

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY ON REHEARING

The Commission finds:

- (1) On October 1, 2014, as clarified on October 10, 2014, Interstate Gas Supply, Inc. (IGS), filed an application requesting the Commission grant a waiver of certain requirements set forth in Ohio Adm.Code 4901:1-21-06 and 4901:1-29-06, with respect to third-party verification. In its application, IGS noted that Ohio Adm.Code 4901:1-29-06(D)(6)(b) and 4901:1-21-06(D)(1)(h) were recently revised to require 100 percent third-party verification for door-to-door enrollments for solicitations for competitive retail natural gas service (CRNGS) and competitive retail electric service (CRES). *See In re Comm. Review of its Rules for Competitive Retail Natural Gas Serv.*, Case No. 12-925-GA-ORD; *In re Comm. Review of its Rules for Competitive Retail Elec. Serv.*, Case No. 12-1924-EL-ORD.
- (2) In support of its request, IGS stated that it has developed a process for customer enrollment that uses an IGS employee Home Energy Consultant (HEC) equipped with technology that enables customer enrollment with a CRES or CRNGS product at a customer's home via a mobile internet protocol that allows IGS to track the time and location of customer solicitations and enrollments. Additionally, IGS stated that, when an enrollment is made, the tablet computer verifies the customer's consent to terms and conditions via electronic signature and also verifies via electronic signature that the customer acknowledges the specific statements set forth in the Commission's rules. Further, IGS explained that the HEC enrollment process gives customers the option to receive a physical copy of the terms and conditions and acknowledgement form, upon which the physical copy is provided to the customer at the time of the sale. Alternately, with a customer's consent, the terms and conditions are emailed to the customer immediately upon enrollment.

Moreover, IGS noted the HEC process contains enhanced consumer protections because: the HECs are all direct employees of IGS; the HECs are compensated primarily with base pay; the HECs are assigned to specific geographic sales territories; customers enrolling through the HEC process receive a follow-up telephone call from IGS requesting feedback; and the HEC leaves behind a business card with information for customers on how to provide feedback to IGS. Because of these enhanced consumer protection procedures in the HEC process, IGS asserted the Commission should waive the third-party verification requirements set forth in revised Ohio Adm.Code 4901:1-21-06(D)(1)(h) and 4901:1-29-06(D)(6)(b) for transactions that take place using the HEC enrollment process. Finally, IGS affirmed that, if a customer elects to enroll via a physical wet signature contract, it would follow the third-party verification requirements set forth in Ohio Adm.Code 4901:1-21-06(D)(1)(h) and 4901:1-29-06(D)(6)(b).

- (3) By Finding and Order issued November 20, 2014, the Commission granted the motion to intervene filed by the Ohio Consumers' Counsel (OCC) and granted the application for waiver filed by IGS, stating that its ruling is limited to the purpose of this case only and does not impact the Commission's ability to reconsider this issue in any future proceeding. In granting the waiver, the Commission noted that Ohio Adm.Code Chapters 4901:1-21 and 4901:1-29, 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. Therefore, the Commission found that IGS' request for waiver should be granted for the specific purpose of implementing its HEC process; however, the Commission emphasized that the HEC process, as described in IGS' filing, must meet the internet enrollment provisions of Ohio Adm.Code 4901:1-21-06(D)(3) and 4901:1-29-06(F), with the additional provisions that IGS shall send an electronic copy of the terms and conditions to the customer's email address. If the customer does not provide an email address or refuses an

electronic copy, a third-party verification of the enrollment shall be required.

- (4) R.C. 4903.10 provides that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days after the entry of the order upon the journal of the Commission.
- (5) On December 22, 2014, OCC filed an application for rehearing of the Commission's November 20, 2014 Order citing two assignments of error. IGS filed a memorandum contra OCC's application for rehearing on January 2, 2015.
- (6) In its first assignment of error, OCC asserts the Commission violated R.C. 4903.09 by granting a permanent waiver of the third-party verification rules without explaining how IGS showed good cause for waiver of rules designed to protect consumers against misleading, deceptive, unfair, and unconscionable acts and practices in the marketing, solicitation, and sale of CRNGS and CRES, in accordance with Ohio Adm.Code 4901:1-21-02(C) and 4901:1-29-02(C). Rather, according to OCC, the Commission merely granted the waiver and clarified that IGS must follow the internet enrollment provisions in the rules. However, OCC claims the ruling does not explain how IGS' new enrollment process is an adequate substitute for third-party verification. OCC submits the electronic enrollment process developed by IGS is new and untested; nevertheless, the Commission granted a permanent waiver, with no time limit. Therefore, OCC argues the Commission should either abrogate the Order, or make the waiver temporary.
- (7) In its memorandum contra, IGS initially notes OCC does not oppose IGS' request for waiver and generally appears supportive of the enhanced HEC enrollment process. With regard to OCC's first assignment of error, IGS asserts the Commission did not err in not finding good cause, as good cause exists to grant the waiver application.
- (8) Upon consideration of OCC's first assignment of error, the Commission finds that it is without merit. The Order in these

