

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

|   |   |                         |
|---|---|-------------------------|
| In the Matter of the Complaint against KNG  | ) |                         |
| Energy, Inc. by Ohio Intrastate Energy, LLC | ) |                         |
| And Request for Approval of Immediate       | ) | Case No. 12-2576-GA-CSS |
| Substitution of Service and for Approval of | ) |                         |
| Transition Plan.                            | ) |                         |

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**OHIO GAS COMPANY'S AMENDED  
SUPPLEMENTAL MEMORANDUM IN SUPPORT OF  
INTERVENTION**

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**June 24, 2013**

**Attorney for Ohio Gas Company**

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On September 20, 2012, Ohio Intrastate Energy, LLC (“OIE”) filed a complaint initiating this matter. Ohio Gas Company (“Ohio Gas”) filed a motion to intervene on November 6, 2012. The motion was unopposed. On June 6, 2012, the Attorney Examiner issued an Entry setting this matter for a second settlement conference and taking the motion of Ohio Gas to intervene under advisement. The Attorney Examiner also granted Ohio Gas leave to file a supplemental memorandum in support of its motion to intervene. In support of its motion to intervene, Ohio Gas provides this supplemental memorandum.

Ohio Gas serves the villages of Hamler, Holgate, and Malinta. These three villages with two other villages, Deshler and Hoytville, were signatories to a 1959 Deed and Indenture that served as a vehicle for service from Suburban Natural Gas Company (“Suburban”) through fifty year leases. At one time, McComb was also a party to the Deed and Indenture. Prior to the end of the leases, McComb terminated its

arrangement with Suburban and established its own municipal utility that utilized an alternative delivery pathway to feed its distribution system. After it became apparent that the leases for the remaining villages operating with Suburban could not be renewed, Suburban filed a proceeding to abandon service to the villages.<sup>1</sup> The villages attempted to enter a new agreement with a provider under an arrangement similar to that with Suburban, but were not successful. The villages then determined that each would go its own way, and each enacted an ordinance terminating its interest in the 1959 Deed and Indenture. Three of the villages, Hamler, Holgate, and Malinta, sold their distribution and transmission facilities to Ohio Gas. KNG Energy Systems, Inc., (“KNG”) served a municipal utility created by Deshler. KNG and Ohio Gas entered into an agreement to construct an interconnection to enable Ohio Gas’s marketing affiliate to transport gas from an interstate pipeline, Crossroads, to the villages served by Ohio Gas.

In several documents, OIE now relies on the terminated Deed and Indenture to advance its interests in this Complaint. At page 2 of the Complaint, OIE relies on the Deed and Indenture to assert gas transportation rights. At page 20, OIE claims it has dedicated capacity rights as a successor to rights held by two villages under the Deed and Indenture. Further, in its memorandum contra at pages 20 and 21, OIE asserts that the actions undertaken by one of the villages to terminate the Deed and Indenture was legally ineffective. Finally, in a letter dated January 20, 2012 attached to Ohio Gas’s motion to intervene, OIE notified Ohio Gas of its arrangements with Columbia Gas Transmission to reactivate a delivery point known as the Deshler Station and that it was

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<sup>1</sup> *In the Matter of the Application of Suburban Natural Gas Company for Authority to Abandon Service Pursuant to Section 4905.20 and 4905.21, Revised Code*, Case No. 08-947-GA-ABN (Aug. 1, 2008).

providing this notice on the basis that it was treating the Deed and Indenture as effective. Counsel for OIE went on to state, “Without regard to the decision to schedule volumes through the Deshler Station, we note that the common responsibility to maintain all parts of the Transmission System for the benefit of all the Villages still applies.” Attachment to Motion to Intervene at 3.

If these erroneous statements regarding the Deed and Indenture go unchallenged, the effect of them could impose economic obligations on Ohio Gas inconsistent with the arrangements already approved by the Public Utilities Commission of Ohio (“Commission”). Ohio Gas is currently serving the villages of Hamler, Holgate, and Malinta pursuant to orders of the Commission resulting from the Suburban abandonment proceeding and on the basis that the Deed and Indenture is no longer in effect. Yet any decision by the Commission premised on the “common responsibility” to maintain the Transmission System may be adverse in future proceedings for Ohio Gas. Further Ohio Gas was and remains an interested party in the continued operation of gas service that was formerly subject to the Deed and Indenture. As a result, Ohio Gas has a real and substantial interest in these proceedings.

Because Ohio Gas has an interest that could be adversely affected by the positions advanced by OIE in the underlying complaint, Ohio Gas should be permitted to intervene.

Ohio Gas’s interest would not be adequately protected by OIE and KNG. OIE is seeking to initiate service to one community and is prepared to advance a legal theory that is inconsistent with Ohio Gas’s interest regarding the respective rights of the parties concerning the Deed and Indenture and Suburban abandonment proceeding. KNG’s

interest is limited by its interest in one part of the former system that it has agreed to transfer to OIE under appropriate circumstances. Thus, neither of the existing parties shares an interest in these proceedings similar to that of Ohio Gas.

Ohio Gas does not intend to intervene in Case No. 12-2758-GA-CSS as that Complaint relates to a specific problem concerning the ownership and alleged unlawful use of facilities. Ohio Gas may modify that position based on OIE's response to the Complaint in that case.

For the reasons stated above, Ohio Gas renews its Motion to Intervene.

Respectfully submitted,

/s/ Frank PDarr  
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**Attorney for Ohio Gas Company**

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Ohio Gas Company's Supplemental Memorandum in Support of Intervention* was served upon the following parties of record this 24<sup>th</sup> day of June, 2013, *via* electronic transmission, hand-delivery, or ordinary U.S. mail, postage prepaid.

/s/ Frank P. Darr

Frank P. Darr

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**6/24/2013 10:18:06 AM**

**in**

**Case No(s). 12-2576-GA-CSS**

Summary: Memorandum (Amended Supplemental) in Support of Intervention electronically filed by Mr. Frank P Darr on behalf of Ohio Gas Company