

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Power Company to Update Its Alternative)	Case No. 15-1052-EL-RDR
Energy Rider and Auction Cost)	
Reconciliation Rider.)	

**REPLY OF INTERSTATE GAS SUPPLY, INC.
TO MEMORANDUM CONTRA OF THE OFFICE OF THE OHIO CONSUMERS'
COUNSEL**

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On May 25, 2018, Interstate Gas Supply, Inc. ("IGS") filed a Motion to Intervene and Request for Leave to File Motion Out of Time. IGS requested late intervention due to a clerical error. IGS did not record the correct deadline for intervention, which it had believed was due on the same date for initial comments. IGS, however, timely filed its comments and sought leave to intervene out of time when it discovered the oversight regarding the intervention deadline.

On June 8, 2018, the Office of the Ohio Consumers' Counsel ("OCC") filed a Memorandum Contra to IGS' request to intervene out of time, alleging that IGS had failed to justify its late intervention. OCC also filed a motion to strike IGS' comments, arguing that IGS should not be permitted to comment to the extent that IGS' intervention is denied.

Pursuant to Rule 4901-1-12(2), Ohio Administrative Code ("OAC"), IGS hereby files its timely reply to OCC's memorandum contra.¹ As discussed below, IGS' intervention is warranted; the Public Utilities Commission of Ohio ("Commission") should

¹ IGS will respond separately to OCC's motion to strike within the fifteen day time frame permitted Rule 4901-1-12(1), OAC.

be lenient and grant IGS' motion to intervene, which was submitted a mere seven days after the deadline.

OCC alleges that IGS has not demonstrated extraordinary circumstances to justify late intervention under the Commission's precedent. OCC cites two cases to support its argument, neither of which supports OCC's argument.

First, OCC relies upon Case No. 16-1309-GA-UNC, involving Columbia Gas of Ohio's demand side management program. While that case provides an example of a late intervention request being denied, the Attorney Examiner's holding focused on fundamental legal flaws in the motion to intervene unrelated to timeliness. The Attorney Examiner found that the movant "failed to demonstrate good cause or meet the requirements in R.C. 4903.221(B)."² Indeed, Attorney Examiner See's Entry focused on the entity's failure to satisfy several elements of the intervention criteria:

*Although Empower acknowledged the criteria in its motion for intervention, Empower substantially failed to address them. While Empower asserts that it will accept the record as it stands as a result of its late filed request, Empower's motion fails to state the nature and extent of its interest, its legal position to be advocated in these proceedings, or how its participation will contribute to the resolution of the issues presented. Accordingly, the attorney examiner finds Empower's motion to intervene should be denied.*³

Moreover, *in the same Entry*, another party was granted late intervention on the basis that they had met the criteria of R.C. 4903.221:

[T]he attorney examiner finds that ELPC has demonstrated good cause for leave to file for intervention after the specified deadline and presented sufficient information to meet the criteria set forth in R.C. 4903.221(B).

² *In the Matter of the Application of Columbia Gas, Inc. For Approval of Demand-Side Management Programs For Its Residential and Commercial Customers*, Case Nos. 16-1309-GA-UNC, Entry at 5 (Sep. 27, 2016).

³ *Id.* (emphasis added).

Further, the attorney examiner recognizes that ELPC joined with NOAC and the NOAC Communities to timely file testimony advocating its position. Therefore, ELPC's motion to intervene and request for leave to file the motion out of time should be granted.⁴

The above-referenced case is not an anomaly—the Commission has often granted late intervention when a party is merely a few days late and otherwise satisfies the standard of R.C. 4903.221.⁵

This case is more akin to the scenario involving ELPC than Empower. IGS' intervention was only a few days late. Moreover, IGS' motion to intervene explicitly set forth its interest, legal position, and identified important issues that must be developed and addressed in this case:

IGS has a substantial interest in these proceedings, insofar as Staff's recommendation that the Commission direct AEP Ohio to return to customers the PUCO and Ohio Consumers' Council ("OCC") assessment fees collected through the "gross-up" factor may impact the competitive conditions between CRES providers and the utility in the AEP Ohio service territory. Specifically, Staff's recommendation, which seeks to disallow recovery of the PUCO and OCC assessments through bypassable riders, would discriminate against shopping customers by artificially depressing the SSO rate. Staff's recommendation would also adversely impact competitive parity in the marketplace since it implies that the PUCO and OCC assessments would be better collected through distribution rates. Therefore, IGS has direct, real, and substantial interests in this proceeding.⁶

⁴ *Id.*

⁵ *In the Matter of the Application of Dayton Power and Light For Approval of its Electric Security Plan*, Case Nos. 08-1094-EL-SSO, et al., Entry at 3 (Feb. 5, 2009) (granting late intervention over claim that extraordinary circumstances do not exist because the Supreme Court has held that statutes and rules "generally liberally construed in favor of intervention."); *In the Matter of the Application of Columbus Southern Power and Ohio Power for Authority to Establish a Standard Service Offer*, Case Nos. 11-0346-EL-SSO, et al., Entry at 2 (Jul. 8, 2011) (noting policy in favor of liberal intervention and that party will abide by existing procedural schedule); *In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*, Case Nos. 11-3549-EL-SSO, et al., Entry at 4-5 (Jul. 22, 2011) (granting Cincinnati Bell intervention and finding that no party will be prejudiced) Dominion Retail granted intervention out of time).

