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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, Stand Energy Corporation, Border Energy, Incorporated, Northeast Ohio Public Energy Council, and Ohio Farm Bureau Federation	)	
Complainants,	)	Case No. 10-2395-GA-CSS
v.	)	
Interstate Gas Supply, Inc.	)	
Respondent.	)	

NORTHEAST OHIO PUBLIC ENERGY COUNCIL'S MEMORANDUM CONTRA THE MOTIONS TO STRIKE FILED BY NISOURCE CORPORATE SERVICES CO. AND INTERSTATE GAS SUPPLY, INC.

I. INTRODUCTION

On September 22, 2011, Stand Energy Corporation ("Stand") filed a Motion for leave to file an amended complaint naming Columbia Gas of Ohio, Inc. ("Columbia") and NiSource Corporate Services Co. ("NCS") as necessary parties. On October 7, 2011, the Northeast Ohio Public Energy Council ("NOPEC") filed its memorandum to: (1) support Stand's request that the Public Utilities Commission of Ohio (the "Commission") grant Stand's motion for leave to add Columbia and NCS as Co-Respondents in the above-captioned proceeding; and (2) request that the Commission also grant the Complainants leave to add NiSource Retail Services, Inc. ("NRS") as a party. On October 11, 2011 and October 17, 2011, respectively, NCS and Interstate Gas Supply, Inc. ("IGS") each filed motions to strike the memorandum in support previously filed by NOPEC ("Motions to Strike"). For the reasons set forth herein, the Motions to Strike should be denied.

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II. LEGAL ARGUMENT

From a legal standpoint, the issues raised in the Motions to Strike filed by IGS and NCS are without merit, and the Commission should deny them.

A. Prior Commission precedent supports the filing of NOPEC's memorandum in support.

Both NCS and IGS contend that NOPEC's memorandum in support should be stricken because the "Commission's Rules do not provide any authority for a party to file a memorandum in support to bolster the motion of another party." (IGS Motion to Strike at 5; NCS Motion to Strike at 2-3). Although NOPEC agrees that the Commission's rules are silent regarding the filing of a memorandum in support, those same rules nowhere prohibit the filing of such a memorandum. Therefore, the fact that the Commission's rules are silent does not mean that a memorandum in support is prohibited. In fact, Attorney Examiner Kingery agreed with this conclusion in the context of a motion to strike:

> The examiner will first address the motion by OCC to strike the supportive memorandum filed by IEU-Ohio. While OCC is correct that the Commission's procedural rules do not provide for the filing of memoranda in support of motions by other parties, those rules also do not prohibit such filings. Therefore, the examiner will not grant the motion to strike.

Consolidated Duke Energy Ohio Inc., Rate Stabilization Plan Remand and Rider Adjustment Cases, Case No. 03-93-EL-ATA, et al. (January 2, 2007) at Finding 7.[1] For this reason, the procedural

[1] It should be noted that the cases relied upon by IGS and NiSource regarding memoranda in support involved applications for rehearing. The Commission has held that memoranda contra applications for rehearing should be stricken to the extent that they are simply memoranda in support. However, those cases did not address a motion dealing with the threshold issue of the Commission's jurisdiction over parties in a complaint case, as is the case here. Further, NCS' statement on page 3 of its Motion to Strike regarding the Commission's August 26, 2003 Entry on Rehearing in Case No. 00-942-TP-COI is misleading. The Commission did not grant a motion to strike in that case because the filing was allegedly a memorandum in support. Instead, the Commission explained: "The Commission finds that CLECs' response of August 7, 2003, is not a memorandum contra OCC's application for rehearing as contemplated by Rule 4901-1-35, O.A.C. Rather, at best, CLECs' filing is simply a memorandum in support of OCC's application for rehearing."

arguments raised by NCS and IGS should be denied, and the Commission should address the merits of the motion to amend.

B. No one will be prejudiced by the filing of NOPEC's memorandum in support.

Neither Stand's motion to amend, nor NOPEC's memorandum in support, are intended to unduly delay this proceeding. The purpose of amending the complaint is simply to add NCS, Columbia and NRS to this proceeding is to ensure that all relevant parties are before the Commission and that full and appropriate relief may be granted.

NOPEC also points out that OAC Rule 4901-1-06 specifically requires Commission approval before a party can file an amended complaint. That process has been followed here. In the event the Commission grants Stand's motion for leave to amend the complaint, NOPEC acknowledges that the procedural schedule would need to be extended to allow for the filing of the amended complaint as well as answers by the additional parties. Such an extension of the procedural schedule does not prejudice any of the complainants. An extension certainly does not prejudice IGS, as IGS continues to be able to offer competitive retail natural gas service under the Columbia Retail Energy name throughout the pendency of this proceeding or any of the NiSource entities, as they presumably continue to receive whatever financial benefit they have negotiated for allowing IGS to use the Columbia name and starburst logo.

C. To the extent IGS objects to the addition of NRS as a party to this proceeding, NOPEC agrees to allow IGS to file a responsive pleading to address IGS' due process concerns.

