

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIV
2011 NOV -1 AM 11:39
PUCO

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,

v.

Interstate Gas Supply, Inc.

Respondent.

Case No. 10-2395-GA-CSS

MOTION FOR SUBPOENA

Pursuant to Ohio Administrative Code ("OAC") Rule 4901-1-25, the Northeast Ohio Public Energy Council ("NOPEC") hereby moves the Public Utilities Commission of Ohio ("Commission") for the issuance of a subpoena to command Scott White, President of Interstate Gas Supply, Inc. ("IGS"), and one or more of IGS' officers, agents, employees, or other persons duly authorized to testify on its behalf, to appear at a previously noticed deposition scheduled for 10:00 A.M. on November 3, 2011, at the offices of Bricker & Eckler LLP, 100 South Third Street, Columbus, Ohio 43215. The deposition notice was filed in this docket on October 26, 2011

On October 26, 2011, and pursuant to OAC Rule 4901-1-21, NOPEC filed and served a notice for the depositions of Mr. White and one or more of IGS' officers, agents, employees, or other persons duly authorized to testify on its behalf relating to: (1) IGS' use of the trade name Columbia Retail Energy; (2) IGS' discussions with staff at the Public Utilities Commission of Ohio about using the trade name Columbia Retail Energy; (3) the licensing agreement between IGS and NiSource regarding the use of the Columbia name and starburst logo; (4) Columbia

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business.
Technician JD Date Processed 11-01-11

Retail Energy's marketing materials; and (5) IGS' communications with NiSource and the Commission Staff related to the use of the trade name Columbia Retail Energy.

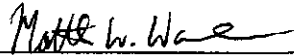
By email dated October 28, 2011, counsel for IGS stated that neither Mr. White nor any other IGS representative would be made available on November 3rd. A true and accurate copy of the email is attached hereto as Exhibit 1. Despite attempts by NOPEC's counsel on October 31, 2011 to reach an accommodation regarding the properly noticed deposition (see attached Exhibit 2), counsel for IGS again stated by telephone that neither Mr. White nor any other IGS representative would be made available.

At this time, NOPEC has complied with the Commission's discovery rules; sent sufficient notice to Mr. White and IGS regarding the scheduled depositions; scheduled a court reporter; agreed that IGS would not need to bring any documents to the deposition; and attempted to work with opposing counsel to schedule the depositions at a date, time and location convenient for IGS. Yet, IGS continues to thwart NOPEC's legal right to take a discovery deposition of a witness that is the President of IGS; who played a significant role in a licensing arrangement entered into between NiSource and IGS for the use of the "Columbia" name and starburst logo, an issue at the heart of this case; who signed the licensing agreement with NiSource on behalf of IGS; and who has been named as a witness in this case by one of the Complainants, Stand Energy Corp.

For the reasons set forth above, and pursuant to the Commission's rules, NOPEC respectfully requests that the Attorney Examiner sign the attached subpoena so that Mr. White and one or more of IGS' officers, agents, employees, or other persons duly authorized to testify on its behalf will be compelled to appear and provide testimony at the already noticed deposition

scheduled for November 3, 2011 at the offices of Bricker & Eckler LLP, 100 South Third Street,
Columbus, Ohio 43215.

Respectfully submitted,



Glenn S. Krassen
BRICKER & ECKLER LLP
1001 Lakeside Avenue East, Suite 1350
Cleveland, Ohio 44114
Telephone: (216) 523-5405
Facsimile: (216) 523-7071
E-mail: gkrassen@bricker.com

Matthew W. Warnock
Thomas J. O'Brien
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
E-mail: mwarnock@bricker.com
tobrien@bricker.com

Attorneys for Northeast Ohio Public Energy
Council

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

SUBPOENA

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,

v.

Interstate Gas Supply, Inc.

Respondent.

Case No. 10-2395-GA-CSS

To: Interstate Gas Supply, Inc.
C/O CWS Agency Corporation (statutory agent)
65 East State Street, Suite 1000
Columbus, OH 43215

Upon application of the Northeast Ohio Public Energy Council, **YOU ARE HEREBY COMMANDED TO** produce Mr. Scott White and one or more of IGS' officers, agents, employees, or other persons duly authorized to testify on its behalf at a deposition scheduled for 10:00 A.M. on November 3, 2011, at the offices of Bricker & Eckler LLP, 100 South Third Street, Columbus, Ohio 43215, and relating to:

- (1) IGS' use of the trade name Columbia Retail Energy;
- (2) IGS' discussions with staff at the Public Utilities Commission of Ohio about using the trade name Columbia Retail Energy;
- (3) the licensing agreement between IGS and NiSource regarding the use of the Columbia name and starburst logo;
- (4) Columbia Retail Energy's marketing materials; and
- (5) IGS' communications with NiSource and the Commission Staff related to the use of the trade name Columbia Retail Energy.:

APPROVED:


Attorney Examiner/Legal Director

Notice: If you are not a party or an officer, agent, or employee of a party to this proceeding, then witness fees for attending under this subpoena are to be paid by the party at whose request the witness is summoned.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served upon the following party of record by hand-delivery this 1st day of November 2011.

