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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of U.S.)
Gas & Electric, Inc., for Certification as a) Case No. 08-601-GA-CRS
Competitive Retail Natural Gas Supplier in Ohio)

RESPONSE AND MEMORANDUM CONTRA
MOTION TO INTERVENE BY STAND ENERGY CORPORATION

Pursuant to Rule 4901-1-12(B) and the June 12, 2008, Entry in this matter, U.S. Gas & Electric, Inc., d/b/a Ohio Gas & Electric ("USG&E", "OG&E" or "the Applicant"), submits this memorandum contra to the Motion to Intervene & Protest ("Motion"), of Stand Energy Corporation ("Stand").

I. BACKGROUND

On May 16, 2008, the Applicant filed its application ("Application"), seeking natural gas supplier certification with the Public Utilities Commission of Ohio. A motion for a protective order was also filed pertaining to exhibits of sensitive company information. On May 27, 2008, Stand filed its Motion. On June 5, 2008, the Attorney Examiner issued an entry ("Entry"), suspending the consideration of the Application of the Applicant, finding that good cause had been shown through the allegations in the Motion filed by Stand to suspend the thirty day automatic approval process for the Application in order that the Commission and its staff could further review the matter. The Attorney Examiner also found that review of the Application would be benefited by allowing the Applicant to respond to the protest within seven days of the date of the entry. Finally, the Attorney Examiner imposed an expedited schedule on the parties requiring that memorandum contra be filed within seven days of the service of any motion, that

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any reply be filed within four days after the service of a memorandum contra and that Paragraph B of Rule 4901-1-07 of the OAC which permits three additional days to take action if service is made by mail would not apply.

II. ARGUMENT

A. Stand's Motion to Intervene and Protest contains false allegations and misinterpretations of the facts which were publicly disclosed.

Attached to this Response and Memorandum Contra as Appendix A is Exhibit B-4 "Disclosure of Liabilities and Investigations", that was filed by the Applicant as part of its May 16, 2008, Application. In Exhibit B-4, USG&E discloses the fact that it signed a consent decree in which it did not admit any wrong doing, but removed the promoters from both ownership and leadership of the company, including the then chief executive officer. The consent decree is a public document available to the public on EDGAR, the document website for the Securities and Exchange Commission. Despite the availability of the detailed summary in Exhibit B-4 and the actual consent decree, Stand in its Motion makes allegations which are materially inaccurate and misleading as a reason for the Commission to deny Applicant's request to become a competitor of Stand.

At page 2 of 6 of its Motion to Intervene & Protest, Stand states that the "serious violations of the United States Securities laws, and the Securities Exchange Commission rules" led to the firing of several key USG&E executives and the deregistration of USG&E securities to become a private company. This statement is misleading for it intimates that the Securities and Exchange Commission determined that USG&E had violated federal law. There was no such determination and USG&E did not admit to any wrongdoing. As detailed in Exhibit B-4 in August of 2003, the facts are that USG&E, in response to a notice by the Securities and

Exchange Commission, retained independent counsel to conduct an internal investigation. Further, based on the independent counsel's recommendations the Applicant terminated the employment of certain promoters and employees involved in fund raising. Further, USG&E was not required to de-register as a result of the settlement with the SEC. The settlement allowed USG&E to deregister and the Applicant voluntarily deregistered and became a private company.

The application process rightly asks for a corporate history to determine standards of behavior a company follows. Although the acts of USG&E's promoters were serious, the response by USG&E was responsible and the leadership of the company that fired the promoters and took the company private is the leadership of USG&E today.

At page 3 of 6 of its Motion to Intervene & Protest, Stand argues that the suggestion or representation that legal and ethical problems of USG&E are in the past, is false and misleading in Stand's opinion. Stand gives no facts, reasons or documentation to support this opinion; further, Stand goes on to pose the rhetorical question: "what culpability should the owners of USG&E have for the admittedly illegal behavior?", which it answers by stating: "unless the ownership of USG&E has changed, it is not likely the relative ethics of the organization have changed either."

A review of Exhibit B-4 reveals that the ownership of USG&E has in fact changed and that there was no admitted illegal behavior, only a consent decree that specially stated no admission of wrong doing. Exhibit B-4 as filed with this Commission, indicates that it is the current Chief Executive Officer who terminated all employees involved in fund raising, including the promoters who the SEC had challenged and that such was done before the SEC and

the Company negotiated the settlement. Further, as noted above, the SEC final settlement was a Consent Decree in which there was no admission of any illegal behavior.

In sum, the ownership of the Applicant has in fact changed with the only people owning the Applicant being those who have contributed funds; all promoters and employees involved in fund raising were terminated in 2003 and 2004 and are no longer with the Applicant. All of these facts have been fully disclosed by the Applicant and are contained in Exhibit B-4 and are also available publicly to any interested person. Stand Energy's allegations are simply erroneous and should be dismissed.

B. USG&E Has Filed a Complete Application With The Commission.

In its Motion, Stand makes three allegations: 1) that the ownership of USG&E is not discussed in Exhibit B-4; 2) that the Application did not appear to contain Exhibit B-5; and 3) that the Applicant failed to disclose its *slamming* activities in New York State in Exhibit B-4.

