

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

The attorney examiner finds:

- (1) On June 22, 2012, Interstate Gas Supply, Inc. (IGS) filed a renewal application for recertification as a competitive retail natural gas marketer.
- (2) On June 22, 2012, IGS filed a motion for a protective order regarding exhibits C-3, C-4, and C-5 contained in its 2012 renewal application. Exhibit C-3 contains the consolidated balance sheets of IGS and its subsidiaries, statements of income, shareholders' equity, and cash flows from 2010 and 2011. Exhibit C-4 consists of IGS's financial arrangements, a credit agreement, and bank commitments. Exhibit C-5 includes IGS's forecasted financial statements through 2014.
- (3) Also on June 22, 2012, IGS filed a motion requesting an extension of protective treatment for exhibits C-3, C-4, and C-5 contained in IGS's renewal applications for 2006, 2008, and 2010. These documents were last granted protective treatment on December 15, 2010. These 2006, 2008, and 2010 exhibits contain the same types of information and documents as the 2012 exhibits described above (i.e., financial statements, financial arrangements, and forecasted financial statements).
- (4) In support of its motion for a protective order and extension of protective treatment, IGS asserts that the information in the confidential documents is competitively sensitive and proprietary business and financial information comprising of trade secrets. Furthermore, IGS argues that granting protective treatment to these documents is not inconsistent with the purposes of Title 49 of the Revised Code. IGS explains that public disclosure of these documents would jeopardize IGS's business position in negotiations with other parties and its ability to compete. IGS states that competitors

could use the confidential documents to estimate IGS's growth rates, market share, and margins, and to make strategic decisions whether to enter or exit the markets in the geographic regions in which IGS operates. IGS claims that the confidential documents derive independent economic value from not being generally known to, and not being readily ascertainable by proper means, to other persons. IGS notes that it is a privately-held company and, thus, would be especially vulnerable if protective treatment were not granted. Lastly, IGS notes that it has also filed public versions of its 2006, 2008, and 2010 renewal applications to provide information to the public. No memoranda contras were filed to either motion.

- (5) 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*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).
- (6) 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."
- (7) 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.

- (8) The attorney examiner has reviewed the information included in IGS's motion for protective order and extension of protective treatment, as well as the supporting memoranda. 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 the information in exhibits C-3, C-4, and C-5 contained in IGS's 2012 renewal application is trade secret information. Its 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. Accordingly, the attorney examiner finds that there is good cause to grant IGS's motion for a protective order as to exhibits C-3, C-4, and C-5 of its 2012 renewal application. Turning to the motion for extension of protective treatment for the information contained in the renewal application for years 2006, 2008, and 2010, the attorney examiner notes that the competitive value of this information diminishes with age. Accordingly, with regard to the exhibits contained in the 2008 and 2010 renewal applications, filed on June 20, 2008, and June 21, 2010, respectively, the attorney examiner finds that, given that they were submitted within the last four years, this information should continue to be treated as trade secret information; therefore, the release of these documents is prohibited under state law. Accordingly, the attorney examiner finds that there is good cause to grant IGS's motion to extend protective treatment of exhibits C-3, C-4, and C-5 of IGS's 2008 and 2010 renewal applications.
- (9) Rule 4901-1-24(D)(4), O.A.C., provides for protective orders relating to gas marketers' certification applications to expire after 24 months. Therefore, exhibits C-3, C-4, and C-5 of IGS's 2008, 2010, and 2012 renewal application should receive protected status for a 24-month period from the effective date of IGS's most recent certificate renewal, or July 25, 2014, and should remain under seal in the Docketing Division for that time period.

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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, 687 N.E.2d 661 (1997).

- (10) 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.
- (11) Turning to the exhibits to the 2006 renewal application, the attorney examiner believes that the age of these documents has so diminished their value that they no longer constitute trade secret information. Accordingly, the attorney examiner finds that exhibits C-3, C-4, and C-5 from 2006, filed under seal on June 13, 2006, should be released. The attorney examiner directs the Docketing Division to release those exhibits on September 17, 2012.
- (12) As an additional matter, the attorney examiner notes that protective treatment for the exhibits C-3, C-4, and C-5, filed with IGS's 2004 renewal application on July 1, 2004, were granted protective treatment until February 11, 2011. IGS has not filed a motion to extend protective treatment. Accordingly, the attorney examiner directs the Docketing Division to release the 2004 exhibits on September 17, 2012.

It is, therefore,

ORDERED, That IGS's motion for a protective treatment of exhibits filed under seal on June 22, 2012, as part of its 2012 renewal application be granted. It is, further,

ORDERED, That IGS's motion for extension of protective treatment for exhibits filed under seal on June 20, 2008, and June 21, 2010, as part of its 2008 and 2010 renewal applications be granted. It is, further,

ORDERED, That exhibits C-3, C-4, and C-5 of the 2008, 2010, and 2012 reports, filed under seal on June 20, 2008, June 21, 2010, and June 22, 2012, respectively, remain under seal in the Commission's Docketing Division for a 24-month period, until July 25, 2014. It is, further,

ORDERED, That IGS's motion for an extension of protective treatment for exhibits filed under seal on June 13, 2006, as part of its 2006 renewal application be denied. It is, further,

ORDERED, That the Docketing Division release the documents filed under seal on July 1, 2004, and June 13, 2006, in accordance with the directives set forth in findings (11) and (12). It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Katie Stenman

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By: Katie L. Stenman  
Attorney Examiner

JRJ/sc

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**9/6/2012 11:58:58 AM**

**in**

**Case No(s). 02-1683-GA-CRS**

Summary: Attorney Examiner Entry granting IGS's motion for protective treatment of exhibits filed under seal on 06/22/12 as part of its 2012 renewal application and granting IGS's motion for extension of protective treatment for exhibits filed under seal on 06/20/08 and 06/21/10 as part of its 2008 and 2010 renewal applications. - electronically filed by Sandra Coffey on behalf of Katie Stenman, Attorney Examiner, Public Utilities Commission of Ohio