BEFORE

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Ohio Power Company to Update Its Alternative Energy Rider and Auction Cost Reconciliation Rider. | )  )  )  ) | Case No. 15-1052-EL-RDR |

**MEMORANDUM CONTRA OF INTERSTATE GAS SUPPLY, INC. THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL’S MOTION TO STRIKE**

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**BY**

**INTERSTATE GAS SUPPLY, INC.**

1. **INTRODUCTION**

On May 25, 2018, Interstate Gas Supply, Inc. (“IGS”) filed initial comments as set forth in the procedural schedule approved on April 30, 2018. IGS’ comments set forth a position not reflected in the comments provided by any other party. Due to a clerical error IGS was unaware that its motion to intervene was due seven days prior; therefore, IGS filed its motion to intervene simultaneously with its comments.[[1]](#footnote-1)

On June 8, 2018, the Office of the Ohio Consumer’s Counsel (“OCC”) filed a motion to strike (“Motion to Strike”) IGS’ comments in their entirety.[[2]](#footnote-2) OCC’s argument is based solely on IGS’ late intervention. OCC argues that IGS’ should not be permitted to intervene, and, as a non-party to the proceeding, IGS is ineligible to file of comments.[[3]](#footnote-3) Because IGS has met the standard for intervention and OCC had an opportunity to review and respond to IGS’ timely comments, OCC’s motion should be denied.[[4]](#footnote-4)

1. **ARGUMENT**

OCC states that “IGS is not a party” and that “the PUCO has previously struck filings, when a motion to intervene was denied.”[[5]](#footnote-5) While the Commission has at times struck pleadings filed by parties seeking to intervene and participate in cases after hearings have commenced, OCC is incorrect that it is the Commission’s practice to strike pleadings whenever a party does not achieve party status in a case. Indeed, there have been several cases in which parties have filed comments without intervening at all.[[6]](#footnote-6)

Moreover, as demonstrated in IGS’ reply in support of its motion to intervene, intervention is warranted. Thus, there is no basis to grant OCC’s motion.

The only case cited by OCC (the FirstEnergy ESP case) bears no resemblance to the facts in this case.[[7]](#footnote-7) In that case, Noble Americas Energy Solutions LLC’s (“Noble”) intervention was over a year late, after the deadline for discovery had passed, and after the hearing had commenced; thus, other parties would be prejudiced as they “had no opportunity to conduct discovery or otherwise prepare to respond to the arguments raised by Noble Solutions.”[[8]](#footnote-8) Here, IGS filed timely comments and OCC had a chance to respond in its reply comments.[[9]](#footnote-9) There has been no hearing and OCC has an opportunity to file discovery against IGS to the extent that it so desires if a hearing moves forward. Therefore, OCC cannot claim that it has been prejudiced in any fashion by the comments it seeks to strike.

1. **CONCLUSION**

Given the precedent, IGS should be granted intervention and the Commission should permit IGS’ comments to stand. Should IGS’ motion to intervene be granted, OCC’s argument would completely dissipate without the need for further action as IGS would be a party to the proceeding with timely filed comments in accordance with the procedural schedule filed in the present case. OCC’s argument lacks substance and does not support striking IGS’ comments, given that IGS has met the standard for non-timely intervention.

Respectfully submitted,

*/s/ Joseph Oliker*

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**CERTIFICATE OF SERVICE**

I certify that this *Memorandum Contra of Interstate Gas Supply the Office of the Ohio Consumers’ Counsel’s Motion to Strike* was filed electronically with the Docketing Division of the Public Utilities Commission of Ohio on this 25th day of June 2018.

*/s/ Joseph Oliker*

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1. *See* Reply of Interstate Gas Supply, Inc. to Memorandum Contra of the Office of the Ohio Consumer’s Counsel at 2 (June 15, 2018). [↑](#footnote-ref-1)
2. *See* Motion to Strike Comments filed by Interstate Gas Supply, Inc. And Memorandum Contra Interstate Gas Supply, Inc.’s Motion to Intervene by the Office of the Ohio Consumers’ Counsel at 2 (June 8, 2018). [↑](#footnote-ref-2)
3. *Id*. [↑](#footnote-ref-3)
4. Reply of Interstate Gas Supply, Inc. at 7. [↑](#footnote-ref-4)
5. OCC Motion to Strike at 2. [↑](#footnote-ref-5)
6. *In the Matter of the Application of Ohio Power Company to Adjust Its Economic Development Rider Rate*, Case No 14-193-EL-RDR, Comments and Objections by OCC (Feb. 24, 2014); In the Matter of the Commission's Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies, Case No. 18-47-AU-COI (see comments of several parties that did not intervene). [↑](#footnote-ref-6)
7. *See In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Opinion and Order at 30-31 (March 31, 2016) (granting motion to strike Noble’s reply brief due to being 470 days tardy and being prejudicial to all other parties in the proceeding). [↑](#footnote-ref-7)
8. *Id.*  [↑](#footnote-ref-8)
9. Reply Comment by OCC at 3-4. [↑](#footnote-ref-9)