FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of the Office of the Ohio Consumers' Counsel, Stand Energy Corporation, Border Energy, Incorporated, Northeast Ohio Public Energy Council, and Ohio Farm Bureau Federation	)	
Complainants,	)	Case No. 10-2395-GA-CSS
v.	)	
Interstate Gas Supply, Inc.	)	
Respondent.	)	

THE NORTHEAST OHIO PUBLIC ENERGY COUNCIL'S MEMORANDUM CONTRA INTERSTATE GAS SUPPLY, INC'S MOTION FOR PROTECTIVE ORDER

I. INTRODUCTION

On November 8, 2011, Attorney Examiner Stenman established the briefing schedule in this case on the issue of confidential information, stating:

> A similar schedule will be followed in terms of addressing the protective treatment of the confidential transcript as well as the confidential exhibits. IGS will be expected to file its motion for a protective order as well as appropriately redacted copies of NOPEC Exhibit 5 and 5A and the redacted portion of the transcript by November 29th.[1]

On November 29, 2011, Interstate Gas Supply, Inc. ("IGS") filed a Motion for Protective Treatment (the "Motion") seeking to prevent the disclosure of all "confidential" portions of the hearing transcript and the entire licensing agreement IGS entered into with NiSource Retail Services (the "Licensing Agreement"). (Emphasis added) IGS seeks blanket protective treatment for everything it does not want to be made known to the public. IGS' Motion ignores both Ohio law (providing for disclosure of redacted versions of confidential documents) and

Attorney Examiner Stenman's order that IGS submit with its Motion redacted copies of both the Licensing Agreement and confidential hearing transcript. In reality, nearly all of the information contained within the Licensing Agreement and hearing transcript does not fall within the scope of trade secret or any other protection under Ohio law.

For the reasons set forth herein, the Northeast Ohio Public Energy Council ("NOPEC") respectfully requests that the Commission deny IGS' Motion, and order properly redacted copies of the Licensing Agreement and hearing transcript to be filed with the Commission in the public docket. Since IGS failed to do so initially, NOPEC is filing redacted versions of the Licensing Agreement and the confidential hearing transcript with this Memorandum Contra redacting what NOPEC believes to actually constitute "trade secret" information.

II. LEGAL ARGUMENT

IGS' Motion is another attempt by IGS to disregard the Commission's rules by preventing non-confidential information from otherwise being made available in the public record. NOPEC files this Memorandum Contra requesting that IGS abide by Ohio law, and order that the Licensing Agreement and confidential hearing transcript be filed in the public docket subject to the limited redactions proposed by NOPEC herein.

A. The Licensing Agreement and confidential hearing transcript in their entirety are not entitled to trade secret status under Ohio law.

Ohio Administrative Code ("OAC") Rule 4901-1-24 governs protective orders in Commission proceedings. More specifically, Subsection (D)(1) states that"[a]ll documents submitted pursuant to paragraph (D) of this rule should be filed with only such information

[1] Tr. Vol. II, p. 438.

redacted as is essential to prevent disclosure of the allegedly confidential information."[2] At the evidentiary hearing, Attorney Examiner Stenman emphasized this principle, stating:

> A similar schedule will be followed in terms of addressing the protective treatment of the confidential transcript as well as the confidential exhibits. IGS will be expected to file its motion for a protective order as well as appropriately redacted copies of NOPEC Exhibit 5 and 5A and the redacted portion of the transcript by November 29th.[3]

Instead of following either the Commission's rules or the Attorney Examiner's direction at the evidentiary hearing, IGS filed a Motion that did not include a redacted version of either the Licensing Agreement or the allegedly confidential portions of the hearing transcript. Instead, IGS now argues that the entire Licensing Agreement and almost all of the confidential hearing transcript are confidential trade secrets.[4]

The stated authority for IGS' Motion is OAC 4901-1-24(D), which protects information to the extent that it is protected by state or federal aw, is deemed a "trade secret" under Ohio law, or where disclosure of the information would be inconsistent with Title 49 of the Ohio Revised Code. *Id.* In order to qualify as a "trade secret" under Ohio law, the information ("including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, programs, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers") must "derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use." R.C. 1333.61(D)(1).

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[2] See also Confidential Tr. Vol. I, p. 52, lines 16-21.

[3] Tr. Vol. II, p. 438.

