

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Interstate     )  
Gas Supply, Inc. for a Waiver of Rules     ) Case No. 14-1740-EL-WVR  
4901:1-10-29(D)(6)(b) and 4901:1-21-     ) Case No. 14-1741-GA-WVR  
06(D)(1)(h) of the Ohio Administrative Code.     )

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**APPLICATION FOR REHEARING OF THE PUCO’S ORDER GRANTING A  
WAIVER OF CONSUMER PROTECTION RULES  
BY  
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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The Office of the Ohio Consumers’ Counsel (“OCC”) files an Application for Rehearing of the Finding and Order (“Order”) issued by the Public Utilities Commission of Ohio (“PUCO”) on November 20, 2014 granting Interstate Gas Supply, Inc. (“IGS”) a waiver of consumer protection rules. In the Order, the PUCO allowed IGS to avoid third-party verification in all door-to-door sales that involve a change in a consumer’s electric or natural gas supplier. Third-party verification is required by Ohio Adm. Code 4901:1-21-06(D)(1)(h) (“Rule 21-06(D)(1)(h)”) and 4901:1-29-06(D)(6)(b)<sup>1</sup> (“Rule 29-06(D)(6)(b)”), respectively.

The PUCO’s Order was unlawful and unreasonable in the following respects:

1. The PUCO violated R.C. 4903.09 by granting a permanent waiver of the third-party verification rules without explaining how IGS showed good cause for a waiver of rules designed to protect consumers against misleading, deceptive, unfair, and unconscionable acts and practices in the marketing, solicitation, and sale of competitive retail electric and natural gas service.
2. The PUCO erred by not making the waiver temporary (instead of permanent) and by not including additional consumer safeguards with its

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<sup>1</sup> The caption for this proceeding incorrectly identifies this rule as 4901:1-10-29(D)(6)(b).

grant of the waiver, including such safeguards as: a requirement for IGS to measure customer perceptions about any aggressiveness of its sales agents; a requirement for the PUCO Staff to analyze data from complaints received by the PUCO, so as to ensure that the waiver does not negatively affect customers; and an elimination of any early termination charges that IGS levies on customers.

The PUCO should grant OCC's Application for Rehearing, and abrogate or modify the Order. The grounds for this Application for Rehearing are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

/s/ Terry L. Etter

Terry L Etter, Counsel of Record

Kevin F. Moore

Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: (614) 466-7964 (Etter direct)

Telephone: (614) 387-2965 (Moore direct)

terry.etter@occ.ohio.gov

kevin.moore@occ.ohio.gov

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

The PUCO has recognized that its rules concerning competitive electric and natural gas service are consumer protection rules, for four million Ohio households. The PUCO stated that the rules are intended to provide minimum standards for service quality, safety, and reliability, and to provide customers with sufficient information to make informed decisions about competitive electric and natural gas service.<sup>2</sup> The PUCO also stated that the rules are intended to protect customers against deceptive, unfair, and unconscionable acts and practices in the marketing, solicitation, and sale of competitive electric and natural gas service, and in the administration of any contracts for such services.<sup>3</sup>

As part of its rules concerning competitive electric and natural gas service, the PUCO requires third-party verification of all changes to a residential customer's electric

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<sup>2</sup> Order at 3.

<sup>3</sup> Id. See also Ohio Adm. Code 4901:1-21-02(A); 4901:1-29-02(A).

or natural gas supplier if the change occurs because of a door-to-door solicitation.<sup>4</sup> The PUCO has stated that these rules are necessary to protect consumers.<sup>5</sup>

On October 1, 2014, IGS, a supplier of electric and natural gas service, asked the PUCO to waive the rules for IGS's door-to-door solicitations made through its new electronic enrollment process.<sup>6</sup> According to IGS, its new enrollment process is done for door-to-door sales through the use of tablet computers that verify customer enrollments through the use of a customer's electronic signature.<sup>7</sup> The tablets have a GPS mechanism that tracks the time and location of all customer solicitations, whether or not a change of provider occurs.<sup>8</sup> IGS states that, through an electronic signature, the tablets verify that the customer consents and acknowledges the specific statements in Rule 29-06(D)(6)(b).<sup>9</sup> The process also gives customers the option of receiving a physical copy of the terms and conditions of service and the applicable acknowledgement form.<sup>10</sup>

On October 10, 2014, IGS filed a Notice of Clarification of its Application in which IGS stated that it sought the waiver only for supplier changes made through its electronic enrollment process.<sup>11</sup> IGS also stated that the waiver would not apply to

