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October 19, 2010

Ms. Renee Jenkins
Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street, 13th Floor
Columbus, OH 43215-3793

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

Dear Ms. Jenkins:

Please find enclosed for filing in the above captioned matter the original and nine (9) copies of *Retail Energy Supply Association's Memorandum Contra Interstate Gas Supply's Motion for Leave to File a Reply Instant to RESA's Reply Memorandum*. Please date stamp and return the additional copies.

Very truly yours,

BAILEY CAVALIERI LLC



Dane Stinson

Enclosures

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

**RETAIL ENERGY SUPPLY ASSOCIATION'S
MEMORANDUM CONTRA INTERSTATE GAS SUPPLY'S MOTION FOR LEAVE TO
FILE A REPLY INSTANTER TO RESA'S REPLY MEMORANDUM**

I. INTRODUCTION

The pleading cycle governing the Retail Energy Supply Association's ("RESA") Motion to Intervene, Request for Rulemaking and Preliminary Comments ("Motion to Intervene") has ended. RESA filed its Motion to Intervene in this proceeding on September 7, 2010, Interstate Gas Supply ("IGS") filed its memorandum contra on September 10, 2010 ("Memo Contra"), and RESA filed its reply on September 17, 2010 ("Reply"). The Public Utility Commission of Ohio's ("Commission") rules do not provide for further replies. See section 4901-1-12(B), Ohio Admin. Code. Nevertheless, IGS filed a motion seeking leave to file a reply instanter ("Reply Instanter") to RESA's Reply. IGS seeks leave to file the Reply Instanter "to correct misleading statements RESA made about the Columbia Retail Energy ("CRE") website and to update the Commission on changes to the website." Reply Instanter, at 1. As shown below, RESA's representations about the website were accurate. IGS has created a "misrepresentation" to provide it an opportunity to explain the changes it made to the disclosures contained on its website after RESA brought the website to the Commission's attention. RESA requests the Commission to deny IGS's motion for leave to file the Reply Instanter and strike IGS's Reply Instanter.

II. BACKGROUND

Throughout its pleadings in this matter, RESA has shown that IGS's proposed use of a non-affiliated utility's name and logo is a matter of first impression for the Commission and requested the Commission commence a rulemaking proceeding so that all interested parties would have input on the rules governing such use. RESA's position is that use of the "Columbia" trade name and/or logo, standing alone, would be misleading, deceptive and anti-competitive. Significantly, RESA does not propose a blanket prohibition on competitive retail natural gas suppliers' use of non-affiliated utilities' names and logos, but requests that the rulemaking examine the appropriate disclosures to accompany such use.

At the time RESA filed its Motion to Intervene in this proceeding on September 7, 2010, IGS (at least to RESA's knowledge) had not commenced marketing under the Columbia trade name and logo. However, RESA cautioned that if IGS commenced such marketing, the PUCO should use its statutory and regulatory authority to prevent such unlawful marketing until new rules became effective. See RESA Motion to Intervene, at 6 and 9.

In its Memo Contra RESA's Motion to Intervene, IGS did not object to the rulemaking process, agreed that disclosures were appropriate, and even went so far as to share the disclosures it proposed to use. In examining the proposed disclosures in its Reply of September 17, 2010, RESA explained them as follows:

IGS states that it will use the following, or a substantially similar,^[1] disclosure at the **TOP** of its marketing material next to the "Columbia" logo:

Columbia Retail Energy is not an affiliate of NiSource or
Columbia Gas of Ohio.

¹ To the extent IGS infers in its Reply Instanter that RESA misled the Commission by claiming that IGS committed to use the precise language provided in its Memo Contra, IGS is mistaken. See Reply Instanter, at 3. This quoted passage from RESA's Reply clearly acknowledges that IGS proposed to use "substantially similar" disclosures. RESA's point in its Reply is that the "substantially similar" use of "the utility" in lieu of "Columbia Gas of Ohio," is misleading, deceptive and anti-competitive.

