FILE

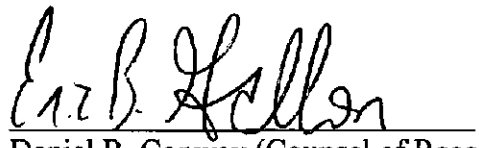
BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

MOTION OF NISOURCE CORPORATE SERVICES COMPANY TO QUASH SUBPOENA

Pursuant to Rule 4901-1-25(A), Ohio Administrative Code, NiSource Corporate Services Company ("NiSource Services") respectfully moves to quash the subpoena that Northeast Ohio Public Energy Council (NOPEC) served on NiSource Services's agent on September 24, 2010. NOPEC's efforts to obtain duplicative third-party discovery from NiSource Services, when NOPEC is not a party to this proceeding and the Commission has not ordered an evidentiary hearing, are inappropriate and unlawful. A memorandum in support of this motion is attached.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

On June 21, 2010, Interstate Gas Supply, Inc. (IGS) filed an application for renewal of its certification as a competitive retail natural gas supplier (CRNGS). The application was deemed approved on July 22, 2010. *See* Ohio Rev. Code § 4929.20(A) ("certification or certification renewal shall be deemed approved thirty days after the filing of an application with the commission unless the commission suspends that approval for good cause shown."); *see also* Rule 4901:1-27-06(A), Ohio Admin. Code.

On August 6, 2010, IGS filed a Notice of Material Change in this proceeding. The filing notified the Commission that IGS was registering a new trade name with the Ohio Secretary of State, "Columbia Retail Energy," and might offer service under that name. *See id.* at 1.

On August 31, 2010, NOPEC filed a motion to intervene in this proceeding and asked the Commission to set this matter for an evidentiary hearing. *See* Northeast Ohio Public Energy Council's Motion to Intervene and Motion for an Evidentiary Hearing, *In re IGS Application* (Aug. 31, 2010). NOPEC argued that IGS's use of "Columbia Retail Energy" as a trade name "will cause unnecessary customer confusion, unfairly skew the distribution of customers and, ultimately, undermine natural gas governmental aggregation in Ohio." *Id.*, Mem. Supp. at 2. The Commission has not ruled on NOPEC's motion or any of the other motions currently pending in this proceeding.

Three days later, NOPEC served its first set of discovery requests on IGS. *See* Northeast Ohio Public Energy Council's First Set of Discovery Requests to Interstate Gas Supply Inc. (Sept. 3, 2010) (filed by IGS on Sept. 9, 2010). NOPEC's discovery requests to IGS contained nineteen interrogatories and five requests for production of documents. The five document requests sought, among other categories of documents:

- "any and all communications between IGS and Dean Bruno [of the NiSource Corporate Services Company]";
- "any and all communications between or among IGS and NiSource pertaining to [IGS's Notice of Material Change] or [IGS's] licensing of the 'Columbia' or 'Columbia Retail Energy' trade names"; and
- "any and all agreements between IGS and NiSource under which IGS and NiSource are conducting business[.]"

Id., NOPEC RFPs 2, 3, and 5. IGS filed a Motion for Protective Order on September 9, 2010. NOPEC opposed IGS's Motion for Protective Order on September 16, 2010, and, for some reason, also filed a motion to compel IGS to respond to NOPEC's discovery requests on September 29, 2010. IGS's Motion for Protective Order and NOPEC's Motion to Compel Discovery are still pending.

Nevertheless, on September 23, 2010, NOPEC moved the Commission for a subpoena to require NiSource Services to produce many of the same documents NOPEC sought from IGS. *See* NOPEC Motion for Subpoena at 1 (Sept. 23, 2010). Like NOPEC's discovery requests to IGS, NOPEC's subpoena to NiSource Services seeks, among other categories of documents:

- "[a]ny and all communications between [IGS] and Dean Bruno of the NiSource Corporate Services Company ('NiSource')";
- "[a]ny and all communications between or among IGS, NiSource, and/or Columbia Gas of Ohio ('Columbia Gas') pertaining to the Notice of Material Change filed by IGS on August 6, 2010 in Case No. 02-1683-GA-CRS";
- "[a]ny and all communications between or among IGS, NiSource, and/or Columbia Gas regarding the licensing of the 'Columbia' or 'Columbia Retail Energy' trade names/trademarks"; and
- "any and all agreements between IGS and NiSource under which IGS and NiSource are conducting business[.]"