[4] The only portion of the confidential hearing transcript deemed by IGS to be non-confidential are the references to the names of IGS' shareholders. See Motion for Protective Treatment, p. 5, footnote 5.

The Licensing Agreement, however, does not constitute: (i) scientific or technical information; (ii) a design; (iii) a process; (iv) a formula; (v) a pattern; (vi) a compilation; (vii) a device; (viii) a method; (ix) a technique; (x) an improvement; (xi) business plans; (xii) business information; (xiii) financial information; or (xiv) a listing of names, addresses or telephone numbers. Instead, it is a simple contract that, for the first time in Ohio history, allows an unregulated retail natural gas supplier (IGS) to provide competitive retail natural gas service to consumers in the Columbia Gas of Ohio service territory using the "Columbia" name and starburst logo, even though IGS is not affiliated with Columbia Gas. Even assuming the Licensing Agreement contained a few passages that might arguably be entitled to trade secret protection, this fact does not render the entire document a trade secret.[5] Instead, the document must be disclosed subject to proper redactions of the actual trade secret information.

Perhaps most relevant to this discussion are two cases decided by the Ohio Supreme Court. First, in *State ex rel. Plain Dealer v. Ohio Dept. of Insurance*, the Court concluded that even though "some of the other information may not have been released into the public domain, the presence of information already made public prevents us from concluding that the Memoranda, as a whole, is a document that is not generally known to the public."[6] As set forth below, a significant amount of information in the Licensing Agreement and confidential portion of the hearing transcript has been released in the public domain, thereby preventing protection of both documents in their entirety.

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[5] The fact that IGS is a privately-held company has no bearing on the trade secret analysis. Although IGS argues differently in the Motion for Protective Treatment, it cites Commission orders granting protective treatment to certain financial exhibits (e.g. financial statements and forecasts) to CRES and CRNGS applications. However, there are no financial documents under review in this case, and NOPEC already agreed that specific dollar amounts identified in the Licensing Agreement and confidential hearing transcript should be redacted.

[6] (1997), 80 Ohio St.3d 513, 529.

The second notable case, and one deciding the propriety of disclosing retail electric agreements before the Commission, is the Ohio Supreme Court's decision in *Ohio Consumers' Counsel v. PUCO.*[7] At the heart of that case were a number of agreements between Duke Energy Retail Services (a competitive retail electric supplier) and its customers. During a Commission proceeding, the Office of the Ohio Consumers' Counsel requested copies of the customer agreements. Duke Energy Retail Services refused to produce them based on trade secret claims.

Rather than label the entire agreements as trade secrets, the Commission determined that only certain portions of the customer agreements were entitled to protective treatment. In fact, the Commission identified specific categories of information in the agreements that constituted a trade secret, including: "customer names, account numbers, customer social security numbers or employer identification numbers, contract termination dates or other termination provisions, financial consideration in each contract, price of generation specified in each contract, volume of generation covered by each contract, and terms under which any options may be exercisable."[8] Because only specific portions of the customer agreements were entitled to trade secret status, the Commission ordered redacted copies to be made available publicly. On appeal, the Court upheld the Commission's decision.

In reaching its decision, the Ohio Supreme Court explained:

> The determination that certain information constitutes a trade secret, however, is not the end of the commission's analysis. The commission must also balance that determination with its duty under Ohio Adm. Code 4901-124(D)(1), which requires it to redact confidential information when reasonable without rendering the remaining document incomprehensible or of little meaning. The commission conducted an in camera review of

[7] (2009), 121 Ohio St.3d 362.

[8] *Order on Remand* (October 24, 2007), PUCO Case Nos. 03-93-EL-ATA, 03-2079-EL-AAM, 03-2081-EL-AAM and 03-2080-EL-ATA, p. 15.

> the document in question to identify and order the eligible areas of redaction. We have previously held that an in camera inspection is the 'best procedure' to determine whether information is exempt from disclosure. We conclude that the commission took the appropriate steps in this proceeding to appropriately redact the trade-secret information and make the document available to the public.[9]

In light of this direct precedent from the Ohio Supreme Court, and for the reasons set forth below, it cannot be disputed that protecting the entire Licensing Agreement from disclosure is unreasonable, contrary to Ohio law, and prejudicial to NOPEC and the public. Proper redactions, as requested by Attorney Examiner Stenman, appropriately address the alleged trade secret status of a limited amount of information in the Licensing Agreement and confidential hearing transcript.

