

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Increase the Rates and Charges for Gas Services and Related Matters.</b>	) ) ) )	<b>Case No. 21-637-GA-AIR</b>
<b>In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Alternative Form of Regulation.</b>	) ) )	<b>Case No. 21-638-GA-ALT</b>
<b>In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of a Demand Side Management Program for Its Residential and Commercial Customers.</b>	) ) ) ) )	<b>Case No. 21-639-GA-UNC</b>
<b>In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval to Change Accounting Methods.</b>	) ) )	<b>Case No. 21-640-GA-AAM</b>

**JOINT INITIAL BRIEF OF  
THE RETAIL ENERGY SUPPLY ASSOCIATION  
AND  
INTERSTATE GAS SUPPLY, INC.**

**December 9, 2022**

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## I. INTRODUCTION

On June 30, 2021, Columbia Gas of Ohio, Inc. (“Columbia”) filed an application seeking authority from the Public Utilities Commission of Ohio (“PUCO” or “Commission”) to increase its rates and to receive approval for an alternative rate plan and demand side management program. Columbia’s application also raised several issues that impacted the competitive retail natural gas market and its participants. Namely, Columbia sought to implement a Carbon Reduction Rider, which was intended to allow all customer classes to pay an additional fee per account per month to fund the purchase of carbon offsets. The Retail Energy Supply Association (“RESA”)<sup>1</sup> and Interstate Gas Supply, Inc. (“IGS”) separately intervened in these proceedings and subsequently participated in the monthslong negotiations that gave rise to the Joint Stipulation and Recommendation (the “Stipulation”) at issue in these proceedings, which RESA and IGS signed.

The Stipulation provides several benefits to Columbia, customers, and suppliers. Specifically, Section II.E establishes a *Non-Residential Customer Exit the Merchant Function Taskforce*, and Section II.B.1 provides for the withdrawal of Columbia’s Carbon Reduction Rider proposal and agreement to not implement Staff’s recommended alternative. The Stipulation also contains Section II.J, which will result in a new on-line mechanism for customers to use to control their inclusion on the eligible-customer list.

To the extent any of these provisions are challenged by the Opposing Parties (Citizens Utility Board of Ohio, Ohio Partners for Affordable Energy and Environmental Law and Policy Center), the Commission should not ignore Ohio law, including the statutory mandate to follow

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<sup>1</sup> 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 the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

the policies of R.C. § 4929.02, which support the development of the competitive retail natural gas service (“CRNGS”) market in Ohio. The Opposing Parties cannot avoid the record in this proceeding, which establishes that Sections II.B.1, II.E and II.J benefit Columbia, customers, and suppliers. The Commission Staff, which includes the Service Monitoring and Enforcement Division, also signed the Stipulation and that fact should weigh heavily when considering the Stipulation and Sections II.B.1, II.E and II.J. The Stipulation as a package is in the public interest, does not violate any important regulatory principle or policy, and was extensively negotiated by the parties.<sup>2</sup> The Stipulation should be approved without modification.

## **II. ARGUMENT**

### **A. The exit-the-merchant-function taskforce provision in the Stipulation will further develop the competitive retail natural gas service market in Ohio.**

Section II.E. of the Stipulation, titled *Non-Residential Customer Exit the Merchant Function Taskforce*, represents negotiated provisions by RESA and IGS with the other signatory parties to implement a pathway that should further the development of the CRNGS market in Ohio and specifically within Columbia’s service territory. Section II.E provides for interested party discussions related to a potential modification or an exit of the merchant function for nonresidential customers and for a filing from Columbia regarding the same. It is a reasonable step in the transition to a fully CRNGS market, is consistent with the policies set forth in R.C. § 4929.02, and is a pathway approved by the Commission in the past. Section II.E of the Stipulation is intended to further the development of the retail market in Ohio, is in the public interest, does not violate

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<sup>2</sup> RESA and IGS are signatory parties to the Stipulation subject to certain provisions to which they did not join, as delineated in Joint Exhibit 1.

