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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of The Office of the Ohio Consumers' Counsel, et al.,	)	
Complainant,	)	
	)	Case No. 10-2395-GA-CSS
v.	)	
Interstate Gas Supply d/b/a Columbia Retail Energy,	)	
Respondent.	)	

MEMORANDUM CONTRA OF COLUMBIA GAS OF OHIO, INC. TO STAND ENERGY CORPORATION'S MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT

1. Introduction

Pursuant to §4901-1-38(B), Ohio Administrative Code ("O.A.C."), Columbia Gas of Ohio, Inc. ("Columbia") files this Memorandum Contra Stand Energy Corporation's Motion for Leave to File an Amended Complaint. While the Commission's rules do not explicitly provide for non-parties to file memoranda contra, *see* § 4901-1-12, O.A.C., administrative economy and equity warrant a waiver of the usual rule, so that Columbia may address Stand Energy's flawed claims before Columbia is unnecessarily and unjustifiably inserted into these proceedings.

While all of the other Joint Complainants are actively negotiating a settlement to this proceeding (*see* Joint Motion for Extension, Memorandum in Support, at p. 3 (Sept. 23, 2011)), Stand Energy Corporation ("Stand Energy") has proposed to prolong this proceeding by adding two new respondents, Columbia and NiSource Corporate Services, Inc. ("NiSource"). Stand Energy does not assert that the presence of NiSource and Columbia is necessary to obtain the relief requested in its Complaint, *i.e.*, preventing Respondent Interstate Gas Supply

("IGS") from using the Columbia name and logo. Instead, Stand Energy asserts that NiSource and Columbia must be brought into this proceeding to prevent NiSource from licensing the name or logo to *other*, unspecified companies in the future. (*See* Stand Energy Memorandum Supporting Motion at p. 3.) To justify this extraordinary request, Stand Energy offers a rambling, conspiracy-theory-riddled argument that somehow involves budget cuts at the Office of the Ohio Consumers' Counsel, a FERC proceeding from 2004, and a purported secret, 12-year-old plan by Columbia to "exit the merchant function in Ohio." (*Id.*; *see also id.* at pp. 2-4.) Although confusing and false – Columbia has publicly stated that it currently has no intention of exiting the merchant function (*see, e.g., In the Matter of the Application of Columbia Gas of Ohio, Inc. For Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case No. 08-1344-GA-EXM, Joint Stipulation and Recommendation, at p. 9 (Oct. 7, 2009)) – Stand Energy's arguments do not cloud the facts that Stand Energy: (1) should not be a party to this proceeding, (2) has no valid justification for waiting until the eve of hearing to file its motion, and (3) has not pled anything resembling a valid claim against Columbia.

As a preliminary matter, Stand Energy's motion is not properly before the Commission because Stand Energy itself is not properly before the Commission. Stand Energy's counsel in this matter, John M. Dosker, is not registered to practice law in Ohio and has not sought admission *pro hac vice* for this proceeding. Moreover, the evidence suggests that this is not an oversight. Mr. Dosker has been representing Stand Energy in Commission proceedings for years without authorization. Because Stand Energy is not, and has never been, represented by an Ohio attorney in this proceeding, Stand Energy is not a proper party. Rather than adding new Respondents, the Commission should dismiss Stand Energy as a Complainant.

Even if Stand Energy had standing to bring its claims, however, Stand Energy had no just cause for seeking a last-minute amendment to the joint Complaint. Nothing has happened since last October, when this complaint case was filed, that made Columbia or NiSource newly relevant to this proceeding. If Columbia and NiSource were truly "necessary parties," as Stand Energy asserts (Stand Energy Memorandum Supporting Motion at p. 4), then Stand Energy should have listed them in its initial Complaint or sought leave to add them months ago. Instead, Stand Energy strangely chose to sit around and wait for the OCC to act. (*Id.* at p. 2.) Because of Stand Energy's delay, Columbia and NiSource's late addition to this litigation would necessitate yet another extension of

the procedural schedule to allow the new Respondents to file an answer, conduct discovery, and otherwise get up to speed.

More likely, though, Columbia would file a motion to dismiss the amended complaint. Although Stand Energy did not submit a proposed Amended Complaint, Stand Energy's Motion fails to describe any claims that may legitimately be raised in a complaint proceeding before this Commission. Stand Energy admits that Columbia did not actually *do* anything. According to Stand Energy, it was NiSource, not Columbia, that granted the license to IGS. (*See* Stand Energy Memorandum Supporting Motion at p. 5.) The only thing Stand Energy accuses Columbia of doing is "remaining silent" (*id.*) and not "object[ing] to the licensing of the name Columbia and the logo to IGS" (*id.* at p. 7). Columbia had no legal obligation to "object" to another company granting a license to that company's intellectual property.