⁶ IGS Motion to Intervene at 5-6 (May 25, 2018).

Further, IGS' intervention will contribute to the development of record and the resolution of the issues in this proceeding—indeed, IGS has already done so through the filing of its comments. IGS' position is not represented in this proceeding by any other party; therefore, the Commission should grant intervention to ensure that IGS' interest is represented.

Second, OCC relies upon the denial of Noble Americas Energy Solutions LLC's ("Noble") intervention in FirstEnergy's electric security plan ("ESP") case. The facts in that case, however, are a far cry from this case. In denying Noble's motion, the Commission found that Noble was *over a year late*, "470 days"⁷ to be exact.⁸ The Commission further noted that the intervention request occurred after the deadline for discovery had passed and the hearing had commenced; thus other parties would be prejudiced as they "had no opportunity to conduct discovery or otherwise prepare to respond to the arguments raised by Noble Solutions."⁹

In stark contrast to the *FirstEnergy ESP* case, IGS requested leave to intervene a few days after the deadline and prior to the establishment of a hearing schedule. IGS further set forth its interest in its motion to intervene as well as its legal and policy position in comments, which were submitted in accordance with the procedural schedule established in this proceeding. OCC had an opportunity to evaluate and consider IGS'

⁷ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Opinion and Order at 31 (Mar. 31, 2016) (hereinafter "*FirstEnergy ESP*").

⁸ *Id.* ("The Commission finds that Noble Solutions' motion to intervene out-of-time should be denied. Initially, we emphasize the untimeliness—470 days—of Noble Solutions' filing.")

⁹ *Id.*

position and submit reply comments.¹⁰ Therefore, unlike the FirstEnergy ESP case, no party will be prejudiced by the delay in IGS submitting its intervention request.

In this proceeding, IGS intervention is particularly warranted given that OCC's position in this case and others—advocating that shopping customers should subsidize default service customers—is in direct conflict with the interests of IGS and the customers it serves. While the OCC alleges to represent the interest of residential customers,¹¹ its advocacy has often fallen short of representing customers that have exercised their statutory right to choose a competitive retail electric service provider. In this case, for example, OCC alleges that “all customers should contribute to paying the assessments that fund the operations of the PUCO and OCC. These costs should be allocated across AEP's entire distribution customer base, not just the SSO customers who pay the ACRR.”¹² Given OCC's position that shopping customers should pay twice for the PUCO and OCC assessments—paying AEP Ohio for its assessments through distribution rates and then paying for the assessment their retail supplier must recover through their bypassable rates—IGS' intervention is necessary to protect its interest and that of its customers. The above issue requires that IGS be a party to the case to protect the interest of the hundreds of thousands of shopping customers in AEP Ohio's service territory.¹³

¹⁰ Reply By the Office of the Ohio Consumers' Counsel at 3-4 (Jun. 8, 2018).

¹¹ Motion to Intervene By the Office of Consumers' Counsel at 1 (May 24, 2017).

¹² *Id.*

¹³ <https://www.puco.ohio.gov/industry-information/statistical-reports/electric-customer-choice-switch-rates-and-aggregation-activity/electric-switch-rates-by-customer/customers-1q2018/>.

Finally, IGS contends that it meets the multi prong requirements as set forth in RC 4903.211(B) and OAC Rule 4901-1-11(B). As outlined above and additionally in IGS' Motion to Intervene, IGS as a real and substantial interest in the proceeding. IGS will also not unduly delay the proceeding, as demonstrated by timely filing of initial comments. IGS is also in a position that were it not permitted to participate its' interest and the interest of the customers we serve would be would be prejudiced. IGS has demonstrated a substantial interest in the case not represented by another party. Therefore, the Commission should grant IGS' request to intervene out of time.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that this *Reply of Interstate Gas Supply, Inc. to Memorandum Contra of the Office of the Ohio Consumers' Counsel* was filed electronically with the Docketing Division of the Public Utilities Commission of Ohio on this 15th day of June 2018.

/s/ Joseph Olikier
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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/15/2018 4:18:51 PM

in

Case No(s). 15-1052-EL-RDR

Summary: Reply electronically filed by Helen Sweeney on behalf of Interstate Gas Supply, Inc.