

ORIGINAL

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

Case No. 10-138-GA-CRS

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MOTION FOR PROTECTIVE ORDER

Pursuant to section 4901-1-24(D) of the Ohio Administrative Code ("OAC"), Palmco Energy OH, LLC ("Palmco") hereby respectfully requests that the Public Utilities Commission of Ohio grant a Protective Order to Palmco to ensure that proprietary and confidential financial information provided by Palmco as Exhibit C-3 of Section C-3, Exhibit C-4 of Section C-4, and Exhibit C-5 of Section C-5 of its Renewal Certification Application as a Competitive Retail Natural Gas Supplier ("Confidential Information") is not subject to public disclosure. In addition, Palmco respectfully requests an extension to the prior Protective Order entered by the Commission on April 20, 2012 in connection with Palmco's 2012 Renewal Certification. In accordance with the requirements of section 4901-1-24(D) of the OAC, Palmco has filed under seal three (3) unredacted copies of the Confidential Information. A Memorandum in Support is attached to this Motion.

Respectfully submitted,



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Dated: January 13, 2014

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ORIGINAL

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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Application of Palmco	:	
Energy OH, LLC for	:	
Renewal Certification	:	Case No. 10-0138-GA-CRS
as a Competitive Retail	:	
Natural Gas Supplier	:	
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**MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE
ORDER AND EXTENSION OF PRIOR PROTECTIVE ORDER
GRANTED APRIL 20, 2012**

Palmco Energy OH, LLC ("Palmco") seeks a Protective Order to protect the confidential and proprietary information contained in the following documents:

(a) The Audited Consolidated Financial Statements of Columbia Utilities, LLC's and Palmco LLC's dated December 31, 2011 ("2011 Audited Consolidated Financials") and the Audited Consolidated Financial Statements of Columbia Utilities, LLC's and Palmco LLC's dated December 31, 2012 ("2012 Audited Consolidated Financials") (the 2011 Audited Consolidated Financials and 2012 Audited Consolidated Financials are sometimes collectively referred to herein as the "Audited Consolidated Financials"), each filed as part of Exhibit C-3 of Section C-3 of the Palmco Renewal Certification Application as a Competitive Retail Natural Gas Supplier in Ohio ("2014 Renewal Certification");

(b) Palmco's 2013 Unaudited Financial Statements covering the period through September 30, 2013, and Palmco's 2012 Unaudited Financial Statements, each filed as part of Exhibit C-3 of Section C-3 of the 2014 Renewal Certification ("Palmco Unaudited Financials");

(c) Palmco's *Forecasted Financial Statements for 2014 and 2015*, filed as part of Exhibit C-5 of Section C-5 of the 2014 Renewal Certification ("Forecasted Financials"); and

(d) Palmco's Citibank Line of Credit and Master Note, filed as part of Exhibit C-4 of Section C-4 of the 2014 Renewal Certification ("Line of Credit").

In addition, Palmco seeks an extension to the Commission's prior Protective Order entered on April 20, 2012, granted in connection with Palmco's 2012 Renewal Certification.

PROTECTIVE ORDER FOR AUDITED CONSOLIDATED FINANCIALS, PALMCO UNAUDITED FINANCIALS, FORECASTED FINANCIALS, AND LINE OF CREDIT

Section C-3 of the 2014 Renewal Application requires Palmco to "provide copies of the applicant's two most recent years of audited financial statements (balance sheet, income statement, and cash flow statement). If audited financial statements are not available, provide officer-certified financial statements." In satisfaction of this requirement, Palmco is filing the (a) Audited Consolidated Financials and (b) Palmco Unaudited Financials.

