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October 14, 2010

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VIA E-FILING and FIRST CLASS MAIL

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17102

Re: Update and Amendment to the Initial Application for
Natural Gas Supply Services to the Public for Interstate
Gas Supply, Inc., d/b/a IGS Energy, Docket No. A-125051

Dear Secretary Chiavetta:

Enclosed for filing please find the Protest of The Retail Energy Supply Association and Request for Interim Disclaimer/Rulemaking in the above-captioned proceeding. Copies have been served on all parties as indicated in the attached certificate of service.

Very truly yours,


Eranda Vero

EV/ck
Enclosures
Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re: Update and Amendment to the Initial :
Application for Natural Gas Supply Services to the :
Public for Interstate Gas Supply, Inc., d/b/a : Docket No. A-125051
IGS Energy :

**PROTEST OF RETAIL ENERGY SUPPLY ASSOCIATION AND REQUEST
FOR INTERIM DISCLAIMER/RULEMAKING**

The Retail Energy Supply Association (“RESA”), by and through its counsel, John F. Povilaitis, Eranda Vero and Ryan, Russell, Ogden & Seltzer P.C., hereby files this Protest with respect to the above-captioned matter, pursuant to 52 Pa. Code §§ 5.51 and 54.36. In connection with its Protest, RESA represents as follows:

1. RESA is a non-profit trade association comprised of a broad range of companies that are involved in wholesale generation of electricity and the competitive supply of natural gas to residential, commercial and industrial consumers.¹ Many RESA members have been certified by the Pennsylvania Public Utility Commission (“Commission”) as competitive retail natural gas suppliers (“NGS”) and supply natural gas commodity to residential, commercial and industrial consumers in this state.

2. RESA’s attorneys in this matter are:

John F. Povilaitis
Eranda Vero
Ryan, Russell, Ogden & Seltzer P.C.
800 North Third Street, Suite 101

¹ RESA’s members include ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; NextEra Energy Services; PPL EnergyPlus; Reliant Energy Northeast LLC; Sempra Energy Solutions LLC. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

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3. On November 11, 1999, Interstate Gas Supply, Inc., d/b/a IGS Energy (“IGS”) filed an Application to offer, render, furnish or supply natural gas supply services in the Commonwealth of Pennsylvania. On January 12, 2000, the Commission approved a license at Docket No. A-125051, authorizing IGS to begin to offer, render, furnish or supply natural gas supply services to all customers, within the service territory of Columbia Gas of Pennsylvania, Inc. (“Columbia Gas of PA”).

4. On September 17, 2010, Interstate Gas Supply, Inc., d/b/a IGS Energy (“IGS”), another certified NGS in this state, filed by letter/notice an update and amendment to the November 11, 1999 Application (referenced in paragraph 3, above), pursuant to 52 Pa. Code § 62.105. The letter/notice advised the Commission that IGS will be using a fictitious name or doing business as (“d/b/a”): IGS Energy and Columbia Retail Energy. IGS has not included in its letter/notice to the Commission how it intends, or if it intends, to distinguish its marketing of natural gas commodity supply under the “Columbia Retail” trade name from that of the incumbent natural gas distribution company (“NGDC”), Columbia Gas of Pennsylvania.

5. RESA requests that the Commission adopt interim guidelines and subsequently initiate a rulemaking proceeding, pursuant to 1 Pa. Code Chapter 7, and 52 Pa. Code § 5.211, provide standards governing the use by an NGS of a non-affiliated NGDC’s name and/or logo. RESA submits that neither IGS, nor any other NGS, should be permitted to use the name and/or logo of a non-affiliated NGDC until the rulemaking

has concluded and the rules become effective. Should IGS or any other NGS do so, the Commission should initiate proceedings pursuant to 66 Pa. C.S. § 701 and 52 Pa. Code § 5.31 to prevent such use until the new rules are adopted. In the alternative, if the Commission in its discretion chooses not to initiate a rulemaking or a complaint, RESA requests that the matter be assigned for hearing and development of a record on the issue of whether IGS's proposed d/b/a of Columbia Energy Retail is misleading and in violation of the Commission's Code of Conduct applicable to NGSs.

