

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of	)	
	)	
THE GAS COMPANY, LLC dba	)	Docket No. 2024-0304
HAWAII GAS	)	
	)	
For Modifications of General Order No.	)	
9 Paragraph 2.3.f.2. Requirements	)	
Relating to Capital Improvements.	)	
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**APPLICANT’S MOTION FOR PROTECTIVE ORDER**

and

**CERTIFICATE OF SERVICE**

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THE GAS COMPANY, LLC dba HAWAII GAS (“Hawaii Gas” or “HG”), by and through its attorneys, Watanabe Ing, LLP, respectfully requests that the Hawaii Public Utilities Commission (“Commission”) issue a protective order in this docket. This motion is made pursuant to Hawaii Administrative Rules (“HAR”) §§ 16-601-41 and -50. Hawaii Gas does not request a hearing on this motion.

On September 18, 2024, Hawaii Gas filed its Application for approval of a permanent exemption from, and a modification of, General Order No. 9, *Standards for Gas Service Calorimetry, Holders & Vessels in the State of Hawaii* (“**G.O.9**”), section 2.3.f.2. to increase the threshold amount from \$500,000 to \$2,750,000, excluding customer and third-party contributions.

Hawaii Gas anticipates that, throughout this proceeding, confidential information will be requested and/or provided, including but not limited to, strategies, confidential negotiation positions, contractual terms, trade secrets, pricing information,, and/or other non-public information (collectively, the “Confidential Information”). The Confidential

Information may be requested and/or provided through, among other filings, Information Requests (“IRs”) and responses to IRs.

Public disclosure of such Confidential Information would disadvantage or harm Hawaii Gas by, among other things, providing market competitors, vendors, or other counterparties non-public information to alter their commercial and/or competitive positions and strategies to the disadvantage of Hawaii Gas and/or its affiliates, customers, employees, and vendors.

To the extent that the Confidential Information may consist of “government records” as defined in the Uniform Information Practices Act (“UIPA”), as codified in Hawaii Revised Statutes (“HRS”) Chapter 92F, such Confidential Information would be protected from disclosure under the UIPA. The UIPA provides that “[a]ll government records are open to public inspection unless access is restricted or closed by law.”<sup>1</sup> However, the UIPA protects from disclosure certain records and information that falls under any of the five categories of exceptions under HRS § 92F-13.<sup>2</sup> Specifically, Hawaii Gas anticipates filing certain confidential and/or proprietary information in this proceeding that: (1) meets the privacy exception under UIPA where “if disclosed, would constitute a clearly unwarranted invasion of personal privacy;”<sup>3</sup> and/or (2) “by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function.”<sup>4</sup>

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<sup>1</sup> HRS § 92F-11.

<sup>2</sup> HRS § 92F-13.

<sup>3</sup> HRS § 92F-13(1).

<sup>4</sup> HRS § 92F-13(3).

Further, if disclosed publicly, critical infrastructure information could increase the risk to the security of Hawaii Gas' facilities, jeopardize Hawaii Gas' emergency and disaster preparedness plans, and/or adversely impact its ability to respond to potential terrorist threats. Pursuant to the Homeland Security Act of 2002 and OIP Op. Ltr. No. F17-02 (December 8, 2016), such critical infrastructure information should be protected from public disclosure. Based on the foregoing, Hawaii Gas believes that a protective order is necessary in this docket.

The Hawaii Office of Information Practices ("OIP") and Hawaii case law have clarified that the Frustration Exception justifies the protection of confidential business and financial information.<sup>5</sup> The OIP's own review of UIPA's legislative history led it to conclude that "it is appropriate for agencies to invoke the Frustration Exception to protect trade secrets, proprietary information, confidential commercial and financial information ... if disclosure would frustrate a legitimate government function."<sup>6</sup> According to the OIP, examples of records that might be included under the government function ground include:

- (5) Proprietary information such as research methods, records and data, computer programs, software, and other types of information manufactured or marketed by persons under exclusive legal right, owned by an agency or entrusted to it.
- (6) Confidential business information, which includes trade secrets or confidential commercial and financial information where there is a likelihood of substantial competitive harm. For example, information may be withheld if disclosure would allow competitors to

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<sup>5</sup> See *Kaau v. Aloha Tower Dev. Corp.*, 846 P.2d 882 (Haw. 1993) (holding that the Frustration Exception required the protection of certain confidential business information;

<sup>6</sup> OIP Op. Ltr. No. 02-07 (August 27, 2002) at 8.

selectively underprice, estimate profit margins, or determine market and supply weaknesses.<sup>7</sup>

Hawaii Gas affirms that the public disclosure of its Confidential Information in this docket would competitively disadvantage Hawaii Gas in future negotiations if disclosed to competitors, vendors, contractors, other counterparties and/or the public.

Additionally, given the possibility of intervening parties and/or participants in this proceeding aside from the Consumer Advocate, Hawaii Gas requests that the Commission issue a two-tiered Protective Order, which provides a means for a party or participant to designate certain information as “restricted information,” which will only be disclosed to the Commission, the Consumer Advocate, and possibly other specifically designated parties or participants.

For the reasons set forth above, and in accordance with HAR § 16-601-50, Hawaii Gas requests that the Commission grant its motion for a two-tiered Protective Order covering the Confidential Information requested, provided, and/or identified in the course of this proceeding.

DATED: Honolulu, Hawaii, September 24, 2024.

/s/ Kendrick S. Chang

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<sup>7</sup> OIP, *Open Records: Guide to Hawaii’s Uniform Information Practices Act* (Oct. 2018), at 20-21, available at <https://oip.hawaii.gov/wp-content/uploads/2018/10/October-2018-UIPA-Manual.pdf>.

## **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing document were duly served on the following party, by having said copies delivered set forth below:

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DATED: Honolulu, Hawaii, September 24, 2024.

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