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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of )

The Office of the Ohio Consumers' )  
Counsel )

10 West Broad Street, Suite 1800 )  
Columbus, Ohio 43215 )

Case No. 10-2395-GA-CSS

Stand Energy Corporation )  
1077 Celestial Street, Suite 110 )  
Cincinnati, Ohio 45202 )

Border Energy, Incorporated )  
9787 Fairway Drive )  
Powell, Ohio 43065 )

Northeast Ohio Public Energy Council )  
31320 Solon Road, Suite 20 )  
Solon, Ohio 44139 )

Ohio Farm Bureau Federation )  
280 North High Street )  
Columbus, Ohio 43218-2383 )

Complainants, )

v. )

Interstate Gas Supply d/b/a Columbia )  
Retail Energy )  
5020 Bradenton Avenue )  
Dublin, Ohio 43017 )

Respondent. )

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

PUCO

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**JOINT MOTION TO CONSOLIDATE CASES**  
**BY**  
**THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**  
**STAND ENERGY CORPORATION**  
**BORDER ENERGY, INCORPORATED**  
**NORTHEAST OHIO PUBLIC ENERGY COUNCIL, AND**  
**OHIO FARM BUREAU FEDERATION**

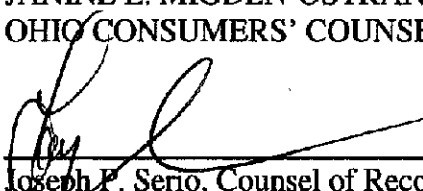
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The Office of the Ohio Consumers' Counsel ("OCC") Stand Energy Corporation ("Stand"), Border Energy, Inc. ("Border"), Northeast Ohio Public Energy Council ("NOPEC"), and the Ohio Farm Bureau Federation ("OFBF") (collectively "Joint Movants") move the Public Utilities Commission of Ohio ("PUCO" or "Commission") to consolidate the above-captioned dockets pursuant to Ohio Adm. Code 4901-1-12 and Ohio Civ.R. 42(A)(1). In both proceedings, the PUCO is being asked to decide whether Interstate Gas Supply, Inc. ("IGS") should be allowed to offer competitive retail natural gas service under the "Columbia Retail Energy" trade name to consumers, and to use the Columbia sunburst logo, in the Columbia Gas of Ohio ("Columbia Gas") service territory even though IGS is not affiliated with Columbia Gas. These facts present the appropriate circumstance for consolidating the two proceedings.

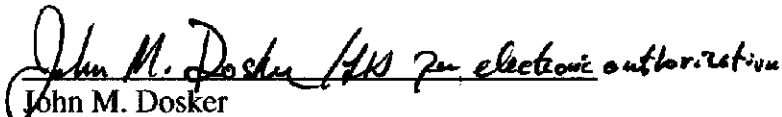

The reasons for granting the Joint Motion to Consolidate are set forth in the attached Memorandum in Support.


Respectfully submitted,

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OHIO CONSUMERS' COUNSEL

  
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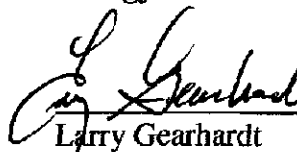
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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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|---------------------------------------|---|-------------------------|
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| The Office of the Ohio Consumers'     | ) |                         |
| Counsel                               | ) |                         |
| 10 West Broad Street, Suite 1800      | ) | Case No. 10-2395-GA-CSS |
| Columbus, Ohio 43215                  | ) |                         |
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| Columbus, Ohio 43218-2383             | ) |                         |
|                                       | ) |                         |
| Complainants,                         | ) |                         |
|                                       | ) |                         |
| v.                                    | ) |                         |
|                                       | ) |                         |
| Interstate Gas Supply d/b/a Columbia  | ) |                         |
| Retail Energy                         | ) |                         |
| 5020 Bradenton Avenue                 | ) |                         |
| Dublin, Ohio 43017                    | ) |                         |
|                                       | ) |                         |
| Respondent.                           | ) |                         |
|                                       | ) |                         |
|                                       | ) |                         |
| In the Matter of the Application of   | ) |                         |
| Interstate Gas Supply, Inc. for       | ) | Case No. 02-1683-GA-CRS |
| Certification as a Retail Natural Gas | ) |                         |
| Supplier.                             | ) |                         |

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## MEMORANDUM IN SUPPORT

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### I. INTRODUCTION

On August 6, 2010, IGS filed a Notice of Material Change ("Notice") with the Commission in Case No. 02-1683-GA-CRS (the "Name Change Case") that would allow IGS to offer competitive retail natural gas service under a new trade name, Columbia Retail Energy. The name change is allegedly pursuant to a licensing agreement between IGS and Nisource (the parent company of Columbia Gas of Ohio), and reportedly does not include an affiliate relationship. The use of this new trade name would allow IGS to offer competitive retail natural gas service under the "Columbia Retail Energy" trade name to consumers, and use the Columbia sunburst logo, in the Columbia Gas service territory even though IGS is not affiliated with Columbia Gas.

