

August 28, 2008

Via Electronic Filing

Ms. Reneé J. Jenkins
Director of Administration
Secretary of the Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

RE: In the Matter of Stand Energy Corporation v. TTI National, Inc.; PUCO Case No. 08-856-TP-CSS

Dear Ms. Jenkins:

TTI National, Inc. submits its Reply in Support of Its Motion to Dismiss and for Assessment of Costs Pursuant to O.R.C. § 4903.24 and Memorandum Contra Stand Energy's Motion to Strike Affirmative Defenses for electronic filing in the above-referenced matter.

The exhibits are not available in WORD format and therefore are not included in the native file.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Very truly yours,

/s/ Carolyn S. Flahive

Enclosure

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Stand Energy Corporation,)	
)	
)	
Complainant)	
)	Case No. 08-856-TP-CSS
v.)	
)	
TTI National, Inc.,)	
)	
Respondent.)	

**TTI NATIONAL, INC.'S
REPLY IN SUPPORT OF ITS MOTION TO DISMISS
AND FOR ASSESSMENT OF COSTS PURSUANT TO O.R.C. § 4903.24
AND
MEMORANDUM CONTRA STAND ENERGY'S
MOTION TO STRIKE AFFIRMATIVE DEFENSES**

TTI National, Inc. ("TTI"), through its counsel and pursuant to O.A.C. 4901:1-1-12(B)(1) and (2), respectfully submits its: (1) Reply in Support of its Motion to Dismiss and for Assessment of Costs Pursuant to O.R.C. § 4903.24; and (2) Memorandum Contra "Stand Energy's Motion and Memorandum to Strike Affirmative Defenses and Memorandum Contra" ("Motion and Memo Contra").

Introduction

Other than advancing a hyperbolic array of accusations against TTI and attempting to portray itself as the proverbial white knight, nobly taking on the self-assigned role of legal crusader for the citizenry of Ohio, Stand Energy Corporation's (hereinafter, "Complainant") Motion and Memo Contra say little of consequence. Complainant does not respond to TTI's Motion to Dismiss and Memorandum in

Support,¹ instead filing only a motion to strike certain of TTI's affirmative defenses, and a memorandum contra one of them. Moreover, although moving to "strike" TTI's affirmative defenses, Complainant actually only attempts to refute them, rather than to offer any cognizable legal basis for striking them from the record.

Additionally, a pleading filed by Complainant on July 29, 2008 in Case No. 08-0813-TP-CSS, a similar proceeding against OPEX Communications, Inc. ("OPEX"), reveals that Complainant's counsel has filed both the Complaint and Motion and Memo Contra in this case without being licensed to practice law in Ohio, as required under Commission rules. This provides still further cause to dismiss this case.

Discussion

I. TTI's Reply in Support of TTI's Motion to Dismiss and for Assessment of Costs

Given the dearth of any pertinent discussion of TTI's Motion to Dismiss in the Motion and Memo Contra, TTI makes only few points on reply in further support of its Motion to Dismiss.

A. Complainant Has Made Its Filings in this Case in Violation of O.A.C. § 4901-1-08(A)

On July 29, 2008, Complainant filed a "Motion to Strike Affirmative Defenses Raised by Respondent and Memorandum Contra to Respondent's Suggestion the Complaint Has Been 'Satisfied'" in its pending case against OPEX, a true and correct copy of which is attached as **Exhibit A** hereto. Exhibit 1 to that filing reveals that although Complainant's counsel has his office in Ohio, he is not licensed to practice law

¹ See "TTI National, Inc.'s Memorandum in Support of Motion to Dismiss and for Assessment of Costs Pursuant to O.R.C. § 4903.24" ("TTI Dismissal Memo"), filed July 28, 2008. Pursuant to O.A.C. 4901:1-1-12(B)(1) any memorandum contra TTI's motion to dismiss was due on August 15, 2008.

in the state of Ohio. Specifically, the e-mail signature block used by Complainant's counsel is as follows:

John M. Dosker*
General Counsel
Stand Energy Corporation
a Kentucky Corporation
1077 Celestial St., Suite 110
Cincinnati, OH 45202-1629
Ph- 513-621-1113 Fax- 513-621-3773
jdosker@stand-energy.com
****Licensed only in Kentucky***

(Emphasis added).

