

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Co-)
lumbia Gas of Ohio, Inc. for Approval)
of an Economic Development Project:) Case No. 19-1753-GA-EDP
Lawrence Economic Development)
Corporation, Southern Ohio Indus-)
trial District.)

**MOTION FOR A PROTECTIVE ORDER
AND MEMORANDUM IN SUPPORT
OF COLUMBIA GAS OF OHIO, INC.**

Pursuant to Ohio Admin. Code 4901-1-24(D), Columbia Gas of Ohio, Inc. ("Columbia") hereby requests that the Public Utilities Commission of Ohio ("Commission") issue a Protective Order with respect to capital expenditure numbers related to the Lawrence Economic Development Corporation, Southern Ohio Industrial District ("the Project") which is the subject of the Application filed in this docket this same date. The information redacted in the Application is confidential and contains proprietary trade secrets, which are subject to protection from disclosure under Ohio law. Columbia further requests that the Protective Order be effective for a 24-month period, pursuant to Ohio Admin. Code 4901-1-24(F).

The reasons for this motion are more fully explained in the attached Memorandum in Support.

Respectfully submitted by,

COLUMBIA GAS OF OHIO, INC.

/s/ Joseph M. Clark

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Columbia Gas of Ohio, Inc. ("Columbia") is a natural gas utility, regulated by the Public Utilities Commission of Ohio ("Commission"). Southern Ohio Industrial District is located in Lawrence County, Ohio. Lawrence Economic Development Corporation, Southern Ohio Industrial District involves a new customer, PureCycle Technologies, starting a business on the former Dow Chemical plant site near Hanging Rock, Ohio. This site is known as the Southern Ohio Industrial District. Southern Ohio Industrial District was purchased by Lawrence County Economic Development Corporation.

Pursuant to Revised Code § 4929.163, Columbia filed an Application in this same docket requesting Commission approval of this economic development project. The application filed concurrently in this docket contains confidential trade secret information. Specifically, the confidential trade secret information in the application (and redacted in the public version) includes the total project costs and required contribution for the line extension. If this information is released to the public, Columbia would suffer substantial harm as its respective competitors would have access to proprietary trade secrets.

II. LAW

The need to protect confidential and proprietary information is recognized under Ohio administrative law. Ohio Admin. Code 4901-1-24 provides:

Upon motion of any party or person with regard to the filing of a document with the commission's docketing division relative to a case before the Commission...the attorney examiner may issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where the information is deemed by...the attorney examiner to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

Furthermore, under the Ohio Uniform Trade Secrets Act¹, a “Trade Secret” is defined as:

(D) Information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, *or any business information or plans, financial information*, or listing of names, address, or telephone numbers, that satisfies both of the following:

(1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

(2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Moreover, in *State ex rel. The Plain Dealer v. the Ohio Dept. of Ins.*² (1997), the Supreme Court of Ohio adopted a six-factor test to analyze whether information is a trade secret under the statute: (1) the extent to which the information is known outside the business, (2) the extent to which it is known to those inside the business, i.e., by the employees, (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information, (4) the savings effected and the value to the holder in having the information as against competitors, (5) the amount of effort or money expended in obtaining and developing the information, and (6) the amount of time and expense it would take for others to acquire and duplicate the information.³

Applying these criteria, the Commission routinely grants protection to confidential, trade secret information, including pricing information.

III. ARGUMENT

The redacted information contained in the Application meets the criteria for being a Trade Secret under Revised Code 1333.61 and applicable precedent, and should be afforded protective treatment under the Commission’s rules.

¹ Revised Code § 1333.61 (emphasis added)

² *State ex rel. The Plain Dealer v. the Ohio Dept. of Ins.*, 80 Ohio St. 3d 513 (1997)

³ *Id.* at 524-525 (quoting *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983)).

