

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Co-    )  
lumbia Gas of Ohio, Inc. for Approval    )  
of an Economic Development Project:    ) Case No. 19-1918-GA-EDP  
Tosoh SMD, Inc.                                )

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

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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 capital expenditure numbers related to the Tosoh SMD, Inc. 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).

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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**COLUMBIA GAS OF OHIO, INC.**

## MEMORANDUM IN SUPPORT

Columbia Gas of Ohio, Inc. ("Columbia") is a natural gas utility, regulated by the Public Utilities Commission of Ohio ("Commission"). Tosoh SMD, Inc. is a manufacturer and distributor of a wide range of chemical advanced materials, currently located in Grove City, Ohio. Tosoh SMD, Inc. is planning to expand by constructing 30,000 square feet of distribution and manufacturing space along with a natural gas fired back-up generator, all at its Grove City headquarters.

Pursuant to Revised Code § 4929.163, Columbia filed an Application in this same docket requesting Commission approval of this economic development project. The application filed concurrently in this docket contains confidential trade secret information. Specifically, the confidential trade secret information in the application (and redacted in the public version) includes total project costs for the line extension, the deposit required, and Tosoh SMD, Inc.'s contribution towards the deposit. If this information is released to the public, Columbia and Tosoh SMD, Inc. would suffer substantial harm as its respective 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 Act<sup>1</sup>, 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 redacted content is investment information that is of a business and financial nature. Second, Columbia and Tosoh SMD, Inc. derive independent economic value from the investment information not being readily ascertainable by others. The capital investment agreed to by each party was the result of 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.<sup>2</sup> Further, the Court found that the “Commission has the statutory authority to protective competitive agreements from disclosure...”<sup>3</sup> Finally, granting

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<sup>1</sup> Revised Code § 1333.61 (emphasis added)

<sup>2</sup> *Ohio Consumers’ Counsel v. Pub. Util. Comm. et al.*, 121 Ohio St. 3d 362, 369 (2009).

<sup>3</sup> *Id.* at 370.

Columbia's Motion would be consistent with its precedent granting protective treatment for the same or very similar investment information.<sup>4</sup>

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 and Tosoh SMD, Inc.'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 to protect the confidential and proprietary trade secret information from public disclosure. The Commission should deem the materials in the Application confidential for a period of 24 months.

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<sup>4</sup> *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 at 3 (November 18, 2016); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of a Reasonable Arrangement for Transporting Natural Gas*, Case No. 16-1555-GA-AEC, Finding and Order at 3 (August 31, 2016); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Economic Development Project with Nucor Steel Marion, Inc.*, Case No. 17-1906-GA-EDP, Entry at 3 (September 29, 2017); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Economic Development Project with GETH-Ohio, Southern Ohio Industrial District Project*, Case No. 17-1678-GA-EDP, Entry at 3 (December 12, 2017); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Economic Development Project with FWD:Energy, Southern Ohio Industrial District Project*, Case No 17-1679-GA-EDP, Entry at 3 (December 12, 2017); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Economic Development Project with CertainTeed*, Case No 18-295-GA-EDP, Entry at 3 (March 20, 2018); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Economic Development Project with COMTEX Laundry*, Case No 18-1296-GA-EDP, Entry at 3 (September 4, 2018); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Economic Development Project Known as the North Central Ohio Business Park Site* Ohio Authentication Project, Case No 19-1274-GA-EDP, Entry at 3 (June 25, 2019); *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Economic Development Project Known as the Lawrence Economic Development Corporation, Southern Ohio Industrial District*, Case No 19-1753-GA-EDP, Entry at 3 (October 3, 2019).

Respectfully submitted,  
**COLUMBIA GAS OF OHIO, INC.**

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Summary: Motion for a Protective Order and Memorandum in Support of Columbia Gas of Ohio, Inc. electronically filed by Ms. Melissa L. Thompson on behalf of Columbia Gas of Ohio, Inc.