

FILE

30

RECEIVED-DOCKETING DIV

2011 NOV 29 PM 5:25

PUCO

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

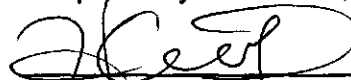
In the Matter of the Complaint of )  
The Office of the Ohio Consumers' )  
Counsel, et al., )  
Complainants, )  
v. )  
Interstate Gas Supply d/b/a Columbia )  
Retail Energy, )  
Respondent. )

Case No. 10-2395-Ga-CSS

INTERSTATE GAS SUPPLY, INC.'S  
MOTION FOR PROTECTIVE TREATMENT

Pursuant to Ohio Administrative Code ("OAC") 4901-1-24(D), Interstate Gas Supply, Inc. ("IGS") respectfully moves the Public Utilities Commission of Ohio ("Commission") for an order protecting from disclosure the Service Mark Licensing Agreement (the "Agreement") between IGS and NiSource Retail Services, Inc. ("NRS") and the confidential portions of the transcript from the November 7-8, 2011 hearing. The reasons for this Motion are more fully set forth in the attached Memorandum in Support.

Respectfully submitted,



John W. Bentine (0016388)

Email: [jbentine@cwsllaw.com](mailto:jbentine@cwsllaw.com)

Direct: (614) 334-6121

Sarah Daggett Morrison (0068035)

Email: [smorrison@cwsllaw.com](mailto:smorrison@cwsllaw.com)

Direct: (614) 334-7197

Zachary D. Kravitz (0084238)

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.

Technician Sm Date Processed NOV 30 2011

Email: [zkraivtz@cwslaw.com](mailto:zkraivtz@cwslaw.com)  
Direct: (614) 334-6172  
CHESTER WILLCOX & SAXBE LLP  
65 East State Street, Suite 1000  
Columbus, Ohio 43215  
Telephone: (614) 221-4000  
Facsimile: (614) 221-4012

**Attorneys for IGS**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of )  
 )  
The Office of the Ohio Consumers' )  
Counsel, et al., )  
 )  
Complainants, )  
 )  
v. )  
 )  
Interstate Gas Supply d/b/a Columbia )  
Retail Energy, )  
 )  
Respondent. )

Case No. 10-2395-Ga-CSS

---

**MEMORANDUM IN SUPPORT**

---

**I. INTRODUCTION**

On July 15, 2010, IGS and NRS entered into a Service Mark License Agreement (the "Agreement"), which authorized IGS to market competitive retail natural gas supply using the Columbia Retail Energy ("CRE") trade name and logo. NiSource Corporate Services Company, on behalf of NRS, negotiated the Agreement with IGS.<sup>1</sup> The Agreement between an unaffiliated natural gas marketer and a subsidiary of a parent company of a utility to use a similar trade name and logo as a utility is the first of its kind in Ohio.

Shortly after the execution of the Agreement and after attempting to revise the issue in IGS' certification case (PUCO Case No. 02-1683-GA-CRS), on October 21, 2010, the Complainants in this case filed a complaint against IGS, alleging IGS d/b/a CRE had engaged in marketing, solicitation, sales acts, or practices that were unfair,

---

<sup>1</sup> Bruno Aff. Ex. 3.

misleading, deceptive, or unconscionable, and that by using the CRE trade name and logo, IGS engaged in anticompetitive acts or practices.

On or about May 2, 2011, IGS entered into a Protective Agreement with the Complainants to expedite the exchange of discovery of materials that the disclosing party had a good faith belief were entitled to protection under existing law.<sup>2</sup> The Protective Agreement authorized the disclosing party to identify the protected materials as "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY."<sup>3</sup>

During the discovery process, the Complainants requested IGS to produce the Agreement. In response to the request, IGS produced two versions of the agreement. IGS designated two different versions of the Agreement because the information contained in the Agreement was so competitively sensitive that IGS could not have its competitors in possession of the information, even for purposes of litigation. IGS produced a redacted confidential version of the Agreement for the Complainants, and because of the highly sensitive nature of Agreement, IGS produced an unredacted "attorney's eyes only" version of the Agreement only to be shared with the attorneys for the Complainants.

On November 6, 2011, as required by the Protective Agreement, NOPEC informed IGS of its intent to use the Agreement during the hearing in this matter. Pursuant to that notice, on November 7, 2011, NOPEC used the redacted and unredacted "attorney's eyes only" versions of the Agreement during NOPEC's cross-examination of IGS President Scott L. White and IGS' General Counsel Vincent A.

---

<sup>2</sup> Ex. 1 (IGS signed identical Protective Agreements with each Complainant. IGS has attached the Protective Agreement with the OCC as an example.)

<sup>3</sup> *Id.*

Parisi.<sup>4</sup> NOPEC also examined IGS' witnesses on matters related to the structure of its business and the composition of its Board of Directors.

