

**FILE**

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

OCT -4 PM 5:01

In the Matter of the Application of  
Interstate Gas Supply, Inc. for  
Certification as a Retail Natural Gas  
Supplier

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**PUCO**  
Case No. 02-1683-GA-CRS

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**INTERSTATE GAS SUPPLY, INC.'S MOTION FOR LEAVE TO FILE A REPLY INSTANTER  
TO RETAIL ENERGY SUPPLY ASSOCIATION'S REPLY MEMORANDUM**

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Pursuant to O.A.C. 4901-1-12(A), Interstate Gas Supply, Inc. ("IGS") files this Motion for Leave to file a reply instanter to Retail Energy Supply Association's ("RESA") Reply Memorandum filed in the above captioned proceeding on September 17, 2010 ("Motion for Leave"). As explained in the attached Memorandum in Support, IGS asks for leave to file a Reply to RESA's Reply Memoranda in order to correct RESA's misleading statements made about the Columbia Retail Energy ("CRE") website and also update the Commission on changes to the website.

Respectfully submitted,



John W. Bentine (0016388)  
Email: jbentine@cwslaw.com  
Direct Dial: 614-334-6121  
Matthew S. White (0082859)  
Email: mwhite@cwslaw.com  
Direct Dial: 614-334-6172  
CHESTER WILLCOX & SAXBE LLP  
65 E. State Street, Suite 1000  
Columbus, Ohio 43215  
Telephone: 614-221-4000  
Facsimile: 614-221-4012

Vincent A. Parisi  
Email: vparisi@igsenergy.com  
IGS ENERGY  
6100 Emerald Parkway  
Dublin, Ohio, 43016  
Telephone: 614-923-1000  
*Attorneys for Interstate Gas Supply, Inc.*

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Interstate Gas Supply, Inc. for  
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**Case No. 02-1683-GA-CRS**

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**MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE A REPLY INSTANTER  
AND REPLY OF INTERSTATE GAS SUPPLY, INC.**

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**I. MEMORANDUM IN SUPPORT**

On September 7, 2010, RESA filed a Motion to Intervene in the above captioned proceeding and Motion for Evidentiary hearing objecting to IGS' use of the CRE service mark. On September 10, 2010 IGS filed a Memorandum Contra RESA's Motion to Intervene and Motion for Evidentiary hearing ("Memo Contra") noting, *inter alia*, that it is procedurally improper to conduct an evidentiary hearing on the use of the CRE service mark in IGS' certificate docket. On September 17, 2010 RESA filed a Reply Memorandum to IGS' Memo Contra ("Reply Memorandum").

In its Reply Memorandum, RESA makes the allegation that the disclosures on CRE's website are different from the disclosures IGS committed to making on its marketing material.<sup>1</sup> RESA's statements made regarding the disclosures on the CRE website fail to acknowledge the CRE website is designed to market to customers in multiple gas distribution utilities, not just Columbia Gas of Ohio ("CGO"). In order to correct this mischaracterization, IGS respectfully requests that the Commission grant IGS leave to file a reply to RESA's statements regarding the CRE website. Also, the CRE website only recently became operational and therefore RESA is raising a new issue which IGS was not able to address in its initial Memorandum Contra. As more fully explained in its Reply, IGS has made a recent change to the CRE website that is relevant to RESA's accusations, not because there was any merit in the accusation; rather, IGS

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<sup>1</sup> RESA Reply Memorandum at 10.

as is its standard practice reviewed the concerns raised and determined that there was a revision it could make that would resolve the concerns from a reasonable person standard. Instead of arguing about the legitimacy of the allegation, IGS believed it was more meaningful to simply make a reasonable adjustment to the website disclosure and eliminate the issue, real or perceived, altogether.

In past proceedings the Commission has granted leave to file replies in order to correct inaccurate or misleading statements made by parties.<sup>2</sup> For the foregoing reasons, IGS respectfully requests that the Commission accept the below Reply.

