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FILE

SEC
STAND ENERGY CORPORATION

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Cincinnati, Ohio 45202-1629
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PUCO

July 29, 2008

VIA U. S. MAIL

Public Utilities Commission of Ohio
Docketing Division
13th Floor
180 East Broad Street
Columbus, OH 43215-3793

Re: Case No. 08-0813-TP-CSS

Ladies and Gentlemen:

Enclosed for filing are an original and ten copies of Stand Energy Corporation's "*Motion To Strike Affirmative Defenses Raised by Respondent and Memorandum Contra to Respondent's Suggestion The Complaint Has Been Satisfied*" against Telecommunications Provider OPEX Communications, Inc. Please contact me if you have any questions regarding this motion or the above-referenced docket.

Sincerely,

John M. Dosker

John M. Dosker
General Counsel

Enclosures

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Technician TM Date Processed 7/30/2008

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of:	)	
	)	
Stand Energy Corporation	)	
	)	
Complainant	)	
	)	
v.	)	**Case No. 08-813-TP-CSS**
	)	
OPEX Communications, Inc.	)	
	)	
Respondent	)	

MOTION TO STRIKE AFFIRMATIVE DEFENSES RAISED BY RESPONDENT AND MEMORANDUM CONTRA TO RESPONDENT'S SUGGESTION THE COMPLAINT HAS BEEN "SATISFIED"

Stand Energy Corporation, by and through the undersigned counsel, moves the PUCO, through the hearing officer, to strike the "affirmative defenses" raised by Respondent, OPEX Communications, Inc. filed herein. Complainant further requests that Respondent's suggestion of "satisfaction" be ignored as that suggestion is unsupported by any reasonable argument or fact. A memorandum in support follows.

RESPECTFULLY SUBMITTED,

STAND ENERGY CORPORATION

BY: John M. Dosker

John M. Dosker, TA
Its General Counsel
1077 Celestial Street, Suite 110
Cincinnati, Ohio 45202-1629
(513) 621-1113 (Phone)
(513) 621-3773 (Fax)
jdosker@stand-energy.com (e-mail)

MEMORANDUM

Respondent filed an answer on or about July 21, 2008 containing a general denial of "each and every allegation of the Complaint" followed by four paragraphs purporting to be "affirmative defenses" to the Complaint. These unsworn statements made by Respondent's counsel in paragraphs two (2) through six (6) of the Answer are improper and should be stricken.

In Paragraph 3 of the Answer, Respondent's counsel alleges that "All of Respondent's attempts to contact Complainant were unfruitful . . . " (Emphasis added). Respondent's counsel attempted to contact Stand Energy's General Counsel by telephone on two occasions. Both times, Respondent's counsel was informed that Stand Energy preferred to keep all communications between our companies in writing so that there would be no mischaracterization or misinterpretation of the parties' positions (whether intentional or otherwise). Stand Energy reasonably determined it would be unwise to have telephone conversations with a company that had already lost our trust through its conduct.

Attached hereto and incorporated herein as if fully set forth as Complainant's Exhibit 1 are copies of a series of three separate e-mail communications sent to Respondent's counsel totaling four (4) pages. These e-mails (and Respondent's Counsel's reply to each) are submitted to rebut Respondent's claim that the party's attorneys had no communications prior to the Answer being filed herein. Specifically, Stand Energy replied to Respondent's Counsel on July 15th, July 21st and July 22nd by e-mail. (See, Exhibit 1). Respondent had the audacity to suggest that "this matter could have been resolved quickly and expediently had you simply contacted me to begin with". Complainant believes the evidence will prove otherwise.

Finally, Stand Energy's Complaint has not been "fully satisfied" as alleged in paragraph five (5) of Respondent's Answer. Stand Energy has a statutory right to prove its allegations that,

"Respondent provided inadequate telecommunications service to Complainant by, *inter alia,* violation of ORC 4901:1-5-03" and that "Respondent failed to furnish Complainant with "reasonable access" to company representatives for purposes of responding to it's complaint herein even after repeated written requests (via e-mail and certified U.S. Mail) and verbal requests (via telephone conversations and messages) by Complainant." [Complaint, paragraph eight (8)]. Complainant also intends to prove "Respondent provided inadequate service by engaging in post-termination "cramming" of charges for services Complainant was no longer receiving or obligated to receive onto post-termination invoices to Complainant and other violations of OAC 4901:1-5-07 all of which are unconscionable and in violation of Ohio law." [Complaint, paragraph nine (9)]. Stand Energy believes Respondent engaged in unfair and deceptive acts or practices relative to the actions giving rise to the Complaint herein. For all these reasons, there are strong Ohio public policy arguments to allow this case to proceed to hearing.