A search of the Supreme Court of Ohio attorney directory (http://www.sconet.state.oh.us/atty_reg/Public_AtorneyInformation.asp) locates no John Dosker licensed to practice law in Ohio. Complainant's Complaint and subsequent filings in this case thus violate the Commission rule that requires corporations to be represented by licensed *Ohio* counsel. See O.A.C. 4901-1-08(A). This violation presents an additional ground for dismissal of the Complaint beyond those already raised in TTI's Motion to Dismiss (and would warrant the striking of all subsequent pleadings filed improperly as well).

B. Complainant Has Conceded the Propriety of Assessing the Fees, Expenses and Costs of This Proceeding Against Complainant

Complainant has not addressed, much less objected to, the assessment of fees, expenses and costs of this proceeding against Complainant pursuant to O.R.C. § 4903.24, as requested by TTI. Complainant has thus conceded the propriety of the Commission doing so. Such assessment is particularly appropriate here in light of the frivolous nature of the Complaint, Complainant's failure to invoke the Commission's informal dispute process before unnecessarily consuming the Commission's and TTI's resources with a

formal proceeding, Complainant's filing of the Complaint in violation of the mandatory arbitration clause in its contract with TTI, Complainant's filing of the Complaint despite its admission that it did not properly cancel the contract with TTI that is at issue, and Complainant's filing of the Complaint in violation of Commission rules that require that corporations be represented by licensed Ohio counsel.

C. Complainant's Motion and Memo Contra Fail to Address TTI's Bases for Dismissal of the Complaint, Focusing Instead on the Purported Grounds for Striking Certain Affirmative Defenses

Complainant's Motion and Memo Contra fail to address TTI's bases for dismissal of the Complaint, and instead focus exclusively on the purported grounds for striking certain of TTI's affirmative defenses. The TTI Dismissal Memo detailed the frivolous nature of the Complaint in this proceeding and set forth multiple grounds for dismissal, including: (1) the Complaint failed to state a claim because its legal conclusions were directly contradicted by its factual allegations (*see* TTI Dismissal Memo at 2-4); (2) Complainant had agreed to "final and binding arbitration" as its exclusive remedy for disputes arising under its contract with TTI, divesting the Commission of jurisdiction (*id.* at 4); (3) Complainant admitted that it had not terminated its contract with TTI pursuant to the cancellation provisions thereof (*id.* at 5); and (4) Complainant had breached multiple provisions of the contract with TTI, and was therefore not entitled to relief thereunder (*id.* at 5-6). The Motion and Memo Contra offer no response to TTI's motion for dismissal, which the Commission should grant.

II. TTI's Memorandum Contra Stand Energy's Motion to Strike Affirmative Defenses

Complainant moves generally to strike “the Affirmative Defenses advanced by Respondent TTI National, Inc. in its Answer in this action” (*see* Motion and Memo Contra at 1), but only actually addresses Affirmative Defenses 1, 2 and 6 (and perhaps 5).

A. Affirmative Defense 1

TTI's Affirmative Defense 1 explained that the Complaint alleged no violation of O.R.C. § 4905.26 because the facts alleged in the Complaint contradict Complainant's conclusory legal assertions of legal violations by TTI (which were simply lifted from the nearly identical verbatim against OPEX). For example, Affirmative Defense 1 points out that the Complaint details numerous telephonic and written communications between TTI and Complainant, and yet inexplicably alleges that TTI violated the law by failing to make representatives available to Complainant (*see* Complaint at ¶ 8). Similarly, the Complaint concedes that Complainant failed to terminate its contract with TTI due to an “over cite” [sic] (*see* Complaint at ¶ 4), but inexplicably claims that continued billing for the preexisting services that it failed to cancel constituted cramming (*id.* at ¶ 8).

