**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Complaint of )**

**)**

**Interstate Gas Supply, Inc. ) Case No. 19-362-GE-CSS**

**d/b/a IGS Energy )**

**6100 Emerald Parkway )**

**Dublin, Ohio 43016 )**

**)**

**Complainant, )**

**)**

**v. )**

**)**

**Santanna Natural Gas Corporation )**

**d/b/a Santanna Energy Services )**

**7701 San Felipe Blvd., Suite 200 )**

**Austin, TX 78729 )**

**)**

**Respondent. )**

**INTERSTATE GAS SUPPLY, INC.’S MEMORANDUM CONTRA SANTANNA NATURAL GAS CORPORATION’S MOTION FOR PROTECTIVE ORDER TO PREVENT FURTHER UNDULY BURDENSOME AND HARASSING DISCOVERY REQUESTS**

**I. INTRODUCTION**

After identifying that Santanna Natural Gas Corporation (“Santanna”) or its agents has engaged in misleading and deceptive sales conduct to enroll customers of Interstate Gas Supply, Inc. (“IGS”), IGS filed a complaint to bring Santanna to justice. Although IGS has served several rounds of discovery, to date, IGS has yet to receive complete or adequate responses from Santanna. After good faith attempts by IGS to resolve what has turned into a discovery dispute, on June 7, 2019 IGS moved for an order compelling Santanna to respond to IGS’ First Set of Discovery (“IGS’ Motion”).

On July 30, 2019, in a motion that largely rehashes its Memorandum Contra IGS’ Motion, Santanna has now moved for a protective order to avoid the requirement to provide complete responses to IGS First, Second, and Third Set of Discovery. Specifically, Santanna requests that the Commission issue an order that would bar IGS from serving discovery on any matters related to the following: Santanna’s door-to-door sales and marketing practices, the enrollment of specific customers, and the total number of enrollments performed by certain Santanna vendors.[[1]](#footnote-1) Santanna alleges that responding to IGS’ discovery would be unduly burdensome and harassing because those requests seek information that is not specifically addressed in IGS’ Complaint.[[2]](#footnote-2)

Though IGS addressed Santanna’s arguments at length in its Motion to Compel and subsequent Reply to Santana’s Memorandum Contra IGS’ Motion to Compel, IGS will demonstrate here that Santanna’s Motion should be denied because each inquiry included in IGS’ First, Second, and Third Sets of Discovery is relevant to the Complaint and likely to lead to the discovery of other admissible evidence. For the reasons set forth below, the Commission should deny Santanna’s Motion for Protective Order.

**III. ARGUMENT**

1. **IGS’ Discovery Requests Are Directly Related to the Allegations Made in Its Complaint.**

Santanna argues that IGS used portions of its First, Second, and Third Sets of Discovery to conduct a fishing expedition,[[3]](#footnote-3) because IGS did not put the sales and marketing practices of Santanna’s door-to-door agents or the enrollment of specific customers at issue in IGS’ Complaint.[[4]](#footnote-4) Santanna maintains that the discovery requests it seeks protection from (i.e. inquiries related to Santanna’s door-to-door direct sales and marketing processes, specific customer enrollments, and the number of enrollments obtained by certain of its vendors) are not specifically identified in IGS’ Complaint and, therefore, not relevant to the subject matter of this proceeding. For that reason, Santanna argues that it should be entitled to protection from further discovery related to those matters.[[5]](#footnote-5)

Santanna further avers that Commission precedent prohibits parties to a complaint proceeding from relying on the discovery process to obtain information necessary to allege facts in support of the complaint.[[6]](#footnote-6) To support its claim that IGS is using the discovery process to seek out information that will identify wrongdoing and support its burden of proof, Santanna awkwardly attempts to draw a nexus to a Commission decision[[7]](#footnote-7) in which a pro se litigant’s claim against a utility was dismissed after the complainant’s initial and amended complaints failed to provide factual allegations necessary to set forth reasonable grounds to support her claims. There, the complaint was dismissed only after the complainant acknowledged in her amended complaint that she needed information from the utility to allege facts in support of her claim.[[8]](#footnote-8) This is not such a case: (1) IGS’ Complaint set forth sufficient facts and circumstances to justify the proposed discovery; and (2) IGS already has evidence to independently support the allegations in the Complaint, but IGS should be permitted to conduct discovery to prepare for trial and to ascertain the scope and degree of Santanna’s wrongdoing.

