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September 7, 2010

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Ms. Renee Jenkins
Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street, 13th Floor
Columbus, OH 43215-3793

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

Dear Ms. Jenkins:

Please find enclosed for filing in the above captioned matter the original and nine (9) copies of Retail Energy Supply Association's Motion to Intervene and Request for Rulemaking and Preliminary Comments. Please date stamp and return the additional copies.

Very truly yours,

BAILEY CAVALIERI LLC


Dane Stinson

Enclosures

#648124v1

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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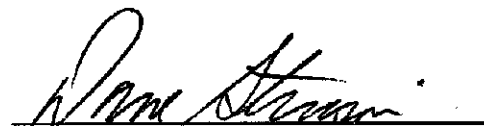
In the Matter of the Application of Interstate Gas)
Supply, Inc. for Certification as a Retail Natural)
Gas Supplier.)

Case No. 02-1683-GA-CRS

**RETAIL ENERGY SUPPLY ASSOCIATION'S
MOTION TO INTERVENE
AND
REQUEST FOR RULEMAKING AND PRELIMINARY COMMENTS**

Now comes the Retail Energy Supply Association ("RESA"), by and through counsel, and respectfully moves the Public Utilities Commission of Ohio ("Commission") to intervene in the above-captioned case pursuant to section 4903.221, Ohio Rev. Code, and section 4901-1-11, Ohio Admin. Code. RESA's interests in this proceeding and the reasons supporting this Motion to Intervene are set forth in the attached Memorandum in Support. In addition, RESA requests that the Commission initiate a rulemaking to consider the appropriate parameters under which a competitive retail natural gas supplier could use a trade name licensed by a non-affiliated natural gas company or its parent. RESA offers its preliminary comments on this issue.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Retail Energy Supply Association (“RESA”) is a non-profit trade association of independent corporations that are among the largest retail suppliers of natural gas and electricity in the United States.¹ Many RESA members have been certified by the Public Utilities Commission of Ohio (“Commission”) as competitive retail natural gas suppliers (“CRNGS”) and supply natural gas commodity to residential, commercial and industrial consumers in this state.

On August 6, 2010, Interstate Gas Supply, Inc. (“IGS”), another certified CRNGS in this state, filed a Notice of Material Change in this proceeding, pursuant to section 4901:1-27-10, Ohio Admin. Code. The notice advised the Commission that IGS: (1) was registering “Columbia Retail Energy” (“Columbia Retail”) as a new trade name in Ohio, and (2) that, in the future, it may offer service within Ohio under any or all of the following trade names: Interstate Gas Supply, Inc., IGS Energy, or Columbia Retail Energy. IGS has not included in its notice to the Commission how it intends, or if it intends, to distinguish its marketing of natural gas commodity supply under the “Columbia Retail” trade name from that of the incumbent natural gas company (“NGC”), Columbia Gas of Ohio.

¹ RESA’s members include ConEdison Solutions; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Gexa Energy; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; PPL EnergyPlus; Reliant Energy Northeast LLC; and Sempra Energy Solutions LLC. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

Section 4901-1-11, Ohio Admin. Code, implements the provisions of section 4903.221, Ohio Rev. Code,² governing intervention in proceedings before the Commission. Pursuant to section 4901-1-11(A)(2), Ohio Admin. Code, the Commission may grant intervention if a person has “a real and substantial interest in the proceeding and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.” Under the rules, and consistent with the provisions of section 4903.221, Ohio Rev. Code, the Commission may consider the following criteria in making its determination:

- (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.
- (5) The extent to which the person's interest is represented by existing party.

Section 4901-1-11(B), Ohio Admin. Code.

As a trade association representing a broad and diverse group of CRNGSs, RESA is a strong proponent of vibrant and sustainable competitive retail energy markets, and embraces Ohio's codified policy of “promot[ing] diversity of natural gas supplies and suppliers, by giving

² Section 4903.221, Ohio Rev. Code, permits a “person who may be adversely affected” to intervene in a Commission proceeding and provides the following criteria for the Commission to consider in ruling upon applications for intervention:

- (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.

consumers effective choices over the selection of those supplies and suppliers.” Section 4929.02(A)(3), Ohio Rev. Code. RESA is concerned that IGS’s use of the “Columbia Retail” trade name, without appropriate disclaimers, will mislead customers to believe that their natural gas will be supplied by their NGC, Columbia Gas of Ohio, to the detriment of customer choice and a competitive retail natural gas market in Ohio.

