

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Co- )  
lumbia Gas of Ohio, Inc. for Approval ) Case No. 17-2202-GA-ALT  
of an Alternative Form of Regulation. )

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**MEMORANDUM CONTRA OF COLUMBIA GAS OF OHIO, INC.  
AND THE OFFICE OF THE OHIO CONSUMERS' COUNSEL  
TO MOTIONS TO INTERVENE OF  
THE RETAIL ENERGY SUPPLY ASSOCIATION AND  
INTERSTATE GAS SUPPLY, INC.**

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**1. INTRODUCTION**

Intervention in an alternative rate plan proceeding is governed by R.C. 4903.221 and Ohio Adm.Code 4901-1-11,<sup>1</sup> which require the proposed intervenor to show it has a real and substantial interest that would be impaired if it were excluded from the proceeding. Pursuant to those laws, Columbia Gas of Ohio, Inc. ("Columbia") and the Office of the Ohio Consumers' Counsel ("OCC") ask the Public Utilities Commission of Ohio ("PUCO" or "Commission") to deny the Motions to Intervene of the Retail Energy Supply Association (RESA) and Interstate Gas Supply, Inc. (IGS).

Columbia filed its Amended Application in this proceeding to establish a Capital Expenditure Program (CEP) Rider to recover the post-in-service carrying costs, incremental depreciation expense, and property tax expense currently deferred pursuant to Columbia's CEP deferral, as well as the corresponding assets to which those expenses were directly attributable. Neither IGS nor RESA have identified a substantial interest in that Amended Application. Instead, IGS and RESA presumably seek to interject issues that are either hypothetical (the potential future impacts of Columbia's capital investments on the Customer CHOICE<sup>®</sup> program) or irrelevant (Columbia's distribution rates and Columbia's *non*-capital investments in developing the competitive natural gas market). The Commission should not allow RESA and IGS to inflate the scope of this proceeding beyond the issues raised in Columbia's Amended Application.

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<sup>1</sup> Ohio Adm.Code 4901:1-19-07(E).

Because RESA and IGS do not meet the threshold requirements for intervention, Columbia and OCC respectfully request that the Commission deny RESA and IGS's Motions to Intervene.

## **2. LAW AND ARGUMENT**

RESA and IGS have failed to justify their intervention in this case in numerous ways. Neither party has shown real or substantial interests in this proceeding, that intervention in this proceeding is necessary to protect such interests, or that either party would significantly contribute to resolving the factual issues in this proceeding. For each of these reasons, as further discussed below, the PUCO should deny the Motions to Intervene.

### **2.1. The movants did not describe a real or substantial interest in this proceeding.**

The first and fundamental requirement for intervening in a PUCO proceeding is that the movant must have "a real and substantial interest in the proceeding."<sup>2</sup> Ohio statute and the Commission's Rules both require the Commission to consider the "nature and extent" of the movant's interest when weighing a motion to intervene.<sup>3</sup> The statute similarly directs the Commission to consider "[t]he legal position advanced by the prospective intervenor and its probable relation to the merits of the case \* \* \*."<sup>4</sup>

The primary purpose of this proceeding, as explained in Columbia's Amended Application, is to establish a capital expenditure program rider (CEP Rider) that will allow Columbia to recover four categories of capital investments (replacement/public improvement/betterment, growth, support services, and information technology) and the deferred post-in-service carrying costs, incremental depreciation expense, and property tax associated with those investments. Neither IGS nor RESA identifies an interest in the proposed CEP Rider or Columbia's Amended Application more generally.

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<sup>2</sup> Ohio Adm.Code 4901-1-11(A)(2).

<sup>3</sup> R.C. 4903.221(B)(1); Ohio Adm.Code 4901-1-11(B)(1).

<sup>4</sup> R.C. 4903.221(B)(2). See *In re Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Waivers of Certain Provisions Contained in Chapter 4901:1-13, Ohio Administrative Code*, No. 06-1452-GA-WVR, Entry, 2007 Ohio PUC LEXIS 395, ¶8 (May 24, 2007) (explaining that "the 'legal position' of a movant is its showing of a real and substantial interest in the subject at hand").

IGS identifies two purported interests: (1) “cost allocation and any cross subsidies between Choice customers and distribution rates,” and (2) the potential impact of Columbia’s capital expenditures on “Columbia’s ability to balance and operate its system” and, accordingly, “the way Columbia’s Choice program is administered.”<sup>5</sup> But neither of those interests relates to *this proceeding*. Columbia’s distribution rates were set in its 2008 rate case, Case Nos. 08-72-GA-AIR, *et al.*<sup>6</sup> and Columbia’s Amended Application seeks no change in the structure or allocation methodology of those rates. Similarly, Columbia’s obligations to marketers like IGS, including the obligation to provide balancing services, are set forth in Section VII of its Commission-approved tariff,<sup>7</sup> and Columbia’s Amended Application seeks no change in those tariff provisions. IGS does not assert that Columbia’s past capital expenditures have already impaired Columbia’s balancing or system operation.

