

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

The attorney examiner finds:

- (1) On June 24, 2014, Interstate Gas Supply, Inc. (IGS) filed a renewal application for recertification as a competitive retail natural gas marketer.
- (2) Also on June 24, 2014, IGS filed a motion for a protective order seeking to protect the confidentiality of exhibits C-3, C-4, and C-5, filed under seal as part of its 2014 certification renewal application. Exhibit C-3 consists of IGS' financial statements. Exhibit C-4 consists of IGS' financial arrangements. Exhibit C-5 includes IGS's forecasted financial statements.
- (3) By its June 24, 2014 motion, IGS also requested an extension of protective treatment for exhibits C-3, C-4, and C-5, filed under seal, respectively, as part of IGS's 2008, 2010, and 2012, certification renewal applications. These documents were last granted protective treatment on September 6, 2012. The involved 2008, 2010, and 2012 exhibits contain the same types of information and documents as the 2014 exhibits described above (i.e., financial statements, financial arrangements, and forecasted financial statements).
- (4) Moreover, by its June 24, 2014, motion IGS is also seeking, to the extent necessary, waiver of the requirement, under Ohio Adm.Code 4901-1-24(F), that a party must move for an extension of a protective order at least 45 days in advance of protective order's expiration date. IGS explains that, due to an administrative oversight, it failed to move sooner than June 24, 2014, to extend the protective treatment previously granted to it. Given that the protective order most recently issued in this case, in 2012, was scheduled to expire on July 25, 2014, the attorney examiner finds that the waiver requested by IGS is

necessary, and is granted, based on upon IGS's June 24, 2014 motion.

- (5) On July 18, 2014, IGS filed, under seal, as part of its 2014 certification renewal application, Supplemental Exhibit C-5. On the same date, IGS filed a motion for a protective order seeking to protect the confidentiality of Supplemental Exhibit C-5. On July 22, 2014, IGS filed, under seal, as part of its 2014 certification renewal application, an explanatory letter containing information that it considers proprietary. On July 22, 2014, IGS filed a motion for a protective order seeking to protect the confidentiality of the explanatory letter filed that day.
- (6) In support of its motions for a protective order and extension of protective treatment, IGS asserts that the information in the confidential documents for which protective treatment is sought 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 R.C. Title 49. 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 2008, 2010, and 2012 certificate renewal applications to provide information to the public.
- (7) R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43, and as consistent with the purposes of R.C. Title 49. R.C. 149.43 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).

- (8) Similarly, Ohio Adm.Code 4901-1-24 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.”
- (9) Ohio law defines a trade secret as “information * * * that satisfies both of the following: (a) 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. (b) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” R.C. 1333.61(D).
- (10) The attorney examiner has reviewed the information included in IGS’s motions for protective order and for 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 R.C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court,¹ the attorney examiner finds that the information in exhibits C-3, C-4, C-5, Supplemental C-5, and in the explanatory letter, all filed as part of IGS’s 2014 certificate renewal application, is trade secret information. Release of such information is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of R.C. Title 49. Accordingly, the attorney examiner finds that there is good cause to grant IGS’s motions for a protective order as to exhibits C-3, C-4, and C-5, Supplemental C-5, and the explanatory letter of its 2014 certification renewal application.

¹ 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).

- (11) Turning to the motion for extension of previously granted protective treatment for the information contained in IGS's certificate renewal applications from prior years, the attorney examiner notes that the competitive value of this information diminishes with age. With regard to the three protected exhibits filed, under seal, on June 22, 2012, as part of IGS's 2012 certificate renewal application, the attorney examiner finds that, given that they were submitted within the last four years, they contain information which 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 2012 renewal application.
- (12) Ohio Adm.Code 4901-1-24(F) provides for protective orders to expire after 24 months. The attorney examiner finds that the 24-month provision in Ohio Adm.Code 4901-1-24(F) 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, exhibits C-3, C-4, and C-5, Supplemental C-5, and the explanatory letter of its 2014 certification renewal application should receive protected status for a 24-month period from the effective date of IGS's most recent certificate renewal, or July 26, 2016, and should remain under seal in the Docketing Division for that time period. Likewise, exhibits C-3, C-4, and C-5 of IGS's 2012 certificate renewal application should receive continued protected status for an additional 24-month period from the effective date of IGS's most recent certificate renewal, or July 26, 2016, and should remain under seal in the Docketing Division for that time period.
- (13) Ohio Adm.Code 4901-1-24(F) 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.

- (14) Turning to the exhibits submitted with the 2008 and 2010 certificate renewal applications, 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 2008, and 2010, filed under seal on June 20, 2008, and June 21, 2010, respectively, should be released. The attorney examiner directs the Docketing Division to release those exhibits on October 10, 2014.

It is, therefore,

ORDERED, That IGS' motion for protective treatment of the information contained in exhibits C-3, C-4, C-5, filed under seal on June 24, 2014, as part of IGS's 2014 renewal application, is granted. It is, further,

ORDERED, That exhibits C-3, C-4, and C-5 of IGS's 2014 certification renewal application, filed under seal on June 24, 2014, shall remain under seal in the Commission's Docketing Division until July 26, 2016. It is, further,

ORDERED, That IGS's motions for protective treatment of the information contained Supplemental Exhibit C-5, filed under seal on July 18, 2014, as well as the explanatory letter filed under seal on July 22, 2014, are granted. It is, further,

ORDERED, That Supplemental Exhibit C-5, filed under seal on July 18, 2014, as well as the explanatory letter filed under seal on July 22, 2014, shall remain under seal in the Commission's Docketing Division until July 26, 2016. It is, further,

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

ORDERED, That exhibits C-3, C-4, and C-5 of IGS's 2012 certification renewal application, filed under seal on June 22, 2012, shall remain under seal in the Commission's Docketing Division until July 26, 2016. It is, further,

ORDERED, That IGS's motion for an extension of protective treatment for exhibits C-3, C-4, and C-5 from IGS's 2008 and 2010 certificate renewal applications, filed under seal on June 20, 2008, and June 21, 2010, respectively, is denied. It is, further,

ORDERED, That the Docketing Division release the documents filed under seal on June 20, 2008, and June 21, 2010, in accordance with the directives set forth in Finding (14). It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Daniel E. Fullin

By: Daniel E. Fullin
Attorney Examiner

JRJ/dah

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

Summary: Attorney Examiner Entry that grants protective treatment to certain exhibits filed as part of the applicant's 2012 and 2014 certification renewal applications. It denies continued protective treatment for exhibits filed as part of the applicant's 2008 and 2010, certification renewal applications and calls for them to be publically released on October 10, 2014; electronically filed by Debra Hight on behalf of Daniel E. Fullin, Attorney Examiner.