

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Joint Motion to)
Modify the December 2, 2009 Opinion)
and Order and the September 7, 2011) Case No. 12-2637-GA-EXM
Second Opinion and Order in Case No.)
08-1344-GA-EXM)

**MEMORANDUM CONTRA OF COLUMBIA GAS OF OHIO, INC.
TO STAND ENERGY CORPORATION'S
MOTION TO INTERVENE**

1. Introduction

Pursuant to Rule 4901-1-12(B)(1), Ohio Administrative Code ("O.A.C."), Columbia Gas of Ohio, Inc. ("Columbia") files this Memorandum Contra Stand Energy Corporation's Motion Intervene. The Commission's rules permit intervention by persons who have "a real and substantial interest" that may be "im-pair[ed] or impede[d] * * *, unless the person's interest is adequately represented by existing parties." Rule 4901-1-11(A)(2). Stand Energy Corporation's Motion to Intervene, filed October 22, 2012, identifies no such interest. Instead, Stand Energy asserts that it is intervening to protect the interest of other persons – specifically, Columbia's residential customers, most of whom Stand Energy does not serve; Columbia's small commercial customers; Stand Energy's customers with unspecified "gas transportation issues"; and "Columbia transportation customers." (Motion at 2, 4.) Moreover, the "gas transportation issues" that Stand Energy apparently seeks to address in this proceeding have nothing to do with Columbia's filings here.

If those persons who receive service from Stand Energy and Columbia wish to assert their interests in this action, they are free to file their own motions to intervene. Stand Energy, however, is not authorized to, or qualified to, represent its customers' or Columbia's customers' interests. Moreover, the vaguely defined interests Stand Energy purportedly seeks to represent are entirely irrelevant to this proceeding. For all of these reasons, as further explained below, Columbia respectfully requests that the Commission deny Stand Energy Corporation's Motion to Intervene.

2. Law and Argument

On October 4, 2012, Columbia, PUCO Staff, Ohio Gas Marketers Group, Retail Energy Supply Association, and Dominion Retail, Inc. (collectively, "the signatory parties") filed a joint motion to modify the Commission's orders in Case No. 08-1344-GA-EXM, which originally authorized Columbia to eliminate its gas cost recovery mechanism and replace it with an auction process. In this proceeding, the signatory parties seek authorization for Columbia to, *inter alia*:

- continue the mechanism approved in Case No. 08-1344-GA-EXM that determines how Columbia shares revenue from off-system sales and capacity release with its customers, but with a different cumulative cap for Columbia's share of the revenues (\$60 million over five years, rather than \$42 million over three years);
- increase the security requirements for SCO suppliers by requiring a new \$0.10/Mcf security deposit, with any unused deposits used to lower Columbia's CHOICE/SCO Reconciliation Rider ("CSRR");
- reduce Columbia's balancing fee by \$0.05/Mcf and charge it directly to consumers rather than SCO Suppliers, to make the charge more transparent to consumers;
- adjust Columbia's firm city gate interstate and intrastate pipeline transportation and storage capacity and modify Columbia's capacity contracts to better meet Columbia's customers' needs; and
- exit the merchant function for Columbia's non-residential customers no earlier than April 1, 2014, if at least 70% of the non-residential customers who are eligible to participate in Columbia's CHOICE program have participated in that program for at least three consecutive months.

Stand Energy has now sought to intervene in this proceeding, though it is unclear why. Stand Energy asserts that it has "a real and substantial interest in this proceeding" that no other party "can adequately represent[.]" (Motion at 4.) Yet, Stand Energy never identifies that interest. Instead, the only interests it describes are those of Stand Energy's and Columbia's customers. Stand Energy suggests that it seeks to represent the interests of Columbia's residential and small commercial customers. (See Motion at 2.) Stand Energy further states that it "seeks * * * to protect [its] customers with gas transportation issues and to attempt to prevent any further changes or reductions to [Columbia's] transportation services that may be discussed in this docket that would be detrimental to current Columbia transportation customers and to the competitive market for

natural gas in the Columbia service territory." (*Id.* at 4.) However, the Joint Motion and Joint Stipulation and Recommendation filed in this proceeding do not propose any changes to Columbia's transportation services. In short, Stand Energy is seeking to represent the interests of Columbia customers who have not sought Stand Energy's help, most of whom Stand Energy does not serve, on subjects that are not at issue in this proceeding.

In order to intervene in a Commission proceeding, an entity must demonstrate that it "may be adversely affected by" the proceeding. (Section 4903.221, Revised Code.) More specifically, unless a federal or Ohio statute confers a right to intervene (and Stand Energy does not claim a statutory right to intervene), the entity must demonstrate that it "has a real and substantial interest in the proceeding, and * * * is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest * * *." (Rule 4901-1-11(A)(2), O.A.C.). In determining whether a proposed intervenor meets this standard, the Commission must consider five factors:

- (1) The nature and extent of the prospective intervenor's interest.
- (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 proceedings.
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.
- (5) The extent to which the person's interest is represented by existing parties.

Rule 4901-1-11(B), O.A.C.; *see also* Section 4903.221(B), Revised Code.

Here, a consideration of these factors demonstrates that Stand Energy does not meet the statutory and regulatory requirements for intervention in this action. As discussed above, Stand Energy has no legal interest in these proceedings. Instead, Stand Energy seeks to intervene to protect the purported interests of Columbia customers, despite the lack of any statutory authorization or request

from Columbia's customers to do so. As such, Stand Energy fails to meet the basic requirement for intervention in a Commission proceeding – that the person "may be adversely affected by [the] proceeding[.]" Section 4903.221, Revised Code. For this reason alone, Stand Energy's motion should be denied. *See, e.g., Rumpke Sanitary Landfill, Inc. v. State*, 128 Ohio St.3d 41, 2010-Ohio-6037, ¶22 (2010) (holding that, even though Civ.R. 24(A)(2) is "constru[ed] * * * liberally to permit intervention," a trial court does not abuse its discretion by denying intervention to a party with no "legal interest in the action"); *see also Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶16 (holding that the rule that governs intervention in Commission proceedings "is very similar to Civ.R. 24").

