

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

Amendment to the Application of )  
Alpha Gas and Electric, LLC for )  
A Certificate to Provide Competitive Retail )  
Natural Gas Service in Ohio )

Case No. 13-1206-GA-CRS

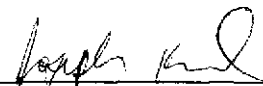
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AMENDMENT TO APPLICATION

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Now comes Alpha Gas and Electric, LLC ("Alpha") seeking to amend certain sections of its application to provide competitive retail natural gas service under the case number referenced above and is providing the Commission with those amended sections, specifically Exhibits C-3, C-4 and C-5. Also included is a Motion for Protective Order to keep those amended sections confidential and not part of the public unredacted record.

Respectfully submitted,

  
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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Amendment to )	
Application of Alpha Gas and Electric, LLC )	Case No. 13-1206-GA-CRS
for a Certificate to Provide Competitive )	
Retail Natural Gas Service in Ohio )	

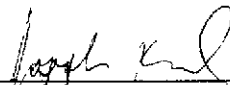
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**MOTION FOR PROTECTIVE ORDER**

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Now comes Alpha Gas and Electric, LLC ("Alpha") seeking certification to provide competitive retail natural gas service and pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code ("O.A.C.") moves for a protective order to keep three financial exhibits (Exhibits C-3, C-4 and C-5) of its amendment to its application for certification confidential and not part of the public unredacted record. The reasons underlying this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of the above cited Rule, three (3) copies of the exhibits are submitted under seal.

Respectfully submitted,

  
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Counsel for Alpha Gas and Electric, LLC

**MEMORANDUM IN SUPPORT OF  
MOTION FOR PROTECTIVE ORDER**

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Alpha Gas and Electric, LLC (“Alpha”) requests that the information it designated as confidential, namely Exhibits C-3, C-4 and C-5 of its Amendment to its Application for Certification to provide competitive retail natural gas services, be protected from public disclosure. The information designated as confidential relates to financial information of the company and would be harmful to Alpha if available to the public as it would provide proprietary information to its competitors.

Rule 4901-1-24(D) of the Ohio Administrative code (“O.A.C.”) provides that the Commission or certain designated employees may issue an order which is necessary to protect the confidentiality of information contained in the documents filed with the Commission’s Docketing Division to the extent that state or federal law prohibits the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. State law recognizes that the need to protect certain types of information will not impair the purposes of Title 49. The commission and its staff have full access to the information in order to fulfill its statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. While the Commission has often expressed its preference for open proceedings, the Commission also long-ago recognized its statutory obligations with regards to trade secrets:

The Commission is of the opinion that the "public records" statute must also be read in pari materia with Section 1333.31, Revised Code ("trade secrets" statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

In re: General Telephone Co., Case No. 81-383-TP-AIR (Entry, February 17, 1982.)

Likewise, the Commission has facilitated the protection of trade secrets in its rules (O.A.C. § 4901-1-24(A)(7)).

The definition of a "trade secret" is set forth in the Uniform Trade Secrets Act:

"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.

R.C. § 1333.61(D). This definition clearly reflects the state policy favoring the protection of trade secrets such as the financial information which is the subject of this motion.

In State ex rel The Plain Dealer the Ohio Dept. of Ins. (1997), 80 Ohio St. 3d 513, the Ohio Supreme Court adopted a six factor test to analyze whether information is a trade secret under the statute:

(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.

Id. at 524-525 (quoting Pyromatics, Inc. v. Petruziello, 7 Ohio App. 3d 131, 134-135  
(Cuyahoga County 1983)).

Applying these factors to the three financial exhibits Alpha seeks to protect as  
they contain confidential information, it is clear that a protective order should be granted.

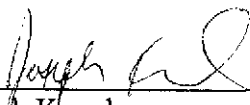
Exhibits C-3, C-4 and C-5 contain confidential financial statements, financial  
arrangements and financial forecasts. Such financial information is generally not disclosed.  
Its disclosure could give competitors an advantage that would hinder Alpha's ability to  
compete. In addition, public disclosure of this financial information is not likely to assist the  
Commission in carrying out its duties under CRS rules.

Courts of other jurisdictions have held that not only does a public utilities  
commission have the authority to protect the trade secrets of the companies subject to its  
jurisdiction, the trade secrets statute creates a duty to protect them. New York Tel. Co. v.  
Pub. Serv. Comm. N.Y., 56 N.Y. 2d 213 (1982). Indeed, for the Commission to do otherwise  
would be to negate the protections the Ohio General Assembly has granted to all businesses,  
including public utilities, and now the new entrants who will be providing power through the  
Uniform Trade Secrets Act. This Commission has previously carried out its obligations in  
this regard in numerous proceedings. See, e.g. Elyria Tel. Co., Case No. 89-965-TP-AEC  
(Finding and Order, September 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, August 17, 1990).

WHEREFORE, for the above reasons Alpha Gas and Electric, LLC requests  
the Commission grant its motion for a protective order and to maintain Exhibits C-3,

C-4 and C-5 to its Amendment to its Application for Certification as a Competitive Retail Natural Gas Supplier under seal.

Respectfully submitted,



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Counsel for Alpha Gas and Electric, LLC

## LIST OF EXHIBITS FOR WHICH PROTECTION IS SOUGHT

### EXHIBITS

### REASONS JUSTIFYING PROTECTION

C-3 (Financial Statements)

These exhibits contain financial information. Disclosure would give an undue advantage to competitors and would hinder Alpha Gas and Electric, LLC's ability to compete.

C-4 (Financial Arrangements)

C-5 (Financial Forecasts)