IGS' motion to strike argues that NOPEC's memorandum in support improperly requests the addition of NRS as a party. In fact, IGS suggests that NOPEC slipped this request into its memorandum in support for the purpose of circumventing "fundamental due process rights." (IGS Motion to Strike at 6). This is not correct. NOPEC included its request to add NRS as a party to

correct what it believed to be Stand's mistaken understanding of the counterparty to the IGS licensing agreement. NRS, rather than NCS, is the counterparty to IGS in the licensing agreement, and the reference to NRS was simply designed to clarify this fact. To the extent IGS wants or needs to file a responsive addressing the addition of NRS as a part to this case, NOPEC does not object.

D. The Commission retains jurisdiction over NCS and NRS under R.C. 4905.05.

Contrary to NCS' Motion to Strike, NOPEC submits that under the unique circumstances presented in this proceeding, and in order to avoid a regulatory gap, the Commission's jurisdiction does in fact extend to NCS and NRS.

Initially, NCS broadly and inaccurately states that the "Commission does not have complaint jurisdiction over entities that are not 'public utilities.'" (NCS Motion to Strike at 4). This broad and unqualified statement, and the citation to the Commission's August 17, 2004 Entry in *Hilton Twinsburg Hotel v. NOPEC*, Case No. 03-2112-EL-CSS, are misleading. First, NCS mischaracterizes the holding in the *Hilton Twinsburg Hotel* Entry, claiming that the Commission overruled NOPEC's attempts to join FirstEnergy Corp. in a complaint proceeding because FirstEnergy is "not a public utility and provides no electric service to customers in Ohio." The Commission made no such statement. The language quoted by NCS is actually a restatement by the Attorney Examiner of an argument set forth by FirstEnergy Corp. The conclusion reached by Attorney Examiner Shailer was that the:

> proper respondents in these cases [involving allegations of improper switching] are the electric distribution utility, the governmental aggregator and the competitive retail electric supplier serving each of the complainants. Because either Ohio Edison or CEI is now a respondent in each of the captioned cases, FirstEnergy Corp.'s motions to dismiss are granted.

There was no mention of the Commission's jurisdiction. There was simply a statement that the proper respondents in the cases were already parties. The Commission did not make a blanket statement about the extent of its jurisdiction over public utilities.

Next, NCS argues that NRS falls outside the scope of the Commission's supervisory powers set forth in R.C. 4905.05, claiming that "NRS neither owns, controls or operates Columbia Gas of Ohio." (NCS Motion to Strike at 6). In the context of this case, this is not an entirely correct statement.

It is NOPEC's understanding that NiSource, Inc. is an energy holding company and the ultimate parent company of Columbia, NCS, and NRS. (NCS Motion to Strike at 5). NiSource, Inc. owns/controls NCS, and NiSource Inc. and NCS own/control both Columbia and NRS. Extending Commission jurisdiction under R.C. 4905.05 to NiSource, Inc., but not its subsidiaries and affiliates (NCS and NRS) leaves a regulatory gap in which the very counterparty to the licensing agreement with IGS would escape jurisdiction despite affecting the provision of competitive retail natural gas service in Ohio. Further, NRS (the entity alleged to be outside the Commission's jurisdiction) apparently owns certain service marks, including the "Columbia" name and, importantly, the Columbia starburst logo – the use of which by IGS constitutes a primary reason for this complaint case. Arguing that NRS (as the owner of the Columbia name and logo) does not exercise control over Columbia Gas' assets (the licensing/leasing of Columbia's service marks) is disingenuous at best. If NRS does not have control over the use of the "Columbia" name and starburst logo, then who does? If the PUCO does not have jurisdiction over the names under which competitive retail natural gas service is offered in Ohio, then who does?

The Commission's general supervisory powers "extend to. . . the persons or companies owning, leasing, or operating such public utilities." R.C. 4905.05. As the entity which licensed or

leased the "Columbia" name and starburst logo to IGS, NRS would fall within the scope of the Commission's supervisory jurisdiction as it is leasing the Columbia utility's name and starburst logo. The Commission must not lose sight of the fact that the licensing agreement with NRS allows, for the first time in the history of the competitive natural gas market in Ohio, an unaffiliated company (IGS) to offer competitive retail natural gas service using the Columbia utility's trade name and sunburst logo in the Columbia Gas service territory, thereby confusing and misleading the average customer of Columbia Gas of Ohio (the public utility). For these reasons, NCS and NRS should properly be joined as a party to this complaint proceeding to properly consider the issues presented in this proceeding.

III. CONCLUSION

For the reasons set forth in NOPEC's memorandum contra, and in a case of first impression involving the competitive natural gas service offerings of a non affiliate using the regulated public utility's name and logo, NOPEC respectfully requests that the motions to strike be denied.

Respectfully submitted,

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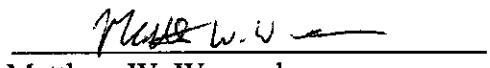
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following parties of record by regular U.S. mail or electronic mail, this 26th day of October 2011.



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