The other factors listed in Rule 4901-1-11(B), O.A.C., also weigh in favor of denying Stand Energy's motion. The legal positions Stand Energy seeks to raise with regard to Columbia's transportation services have no relation to the merits of this case. As such, Stand Energy's intervention would undoubtedly prolong or delay this proceeding by presenting irrelevant testimony and witnesses. Additionally, because there is no indication that Stand Energy has personal knowledge of the interests it seeks to represent (*i.e.*, the interests of Columbia's customers), Stand Energy is not in a position to "significantly contribute to full development and equitable resolution of the factual issues" in this case. Finally, to the extent that Stand Energy is seeking to represent the interests of Columbia's residential customers (*see, e.g.*, Motion at 2), the Office of the Ohio Consumers' Counsel and OPAE have already intervened in this action to represent those interests. Stand Energy's intervention in this case is entirely unnecessary.

In short, Stand Energy lacks standing to intervene in this proceeding. *See In the Matter of the Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934 as amended, to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company*, Case No. 08-537-TP-ARB, Entry, ¶ 6 (Aug. 26, 2008) (denying a motion to intervene where the movant lacked standing). Because Stand Energy fails to satisfy any of the Commission's requirements for intervention, Stand Energy should not be permitted to intervene in this proceeding.

3. Conclusion

Stand Energy Corporation has not shown any actual, legal interest in this proceeding. It has not asserted that it could be adversely affected by this proceeding. Instead, it seeks to represent the interests of Columbia's residential,

small commercial, and transportation customers, apparently without their request or authorization and without any personal knowledge of their interests. Moreover, Stand Energy seeks to insert a subject into this proceeding, Columbia's transportation services, that has no relevance to the signatory parties' filings and will only delay the resolution of the time-sensitive matters at issue here. For all of the reasons stated above, Columbia respectfully requests that the Commission deny Stand Energy Corporation's Motion to Intervene.

Respectfully submitted,

/s/ Eric B. Gallon
Stephen B. Seiple (Counsel of Record),
Assistant General Counsel
Brooke E. Leslie, Counsel
200 Civic Center Drive
P. O. Box 117
Columbus, Ohio 43216-0117
Telephone: (614) 460-4648
(614) 460-5558
Fax: (614) 460-6986
Email: sseiple@nisource.com
bleslie@nisource.com

Daniel R. Conway
Eric B. Gallon
Porter Wright Morris & Arthur LLP
Huntington Center
41 South High Street
Columbus, Ohio 43215
Telephone: (614) 227-2270
(614) 227-2190
Fax: (614) 227-2100
Email: dconway@porterwright.com
egallon@porterwright.com

**Attorneys for Respondent
COLUMBIA GAS OF OHIO, INC.**

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Memorandum Contra Stand Energy Corporation's Motion to Intervene was served by electronic mail upon the following parties this 26th day of October, 2012:

Stephen Reilly
Assistant Attorney General,
Public Utilities Section
Ohio Attorney General Mike DeWine
180 East Broad Street, 6th Floor
Columbus, Ohio 43215-3793
stephen.reilly@puc.state.oh.us

Attorney for
**STAFF OF THE PUBLIC UTILITIES
COMMISSION OF OHIO**

Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
BarthRoyer@aol.com

Attorney for
DOMINION RETAIL, INC.

A. Brian McIntosh
McIntosh & McIntosh
1136 Saint Gregory Street, Suite 100
Cincinnati, Ohio 45202
brian@mcintoshlaw.com

Attorney for
STAND ENERGY CORPORATION

M. Howard Petricoff
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
mhpetricoff@vorys.com

Attorney for
**OHIO GAS MARKETERS GROUP,
RETAIL ENERGY SUPPLY
ASSOCIATION**

Dane Stinson, Esq.
Bailey Cavalieri LLC
10 West Broad Street, Suite 2100
Columbus, Ohio 43215
Dane.Stinson@BaileyCavalieri.com

Attorney for
HESS CORPORATION

Colleen Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
cmooney@ohiopartners.org

Attorney for
**OHIO PARTNERS FOR AFFORDABLE
ENERGY**

Larry S. Sauer
Joseph P. Serio
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
sauer@occ.state.oh.us
serio@occ.state.oh.us

Attorneys for
**OFFICE OF THE OHIO CONSUMERS'
COUNSEL**

Glenn S. Krassen
Bricker & Eckler LLP
1001 Lakeside Ave. East, Suite 1350
Cleveland, Ohio 44114
gkrassen@bricker.com

Matthew W. Warnock
Bricker & Eckler LLP
100 S. Third Street
Columbus, Ohio 43215

Attorneys for
**NORTHEAST OHIO PUBLIC ENERGY
COUNCIL and
OHIO SCHOOLS COUNCIL**

/s/ Eric B. Gallon
Eric B. Gallon

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/26/2012 3:23:19 PM

in

Case No(s). 12-2637-GA-EXM

Summary: Memorandum Contra of Columbia Gas of Ohio, Inc. to Stand Energy Corporation's Motion to Intervene electronically filed by Mr. Eric B. Gallon on behalf of Columbia Gas of Ohio, Inc.