BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Services and Related Matters.	)))))	Case No. 21-637-GA-AIR
In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Alternative Form of Regulation.	)))	Case No. 21-638-GA-ALT
In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of a Demand Side Management Program for its Residential and Commercial Customers.	)))))	Case No. 21-639-GA-UNC
In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval to Change Accounting Methods.	)))	Case No. 21-640-GA-AAM

MOTION FOR PROTECTIVE ORDER OF COLUMBIA GAS OF OHIO, INC.

On June 30, 2021, Columbia Gas of Ohio, Inc. ("Columbia") filed a Motion for Protective Order requesting protective treatment for certain information contained in its Application and supporting schedules. Pursuant to Ohio Adm.Code 4901-1-24(D), Columbia hereby requests protective treatment for certain confidential or highly confidential information contained in the testimony filed in support of its Application. The information Columbia seeks to protect from disclosure is confidential and contains proprietary trade secrets that are subject to protection from disclosure under Ohio law. The reasons for this motion are more fully explained in the attached Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

1. Introduction

On June 30, 2021, Columbia filed an application to change its distribution rates, modify its rate class structure, make various other changes to its tariffs and accounting methods, recover approved cost deferrals since the last rate case, and adopt new riders. Columbia's Application requested approval of an alternative rate plan, under which Columbia is seeking to continue its existing Infrastructure Replacement Program and Capital Expenditure Program and their associated riders and implement a new Federally Mandated Rider to recover incremental costs associated with federally and state-mandated investments in plant, including investments to comply with the Pipeline and Hazardous Materials Safety Administration "Mega Rule." Columbia's Application also requested authority to continue its successful demand side management ("DSM") Program.

Simultaneous with this filing, Columbia is filing testimony from numerous witnesses in support of its Application. Portions of the following pre-filed testimony, or of attachments to that testimony, is confidential and proprietary information entitled to protection under Ohio Adm.Code 4901-1-24:

Witness	Reference for Confidential Information	Description of Confidential Information
Kimberly Cartella	Prepared Direct Testimony at p. 16	Wage increase proposed for Customer Service Representatives
Russell Feingold	Attachment RAF-2	Number of bills and consumption of the Company's Flex customers
Marc Okin	Prepared Direct Testimony at pp. 7-8 and 11; Attachments MBO-3a and -3b	Terms of a confidential agreement and the dollar amounts detailed in Attachments MBO-3a and -3b, which permit calculation of a term in the agreement

For the reasons described below, Columbia requests that the Commission grant this Motion for Protective Order and protect from public disclosure Columbia's trade secrets contained in the listed testimony and testimony attachments.

2. Background Law

The need to protect confidential and proprietary information is recognized under the Commission's rules. Ohio Adm.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.

Furthermore, under the Ohio Uniform Trade Secrets Act, 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, addresses, 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.

R.C. 1333.61(D). This definition clearly reflects the state policy favoring the protection of trade secrets such as the business information reflected in these discovery requests. *See Al Minor & Assocs. v. Martin*, 117 Ohio St. 3d 58, 63 (2008) (Supreme

Court of Ohio noting that "by adopting the Uniform Trade Secrets Act, the General Assembly has determined that public policy in Ohio, as in the majority of other jurisdictions, favors the protection of trade secrets, whether memorized or reduced to some tangible form.")

Moreover, in *State ex rel The Plain Dealer v. the Ohio Dept. of Ins.* (1997),[1] the Supreme Court of Ohio adopted a six-factor test to analyze whether information is a trade secret under the statute: (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, and (6) the amount of time and expense it would take for others to acquire and duplicate the information.[2] Ohio state courts and federal courts applying Ohio law continue to apply this six-factor test. *See, e.g.*, *RECO Equip., Inc. v. Wilson*, S.D. Ohio No. 2:20-cv-3556, 2020 U.S. Dist. LEXIS 218410, at *38 (applying Ohio's six-factor test and concluding that plaintiff made sufficient showing for trade-secret status of stored data regarding manner in which it services customers, makes repairs, and documents customer experiences).

