

FILE

14

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

Application of
Palmco Energy OH, LLC for
Renewal Certification as
Competitive Retail
Natural Gas Supplier

Case No. 10-138-GA-CRS

RECEIVED-DOCKETING DIV
2012 JAN 13 AM 11:38
PUCO

MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER
AND EXTENSION OF PRIOR PROTECTIVE ORDER

Palmco Energy OH, LLC ("Palmco Energy") seeks (1) a Protective Order to protect the confidential and proprietary information contained in the audited Columbia Utilities, LLC's and Palmco LLC's Consolidated Financial Statements dated December 31, 2010 ("Affiliate Financials"), filed as part of Exhibit C-4 of Section C-4 of Palmco Energy's Application for Renewal Certification as a Competitive Retail Natural Gas Supplier in Ohio ("Renewal Application") and (2) an extension to the prior Commission Protective Order entered on March 17, 2010, granted in connection with Palmco Energy's initial Certification Application, and covering the Combined Financial Statements of Columbia Utilities, LLC and Columbia Utilities Power, LLC, dated December 31, 2007 and December 31 2008 ("Columbia Financials").

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business.

Technician JD Date Processed 01-13-12

PROTECTIVE ORDER FOR AFFILIATE FINANCIALS

Section C-4 of the Renewal Application requires Palmco Energy to “provide copies of the applicant’s current financial arrangements to conduct competitive retail natural gas service as a business activity (e.g. guarantees, bank commitments, contractual arrangements, credit arrangements, etc.).” As Palmco Energy has not yet commenced doing business in Ohio, as part of Section C-4 of the Renewal Application it is submitting a Guarantee from Columbia Utilities, LLC, Columbia Utilities Power, LLC, Palmco Energy CT, LLC, Palmco Power CT, LLC, Palmco Energy MD, LLC, Palmco Power MD, LLC, Palmco Energy NJ, LLC, Palmco Power NJ, LLC, Palmco Energy PA, LLC, Palmco Power PA, LLC, Palmco Energy NY, LLC, and Palmco Power NY, LLC (collectively, the “Palmco Affiliates”) in the form attached hereto as Appendix A. Under the terms of the Guarantee, the Palmco Affiliates will act as guarantors of Palmco Energy’s obligations to its retail natural gas customers under Palmco Energy’s natural gas retail sales agreements with such customers. To demonstrate the Palmco Affiliates’ financial ability to act as guarantors of these obligations, Palmco Energy is providing the Affiliate Financials as part of the Renewal Application.

The Palmco Affiliates are each an affiliate of Palmco Energy and of one another¹ and are each in the business of selling natural gas or electricity.² The

¹ Palmco Energy OH, LLC, and each of the Palmco Affiliates have a common ownership of at least 80%.

² Columbia Utilities, LLC is in the business of selling natural gas at retail in New York; Columbia Utilities Power, LLC is in the business of selling electric power at retail in New York; Palmco Energy CT LLC is in the business of selling natural gas at retail in Connecticut; Palmco Power CT, LLC is in the business of selling electric power at retail in Connecticut; Palmco

Affiliate Financials contain confidential and proprietary information not available to the public.

The marketplaces for the sale of electric power and natural gas at retail in each of the states where the Palmco Affiliates do business are highly competitive. The confidential and proprietary financial information contained in the Affiliate Financials includes data identifying the Palmco Affiliates' natural gas and electric power sales, costs, discounts, allowances, margins, and other commercially sensitive information that would be a significant aid to any entity that competes with the Palmco Affiliates in the sale and supply of gas and/or electric power to retail customers located in the states in which they operate. In addition, the Affiliate Financials also include information concerning the equity ownership of the individual member-owners of each of the companies.

The Palmco Affiliates and Palmco Energy have used their best efforts to maintain the confidentiality of the information contained in the Affiliate Financials. The information has not previously been disclosed or released to the public. If such a release were to occur, this financial information would have significant value to the Palmco Affiliates' competitors and would subject each of the Palmco Affiliates to the risk of unfair economic and competitive disadvantage and other business injury. The Palmco Affiliates would be materially and adversely affected for all the reasons explained herein.

Energy MD, LLC is in the business of selling natural gas at retail in Maryland; Palmco Power MD, LLC is in the business of selling electric power at retail in Maryland; Palmco Energy NJ, LLC is in the business of selling natural gas at retail in New Jersey; Palmco Power NJ, LLC is in the business of selling electric power at retail in New Jersey; Palmco Energy PA, LLC is in the business of selling natural gas at retail in Pennsylvania; and Palmco Power PA LLC is in the business of selling electric power at retail in Pennsylvania.