As to the first allegation, the ownership of USG&E is not discussed in Exhibit B-4 because that is not the section required for such information. The Commission's form solicits information about ownership in Sections A-10, Section A-15 and A-16. Section A-10 requires disclosure of the form of ownership. USG&E responded by checking "corporation". Section A-15 requires a graphical depiction of the Applicant's corporate structure and a list of all affiliates and subsidiaries that supply energy services in North America. USG&E responded with a chart indicating that it has no such affiliates or subsidiaries. Section A-16 requires a concise description of the applicant, company history and the principal business interests. USG&E in this section provided a description of both it and its parent, MVC Capital, Inc. The description also provided capitalization figures and the number of customers and gas sales volumes in other

jurisdictions. Thus, USG&E has complied with both the letter and the spirit of the Commission application's form.

With respect to second allegation, Exhibit B-5 labeled "Disclosure of Consumer Protection Violations", asks the Applicant to disclose whether it, its affiliate, its predecessor, or any principal officer has been convicted of or held liable for fraud or for violation of any consumer protection or antitrust laws within the past five years. The Applicant checked the box "No" on the Application Form. See page 5 of 7 of the May 16 Application Form. Having done so, no further exhibit or explanation need be provided. Further, it should be noted that in compliance with Section A-14, USG&E has provided the names of its principle officers.

In its filing, Stand cites no case numbers or dates on which any regulatory body found USG&E in violation of a statute, regulation or rule. Further, no case or cite was provided as to any investigation or reprimand. To the Applicant's best knowledge, no such conviction, reprimand, or even investigation exists. Nor is the Applicant aware of any other pending matter that could adversely impact the Applicant's financial or operational ability to serve the public.

What Stand has alleged here, and has contacted USG&E about, concerns customers in New York which Stand believes were rightly theirs and which Stand alleges USG&E slammed. In that regard the status of the allegation of slamming is best reflected in Stand's own words as written in its filing:

"In fact, Stand Energy Corporation is in the process of obtaining evidence of recent "slamming" behavior by USG&E in New York within the last six (6) months that is a clear violation of the Uniform Business Practices (UBP) governing Energy Service Companies (ESCO's) in New York. Specifically, USG&E violated Section 5 (K) of the UBP by switching industrial customers from one ESCO (Stand Energy) to another without the customer's consent." Motion to Intervene and Protest p. 3 of 6.

In sum, a careful reading of Stand's filing indicates that it has a grievance against USG&E, but neither its allegation, or any allegation of another, has led to a ruling, judgment contingent liability, revocation of authority, or formal regulatory investigation. That is what the Commission in its application was looking for.

The proper forum for Stand, assuming it does "obtain evidence" of recent "slamming" behavior by USG&E in New York should be with the New York Public Service Commission. Since Stand is still looking for evidence of a wrong doing in New York, it is fair to say that the allegations made in its Ohio Commission filing is at best premature and may well prove to be a false accusation.

The Commission, after review of these comments and the May 16, 2008, Application of USG&E, should deny Stand's Motion and permit the Application to be approved within ninety days of June 5, 2008.

C. Stand Has Met Neither The Statutory Test Nor The Commission Rule On Satisfying The Criteria For Intervention.

Section 4903.221(B), Revised Code sets forth the criteria that the Commission must consider in ruling upon applications to intervene in its proceedings. These criteria include:

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

Rule 4901-1-11 of the Ohio Administrative Code provides that the Commission, the legal director, the deputy legal director or an attorney examiner must consider the nature and extent of the prospective intervenor's interest, the legal position advanced by the prospective intervenor and its probable relation to the merits of the case, whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings, whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues, and to what extent to which the person's interest is represented by existing parties.

Stand has simply not demonstrated the existence of a real and substantial interest in this case. Its allegations, if accepted as true, all relate to its New York business. Even if Stand's allegations were true, neither Stand nor this Commission can protect those New York interests. There is nothing in the Application or Stand's motion to intervene and protest which suggests that the Applicant will engage in "slamming" activities in Ohio.

However, USG&E wants to face its accuser and have all of the facts presented before the Commission. Therefore, USG&E will waive the fact that Stand has not demonstrated the existence of a real and substantial interest in this case. Stand should be permitted to become a full party of record so that a full and comprehensive record can be developed for the Commission to evaluate in deciding this case.

III. CONCLUSION

The Applicant has filed a complete Application and has made full disclosure. Stand's Motion to Intervene & Protest contains half-truths and misrepresentations. Stand has also made allegations of slamming activities in New York of which the Applicant has received no notice. Despite the fact that Stand's allegations are erroneous and that Stand has not demonstrated the existence of a real and substantial interest, Stand should be permitted to be made a full party of record so that the Commission will have all of the facts before it and can approve the Application by September 3, 2008.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Memorandum Contra was served upon the following person via U.S. First Class Mail postage prepaid and via e-mail this 12th of June, 2008.