Interstate Gas Supply, Inc.
C/O CWS Agency Corporation (statutory agent)
65 East State Street, Suite 1000
Columbus, OH 43215

I also hereby certify that a copy of the foregoing was served upon the following parties of record by electronic mail and regular U.S. mail, this 1st day of November 2011.

Stephen B. Seiple
Brook Leslie
200 Civic Center Drive
Columbus, Ohio 43216
sseiple@nisource.com
bleslie@nisource.com

Joseph Serio
Larry Sauer
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
serio@occ.state.oh.us
sauer@occ.state.oh.us

John M. Dosker
Stand Energy Corporation
1077 Celestial Street, Suite 110
Cincinnati, OH 45202
jdosker@stand-energy.com

A. Brian McIntosh
McIntosh & McIntosh
1136 Saint Gregory Street, Suite 100
Cincinnati, OH 45202
brian@mcintoshlaw.com

John Bentine
Stephen C. Fitch
Sarah Daggett Morrison
Marks. Yurick
Zachary D. Kravitz
Chester Wilcox & Saxbe, LLP
65 East State Street, Suite 1000
Columbus, OH 43215
jbentine@cwsllaw.com
sfitch@cwsllaw.com
smorrison@cwsllaw.com
myurick@cwsllaw.com
zkravitz@cwsllaw.com

Mark A. Whitt
Melissa L. Thompson
Carpenter, Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
whitt@carpenterlipps.com
Thompson@carpenterlipps.com


Todd M. Rodgers
NiSource Corporate Services Company
200 Civic Center Drive
Columbus, OH 43215
tmrodgers@nisource.com

Larry Gearhardt
Chief Legal Counsel
Ohio Farm Bureau Federation
280 North High Street
P.O. Box 182383
Columbus, Ohio 43218-2383
LGearhardt@ofbf.org

Stephen B. Seiple
Brook Leslie
200 Civic Center Drive
Columbus, Ohio 43216
sseiple@nisource.com
bleslie@nisource.com

Daniel R. Conway
Eric B. Gallon
Porter Wright Morris & Arthur, LLP
41 South High Street
Columbus, Ohio 43215
dconway@porterwright.com
egallon@porterwright.com

Joseph Serio
Larry Sauer
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
serio@occ.state.oh.us
sauer@occ.state.oh.us



Matthew W. Warnock

Warnock, Matthew

From: Zachary D. Kravitz [zkravitz@cwslaw.com]
Sent: Friday, October 28, 2011 4:33 PM
To: Krassen, Glenn; Warnock, Matthew; O'Brien, Thomas
Cc: JOE SERIO; thompson@CarpenterLipps.com; whitt@carpenterlipps.com; bleslie@nisource.com; sseiple@nisource.com; tmrodgers@nisource.com; LARRY SAUER; lgearhardt@ofbf.org; dconway@porterwright.com; Gallon, Eric; John M. Dosker; Bentine, John; Sarah D. Morrison; 'Vince Parisi'
Subject: OCC, et al. v. IGS; PUCO Case No. 10-2395-GA-CSS

Glenn, Matt and Tom,

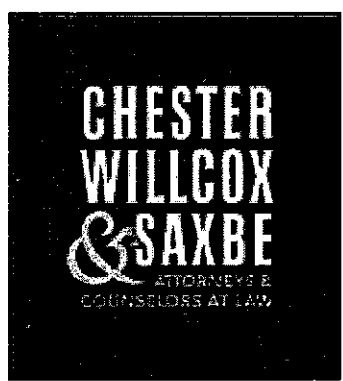
We received NOPEC's notice of deposition, duces tecum, of Scott White and IGS. We believe your Notice is late and will cause IGS, Mr. White and counsel undue burden and expense. The Ohio Rules of Civil Procedure provide 28 days for a party to respond to a deposition duces tecum while the Commission's rules provide twenty days to respond to document requests. Your request provides only eight days to respond. This is simply not enough time to comply with your untimely request and we will not do so.