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<sup>4</sup> See *In the Matter of the Commission's Review of Its Rules for Competitive Retail Electric Service Contained in Chapters 4901:1-21 and 4901:1-24 of the Ohio Administrative Code*, Case No. 12-1924-EL-ORD, Supplemental Finding and Order (March 26, 2014); *In the Matter of the Commission's Review of Its Rules for Competitive Retail Natural Gas Service Contained in Chapters 4901:1-227 through 4901:1-34 of the Ohio Administrative Code*, Case No. 12-925-GA-ORD, Entry on Rehearing (January 17, 2014).

<sup>5</sup> See Case No. 12-925-GA-ORD, Finding and Order (December 18, 2013) at 42.

<sup>6</sup> Application for Waiver (October 1, 2014).

<sup>7</sup> *Id.* at 4.

<sup>8</sup> *Id.* at 3-4.

<sup>9</sup> *Id.* at 4. At the time of the Application, Rule 21-06(D)(1)(h) was not yet in effect.

<sup>10</sup> *Id.*

<sup>11</sup> See Notice of Clarification (October 10, 2014).

supplier changes made through paper agreements.<sup>12</sup> OCC filed a motion to intervene in this case on October 16, 2014.<sup>13</sup>

On November 20, 2014, the PUCO issued the Order in this case granting IGS what appears to be a permanent waiver of the third-party verification requirements in Rules 21-06(D)(1)(h) and 29-06(D)(6)(b) for door-to-door solicitations made through IGS's electronic enrollment process.<sup>14</sup> The PUCO stated IGS's electronic enrollment must meet the Internet enrollment provisions of Ohio Adm. Code 4901:1-21-06(D)(3) and 4901:1-29-06(F).<sup>15</sup> In addition, the PUCO required IGS to send an electronic copy of the terms and conditions to the customer's email address.<sup>16</sup> For those instances where the customer does not provide an email address or refuses an electronic copy, the PUCO required IGS to obtain a third-party verification of the enrollment.<sup>17</sup>

OCC appreciates that IGS has taken the initiative to propose an approach to door-to-door sales that it believes will achieve more consumer protection by increasing the accountability of those involved in selling its services. And we appreciate the dialogue IGS and OCC have had on the subject. As the state's utility consumer advocate, we must balance these aspirations for the future (that are as yet relatively unconfirmed) with the reality based on a general history of problems for consumers that the PUCO has previously recognized. Indeed, the third-party customer verification that IGS in this case

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<sup>12</sup> See *id.*

<sup>13</sup> OCC's Motion was granted. Order at 1.

<sup>14</sup> As discussed below, the PUCO did not put a time limit on the waiver, but stated that the waiver does not impact the PUCO's ability to reconsider the issue in any future proceeding. *Id.* at 3.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

sought (successfully) to waive was just recently adopted by the PUCO as a means to protect consumers against misleading, deceptive, unfair, and unconscionable acts and practices in the marketing, solicitation, and sale of competitive retail electric and natural gas service and in the administration of any contract for these services.<sup>18</sup> Against this backdrop, without yet having the data to determine whether IGS's approach is a consumer protection solution, we have asked in this application for the PUCO to proceed cautiously and add more consumer protection to its ruling.

## **II. STANDARD OF REVIEW**

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after issuance of a PUCO order, "any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding." OCC filed a motion to intervene in this proceeding, which was granted.<sup>19</sup>

R.C. 4903.10 requires that an application for rehearing must be "in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful." In addition, Ohio Adm. Code 4901-1-35(A) states: "An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing."

In considering an application for rehearing, R.C. 4903.10 provides that "the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear." The statute

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<sup>18</sup> See Case Nos. 12-1924-EL-ORD and 12-925-GA-ORD.

<sup>19</sup> See Order at 1.

also provides: “If, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.” As shown herein, the statutory standard to abrogate and/or modify the Order is met here.

### III. DISCUSSION

- A. **The PUCO violated R.C. 4903.09 by granting a permanent waiver of the third-party verification rules without explaining how IGS showed good cause for a waiver of rules designed to protect consumers against misleading, deceptive, unfair, and unconscionable acts and practices in the marketing, solicitation, and sale of competitive retail electric and natural gas service.**

The PUCO has promulgated a “good cause” standard for waiver of any PUCO rule under Ohio Adm. Code Chapters 4901:1-21 and 4901:1-29. Ohio Adm. Code 4901:1-21-02(C) and Ohio Adm. Code 4901:1-29-02(C) state: “The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.” Further, R.C. 4903.09 requires the PUCO to issue written opinions explaining its decisions.