## **II. REPLY**

In its Reply Memorandum, RESA notes that the disclosure made on the Columbia Retail Energy website does not specifically state that CRE is not an affiliate of CGO, but instead the disclosure states that CRE is not an affiliate of the utility. RESA then concludes that IGS has broken its commitment to disclose that CRE is not an affiliate of CGO.<sup>3</sup> RESA's allegations are nothing more than an attempt to discredit IGS' sincere commitment to making the appropriate disclosures to CGO customers.

Disclosures must be made in the context of the marketing material in which the disclosure is placed.<sup>4</sup> The CRE website is designed to accommodate inquiries from potential customers of multiple utilities, as IGS plans to market with the CRE service mark to customers served by other gas distribution utilities. The disclaimer that CRE is not an affiliate of CGO, however, only has relevance to customers served in the CGO territory. Under, RESA's logic, if the CRE website disclosed that CRE was not an affiliate of CGO, then the website disclosure

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<sup>2</sup> See Case No. 09-1089-EL-POR, Entry (July 14, 2010) at Finding 11; Case No. 05-1298-TP-UNC, Finding and Order (March 20, 2006) at Finding 9.

<sup>3</sup> RESA Reply Memorandum at 10-11.

<sup>4</sup> IGS committed to making the disclosures listed in its Memo Contra or disclosures "substantially similar" to the disclosures listed in the Memo Contra. Memo Contra at 3. IGS used the qualifying language "substantial similar" because IGS understands that in the context of certain marketing material, it does not make sense to make the exact disclosures listed in IGS' Memo Contra.

would be misleading to all customers not served in the CGO service territory. This puts IGS in the position of never being able to satisfy RESA's impossible disclosure standards.

However, in order to avoid even the appearance that IGS is not honoring its commitment to make more than adequate disclosures, the disclosure on the CRE website has been changed to state "Columbia Retail Energy is not an affiliate of NiSource or Columbia Gas."<sup>5</sup> This change was made shortly after the CRE website being made available to the public, and has been the case ever since. Further, IGS provided a link to the web site to the Public Utility of Ohio Commission Staff immediately to make them aware of the change from "the utility" to "Columbia Gas" so the Staff would be able to review the change and provide any comments. IGS, as has been the case throughout, simply chose to go beyond the minimum requirements in providing disclosures and to work with Commission Staff. In contrast, the three other CRNGS suppliers currently marketing with names similar to an incumbent utility in Ohio do not have a disclosure at the top of their web pages, and the rule related to disclosures does not require anyone to provide such a statement.<sup>6</sup> More to the point, the utility affiliate CRNGS suppliers have not had even close to the same level of scrutiny that IGS is receiving for the use of the CRE service mark.

IGS has carefully worked with Staff to develop appropriate disclosures. The original disclosure made on IGS' website was one of the disclosures presented to Staff, with the explanation that in some instances markets broader than just Columbia Gas of Ohio's service territory will be relevant to the disclosure so more generic, yet still informative disclosures might be necessary. At a certain point, however, RESA's objections appear to be just an attempt to

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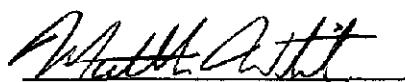
<sup>5</sup> While not technically identical to the disclosures IGS listed in its Memo Contra, it would be difficult to claim that the disclosure on the CRE website is not sufficient to notify customers that CRE is not an affiliate of CGO or any other Columbia Gas utilities where CRE operates.

<sup>6</sup> Vectren Source has no disclosures on its webpage. See: <http://www.vectrensource.com/>  
Duke Energy Retail has no disclosure on its webpage. See: <http://retail.duke-energy.com/>  
Dominion East Ohio Energy disclosed that it is not Dominion East Ohio at the bottom of its webpage. See: <http://www.dom.com/products/energy-offers/dominion-east-ohio-energy.jsp>  
In contrast, CRE has made conspicuous disclosures at both the top and the bottom of its webpage.

stall or stop IGS from marketing under the CRE service mark without any legal justification, citation to any legal authority supporting their contentions, or case law supportive of the theories. The bottom line is that in all marketing materials *directly marketed to CGO customers*, IGS will, and IGS has, disclosed that CRE is not an affiliate of CGO and in a way that is significantly greater than is required under the Administrative Code, and in significantly greater detail, type size, location and frequency than any other company using a name similar to the utility in Ohio. In fact, in its marketing materials IGS has made the very disclosures recommended by RESA.<sup>7</sup> IGS' willingness to accommodate RESA (which is a group of competing companies) by changing its website is more evidence of IGS' commitment to avoiding even the appearance of not making appropriate disclosures.

