

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Columbia Gas of Ohio, Inc. for Ap-	)	
proval of an Economic Develop-	)	Case No. 17-1679-GA-EDP
ment Project: Application for Ap-	)	
proval of an Economic Develop-	)	
ment Project: FWD:Energy, South-	)	
ern Ohio Industrial District Project.	)	

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

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Pursuant to Ohio Admin. Code 4901-1-24(F), Columbia Gas of Ohio, Inc. ("Columbia") hereby requests the extension of a Protective Order granted in response to Columbia's Motion for Protective Order filed on November 15, 2017. Said Protective Order concerns some capital expenditure numbers related to the FWD:Energy, Southern Ohio Industrial District Project ("FWD:Energy") which was the subject of the Application approved in this docket. The information redacted in the Application continues to be confidential and contains proprietary trade secrets, which are subject to protection from disclosure under Ohio law. Columbia respectfully requests that this information continue to be maintained as confidential and not part of the public record for another twenty-four (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

Joseph M. Clark, Counsel of Record

Stephen B. Seiple, Asst. General Counsel  
(0003809)

Joseph M. Clark, Sr. Counsel (0080711)

P.O. Box 117

290 W. Nationwide Blvd.

Columbus, Ohio 43216-0117

Telephone: (614) 460-6988

E-mail: sseiple@nisource.com

josephclark@nisource.com

(Willing to accept service by e-mail)

Attorneys for

**COLUMBIA GAS OF OHIO, INC.**

## MEMORANDUM IN SUPPORT

### I. INTRODUCTION

Pursuant to Revised Code § 4905.31, Columbia filed an Application in this docket requesting Commission approval of a reasonable arrangement. On December 12, 2017, the Commission granted Columbia's Motion for Protective Order of certain confidential, trade secret information. The redacted information includes total project costs for the line extension, the deposit required, and FWD:Energy's contribution towards the deposit. This information is confidential, trade secret information.

### 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 Act, 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.

Revised Code § 1333.61 (emphasis added)

Moreover, in *State ex rel The Plain Dealer v. the Ohio Dept. of Ins.*<sup>1</sup> (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.<sup>2</sup>

Applying these criteria, the Commission routinely grants protection to confidential, trade secret information, including total project cost, deposit amounts, and customer contribution information, as it did in this case in December 2017. The Commission also routinely grants trade secret status to future, projected pricing and cost information.<sup>3</sup> The Commission has also granted protective treatment to competitive retail natural gas supply (“CRNGS”) provider trade secret information such as revenue amounts, customer counts, volumes, and rate information.<sup>4</sup>

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<sup>1</sup> *State ex rel The Plain Dealer v. the Ohio Dept. of Ins.*, 80 Ohio St. 3d 513 (1997)

<sup>2</sup> *Id.* at 524-525 (quoting *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983)).

<sup>3</sup> See, e.g., *In the Matter of the Alternative Energy Portfolio Status Report for 2012 of Direct Energy Business, LLC*, Case Nos. 13-890-EL-ACP, *et al.*, Entry on Rehearing (May 20, 2015).

<sup>4</sup> See, e.g., *In the Matter of the Application to Modify, in Accordance with R.C. 4929.08, the Exemption Granted to The East Ohio Gas Company d/b/a Dominion East Ohio in Case No. 07-1224-GA-EXM*, Case No. 12-1842-GA-EXM, Entry at 9-10 (November 2, 2015).

### III. ARGUMENT

The redacted information contained in the Application continues to meet the criteria for being considered a “Trade Secret” under Revised Code § 1333.61.

First, the entirety of the redacted content remains sensitive information that is of a business and financial nature. These details are clearly “business information or plans” as defined in Revised Code § 1333.61(D) and routinely protected by the Commission.

Second, independent economic value remains in the amounts and entity names, total project cost, and required contribution, due to the confidential nature of the Application not being readily ascertainable by others. The Supreme Court of Ohio has held that pricing and consumption 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.<sup>5</sup> Further, the Court found that the “Commission has the statutory authority to protect competitive agreements from disclosure...”<sup>6</sup> The independent economic value of this information to Columbia’s and FWD:Energy’s competitors has not diminished in this short two-year period and the Commission should not allow it to be disclosed now.

Further, granting Columbia’s Motion for an extension of a Protective Order would be consistent with the Commission’s Order granting Columbia’s first request for a Protective Order on November 15, 2017. The Commission correctly recognized its trade secret value in 2017 and there is no less need for this protection in 2019. There is arguably more need to protect this information to ensure both FWD:Energy and Columbia’s investments *in the pipeline that has now actually been constructed and is in-service* are not undercut by giving this information to competitors.

Columbia also satisfies the six-part test laid out by the Ohio Supreme Court in *State Ex Rel The Plain Dealer*.<sup>7</sup> The confidential, trade secret information Columbia seeks continued protection for is not known outside the business. Generally only the NiSource/Columbia employees who interact with FWD:Energy have this information and the information is not otherwise shared with or accessible to other

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<sup>5</sup> *Ohio Consumers’ Counsel v. Pub. Util. Comm. et al.*, 121 Ohio St. 3d 362, 369 (2009).

<sup>6</sup> *Id.* at 370.

<sup>7</sup> See Affidavit of Thomas Young.

employees. Columbia has taken precautions to guard the information by ensuring it is only distributed on a need-to-know basis. Both Columbia and FWD:Energy derive material value from the information not being known by other parties who compete against Columbia and FWD:Energy. Without this protection, competitors of both Columbia and FWD:Energy could use this intelligence to better price their own services or products to compete against Columbia and FWD:Energy. While Columbia cannot quantify the amount of effort or money expended in obtaining and developing the information, both parties spent significant time negotiating the information currently protected in the Application. It would also take a competitor of Columbia or FWD:Energy significant time and expense to acquire and duplicate the information and giving away this information would needlessly provide a competitor an advantage.

Finally, pursuant to Ohio Admin. Code 4901-1-24(D)(2), Columbia filed two un-redacted copies of the Special Agreement, under seal, attached to its first Motion for Protective Order, thus allowing the Commission full access to all information. This allowed and continues to allow the Commission to fulfill all of its statutory obligations, meaning that public nondisclosure of the proprietary information contained within the Special Agreement is not inconsistent with the purposes of Title 49 of the Revised Code.

This request for the Extension of a Protective Order is reasonable, necessary, and will not prejudice any other party or individual. In fact, to the extent Columbia's and FWD:Energy's ability to compete effectively is preserved, Ohio consumers will be better served.

For all of the foregoing reasons, Columbia respectfully requests that the Commission issue an extension of its Protective Order, which permits Columbia's and FWD:Energy's information to continue to be maintained as confidential, not part of the public record, and requires those with access to treat all information disseminating from the Special Agreement in a confidential manner for another twenty-four (24) months.

Respectfully submitted,  
**COLUMBIA GAS OF OHIO, INC.**

By: /s/ Joseph M. Clark  
Joseph M. Clark (Counsel of Record)

Stephen B. Seiple, Asst. General Counsel  
(0003809)  
Joseph M. Clark, Sr. Counsel (0080711)  
290 W. Nationwide Blvd.  
P.O. Box 117  
Columbus, Ohio 43215  
Telephone: (614) 460-6988  
Email: sseiple@nisource.com  
josephclark@nisource.com

(Willing to accept service by email)

Attorneys for  
**COLUMBIA GAS OF OHIO, INC.**

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