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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application)
of Interstate Gas Supply, Inc.)
for Certification as a Retail)
Natural Gas Supplier)

Case No. 02-1683-GA-CRS

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INTERSTATE GAS SUPPLY, INC.'S
MOTION FOR PROTECTIVE ORDER REGARDING
RENEWAL OF CERTIFICATE TO PROVIDE COMPETITIVE RETAIL NATURAL
GAS SERVICE AND MEMORANDUM IN SUPPORT

John W. Bentine, Esq. (0016388)
Trial Counsel
E-Mail: jbentine@cwsllaw.com
Direct Dial: (614) 334-6121
Bobby Singh, Esq. (0072743)
E-Mail: bsingh@cwsllaw.com
Direct Dial: (614) 334-6122
Chester Willcox & Saxbe, LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215
(614) 221-4000 (main number)
(614) 221-4012 (facsimile)

Attorneys for Interstate Gas Supply, Inc.

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I. MOTION FOR PROTECTIVE ORDER

Pursuant to Ohio Administrative Code ("OAC") 4901-1-24(D), Interstate Gas Supply, Inc. ("IGS") respectfully moves the Public Utilities Commission of Ohio ("Commission") to: (i) issue a protective order to protect for eighteen (18) months the confidentiality of and prohibit the disclosure of certain documents filed simultaneously with this Motion in the above-captioned docket, and (ii) grant a waiver from OAC 4901-1-24(F), which causes any order prohibiting public disclosure of certain documents to automatically expire eighteen (18) months after the protective order was issued.

The documents for which protective treatment is sought are Exhibits C-3 Financial Statements (Exhibit C-3), C-4 Financial Arrangements (Exhibit C-4), and C-5 Forecasted Financial Statements (Exhibit C-5) contained in IGS's Renewal Certification for Retail Natural Gas Supplier ("Renewal Certification"), which was filed simultaneously with this Motion. The information in C-3 Financial Statements (Exhibit C-3), C-4 Financial Arrangements (Exhibit C-4), and C-5 Forecasted Financial Statements (Exhibit C-5) is competitively sensitive and highly

proprietary business financial information comprising of trade secrets (collectively, "Protected Information"). The Protected Information has been clearly marked as confidential and is hereby filed under seal, separate from the remainder of the materials that comprise of IGS's Renewal Certification.

The grounds for the instant Motion for Protective Order are set forth below.

II. MEMORANDUM IN SUPPORT

As part of the Renewal Certification, the Commission requested information regarding IGS's financial statements (Exhibit C-3), financial arrangements (Exhibit C-4), and forecasted financial statements (Exhibit C-5), comprising of the Protected Information. IGS has submitted the Protected Information under seal because the documents contain competitively sensitive and highly proprietary business financial information, which require confidential treatment.

OAC 4901-1-24(D) provides for the issuance of an order that is necessary to protect the confidentiality of information contained in documents filed at the Commission: (i) to the extent that state and federal law prohibit the release of such information, and (ii) where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code ("RC"). State law recognizes the need to protect information that is confidential in nature, such as the Protected Information. In particular, RC § 4929.23(A) specifically permits the Commission to grant confidentiality to competitive information.¹ Further, RC § 4901.12 and 4905.07 facilitate the protection of trade secrets in the Commission's possession.² RC § 4901.12 and 4905.07 have

¹ RC § 4929.23(A) provides: "A retail natural gas supplier or governmental aggregator subject to certification under section 4929.20 of the Revised Code shall provide the public utilities commission with such information, regarding a competitive retail natural gas service for which it is subject to certification, as the commission considers necessary to carry out sections 4929.20 to 4929.24 of the Revised Code. The commission shall take such measures as it considers necessary to protect the confidentiality of any such information."

² RC § 4901.12 provides: "Except as otherwise provided in section 149.43 of the Revised Code and as consistent with the purposes of Title XLIX [49] of the Revised Code, all proceedings of the public utilities commission and all

reference to RC § 149.43, and therefore, incorporate the provision that excepts from the public record such information and records whose release is prohibited by law.³ Therefore, it is clear that state law prohibits the release of information meeting the definition of a trade secret.

The Protected Information contained in Exhibits C-3, C-4, and C-5 is comprised of competitively sensitive and highly proprietary business financial information that falls within the statutory characterization of a trade secret as defined by RC § 1333.61(D). The definition of trade secret contained in RC § 1333.61 (D) is as follows:

"Trade secret" means 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.⁴

The Protected Information consists of financial statements, financial arrangements, and forecasted financial statements that are proprietary, and therefore, are confidential. Public disclosure of this information would jeopardize IGS's business position in negotiations with other parties and its ability to compete. IGS avers that this information is not generally known by the public and is held in confidence in the normal course of business. Accordingly, IGS

documents and records in its possession are public records." RC § 4905.07 provides: "Except as provided in section 149.43 of the Revised Code and as consistent with the purposes of Title XLIX [49] of the Revised Code, all facts and information in the possession of the public utilities commission shall be public, and all reports, records, files, books, accounts, papers, and memorandums of every nature in its possession shall be open to inspection by interested parties or their attorneys."

