

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 sections 4901:1-27-08 and 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, Exhibit C-5 of Section C-5 and Attachment 1 to Exhibit D-1 of Section D-1 of its Renewal Certification Application as a Competitive Retail Natural Gas Supplier ("Confidential Information") is not subject to public disclosure. In addition, Palmco respectfully reserves the right to request an extension to the prior Protective Orders entered by the Commission on April 20, 2012 and May 1, 2014 in connection with Palmco's 2012 and 2014 Renewal Certifications, respectively. 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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**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. 10-0138-GA-CRS

MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

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, 2013 ("2013 Audited Consolidated Financials") and the Audited Consolidated Financial Statements of Columbia Utilities, LLC's and Palmco LLC's dated December 31, 2014 ("2014 Audited Consolidated Financials") (the 2013 Audited Consolidated Financials and 2014 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 ("2016 Renewal Certification");

(b) Palmco's 2015 Unaudited Financial Statements covering the period through November 30, 2015, and Palmco's 2014 Unaudited Financial Statements, each filed as part of Exhibit C-3 of Section C-3 of the 2016 Renewal Certification ("Palmco Unaudited Financials");

(c) Palmco's Forecasted Financial Statements for 2016 and 2017, filed as part of Exhibit C-5 of Section C-5 of the 2016 Renewal Certification ("Forecasted Financials");

(d) Palmco's Citibank Master Note and Line of Credit, filed as part of Exhibit C-4 of Section C-4 of the 2016 Renewal Certification ("Master Note and Line of Credit");

(e) The Technical Services Agreement between Palmco and Quantum Gas & Power, Ltd. ("Quantum") dated August 30, 2015 ("Quantum Agreement").

In addition, Palmco reserves the right to seek an extension to the Commission's prior Protective Orders entered on April 20, 2012 and May 1, 2014, granted in connection with Palmco's 2012 and 2014 Renewal Certifications, respectively, as permitted by OAC § 4901:1-27-08.

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

Section C-3 of the 2016 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 affiliates.¹ A number of Palmco's affiliates are in the business of selling natural gas or electricity at retail (the "Operating Affiliates").² The Palmco Unaudited

¹ Palmco's affiliates include its operating retail energy affiliates, three real estate company affiliates, and a various other affiliates that are not currently operating.

² Palmco's Operating Affiliates include the following: Columbia Utilities, LLC, which is in the business of selling natural gas at retail in New York; Columbia Utilities Power, LLC, which is in the business of selling electric power at retail in New York; Palmco Power CT, LLC, which is in the business of selling electric power at retail in Connecticut; Palmco Power IL, LLC, which is in the business of selling electric power at retail in Illinois; Palmco Power MA, LLC, which is in the business of selling electric power at retail in Massachusetts; Palmco Energy MD, LLC, which is in the business of selling natural gas at retail in Maryland; Palmco Power MD, LLC, which is in the business of selling electric power at retail in Maryland; Palmco Energy NJ, LLC, which is in the business of selling natural gas at retail in New Jersey; Palmco Power NJ, LLC, which is in the business of selling electric power at retail in New Jersey; Palmco Power OH, LLC, which is in the business of selling electric power at retail in Ohio; Palmco Energy PA, LLC, which is in the

Financials include Palmco's unaudited financials for calendar year 2014 and calendar year 2015 through November 30, 2015, 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 2016 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 2016 and 2017 as Exhibit C-5.

Finally, Section C-4 of the 2016 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 the Master Note and 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 Palmco and its Operating 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 Palmco's and the Operating Affiliates' actual and forecasted 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

business of selling natural gas at retail in Pennsylvania; and Palmco Power PA, LLC, which is in the business of selling electric power at retail in Pennsylvania.

Palmco and the Operating 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 Master Note and Line of Credit include confidential and proprietary financial information regarding personal guarantees, leverage ratios, and other commercially sensitive information regarding Palmco and the Operating Affiliates (all of which are privately owned) that could potentially aid any entity that competes with Palmco and the Operating Affiliates, or be used against Palmco and the Operating Affiliates in the sale and supply of gas and/or electric power to retail customers located in the states in which they operate.