B. The fact that there is a confidentiality agreement between the parties in this case is insufficient to support a trade secret claim, and irrelevant to IGS' Motion.

According to the Ohio Supreme Court, a party "cannot meet the statutory trade secret definition by stating that documents for which trade secret status is claimed are protected merely by their reference in an agreement of confidentiality."[10] The confidentiality agreement between IGS and various Complainants (including NOPEC) served as the only means by which NOPEC could obtain a copy of the Licensing Agreement, or to ask questions about allegedly confidential information at the evidentiary hearing in this case. The mere presence of the confidentiality agreement has no bearing on whether the Licensing Agreement is a trade secret.

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[9] *Ohio Consumers' Counsel v. PUCO*, 121 Ohio St.3d at 370.

[10] *See State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 527.

C. Redacting the Licensing Agreement and confidential hearing transcript accomplishes IGS' goal of protecting confidential information, and can be done without rendering the entire Licensing Agreement incomprehensible.

To determine whether information should be redacted (or exempt from disclosure), the Ohio Supreme Court has held that "an in camera inspection remains the best procedure."[11] OAC Rule 4901-1-24(D)(1) further explains that, "All documents submitted pursuant to paragraph (D) of this rule should be filed with only such information redacted as is essential to prevent disclosure of the allegedly confidential information. Such copies should be filed with the otherwise required number of copies for inclusion in the public case file."

In this case, it is possible to redact specific information within the Licensing Agreement and confidential hearing transcript without rendering either document incomprehensible. This is common practice in Commission proceedings and is exactly what Attorney Examiner Stenman requested IGS do when filing its Motion. Because IGS failed to do so, however, NOPEC chose to redact the limited amount of information it believes constitutes a trade secret from the Licensing Agreement and confidential hearing transcript, and has attached the redacted versions as Exhibit A (the Licensing Agreement)[12] and B (the confidential hearing transcripts)[13] to this Memorandum Contra. Because of the allegedly confidential nature of these documents, they are being filed under seal.

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[11] See *State ex rel. Allright Parking of Cleveland, Inc. v. Cleveland* (1992), 63 Ohio St. 3d 772, 776, citing *State, ex rel. Natl. Broadcasting Co., v. Cleveland* (1991), 57 Ohio St. 3d 77, 81.

[12] The only unredacted copy of the Licensing Agreement provided to NOPEC included certain highlighting by IGS. These highlighted portions are different from the redactions being proposed by NOPEC. The redactions proposed by NOPEC are blacked out and not visible on the copy of the Licensing Agreement attached hereto as Exhibit A and being filed under seal.

[13] There are two separate portions of the hearing transcript deemed to be confidential: Transcript Volume I, pp. 51-119; and Transcript Volume II, pp. 419-433. Because NOPEC does not believe that there is any information in Transcript Volume II (pp. 419-433) entitled to protection as a trade secret, Exhibit B to this Memorandum Contra only includes a redacted version of Transcript Volume I (pp. 51-119) and it too is being filed under seal.

NOPEC acknowledges that the specific customer information included in Exhibit C to the Licensing Agreement constitutes a trade secret entitled to protection. This is accomplished by redacting the entire exhibit. Likewise, the specific dollar amounts in the Licensing Agreement can be redacted. The rest of the Licensing Agreement contains standard contract terms and conditions not entitled to confidential treatment because the information: (1) already is available in the public domain (e.g. in newspaper articles, on websites, and in the public portion of the hearing); or (2) not entitled to protection based on the Ohio Supreme Court's decision in *Ohio Consumers' Counsel v. PUCO.*

1. **Contrary to the statement in Mr. Parisi's affidavit, some of the terms in the Licensing Agreement are in the public domain.**

There is no question that significant portions of allegedly confidential information in the Licensing Agreement and confidential hearing transcript are in the public domain, thereby removing any trade secret protection whatsoever.[14] It is unreasonable to continue to seek trade secret status for such information. Examples of information already in the public domain include the following:

- Vince Parisi's affidavit attached to IGS' Motion for Protective Order states that on "July 15, 2010, IGS and NiSource Retail Services, Inc. ('NRS') entered into a Service Mark Licensing Agreement, which . . . authorized IGS to market competitive retail natural gas supply using the Columbia Retail Energy ('CRE') trade name and logo." The existence of the Licensing Agreement, names of the parties to the Licensing Agreement, and date of the Licensing Agreement are all in the public domain.

