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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of North Coast Gas Transmission, LLC for Approval of Contracts With the East Ohio Gas Company dba Dominion East Ohio, and Columbia Gas of Ohio, Inc. That Will Allow the operation of Lines in Connection with Each Other Pursuant to Section 4905.48(A) of the Revised Code.

Case No. 09-564-GA-ATR

**JOINT MOTION FOR PROTECTIVE ORDER OF THE EAST OHIO GAS COMPANY
D/B/A DOMINION EAST OHIO, NORTH COAST GAS TRANSMISSION, LLC, AND
COLUMBIA GAS OF OHIO, INC.**

Pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code, The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO"), North Coast Gas Transmission, LLC ("North Coast"), and Columbia Gas of Ohio, Inc. ("Columbia") jointly move for a protective order providing that certain information filed by DEO, North Coast, and Columbia under seal with this motion is a "trade secret" as that term is defined under Ohio Revised Code Section 1333.61 and should be protected from public disclosure. This motion is supported by the attached memorandum in support.

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of North Coast Gas Transmission, LLC for Approval of Contracts With the East Ohio Gas Company dba Dominion East Ohio, and Columbia Gas of Ohio, Inc. That Will Allow the operation of Lines in Connection with Each Other Pursuant to Section 4905.48(A) of the Revised Code.

Case No. 09-__-GA-ATR

**MEMORANDUM IN SUPPORT OF THE MOTION FOR PROTECTIVE ORDER
BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL ON BEHALF OF
THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO**

I. INTRODUCTION

Pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code, The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO"), North Coast Gas Transmission, LLC ("North Coast"), and Columbia Gas of Ohio, Inc. ("Columbia") seek a protective order to preserve the confidentiality of "trade secret" information as that term is defined under Revised Code Section 1333.61. DEO, North Coast, and Columbia have met the requirements set forth in Rule 4901-1-24(D) necessary for the Commission to grant the protective order. Movants seek to protect information contained in the document filed under seal, Exhibit A to the Application for Interconnection North Coast Gas Transmission, LLC ("Application") submitted in this proceeding. The information for which protection is sought constitutes only the price amount and one sentence describing the amount of gas retained by DEO as the unaccounted for gas percentage. As demonstrated below, this information has independent economic value and deserves protection. Granting this motion is required under Section 1333.61 and case law from the Ohio Supreme Court and the Commission.

II. ARGUMENT

A. The Information At Issue Constitutes a Trade Secret and Deserves Protection.

Under Rule 4901-1-24(D), a party may seek an order “necessary to protect the confidentiality of information contained in [a filed] document, to the extent that state or federal law prohibits release of the information, including where the information is deemed by the commission . . . to constitute a trade secret under Ohio law.” Ohio Admin. Code § 4901-1-24(D). Section 1333.61(D) of the Revised Code defines “trade secret” as follows:

“Trade secret” means information, including . . . any business information or plans . . . [or] financial information . . . 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.

To determine whether information meets the trade secret definition set forth in Section 1333.61, the Commission has adopted the following six part test:

- (1) [t]he 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.

See In re the Utilities Group, Case No. 09-351-EL-AGG (Entry at 2) (May 1, 2009), (citing *State ex. Rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St. 3d 513, 524-525).

The material for which Movants seek protection qualify as trade secrets under Section 1333.61 and the Commission's six-part test. The information for which Movants seek protection is found in Application Exhibit A and consists of two things: (1) the price for gas transportation service charged by DEO to North Coast; and (2) the amount of gas retained by DEO as the unaccounted for gas percentage. The information at issue is potentially valuable to DEO and the parties with whom DEO does business and must negotiate.

The information is part of a competitive gas transportation contract. DEO has other similar contracts with gas marketers and end users operating in that competitive market. These marketers and end users would gain a competitive advantage by knowing the price and retained gas terms set forth in Exhibit A. In particular, they may act upon the competitive knowledge by attempting to negotiate more favorable gas transportation price and gas retention terms with DEO. Permitting competitive contract terms -- particularly discounted contract terms -- into the public domain puts DEO at a competitive disadvantage. It also may result in economic harm to customers and DEO. To the extent that DEO is unable to negotiate favorable terms in its competitive contracts, its revenue from competitive sources may be reduced. If revenue from competitive contracts (such as the gas transportation contracts with marketers and end users) is reduced, other customers must make up the revenue shortfall in rates established in a base rate proceeding because DEO's revenue requirement remains the same. To the extent there is a time lag before rates are adjusted, DEO is harmed directly. The Commission has previously ruled that such price information has independent economic value and is a trade secret. *In re Duke's SRT*, Case No. 07-723-EL-UNC *et al* (Entry at 4) (August 4, 2008).