Moreover, you have had a year to decide to take these depositions. IGS did not list Mr. White as a potential witness in this case and NOPEC never filed a witness list. We do not understand why, at this late hour, you now want to engage in discovery through depositions of a witness neither party intends to call at the hearing.

We object to the Notice of Deposition, do not plan on making Mr. White or any IGS representative available on November 3, and we will be filing a timely motion for protective order for the deposition, duces tecum, of IGS and Mr. White.

Regards,

Zach Kravitz

| | |
|--|--|
|  <p>CHESTER WILLCOX & SAXBE ATTORNEYS & COUNSELLORS AT LAW</p> | <p>Zachary D. Kravitz</p> <p>DIRECT: 614.334.6117 zkravitz@cwslaw.com Chester Willcox & Saxbe, LLP 65 East State Street, Suite 1000 Columbus, OH 43215 MAIN: 614.221.4000 FAX: 614.221.4012 V-Card Bio Page</p> <p>Check out the new www.cwslaw.com</p> |
|--|--|

CONFIDENTIALITY NOTICE

The information contained in this e-mail is intended only for the use of the individual or entity to which it is addressed and it may contain information that is privileged, confidential, attorney work product and/or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient (or the employee or agent responsible to deliver it to the intended recipient), you are hereby notified that any dissemination, distribution, or copying of this e-mail is prohibited. If you have received this e-mail in error, please notify the sender by telephone call at the number listed above or by return e-mail.

LEGAL NOTICE

If you send e-mail to Chester, Willcox & Saxbe, LLP in connection with a matter for which we do not already represent you, your communication may not be treated as privileged or confidential. If you communicate with us by e-mail in connection with a matter for which Chester, Willcox and Saxbe, LLP already represents you, please remember that Internet e-mail is not secure and you may wish to consider other means of sharing the information.

NOTICE REGARDING TAX ADVICE

To the extent that this communication contains any federal tax advice, such advice, unless explicitly stated otherwise, is not intended or written to be used, and cannot be used, by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer.



Please consider the environment before printing this email.

EXHIBIT 2

Warnock, Matthew

From: Warnock, Matthew
Sent: Monday, October 31, 2011 10:02 AM
To: 'Zachary D. Kravitz'; 'Sarah D. Morrison'; Bentine, John
Cc: 'vparisi@igsenergy.com'; Krassen, Glenn; O'Brien, Thomas
Subject: RE: OCC, et al. v. IGS; PUCO Case No. 10-2395-GA-CSS
Importance: High
 John, Zach and Sarah,

Thank you for your message on Friday afternoon. As required by the Ohio Rules of Civil Procedure, and the PUCO's discovery rules, this email serves as NOPEC's attempt to resolve all issues pertaining to the notice of deposition of Scott White and any corporate designee of IGS.

First, the timing of the deposition notice should not be an issue in this case. The PUCO's discovery rules do not limit the time during which a discovery deposition may occur; and, in fact, the PUCO's discovery rules simply require that discovery be completed prior to the start of the evidentiary hearing. Here, NOPEC's deposition comports with the requirements in OAC Rule 4901-1-21(B), establishes a proposed deposition date of November 3rd (which is before the start of the evidentiary hearing), and specifically offers to work with counsel for IGS regarding alternative dates for the deposition(s). Further, the deposition notice was filed and served on October 28th, or approximately six (6) days prior to the proposed deposition date. This is similar to the time frame set forth in IGS' recently filed amended notice of deposition to NOPEC (and a time frame in which NOPEC worked with counsel for IGS to arrange for an alternative time, date and location amenable to all parties).

Second, the fact that neither IGS nor NOPEC identified Mr. White as a witness in this case has no bearing on the deposition notice. The only requirement for discovery, including the holding of a deposition, is that it pertain to "any matter, not privileged, which is relevant to the subject matter of the proceeding." OAC Rule 4901-1-16(B). It is beyond dispute that questioning the President of IGS (Scott White) and any corporate representative designed by IGS is relevant to a case in which IGS is the sole respondent, and that focuses on IGS' use of the Columbia trade name and starburst logo. In addition to being relevant, the deposition of Mr. White is necessary because Stand Energy, one of the co-complainants in this case, identified Mr. White on its witness list. This alone is enough to justify the deposition of Mr. White.