Contrary to the facts contained in *Williams*, IGS satisfied the Commission’s pleading standard[[9]](#footnote-9) when it alleged that Santanna’s sales representativesmade certain misrepresentations to IGS’ customers via telephone that violated Ohio law and the Commission’s rules[[10]](#footnote-10) and included statements of the relief requested. IGS filed its Complaint only after it identified wrongdoing committed by Santanna, and has used its First, Second, and Third Sets of Discovery primarily to identify the sales agent(s) and channel(s) used to perpetuate the fraud as well as the total number of IGS’ customers that may have been adversely impacted by Santanna’s duplicitous and misleading sales tactics. Contrary to Santanna’s assertion that IGS is using the discovery process to identify a claim it can pursue, IGS’ discovery requests are directly related to the allegations made in its Complaint and are carefully crafted to identify the full scope of Santanna’s misconduct and extent of harm caused. Accordingly, Santanna’s argument that IGS is relying on the discovery process to allege facts in support of its claims should be dismissed.

1. **IGS’ Discovery Related to Santanna’s Door-to-Door Agents is Permissible.**

Santanna argues that it should be entitled to protection from further discovery related to its door-to-door sales, marketing, and enrollment processes because any inquiries related to that particular subject matter is beyond the scope of IGS’ Complaint.[[11]](#footnote-11) Santanna maintains that because IGS’ Complaint alleges that Santanna improperly solicited customers via telephone—it does not specifically allege that Santanna violated any laws regarding its door-to-door solicitation practices—IGS should be prohibited from discovering any information related to Santanna’s door-to-door sales channel.[[12]](#footnote-12) Here again, Santanna mischaracterizes the scope and substance of IGS’ Complaint and its relationship to the Commission’s rules on discovery to shield it from providing meaningful responses to IGS’ discovery requests.

Both Ohio law and the Commission’s rules permit discovery of any unprivileged matter relevant to the subject matter of the pending proceeding.[[13]](#footnote-13) The Commission’s rules also permit discovery of information reasonably calculated to lead to the discovery of admissible evidence.[[14]](#footnote-14) As IGS established in its Motion to Compel and subsequent Reply to Santanna’s Memorandum Contra IGS’ Motion to Compel, the Complaint alleges that Santanna’s “*sales representatives*” made certain misrepresentations to IGS’ customers over the telephone.[[15]](#footnote-15) *The Complaint does not limit the acts complained of to Santanna’s telephonic sales representatives only*. Instead, IGS’ Complaint includes any individual that may have used the telephone to solicit products and services on Santanna’s behalf—including its door-to-door sales representatives. To be clear, IGS did not specifically identify Santanna’s *telephonic* sales representatives as the offending parties in Paragraph 8 of its Complaint, because IGS did not, and could not, know whether the alleged misconduct was perpetuated exclusively by Santanna’s telephonic sales representatives.

While Santanna has been less than forthcoming in discovery, evidence is mounting to suggest that Santanna’s door-to-door agents were operating a rouge call center(s) to contact IGS’ (and potentially other suppliers’) customers by telephone to obtain additional, otherwise invalid, enrollments on Santanna’s behalf. This conclusion is supported by Santanna’s admission in IGS’ First Set of Discovery that it believes Jennifer White was “enrolled lawfully [with Santanna] by direct solicitation [door-to-door].”[[16]](#footnote-16) IGS has direct evidence that Santanna improperly enrolled Jennifer White telephonically. Therefore, IGS should be entitled to evaluate all information related to those claims and Santanna’s alleged defenses. Accordingly, the Commission should deny Santanna’s request to protect it from any further discovery related to Santanna’s door-to-door sales, marketing, and enrollment processes because the information requested is relevant and within the scope of IGS’ Complaint.