The "affirmative defenses" raised by Respondent are unsworn and untrue. They should be stricken from the record. The suggestion of "satisfaction" of the Complaint should be ignored.

Respectfully Submitted,

STAND ENERGY CORPORATION

BY: John M. Dosker

John M. Dosker, TA
Its General Counsel
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(513) 621-1113 (Phone)
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jdosker@stand-energy.com (e-mail)

STATE OF OHIO
COUNTY OF HAMILTON

Signed and sworn to before me, a Notary Public in the State of Ohio, this 29th day of July, 2008 by John M. Dosker, personally known to me. My Commission Expires: 2-7-11

Kathy L. Kellems
NOTARY PUBLIC

KATHY L. KELLEMS
Notary Public, State of Ohio
My Commission Expires
February 7, 2011

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion and Memorandum was served upon the PUCO and the Respondent via ordinary U.S. Mail postage prepaid on July 29th, 2008.

PUCO Docketing Division
13th Floor
180 East Broad Street
Columbus, Ohio 43215-3793

OPEX Communications, Inc.
707 Wilshire Blvd., 12th Floor
Los Angeles, CA 90017

John M. Dosker
John M. Dosker

Dosker, John

From: Dosker, John
Sent: Tuesday, July 22, 2008 8:00 AM
To: 'Nathaniel Law'
Subject: RE: Stand Energy Corporation v. OPEX Communications, Inc.

Mr. Law:

I don't care how smart or smooth you think you are. I have proof of my claims and I intend to present it to the PUCO. I intend to obtain a finding that OPEX violated the law. I further intend for all of our communications to be in writing to protect both organizations against any misunderstanding - intentional or otherwise.

Excusing invoices is not going to resolve Stand Energy's complaint. No customer should ever be ignored. Your e-mail suggesting Stand Energy failed to contact the right OPEX department is additional insult. Stand Energy made several attempts to communicate telephonically. We sent a certified mail letter. If your organization is not smart enough to route certified mail complaints to the legal department, then I'm not sure what function you serve.

John Dosker

John M. Dosker*
General Counsel
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a Kentucky corporation
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From: Nathaniel Law [mailto:nathaniell@TOTALCALLUSA.com]
Sent: Monday, July 21, 2008 5:03 PM
To: Dosker, John
Subject: RE: Stand Energy Corporation v. OPEX Communications, Inc.

Mr. Dosker:

All I was seeking was a few minutes of your time to discuss and resolve this matter informally over the phone, and you blatantly refused to do any such thing. Interesting that for someone who demanded a response so readily from a company representative refuses to speak with one when contacted to try to resolve this matter and put it behind both of our respective companies.

OPEX's answer will indicate that the complaint has been "satisfied" in the sense that the two items Stand has been seeking this entire time – 1) credit to its account for the outstanding balance; and 2) the cessation of all further billing to Stand from OPEX – have been fulfilled. In this regard, no "misrepresentation" will occur as you suggest. If, however, OPEX's answer asserted that a "settlement had been reached," when in fact it has not thus far, and in no way do I suggest that such has occurred, then your claim of "misrepresentation" may not be as far-fetched. However, this is not the case as OPEX does not assert in its answer that the matter has been settled between the parties, and merely states that Stand's account balance has been credited and no further bills or invoices will be sent to Stand in the future.

After these two items have been resolved, I see no reason why this matter should be pursued any further. Moreover, I fail to see

why you did not raise this matter with the PUCO's informal call center prior to filing the formal complaint. Additionally, this matter could have been resolved quickly and expediently had you simply contacted me to begin with.

