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PUCO

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MOTION TO INTERVENE
AND
MOTION FOR AN EVIDENTIARY HEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

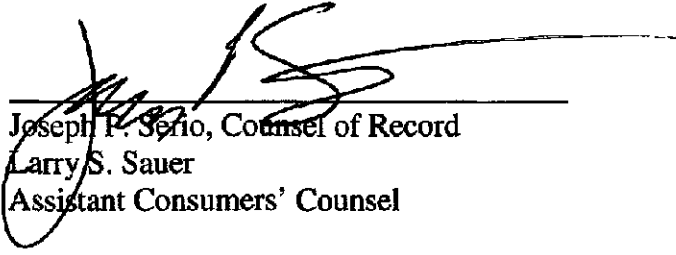
The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential utility consumers, moves¹ the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant the OCC's intervention in this case wherein the Commission will decide whether to allow Interstate Gas Supply, Inc. ("IGS") to offer retail services to consumers in the service territory of Columbia Gas of Ohio, Inc. ("Columbia") under the new trade name of Columbia Retail Energy ("CRE") even though IGS is not even affiliated with Columbia. OCC also requests that the PUCO set this matter for an evidentiary hearing pursuant to Ohio Admin. Code 4901:1-27-10(A)(2).

The reasons the PUCO should grant this Motion and set this matter for an evidentiary hearing are more fully explained in the attached Memorandum in Support.

¹ R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On August 6, 2010, IGS filed a Notice of Material Change (“Notice”) with the Commission. The material change proposed by IGS is to offer competitive retail natural gas service under a new trade name. The new trade name proposed by IGS is “Columbia Retail Energy.”² IGS would market natural gas to consumers by using a variation of the Columbia name, a name that consumers have long come to associate with Columbia as their natural gas utility.

By design or effect, IGS’ decision to change its trade name to Columbia Retail Energy can confuse customers who long have associated the Columbia name with their utility and not with IGS the marketer. Typically, the PUCO’s consideration of the use of corporate names has related to whether it will be unfair to customers to have to distinguish between the utility and its marketing affiliates. But here, customers would be asked to distinguish between a company (IGS) using the Columbia name that is not even a Columbia company, but is a company that consumers have long known as IGS. The PUCO should protect customers against this difficulty of needing to distinguish between two different companies selling natural gas under versions of a corporate name that include the same key word, Columbia. And consumers should be protected against

² Notice at 1.

having to ascertain that a company previously known as IGS is the same company that would be marketing under a variation of the utility's name that is not IGS. The result either is or has the potential to be unfair, deceptive and misleading to consumers.

II. INTERVENTION

Pursuant to R.C. Chapter 4911, the OCC moves to intervene under its legislative authority to represent the interests of the natural gas residential utility customers in Columbia Gas of Ohio, Inc.'s service territory. It is essential for the PUCO to determine whether IGS' use of the trade name Columbia Retail Energy is unfair, deceptive and/or misleading to residential customers, or is otherwise unreasonable, because it could lead to customers making decisions based on incorrect assumptions.

The interests of the residential natural gas customers in Ohio may be "adversely affected" by this case, depending on, among other things, the Commission's decision allowing IGS' use of the trade name Columbia Retail Energy which can cause consumer confusion, thus satisfying the intervention standard in R.C. 4903.221. The OCC also meets the Commission's required showing for a party that has a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2), and should therefore be permitted to intervene in this case.

R.C. 4903.221(B) requires the PUCO to consider the following criteria in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and

- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest includes advocating for residential customers who have the right to participate in Columbia's Choice Program and who have the right to choose between alternative competitive natural gas suppliers competing in Columbia's service territory. However, consumers should be in a position to participate in the Choice program free from "marketing, solicitation, sales acts, or practices, which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation or sale of a competitive retail natural gas service"³ with respect to the real identities of the Marketers that are conducting business. In this case, IGS' use of a trade name that includes the word Columbia has the potential, if not the certainty, of leading customers to make decisions for considering and purchasing regulated services as a result of confusion between the marketing company (IGS as Columbia Retail Energy) and the gas company (Columbia Gas). The General Assembly deemed the interests of residential customers worthy of protection, by OCC, through legislative authority in R.C. Chapter 4911. The OCC should be permitted to intervene to protect these interests.

Second, the legal positions advanced by the OCC regarding the reasonableness and lawfulness of the Application have an actual, and not just "probable," relation to the merits of the case. These legal positions include contributing to PUCO decisions as to whether this name change will "adversely affect" IGS' fitness or ability to provide

³ Ohio Admin. Code 4901:1-29-05(C).

service⁴ as a result of unfair, misleading or deceptive acts or practices.⁵

Third, OCC's participation will not unduly prolong or delay the proceeding. In fact, OCC's intervention will provide insights based upon expertise to assist the Commission in its review of the IGS Notice. Therefore, OCC's intervention is consistent with and supported by the statute, and any future procedural schedule.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a "real and substantial interest" according to Ohio Admin. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a very real and substantial interest in this case, where OCC will advocate for residential consumers who have the option of participating in the Columbia Gas Choice program.

