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BAILEY CAVALIERI LLC

ATTORNEYS AT LAW

One Columbus 10 West Broad Street, Suite 2100 Columbus, Ohio 43215-3422
telephone: 614.221.3155 facsimile: 614.221.0479
www.baileycavalieri.com

Direct Dial: 614.229.3210
Email: Dane.Stinson@baileycavalieri.com

October 21, 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 Reply to Interstate Gas Supply's Memorandum Contra the Ohio Consumers' Counsel, et al.'s Motion to Cease and Desist*. 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)	Case No. 02-1683-GA-CRS
Natural Gas Supplier.)	

**RETAIL ENERGY SUPPLY ASSOCIATION'S
REPLY TO INTERSTATE GAS SUPPLY'S MEMORANDUM CONTRA THE OHIO
CONSUMERS' COUNSEL, ET AL.'S MOTION TO CEASE AND DESIST**

In its memorandum contra the Ohio Consumers' Counsel, et al.'s ("Joint Movants") motion to cease and desist filed in this proceeding on October 14, 2010, Interstate Gas Supply ("IGS") misunderstands the Retail Energy Supply Association's ("RESA") position in this proceeding. RESA files this reply to correct this misunderstanding.

Since the time it intervened in this proceeding, RESA had requested the Public Utilities Commission of Ohio ("Commission") to prevent IGS from marketing under the Columbia trade name and/or logo until rules are in place that govern a non-affiliated competitive retail natural gas supplier's ("CRNGS") use of a non-affiliated utility's name and/or logo. See RESA's Motion to Intervene, filed September 7, 2010, at 6, 9, and 10; RESA's Reply to IGS's Memo Contra RESA's Motion to Intervene, filed September 17, 2010, at 2 and 11; RESA's Statement in Support, filed October 1, 2010, at 4; and RESA's Memo Contra IGS's Motion for Leave to File a Reply Instantly, filed October 19, 2010, at 2, 3, 4, and 6. RESA filed a statement in support of Joint Movants' motion on October 1, 2010, to urge the Commission, based upon RESA's extensive pleadings in this matter, to use its authority to prevent IGS from using the Columbia trade name and logo until permanent rules are in place.

RESA wishes to correct IGS's following misunderstandings:

1. RESA does not propose a blanket prohibition on a CRNGS's use of a non-

affiliated utility's name and logo (see IGS Memo Contra Motion to Cease and Desist, at 3, 12), but requests the Commission to commence a rulemaking proceeding so that all interested parties will have input on the rules and disclosures governing such use. See RESA's pleadings cited above.

2. Contrary to IGS's assertions (see IGS Memo Contra Motion to Cease and Desist, at 5), RESA has cited clear statutory and regulatory authority for the Commission to initiate a proceeding to investigate IGS's conduct and to prevent IGS from using the "Columbia" name and/or logo until permanent rules are in place, namely 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. See RESA's pleadings cited above.
3. Contrary to IGS's assertions (see IGS Memo Contra Motion to Cease and Desist, at 3-4), a vast distinction exists when an affiliated CRNGS uses the incumbent utility's name and when a non-affiliated CRNGS uses the utility's name, considering that consumers would not know that the non-affiliated CRNGS was the actual source of their natural gas commodity supply, absent proper disclosures identifying the non-affiliated CRNGS. See, e.g., *Daddy's Junky Music Stores, Inc. v. Big Daddy's Family Music Center*, 109 F.3d 27, 280 (6th Cir. 1997), an analogous trademark infringement case which sets forth the eight standards for determining the likelihood of confusion when using another's trademark:

When determining whether a likelihood of confusion exists, a court must examine and weigh the following eight factors: 1. strength of the senior mark; 2. relatedness of the goods or services; 3. similarity of the marks; 4. evidence of actual

confusion; 5. marketing channels used; 6. likely degree of purchaser care; 7. the intent of defendant in selecting the mark; and 8. likelihood of expansion of the product lines.

When applying these factors to a given case, a court must remember that these factors imply no mathematical precision, but are simply a guide to help determine whether confusion is likely. They are also interrelated in effect. Each case presents its own complex set of circumstances and not all of these factors may be particularly helpful in any given case. But a thorough and analytical treatment must nevertheless be attempted. *The ultimate question remains whether relevant consumers are likely to believe that the products or services offered by the parties are affiliated in some way.* (Emphasis supplied.)

4. Contrary to IGS's assertions (see IGS Memo Contra Motion to Cease and Desist, at 4-5, 14), neither the disclosures IGS proposes in its pleadings nor those it uses in practice are clear and conspicuous. The disclosures are insufficient because they fail to identify that IGS will be the entity that will provide natural gas commodity service, the full disclosures are not posted near the Columbia name and logo, and the disclosures confuse the relationship among IGS, Columbia Retail Energy, and Columbia Gas of Ohio. See RESA Statement in Support at 2-4, RESA Memo Contra IGS's Motion for Leave to File Reply *Instantly*, at 2-5.