Section 4929.23 of the Ohio Revised Code ("Revised Code") provides that retail natural gas suppliers that are subject to certification under section 4929.20 of the Revised Code must provide the Commission with such information as the Commission considers necessary to carry out sections 4929.20 to 4929.24 of the Revised Code. Section 4929.23 states that the "***Commission shall take such measures as it considers necessary to protect the confidentiality of any such information.***" (Emphasis supplied). Hence, while it is clear that the Commission may seek information necessary for it to make an informed judgment regarding the certification of any applicant, it is also recognized that there is a need to protect the confidential information of such applicants.

Section 4901-1-24(D) of the Revised Code sets forth the procedure for protecting confidential information. This provision authorizes the Commission "upon motion of any party or person with regard to the filing of a document . . . relative to a case before the commission" to issue an order protecting the confidentiality of information contained in the document "to the extent that state or federal law prohibits the release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where disclosure of the information is not inconsistent with the purposes of Article 49 of the Revised Code." Thus, the statute expressly recognizes that where information constitutes a "trade secret" under state or federal law, the Commission may issue an order protecting the confidentiality of such information.

Section 1333.61(D) of the Revised Code defines a "trade secret" as including "financial information, business information or plans" that "(1) derive

independent economic value, ***actual or potential***, from not being generally known to, and not being readily accessible by proper means by, other persons who can obtain economic value from its disclosure and use” and “(2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” (Emphasis supplied). The Affiliate Financials fall squarely within the four corners of this definition. As explained *supra*, the Affiliate Financials contain commercially sensitive information about a privately-owned company that would offer significant benefit to any competitor of the Palmco Affiliates. The Affiliate Financials also include personal information about the ownership shares of the individual members in each of the companies. Palmco Energy and the Palmco Affiliates have used their best efforts to maintain the confidentiality of the information contained in the Affiliate Financials and such information has never been provided to the public.

**EXTENSION OF PRIOR PROTECTIVE ORDER ENTERED
MARCH 17, 2010 COVERING THE COLUMBIA FINANCIALS**

Like the current Renewal Application, Section C-4 of Palmco Energy’s initial Certification Application required Palmco Energy to “provide copies of the applicant’s current financial arrangements to conduct competitive retail natural gas service as a business activity (e.g. guarantees, bank commitments, contractual arrangements, credit arrangements, etc.).” To satisfy this requirement, as part of its initial Certification Application, Palmco Energy submitted a form of Guarantee from Columbia Utilities, LLC and Columbia

Utilities Power, LLC (collectively, the "Columbia Affiliates").³ Under the terms of the Guarantee, the Columbia Affiliates were to act as guarantors of Palmco Energy's obligations under Palmco Energy's natural gas retail sales agreements with its retail customers. To demonstrate the Columbia Affiliates' financial ability to act as guarantors of these obligations, Palmco Energy provided the Combined Financial Statements of Columbia Utilities, LLC and Columbia Utilities Power, LLC, dated December 31, 2007 and December 31 2008 as part of its initial Certification Application.

To maintain the confidentiality of the Columbia Financials, Palmco Energy filed a Motion for a Protective Order and Memorandum in Support with the Commission requesting that a Protective Order be issued pursuant to section 4901-1(D) of the OAC with respect to the information contained in the Columbia Financials. By entry on March 17, 2010, the Commission granted Palmco Energy's request, issuing a Protective Order that required the Columbia Financials be maintained under seal for a period of 24 months ending March 8, 2012 ("March 2010 Protective Order"). Paragraph 5 of the March 2010 Protective Order states that "Rule 4901-1-24(F), O.A.C. requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date." In accordance with such Paragraph 5, and Rules

³ As noted above, the Columbia Financials filed with the initial Certification Application included the financials of two Palmco Energy affiliates -- Columbia Utilities, LLC and Columbia Utilities Power, LLC. Since the time the initial Certification Application was filed and the Columbia Financials were prepared, additional Palmco Energy affiliates have commenced business in other states. As a result, the audited Affiliate Financials described *supra* at 1 and filed in connection with the Renewal Certification Application include the financial results of Columbia Utilities, LLC and Columbia Utilities Power, LLC as well as other Palmco Energy affiliates.

4901-1-24(F) and 4901-1-24(D)(4) of the OAC, Palmco Energy now requests an extension of that Protective Order for an additional 24 month period.

The Columbia Affiliates are each affiliates of Palmco Energy and of one another⁴ and each is privately owned and not publicly traded. As noted *supra* at 2, *f.n.1*, Columbia Utilities, LLC is in the business of selling natural gas at retail in the State of New York, and Columbia Utilities Power, LLC is in the business of selling electric power at retail in the State of New York. The Columbia Financials contain valuable confidential and proprietary information not available to the public relating to such gas and electric power businesses.

