

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>Interstate Gas Supply of Illinois, Inc.</b>	)	
	)	
<b>Petition for Emergency Relief To Protect Portions Of</b>	)	
<b>IGS’s Report of Continued Compliance As An</b>	)	<b>Docket No. 12-_____</b>
<b>Alternative Gas Supplier.</b>	)	

**VERIFIED PETITION FOR CONFIDENTIAL TREATMENT**

NOW COMES Interstate Gas Supply of Illinois, Inc. (“IGS Energy”), by its attorneys DLA Piper LLP (US), and hereby petitions the Illinois Commerce Commission (“Commission”) for emergency relief to protect from disclosure for not less than two years highly confidential and proprietary information included in its 2012 Verified Continuing Compliance Report (the “Compliance Report”) submitted on January 31, 2012 with its certification as an Alternative Gas Supplier (“AGS”). In support of the instant Petition, IGS Energy respectfully states as follows:

**I.**

**Introduction**

1. IGS Energy is certified by the Commission as an AGS. The Commission originally granted IGS Energy a certificate of service authority to provide service as an AGS in the State of Illinois, on July 24, 2003 in ICC Docket No. 03-0413.
2. On January 31, 2012, IGS Energy submitted a confidential version and a redacted public version of its Compliance Report to the Commission.
3. IGS Energy’s Compliance Report includes confidential information regarding IGS Energy’s annual report of dekatherms and revenue related to natural gas sold to residential and small commercial customers in Illinois. (See Compliance Report at ¶ 6.) The dekatherm report demonstrates IGS Energy’s continuing compliance with the requirement of 83 Ill. Adm.

Code 551.170, and IGS Energy considers this information to be highly confidential and proprietary, the disclosure of which information to competitors, or potential competitors, would be detrimental to IGS Energy.

## II.

### **Statutory Law, Regulations, and Recent Case Law Support Confidential Treatment of the Dekatherm and Revenue Information**

4. The Public Utilities Act (“Act”) requires the Commission to protect confidential and proprietary information submitted by regulated entities:

Protection of confidential and proprietary information. The Commission **shall** provide adequate protection for confidential and proprietary information furnished, delivered or filed by any person, corporation or other entity.

(220 ILCS 5/4-404.) (Emphasis added.)

5. The Commission’s Rules of Practice similarly provide for protection of “confidential, proprietary or trade secret nature of any data, information or studies.” (83 Ill. Admin. Code 200.430(a).) The AGS regulations identify the same categories of information for protection. (*See* 83 Ill. Admin. Code 551.60.) The protection afforded to such confidential, proprietary, or trade secret nature of any data, information or studies is not limited to any specific time period and “may exceed five years upon a showing of good cause.” (83 Ill. Admin. Code 200.430(b).)

6. The Illinois Freedom of Information Act (“FOIA”) affords similar protection for confidential or proprietary information. Section 7(g) of the Illinois FOIA exempts from public disclosure:

Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the

trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested.

(5 ILCS 140/7(g).) (Emphasis added.)

7. Recent authoritative case law from the Illinois Appellate Court specifically dealing with information submitted to the Commission by a regulated entity mandates a broad application of the protection of confidential or proprietary information. In *BlueStar Energy Services, Inc. v. Illinois Commerce Commission*, decided in 2007, the Appellate Court stated:

The Illinois legislature intended that the term trade secret would be **construed broadly**. The bill’s authors included the trade secret exemption because they did not wish to discourage private parties from doing business with the State.

(*BlueStar*, 374 Ill. App. 3d 990, 995 (1st Dist. 2007) (emphasis added) (quoting *Roulette v. Dep’t of Central Management Services*, 141 Ill. App. 3d 394, 399 (1st Dist. 1986).). The *BlueStar* Court affirmed the Commission’s position in favor of confidential treatment even though the Court found that the document in question “does not contain trade secrets in the conventional sense . . . .” (374 Ill. App 3d at 995.) In short, Illinois Courts, both historically and very recently, have recognized the need for meaningful, robust protection of confidential information submitted to the Commission and other agencies by regulated entities.

### III.

#### **The Competitive Illinois Market**

8. The retail natural gas service industry generally is highly competitive. Likewise, the retail gas market in Illinois is a robust competitive landscape with multiple market participants serving all sizes of customers. This, of course, is consistent with the Act, which

contains specific provisions to provide for a competitive natural gas market involving AGSs such as IGS Energy. (See Art. 19 of the Act, 220 ILCS 5/19-100, *et seq.*)

9. The Commission “strongly embraces retail competition in energy markets.” (Jan. 10, 2012 Order at 195, *Ameren Illinois Co., Proposed General Increase in Natural Gas Rates*, ICC Docket No. 11-0282.) Similarly, the Commission has “consistently advocate[d] the position that competitive forces, where viable, best protect consumers’ interests.” (Annual Report on the Development of Natural Gas Markets in Illinois, July 2007, at 5, available at <http://www.icc.illinois.gov/reports/Results.aspx?t=4>.) Accordingly, the Commission has determined that “Small volume transportation programs for small commercial and residential customers are an important component of the Illinois retail natural gas markets.” (*Id.* at 6.) Thus, the Commission has opposed actions that would have an “incrementally adverse impact on supply competition” as “inconsistent with our policy of expanding customer choice.” (Feb. 5, 2008 Order at 304, *North Shore Gas Company/The Peoples Gas Light and Coke Company, Proposed General Increase in Natural Gas Rates*, ICC Docket No. 07-0241/0242c.)