In addition, OCC meets the criteria of Ohio Admin. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Admin. Code 4901-1-11(B)(5) states that the Commission shall consider the "extent to which the person's interest is represented by existing parties." While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio's residential utility consumers. That interest is different from, and not represented by, any other entity in Ohio.

⁴ Ohio Admin. Code 4901:1-27-10(A)(2).

⁵ Ohio Admin. Code 4901:1-29-03(A)(1), "Retail natural gas suppliers and governmental aggregators shall not engage in unfair, misleading, deceptive, or unconscionable acts or practices related to, without limitation, the following activities: (1) marketing, solicitation, or sale of a competitive retail natural gas service."

Moreover, the Supreme Court of Ohio confirmed OCC's right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC's intervention and that OCC should have been granted intervention.⁶

For the reasons discussed above, the OCC satisfies the criteria set forth in R.C. 4903.221 and Ohio Admin. Code 4901-1-11. Therefore, OCC's Motion to Intervene should be granted.

III. MOTION FOR AN EVIDENTAIRY HEARING

Ohio Admin. Code 4901:1-27-10(A)(2) provides for a hearing by stating:

(2) After notice **and an opportunity for a hearing**, the commission may suspend, rescind, or conditionally rescind a retail natural gas supplier's or governmental aggregator's certificate if it **determines that the material change will adversely affect the retail natural gas supplier's or governmental aggregator's fitness or ability to provide the services for which it is certified**; or to provide reasonable financial assurances sufficient to protect natural gas companies and the regulated sales service customers from default. (Emphasis added).

In this case, the fitness of IGS' ability to provide competitive retail natural gas service is impacted by the use of the "Columbia" name and logo. Ohio Admin. Code 4901:1-29-05 (C) specifically prohibits unfair, misleading, deceptive or unconscionable marketing practices. Yet the adoption of the name Columbia Retail Energy has the practical effect of causing customer confusion because customers will believe that Columbia Retail Energy and Columbia Gas of Ohio Inc. are one and the same or are affiliated companies. It is folly to believe that a disclaimer will have the effect of educating the customer so that the customer understands that Columbia Retail Energy is not an affiliate but is

⁶ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶13-20 (2006).

nothing more than another marketing Company and it is unfair to ask of customers to ascertain the facts behind the proposed unconventional use of the name Columbia.

There is even more reason to set this case for an evidentiary hearing because it involves a non-affiliate attempting to use the gas company's name and logo, which is beyond even the usual stretch of allowing marketing affiliates of the public utility to use a variation of the utility's name that customers have come to associate over many years with the utility. There are many unanswered questions which can only be fully explored in the context of an evidentiary hearing, complete with the discovery process and depositions. For example, does the agreement between Nisource and IGS give IGS exclusive use of the Columbia name and logo, or could other non-affiliate Marketers also enter similar agreements to use other versions of the Columbia name? Obviously such an outcome could and would cause even more customer confusion and make it even more difficult for residential customers to differentiate between the gas company and the marketing company.

Although the licensing agreement is reported to be for only a three-year period, there is no explanation for what happens at the end of that period. At one end of the spectrum is the possibility that IGS would revert to the IGS name. Clearly going back and forth between names would confuse customers. While the other extreme is that the licensing agreement is simply the first step in a Nisource takeover of IGS which would enable Nisource to become one of, if not the largest marketer in its affiliate's Choice Program.

The proposed licensing agreement also raises questions about the level of the payments from IGS in exchange for the use of the Columbia name and logo. Is the level

of the payment contingent on the number of customers that IGS enrolls in the Choice Program? If so does that provide Columbia with an inherent bias towards IGS because the payments to the parent company will increase as IGS' -- Columbia Retail Energy's -- market share increases.

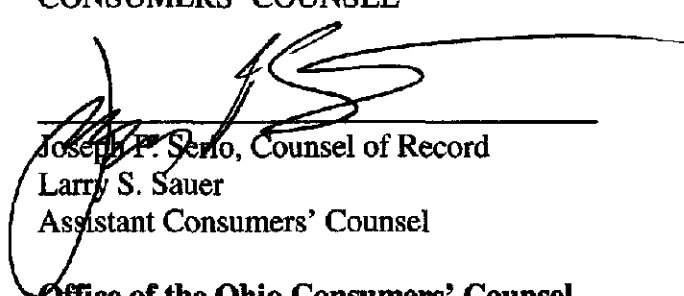
Questions like these, with the protection of consumers foremost in mind, must be considered by the PUCO for purposes of ruling on whether IGS should be permitted or denied the use of the Columbia name and logo. In light of the fact that questions have been raised regarding whether retail Choice provides as much value as wholesale auctions, the issue of a marketer using a gas utility's name and logo in that same utility's service territory becomes even more important for the Commission to carefully scrutinize.

IV. CONCLUSION

For all the reasons stated above, the PUCO should grant OCC's Motion to Intervene and set this matter for an evidentiary hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Motion to Intervene and Motion for an Evidentiary Hearing by the Office of the Ohio Consumers' Counsel* was provided to the persons listed below via first class U.S. Mail, postage prepaid, this 20th day of August 2010.



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