

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
OHIO GAS COMPANY FOR APPROVAL OF
AN ECONOMIC DEVELOPMENT PROJECT
WITH THE NORTH PIONEER INDUSTRIAL
PARK.

CASE NO. 20-1315-GA-EDP

ENTRY

Entered in the Journal on August 24, 2020

{¶ 1} Ohio Gas Company (Ohio Gas) is a natural gas company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 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, the infrastructure development costs to be expended on the project, and the support for the project by an economic development entity or chamber of commerce, 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 July 27, 2020, Ohio Gas filed, pursuant to R.C. 4929.163 and Ohio Adm.Code 4901:1-43-03(A), an application for approval of an economic development project with the North Pioneer Industrial Park, which is intended to provide additional natural gas capacity needed for economic development in Pioneer, Ohio. Ohio Gas states that, to serve the project, it will be required to install approximately 17,000 linear feet of eight-inch distribution main.

{¶ 4} On that same date, Ohio Gas also filed a motion for protective order, seeking to protect its total project cost and investment in the line extension, which was filed under seal on July 28, 2020. Specifically, Ohio Gas 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, Ohio Gas notes that the Commission has consistently granted protective treatment for the total project cost and level of investment by natural gas companies for economic development projects. *See, e.g., In re Columbia Gas of Ohio, Inc.*, Case No. 19-2001-GA-EDP, Entry (Nov. 25, 2019); *In re Columbia Gas of Ohio, Inc.*, Case No. 17-1906-GA-EDP, Entry (Sept. 29, 2017); *In re Columbia Gas of Ohio, Inc.*, Case No. 16-2069-GA-EDP, Entry (Nov. 18, 2016). 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 the 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 the motion for protective order with respect to this capital investment information is reasonable and should be granted.

{¶ 9} 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 Ohio Gas on July 28, 2020.

{¶ 10} 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 Ohio Gas 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 confidential treatment is filed, the Commission may release this information without prior notice to Ohio Gas.

{¶ 11} On July 27, 2020, Ohio Gas 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 in its economic development project notice pertaining to the estimated state and local taxable base increase. In the motion, Ohio Gas also seeks a waiver of Ohio Adm.Code 4901:1-43-03(A)(3)(b), which requires that an economic development project notice include the anticipated number of new jobs created and jobs retained by the project. In its memorandum in support, Ohio Gas explains that it does not possess information regarding

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).

the estimated state and local taxable base increase or anticipated new jobs. Ohio Gas also notes that the Commission has previously granted similar limited waivers in other economic development proceedings. No memoranda contra the motion for a limited waiver were filed.

{¶ 12} Initially, the attorney examiner notes that 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 the motion for a waiver of Ohio Adm.Code 4901:1-43-03(A)(3)(a) and 4901:1-43-03(A)(3)(b), the attorney examiner finds that the 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, Ohio Gas may be required to submit the requisite information at that time. Further, to the extent that Ohio Gas subsequently is able to obtain information regarding the tax and job impacts associated with this economic development project, Ohio Gas should provide the information in the annual report required under Ohio Adm.Code 4901:1-43-04. The attorney examiner notes that the waiver extends only to the requirement that Ohio Gas provide information pertaining to the estimated state and local taxable base increase and anticipated number of new jobs associated with the economic development project, and that Ohio Gas must comply with all other requirements imposed by Title 49 of the Revised Code and the Commission's rules and regulations.

{¶ 13} It is, therefore,

{¶ 14} ORDERED, That the motion for protective order filed by Ohio Gas be granted. It is, further,

{¶ 15} ORDERED, That the Commission's docketing division maintain, under seal, the confidential information filed by Ohio Gas on July 28, 2020, for a period ending 24 months from the date of this Entry. It is, further,

{¶ 16} ORDERED, That the motion for a limited waiver of Ohio Adm.Code 4901:1-43-03(A)(3)(a) and 4901:1-43-03(A)(3)(b) be granted, consistent with Paragraph 12. It is,

further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Sarah J. Parrot

By: Sarah J. Parrot
Attorney Examiner

JRJ/kck

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/24/2020 2:30:50 PM

in

Case No(s). 20-1315-GA-EDP

Summary: Attorney Examiner Entry granting the motion for protective order filed by Ohio Gas; ordering the Commission's docketing division maintain, under seal, the confidential information filed by Ohio Gas on July 28, 2020, for a period ending 24 months from the date of this Entry and granting the motion for a limited waiver of Ohio Adm.Code 4901:1-43-03(A)(3)(a) and 4901:1-43-03(A)(3)(b).
electronically filed by Kelli C. King on behalf of Sarah J. Parrot, Attorney Examiner, Public Utilities Commission of Ohio