I. THE COMMISSION PREVIOUSLY HAS RECOGNIZED THAT CONSUMERS MAY BE DECEIVED BY A NGS'S USE OF A UTILITY'S NAME AND/OR LOGO ON ADVERTISING AND MARKETING MATERIALS.

6. Through its rules, the Commission has recognized that consumers would be defrauded and deceived if a NGDC's competitive retail affiliate used the NGDC name and/or logo. To prevent such confusion, the Commission requires a NGDC's competitive retail *affiliate* to disclose the affiliate relationship in its advertising and marketing materials. See 52 Pa. Code §§ 62.142(a)(15)(i)-(iii), and 62.142(a)(16)-(17). Failure to make such disclosure constitutes an unfair, misleading, deceptive, or unconscionable act or practice.

7. Although the Commission's rules clearly address the need for *affiliates* to disclaim that their services are not those of the traditional NGDC, the rules provide no such standards in circumstances where an *unaffiliated* NGS uses the NGDC's name and/or logo. The rules' silence presents the real concern that a non-affiliated NGS could mislead consumers (particularly residential and small commercial consumers) to believe that its services are those of the NGDC, or even the NGDC's affiliate. Since 52 Pa. Code

§§ 62.142(a)(15)(i)-(iii), and 62.142(a)(16) do not apply to unaffiliated NGSs, new regulations need to be adopted to address this specific concern.

8. RESA believes that there should be new regulations drafted for this specific situation, rather than retrofitting the current affiliate regulations noted above. IGS is neither the NGDC, nor in any way related to the NGDC through a parent company relationship as a traditional affiliate is. Therefore, the simple use of the affiliate rules is not the best consumer protection in this scenario. Instead, RESA believes that the Commission should investigate whether additional safeguards should be put in place that go above and beyond the marketing rules with which an affiliate must comply.

9. Columbia Gas of PA serves more than 413,000 customers on 26 counties in the Commonwealth of Pennsylvania. It is one of the largest natural gas companies in this state, and provided for decades both distribution and commodity supply services to consumers as a vertically integrated monopoly in the western part of the state. Because of its long-time monopoly status, consumers strongly identify the “Columbia” name with Columbia Gas of Pennsylvania, particularly when coupled with the provision of natural gas services. Indeed, consumers attach such a strong identification to the “Columbia” name that it has acquired significant value – so much so that IGS has agreed to pay Columbia Gas of Pennsylvania’s parent, NiSource, a license fee to use the “Columbia” name for a period of three years. See Attachment A, The Columbus Dispatch, *Gas Supplier to Use “Columbia” Name*, August 11, 2010. IGS’s use of the highly recognizable “Columbia” name, without appropriate disclaimers, not only would mislead customers as to the source of their commodity supply, but also would inappropriately influence consumers’ purchasing decisions, communicate a false affiliated relationship

between non-affiliated entities and provide IGS with an unfair competitive advantage over its NGS competitors – in contravention of 52 Pa. Code §§ 62.114 (a), (e), and the spirit of 62.142 (a)(14) and (a)(15).

II. THE COMMISSION ALSO MUST ADOPT RULES THAT SPECIFICALLY PREVENT A NON-AFFILIATED NGS FROM MISLEADING OR DECEIVING CONSUMERS THROUGH THE USE OF A UTILITY NAME AND/OR LOGO.

10. The need to protect against confusion when using the NGDC name and/or logo is even more critical when the name and/or logo will be used by a non-affiliated NGS; however, application of the affiliated-NGS disclaimer rules to a non-affiliated NGS would not offer sufficient protection. For example, if IGS were to use the name “Columbia Retail” on its marketing materials, with the disclaimer that it is not the same entity as Columbia Gas of PA, consumers still would be misled to believe that it was in some way affiliated with Columbia Gas of PA. This confusion is exacerbated by the marketing practices of Columbia Gas of PA’s affiliate, Columbia Retail Services,² which likely will use the same marketing channels (*e.g.*, U.S. mail) as “Columbia Retail.” Thus, greater protection is needed when a non-affiliated NGS is using a licensed NGDC name and/or logo.

