BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY ON REHEARING

The Commission finds:

(1) On June 21, 2010, Interstate Gas Supply, Inc., (IGS) filed an application for renewal of its certification as a competitive retail natural gas marketer.

(2) In accordance with Section 4929.20(A), Revised Code, which provides that applications for "certification or certification renewal shall be deemed approved thirty days after the filing of the application with the commission unless the commission suspends that approval for good cause shown," the application for certification renewal filed by IGS on June 21, 2010, was automatically approved on July 21, 2010. Accordingly, a certificate was issued to IGS for the period of July 24, 2010 through July 24, 2012.

(3) Rule 4901:1-27-10(A), Ohio Administrative Code (O.A.C.), requires a competitive retail natural gas (CRNG) provider to file with the Commission a notification of any material change to the information supplied in a certification or most recent certification renewal application within 30 days of such material change. Rule 4901:1-27-10(B), O.A.C., provides, *inter alia*, that material changes include, but are not limited to, "(9) Any change in the applicant's name or any use of a fictitious name."

(4) On August 6, 2010, IGS filed a notice of material change pursuant to Rule 4901:1-27-10(A), O.A.C., stating that it had registered the trade name of Columbia Retail Energy (CRE) with the Ohio Secretary of State and that, in the future, it may offer service within Ohio "under any or all of the following names: Interstate Gas Supply, Inc., IGS Energy, or Columbia Retail Energy."

(5) After IGS filed its notice of material change, the Ohio Consumers' Counsel (OCC), Border Energy, Inc. (Border), Northeast Ohio Public Energy Council (NOPEC), Stand Energy Corporation

(Stand), Retail Energy Supply Associations (RESA), Delta Energy, LLC (Delta), and the Ohio Farm Bureau Federation (OFBF) (jointly, movants) filed motions to intervene in this case. In addition to the motions to intervene, various discovery-related and procedural motions were also filed in this docket.

(6) By entry issued November 10, 2010, the Commission noted that only limited consideration of the notice of material change is appropriate for the certification docket. Specifically, we recognized that Rule 4901:1-27-10, O.A.C., provided that the Commission may suspend, rescind, or conditionally rescind a retail natural gas supplier's or governmental aggregator's certificate if it determines that the material change will adversely affect the retail natural gas supplier's or governmental aggregator's fitness or ability to provide the services for which it is certified; or to provide reasonable financial assurances sufficient to protect natural gas companies and the regulated sales service customers from default. Accordingly, the Commission determined that no concerns relating to IGS's fitness or ability to provide the services for which it is certified or IGS's financial fitness were raised in the docket. Therefore, the Commission ruled that the concerns raised in the present case were inappropriate for consideration in this docket and were more appropriately addressed in the context of the complaint case filed by several movants in Case No. 10-2395-GA-CSS.

(7) Section 4903.10, Revised Code, states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in the proceeding by filing an application within 30 days after the entry of the order upon the journal of the Commission.

(8) On December 10, 2010, OCC filed an application for rehearing setting forth four assignments of error. Specifically, OCC asserts the following assignments of error:

(a) The Commission erred by issuing an entry that violated Section 4903.09, Revised Code, due to the Commission's failure to include a written opinion setting forth the reasons prompting the decision arrived at based upon findings of fact.

(b) The Commission erred by failing to decide that the 30-day automatic-approval provision of Section

4929.20(A), Revised Code, does not apply to IGS's notice of material change.

(c) The Commission erred by allowing IGS's use of the name and logo by a nonaffiliate of the local distribution company (LDC) in violation of Rule 4901:1-29-05(C)(8), O.A.C.

(d) The Commission erred by failing to address the issue of the legality of IGS's use of the trade name, Columbia Retail Energy, consistent with Commission precedent.

(9) On December 23, 2010, IGS filed a memorandum contra OCC's application for rehearing. Rule 4901-1-35(B), O.A.C., provides that any party may file a memorandum contra within ten days after the filing of an application for rehearing. IGS's memorandum contra was filed three days after the expiration of the time period for the filing of memorandum contra and, accordingly, will not be considered.

(10) In its first assignment of error, OCC argues that the Commission issued an entry that violated Section 4903.09, Revised Code, because it did not set forth sufficient reasoning supporting its decision, based upon findings of fact. Section 4903.09, Revised Code, provides that:

> In all contested cases heard by the public utilities commission, a complete record of all of the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.

According to OCC, because the November 10, 2010, entry did not include a decision regarding the legality of IGS's use of the trade name CRE it violates Section 4903.09, Revised Code. Specifically, OCC argues that the Commission failed to consider that the automatic-approval provision of Section 4929.20, Revised Code, does not apply in the circumstances of a notice of material change and that Rule 4901:1-29-05(C)(8)(f), O.A.C., provides that only affiliates of an LDC may use the LDC's name and logo in marketing to customers. According to OCC, the Commission must make an

affirmative ruling on IGS's notice of material change and, without such a ruling, the Commission is in violation of Section 4903.09, Revised Code. Moreover, OCC avers that, because the Commission has not ruled on the notice of material change, IGS is operating without a valid certificate.