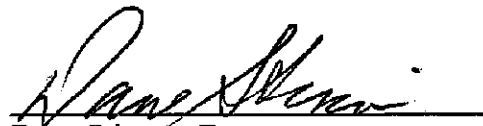
Columbia Gas of Ohio is this state’s largest natural gas company, and has provided for decades both distribution and commodity supply services to consumers as a vertically integrated monopoly. Because of its long-time monopoly status, consumers strongly identify the “Columbia” name with Columbia Gas of Ohio, particularly when coupled with the provision of natural gas services. Indeed, consumers attach such a strong identification to the “Columbia” name that it has acquired significant value – so much so that IGS has agreed to pay Columbia Gas of Ohio’s parent, NiSource, a license fee to use the “Columbia” name for a period of three years. See Attachment A, The Columbus Dispatch, *Gas Supplier to Use “Columbia” Name*, August 11, 2010. IGS’s use of the highly recognizable “Columbia” name, without appropriate disclaimers, not only would mislead customers as to the source of their commodity supply, but also would inappropriately influence consumers’ purchasing decisions and provide IGS with an unfair competitive advantage over its CRNGS competitors – in contravention of section 4929.02(A)(3), Ohio Rev. Code, and sections 4901:1-29-03 and 4901:1-29-05(C), Ohio Admin. Code. As such, RESA has a real and substantial interest in this proceeding and seeks to intervene to protect its interest in developing and maintaining a competitive retail natural gas supply market for its members in Ohio.

RESA will not unduly prolong or delay this proceeding and, indeed, has filed this motion to intervene prior to any deadline for intervention established by section 4903.221, Ohio Rev.

Code. With its vast and diverse experience in competitive natural gas markets, RESA will contribute significantly to the full development and resolution of the factual and legal issues in this proceeding. No other party seeking intervention is a trade association of competitive retail energy suppliers, and no other party can adequately represent RESA's diverse interests.

Wherefore, RESA respectfully requests that the Commission grant its motion to intervene in this proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dane Stinson", is written over a horizontal line.

Dane Stinson, Esq.

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**REQUEST FOR RULEMAKING
AND
PRELIMINARY COMMENTS**

I. INTRODUCTION

RESA requests that the Commission initiate a rulemaking proceeding pursuant to section 4929.10, Ohio Rev. Code, to provide standards governing a CRNGS's use of a non-affiliated NGC's name and/or logo. RESA submits that neither IGS, nor any other CRNGS, should be permitted to use the name and/or logo of a non-affiliated NGC until the rulemaking has concluded and the rules become effective. Should IGS or any other CRNGS do so, the Commission should initiate proceedings pursuant to sections 4929.24 and 4905.26, Ohio Rev. Code, and sections 4901:1-27-12, 4901:1-29-03, and 4901:1-29-05(C), Ohio Admin. Code, to prevent such use until the new rules are adopted.

II. THE COMMISSION PREVIOUSLY HAS RECOGNIZED THAT CONSUMERS MAY BE MISLED BY A CRNGS'S USE OF A UTILITY'S NAME AND/OR LOGO ON ADVERTISING AND MARKETING MATERIALS.

Through its rules, the Commission has recognized that consumers would be misled and deceived if a NGC's competitive retail affiliate used the NGC name and/or logo. To prevent such confusion, the Commission requires a NGC's competitive retail *affiliate* to disclose the affiliate relationship in its advertising and marketing materials. See section 4901:1-29-05(C)(8)(f), Ohio Admin. Code. Failure to make such disclosure constitutes an unfair, misleading, deceptive, or unconscionable act or practice. *Id.*

Although the Commission's rules clearly address the need for *affiliates* to disclaim that their services are not those of the traditional NGC, the rules provide no such standards when an

unaffiliated CRNGS uses the NGC's name and/or logo. The rules' silence presents the real concern that a non-affiliated CRNGS could mislead consumers (particularly residential and small commercial consumers) to believe that its services are those of the NGC, or even the NGC's affiliate. Since section 4901:1-29-05(C)(8)(f), Ohio Admin. Code, does not apply to unaffiliated CRNGSs, new regulations need to be adopted to address this specific concern.

RESA believes that there should be new regulations drafted for this specific situation, rather than retrofitting the current affiliate regulations noted above. IGS is neither the NGC, nor in any way related to the NGC through a parent company relationship as a traditional affiliate is. Therefore, the simple use of the affiliate rules is not the best consumer protection in this scenario. Instead, RESA believes that the Commission should investigate whether additional safeguards should be put in place that go above and beyond the marketing rules with which an affiliate must comply.