any regulatory principle or policy and, as all parties to the proceedings know, was negotiated to the fullest.<sup>3</sup>

**1. Section II.E of the Stipulation was not opposed at hearing and should be approved.**

At the hearing in this matter, no party indicated any opposition to Section II.E of the Stipulation, which states:<sup>4</sup>

Columbia shall convene a Non-Residential Customer Exit the Merchant Function Taskforce with participation open to the parties and interested stakeholders to discuss the specific details of a filing regarding a potential modification or exit by Columbia from the merchant function for non-residential customers (i.e., non-residential customers that consume 300 Mcf or more on an annual basis). In no event shall the Taskforce address an exit of the merchant function for residential consumers, regardless of the rate class in which these residential customers are served. Within 30 days of an Opinion and Order in this proceeding, the parties will meet to discuss a notification process of the Taskforce for potential interested stakeholders. The Taskforce will convene within 90 days of an order approving the Stipulation and it will continue to meet on a regular basis until the filing is made. The Taskforce discussion will include a potential transition of Columbia's non-residential customers from the SCO.

Within one year from the approval of the Stipulation, Columbia agrees to make a filing regarding a potential modification or exit by Columbia from the merchant function for non-residential customers. Columbia's filing will endeavor to incorporate discussions from the Non-Residential Customer Exit the Merchant Function Taskforce. The Signatory Parties shall reserve all substantive and due process rights to support, oppose, or take any other action with regard to Columbia's filing pursuant to this Stipulation section, and Columbia agrees not to oppose motions to intervene by other Signatory Parties in those proceedings.

OCC's witness Adkins testified that the Stipulation includes multiple benefits to consumers and the public interest, including the taskforce discussion group.<sup>5</sup> This testimony was admitted

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<sup>3</sup> The record reflects that negotiations spanned five and one-half months and involved numerous meetings to which all parties were invited. Tr. at 44, 65, 76-77, 78, 79; Columbia Ex. 35 at 3.

<sup>4</sup> Jt. Ex. 1 at 14-15.

<sup>5</sup> OCC Ex. 1 at 10.

without any cross-examination or opposition and thus went unchallenged. Columbia's witness Thompson testified that the Stipulation – which includes Section II.E – satisfies the Commission's criteria for evaluating stipulations.<sup>6</sup> Staff's witness Liphtratt testified that the Stipulation represents a fair, balanced, and reasonable compromise of the issues in these proceedings.<sup>7</sup> This testimony, individually and collectively, supports approval of the Stipulation, which includes all of Section II.E. In addition, the Opposing Parties presented four witnesses, and none of their testimony addressed Section II.E.<sup>8</sup> As a result, the record supports a conclusion that Section II.E of the Stipulation is reasonable and it should be approved.

**2. Section II.E provides for discussions on a potential modification or exit of the merchant function, followed by a filing by Columbia.**

Section II.E of the Stipulation provides for commitments by Columbia to meet periodically with interested parties to discuss in good faith a potential modification or an exit of the merchant function for nonresidential customers and to make a filing regarding the same. The taskforce meetings will allow participants to work through concerns as a means for developing the filing. The meetings are a good first step to address further developments for the non-residential customer segment of the competitive market. There is no requirement in Section II.E that a modification or an exit of the merchant function must occur; rather, Columbia will make a filing after ample opportunity for stakeholder discussions. Interested stakeholders can then seek to participate in response to that filing and the Commission will consider the filing.

Commission precedent supports approval of Section II.E as presented in the Stipulation. Indeed, the Commission has previously approved an exit-the-merchant-function discussion group

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<sup>6</sup> Columbia Ex. 35 at 2, 5.

<sup>7</sup> Staff Ex. 8 at 7.

