

I. Extraordinary Circumstances Exist to Justify Intervention by RESA and IGS

RESA and IGS contend that, for two reasons, extraordinary circumstances exist to justify the intervention of RESA and IGS at this time: (1) the issues related to the need for the Turning Point Facility and the related non-bypassable rider were being debated and considered primarily in the context of OPC's ESP II proceeding,² and RESA and IGS were active participants therein and that, when the Commission indicated by Order that the "need" issue for the Turning Point would be decided in the Long Term Forecast cases, the intervention period had past; and (2) the Commission is grappling with an important question of first impression about which the Commission has asked for additional information and it is therefore reasonable to allow interested, knowledgeable entities to participate. OPC argues incorrectly in its Memorandum Contra that neither of these circumstances is an extraordinary circumstance. RESA and IGS find it difficult to imagine how either of these very unusual circumstances cannot be extraordinary.

With regard to the first reason that RESA and IGS contend that an extraordinary circumstance exists, it is extremely important to recognize the role and the timing of *ESP II*, and the Commission's statements in its decisions in *ESP II*. *ESP II* began approximately one month after OPC filed information in its long-term forecast reports ("LTFRs") regarding its intention to add the Turning Point Facility. The parties in *ESP II*, including RESA and IGS, were embroiled in the many issues of the ESP, including a discussion of the need for the Turning Point Facility and the related non-bypassable rider. In other words, RESA and IGS were actively participating and debating the issues related to the Turning Point Facility, but were doing so in a different, more-comprehensive proceeding.

OPC contends in its Memorandum Contra that it had indicated throughout the *ESP II*

²*In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security*

proceedings that it was handling the determination of the need for the Turning Point Facility in the LTFR cases. OPC had proposed the addition of the Turning Point facility in the LTFR cases one month prior to the start of *ESP II*, and initial testimony in *ESP II* may have advocated that the Commission determine the need for the Turning Point Facility in the LTFR cases. However, OPC ignores the fact that, nonetheless throughout 2011, the parties in *ESP II* were actively embroiled in discussions that included the issues associated with the Turning Point Facility. Plus, the LTFR cases did not progress procedurally during this same time period because the parties in *ESP II* were trying to address the issues.

Then, as it turned out, many parties, including RESA and IGS, agreed in the first settlement in *ESP II* in September 2011 that a zero-rated, non-bypassable rider could be established, but that the Commission would evaluate the issues related to the Turning Point Facility *later* in a *separate* Commission proceeding. When the Commission accepted this component of the stipulation in December 2011, it stated that the zero-rated, non-bypassable rider was merely a placeholder and that concerns related to the rider and the Turning Point Facility would be addressed *subsequently*, in a subsequent hearing and/or subsequent proceedings. *ESP II*, Opinion and Order (December 14, 2011) at 39 and 40. Thus, at that time, RESA and IGS had understood that, if and when OPC requested a specific charge through the non-bypassable rider in a subsequent proceeding (not an already pending proceeding), the Commission would then determine the need for the Turning Point Facility and the non-bypassable rider rate.

However, instead, that stipulation in *ESP II* was rejected by the Commission in an Order issued February 23, 2012. OPC may have advocated in its modified ESP filing that need for the Turning Point Facility be determined in the LTFR cases. However, following the filing of the modified ESP filing, multiple parties in *ESP II* presented a variety of comments about the

Turning Point Facility issues. Again, the Turning Point Facility issues were hotly contested in *ESP II*. In August 2012, when the Commission accepted a modified ESP, including the non-bypassable rider at a rate of zero, the Commission reached a different conclusion with regard to the procedural process for the determination of the need for the Turning Point Facility. The Commission decided that the need issue would take place in LTFR proceedings, while other issues related to the Turning Point Facility would be addressed in a future proceeding. Opinion and Order (August 8, 2012) at 23 and 24. Approximately one month later, the Commission reopened these LTFR proceedings in order to obtain additional information related to the Turning Point Facility.

It would be one thing if RESA and IGS had sat on the “sidelines” during all of these events, and then tried to jump into the LTFR game. However, that is certainly not how things occurred, despite what OPC has argued. RESA and IGS have not sat on their laurels, nor did they overlook the Turning Point Facility issues. RESA and IGS were involved in *ESP II* and in numerous discussions of many issues related to OPC’s provision of service. It was a highly unusual combination of events outside of RESA’s and IGS’ control that have caused them to seek intervention in the LTFR cases at this point. In a nutshell, that highly unusual combination of events is:

- a stipulation in *ESP II* accepted with the Commission outlining a future procedural process for the Turning Point Facility issues
- followed by the rejection of that stipulation
- followed by submission of a modified ESP
- a second Commission decision containing a different procedural process for the Turning Point Facility issues
- the Commission reopening the record in the two pending cases

These events are critical to recognize that extraordinary circumstances have occurred indeed, and that RESA and IGS could not have predicted them.

The second reason that intervention is justified in these proceedings at this juncture is that

the Commission is grappling with an important question of first impression. Certainly the Commission recognized the extraordinary circumstances here because it chose the unusual course of reopening the record in these LTFR proceeding to request additional information. RESA and IGS are experienced and knowledgeable, and can assist the Commission as it considers the issues associated with the Turning Point Facility, including those questions posed by the Commission in its September 5 Entry. RESA and IGS have participated in many proceedings as the Commission has addressed various portions of the Chapter 4928. As the Commission now faces another component of the regulatory framework for competitive retail electric service and electric generation service, the Commission should permit qualified parties to participate, even at this stage of the LTFR proceedings.

OPC correctly points out that the hearing in the LTFR cases is complete. However, OPC is incorrect in stating that RESA and IGS seek to add new evidence. RESA and IGS are not seeking to reopen the hearing, or to add new evidence. Rather, RESA and IGS only wish to have the Commission consider their previously filed comments regarding the specific questions posed by the Commission on September 5.