As also explained above, the marketplace for the sale of electric power and natural gas at retail is a highly competitive one. The confidential and proprietary financial information contained in the Columbia Financials includes data identifying the Columbia Companies' natural gas and electric power sales, costs, discounts, allowances, margins, and other commercially sensitive information that would be a significant aid to any entity that competes with the Columbia Companies in the sale and supply of gas and/or electric power. Moreover, the Columbia Financials also include information concerning the equity ownership of the individual member-owners of each of the companies not otherwise available to the public.

Since the granting of the March 2010 Protective Order, the Columbia Companies and Palmco Energy have used their best efforts to maintain the confidentiality of the information contained in the Columbia Financials. The

⁴ Palmco Energy OH, LLC, Columbia Utilities, LLC, and Columbia Utilities Power, LLC have a common ownership of at least 80%.

information has never been disclosed or released to the public. If such a release were to occur now, the financial information would have significant value to the Columbia Companies' competitors and would subject each of the Columbia Companies to the risk of unfair economic and competitive disadvantage and other business injury. The Columbia Companies would be materially and adversely affected for all the reasons explained herein.

As part of the initial certification process under section 4929.20 of the Revised Code, section 4929.23 required Palmco Energy to provide the Commission with such information as the Commission considered necessary to carry out Revised Code sections 4929.20 to 4929.24. Section 4929.23 states that the "***Commission shall take such measures as it considers necessary to protect the confidentiality of any such information.***" (Emphasis supplied). Hence, while it is clear that the Commission can require the submission of information necessary for it to make an informed judgment regarding the initial certification of Palmco Energy, it is also recognized that there is a need to protect the confidential information of such applicants. The statute places no time limitation on that obligation – rather the statute governs the Commission's obligations as to the Columbia Financials as much today as they did at the time of the filing of the initial Certification Application.

Section 4901-1-24(D) of the Revised Code authorizes the Commission "upon motion of any party or person with regard to the filing of a document . . . relative to a case before the commission" to issue an order protecting the confidentiality of information contained in the document "to the extent that state

or federal law prohibits the release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where disclosure of the information is not inconsistent with the purposes of Article 49 of the Revised Code.” Thus, the law expressly recognizes that where information constitutes a “trade secret” under state or federal law, the Commission may issue an order protecting the confidentiality of such information.

Section 1333.61(D) of the Revised Code defines a “trade secret” as including “financial information, business information or plans” that “(1) derive independent economic value, **actual or potential**, from not being generally known to, and not being readily accessible by proper means by, other persons who can obtain economic value from its disclosure and use” and “(2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” (Emphasis supplied).⁵ The Columbia Financials fall squarely within the four corners of this definition. As explained *supra*, the Columbia Financials contain commercially sensitive information about a privately-owned company that would offer significant benefit to any competitor of the Columbia Companies. The Columbia Financials also include personal information about the ownership shares of the individual members in each of the companies. Palmco Energy and the Columbia Companies have used their best efforts to maintain the

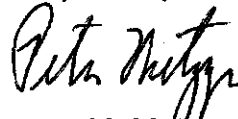
⁵ The fact that the definition of a trade secret includes “financial information and business information” that “derive independent economic value, **actual or potential**, from not being generally known to, and not being readily accessible by proper means by, other persons who can obtain economic value from its disclosure and use” suggests that even if such information only **potentially** has such independent economic value (which is not the case here where the economic value of the information is, indeed, very real), the law still requires it be protected.

confidentiality of the information contained in the Columbia Financials and such information has never been provided to the public.

CONCLUSION

For all the above reasons, Palmco Energy respectfully requests that the Commission (a) grant its Motion for a Protective Order with respect to the Affiliate Financials pursuant to section 4901-1-24(D) of the Ohio Administrative Code and (b) extend for an additional 24 months the Protective Order previously granted with respect to the Columbia Financials pursuant to section 4901-1-24(F) of the Ohio Administrative Code.

Respectfully submitted,



Peter M. Metzger

Cullen and Dykman LLP
44 Wall Street
New York, NY 10005
Tel: (212) 510-2273
Fax: (212) 742-8260
Pmetzger@cullydyk.com
Attorneys for Palmco Energy OH, LLC

Dated: January 12, 2011

GUARANTEE

THIS GUARANTEE ("Guarantee"), entered into and effective as of _____, 2012, is given by COLUMBIA UTILITIES, LLC, a New York limited liability company, COLUMBIA UTILITIES POWER, LLC, a New York limited liability company, PALMCO ENERGY CT, LLC, a Connecticut limited liability company, PALMCO POWER CT, LLC, a Connecticut limited liability company, PALMCO ENERGY NJ, LLC, a New Jersey limited liability company, PALMCO POWER NJ, LLC, a New Jersey limited liability company, PALMCO ENERGY MD, LLC, a Maryland limited liability company, PALMCO POWER MD, LLC, a Maryland limited liability company, PALMCO ENERGY PA, LLC, a Pennsylvania limited liability company, PALMCO POWER PA, LLC, a Pennsylvania limited liability company, PALMCO ENERGY NY, LLC, a New York limited liability company, and PALMCO POWER NY, LLC, a New York limited liability company, (each a "Guarantor" and collectively, the "Guarantors"), and each an affiliate of PALMCO ENERGY OH, LLC, an Ohio limited liability company (the "Obligor"), in favor of the Customers (as defined herein) of the Obligor.