Applying these criteria, the Commission routinely grants protection to confidential, trade secret information, including pricing information.[3] For example, in connection with Columbia's application for approval to continue its DSM programs, the Commission recently confirmed that information pertaining to Columbia's energy efficiency incentives and rebates, cost-effectiveness model, and the model's associated inputs and data were appropriately shielded from public disclosure as trade secrets.[4]

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[1] *State ex rel The Plain Dealer v. the Ohio Dept. of Ins.,* 80 Ohio St. 3d 513 (1997).

[2] *Id*. at 524-525 (quoting *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983)).

[3] *See, e.g. 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 (August 31, 2016).

[4] *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of Demand-Side Management Programs for its Residential and Commercial Customers*, Case No. 16-1309-GA-UNC, Second Entry on Rehearing at ¶ 75 (April 10, 2019).

3. Argument

3.1. Kimberly Cartella

Ms. Cartella testifies in support of a proposed wage increase for four position levels of Customer Service Representative (CSR) in the NiSource Customer Contact Center ("NCCC"). Ms. Cartella conducted an analysis of average hourly base salary and hourly total cash compensation for these CSR position levels compared to wage data available from multiple survey sources for similar positions at other energy utilities. She determined that other energy utility companies compensate their call center service employees at significantly higher rates than the NCCC. She, in collaboration with Columbia Witness Dice, concluded that the proposed increase in wages is needed to reasonably compensate NCCC's CSRs to bring them more in line with comparable positions at other energy utilities and to slow the high CSR employee turnover the NCCC has experienced the past few years.

NCCC's proposed wage increase qualifies for trade secret protection pursuant to R.C. 1333.61(D) and the Supreme Court of Ohio's six-factor test. NCCC and Columbia treat wage increases that are planned but not yet approved as confidential. Ms. Cartella's testimony presents the proposed average increase for the four levels of CSR employees.[5] The proposed wage increase is not known outside the business. Other call centers competing with NCCC for labor, and armed with knowledge of this confidential information, would gain an advantage in recruiting, compensating, and retaining employees.

Consequently, the proposed average wage increase for NCCC CSRs shown at p. 16, line 35 is confidential, trade secret information and entitled to protection under Title 49, the Commission's rules, and Commission precedent.

3.2. Russell Feingold

Attachment RAF-2 to the testimony of Russell Feingold provides details of Columbia's class revenue apportionment process, together with the computational details supporting Columbia's proposed rate design for each rate class. This attachment includes information taken from Schedule E-4, which was the subject of Columbia's first Motion for Protective Order, including the number of bills and consumption of the Company's Flex customers. As explained in Columbia's first Motion for Protective Order, some customers' rates are "flexed" under provisions of

[5] *See* Cartella Attachment KKC-4 and Cartella Testimony at 16.

Columbia's tariff that allow Columbia to agree to a "charge lower than the [applicable] maximum delivery charge" where "necessary because of competition from a pipeline, distribution system or non[-]natural gas fuel source * * * ."[6] The "Flex" rates to which Columbia has agreed for some customers in its General Transportation Service (GTS), Large General Transportation Service (LGTS), and Full Requirements Cooperative Transportation Service (FRCTS) rate classes are not publicly known and cannot be ascertained using public information.

Columbia takes reasonable efforts to maintain the secrecy of its Customers' Flex rates, such as including confidentiality provisions in its Flex agreements with customers, not sharing the Flex rates with employees who do not need to know that information to perform their job functions, and not sharing the Flex rates outside the Company except with contractors who need to know those rates to perform their responsibilities for the Company. If the customer bill numbers and consumption volumes for "Flex" customers in Attachment RAF-2 were made public, customers could determine the average Flex rate for their rate schedule, and some existing Flex customers could attempt to negotiate lower rates. This could ultimately increase Columbia's revenue requirement. Additionally, publicly disclosing this information could allow competitors of Flex rate customers to see and/or calculate competitively sensitive billing information or amounts, and give those competitors valuable competitively sensitive information about those Flex rate customers. Finally, disclosing the Flex rates will provide Columbia's competitors a competitive advantage to try to negotiate lower rates with these customers, which could also increase Columbia's revenue requirement.

