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September 13, 2012

VIA FEDERAL EXPRESS

Public Utilities Commission of Ohio
Docketing Division, 11th Floor
180 East Broad Street
Columbus, OH 43215-3793

Re: Motion for Protection Orders
Case No. 08-601-GA-CRS

Dear Sir or Madam:

Enclosed for filing on behalf of U.S. Gas & Electric, Inc. dba Ohio Gas & Electric ("USG&E") are an original and 10 copies of the following document:

Motion For (1) Extension of 2010 Renewal Protective Order For Exhibits to Original Application, (2) Extension of Protective Order For Exhibits to 2010 Renewal Application, and (3) Protective Order For Exhibits to 2012 Renewal Application

By separate letter tomorrow for arrival and filing on Monday, September 17, 2012, Michelle Mann of USG&E is submitting directly to you an original and 10 copies of a Renewal Certification Application to which section (3) of the enclosed Motion is directed. Specifically, Exhibits C-3, C-4, C-5 and C-6 will be filed under seal pending a ruling on the enclosed Motion.

Please let me know if there is anything further necessary to effect any of these filings.

Sincerely,

Thomas H. Stewart

Encls.
Michelle Mann, USG&E

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
U.S. Gas & Electric, Inc. to Provide) Case No. 08-601-GA-CRS
Competitive Retail Natural Gas Supplier)
Services in the State of Ohio.)

MOTION FOR (1) EXTENSION OF 2010 RENEWAL PROTECTIVE ORDER FOR EXHIBITS TO ORIGINAL APPLICATION, (2) EXTENSION OF PROTECTIVE ORDER FOR EXHIBITS TO 2010 RENEWAL APPLICATION, AND (3) PROTECTIVE ORDER FOR EXHIBITS TO 2012 RENEWAL APPLICATION

U.S. Gas & Electric, Inc. dba Ohio Gas & Electric ("USG&E"), by counsel, moves as follows:

(1) pursuant to Rule 4901-1-24(F) of the Ohio Administrative Code ("O.A.C."), for a protective order extending for another 24 months the existing protective order entered on February 25, 2011 which extended until October 1, 2012 the protective order entered on July 29, 2010 covering trade secrets contained in Exhibits C-3, C-4, and C-5 to USG&E's original certification application filed on May 16, 2008;

(2) pursuant to O.A.C. Rule 4901-1-24(F), for a protective order extending for another 24 months the existing protective order entered on February 25, 2011 covering trade secrets contained in Exhibits C-3, C-4, C-5, and C-6 to USG&E's renewal application filed on August 20, 2010; and

(3) pursuant to O.A.C. Rule 4901-1-24(D), for 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) to USG&E's Renewal Certification Application filed contemporaneously herewith.

The reasons supporting this Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

U.S. GAS & ELECTRIC, INC. dba
OHIO GAS & ELECTRIC

By: _____
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MEMORANDUM IN SUPPORT

(1) Extension of Previous, 2010 Protective Order on 2008 Application

On May 16, 2008, USG&E filed its application for certification as a competitive retail natural gas supplier. USG&E separately filed exhibits C-3, C-4, and C-5 under seal and moved for a protective order that these exhibits containing confidential information remain under seal. On July 29, 2008, the Attorney Examiner in a detailed and fully-reasoned Entry found that Exhibits C-3 (financial statements), C-4 (financial arrangements), and C-5 (forecasted financial statements) contained trade secrets of USG&E and that “non-disclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code.” (Entry of July 29, 2008, ¶ 8).

On September 2, 2010, USG&E moved to extend for an additional 24 months the previous protective order. On February 25, 2011, in another detailed Entry the Attorney Examiner found that Exhibits C-3, C-4, and C-5 “constitutes trade secrets,” “nondisclosure of this information is not inconsistent with the purpose of Title 49 of the Revised Code,” and “these documents could not be reasonably redacted to remove the confidential information contained therein.” (Entry of February 25, 2011, ¶ 7). These findings still remain true today, so that the Commission should protect the exhibits from public disclosure for another 24 months. Exhibit C-3 to the 2008 application contained USG&E’s financial statements from the previous two years. Exhibit C-4 to the 2008 application contained USG&E’s financial arrangements to conduct competitive retail natural gas service. Exhibit C-5 to the 2008 application contained USG&E’s 2-year forecast for balance sheet and income and cash flow statements. The passage of another two years since these projections has not diminished the trade secret status of this business and financial information. Such information clearly falls within the statutory definition of “trade secret” as “. . . business information or plans [and] financial information . . . that . . .

