

FILE

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

REPLY OF NORTHEAST OHIO PUBLIC ENERGY COUNCIL
TO INTERSTATE GAS SUPPLY, INC.'S MEMORANDUM CONTRA
MOTIONS TO INTERVENE AND MOTIONS FOR AN EVIDENTIARY HEARING

The Northeast Ohio Public Energy Council's ("NOPEC") motion to intervene in this case dated August 31, 2010 ("NOPEC Motion to Intervene") not only satisfies the Commission's criteria for intervention in Ohio Revised Code Section ("R.C.") 4903.221 and Ohio Administrative Code ("OAC") Rule 4901-1-11, but raises important substantive questions regarding the Notice of Material Change ("Notice") filed by Interstate Gas Supply, Inc. ("IGS") that would allow IGS to offer competitive retail natural gas service under a new trade name, "Columbia Retail Energy." IGS' Memorandum Contra filed on September 3, 2010 ("Memorandum Contra") failed to challenge any of the grounds for intervention raised by NOPEC. Pursuant to OAC Rule 4901-1-12(B)(2), NOPEC hereby files this reply to correct a number of incorrect statements by IGS.

For the reasons stated below, the Commission should reject the arguments in IGS' Memorandum Contra, grant NOPEC's motion to intervene, and set this case for hearing.

I. NOPEC is not challenging IGS' certification as a competitive retail natural gas supplier.

It must be emphasized that NOPEC is not challenging IGS' certification as a competitive retail natural gas supplier ("CRNGS") or whether its CRNGS renewal application satisfied the

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requirements in R.C. 4929.20(A) or OAC Rules 4901:1-27-06 and 4901:1-27-09. Instead, NOPEC seeks to ensure that the Commission understands the policy concerns and competition issues relating to IGS' use of a new trade name that would allow IGS to market retail natural gas services to consumers in the Columbia Gas of Ohio ("Columbia Gas") service territory using the "Columbia" name, even though IGS is not affiliated with Columbia Gas. As a result, the correct standard in this case is not, as IGS suggests, whether IGS demonstrates that it has the "managerial, technical, and financial capability" to provide service (the standard for certification as a CRNGS) pursuant R.C. 4929.20. Instead, the proper standard in this proceeding is whether 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."

II. The above-captioned IGS certification docket is the correct proceeding for NOPEC to challenge IGS' Notice.

Contrary to IGS' contentions, the IGS certification docket (Case No. 02-1683-GA-CRS) is the most appropriate and administratively-efficient proceeding in which NOPEC can intervene and challenge IGS' use of the "Columbia" trade name.

OAC Rule 4901:1-27-10 governs material changes in the business activities of a CRNGS. Among other things, this rule requires that a CRNGS provide the Commission notice of a material change "under the docket number assigned to the retail natural gas supplier's . . . initial certification or most recent certification renewal application." (Emphasis added). This rule is the very reason that IGS filed its notice of material change in the above-captioned docket—the same docket initially assigned to IGS' initial CRNGS certification application. Consequently, NOPEC filed its motion to intervene in the above-captioned docket. Requiring NOPEC, OCC, Border Energy, Stand Energy, the Retail Energy Supply Association or any other interested party

to initiate a separate complaint proceeding would simply waste time and money. Such a suggestion is unreasonable, inefficient, and not supported by Commission precedent.

III. NOPEC's request for an evidentiary hearing is not only procedurally proper, but necessary to adequately resolve the issues in this case.

On page 3 of its Memorandum Contra, IGS inaccurately states that it is "not only inappropriate, but procedurally improper for the Objecting Parties to ask the Commission to have a hearing on IGS' notice of use of a trade name in IGS' certification docket." This statement ignores the fact that a hearing in IGS' certification docket is exactly what the Commission's own rules contemplate.

OAC Rule 4901:1-27-10(A)(2) specifically states:

After notice and an opportunity for a hearing, the commission may suspend, rescind, or conditionally rescind a 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. (Emphasis added).

This "opportunity for a hearing" is exactly what NOPEC, OCC, and others have requested, and exactly what must be held to adequately resolve the numerous issues and unanswered questions relating to IGS' notice of material change. See pages 4-5 of NOPEC's Motion to Intervene.

IV. IGS improperly and summarily dismissed the unique nature of NOPEC's interests in requesting intervention and an evidentiary hearing.

