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November 5, 2010

Ms. Renee Jenkins
Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street, 13th Floor
Columbus, OH 43215-3793

Re: *In the Matter of the Application of Spark Energy Gas, LP, for Certification as a
Retail Natural Gas Supplier, Case No. 08-638-GA-CRS*

Dear Ms. Jenkins:

Please find enclosed for filing in the above captioned matter the original and seven (7) copies of Spark Energy Gas' Motion to Extend Protective Order and Request to Accept Motion as Timely and for Expedited Ruling. Please date stamp and return the additional copies.

Very truly yours,

BAILEY CAVALIERI LLC



Dane Stinson

cc: Jim Lynn, Attorney Examiner

Enclosures

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)	
Spark Energy Gas, LP, for Certification)	Case No. 08-638-GA-CRS
as a Retail Natural Gas Supplier.)	

***SPARK ENERGY GAS'
MOTION TO EXTEND PROTECTIVE ORDER
AND REQUEST TO ACCEPT MOTION AS TIMELY
AND FOR EXPEDITED RULING***

Spark Energy Gas, LP ("Spark"), by its attorneys and pursuant to sections 4901-1-12 and 4901-1-24(F), Ohio Admin. Code, moves the Public Utilities Commission of Ohio ("Commission") to extend the protective order issued August 5, 2008, in this docket for Exhibit C-3 (Financial Statements), Exhibit C-4 (Financial Arrangements) and Exhibit C-5 (Forecasted Financial Statements) that were filed under seal with Spark's initial certification application on May 27, 2008. In addition, Spark requests that this motion be accepted as timely filed, and that the Commission issue an expedited ruling on its requests pursuant to sections 4901-1-12(C) and (F), Ohio Admin. Code. The reasons supporting Stark's requests are detailed in the attached Memorandum in Support.

Respectfully submitted,



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**MEMORANDUM IN SUPPORT OF SPARK ENERGY GAS'
MOTION TO EXTEND PROTECTIVE ORDER
AND REQUEST TO ACCEPT MOTION AS TIMELY
AND FOR EXPEDITED RULING**

I. MOTION TO EXTEND PROTECTIVE ORDER

Spark Energy Gas, LP ("Spark") is not a publicly traded company and its financial information is not publicly available. Therefore, Spark seeks to extend the protective order granted August 5, 2008, in this docket for the financial information contained in Exhibit C-3: Financial Statements ("Exhibit C-3"), Exhibit C-4: Financial Arrangements ("Exhibit C-4") and Exhibit C-5: Forecasted Financial Statements ("Exhibit C-5") (collectively, the "Exhibits") filed in connection with its initial certification application on May 27, 2008. See, *In the Matter of the Application of Spark Energy Gas, LP, for Certification as a Retail Natural Gas Supplier*, Case No. 08-638-GA-CRS (Entry, August 5, 2008).

As was the case when Spark initially filed the Exhibits, Spark considers the information to be, and has treated it as, a trade secret. The information for which extended protection is sought contains highly proprietary and confidential commercial and financial information, consisting of audited financial information, forecasted financial information and financial arrangements, the disclosure of which would violate covenants in the credit arrangement. Such information clearly is competitively sensitive trade secret information. Public disclosure would impair Spark's ability to respond to competitive opportunities in the marketplace and would provide competitors with an unfair competitive advantage.

Rule 4901-1-24(D), Ohio Administrative Code, provides that the Commission or certain designated employees may issue an order which is necessary to protect the confidentiality of information contained in documents filed with the Commission's Docketing Division to the

extent that state or federal law prohibits the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. State law, and specifically Section 4929.23(A), Ohio Revised Code, permits the Commission to protect the confidentiality of competitive information submitted as a part of the certification process for competitive retail natural gas suppliers. Moreover, Sections 4901.12 and 4905.07, Ohio Revised Code, facilitate the protection of trade secrets in the Commission's possession. These statutes incorporate by reference the provisions of Section 149.43, Ohio Revised Code, which excepts from the public record information and records for which disclosure is prohibited by law. State law prohibits the release of information meeting the definition of a trade secret. Sections 1333.61(D) and 1333.62, Ohio Revised Code. Sections 4901.12 and 4905.07, Ohio Revised Code, also reference the purposes of Title 49 of the Revised Code. The protection of trade secret information from public disclosure is consistent with the purposes of Title 49 and non-disclosure of the information will not impair the purposes of Title 49, because the Commission and its Staff have full access to the information in order to fulfill its statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. While the Commission has often expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to trade secrets:

The Commission is of the opinion that the "public records" statute must also be read *in pari materia* with Section 1333.31, Revised Code ("trade secrets" statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

In re: General Telephone Co., Case No. 81-383-TP-AIR (Entry, February 17, 1982).

The documents and information contained in the Exhibits contain competitively sensitive and highly proprietary business financial information falling within the statutory characterization of a trade secret as defined by Section 1333.61(D), Ohio Revised Code:

"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.