IGS objected to the use of the Agreement in the public proceeding and requested that the portions of the transcript referencing the Agreement be kept confidential under seal.<sup>5</sup> The Attorney Examiner instructed the parties that those portions of the transcript would be treated confidentially, however, the Attorney Examiner deferred ruling whether IGS' designation of the Agreement and corresponding testimony as confidential is proper until the parties had an opportunity to brief the issue.

The documents for which protective treatment is sought are the Agreement and the portions of the hearing transcript<sup>6</sup> identified as confidential (collectively, "Protected Materials"). The information contained within the documents is competitively sensitive and highly proprietary business and financial information comprising of trade secrets.

## **II. LEGAL ARGUMENT**

### **A. The Protected Materials Constitute Trade Secrets Prohibited from Disclosure by Ohio Law**

Ohio Administrative Code Section 4901-1-24(D) provides for the issuance of an order to protect the confidentiality of information contained in documents filed at the Commission to the extent the information is: (i) prohibited from disclosure by state or federal law;<sup>7</sup> (ii) non-disclosure is not inconsistent with the purposes of Ohio Revised Code ("ORC") Chapter 49; and (iii) maintained as confidential by the entity seeking the

---

<sup>4</sup> NOPEC Ex. 5; NOPEC Ex. 5A.

<sup>5</sup> IGS also requested that all testimony relating to the ownership of IGS be kept confidential. Upon inspection of IGS' Certificate publicly filed with the Commission, IGS acknowledges that IGS' shareholders have been named in the Certificate. Accordingly, IGS withdraws its request to have the names of IGS' shareholders remain confidential.

<sup>6</sup> Tr. Vol. I, pp. 51-119; Tr. Vol. II, pp. 419-433.

<sup>7</sup> See RC 149.43(A)(1)(v).

protective treatment.<sup>8</sup>

The protected information contained in the Protected Materials is prohibited from disclosure by state law because it is comprised of competitively sensitive and highly proprietary business and financial information that falls within the statutory definition of a trade secret as defined by O.R.C. § 1333.61(D). The definition of trade secret contained in O.R.C. § 1333.61 states:

"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.

The Ohio Supreme Court<sup>9</sup> has adopted six factors to determine whether a trade secret claim meets the statutory definition:

(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.

The proprietary information at issue meets the definition of "trade secrets"

---

<sup>8</sup> See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-525, citing *Pyromatics, Inc. v. Petruziello* (1983), 7 Ohio App.3d 131.

<sup>9</sup> *Id.*

because the Agreement between IGS and NRS constitutes “business information or plans,” including “technical information,” “financial information” and a “listing of names.” This information derives independent economic value “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.” Additionally, the Agreement is “the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

The Protected Materials contain information that is not known outside of IGS, NCS, and NRS.<sup>10</sup> The Agreement contains customer names, contract termination dates and other termination provisions, financial consideration for the license and other financial provisions, terms of the license and license limitations, and IGS’ throughput schedules.<sup>11</sup> This information is not known outside of the businesses of IGS, NCS and NRS.<sup>12</sup> Within the context of private contracts, the Commission has previously held that “customer names . . . contract termination dates or other termination provisions, financial consideration in each contract, price of generation referenced in each contract, volume of generation covered by each contract, and terms under which any options may be exercisable are all trade-secrets subject to protection.”<sup>13</sup>

The information contained within the Agreement derives independent economic value because IGS’ competitors could use the termination provisions to know the precise time to market to IGS’ customers if the CRE license were terminated.<sup>14</sup> Similarly, the financial consideration for the license and the terms of the licensing fees

---

<sup>10</sup> Parisi Aff. Ex. 2; Bruno Aff. Ex. 3.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *In the Matter of the Application of the Cincinnati Gas & Electric Co.*, Case No. 03-93-EL-ATA, Order on Remand (Oct. 24, 2007).

<sup>14</sup> Parisi Aff. Ex. 2.

are highly confidential.<sup>15</sup> This information could give IGS' competitors an advantage in the event a competitor desired to procure the CRE license at the termination of the Agreement.<sup>16</sup> Specifically, a competitor could use the financial information to undercut IGS in any future negotiations for the CRE license.<sup>17</sup> The public disclosure of this information would jeopardize IGS' business position and ability to compete.<sup>18</sup>

Additionally, there is independent economic value in the Agreement because it identifies IGS' natural gas throughput in Columbia's service territory prior to executing the Agreement.<sup>19</sup> Volume of natural gas throughput and electric generation is proprietary, trade-secret information for competitive retail natural gas suppliers and competitive retail electric suppliers, respectively.<sup>20</sup> Furthermore, the Agreement contains a customer list that is expressly defined as a trade secret.<sup>21</sup> The customer lists have economic value because competitors could use the information to discover previously unknown choice customers and use the information to solicit IGS' customers to IGS' detriment.<sup>22</sup>

The Protected Materials are not generally known by the public and are held in

---

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Parisi Aff. Ex. 2.

