

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc., for a Waiver of Specific)
Sections of the Ohio Administrative Code.)

Case No. 21-1100-EL-WVR

**MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT
OF INTERSTATE GAS SUPPLY, INC.**

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MOTION TO INTERVENE

Pursuant to R.C. 4903.221 and Ohio Adm.Code 4901-1-11, Interstate Gas Supply, Inc. (“IGS” or “IGS Energy”) moves to intervene in the above captioned case. In this proceeding, Duke Energy Ohio, Inc. (“Duke”) seeks a waiver of multiple newly instated rules, including but not limited to Rules 4901:1-10-33(A), 4901:1-10-22(B)(16), and 4901:1-10-33(C)(9). Duke is seeking a full twelve months to comply with these rules which intend to prohibit the discrimination or restriction of certain CRES charges on customer bills.¹

As set forth in the attached Memorandum in Support, IGS submits that it has a direct, real, and substantial interest in the issues and matters involved in the above-captioned proceedings, and that it is so situated that the disposition of the proceedings without IGS’ participation may, as a practical matter, impair or impede IGS’ ability to protect that interest. IGS further submits that its participation in these proceedings will not

¹ In the Matter of the Application of Duke Energy Ohio, Inc., for a Waiver of Specific Sections of the Ohio Administrative Code (“Application”), Case Nos. 21-1100-EL-WVR, Application for Waiver (November 1, 2021) at 1.

cause undue delay, will not unjustly prejudice any existing party, and will contribute to the thorough consideration of the issues raised in the proceedings.

IGS' interests will not be adequately represented by other parties to these proceedings, and, therefore, IGS is entitled to intervene in these proceedings with the full powers and rights granted to intervening parties.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

As a retail energy supplier, IGS Energy has over 30 years of experience serving customers in Ohio’s competitive gas and electric markets. Currently, IGS serves customers across 20 states, including electric customers of various sizes throughout the Duke Ohio service territory. Additionally, the IGS family of companies, which includes IGS Solar, IGS Generation, IGS Home Services, and IGS CNG Services, provides customer focused energy solutions that complement IGS Energy’s core commodity business, including distributed generation, demand response, compressed natural gas refueling, and back-up generation. IGS Energy currently offers non-jurisdictional products and services that would be potentially be impacted by these rules.

In this proceeding, Duke seeks a temporary waiver of 12 months in order to comply with the new rules related to discrimination of non-jurisdictional CRES charges. Duke, according to its Application, plans to conform with the rules not by accommodating CRES charges on their bills in the same manner as they currently accommodate for their affiliates; but rather by removing all current non-jurisdictional charges.² While claiming

² Application at 2-3.

this is a “simple, fair, and easy” solution, Duke then requests the ability to continue discriminating against CRES charges for up to twelve months while it slowly removes the currently unlawful non-jurisdictional charges from its bills. Duke has not offered a sufficient basis in its Application to continue to “unduly restrict” the offer of CRES non-jurisdictional products and services for a year by not opening that same functionality to CRES suppliers as required by the rules. Duke admits in its Application that it is currently offering non-jurisdictional products and services but does not offer any technical reason why those charges can only appear on the bill for Duke’s affiliates.³

IGS respectfully submits that it is entitled to intervene in these proceedings because IGS has a real and substantial interest in these proceedings, the disposition of which may impair or impede its ability to protect that interest.

For purposes of considering requests to intervene in Commission proceedings, the Commission’s rules provide that:

Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that: (1) A statute of this state or the United States confers a right to intervene. (2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.⁴

Further, R.C. 4903.221(B) and Ohio Adm.Code 4901-1-11(B), provide that the Commission, in ruling upon applications to intervene in its proceedings, shall consider the following criteria:

(1) The nature and extent of the prospective intervener’s interest;

³ Application at 3.

⁴ Ohio Adm.Code 4901-1-11(A).

(2) The legal position advanced by the prospective intervener and its probable relation to the merits of the case;

(3) Whether the intervention by the prospective intervener will unduly prolong or delay the proceedings; and

(4) Whether the prospective intervener will significantly contribute to full development and equitable resolution of the factual issues.

As a certified retail electric service provider, IGS has a direct, real, and substantial interest in these proceedings. As quoted by Duke from the Finding and Order, the purpose of the rules is to “prohibit undue or unreasonable prejudice or disadvantage,”⁵ thus allowing Duke a full year to simply drop non-compliant charges prolongs the existing prejudice within the market. Under the proposal, IGS will continue to not be permitted to offer on bill non-jurisdictional products and services while Duke and its affiliates will. IGS has an interest in ensuring that the market is a fair playing field without undue preference or advantage being given to legacy products and services, which are expressly prohibited under the new rules. Therefore, IGS has a real and substantial interest in this proceeding.

Additionally, it would be inappropriate to determine these proceedings without IGS’ participation, as the other parties in the case cannot adequately represent and protect the interests of IGS and its customers in these proceedings.

Further, IGS and its counsel have substantial experience appearing and practicing before the Commission, thus IGS intervention will not unduly prolong or delay this proceeding. In fact, IGS’ involvement in these proceedings will assist in development and resolution of factual issues before the Commission.

Finally, the Supreme Court of Ohio has held that intervention should be liberally

⁵ Finding & Order, p. 79 (February 26, 2020).

allowed for those with an interest in the proceeding.⁶ In light of the liberal interpretation of the intervention rules, IGS clearly meets the standards for intervention in these proceedings. Additionally, IGS intervened and provided comments in the preceding case seeking an adjustment of the same rider mechanism without objection or issue.⁷

For the reasons set forth above, IGS respectfully requests the Commission grant this Motion to Intervene.

Respectfully submitted,

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⁶ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853.

⁷ See generally PUCO Case No. 20-0666-EL-RDR.

CERTIFICATE OF SERVICE

I certify that this *Motion to Intervene and Memorandum in Support of Interstate Gas Supply, Inc.* was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on November 5, 2021. The PUCO's e-filing system will electronically serve notice of the filing of this document on the parties subscribed to these proceedings. Additionally, notice was provided to the parties listed below.

/s/ Joseph Oliker

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Case No(s). 21-1100-EL-WVR

Summary: Motion to Intervene and Memorandum in Support electronically filed by
Mr. Evan F Betterton on behalf of Interstate Gas Supply, Inc.