(hereafter, the "Top Disclosure"). See IGS Memorandum Contra, at 3. IGS also states that it MAY use the following, or a substantially similar, disclosure at the BOTTOM of its marketing material:

The trademark COLUMBIA RETAIL ENERGY including the starburst design is a trademark of NiSource Corporate Services Company and is used under license by Interstate Gas Supply, Inc. Interstate Gas Supply, Inc. is not an affiliate of NiSource Corporate Services Company or Columbia Gas of Ohio.

(hereafter, the "Bottom Disclosure"). *Id.*

RESA Reply, at 8. RESA stated that such disclosures were insufficient because neither the Top nor Bottom Disclosure clearly identified that IGS will be the entity that will provide the service, the Bottom Disclosure was not posted near the Columbia name and logo, and the Top and Bottom Disclosures confused the relationship among IGS, CRE, and Columbia Gas of Ohio. See RESA Reply, at 8-9.

Considering that RESA had asked the Commission, if IGS commenced marketing under the Columbia trade name and logo, to use its statutory and regulatory authority to prevent such unlawful marketing until new rules became effective, RESA informed the Commission in its Reply that IGS had begun its marketing campaign through a website. RESA asked the Commission to order IGS to cease and desist such marketing activities using its authority under sections 4929.24 and 4905.26, Ohio Rev. Code, and sections 4901:1-27-10, 4901:1-27-12, 4901:1-29-03, and 4901:1-29-05(C), Ohio Admin. Code. RESA explained:

IGS already has launched a website on which it is marketing service under the Columbia Retail Energy name. See Attachment B; see also <http://www.columbiaretailenergy.com>. It is alarming how IGS has modified the disclaimers proposed in its pleadings. On the web site's front page, IGS has removed any reference to the traditional [natural gas company], Columbia Gas of Ohio, from its disclosures and replaced it with the words "the utility."

The Top Disclosure on the website now reads:

Columbia Retail Energy is not an affiliate of NiSource or the utility.

Emphasis supplied. The Bottom Disclosure on the website now reads:

The trademark COLUMBIA RETAIL ENERGY including the starburst design is a trademark of NiSource Corporate Services Company and is used under license by Interstate Gas Supply, Inc. Interstate Gas Supply, Inc. is not an affiliate of NiSource Corporate Services Company or the utility.

Emphasis added.

RESA Reply, at 10. RESA concluded:

IGS's conduct in refusing to disclaim an affiliate relationship specifically with Columbia Gas of Ohio on its website underscores the urgent need for the Commission to promulgate specific rules governing a CRNGS's use of a non-affiliated NGC's name and/or logo. The need is even more urgent considering that IGS already has initiated its marketing campaign, subjecting consumers and competing CRNGSs to immediate harm by IGS's misleading and deceptive practices. Because subsequently adopted rules will not repair the harm to consumers who are misled to enroll with Columbia Retail Energy, and will not repair the harm to CRNGSs who lose customers or prospective customers due to IGS's misleading and deceptive marketing practices, RESA urges the Commission to order IGS to cease and desist its current marketing campaign until formal rules are adopted. If such misleading and deceptive marketing practices continue, the Commission should initiate proceedings pursuant to sections 4929.24 and 4905.26, Ohio Rev. Code, and sections 4901:1-27-10, 4901:1-27-12, 4901:1-29-03, and 4901:1-29-05(C), Ohio Admin. Code, to prevent such use until the new rules are adopted and become effective.

RESA Reply, at 11. In its Motion for Leave to File a Reply Instantly, IGS states that it has changed the website's Top and Bottom Disclosures from reading "the utility" to "Columbia Gas" (see Attachment A).² However, these revised disclosures remain insufficient for the reasons stated in RESA's Reply – namely that neither the Top nor Bottom Disclosure clearly identifies that IGS will be the entity that will provide the service, the Bottom Disclosure is not posted near

² RESA previously acknowledged this change in its Statement in Support of Motion to Order Interstate Gas Supply to Cease and Desist Using the Columbia Trade Name, filed October 1, 2010, at fn. 3.

the Columbia name and logo, and the Top and Bottom Disclosures confuse the relationship among IGS, CRE, and Columbia Gas of Ohio.³ See RESA Reply, at 8-9.

