

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Interstate)	Case No. 14-1740-EL-WVR
Gas Supply, Inc. for a Waiver of Rules)	
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.)	

**MEMORANDUM CONTRA THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
APPLICATION FOR REHEARING**

I. INTRODUCTION

Interstate Gas Supply, Inc. (“IGS”) provides competitive retail electric service (“CRES”) and natural gas service (“CRNG”) to customers throughout Ohio. In an effort to improve the customer experience, IGS has developed a process for customer enrollment that utilizes IGS employee Home Energy Consultants (“HEC”) equipped with sophisticated technology that enables customer enrollment at the home of the customer (“HEC Enrollment”). Based upon this new approach to customer enrollment, IGS requested and received a waiver of the Commission’s rules with respect to Third Party Verification (“TPV”) set forth in Ohio Administrative Code (“OAC”) 4901:1-29-06(D)(6)(b) and 4901:1-21-06(D)(1)(h) (“TPV Rules”).¹ The waiver of the TPV Rules is applicable only to IGS and only to the specific HEC Enrollment process outlined by IGS in its Application for Waiver.²

The Office of the Ohio Consumers’ Counsel (“OCC”) filed an Application for Rehearing on December 22, 2014. Initially, it should be noted that OCC has not requested the Commission deny IGS’ waiver request, and generally appears to be supportive of IGS’ enhanced HEC

¹ Finding and Order (Nov. 20, 2014).

² Id.

enrollment process.³ However, in its Application for Rehearing OCC raises two assignments of err.

First, OCC claims that the Commission's Finding and Order is unlawful because it granted IGS a waiver without identifying good cause for doing so. Second, OCC claims that the Commission erred by making the waiver permanent and by not adopting other consumer protections recommend by OCC. Specifically OCC recommend that the Commission reevaluate the waiver after one year based upon extensive monthly feedback. During this period of time, OCC argues that IGS should be prohibited from charging cancelation fees to any customer added through an HEC Enrollment. As discussed below, IGS urges the Commission to deny OCC's Application for Rehearing and affirm that good cause exists to waive the requirements for a third-party verification set forth in the TPV Rules.

II. ARGUMENT

A. The Commission should explicitly find good cause exists for a waiver

The Commission did not err in not finding good cause in its Finding and Order as good cause does exist to grant IGS' waiver application. That said, IGS urges the Commission to explicitly identify good cause for granting IGS a waiver in its Entry on Rehearing. There are several reasons that the Commission may identify good cause for granting the waiver.

Initially, an HEC Enrollment is very different to a traditional door-to-door sale. Traditionally door-to-door sales are conducted by independent contracted sales agents being compensated with a *fee for sale, with little, if any, compensation from base pay*. Often these agents proceed randomly through a neighborhood trying to solicit sales from residences. A

³ "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... we have asked in this application for the PUCO to proceed cautiously and add more consumer protection to its ruling." OCC Application for Rehearing at 3-4.

traditional door-to-door sale is almost always a singular experience and there is no further contact with the customer after the sale. In this situation, the consumer protections provided by the TPVs are appropriate and advisable to assure customer intent.⁴

In contrast, HEC Enrollments are facilitated through IGS employees that are compensated primarily with base pay (including benefits) and sales commission only represents a small portion of the HEC total compensation. In these circumstances, the need for TPV is diminished. Moreover, the HEC Enrollment is not equivalent to a traditional door-to-door sale contemplated by the Commission's rules because it utilizes sophisticated technology that enables customer enrollment at the home of the customer.⁵ Thus, as described in the IGS Waiver Application the HEC Enrollment provides additional safeguards that do not exist in traditional door-to-door enrollments. In fact, an HEC Enrollment provides safeguards *in excess TPV* because IGS will contain granular information regarding the time of each enrollment, solicitation, and prompt delivery of terms and conditions of executed contracts via email delivery.

The HEC Enrollment process significantly benefits customers by providing them with a better and more customer-friendly enrollment experience. Further, the Commission's waiver of the TPV Rules for the limited circumstances described in IGS' Application will enhance the HEC Enrollment process while maintaining strong consumer protection. IGS indicated in its Application for Waiver that customers that otherwise have had a positive enrollment experience with HECs often express frustration with TPVs.⁶ Finally the waiver of the TPV requirement will provide incentive for others in the industry to raise their door-to-door enrollment standards. For

⁴ Application for Waiver at 3-4.

⁵ Id.

⁶ Id at 5.

all of these reasons good cause does exist for granting a waiver of the TPV Rules, and the Commission should affirm this when denying OCC's Application for Rehearing.