<sup>8</sup> See CUB Ex. 1; OPAE Exs. 1 and 2; and ELPC Ex. 1.

provision when presented via a stipulation in Vectren’s last rate case. There, the Commission approved a settlement with a provision allowing stakeholders to engage in discussions about Vectren exiting the merchant function. *In the Matter of the Application of Vectren Energy Delivery Ohio, Inc. for Approval of an Alternative Rate Plan, etc.*, Case Nos. 18-49-GA-AIR et al., Opinion and Order at ¶ 85 (August 28, 2019). The provision was challenged as not being within the public interest, but the Commission disagreed, stating that it could not find that such discussions are not in the public interest. *Id.* at ¶¶ 78 and 85. Unlike the *Vectren* case, however, no such challenge was raised during the hearing in these proceedings. Consistent with the *Vectren* case, the Commission should conclude that discussions and the subsequent filing as contemplated by Section II.E of the Stipulation are in the public interest.

Section II.E also is a provision in the Stipulation that will advance the policy of the state set forth in R.C. 4929.02(A)(7) by promoting competition and transactions between buyers and willing sellers and thereby further the competitive market, particularly because it is important that Columbia make progress toward a complete exit of the merchant function and focus solely on its role as the exclusive distribution utility of natural gas to customers. Section II.E is in the public interest, violates no regulatory principle or policy, and, therefore, should be approved.

- B. Withdrawal of the Carbon Reduction Rider proposal and not implementing the Staff alternative will avoid the debate of whether the utility would be unlawfully offering a competitive retail natural gas service, avoidance of which benefits the competitive retail natural gas market in Ohio and which saves time, expenses and resources.**

Columbia proposed a new rider entitled “Carbon Reduction Rider” in its application in these proceedings.<sup>9</sup> The Rider would allow all customers billed under multiple Columbia rate

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<sup>9</sup> Columbia Ex. 1 at 4-5.

schedules to “fund a reduction” to their carbon output by paying a fee to Columbia Gas.<sup>10</sup> Columbia proposed to work with a third-party vendor to purchase carbon offsets on behalf of the customers who elect the rider.<sup>11</sup> The Staff Report recommended denial of Columbia Gas’ Rider proposal (a recommendation that RESA and IGS supported), but the Staff Report also recommended that the Company implement the program as a nonregulated service under the existing “OPTIONAL SERVICES” tariff (a recommendation to which RESA and IGS objected).<sup>12</sup>

Section II.B.1 of the Stipulation eliminates the debate with this Rider proposal altogether.

Section II.B.1 states in pertinent part the following:<sup>13</sup>

The Signatory Parties agree that Columbia will withdraw its proposal to implement the \* \* \* Carbon Reduction Rider \* \* \*. Further, Columbia agrees not to file for approval of similar riders prior to the filing of its next base distribution rate case unless the Commission orders otherwise \* \* \*. Columbia also will not adopt Staff’s recommendation to implement a carbon offset program as a non-regulated service under its existing “OPTIONAL SERVICES” tariff. The Signatory Parties therefore agree that Staff’s recommendation to implement a carbon offset program should not be implemented in this proceeding.

For purposes of reaching a compromise, the Signatory Parties have agreed that Columbia will withdraw its Carbon Reduction Rider proposal and the Staff’s alternative recommendation would not be implemented. This conclusion is beneficial for multiple reasons. First, this provision avoids utility engagement in the CRNGS market by offering a CRNGS product to customers, which Columbia should not be permitted to do because it has been granted an exemption.<sup>14</sup>

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<sup>10</sup> Columbia Ex. 4 at 33.

<sup>11</sup> *Id.*

<sup>12</sup> Staff Ex. 1 at 50-51; RESA Objections at 2-3, 8; IGS Objections at 2-6.

<sup>13</sup> Jt. Ex. 1 at 8.

<sup>14</sup> *In the Matter of the Application of Columbia Gas of Ohio, Inc., for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case No. 08-1344-GA-EXM, Opinion and Order (December 2, 2009), Second Opinion and Order (September 7, 2011) and Entry on Rehearing (November 1, 2011); *In the Matter of the Application to Modify, in Accordance with Section 4929.08, Revised Code, the Exemption Granted*



Second, it avoids violating the State policy as to natural gas services and goods because, at a minimum, Columbia's proposal and Staff's alternative would not recognize the continuing emergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment and would not promote effective competition in the provision of natural gas services and goods. *See* R.C. §§ 4929.02(A)(6) and (8). Third, Section II.B.1 saves all parties further time and expense associated with litigating the issue because the debate stops with withdrawal of this part of the application and the agreement to not implement the Staff's alternative. Fourth, this provision saves the time and effort for the Commission and its Examiners that would otherwise be required to evaluate this issue. Section II.B.1 supports approval of the Stipulation and should be approved.