The first piece of information that Movants seek to protect is the gas transportation price. The gas transportation price is a competitive price negotiated with each transporter. The Commission does not require the filing or release of a gas transportation price negotiated between a utility and a marketer or end user or between a utility and an interstate gas pipeline company. It is equally inappropriate for the Commission to require DEO and North Coast to release the transportation price set forth in Exhibit A. Disclosure of a discounted gas transportation price permits market participants to attempt to negotiate a similarly discounted price, making it difficult for DEO to maintain its revenues derived from gas transportation contracts to the detriment of other customers. Disclosure is also inappropriate because the price terms are before the Commission only because the contracting parties happen to be regulated public utilities, which requires the competitive contract to come before the Commission pursuant to Revised Code Section 4905.48. The Commission should treat the gas transportation price set forth in Exhibit A in the same manner as the gas transportation price is treated in other competitive contracts, as confidential material. The redaction of the price terms meets the standards of Section 1333.61, the Commission's six-part test, and the precedent set in *Duke* to protect price information.

The second piece of information that Movants seek to protect is the amount of gas retained by DEO as the unaccounted for gas percentage. Disclosure of the amount of gas retained by DEO as the unaccounted for gas percentage would harm customers and DEO and therefore, like the price information, has independent economic value and is a trade secret. Disclosure of discounted gas retention rates would provide leverage to competitive gas transporters to negotiate lower gas retention terms. If, as a result of disclosure, DEO is unable to negotiate favorable gas retention rates as part of its gas transportation contracts, the costs associated with unaccounted for gas increase to all other customers. This would result in a rate

increase to customers to recover such costs through Transportation Migration Rider-Part B. To the extent there is a lag in the cost recovery through rates DEO is directly harmed. Because of the potential harm to customers and DEO, the information sought to be protected “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.” *See* R.C. 1333.61(D)(1).

Further, DEO has taken reasonable efforts to maintain the confidentiality of this information by limiting internal access to this information – only a limited number of employees have access to this information. DEO has also provided this information to counterparties only with an expectation that such information would be held confidential or subject to an explicit confidentiality agreement. *See* R.C. 1333.61(D)(2).

Non-disclosure of this information is also consistent with some of the policies embodied in Revised Code Title 49 because doing so would help maintain the competitive gas market and maintain a reasonable cost basis for SSO customers. Specifically, non-disclosure is consistent with Sections 4929.02(A)(1)-(11) because it: (1) promotes the availability of reliable reasonably priced service by relieving capacity constraints in Parma at a reasonable price; (2) promotes unbundled gas service through a diversity of suppliers; (3) promotes market access because the new capacity allows more market opportunities; (4) allows DEO to run the distribution system in a cost effective manner; (5) promotes the emergence of the competitive natural gas markets through flexible regulatory treatment by maintaining as separate traditional regulated and competitive functions, thus eliminating cross-subsidies; and (6) facilitates additional choices for residential customers.

Non-disclosure of the gas transportation price and the amount of gas retained by DEO as the unaccounted for gas percentage is consistent with the statutory policy set forth in R.C.

4929.11 because disclosure gives gas transporters a negotiating advantage that makes it more difficult for DEO to negotiate favorable contract terms to the detriment of DEO and its customers for the reasons stated above. It may also make it more difficult for DEO to offer gas transportation contract terms that make projects alleviating capacity constraints, such as the North Coast pipeline project at issue in this case, economically viable. Ultimately, non-disclosure permits North Coast to get a transportation price and retained gas term that makes it economically viable to build the pipeline that reduces the capacity constraint. DEO gets a transportation rate and retained gas clause that meet its revenue and system requirements. Competitive gas transporters get fair market terms and conditions for gas transportation service. Disclosure endangers all sides of the equation and may chill future projects and increase prices to customers.

B. The Commission Has Issued a Protective Order to Protect Confidential Material Filed as Part of a Stipulation Seeking Commission Approval of R.C. 4905.48 Contracts.

In *AT&T Ohio v. Dayton Power & Light Co.*, Case No. 06-1509-EL-CSS (Finding and Order) (Nov. 7, 2007), AT&T and Dayton Power & Light (“DP&L”) entered a Stipulation and Recommendation to resolve a complaint by AT&T alleging that DP&L had breached the Joint Pole Line Agreement between the two utilities. The Stipulation was filed with the Commission. *Id.* at 1-2. AT&T and DP&L sought a protective order from the Commission to protect from public disclosure two sentences in Section II(B) of the Stipulation that dealt with past charges for the joint use poles. *Id.* at 2. After an *in camera* review, the Commission determined that the pricing information at issue was a trade secret pursuant to Section 1333.61. *Id.* at 2-4.

As in *AT&T*, this case involves approval of a contract between utilities under Revised Code Section 4905.48. As in *AT&T*, notwithstanding the fact that the information at issue appears in a contract between utilities, it nevertheless has competitive value to the utilities and to

other parties that the utilities deal with and thus is a trade secret under Ohio law. As in *AT&T*, the information at issue deserves protection.

III. CONCLUSION

For the foregoing reasons, the Motion for Protective Order should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Joint Motion for Protective Order and Memorandum in Support was sent by electronic mail to the following parties on this 6th day of July, 2009.



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