

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of U.S.)
Gas & Electric, Inc. for Certification as a) Case No. 08-601-GA-CRS
Retail Natural Gas Supplier.)

ENTRY

The attorney examiner finds:

- (1) On August 30, 2010, the applicant, U.S. Gas & Electric, Inc. (USG&E), filed an application to renew the certification under which it is authorized it to provide competitive retail natural gas service (CRNGS) in Ohio. On September 2, 2010, USG&E filed a motion for protective order, pursuant to Rule 4901-1-24, Ohio Administrative Code (O.A.C.), requesting that certain financial information it considers confidential and that it filed, under seal, be kept under seal. More specifically, USG&E is seeking:
 - (a) Pursuant to Rule 4901-1-24(F), O.A.C., a protective order extending for another 24-month period, the existing protective order covering Exhibits C-3, C-4, and C-5 of USG&E's original certification application filed on May 16, 2008. All three of these exhibits were originally filed, in unredacted form, under seal, with USG&E's original certification application on May 16, 2008.
 - (b) Pursuant to Rule 4901-1-24(D), O.A.C., a protective order for 24 months covering Exhibits C-3 (financial statements), C-4 (financial arrangements), C-5 (forecasted financial statements), and C-6 (credit rating) of USG&E's renewal certification application filed on August 20, 2010. All four of these exhibits were filed, in unredacted form, under seal, on August 30, 2010, in this case.
- (2) In support of its motion for a 24-month extension of the existing protective order issued July 29, 2008, covering Exhibits C-3, C-4, and C-5 of USG&E's 2008 certification application, USG&E asserts that the protected information in those exhibits continues to be

competitively sensitive and proprietary business financial information. Thus, USG&E seeks to continue the protective order issued on July 29, 2008, for an additional 24-month period.

- (3) In support of its motion for protective order to cover the pertinent four exhibits to its renewal certification application, USG&E explains that Exhibits C-3, C-4, C-5, and C-6, filed on August 30, 2010, each contain competitively sensitive and highly proprietary business financial information which is not generally known or available to the general public.
- (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, 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) Ohio law defines a trade secret as "information . . . 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." Section 1333.61(D), Revised Code.
- (7) The attorney examiner has examined the information covered by the motion for protective order filed by USG&E, as well as the assertions set forth in the memorandum in support of that motion. Applying the requirements that the information must have

independent economic value and be the subject of reasonable efforts to maintain secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,¹ the attorney examiner finds that the information which is the subject of the motion for protective order constitutes trade secret information. Release of these documents 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 documents could not be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner finds that USG&E's motion for protective order is reasonable and should be granted with regard to Exhibits C-3, C-4, and C-5 of USG&E's 2008 certification application filed on May 16, 2008, as well as to Exhibits C-3, C-4, C-5, and C-6 of USG&E's certification renewal application filed on August 30, 2010.

- (8) Rule 4901-1-24(D), O.A.C., provides that protective orders relating to gas marketers' certification renewal applications should 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 gas marketers' certification applications with the expiration of their certification and that the expiration dates should allow adequate time for consideration of any motion for extension. Therefore, confidential treatment should be afforded to Exhibits C-3, C-4, and C-5 of USG&E's 2008 certification application, as well as to Exhibits C-3, C-4, C-5, and C-6 of USG&E's certification renewal application for a period ending 24 months from the effective date of the certificate issued to USG&E or until October 1, 2012. Until that date, the docketing division should maintain, under seal, Exhibits C-3, C-4, and C-5 of USG&E's 2008 certification application, which were filed originally on May 16, 2008, as well as Exhibits C-3, C-4, C-5, and C-6 of USG&E's certification renewal application, which were filed under seal in this docket on August 30, 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. If USG&E wishes to extend the

¹ See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St. 3d 513, 534-525.

confidential treatment granted here, 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 USG&E.

It is, therefore,

ORDERED, That the motion for protective order filed on September 2, 2010, by USG&E be granted with regard to Exhibits C-3, C-4, and C-5 of USG&E's 2008 certification application, which were filed originally on May 16, 2008, as well as Exhibits C-3, C-4, C-5, and C-6 of USG&E's certification renewal application, which were filed under seal in this docket on August 30, 2010. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, for a period of 24 months, concluding on October 1, 2012, Exhibits C-3, C-4, and C-5 of USG&E's 2008 certification application, which were filed originally on May 16, 2008, as well as Exhibits C-3, C-4, C-5, and C-6 of USG&E's certification renewal application, which were filed under seal in this docket on August 30, 2010. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO


By: Daniel E. Fullin
Attorney Examiner

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/dah

Entered in the Journal

FEB 25 2011



Renee J. Jenkins