The Audited Consolidated Financials include the audited financials of Palmco and each of its operating affiliates, including Columbia Utilities, LLC; Columbia Utilities Power, LLC; Palmco Power CT, LLC; Palmco Power, IL, LLC; Palmco Energy MD, LLC; Palmco Power MD, LLC; Palmco Energy NJ, LLC; Palmco Power NJ, LLC; Palmco Power OH, LLC; Palmco Energy PA, LLC; and Palmco Power PA, LLC (collectively, the "Palmco Affiliates"). The Palmco Affiliates are each an affiliate of Palmco and one another and are each in the business of selling natural gas or electricity at retail.¹ The

¹ 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 Unaudited Financials include Palmco's unaudited financials for calendar year 2012 and calendar year 2013 through August 31, 2013, and are attached as part of Exhibit C-3. Both the Audited Consolidated Financials and the Palmco Unaudited Financials contain confidential and proprietary information not available to the public.

Section C-5 of the 2014 Renewal Certification requires Palmco to "provide two years of forecasted financial statements (balance sheet, income statement, and cash flow statement) for the applicant's CRNGS operation, along with a list of assumptions, and the name, address, email address, and telephone number of the preparer." In satisfaction of this requirement, Palmco has included its forecasted financials for 2014 and 2015 as Exhibit C-5.

Finally, Section C-4 of the 2014 Renewal Certification requires Palmco to "provide copies of the applicant's current financial arrangements to conduct competitive retail natural gas service ("CRNGS") as a business activity (e.g., guarantees, bank commitments, contractual arrangements, credit agreements, etc.)." In satisfaction of this requirement, Palmco is providing a copy of a Line of Credit as Exhibit C-4.

The marketplace for the sale of electric power and natural gas at retail in each of the states where the Palmco Affiliates do business is highly competitive. The confidential and proprietary financial information contained in the Audited Consolidated Financials, the Palmco Unaudited Financials, and the Forecasted Financials (collectively referred to herein as the "Palmco Financials") include data identifying the Palmco Affiliates' actual and forecasted natural gas and electric power sales, costs, discounts, allowances,

Palmco Power CT, LLC is in the business of selling electric power at retail in Connecticut; Palmco Power IL, LLC is in the business of selling electric power at retail in Illinois; Palmco 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 Power OH, LLC is in the business of selling electric power at retail in Ohio; 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.

margins, and other commercially sensitive information that would be a significant aid to any entity that competes with Palmco and 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 Palmco Financials also include information concerning the equity ownership of the individual member-owners of each of the companies.

Similarly, the Line of Credit includes confidential and proprietary financial information regarding personal guarantees, leverage ratios, and other commercially sensitive information regarding Palmco and the Palmco Affiliates (all of which are privately owned) that could potentially aid any entity that competes with Palmco and the Palmco Affiliates, or be used against Palmco and 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.

The Palmco Affiliates and Palmco have used their best efforts to maintain the confidentiality of the information contained in the Palmco Financials and the Line of Credit. 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 competitors of Palmco and the Palmco Affiliates, and would subject Palmco and the Palmco Affiliates to the risk of unfair economic and competitive disadvantage and other business injury. Palmco and the Palmco Affiliates would be materially and adversely affected for all the reasons explained herein.

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 renewal 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**,² 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 Palmco Financials and the Line of Credit fall squarely within the four corners of this definition. As explained *supra*, the Palmco Financials and Line of Credit contain commercially sensitive

² 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 to be protected.

information about privately-owned companies that would offer significant benefit to any competitor of Palmco and the Palmco Affiliates. The Palmco Financials also include personal information about the ownership shares of the individual members in each of the companies. Moreover, Palmco and the Palmco Affiliates have used their best efforts to maintain the confidentiality of the information contained in the Palmco Financials and Letter of Credit, and such information has never been provided to the public.

**MOTION FOR EXTENSION OF PRIOR
PROTECTIVE ORDER GRANTED APRIL 20, 2012**

Like the 2014 Renewal Certification, Section C-4 of Palmco's initial 2010 Certification Application and its 2012 Renewal Certification, each required Palmco 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 2010 Certification Application, Palmco filed 2007 and 2008 Audited Consolidated Financials for various Palmco affiliates. To satisfy this requirement, as part of its 2012 Renewal Certification, Palmco filed the 2010 Audited Consolidated Financials for various Palmco affiliates.

