

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of Columbia)
Gas of Ohio , Inc. for Approval of Tariff's to)
Recover Through an Automatic Adjustment)
Clause Costs Associated with the Establishment)
Of an Infrastructure Replacement Program)
and for Approval of Certain Accounting)
Treatment)

Case No. 07-478-GA-UNC

**INTERSTATE GAS SUPPLY, INC.'S
MEMORANDUM CONTRA COLUMBIA GAS' MOTION TO STRIKE**

I. Introduction

Columbia Gas of Ohio ("Columbia") seeks to strike portions of the brief filed by Interstate Gas Supply, Inc. "IGS" that mention or refer to the rights or interests of customers. In the Memorandum in Support of their Motion, Columbia argues that IGS only has standing to assert their own rights in this proceeding and not the rights or interests of customers. Columbia's motion is frivolous and should be summarily rejected for the reasons noted below.

First, IGS was granted intervention in this proceeding as a full party and is not limited as to any relevant interest or issue it may assert. Further, Columbia has waived any right to challenge IGS's standing in this proceeding as it did not object to or seek to limit IGS's intervention when filed. Additionally, even if IGS's intervention in this proceeding was limited, which it is not, it is self evident that the interests of IGS and its customers are in some ways inextricably linked. Finally, IGS submits that if it is barred from arguing the rights or interests of customers, IGS expects Columbia to withdraw the numerous references to customers' rights and interests from its pleadings, or be found to be estopped from moving to strike similar references in IGS' pleadings.

II. IGS is a Full Party to the Proceeding and is Not Limited in the Interests it May Assert

On June 26, 2007, IGS filed a Motion to Intervene in this proceeding. On July 11, 2007 IGS was granted its Motion to Intervene by the Commission. In its Entry granting that intervention, the Commission did not limit IGS's participation. The Commission's rules state that any person may be permitted to intervene in a proceeding by showing that a:

person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.

O.A.C. 4901-1-11(A)(2). By granting IGS's intervention, the Commission found that IGS had a substantial interest in the proceeding that was not adequately represented by existing parties.

Had Columbia believed that the Commission should limit IGS's intervention it could have asked the Commission to do so.

O.A.C. 4901-1-11(D), provides that the Commission may:

(1) Grant limited intervention, which permits a person to participate with respect to one or more specific issues, if the person has no real and substantial interest with respect to the remaining issues or the person's interest with respect to the remaining issues is adequately represented by existing parties.

(2) Require parties with substantially similar interests to consolidate their examination of witnesses or presentation of testimony.

However, Columbia did not request IGS's intervention be limited and the Commission did not limit IGS's intervention. Accordingly, Columbia's motion must be denied.

Columbia cites three cases in support of the proposition that IGS's intervention should be limited. *State ex rel Harrell*, (1989), 46 Ohio St.3d. 55, 544 N.E. 2d 924; *Bernardini v. Conneaut Area City School Dist. Bd. Of Edn.* (1979) 58 Ohio St.2d 1, 387 N.E. 2d 1222; *N. Canton v. Canton*, 114 Ohio St. 3d. 253, 2007-Ohio-4005. These cases are not applicable. *State ex rel Harrell*, is an equal protection case where the Court ruled that the parties lacked standing to challenge the constitutionality of a school board classification of school districts. *State ex rel Harrell* at 63. *Bernardini* is another equal protection case where the Court ruled that board of education lacked standing to challenge interpretation of statute giving military service credit to teachers. *Bernardini* at 1224. *Canton* is an equal protection case where one city challenged another city's standing to sue over the annexation of railroad property. *Canton* at 586. These standing cases have no applicability in cases such as this one where standing has already been determined at the intervention stage. Further none of these case have anything to do with a party's ability to represent their broad interests, whether including consumers' interests, or not, in a Commission proceeding.

III. Columbia Has Waived its Right to Object to IGS's Intervention Status

As noted above, IGS filed its Motion to Intervene, on June 26, 2007, and the Commission granted intervention on July 11, 2007. O.A.C. 4901-1-11(D) clearly sets forth the procedure for which the Commission may limit a participant's intervention. Columbia did not attempt to limit IGS's intervention in a timely manner. Rather, after nearly 6 months from the Commission's Entry granting intervention, Columbia now attempts to limit IGS's participation. During that time, IGS has been a full participant to this proceeding.