B. The waiver of the TPV Rules is not permanent and sufficient protections are already in place

In OCC's second assignment of error OCC claims that the Commission erred by providing IGS with a permanent waiver and OCC also urges the Commission to adopt additional consumer protection measures. However, the Commission did not grant IGS a permanent waiver as claimed by OCC. In the Finding and Order in this proceeding the Commission stated that "the waivers granted are limited to the purpose of this case only and do not impact the Commission's ability to reconsider this issue *in any future proceeding* (emphasis added)."⁷ Thus, the Commission indicated that it will continue to evaluate its waiver of the TPV Rules on an ongoing basis and the Commission has retained the right at any time to rescind the waiver.

With respect to the additional consumer protection recommended, while IGS appreciates OCC's desire to protect consumers, the consumer protections recommended by OCC are not necessary and would create an additional burden on IGS and customers.

First, OCC recommends that IGS not be allowed to charge cancel fees on its products enrolled with HECs. Initially it should be noted that IGS rarely charges cancel fees on any of its residential commodity products.⁸ However, it would unduly prejudice IGS by prohibiting it from charging cancel fees for HEC enrolled products in the future. As products become more sophisticated and are bundled with other non-commodity products and services, there may be a need for IGS to charge cancel fees in the future. Thus, restricting IGS from charging cancel fees

⁷ Finding and Order at 4.

⁸ See PUCO Apples to Apples website demonstrating that none of the dozens of IGS gas and electric products listed on the site sold throughout Ohio contain cancel fees:

<http://www.energychoice.ohio.gov/ApplesToApplesCategory.aspx?Category=NaturalGas>

<http://www.energychoice.ohio.gov/ApplesToApplesCategory.aspx?Category=Electric>

for customers that are enrolled by HECs will unnecessarily limit the products IGS may be able to offer customers. Further, per Ohio rules, customers already have the right to rescind any enrollment by a CRES and CRNG provider, without cancel fee, within seven days of enrollment.⁹ Thus, there are already sufficient consumer protections in place without restricting IGS' ability to charge cancel fees.

Second, OCC recommends that the PUCO review the complaint data to determine if the absence of a TPV will negatively affects IGS customers.¹⁰ However, it is IGS' understanding that Commission Staff is already reviewing the complaint data of IGS and other CRES and CRNG providers on an ongoing basis. And Staff already has the ability at any time to notify IGS and the Commission if there appears to be a level of customer complaints which Staff infers may indicate enrollment issues. This coupled with the Commissions clear indication that it reserves the right at any-time to rescind IGS' waiver, gives IGS a strong incentive to ensure the HEC Enrollment process is effectuated in a manner consistent with the representation IGS made in its Waiver Application. Thus, the Commission did not err by not including OCC's recommended additional consumer protection, as the consumer protection OCC requests is already in place.

Finally, OCC recommends that IGS be required to report monthly to the PUCO Staff and to the OCC on the feedback it receives from customers that enroll through the HEC Enrollment processes. While IGS is happy to have informal conversations with OCC and Staff regarding the status of IGS' HEC enrollment initiative, monthly reporting would be unduly burdensome on IGS and Staff. As noted above Staff is already aware of any complaints that it receives from customers about IGS. If complaints were to become excessive, Staff and the Commission have the ability at any time to take disciplinary action against IGS, including rescinding IGS' waiver.

⁹ See OAC 4901:1-21-06, 4901:1-29-06

¹⁰ Application for Rehearing at 9.

Further, formal reporting may require IGS to disclose confidential information that IGS does not wish to be in the hands of its competitors. Since both OCC and Staff are subject to freedom of information (FOIA) request, monthly formal reporting would put IGS at undue risk of having its confidential information disclosed to competitors.

In sum, IGS can commit to continuing its dialog with OCC to discuss any reasonable questions or concerns OCC may have with its HEC enrollment process. That said, the issues raised by OCC in its second assignment of err do no amount to an err of the Commission. Thus, OCC's second assignment of err must be denied.

III. CONCLUSION

IGS appreciates OCC's general support of IGS' efforts to improve the customer enrollment experience for customers. However, the waiver of the TPV Rules granted by the Commission is an essential part of ensuring that customers have the best possible HEC Enrollment process. Further, the Commission's decision to waive the TPV Rules for the specific and limited circumstances described in IGS' Waiver Application is an important step in raising the standards for door-to-door enrollment throughout Ohio. For these reasons, 1) the Commission did not err by granting a waiver of the TPV Rules, 2) good cause does exist for granting a waiver of the TPV Rules (which the Commission should expressly confirm in its finding denying OCC's Application for Rehearing), and 3) the restrictions and additional consumer protections recommended by OCC in its Application for Rehearing are unnecessary and would be an undue burden on IGS. For these reasons the Commission should deny OCC's Application for Rehearing.

Respectfully Submitted,

/s/ Matthew White

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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 2nd day of January 2014.

/s/ Matthew White

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Summary: Memorandum Contra electronically filed by Mr. Matthew White on behalf of IGS Energy