

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
COLUMBIA GAS OF OHIO, INC. FOR
APPROVAL OF THE SOFIDEL PIPELINE AS AN
ECONOMIC DEVELOPMENT PROJECT.

CASE NO. 16-2069-GA-EDP

ENTRY

Entered in the Journal on November 18, 2016

{¶ 1} Columbia Gas of Ohio, Inc. (Columbia or the Company) is a natural gas company, pursuant to R.C. 4905.03, and a public utility, pursuant to R.C. 4905.02, and is, therefore, subject to the Commission's jurisdiction.

{¶ 2} R.C. 4929.163 provides that a natural gas company may file an application with the Commission for approval of an economic development project. The application must include a description of the economic development project and the infrastructure development costs to be expended on the project, as well as describe how the project meets the criteria set forth in rules adopted by the Commission. Ohio Adm.Code 4901:1-43-03 sets forth the requirements for an economic development project notice filed by a natural gas company with the Commission and the process for approval of the notice.

{¶ 3} On October 24, 2016, Columbia filed an application for approval of an economic development project, pursuant to R.C. 4929.163(A) and Ohio Adm.Code 4901:1-43-03(A). The project which is the subject of the application is a proposed pipeline project known as the Sofidel Pipeline Project, and is located in Pickaway County, Ohio.

{¶ 4} On that same day, Columbia filed a motion for protective order, seeking to protect capital investment information, namely the amount of capital contributions toward the Sofidel Pipeline Project. Specifically, Columbia asserts that this information constitutes confidential, sensitive, and proprietary trade secret information, as defined in R.C. 1333.61(D), and as recognized by Ohio Adm.Code 4901-1-24. Additionally, Columbia notes that its request would include some of the same type of capital investment information that was deemed confidential and protected by the Commission in Case No.

16-1555-GA-AEC. *In re Columbia Gas of Ohio, Inc.*, Case No. 16-1555-GA-AEC, Finding and Order (Aug. 31, 2016). Columbia also requests that its responses to any requests for additional information from Staff be protected. No memoranda contra the motion for protective order were filed.

{¶ 5} R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43, and as consistent with the purposes of Title 49 of the Revised Code. R.C. 149.43 specifies that the term “public records” excludes information that, 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*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).

{¶ 6} Similarly, Ohio Adm.Code 4901-1-24 allows the attorney examiner 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 nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.”

{¶ 7} 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.” R.C. 1333.61(D).

{¶ 8} The attorney examiner has reviewed the information that is the subject of Columbia’s motion for protective order, as well as the assertions set forth in the supportive memorandum. Applying the requirements that the information have independent

economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court,¹ the attorney examiner finds that the capital expenditure numbers and related information constitutes trade secret information. Its release is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Therefore, the attorney examiner finds that Columbia's motion for protective order with respect to this capital investment information is reasonable and should be granted.

{¶ 9} Regarding Columbia's request that its responses to any requests for additional information from Staff be granted protected status, the attorney examiner notes that the Company has not filed any such responses under seal in the docket or otherwise indicated that there are, in fact, any such responses to be filed. If Columbia does seek, at some point, to file an actual response to a data request from Staff, and the Company believes that the response should be afforded protected status, the Company should file the response under seal, along with a motion for protective order, consistent with the requirements of Ohio Adm.Code 4901-1-24(D).

{¶ 10} Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4901-1-24(D) automatically expire after 24 months. Therefore, confidential treatment shall be afforded for a period ending 24 months from the date of this Entry. Until that date, the Commission's docketing division should maintain, under seal, the information filed confidentially by Columbia on October 24, 2016.

{¶ 11} Ohio Adm.Code 4901-1-24(F) requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If Columbia wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend

¹ See *State ex rel. the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-25, 687 N.E.2d 661 (1997).

confidential treatment is filed, the Commission may release this information without prior notice to Columbia.

{¶ 12} On October 24, 2016, Columbia also filed a motion for a limited waiver of Ohio Adm.Code 4901:1-43-03(A)(3)(a), which requires a natural gas company to include information pertaining to the estimated state and local taxable base increase in its economic development project notice. In its memorandum in support, Columbia explains it does not have access to this information and cannot reasonably estimate the full tax receipt impacts without such information. Columbia also notes that it has complied with all other requirements of Ohio Adm.Code 4901:1-43-03, and believes it has provided the Commission sufficient information to consider its application for an economic development project. *No memoranda contra Columbia's motion for a limited waiver were filed.*

{¶ 13} The attorney examiner initially notes that newly adopted Ohio Adm.Code 4901:1-43-02(B) provides that the Commission may waive any requirement in the chapter, other than a requirement mandated by statute, for good cause shown. Upon consideration of Columbia's motion for a waiver of Ohio Adm.Code 4901:1-43-03(A)(3)(a), the attorney examiner *finds that Columbia's motion should be granted, contingent upon the Commission's review and consideration of the application.* If the Commission later finds that additional information is needed, Columbia may be required to submit the requisite information at that time. The attorney examiner stresses that the waiver extends only to the requirement that Columbia provide information pertaining to the estimated state and local taxable base increase associated with the economic development project, and that Columbia must comply with all other requirements imposed by Title 49 of the Revised Code and the Commission's rules and regulations.

{¶ 14} As a final matter, on November 8, 2016, the Ohio Consumers' Counsel (OCC) filed a motion to intervene within the prescribed time set forth in Ohio Adm.Code 4901:1-43-04(E)(1). In support of its motion to intervene, OCC states that it has authority under

R.C. Chapter 4911 to represent the interests of Ohio's residential utility customers and that the interests of such customers may be adversely affected by the Commission's authorization of Columbia to incur and defer expenses associated with its economic development project. OCC notes that, although the creation of a rider for the recovery of any deferred costs will be determined in Case Nos. 16-2067-GA-ATA and 16-2068-GA-IDR, Columbia's residential customers will ultimately be affected by determinations in this proceeding. OCC further submits that its participation will not unduly prolong or delay the proceeding and that its advocacy will significantly contribute to the full development and equitable resolution of the issues. The attorney examiner finds that OCC's motion to intervene complies with the requirements of Ohio Adm.Code 4901-1-11, has been timely filed, and should be granted.

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That Columbia's motion for protective order be granted to the extent set forth in this Entry. It is, further,

{¶ 17} ORDERED, That the Commission's docketing division maintain, under seal, the confidential information filed by Columbia on October 24, 2016, for a period ending 24 months from the date of this Entry. It is, further,

{¶ 18} ORDERED, That Columbia's motion for a limited waiver of Ohio Adm.Code 4901:1-43-03(A)(3)(a) be granted, consistent with Paragraph 13 above. It is, further,

{¶ 19} ORDERED, That OCC's motion to intervene be granted. It is, further,

{¶ 20} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Megan J. Addison

By: Megan J. Addison
Attorney Examiner

JRJ/vrm