**C. Section II.J of the Stipulation, establishing an on-line option for Columbia customers to address their inclusion on the eligible-customer list, is a reasonable and beneficial option.**

The Commission's rules currently envision that customers can call the utility or download a form from the utility's website to ask to not be included in the eligible-customer list. *See* Ohio Adm.Code 4901:1-29-09(C)(5). Section II.J of the Stipulation will establish a more robust on-line process for the Columbia customers. Section II.J states:<sup>15</sup>

Columbia agrees to implement by August 31, 2023, after consultation with Signatory Parties, a reasonable electronic online means to allow its consumers to opt out of Columbia's eligible customer list for disclosing Columbia consumers' contact information to certified retail natural gas suppliers for their marketing. For consumers who change their minds, the electronic online means will allow consumers to opt into Columbia's eligible customer list. The opt out/opt into shall be visible to consumers and accessible through Columbia's website without requiring customers to sign into their accounts. The costs of this provision shall not be borne by consumers. The online process established shall be similar to the opt-

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*Columbia Gas of Ohio, Inc., in Case No. 08-1344-GA-EXM, Case No. 12-2637-GA-EXM, Opinion and Order (January 9, 2013) and Entry on Rehearing (March 20, 2013).*

<sup>15</sup> Jt. Ex. 1 at 21.

out/opt into process offered by Ohio Power Company d/b/a AEP Ohio as of the agreed-to date of this Stipulation.

There is likely no dispute that this new on-line function will be beneficial for customers who elect to use it. To the extent there is any argument to the contrary, the record nonetheless supports the conclusion that Section II.J is reasonable and beneficial. OCC's witness Adkins testified that this new on-line function is a benefit to consumers and the public interest.<sup>16</sup> Staff's witness Liphtratt testified the Stipulation, which includes this new on-line function, represents a fair, balanced, and reasonable compromise of the issues in these proceedings.<sup>17</sup> Both of these witnesses' testimony were admitted without any cross-examination or opposition. As a result, the record supports a conclusion that Section II.J of the Stipulation is reasonable and it should be approved.

In addition to the evidence in the record, the Commission can conclude that this provision of the Stipulation will implement a beneficial change because customers will have an additional choice on how they may opt off and opt into the eligible-customer list. Having choices is a good thing for customers. The process will be simpler than mailing the form to Columbia or waiting in any queue when calling the company (the two options available currently). The Commission should find Section II.J to be beneficial, and approve the Stipulation.

### **III. CONCLUSION**

If in their briefs the Opposing Parties attack the supplier-related provisions in Sections II.B.1, II.E and II.J of the Stipulation, the Commission should reject such arguments. The negotiated resolutions of the issues in those sections of the Stipulation result in reasonable and fair outcomes that further develop the CRNGS market in Ohio, prevent implementation of a new tariff

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<sup>16</sup> OCC Ex. 1 at 10.

<sup>17</sup> Staff Ex. 8 at 7.

that conflicts with Ohio law, and implement a new process for customers. Multiple witnesses support these sections of the Stipulation. The absence of any contrary evidence in the record is also a justifiable basis to reject any argument on brief that opposes these sections of the Stipulation. When considering the record in these proceedings along with the General Assembly's mandate that the Commission follow the policies set forth in R.C. § 4929.02, Sections II.B.1, II.E and II.J of the Stipulation support the approval of the Stipulation. Accordingly, RESA and IGS respectfully request that the Commission approve the Stipulation without modification.

