

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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PUCO

**REPLY TO IGS' MEMORANDUM CONTRA
OCC'S MOTION TO COMPEL DISCOVERY
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION AND STATEMENT OF FACTS

This case relates to the Notice of Material Change that Interstate Gas Supply, Inc. ("IGS") filed because it registered a new trade name, Columbia Retail Energy, with the Secretary of State.¹ The name change is allegedly pursuant to a licensing agreement with Nisource (the parent company of Columbia Gas of Ohio), and reportedly does not include an affiliate relationship between IGS and Nisource.

On Friday, August 6, 2010, IGS filed a Notice to alert the PUCO that IGS registered a new trade name, Columbia Retail Energy, with the Secretary of State.²

On August 20, 2010, OCC filed its Motion to Intervene and Motion for an Evidentiary Hearing. OCC also served its First set of Discovery on IGS on the same day it moved for intervention. Subsequently, 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.

¹ IGS Notice at 1 (August 6, 2010).

² IGS Notice at 1 (August 6, 2010).

On September 3, 2010, IGS filed a Memorandum Contra to the intervention requests of OCC, Border and NOPEC and to the Motions for an Evidentiary Hearing. In 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").³ Further Motions to Intervene were filed by Delta Energy, LLC and the Ohio Farm Bureau Federation on September 15, 2010 and October 5, 2010, respectively.

On September 17, 2010, OCC filed its Motion to Compel Discovery pursuant to Ohio Adm. Code 4901-1-12 and 4901-1-23.⁴ OCC submitted its Motion to Compel IGS to respond to OCC's request for the production of documents and to provide complete responses to OCC's discovery interrogatories. On October 4, 2010, IGS filed its Memorandum Contra OCC Motion to Compel ("Memo Contra"). Pursuant to Ohio Adm. Code 4901-1-12 (B)(2), OCC hereby replies to the IGS Memo Contra OCC Motion to Compel.⁵

II. ARGUMENT

IGS repeated arguments from its Memorandum Contra to OCC's Motion to Intervene to further argue against responding to OCC's discovery requests. IGS states:

³ 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.

⁴ See also NOPEC Motion to Compel Discovery (September 29, 2010).

⁵ 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.

IGS will simply state that allowing OCC to intervene and conduct discovery in a proceeding where it has not, and cannot, establish its right to intervene would allow OCC to conduct unlimited fishing expeditions in all dockets, regardless of whether OCC's Intervention is appropriate.⁶

IGS is wrong. OCC already responded, in our earlier Memorandum Contra, to all of IGS's arguments regarding OCC's intervention, which OCC incorporates by reference here.⁷ Therefore, there is no reason to revisit the same IGS intervention arguments.

IGS makes the argument that it should not be required to respond to discovery until the preliminary questions regarding OCC's intervention and hearing requests are answered. That claim mistakenly assumes that discovery is contingent upon the preliminary findings that IGS describes. However, as is obvious from IGS' failure to provide the Commission with any authority for such a claim, there is no statutory, or case precedent supporting this claim.. Moreover, the Commission's Rule carve out no such exception. Ohio Adm. Code 4901-1-16(H) states:

For purposes of rules 4901-1-16 to 4901-1-24 of the Administrative Code, the term "party" includes any person who has filed a motion to intervene which is pending at the time a discovery request or motion is to be served or filed.

Rather, Ohio Adm. Code 4901-1-17(A) provides that the time periods for discovery begin immediately when a proceeding begins: "discovery may begin immediately after a proceeding is commenced...." OCC complied with the PUCO's discovery rules -- and, unlike IGS, is advancing positions for resolving this issue with the full support of the PUCO's rules.

⁶ Memo Contra at 2.

⁷ See OCC Reply to IGS's Memoranda Contra OCC Motion to Intervene 2-8 (September 13, 2010).

