

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**INTERLOCUTORY APPEAL AND MEMORANDUM IN SUPPORT OF IGS ENERGY**

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**INTERLOCUTORY APPEAL**

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Pursuant to Ohio Administrative Code ("OAC") 4901-1-15(A)(1), Interstate Gas Supply, Inc. ("IGS" or "IGS Energy") respectfully appeals the Attorney Examiner's October 6, 2014 Entry denying protective treatment of information filed under seal in IGS's 2008 and 2010 applications ("Renewal Applications") for renewal as a certified retail natural gas supplier. Specifically, the Entry denied extension of protective treatment of Exhibits C-3 Financial Statements, C-4 Financial Arrangements, and C-5 Forecasted Financial Statements (collectively "Confidential Documents") contained in IGS's Renewal Applications.

The Commission's rules allow for protective treatment of certain confidential information filed at the Commission in order to prevent disclosure of such information. Rule 4901-1-24(D), OAC. Ohio law recognizes the need to provide protective treatment to information such as the Confidential Documents. R.C 4929.23(A).

But, the Entry stated that the "age of these documents has so diminished their value that they no longer constitute trade secret information." Entry at 5 (Attachment A). Further, the Entry indicated that its order is effective on October 10, 2014, stating that "[t]he attorney examiner directs the Docketing Division to release those exhibits on October 10, 2014." As discussed further in the attached memorandum in support, the Entry is unlawful, unjust, and unreasonable.

The Entry conflicts with precedent in this proceeding, which provided protective treatment of IGS's trade secrets for a period of six years. Entry at 3 (Sep. 6, 2012).<sup>1</sup>

Moreover, the Confidential Documents are not "stale" and without value to IGS's competitors. The release of the Confidential Documents will provide an advantage to IGS's competitors and business associates. As a family-owned privately-held company, the release of this information will particularly disadvantage IGS. Additionally, there is no public benefit for the disclosure of the private financial data of IGS. Therefore, the Entry is unjust and unreasonable and the Commission should issue an order reversing the October 6<sup>th</sup> Entry and protecting from disclosure the Confidential Documents contained in IGS's renewal Applications.

Further, R.C. 4903.10(B) provides that when an appeal "has been filed before the effective date of the order as to which a rehearing is sought, the effective date of such order, unless otherwise ordered by the commission, shall be postponed or stayed pending disposition of the matter by the commission or by operation of law." Accordingly, IGS respectfully requests that the Commission stay the release of the Confidential Documents contained in IGS's Renewal Applications pending resolution of this appeal.

Respectfully submitted,

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<sup>1</sup> *In re Application of Columbus Southern Power Company*, 128 Ohio St. 3d 512, 523 (2011).

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**MEMORANDUM IN SUPPORT**

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IGS respectfully requests that the Commission reverse the Attorney Examiner's October 6<sup>th</sup> Entry ordering disclosure of the Confidential Documents contained in IGS's Renewal Applications. The Entry determined that the "age of these documents has so diminished their value that they no longer constitute trade secret information." Entry at 5. The Entry erred.

The Confidential Documents consist of financial statements, financial arrangements and forecasted financial statements that are proprietary, confidential and that constitute trade secrets. By examining the Confidential Documents, competitors could reasonably estimate IGS's growth rates, market share and margins. Disclosure of the Confidential Documents would allow IGS's competitors to compare IGS's financial results from year to year and determine the areas in which IGS's business is expanding and contrasting. Competitors could use the Confidential Documents to make strategic decisions whether to enter or exit the markets in the geographic regions in which IGS operates. Public disclosure of this information would jeopardize IGS's business position in negotiations with other parties and its ability to compete. Therefore, the Confidential Documents derive independent economic value from not being generally known to and not being readily ascertainable by proper means by other persons. Public disclosure of the Confidential Documents will cause substantial harm to IGS's business and competitive interests.

IGS is a family-owned 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>2</sup> Privately held companies are not similarly situated to many of the publicly traded companies that do business in Ohio. IGS does not disclose its financial statements—historical or projected—or financial arrangements to any party unless required by law and only under seal. Thus, the information contained in the Confidential Documents is not generally known by the public and is held in confidence in the normal course of business. Conversely, publicly held companies often disclose their forward projections of earnings, historical financial statements and financial arrangements because they must comply with federal and state securities regulations; non-public companies such as IGS do not have these requirements.

Additionally, IGS is a family-owned privately-held company with few shareholders. Thus, unlike a publicly held company—with thousands of dispersed and anonymous shareholders—the financial information of IGS has the potential to disclose personal financial data of individuals and not just company data. As a matter of public policy, financial data of individuals should receive heightened protection.

Moreover, there is no clear benefit or public policy reason to disclosing the Confidential Documents. Thus, the potential harm to IGS of disclosing the Confidential Documents outweighs the benefit. IGS has filed public versions of its

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<sup>2</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-GACRS, 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, (Jun. 14, 2003); See *Id.*, at para. 3, p. 2.

Renewal Applications that contain a great deal of public, non-proprietary information about IGS. And Commission Staff has access to the Confidential Documents. Thus, continuing protective treatment of these documents will not obstruct the Commission's regulatory oversight function.

Additionally, disclosure of the Confidential Information contained in IGS's 2010 Renewal Application conflicts with past precedent in this proceeding. On September 6, 2012, Attorney Examiner Stenman issued an Entry extending protective treatment of Confidential Documents contained in IGS's 2008 renewal applications until 2014:

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

Thus, the Entry extended protective treatment of IGS's Confidential Documents for a period of 6 years. The October 6<sup>th</sup> Entry, however, allows for protective treatment of Confidential Documents contained in IGS's 2010 Renewal Application for a period of only 4 years. The Entry thus unlawfully deviates from past precedent. *In re Application of Columbus Southern Power Company*, 128 Ohio St. 3d 512, 523 (2011).

Finally, as discussed above, IGS requests that the Commission stay the October 10<sup>th</sup> effective date of release contained in the October 6<sup>th</sup> Entry. Failure to stay the release of the Confidential Documents contained in IGS's Renewal Applications pending the resolution of this appeal would, as a practical matter, undermine any successful appeal and cause detrimental harm to IGS's business interests.

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<sup>3</sup> Entry at 3 (Sep. 6, 2012) (emphasis added).

For the foregoing reasons, IGS respectfully requests that the Commission reverse the October 6<sup>th</sup> Entry and extend protective treatment of the Confidential Documents Contained in IGS's Renewal Applications.

Respectfully submitted,

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# Attachment A



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 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,<sup>4</sup> 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.

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<sup>4</sup> See *State ex-rel. The Plain Dealer v. Ohio Dept. fins.*, 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

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By: Daniel E. Fullin  
Attorney Examiner

JRJ/dah

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

**Commission of Ohio Docketing Information System on**

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**in**

**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.

I hereby certify that a copy of the foregoing Interlocutory Appeal and Memorandum in Support of IGS Energy was served upon the following parties of record this 9th day of October 2014, via electronic transmission, hand-delivery or first class mail, U.S. postage prepaid.

/s/Joseph Olikier  
Joseph Olikier

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**Counsel for Staff of the Commission**



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

Summary: Notice of Interlocutory Appeal electronically filed by Mr. Joseph E. Olikar on behalf of IGS Energy