RESA’s position, in contrast, is effectively that Columbia should have filed a different kind of proceeding. Rather than trying to recover distribution-related expenditures or “costs associated with land purchases, office furniture, various work equipment and the like,” RESA says, “Columbia should be taking actions \* \* \* to promote and grow the competitive market in its territory,” which RESA asserts Columbia has not been doing.<sup>8</sup> RESA’s assertion is untrue. RESA’s website acknowledges that “Ohio \* \* \* has an active retail market for natural gas.”<sup>9</sup> In the last few years, Columbia has modified its bills and tariff to allow Columbia to, among other things, “provide CRNGS suppliers with the option to bill commodity-related charges to their customers via rate-ready billing, bill-ready billing, or a combination of the two”<sup>10</sup>; “bill customers a charge, rather than a rate, provided by CRNGS suppliers \* \* \* for customers enrolled in Bill Ready or CHOICE Prepay service with a supplier” (along with an “average rate per

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<sup>5</sup> IGS Motion to Intervene at 6.

<sup>6</sup> See, e.g., Public Utilities Commission of Ohio, Columbia Gas of Ohio’s distribution rate, <https://www.puco.ohio.gov/be-informed/consumer-topics/columbia-gas-of-ohio-s-distribution-rate/> (“On Oct. 24, 2008, Columbia, PUCO staff, the Ohio Consumers’ Counsel and other parties reached an agreement in the case that would allow Columbia to increase rates for natural gas distribution service.”).

<sup>7</sup> See, e.g., P.U.C.O. No. 2, Section VII, Part 18 (Balancing Services).

<sup>8</sup> RESA Motion to Intervene at 3-4.

<sup>9</sup> RESA, Ohio’s Competitive Energy Landscape, <https://www.resausa.org/states/ohio> (last visited Sept. 28, 2018).

<sup>10</sup> *In re Application of Columbia Gas of Ohio, Inc. to Revise its Tariffs to Allow for the Implementation of Bill-Ready Service*, Case No. 15-691-GA-ATA, Finding and Order, ¶5 (Aug. 26, 2015).

Ccf”);<sup>11</sup> and “implement CHOICE Immediate Enrollment and CHOICE Pre-pay.”<sup>12</sup> Regardless, RESA’s interest in expanding the competitive market is *not* the purpose of this proceeding. The purpose of a capital expenditure program is *capital expenditures* – specifically, infrastructure expansion, improvement, and replacement; the installation, upgrading, or replacement of information technology systems; and programs necessary to comply with rules, regulations, or orders of the Commission or other governmental entities.<sup>13</sup>

In sum, IGS and RESA have no substantial interest *in the case they are seeking to join*. Instead, they seek to insert issues that are at best ancillary to, or at worst entirely beyond the scope of, Columbia’s Amended Application. Because granting intervention to either RESA or IGS “would only expand the scope of this proceeding[,] \* \* \* intervention is not appropriate under Rule 4901-1-1-11, O.A.C. \* \* \*.”<sup>14</sup>

## **2.2. Neither movant explained why its interests might be adversely affected by this proceeding.**

Ohio also permits intervention in a PUCO proceeding only if the person seeking intervention “may be adversely affected by” the proceeding.<sup>15</sup> The PUCO, accordingly, requires each movant to demonstrate that it is “so situated that the disposition of the proceeding may, as a practical matter, impair or impede [its] ability to protect that interest[.]”<sup>16</sup> Here, denying RESA’s and IGS’s Motions to Intervene would not impair their ability to achieve their stated goals in any way.

If IGS has concerns about “cost allocation and any cross-subsidies between Choice customers and distribution rates,”<sup>17</sup> those concerns can be raised

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<sup>11</sup> *In re Application of Columbia Gas of Ohio, Inc. for a Waiver of Ohio Adm.Code 4901:1-13-11(B)(9)*, Case No. 16-653-GA-WVR, Entry, ¶¶5-6 (July 20, 2016).

<sup>12</sup> *In re Application of Columbia Gas of Ohio, Inc. to Revise its Tariffs to Implement Immediate CHOICE Enrollment and CHOICE Pre-pay*, Case No. 16-2430-GA-ATA, Finding and Order, ¶1 (May 24, 2017).

<sup>13</sup> R.C. 4919.111(A).

<sup>14</sup> *In re Complaint of Time Warner Telecom of Ohio, L.P. v. Cincinnati Bell Tel. Co.*, Case No. 99-322-TP-CSS, Entry, at ¶7 (July 16, 1999).

<sup>15</sup> R.C. 4903.221.

<sup>16</sup> Ohio Adm.Code 4901-1-11(A)(2).

<sup>17</sup> IGS Motion to Intervene at 6.

in, and are more appropriately raised in, Columbia's next base distribution rate case. And if, in the future, IGS concludes that Columbia has impaired its "ability to balance and operate its system" in a way that undermines Columbia's CHOICE® program,<sup>18</sup> IGS can file a complaint and ask the Commission to order improvements or additions to Columbia's facilities.<sup>19</sup> Nothing in this proceeding would prevent IGS from taking either of those steps.

