

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Proper Procedures and ) Process for the Commission's Operations ) and Proceedings During the Declared State ) of Emergency and Related Matters. )	Case No. 20-591-AU-UNC
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In the Matter of the Joint Application for ) Waiver of the Restrictions on In-Person ) Marketing. )	Case No. 20-1040-GE-UNC
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**INTERSTATE GAS SUPPLY, INC.'S MEMORANDUM CONTRA APPLICATION FOR  
REHEARING BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

On June 17, 2020, the Commission authorized Suppliers to resume door-to-door marketing through the adoption of the standards issued by the Governor and Director of the Ohio Department of Health ("ODH"), as well as its own additional directives to ensure that Suppliers and their agents proceed with caution and strict adherence to the relevant health and safety requirements.<sup>1</sup> By doing so, the Commission would be continuously implementing the most up-to-date policies established by the best public health expertise available.

Despite this well-reasoned decision, the Office of the Ohio Consumers' Counsel ("OCC"), Northeast Ohio Public Energy Council ("NOPEC"), Ohio Poverty Law Center ("OPLC"), Coalition on Homelessness and Housing in Ohio ("COHHIO"), Pro Seniors, Inc. ("PSI"), and Southeastern Ohio Legal Services ("SOLS") filed an application for rehearing

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<sup>1</sup> *In the Matter of the Proper Procedures and Process for the Commission's Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case Nos. 20-591-AU-UNC, et al., Entry (June 17, 2020) ("Entry") at ¶ 1, 15.

alleging the Commission failed to provide support for its decision and requesting that the Commission reinstate the suspension on door-to-door suspensions until there is a vaccine, a cure, or widespread immunity.<sup>2</sup>

Because the Commission issued a decision that properly balanced the health and safety of Ohioans with the state's policy to safely reopen the Ohio's economy, Interstate Gas Supply, Inc. ("IGS") requests that the Commission deny OCC's Application for Rehearing in its entirety. However, should the Commission believe that additional safety precautions are necessary, IGS recommends limiting door-to-door marketing activity to only those Suppliers with an employee-based sales force.

## **II. ARGUMENT**

### **A. The Commission properly relied upon the state's health experts in its determination to lift the ban on door-to-door solicitations.**

OCC argues that the Commission's decision was unreasonable and violated R.C. 4903.09 because it allowed door-to-door marketing to resume with no evidence of its evaluation and no rationale supporting its decision to lift the ban on door-to-door marketing.<sup>3</sup> This is simply incorrect.

In the Entry, the Commission explicitly stated it made its decision in light of the Director of the ODH issuing an order "to responsibly rescind requirements of the Stay Safe Ohio Order and lift the mandatory requirements and restrictions that were needed during the initial phase of the COVID-19 pandemic," as well as subsequent Orders to "lift

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<sup>2</sup> Although the Application for Rehearing was submitted by OCC, NOPEC, OPLC, COHHIO, PSI, and SOLS, IGS refers to the filing as OCC's Application for Rehearing because OCC is the only entity that has standing to file an application for rehearing in this proceeding. See *infra* at II.D.

<sup>3</sup> OCC Application for Rehearing at 9-11.

mandatory requirements and restrictions to safely open up the Ohio economy.”<sup>4</sup> Thus, the Commission’s rationale for allowing door-to-door solicitations to resume is based upon the Governor and Director of ODH’s decision that it is safe to resume business operations in the state.

Additionally, despite OCC’s claims, it is clear the Commission properly evaluated the evidence when it determined that door-to-door marketing may resume because the Commission placed additional requirements on Suppliers than those established by the Governor and ODH. Indeed, in recognition of concerns raised by OCC, the Commission included additional directives to ensure that Suppliers and their agents proceed with caution and strict adherence to the relevant health and safety requirements.<sup>5</sup> If the Commission had not thoroughly evaluated the statewide conditions that would apply to Suppliers, then the Commission would not have found it necessary to supplement them.

Further, this demonstrates that the Commission considered and rejected OCC’s attempt to arbitrarily and unreasonably discriminate against the energy industry. Arguing against the uniform application of the statewide health and safety guidelines which permitted door-to-door industries to operate, OCC sought an indefinite suspension of in-person energy marketing.<sup>6</sup> In so doing, OCC would have rather substitute its own layman understanding of science for the ODH’s well-reasoned guidance. Instead, by authorizing in-person marketing activities to resume under the statewide requirements, the Commission expressed its agreement with the Suppliers: If the Governor and ODH have

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<sup>4</sup> Entry at ¶ 1, 13-14.

<sup>5</sup> *Id.* at ¶ 1, 16.

<sup>6</sup> *Id.* at ¶ 12.

established provisions and policies that allow Ohio's businesses to safely resume operating, including other door-to-door operations, then those provisions and policies will also allow Suppliers to safely resume their business operations.<sup>7</sup>

Moreover, IGS notes the contradicting argument that OCC asks the Commission to adopt. OCC alleges that there is no record evidence supporting the Commission's determination, yet to overturn the Entry, OCC relies upon a significant amount of newspaper articles and other extra-record material that would be inadmissible in this proceeding. Therefore, OCC's assignment of error should be denied.

**B. By relying upon the state-issued guidelines, the Commission has mitigated all of OCC's concerns regarding the progression of the virus.**

OCC also argues that because of an increase in a coronavirus cases and recent statements from the Governor, the Commission should reconsider its decision to allow door-to-door marketing to resume.<sup>8</sup> However, by relying upon the state-issued guidelines, the Commission has mitigated all of OCC's concerns regarding a spike in cases and its call to respond to concerns of the Governor *because the Governor himself is controlling the operations of Suppliers*. Instead of requiring the Commission – economic regulators – to evaluate the rapidly developing science related to the coronavirus in order to establish Supplier-specific standards, the Commission has rightly placed this task in the hands of the state's experts, who are continuously adjusting these policies based upon the current outlook in the state.