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[6] *See* P.U.C.O. No. 2, Ninth Revised Sheet No. 16 (Small General Sales Rate), Eighth Revised Sheet No. 17, page 1 of 2 (Small General Schools Sales Rate), Eighth Revised Sheet No. 18 (General Sales Rate), Seventh Revised Sheet No. 19 (General Schools Sales Rate), Fifth Revised Sheet No. 20 (Large General Sales Rate), Seventh Revised Sheet No. 49 (Small General Transportation Service Delivery Charge), Eighth Revised Sheet No. 50 (Small General Schools Transportation Service Delivery Charge), Eighth Revised Sheet No. 53 (General Transportation Service Delivery Charge), Sixth Revised Sheet No. 54 (General Schools Transportation Service Delivery Charge), Third Revised Sheet No. 58 (Large General Transportation Service), Section VII, Seventh Revised Sheet No. 25, pages 2 and 3 of 3 (Full Requirements Small General Transportation Service and Full Requirements Small General Transportation Service), Section VII, Eighth Revised Sheet No. 27, page 2 of 3 (Full Requirements General Transportation Service Delivery Charge), Section VII, Sixth Revised Sheet No. 27, page 3 of 3 (Full Requirements General Schools Transportation Service Delivery Charge), Section VII, Ninth Revised Sheet No. 28, page 2 of 3 (Full Requirements Large General Transportation Service). *See also* Section VII, Fourth Revised Sheet No. 41 (Full Requirements Cooperative Transportation Service) (allowing Columbia to "bill less than maximum rate where competitive circumstances exist").

Consequently, the "Adjusted Bills" and "Adjusted Volumes" information for Flex customers on pages 1 of 10 and 2 of 10 in Attachment RAF-2, and the "Bills" and "MCF" information for Flex customers on pages 8 of 10, 9 of 10, and 10 of 10, in Attachment RAF-2, is confidential, trade secret information and entitled to protection under Title 49, the Commission's rules, and Commission precedent.

3.3. Marc Okin

Mr. Okin, in his pre-filed testimony, discusses the terms of a 2008 settlement agreement with Toledo Edison that resolved environmental remediation responsibilities under the federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") regarding a former manufactured gas plant site (Toledo I (Land) MGP). The settlement agreement prohibits the parties from disclosing any term of the agreement, except as expressly provided therein. None of the exceptions to confidentiality permit Columbia to unilaterally disclose any term of the agreement on the public record. Mr. Okin discloses only those agreement terms necessary to inform the Commission of the site's history, of Columbia's success in obtaining a financial contribution from Toledo Edison toward environmental remediation, and of the accounting treatment for the amount of environmental remediation expense Columbia seeks to recover for this site.

Columbia seeks a protective order against public disclosure of the agreement terms in Mr. Okin's testimony at p. 7, lines 36-40, and p. 8, lines 1-4. Columbia also moves to redact the annual environmental remediation cost amounts shown in Mr. Okin's testimony at p. 11, lines 10-11, and Attachments MBO-3a and -3b, because the sum of those expenses can be used to easily calculate the amount of the confidential settlement payment which Columbia subtracted from the amount it seeks to recover.

Ohio Adm.Code 4901-1-24(D) authorizes granting confidential protection in this scenario and such an Order would not be inconsistent with the purposes of Title 49. Respecting the parties' confidentiality provision will encourage other utilities to reach private agreements for environmental remediation. Moreover, the settlement agreement authorizes Columbia to disclose it to the Commission in connection with this proceeding. If requested, Columbia will file the settlement agreement under seal or produce a confidential copy to Staff in response to a discovery request from Staff.

4. Conclusion

For the reasons discussed above, the Commission should grant Columbia's Motion for Protective Order and protect the listed confidential information from

public disclosure. The Commission should order all parties to keep the listed information confidential and direct that any use of this information must be done under seal, pursuant to the Commission's rules. Finally, pursuant to Ohio Adm.Code 4901-1-24(F), the Commission should deem the information confidential for a period of 24 months from the date of an order ruling on this Motion.

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served via electronic mail on the 14th day of July, 2021 upon the parties listed below.

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