Nathaniel Law

Nathaniel Law, Esq.
Corporate Counsel
Total Call International, Inc.
Main: 213.995.9700 x265
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From: Dosker, John [mailto:JDosker@stand-energy.com]
Sent: Monday, July 21, 2008 1:51 PM
To: Nathaniel Law
Subject: RE: Stand Energy Corporation v. OPEX Communications, Inc.

Mr. Law:

I didn't refuse to communicate with you. I refused to do it on the phone. Be advised that if OPEX files an answer with the Public Utilities Commission of Ohio suggesting Stand Energy's complaint has been "satisfied" someone will be misrepresenting facts to the Commission. I wouldn't do that.

John Dosker
John M. Dosker
Stand Energy Corporation
1077 Celestial St., Suite 110
Cincinnati, OH 45202-1629
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jdosker@stand-energy.com

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From: Nathaniel Law [mailto:nathaniell@TOTALCALLUSA.com]
Sent: Monday, July 21, 2008 4:36 PM
To: Dosker, John
Subject: RE: Stand Energy Corporation v. OPEX Communications, Inc.

Mr. Dosker:

I find it unfortunate that my attempts to contact you to resolve the balance outstanding on Stand's account with OPEX have been rebuffed so readily as a result of a dispute over an amount totaling approximately $60.

First of all, my receipt of your recently filed complaint with the Ohio Public Utilities Commission (the "Commission") was the first instance I and the legal department of OPEX was made aware of this matter. If I had been aware of this matter initially (for instance, if you had addressed your complaint to OPEX's Legal Department), I can assure you that it would have been addressed

immediately.

As such, I contacted you to try to resolve this matter without expending additional time and effort to deal with this matter before the Commission, in the hopes that you would extend the professional courtesy to discuss this matter with me informally. However, I can tell from your email and your flat out refusal to speak with me over the telephone that you are unwilling to provide such courtesy to me.

Nevertheless, OPEX is willing to credit the entire balance currently outstanding on Stand's account ($62.41 as of July 21, 2008) and cease all further billing of Stand by OPEX in order to resolve this matter once and for all. Judging from the tone of your email message and your refusal to even discuss the matter with me over the telephone, however, you apparently hold a fairly high level of animosity towards OPEX and will likely refuse to withdraw Stand's complaint notwithstanding OPEX's credit to Stand's account for the outstanding balance and the cessation of any further billing.

Regardless, I prefer to treat fellow attorneys reasonably and fairly and therefore am extending the professional courtesy to you in advising you in advance that, after issuing the credit of the outstanding balance on Stand's account and the cessation of all further billing to Stand, OPEX will file an answer to Stand's complaint which will assert that the complaint has been satisfied.

Best regards,

Nathaniel Law

Nathaniel Law, Esq.
Corporate Counsel
Total Call International, Inc.
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From: Dosker, John [mailto:JDosker@stand-energy.com]
Sent: Tuesday, July 15, 2008 5:51 AM
To: Nathaniel Law
Subject: RE: Stand Energy Corporation v. OPEX Communications, Inc.

Mr. Law:

Is this the response I was told to expect "within 48 hours" via auto e-mail response almost two months ago? You're a little late. Given my unfortunate experience with your organization, it is in the best interests of Stand Energy Corporation for all communications in this matter to be in writing. Interesting that you are now so readily available to speak with me when your organization's so-called "customer service" department was not. FYI- OPEX's Answer to Stand Energy's Complaint is due in less than a week and I don't extend professional courtesy to organizations that do not act professionally. I'm sure we'll have the opportunity to speak in Columbus, Ohio.

John Dosker
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From: Nathaniel Law [mailto:nathaniell@TOTALCALLUSA.com]
Sent: Monday, July 14, 2008 7:01 PM
To: Dosker, John
Subject: Stand Energy Corporation v. OPEX Communications, Inc.

Dear Mr. Dosker:

My name is Nathaniel Law, and I am an in-house counsel for Total Call International, Inc., the parent company of OPEX Communications, Inc. ("OPEX")

I recently received the complaint made by Stand Energy Corporation ("Stand") against OPEX and would like to speak with you regarding this matter. Please call me at your convenience at my direct number listed below. I am typically available during normal business hours (9 a.m. to 6 p.m. PST) every day.

Best regards,

Nathaniel Law

Nathaniel Law, Esq.
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Fax: 213.995.9710
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