Complainant argues that its Complaint is justified “in spite of the amount of money involved” because Complainant has “suffered and endured” such grievous conduct at TTI's hands that its Complaint should survive despite its legal infirmities, “to hold someone accountable.” *See* Motion and Memo Contra at 2. Complainant's argument verges into hypocrisy given that Complainant has apparently filed a frivolous complaint to exact a “pound of flesh” by forcing TTI to incur unnecessary legal fees defending a claim regarding bills that Complainant never paid and which were rendered

because Complainant admittedly failed to cancel its contract with TTI.² The Commission need only review the back-and-forth e-mail correspondence between Complainant's counsel and OPEX (*see* Exhibit A hereto at Exhibit 1) to get a feeling for the tone of the communications that come from Complainant. Yet, Complainant now attempts to take on the role of victim.

Ultimately, Complainant offers no basis for striking Affirmative Defense 1 beyond the fact that Complainant believes the Complaint is justified as a crusade against corporate America. Complainant wholly fails to address the critical inconsistencies between the Complaint's factual allegations – which are taken as true for purposes of a motion to dismiss – and the legal conclusions that follow, which are not.

B. Affirmative Defense 2

Affirmative Defense 2 notes that the Commission has no jurisdiction over Complainant's claims because the contract between Complainant and TTI contains a mandatory arbitration provision under which Complainant's exclusive relief following failed dispute resolution is "final and binding arbitration."

Complainant first launches into a diatribe about the evils of arbitration clauses in the consumer and employment law contexts, ridiculing arbitration as "the friend of big business." *See* Motion and Memo at 4-5. This is irrelevant for several reasons, not the least of which is that Complainant is a corporation, not a consumer, and this is a contractual dispute brought by one sophisticated utility against another, not an employment dispute. Complainant raises no valid basis for deeming the mandatory arbitration clause unenforceable.

² *See* Complaint at 4.

Just six months ago, the U.S. Supreme Court held that when parties agree to arbitrate questions arising under a contract, the Federal Arbitration Act supersedes state laws lodging primary jurisdiction in another forum, whether judicial or administrative. *See Preston v. Ferrer*, 128 S.Ct. 978, 981 (2008); *see also Gilmer v. Interstate/Johnson Lane Corp.*, 111 S.Ct. 1647, 1654 (1991) (“mere involvement of an administrative agency in the enforcement of a statute” does not limit private parties’ obligation to comply with their arbitration agreements). The Supreme Court also reaffirmed the “national policy favoring arbitration when the parties contract for that mode of dispute resolution.” *Id.* at 981. It also confirmed that when parties agree to arbitrate disputes arising out of their contract, questions concerning the validity of the entire contract (if that is what Complainant’s vague attack on arbitration signifies) are to be resolved by the arbitrator. *Id.* Complainant complains that it has statutory rights, but “[b]y agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than judicial forum.” *See Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 481 (1989).

Complainant next claims that it did not receive a copy of TTI’s “General Service Agreement for Residential and Small Business Customers” (“GSA”), which is the contract between TTI and Complainant. *See* Motion and Memo at 4. This assertion is simply not credible given that Complainant *quotes the GSA in its Complaint*, acknowledging both that Complainant received the GSA, and that the GSA governs the parties’ business relationship:

... Roman Numeral Five (V) of Respondent’s contract terms and conditions is entitled “Cancellation of Service” which reads as follows: “If the Customer wishes [sic] to change its service to another long distance carrier at any time, the Customer (a) should call the new preferred

long distance carrier and (b) should send a written notice, giving thirty (30) days prior notice, to Company that the Customer is terminating the Customer's account with the Company [ellipses in Complaint] The Customer may send a written notice of service termination to Company at the following address: TTI National, Inc. 20855 Stone Oak Parkway, San Antonio, TX 78258, Attn. Customer Service.