Concerned about IGS' unprecedented filing and the adverse impacts on a fair marketplace for consumers as a result of IGS' proposed use of the "Columbia" trade name, each of the Joint Movants, Delta Energy, LLC and the Retail Energy Supply Association moved to intervene in the Name Change Case. Since the filing of these seven (7) motions to intervene, the parties all have taken significant efforts to protest IGS' use of the Columbia Retail Energy trade name on the grounds, among others, that such use constitutes an unfair, misleading, deceptive, or unconscionable act. The intervenors' positions in the case are unanimously in opposition to the IGS proposal, as evidenced by the number and scope of the pleadings currently pending before the

Commission in the Name Change Case; seven (7) Motions to Intervene,<sup>1</sup> three (3) Motions for an Evidentiary Hearing, one (1) Request for a Rulemaking, two (2) Motions to Compel Discovery,<sup>2</sup> one (1) Motion to Cease and Desist, and one (1) Motion for Sanctions.<sup>3</sup>

On October 21, 2010, OCC, Stand, Border, NOPEC, and OFBF collectively filed the above-captioned Complaint alleging that IGS has engaged in marketing, solicitation, and/or sales acts or practices which are unfair, misleading, deceptive, or unconscionable (the "Complaint Case"). The facts and legal theories identified in the Name Change Case are based on substantially the same facts and legal theories propounded in the Complaint Case. The parties are nearly identical. Both actions at issue involve common questions of law and fact relating to interpretation of the exact same transaction. Consolidation of the two actions will promote judicial efficiency and economy for the Commission and all the parties.

For these reasons, consolidation of the Name Change Case and the Complaint Case is warranted.

## **II. CONSOLIDATION IS APPROPRIATE TO PROMOTE JUDICIAL EFFICIENCY.**

Ohio CivR 42(A)(1) allows for the consolidation of cases involving a common question of law or fact:

**When actions involving a common question of law or fact are pending before a court, that court after a hearing**

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<sup>1</sup> 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).

<sup>2</sup> OCC (September 17, 2010) and NOPEC (September 29, 2010).

<sup>3</sup> OCC, NOPEC, Border, Stand and Delta (September 28, 2010).

may order a joint hearing or trial of any or all the matters in issue in the actions; it may order some or all of the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.<sup>4</sup>

The power to consolidate is at the discretion of the trier of fact. *BancOhio Natl. Bank v. Schiesswohl* (1988), 51 Ohio App.3d 130, 132. In deciding whether to consolidate, “the court should be mindful of the purpose of consolidation, which is the saving of time when a joint trial is used as opposed to separate trials.” See *Waterman v. Kitrick* (1990), 60 Ohio App.3d 7, 14. Consolidation is appropriate when: (1) the actions have a common question of law and fact; (2) consolidation furthers the interest of judicial efficiency; and, (3) the parties are substantially the same. *Id.* The Name Change Case and the Complaint Case provide the legally proper and appropriate circumstances for consolidation.

As noted above, the Complaint Case and the Name Change Case involve the same set of facts, the same marketing activities of IGS, the same licensing agreement between IGS and NiSource, the same Ohio law, and the same Commission rules. In fact, the parties in both proceedings have alleged violations of: R.C. 4929.20(A),<sup>5</sup> and Ohio Adm. Code 4901:1-27-03(A),<sup>6</sup> 4901:1-27-12(I)(7),<sup>7</sup> 4901:1-27-12(I)(9),<sup>8</sup> 4901:1-27-12(I)(11),<sup>9</sup> 4901:1-29-02(A)(d),<sup>10</sup> 4901:1-29-03(A),<sup>11</sup> and 4901:1-29-05(C)(8)(f).<sup>12</sup> Therefore, there

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<sup>4</sup> Emphasis added.

<sup>5</sup> Joint Motion to Cease and Desist at 5; See also Complaint at Claim 1.

<sup>6</sup> *Id.*; See also Complaint at Claim 1.

<sup>7</sup> *Id.* at 7; See also Complaint at Claim 1.

