

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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THE OFFICE OF THE OHIO CONSUMERS')
COUNSEL, et al.)
)
Complainants,) Case No. 10-2395-GA-CSS
)
v.)
)
INTERSTATE GAS SUPPLY, INC.)
)
Respondent.)

**NISOURCE CORPORATE SERVICES COMPANY'S
MEMORANDUM CONTRA STAND ENERGY CORPORATION'S
MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

Pursuant to Ohio Adm. Code 4901-1-12(B), NiSource Corporate Services Company ("NCS") submits its Memorandum Contra Stand Energy Corporation's ("Stand") Motion for Leave to File Amended Complaint.

I. INTRODUCTION

This case was filed almost a year ago. On September 13, 2011, the parties filed witness lists. No party, including Stand, listed any employee of NCS as witnesses. When Stand filed its motion for leave to file an Amended Complaint on September 22, the hearing was scheduled to begin on October 4 -- just twelve days later. Because Stand served its motion by mail and did not ask for an expedited ruling, memoranda contra (due within eighteen days under Rules 4901-1-12(B)(1)) and 4901-1-07(B) are not due until October 10 -- six days *after* the hearing was scheduled to begin.¹ Nor has Stand bothered to tender a proposed Amended Complaint for the Commission's consideration. All of this begs the question: What was the point of Stand's

¹ Other parties (excluding Stand) filed a motion on September 23 to continue the hearing until November 1. The Attorney Examiner granted the motion in a September 27 Entry.

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September 22 filing? The Commission can draw its own conclusion whether "good cause" exists for Stand's motion, or whether it was instead filed for purposes of harassment and delay.

Whether filed in good faith or not, Stand's eleventh-hour attempt to drag NCS into this litigation must be denied because NSC is not a "public utility" or otherwise subject to the Commission's jurisdiction. Indeed, the only theory of jurisdiction that Stand is able to muster is "equity." (Motion at 8.) The next time the Commission or Ohio Supreme Court recognize "equity" as a basis for Commission jurisdiction will be the first time. Stand's motion should be denied.

II. ARGUMENT

The Commission is not a court. Its jurisdiction and authority are defined by the General Assembly. *Lucas County Commr's v. Pub. Util. Comm.* (1997), 80 Ohio St.3d 344, 347 (citing *Columbus S. Power Co. v. Pub. Util. Comm.* (1993), 67 Ohio St.3d 535, 537) (Commission may "exercise only the jurisdiction conferred by statute."). In enacting R.C. 4905.04, the General Assembly limited the Commission's jurisdiction to supervise and regulate "public utilities and railroads." R.C. 4905.26 similarly limits the Commission's complaint jurisdiction to claims against a "public utility."

"Public utilities" are defined in R.C. 4905.02 and .03. NCS meets none of these definitions. As explained in the affidavit of Dean Bruno (attached as Exhibit A), NCS is a Delaware corporation and subsidiary of NiSource Inc. NCS provides certain support services to various NiSource affiliates, including accounting and budget administration, human resources, information technology, legal, tax, corporate communications, insurance procurement, risk management, internal audit and real estate services. NSC does not "supply[] natural gas for lighting, power, or heating purposes to consumers within this state." R.C. 4905.03(A)(5). Nor is

it "in the business of transporting natural gas, oil, or coal or its derivatives through pipes or tubing, either wholly or partly within this state." R.C. 4905.03(A)(6). NCS does not otherwise hold itself out to the public as a "public utility." NCS cannot be considered a "public utility" under any stretch of the imagination.

The Commission routinely dismisses entities from complaint proceedings that are affiliated with a public utility, but are not themselves a public utility. For example, In *Tomlin v. Columbus Southern Power*, the Commission dismissed CSP's parent holding company, American Electric Power ("AEP") from a complaint case, explaining that "as a holding company of a public utility, [AEP] does not fall within the definition of an electric light company or a public utility as provided in Sections 4905.03(A)(4) or 4905.02, Revised Code." *Tomlin v. Columbus Southern Power*, Case No. 02-46-EL-CSS, Entry (May 14, 2002) at Finding (9). Thus, "the Commission concludes, without further analysis, that AEP is not a public utility over which the Commission may exercise its jurisdiction." *Id.*