III. RESA MADE NO MISREPRESENTATION

IGS contends that the Commission should provide it leave to file the Reply Instantner of October 4, 2010, to correct the “misleading statements” RESA made in its Reply filed September 17, 2010. IGS Reply Instantner, at 1. IGS alleges a misrepresentation by omission – that RESA “fail[ed] to acknowledge the CRE website is designed to market to customers in multiple gas distribution utilities, not just Columbia Gas of Ohio (‘CGO’).” IGS Reply Instantner, at 1. To the contrary, the website acknowledges that CRE is providing service only in the Columbia Gas of Ohio territory. See Attachment A. Even if IGS proposes to market under the CRE name in multiple natural gas company service territories in the future, and even if the use of the words “the utility” is appropriate when marketing in multiple jurisdictions, the fact remains that the CRE website offers service only in Columbia Gas of Ohio’s service territory. RESA made no misrepresentation, or “misrepresentation by omission.” IGS’s revision of the website disclosure from “the utility” to “Columbia Gas” admits as much.

IV. CONCLUSION

The pleading cycle on RESA’s Motion to Intervene has ended (see section 4901-1-12(B), Ohio Admin. Code). Although RESA attempts to extend the pleading cycle by alleging that RESA made a misrepresentation in its Reply, the foregoing shows that no misrepresentation was


³ IGS states in its Reply Instantner that, “***IGS has made the very disclosures recommended by RESA.” Reply Instantner, at 5. IGS relies on RESA’s general outline of disclosure requirements and ignores how RESA proposed that the outline be used in practice to provide the following or similar clear disclosure:

Service is provided by Interstate Gas Supply, Inc. under the trade name Columbia Retail Energy. Neither Interstate Gas Supply nor Columbia Retail Energy is affiliated with Columbia Gas of Ohio.

RESA Reply, at 9. IGS’s disclosures, as used in its website and written marketing materials, obviously fall far short of RESA’s proposal, contrary to IGS’s claims.

made. Accordingly, IGS's motion for leave to file a reply instanter must be denied and the Reply Instanter stricken. Moreover, IGS's confusion about the proper disclosures to make when marketing under the "Columbia" name, as evidenced by its changing website disclosures, shows that a rulemaking proceeding is essential on this matter of first impression to assure that appropriate and specific disclosures are in place for all non-affiliated entities using a utility name. In addition, considering that IGS has initiated website and written marketing campaigns with disclosures that are insufficient, RESA renews its request that the Commission use its statutory and regulatory authority to order IGS to cease and desist its campaign until formal rules are adopted.

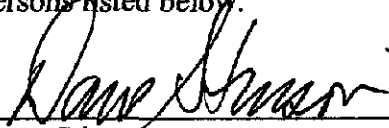
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dane Stinson", is written over a horizontal line.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing *Retail Energy Supply Association's Memorandum Contra Interstate Gas Supply's Motion for Leave to File a Reply Instantly to RESA's Reply Memorandum* was served by Regular U.S. Mail and/or electronic mail this 19th day of October 2010 on the persons listed below.


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Please choose your utility:

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What Do I Need to Enroll?

To get started, all you need is your Columbia Gas account number, which can be found on your bill. If you do not have this, please call your utility.

Where Is My Billing?

The trademark COLUMBIA RETAIL ENERGY including the starburst design is a trademark of NiSource Corporate Services Company and is used under license by Interstate Gas Supply, Inc. Interstate Gas Supply, Inc. is not an affiliate of NiSource Corporate Services Company or Columbia Gas.

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Attachment

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