

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

THE OFFICE OF THE OHIO CONSUMERS')
COUNSEL, et al.)
)
Complainants,)
)
v.)
)
INTERSTATE GAS SUPPLY, INC.)
)
Respondent.)

Case No. 10-2395-GA-CSS

**MOTION OF NISOURCE CORPORATE SERVICES COMPANY
AND NISOURCE RETAIL SERVICES, INC.
TO STRIKE NORTHEAST OHIO PUBLIC
ENERGY COUNCIL'S MEMORANDUM IN SUPPORT**

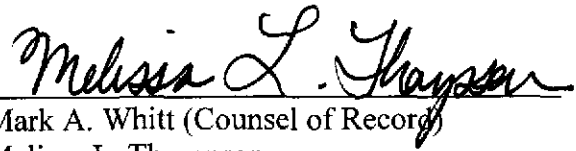
Pursuant to Ohio Adm. Code 4901-1-12(A), NiSource Corporate Services Company ("NCS") and NiSource Retail Services, Inc. ("NRS") respectfully request issuance of an Entry striking the Memorandum in Support of Stand Energy Corporation's Motion for Leave to File an Amended Complaint filed by the Northeast Ohio Public Energy Council ("NOPEC"). NOPEC's "memorandum in support" is procedurally improper, substantively deficient and asks for relief that Stand did not request. This Motion should be granted for the reasons stated in the attached memorandum in support.

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Dated: October 11, 2011

Respectfully submitted,

A handwritten signature in black ink that reads "Melissa L. Thompson". The signature is written in a cursive style and is positioned above a horizontal line.

Mark A. Whitt (Counsel of Record)
Melissa L. Thompson
CARPENTER LIPPS & LELAND LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
(614) 365-4100 (Telephone)
(614) 365-9145 (Facsimile)
whitt@carpenterlipps.com
thompson@carpenterlipps.com

Todd M. Rodgers
NiSource Corporate Services Company
200 Civic Center Drive
Columbus, Ohio 43215
(614) 460-4639 (Telephone)
(614) 460-6980 (Facsimile)
tmrogers@nisource.com

ATTORNEYS FOR NISOURCE
CORPORATE SERVICES COMPANY
AND NISOURCE RETAIL SERVICES,
INC.

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THE OFFICE OF THE OHIO CONSUMERS')	
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**MEMORANDUM IN SUPPORT OF
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AND NISOURCE RETAIL SERVICES, INC.
TO STRIKE NORTHEAST OHIO PUBLIC
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I. INTRODUCTION

NOPEC submitted a filing styled as a "memorandum in support" of Stand's September 22, 2011 motion for leave to join NiSource Corporate Services Company ("NCS") as a party. NOPEC also requests, in addition to NCS, that the Commission "add NiSource Retail Services, Inc. as a necessary and indispensable party." (Memorandum at 1.) NOPEC's "memorandum in support" should be stricken on both procedural and substantive grounds.

Procedurally, NOPEC's "memorandum in support" does not comply with the Commission's rules for motion practice. When a party files a motion, other parties are permitted to file memoranda contra. A memorandum contra means what it says -- a memorandum opposing another party's motion. "Me too" briefs are inappropriate under the Commission's rules, as well as prejudicial to opposing parties. Where parties have aligned interests in litigation, they should

seek relief jointly rather than through piecemeal and repetitive motions. NOPEC provides no explanation for failing to join in Stand's motion when it was filed on September 22.

NOPEC's memorandum fails on substantive grounds as well. As already explained in the response to Stand's motion (filed October 7), NCS is not a "public utility" or otherwise subject to the Commission's jurisdiction. The statutes NOPEC cites do not establish otherwise. NiSource Retail Services, Inc. ("NRS") is not subject to the Commission's jurisdiction, either, for the very same reason: NRS is not a "public utility." The fact that NOPEC seeks to join NRS as a party but Stand did not is another, independent basis to strike NOPEC's "memorandum in support."