Columbia Gas of Ohio is Ohio's largest natural gas company and has provided for decades both distribution and commodity supply services to consumers as a vertically integrated monopoly. Because of its long-time monopoly status, consumers strongly identify the "Columbia" name with Columbia Gas of Ohio, particularly when coupled with the provision of natural gas services. Indeed, consumers attach such a strong identification to the "Columbia" name that it has acquired significant value – so much so that IGS has agreed to pay Columbia Gas of Ohio's parent, NiSource, a license fee to use the "Columbia" name for a period of three years. See Attachment A, The Columbus Dispatch, *Gas Supplier to Use "Columbia" Name*, August 11, 2010. IGS's use of the highly recognizable "Columbia" name, without appropriate disclaimers, not only would mislead customers as to the source of their commodity supply, but

would also inappropriately influence consumers' purchasing decisions and provide IGS with an unfair competitive advantage over its CRNGS competitors.

III. THE COMMISSION ALSO MUST ADOPT RULES THAT SPECIFICALLY PREVENT A NON-AFFILIATED CRNGS FROM MISLEADING OR DECEIVING CONSUMERS THROUGH THE USE OF A UTILITY NAME AND/OR LOGO.

The need to protect against confusion when using the NGC name and/or logo is even more critical when the name and/or logo will be used by a non-affiliated CRNGS; however, application of the affiliated-CRNGS disclaimer rules to a non-affiliated CRNGS would not offer sufficient protection. For example, if IGS were to use the name "Columbia Retail" on its marketing materials, with the disclaimer that it is not the same entity as Columbia Gas of Ohio, consumers still would be misled to believe that it was in some way affiliated with Columbia Gas of Ohio. This confusion is exacerbated by the marketing practices of Columbia Gas of Ohio's affiliate, Columbia Retail Services,³ which likely will use the same marketing channels (*e.g.*, U.S. mail) as "Columbia Retail." Thus, greater protection is needed when a non-affiliated CRNGS is using a licensed NGC name and/or logo.

RESA believes that new regulations should be adopted that specifically address the use of the NGC name and/or logo by a non-affiliated CRNGS. RESA proposes that the non-affiliated CRNGS be required, at a minimum, to disclose on all bills, and all advertising, marketing, and consumer education materials:

1. the CRNGS's full legal name, and
2. that the CRNGS is not affiliated with the NGC.

³ Columbia Retail Services is a NiSource company and affiliate of Columbia Gas of Ohio, which offers repair services and service plans for heating and cooling systems, NGC lines, and appliances.

To be effective, such disclosure must appear in close proximity to the NGC name and/or logo in appropriate and conspicuous type-size.⁴ By making, at least, these requirements mandatory customer confusion should be reduced.

Considering that the Commission currently lacks rules to protect against a non-affiliated CRNGS's misleading or deceptive use of a NGC name and/or logo, RESA requests that the Commission initiate a rulemaking on this single issue pursuant to its authority under section 4929.10, Ohio Rev. Code. Alternatively, RESA requests the Commission to consider this issue in its periodic review of chapter 4901:1-29, Ohio Admin. Code. RESA notes that the review date for this chapter is November 30, 2011, and requests that the Commission initiate such review immediately.

IV. INTERIM PROTECTIONS ARE REQUIRED UNTIL A NEW RULE IS ADOPTED.

As explained above, the absence of Commission rules on this issue presents an immediate concern that a CRNGS's advertising and marketing materials containing a non-affiliated NGC's name and/or logo could mislead or deceive consumers to believe that the source of their commodity supply is the NGC, or the NGC's competitive retail affiliate. RESA submits that neither IGS, nor any other CRNGS, should be permitted to use the name and/or logo of a non-affiliated NGC until the rulemaking has concluded and the rules become effective. Should IGS or any other CRNGS do so, the Commission should initiate proceedings pursuant to sections 4929.24 and 4905.26, Ohio Rev. Code, and sections 4901:1-27-12, 4901:1-29-03, and 4901:1-29-05(C), Ohio Admin. Code, to prevent such use until the new rules are adopted.

