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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**PUCO**

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**REPLY TO IGS' MEMORANDUM CONTRA OCC'S MOTION TO INTERVENE  
AND MOTION FOR AN EVIDENTIARY HEARING  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION AND STATEMENT OF FACTS**

On August 20, 2010, the Office of the Ohio Consumers' Counsel ("OCC") filed a Motion to Intervene and a Motion for an Evidentiary Hearing in this case involving a Notice of Material Change ("Notice") filed by Interstate Gas Supply, Inc. ("IGS"). On Friday, August 6, 2010, IGS filed the Notice to alert the Public Utilities Commission of Ohio ("Commission" or "PUCO") that IGS registered a new trade name, Columbia Retail Energy, with the Secretary of State.<sup>1</sup> The name change is allegedly pursuant to a licensing agreement with Nisource, and does not include an affiliate relationship between any company held by Nisource (the holding company of Columbia Gas of Ohio) and IGS.

On August 31, 2010, Border Energy Inc. ("Border") and Northeast Ohio Public Energy Council ("NOPEC") filed Motions to Intervene, and Motions for an Evidentiary Hearing. On September 3, 2010, IGS filed a Memo Contra to OCC, Border and NOPEC's interventions and Motions for an Evidentiary Hearing ("Memo Contra"). In

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<sup>1</sup> IGS Notice at 1 (August 6, 2010).

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addition, IGS filed a Motion for a Protective Order. On September 7, 2010, additional Motions to Intervene were filed by Stand Energy (“Stand”) and Retail Energy Supply Association (“RESA”).<sup>2</sup>

Pursuant to Ohio Adm. Code 4901-1-12 (B)(2) OCC hereby replies to the IGS Memo Contra OCC Motion to Intervene.<sup>3</sup>

## **II. ARGUMENT**

### **A. OCC’s Motion To Intervene Should Be Granted.**

While IGS’ Memo Contra states its opposition to OCC’s intervention in the introduction;<sup>4</sup> however it should be noted that IGS fails to make any appropriate legal arguments in response to the arguments made by OCC in support of its Motion to Intervene. The Ohio law governing intervention -- 4903.221 -- requires that intervention should be allowed in PUCO proceedings when the statutory criteria are met, as OCC has done in this case.

The intervention statute, R.C. 4903.221(B), requires the PUCO to consider the following -- and only the following criteria -- in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor’s interest;

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<sup>2</sup> 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 Semptra Energy Solutions LLC.

<sup>3</sup> Pursuant to Ohio Adm. Code 4901-1-12(B)(2), the OCC has seven (7) days to file its Reply. Because the Commission has not issued an Entry authorizing electronic service, and because the OCC was served the Memo Contra by mail, pursuant to Ohio Adm. Code 4901-1-07(B) an additional three days shall be added to the prescribed period of time.

<sup>4</sup> Memo Contra at 1-2.

- (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.

IGS did not even argue that OCC failed to meet any of the above intervention criteria.

In addition, OCC cited to the decision of the Supreme Court of Ohio in *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 384, 388, a case in which the Court confirmed OCC's right to intervene in PUCO proceedings. There, the Court reversed the PUCO ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention.

Therefore, in this case, the Commission should follow Ohio law and the Court's determination that the Commission should liberally construe the rules in favor of intervention, and grant OCC's intervention.<sup>5</sup>

**B. The PUCO Should Consider Objections To The Proposed IGS Name Change In This Proceeding And Should Do So By Holding A Hearing.**

The Commission's rules provide for a hearing in this proceeding.<sup>6</sup> But IGS argues against it. IGS states:

It is not only inappropriate but also 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, since there is nothing that the Commission could find that is relevant to the elements to be considered by the Commission in determining

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<sup>5</sup> For the same reason, OCC supports the Motions to Intervene filed by Border, NOPEC, Stand Energy and RESA.