RESA, in turn, argues that allowing Columbia to recover its deferred regulatory assets (and related capital expenditures) "would give Columbia an opportunity to sidestep efforts to promote the competitive marketplace."<sup>20</sup> If RESA believes Columbia should undertake further efforts to promote the competitive market, RESA can and should express its position in Case No. 12-2637-GA-EXM. Intervention in this proceeding will not accomplish that goal.

**2.3. Neither movant will help develop or resolve any factual issues in this case.**

The last factor the PUCO must weigh is whether the movants "will significantly contribute to the full development and equitable resolution of the factual issues in this proceeding."<sup>21</sup> Again, this factor weighs against granting the Motions to Intervene.

RESA asserts that it will "contribute to a just and expeditious resolution of the issues involved" because it "has been actively involved in the development of the Ohio competitive markets."<sup>22</sup> But the development of the Ohio competitive markets is not one of the factual issues involved in this proceeding. And IGS simply asserts that it has "knowledge and industry experience."<sup>23</sup> While Columbia does not dispute that, Commission Staff also has knowledge and industry

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<sup>18</sup> *Id.*

<sup>19</sup> See R.C. 4905.26 (allowing "any person, firm, or corporation" to bring a complaint "against any public utility" alleging that any service rendered is "unjust, unreasonable, \* \* \* or in violation of law \* \* \* or that any service is, or will be, inadequate"); R.C. 4905.22 ("Every public utility shall furnish necessary and adequate service and facilities"); and R.C. 4905.38 (authorizing the Commission, after the hearing of a complaint, to order a public utility to make "repairs, improvements, or additions" "in order to secure adequate service or facilities").

<sup>20</sup> RESA Motion to Intervene at 6.

<sup>21</sup> R.C. 4903.221(B)(4); Ohio Adm.Code 4901-1-11(B)(4).

<sup>22</sup> RESA Motion to Intervene at 6.

<sup>23</sup> IGS Motion to Intervene at 6.

experience. And so does Columbia and the other numerous parties that have already intervened in this action, including the Office of the Ohio Consumers' Counsel, Ohio Partners for Affordable Energy, Industrial Energy Users-Ohio, Ohio Energy Group, and the OMA Energy Group. Given the involvement of these other knowledgeable and experienced organizations, and the thorough prudence audit performed by Blue Ridge Consulting Services, Inc., neither RESA's nor IGS's intervention will meaningfully contribute to the development and resolution of the issues in this proceeding. Therefore, the PUCO should reject the Motions to Intervene filed by RESA and IGS.

### 3. CONCLUSION

As IGS notes, under the Supreme Court of Ohio's 2006 opinion in *Ohio Consumers' Counsel v. Public Utilities Commission of Ohio*, intervention in Commission proceedings "ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the PUCO."<sup>24</sup> But RESA and IGS do not have real and substantial interests in this proceeding. Even under the liberal standard for intervention described by the Supreme Court in *Ohio Consumers' Counsel*, RESA and IGS have not justified their intervention here.

Allowing RESA and IGS to intervene would unnecessarily lengthen and delay these proceedings by interjecting issues and complaints that are beyond the scope of this proceeding. Their intervention should be denied. If the Commission should decide to allow IGS and/or RESA to intervene in this proceeding, their intervention should at least be limited to arguments and testimony that are demonstrably linked to Columbia's Amended Application and the statutes and rules under which it was filed.<sup>25</sup> Because the Motions to Intervene only raise is-

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<sup>24</sup> (Emphasis added.) *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 387, 2006-Ohio-5853, ¶20, cited in IGS Motion to Intervene at 7, n.4.

<sup>25</sup> See, e.g., *In re Application of 6011 Greenwich Windpark, LLC Regarding its Certificate of Environmental Compatibility and Public Need Issued in Case No. 13-990-EL-BGN*, Case No. 15-1921-EL-BGA, Order on Certificate at 3 (May 19, 2016) granting two organizations' motions to intervene, but denying those motions "to the extent the movants request intervention to address irrelevant matters other than the amendment application or that are outside the scope of this proceeding."). See also *In re Application of Columbia Gas of Ohio, Inc. for Authority to Revise Its Tariffs*, Case No. 17-1005-GA-ATA, Finding and Order, ¶12 (July 5, 2017) (allowing the German Village Society, Inc. to intervene in a proceeding in which Columbia sought to amend its tariffs to add provisions relating to the installation of excess flow valves, but declining to consider GVS's "request to propose additional tariff language regarding infrastructure upgrades in historic districts," because it found the request to be "beyond the scope of this proceeding").

sues that are beyond the scope of this proceeding, Columbia and OCC respectfully request that the Commission simply deny RESA and IGS's Motions to Intervene and allow RESA and IGS to pursue their interests in other, more appropriate proceedings.

Respectfully submitted,

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