

September 10, 2010

Via Hand Delivery

Ms. Renee J. Jenkins, Secretary
The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

RECEIVED-DOCKETING DIV
2010 SEP 10 PM 3:04
PUCO

RE: In the Matter of the Application of Interstate Gas Supply, Inc. for Certification as a Retail Natural Gas Supplier, PUCO Case No. 02-1683-GA-CRS

Dear Ms. Jenkins:

Enclosed are an original and nine (9) copies of a Reply to be filed on behalf of Border Energy, Inc. in the above-referenced matter.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Very truly yours,



Carolyn S. Flahive

Enclosures

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician Sm Date Processed SEP 10 2010

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Interstate)
Gas Supply, Inc. for Certification as a Retail) Case No. 02-1683-GA-CRS
Natural Gas Supplier)

RECEIVED-DOCKETING L
2010 SEP 10 PM 3:04
PUCO

**REPLY OF BORDER ENERGY, INC.
TO MEMORANDUM CONTRA
OF INTERSTATE GAS SUPPLY, INC.**

I. Background.

On August 6, 2010, Interstate Gas Supply, Inc. ("IGS") filed a Notice of Material Change in this proceeding. According to the Notice, IGS plans to offer competitive retail natural gas service under the trade name "Columbia Retail Energy." On August 31, 2010, Border Energy, Inc. ("Border") filed a Motion to Intervene and a Motion for Evidentiary Hearing. On September 3, 2010, IGS filed a Memorandum Contra Motions to Intervene ("IGS Memo Contra"). Border is a certified Competitive Retail Natural Gas Marketer, specializing in the purchase, transportation and risk management of gas supplies for both commercial and residential customers. Border contracts to buy natural gas from suppliers and arranges for delivery of such gas within Ohio to end-use customers in the Columbia Gas of Ohio ("Columbia Gas") service territory.

As a provider of competitive services, Border is concerned that the use of the name "Columbia Retail Energy" by a company long known to customers as IGS, is not only confusing and misleading because IGS is not affiliated with Columbia Gas, but also positions IGS unfairly in the competitive marketplace.

II. The IGS Certification Docket is the Appropriate Proceeding for Responses to the Notice of Material Change Filed by IGS.

IGS argues in its Memo Contra that the proposed intervenors should resort to filing a complaint pursuant to Rev. Code § 4929.15 and 4905.26.¹ However, it should go without saying that the docket in which a party files is the appropriate docket for interested entities to file any applicable response. IGS filed its Notice of Material Change in Case No. 02-1683-GA-CRS, its certification docket, therefore Case No. 02-1683 is the appropriate proceeding for filing comments to that Notice. If, as IGS suggests, a prospective intervenor were to allow the IGS Notice to remain unchallenged in this docket, and initiate a complaint proceeding instead, IGS would likely argue that such complainant waived its right to object to the Notice and that such complaint is untimely.

Moreover, the complaint mechanism contemplated in Rev. Code § 4905.26 would not allow the Commission to prevent the customer confusion certain to arise from IGS's use of the "Columbia Retail Energy" trade name *before* it occurs. Retail natural gas suppliers may not engage in unfair, misleading, deceptive, or unconscionable acts or practices related to the marketing, solicitation, or sale of a competitive retail natural gas service.² Consumers have a right to choose between alternative competitive natural gas suppliers competing in Columbia Gas's service territory, including choosing between IGS, Border, and other marketers, free from "marketing, solicitation, sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a competitive retail natural gas service."³ Because IGS filed its Notice of Material Change in its certification docket, as required pursuant to Ohio Adm.Code 4901:1-27-10, this docket is the appropriate proceeding in which to object to

¹ IGS Memo Contra at 1.

² Ohio Adm.Code 4901:1-29-03(A)(1).

³ Ohio Adm.Code 4901:1-29-05(C).

the change described in that Notice. The Commission should not wait until customers have been misled into making a choice based on the use of a licensed trade name implying a nonexistent association before it determines such licensing is an unfair, misleading, and deceptive practice. The Commission's prompt consideration of a proposed change, including a potential hearing regarding the same, is clearly contemplated by Ohio Adm.Code 4901:1-27-10 (A)(2).

III. The Use of the Columbia Trademark is Not Consistent with Longstanding Practice.

IGS states in its Memo Contra that it "is not the first to use a trademark, trade name or fictitious name that is similar to that of an incumbent utility in the Ohio market."⁴ However, the five other marketers listed by IGS in support of that assertion are all affiliates or wholly-owned subsidiaries of the similarly-named utility. IGS is not an affiliate or subsidiary of Columbia Gas. The licensing by IGS of the "Columbia" name is clearly an attempt to imply that IGS is a business affiliate of Columbia Gas, when it is not. Such misleading use of a utility's name by an unaffiliated entity is unprecedented and should be fully evaluated by the Commission.

Moreover, allowing IGS to use a brand name intended to mislead a customer into selecting IGS as its service provider is a slippery slope that, left unchecked, will lead to a marketplace of competitors affiliating themselves *in name only* to intentionally create and benefit from the customers' inaccurate perception that the marketer is associated with the utility. Unsuspecting customers may choose IGS as a result of this implied association, resulting in an unfair competitive advantage for IGS. It is disingenuous to believe that IGS didn't intentionally license the "Columbia" name to gain this competitive advantage at customers' expense. It is similarly disingenuous to believe that any disclaimer of affiliation is sufficient to quash such intentional misrepresentation.

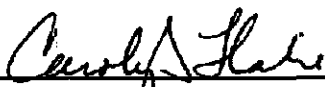
⁴ IGS Memo Contra at 5.

IV. Conclusion.

For the reasons set forth above, the Commission should grant Border's Motion to Intervene and Motion for Evidentiary Hearing.

Respectfully submitted,

BORDER ENERGY, INC.

By: 
Carolyn S. Flahive
Ann B. Zallocco
Thompson Hine LLP
41 South High Street
Suite 1700
Columbus, Ohio 43215-6101
(614) 469-3200

Its Attorneys

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served via regular U.S. mail this

10th day of September 2010 on the following:

John W. Bentine
Matthew S. White
Chester, Wilcox & Saxbe LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215
Attorneys for Interstate Gas Supply, Inc.

William Wright
Attorney General's Office
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215

Vincent A. Parisi
Interstate Gas Supply, Inc.
5020 Bradenton Avenue
Dublin, Ohio 43017

Dean Bruno
Dir. of Strategic and Financial Planning
NiSource Corporate Service Company
200 Civic Center Drive
Columbus, Ohio 43215

Office of the Ohio Consumers' Counsel
Joseph P. Serio, Counsel of Record
Larry S. Sauer
Assistant Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215

Dane Stinson
Bailey Cavaliere LLC
10 West Broad Street
Columbus, Ohio 43215
Attorney for RESA

Glen S. Krassen
Bricker & Eckler LLP
1011 Lakeside Ave., Suite 1350
Cleveland, Ohio 44114
Attorney for NOPEC

Matthew W. Warnock
Brickler & Eckler LLP
100 South Third Street
Columbus, OH 43215
Attorney for NOPEC

John M. Dosker
Stand Energy Corporation
1077 Celestial Ct., Suite 110
Cincinnati, OH 45202


Ann Zallocco