NOPEC Subpoena at 1. The subpoena demands that NiSource Services produce the requested documents and information at an unspecified location by October 13, 2010. *See id.*

NOPEC's subpoena is improper, unlawful, and unenforceable, for three reasons. First, NOPEC is not a party to this proceeding. The Commission's rules state that only the Commission itself, a commissioner, the legal director, the deputy legal director, an attorney examiner, or a "party" to a Commission proceeding may move the Commission to issue a subpoena. *See* Rule 4901-1-25(A), Ohio Admin. Code. "For purposes of rules 4901-1-16 to 4901-1-**24** of the Administrative Code, the term 'party' includes 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." Rule 4901-1-16(H), Ohio Admin. Code (emphasis added). But, for purposes of the Commission's subpoena rule – Rule 4901-1-**25** – "party" does not include entities that have simply moved to intervene. For Rule 4901-1-25, the term "party" includes "[a]ny person **granted leave** to intervene[.]" Rule 4901-1-10(A)(4), Ohio Admin. Code (emphasis added). Because NOPEC has not been granted leave to intervene in this proceeding, NOPEC is not a party to this proceeding. Unless the Commission grants NOPEC's motion to intervene, NOPEC is not permitted to move for a subpoena.

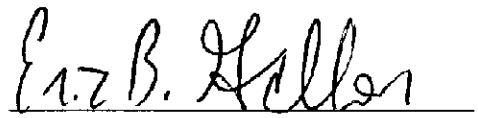
Second, even parties to a Commission proceeding have no right to conduct discovery in cases not requiring an evidentiary hearing. The Commission has explicitly rejected the proposition that "any interested person" has "the right to intervene, conduct discovery, and present evidence" in Commission proceedings in which no hearing is held. Finding and Order, *In the Matter of the Review of Chapters 4901-1, 4901-3, and 4901-9 of the Ohio Administrative Code*, Case No. 06-685-AU-ORD, at 3-4 (Dec. 6, 2006). To the contrary, the Commission has held that "the full discovery process [is] normally reserved for cases where a hearing is required." Entry on Rehearing, *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, ¶8 (Oct. 28, 2003). The Commission is not required to hold a hearing in this matter. *See generally* Rule 4901:1-27-10(A), Ohio Admin. Code. Indeed, it would be improper to do so. As IGS has argued, "[i]t is unprecedented, and without legal basis, to hold a hearing in a certification docket to determine whether a CRNGS provider should be able to use a particular trade name." IGS Memo Contra OCC's Motion to Compel (Oct. 4, 2010) at 3. NOPEC's efforts to obtain discovery in this proceeding are therefore improper.

Third, by NOPEC's own logic, NOPEC's subpoena would be moot at this point. On September 28, 2010, NOPEC and five other proposed intervenors filed a motion asking the Commission to sanction IGS and order IGS to stop using the Columbia Gas trade name. NOPEC's motion noted that, in response to a request from the Commission's Staff, IGS had filed a revised version of the first page of its CRNGS certification renewal application listing "Columbia Retail Energy" as a name under which IGS does business. *See* Motion to Order IGS to Cease and Desist and for Sanctions (Sept. 28, 2010), Mem. Supp. at 6. NOPEC argued that that filing was really a "revised renewal application" and that the Commission needed to issue a revised renewal certificate before IGS could use its new trade name. *See id.* What NOPEC fails to consider is that an application for renewal of a CRNGS certification is automatically approved if the Commission does not act on it within thirty days. *See* Rules 4901:1-27-06(A) and 4901:1-27-09(C), Ohio Admin. Code; *see also* Ohio Rev. Code § 4929.20(A). IGS filed the revised first page on August 12, 2010. Even if that filing had been a "revised renewal application," then it would have been deemed approved on September 12, 2010. It follows that NOPEC has no legitimate reason to subpoena documents from NiSource Services regarding IGS's license to use the trade name "Columbia Retail Energy." By NOPEC's logic, IGS's use of that trade name has already been approved.

In sum, NOPEC's attempt to sidestep IGS's motion for protective order and seek the same documents from NiSource Services, when NOPEC is not even a party and there is no hearing in this proceeding, is not permitted by the Commission's rules. Moreover, by NOPEC's own logic, NOPEC's subpoena is moot, because IGS's use of the trade name "Columbia Retail Energy" already has been approved by the Commission. For all of these reasons, NiSource Services moves the PUCO to quash NOPEC's subpoena.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of October, 2010, a true and accurate copy of the foregoing Motion of NiSource Corporate Services Company to Quash Subpoena was served by electronic mail and First-Class United States Mail, postage prepaid, upon the following:

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