

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the Fuel)	
Adjustment Clauses for Columbus)	
Southern Power Company and Ohio)	Case No. 11-5906-EL-FAC
Power Company and Related Matters)	
)	
In the Matter of the Fuel Adjustment)	
Clauses for Columbus Southern Power)	Case No. 12-3133-EL-FAC
Company and Ohio Power Company)	
)	
In the Matter of the Fuel Adjustment)	Case No. 13-572-EL-FAC
Clauses for Ohio Power Company)	
)	
In the Matter of the Fuel Adjustment)	Case No. 13-1286-EL-FAC
Clauses for Ohio Power Company)	
)	
In the Matter of the Fuel Adjustment)	Case No. 13-1892-EL-FAC
Clauses for Ohio Power Company)	

REPLY IN SUPPORT OF MOTION TO INTERVENE OF IGS ENERGY

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Pursuant to R.C. 4903.221 and Rule 4901-1-11, Ohio Administrative Code (“OAC”), Interstate Gas Supply, Inc. (“IGS” or “IGS Energy”) moved to intervene in the above captioned proceedings in which an auditor has submitted a recommendation regarding Ohio Power Company’s (“Ohio Power”) and Columbus Southern Power Company’s (“CSP”) (collectively, “AEP-Ohio”) potential double recovery of purchased power costs. Ohio Power filed a memo contra, arguing that the Public Utilities Commission of Ohio (“Commission”) should not grant IGS full party status. AEP-Ohio claims that IGS should be permitted to participate with respect to the allocation of any credit or refund because that is the “one issue in which movants have a real and substantial interest.” AEP-Ohio Memo Contra at 2. As discussed below and in accordance with the Supreme Court of Ohio’s policy in favor of liberal intervention, AEP-Ohio’s memo contra should be rejected and IGS should be granted full party status.

RC 4903.221(B) and Rule 4901-1-11(B), OAC, provide that the Commission, in ruling upon applications to intervene in its proceedings, shall consider the following criteria:

(1) The nature and extent of the prospective intervener’s interest; (2) The legal position advanced by the prospective intervener and its probable relation to the merits of the case; (3) Whether the intervention by the prospective intervener will unduly prolong or delay the proceedings; (4) Whether the prospective intervener will significantly contribute to full development and equitable resolution of the factual issues.

AEP-Ohio challenges IGS’ ability to fully satisfy the first two criteria. AEP-Ohio claims that “[n]either IGS nor RESA has a real and substantial interest in the issues related to the Company’s Fuel Adjustment Clause (a bypassable retail rate not related

to competitive service¹) or the threshold determination of double recovery (which is a predicate to any customer refund or credit) that will also be addressed in these proceedings.” AEP-Ohio Memo Contra at 2 (footnote added). AEP-Ohio also claims that IGS’ intervention should be limited because it will only advance a legal position with respect to the credit or refund. *Id.* at 2-3. Both of AEP-Ohio’s arguments are wrong.

Initially, the determination of whether there is, in fact, a double recovery in the first place will determine whether the Commission should issue a credit or refund. Thus, IGS has an interest in the determination regarding the existence of the double recovery.

Moreover, IGS’ interest is not necessarily limited to resolving issues related to the credit or refund. IGS competes against the default rate offering of competitive services. Duke Energy Ohio, Inc.’s (“Duke”) and Duke Energy Commercial Asset Management’s (“DECAM”) intervened in AEP-Ohio’s last fuel adjustment (“FAC”) clause case for the same reason.² Over AEP-Ohio’s objection, the Commission permitted

¹ IGS disagrees with AEP-Ohio’s claim that the FAC does not pertain to a competitive service. Under R.C. 4928.141(A), “an electric distribution utility shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a *standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers*, including a firm supply of electric generation service.” (emphasis added). The FAC relates to a bypassable portion of the standard service that provides competitive services to default customers. See also *Elyria Foundry v. Pub. Util. Comm’n*, 114 Ohio St. 3d 305 at ¶ 50 (2007) (“Fuel is an incremental cost component of generation service. Thus, by allowing that generation-cost component to be deferred and subsequently recovered in a distribution rate case, or alternatively allowing FirstEnergy to apply generation revenues to reduce distribution expenses, the commission violated R.C. 4928.02(G)”).

² *In the Matter of the Fuel Adjustment Clause of Columbus Southern Power Company and Ohio Power Company and Related Matters for 2011*, Case Nos. 11-281-EL-FAC, *et al.*, Tr. Vol. I at 10 (granting intervention to DECAM and Duke) (hereinafter “2011 FAC Case”); 2011 FAC Case, Motion to Intervene by Duke Energy Commercial Asset Management (Oct. 10, 2013) (“DECAM is a participant in the wholesale electric market in Ohio. That wholesale market will be directly impacted by the rates being charged under the standard service offer of AEP Ohio.”); 2011 FAC Case, Reply of Duke Energy Commercial Asset Management in Support of Intervention (Oct. 22, 2013) (“DECAM has a real and substantial interest in protecting its ability to compete in the SSO. Contrary to AEP Ohio’s contention that purely competitive interests do not justify intervention, the Commission has routinely recognized that such interests are indeed an adequate basis for intervention.” See also *In re Purchased Gas Adjustment Clause of The East Ohio Gas Company*, Case No. 05-219-GA-GCR at 6 (Dec. 2, 2005)(granting IGS’

Duke and DECAM to participate in that proceeding without limitation. Thus, IGS should be permitted to intervene in this proceeding with full party status, as it may influence the price or structure of the default rate and any refunds or credits related thereto.

IGS also has an interest in the threshold determination of the double recovery because it may have advantaged a market participant. Ohio Power no longer owns generating assets (with the exception of the Ohio Valley Electric Corporation); Ohio Power transferred them to its affiliate, AEP Generation Resources. AEP Generation Resources, however, has continued to serve the SSO—and may have flowed costs through the FAC—during the audit period under review. IGS should be permitted to participate to determine whether AEP Generation Resources received or will receive any portion of the double recovery. IGS has an interest ensuring that a competitor does not utilize its affiliate's FAC to obtain an unfair advantage and windfall.

Therefore, IGS submits that it has a direct, real, and substantial interest in the issues and matters involved in the above-captioned proceedings, and that it is so situated that the disposition of these proceedings without IGS' participation may, as a practical matter, impair or impede IGS' ability to protect that interest. And IGS reserves the right to assert legal arguments to support the interests identified above. IGS further submits that its participation in these proceedings will not cause undue delay, will not unjustly prejudice any existing party, and will contribute to the just and expeditious resolution of the issues and concerns raised in these proceedings.

motion to intervene because gas cost recovery rate proceedings had a demonstrated impact on competitive markets and the interests of competitive suppliers).

IGS' interests will not be adequately represented by other parties to these proceedings and therefore, IGS is entitled to intervene in these proceedings with the *full powers and rights granted to intervening parties*.

Finally, the Supreme Court of Ohio has held that intervention should be liberally allowed for those with an interest in the proceeding.³ In light of the liberal interpretation of the intervention rules, IGS clearly meets the standards for intervention in these proceedings.

For the reasons set forth above, IGS respectfully requests the Commission grant this Motion to Intervene.

Respectfully submitted,

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³ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, (2006) 111 OhioSt.3d 384, 388.

CERTIFICATE OF SERVICE

I certify that this Reply in Support of IGS Energy's Motion to Intervene was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 3th day of February 2015. The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: Reply electronically filed by Mr. Matthew White on behalf of IGS Energy