<sup>19</sup> *Id.*

<sup>20</sup> *In the Matter of the Joint Application of North Coast Gas Transmission, LLC and Suburban Natural Gas Company for Approval of a Natural Gas Transportation Service Agreement*, Case No. 06-1100-PL-AEC, Entry (Feb. 7, 2007); *In the Matter of the Application of the Cincinnati Gas & Electric Co.*, Case No. 03-93-EL-ATA, Order on Remand (Oct. 24, 2007).

<sup>21</sup> ORC § 1333.61; *see also In the Matter of the Application of the Cincinnati Gas & Electric Co.*, Case No. 03-93-EL-ATA, Order on Remand (Oct. 24, 2007); *Vanguard Transportation Systems, Inc. v. Edwards Transfer & Storage Co.*, 109 Ohio App. 3d 786, 791 (10<sup>th</sup> Dist. 1996) ("a customer list is an intangible asset which an owner may keep from its competitors. There is a presumption of secrecy regarding a customer list when an owner thereof takes measures to prevent it, in the ordinary course of business, from being available to persons other than those selected by the owner." (internal citations omitted)).

<sup>22</sup> Parisi Aff. Ex. 2.



confidence in the normal course of business.<sup>23</sup> While the existence of the Agreement is public knowledge, the terms of the Agreement have been kept confidential by IGS, NCS, and NRS.<sup>24</sup> The Agreement is exclusively available to high-level management and attorneys for IGS, NCS and NRS.<sup>25</sup> Business information shared between IGS, NCS, and NRS relating to the enforcement of the Agreement has also been kept confidential.<sup>26</sup> Access to the executed Agreement and electronic version of the Agreement is restricted to management and counsel of IGS, NCS and NRS.<sup>27</sup>

While IGS cannot put an exact value on the effort and money expended to obtain or develop the information, IGS submits that decades of experience in the industry generated consumer good-will towards IGS that induced NRS to license the CRE name to an unaffiliated entity.<sup>28</sup> IGS was involved in extensive negotiations with NCS on behalf of NRS, and numerous hours went into the crafting of Agreement.<sup>29</sup> The resulting licensing agreement between an unaffiliated CRNGS and a subsidiary of a utility's parent company is the first of its kind in Ohio.<sup>30</sup> For this reason, the entire Agreement is confidential and proprietary information.

In the same vein, IGS cannot speculate how much time and money it would take for IGS' competitors to obtain the good will to license a similar name of a utility and to create a similar agreement.<sup>31</sup> Furthermore, IGS avers that its competitors could potentially never know the terms of the Agreement and other confidential information

---

<sup>23</sup> Parisi Aff. Ex. 2; Bruno Aff. Ex. 3.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Parisi Aff. Ex. 2.

<sup>29</sup> Parisi Aff. Ex. 2; Bruno Aff. Ex. 2.

<sup>30</sup> Parisi Aff. Ex. 2.

<sup>31</sup> *Id.*

therein.<sup>32</sup> IGS, NCS, and NRS keep the Agreement highly confidential with no intention of making the Agreement public.<sup>33</sup> Moreover, IGS is a private company that is not subject to the same disclosure requirements as public businesses.<sup>34</sup> As a private agreement between two parties, as non-signatories to the Agreement, there would be no reason for the Complainants to ever see the Agreement.

Lastly, IGS is a privately-held company, and therefore, would be especially vulnerable if protective treatment were not granted. Indeed, the Commission has previously found the need for protective treatment to be especially "persuasive for the privately held companies,"<sup>35</sup> and the Commission has granted protective treatment to IGS in its Certificate case. Accordingly, the testimony regarding the composition of the Board of Directors, which is not public information, should also remain confidential.

B. It is the Policy of the Commission to Protect Trade Secrets from Public Disclosure

Ohio Administrative Code Section 4901-1-24(A) states:

Upon motion of any party or person from whom discovery is sought, the commission, the legal director, the deputy legal director, or the attorney examiner assigned to the case may issue any order which

---

<sup>32</sup> *Id.*

<sup>33</sup> Parisi Aff. Ex. 2; Bruno Aff. Ex. 2.

<sup>34</sup> Parisi Aff. Ex. 2.

<sup>35</sup> 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); See *Id.*, at para. 3, p. 2. See also *In the Matter of the Applications of: Vectren Retail, LLC, d/b/a Vectren Source, Interstate Gas Supply, Inc., Shell Energy Services Co., L.L.C., and FirstEnergy Solutions Corp. for Certification as Retail Natural Gas Suppliers in the State of Ohio; In the Matter of the Application of Direct Energy Services, LLC for Renewal of Certification as a Competitive Retail Natural Gas Supplier and for Approval to Transfer that Certification*, Case Nos. 02-1668-GA-CRS, 02-1683-GA-CRS, 02-1680-GA-CRS, 02-1864-GA-CRS, 02-1829-GA-CRS, Entry (Aug. 11, 2004).

is necessary to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such a protective order may provide that . . . (7) A trade secret or other confidential research, development, commercial, or other information not be disclosed or be disclosed only in a designated way.