- IGS' answer filed in this case on November 15, 2010 acknowledges that the effective date of the Licensing Agreement is August 1, 2010.[15]

- The direct prefiled testimony of Vincent A. Parisi acknowledges that IGS can use the "Columbia Retail Energy" name in Ohio, Pennsylvania, Virginia and Maryland.[16]

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[14] See *State ex rel. Plain Dealer v. Ohio Dept. of Insurance*, 80 Ohio St.3d at 529.

[15] Answer at ¶ 15.

- IGS' answer filed in this case on November 15, 2010 "denies that the licensing agreement with NiSource authorizes IGS to use the Columbia trade name and logo in the Dominion Choice Program."[17] The affidavit of Mr. Parisi attached to IGS' Motion for Summary Judgment confirms that IGS cannot use the "Columbia Retail Energy" trade name in the Dominion Choice Program.[18]

- A newspaper article in the *Cleveland Plain Dealer* dated November 20, 2010 identifies the term/duration of the Licensing Agreement as three (3) years.[19]

- Exhibit A to the Licensing Agreement contains the "Columbia Retail Energy" service marks licensed to IGS, as well as certain disclaimers, all of which are included on IGS' marketing materials.[20]

- The fact that IGS is only using the "Columbia Retail Energy" name to market natural gas commodity products is in the public domain.[21]

- The fact that IGS filed documents with relevant state agencies (e.g. the Ohio Secretary of State) registering the trade name "Columbia Retail Energy" is in the public domain.[22]

2. **Only certain categories of information are entitled to trade secret status based on the Ohio Supreme Court's decision in *Ohio Consumers' Counsel v. PUCO.***

In *Ohio Consumers' Counsel v. PUCO*, the Ohio Supreme Court upheld a Commission order limiting the categories of information that qualify as a trade secret in competitive retail electric service contracts, including: "customer names, account numbers, customer social security numbers or employer identification numbers, contract termination dates or other termination provisions, financial consideration in each contract, price of generation specified in

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[16] Direct Testimony of Vincent A. Parisi filed on November 1, 2001 (hereinafter "Parisi Testimony"), p. 10.

[17] Answer at ¶ 29.

[18] See IGS' Motion for Summary Judgment, p. 37.

[19] See http://www.cleveland.com/business/index.ssf/2010/11/interstate_gas_supply_operates.html. A copy of the newspaper article is attached hereto as Exhibit C.

[20] See IGS Ex. 1.

[21] See e.g. Columbia Retail Energy's statement on the City of Manassas, Virginia's website: http://www.manassascity.org/DocumentView.aspx?DID=3709. A copy of this statement is attached hereto as Exhibit D.

[22] See e.g. Parisi Testimony, pp. 5-6.

each contract, volume of generation covered by each contract, and terms under which any options may be exercisable."[23] Importantly, the following information (which constitutes most of the terms and conditions in the agreements) was not redacted by the Commission or the Court:

- The recitals (other than the specific customer's name);
- The definition section (other than the specific customer's electric generation demand levels, the customer's name, and the dollar amount of certain fees);
- The power contract terms, including pricing terms (except for the specific dollar amounts);
- The term/duration of the agreements (except for the termination specific termination provision);
- The billing processes;
- Events of default and remedies available under the agreements;
- General contract provisions (e.g. governing law and jurisdiction, dispute resolution, representations and warranties, assignment, notices, confidentiality language, and counterparts);
- The signature block (except for the name of the specific customer).

These same considerations should guide the Commission's ruling in this case. A copy of one of the redacted agreements from the *Ohio Consumers' Counsel v. PUCO* is attached hereto as Exhibit E for the Commission's review.

The Ohio Supreme Court noted in *Ohio Consumers' Counsel v. PUCO* that the Commission has the:

> statutory authority to protect competitive agreements from disclosure, and as we have noted, the commission also has a duty to encourage competitive providers of electric generation. All of the parties agree that the market is weak, and anything could affect the future growth of competitive providers. Exposing a competitor's business strategies and pricing points would likely have a negative impact on that provider's viability. Absent any showing of harm from the commission's order, and

[23] See *Ohio Consumers' Counsel v. PUCO*, 121 Ohio St.3d at 370; see also *Order on Remand* (October 24, 2007), p. 15.

