

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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**JOINT REPLY TO IGS' MEMORANDUM CONTRA THE
MOTION TO CEASE AND DESIST AND MOTION FOR SANCTIONS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL,
NORTHEAST OHIO PUBLIC ENERGY COUNCIL, BORDER ENERGY, INC,
STAND ENERGY CORPORATION AND DELTA ENERGY, LLC**

I. INTRODUCTION AND STATEMENT OF FACT

The Office of the Ohio Consumers' Counsel ("OCC"), the Northeast Ohio Public Energy Council ("NOPEC"), Border Energy, Inc. ("Border"), Stand Energy Corporation ("Stand") and Delta Energy, LLC ("Delta") (hereinafter together "Joint Movants") hereby reply ("Joint Reply") to the IGS' "Memo Contra Motion to Order Interstate Gas Supply ("IGS") to Cease and Desist and Motion for Sanctions" ("Memo Contra").¹ The Memo Contra was filed on October 14, 2010. The Joint Movants incorporate the facts as stated in their Motion to Cease and Desist and Motion for Sanctions ("Motions") filed on September 28, 2010.

¹ 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.

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II. ARGUMENT

A. The Commission Should Issue An Order In this Case.

IGS addresses the elements that Joint Movants cited as support for the granting of their motions. First, IGS contends that it will likely succeed on the merits, and so claims it should not be made to cease and desist in the use of the Columbia name.² In support of its contention, IGS cites to a number of instances in which the Commission has issued certificates in the applicant's legal name without listing trade names,³ or where the Commission did not issue a new certificate following a Notice of Material change for nine months.⁴ But in each of the cases cited by IGS there was no opposition to the certificate applications or the notice of material change. The issue for the Commission is whether the level of opposition to the IGS name change distinguishes this case from the other cases IGS relies upon.

The level of opposition to the IGS proposal is significant, as evidenced by the pleadings currently pending before the Commission: seven (7) Motions to Intervene,⁵ three (3) Motions for an Evidentiary Hearing, one (1) Request for a Rulemaking, two (2) Motions to Compel Discovery,⁶ one (1) Motion to Cease and Desist and one (1) Motion for Sanctions,⁷ all opposing the name change.

² Memo Contra at 9-11.

³ Memo Contra at 10, footnote 21.

⁴ Memo Contra at 10, footnote 22.

⁵ Motions to Intervene: OCC (August 20, 2010), Border (August 31, 2010), NOPEC (August 31, 2010), Stand (September 7, 2010), Retail Energy Supply Association ("RESA") (September 7, 2010), Delta (September 15, 2010) and Ohio Farm Bureau Federation ("OFBF") (October 5, 2010).

⁶ OCC (September 17, 2010) and NOPEC (September 29, 2010).

⁷ OCC, NOPEC, Border, Stand, and Delta (September 28, 2010).

B. The Status of the IGS Certificate Should Be Decided.

The certification issue can be boiled down to whether IGS has a lawful certificate entitling IGS to market competitive retail natural gas services using the trade name Columbia Retail Energy. IGS states that it does.⁸ The Joint Movants claim that IGS has no such certificate, and thus no right to market its services using the Columbia Retail Energy trade name.⁹ Both sides have expended significant resources to present their cases to the Commission.

IGS relies on its argument that its certificate was automatically-approved. IGS stated:

* * * the rules that relate to certification timing would apply. O.A.C. 4901:1-27-06(A) provides "If the commission does not act upon an application within thirty days of the filing date, the application shall be deemed automatically approved pursuant to section 4929.20 of the Revised Code on the thirty-first day after the official filing date."¹⁰

That argument has been refuted by the Joint Movants. Joint Movants contend 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. However, this is not a certification or renewal certification case.

The IGS argument that its Notice of Material Change was automatically approved is wrong because this is not a certification or a certification renewal case. Both Ohio Adm. Code 4901:1-27-06 (Application Approval or Denial) and Ohio Adm. Code 4901:1-27-09 (Certification Renewal) includes provisions that establish a 30-day automatic approval process. However, Ohio Adm. Code 4901-1-29-10 (Material

⁸ IGS Memo Contra at 9-11.

