BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of Interstate Gas Supply, Inc. for Certification as a Retail Natural Gas Supplier

FILE

MMISSION OF OHIO Case No. 02-1683-GA-CRS

MEMORANDUM CONTRA NORTHEAST OHIO ENERGY COUNCIL'S MOTION TO COMPEL BY INTERSTATE GAS SUPPLY INC.

On August 31, 2010 the Northeast Ohio Public Energy Council ("NOPEC") filed a Motion to Intervene and Request for Evidentiary Hearing in Interstate Gas Supply Inc.'s ("IGS") certification docket. On September 3, 2010 NOPEC served a set of discovery requests on IGS. On September 9, 2010, IGS filed a Motion for Protective Order requesting that discovery not be had by NOPEC until a determination on NOPEC's outstanding motions is made by the Commission. Despite IGS' outstanding Motion for Protective Order, on September 29, 2010, NOPEC filed a Motion to Compel requesting that the Commission order IGS to respond to NOPEC's discovery requests. On October 4, 2010 IGS filed a Memorandum Contra the Office of the Ohio Consumers' Counsel's ("OCC") Motion to Compel.

IGS believes that the issues raised in NOPEC's Motion to Compel are substantially the same issues raised in OCC's Motion to Compel and accordingly, IGS incorporates its Memorandum Contra OCC's Motion to Compel into this Memorandum Contra by reference. There are, however, additional points IGS would like to make in response to NOPEC's Motion to Compel.

In the Matter of the Review of Chapters 4901-1, 4901-3, and 4901-9 of the Ohio Administrative Code, the OCC requested that the Commission expand, inter alia, the Inis is to certify that the images appearing are an accurate and complete reproduction of a club file locument delivered in the regular course of business.

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right to intervene and conduct discovery in every Commission proceeding. Specifically, OCC noted that "the Commission rules as currently written fail to extend the procedural due process rights to proceeding other than those where a hearing is held."¹ In squarely rejecting OCC's request the Commission concluded that

"if OCC's proposal were adopted, any interested person would have the right to intervene, conduct discovery, and present evidence in any Commission case. The Commission does not believe that such rights exist. In addition, OCC's proposed definition would eliminate the Commission's discretion to conduct its proceedings in a manner it deems appropriate and would unduly delay the outcome of many cases."²

This Commission determination clearly stands for the proposition that a party does not gain full rights of discovery simply by filing an intervention in a proceeding. Additionally, the Commission has held that "the full discovery process [is] normally reserved for cases where a hearing is required."³

NOPEC has not established a right to intervene in IGS' certification docket, and a determination has not yet been made on NOPEC's request for hearing. For these reasons and the reasons already stated in IGS' Memorandum Contra OCC's Motion to Compel, NOPEC's Motion to Compel should be denied. Further, the Commission should issue an order determining that discovery may not be had until a determination is made on NOPEC's and IGS' outstanding motions.

¹ Case No. 06-685-AU-ORD, OCC Initial Comments (June, 26, 2006) at 2-3.

² Id., Finding and Order (Dec. 6, 2006) at 3-4.

³ In the Matter of the Implementation of the Federal Communication Commission's Triennial Review Regarding Local Circuit Switching in the Mass Market, Case No. 03-2040-TP-COI, Entry on Rehearing (Oct. 28, 2003) at 4.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Memorandum Contra NOPEC's Motion to Compel* was served upon the following persons listed below by electronic mail and regular U.S. Mail, postage prepaid, this 14th day of October, 2010.

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