

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Five-Year Review of)
Natural Gas Company Uncollectible) Case No. 08-1229-GA-COI
Riders.)

ENTRY

The Commission finds:

- (1) On August 19, 2009, the Commission issued its finding and order in this case, which, *inter alia*, determined that a consultant should be selected in order to assist the Commission in the evaluation of the collection policies, practices, and performance of Vectren Energy Delivery of Ohio, Inc., The East Ohio Gas Company d/b/a Dominion East Ohio, Duke Energy of Ohio, Inc. (Duke), and Columbia Gas of Ohio, Inc. (Columbia), and issued a request for proposal.
- (2) By entry issued September 30, 2009, the Commission, *inter alia*, selected NorthStar Consulting Group (NorthStar) to audit the collection policies and practices. On May 3, 2010, as revised on May 7, 2010, NorthStar filed its audit report.
- (3) On May 3, 2010, Columbia and Duke filed motions for protective order of certain information contained in the audit report, pursuant to Rule 4901-1-24, Ohio Administrative Code (O.A.C.). Specifically, Columbia requests confidential treatment of certain information contained in Chapter III of the report related to Columbia's customer segmentation process and the threshold numbers for shut-offs for the different customer groups. Similarly, Duke requests protection for information contained in Chapter V, Section C, Key Practice Comparison, of the report, which includes a comparison of all the companies' practices regarding terminations and payment arrangements of their customers.
- (4) In support of its motion for protective order, Columbia submits that certain numbers referenced in Chapter III are not publically disseminated and not widely known throughout the company. While Columbia admits that the information may not rise to the level of a trade secret, Columbia is concerned that disclosure of the information may provide a disincentive for customers to pay their bills on time; thus, increasing the company's bad debt and the

uncollectible rider. In addition, Columbia offers that the threshold number for shut-off is subject to frequent changes and public disclosure of this information could mislead customers.

- (5) Likewise, Duke argues that certain information in the audit report is confidential because it would be of value to customers seeking to avoid responsibility for payment of their bills and, if released, would increase the amount of the company's bad debt. Duke submits that this material, if disclosed, would enable customers to ascertain the manner in which the company plans, manages, and operates its termination and payment procedures. According to Duke, if this information is public, the company would be placed at a disadvantage because its ability to terminate service and make payment arrangements for those customers that are delinquent in payments and gaming the system would be reduced. Duke believes that, with the information, a customer could take actions that, in the absence of the information, they would not otherwise take. Furthermore, Duke states that the information is not known outside of Duke and is not disseminated within Duke except to those employees who have a need to know. Duke considers this information to be proprietary, confidential, and a trade secret as those terms are used in Section 1333.61, Revised Code; therefore, Duke asserts that this information should be treated as confidential pursuant to Section 4901.16, Revised Code.
- (6) On May 21, 2010, OCC filed a memorandum contra the motions for protective order filed by Columbia and Duke. OCC asserts that the motions are deficient and the Commission should deny the motions. OCC emphasizes that Commission proceedings and documents in the Commission's possession are public record and should be open to the public for inspection, pursuant to Sections 4901.12 and 4905.07, Revised Code. OCC states that, while these statutes recognize the trade secret exception to the Commission's open records policy found in Sections 149.43, Revised Code, as defined in Section 1331.61(D), Revised Code, the information for which Columbia and Duke request protection does not qualify under the trade secret exception. OCC points out that, while Columbia acknowledges in its motion that the report may not rise to the level of a trade secret, Duke argues that the information is a trade secret. However, OCC asserts that Duke makes no argument supporting its contention and fails to demonstrate how the data derives any independent economic value as required by the statutory definition of a trade secret. OCC notes that the only

argument raised by both companies is that customers may game the system if they know how the companies handle terminations. OCC agrees that gaming should not be encouraged; however, OCC advises that the law does not allow for proceedings to be closed to the public for this reason.

- (7) On May 28, 2010, Columbia and Duke filed replies to OCC's memorandum contra their motions for protective order. Columbia maintains that the information regarding the segmentation process is extremely confidential and sensitive and disclosure of it may harm Columbia's customers. Columbia avers that OCC has failed to identify the potential harm to customers if this information is not publically disclosed. Duke insists that the information is a trade secret and that OCC's arguments are not persuasive because Duke's termination and payment procedures have potential, if not actual, economic value from not being generally known. According to Duke, the laws of economics and self-interest demonstrate that others tend to use confidential information to their benefit.
- (8) Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, specifies that the term "public records" excludes information which, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State* (2000), 89 Ohio St.3d 396, 399.
- (9) Similarly, Rule 4901-1-24, O.A.C., allows the Commission to issue an order 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 . . . to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."
- (10) Ohio law defines a trade secret as "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." Section 1333.61(D), Revised Code.

- (11) The Commission has reviewed the information included in the motions for protective order filed by Columbia and Duke, as well as the assertions set forth in the supportive memorandum, OCC's memorandum contra, and the companies' replies. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,¹ the Commission finds that the audit report does not contain trade secret information. Therefore, the Commission finds the motions for protective order should be denied in their entirety. Accordingly, on December 7, 2010, the Commission's docketing division should release the unredacted pages of the audit report filed by NorthStar in this docket on May 3, 2010.
- (12) At this time, the Commission finds it appropriate to allow interested persons to file comments on the audit report filed by NorthStar on May 3, 2010, as revised. Therefore, comments and reply comments on the audit report may be filed by January 14, 2011, and February 11, 2011, respectively.

It is, therefore,

ORDERED, That, in accordance with finding (11), the motions for protective order filed by Columbia and Duke be denied. It is, further,


ORDERED, That, on December 7, 2010, the Commission's docketing division release the unredacted pages of the audit report filed by NorthStar in this docket on May 3, 2010. It is, further,

ORDERED, That interested persons may file comments and reply comments on the audit report by January 14, 2011, and February 11, 2011, respectively. It is, further,

¹ See *State ex-rel. the Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-525.

ORDERED, That a copy of this entry be served upon all natural gas companies in the state of Ohio and all parties of record in this proceeding.

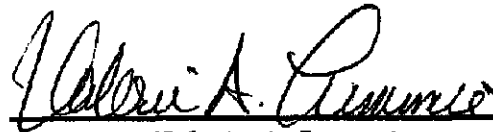
THE PUBLIC UTILITIES COMMISSION OF OHIO



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