³ RC § 149.43(A)(1)(v) provides in part that "'Public record' does not mean records the release of which is prohibited by state or federal law."

⁴ Emphasis added.

respectfully requests that the Protected Information contained in Exhibits C-3 Financial Statements, C-4 Financial Arrangements, and C-5 Forecasted Financial Arrangements be deemed to contain trade secrets, and thus, be treated as confidential by the Commission and its Staff. In any event, the non-disclosure of the information will not impair the purposes of Title 49 because the Commission and its Staff will have full access to the requested information in order to complete their review process.

The Commission has previously granted protected treatment to such information contained in similar applications of other competitive suppliers. *See In the Matter of the Applications of the Following Entities for a Certificate to Provide Competitive Retail Natural Gas Service in Ohio: NICOR Energy L.L.C., Vectren Retail LLC, d.b.a. Vectren Source, Shell Energy Services Co. L.L.C., Volunteer Energy Services Inc., ACN Energy Inc., Energy America LLC, FirstEnergy Solutions Corp., AEP Ohio Retail Energy LLC, Energy Cooperative of Ohio, MidAmerican Energy Company, ProLiance Energy LLC, Metromedia Energy Inc., and UGI Energy Services Inc., d.b.a. GASMARK*, Case Nos. 02-1654-GA-CRS, 02-1668-GA-CRS, 02-1680-GA-CRS, 02-1786-GA-CRS, 02-1828-GA-CRS, 02-1829-GA-CRS, 02-1864-GA-CRS, 02-1889-GA-CRS, 02-1891-GA-CRS, 02-1893-GA-CRS, 02-1909-GA-CRS, 02-1926-GA-CRS, 02-1968-GA-CRS, Entry, June 14, 2003. In the above entry, the Commission found the need for protective treatment to be especially "persuasive for the privately held companies." *See id.* at para. 3, p. 2. IGS is a privately-held company, and therefore, would be especially vulnerable if protective treatment were not granted.

Additionally, IGS respectfully requests a waiver from OAC 4901-1-24(F), which causes any order prohibiting public disclosure of certain documents to automatically expire eighteen (18) months after the date the order was issued. Given the extremely sensitive nature of the

requested documents and the risk of disclosure of the same, IGS believes that a waiver of this rule is necessary. Inasmuch as IGS is a small privately-held company, the sensitive nature of this information will remain and the need to keep the information from public disclosure will not diminish upon the expiration of eighteen (18) months. Therefore, the information is proprietary now and will continue to be in eighteen (18) months. Thus, it will be imperative to maintain the information as confidential, and for the Commission to continue its protection from public disclosure. Providing a waiver now would also conserve the Commission's resources, because it will avoid the Commission from re-issuing an extension of protective treatment in eighteen (18) months, as it has previously done for similar requests. *See In the Matter of the Application of Vectren Retail, LLC, d/b/a Vectren Source, for Certification as a Retail Natural Gas Supplier in the State of Ohio*, Case No. 02-1668-GA-CRS; *In the Matter of the Application of ShellEnergy Services Company, LLC, for Certification as a Retail Natural Gas Supplier in the State of Ohio*, Case No. 02-1680-GA-CRS; *In the Matter of the Application of Energy America, LLC, For Certification as a Competitive Retail Natural Gas Supplier in the State of Ohio*, Case No. 02-1829-GA-CRS, Entry, January 22, 2004. As such, IGS respectfully requests that the Commission grant a waiver from OAC 4901-1-24(F) to prevent the information that has been filed under seal from being removed from protective status and placed into the public record of the proceeding.

Wherefore, for the reasons set forth above, IGS respectfully requests that the Commission grant this Motion for Protective Order, which includes: (i) the request for protective treatment of the information contained in C-3 Financial Statements (Exhibit C-3), C-4 Financial

Arrangements (Exhibit C-4), and C-5 Forecasted Financial Statements (Exhibit C-5), filed under seal, as well as (ii) a waiver of OAC 4901-1-24(F).

Respectfully submitted,



John W. Bentine, Esq. (0016388)

Trial Counsel

E-Mail: jbentine@cwsllaw.com

Direct Dial: (614) 334-6121

Bobby Singh, Esq. (0072743)

E-Mail: bsingh@cwsllaw.com

Direct Dial: (614) 334-6122

Chester Willcox & Saxbe, LLP

65 East State Street, Suite 1000

Columbus, Ohio 43215

(614) 221-4000 (main number)

(614) 221-4012 (facsimile)

Attorneys for Interstate Gas Supply, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Interstate Gas Supply, Inc.'s Motion For Protective Order Regarding Renewal Of Certificate To Provide Competitive Retail Natural Gas Service And Memorandum In Support was served upon the following parties of record or as a courtesy, via U.S. Mail postage prepaid, express mail, hand delivery, or electronic transmission, on July 1, 2004.



Bobby Singh, Esq

Gregory A. Price
Senior Staff Attorney
The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215