

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE JOINT
APPLICATION OF COLUMBIA GAS OF
OHIO, INC. AND THE EAST OHIO GAS
COMPANY D/B/A DOMINION ENERGY
OHIO FOR APPROVAL OF A NATURAL
GAS TRANSPORTATION SERVICE
AGREEMENT.

CASE No. 20-1569-GA-AEC

ENTRY

Entered in the Journal on February 3, 2021

{¶ 1} Columbia Gas of Ohio, Inc. (Columbia) and The East Ohio Gas Company d/b/a Dominion Energy Ohio (DEO) (jointly, Companies) are natural gas companies as defined in R.C. 4905.03 and public utilities as defined in R.C. 4905.02, and, as such, are subject to the jurisdiction of this Commission.

{¶ 2} R.C. 4905.31 authorizes the Commission to approve schedules or reasonable arrangements between a public utility and another public utility or one or more of its customers. The statute provides that every such schedule or reasonable arrangement shall be under the supervision and regulation of the Commission, and is subject to change, alteration, or modification by the Commission.

{¶ 3} On October 2, 2020, the Companies filed a joint application, pursuant to R.C. 4905.16, 4905.31, and 4905.48, seeking approval of a general transportation service master meter agreement (TSA) related to the construction of, and service to, a new point of delivery in Canfield, Ohio. As part of the application, the Companies filed as attachments redacted copies of both the TSA and a Data Sharing Letter Agreement (Data Sharing Agreement) executed by the parties.

{¶ 4} Simultaneous with the application, DEO filed on October 2, 2020, an amended motion for protective order in which it seeks protection of certain information in the TSA and the Data Sharing Agreement. DEO states that the redacted information in the TSA and the Data Sharing Agreement is confidential and includes non-public cost and pricing

information, negotiated terms and conditions, personal identifying information, and information regarding pipeline infrastructure, and asserts that all such information should be protected from public disclosure.

{¶ 5} In a Finding and Order issued on December 2, 2020, the Commission approved the joint application filed by the Companies.

{¶ 6} Regarding the amended motion for protective order, 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).

{¶ 7} 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.”

{¶ 8} 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).

{¶ 9} The attorney examiner has reviewed the information that is the subject of DEO’s amended 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 denies, in part, and grants, in part, DEO's request. The redacted information contained in the TSA and the Data Sharing Agreement, attached to the joint application as Attachment A and Attachment B, respectively, is hereby denied protected treatment as follows:

Attachment A – General Transportation Service Master Meter Agreement

- Page 1:
 - All of the information should be unredacted.
- Page 3:
 - All of the information should be unredacted.
- Page 4:
 - All of the information should be unredacted.
- Pages 7-9:
 - All of the information should be unredacted.
- Page 10:
 - Specific dollar amounts listed on this page and all of Sections 5(a)(i) and 5(a)(ii) shall be afforded protective treatment, but all other information on the page should be unredacted.
- Pages 11-13:

¹ See *State ex rel. the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

- All of the information should be unredacted.
- Pages 16-17:
 - All of the information should be unredacted.

Attachment B – Data Sharing Letter Agreement

- All of the information should be unredacted.

{¶ 10} The information in the sections described above appears to be standard contract terms along with work-related employee contact information and the attorney examiner, therefore, finds that the information does not constitute trade secrets. The Companies are hereby directed to file copies of the TSA and Data Sharing Agreement with the unredacted information specified above within ten business days from the date of this Entry.

{¶ 11} Regarding the remaining information, the attorney examiner finds that it constitutes trade secret information. Its release, therefore, is 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.

{¶ 12} 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 that the Companies file confidentially as directed by this Entry.

{¶ 13} 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 DEO or 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 confidential treatment is filed, the Commission may release this information without prior notice to the Companies.

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That the amended motion for protective order filed by DEO on October 2, 2020, be granted, in part, and denied, in part. It is, further,

{¶ 16} ORDERED, That the Companies file copies of the TSA and Data Sharing Agreement with the unredacted information specified herein within ten business days from the date of this Entry. It is, further,

{¶ 17} ORDERED, That, except as otherwise noted in this Entry, the Commission's docketing division maintain, under seal, the information that the Companies file confidentially as directed by this Entry. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/David M. Hicks

By: David M. Hicks
Attorney Examiner

NJW/kck

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in

Case No(s). 20-1569-GA-AEC

Summary: Attorney Examiner Entry granting in part and denying in part the amended motion for protective order filed by DEO on October 2, 2020; ordering that the Companies file copies of the TSA and Data Sharing Agreement with the unredacted information specified herein within ten business days from the date of this Entry and ordering that, except as otherwise noted in this Entry, the Commission's docketing division maintain, under seal, the information that the Companies file confidentially as directed by this Entry.
electronically filed by Kelli C. King on behalf of David M. Hicks, Attorney Examiner, Public Utilities Commission of Ohio