This definition clearly reflects the state policy favoring the protection of trade secrets such as the information which is the subject of this motion.

Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade secrets of a public utility, the trade secret statute creates a duty to protect them. *New York Tel. Co. v. Pub. Serv. Comm. N.Y.*, 56 N.Y. 2d 213 (1982). Indeed, for the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses, including public utilities, through the Uniform Trade Secrets Act. This Commission has previously carried out its obligations in this regard in numerous proceedings. *See, e.g., Elyria Tel. Co.*, Case No. 89-965-TP-AEC (Finding and Order, September 21, 1989); *Ohio Bell Tel. Co.*, Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); *Columbia Gas of Ohio, Inc.*, Case No. 90-17-GA-GCR (Entry, August 17, 1990).

In *Pyromatics, Inc. v. Petruziello*, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983), the Court of Appeals, citing *Koch Engineering Co. v. Faulconer*, 210 U.S.P.Q. 854, 861 (Kansas 1980), has delineated factors to be considered in recognizing a trade secret:

(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.

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

The protection of trade secrets from public disclosure is consistent with the underlying purpose of Chapter 4928.26, Ohio Rev. Code. More specifically, section 4928.06(F), Ohio Rev. Code, grants the Commission broad discretionary powers to "take such measures as it considers necessary to protect the confidentiality of any such information [necessary to effect competition], including the granting of this motion under section 4901-1-24(F), Ohio Admin. Code.

The financial information contained in the Exhibits remains accurate and has not become outdated or stale. Spark considers and has continued to treat the documents and information contained in the Exhibits as trade secret. In the ordinary course of business, the information continues to be deemed confidential, continues to be treated as proprietary and confidential by Spark employees and is not disclosed to anyone unless required pursuant to a legal proceeding.

Considering the competitive environment in which Spark operates, the financial information for which continued protection is requested in the Exhibits is highly proprietary, confidential and commercially sensitive. Therefore, it is imperative that Commission extend

protective treatment of such information, thus precluding potential competitors from gaining access to this commercially sensitive information. Additionally, non-disclosure of the information will not impair the purposes of Title 49, because the Commission and its Staff have full access to the information in order to fulfill its statutory obligations. The Commission can thus ensure that Spark (1) complies with Commission's rules and (2) will receive no regulatory advantage over its potential competitors.

II. REQUEST TO ACCEPT MOTION AS TIMELY

Spark also requests that the Commission accept this motion as being timely filed. Section 4901-1-24(F), Ohio Admin. Code, requires that motions to extend protective orders be filed 45 (forty-five) days prior to the expiration of the existing protective order. Spark's protective order issued August 5, 2008, expired on August 31, 2010. Spark timely filed its renewal certification application on July 13, 2010. Spark intended to seek continued protection of the Exhibits, but inadvertently overlooked filing a motion required to continue protection. By entry issued October 27, 2010, the attorney examiner granted protection to documents filed with the 2010 renewal application that are similar to those contained in the Exhibits, and notified Spark that the Exhibits may be released on November 30, 2010, because a motion to continue their protection had not yet been filed. Spark immediately recognized its oversight and retained Ohio counsel to file the appropriate motion. Spark asks the Commission to exercise the discretion¹ provided by section 4901-1-24, Ohio Admin. Code, and not release the Exhibits on November 30, 2010, and instead continue the protection of the Exhibits until August 14, 2012, which is the date on which the protective order expires for the similar exhibits granted protection

¹ Section 4901-1-24(F), Ohio Admin. Code, provides in part:

Unless otherwise ordered, any order prohibiting public disclosure pursuant to paragraph (D) of this rule shall automatically expire eighteen months after the date of its issuance, and such information ***may*** then be included in the public record of the proceeding.*** (Emphasis added.)

in Spark's 2010 renewal certification application. See entry issued in this docket on October 27, 2010.

III. REQUEST FOR EXPEDITED RULING

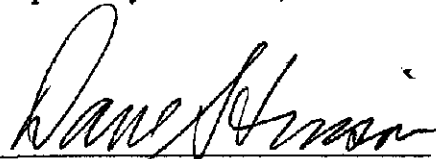
Spark also requests that an expedited ruling be issued on this motion pursuant to sections 4901-1-12(C) and (F), Ohio Admin. Code, considering that the Exhibits currently are scheduled for possible release on November 30, 2010. See Entry issued in this matter on October 27, 2010. Because Spark is the only party to this proceeding, an expedited ruling will not adversely affect the substantive right of any party.

IV. CONCLUSION

For the foregoing reasons, Spark requests the Commission to:

1. accept Stark's motion to extend the protective order issued August 5, 2008, as timely filed;
2. grant Spark's motion to extend the protective order issued for the Exhibits in this docket on August 5, 2008, until August 14, 2012; and
3. issue an expedited ruling on Spark's request.

Respectfully submitted,



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