II. ARGUMENT

A. NOPEC's Memorandum in Support is Procedurally Improper.

The Commission's rules for filing and responding to motions are clear. Rule 4901-1-12(A) generally requires motions to be in writing, accompanied by a memorandum in support explaining the grounds for relief. Thereafter, Rule 4901-1-12(B)(1) states that any party "may file a memorandum *contra* within fifteen days after the service of a motion...." (Emphasis added). "Contra" means "against or contrary to." *Black's Law Dictionary* 365 (9th ed. 2009). After a memorandum *contra* is filed, any party "may file a reply memorandum within seven days after service of a memorandum *contra*...." Ohio Adm. Code 4901-1-12(B)(2) (emphasis added).

The Commission's rules do not provide a mechanism for parties to file memoranda in support of other parties' motions. There is a good reason for this: such a practice is both inefficient and prejudicial to other parties. It is inefficient because the Commission and opposing parties are forced to address arguments in a piecemeal fashion through multiple rounds of pleadings. This is prejudicial in and of itself, but additional prejudice ensues because NCS has

only seven days to respond to NOPEC's "memorandum in support" versus the fifteen days it would have if NOPEC had joined Stand's motion.

In the analogous context of applications for rehearing, the Commission has recognized that rules authorizing the filing of memoranda contra do not authorize filing memoranda in support of another party's motion.

The Commission agrees with OCC's assertion that Rule 4901-1-35, O.A.C., is limited in scope to the filing of memorandum contra applications for rehearing. To the extent that a party believes that it is necessary to inform the Commission of its support for another party's rehearing position the appropriate motion for leave to file a memorandum in support should be submitted for the Commission's consideration.

In the Matter of the Establishment of Carrier-to-Carrier Rules, Case No. 06-1344-TP-ORD, Entry on Rehearing (Oct. 17, 2007) at Finding (6). Where a party files a memorandum in support instead of a memorandum contra, the memorandum is properly stricken. In the Matter of Investigation in SBC's Entry into In-Region InterLATA, Case No. 00-942-TP-COI, Entry on Rehearing (August 26, 2003) at Finding (19) ("SBC Ohio's motion to strike is granted" because "CLEC's filing is simply a memorandum in support of OCC's application for rehearing.").

NOPEC did not file a memorandum contra. It filed a memorandum in support not permitted under the Commission's rules. For this reason alone NOPEC's filing should be stricken.

B. NOPEC's Memorandum Provides No Basis For Joinder of NCS or NRS, As Neither Is Subject To The Commission's Jurisdiction.

Acknowledging that "neither the statutes nor regulations governing the Commission's powers address the issue of joinder," NOPEC nonetheless argues that "[NCS] and [NRS] must be joined as necessary and indispensable parties" under Rule 4901-1-10. (Memorandum at 2.)

NOPEC apparently reads this rule to allow the Commission to exercise jurisdiction over any

person it orders be made a party. This is obviously wrong. The Commission may "exercise only the jurisdiction conferred by statute." *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). The Commission's authority to join parties under its procedural rules does not expand its statutory subject-matter jurisdiction. Whether "necessary and indispensable" or not, the Commission does not have complaint jurisdiction over entities that are not "public utilities." See *Hilton Twinsburg Hotel v. NOPEC*, Case No. 03-2112-EL-CSS, et al., Entry (August 17, 2004), Finding (11) (overruling NOPEC's attempt to join FirstEnergy Corp. in complaint proceeding because FirstEnergy is "not a public utility and provides no electric service to customers in Ohio...."). A public utility, as defined by R.C. 4905.02 and .03, is limited to entities that provide certain services to consumers within Ohio. R.C. 4905.26 likewise limits the Commission's complaint jurisdiction to claims against public utilities and railroads.

The Commission cannot join NRS and NCS to this complaint case - they are not public utilities. NCS does not meet any definition of a public utility, as explained in NCS's Memorandum Contra Stand's Motion for Leave to File an Amended Complaint. (Mem. Contra Mem. in Support at 2-3.) Similarly, NRS fails to meet any definition of public utility set forth in R.C. 4905.02 and .03. As explained in the affidavit of Scott MacDonald (attached as Exhibit A), NRS is a Delaware corporation and subsidiary of NiSource Inc. (See Exhibit A at ¶¶2-3.) NRS provides unregulated services to Ohio consumers including service plans and leasing services for household appliances and systems. (See Exhibit A at ¶4.) NRS does not "supply[] natural gas for lighting, power, or heating purposes to consumers within this state." R.C. 4905.03(A)(5); See also Exhibit A at ¶6. 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); *See also* Exhibit A at ¶7. NRS does not otherwise hold itself out to the public as a "public utility." (*See* Exhibit A at ¶8.)

