

FILE

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

In the Matter of the Application
Of Suburban Natural Gas Company
For Approval of a Contract With
Bakery Feeds, A Division of
Griffin Industries

Case No. 10-2465 -GA-AEC

SUBURBAN NATURAL GAS COMPANY'S
MOTION FOR PROTECTIVE ORDER

Suburban Natural Gas Company (hereinafter "Suburban"), by its attorneys, and pursuant to Section 4901-1-24(D) of the Commission's rules, moves for a protective order keeping confidential the designated confidential and/or propriety information contained in the filing accompanying this motion. The reasons underlying this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of Section 4901-1-24(D) of the Commission's rules, unredacted copies of the confidential information which is the subject of this motion have been filed under seal.

Respectfully submitted,



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MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER

Suburban requests that the information designated as confidential and/or proprietary in the accompanying filing (along with any and all copies, including electronic copies) be protected from public disclosure.

Suburban states that the customer contract for which approval is sought was secured by Suburban in direct competition with another natural gas distribution company presently capable of providing the identical service to the customer. Accordingly, disclosure of the information for which confidential treatment is sought would have a substantial and negative impact upon Suburban's ability to retain this customer and maintain its existing revenue stream.

Section 4901-1-24(D) of the Commission's rules provides that the Commission or certain designated employees may issue an order which is necessary to protect the confidentiality of information contained in documents filed with the Commission's Docketing Division to the extent that state or federal law prohibits the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. As set forth herein, state law prohibits the release of the information which is the subject of this motion.

Moreover, the non-disclosure of the information will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in order to fulfill its statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. While the Commission has often expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to trade secrets:

The Commission is of the opinion that the "public records" statute must also be read in pari materia with Section 1333.31, Revised Code ("trade secrets" statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

In re: General Telephone Co., Case No. 81-383-TP-AIR (Entry, February 17, 1982). Likewise, the Commission has facilitated the protection of trade secrets in its rules (O.A.C. §4901-1-24(A)(7)).

The definition of a "trade secret" is set forth in the Uniform Trade Secrets Act:

"Trade secret" means 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, addresses, 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.

R.C. §1333.61(D). This definition clearly reflects the state policy favoring the protection of trade secrets such as the information which is the subject of this motion.

Courts of other jurisdiction have held that not only does a public utilities commission have the authority to protect the trade secrets of a public utility, the trade secret statute creates a duty to protect them. New York Tel. Co. v. Pub. Serv. Comm. N.Y., 56 N.R. 2d 213 (1982). Indeed, for the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses, including public utilities, through the Uniform Trade Secrets Act. This Commission has previously carried out its obligations in this regard in numerous proceedings. See, e.g., Elyria Tel. Co., Case No. 89-965-TP-AEC (Finding and Order, September 21, 1989); Ohio Bell Tel. Co., Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); Columbia Gas of Ohio, Inc., Case No. 90-17-GA-GCR (Entry, August 17, 1990).

The Ohio General Assembly recently amended R.C. §§ 4901.12 and 4905.07 in order to facilitate the protection of trade secrets in

the Commission's possession. Am. Sub. H.B. 476, effective September 17, 1996. The General Assembly carved out an exception to the general rule in favor of the public disclosure of information in the Commission's possession. By referencing R.C. §149.43, the Commission-specific statutes now incorporate the provision of that statute that excerpts from the definition of "public record" records the release of which is prohibited by state or federal law. R.C. §149.43(A)(1). In turn, state law prohibits the release of information meeting the definition of a trade secret. R.C. §§1333.61(D) and 1333.62. The amended statutes also reference the purposes of Title 49 of the Revised Code. The protection of trade secret information from public disclosure is consistent with the purposes of Title 49 because the Commission and its Staff have access to the information; in many cases, the parties to a case may have access under an appropriate protective agreement. The protection of trade secret information as requested herein will not impair the Commission's regulatory responsibilities.

In Pyromatics, Inc. v. Petruziello, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983), the Court of Appeals, citing Koch Engineering Co. v. Faulconer, 210 U.S.P.Q. 854, 861 (Kansas 1980), has delineated factors to be considered in recognizing a trade secret:

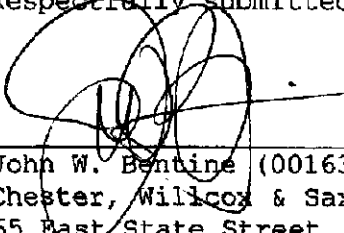
(1) The extent to which the information is known outside the business, (2) the extent to which it is known to those inside the business, i.e., by the employees, (3) the

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.

For all of the information which is the subject of this motion, Suburban considers and has treated the information as a trade secret. In the ordinary course of business of Suburban, this information is stamped confidential, is treated as proprietary and confidential by Suburban employees, and is not disclosed to anyone except in a Commission proceeding and/or pursuant to staff data request. During the course of discovery, information of this type information has generally been provided only pursuant to protective agreement.