For all of these reasons, as more fully described below, Stand Energy's Motion for Leave to File an Amended Complaint should be denied and Stand Energy should be dismissed from this proceeding.

2. Stand Energy's Motion for Leave to File An Amended Complaint Must Be Stricken and Denied.

2.1. Stand Energy Corporation is not a proper party to the proceeding, and has no standing to move for leave to file an amended complaint, because its attorney is not authorized to practice in Ohio.

The first reason Stand Energy's Motion for Leave should be denied is that Stand Energy is not properly represented in this proceeding. "[I]n accordance with Rule 4901-1-08(A), O.A.C., a corporation must be represented by an attorney-at-law at Commission hearings. Further, in accordance with Rule 4901-1-08(B), O.A.C., persons authorized to practice law in other jurisdictions may be permitted to appear before the Commission in a particular proceeding, upon motion of an attorney authorized to practice law in Ohio." *In the Matter of the Complaint of Milentije Miljkovic v. Primo Communications, Inc.*, Case No. 07-78-TP-CSS, Entry (May 28, 2008). In other words, "all corporations must be represented in Commission proceedings by an attorney-at-law authorized to practice in Ohio." *In the Matter of Lazer Express, Inc., Notice of Apparent Violation and Intent to Assess Forfeiture,* Case No. 09-577-TR-CVF, Entry (Sept. 10, 2009).

Stand Energy is represented in this proceeding by its General Counsel, John M. Dosker. Mr. Dosker is not authorized to practice law in Ohio. *See* Supreme Court of Ohio, Attorney Information Search, http://www.sconet.state.oh.us/AttySvcs/AttyReg/Public_AttorneyInformation.asp. Instead, Mr. Dosker is admitted to practice before the courts of Kentucky. *See, e.g.*, Kentucky Public Service Commission, Case No. 2011-00124, Stand Energy Corporation's Motion to Intervene and Supporting Memorandum (Apr. 21,2011) (*available at* http://psc.ky.gov/pscscf/2011%20cases/2011-00124/20110421_Stand%20Energys%20Motion%20to%20Intervene%20and%20Supporting%20Memorandum.pdf); *see also* Tennessee Regulatory Authority, Docket No. 05-00258, Application to Appear Pro Hac Vice (Jan. 11, 2007) (*available at* http://www.state.tn.us/tra/orders/2005/0500258ks.pdf).

Although Mr. Dosker has sought admission *pro hac vice* to appear before the Commission in the past (*see, e.g., In re Stand Energy Corp. v. The Cincinnati Gas & Electric Co.*, Case No. 99-960-GA-CSS, Entry (Feb. 13, 2000)), he did not seek permission to represent Stand Energy in this proceeding. Nor did he request *pro hac vice* admission in the certification proceeding that preceded this case, Case No. 02-1683-GA-CRS, when Stand Energy sought to intervene in that case last September. *See 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, Stand Energy Corporation's Motion to Intervene (Sept. 7, 2010). Because Stand Energy is not represented by an attorney authorized to practice in Ohio, it is not a proper party to this proceeding and should not be permitted to stand in the way of the other Complainants' efforts to resolve their claims against IGS.

2.2. Stand Energy has failed to show good cause for amending the joint complaint at this late date.

Even if Stand Energy were a proper party to this complaint case, Stand Energy's motion should still be denied because of Stand Energy's failure to diligently prosecute its claims against Columbia and NiSource. The Commission may not "authorize the amendment of any . . . complaint . . . filed with the commission" "upon motion of any party" unless that party demonstrates "good cause" for the amendment. Rule 4901-1-06, O.A.C. Stand Energy does not meet this standard because it has no good cause for waiting until twelve days before the original scheduled hearing date to ask to add two new respondents.

Stand Energy suggests that it was waiting to see whether OCC's budget cuts would allow it to "continue prosecution of the case and to what degree"

(Mem. Supp. Motion for Leave at p. 2), but that is no excuse for delay. Stand Energy had an obligation to defend its own interests, not rely on other parties to file motions on its behalf. Moreover, OCC's budget cuts went into effect almost three months ago. *See, e.g.*, News Release, Office of the Ohio Consumers' Counsel, Deep budget cuts force Ohio Consumers' Counsel to curtail services (July 8, 2011) (*available at* http://www.pickocc.org/news/2011/pressrelease.php?date=07122011). Even if Stand Energy had some justification for expecting OCC to represent Stand Energy's interests, which it did not, Stand Energy could have verified OCC's intentions at any point during the last three months.