Further, OAC § 4901-1-24(D) provides for the issuance of an order to protect the confidentiality of information contained in documents filed at the Commission to the extent the information is: (i) prohibited from disclosure by state or federal law;<sup>36</sup> (ii) non-disclosure is not inconsistent with the purposes of Ohio Revised Code ("ORC") Chapter 49; and (iii) maintained as confidential by the entity seeking the protective treatment.<sup>37</sup>

Commission rules also acknowledge the need to maintain the confidentiality of trade secret information presented at hearings. O.A.C. § 4901-1-27. Specifically, O.A.C. § 4901-1-27(B)(7)(e) states that the presiding hearing officer may take such actions as are necessary to:

Prevent public disclosure of trade secrets, proprietary business information, or confidential research, development, or commercial materials and information. The presiding hearing officer may, upon motion of any party, direct that a portion of the hearing be conducted *in camera* and that the corresponding portion of the record be sealed to prevent public disclosure of trade secrets, proprietary business information, or confidential research, development, or commercial materials and information. The party requesting such protection shall have the burden of establishing that such protection is required.

This Commission has long recognized the need to protect trade secret information from public disclosure and has issued protective orders in numerous proceedings to maintain the confidentiality of competitively sensitive and proprietary

---

<sup>36</sup> See RC 149.43(A)(1)(v).

<sup>37</sup> See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St. 3d 513, 524-525, citing *Pyromatics, Inc. v. Petruziello* (1983), 7 Ohio App. 3d 131.

information.<sup>38</sup> In fact, the recognition of the value of permitting this type of information to remain confidential has even led courts of other jurisdictions to hold that public utilities have not only the authority, but the duty, to protect the trade secrets of the entities that they regulate.<sup>39</sup> Thus, in accordance with state law, the Commission's rules and precedent prohibit the release of customer and proprietary business information, such as the Protected Materials.

Granting confidential treatment to the information will not impair the purposes of Chapter 49 of the Revised Code, because the Complainants and the Commission have full access to the Protected Materials for the adjudication of this matter. Disclosing the Protective Material to the public would actually encumber the purposes of Chapter 49 of the Revised Code. In the deregulated industry, IGS is a competitive retail natural gas supplier. IGS had the business foresight to create a novel agreement to market natural gas to Ohio consumers. Releasing this information to IGS' competitors would discourage future innovation because companies will be less likely to expend their resources to promote innovative ideas that advance the competitive market – in accordance with Ohio's natural gas policy as set forth in R.C. § 4929.02 – if the companies cannot be assured that their original thoughts and ideas will not be protected from competitors.

Accordingly, IGS respectfully requests that the Proprietary Materials be deemed to contain trade secrets, and thus, be treated as confidential by the Commission and its Staff.

---

<sup>38</sup> See, e.g. *Elyria Tel. Co.*, Case No. 89-965-TP-AEC, Finding and Order (Sept. 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 (Aug. 17, 1990).

<sup>39</sup> See *New York Tel. Co. v. Pub. Serv. Comm. N.Y.*, 56 N.Y.2d 213 (1982).

C. No Party will be Prejudiced if the Protected Materials Remain Confidential and Proprietary Information Under Seal with the Commission.

A determination that the documents in question will remain confidential and protected will not prejudice or disadvantage the Complainants. IGS has freely provided the Agreement to the Complainants on the condition that the Complainants sign the Protective Agreement. In doing so, the Complainants had the opportunity to fully prosecute their claims against IGS. Indeed, the Complainants cross-examined IGS President Scott L. White and IGS General Counsel Vincent A. Parisi with respect to the formation of the Agreement and all matters contained within the Agreement.

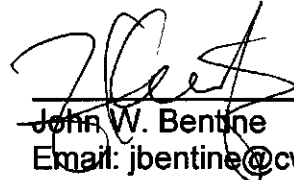
Moreover, the public will not be harmed if the Protected Materials remain confidential. The crux of the Complainants' Complaint alleged that IGS was misleading or deceiving consumers by using the trade name CRE. The Complainants had the opportunity to publicly cross-examine IGS witnesses regarding these issues, including CRE's solicitations, envelope, website and CRE's use of disclosures to inform consumers that CRE is a trade name licensed to IGS by NiSource; IGS and CRE are not affiliated with NiSource of Columbia Gas of Ohio; and IGS is the party providing the services under the CRE trade name. The Complainants have nothing to gain, and IGS much to lose, from disclosing the Protected Materials to the public. Any benefit of public disclosure is clearly outweighed by the extreme detriment to IGS.

**III. CONCLUSION**

The reasons set forth above demonstrate that the information contained in the Protected Materials 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 disclosure. Public disclosure of the Protected Materials will

cause substantial harm to IGS' business and competitive interests. Thus, IGS respectfully urges the Commission to grant an order to protect the confidentiality of the Protected Materials.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "JBentine", is written over a horizontal line.