To maintain the confidentiality of the 2010 Audited Consolidated Financials provided with its 2012 Renewal Certification, Palmco 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 2010 Audited Consolidated Financials. In addition, that Motion for a Protective Order and Memorandum in Support also requested an extension of a prior Commission Protective Order entered on March 17, 2010 covering the 2007 and 2008 Audited Consolidated Financials filed by Palmco as part of its initial 2010

Certification Application ("2010 Protective Order"). By entry on April 20, 2012, the Commission granted Palmco's request for a Protective Order covering the 2010 Audited Consolidated Financials, as well as an extension to the 2010 Protective Order covering the 2007 and 2008 Consolidated Audited Financials, for a period of 24 months ("2012 Protective Order"). In accordance with Rules 4901-1-24(F) and 4901-1-24(D)(4) of the OAC, Palmco now requests an extension of that 2012 Protective Order for an additional 24 month period for the reasons stated below.

As noted above, the Palmco Affiliates are each affiliates of Palmco and of one another and each is privately owned and not publicly traded. As further stated *supra* at 3, *f.n.2*, the Palmco Affiliates are in the business of selling either natural gas or electric power at retail. The 2007, 2008, and 2010 Audited Consolidated Financials each contain 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 in New York is highly competitive. The confidential and proprietary financial information contained in the 2007, 2008, and 2010 Audited Consolidated Financials includes data identifying Palmco's and 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 Palmco and the Palmco Affiliates in the sale and supply of gas and/or electric power to retail customers. Moreover, the 2007, 2008, and 2010 Audited Consolidated Financials also include information concerning the personal ownership of the individual member-owners of each of the companies not otherwise available to the public.

Since the granting of the 2012 Protective Order, Palmco and the Palmco Affiliates have used their best efforts to maintain the confidentiality of the information contained in the 2007, 2008, and 2010 Audited Consolidated Financials. The 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 competitors of Palmco and the Palmco Affiliates' and would subject Palmco and the Palmco Affiliates to the risk of unfair economic and competitive disadvantage and other business injury. Palmco and the Palmco Affiliates would be materially and adversely affected for all the reasons explained herein.

As part of Palmco's initial 2010 Certification Application and its 2012 Renewal Certification, section 4929.23 of the Revised Code required Palmco to provide the Commission with such information as the Commission considered 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 could require the submission of information necessary for it to make an informed judgment regarding Palmco's initial 2010 Certification Application and its 2012 Renewal Certification, the law also recognizes 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 2007, 2008, and 2010 Audited Consolidated Financials as much today as it did at the time of the filing of Palmco's initial 2010 Certification Application and its 2012 Renewal Certification.

As discussed above, 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 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.


Further, as previously described, 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 2007, 2008, and 2010 Audited Consolidated Financials fall squarely within the four corners of this definition. As explained *supra*, the 2007, 2008, and 2010 Audited Consolidated Financials contain commercially sensitive information about a privately-owned company that would offer significant benefit to any competitor of Palmco and the Palmco Affiliates. The 2007, 2008, and 2010 Audited Consolidated Financials also include personal information about the ownership interests of the individual members in each of the companies. Furthermore, Palmco and the Palmco Affiliates have used their best efforts to maintain the confidentiality of the information contained in the 2007, 2008, and 2010 Audited Consolidated Financials and such information has never been provided to the public.

CONCLUSION

For all the above reasons, Palmco respectfully requests that the Commission (a) grant its Motion for a Protective Order with respect to the 2011 Audited Financials, the 2012 Audited Financials, the Palmco Unaudited Financials, the Forecasted Financials, and the Line of Credit pursuant to section 4901-1-24(D) of the Ohio Administrative Code

and (b) extend the Protective Order previously entered on April 20, 2012 pursuant to section 4901-1-24(F) of the Ohio Administrative Code.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dina Vespa".

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Dated: January 13, 2014