The Operating Affiliates and Palmco have used their best efforts to maintain the confidentiality of the information contained in the Palmco Financials and the Master Note and 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 Operating Affiliates, and would subject Palmco and the Operating Affiliates to the risk of unfair economic and competitive disadvantage and other business injury. Palmco and the Operating 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 added). 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 4901:1-27-08(A) of the Ohio Administrative Code ("OAC") allows an applicant to file financial statements, financial arrangements, and forecasted financial statements under seal. When filed under seal, such documents "will be afforded protective treatment for a period of six years from the date of the certificate for which the information is being provided." OAC § 4901:1-27-08(A). Because the Palmco Financials and Master Note and Line of Credit qualify as "financial statements, financial arrangements, and forecasted financial statement," and because Palmco is filing these documents under seal, this regulation requires that the Commission afford these documents protective treatment for a period of six years.

Further, OAC § 4901-1-24(D) sets forth the procedure for protecting confidential information. This provision authorizes the Commission "[u]pon 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 nondisclosure of the information is not inconsistent with the purposes of Article 49 of the Revised Code." Thus, the regulation 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 "business information or plans [or] financial information" that (1) "derives independent

economic value, ***actual or potential***,³ 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 and use" and (2) "is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." (Emphasis added). The Palmco Financials and the Master Note and Line of Credit fall squarely within the four corners of this definition. As explained *supra*, the Palmco Financials and the Master Note and Line of Credit contain commercially sensitive information about privately-owned companies that would offer significant benefit to any competitor of Palmco and the Operating 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 Operating Affiliates have used their best efforts to maintain the confidentiality of the information contained in the Palmco Financials and the Master Note and Line of Credit, and such information has never been provided to the public.

PROTECTIVE ORDER FOR QUANTUM AGREEMENT

In addition to providing for the protection of certain financial information, OAC § 4901:1-27-08 states that an applicant may file a motion for a protective order covering other information. The motion "shall be automatically approved on the thirty-first day after the date of filing and the information shall be afforded protective treatment for a period of six years from the date of the certificate for which the information is being provided, unless the commission or an attorney examiner appointed by the commission

³ 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.

rules otherwise.”⁴ OAC § 4901:1-27-08(B). As discussed below, the Quantum Agreement contains trade secret information. Therefore, the Quantum Agreement qualifies for protected treatment under OAC § 4901-1-24(D) and neither the Commission nor an appointed attorney examiner should deny protected status to the Quantum Agreement.

As discussed above, OAC § 4901-1-24(D) allows for the protection of trade secret information. Under § 1333.61(D) of the Revised Code, the term “trade secret” is defined to include business information or plans and financial information where: (1) “[i]t 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”; and (2) “[i]t is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

The retail marketplace for natural in Ohio is highly competitive. Palmco competes with other natural gas suppliers based on a variety of factors, including, without limitation, the purchase of natural gas commodity for sale to its customers. The ability to obtain sufficient natural gas at a competitive price significantly dictates the success or failure of Palmco’s business in the state. As the Quantum Agreement expressly states the roles of both Palmco and Quantum in Palmco’s scheduling and procurement of the natural gas commodity, it gives significant insight into Palmco’s business operation, which is not generally known to or readily ascertainable by Palmco’s competitors in the Ohio retail natural gas supply market.

The Quantum Agreement also contains details regarding Palmco’s service from and compensation to Quantum. The precise terms and conditions, including

⁴ To qualify for protective treatment, the motion must be filed in conformance with OAC § 4901:1-27-07, which requires the motion to be filed by an attorney authorized to practice law in Ohio. An out-of-state attorney may file a motion if admitted to practice pro hac vice in the state.

compensation, that Palmco and Quantum have agreed to, as is reflected in the Quantum Agreement, is important confidential business information. Among other things, public disclosure of the Quantum Agreement would result in the release of these material terms and conditions. As with any private business contract, Palmco spent considerable time and resources negotiating the terms of these arrangements, utilizing the business knowledge and information it has gained over the years in serving the Ohio natural gas supply marketplace. This business experience, knowledge, and information has guided Palmco in negotiating favorable terms in its service provider agreements, which terms affect the Company's cost of doing business and, ultimately, the prices it offers its customers.

Because of the actual and potential economic value in the Quantum Agreement, the Company also has undertaken reasonable efforts to protect the confidentiality of such information to ensure that it is not known to the public at large, including its competitors, who could lure such Quantum away from Palmco with more advantageous terms Quantum Agreement was disclosed. For this reason, the Quantum Agreement specifically provides that the terms of the Quantum Agreement may not be disclosed to any third party. Further, recognizing that the Quantum Agreement may be subject to disclosure to regulatory bodies, such as the Commission, the parties included a particular provision requiring the disclosing party to take all steps possible to limit the disclosure of the Agreement. This expressly includes requesting that the governmental entity requiring disclosure afford confidential treatment to the Quantum Agreement.