⁹ Motions at 5-8.

¹⁰ Memo Contra at 11 (emphasis omitted).

Changes in Business) -- the provision under review in this case -- **does not** include the same 30-day automatic approval provision. These are rather straightforward arguments that the Commission is in a position to resolve without further delay.

C. Further Delay Can Lead To Consumer Confusion And Irreparable Harm.

The Commission needs to rule in this case to prevent any further irreparable consumer harm from IGS' use of the Columbia Retail Energy trade name. IGS makes the unsubstantiated argument that customers will not be misled to believe that Columbia Retail Energy is related to Columbia Gas of Ohio because of the clear and conspicuous disclaimers on all marketing materials.¹¹ However, Joint Movants do not reach their conclusions through speculative leaps as IGS contends.¹² The fact is that IGS has spent the past 21 years building its brand: "by serving its customers honestly and reliably."¹³ It is interesting to note that IGS is fighting for the right to use the Columbia Retail Energy trade name only in the Columbia service territory.¹⁴ This break from the branded and well recognized IGS name certainly should not be done without careful consideration as to how marketing materials using the Columbia Retail Energy trade name in conjunction with the highly recognizable Columbia logo will be received by consumers.

Joint Movants contend that IGS' decision was made solely to expand market share through unfair, misleading and deceptive marketing practices which are specifically

¹¹ Memo Contra at 13-14.

¹² Memo Contra at 13.

¹³ Memo Contra at 1.

¹⁴ See IGS marketing materials sent to consumers in Dominion East Ohio Territory attached hereto as Exhibit A.

disallowed by Commission rules.¹⁵ IGS' use of the Columbia Retail Energy trade name and Columbia logo impacts the fundamental concept of a competitive Choice market in Columbia's service territory. Therefore, the Commission needs to decide this case as soon as practicable in order to prevent consumers from being harmed by this marketing ploy.

D. IGS Will Not Be Harmed By A Cease And Desist Order.

IGS states that it would be substantially harmed if the Motion to Cease and Desist were to be granted. IGS states:

As the Objecting Parties know, marketing to customers before the gas season is very important for natural gas suppliers and preventing IGS from doing so will cause great financial harm to IGS.¹⁶

As Joint Movants argued, IGS retains the right to market to consumers in the Columbia Service Territory as IGS, thereby maintaining the status quo and resulting in no harm to IGS.

IGS also argued against its own interest by stating:

While IGS does not believe it was necessary to wait 30 days after the filing to use the CRE service mark, **out of abundance of caution** IGS did not use the Columbia Retail Energy trade name in the market until after September 6, 2010, allowing the full 30 days to expire.¹⁷

By delaying its use of the Columbia Retail Energy trade name for a period of time beyond when IGS argues it was not legally obligated to do so demonstrates a weakness in its legal position, and that it has acted at its own risk. Therefore, to the extent IGS

¹⁵ Ohio Adm. Code 4901:1-29-03(A), Ohio Adm. Code 4901:1-29-05(C), Ohio Adm. Code 4901:1-27-12(D)(9).

¹⁶ Memo Contra at 15-16.

¹⁷ Memo Contra at 11(emphasis added).

expended resources to develop and promote the Columbia Retail Energy trade name, and did so at its own risk, the Commission should find that IGS will not be harmed by a Commission order requiring IGS to cease and desist from the use of the Columbia Retail Energy trade name and logo.

E. Sanctions Are Appropriate In This Case.

IGS argues that sanctions are not authorized.¹⁸ IGS is wrong. In the event the Commission decides that IGS has been marketing under a trade name that is not authorized pursuant to a legal certificate, the Commission's rules provide for such sanctions.¹⁹

III. CONCLUSION

The time for Commission action in this case is now. The Commission should Order IGS to cease and desist further marketing and solicitation efforts using the trade name Columbia Retail Energy. And the Commission should Order sanctions in the amount of \$1,000 per solicitation per day due to the unfair, misleading, deceptive or unconscionable nature of the marketing and solicitation efforts. The PUCO should also determine if other sanctions are also appropriate.

