

August 31, 2010

Via Hand Delivery

Ms. Renee J. Jenkins, Secretary
The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

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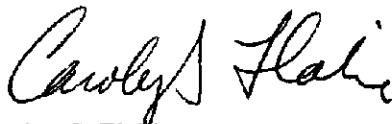
RE: In the Matter of the Application of Interstate Gas Supply, Inc. for Certification as a Retail Natural Gas Supplier, PUCO Case No. 02-1683-GA-CRS

Dear Ms. Jenkins:

Enclosed are an original and nine (9) copies of a Motion to Intervene and Motion for Evidentiary Hearing to be filed on behalf of Border Energy, Inc. in the above-referenced matter.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Very truly yours,



Carolyn S. Flahive

Enclosures

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**MOTION TO INTERVENE
AND MOTION FOR EVIDENTIARY HEARING
BY BORDER ENERGY, INC.**

Pursuant to Ohio Adm.Code 4901-1-11, Border Energy, Inc. ("Border") hereby moves to intervene in this proceeding. Further, pursuant to Ohio Adm.Code 4901:1-27-10(A)(2), Border respectfully requests that the PUCO set this matter for an evidentiary hearing.

Border has real and substantial interests in this proceeding, and those interests may be adversely affected by its outcome. No other party to the proceeding can adequately represent Border's interests. The Commission should grant Border's Motion to Intervene and Motion for Evidentiary Hearing for the reasons more fully set forth in the attached Memorandum in Support.

Respectfully submitted,

BORDER ENERGY, INC.

By: 
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Its Attorneys

MEMORANDUM IN SUPPORT

I. Background.

On August 6, 2010, Interstate Gas Supply, Inc. ("IGS") filed a Notice of Material Change in this proceeding. According to the Notice, IGS plans to offer competitive retail natural gas under the trade name "Columbia Retail Energy." Therefore, IGS will be offering service within Ohio under any one of the following names: Interstate Gas Supply, Inc., IGS Energy, or Columbia Retail Energy.

Border is a certified Competitive Retail Natural Gas Marketer, specializing in the purchase, transportation and risk management of gas supplies for both commercial and residential customers. Border contracts to buy natural gas from suppliers and arranges for delivery of such gas within Ohio to end-use customers in the Columbia Gas of Ohio ("Columbia Gas") service territory.

As a provider of competitive services, Border is concerned that the use of the name "Columbia Retail Energy" by a company long known to customers as IGS, is not only confusing and misleading because IGS is not affiliated with Columbia Gas of Ohio, but also positions IGS unfairly in the competitive marketplace.

II. Legal Standards for Intervention.

Pursuant to Rev. Code § 4903.221, any person who may be adversely affected by a Commission proceeding may intervene in such proceeding. Border would clearly be adversely affected by IGS's use of a name that appears to establish an affiliation, which does not exist, with Columbia Gas. A customer's decision to select IGS or "Columbia Retail Energy" as its provider could be based solely on such misrepresentation, thereby giving IGS an unfair competitive advantage.

Pursuant to Ohio Adm.Code 4901-1-11, in deciding whether to permit intervention, the Commission shall consider:

- (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 proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues; and
- (5) The extent to which the person's interest is represented by existing parties.

III. Border Clearly Meets All Criteria for Intervention.

Border should be granted intervention because it has a real and substantive interest in this proceeding. Border's ability to compete for the same customers targeted by IGS will be weakened by IGS's use of a trade name that implies an association with Columbia Gas. Unsuspecting customers may choose IGS as a result of this implied association, resulting in an unfair competitive advantage for IGS.

Border's legal position is that IGS should not be permitted to engage in unfair, misleading or deceptive acts or practices.¹ Consumers have a right to choose between alternative competitive natural gas suppliers competing in Columbia's service territory, including choosing between IGS, Border, and other marketers, 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."² A consumer's decision to select

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." Ohio Adm.Code 4901:1-29-03(A)(1).

² Ohio Adm.Code 4901:1-29-05(C).

the marketer "Columbia Retail Energy" may very well be based on the consumer's mistaken impression that "Columbia Retail Energy" is affiliated with Columbia Gas, the gas utility.

Border's participation will not unduly prolong or delay the proceeding. The Commission has not established a procedural schedule in this matter nor issued any ruling. Border's Motions will not cause any further delay in the proceeding. Border will be able to significantly contribute to the full development and equitable resolution of the factual issues and will fully cooperate with all parties to do so. In fact, allowing IGS to mislead customers into making a decision based on a deceptive trade name would result in a far from equitable resolution of the factual issues.

Border's interests are not represented by existing parties. To date, the only other potential intervenor is the Office of the Ohio Consumers' Counsel, which has the statutory authority to represent the interests of the natural gas residential utility customers in Columbia Gas's service territory. Border is a gas marketer seeking to compete fairly. No other party can represent Border's interests in this proceeding.

Border's intervention in this proceeding will contribute to the Commission's understanding of the impact of IGS's use of a trade name certain to cause confusion in the market. For the aforementioned reasons, Border satisfies the criteria set forth in both Rev. Code 4903.221 and Ohio Adm.Code 4901-1-11. Therefore, Border's Motion to Intervene should be granted.

IV. Evidentiary Hearing

The Commission should schedule a hearing in this matter to thoroughly review the ramifications of allowing IGS to use the trade name "Columbia Retail Energy." Ohio Adm.Code 4901:1-27-10(A)(2) provides for an opportunity for hearing following a retail natural gas

supplier's notification of material change, after which the Commission may suspend, rescind, or conditionally rescind the retail natural gas supplier's certificate if it determines that the material change will adversely affect the retail natural gas supplier's fitness or ability to provide the services for which it is certified. At issue in this proceeding is IGS's ability to provide services, which as the result of the use of the "Columbia Retail Energy" trade name, would be based on unfair, misleading and deceptive practices. IGS's adoption of the "Columbia Retail Energy" trade name will inevitably lead to customer confusion because customers will reasonably expect that "Columbia Retail Energy" is affiliated with Columbia Gas of Ohio, Inc., which it is not. The Commission's oversight and monitoring of IGS's presumed use of disclaimers will be insufficient to protect consumers from such confusion. Moreover, an evidentiary hearing will allow the Commission to gain a complete understanding of the current and future relationship between NiSource and IGS, explore the details of the trade name licensing agreement, and determine the full impact on customers who strive to make intelligent decisions within the framework of the Choice Program.

V. Conclusion.

For the reasons set forth above, Border Energy, Inc. respectfully requests that its Motion to Intervene and Motion for Evidentiary Hearing be granted.

Respectfully submitted,

BORDER ENERGY, INC.

By: Carolyn S. Flahive

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served via regular U.S. mail this
31st day of August 2010 on the following:

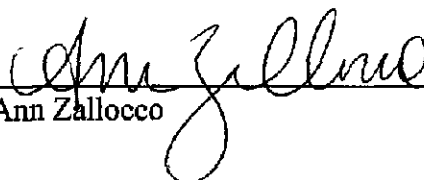
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