Respectfully Submitted,

/s/ Gretchen L. Petrucci

Michael J. Settineri (0073369), Counsel of Record

Gretchen L. Petrucci (0046608)

Vorys, Sater, Seymour and Pease LLP

52 East Gay Street

Columbus, OH 43215

Telephone: 614-464-5462

[mjsettineri@vorys.com](mailto:mjsettineri@vorys.com)

[glpetrucci@vorys.com](mailto:glpetrucci@vorys.com)

*Counsel for the Retail Energy Supply Association*

/s/ Michael Nugent (per authorization 12/9/2022)

Michael Nugent (0090408), Counsel of Record

Joseph Oliker

Evan Betterton

Stacie Cathcart

IGS Energy

6100 Emerald Parkway

Dublin, Ohio 43016

Telephone: 614-659-5000

[michael.nugent@igs.com](mailto:michael.nugent@igs.com)

[joe.oliker@igs.com](mailto:joe.oliker@igs.com)

[evan.betterton@igs.com](mailto:evan.betterton@igs.com)

[stacie.cathcart@igs.com](mailto:stacie.cathcart@igs.com)

*Counsel for Interstate Gas Supply, Inc.*

**CERTIFICATE OF SERVICE**

The Public Utilities Commission of Ohio’s e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 9<sup>th</sup> day of December 2022 upon all persons/entities listed below:

/s/ Gretchen L. Petrucci  
\_\_\_\_\_  
Gretchen L. Petrucci

Columbia Gas of Ohio	Joseph M. Clark, Counsel of Record John R. Ryan Melissa L. Thompson 290 W. Nationwide Blvd./P.O. Box 117 Columbus, OH 43216-0117 <a href="mailto:josephclark@nisource.com">josephclark@nisource.com</a> <a href="mailto:johnryan@nisource.com">johnryan@nisource.com</a> <a href="mailto:mlthompson@nisource.com">mlthompson@nisource.com</a>	Eric B. Gallon Mark Stemm L. Bradfield Hughes Devan K. Flahive Porter, Wright, Morris & Arthur LLP 41 South High Street Columbus, OH 43215 <a href="mailto:egallon@porterwright.com">egallon@porterwright.com</a> <a href="mailto:mstemm@porterwright.com">mstemm@porterwright.com</a> <a href="mailto:bhughes@porterwright.com">bhughes@porterwright.com</a> <a href="mailto:dflahive@porterwright.com">dflahive@porterwright.com</a>
Citizens’ Utility Board of Ohio	Trent Dougherty Hubay Dougherty LLC 1391 Grandview Ave. #12460 Columbus, Ohio 43212 <a href="mailto:trent@hubaydougherty.com">trent@hubaydougherty.com</a>	
Environmental Law & Policy Center	Janean R. Weber Environmental Law & Policy Center 21 W. Broad Street, 8 <sup>th</sup> Floor Columbus, OH 43215 <a href="mailto:jweber@elpc.org">jweber@elpc.org</a>	Robert Kelter Environmental Law & Policy Center 35 E. Wacker Drive, Suite 1600 Chicago, IL 60601 <a href="mailto:RKelter@elpc.org">RKelter@elpc.org</a>
Industrial Energy Users – Ohio	Matthew R. Pritchard Bryce A. McKenney McNees Wallace & Nurick LLC 21 East State Street, 17TH Floor Columbus, OH 43215 <a href="mailto:mpritchard@mcneeslaw.com">mpritchard@mcneeslaw.com</a> <a href="mailto:bmckenney@mcneeslaw.com">bmckenney@mcneeslaw.com</a>	

