

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

PUCO

2010 SEP 16 PM 4:41

RECEIVED-DOCKETING DIV

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

Case No. 02-1683-GA-CRS

**NORTHEAST OHIO PUBLIC ENERGY COUNCIL'S MEMORANDUM CONTRA
MOTION FOR PROTECTIVE ORDER OF INTERSTATE GAS SUPPLY, INC.**

On September 9, 2010, Interstate Gas Supply, Inc. ("IGS") filed a Motion for Protective Order and Request for Expedited Treatment (the "Motion"). In the Motion, IGS refuses to respond to the proper discovery requests served on IGS by the Northeast Ohio Public Energy Council ("NOPEC") on September 3, 2010, and disregards the rules of the Public Utilities Commission of Ohio in doing so. For the following reasons, IGS' Motion should be denied.

I. Procedural History

On August 6, 2010, Interstate Gas Supply, Inc. ("IGS") filed a Notice of Material Change ("Notice") with the Commission that would allow it to offer competitive retail natural gas service under a new trade name, "Columbia Retail Energy." The use of this new trade name would allow IGS to market retail natural gas services to consumers in the Columbia Gas service territory using the "Columbia" name, even though IGS is not affiliated with Columbia Gas. Concerned about the adverse impact of IGS' proposed use of the "Columbia" trade name, and its effect on governmental aggregators such as NOPEC, NOPEC filed a Motion to Intervene and Motion for an Evidentiary Hearing on August 31, 2010 (the "Motion to Intervene"). The purpose of NOPEC's Motion to Intervene was to allow for the representation of the interests of governmental natural gas aggregators and the approximately 70,000 NOPEC natural gas

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 Amu Date Processed 9/16/10

aggregation customers and sixteen (16) NOPEC member communities in the Columbia Gas service territory.

After its Motion to Intervene was filed, and pursuant to Ohio Administrative Code (“OAC”) Rule 4901-1-16(H), NOPEC served discovery requests on IGS on September 3, 2010. NOPEC’s discovery requests consisted of 19 straightforward interrogatories and five (5) requests for production of documents. Rather than respond to NOPEC’s reasonable and proper discovery requests, IGS filed the Motion.¹

II. IGS’ Motion for Protective Order disregards the Commission’s discovery rules.

This Commission’s discovery rules, specifically OAC Rule 4901-1-12(H), expressly allow NOPEC to pursue discovery from IGS prior to any Commission ruling granting NOPEC’s intervention request. IGS has not provided any support for its argument that NOPEC’s discovery requests are “premature.”

OAC Rules 4901-1-16(A) and (B) govern discovery in Commission proceedings. Together, these two rules establish the Commission’s policy of encouraging the use of pre-hearing discovery,² and allowing “**any party to a commission proceeding**” to “**obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding.**” (Emphasis added). Importantly, and contrary to IGS’ Motion, OAC Rule 4901-1-16(H) expressly defines the term “party” to include “**any person who has filed a motion to intervene which is pending at the time a discovery request or motion is to be served or filed.**” (Emphasis added.)

¹ It is notable that IGS failed to contact NOPEC regarding its request for expedited treatment as required by OAC Rule 4901-1-12(C). Of course, as provided in 4901-1-12(C), IGS is not entitled to file a reply memoranda based upon its request for expedited treatment in this case.

² OAC Rule 4901-1-16(A) explains that the “purpose of rules 4901-1-16 to 4901-1-24 of the Administrative Code is to encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings.”

In accordance with OAC Rule 4901-1-16(H), NOPEC filed its Motion to Intervene on August 31, 2010, waited several days, and then served its discovery requests on IGS on September 3, 2010. Because NOPEC falls within the definition of “party” under OAC Rule 4901-1-16(H), NOPEC had standing to properly serve its discovery requests on IGS.