Stand Energy's assertion that it was "distracted" from "pursuing this case" by the "political activity" surrounding the OCC's biennial budget (Stand Energy Memorandum Supporting Motion at p. 2) does not explain Stand Energy's failure to file its motion sooner. It is an admission that Stand Energy stopped paying attention to this case until the hearing date approached. The Commission should not let Stand Energy use its failure to take this case or its obligations as a complainant seriously as an excuse for its delay. Because Stand Energy has not shown good cause for seeking to add Columbia or NiSource as respondents at this late date, Stand Energy's motion should be denied.

2.3. Stand Energy does not propose any lawful claims against Columbia

Stand Energy's motion also should be denied because it fails to describe anything approaching a lawful and valid claim against Columbia. Stand Energy rips out of context, mischaracterizes, and otherwise stretches Columbia tariff, the Revised Code, and the Commission's rules to try to find some legal basis for adding Columbia to this proceeding. But none of the sources Stand Energy cites say what Stand Energy claims they say. Not surprisingly, there is no law in Ohio that makes it illegal for a public utility to fail to object to another company's licensing contract.

2.3.1. Columbia's standards of conduct for its Customer CHOICE℠ Program provide no basis for Stand Energy's claims.

In an effort to put some meat on the thin bones of its claims, Stand Energy asserts that Columbia's failure to "object[ ] to the licensing of the name Columbia and the logo" (Stand Energy Memorandum Supporting Motion at p. 7) violated

the standards of conduct for Columbia's Customer CHOICE℠ Program. In particular, Stand Energy accuses Columbia of violating standards number 3, 12, and 13. But as might be expected, those standards of conduct apply only to "operation of [Columbia's] Customer CHOICE℠ Program" (Columbia Tariff, P.U.C.O. No. 2, Original Sheet No. 22, Section VII, Part 22.1), which is not at issue here. And in trying to make them apply to a licensing agreement, Stand Energy grossly mischaracterizes them.

Standard number 3 does not, as Stand Energy asserts, "prohibit[ ] giving any 'Retail Natural Gas Supplier preference in matters[.]'" (Stand Energy Memorandum Supporting Motion at p. 5.) It prohibits Columbia from giving "any Retail Natural Gas Supplier . . . preference in matters . . . *relating to transportation service*[.]" (Tariff, P.U.C.O. No. 2, Original Sheet No. 22, Section VII, Part 22.1(3) (emphasis added).) A license to use the Columbia name and logo is not a matter relating to transportation service. And according to Stand Energy's own allegations, it was NiSource, not Columbia, that gave the "preference" to IGS, by selling it a license without "offer[ing] it to competitors in any of the five Columbia Distribution Territories." (Stand Energy Memorandum Supporting Motion at p. 5.) Thus, standard number 3 clearly does not apply.

Next, standard number 12 does not "indicate[a] commitment to provide similar services under similar terms and conditions to avoid any 'preference' to any supplier," as Stand Energy asserts. (*Id.*) It prohibits Columbia from offering "a *discount or fee waiver* for . . . any . . . service offered to Retail Natural Gas Suppliers" without offering the same discount or fee waiver, "upon request, prospectively[,] . . . to all similarly situated Retail Natural Gas Suppliers or Retail Natural Gas Suppliers' customers under similar terms and conditions." (Tariff, Original Sheet No. 22, Section VII, § 22.1(12) (emphasis added).) A license to use the Columbia name and logo is not a "discount or fee waiver." And again, Columbia did not offer the license to IGS. Thus, standard number 12 clearly does not apply.

Lastly, even Stand Energy admits that standard number 13 does not apply. Standard number 13 places restrictions on the use of Columbia's name or logo "in its marketing affiliate's promotional material" and prohibits Columbia Gas from "participating in exclusive joint activities with its marketing affiliate[.]" (Tariff, Original Sheet No. 22, Section VII, § 22.1(13).) As Stand Energy admits, IGS is not affiliated with Columbia (*see* Complaint ¶ 8) and Columbia's "marketing affiliate . . . no longer exists[.]" (Stand Energy Memorandum Supporting Motion at p. 6.) Because IGS is not Columbia's "marketing affiliate," standard number 13 is irrelevant here. Thus, nothing in the standards of conduct for Colum-

bia's Customer CHOICE℠ Program gives Stand Energy any basis for any cause of action against Columbia.

2.3.2. The Commission's governing statutes and regulations provide no basis for Stand Energy's claims.

Nothing in the Commission's governing statutes or rules gives Stand Energy a basis for any cause of action against Columbia either. Stand Energy preposterously claims that, "pursuant to [Rule] 4901-1-10(2), '***Any public utility, railroad or private motor carrier against whom a complaint is filed***' shall be a proper party to a Commission proceeding." (Stand Energy Memorandum Supporting Motion at p. 7.) But Rule 4901-1-10(2) says no such thing. Rule 4901-1-10(2), O.A.C., defines "[t]he parties to a commission proceeding" as including "[a]ny public utility . . . against whom a complaint is filed." That does not mean that any complaint against a public utility is proper. It simply means that once a complaint has been filed against a public utility, that public utility is a "party" to the proceeding. To demonstrate that proposed claims against Columbia are proper, Stand Energy must demonstrate that those claims meet the standard of Section 4905.26, Revised Code.