> recognizing the volatility and competitiveness of the electric industry, we conclude that the order to redact information is not unreasonable. Accordingly, we affirm the commission's orders regarding trade secrets.[24]

Te primary reason for protecting even the limited categories of "trade secrets" in that case was a need to further the competitive energy market in Ohio. This situation does not exist with the Licensing Agreement. In fact, it is just the opposite.

Instead of promoting the competitive market in Ohio, the Licensing Agreement (a first of its kind in Ohio's competitive natural gas market) threatens the competitive marketplace, gives IGS an undue preference in the Columbia Gas of Ohio service territory, and sets a harmful precedent for consumers in Ohio's competitive natural gas market. Disclosure of the redacted portions of the Licensing Agreement and confidential hearing transcript to the public would not harm IGS. In fact, as Mr. Parisi explained, "IGS was one of the first natural gas choice suppliers in Ohio,"[25] and has a "long record in the industry."[26] Interstate Gas Supply and IGS Energy represent a "strong brand and a strong name,"[27] and IGS contends that it has not lost any brand recognition in the Columbia Gas of Ohio service territory.[28] Therefore, even if IGS no longer was able to use the "Columbia Retail Energy" name, the company could return to using what it acknowledges to be an established and strong brand name without threatening the competitive market in Ohio.

There is absolutely no prejudice to IGS from disclosing the information subject to this Memorandum Contra. Rather, there is a strong public benefit to disclosing the Licensing Agreement and confidential portions of the hearing transcript as it sheds light on what otherwise

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[24] *Ohio Consumers' Counsel v. PUCO*, 121 Ohio St.3d at 370.

[25] Parisi Testimony at p. 2.

[26] Tr. Vol. II, p. 357.

[27] Tr. Vol. II, p. 357.

[28] Tr. Vol. II, p. 358.

has been IGS and NiSource's secretive process to enroll Columbia Gas of Ohio customers through IGS doing business as "Columbia Retail Energy."

IV. CONCLUSION

For the reasons stated above, NOPEC respectfully requests that the Commission: (1) deny IGS' overreaching motion; and, (2) order that the Licensing Agreement and confidential hearing transcript be filed in the public docket subject to the limited redactions proposed by NOPEC herein.

Respectfully submitted

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon the following parties of record by e-mail and regular U.S. mail this 13th day of December, 2011:

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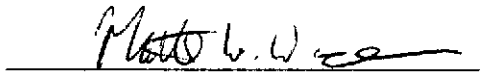

Matthew W. Warnock

EXHIBIT A
(filed under seal)

EXHIBIT B
(filed under seal)

CLEVELAND.COM
Everything Cleveland

Interstate Gas Supply operates as Columbia Retail Energy, but only in Columbia Gas territory

Published: Saturday, November 20, 2010, 6:00 PM

By **John Funk, The Plain Dealer**

New name, new logo

Interstate Gas Supply's name and logo change in Columbia Gas of Ohio territory and comes with a disclaimer in communications from the company.

Columbia Retail Energy

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

The disclaimer: 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.

THE PLAIN DEALER

IGS

The state's largest independent gas supplier has come up with a way to beat the competition in Columbia Gas of Ohio territory -- sell under a name that includes the word "Columbia."

Trouble is, some consumers may end up paying more for gas, still thinking they are being served by the old-fashioned utility.

Interstate Gas Supply, or IGS, is now doing business as **Columbia Retail Energy** -- but only to Columbia Gas of Ohio's customers.

In Dominion East Ohio's territory, IGS is still IGS.

The re-badged IGS has nothing to do with Columbia Gas of Ohio, that company's spokesman said.

What has happened is that IGS has bought the right to use the name from Columbia's corporate parent, **NiSource Inc.**, of Merrillville, Ind.

And last summer, IGS registered the name with the **Ohio Secretary of State**, where records show IGS has the right to use it

EXHIBIT
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Interstate Gas Supply has licensed the exclusive use of the name Columbia Retail Energy and associated logo

for five years. Records at the **Public Utilities Commission of Ohio** indicate the deal with NiSource is for three years.

Columbia Retail Energy is offering Columbia utility customers a fixed rate of 75 cents per hundred cubic feet through next September. Columbia Gas of Ohio's **current** monthly rate is 52 cents.

So why the use of a fictitious name?