cases explained, in detail, the process and rationale behind IGS' waiver request and, as stated in the Order, the Commission thoroughly considered all of the information submitted on the record when determining that good cause exists to grant the waiver. As for OCC's assertion that the Commission should establish a time limit on the waiver, such a specific requirement is not necessary, as the Commission will continue to monitor IGS' HEC enrollment process to ensure that customers are provided sufficient information to make informed decisions, and that they are protected 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. Moreover, as stated in the Order, our granting of the waiver in no way impacts our ability to reconsider such ruling in any future proceeding. Therefore, OCC's first assignment of error should be denied.

- (9) In its second assignment of error, OCC maintains the Commission erred by not making the waiver temporary and by not including additional consumer safeguards with its grant of the waiver. According to OCC, the following safeguards should have been included: a requirement for IGS to measure customer perceptions about any aggressiveness of its sales agents; a requirement for Staff to analyze data from complaints received by the Commission, so as to ensure the waiver does not negatively affect customers; and an elimination of any early termination charges that IGS levies on customers. OCC maintains the Commission should order a review of the electronic enrollment process after the waiver has been in effect for one year and, during that year, IGS should collect information and report monthly to the Staff and OCC on the feedback received from customers who changed service through the electronic enrollment process.
- (10) In its memorandum contra, IGS notes that, contrary to OCC's assertions, the Commission did not grant a permanent waiver; rather, the Commission explicitly stated that the waivers were limited to this case and the Commission may reconsider the issue in any future proceeding. Therefore, the Commission indicated it would continue to evaluate its waiver of the rules and retained the right at any time to rescind the waiver. With regard to OCC's recommendation that IGS not be allowed to

charge cancellation fees, IGS notes that it rarely charges such fees. However, according to IGS, it would unduly prejudice IGS to prohibit it from charging such fees in the future. Moreover, IGS notes that the rules already give customers the right to rescind any enrollment by a CRES or CRNGS provider, without a cancellation fee, within seven days of enrollment; thus, there are already sufficient safeguards in place without restricting IGS' ability to charge cancellation fees. As for OCC's proposal that Staff review complaint data, IGS understands Staff is already reviewing the complaint data of IGS and other providers. According to IGS, this, coupled with the Commission's reservation of the right to rescind the waiver, gives IGS incentive to ensure the HEC enrollment process is effectuated in a manner consistent with the representations made by IGS in its application. Finally, IGS responds that it is willing to have informal conversations with OCC and Staff regarding the status of the HEC initiative; however, monthly reporting would be unduly burdensome on IGS and Staff. In addition, IGS speculates that formal reporting may require IGS to disclose confidential competitive information, since both Staff and OCC are subject to a freedom of information request.

- (11) Upon consideration of OCC's second assignment of error, the Commission finds that it is without merit. As we stated previously, it is not necessary to state that the waiver granted to IGS is temporary, as we will continue to monitor the process and may revisit the issue in the future if circumstances warrant. In addition, OCC's recommendation for continued review by Staff of complaint data is superfluous, because it is already part of the Commission's mission to review such data and monitor the processes of the CRES and CRNGS providers to ensure compliance with Commission rules and orders. As for the recommendation that IGS not be permitted to charge cancellation fees, the Commission notes that, notwithstanding the fact that OCC brings this issue up for the first time on rehearing, we find that the rules sufficiently protect customers by giving them the right to rescind any enrollment without a cancellation fee within seven days. Therefore, the Commission finds that OCC's second assignment of error should be denied.

It is, therefore,

ORDERED, That the application for rehearing filed by OCC is denied. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Thomas W. Johnson, Chairman

Steven D. Lesser

M. Beth Trombold
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CMTP/vrm

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JAN 21 2015

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Secretary