Interstate Gas Supply, Inc.	Michael Nugent Evan Betterton Joseph Oliker Stacie Cathcart IGS Energy 6100 Emerald Parkway Dublin, Ohio 43016 <a href="mailto:michael.nugent@igs.com">michael.nugent@igs.com</a> <a href="mailto:evan.betterton@igs.com">evan.betterton@igs.com</a> <a href="mailto:joe.oliker@igs.com">joe.oliker@igs.com</a> <a href="mailto:stacie.cathcart@igs.com">stacie.cathcart@igs.com</a>	
Northeast Ohio Public Energy Council	Devin D. Parram Bricker & Eckler LLP 100 South Third Street Columbus, Ohio 43215-4291 <a href="mailto:dparram@bricker.com">dparram@bricker.com</a>	Glenn S. Krassen Northeast Ohio Public Energy Council 31360 Solon Road, Suite 33 Solon, Ohio 44139 <a href="mailto:gkrassen@nopec.org">gkrassen@nopec.org</a>
Ohio Consumers' Counsel	William J. Michael Angela D. O'Brien Office of the Ohio Consumers' Counsel 65 East State Street, 7th Floor Columbus, OH 43215 <a href="mailto:william.michael@occ.ohio.gov">william.michael@occ.ohio.gov</a> <a href="mailto:angela.obrien@occ.ohio.gov">angela.obrien@occ.ohio.gov</a>	
Ohio Energy Group	Michael L. Kurtz, Esq. Kurt J. Boehm, Esq. Jody Kyler Cohn, Esq. BOEHM, KURTZ & LOWRY 36 East Seventh Street, Suite 1510 Cincinnati, OH 45202 <a href="mailto:mkurtz@BKLawfirm.com">mkurtz@BKLawfirm.com</a> <a href="mailto:kboehm@BKLawfirm.com">kboehm@BKLawfirm.com</a> <a href="mailto:jkylercohn@BKLawfirm.com">jkylercohn@BKLawfirm.com</a>	
Ohio Manufacturers' Association Energy Group	Kimberly W. Bojko Jonathan Wygonski Carpenter Lipps & Leland LLP 280 North High Street, Suite 1300 Columbus, OH 43215 <a href="mailto:bojko@carpenterlipps.com">bojko@carpenterlipps.com</a> <a href="mailto:wygonski@carpenterlipps.com">wygonski@carpenterlipps.com</a>	
Ohio Partners for Affordable Energy	Robert Dove Nicholas S. Bobb Kegler Brown Hill + Ritter Co., L.P.A. 65 E State St., Ste. 1800 Columbus, OH 43215-4295 <a href="mailto:rdove@keglerbrown.com">rdove@keglerbrown.com</a> <a href="mailto:nbobb@keglerbrown.com">nbobb@keglerbrown.com</a>	

Ohio School Council	Glenn S. Krassen Bricker & Eckler LLP 1001 Lakeside Avenue, Suite 1350 Cleveland, OH 44114 <a href="mailto:gkrassen@bricker.com">gkrassen@bricker.com</a>	Dane Stinson Bricker & Eckler LLP 100 South Third Street Columbus, OH 43215-4291 <a href="mailto:dstinson@bricker.com">dstinson@bricker.com</a>
Retail Energy Supply Association	Michael J. Settineri Gretchen L. Petrucci Vorys, Sater, Seymour and Pease LLP 52 E Gay Street / P.O. Box 1008 Columbus, OH 43216-1008 <a href="mailto:mjsettineri@vorys.com">mjsettineri@vorys.com</a> <a href="mailto:glpetrucci@vorys.com">glpetrucci@vorys.com</a>	
Staff of the Public Utilities Commission of Ohio	Werner Margard Shaun Lyons Ohio Assistant Attorneys General 30 E. Broad St., 26 <sup>th</sup> Floor Columbus, OH 43215 <a href="mailto:werner.margard@OhioAGO.gov">werner.margard@OhioAGO.gov</a> <a href="mailto:shaun.lyons@OhioAGO.gov">shaun.lyons@OhioAGO.gov</a>	
The Kroger Co.	Angela Paul Whitfield (0068774) Madeline Wilcox Carpenter Lipps & Leland LLP 280 Plaza, Suite 1300 280 North High Street Columbus, Ohio 43215 (614) 365-4100 Email: <a href="mailto:paul@carpenterlipps.com">paul@carpenterlipps.com</a> <a href="mailto:wilcox@carpenterlipps.com">wilcox@carpenterlipps.com</a>	

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AAM**

Summary: Brief - Joint Initial Brief electronically filed by Mrs. Gretchen L. Petrucci  
on behalf of Retail Energy Supply Association and Interstate Gas Supply, Inc.