As the foregoing demonstrates, the Quantum Agreement has independent economic value from not being generally known to those who could profit from the knowledge of them and have been the subject of reasonable efforts to maintain their confidentiality. Accordingly, the Quantum Agreement qualifies as a trade secret under

section 1333.61(D) of the Revised Code. Therefore, the Quantum Agreement should be afforded protected status under OAC §§ 4901-1-24 and 4901:1-27-07(B).

RESERVATION OF RIGHT TO REQUEST EXTENSION OF PRIOR PROTECTIVE ORDERS

Palmco was granted Protective Orders in conjunction with both its 2012 and 2014 Renewal Certifications. The Protective Order issued in conjunction with Palmco's 2012 Renewal Certification afforded protected status to: the Audited Consolidated Financial Statements of Columbia Utilities, LLC's and Palmco LLC's dated December 31, 2010.⁵ The Protective Order issued in conjunction with Palmco's 2014 Renewal Application granted protected status to: the Audited Consolidated Financial Statements of Columbia Utilities, LLC's and Palmco LLC's dated December 31, 2011; the Audited Consolidated Financial Statements of Columbia Utilities, LLC's and Palmco LLC's dated December 31, 2012; Palmco's 2013 Unaudited Financial Statements covering the period through September 30, 2013; Palmco's 2012 Unaudited Financial Statements; Palmco's Forecasted Financial Statements for 2014 and 2015; and Palmco's Citibank Line of Credit and Master Note.⁶

Pursuant to amendments to the Ohio Administrative Code that became effective on December 1, 2014, "financial statements, financial arrangements, and forecasted financial statements" that are filed under seal are afforded protective treatment for a period of six years. OAC § 4901:1-27-08(A). In an Entry dated October 15, 2014, the Commission clarified that this six-year protection period would extend the protection afforded by existing protective orders "until December 31 six years after the date of the

⁵ Case No. 10-0138-GA-CRS, Entry (Apr. 20,2012).

⁶ Case No. 10-0138-GA-CRS, Entry (May 1, 2014).

certificate for which the information was provided.”⁷ In order to extend the protection beyond this six year period, a company must “file an appropriate motion at least 45 days in advance of the expiration date.”⁸

The 2012 Renewal Certification was granted to Palmco on February 14, 2014.

Therefore, the documents protected in conjunction with the 2012 Renewal certification will remain protected until December 1, 2018. The 2014 Renewal Certification was granted to Palmco on February 14, 2014. Therefore the documents protected in conjunction with that 2014 Renewal Certification will remain protected until December 31, 2020. As such, it is not necessary for Palmco to seek an extension for the protection of either set of documents at this time. However, Palmco reserves the right to request an extension to the protection of these sets of document at a later date, as permitted by OAC § 4901:1-27-08(D) and the October 15, 2014 Entry.

CONCLUSION

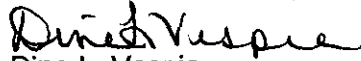
For all the above reasons, Palmco respectfully requests that the Commission (a) grant its Motion for a Protective Order with respect to the 2013 Audited Financials, the 2014 Audited Financials, the Palmco Unaudited Financials, the Forecasted Financials, the Master Note and Line of Credit, and the Quantum Agreement pursuant to sections 4901-1-24(D) and 4901:1-27-08 of the Ohio Administrative Code. Additionally, Palmco reserves the right to seek extensions to the protected status of documents filed in conjunction with the 2012 and 2014 Renewal Certifications pursuant to section 4901:1-

⁷ Case Nos. 12-0925-GA-ORD and 12-1924-EL-ORD, Entry (Oct. 15, 2015) (“October 15, 2014 Entry”), at Finding (5)(b). As an example, the Commission stated that “a protective order granted for information filed in conjunction with a certificate dated February 1, 2008, will be protected until the extended date of December 31, 2014, rather than the date specified in the original entry granting the motion for protective order.”

⁸ Id.

27-08(D) of the Ohio Administrative Code and the Commission's October 15, 2014
Entry.

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