See Complaint at ¶ 3.

Complainant also argues – without any legal support – that making a contract publicly available on a website does not satisfy legal requirements. Complainant does so despite this Commission's new rule adopting website publication as a compliant method for making rates, terms and conditions of mandatorily detariffed services available to customers.³ See O.A.C. 4901:1-6-05(G)(3); see also "Entry," *In the Matter of the Review of Chapter 4901:1-6, Ohio Administrative Code*, Case No. 06-1345-TP-ORD (Sept. 19, 2007) (associated order). Complainant also neglects to acknowledge that its application for service from TTI, a true and correct copy of the pertinent portion of which is attached as **Exhibit B** hereto,⁴ expressly acknowledge that "[s]ervice is provided in accordance with TTI National, Inc.'s General Service Agreement, which may be amended from time to time, and is made part of this application."

C. Affirmative Defense 5

TTI's Affirmative Defense 5 noted Complainant's failure to attach a copy of Complainant's contract with TTI to the Complaint, as mandated by Ohio Rule of Civil Procedure 10(D)(1). The Motion and Memo Contra do not reference Affirmative Defense 5, but to the extent that Complainant's assertion that it did not have the GSA – as

³ The FCC detariffed domestic interstate, interexchange (long distance) services in 2001, following several years of legal wrangling over its 1996 mandatory detariffing order. See "Second Report and Order," *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as Amended*, CC Docket 96-61; FCC 96-424 (rel. October 31, 1996).

⁴ Several pages of the application contain customer proprietary network information, and have therefore not been included.

noted above, a claim flatly contradicted by Complainant's direct quotation of the GSA in the Complaint – is intended to be a basis for striking this defense, any such argument is refuted by the fact that Complainant clearly possessed a copy of the GSA, in addition to its being part of the service application and publicly available on-line.

D. Affirmative Defense 6

Complainant lastly argues in its “memorandum contra” TTI's Affirmative Defense 6 that the Complaint is not satisfied by TTI's termination of the contract with Complainant and waiver of all outstanding charges because Complainant is entitled to hearing and determination on its claims. *See* Motion and Memo Contra at 6. A hearing is not “relief” – it is instead part of the potential process for adjudication of a claim. Complainant admits that its prayer for relief seeks the withdrawal and cancellation of TTI's invoices. *Id.* Complainant concedes that TTI has already waived all outstanding invoices and terminated Complainant's contract, as established in Affirmative Defense 6 and Exhibit 4 to TTI's Answer and Affirmative Defenses.

Complainant relies instead on its prayer for relief, which also asks for “punitive measures” and all other “legal” and “equitable” relief “to which it is entitled” (*see* Motion and Memo Contra at 6), but offers no authority to support the notion that this Commission can award punitive damages, or legal or equitable relief (and of course, it cannot). The only relief Complainant could have obtained after prevailing at hearing has already been provided. The Commission should reject Complainant's specious claim that the Complaint has not been satisfied, and put an end to Complainant's unnecessary consumption of party and Commission resources.

E. Affirmative Defenses 3 and 4

Although moving to strike TTI's affirmative defenses generally, Complainant makes no effort to address TTI's Affirmative Defenses 3 and 4, which involve Complainant's admitted failure to request cancellation of its service with TTI (*see* Complaint at ¶ 4) and Complainant's breach of several provisions of its contract with TTI. The Commission should not strike any defenses that Complainant's motion to strike failed to address.

Conclusion

Complainant continues to abuse the Commission's formal complaint process. Simply put, Complainant failed to comply with the cancellation provisions of its contract with TTI, got upset when billings continued under an active contract, and continues to breach its contract by pursuing its frivolous recycled Complaint before this Commission even though arbitration is Complainant's exclusive remedy. Complainant will continue this abuse of process – initiated by counsel who is unlicensed in this state – unless and until the Commission dismisses the Complaint for all of the valid reasons advanced by TTI.