10. IGS Energy and other AGSs doing business in Illinois participate in the competitive markets that the Commission supports. Requiring public disclosure of information that is confidential and proprietary to IGS Energy – particularly the information designated as confidential in IGS Energy’s Compliance Report – would be highly prejudicial to IGS Energy and would be detrimental to IGS Energy’s ability to compete in the Illinois market for the benefit of Illinois consumers.

#### IV.

##### **Public Disclosure of the Dekatherm and Revenue Information Would be Detrimental to IGS Energy and is Unnecessary**

11. The dekatherm and related revenue information in IGS Energy's Compliance Report is highly confidential. Disclosure of that sensitive information would provide IGS Energy's competitors both inside and outside of Illinois with non-public market intelligence about IGS Energy, including its strength and position in the market. Such information, from which competitors might derive non-public market share information, would permit competitors to adjust their marketing and sales policies in a manner that might competitively disadvantage IGS Energy. Similarly, making the dekatherm information and related revenue information public would allow competitors to potentially derive information about IGS Energy's profit margins, pricing strategies, and sales strategies. Additionally, competitors could use the non-public information to derive IGS Energy's supply costs, supply planning, or purchasing strategies.

12. Further, disclosure of IGS Energy's non-public dekatherm information would allow IGS Energy's wholesale gas suppliers to potentially derive IGS Energy's underlying supply costs, which may be detrimental to IGS Energy and its customers. That is, armed with the knowledge of IGS Energy's non-public dekatherm and related revenue information, natural gas suppliers could alter their pricing strategies based on calculations of IGS Energy's margins.

13. The information that IGS Energy has designated as confidential and proprietary in its Compliance Report is limited and fits well within the categories of information to which the Commission has historically and recently afforded confidential treatment. Even under a "hard look" approach to requests for confidential treatment that the Commission has recently

adopted, the Commission has afforded confidential treatment to the same type of dekatherm information and financial information submitted by IGS and other companies. (*See, e.g.*, ICC Docket No. 11-0086; ICC Docket No. 10-0084; ICC Docket No. 09-0139; ICC Docket No. 09-220) (affording confidential treatment to dekatherm information and related information contained in Part 551 reports.) Likewise, the information that IGS has designated as confidential in its Compliance Report is competitively sensitive and should not be disclosed publically.

## V.

### **The Information Should be Afforded Confidential Treatment for at Least Two Years**

14. As noted above, the Commission's Regulations do not place a limitation on the time that the Commission may maintain information as non-public. The protection afforded to such confidential, proprietary, or trade secret nature of any data, information or studies is not limited to any specific time period and "may exceed five years upon a showing of good cause." (83 Ill. Admin. Code 200.430(b).) In other words, it is possible that there could be information submitted to the Commission that should be maintained as non-public information forever.

15. In this instance, IGS Energy seeks confidential treatment for a period of not less than two years. In making this request, IGS Energy does not waive, and specifically reserves its right to request confidential treatment for future filings and submittals for a period in excess of two years.

## VI.

### Conclusion

16. The dekatherm information and related revenue information disclosed in paragraph 6 of the IGS Energy Compliance Report is quintessential highly confidential and proprietary non-public business information. As such, the dekatherm and related revenue information should receive protection under the Act and the Commission's Regulations as confidential, non-public information for a period of not less than two years.

WHEREFORE, IGS Energy respectfully requests that the Commission enter an Order, without hearing, protecting from disclosure for a period of not less than two years, the above-referenced confidential version of IGS's 2012 Compliance Report that was submitted pursuant to Part 551 to the Chief Clerk of the Commission, on January 31, 2012.

Respectfully submitted,

**INTERSTATE GAS SUPPLY OF ILLINOIS, INC.**

By: /s/Christopher N. Skey  
One of Its Attorneys

Christopher J. Townsend  
Christopher N. Skey  
Michael R. Strong  
DLA Piper LLP (US)  
203 North LaSalle Street -- Suite 1900  
Chicago, IL 60601  
(312) 368-4039  
christopher.townsend@dlapiper.com  
christopher.skey@dlapiper.com  
michael.strong@dlapiper.com  
Dated: January 31, 2012

**VERIFICATION**

State of Illinois        )  
                                  )  
County of Cook        )

Christopher N. Skey, being first duly sworn, deposes and says that he is one of the attorneys for Interstate Gas Supply of Illinois, Inc., that he has read the foregoing Verified Petition for Confidential Treatment, and that the statements contained in that document are true, correct, and complete to the best of his knowledge, information, and belief.

\_\_\_\_\_  
Christopher N. Skey

Subscribed and sworn to before me  
this \_\_\_\_\_ day of January 2012.

\_\_\_\_\_  
Notary Public