"IGS hopes to promote additional competitive opportunities for all competitors," said Larry Friedeman, an IGS vice president. "And because of IGS' business acumen, certainly the company would hope to compete successfully."

Translation: The company thinks it can sign up a lot more customers in a market where consumers have been reluctant to leave the old-fashioned utility. Only 37 percent of Columbia Gas of Ohio customers has left the utility as of June, the most recent PUCO records show.

Other independent suppliers and the **Ohio Consumers' Counsel** have objected to the use of the name in two separate cases at the PUCO.

The PUCO recently rejected their arguments in a **case** in which IGS is seeking to register the new name within its original certificate to operate in Ohio. The commission has yet to make a final ruling, but it appears the PUCO staff has no serious objections.

In the other **case**, the consumers counsel is arguing that the name and use of the Columbia logo have already confused some customers.

"The company is only using the Columbia name in Columbia Gas of Ohio territory. Why? We think it gives them a competitive advantage because customers will confuse them with Columbia Gas of Ohio," said Consumers' Counsel Janine Migden-Ostrander. "We want to see a robust market where all of the companies are on an even footing."

IGS counters that it has not tried to hide its identity.

The one marketing letter the company has mailed out so far includes a logo similar to that of Columbia Gas of Ohio. Under the logo, in small type, is the disclaimer: "Columbia Retail Energy is not an affiliate of NiSource or Columbia Gas of Ohio."

But only at the very bottom of the sales letter does the reader learn the true identity of the company in a tiny footnote: "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.

About 30 people have called the PUCO in an effort to find out more information about Columbia Retail Energy. About a half-dozen objected to the use of the fictitious name.

"I just received my mailing regarding Columbia Gas Retail Energy, in cahoots (yes, cahoots) with Interstate Gas Supply. The letter border on fraudulence thru obfuscation," wrote a Reynoldburg man in a complaint to the PUCO. "How the hell can you expect a low-income, senior citizen or uneducated person to read this letter and figure out what is really going on."

Whose idea is this?

Friedeman said he did not know whether IGS contacted NiSource, or NiSource called IGS.

NiSource spokesman Karl Brack said he wasn't sure either. "I do know that discussions took place, and before selecting them, we were very careful about considering their qualifications and abilities," he said. "We are very familiar with their strengths and operations."

IGS is the only company to license the name, and therefore it has the right to use it in any state where there is a Columbia Gas utility, Brack said.

In addition to Ohio, **Columbia Gas** has companies in Kentucky, Pennsylvania, Virginia, Maryland and Massachusetts.

IGS has already registered its new name in **Pennsylvania** and **Maryland**. The company is registered only as Interstate Gas in **Virginia** and **Kentucky**, state records show.

Columbia Retail Energy Statement

NiSource Retail Services has entered in an agreement with Interstate Gas Supply, Inc. (IGS) to provide IGS the use of the Columbia Retail Energy service mark in connection with the sale of IGS natural gas commodity products.

Columbia Retail Energy is a separate entity. It is not the utility.

Do you feel the agreement with IGS to license the name Columbia Retail Energy will impact your local brand?

No. Columbia Gas of Virginia has been operating safely and reliably in the state for 163 years. We will continue to deliver the gas to homes and businesses, provide safe reliable service without interruption, read customer meters, and continue to provide exceptional customer service and 24-hour emergency response. And we will continue to partner in the communities we serve to build strong, stable communities.

Is this new company a competitor to your local LDC?

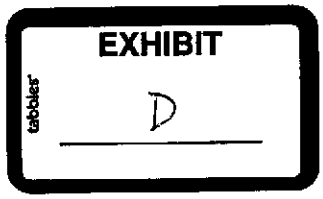
No, we do not view any of our CHOICE program marketers as competitors with the utility. Columbia Gas of Virginia does not participate in the customer CHOICE program. Customers can continue to purchase natural gas from us or to participate in the CHOICE program.

Are you concerned about customer confusion?

No. We are focused on providing customer-focused energy solutions, and we believe this agreement provides customers another alternative as they consider their natural gas supply options.

How many CGV customers participate in the Virginia CHOICE program?

As of December 1, 2010 8,614 customers are enrolled in CHOICE: 5,739 residential; 2,860 commercial and 15 industrials.