WHEREFORE, TTI National, Inc. again requests that the Complaint be dismissed with prejudice, and that the Commission assess the fees, expenses and costs of this proceeding against Complainant pursuant to O.R.C. § 4903.24. TTI also urges the Commission to deny Complainant's motion to strike TTI's affirmative defenses.

Dated: August 28, 2008

Respectfully submitted,

TTI NATIONAL, INC.

By: /s/ Carolyn S. Flahive

Thomas E. Lodge

Carolyn S. Flahive

THOMPSON HINE LLP

41 South High Street, Suite 1700

Columbus, Ohio 43215-6101

(614) 469-3200

(614) 469-3361 FAX

Tom.Lodge@thompsonhine.com

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Chicago, Illinois 60601

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(312) 470-5571 FAX

deborah.kuhn@verizon.com

Its Attorneys

CERTIFICATE OF SERVICE

I hereby certify that I have forwarded a copy of the foregoing *TTI National, Inc.'s Reply in Support of Its Motion to Dismiss and for Assessment of Costs Pursuant to O.R.C. § 4903.24 and Memorandum Contra Stand Energy's Motion to Strike Affirmative Defenses* upon:

John M. Dosker, TA
General Counsel
Stand Energy Corporation
1077 Celestial Street, Suite 110
Cincinnati, OH 45202-1629

by U.S. mail this 28th day of August, 2008.

/s/ Carolyn S. Flahive
Carolyn S. Flahive

EXHIBIT A



SEC

STAND ENERGY CORPORATION

1077 Celestial Street • Rookwood Bldg. • Suite 110
Cincinnati, Ohio 45202-1629
(513) 621-1113
(800) 598-2046
(513) 621-3773 Fax

July 29, 2008

RECEIVED-DOCKETING DIV
2008 JUL 30 PM 12:36
PUCO

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
General Counsel

Enclosures

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
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.)
)
OPEX Communications, Inc.)
)
Respondent)

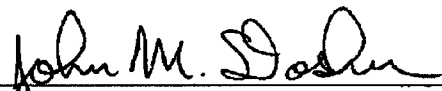
Case No. 08-813-TP-CSS

**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, 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.

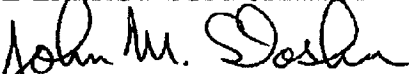
Finally, Stand Energy's Complaint has not been "fully satisfied" as alleged in paragraph five (5) of Respondent's Answer. Stand Energy has a statutory right to prove its allegations that,

"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,

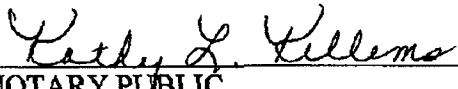
STAND ENERGY CORPORATION

BY: 

John M. Dosker, 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)

**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


NOTARY PUBLIC

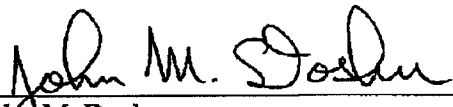
KATHY L. KELLEMS
Notary Public, State of Ohio
My Commission Expires
February 7, 2011

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

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
Stand Energy Corporation
a Kentucky corporation
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jdosker@stand-energy.com

* Licensed Only in Kentucky

The information contained in this message is privileged and confidential information intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at 513-621-1113 and delete this electronic file. Thank you.