NOPEC, OCC, Border Energy, Stand Energy, and the Retail Energy Supply Association filed separate motions to intervene because they represent different groups and interests. Although NOPEC shares OCC's concerns about the customer confusion issues raised by IGS' Notice, it did not raise "essentially the same arguments" as the other parties. In fact, NOPEC's substantive comments are focused on the effect of IGS' trade name change on governmental natural gas aggregators. As the largest governmental retail energy aggregator in the State of

Ohio, NOPEC represents the broad interests of governmental aggregators as well as the specific interests of residential and small business customers participating in NOPEC's natural gas aggregation program. Not only did IGS fail to address the substantive issues raised in NOPEC's Motion,¹ but it proved unable to specifically identify any of the statutory or regulatory criteria for intervention that NOPEC did not satisfy.

V. The use of the "Columbia" name by IGS, an entity unaffiliated with Columbia Gas, is unprecedented.

IGS devotes nearly two pages of its Memorandum Contra (pages 5-6) to incorrectly arguing that its use of the "Columbia" name would be "consistent with longstanding practice." The examples cited by IGS involve unregulated affiliates of incumbent utilities using a portion of the incumbent utility's trade name as part of its own. The relationships between the unregulated affiliate of an incumbent utility and the incumbent utility itself (e.g. FirstEnergy Solutions and First Energy) are governed by corporate separation rules inapplicable to IGS. Importantly, IGS has no affiliation whatsoever with Columbia Gas—a fact IGS readily admits in its Memorandum Contra (at page 3, footnote 3).² IGS' analogies do not pertain to the unique set of facts presented in IGS' Notice, and there is nothing in the Commission's past practice that suggests that IGS should be allowed use of the "Columbia" trade name.

VI. IGS' use of the "Columbia" trade name serves no purpose other than to confuse customers and undermine natural gas governmental aggregation in Ohio.

R.C. 4929.20(B) does not provide IGS with carte blanche authority to confuse customers through the use of the "Columbia" name by an entity unaffiliated with Columbia Gas. Instead,

¹ Notably, IGS did not address NOPEC's primary concern that the kind of natural gas sales practices represented by IGS' proposed trade name change, at the very same time that Columbia Gas is discussing its transition to SCO service, will cause unnecessary customer confusion, unfairly skew the distribution of customers and, ultimately, undermine natural gas governmental aggregation in Ohio.

² IGS explained that "no ownership or corporate affiliation exists between IGS and a public utility."

this statute provides the Commission with specific guidance regarding the implementation of rules relating to capability standards, including the marketing practices of CRNGS.

Specifically, the second sentence of R.C. 4929.20(B) explains that such capability “standards shall allow flexibility for voluntary aggregation, to encourage market creativity in responding to consumer needs and demands.” Rather than giving an unaffiliated company (IGS) the right to use a regulated utility’s (Columbia Gas) trade name, this section requires the Commission to keep in mind the importance of governmental aggregation as a creative market solution for customer needs and demands. The phrase “encourage market solutions” highlighted by IGS assuredly does not contemplate IGS “rebranding its marketing offers” through the use of the “Columbia” name when it already provides service under an entirely adequate trade name that raises no issues regarding its relationship to an incumbent Ohio utility.

VII. Clarification regarding NOPEC’s natural gas aggregation program.

NOPEC does wish to correct the record regarding its natural gas aggregation program. NOPEC currently provides natural gas governmental aggregation service to approximately 70,000 residential and small business natural gas customers located in the service territory of Columbia Gas. The competitive retail natural gas supplier chosen by NOPEC to serve its customers is Dominion Retail, not Dominion East Ohio Energy. Unlike IGS, Dominion Retail is an unregulated affiliate of a public utility in Ohio, thereby rendering any comparison to IGS entirely inaccurate. NOPEC does not conduct its CRNGS aggregation operations under the trade name of a utility company.

For the reasons set forth in NOPEC's Motion to Intervene, and as set forth above, NOPEC respectfully requests that its Motion to Intervene be granted, and that this case be set for an evidentiary hearing.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following parties of record by regular U.S. mail and e-mail, this 10th day of September 2010.

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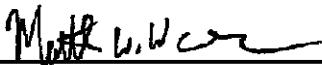
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