RECITALS

A. The Customers and the Obligor will be entering into Natural Gas Sales Agreements pursuant to which the Customers will purchase natural gas at retail from the Obligor (the "Natural Gas Sales Agreement").

B. The Obligor has applied to the Public Utilities Commission of Ohio (the "Commission") for a renewal certification application to sell natural gas to retail customers located within the State of Ohio.

C. The Commission has agreed to grant such renewal certification to the Obligor on the condition that the Guarantors provide this Guarantee for the benefit of the Customers.

D. The Guarantors and the Obligor are desirous that Obligor obtain such certification and the Guarantors acknowledge and agree that each shall benefit from the issuance of such license by the Commission.

NOW THEREFORE, in consideration of the above recitals (which are each incorporated by reference herein) and the promises set forth in this Guarantee, and for other good and valuable consideration, the receipt, nature and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. For purposes of this Guarantee, the following terms shall have the following meanings:

(a) "Customers" shall mean each of the Obligor's retail customers located in Ohio who enter into a Natural Gas Sales Agreement with the Obligor.

(b) "Obligations" shall mean the obligations of the Obligor under the Natural Gas Sales Agreement with each of its Customers.

2. Guarantee. The Guarantors, jointly and severally, irrevocably guarantee full and prompt payment and performance when due of the Obligations. Except as provided in Section 8 of this Guarantee, this Guarantee shall remain in full force and effect, and shall not be released or terminated until the Obligations have been finally and fully paid, performed or otherwise satisfied, as applicable.

3. Nature of Guarantee. The obligations of the Guarantors shall be primary and effective immediately upon the non-performance of the Obligations.

4. Guarantor Claims and Defenses. The Guarantors shall have and exercise, without limitation, any and all defenses, claims and discharges of the Obligor pertaining to any of the Obligations, including the defense of discharge by payment, performance, or other satisfaction, as applicable, as if the Guarantors were the Obligor. However, the Guarantor will not assert, plead or enforce against any Customer any defense of discharge in bankruptcy or incapacity that may be available to the Obligor in respect of any of the Obligations.

5. Waiver; Laches. No amendment or waiver of any provision of this Guarantee, nor consent to any departure by the Guarantors therefrom, shall be effective unless the same shall be approved by the Commission. No failure on the part of any Customer to exercise, and no delay in exercising any right under this Guarantee with respect to any of the Obligations, shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Guarantee with respect to any of the Obligations preclude any other or further exercise thereof or the exercise of any other right.

6. Entire Agreement. This Guarantee constitutes the entire agreement with respect to the subject matter hereof and supersedes any prior understandings, agreements or representations by or between the Guarantor and the Customers, written or oral, to the extent they related in any way to the subject matter hereof.

7. Governing Law. This Guarantee shall be governed by and construed in accordance with the laws of the State of Ohio.

8. Termination of Guarantee. Notwithstanding any provision of this Guarantee to the contrary, this Guarantee shall terminate automatically upon the earlier to occur of (a) the full and final performance, satisfaction or expiration of

the Obligations, or (b) the prior approval by the Commission of the termination of this Guarantee. Upon the termination of this Guarantee as provided in this Section, the Guarantors shall have no further obligations hereunder. For purposes of this Section 8, the Commission shall be deemed an intended third party beneficiary of this Guarantee.

IN WITNESS WHEREOF, the Guarantors have executed this Guarantee as of the date first written above.

COLUMBIA UTILITIES POWER, LLC

By: _____
Name: _____
Title: _____

COLUMBIA UTILITIES, LLC

By: _____
Name: _____
Title: _____

PALMCO ENERGY CT, LLC

By: _____
Name: _____
Title: _____

PALMCO POWER CT, LLC

By: _____
Name: _____
Title: _____

PALMCO ENERGY NJ, LLC

By: _____
Name: _____
Title: _____

PALMCO POWER NJ, LLC

By: _____
Name: _____
Title: _____

PALMCO ENERGY MD, LLC

By: _____
Name: _____
Title: _____

PALMCO POWER MD, LLC

By: _____
Name: _____
Title: _____

PALMCO ENERGY PA, LLC

By: _____
Name: _____
Title: _____

PALMCO POWER PA, LLC

By: _____
Name: _____
Title: _____

PALMCO ENERGY NY, LLC

By: _____
Name: _____
Title: _____

PALMCO ENERGY NY, LLC

By: _____
Name: _____
Title: _____