In this case, the PUCO did not find that IGS had shown good cause for a permanent waiver of Rules 21-06(D)(1)(h) and 29-06(D)(6)(b). Instead, the PUCO merely granted the waiver and clarified that IGS must follow the Internet enrollment provisions of Ohio Adm. Code 4901:1-21-06(D)(3) and 4901:1-29-06(F).<sup>20</sup> The PUCO added that IGS must also send an electronic copy of the terms and conditions of service

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<sup>20</sup> Id. at 3.

to the customer's email address, or obtain a third-party verification of the enrollment if the customer does not provide an email address or refuses an electronic copy.<sup>21</sup>

The PUCO's ruling, however, does not explain how IGS's new enrollment process is an adequate substitute for third-party verification. The PUCO acknowledged that the rules in Ohio Adm. Code Chapters 4901:1-21 and 4901:1-29 are consumer protection rules. The PUCO noted that the rules in those two Chapters

are intended to provide minimum standards for service quality, safety, and reliability; provide customers with sufficient information to make informed decisions about CRES and CRNGS; and protect customers against deceptive, unfair, and unconscionable acts and practices in the marketing, solicitation, and sale of CRES and CRNGS and in the administration of any contracts for such services.<sup>22</sup>

Yet the PUCO did not explain how IGS's new enrollment process accomplishes the same consumer protections as Rules 21-06(D)(1)(h) and 29-06(D)(6)(b). These two rules in particular are designed to protect consumers against deceptive, unfair, and unconscionable acts and practices in the marketing, solicitation, and sale of competitive retail electric and natural gas service. The requirements for 100 percent third-party verification of in-home solicitations were adopted because of significant abuses that occurred during door-to-door sales by competitive suppliers of residential electric and natural gas service.

The electronic enrollment process developed by IGS is new, and is thus untested. Nevertheless, the PUCO granted IGS a permanent waiver of the third-party verification rules without explaining how the new process provides the same consumer protections as

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<sup>21</sup> Id.

<sup>22</sup> Id.



Rules 21-06(D)(1)(h) and 29-06(D)(6)(b). The Order did not claim that the waiver was temporary, and the PUCO placed no time limit on the waiver. The Order merely states that the waiver does not “impact the Commission’s ability to reconsider this issue in any future proceeding.”<sup>23</sup> The PUCO should be more proactive in ensuring that the consumer protections in Rules 21-06(D)(1)(h) and 29-06(D)(6)(b) will not be undermined by the use of IGS’s new electronic enrollment process.

The PUCO did not satisfy the requirements of R.C. 4903.09 in granting IGS a permanent waiver of the third-party verification rules. The PUCO should either abrogate the Order, or modify it and make the waiver temporary, subject to further PUCO review, as discussed in the next section.

**B. The PUCO erred by not making the waiver temporary (instead of permanent) and by not including additional consumer safeguards with its grant of the waiver, including such safeguards as: a requirement for IGS to measure customer perceptions about any aggressiveness of its sales agents; a requirement for the PUCO Staff to analyze data from complaints received by the PUCO, so as to ensure that the waiver does not negatively affect customers; and an elimination of any early termination charges that IGS levies on customers.**

In granting IGS a waiver of the third-party verification rules, the PUCO required IGS’s electronic enrollment to meet the Internet enrollment provisions of Ohio Adm. Code 4901:1-21-06(D)(3) and 4901:1-29-06(F).<sup>24</sup> IGS must also send an electronic copy of the terms and conditions to the customer’s email address.<sup>25</sup> If the customer does not

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<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Id.

provide an email address or refuses an electronic copy, IGS must obtain a third-party verification of the enrollment.<sup>26</sup>

OCC appreciates the PUCO's effort to protect consumers during the door-to-door solicitation process. But the PUCO should have made the waiver temporary until IGS demonstrates that its electronic enrollment process provides the same consumer protections as the third-party verification of all enrollments found in Rules 21-06(D)(1)(h) and 29-06(D)(6)(b).

IGS's electronic enrollment process is a new technology. And the third-party verification that IGS sought to waive is the cornerstone of the PUCO's consumer protections adopted within the past year. Given this new technology and the importance of the now-waived consumer protections, the PUCO should have ordered two additional consumer safeguards to measure the effectiveness of IGS's new door-to-door solicitation process until .