In its memo contra Joint Movants' motion to cease and desist, IGS remarks of the "hysterical tone," and "unverified speculation" in the intervenors' pleadings in this proceeding,

a characterization with which RESA does not agree.¹ IGS seeks to counter its perception of such “hysteria” and “speculation” with assurances that it has worked with the Commission Staff on the disclosures to be given. See IGS Memo Contra Motion to Cease and Desist, at 4-5. RESA appreciates Staff’s willingness to work with all CRNGSs on difficult issues of interpretation; however, on this issue of first impression, for which rules currently do not exist, RESA believes it appropriate that all interested persons be heard through a transparent rulemaking process. Such a process would facilitate understanding of all interested parties’ positions, reduce the confusion surrounding this proceeding, and lead to an orderly resolution of the issues presented. During the interim, however, considering IGS’s acknowledgement of its discretion to tailor disclosures to meet its needs (see IGS Motion for Leave to File a Reply Instanter, at 3), its confusion of the appropriate disclosures to use in its website (*Id.*, at 2-3, 4), and its failure to make appropriate disclosures on its written materials (Joint Movants’ Motion to Cease and Desist, at Exhibit A; RESA Statement in Support, at 3-4), RESA renews its request for the Commission to use its statutory and regulatory authority to initiate a proceeding to investigate IGS’s conduct and to prevent IGS from using the “Columbia” name and/or logo until

¹ RESA stands by its characterization of IGS’s use of the “Columbia” trade name, standing alone or with insufficient disclosures, as “misleading, deceptive, and anti-competitive” – which is the pertinent language used in the Commission’s own rules.

Regrettably, in its memo contra Joint Movants’ motion to cease and desist, at 14, IGS wrongly accuses RESA of making “false and/or misleading statements in an attempt to manufacture customer harm.” To support its accusation, IGS states that RESA failed to notify the Commission in RESA’s Statement in Support that IGS had changed the disclosures in its website after RESA had informed the Commission of their impropriety. Even a cursory glance at footnote 3 in RESA’s Statement in Support reveals that RESA informed the Commission that IGS had changed its website disclosures (and that the revised disclosures remained defective). IGS’s uncertainty of what disclosures to use clearly speaks to the need for a rulemaking on this issue of first impression.

Just as regrettably, IGS accuses RESA of making misleading statements or misrepresentations in RESA’s reply to IGS’s memo contra RESA’s motion to intervene, by failing to disclose that IGS’s website was designed to solicit customers in multiple service territories. RESA’s memo contra IGS’s motion for leave to file a reply instanter, filed October 19, 2010, clearly shows that IGS’s accusation is unfounded, and that the website currently offers service only in Columbia’s service territory.

permanent rules are in place.

Respectfully submitted,

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

Dane Stinson (0019101)

BAILEY CAVALIERI LLC

10 West Broad Street, Suite 2100

Columbus, Ohio 43215

(614) 221-3155 (telephone)

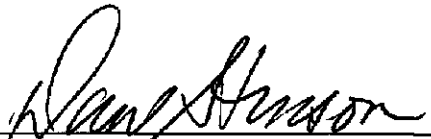
(614) 221-0479 (fax)

Dane.Stinson@BaileyCavalieri.com

Attorney for RESA

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing *Retail Energy Supply Association's Reply to Interstate Gas Supply's Memorandum Contra the Ohio Consumers' Counsel, et al.'s Motion to Cease and Desist* was served by Regular U.S. Mail and/or electronic mail this 21st day of October 2010 on the persons listed below.


Dane Stinson

John W. Bentine
Matthew S. White
Chester Willcox & Saxbe, LLP
65 East State Street, Suite 1100
Columbus, Ohio 43215-4213
jbentine@cwslaw.com
mwhite@cwslaw.com

Glenn S. Krassen
Bricker & Eckler LLP
1011 Lakeside Avenue, Suite 1350
Cleveland, Ohio 44114
gkrassen@bricker.com

Vincent A. Parisi
Interstate Gas Supply, Inc.
5020 Bradenton Avenue
Dublin, Ohio 43017
vparisi@igsenergy.com

Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
mwarnock@bricker.com

Joseph P. Serio
Larry S. Sauer
Assistant Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
serio@occ.state.oh.us
sauer@occ.state.oh.us

Carolyn S. Flahive
Ann B. Zallocco
Thompson Hine LLP
41 South High Street, Suite 1700
Columbus, Ohio 43215
Carolyn.Flahive@ThompsonHine.com
Ann.Zallocco@ThompsonHine.com

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

John M. Dosker
Stand Energy Corp.
1077 Celestial Street, Suite 110
Cincinnati, Ohio 45202
jdosker@stand-energy.com

William Wright
Attorney General's Office
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
William.wright@puc.state.oh.us

Andrew Mitrey
Border Energy Inc.
9787 Fairway Drive
Powell, Ohio 43065