

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of	)	
Interstate Gas Supply, Inc., for	)	Case No. 02-1683-GA-CRS
Certification as a Retail Natural Gas	)	
Supplier.	)	

ENTRY

The attorney examiner finds:

- (1) On July 5, 2002, Interstate Gas Supply, Inc., (IGS) filed its initial application for certification as a retail natural gas supplier. Although the Commission can withhold from public release certain confidential, proprietary and trade secret information contained in certification applications, pursuant to Rule 4901-1-24, Ohio Administrative Code (O.A.C.), IGS did not move for a protective order with regard to any information in that application.
- (2) On July 1, 2004, IGS filed its first application for renewal of its certification and a motion for protective treatment of exhibits C-3, C-4, and C-5 of that application. That motion was granted on August 11, 2004, for a period of 18 months. On November 28, 2005, IGS filed a motion to renew the protective order, which motion was granted on February 7, 2006, for an additional 18-month period, commencing on February 11, 2006. On June 7, 2007, IGS filed another motion to renew, which was granted, for 18 months, as of August 11, 2007. That protective order expired on February 11, 2009.
- (3) On June 13, 2006, IGS filed its second application for renewal of its certification and a motion for protective treatment of exhibits C-3, C-4, and C-5 of that application. That motion was granted on July 13, 2006, for a period of 18 months. No motion for renewal was filed prior to its scheduled expiration on January 13, 2008.
- (4) On June 20, 2008, IGS filed its third application for renewal of its certification and a motion for a protective order of exhibits C-3, C-4, and C-5 of that application. In that motion, IGS also stated that it sought to extend protective treatment of exhibits C-3, C-4, and C-5 of the applications filed on June 13, 2006; July 1, 2004; and July 5, 2002.

- (5) By entry filed July 28, 2008, IGS's motion for a protective order was granted for the 2006 and 2008 exhibits but denied with regard to the 2002 exhibits, on the grounds that those exhibits were filed publicly. The protective order for the 2004 exhibits was not extended, as the entry noted those exhibits were still subject to a protective order set to expire on February 11, 2009. The entry stated that, when expiration of the protective order covering the 2004 exhibits approached, IGS could file a motion seeking extension of that order.
- (6) On December 26, 2008, IGS filed a motion seeking extension of the protective order covering the 2004 exhibits.
- (7) The exhibits covered by IGS's motion consist of financial statements, financial arrangements, and financial forecasts. IGS submits that this information is completely sensitive and proprietary. It contends that all of this information remains sensitive, as competitors could use it to back-calculate IGS's margin on sales and its market share. Thus, it concludes, the information has actual, substantial independent economic value from not being generally known and not being ascertainable by proper means by persons that would derive economic value from its disclosure. IGS confirms that it goes to great lengths to protect the secrecy of this information. Finally, IGS asserts that nondisclosure of this information will not impair the purposes of Title 49, as the Commission will have full access to the information.
- (8) The attorney examiner finds that the same procedures applicable to the initial issuance of a protective order should be used for considering the extension of a protective order. Therefore, in order to determine whether to grant or to extend a protective order, it is necessary to review the materials in question; to assess whether the information constitutes a trade secret under Ohio law; to decide whether non-disclosure of the materials will be consistent with the purposes of Title 49, Revised Code; and to evaluate whether the confidential material can reasonably be redacted.
- (9) The attorney examiner has reviewed the information in Exhibits C-3, C-4, and C-5 of the 2004 application, as well as the assertions set forth in the memorandum in support of IGS's motion.
- (10) The attorney examiner notes initially that the competitive value of these exhibits, given their age, is diminished. However, after

applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,<sup>1</sup> the attorney examiner finds at the present time the 2004 exhibits still contain trade secret information. Their release is therefore 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. Finally, the attorney examiner concludes that these exhibits cannot be reasonably redacted to remove the confidential information contained therein.

- (11) Rule 4901-1-24(F), O.A.C., provides that, unless otherwise ordered, protective orders under Rule 4901-1-24(D), O.A.C., automatically expire after 18 months. Rule 4901-1-24(D)(4), O.A.C., provides for protective orders relating to gas marketers' certification renewal programs to expire after 24 months.
- (12) The attorney examiner also finds that, although the previous protective order expired February 11, 2009, the exhibits remained under seal and thus were not made public. Therefore, while the motion will be granted and confidential treatment shall be afforded to the 2004 exhibits, the new protective order will expire on February 11, 2011, 24 months after expiration of the previous order. Until that date, the docketing division of the Commission should maintain exhibits C-3, C-4, and C-5 of IGS's 2004 certification renewal application under seal.
- (13) Rule 4901-1-24(F), O.A.C., 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 IGS 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 IGS.

It is, therefore,

ORDERED, That the motion by IGS for a protective order be granted. It is, further,

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<sup>1</sup> See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525 (1997).

ORDERED, That the Commission's docketing division shall maintain, under seal, exhibits C-3, C-4, and C-5 of IGS's 2004 certification renewal applications, as filed on July 1, 2004, until February 11, 2011. It is, further,

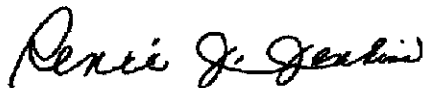
ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
By: Henry H. Phillips-Gary  
Attorney Examiner

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/ct

Entered in the Journal  
OCT 01 2009



Renee J. Jenkins  
Secretary