

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Waterville)
Gas Company for Approval of Contract with) Case No. 11-5437-GA-AEC
Johns Manville International, Inc.)

**MOTION TO EXTEND PROTECTIVE ORDER
OF
WATERVILLE GAS COMPANY**

In accordance with Ohio Adm. Code 4901-1-24(F), Waterville Gas Company (Waterville) hereby moves to extend the Public Utilities Commission of Ohio's (Commission) May 3, 2019 protective order placing under seal certain price and volume information contained in Exhibit A of Waterville's Application for approval of a contract with Johns Manville International, Inc. (Johns Manville). As further explained in the Memorandum in Support, good cause exists to grant the extension of the existing protective order for another 24-month period.

Respectfully submitted,

/s/ Kimberly W. Bojko

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MEMORANDUM IN SUPPORT

On May 3, 2019, the Commission granted Waterville's motion to extend the protective order, which designated as confidential and protected from public disclosure the price and volume information contained in Exhibit A of the Application in the above-captioned proceeding.¹ The Commission explained that the information would remain under seal for 24 months from the date of its Entry.²

Pursuant to Ohio Adm. Code 4901-1-24(F), any motion to extend the protective order must be filed at least 45 days in advance of the expiration date of the existing order. Through this timely motion,³ Waterville seeks an order from the Commission extending the protective order for another 24 months in order to keep confidential and protect from public disclosure certain trade secret and competitively sensitive information. If released to the public, the information contained in Exhibit A of the Application would harm Waterville, as it would provide its competitors with sensitive, proprietary information, which is not generally known or available to the public.

Ohio Adm. Code 4901-1-24(D) permits an attorney examiner to issue an order to protect the confidentiality of information contained in a document filed at the Commission "to the extent

¹ Entry at ¶ 10 (May 3, 2019).

² Id. at ¶ 7.

³ The 45th day prior to the expiration date of the existing protective order is Friday, March 19, 2021.

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 non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code." As referenced above, Ohio Adm. Code 4901-1-24(F) authorizes a party to seek an extension of a previously-existing protective order. The motion to extend a protective order must be filed at least 45 days in advance of the expiration date of the existing order and contain a detailed discussion of the need to continue protective treatment. *Id.*

R.C. 1333.61(D) defines a trade secret as information which "(1) 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[; and] (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Further, R.C. 149.43 states that the term "public records" excludes information which, under state or federal law, may not be released. The Supreme Court of Ohio has held that this "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State* (2000), 89 Ohio St.3d 396, 399. Moreover, in *State ex rel. The Plain Dealer v. Ohio Dept. of Insurance*, the Supreme Court of Ohio adopted the following six-factor test to determine whether information constitutes a "trade secret" under R.C. 1333.61:

- (1) the extent to which the information is known outside the business;
- (2) the extent to which it is known to those inside the business, i.e., by the employees;
- (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information;
- (4) the savings effected and the value to the holder in having the information as against competitors;
- (5) the amount of effort or money expended in obtaining and developing the information;
- (6) the amount of time and expense it would take for others to acquire and duplicate the information.

State ex rel. The Plain Dealer v. Ohio Dept. of Ins. (1997), 80 Ohio St.3d 513, 524-25.

Based on the above-mentioned factors, the Commission should grant Waterville's Motion and protect the designated information contained in Exhibit A from public disclosure for an additional 24 months. The price and volume information is confidential and relates to Waterville and Johns Manville's financial arrangements. The Commission has previously recognized that "negotiated price and quantity terms can be sensitive information in a competitive environment" in granting a protective order for price and quantity terms in negotiated transportation capacity contracts.⁴ The price and volume information is not widely known outside the business and Waterville does not externally disclose this confidential information without the existence of protective agreements. Moreover, the information is not known by those inside the business who are employed in capacities other than those that encompass financial and accounting services. Information of this nature contained in this exhibit is not generally disclosed, as such disclosure would give competitors an advantage that could damage Waterville's ability to compete in its market. As explained previously, Waterville competes directly with another public utility that has a direct connection with another nearby manufacturing facility of Johns Manville. Further, extended confidential treatment of the information contained in Exhibit A is not inconsistent with the purposes of Title 49 of the Revised Code. Because the Commission and its Staff have full access to the information for which extended confidential treatment is requested, the Commission's ability to perform its statutory obligations will not be affected in any way by the granting of this Motion.

⁴ See *In the Matter of the Application of North Coast Gas Transmission LLC for Approval of a New Contract and Amendments to Three Existing Contracts*, Case No. 05-1214-PL-AEC, 2005 Ohio PUC LEXIS 548, Order at ¶ 5 (Nov. 9, 2005).

In light of the nature of the exhibits for which Waterville seeks extended confidential treatment and the competitive advantage which disclosure of the information contained in the exhibits may provide to its competitors, the Commission should grant Waterville's Motion.

Accordingly, Waterville respectfully requests that the Commission grant this Motion and extend protective treatment over the trade secret and competitively sensitive information discussed herein to keep such information confidential and protect from public disclosure the price and volume information contained in Exhibit A of the Application.

Respectfully submitted,

/s/ Kimberly W. Bojko

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Summary: Motion to Extend Protective Order of Waterville Gas Company electronically filed by Mrs. Kimberly W. Bojko on behalf of Waterville Gas Company