11. RESA believes that new regulations should be adopted that specifically address the use of the NGDC name and/or logo by a non-affiliated NGS. RESA proposes that the non-affiliated NGS be required, at a minimum, to disclose on all bills, and all advertising, marketing, and consumer education materials:

- i. the NGS’s full legal name, and

² Columbia Retail Services is a NiSource company and affiliate of Columbia Gas of Pennsylvania, which offers repair services and service plans for heating and cooling systems, NGDC lines, and appliances.

ii. that the NGS is not affiliated with the NGDC.
An effective disclosure could be worded as follows and located in proximity to the Interstate Gas Supply name (IGS) on materials:

Service is provided by Interstate Gas Supply, Inc. under the trade name Columbia Retail Energy. Neither Interstate Gas Supply nor Columbia Retail Energy is affiliated with Columbia Gas of Pennsylvania.

To be effective, such disclosure must appear in close proximity to the NGDC name and/or logo in appropriate and conspicuous type-size.³ By making, at least, these requirements mandatory, customer confusion should be reduced.

12. Considering that the Commission currently lacks rules to protect against a non-affiliated NGS's misleading or deceptive use of a NGDC name and/or logo, RESA requests that the Commission initiate a rulemaking on this single issue.

III. INTERIM PROTECTIONS ARE REQUIRED UNTIL A NEW RULE IS ADOPTED.

13. As explained above, the absence of Commission rules on this issue presents an immediate concern that a NGS's advertising and marketing materials containing a non-affiliated NGDC's name and/or logo could mislead or deceive consumers to believe that the source of their commodity supply is the NGDC, or the NGDC's competitive retail affiliate. RESA submits that neither IGS, nor any other NGS, should be permitted to use the name and/or logo of a non-affiliated NGDC until the rulemaking has concluded and the rules become effective. Should IGS or any other NGS

³ RESA's concern that the failure to use such disclaimers will mislead consumers to believe that their commodity is being supplied by the incumbent utility or its affiliate is shared by regulators in Illinois, where a rulemaking for retail electric consumer protections has proposed rules requiring competitive retail electric suppliers to disclose their legal names and the name under which they will provide service. See ICC Staff Proposed Section 412.110 Uniform Disclosure Statement [ICC Docket No. 09-0592].

In addition, RESA has filed a similar protest before the Public Utilities Commission of Ohio, Case No. 02-1683-GA-CRS, where IGS has filed a Notice of Material Change proposing to offer service under the trade name "Columbia Energy Retail."

do so, the Commission should initiate proceedings pursuant to 66 Pa. C.S. § 701 and 52 Pa. Code § 5.31 to prevent such use until the new rules are adopted.

IV. IN THE ALTERNATIVE, THE COMMISSION SHOULD SET THIS AMENDED APPLICATION FOR HEARING

14. Should the Commission in its discretion choose not to initiate a rulemaking, RESA requests that the matter be assigned for hearing and development of a record on the issue of whether IGS's proposed d/b/a of Columbia Energy Retail is misleading and in violation of the Commission's Code of Conduct applicable to NGSs. This is not RESA's preferred relief, since as a matter of Commission policy a non-affiliated NGS should not be permitted to depict itself as an NGDC affiliate, and on this basis the amendment to IGS's Application should be summarily denied.

IV. CONCLUSION

RESA requests the Commission to initiate a rulemaking, pursuant to 1 Pa. Code Chapter 7, and 52 Pa. Code § 5.211, to provide standards governing a NGS's use of a non-affiliated NGDC's name and/or logo. At a minimum, such rules should require the NGS to conspicuously disclose on all bills, and all advertising, marketing, and consumer education materials:

- i. the NGS's full legal name, and
- ii. that the NGS is not affiliated with the NGDC.

In addition, the following interim disclosure requirement should be imposed on IGS and located in proximity to the Interstate Gas Supply name (IGS) on materials, pending completion of a rulemaking:

Service is provided by Interstate Gas Supply, Inc. under the trade name Columbia Retail Energy. Neither Interstate Gas Supply nor Columbia Retail Energy is affiliated with Columbia Gas of Pennsylvania.