NOPEC next argues that the Commission's general supervisory authority under R.C. 4905.05 supports the exercise of jurisdiction over both NCS and NRS. (Memorandum at 2-3.) This, too, is wrong. While the Commission has limited jurisdiction over "persons or companies owning, leasing or operating such public utilities," NOPEC has not established -- and cannot establish -- that NCS or NRS "own," "lease" or "operate" Columbia Gas of Ohio. Merely alleging as much does not make it so. As already established in the Affidavit accompanying NCS's Memorandum Contra Stand's Motion to Amend, NCS is a Delaware corporation and subsidiary of NiSource Inc. (Mem. Contra Mem. in Support at Exhibit A.) NCS does not own, lease or operate Columbia Gas of Ohio; it merely provides shared support services for Columbia and other NiSource subsidiaries.¹ R.C. 4905.05 makes clear that NCS's affiliate relationship with a public utility is not sufficient to confer jurisdiction: "Nothing in this section, or section 4905.06 or 4905.46 of the Revised Code pertaining to regulation of holding companies, grants the public utilities commission authority to regulate *a holding company or its subsidiaries* which are organized under the laws of another state, render no public utility service in the state of Ohio, and are regulated as a public utility by the public utilities commission of another state or primarily by a federal regulatory commission...." (Emphasis added).

NRS, similarly, is not subject to the Commission's general supervisory jurisdiction. NRS is also a Delaware corporation and subsidiary of NiSource Inc. (*See* Exhibit A at ¶¶2-3.) None of

¹ Paragraph 7 of the Complaint in this proceeding alleges that Columbia Gas of Ohio is a subsidiary of NCS. IGS admitted this allegation in its Answer. IGS's mistaken admission, however, is not binding on NCS as NCS is not the party that pled the Answer. The record should be clear that Columbia Gas of Ohio is a subsidiary of Columbia Energy Group, a Delaware corporation, and ultimately NiSource Inc., an energy holding company under the Public Utility Holding Company Act of 2005. *See* 2010 Annual Report of Columbia Gas of Ohio, Inc., Case No. 11-0002-GA-RPT (April 29, 2011) at 3.1-4.1.

the retail services it provides in Ohio are regulated by the Commission. (See Exhibit A at ¶4.) NRS neither owns, controls or operates Columbia Gas of Ohio, nor engages in any line of business that subjects it to regulation as a public utility. (See Exhibit A at ¶¶5-8, 10.) The bare claim that NRS was a counterpart to an agreement with IGS does not make NRS a "necessary and indispensable party" over whom the Commission may exercise jurisdiction. (See Memorandum at 3.)

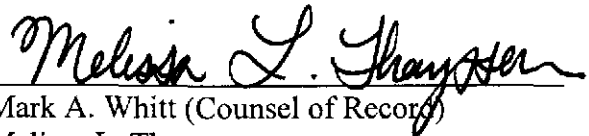
Notably, Stand did *not* request leave to join NRS as a party. NOPEC's memorandum "in support," therefore, improperly requests additional relief not requested by the moving party. To the extent the Commission construes NOPEC's request to join NRS as a motion, it is woefully deficient for the jurisdictional reasons stated above. Further, as with Stand, NOPEC has not proffered a proposed amended complaint stating any claim against NRS or NCS or requesting any relief. No party, including Stand and NOPEC, has listed an NCS or NRS employee on its witness list. Yet somehow NCS and NRS are "indispensable parties"? The irony should not be lost on the Commission.

III. CONCLUSION

The Commission should strike NOPEC's memorandum in support and deny its attempt to join NRS and NCS as parties to this proceeding.