SD 8388

CONFIDENTIAL PROPRIETARY
TRADE SECRET

OPTION AGREEMENT

BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

[redacted]

This Option Agreement (the "Agreement") is entered into as of this 2nd day of February, 2005 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and [redacted] corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, [redacted] and purchases electric power service from The Cincinnati Gas & Electric Company (CG&E) on metered accounts listed on Exhibit C.

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of electrical power at retail;

WHEREAS, CRS an[redacted]esire to establish terms and conditions for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

ARTICLE I
DEFINITIONS

The following definitions and any terms defined in this Agreement shall apply hereunder.

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect

(14)

DEPOSITION EXHIBIT #12 WHITLOCK

EXHIBIT E

ownership of ten (10) percent or more.

"Base Contract Price" means the price in $US as set forth in Exhibit B to be paid by AK Steel to CRS for the purchase of Generation and Transmission service under this Agreement.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

"Maximum Demand" means [redacted] combined maximum annual demands for all [redacted] accounts listed on Exhibit C with Cincinnati Gas & Electric ("CG&E") for the twelve months ending December 31, 2004.

"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by [redacted] Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, except as provided herein, that [redacted] shall purchase all of its retail Energy requirements for its facility from CRS and the [redacted] shall not resell any of the Energy provided hereunder to any third party.

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS on [redacted] Delivery Point.

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ARTICLE II
OPTION

2.1 [redacted] currently purchases its generation electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs or will provide notice by December 30, 2004 that it will purchase generation electric service from CG&E starting no later than December 31, 2005 in accordance with applicable CG&E tariff requirements. [redacted] hereby grants to CRS the exclusive option, upon thirty (30) days notice, to provide generation electric service for all of [redacted] accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option"). In the event that an Electric Choice Insufficient Return Notice Fee is incurred by [redacted] due to switching back to CG&E standard tariffed service prior to January 31, 2005, an amount equivalent to said fee will be paid to [redacted] by CRS.

2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.

2.3 In exchange for [redacted] granting CRS this option, CRS agrees to pay [redacted] each calendar year quarter of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment"). The Parties agree that if [redacted] defaults or is delinquent, after any applicable cure period, in any of its payments to any Cinergy affiliated company for any service provided to [redacted] then CRS has the right to offset the Option Payment due hereunder with any amounts that are owed by [redacted] to the Cinergy affiliated company.

2.4 [redacted]

2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

ARTICLE III
CRS POWER CONTRACT TERMS

3.1 In the event CRS exercises its option, a power sale agreement between CRS and AK Steel will be negotiated. The power sale agreement shall include generally accepted terms and conditions relating to the sale of competitive retail electric generation service, including, among others, the following terms:

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a. Energy Quantity and Type. CRS shall provide [redacted] Firm, Full Requirements Energy and Capacity up to [redacted] Maximum Demand ("Quantity"). If during the Term of this Agreement [redacted] additional load or accounts greater tha[redacted] then such new load or account is not included within the terms of this Agreement and CRS shall have no obligation to provide Energy and Capacity t[redacted] the Quantity set forth herein.

b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. or CG&E (or an affiliate on its behalf), whichever is applicable, as filed with the FERC and as it may be amended, from time to time, or any successor tariff.

c. Base Contract Price. The Base Contract Price is set forth in Exhibit B.

d. Change to Prices. As a retail sale, the power sale agreement is not subject to the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. Neither CRS no[redacted] shall seek to modify the Base Contract Price through the auspices of any regulatory body.

e. Term. The term of the power sale agreement shall be through December 31, 2008.

f. Credit. The power sale agreement will have terms and conditions as similar as possible to CG&E's existing unbundled tariffs. CRS will not require surety bonds, deposits or other corporate guarantees.

g. Adjusted Base Contract Price. If CRS exercises this option, then the combined net generation cost paid to CRS and CG&E will be an amount equivalent to [redacted] In addition, there will be transmission charges to be paid to CRS as set forth in Exhibit B.

ARTICLE IV
TERM OF AGREEMENT

4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from January 1, 2005 through and

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including December 31, 2008, unless terminated earlier in accordance with the terms of this Agreement ("Term").

4.2 Agreement Termination. [redacted] Before termination of this Agreement, the Parties agree to use best efforts to fulfill the intent of this Agreement by negotiating amendments to this Agreement that put the Parties in substantially the same overall economic positions as created under the PUCO's Order dated November 23, 2004 in Case No. 03-93-EL-ATA and this Agreement.