~~John W. Bentine~~ (0016388)

Email: ~~jbentine@cwsllaw.com~~

Direct: (614) 334-6121

Sarah Daggett Morrison (0068035)

Email: smorrison@cwsllaw.com

Direct: (614) 334-7197

Zachary D. Kravitz (0084238)

Email: zkravitz@cwsllaw.com

Direct: (614) 334-6172

CHESTER WILLCOX & SAXBE LLP

65 East State Street, Suite 1000

Columbus, Ohio 43215

Telephone: (614) 221-4000

Facsimile: (614) 221-4012

**Attorneys for IGS**

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the *Interstate Gas Supply, Inc.'s Motion for Protective Treatment* was served this 29<sup>th</sup> day of November, 2011 by U.S. First Class mail and electronic mail upon the following:

Joseph Serio  
Larry S. Sauer  
OFFICE OF CONSUMERS' COUNSEL  
10 W. Broad Street, Suite 1800  
Columbus, Ohio 43215  
Email: serio@occ.state.oh.us  
Email: sauer@occ.state.oh.us

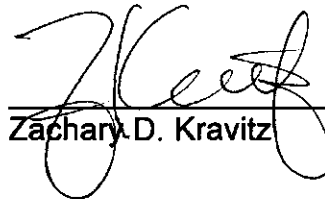
Larry Gearhardt  
Chief Legal Counsel  
OHIO FARM BUREAU FEDERATION  
280 North High Street  
Columbus, Ohio 43218-8256  
Email: LGearhardt@ofbf.org

Sommer Sheely  
Matthew W. Warnock  
Thomas J. Obrien  
BRICKER & ECKLER LLP  
100 South Third Street  
Columbus, Ohio 43215  
Email: mwarnock@bricker.com  
Email: tobrien@bricker.com  
Email: ssheely@bricker.com

A. Brian McIntosh  
Michael Todd McIntosh  
McIntosh & McIntosh  
1136 Saint Gregory Street, Suite 100  
Cincinnati, Ohio 45202  
Email: brian@mcintoshlaw.com  
Email: todd@mcintoshlaw.com

John M. Dosker  
STAND ENERGY CORPORATION  
1077 Celestial Street, Suite 110  
Cincinnati, Ohio 45202  
Email: jdosker@stand-energy.com

Glenn S. Krassen  
BRICKER & ECKLER LLP  
1011 Lakeside Avenue, Suite 1350  
Cleveland, Ohio 44114  
Email: gkrassen@bricker.com



---

Zachary D. Kravitz

# EXHIBIT 1

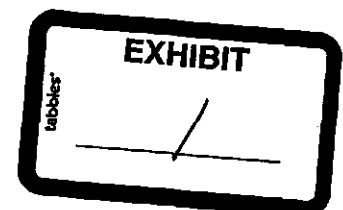


**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of	)	
	)	
The Office of the Ohio Consumers'	)	
Counsel	)	
10 West Broad Street, Suite 1800	)	Case No. 10-2395-GA-CSS
Columbus, Ohio 43215	)	
	)	
Stand Energy Corporation	)	
1077 Celestial Street, Suite 110	)	
Cincinnati, Ohio 45202	)	
	)	
Border Energy, Incorporated	)	
9787 Fairway Drive	)	
Powell, Ohio 43065	)	
	)	
Northeast Ohio Public Energy Council	)	
31320 Solon Road, Suite 20	)	
Solon, Ohio 44139	)	
	)	
Ohio Farm Bureau Federation	)	
280 North High Street	)	
Columbus, Ohio 43218-2383	)	
	)	
Complainants,	)	
	)	
v.	)	
	)	
Interstate Gas Supply d/b/a Columbia	)	
Retail Energy	)	
5020 Bradenton Avenue	)	
Dublin, Ohio 43017	)	
	)	
Respondent.	)	

**PROTECTIVE AGREEMENT**

This Protective Agreement ("Agreement") is entered into by and between Interstate Gas Supply, Inc. ("IGS" or "Company") and the Office of the Ohio Consumers' Counsel ("OCC") (each individually "Party" and collectively, "Parties"). This Agreement is designed to facilitate



and expedite the exchange of information in the discovery process in this proceeding, as this "Proceeding" is defined herein. It reflects agreement between the Parties as to the manner in which "Protected Materials," as defined herein, are to be treated. This Agreement is not intended to constitute any resolution of the merits concerning the confidentiality of any of the Protected Materials.

1. The purpose of this Agreement is to permit prompt access to and review of such Protected Materials in a controlled and appropriate manner that will allow their use for the purposes of this Proceeding while protecting such information from disclosure to non-parties to this Agreement or similar agreement without a prior ruling by an administrative agency of competent jurisdiction or court of competent jurisdiction regarding whether the information deserves protection.

2. "Proceeding" as used throughout this document means the above-captioned case, including any appeal(s) or remand(s).

