

FILE

BARNES & THORNBURG LLP

RECEIVED-DOCKETING DIV

2010 NOV -8 PM 2:17

Charles R. Dyas, Jr
(614) 628-1408
charles.dyas@btlaw.com

7
Fifth Third Center
Suite 1850
21 E. State Street
Columbus, OH 43215-4219 U.S.A.
(614) 628-0096
Fax (614) 628-1433

www.btlaw.com

PUCO

November 5, 2010

Public Utilities Commission of Ohio
Docketing Division
180 East Broad Street
Columbus, OH 43215-3793

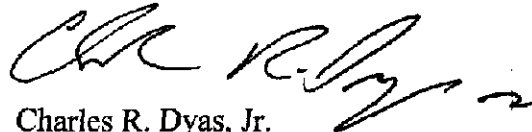
RE: In the Matter of The Office of the Ohio Consumer Counsel, et al. v.
Interstate Gas Supply, Inc. d/b/a Columbia Retail Energy
Case No. 10-2395-GA-CSS

Dear Clerk:

Please find enclosed the original and twenty-one (21) copies of MXenergy, Inc.'s Motion to Intervene in the above-referenced case, which is being served on all parties by regular mail today. Please return one time stamped copy in the enclosed self addressed stamped envelope. Please do not hesitate to contact me should you have any questions.

Thank you for your attention to this matter.

Sincerely,


Charles R. Dyas, Jr.

cc: Sandy Guthorn
All Parties of Record

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 Am Date Processed 11/8/10

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIV
2010 NOV -8 PM 2:17

In the Matter of

The Office of the Ohio Consumer Counsel, et al.,

v.


Interstate Gas Supply, Inc.
d/b/a/ Columbia Retail Energy

Case No. **10-2895-CA-CSS**

MXENERGY, INC.'S MOTION TO INTERVENE

Now comes MXenergy, Inc. ("MXenergy"), by and through counsel of record and pursuant to Ohio Revised Code ("R.C.") 4903.221 and Ohio Administrative Code ("Ohio Adm. Code") 4901-1-11 respectfully moves the Public Utilities Commission (the "Commission") to grant its Motion to Intervene in this proceeding. MXenergy has real and substantial interests in this matter that cannot be adequately represented by any other party to the action. The reasons supporting MXenergy's Motion are set forth in the attached Memorandum of Support.

Respectfully submitted,



Charles R. Dyas, Jr. (0034269)
Barnes & Thornburg LLP
21 East State Street, Suite 1850
Columbus, OH 43215
(614) 628-1408
(614) 628-1433 (Facsimile)
cdyas@btlaw.com

Attorney for MXenergy, Inc.

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of	:	
	:	
The Office of the Ohio Consumer Counsel, et al.,	:	Case No. 10-2395-GA-CSS
	:	
v.	:	
	:	
Interstate Gas Supply, Inc.	:	
d/b/a/ Columbia Retail Energy	:	

**MEMORANDUM IN SUPPORT
OF MXENERGY'S MOTION FOR INTERVENTION**

I. INTRODUCTION AND BACKGROUND

MXenergy is registered with the Ohio Secretary of State as a foreign corporation licensed to do business in Ohio as a natural gas supplier. MXenergy's primary office is located at 20 Summer Street, Stamford, Connecticut 06901. Founded in 1999 to provide natural gas and electricity to consumers in deregulated energy markets, MXenergy is one of the largest independent retailers of natural gas in the country, serving approximately 500,000 customers in 41 utility territories in the United States and Canada. MXenergy has been certified by the Public Utilities Commission of Ohio ("PUCO" or "Commission") as a competitive natural gas supplier ("CRNGS").

On August 6, 2010 Interstate Gas Supply, Inc. ("IGS") filed a Notice of Material Change (the "Notice") with the Commission pursuant to section 4901:1-27-10 of the Ohio administrative Code. The Notice requests that IGS be permitted to operate in the retail natural gas market under the trade name Columbia Retail Energy ("Columbia Retail"). IGS is unaffiliated with Columbia Gas of Ohio, Inc. ("Columbia Gas") which is the incumbent natural gas company in Ohio.

Without first obtaining formal approval from the Commission IGS is currently using the "Columbia Retail Energy" name in marketing natural gas services in Ohio. (See Exhibits A, B and C attached hereto and incorporated herein). IGS actions are not only deceptive and misleading to the consumer, in violation of Ohio Adm. Code 4901:1-29-05(C), but also disregard the Commissions authority by violating Ohio Revised Code section 4920.20(A) by not receiving the appropriate certification.

IGS's blatant efforts to obtain a competitive advantage over other CRNGS such as MXenergy disrupts the competitive equilibrium of the natural gas market. MXenergy moves to intervene in this proceeding to protect its interest as a CRNGS. In PUCO Case No. 02-1683-GA-CRS MXenergy seeks to join with the Retail Energy Supply association ("RESA") in requesting the Commission to initiate rulemaking proceedings pursuant to Ohio Revised code Section 4929.10 to provide standards governing a CRGNS's use of a non-affiliated NGS's name and/or logo.

In the instant matter MXenergy now seeks to join the Complainants and submit that IGS has engaged in marketing, solicitation, sales acts or practices which are unfair, misleading, deceptive, or unconscionable acts in violation of Ohio Revised Code Section 4929.20(A) and Ohio Administrative Code Sections 4901:1-27(I)(7) and 4901:1-27-03(A).