⁴ RESA's concern that the failure to use such disclaimers will mislead consumers to believe that their commodity is being supplied by the incumbent utility or its affiliate is shared by regulators in Illinois, where a rulemaking for retail electric consumer protections has proposed rules requiring competitive retail electric suppliers to disclose their legal names and the name under which they will provide service. See ICC Staff Proposed Section 412.110 Uniform Disclosure Statement [ICC Docket No. 09-0592].

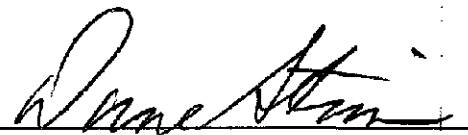
V. CONCLUSION

RESA requests the Commission to initiate a rulemaking proceeding pursuant to its authority under section 4929.10, Ohio Rev. Code, to provide standards governing a CRNGS's use of a non-affiliated NGC's name and/or logo. At a minimum, such rules should require the CRNGS to conspicuously disclose on all bills, and all advertising, marketing, and consumer education materials:

1. the CRNGS's full legal name, and
2. that the CRNGS is not affiliated with the NGC.

RESA submits that neither IGS, nor any other CRNGS, should be permitted to use the name and/or logo of a non-affiliated NGC until the rulemaking has concluded and the rules become effective. Should IGS or any other CRNGS do so, the Commission should initiate proceedings pursuant to sections 4929.24 and 4905.26, Ohio Rev. Code, and sections 4901:1-27-12, 4901:1-29-03, and 4901:1-29-05(C), Ohio Admin. Code, to prevent such use until the new rules are adopted.

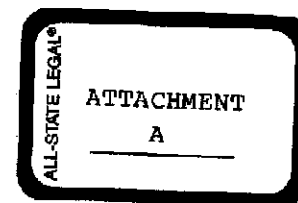
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Columbus Dispatch, The (OH)

August 11, 2010

**Gas supplier IGS to use 'Columbia' name**
Dan Gearino THE COLUMBUS DISPATCH

Two separate companies soon will be using the "Columbia" brand name and logo to provide natural gas to Ohio customers.

IGS Energy of Dublin, an unregulated gas supplier, has purchased a three-year license to use the "Columbia" name from NiSource, parent company of Columbia Gas of Ohio.

IGS Energy will use the name "Columbia Retail Energy" to market its gas contracts.

Financial terms were not disclosed.

The state's consumer advocate is raising an eyebrow, worried that the similar names will be confusing.

"When you're using the **Columbia** name, you have to wonder if people will know the difference between the utility and the marketer," said Marty Berkowitz, a spokesman for the Office of the Ohio Consumers' Counsel.

Columbia Gas of Ohio will continue to sell gas and handle gas distribution. The company's territory covers 1.4 million residential households.

NiSource decided to license the name because it was pleased with IGS' track record, and it was confident that customers would understand the difference between the two companies, said Karl Brack, a spokesman at NiSource's Indiana headquarters.

Doug Austin, IGS vice president, indicated his company plans to be clear with its customers.

"**Columbia Retail Energy** is not the utility and is not an affiliate, and all marketing to customers will clearly communicate this," he said.

His company will continue to use the IGS name along with the **Columbia Retail** name.

IGS' arrangement is a new twist in Ohio's deregulated gas system. For more than a decade, customers have had the choice to buy gas from the regulated utility or from a slate of unregulated providers, known as gas marketers. Marketers sell a variety of rate plans, including fixed-rate contracts, while the utilities' rates change each month.

IGS, which employs 200 and recently moved to a new headquarters in Dublin, is the largest marketer in Ohio.

Beginning in the 1990s, **Columbia** Gas had a marketing company known as **Columbia Energy Services**. The business was sold and renamed in 2001, and it is not actively seeking new customers.

Some Ohio utilities, including Dominion East and Vectren, have marketers with similar names under the same corporate umbrella. Last year, Dominion paid a \$50,000 fine after complaints that its marketing arm was using misleading practices to attract customers from its utility arm.

The Consumers' Counsel will monitor this new **Columbia** situation for similar problems, Berkowitz said.

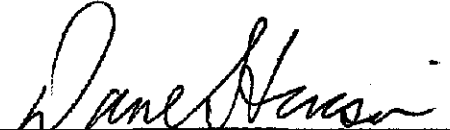
"We're going to oppose anything that creates undue confusion for customers," he said.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing *Retail Energy Supply Association's Motion to Intervene and, Request for Rulemaking and Preliminary Comments* was served by Regular U.S. Mail and electronic mail this 7th September 2010 on the persons listed below.


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