"R.C. 4905.26 specifically confers exclusive jurisdiction upon PUCO to determine whether any service provided by a public utility is in any respect unjust, unreasonable, or in violation of the law." *Corrigan v. Illum. Co.*, 122 Ohio St.3d 265, 2009-Ohio-2524, ¶21 (*citing State ex rel. Columbia Gas of Ohio, Inc. v. Henson*, 102 Ohio St.3d 349, 2004-Ohio-3208, at ¶ 16). Stand Energy suggests the Commission has jurisdiction over *any* "disputes involving utilities." (Stand Energy Memorandum Supporting Motion at p. 10.) The Northeast Ohio Public Energy Council ("NOPEC") similarly suggests, in its procedurally invalid "Memorandum in Support" of Stand Energy's motion, that Columbia should be added to this case just because it is a public utility "and subject to the complaint process set forth in R.C. 4905.26." (NOPEC Memorandum in Support at p. 2 (Oct. 7, 2011.) But Section 4905.26 limits the kinds of complaints that are appropriate to bring before the Commission. Specifically, Section 4905.26 states that a corporation may bring the following kinds of complaints against a public utility:

- a complaint "that any rate, fare, charge, toll, rental, schedule, classification, or service . . . rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law";

- a complaint "that any regulation, measurement, or practice affecting or relating to any service furnished by the public utility, or in connection with such service, is, or will be, in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential";

- a complaint that "any service is, or will be, inadequate or cannot be obtained[.]"

Section 4905.26, Revised Code.

None of these categories applies here. A license from NiSource to use the Columbia name and logo is not a "rate, fare, charge, toll, rental, schedule, classification, or service[.]" ("A 'service' is '[a]n intangible commodity in the form of human effort, such as labor, skill, or advice.'" *State ex rel. Columbus S. Power Co. v. Fais*, 117 Ohio St.3d 340, 2008-Ohio-849, ¶21 (*quoting* Black's Law Dictionary (8th Ed.2004) 1399).) A license from NiSource to use the Columbia name and logo is not a "regulation, measurement, or practice affecting or relating to any service furnished by" Columbia. And Stand Energy is not complaining that "any service is, or will be, inadequate or cannot be obtained[.]" In fact, Stand Energy is not alleging that Columbia *did* anything wrong at all. The subject of Stand Energy's proposed amended complaint is "*NiSource Corporate Services, Inc.*['s] agree[ment] to license the use of the name and logo Columbia Retail Energy to IGS[.]" (Stand Energy Memorandum Supporting Motion in Support at p. 5 (emphasis added).) Columbia has done nothing but, in Stand Energy's words, "remain[ ] silent." (*Id.*)

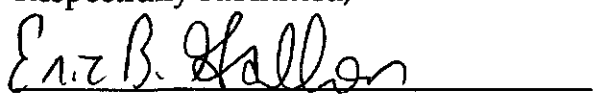
Under Section 4905.26, Revised Code, upon receiving a complaint against a utility, the Commission must "fix a time for hearing and . . . notify complainants and the public utility thereof" *only* "if it appears that reasonable grounds for complaint are stated[.]" Section 4905.26, Revised Code. Stand Energy has not stated any reasonable grounds for bringing a complaint against Columbia. Consequently, the Commission should deny Stand Energy's motion for leave to amend its complaint.

3. Conclusion

Stand Energy brought this complaint unlawfully and is now seeking to prolong it unnecessarily, against the wishes of the majority of its co-complainants, by asking the Commission to allow it to assert half-baked and hole-ridden claims against two new Respondents. For the reasons provided above, Columbia Gas of Ohio, Inc. respectfully requests that the Commission de-

ny Stand Energy Corporation's Motion for Leave to File an Amended Complaint and dismiss Stand Energy from this complaint case.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Memorandum Contra of Columbia Gas of Ohio, Inc. to Stand Energy Corporation's Motion For Leave To File An Amended Complaint was served by electronic and regular mail on this 7th day of October, 2011, upon the following counsel:

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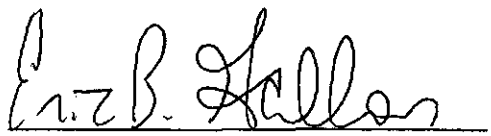

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