

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Co-)
lumbia Gas of Ohio, Inc. for Approval) Case No. 18-0295-GA-EDP
of an Economic Development Project:)
CertainTeed Expansion Project.)

**MOTION TO EXTEND PROTECTIVE ORDER
AND MEMORANDUM IN SUPPORT OF
COLUMBIA GAS OF OHIO, INC.**

Pursuant to Ohio Adm.Code 4901-1-24, Columbia Gas of Ohio, Inc. ("Columbia") hereby requests that the Public Utilities Commission of Ohio ("Commission") extend a Protective Order with respect to capital expenditure numbers related to the CertainTeed Expansion Project (the "Project"), which is the subject of the Application filed in this docket on February 21, 2018. The information redacted in the Application continues to be confidential and still 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 Adm.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/ John R. Ryan

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MEMORANDUM IN SUPPORT

Pursuant to R.C. 4929.163, Columbia filed an Application in this docket requesting Commission approval of an economic development project. The Application contained confidential trade secret information. Specifically, the confidential trade secret information in the Application (and redacted in the public version) included total project costs for the line extension, the deposit required, and CertainTeed Corp.'s ("CertainTeed") contribution towards the deposit. On March 20, 2018, the Commission granted Columbia's Motion for Protective Order of the confidential, trade secret information.¹ On January 22, 2020, Columbia filed a Motion for Extension of the granted Protective Order.

The need to protect confidential and proprietary information is recognized under Ohio administrative law. Ohio Adm.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.

Pursuant to Ohio Adm.Code 4901-1-24(D)(2), Columbia filed two un-redacted copies of the Application, under seal, thus allowing the Commission full access to all information. The Commission will still 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.

Furthermore, under the Ohio Uniform Trade Secrets Act,² 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*

¹ *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 (March 20, 2028).

² R.C. 1333.61 (emphasis added).

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.

The redacted information in the Application continues to meet the criteria for being considered a “Trade Secret” under R.C. 1333.61. First, the redacted content is investment information that is of a business and financial nature. Second, Columbia still derives independent economic value from the investment information not being readily ascertainable by others. The capital investment agreed to by each party was the result of negotiated bargaining by the contributing entities, and public disclosure of the results of these negotiations could still harm each entity’s bargaining position in subsequent economic development ventures that may be similar to the Project at issue here. Finally, it remains 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.³ Further, the Court found that the “Commission has the statutory authority to protective competitive agreements from disclosure...”⁴ Finally, granting Columbia’s Motion would be consistent with its precedent granting protective treatment for the same or very similar investment information.⁵

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

⁴ *Id.* at 370.

⁵ *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

Moreover, in *State ex rel. The Plain Dealer v. the Ohio Dept. of Ins.*,⁶ 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.⁷

Columbia satisfies this six-part test. The confidential, trade secret information Columbia seeks continued protection for is not known outside the business. Generally, only Commission Staff and the NiSource Inc. and Columbia employees who interact with CertainTeed have this information and the information is not otherwise shared with or accessible to other employees. Columbia has taken precautions to guard the information by ensuring it is only distributed on a need-to-know basis. Both Columbia and CertainTeed derive material value from the information not being known by other parties who compete against Columbia and CertainTeed. Without this protection, competitors of both Columbia and CertainTeed could use this intelligence to better price their own services or products to compete against Columbia and CertainTeed. While Columbia cannot quantify the amount of effort or money expended in obtaining and developing the information, both parties spent significant time negotiating the redacted information currently protected in the Application. Finally, it would still take a competitor of Columbia or CertainTeed significant time and expense to acquire and duplicate the information and giving away this information would needlessly provide a competitor an advantage.

No. 17-1678-GA-EDP, Entry at 3 (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 3 (December 12, 2017); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Economic Development Project with CertainTeed*, 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 Known as the North Central Ohio Business Park Site* Ohio Authentication Project, Case No 19-1274-GA-EDP, Entry at 3 (June 25, 2019); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Economic Development Project Known as the Lawrence Economic Development Corporation, Southern Ohio Industrial District*, Case No 19-1753-GA-EDP, Entry at 3 (October 3, 2019).

⁶ *State ex rel. The Plain Dealer v. The Ohio Dept. of Ins.*, 80 Ohio St. 3d 513 (1997).

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

This request to extend the Protective Order is reasonable, necessary and will not prejudice any other party or individual. In fact, to the extent Columbia's and CertainTeed's ability to compete effectively is still preserved, Ohio consumers will be better served.

For all of the foregoing reasons, Columbia respectfully requests that the Commission extend the existing Protective Order to continue to protect the confidential and proprietary trade secret information from public disclosure. The Commission should deem the materials in the Application confidential for another period of 24 months.

Respectfully submitted,

COLUMBIA GAS OF OHIO, INC.

By: /s/ John R. Ryan

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Summary: Motion Motion for Extension of a Protective Order and Memorandum in
Support electronically filed by Mr. John R. Ryan on behalf of Columbia Gas of Ohio