Santanna also continues to maintain that IGS should be not be entitled to inquire into Santanna’s door-to-door sales and marketing processes because IGS’ Complaint does not specifically allege misconduct regarding that particular sales solicitation channel.[[17]](#footnote-17) Santanna remains firm in its contention that IGS’ Complaint falls short of incorporating Santanna’s door-to-door sales representatives by reference because Paragraph 5 to the Complaint, which IGS cited in its Motion to Compel, does not specifically make any allegations regarding Santanna’s direct solicitations.[[18]](#footnote-18) Once again, Santanna’s argument misses the mark—the Complaint is not so narrowly drawn.

In evaluating the claims set forth in a complaint, Ohio courts must construe the complaint in the light most favorable to the plaintiff, presume all of the factual allegations in the complaint as true, and *make all reasonable inferences in favor of the plaintiff*.[[19]](#footnote-19) As IGS described in detail in its Reply to Santanna’s Memorandum Contra IGS’ Motion to Compel Discovery, [[20]](#footnote-20) IGS established in Paragraph 2 of its Complaint that Santanna is both an “electric services company” and a “retail natural gas supplier” as those terms are defined in the Ohio Revised Code.[[21]](#footnote-21) Making all reasonable inferences in favor of IGS, its statement in Paragraph 5 that electric service companies and retail natural gas suppliers market products through door-to-door sales should be read to include Santanna and its door-to-door sales representatives. Since the five allegations in Paragraphs 14-26 of IGS’ Complaint incorporate each of the preceding Paragraphs by reference, Santanna’s argument is meritless and should be dismissed.

Based on the foregoing, the Commission should deny Santanna’s motion to protect it from further discovery related to its door-to-door sales, marketing, and enrollment processes because the information requested is relevant, within the scope of IGS’ Complaint, and is likely to lead to the discovery of other admissible evidence.

1. **IGS is Entitled to Discover Information Concerning Specific Individuals Not Named in its Complaint.**

Santanna argues that it should be entitled to protection from further discovery related to specific customer enrollments because IGS did not raise any allegations related to those customers in its Complaint.[[22]](#footnote-22)To support its claim that IGS’ customer-specific interrogatories are little more than an attempt to “thwart competition and/or win back its customers,”[[23]](#footnote-23) Santanna attached to its Motion a recent public records request that it filed to obtain all informal complaints and/or contacts to the Commission’s call center regarding “IDS” or “IDS Energy.”[[24]](#footnote-24) Santanna argues that the absence of a customer complaint and/or contact that specifically references “IDS” or “IDS Energy”in the Commission’s records is dispositive that IGS cannot substantiate its claims, and that IGS’ customer-specific interrogatories merely attempt to probe Santanna’s records to identify improper conduct and justify customer attrition.[[25]](#footnote-25) Santanna’s argument is based upon an incorrect standard of proof and an incomplete and misleading version of the facts.

As an initial matter, the Commission’s rules do not require IGS’ Complaint to specifically identify the specific customers that may have been adversely impacted by Santanna’s misleading and deceptive sales tactics to obtain discovery related to those enrollments. Rather, the Commission’s rules only require that all complaints filed pursuant to R.C. 4905.26 set forth “the facts which constitute the basis of the complaint, and the relief sought.”[[26]](#footnote-26) The Commission’s rules also provide that any discovery associated with the complaint must be relevant to the pleading and reasonably calculated to lead to the discovery of admissible evidence.[[27]](#footnote-27)

Setting aside the fact that the disclosure of *any* natural gas customer information (e.g. customer names, addresses, telephone numbers, etc.) in IGS’ Complaint would likely run afoul of the Commission’s rules,[[28]](#footnote-28) Santanna’s assertion that IGS cannot discover customer-specific information unless that customer is identified in IGS’ Complaint flies in the face of reason and exceeds the Commission’s notice pleading and discovery standards.[[29]](#footnote-29) IGS raised five separate allegations—as well as factual assertions to support such allegations—that Santanna engaged in misleading and deceptive sales and marketing tactics that violated the Commission’s rules. IGS’ discovery regarding Santanna’s customer-specific enrollment inquiries is relevant to identify the sales channel(s) and agent(s) that Santanna used to perpetuate the fraud(s).[[30]](#footnote-30) A full and complete response to those inquiries is also likely to lead to the discovery of other admissible evidence that, at a minimum, should assist IGS in quantifying the full extent of harm caused by Santanna’s misconduct.