Likewise, in *S.G. Foods v. FirstEnergy Corporation*, the Commission dismissed FirstEnergy Corporation and AEP from complaint cases because neither met the definition of a "public utility." *S.G. Foods v. FirstEnergy Corp.*, Case No. 04-28-EL-CSS, et al., Entry (March 7, 2006) at Finding (57) ("Holding companies such as FE and AEP are not engaged in the business of supplying electricity to consumers and, thus, are not subject to our jurisdiction for purposes of service-quality complaints.").²

² For other Commission cases dismissing non-public utilities as respondents, see *Toledo Premium Yogurt Inc. d/b/a Freshens Yogurt v. Toledo Edison Co.*, Case No. 91-1528-EL-CSS, 1992 Ohio PUC LEXIS 984, Entry on Rehearing (November 5, 1992) at *6; *Nader v. Colony Square Partners, Ltd.*, Case No. 99-475-EL-CSS, Entry (August 26, 1999); *Haning v. Rutland Furniture, Inc. d/b/a Rutland Bottled Gas Service*, Case No 97-32-GA-CSS, Entry (July 17, 1997), *aff'd*, *Haning v. Pub. Util. Comm.* (1999), 86 Ohio St.3d 121; *Gillooly d/b/a Putt-Putt Golf Course of Newark, Ohio v. ALLTEL Ohio, Inc.*, Case No. 88-768-TP-CSS, 1988 Ohio PUC LEXIS 759, Entry (August 15, 1988) at *2.

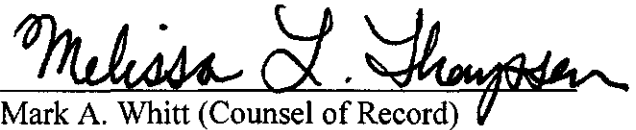
Stand cites no authority for the Commission to assert jurisdiction over NCS. It merely claims, "Equity demands NiSource Corporate Services, Inc. be joined as a party," and that the Commission "can and should exercise jurisdiction." (Motion at 8, 9.) It goes on to argue the unremarkable proposition that the Commission "has exclusive jurisdiction over complaints," but the cited authority is of no import here. (*See* Motion at 9-10.) These authorities merely confirm that R.C. 4905.26 confers exclusive Commission jurisdiction for complaints involving "public utilities." To suggest that the Commission has jurisdiction over *any* entity named in a complaint is plain silly.

III. CONCLUSION

The Commission does not have jurisdiction over NCS because NCS is not a "public utility." Stand's motion for leave to file an Amended Complaint that names NCS as a party must be denied.

Dated: October 7, 2011

Respectfully submitted,

A handwritten signature in black ink that reads "Melissa L. Thompson". The signature is written in a cursive style with a horizontal line underneath the name.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra Stand Energy Corporation's Motion for Leave to file Amended Complaint was served by ordinary U.S. mail, postage prepaid, to the following persons on this 7th day of October, 2011:

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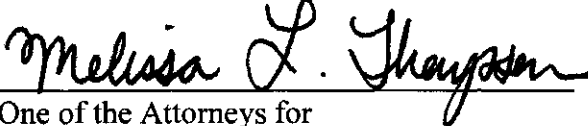
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AFFIDAVIT OF DEAN BRUNO

Dean Bruno, being first duly sworn, states:

1. My name is Dean Bruno. I am the Director, Financial Planning for NiSource Corporate Services Company ("NCS"). I am authorized to make this Affidavit on behalf of NCS and have personal knowledge of the facts stated herein.
2. NCS is a Delaware corporation, and registered to do business in Ohio as a foreign corporation.
3. NCS is a subsidiary of NiSource Inc. ("NiSource"), an energy holding company under the Public Utility Holding Company Act of 2005.
4. NCS provides support services to NiSource subsidiaries. These support services include accounting and budget administration, human resources, information technology, legal, tax, corporate communications, insurance procurement, risk management, internal audit and real estate services.
5. NCS does not engage in the business of supplying artificial gas for lighting, power, or heating purposes to consumers within the state of Ohio. NCS does not engage in the