The macro point, however, is that there is an obvious conflict when competing CRNGS suppliers have input on the details of the marketing material of their competitors. There are other procedural mechanisms to address RESA's concerns about IGS' marketing material, including a complaint proceeding. Allowing competitors to have direct input on IGS' marketing material in its certificate docket is likely only to lead to disingenuous attempts to delay or encumber IGS' legitimate marketing efforts.

Respectfully submitted,



John W. Bentine (0016388)  
Email: [jbentine@cwsllaw.com](mailto:jbentine@cwsllaw.com)  
Direct Dial: 614-334-6121  
Matthew S. White (0082859)  
Email: [mwhite@cwsllaw.com](mailto:mwhite@cwsllaw.com)  
Direct Dial: 614-334-6172  
CHESTER WILLCOX & SAXBE LLP  
65 E. State Street, Suite 1000  
Columbus, Ohio 43215

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<sup>7</sup> RESA recommends that on all bills, and all advertising, marketing, and consumer education materials the Commission require the disclosure of: 1) the CRNGS's full legal name, and 2) that the CRNGS is not affiliated with the NGC. RESA Reply Memorandum at 12.

Telephone: 614-221-4000

Facsimile: 614-221-4012

Vincent A. Parisi

Email: [vparisi@igsenergy.com](mailto:vparisi@igsenergy.com)

IGS ENERGY

6100 Emerald Parkway

Dublin, Ohio, 43016

Telephone: 614-923-1000

*Attorneys for Interstate Gas Supply, Inc.*

### CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Motion for Leave to File a Reply and Reply of Interstate Gas Supply, Inc.* was served upon the following persons listed below by electronic and regular U.S. mail, postage prepaid, this 4<sup>th</sup> day of October, 2010.

Joseph Serio  
Larry S. Sauer  
OFFICE OF CONSUMERS' COUNSEL  
10 W. Broad Street, Suite 1800  
Columbus, Ohio 43215  
Email: serio@occ.state.oh.us  
sauer@occ.state.oh.us

Katie Stenman  
Attorney Examiner  
PUBLIC UTILITIES COMMISSION OF OHIO  
180 E. Broad Street  
Columbus, Ohio 43215  
Email: Katie.Stenman@puc.state.oh.us

Glenn S. Krassen  
BRICKER & ECKLER LLP  
1011 Lakeside Avenue, Suite 1350  
Cleveland, Ohio 44114  
Email: gkrassen@bricker.com

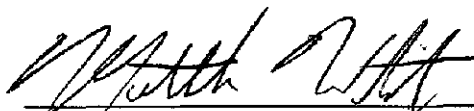
Matthew W. Warnock  
BRICKER & ECKLER LLP  
100 South Third Street  
Columbus, Ohio 43215  
Email: mwarnock@bricker.com

Carolyn S. Flahive  
Ann B. Zallocco  
THOMPSON HINE LLP  
41 South High Street, Suite 1700  
Columbus, Ohio 43215  
Email: Carolyn.Flahive@ThompsonHine.com

John M. Dosker  
STAND ENERGY CORPORATION  
1077 Celestial Street, Suite 110  
Cincinnati, Ohio 45202  
jdosker@stand-energy.com

Dane Stinson  
BAILEY CAVALIERI LLC  
10 West Broad Street, Suite 2100  
Columbus, Ohio 43215  
Dane.Stinson@BaileyCavalieri.com

Juan Jose Perez  
PEREZ & MORRIS LLC  
8000 Ravine's Edge Court, Suite 300  
Columbus, Ohio 43235  
jperez@perez-morris.com

  
Matthew White