The Attachment to this Memorandum in Support lists the information which has been redacted from the associated filing and further describes why it should be granted protected status. For the foregoing reasons, Suburban requests that the designated information be protected from public disclosure.

Respectfully submitted,



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ATTACHMENT

Information Redacted

Reasons

Price per Mcf

The price per Mcf set forth in this contract is competitively sensitive and was individually negotiated with Banc One. Public disclosure of the unit price would impair Suburban's ability to respond to competitive opportunities in the marketplace.

Term of Contract

The term of the contract is competitively sensitive information. Its public disclosure would alert competitors to renewal and/or cancellation opportunities which could impair Suburban's ability to serve this customer.

AGREEMENT FOR GAS SERVICE

BAKERY FEEDS, a division of Griffin Industries, having an office at 12850 Quarry Road, North Baltimore, Ohio 45872 (hereinafter referred to as "Customer"), and SUBURBAN NATURAL GAS COMPANY, an Ohio public utility subject to the jurisdiction of the Public Utilities Commission of Ohio (hereinafter referred to as "Suburban"), hereby enter into the following agreement for gas service pursuant to Section 4905.31 of the Ohio Revised Code:

A. Subject to availability of gas supply, sufficient capacity in existing plant, applicable provisions of its published tariffs, and valid rules, regulations, and orders of all regulatory authorities having jurisdiction, Suburban agrees to furnish gas service to Customer at Customer's plant and office at 12850 Quarry Road, North Baltimore, Ohio 45872 upon the following terms and conditions:

1. Measurement. The unit of measurement shall be that quantity of gas which will occupy one cubic foot at a pressure base of fourteen and seventy-three hundredths (14.73) pounds per square inch absolute [thirty (30) inches of mercury], a temperature base of sixty degrees (60°) Fahrenheit (520 F. Absolute), and without adjustment for water vapor content or as from time to time specified in the tariffs filed with the Federal Energy Regulatory Commission (FERC) by Suburban's suppliers. To determine the volume of gas delivered,

factors such as those required for pressure, temperature, and specific gravity and deviation from Boyle's Law shall be applied.

2. Rate. The base rate per one thousand cubic feet (Mcf) of gas delivered shall, subject to the adjustments and charges set forth below, be \$ (information redacted).

3. Cost Adjustments. The base rate set forth above does not include the cost of gas purchased by Suburban from its suppliers or the Ohio Gross Receipts Tax applicable thereto which shall be added to the base rate to arrive at Suburban's billing rate. Moreover, Suburban's cost of gas shall be subject to adjustment for increases or decreases in accordance with Chapter 4901:1-14 of the Ohio Administrative Code as required by the Public Utilities Commission of Ohio ("PUCO").

4. Billing. Bills for service rendered under this Agreement shall be mailed by the fifteenth (15th) day of each month for gas delivered during the preceding month and shall be due and payable within fourteen (14) days of the date of mailing. Delinquent payments shall be subject to a penalty of five percent (5%).

5. Service Restrictions and Limitations. Suburban shall have the right to curtail or discontinue deliveries of gas to Customer

whenever and to the extent necessary, in Suburban's sole judgment, such curtailment or interruption of service is required for safety reasons, to prevent injury to the public or Suburban's customers, to protect Suburban's system, and/or pursuant to PUCO regulations and orders. In the event Suburban determines that the exercise of such right is necessary, it shall immediately notify Customer of its decision and of the probable duration of such service limitation or restriction.

B. Customer agrees to accept gas service from Suburban for the full requirements of the North Baltimore plant and office upon the terms and subject to the foregoing limitations and conditions and to promptly pay the rates and charges herein set forth for the duration of this Agreement.

C. Neither Suburban nor Customer shall be liable in damages to the other for any act, omission, or circumstance preventing fulfillment of any obligation hereunder, occasioned by or in consequence of any act not within the control of either party hereto. In the event of any such circumstance, the parties hereto shall not be relieved of the responsibility of making prompt effort to again place themselves in position to carry out all obligations which they have assumed by the terms of this Agreement.

D.

(Information Redacted)

E. This Agreement shall inure to the benefit of and be binding upon the parties, their heirs, successors, and assigns.

F. The rates and charges set forth in this Agreement shall be and remain confidential as to third parties, and Suburban shall seek approval for such treatment in its filing with the PUCO.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by officers or agents duly qualified in the premises as of the 29th day of October, 2010.

SUBURBAN NATURAL GAS COMPANY

By: David L. Pemberton, Jr.
David L. Pemberton, Jr.
President

BAKERY FEEDS
A Division of Griffin Industries

By: Doug Buckner
Doug Buckner
General Manager