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<sup>7</sup> See Joint Application to Establish Procedures for In-Person Marketing During State of Emergency (May 14, 2020) at 5.

<sup>8</sup> OCC Application for Rehearing at 2-9.

Additionally, OCC again attempts to unfairly restrict and unequally treat the Supplier community relative to all other businesses in this state, including those that also conduct door-to-door activities, without any rationale. In fact, such a request is contrary to Governor DeWine's July 15, 2020 Address cited by OCC which encourages Ohioans to wear masks in order "keep this positive economic momentum going."<sup>9</sup>

Momentum IGS has felt since the Commission's Entry. The sales channels used during the Commission's suspension of door-to-door marketing were a supplement for sales activity, not a substitute. The experience that IGS creates when in the presence of the customer is superior to an over the phone encounter. IGS's sales teams are called Home Energy Consultants ("HECs") for a reason – they are available to the customer to consult on their energy questions and needs through a face to face encounter free of distractions and interruptions, creating the best customer experience.

The Commission's decision to adopt the most up-to-date standards issued by the Governor and ODH means the protections taken by Suppliers will adjust based upon the current situation in Ohio. There is simply no better way to respond to the concerns of the Governor than to implement his own directives, and thus, OCC's application should be denied.

**C. Should the Commission wish to add additional consumer protections, IGS recommends limiting door-to-door marketing to only those Suppliers which directly employ their sales force.**

Like the Commission and OCC, IGS was also disappointed and concerned with the allegations raised against another Supplier for failing to comply with the Commission's

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<sup>9</sup> *Id.* at Att. 1 at 2.

Entry.<sup>10</sup> The Commission has certainly followed through with its stated intentions that swift and serious action will be taken against any Supplier that fails to comply its Entry. Therefore, IGS believes the Entry is sufficiently protecting Ohioans. One Supplier does not represent the entire industry, so regulation should not be tailored toward these exceptions.

However, should the Commission wish to modify its Entry, IGS recommends restricting door-to-door solicitations to only those Suppliers with an employee-based sales force. The Commission should consider the notable additional control that IGS retains over its HECs because they are employees of IGS. This arrangement is somewhat unique in the marketplace and provides the HECs with regular, non-commission-based income, with benefits, and provides IGS a much greater ability to direct the activities of its employees and to discipline or retrain any who fall short. This also provides IGS with the ability to stress the seriousness of any violations to the Entry, as demonstrated by the Commission's recent actions.<sup>11</sup>

Thus, although IGS believes the provisions issued by the state and the Commission are sufficient, should the Commission wish to add additional consumer protections, IGS recommends limiting door-to-door marketing to only those Suppliers which directly employ their sales force. This level of control should assuage many of the stated concerns regarding in-person marketing.

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<sup>10</sup> See *In the Matter of the Commission's Investigation into SFE Energy Ohio, Inc. and Statewise Energy Ohio, LLC's Compliance with the Ohio Revised Code and Ohio Administrative Code and Potential Remedial Action*, Case No. 20-1216-GE-COI, Entry (July 15, 2020) at ¶ 2.

<sup>11</sup> *Id.* at ¶ 7.

**D. Northeast Ohio Public Energy Council, Ohio Poverty Law Center, Coalition on Homelessness and Housing in Ohio, Pro Seniors, Inc., and Southeastern Ohio Legal Services do not have standing to filing an application for rehearing, and therefore, the Commission must give no weight to their inclusion on OCC's Application for Rehearing.**

R.C. 4903.10 states that, after any order has been made by the Commission, “any party who has entered an appearance in person or by counsel in the proceeding may apply for a rehearing in respect to any matters determined in the proceeding.” On July 17, 2020, the OCC, along with NOPEC, OPLC, COHHIO, PSI, and SOLS filed an application for rehearing in this proceeding. However, NOPEC, OPLC, COHHIO, PSI, and SOLS have failed to file for intervention, and therefore, none are a “party” under R.C. 4903.10, as defined by Ohio Adm.Code 4901-1-10.<sup>12</sup>

R.C. 4903.10 also provides that an affected person, firm or corporation may file for rehearing in an uncontested proceeding or by leave of the Commission. However, this is not an uncontested proceeding, and these entities did not seek leave from the Commission in order to file this application. Therefore, these entities do not have a right to apply for rehearing with respect to the Commission's Entry, and the Commission must give no weight to inclusion of these parties on OCC's Application for Rehearing.<sup>13</sup>

### **III. CONCLUSION**

For the reasons set forth above, IGS requests that the Commission deny the Application for Rehearing filed by OCC in its entirety.

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<sup>12</sup> *In the Matter of the Application of The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case Nos. 08-1094-EL-SSO, et al., Fourth Entry on Rehearing (Feb. 14, 2020) at ¶ 12.

<sup>13</sup> *See id.*

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on July 27, 2020. The Commission's e-filing system will electronically serve notice of the filing of this document on the parties subscribed to these proceedings. Additionally, a copy of this filing was provided to those listed below.

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Summary: Memorandum Interstate Gas Supply, Inc.'s Memorandum Contra Application for Rehearing electronically filed by Bethany Allen on behalf of Interstate Gas Supply, Inc.