II. MOTION TO INTERVENE

Ohio Adm. Code 4901-1-11 and R.C. 4903-221 generally provide that any party whose real and substantial interest stands to be adversely affected by the outcome of a Commission proceeding may intervene to protect that interest. The Supreme Court of Ohio has held "intervention ought to be liberally allowed so the positions of all persons with real and substantial interests in the proceedings can be considered by the PUCO." *Ohio Consumers'*

Counsel v. Public Utilities Commission (2006), 111 Ohio St.3d 384, 388. In this proceeding, no other party can fully and adequately represent the particularized interests of MXenergy. The intervention of MXenergy is necessary to ensure a just outcome.

R.C. 4903.221(B) and Ohio Adm. Code 4901-1-11(B) state in sum and substance that the Commission shall consider the following when deciding a motion to intervene: (1) the nature and extent of the prospective intervenor's interest; (2) the legal position advanced by the prospective intervenor and its relation to the merits of the case; (3) whether the intervention would unduly delay the proceeding or unjustly prejudice any existing party; (4) the potential intervenor's contribution to the full development and equitable resolution of the issues involved in the proceeding; and (5) whether the potential intervenor's interest is represented by existing parties to the case.

As a natural gas retailer in Ohio, MXenergy has a specific interest in preserving a fair and competitive marketplace that is free from deceptive practices. MXenergy has a significant stake in the effect such a deceptive trade name change has and will have on the energy consumer as well as Ohio's retail natural gas market as a whole.

Ohio Adm. Code 4901:1-29-05(C) provides, "no retail natural gas supplier or governmental aggregator may engage in marketing, solicitation, sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of the competitive retail natural gas service." Columbia Gas has a trusted reputation in Ohio. Should IGS be permitted to assume the trade name of Columbia Retail, consumers stand to be deceived and misled in selecting Columbia Retail based solely on the good name and reputation of Columbia Gas. As a result, Columbia Retail is likely to significantly increase its percentage of

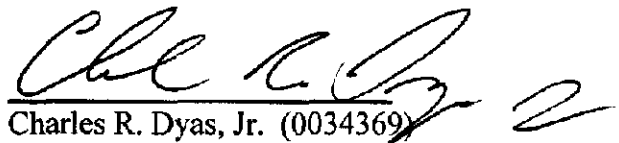
the market share without having earned this new customer base. Such marketing and solicitation practices violate Ohio Adm. Code 4901:1-29-05(C).

Additionally, the unfair advantage that would be given to IGS if its request is granted is in violation of R.C. 4905.35, titled "Prohibiting Discrimination." The law makes clear a public utility is prohibited from giving any undue or unreasonable preference or advantage to a corporation to the prejudice or disadvantage of another. See R.C. 4905.35. As MXenergy would be both disadvantaged and prejudiced by the unreasonable advantage given to IGS by the use of the Columbia Retail trade name, its motion to intervene in this matter should be granted.

Furthermore, MXenergy will in no way unduly delay the proceedings in this case and will not unjustly prejudice any party. To the contrary, MXenergy's participation could prevent future litigation on this matter as its claims and objections will be heard and considered in the current proceeding. By allowing the intervention of MXenergy, a more full and equitable outcome will be ensured.

For the reasons set forth above, it is respectfully requested MXenergy's Motion to intervene be granted.

Respectfully submitted,



Charles R. Dyas, Jr. (0034369)
Barnes & Thornburg LLP
21 East State Street, Suite 1850
Columbus, OH 43215
(614) 628-1408
(614) 628-1433 (Facsimile)
cdyas@btlaw.com

Attorney for MXenergy, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following parties of record by ordinary U.S. Mail postage prepaid this 5th day of November, 2010.

Interstate Gas Supply, Inc. Vincent A. Parisi 6100 Emerald Parkway Dublin, OH 43016-3248	Border Energy Inc. Andrew Mitrey 9787 Fairway Drive Powell, OH 43065
John W. Bentine Matthew S. White Chester, Wilcox & Saxbe, LLP 65 East State Street, Suite 1000 Columbus, OH 43215 <i>Counsel for Interstate Gas Supply, Inc.</i>	Retail Energy Supply Association (RESA) Stephen Howard 52 East Gay Street Columbus, OH 43215
Matthew W. Warnock Glenn S. Krassen Bricker & Eckler LLP 100 S. Third Street Columbus, OH 43215 <i>Counsel for Northeast Ohio Public Energy Council</i>	Stand Energy Corp. John M. Dosker 1077 Celestial Street, Suite 110 Cincinnati, OH 45202
Office of Ohio Consumer's Counsel Joseph P. Serio Larry S. Sauer 10 West Broad Street, Suite 1800 Columbus, OH 43215	Dean Bruno Director of Strategic & Financial Planning NiSource Corporate Service Company 200 Civic Center Drive Columbus, OH 43215
Dane Stinson Bailey Cavalieri LLC 10 West Broad Street, Suite 2100 Columbus, OH 43215 <i>Counsel for Retail Energy Supply Association</i>	Carolyn Flahive Ann B. Zalloco Thompson Hine LLP 41 South High Street, Suite 1700 Columbus, OH 43215 <i>Counsel for Border Energy, Inc.</i>
William Wright Attorney General's Office Public Utilities Section 180 East Broad Street, 6 th Floor Columbus, OH 43215	Juan Jose Perez Perez & Morris LLC 8000 Ravine's Edge Court, Suite 300 Columbus, OH 43235 <i>Counsel for Delta Energy, LLC</i>
Larry Gearhardt Chief Legal Counsel Ohio Farm Bureau Federation 280 North High Street PO Box 182383 Columbus, OH 43218-2383	