Limiting intervention at this late stage in the proceeding would clearly prejudice IGS. Columbia has waived its right to object to IGS's status in the proceeding after it failed to timely object to IGS's intervention.

IV. IGS's Interests and the Purpose of This Hearing are Inextricably Linked to Customer's Interests

Even if it were true that IGS is limited to defending its own interests in the proceeding, as Columbia incorrectly asserts, IGS's interests are inextricably linked to its customers' interest. IGS's interests are obviously bound up with that of its current and potential customers. By providing services that benefit customers, IGS also benefits because it is able to grow and maintain their business. Therefore, it is self evident that what is in the interest of customers, is in the interest of IGS.

Limiting IGS from referring to the interests of the customers it serves or could serve would effectively prevent IGS from defending its own interests, as well as prevent it from contributing to the public interest purpose of this proceeding.

V. Columbia Should Strike All References to Customers Interests in Its Pleadings

If Columbia expects IGS to not refer or rely upon to customers' interests, Columbia should do the same. If in fact, as Columbia argues, that it is the job of the Ohio Consumers' Counsel, Ohio Partners for Affordable Energy, and the Public Utility Commission's Staff to defend the interests of customers¹, then it is inappropriate for Columbia to assert or rely upon customers' interests. However, Columbia clearly does not hold itself to the same standard as it

¹ See Memoranda in Support of Columbia Gas of Ohio's Motion to Strike (Page 5, line 17 through page 6, line 2)

propounds for IGS. Columbia relies upon or refers to customers', consumers' or the publics' rights and interests at least 26 different times in their Post-Hearing brief submitted to the Commission.² These references include appeals regarding customers' safety, economic interests and convenience. Understandably, in their Memorandum in Support of their Motion to Strike, Columbia does not attempt to explain why it should be able to assert and defend the rights of customers without limit, yet IGS should be prohibited from doing the same. Columbia's motion is clearly frivolous and should be denied.

III. Conclusion

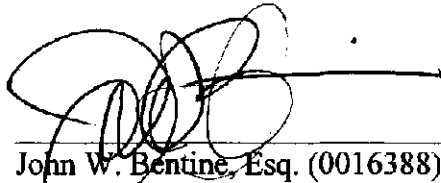
IGS sought intervention in this hearing over 6 1/2 months ago. Columbia neither objected to IGS's intervention nor did they seek to limit the scope in which IGS could participate. Over 6 months ago the Commission granted IGS full intervention.

Columbia's challenge to the scope of IGS's intervention is untimely, inequitable, and hypocritical. Columbia argues IGS cannot assert the interests of its customers, even though IGS's interests are tied to the interests of its customers. Finally, Columbia argues that IGS cannot to do what Columbia has routinely done in its own pleadings.

For the above reasons, IGS asks that the Commission deny Columbia's Motion to Strike.

² See in Columbia's Post Hearing Brief; page 1, lines 1-3; page 2, lines 1-2; page 2, lines 11-12; page 6, lines 8-9; page 7, lines 1-3; page 7, lines 10-12; page 10, lines 7-8; page 10, line 12; page 11, lines 5-8; page 11, lines 14-21; page 12, line 18 through page 19, line 3; page 14, lines 1-3; page 17, lines 4-5; page 19, lines 4-5; page 19, lines 14-18; page 20, lines 8-17; page 21, line 16 through page 22, line 10; page 22, lines 18-20; page 23, lines 3-5; page 25, lines 5-8; page 25, lines 17-21; page 26, lines 1-4; page 26, lines 15-16.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John W. Bentine', is written over a horizontal line.

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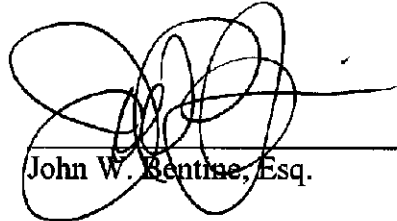
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following parties of record or as a courtesy, via U.S. Mail postage prepaid, express mail, hand delivery, or electronic transmission, on January 15, 2008.



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