

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review of	)	
its Rules for Competitive Retail Natural Gas	)	Case No. 12-925-GA-ORD
Service Contained in Chapter 4901:1-27	)	
Through 4901:1-34 of the Ohio	)	
Administrative Code.	)	

**REPLY COMMENTS OF INTERSTATE GAS SUPPLY, INC.**

Pursuant to the Commission's November 7, 2012 Entry in this matter, Interstate Gas Supply, Inc. ("IGS Energy") respectfully submits these Reply Comments. The fact that IGS Energy elected not to address a particular comment or topic raised by any particular commentator does not signify its agreement with such a position.

**I. Rule 4901:1-29-05 "Marketing and Solicitation"**

NOPEC wants to add to subsection (C) a new paragraph 12 that would be another item to the list of prohibited activities as follows: "The use of an Ohio utility's name and/or logo by an unaffiliated competitive retail natural gas supplier." (NOPEC Initial Comments, pp. 2-3.)

Intellectual property that is properly licensed should not be precluded simply because the licensee is not affiliated with the owner of the intellectual property, unless, the use of a similar name is banned for all market participants, regardless of affiliation. Said another way, if it is permissible for an affiliated company to use a name similar to an incumbent utility, then a properly licensed unaffiliated company should have the ability to do the same. To do otherwise would be a violation of the Revised Code prohibition on allowing affiliated companies to an incumbent utility to have access that is not provided to other market participants. Although not every market participant may be successful in negotiating a licensing agreement with the owner of intellectual property allowing for the use of a similar name, to preclude such activity simply because of a lack of affiliation would create an unfair barrier to the market. Finally, if the PUCO

determines that use of a similar name to the utility is misleading, then it should not matter if it is a corporate affiliate or license agreement. An affiliate has no “extra” access to information than any other supplier, if it is decided that use of utility name misleads customers then no entity including an affiliate should be allowed to use the name.

## **II. Rule 4901:1-29-06 “Customer Enrollment and Consent”**

Eagle suggests that all references to door-to-door solicitations be deleted from all natural gas rules and such solicitations be prohibited. The Commission should not be swayed to adopt this suggestion. Eagle believes that door-to-door marketing is not necessary because it has adopted another marketing approach whereas some of its competitors effectively used door-to-door solicitation. What could be better for Eagle than to eliminate a competitor’s marketing approach and limit marketing activities to only those which Eagle currently utilizes. To prohibit an entire marketing approach is contrary to Section 4929.02(A)(6), Revised Code which calls for flexible regulatory treatment. Door-to-door solicitation has been subject to regulatory treatment – lawful restrictions and limitations of the Commission and by local ordinances often called “Green River Ordinances”<sup>1</sup> where the courts have demanded a balance between crime prevention and commercial free speech. An appropriate balance between consumer protection and marketing methodologies can be struck; door-to-door sales do not need to be eliminated. While there is no evidence of pervasive wrongdoing, if the Commission desires to implement additional rules relevant to door-to-door solicitation, it may consider the initiation of a registration process

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<sup>1</sup> “Green River Ordinances” prohibit door-to-door sales without express permission from the household beforehand, and are so named for the city of Green-River, Wyoming, which was the first city to enact such an ordinance. The ordinance was found to be constitutional. Town of Green River v. Fuller Brush Co., 65 F. 2d 112 (10) (Cir. 1933). While the Supreme Court in the 1950s upheld the First Amendment challenges to ordinances limiting door-to-door sales, in more recent cases the High Court has recognized that commercial free speech is entitled to some protections. City of Cincinnati v. Discovery Network Inc., 507 U.S. 410, 420 (1993), citing Breard v. Alexandria, 341 U.S. 622 (1951), Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976).

where the Commission acts as a clearinghouse of agents engaged in door-to-door activities. The registration process could include a uniform criminal background check and a basic proficiency test, which would demonstrate an agent's familiarity with the industry and marketing rules. Costs associated with the process could be paid for by a registration fee. Additionally, the Commission should differentiate between door-to-door activities and other forms of direct solicitation. Door-to-door activities should be construed to include *only* those solicitation activities occurring at the consumers' homes without an appointment or a previous relationship with the consumer.

### **III. Conclusion**

Interstate Gas Supply, Inc. appreciates the excellent approach the Staff used in proposing amendments to these rules. It urges the Commission to adopt IGS Energy's initial comments and these reply comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "MS White / Vincent A. Parisi" with a flourish at the end.

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## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served via electronic mail on the parties listed below this 6<sup>th</sup> day of February, 2013.



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Summary: Reply Reply Comments electronically filed by M HOWARD PETRICOFF on behalf of Interstate Gas Supply, Inc.