

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Columbia Gas of Ohio, Inc. for Ap-)	
proval of an Economic Develop-)	Case No. 16-2069-GA-EDP
ment Project: Sofidel Pipeline Pro-)	
ject.)	

**MOTION FOR A PROTECTIVE ORDER
AND MEMORANDUM IN SUPPORT
OF COLUMBIA GAS OF OHIO, INC.**

Pursuant to Ohio Admin. Code 4901-1-24(D), Columbia Gas of Ohio, Inc. ("Columbia") hereby requests that the Public Utilities Commission of Ohio ("Commission") issue a Protective Order with respect to some capital expenditure numbers related to the Sofidel Pipeline Project ("the Project") which is the subject of the Application filed in this docket this same date. The information redacted in the Application is confidential and contains proprietary trade secrets, which are subject to protection from disclosure under Ohio law. Columbia further requests that the Protective Order be effective for a 24-month period, pursuant to Ohio Admin. Code 4901-1-24(F), from the date of the order in this case.

The reasons for this motion are more fully explained in the attached Memorandum in Support.

Respectfully submitted by,

COLUMBIA GAS OF OHIO, INC.

/s/ Joseph M. Clark

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MEMORANDUM IN SUPPORT

On October 21, 2016, Columbia filed an application in Case Nos. 16-2067-GA-ATA and 16-2068-GA-IDR that requested authority to establish its Infrastructure Development Rider (“IDR”). That application sought to establish the rider, but did not request recovery of any amounts pursuant to the new rider. The Application in the instant docket is first in which Columbia is requesting approval of any capital expenditures pursuant to the IDR and is requesting authority to defer costs for recovery through its IDR.

On July 12, 2016, Columbia filed an Application in Case No. 16-1555-GA-AEC that sought approval of a special contract between Columbia and Sofidel America Corp. (“Sofidel”). Along with that Application, Columbia filed a Motion for a Protective Order requesting confidential treatment of account numbers and pricing, pressure, and consumption information that is confidential, trade secret information. By Finding and Order dated August 31, 2016, the Commission approved Columbia’s application and granted Columbia’s motion for a protective order.

The special contract approved by the Commission contemplated that part of the capital investment needed to fund the Project would come from funds recovered by Columbia’s IDR. The Application filed in the instant docket requests approval to use funds recovered by the IDR in order to fulfill the intent of the special agreement approved by the Commission in Case No. 16-1555-GA-AEC.

The redacted Application filed in the instant docket contains some of the same capital investment information that was deemed confidential and protected by the Commission in Case No. 16-1555-GA-AEC – namely the amount of capital contributed by different entities involved in funding the Project. Columbia requests protective treatment of this redacted information. The redacted information includes capital investment information that is confidential, trade secret information. If this information is released to the public, Columbia would suffer substantial harm as its competitors would have access to proprietary trade secrets.

The need to protect confidential and proprietary information is recognized under Ohio administrative law. Ohio Admin. Code 4901-1-24 provides:

Upon motion of any party or person with regard to the filing of a document with the commission’s docketing division relative to a case before the Commission...the attorney examiner may issue any order which is necessary to

protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where the information is deemed by...the attorney examiner to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

Pursuant to Ohio Admin. Code 4901-1-24(D)(2), Columbia is filing two unredacted copies of the Application, under seal, thus allowing the Commission full access to all information. The Commission will be able to fulfill all of its statutory obligations, meaning that public nondisclosure of the proprietary information contained within the Application is not inconsistent with the purposes of Title 49 of the Revised Code.

Furthermore, under the Ohio Uniform Trade Secrets Act¹, a “Trade Secret” is defined as:

(D) 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, address, 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.

The redacted information in the Application meets the criteria for being considered a “Trade Secret” under Revised Code § 1333.61. First, the entirety of the redacted content is investment information that is of a business and financial nature. Second, Columbia derives independent economic value from the investment information that, due to the confidential nature of the Application and the special contract approved in Case No. 16-1555-GA-AEC, is not readily ascertainable by others. The capital investment agreed to by each party was the result of

¹ Revised Code § 1333.61 (emphasis added)

negotiated bargaining by the contributing entities, and public disclosure of the results of these negotiations could harm each entity's bargaining position in subsequent economic development ventures that may be similar to the Project at issue here. Finally, it is reasonable under the circumstances to redact the confidential investment information contained within the Application given the public nature of proceeding before the Commission.

The Supreme Court of Ohio has held that pricing information is confidential. In *Ohio Consumers' Counsel v. Pub. Util. Comm. et al.*, the Court found that the Commission's determination that account numbers, price of generation and volume of generation specified in a contract had independent economic value was reasonable.² Further, the Court found that the "Commission has the statutory authority to protective competitive agreements from disclosure..."³ Finally, granting Columbia's Motion would be consistent with its precedent granting protective treatment for the same investment information protected in Case No. 16-1555-GA-AEC.

This request for a Protective Order is reasonable, necessary and will not prejudice any other party or individual. In fact, to the extent Columbia's ability to compete effectively is preserved, Ohio consumers will be better served.

For all of the foregoing reasons, Columbia respectfully requests that a Protective Order be issued, which permits Columbia to file the Application under seal and requires those with access to treat all information disseminating from the Application in a confidential manner for a 24 months from the date of the order in this case. Moreover, Columbia requests that should Staff seek any additional information or clarification with respect to the redacted portion of the Application, those requests should also be permitted to be filed under seal and subject to the same Protective Order.

² *Ohio Consumers' Counsel v. Pub. Util. Comm. et al.*, 121 Ohio St. 3d 362, 369 (2009).

³ *Id.* at 370.

Respectfully submitted,
COLUMBIA GAS OF OHIO, INC.

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Summary: Motion for a Protective Order and Memorandum in Support electronically filed by Cheryl A MacDonald on behalf of Columbia Gas of Ohio, Inc.