Stephen M. Howard
Stephen M. Howard

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APPENDIX A

Exhibit B-4 "Disclosure of Liabilities and Investigations"

"Disclosure of Liabilities and Investigations," provide a description of all existing, pending or past rulings, judgments, contingent liabilities, revocations of authority, regulatory investigations, or any other matter that could adversely impact the applicant's financial or operational status or ability to provide the services it is seeking to be certified to provide.

Commencing in late 2001 and through early 2003, USG&E raised approximately \$3.2 million from the sale of stock to approximately 280 investors in transactions that were intended to be exempt from the registration provisions of the Securities Act of 1933, as amended ("Securities Act"). The sales of the securities of USG&E were coordinated by Larry Webman and Melvin Webman, who trained and directed telemarketing personnel who raised funds on behalf of USG&E.

Don Secunda joined USG&E in March 2002 as its Chairman and Chief Executive Officer. Mr. Secunda terminated Mr. Linde in December 2002 when he allegedly discovered false representations made by Mr. Linde concerning the financial condition of USG&E. In January 2003, Doug Marcille was engaged by USG&E as its Chief Financial Officer. In response to Mr. Marcille's findings from his review of the USG&E's books and records, the company terminated the sale of securities by USG&E in March 2003, less than two months after Mr. Marcille joined the company.

In 2002 (prior to Mr. Marcille's employment in 2003), USG&E began to offer securities in a drilling program to obtain gas supplies for its retail gas business. USG&E ultimately created the three Drilling Programs, (in the form of limited liability companies), to raise money for the purpose of drilling various wells located in Armstrong County, Pennsylvania. Drilling I raised \$1 million in late 2002 and early 2003 and drilled four wells. Drilling II raised \$993,750 in the spring of 2003 and drilled four wells. Drilling III raised almost \$2 million during the summer of 2003 and drilled four wells. These securities in the drilling programs were sold by telemarketers under the direction and control of Larry Webman and Melvin Webman.

In August 2003, during the course of the offer and sale of interests in Drilling III, the staff of the United States Securities and Exchange Commission ("SEC") commenced an informal inquiry into sales of securities by USG&E and the Drilling Programs. In late August 2003, at Mr. Marcille's suggestion, USG&E retained Akerman Senterfitt (the "Firm") to replace Greenberg Traurig, the Company's law firm at the time, and to conduct an internal investigation into matters relating to the sales of securities by USG&E and by the three Drilling Programs sponsored by USG&E. Also, at Mr. Marcille's suggestion, all employees involved in fundraising, including the Melvin and Larry Webman, were terminated.

Counsel reviewed the securities offerings, interviewed employees and consultants of USG&E, and with the consent of USG&E, disclosed to the staff of the SEC its findings. In particular, it was disclosed to the staff of the SEC that in counsel's view USG&E's offerings should have been registered under federal securities laws.

USG&E's fund raising activities on behalf of the drilling programs were terminated in August 2003 at the time that the Firm was retained. Approximately \$167,000, raised with respect to the offer and sale of interests in Drilling III, was placed in escrow with the Firm (which funds were paid to the SEC under the settlement). USG&E and Messrs. Secunda and Marcille fully cooperated with the staff of the SEC in connection with its informal inquiry.

In 2004, after the informal inquiry was completed by the staff of the SEC, USG&E was notified that the staff believed the offerings of USG&E and the Drilling Programs securities had violated federal securities laws. As a result of the SEC's findings, and with the SEC's approval, on September 13, 2004 Doug Marcille replaced Don Secunda as CEO of the Company, and Mr. Secunda was terminated as an employee of the Company.

In September 2004, under Mr. Marcille's direction, USG&E organized the USG&E Investor Steering Committee. The committee was organized to represent the interests of the Investors in a Restructuring process designed to place additional shares in the hands of the investors. The committee consisted of 11 investors representing holders of each class of securities in the USG&E Entities and representing in the aggregate, approximately 25% of the funds invested in USG&E by the Investors.

The Investor Steering Committee met with USG&E management and counsel on five occasions throughout 2004, 2005 and 2006, three meetings of which were held in person and two meetings of which were held by telephone conference call. Through the process, the terms of the Restructuring were considered and approved by the shareholders and the SEC.

The SEC and the Company, along with Mr. Marcille, negotiated a final settlement with the SEC in September 2006. In accordance therewith, on September 27, 2006, the SEC filed a complaint against Larry Webman, Melvin Webman, Don Secunda, Doug Marcille, and the Company, alleging violations of the Securities Act. The complaint acknowledged that Mr. Marcille played much less of a part in the alleged violations than the other three parties. The only allegation relating to Mr. Marcille was that fundraisers were paid commissions while he was Chief Financial Officer of the company.

On October 3, 2006, Mr. Marcille, along with the Company, without admitting or denying any allegations, finalized the settlement with the SEC. Pursuant to the settlement, the Company paid \$167,000 and Mr. Marcille paid \$40,000. As a result of the settlement, the SEC allowed USG&E to de-register its securities and it became a private company.

In July 2007, USG&E obtained a \$43,000,000 refinancing in which MVC Capital, a New York Stock Exchange traded company (NYSE: MVC), acquired control of USG&E. Commensurate with the refinancing, the board of directors re-appointed Mr. Marcille as the company's President and Chief Executive Officer.