Santanna argues that since the Commission’s call center records contain no mention of customers complaining about or referencing “IDS*”* or “IDS Energy*”* from January 1, 2018 through May 13, 2019, IGS is unable to substantiate the claims alleged in its Complaint.[[31]](#footnote-31) Santanna’s argument is as misleading as its sales tactics. The argument is essentially a modified version of the familiar *if a tree falls in the forest and no one is around to hear it, does it make a sound*—only this time Santanna proffers that since no one in the Commission’s call center received a complaint or reference to IDS or IDS Energy, the allegations raised in IGS’ Complaint simply could not have occurred.

Santanna’s argument is a red herring because the absence of a reference to “IDS” or “IDS Energy” in the Commission’s call center records is not dispositive that IGS is unable to substantiate its claims. Santanna’s argument also fails because it willfully ignores the substantial likelihood that a customer may have elected to only notify IGS of the facts that eventually gave rise to its Complaint. IGS also believes that other customers may have elected to resolve the issue by cancelling his or her fraudulent enrollment with Santanna directly, and in doing so, refrained from notifying either IGS or the Commission

Moreover, as discussed in the Affidavit of Tara McGraw, Compliance Manager for IGS, Attachment D does not contain a complete version of the truth[[32]](#footnote-32). Moreover, there is reason to believe that Santanna violated the law because “IGS customers contacted the IGS’ call center and communicated that Santanna’s agents were engaged in misleading and deceptive sales practices to incentivize the customers to enroll with Santanna.” Setting aside that the facts asserted in the Complaint must be accepted as true at this juncture, IGS has provided additional evidence that demonstrates that Attachment D[[33]](#footnote-33) appended to Santanna’s motion is simply irrelevant.

Accordingly, the Commission should reject Santanna’s motion for protection from further discovery concerning specific individuals to allow IGS the opportunity to properly evaluate the enrollment(s) of certain customers that may have been adversely impacted by Santanna’s deceptive and misleading sales tactics.

1. **Proprietary Information is Discoverable**

Finally, Santanna argues that it should be entitled to protection from further discovery related to specific customer enrollments as well as the total number of enrollments certain of its vendors obtained, because the information sought is competitively sensitive.[[34]](#footnote-34) Santanna contends that IGS’ discovery request to produce that information qualifies as a trade secret for which Santanna is entitled to protection.[[35]](#footnote-35) Santanna’s argument is yet another red herring.

The purpose of IGS discovery is to identify the full scope of wrongdoing that occurred during the time frame alleged in the complaint—the purpose is not to obtain a competitive advantage. Parties in Commission proceedings routinely exchange sensitive and proprietary information pursuant to a confidentiality agreement.[[36]](#footnote-36) IGS has already entered into a confidentiality agreement with Santanna. Given that a standard term in confidentiality agreement is the prohibition against using sensitive information for business purposes, Santanna’s argument is misplaced.

Accordingly, the Commission should deny Santanna’s motion to protect it from further inquiries related to Santanna’s agents as well as the total number of enrollments those agents performed.

**IV. CONCLUSION**

Santanna’s Motion for Protective Order is based on flawed arguments and mischaracterizations of IGS’ Complaint and related discovery. IGS’ First, Second, and Third Sets of Discovery that inquire into Santanna’s door-to-door sales and marketing practices, the enrollment of specific customers, and the total number of enrollments certain of Santanna vendors performed is relevant and within the scope of IGS’ Complaint. Based on the foregoing, the Commission should dismiss Santanna’s Motion for Protective Order.

Respectfully submitted,

***/s/ Michael Nugent***

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing *Memorandum Contra Santanna Natural Gas Corporation’s Motion For Protective Order To Prevent Further Unduly Burdensome and Harassing Discovery Requests* has been served upon the following persons via electronic mail this 14th day of August 2019.