RESA submits that neither IGS, nor any other NGS, should be permitted to use the name and/or logo of a non-affiliated NGDC until the rulemaking has concluded and the rules become effective. Should IGS or any other NGS do so, the Commission should initiate proceedings pursuant to 66 Pa. C.S. § 701 and 52 Pa. Code § 5.31 to prevent such use until the new rules are adopted. In the alternative, if the Commission in its discretion chooses not to initiate a rulemaking, RESA requests that the matter be assigned for hearing and development of a record on the issue of whether IGS's proposed d/b/a of Columbia Energy Retail is misleading and in violation of the Commission's Code of Conduct applicable to NGSs. RESA remains open to reasonable discussions with IGS in order to settle the subject matter of this Protest expeditiously.

Dated: October 14, 2010



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Attorneys for the
Retail Energy Supply Association

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Update and Amendment to the Initial :
Application for Natural Gas Supply Services to the :
Public for Interstate Gas Supply, Inc., d/b/a : Docket No. A-125051
IGS Energy :

VERIFICATION

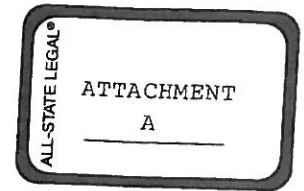
I, Tracy McCormick, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect Retail Energy Supply Association to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904.

Date: October 13, 2010



Columbus Dispatch, The (OH)

August 11, 2010



Gas supplier IGS to use 'Columbia' name *Dan Gearino THE COLUMBUS DISPATCH*

Two separate companies soon will be using the "**Columbia**" brand name and logo to provide natural gas to Ohio customers.

IGS **Energy** of Dublin, an unregulated gas supplier, has purchased a three-year license to use the "**Columbia**" name from NiSource, parent company of **Columbia Gas** of Ohio.

IGS **Energy** will use the name "**Columbia Retail Energy**" to market its gas contracts.

Financial terms were not disclosed.

The state's consumer advocate is raising an eyebrow, worried that the similar names will be confusing.

"When you're using the **Columbia** name, you have to wonder if people will know the difference between the utility and the marketer," said Marty Berkowitz, a spokesman for the Office of the Ohio Consumers' Counsel.

Columbia Gas of Ohio will continue to sell gas and handle gas distribution. The company's territory covers 1.4 million residential households.

NiSource decided to license the name because it was pleased with IGS' track record, and it was confident that customers would understand the difference between the two companies, said Karl Brack, a spokesman at NiSource's Indiana headquarters.

Doug Austin, IGS vice president, indicated his company plans to be clear with its customers.

"**Columbia Retail Energy** is not the utility and is not an affiliate, and all marketing to customers will clearly communicate this," he said.

His company will continue to use the IGS name along with the **Columbia Retail** name.

IGS' arrangement is a new twist in Ohio's deregulated gas system. For more than a decade, customers have had the choice to buy gas from the regulated utility or from a slate of unregulated providers, known as gas marketers. Marketers sell a variety of rate plans, including fixed-rate contracts, while the utilities' rates change each month.

IGS, which employs 200 and recently moved to a new headquarters in Dublin, is the largest marketer in Ohio.

Beginning in the 1990s, **Columbia Gas** had a marketing company known as **Columbia Energy Services**. The business was sold and renamed in 2001, and it is not actively seeking new customers.

Some Ohio utilities, including Dominion East and Vectren, have marketers with similar names under the same corporate umbrella. Last year, Dominion paid a \$50,000 fine after complaints that its marketing arm was using misleading practices to attract customers from its utility arm.

The Consumers' Counsel will monitor this new **Columbia** situation for similar problems, Berkowitz said.

"We're going to oppose anything that creates undue confusion for customers," he said.

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Update and Amendment to the :
Initial Application for Natural Gas :
Supply Services to the Public for Interstate : Docket No. A-125051
Gas Supply, Inc., d/b/a IGS Energy, :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the relevant documents in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

Via First Class and Electronic Mail

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Date: October 14, 2010



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