<sup>6</sup> Ohio Adm. Code 4901:1-27-10(A)(2).

whether a properly issued certification should be suspended, rescinded or conditionally rescinded.<sup>7</sup>

IGS makes this argument without benefit of citation or explanation as to what makes OCC's request for a hearing "inappropriate" or "procedurally improper." It is up to the Commission -- not IGS -- to weigh the evidence and make a determination if the proposed name change and use of the Columbia logo results in adversely affecting the retail natural gas supplier's fitness or ability to provide the services for which it is certified. OCC should have the opportunity to present evidence and otherwise participate at hearing.

IGS, a Competitive Retail Natural Gas Supplier ("CRNGS"), has sought the right to use the trade name and logo of the local distribution company ("LDC"), Columbia Gas of Ohio, Inc. ("Columbia"). The twist on this scenario is that IGS is not affiliated with Columbia, but nevertheless seeks the use of the Columbia name and logo in order to achieve a competitive advantage.

The Commission's rules pertaining to material changes in business require that the Notice of Material Change be filed in the docket number assigned to the retail natural gas supplier's initial certification or most recent certification renewal application.<sup>8</sup> Furthermore, the PUCO's rules recognize that any change in the applicant's name or any use of a fictitious name constitutes a material change in business.<sup>9</sup> IGS has proposed a material change in business and has filed its Notice in the appropriate docket.

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<sup>7</sup> Memo Contra at 3.

<sup>8</sup> Ohio Adm. Code 4901:1-27-10(A)(1).

<sup>9</sup> Ohio Adm. Code 4901:1-27-10(B)(9).

Even IGS recognizes that the Commission's rules provide for a hearing to adjudicate the proposed material change. In its Memo Contra, IGS states:

Therefore, the only grounds on which a hearing could now be held would be if the Commission determined that IGS' notice of use of the CRE trade name so adversely affected IGS' fitness or ability to provide the services for which it is certified that it warranted an adjudication by the Commission as to whether IGS' recently issued renewal certification should be suspended, rescinded or conditionally rescinded.<sup>10</sup>

In light of the fact that Ohio Adm. Code 4901:1-27-10(A)(2) requires such Commission adjudication to be determined through a hearing, the Commission should establish a procedural schedule that includes an evidentiary hearing.

The Commission's rules provide the PUCO with the power to suspend, rescind, or conditionally rescind the CRNG'S certificate after notice and opportunity for a hearing.

The Commission's rules state:

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.<sup>11</sup>

The Commission has the authority in this proceeding to adjudicate the material change to IGS' recently issued renewal certificate.<sup>12</sup> The Commission should determine that a Certificate with IGS proposing to use the trade name Columbia Retail Energy should be suspended, rescinded or conditionally rescinded due solely to the proposed material

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<sup>10</sup> Memo Contra at 2.

<sup>11</sup> Ohio Adm. Code 4901:1-27-10(A)(2) (emphasis added).

<sup>12</sup> Memo Contra at 2. ("[IGS] filed for certificate renewal on June 21, 2010, and its certificate was renewed by operation of law, pursuant to O.A.C. 4901:1-27-09(0) and 4901:1-27-06(A), on July 22, 2010.").

change in business.<sup>13</sup> OCC does not advocate for IGS' recently renewed certificate to be suspended, rescinded or conditionally rescinded as long as IGS continues to do business under the IGS name. However, if the Commission decides to suspend, rescind or conditionally rescind IGS' certificate, then the Commission should assure that IGS follows Ohio Adm. Code 4901:1-27-12 to assure that IGS's existing customers will continue to receive natural gas commodity service without interruption.

Finally, IGS argues that “\* \* \* a motion to hold a hearing on whether or not IGS should be able to use a licensed trade name is outside the scope of the certification docket \* \* \*.”<sup>14</sup> IGS is wrong, because the same rule that IGS cites -- Ohio Adm. Code 4901:1-27-10 -- is the very rule that defines a name change as a material change in business, and also provides for an evidentiary hearing on the CRNGS' fitness as a result of that very same material change in business. Therefore, the issue is not outside the scope of this proceeding, and OCC's Motion to Intervene and Motion for an Evidentiary Hearing should be granted.