First, the PUCO should have ordered, in this case, a review of the electronic enrollment process after the waiver has been in effect for one year. During that year, IGS should be required to collect information and to report monthly on feedback it receives from customers who have changed service through the electronic enrollment process. These reports should be made to the PUCO Staff and to OCC.

IGS states that it obtains customer feedback from two sources: (1) follow-up calls it intends to make to customers who enroll for residential electric or gas services; and (2) customer surveys.<sup>27</sup> In addition to inquiring about the sales presentation, the follow-up

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<sup>26</sup> Id.

<sup>27</sup> Application for Waiver at 5.

call could provide a mechanism for determining if customers adequately understand the terms and conditions of their new electric or gas service. The customer surveys should continue, but should be structured to determine how well residential customers understand the electric, natural gas, or other services that are being marketed by the IGS's door-to-door salespeople.

Second, the PUCO Staff should review and analyze the PUCO complaint data on a monthly basis to determine whether the absence of a third-party verification process negatively affects IGS's consumers. In the past, residential consumers have been victimized by egregious practices of door-to-door salespeople. PUCO complaint data will provide an additional insight into whether such practices continue absent third-party verification.

In addition, to further protect consumers the PUCO should have eliminated any early termination charges from contracts that are initiated by IGS through its electronic door-to-door enrollment process while the waiver is temporary. Underlying the waiver granted to IGS for its electronic enrollments is the concern about how well customers understand the terms and conditions of their contracts. OCC is concerned residential customers may be ill-informed or not adequately understanding during a sales presentation that is being made at their front door. Eliminating any early termination charges from contracts initiated by IGS's electronic enrollment process while it is under PUCO review helps to ensure that consumers can more thoroughly review the contracts at a later time and have an assurance of knowing they can cancel the contract without the fear of early termination penalties.

#### **IV. CONCLUSION**

As stated, OCC appreciates that IGS has taken the initiative to propose an approach to door-to-door sales that it believes will achieve more consumer protection by increasing the accountability of those involved in selling its services. And we appreciate the dialogue IGS and OCC have had on the subject. As the state's utility consumer advocate, we must balance these aspirations for the future (that are as yet relatively unconfirmed) with the reality based on a general history of problems for consumers that the PUCO has previously recognized. Indeed, the third-party customer verification that IGS in this case sought (successfully) to waive was just recently adopted by the PUCO as a means to protect consumers against misleading, deceptive, unfair, and unconscionable acts and practices in the marketing, solicitation, and sale of competitive retail electric and natural gas service and in the administration of any contract for these services.<sup>28</sup> Against this backdrop, without yet having the data to determine whether IGS's approach is a consumer protection solution, we have asked in this application for the PUCO to proceed cautiously and add more consumer protection to its ruling.

It was unlawful and unreasonable for the PUCO to grant IGS a permanent waiver of the third-party verification rules that protect consumers. The PUCO should abrogate or modify the Order as discussed above.

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<sup>28</sup> See Case Nos. 12-1924-EL-ORD and 12-925-GA-ORD.

Respectfully submitted,

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

/s/ Terry L. Etter

Terry L. Etter, Counsel of Record

Kevin F. Moore

Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: (614) 466-7964 (Etter direct)

Telephone: (614) 387-2965 (Moore direct)

terry.etter@occ.ohio.gov

kevin.moore@occ.ohio.gov

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Application for Rehearing was served on the persons stated below via electronic transmission, this 22<sup>nd</sup> day of December 2014.

/s/ Terry L. Etter

Terry L. Etter

Assistant Consumers' Counsel

### **SERVICE LIST**

William Wright  
Chief, Public Utilities Section  
Public Utilities Commission of Ohio  
180 East Broad Street, 6<sup>th</sup> Floor  
Columbus, Ohio 43215  
William.wright@puc.state.oh.us

Matthew White  
Joseph Olikier  
Interstate Gas Supply, Inc.  
6100 Emerald Parkway  
Dublin, Ohio 43016  
mswhite@igsenergy.com  
joliker@igsenergy.com

AE: [Mandy.willey@puc.state.oh.us](mailto:Mandy.willey@puc.state.oh.us)

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Summary: App for Rehearing Application for Rehearing of the PUCO's Order Granting a Waiver of Consumer Protection Rules by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.