In considering OCC's reliance on Section 4903.09, Revised Code, the Commission again reiterates what it believes is the central issue in this case: the appropriate standard by which this Commission considers a notice of material change. In considering a notice of material change, the Commission evaluates whether IGS's fitness or ability to provide the services for which it is certified or IGS' financial fitness has been affected by the notice of material change. The Commission does not believe that the notice of material change filed in this case casts doubt on IGS's fitness. We find that the concerns raised by OCC are outside the scope of this proceeding and that no party has raised a credible claim that would trigger further consideration of the notice of material change filing in this docket. Therefore, within the framework of the certification docket, the Commission does not believe that this case meets the definition of a contested case. Therefore, because we find that our November 10, 2010, entry was not out of compliance with Section 4903.09, Revised Code, we conclude that OCC's first assignment of error should be denied.

(11) In its second assignment of error, OCC's argues that the Commission did not properly consider the application of the automatic-approval provision of Section 4929.20, Revised Code, to the notice of material change filed in this case. The Commission recognizes that OCC is correct, inasmuch as OCC points out that the 30-day automatic-approval provision contained in Section 4929.20, Revised Code, does not apply to a notice of material change. Rather, it applies to the automatic approval of certificate applications or certificate renewal applications. However, OCC's assertion that IGS is operating without a valid CRNGs certificate because the 30-day automatic-approval provision does not apply is incorrect. IGS is currently operating under a valid certificate. The notice of material change did not change or invalidate the certificate. Instead, the notice of material change triggered the provisions of Rule 4901:1-27-10, O.A.C., which provides that the Commission may suspend, rescind, or conditionally rescind a retail natural gas supplier's or governmental aggregator's certificate if it determines that the material change will adversely affect the retail natural gas supplier's or governmental aggregator's fitness or

ability to provide the services for which it is certified; or to provide reasonable financial assurances sufficient to protect natural gas companies and the regulated sales service customers from default. The Commission did not take any of the actions provided for in Rule 4901:1-27-10, O.A.C., because we believe IGS's fitness or ability to provide the services for which it is certified or IGS' financial fitness is not hindered because of the filing of the notice of material change and IGS is still operating, as IGS and as CRE, under a valid certificate. Accordingly, OCC's second assignment of error should be denied.

(12) In its third assignment of error, OCC also argues that the Commission has failed to properly apply Rule 4901:1-29-05(C)(8)(f), O.A.C., which OCC interprets to bar the use of the Columbia name and logo by a nonaffiliate because it does not provide rules for the use of an LDC's name or logo by an unaffiliated company. OCC is correct that Rule 4901:1-29-05(C)(8)(f), O.A.C., provides rules for the use of an LDC's name or logo by an affiliated company and does not provide any rules for the use of a LDC's name and logo by an unaffiliated company. While the significance of this distinction may be examined during the pending complaint case, we do not find that it assists us in considering whether IGS's fitness or ability to provide the services for which it is certified, or its financial fitness is adversely impacted by the notice of material change.

(13) In OCC's fourth assignment of error, OCC states that the Commission's decision to limit the purpose of the certification docket was in error and the Commission should have addressed the parties' issues raised in their various pleadings because it addressed similar concerns in *In the Matter of the Application of Commerce Energy, Inc. d/b/a Just Energy for Certification as a Competitive Retail Natural Gas Provider*, Case No. 02-1828-GA-CRS (*Just Energy*). In attempting to compare *Just Energy* with the instant case, OCC notes the disparate rulings on various motions, as well as what OCC believes to be the similarity of the issues raised.

In considering the distinction between the present case and *Just Energy*, we note the point in the recertification process during which issues were raised. In *Just Energy*, the Commission was considering a review of Just Energy's marketing practices, based on numerous customer complaints, at the time of a pending renewal application. Moreover, the automatic approval of Just Energy's renewal application was suspended to allow for further consideration. In the present case, IGS was issued a valid certificate

before the notice of material change was filed. Therefore, there was no renewal application pending in the present case to suspend. Instead, as previously stated, the Commission could only consider whether the notice of material change effected IGS's fitness to provide the service for which it is certified or financial fitness was compromised. Therefore, the present case and *Just Energy* were properly processed and considered differently in accordance with the Commission's rules and precedent. Accordingly, OCC's fourth assignment of error should be denied.

It is, therefore,

ORDERED, That OCC's application for rehearing be denied. It is, further.

ORDERED, That a copy of this entry on rehearing be served upon all interested parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Steven D. Lesser, Chairman

Paul A. Centolella

Valerie A. Lemmie

Cheryl L. Roberto

KLS/dah

Entered in the Journal JAN 0 5 2011

Reneé J. Jenkins
Secretary