

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.)

ENTRY

The attorney examiner finds:

- (1) On June 13, 2006, Interstate Gas Supply, Inc. (Interstate), filed a motion for a protective order under Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), with regard to its financial statements (Exhibit C-3), financial arrangements (Exhibit C-4), and financial forecasts (Exhibit C-5), as part of the renewal of its certification as a retail natural gas supplier.
- (2) 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 (2000).
- (3) Similarly, Rule 4901-1-24, 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."
- (4) 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

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circumstances to maintain its secrecy." Section 1333.61(D), Revised Code. The Ohio Supreme Court has adopted the following six factors to be used in analyzing a claim that information is a trade secret under that section:

- (1) [t]he 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.

State ex rel. The Plain Dealer v. Ohio Dept. of Ins., 80 Ohio St.3d 513, 524-525 (1997).

- (5) The Ohio Supreme Court has found that an *in camera* inspection is necessary to determine whether materials are entitled to protection from disclosure. *State ex rel. Allright Parking of Cleveland Inc. v. Cleveland*, 63 Ohio St. 3d 772 (1992).
- (6) Rule 4901-1-24(D)(1), O.A.C., also provides that, where confidential material can be reasonably redacted from a document without rendering the remaining document incomprehensible or of little meaning, redaction should be ordered rather than wholesale removal of the document from public scrutiny.
- (7) Thus, in order to determine whether to issue a protective order, it is necessary to review the materials in question; to assess whether the information constitutes a trade secret under Ohio

law; to decide whether non-disclosure of the materials will be consistent with the purposes of Title 49, Revised Code; and to evaluate whether the confidential material can reasonably be redacted.

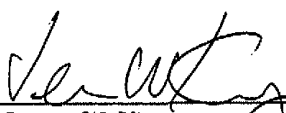

- (8) The attorney examiner has reviewed Exhibits C-3, C-4, and C-5, and the assertions set forth in the memorandum in support of Interstate's motion. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy, as well as the six-factor test set forth by the Ohio Supreme Court, the attorney examiner finds that the information in Exhibits C-3, C-4, and C-5 is a trade secret. Its release is therefore prohibited under state law. The attorney examiner also finds that non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. Finally, the attorney examiner concludes that Exhibits C-3, C-4, and C-5 cannot be reasonably redacted to remove the confidential information contained therein.
- (9) The attorney examiner therefore finds that there is good cause to grant Interstate's motion for a protective order for Exhibits C-3, C-4, and C-5. Those exhibits should receive protected status for an 18-month period from the date of this entry, and should remain under seal in the docketing division for that time period. Interstate should note that Rule 4901-1-24(F), O.A.C., provides that protective orders under Rule 4901-1-24(D), O.A.C., automatically expire after 18 months. However, that same rule provides that, "[a] party wishing to extend a protective order beyond eighteen months shall file an appropriate motion at least forty-five days in advance of the expiration date." If Interstate wishes to extend that protection, it may file an appropriate motion at least forty-five days in advance of the expiration date of this order.
- (10) Accordingly, the docketing division should maintain under seal Exhibits C-3, C-4, and C-5, as filed on June 13, 2006, for a period of 18 months from the date of this entry.

It is, therefore,

ORDERED, That Interstate's motion for a protective order be granted for a period of eighteen months from the date of this entry. Exhibits C-3, C-4, and C-5 shall remain under seal in the Commission's docketing division for that eighteen-month period. It is, further,


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

THE PUBLIC UTILITIES COMMISSION OF OHIO

By: 
Jeanne W. Kingery
Attorney Examiner 


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Entered in the Journal

 JUL 14 2008



Renee J. Jenkins
Secretary