derives independent economic value . . . from not being generally known to . . . other persons who can obtain economic value from its disclosure or use [and] is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” R.C. § 1333.61(D). This statutory definition clearly evinces this state’s policy of protecting trade secrets like the information in Exhibits C-3, C-4, and C-5 to USG&E’s 2008 application. Further, this is the state law that prohibits release of records, which is a specified exception to the definition of “public record” in R.C. ¶ 149.43. Indeed, the General Assembly in 1996 enacted R.C. § 4901.07 and § 4901.12 which govern the Commission’s duties regarding public records and which specifically incorporate the exceptions to disclosure in R.C. § 149.43.

Just as in 2008, USG&E continues today to use its best efforts to keep this, and similar, trade secrets confidential and shielded from release to others. The trade secrets contained in Exhibits C-3, C-4 and C-5 to its 2008 application remain extremely sensitive information today. If not protected, those trade secrets could be used by competitors to determine USG&E’s previous and projected (therefore, likely current) balance sheets, revenue, cash flow, credit agreements, contractual arrangements, and other similar information to obtain an unfair competitive advantage. Thus, as the Attorney Examiner found in 2010, the information has “independent economic value.” (Entry of February 25, 2011, ¶ 7). Disclosure of such information now or in the next 24 months would unfairly damage USG&E in the marketplace and adversely affect USG&E’s ability to compete effectively. The public has no more interest today in the disclosure of all or any of the trade secrets than two years ago, when the Attorney Examiner again found the exhibits to be trade secrets exempt from public disclosure.

In the 2010 entry granting renewal of the original protective order, the Attorney Examiner found 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." (Entry of February 25, 2011, ¶ 8). USG&E and counsel mistakenly believed that the date for renewal of the protective order coincided with the filing date for the renewal application and, therefore, did not file this Motion 45 days before the expiration of the existing protection order entered February 25, 2011. USG&E therefore requests the Commission waive the normal 45-day deadline and enter the requested extension of the protective order.

(2) Extension of Previous Protective Order on 2010 Renewal Application

On August 30, 2010, USG&E filed its renewal application for certification as a competitive retail natural gas supplier. USG&E separately filed exhibits C-3 (financial statements), C-4 (financial arrangements), C-5 (forecasted financial statements), and C-6 (credit rating) under seal and moved for a protective order that these exhibits containing confidential information remain under seal. On February 25, 2011, the Attorney Examiner in a detailed and fully-reasoned Entry found that Exhibits C-3, C-4, C-5, and C-6 to USG&E's renewal application "constitutes trade secrets," "nondisclosure of this information is not inconsistent with the purpose of Title 49 of the Revised Code," and "these documents could not be reasonably redacted to remove the confidential information contained therein." (Entry of February 25, 2011, ¶ 7). These findings still remain true today, so that the Commission should protect these exhibits to USG&E's 2010 renewal application from public disclosure for another 24 months. Exhibit C-3 to the 2010 renewal application contained USG&E's financial statements from the previous two years. Exhibit C-4 to the 2010 renewal application contained USG&E's financial arrangements to conduct competitive retail natural gas service. Exhibit C-5 to the 2010 renewal

application contained USG&E's 2-year forecast for balance sheet and income and cash flow statements. Exhibit C-6 to the 2010 renewal application contained a Dun & Bradstreet Information Systems report of USG&E that is not available to the general public. As the Attorney Examiner will see during *in camera* review,¹ this report is very large and contains much business information about USG&E which its competitors could unfairly use to their advantage.