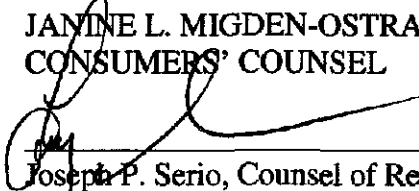
IGS' behavior is especially troublesome because it includes a decision to proceed with use of the Columbia trade name and logo prior to receipt of necessary Commission approval for such actions. The Commission should therefore grant these Motions.

¹⁸ Memo Contra at 16.

¹⁹ Ohio Adm. Code 4901:1-34-08.

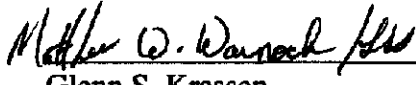
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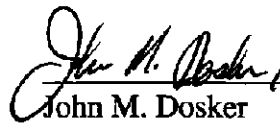
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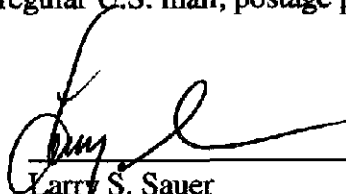
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Joint Reply IGS Memo Contra to Joint Motion to Cease and Desist and Motion for Sanctions* has been served upon the below-named persons via regular U.S. mail, postage prepaid, this 25th day of October, 2010.


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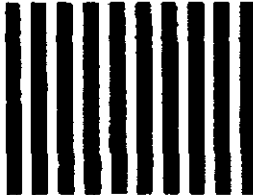
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Dominion East Ohio Natural Gas Customer
Important Natural Gas Information



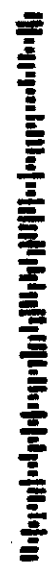
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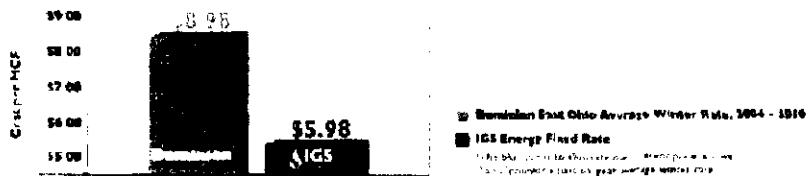




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IGS Energy is currently offering a low fixed rate of \$5.98 per MCF through your June 2011 billing cycle!



This offer is available for a limited time only. Please enroll no later than Friday, November 19, 2010.



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IGSenergy.com and enter
the promo code below.

You will need your Dominion East Ohio natural gas account number at the time you enroll.

IGS Energy Promo Code: NFD12A226207

Natural Gas Choice.

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☒ **Yes! I want to take control of my natural gas costs.**

By signing this enrollment form, I am enrolling with IGS Energy for a fixed rate of \$5.98 per MCF through my June 2011 billing cycle.

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1. Dominion East Ohio natural gas account number

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Signature

IGSENERGY.

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Your signature on this document is required to activate your account and to authorize us to use your personal information. Your signature must be legible. IGS Energy reserves the right to change and amend this document without notice. Your signature is valid for 30 days. After 30 days, your signature is open to residents of the Commonwealth of Massachusetts and those states in which IGS Energy has a sales territory. IGS Energy reserves the right to deactivate your account for customers using 544012 if we determine that you are not using the right to use our natural gas delivery services in accordance with the applicable regulatory jurisdiction. By signing this consent form, you authorize IGS Energy to be your agent for purposes of, on behalf of, your natural gas needs with respect to enrolling you in the program, supplying your natural gas, interacting with the utility on your behalf and receiving information regarding your account. To acknowledge receipt of the terms and conditions involved with this offer and by signing this card agree to the terms and conditions of the program. IGS Energy reserves the right to obtain information about your account from your local utility.