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<sup>13</sup> In the Matter of the Application of Future Now Energy LLC for a Certificate to Provide Competitive Retail Natural Gas Service in Ohio, Case No. 06-791-GA-CRS Entry at XXX (Date XXX).( Pursuant to Rule 4901:27-10(A)(13), O.A.C., any change to or termination of the July 21, 2006, energy procurement agreement with Volunteer Energy would constitute a material change in business that must be reported to the Commission within 30 days. In the event of a change to or termination of the agreement with Volunteer Energy, Future Now would be required to demonstrate expertise comparable to that which is being provided under that agreement. If it can cite no such comparable expertise, Future Now might then be found ineligible to continue serving as a CRNGS provider and Future Now's certificate might then be suspended or rescinded, pending demonstration of comparable expertise.”).

<sup>14</sup> Memo Contra at 4.

**C. IGS' Use Of The Columbia Retail Energy Trademark Is Not Consistent With Longstanding Practice.**

IGS argues that it is not the first to use a trademark, trade name or fictitious name that is similar to that of an incumbent utility in the Ohio market.<sup>15</sup> IGS is almost right. What differentiates the IGS name change proposal from the other usage of trade names that IGS cited is the fact that IGS is not affiliated with Columbia.<sup>16</sup> Despite the apparent lack of an affiliate relationship, IGS has sought the right to use the Columbia name and logo in its future marketing efforts. But such a proposal can harm customers by creating confusion arising from a non-affiliate using another provider's name and then having a disclaimer that states that the company is not the utility and also not an affiliate.

IGS mischaracterizes the law in arguing in favor of the name change. IGS states:

\* \* \*, the Commission, by direction of the Legislature, when considering any rules it develops, is to ensure that "the standards shall allow flexibility for voluntary aggregation, to encourage market creativity in responding to consumer needs and demands" (emphasis omitted). [R.C.] 4929.20(B).

Unfortunately, the "creativity" referenced in the law is supposed to respond to "consumer needs and demands." Customer confusion does not respond to consumers' needs and demands.<sup>17</sup> What IGS is seeking is not about its customers' needs but would seem to be about gaining competitive advantage.

The Commission must stop IGS' use of the trade name Columbia Retail Energy, and alert IGS (and other gas marketers) that creative marketing must serve consumers'

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<sup>15</sup> Memo Contra at 5. ("In fact, IGS would be no less than the sixth, given the similarity of Dominion East Ohio Energy to Dominion East Ohio, First Energy Solutions to First Energy, Vectren Source to Vectren Energy Delivery, Duke Retail Energy to Duke Energy-Ohio and AEP Retail Energy to AEP-Ohio.")

<sup>16</sup> Memo Contra at 4.

<sup>17</sup> Ohio Adm Code 4901:1-29-05(C). ("No retail natural gas supplier or governmental aggregator may engage in 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.")

“needs” and not confuse them. Therefore, the Commission should grant OCC’s Motion to Intervene and Motion for an Evidentiary Hearing.

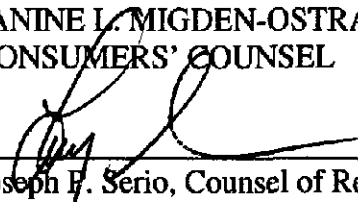
### **III. CONCLUSION**

For all the reasons stated above, OCC’s Motion to Intervene should be granted. IGS should be rejected in its efforts to foreclose OCC from intervening in this case on behalf of consumers. Finally, the Commission should grant OCC’s Motion for an Evidentiary Hearing, and preclude IGS from using the trade name Columbia Retail Services.



Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



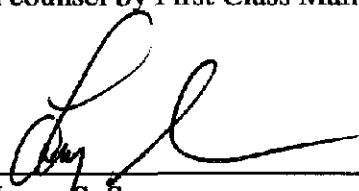
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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing  
*Reply* has been served upon the below-named counsel by First Class Mail this 13th day of  
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