USG&E is not a publicly traded company and its financial and business records, including the information contained in Exhibits C-3, C-4, C-5, and C-6 of the 2010 renewal application is not publicly available nor known to the general public. Rather, USG&E maintains the information in these 4 exhibits in strict confidence in the usual course of its business. The four exhibits contain competitively sensitive and highly proprietary business and financial information that, if disclosed, would put USG&E at an unfair competitive disadvantage. Exhibits C-3, C-4, C-5 and C-6 to the 2010 renewal application contain trade secrets of USG&E within the meaning of R.C. § 1333.61(D). The Ohio Supreme Court has held that the "state or federal law" exception to the public records statute, R.C. § 149.43, includes trade secrets. *State ex rel. Besser v. Ohio State University*, 89 Ohio St.3d 396, 399 (2000). As previously discussed, both R.C. § 4905.07 and § 4905.12 specifically incorporate the exceptions found in R.C. § 149.43.² Likewise, O.A.C. § 4901-1-24(D) permits the Commission to enter a protective order "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

¹ The Ohio Supreme Court has determined *in camera* inspection is the proper method for reviewing records to be excepted from public disclosure. *State, ex rel. Allright Parking of Cleveland, Inc. v. Cleveland*, 63 Ohio St.3d 772, 776 (1992).

² R.C. § 4905.07 and § 4905.12 provide that records in the possession of the Commission are public records but both begin with the caveat: "Except as provided in section 149.43 of the Revised Code and consistent with the purposes of Title [49] of the Revised Code . . ."

Code.” Thus, disclosure of trade secrets like the information contained in Exhibits C-3, C-4, C-5 & C-6 to USG&E’s renewal application is specifically prohibited under state law.

Moreover, ordering that the information therein be sealed is not inconsistent with Ohio Revised Code Chapter 49. There is no legitimate purpose or public interest to be served in disclosing the financial and business information to the general public including USG&E’s competitors or, indeed, to any person other than the appropriate staff of the Commission in exercising its governmental function of reviewing the renewal application. Finally, there is no reasonable manner to redact the information in Exhibits C-3, C-4, C-5 or C-6 to the 2010 renewal application under O.A.C. Rule 4901-1-24(D) without making the remaining document incomprehensible, so that the entirety of each of the four exhibits should be covered by a protective order.

The passage of another two years since these projections has not diminished the trade secret status of this business and financial information. Such information clearly falls within the statutory definition of “trade secret” as “. . . business information or plans [and] financial information . . . that . . . derives independent economic value . . . from not being generally known to . . . other persons who can obtain economic value from its disclosure or use [and] is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” R.C. § 1333.61(D). This statutory definition clearly evinces this state’s policy of protecting trade secrets like the information in Exhibits C-3, C-4, C-5, and C-6 to USG&E’s 2010 renewal application. Further, this is the state law that prohibits release of records, which is a specified exception to the definition of “public record” in R.C. ¶ 149.43.

Just as in 2010, USG&E continues today to use its best efforts to keep this, and similar, trade secrets confidential and shielded from release to others. The trade secrets contained in

Exhibits C-3, C-4, C-5 and C-6 to its 2010 renewal application remain extremely sensitive information today. If not protected, those trade secrets could be used by competitors to determine USG&E's previous and projected (therefore, likely current) balance sheets, revenue, cash flow, credit agreements, contractual arrangements, and other similar information to obtain an unfair competitive advantage. Thus, as the Attorney Examiner found in 2010, the information has "independent economic value." (Entry of February 25, 2011, ¶ 7). Disclosure of such information now or in the next 24 months would unfairly damage USG&E in the marketplace and adversely affect USG&E's ability to compete effectively. The public has no more interest today in the disclosure of all or any of the trade secrets than two years ago, when the Attorney Examiner found the exhibits to be trade secrets exempt from public disclosure.

Because of the mistaken believe as to the coincided dates for filing a renewal application and for seeking to renew the existing protective order, USG&E requests the Commission waive the normal 45-day deadline and enter the requested extension of the protective order.

(3) Protective Order for Renewal Application

Because its existing certification expires on September 30, 2012, USG&E is filing contemporaneously herewith a Renewal Certification Application. Exhibits C-3 (financial statements), C-4 (financial arrangements), C-5 (forecasted financial statements), and C-6 (credit rating) to that application contain trade secret and confidential proprietary business information that should be covered by a protective order. As required, USG&E is submitting under seal unredacted copies of each exhibit.