With this information in mind, NOPEC is willing to amicably resolve this dispute by: (1) continuing with the properly noticed depositions of Mr. White and any other corporate designee of IGS without the documents requested in the deposition notice; (2) holding the properly noticed depositions of Mr. White and any other corporate designee of IGS at a mutually agreeable time, date and location as long as it occurs prior to Friday, November 4th; and (3) resolving the duces tecum/document production portion of the deposition notice through pleadings (e.g. a motion for protective order and/or motion to compel). In essence, NOPEC will not require the deponents to bring documents to the deposition, but IGS agrees to produce Mr. White and any other corporate designee for a deposition on November 3rd or an alternative date prior to the evidentiary hearing.

In the event IGS does not agree to produce the noticed deponent(s) on November 3rd (or a mutually agreed upon alternative date), NOPEC will have no choice but to file a motion to compel and request an extension of the November 7th hearing date. Because a court reporter has already been scheduled for November 3rd, we look forward to hearing from you at your earliest convenience, and by no later than the close of business today (Monday, October 31, 2011).

Because the deposition of Mr. Herington is taking place this afternoon, please follow up with Mr. O'Brien (phone: 614-227-2335; email: tobrien@bricker.com) if you have any questions this afternoon.

Matt Warnock
 Bricker & Eckler LLP

11/1/2011

Direct Dial - 614-227-2388

From: Zachary D. Kravitz [mailto:zkravitz@cwsllaw.com]
Sent: Friday, October 28, 2011 4:33 PM
To: Krassen, Glenn; Warnock, Matthew; O'Brien, Thomas
Cc: JOE SERIO; thompson@CarpenterLipps.com; whitt@carpenterlipps.com; bleslie@nisource.com; sseiple@nisource.com; tmrodgers@nisource.com; LARRY SAUER; lgearhardt@ofbf.org; dconway@porterwright.com; Gallon, Eric; John M. Dosker; Bentine, John; Sarah D. Morrison; 'Vince Parisi'
Subject: OCC, et al. v. IGS; PUCO Case No. 10-2395-GA-CSS

Glenn, Matt and Tom,

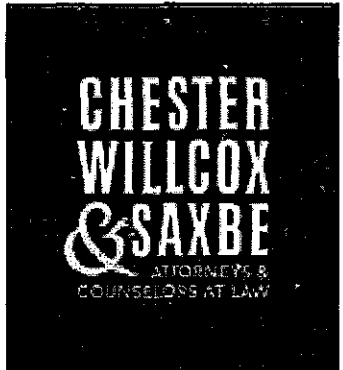
We received NOPEC's notice of deposition, duces tecum, of Scott White and IGS. We believe your Notice is late and will cause IGS, Mr. White and counsel undue burden and expense. The Ohio Rules of Civil Procedure provide 28 days for a party to respond to a deposition duces tecum while the Commission's rules provide twenty days to respond to document requests. Your request provides only eight days to respond. This is simply not enough time to comply with your untimely request and we will not do so.

Moreover, you have had a year to decide to take these depositions. IGS did not list Mr. White as a potential witness in this case and NOPEC never filed a witness list. We do not understand why, at this late hour, you now want to engage in discovery through depositions of a witness neither party intends to call at the hearing.

We object to the Notice of Deposition, do not plan on making Mr. White or any IGS representative available on November 3, and we will be filing a timely motion for protective order for the deposition, duces tecum, of IGS and Mr. White.

Regards,

Zach Kravitz

| | |
|---|--|
|  | <p>Zachary D. Kravitz</p> <p>DIRECT: 614.334.6117 zkravitz@cwsllaw.com Chester Willcox & Saxbe, LLP 65 East State Street, Suite 1000 Columbus, OH 43215 MAIN: 614.221.4000 FAX: 614.221.4012 V-Card Bio Page</p> <p>Check out the new www.cwsllaw.com</p> |
|---|--|

CONFIDENTIALITY NOTICE

11/1/2011

The information contained in this e-mail is intended only for the use of the individual or entity to which it is addressed and it may contain information that is privileged, confidential, attorney work product and/or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient (or the employee or agent responsible to deliver it to the intended recipient), you are hereby notified that any dissemination, distribution, or copying of this e-mail is prohibited. If you have received this e-mail in error, please notify the sender by telephone call at the number listed above or by return e-mail.

LEGAL NOTICE

If you send e-mail to Chester, Willcox & Saxbe, LLP in connection with a matter for which we do not already represent you, your communication may not be treated as privileged or confidential. If you communicate with us by e-mail in connection with a matter for which Chester, Willcox and Saxbe, LLP already represents you, please remember that Internet e-mail is not secure and you may wish to consider other means of sharing the information.

NOTICE REGARDING TAX ADVICE

To the extent that this communication contains any federal tax advice, such advice, unless explicitly stated otherwise, is not intended or written to be used, and cannot be used, by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer.



Please consider the environment before printing this email.