OCC's discovery requests are relevant and reasonably likely to lead to the discovery of admissible evidence.⁸ IGS disagrees with OCC's position because it contends that:

It is unprecedented, and without legal basis, to hold a hearing in a certification docket to determine whether a CRNGS provider should be able to use a particular trade name. * * * Since a certification docket is not the appropriate venue to prospectively discuss IGS' marketing efforts, OCC's discovery requests are neither relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence in this docket.⁹

IGS' arguments are incorrect for a couple of reasons. First, 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 rule states:

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.¹⁰

The Commission has the authority in this proceeding to adjudicate the material change to IGS' recently issued renewal certificate.¹¹

Second, the trade name that IGS is proposing is a significant change, and one that is not comprehended by the Commission's rules. IGS is proposing the use of the trade

⁸ OCC Motion to Compel at 4-5 (September 17, 2010).

⁹ Memo Contra at 3.

¹⁰ Ohio Adm. Code 4901:1-27-10(A)(2) (emphasis added).

¹¹ 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.").

name Columbia Retail Energy with the Columbia sunburst logo. The important distinction in this case is that there is no affiliate relationship between IGS and Columbia Gas of Ohio, Inc., although consumers may be misled into thinking so based on the similar name and logo.

Through its rules, the Commission has taken action to prevent consumers from being misled and deceived if a local distribution gas company's ("LDC") competitive retail affiliate used the company name and/or logo.¹² The Commission requires an LDC's competitive retail affiliate to disclose the affiliate relationship in its advertising and marketing materials.¹³ Failure to make such disclosure constitutes an unfair, misleading, deceptive, or unconscionable act or practice.¹⁴

But the idea of a supplier using the name and logo of a non-affiliated natural gas utility to sell gas to consumers was apparently so far-fetched that it was not the subject of PUCO rules. Therefore, under these circumstances, the Commission should exercise its authority and set this matter for hearing.

Third, the certification case is where the rules instruct the notice of material change be filed. Ohio Adm. Code 4901:1-27-10(A)(1) states:

A retail natural gas supplier or governmental aggregator shall file such notice under the docket number assigned to the retail natural gas supplier's or governmental aggregator's initial certification or most recent certification renewal application, whichever is the most recent.

Therefore, the Commission should find that the present proceeding is the appropriate case

¹² Ohio Adm. Code 4901:1-29-05(C)(8)(f).

¹³ Id.

¹⁴ Id.

for these issues to be addressed, and that IGS should respond to OCC's discovery requests *post haste*.

IGS further argues that OCC's opportunity for discovery has passed.¹⁵ In support of its position, IGS relies upon the fact that R.C. 4929.20 states that a certification or renewal certification shall be deemed approved if not acted upon within 30 days of filing, and thirty days has passed.¹⁶ The problem with the IGS argument is that this is not a certification or a certification renewal case. Ohio Adm. Code 4901:1-27-06 (Application Approval or Denial) and Ohio Adm. Code 4901:1-27-09 (Certification Renewal) both of the above Ohio Adm. Code sections includes provisions that establish a 30-day automatic approval. However, Ohio Adm. Code 4901-1-29-10 (Material Changes in Business) does not include the same 30-day automatic approval provision. Therefore, IGS's claim is deficient and OCC's opportunity for discovery has not passed, and the Commission should compel IGS to respond.

III. CONCLUSION


For all the reasons stated above, OCC's Motion to Compel should be granted. And IGS should be instructed to respond to OCC's discovery *post haste*, in the interest of an appropriate review in this case toward protecting Ohioans in their natural gas purchases.

¹⁵ Memo Contra at 5.

¹⁶ Memo Contra at 5.

Respectfully submitted,

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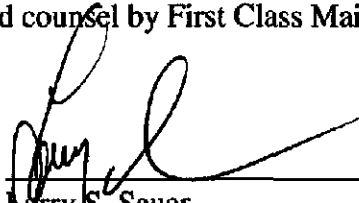


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CERTIFICATE OF SERVICE

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 14th day of
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