For the same reasons that the Attorney Examiner found Exhibits C-3, C-4, C-5, and C-6 to USG&E's 2010 renewal application to be trade secrets exempt from public disclosure and properly the subject of a protective order, and for the reasons discussed above, the Attorney

Examiner should similarly protect those four exhibits to USG&E's current renewal application filed contemporaneously herewith. The Attorney Examiner should find that Exhibit C-6 to the renewal application contains trade secret and confidential proprietary business information that should be protected from public disclosure. Exhibit C-6 contains a Dun and Bradstreet Information Services report on USG&E that is not available to the general public. As the Attorney Examiner will see during *in camera* review,³ this report is very large and contains much business information about USG&E which its competitors could unfairly use to their advantage.

USG&E is not a publicly traded company and its financial and business records, including the information contained in Exhibits C-3, C-4, C-5, and C-6, are not publicly available nor known to the general public. Rather, USG&E maintains the information in these Exhibits in strict confidence in the usual course of its business. The four Exhibits contain competitively sensitive and highly proprietary business and financial information that, if disclosed, would put USG&E at an unfair competitive disadvantage. Exhibits C-3, C-4, C-5 and C-6 to the renewal application contain trade secrets of USG&E within the meaning of R.C. § 1333.61(D). The Ohio Supreme Court has held that the "state or federal law" exception to the public records statute, R.C. § 149.43, includes trade secrets. *State ex rel. Besser v. Ohio State University*, 89 Ohio St.3d 396, 399 (2000). As previously discussed, both R.C. § 4905.07 and § 4905.12 specifically incorporate the exceptions found in R.C. § 149.43.⁴ Likewise, O.A.C. § 4901-1-24(D) permits the Commission to enter a protective order "where the information is deemed . . . to constitute a trade secret under Ohio law, and where non-disclosure of the

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⁴ R.C. § 4905.07 and § 4905.12 provide that records in the possession of the Commission are public records but both begin with the caveat: "Except as provided in section 149.43 of the Revised Code and consistent with the purposes of Title [49] of the Revised Code . . ."

information is not inconsistent with the purposes of Title 49 of the Revised Code.” Thus, disclosure of trade secrets like the information contained in Exhibits C-3, C-4, C-5 & C-6 to USG&E’s renewal application is specifically prohibited under state law.

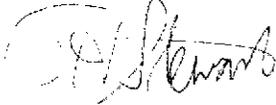
Moreover, ordering that the information therein be sealed is not inconsistent with Ohio Revised Code Chapter 49. There is no legitimate purpose or public interest to be served in disclosing the financial and business information to the general public including USG&E’s competitors or, indeed, to any person other than the appropriate staff of the Commission in exercising its governmental function of reviewing the renewal application. Finally, there is no reasonable manner to redact the information in Exhibits C-3, C-4, C-5 or C-6 under O.A.C. § 4901-1-24(D) without making the remaining document incomprehensible, so that all of the exhibits should be covered by a protective order.

Conclusion

For all of the foregoing reasons, USG&E respectfully requests that the Commission enter (1) a protective order sealing for another 24 months Exhibits C-3, C-4 and C-5 to USG&E’s Original Certification Application filed May 16, 2008; (2) a protective order sealing for 24 months Exhibits C-3, C-4, C-5, and C-6 to USG&E’s Renewal Certification Application filed on August 30, 2010; and (3) a protective order sealing for 24 months Exhibits C-3, C-4, C-5, & C-6 to USG&E’s Renewal Certification Application filed herewith.

Respectfully submitted,

U.S. GAS & ELECTRIC, INC.
dba OHIO GAS & ELECTRIC

By: 

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CERTIFICATE OF SERVICE

I certified that an exact copy of the foregoing Motion was sent by U.S. mail, postage prepaid, on September 13, 2012 to the following counsel of record:

John M. Dosker, General Counsel
Stand Energy Corporation
1077 Celestial Street, Suite 110
Cincinnati, Ohio 45202-1629