4.3 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

ARTICLE V
BILLING

5.1 Payment. CRS shall submit the Option Payment to [redacted] by check or wire transfer within forty-five (45) days after the end of each calendar year quarter. The payment shall be submitted to an account or address designated by [redacted].

ARTICLE VI
DEFAULTS AND REMEDIES

6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:

6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;

6.1.2 the failure of the Defaulting Party to materially perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party;

6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or

transferee entity fails to assume all of the obligations of such Party under this Agreement;

6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is given by the other Party; or

6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.

6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, [redacted]

ARTICLE VII
DUTY TO MITIGATE

7.1 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

ARTICLE VIII
GOVERNING LAW - DISPUTE RESOLUTION

8.1 Governing Law and Jurisdiction. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of Ohio.

8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the

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right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes maintaining the status quo until such time as the arbitration award is rendered or the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected b[redacted]A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within ninety (90) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

ARTICLE IX
MISCELLANEOUS

9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in

accordance with its terms; (e) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (f) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to this Agreement; (g) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

9.2 Assignment. This Agreement shall be assignable by CRS without the [redacted]nsent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.

9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

James B. Gainer
139 East Fourth Street
Cincinnati, OH 45202

Phone – 513-287-2633
Fax - 513-287-1902

[redacted]

David F. Boehm, Esq.

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Michael L. Kurtz, Esq.
Boehm, Kurtz & Lowry
36 E. Seventh Street, Suite 1510
Cincinnati, Ohio 45202
Ph: 513.421.2255 Fax: 513.421.2764

9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.

9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.

9.7 This Agreement supersedes and replaces the agreement between CRS and [redacted]ated November 22, 2004. During the term of this Agreement, it supersedes and replaces any other agreements between the Parties or their affiliates related to PUCO Case No. 99-1658-EL-ETP. Upon the termination of this Agreement, any other settlement agreements between the Parties or their affiliates related to PUCO Case No. 99-1658-EL-ETP shall be in full force and effect according to their original terms.

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The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

By: [signature]

Title: VP & Gen Counsel

Date: May 2, 2005

[redacted]

Date: 05/21/05

FORM APPROVED ATTORNEY

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Exhibit A:

Customer Group: [redacted]
Quarterly Option Payment Calculation

The CRS option payments made quarterly for the period January 1, 2005 through December 31, 2008 or the date upon which the option is exercised whichever comes first, will be equivalent to the following calculation:

The actual amount paid by [redacted] The Cincinnati Gas and Electric Company during the [redacted]

Less the following amounts:

[redacted]

Tariff Schedule	Demand Charge ($ per kW)			Energy Charge ($ per kWh)		
	First Step	Second Step	Additional	First Step	Second Step	Additional
DM [1]	[redacted]					
DP						
DS						
TS						

1 DM only [redacted]

Plus

Plus [redacted]

EXHIBIT B:

Customer Group: [redacted]

CRS Generation Rates for Former Rate DP Standard Service Customers

Net Monthly Generation And Transmission Bill Will Be The Following [redacted]

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

Generation Charges

(a) Demand Charge

First 1,000 kilowatts ..... [redacted]

Additional kilowatts ..... [redacted]

(b) Energy Charge

Billing Demand times 308 ..... [redacted]

Additional kilowatt-hours ..... [redacted]

(c) [redacted]

The Fuel Charge shall be equal to th[redacted]

Transmission Charges

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following PUCO approved charges:

(1) Network Transmission Services
(2) MISO Schedule Charges
(3) Net Congestion Charges

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EXHIBIT B:

Customer Group: [redacted]

CRS Generation and Transmission Rates for Former Rate TS Standard Service Customers

Net Monthly Bill

Computed in accordance with the following charges. (Kilovolt amperes are abbreviated as kVA and kilowatt-hours are abbreviated as kWh):

Generation Charges

(b) Demand Charge
First 50,000 KVA ..... [redacted]
Additional KVA .....

(b) Energy Charge
Billing Demand times 300 ..... [redacted]
Additional kilowatt-hours .....

(d) Fuel Charge
The Fuel Charge shall be equal to the [redacted]

Transmission Charges

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following PUCO approved charges:

(4) Network Transmission Services
(5) MISO Schedule Charges
(6) Net Congestion Charges

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Exhibit C:

Customer Group: [redacted]

Customer Account List

This agreement pertains to the following: [redacted]

[redacted]