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

7/28/2008

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
Fax: 213.995.9710
Email: nathaniell@totalcallusa.com
Web: www.totalcallusa.com

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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
Ph- 513-621-1113 Fax- 513-621-3773
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

7/28/2008

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.
Main: 213.995.9700 x265
Fax: 213.995.9710
Email: nathaniell@totalcallusa.com
Web: www.totalcallusa.com

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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
Stand Energy Corporation
1077 Celestial St., Suite 110
Cincinnati, OH 45202-1629
Ph- 513-621-1113 Fax- 513-621-3773
jdosker@stand-energy.com

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7/28/2008

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.
Corporate Counsel
Total Call International, Inc.
Main: 213.995.9700 x265
Fax: 213.995.9710
Email: nathaniell@totalcallusa.com
Web: www.totalcallusa.com

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7/28/2008

EXHIBIT B

My signature below authorizes TTI National Inc. (TTI) to become my new telephone service provider in place of my current provider, for the provision of the service or services I have designated. I authorize TTI to act as my agent to make this change happen, and direct my current provider to work with my new provider designated above to effect the change.

I understand that I may be assessed a small, one-time per line charge to switch providers. TTI will issue a credit (not to exceed \$5 per line) upon customer request to help offset the cost of this charge. If I later wish to return to my current telephone company, I may be required to pay a reconnection charge to that company. I also understand that my new telephone company may have different calling areas, rates and charges than my current telephone company and that by signing below I indicate that I understand those differences (if any) and am willing to be billed accordingly.

I authorize TTI to provide the services I have designated to the telephone number(s) listed above, and not others.

I understand that only one carrier may be designated as my interstate or IntraLATA primary interexchange carrier for any telephone number. To the extent that my state allows me to choose an additional primary carrier for IntraLATA toll or local service, I understand that I may designate different carriers for each. I choose TTI to become my long distance carrier, which may include IntraLATA traffic where available.

Service is provided in accordance with TTI National Inc.'s General Service Agreement, which may be amended from time to time, and is made part of this application. I understand that this offer is subject to credit approval and a security deposit may be required as a condition of the services. In order to switch my long distance service to TTI National, as the resident, partner or sole proprietor who is authorized to act on behalf of the household or business, I must provide my Social Security number and name for authorization. I understand that entering my Social Security number below serves to verify my identity and evidences my consent and authorization for the use of my personal consumer credit report in the extension of credit to my household or business.

I have read and understand this Letter of Agency and I understand that my signature on this Letter of Agency will result in a change of the telephone service provider for the services selected for the telephone number(s) listed above. I certify that I am at least 18 years of age and legally authorized to change telephone companies for services to the telephone number(s) listed above. I further certify that the information on this application is correct to the best of my knowledge. I accept responsibility for payment of all charges incurred.

* Authorized Signature

Federal Tax ID

Social Security #

Print Name Jason Cox

Date Sept 18, 2003

Vermont residents only: Please read the following. The signature of the person authorized to make a change on behalf of the household or business below will serve as an indication that you have read and understand these statements.

I understand that the local phone company may apply a one-time fee of \$_____ to effectuate the preferred carrier change. Upon my request, TTI will reimburse me this charge up to \$5.00 per line.

To confirm a change of the preferred long distance carrier for the business telephone number(s) stated above, I can call the toll-free telephone number 1-800-625-4141 from that telephone number(s). To confirm the local toll primary carrier for the business telephone number(s) stated above, I can call, toll-free, 1-(Area Code)-700-4141 or 1-800-4141 from that telephone number(s).

I am aware that as a Vermont resident, if my primary interexchange carrier is changed without my authorization, I have the right to file a complaint with the Consumer Affairs Division of the Department of Public Service. The mailing address of the Consumer Affairs Division is: State of Vermont, Department of Public Service, 112 State Street, Drawer 20, Montpelier, VT 05620-2601. The toll-free telephone number is 1-800-622-4465.

*

Signature

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/28/2008 10:25:22 AM

in

Case No(s). 08-0856-TP-CSS

Summary: Reply Reply in Support of Its Motion to Dismiss and Memorandum Contra Motion to Strike Affirmative Defenses electronically filed by Carolyn S Flahive on behalf of TTI National, Inc.