3. "Protected Materials" means documents and information furnished subject to the terms of this Agreement and so designated by the Company by conspicuously marking each document or written response as confidential. Protected Materials do not include any information or documents contained in the public files of any state or federal administrative agency or court and do not include documents or information which at, or prior to, commencement of this Proceeding, is or was otherwise in the public domain, or which otherwise enters into the public domain.

4. Protected Materials provided in the context of this Proceeding will be provided to the receiving Party for use by such Party in conjunction with this Proceeding. Nothing in this Agreement precludes the use of any portion of the Protected Materials that otherwise becomes part of the public record or enters into the public domain. Nothing in this Agreement precludes OCC from filing Protected Materials under seal or otherwise using Protected Material in ways, such as *in camera* proceedings, that do not disclose Protected Materials.

5. As used in this Agreement, the term "Authorized Representative" includes OCC's counsel of record in this Proceeding and other attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by OCC and engaged in this Proceeding.

6. Access to Protected Materials is permitted to OCC's Authorized Representatives who are either a signatory to this Agreement or who have executed a Non-Disclosure Certificate in the form attached hereto as Exhibit A prior to any access. OCC must treat all Protected Materials, copies thereof, information contained therein, and writings made therefrom as proprietary and confidential, and will safeguard such Protected Materials, copies thereof, information contained therein, and writings made therefrom so as to prevent voluntary disclosure to any unauthorized persons.

7. If any OCC Authorized Representative ceases to be engaged for purposes of this Proceeding, access to any Protected Materials by such person will be terminated immediately and such person must promptly return Protected Materials in his or her possession to another Authorized Representative and if there is no such Authorized Representative, such person must treat such Protected Materials in the manner set forth in Paragraph 16 hereof as if this Proceeding herein had been concluded. Any person who has signed the foregoing Non-Disclosure Certificate will continue to be bound by the provisions of this Agreement even if no longer so engaged.

8. In this proceeding, OCC may disclose Protected Materials or writings regarding their contents to any individual or entity that is in possession of said Protected Materials or to any individual or entity that is bound by a Protective Agreement or Order with respect to the Protected Materials. OCC may also disclose, in a manner that does not expose the same Protected Materials to the public, Protected Materials to employees or persons working for or representing the Public Utilities Commission of Ohio in connection with this Proceeding.

9. OCC may file Protected Materials under seal in this Proceeding whether or not OCC seeks a ruling that the Protected Materials should be in the public domain. If OCC desires to include, utilize, refer to, or copy any Protected Materials in such a manner, other than in a manner provided for herein, that might require disclosure of such material, then OCC must first give notice (as provided in Paragraph 15) to the Company, specifically identifying each of the Protected Materials that could be disclosed in the public domain. The Company will have seven (7) business days after service of OCC's notice to file with an administrative agency of competent jurisdiction or court of competent jurisdiction, a motion and affidavits with respect to each of the identified Protected Materials demonstrating the reasons for maintaining the confidentiality of the Protected Materials. The affidavits for the motion must set forth facts

delineating that the documents or information designated as Protected Materials have been maintained in a confidential manner and the precise nature and justification for the injury that would result from the disclosure of such information. If the Company does not file such a motion within seven (7) business days of service of the notice, then the Protected Materials will be deemed non-confidential and not subject to this Agreement.

10. The Parties agree to seek *in camera* proceedings by the administrative agency of competent jurisdiction or court of competent jurisdiction for arguments or for the examination of a witness that would disclose Protected Materials. Such *in camera* proceedings will be open only to the Parties, their counsel, other Authorized Representatives, and others authorized by the administrative agency or court to be present; however, characterizations of the Protected Materials that do not disclose the Protected Materials may be used in public. Until the administrative agency or court of competent jurisdiction decides on the proposed use of the Protected Materials, that portion of the hearing transcript that contains Protected Materials will be sealed and will itself be subject to this Agreement.

11. Any portion of the Protected Materials that the administrative agency of competent jurisdiction or court of competent jurisdiction has deemed to be protected and that is filed in this Proceeding will be filed in sealed confidential envelopes or other appropriate containers sealed from the public record.

12. It is expressly understood that upon a filing made in accordance with Paragraph 9 or Paragraph 13 of this Agreement, the burden will be upon the Company to show that any materials labeled as Protected Materials pursuant to this Agreement are confidential and deserving of protection from disclosure.

13. The OCC will give the Company notice (as provided in Paragraph 15) if OCC receives a public records request for such Protected Materials. The Company will have seven (7) business days after service of OCC's notice to file a pleading before a court of competent jurisdiction to prevent disclosure of such Protected Materials. If the Company files such a pleading, the Party subject to the public records request will continue to protect the Protected Materials as required by this Agreement pending an order of the court. If the Company does not file a pleading in a court of competent jurisdiction within seven (7) business days of service of the notice, then such Protected Materials can be deemed to be non-confidential, not a trade secret

and not subject to this Agreement. Alternatively, the Company may provide notice to OCC that the Protected Materials may be disclosed in response to a public records request.