IGS has completely ignored OAC Rule 4901-1-16(H). IGS inaccurately claims that NOPEC “should not be rewarded for its abuse of Commission rules and procedure” by allowing full discovery before NOPEC’s intervention request is granted.³ IGS’ argument is unsupportable under the clear language of the Commission’s discovery rules as well as established Commission practice, and should be rejected.

In addition, IGS improperly argues that NOPEC will not be prejudiced by delaying discovery until its intervention request is ruled upon.⁴ This argument is a red herring. The only prerequisite to the use of discovery in Commission proceedings is the filing of a motion to intervene. NOPEC did just that, and then properly served discovery requests on IGS. The issue of prejudice is irrelevant and serves only to distract the parties and the Commission from the real issue—namely, the important legal and policy considerations raised in this unprecedented filing seeking to allow the use of a utility’s name in marketing to Ohio consumers by an unrelated third party (IGS) and at a time when that utility is seeking to transition from SSO to SCO service. Ohio consumers deserve the right to a careful review of this issue of first impression, including the development of a full record through an evidentiary hearing.

³ See page 2 of *The Motion for Protective Order of Interstate Gas Supply, Inc. and Request for Expedited Treatment* filed against OCC on September 3, 2010, which is incorporated by reference into the *Motion for Protective Order of Interstate Gas Supply, Inc. and Request for Expedited Treatment* filed against NOPEC on September 9, 2010.

⁴ *Id.* at pages 5-6.

III. NOPEC is willing to sign a protective agreement with IGS to prevent the disclosure of confidential information.

The purpose of a motion for protective order is to protect the confidentiality of proprietary information in a Commission proceeding. If IGS' responses to NOPEC's discovery requests will contain confidential information, NOPEC is willing to enter into an appropriate protective agreement with IGS. In fact, NOPEC's counsel made this fact known to counsel for IGS in a telephone conversation on September 7, 2010. Therefore, even if IGS' discovery responses will contain confidential information, NOPEC will provide IGS with a reasonable method of protecting the confidentiality of the information in those responses.

For the reasons set forth above, IGS' Motion should be denied, and IGS should be required to respond to NOPEC's discovery requests by the September 23, 2010 due date set forth in NOPEC's discovery requests.

Respectfully submitted,



Glenn S. Krassen
BRICKER & ECKLER LLP
1001 Lakeside Avenue East, Suite 1350
Cleveland, Ohio 44114
Telephone: (216) 523-5405
Facsimile: (216) 523-7071
E-mail: gkrassen@bricker.com

Matthew W. Warnock
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215
Telephone: (614) 227-2388
Facsimile: (614) 227-2301
E-mail: mwarnock@bricker.com

Attorneys for NOPEC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following parties of record by electronic mail and regular U.S. mail this 16th day of September 2010.

William Wright
bill.wright@puc.state.oh.us
Attorney General's Office
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215

Joseph Serio
serio@occ.state.oh.us
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485

Carolyn S. Flahive
carolyn.flahive@thompsonhine.com
Arm B. Zallocco
ann.zallocco@thompsonhine.com
Thompson Hine LLP
41 South High Street, Suite 1700
Columbus, OH 43215

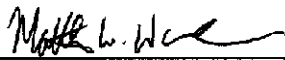
Vincent A. Parisi, Esq.
vparisi@igsenergy.com
Interstate Gas Supply, Inc.
5020 Bradenton Avenue
Dublin, OH 43017

Dane Stinson
dane.stinson@baileycavalieri.com
Bailey Cavalieri, LLC
10 West Broad Street, Suite 1200
Columbus, OH 43215

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

John Bentine, Esq.
jbentine@cwslaw.com
Matthew W. White, Esq.
mwhite@cwslaw.com
Chester Wilcox & Saxbe, LLP
65 East State Street, Suite 1000
Columbus, OH 43215

Juan Jose Perez
Perez & Morris, LLC
8000 Ravine's Edge Court, Suite 300
Columbus, OH 43235



Matthew W. Warnock