The redacted information in the Application meets the criteria for being considered a “Trade Secret” under Revised Code § 1333.61. First, the redacted content is investment information that is of a business and financial nature. Second, Columbia derives independent economic value from the investment information not being readily ascertainable by others. Public disclosure of the confidential information could harm Columbia’s bargaining position in subsequent economic development ventures that may be similar to the Project at issue here. Finally, it is reasonable under the circumstances to redact the confidential investment information contained within the Application given the public nature of proceeding before the Commission.

The Supreme Court of Ohio has held that pricing information is confidential. In *Ohio Consumers’ Counsel v. Pub. Util. Comm. et al.*, the Court found that the Commission’s determination that account numbers, price of generation and volume of generation specified in a contract had independent economic value was reasonable.⁴ Further, the Court found that the “Commission has the statutory authority to protective competitive agreements from disclosure...”⁵ Granting Columbia’s Motion would also be consistent with Commission precedent granting protective treatment for the same or very similar investment information.⁶

Columbia also satisfies the six-part test laid out by the Supreme Court of Ohio in *State ex rel. The Plain Dealer*. The confidential, trade secret information Columbia seeks continued protection for is not known outside the business. Gener-

⁴ *Ohio Consumers’ Counsel v. Pub. Util. Comm. et al.*, 121 Ohio St. 3d 362, 369 (2009).

⁵ *Id.* at 370.

⁶ *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of the Sofidel Pipeline as an Economic Development Project*, Case No. 16-2069-GA-EDP, Entry at 3 (November 18, 2016); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of a Reasonable Arrangement for Transporting Natural Gas*, Case No. 16-1555-GA-AEC, Finding and Order at 3 (August 31, 2016); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Economic Development Project with Nucor Steel Marion, Inc.*, Case No. 17-1906-GA-EDP, Entry at 3 (September 29, 2017); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Economic Development Project with GETH-Ohio, Southern Ohio Industrial District Project*, Case No. 17-1678-GA-EDP, Entry at 4 (December 12, 2017); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Economic Development Project with FWD:Energy, Southern Ohio Industrial District Project*, Case No. 17-1679-GA-EDP, Entry at 4 (December 12, 2017); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Economic Development Project with CertainTeed Corp.*, Case No. 18-295-GA-EDP, Entry at 3 (March 20, 2018); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Economic Development Project with COMTEX Laundry*, Case No. 18-1296-GA-EDP, Entry at 3 (September 4, 2018).

ally only the NiSource/Columbia employees who designed the Lawrence Economic Development Corporation, Southern Ohio Industrial District project or prepared the Application in this docket have the project cost and required contribution information; the information is not otherwise shared with or accessible to other employees. Columbia has also taken precautions to guard the information by ensuring it is only distributed on a need-to-know basis. Columbia derives material value from the information not being known by other parties who compete against Columbia. While Columbia cannot quantify the amount of effort or money expended in obtaining and developing the information, Columbia spent its internal employee resource time developing the total project and required contribution costs. Finally, it would take a competitor of Columbia significant time and expense to acquire and duplicate the information and giving away this information would unfairly provide a competitor an advantage.

Pursuant to Ohio Admin. Code 4901-1-24(D)(2), Columbia is filing two unredacted copies of the Application, under seal, thus allowing the Commission full access to all information. The Commission will be able to fulfill all of its statutory obligations, meaning that public nondisclosure of the proprietary information contained within the Application is not inconsistent with the purposes of Title 49 of the Revised Code.

This request for a Protective Order is reasonable, necessary and will not prejudice any other party or individual. In fact, to the extent Columbia's and Lawrence Economic Development Corporation, Southern Ohio Industrial District's ability to compete effectively is preserved, Ohio consumers will be better served.

IV. CONCLUSION

For all of the foregoing reasons, Columbia respectfully requests that a Protective Order be issued to protect the confidential and proprietary trade secret information from public disclosure. The Commission should deem the materials in the Application confidential for a period of twenty-four months.

Respectfully submitted,
COLUMBIA GAS OF OHIO, INC.

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Summary: Motion for a Protective Order and Memorandum in Support electronically filed by Cheryl A MacDonald on behalf of Columbia Gas of Ohio, Inc.