**SERVICE LIST**

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***/s/ Michael Nugent***

Michael A. Nugent

Attorney for Complainant

IGS Energy

1. Santanna Motion for Protective Order to Prevent Further Unduly Burdensome and Harassing Discovery Requests (July 30, 2019). (hereinafter “Santanna Motion for Protective Order”).

   [↑](#footnote-ref-1)
2. *Id*. [↑](#footnote-ref-2)
3. Santanna Motion for Protective Order at 7. [↑](#footnote-ref-3)
4. *Id*. at 8. [↑](#footnote-ref-4)
5. *Id*. at 17. [↑](#footnote-ref-5)
6. *Id*. at 10. [↑](#footnote-ref-6)
7. See *In the Matter of the Complaint of Diana Williams v. Ohio Edison Co*., Case No. 08-1230-EL-CSS, Finding and Order at ⁋ 13 (October 28, 2009) (hereinafter “*Williams*”). [↑](#footnote-ref-7)
8. *Id*. at 6. [↑](#footnote-ref-8)
9. Ohio Adm. Code 4901-9-01(B) (stating that all complaints filed pursuant to R.C. 4905.26 need only set forth “the facts which constitute the basis of the complaint, and the relief sought.”) [↑](#footnote-ref-9)
10. Complaint at 4. [↑](#footnote-ref-10)
11. Santanna Motion for Protective Order at 11. [↑](#footnote-ref-11)
12. *Id*. at 14. [↑](#footnote-ref-12)
13. Ohio Adm. Code 4901-1-16(B); Civ.R. 26(B). [↑](#footnote-ref-13)
14. Ohio Adm. Code 4901-1-16(B). [↑](#footnote-ref-14)
15. Complaint at ⁋8. [↑](#footnote-ref-15)
16. Motion to Compel of Interstate Gas Supply, Inc. at 113 (June 7, 2019) (Santanna Response to IGS-RFA-01-06). [↑](#footnote-ref-16)
17. Santanna Motion for Protective Order at 12. [↑](#footnote-ref-17)
18. *Id*. [↑](#footnote-ref-18)
19. *Grover v. Bartsch*, 170 Ohio App. 3d 188, 2006 Ohio 6115, P16, 866 N.E. 2d 547. [↑](#footnote-ref-19)
20. Reply in Support of Interstate Gas Supply, Inc.’s Motion to Compel Discovery, at 4 (July 1, 2019). [↑](#footnote-ref-20)
21. *See* R.C. 4928.01(A)(9); R.C. 4929.01(N). [↑](#footnote-ref-21)
22. Santanna Motion for Protective Order at 15. [↑](#footnote-ref-22)
23. *Id*. at 6. [↑](#footnote-ref-23)
24. *Id*. at Attachment D, Page 1 of 106. [↑](#footnote-ref-24)
25. *Id*. at 5. [↑](#footnote-ref-25)
26. Ohio Adm. Code 4901-9-01(B). [↑](#footnote-ref-26)
27. Ohio Adm. Code 4901-1-16(B). [↑](#footnote-ref-27)
28. *See* Ohio Adm. Code 4901:1-29-09(A)(1). [↑](#footnote-ref-28)
29. *See* Ohio Adm. Code 4901-1-16(B). [↑](#footnote-ref-29)
30. Santanna Motion for Protective Order at Attachment A, Page 13 of 22; Attachment B, Pages 11-12 of 15; Attachment C, Pages 8, 9, 12 of 15. [↑](#footnote-ref-30)
31. *Id*. [↑](#footnote-ref-31)
32. *See* Attachment A [↑](#footnote-ref-32)
33. Some of the information contained in Attachment D—customer-specific information such as phone numbers, addresses, and other personal information, as well as IGS-specific product information—makes one question: (1) the process for handling public record requests that solicit sensitive information; and (2) Santanna’s decision to file such information in a public docket. Attachment D, Pages 4-106. [↑](#footnote-ref-33)
34. *Id*. at 16. [↑](#footnote-ref-34)
35. *Id*.

    [↑](#footnote-ref-35)
36. IGS takes no position on Santanna’s claim that the solicited information is proprietary. [↑](#footnote-ref-36)