II. The Other Intervention Factors are Fully Satisfied

In addition to finding that extraordinary circumstances justify the intervention of RESA and IGS, the Commission should also find that the factors set forth in Rule 4901-1-11(B), Ohio Administrative Code, are satisfied. Those factors are:

- (1) The nature and extent of the prospective intervenor's interest.
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case.
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

- (5) The extent to which the person's interest is represented by existing parties.

RESA and IGS fulfill these five factors, despite OPC's claims to the contrary.

First, RESA and IGS explained in their October 3 comments and their October 17 pleading that they are very interested in the determinations associated with the Turning Point Facility, including the determination of need, because the need determination can significantly affect the provision of competitive services in Ohio under Chapter 4928 as well as its cost. AEP completely missed the mark when it argued that RESA and IGS are seeking to change the Commission's rules and the organization of its dockets. RESA and IGS are not advocating such. RESA and IGS have explained how the need for the proposed facility should be viewed and the possible impact of that facility on the competitive marketplace.

Second, RESA and IGS have advanced legal positions directly related to the merits of the cases. RESA and IGS responded to the questions posed by the Commission in its September 5 Entry, advocating a specific interpretation of "need," the scope of the need analysis, and the territory to be analyzed for the need determination.

Third, RESA and IGS will not unduly delay or prolong these proceedings. The fact that the Commission reopened these proceedings and requested additional information does not establish that RESA and IGS will unduly delay the proceedings. As noted earlier, RESA and IGS are experienced, knowledgeable entities that can significantly contribute to the Commission's analysis in these matters. RESA and IGS have timely submitted comments and other pleadings in these matters. The addition of RESA and IGS will not unduly delay or prolong these proceedings.

Fourth, RESA and IGS will significantly contribute to full development and equitable resolution of the issues associated with the need determination for the Turning Point Facility that was requested by the Commission. RESA and IGS have extensive experience with the

development of competitive retail electric service in Ohio and the necessary interpretations of the statutory framework. RESA and IGS can provide valuable additional input regarding the issues presented by the Commission in its September 5 Entry.

Fifth, RESA and IGS are not adequately represented by existing parties. RESA and IGS are not the same as any of the existing parties. Even if the arguments proposed by RESA and IGS were similar to those advocated by the existing parties, RESA and IGS have additional experience in Ohio's competitive marketplace. Moreover, RESA and IGS represent the interests of a broad and diverse group of retail energy suppliers, much more than is represented by the parties currently participating in these proceedings. As noted in RESA's comments, several of RESA's members are active, certificated competitive suppliers in Ohio's retail electric and natural gas markets, who provide service to residential, commercial, industrial and governmental customers. RESA and IGS do not agree their interests are adequately represented by the existing parties in these proceedings.

III. Conclusion

RESA and IGS have real and substantial interests in the issues in these proceedings, and have explained the nature and extent of their interests. RESA and IGS have established that their interests are related to the merits of these LTFR proceedings, that they will significantly contribute to the proceedings, and that the disposition of the proceedings may, as a practical matter, impair or impede their ability to protect their interests. RESA and IGS are not adequately represented by other parties in this proceeding, they will not unduly delay or prolong the proceedings, and extraordinary circumstances exist to justify intervention at this stage in the proceedings. Finally, RESA and IGS are not seeking to reopen the hearing, or to add new evidence. RESA and IGS simply wish that the Commission grant them intervention in this

proceedings so that the Commission may consider their previously filed comments.

WHEREFORE, RESA and IGS respectfully request that they be granted intervention.

Respectfully submitted,

/s/ M. Howard Petricoff

M. Howard Petricoff (0008287)

Vorys, Sater, Seymour and Pease LLP

52 E. Gay Street

P.O. Box 1008

Columbus, Ohio 43216-1008

614-464-5414

(614) 719-4904 (fax)

mhpetricoff@vorys.com

*Attorneys for the Retail Energy Supply Association
and Interstate Gas Supply, Inc. d/b/a IGS Energy*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Initial Comments of Interstate Gas Supply, Inc. d/b/a IGS Energy was served this 7th day of November, 2012, via email on the parties listed below.

James F. Lang
Laura C. McBride
Calfee Halter & Griswold LLP
The Calfee Building
1405 East Sixth Street
Cleveland, OH 44114
jlang@calfee.com
lmcbride@calfee.com

Samuel C. Randazzo
Joseph E. Oliker / Frank P. Darr
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
sam@mwncmh.com
joliker@mwncmh.com
fdarr@mwncmh.com

Trevor Alexander
Calfee Halter & Griswold LLP
1100 Fifth Third Center
21 East State Street, Ste. 1100
Columbus, OH 43215-4243
talexander@calfee.com

Jack D' Aurora
The Behal Law Group LLC
501 South High Street
Columbus, OH 43215
jdaurora@behallaw.com

Steven T. Nourse
Matthew J. Satterwhite
American Electric Power Service Corp.
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
stnourse@aep.com
mjsatterwhite@aep.com

Selwyn J. Dias
Ohio Power Company
850 Tech Center Drive
Gahanna, OH 43230
sjdias@aep.com

Mark A. Hayden
FirstEnergy Corp.
76 South Main Street
Akron, OH 44308
haydenm@firstenergycorp.com

Terry Etter
Ohio Consumers' Counsel
10 W. Broad Street, Suite 1800
Columbus, OH 43215
etter@occ.state.oh.us

Thomas McNamee
180 East Broad Street, 6th Floor
Columbus, OH 43215
Thomas.mcnamee@puc.state.oh.us

/s/ Gretchen L. Petrucci

Gretchen L. Petrucci