

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The East)	
Ohio Gas Company d/b/a Dominion Energy)	
Ohio for Approval of an Economic)	Case No. 21-0523-GA-EDP
Development Project: Wooster Innovation)	
Park)	

**MOTION FOR PROTECTIVE ORDER AND FOR WAIVER OF
THE EAST OHIO GAS COMPANY D/B/A DOMINION ENERGY OHIO**

In accordance with Ohio Adm. Code 4901-1-24(D), The East Ohio Gas Company d/b/a Dominion Energy Ohio (DEO or the Company) respectfully moves for a protective order to keep confidential and not part of the public record certain information contained in the economic development project notice filed today. This information redacted in the notice is confidential and contains proprietary trade secrets, which are subject to protection from public disclosure. DEO also requests a waiver of Ohio Adm.Code 4901:1-43-03(A)(3)(a). Good cause exists to grant this motion for the reasons set forth in the attached Memorandum in Support.

Dated: May 3, 2021

Respectfully submitted,

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ATTORNEYS FOR THE EAST OHIO GAS
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MEMORANDUM IN SUPPORT

The economic development project notice filed today by DEO pertains to the extension of DEO's facilities to permit the development of and provision of service to Wooster Innovation Park, located at Daisy Way, Wooster, OH 44691, in Wayne County. DEO's motion seeks two forms of relief: protective treatment of certain confidential information; and a waiver of the requirement to provide an estimate of the state and local tax base increase under Ohio Adm.Code 4901:1-43-03(A)(3)(a).

A. The request for protective treatment should be granted.

The notice contains confidential trade secret information, including total project costs and DEO's investment in the project. DEO would suffer harm if its competitors would have access to these proprietary trade secrets.

Under Ohio Adm.Code 4901-1-24(D), the Commission and other designees "may issue any order which is necessary to protect the confidentiality of information contained in [a document filed with the Commission], to the extent that state or federal law prohibits release of the information, including where the information is deemed by the commission, the legal director, the deputy legal director, or 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."

The information for which DEO seeks the protective agreement should be protected in accordance with state law.

1. Ohio law prohibits the release of trade secrets.

Ohio law prohibits the release of trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St.3d 396, 399 (2000). "Trade secret," among other things, means "any business information or

plans, financial information, or listing of names, addresses, or telephone numbers” that meets two conditions:

- (1) “[i]t 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.”

R.C. 1333.61(D)(1)–(2). The information identified above satisfies these conditions and should be kept confidential.

First, the redacted content is business and investment information that is of a business and financial nature. Second, DEO derives independent economic value from such information not being readily ascertainable by others. 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 can be confidential. In *Ohio Consumers’ Counsel v. Public Util. Comm’n*, the Court affirmed the Commission’s determination that the account numbers and price and volume of generation contained in a contract had independent economic value. 121 Ohio St.3d 362, 369 (2009). Further, the Court found that “the commission has the statutory authority to protect competitive agreements from disclosure.” *Id.* at 370. To that end, the Commission has repeatedly recognized that non-public pricing information is worthy of protection. *See, e.g., In re Generation Pipeline*, Case No. 17-524-GA-AEC, Order (Apr. 19, 2017) at 3 (“the Commission finds that the pricing, shrinkage factor, and volume information contained in Exhibit B to the natural gas transportation service agreement constitutes trade secret information”); *In re Ohio Power Co.*, Case No. 15-279-EL-RDR, Order (Mar. 18, 2015) at 7 (granting protective treatment for “pricing information”); *In re*

N. Coast Gas Transmission LLC, Case No. 14-158-PL-AEC, Finding & Order (Mar. 19, 2014) at 2 (granting protective treatment for “pricing, volumes, and shrinkage factors”).

DEO has also taken reasonable efforts to protect the information. Only a limited number of management-level DEO personnel have participated in determination of such information, and DEO has not disclosed information regarding the project costs outside of this narrow group. DEO has not otherwise disclosed this information and has treated it as sensitive and confidential. And DEO now files this motion for protective treatment.

Additionally, under Ohio Adm.Code 4901-1-24(D), nondisclosure of this information is not inconsistent with Title 49 of the Revised Code. The Commission and Staff will have full access to the information needed to provide complete and thorough review of the project notice, and no provision of Ohio law would support the competitive harm that would result from the disclosure of this information. Finally, granting DEO’s motion would be consistent with the line of Commission precedent permitting protective treatment for similar EDP investment information. *See, e.g., In re Columbia Gas of Ohio*, Case No. 20-1765-GA-EDP, Entry (Jan. 4, 2021) at 3.

2. Other factors support the protection of this information under Ohio law.

DEO would also observe that the following factors, identified by the Supreme Court of Ohio in addition to the statutory factors, support protecting this information. *See State ex rel. Plain Dealer v. Ohio Dep’t of Ins.*, 80 Ohio St.3d 513, 524–25 (1997).

First, the pertinent information is *not* “known outside” of DEO. *Id.* No other entity has access to this information. Second, the information is not widely “known to those inside” of DEO. *Id.* As explained, only a small group of management-level personnel had access to this information. Third, DEO has taken reasonable “precautions to guard the secrecy of the information,” *id.*, by carefully limiting disclosure of the information, including internally, and

marking documents containing the information appropriately. Fourth, the information would be “valu[able]” to competitors in the marketplace were it to be published. *Id.* Finally, regarding the “time and expense it would take for others to acquire and duplicate the information,” *id.*, it would be impossible for any party to acquire this information at this time, unless it were disclosed.

For these reasons, Ohio law compels the protection of this information.

B. The motion for waiver should also be granted.

DEO also requests that the Commission grant DEO a waiver of Ohio Adm.Code 4901:1-43-03(A)(3)(a)’s requirement to provide the estimated state and local taxable base increase. DEO does not have access to the information necessary to estimate the state and local tax base increase. DEO does not know the estimated state and local taxable base increase information. Nor can DEO reasonably estimate the full tax receipt impacts of the Project without this information. Because any information that would be utilized to calculate the state and local tax base increase is not within DEO’s possession or control, DEO requests that this requirement be waived. Similar requests have been granted by the Commission in other EDP proceedings. *See, e.g.,* Case No. 20-1703-GA-EDP.

WHEREFORE, DEO respectfully requests that the Commission grant the motion for a protective order and for waiver and grant all other necessary and proper relief.

Dated: May 3, 2021

Respectfully submitted,

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Summary: Motion Motion for Protective Order and Waiver and Memorandum in Support electronically filed by Christopher T Kennedy on behalf of The East Ohio Gas Company d/b/a Dominion Energy Ohio