<sup>8</sup> *Id.* at 7; See also Complaint at 2, 10-12.

<sup>9</sup> *Id.* at 7; See also Complaint at Claim 2.

<sup>10</sup> *Id.* at ii, See also Complaint at Claims 10-12.

<sup>11</sup> *Id.* at 7, 11; See also Complaint at Claims 2-9.

<sup>12</sup> *Id.* at 2, 7; See also Complaint at Claims 2 and 3.



are common, if not virtually identical, questions of law and fact justifying the consolidation of the Name Change Case and the Complaint Case.

The Commission has granted consolidation for the sake of judicial economy] in other proceedings where a determination in one case would directly affect the determination in another case involving common issues and parties.<sup>13</sup> Consolidation of the Name Change Case and the Complaint Case will effectively and efficiently consider the issues while conserving resources and avoiding unnecessary delay.<sup>14</sup> Furthermore, consolidation will prejudice no party, and in fact will allow the Commission to rule upon the substantive legal issues in an expedited manner. This approach to proceed effectively and efficiently will serve the Commission's regulatory imperative to ensure that Ohio's residential natural gas customers are protected from unfair, misleading and deceptive marketing tactics.

Finally, the parties in the Name Change Case and the Complaint Case are substantially similar. In fact, five of the parties intervening in the Name Change Case joined together to file the Complaint in the above-captioned case.

Because all of the prerequisites to consolidation have been satisfied, the Name Change Case and the Complaint Case should be consolidated.

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<sup>13</sup> For example see *In re Complaint of the City of Huron Against Ohio Edison Company*, Case No. 03-1238-EL-CSS, Entry at 2 (August 13, 2003). Consolidation was also recently granted by the PUCO for similar proceedings involving interconnection and net-metering complaints. See *In the Matter of the Complaint of Gerald Giesler vs. Toledo Edison Company*, Case No. 07-498-EL-CSS, et al, Entry at 2 (August 20, 2009)

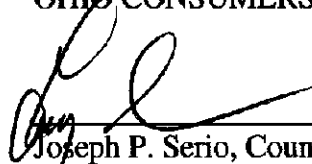
<sup>14</sup> Even more resources will be conserved if the Commission chooses to take judicial notice of the innumerable pleadings and discovery motions that remain pending in the Name Change Case.

### III. CONCLUSION

The Joint Movants, IGS, and Ohio's residential natural gas utility customers will benefit from a final resolution of the issues surrounding IGS' use of the Columbia Retail Energy trade name and Columbia sunburst logo. As a result, and in the name of judicial economy, Joint Movants respectfully request that the Commission grant this Motion to Consolidate.

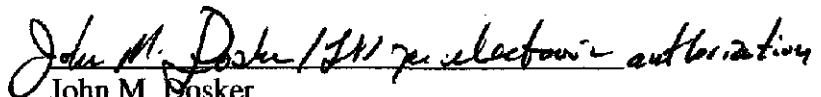
Respectfully submitted,

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OHIO CONSUMERS' COUNSEL

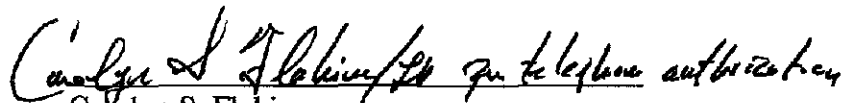


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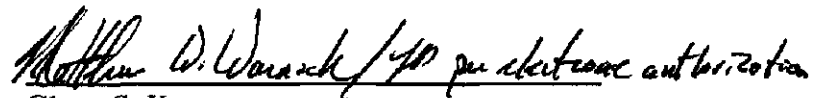
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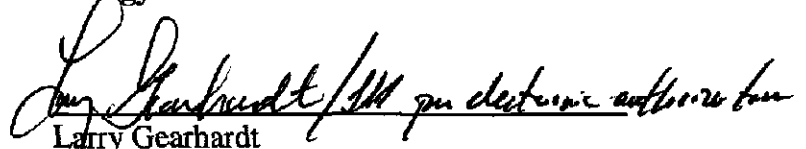
  
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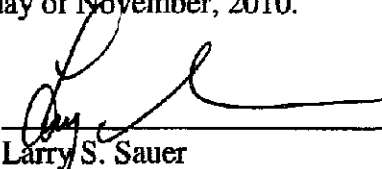
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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing *Joint Motion to Consolidate Cases* has been served upon the below-stated counsel, via regular U.S. Mail, postage prepaid, this 3rd day of November, 2010.

  
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