14. Provided that the provisions of paragraph 13 have been complied with by OCC, if, under Ohio's public records law, a court awards a relator or person or party attorney's fees or statutory damages or court costs (collectively "Damages") in connection with OCC's non-disclosure or delayed disclosure of Protected Materials, then the Company will pay such awarded fees, statutory damages, and/or court costs to the relator or person or party so that the State of Ohio, OCC and OCC's employees and officials are held harmless. In the event OCC needs to defend against a claim related to public records that contain the IGS information that is subject to this Agreement, OCC will consider cooperative input from IGS (if offered by IGS) with regard to such defense. OCC's agreement to accept cooperative input from IGS, as referenced in the preceding sentence, in no way will limit OCC's exercise of its independent judgment as a state government agency nor will it limit OCC's ability to obtain and rely upon legal advice or legal representation from the Ohio Attorney General. With regard to the cooperative input from IGS that OCC will consider as described above, OCC will not unreasonably reject such input if any monetary settlement or confession of judgment with respect to Damages is for amounts greater than \$5,000 which the Company would be required to pay or indemnify.

15. All notices referenced in Paragraphs 9 and 13 must be served by each Party on the other Party by one of the following methods: (1) sending the notice to the counsel of record herein via e-mail; (2) hand-delivering the notice to such counsel in person at any location; or (3) sending the notice by an overnight delivery service to such counsel.

16. Once OCC has complied with its records retention schedule(s) pertaining to the retention of the Protected Materials and OCC determines that it has no further legal obligation to retain the Protected Materials and this Proceeding (including all appeals and remands) is concluded, OCC must return or dispose of all copies of the Protected Materials unless the Protected Materials have been released to the public domain or filed with a state or federal administrative agency or court under seal. OCC may keep one copy of each document designated as Protected Material that was filed under seal and one copy of all testimony, cross-examination, transcripts, briefs and work product pertaining to such information and will maintain that copy as provided in this Agreement.

17. By entering into this Protective Agreement, OCC does not waive any right that it may have to dispute the Company's determination regarding any material identified as confidential by the Company and to pursue those remedies that may be available to OCC before an administrative agency or court of competent jurisdiction. Nothing in this Agreement precludes OCC from filing a motion to compel.

18. By entering into this Protective Agreement, the Company does not waive any right it may have to object to the discovery of confidential material on grounds other than confidentiality and to pursue those remedies that may be available to the Company before an administrative agency of competent jurisdiction or court of competent jurisdiction.

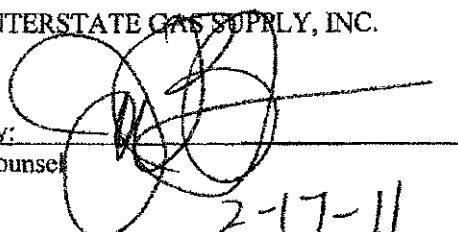
19. This Agreement represents the entire understanding of the Parties with respect to Protected Materials and supersedes all other understandings, written or oral, with respect to the Protected Materials. No amendment, modification, or waiver of any provision of this Agreement is valid, unless in writing signed by both Parties. Nothing in this Agreement should be construed as a waiver of sovereign immunity by the OCC.

20. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.

INTERSTATE GAS SUPPLY, INC.

By:  
Counsel

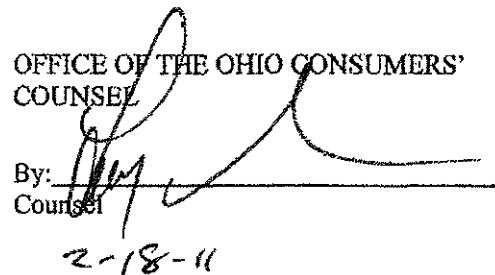
Date

  
2-17-11

OFFICE OF THE OHIO CONSUMERS'  
COUNSEL

By:  
Counsel

Date

  
2-18-11

# EXHIBIT 2

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the matter of the Complaint of	)	
	)	
The Office of the Ohio Consumers'	)	
Counsel, et al.,	)	
	)	
Complainants,	)	
	)	Case No. 10-2395-GA-CSS
v.	)	
	)	
Interstate Gas Supply d/b/a Columbia	)	
Retail Energy,	)	
	)	
Respondent.	)	

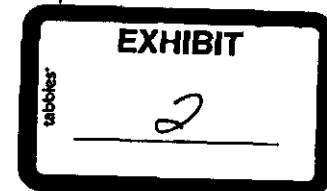
---

**AFFIDAVIT OF VINCENT A. PARISI**

---

Vincent A. Parisi, being first duly sworn and cautioned according to law, does swear and depose that:

1. I, Vincent A. Parisi, am General Counsel of Interstate Gas Supply, Inc. ("IGS"). I am authorized by IGS to make this affidavit, and I make this affidavit based on my own personal knowledge regarding the matters herein;
2. On July 15, 2010, IGS and NiSource Retail Services, Inc. ("NRS") entered into a Service Mark License Agreement (the "Agreement"), which, *inter alia*, authorized IGS to market competitive retail natural gas supply using the Columbia Retail Energy ("CRE") trade name and logo;
3. IGS was involved in extensive confidential negotiations with NiSource Corporate Services Company ("NCS") on behalf of NRS with respect to the Agreement;
4. IGS and NCS agreed to keep the negotiations and resulting Agreement confidential;
5. IGS treats the Agreement as confidential and proprietary business information;
6. The information contained within the Agreement, including but not limited to customer names, contract termination dates and other termination provisions,





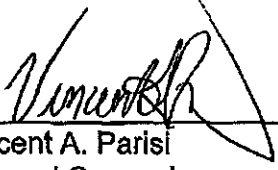
financial consideration for the license and other financial provisions, terms of the license and license limitations, and IGS' throughput schedules is information not known outside of IGS;

7. The termination provisions contained within the Agreement derive independent economic value because IGS' competitors could use the information to know the precise time to market to IGS' customers if the CRE license were terminated.
8. The financial consideration for the license and the terms of the licensing fees are highly confidential. This information could give IGS' competitors an advantage in the event a competitor desired to procure the CRE license at the termination of the Agreement. Specifically, a competitor could use the financial information to undercut IGS in any future negotiations for the CRE license. The public disclosure of this information would jeopardize IGS's business position and ability to compete;
9. The information in the Agreement derives independent economic value because it identifies IGS' natural gas throughput in Columbia's service territory prior to executing the Agreement;
10. The customer lists contained in the Agreement have economic value because competitors could use the information to discover previously unknown choice customers and use the information to solicit IGS' customers to IGS' detriment;
11. While IGS cannot put an exact value on the effort and money expended to obtain or develop the information, IGS submits that decades of experience in the industry generated consumer good-will towards IGS that induced NCS to license the CRE name to an unaffiliated entity;
12. IGS was involved in extensive negotiations with NCS and numerous hours went into the crafting of Agreement. The resulting licensing agreement between an

unaffiliated CRNGS and a subsidiary of a utility's parent company is the first of its kind in Ohio;

13. IGS cannot speculate how much time and money it would take for IGS' competitors to obtain the good will to license a similar name of a utility and to create a similar agreement. Because IGS, NCS, and NRS keep the Agreement highly confidential, IGS avers that its competitors could potentially never know the terms of the Agreement and other confidential information therein;
14. IGS is a private company that is not subject to the same disclosure requirements as public businesses;
15. The terms of the Agreement are not generally known to the public, and the Agreement is held in confidence in the normal course of business at IGS;
16. The Agreement is exclusively available to high-level management of IGS and attorneys for IGS. Business information shared between IGS, NCS, and NRS relating to the enforcement of the Agreement is kept confidential;
17. The Agreement has not been shared with employees of IGS;
18. Access to the executed Agreement or the electronic version of the Agreement is restricted to IGS management only;

Further affiant sayeth naught.

  
\_\_\_\_\_  
Vincent A. Parisi  
General Counsel  
Interstate Gas Supply, Inc.

STATE OF OHIO  
COUNTY OF FRANKLIN, SS:

On this 29th day of November 2011, Vincent Parisi appeared before me, a notary public for the State of Ohio, and subscribed and swore that the foregoing is true and accurate to the best of his knowledge and belief.

**RONALD L. WATERMAN**  
Attorney At Law  
Notary Public, State of Ohio  
My Commission Expires 11/11/13  
Section 147.03 R.C.

  
\_\_\_\_\_  
Notary Public

# EXHIBIT 3



customer names, contract termination dates and other termination provisions, financial consideration for the license and other financial provisions, terms of the license and license limitations, and IGS' throughput schedules.

6. The terms of the Agreement are not generally known to the public, and the Agreement is held in confidence in the normal course of business at NCS and NRS;
7. The Agreement is exclusively available to management of NCS and NRS and their respective attorneys. Business information shared among IGS, NCS and NRS relating to the enforcement of the Agreement is kept confidential;
8. Access to the executed Agreement or the electronic version of the Agreement is restricted to NCS and NRS management and their respective legal counsel.

Further affiant sayeth naught.

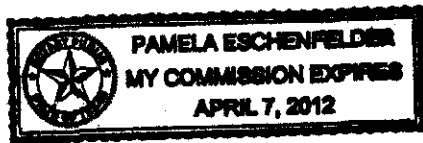
A handwritten signature in black ink, appearing to read "Dean Bruno", written over a horizontal line.

Dean Bruno  
Director, Financial Planning  
NiSource Corporate Services Company

STATE OF TEXAS

COUNTY OF HARRIS, SS:

On this 28th day of November 2011, Dean Bruno appeared before me, a notary public for the State of Texas, and subscribed and swore that the foregoing is true and accurate to the best of his knowledge and belief.



*Pamela Eschenfelder*  
Notary Public

4850-2140-1358, v. 1  
970-004/300644