

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

The attorney examiner finds:

- (1) On June 21, 2010, Interstate Gas Supply, Inc. (IGS), filed a renewal application for recertification as a competitive retail natural gas marketer.
- (2) On June 21, 2010, IGS filed a motion for protective order regarding Exhibits C-3, C-4, and C-5 contained in IGS's 2010 renewal application. IGS asserts that the information contained in these exhibits is competitively sensitive and proprietary business and financial information. Specifically, IGS avers that public disclosure of this information would jeopardize IGS's business position in negotiations with other parties and its ability to compete. According to IGS, by examining the exhibits, a competitor could reasonably estimate IGS's growth rates, market share, and margins and could use the exhibits to make strategic decisions regarding whether to enter or exit the markets in the geographic regions in which IGS operates. No memorandum contra was filed in opposition to this motion.
- (3) On June 28, 2010, IGS filed a motion to extend protective treatment regarding Exhibits C-3, C-4, and C-5 contained in IGS's 2006 and 2008 renewal applications. These exhibits were most recently granted protective treatment on July 28, 2008. The exhibits covered by IGS's motion consist of financial statements, financial arrangements, and financial forecasts. IGS submits that this information is competitively 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. No memoranda contras were filed to this motion.

- (4) Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, specifies that the term "public records" excludes information which, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State* (2000), 89 Ohio St.3d 396, 399.
- (5) Similarly, Rule 4901-1-24, Ohio Administrative Code (O.A.C.), allows an attorney examiner to issue an order to protect the confidentiality of information contained in a filed document, "to the extent that state or federal law prohibits release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."
- (6) In considering IGS's motions for protective order filed June 21, 2010, and June 28, 2010, the attorney examiner notes 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 nondisclosure 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.
- (7) The attorney examiner initially notes that the competitive value of the exhibits filed with IGS's 2006 and 2008 renewal applications, 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 that, at the present time, the 2006 and 2008 exhibits still contain trade secret information. The release of the 2006, 2008,

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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).

and 2010 exhibits 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. Therefore, the attorney examiner finds that IGS's June 21, 2010, and June 28, 2010, motions for a protective order are reasonable and should be granted with regard to the confidential information contained in Exhibits C-3, C-4, and C-5 contained in IGS's 2006, 2008, and 2010 renewal applications.

- (8) Rule 4901-1-24(D)(4), O.A.C., provides for protective orders relating to gas marketer's renewal applications to expire after 24 months. The attorney examiner finds that the 24-month provision in Rule 4901-1-24(D)(4), O.A.C., is intended to synchronize the expiration of protective orders related to a gas marketer's certification application with the expiration of its certification and that the expiration dates should allow adequate time for consideration of any motion for extension. Therefore, confidential treatment shall be afforded to IGS for a period ending 24 months from the effective date of the certificate issued to IGS, or until July 24, 2012. Until that date, the docketing division should maintain, under seal, Exhibits C-3, C-4, and C-5 contained in IGS's 2006, 2008, and 2010 renewal applications, which were filed under seal in this docket on June 13, 2006, June 20, 2008, and June 21, 2010.
- (9) 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. Therefore, 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 docketing division may release this information without prior notice to IGS.

It is, therefore,

ORDERED, That the motions for a protective order filed by IGS on June 21, 2010, and June 28, 2010, be granted in accordance with Finding (7). It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, Exhibits C-3, C-4, and C-5 filed under seal in this docket as part of IGS's 2006, 2008, and 2010, renewal applications on June 13, 2006, June 20, 2008, and June 21, 2010, for a period of 24 months, ending on July 24, 2012. It is, further,

ORDERED, That a copy of this entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Katie L. Stenman

By: Katie L. Stenman  
Attorney Examiner

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Entered in the Journal

DEC 15 2010

Renee J. Jenkins

Renee J. Jenkins  
Secretary