Dated: October 11, 2011

Respectfully submitted,



Mark A. Whitt (Counsel of Record)
Melissa L. Thompson
CARPENTER LIPPS & LELAND LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
(614) 365-4100 (Telephone)
(614) 365-9145 (Facsimile)

whitt@carpenterlipps.com
thompson@carpenterlipps.com

Todd M. Rodgers
NiSource Corporate Services Company
200 Civic Center Drive
Columbus, Ohio 43215
(614) 460-4639 (Telephone)
(614) 460-6980 (Facsimile)
tmrodgers@nisource.com

ATTORNEYS FOR NISOURCE
CORPORATE SERVICES COMPANY
AND NISOURCE RETAIL SERVICES,
INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Strike NOPEC's Memorandum in Support was served by ordinary U.S. mail, postage prepaid, to the following persons on this 11th day of October, 2011:

John W. Bentine
Stephen C. Fitch
Sarah Daggett Morrison
Mark S. Yurick
Zachary D. Kravitz
Chester Willcox & Saxbe LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215

Daniel R. Conway
Eric B. Gallon
Porter Wright Morris & Arthur LLP
41 South High Street, Suite 3000
Columbus, Ohio 43215-6194

Vincent A. Parisi
Interstate Gas Supply, Inc.
6100 Emerald Parkway
Dublin, Ohio 43016

Stephen B. Seiple
Brooke E. Leslie
Columbia Gas of Ohio, Inc.
200 Civic Center Drive
Columbus, Ohio 43215

Larry Gearhardt
Ohio Farm Bureau Federation
280 North High Street
Columbus, Ohio 43215

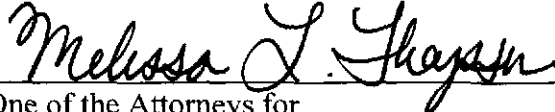
Glenn S. Krassen
Bricker & Eckler LLP
1001 Lakeside Avenue East, Suite 1350
Cleveland, Ohio 44114

Joseph P. Serio
Larry S. Sauer
Kyle Kern
The Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485

Matthew W. Warnock
Thompson J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215

John M. Dosker
Stand Energy Corporation
1077 Celestial Street, Suite 110
Cincinnati, Ohio 45202

William Wright
Ohio Attorney General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215-3763


One of the Attorneys for
NiSource Corporate Services Company and
NiSource Retail Services, Inc.

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Case No. 10-2395-GA-CSS

AFFIDAVIT OF

Scott C. MacDonald, being first duly sworn, states:

1. My name is Scott C. MacDonald. I am the President of NiSource Retail Services, Inc. ("NRS"). I am authorized to make this Affidavit on behalf of NRS and have personal knowledge of the facts stated herein.
2. NRS is a Delaware corporation, and registered to do business in Ohio as a foreign corporation.
3. NRS is a subsidiary of NiSource Inc. ("NiSource"), an energy holding company under the Public Utility Holding Company Act of 2005.
4. NRS provides unregulated services to consumers in Ohio. Specifically these services include service plans and leasing services for household appliances and systems.
5. NRS does not engage in the business of supplying artificial gas for lighting, power, or heating purposes to consumers within the state of Ohio. NRS does not engage in the business of supplying artificial gas to gas companies or to natural gas companies within the state of Ohio.

6. NRS does not engage in the business of supplying natural gas for lighting, power, or heating purposes to consumers within the state of Ohio.

7. NRS does not engage in the business of transporting natural gas, oil, or coal or its derivatives through pipes or tubing within the state of Ohio.

8. NRS does not otherwise hold itself out to the public as a "public utility."

9. NRS is not the subsidiary of NiSource Corporate Services Company.

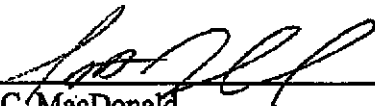
10. NRS does not own, lease or operate Columbia Gas of Ohio, Inc.

11. NRS does not lease or operate the licensing function of Columbia Gas of Ohio, Inc.

12. NRS has not leased to any person, corporation or entity any licenses owned by Columbia Gas of Ohio, Inc.

13. NRS is an unregulated affiliate of NiSource Corporate Services Company and Columbia Gas of Ohio, Inc.

FURTHER AFFIANT SAYETH NAUGHT.

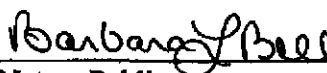


Scott C. MacDonald

STATE OF NEW HAMPSHIRE)
) ss.
COUNTY OF Rockingham)

BARBARA L. BELL
Notary Public - New Hampshire
Commission Expires November 28, 2012

Sworn to before me and subscribed in my presence this 11th day of October, 2011.



Notary Public