

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of the	)	
Ohio Consumers' Counsel, Stand	)	
Energy Corporation, Incorporated,	)	
Northeast Ohio Public Energy Council,	)	
and Ohio Farm Bureau Federation,	)	
	)	
Complainants,	)	Case No. 10-2395-GA-CSS
	)	
v.	)	
	)	
Interstate Gas Supply, Inc,	)	
	)	
Respondent.	)	

ENTRY

The attorney examiner finds:

- (1) On October 21, 2010, the Ohio Consumers' Counsel (OCC), Border Energy, Inc. (Border), Northeast Ohio Public Energy Council (NOPEC), Stand Energy Corporation (Stand), and the Ohio Farm Bureau Federation (OFBF) (collectively, joint complainants) filed a complaint, alleging that, among other things, Interstate Gas Supply, Inc. d/b/a Columbia Retail Energy (IGS) has engaged in marketing, solicitation, sales acts, or practices that are unfair, misleading, deceptive, or unconscionable. By entry issued February 28, 2011, MXenergy (MX) was granted leave to join the complaint. On March 16, 2011, and May 13, 2011, respectively, Border and MX withdrew from the case.
- (2) On November 12, 2010, IGS filed its answer denying the allegations contained in the complaint and asserting that it has complied with all statutory and regulatory requirements.
- (3) A hearing is currently scheduled to commence in this matter on November 7, 2011.
- (4) On September 22, 2011, Stand filed a motion for leave to file an amended complaint naming Columbia Gas of Ohio, Inc. (Columbia) and NiSource Corporate Services, Inc. (NiSource) as parties. In support of its motion, Stand explains that Columbia's

failure to object to NiSource licensing the use of Columbia's name is a breach of Columbia's tariffs because Columbia allowed NiSource to give benefits and preference to IGS that were not offered to any other competitive retail natural gas supplier in Columbia's territory. In addition, Stand contends that NiSource's licensing of the brand name and logo of Columbia to IGS is an indirect violation of Columbia's tariff by NiSource. According to Stand, if NiSource is not joined as a party, it will evade review of its conduct and equity demands that NiSource be joined. Therefore, Stand concludes that the Commission should afford it the same rights as would be available in federal or state court to join NiSource under both the theory of equity and because the Commission has exclusive jurisdiction over complaints involving utilities. Therefore, Stand requests that it be granted leave to file an amended complaint joining Columbia and NiSource.

- (5) On October 6, 2011, IGS filed a memorandum contra Stand's motion to amend. In its memorandum, IGS points out that Stand's motion was filed more than 11 months after joint complainants filed the original complaint in this case and 32 days before the scheduled hearing in this proceeding. IGS explains that it will be unduly prejudiced if Stand's motion is granted due to the likely need to conduct additional discovery and to continue the hearing. Furthermore, IGS explains that, although Stand asserts that the best result the complainants could hope for against IGS is a cease and desist order, that is the relief requested in the original complaint, which was known to Stand a year ago when the complaint was filed. Accordingly, IGS requests that Stand's motion be denied due to its untimely and prejudicial nature.
- (6) On October 7, 2011, NiSource filed a memorandum contra Stand's motion arguing that the Commission lacks jurisdiction over NiSource as it is not a public utility within the definition contained in Sections 4905.02 and 4905.03, Revised Code. NiSource also explains that the Commission is an administrative body with statutorily granted limited jurisdiction that cannot be invoked based on a theory of equity. NiSource requests that Stand's motion for leave to amend be denied as to NiSource.
- (7) Columbia also filed a memorandum contra Stand's motion on October 7, 2011. In its memorandum, Columbia explains that complainants, other than Stand, are negotiating a settlement in this proceeding while Stand is seeking to prolong the proceeding by

joining two new respondents. Furthermore, Columbia asserts that Stand does not explain, in its motion, how joining NiSource and Columbia is necessary to obtain the relief requested in the complaint, preventing IGS from using the Columbia name and logo. Columbia also points out that Stand's motion is not properly before the Commission because Stand is not represented by an attorney licensed to practice law in Ohio. However, Columbia argues that, even if Stand's motion is considered properly filed, nothing has changed since the filing of the original complaint that would justify the addition of two respondents as necessary parties at this time. Columbia further explains that Stand has not described any proposed claims against Columbia that could be legitimately raised in this proceeding before the Commission as Columbia has no legal obligation to be involved in the licensing agreement between IGS and NiSource. Columbia, therefore, requests that Stand's motion be denied.

- (8) On November 7, 2011, NOPEC filed a memorandum in support of Stand's motion, stating that the Commission retains jurisdiction over Columbia, as a public utility. NOPEC also asserts that the Commission has jurisdiction over NiSource pursuant to Section 4905.05, Revised Code, and must join NiSource and NiSource Retail Services (NRS) as necessary parties.
- (9) On October 11, 2011, NiSource and NRS filed a motion to strike NOPEC's memorandum arguing that NOPEC's memorandum is not provided for in the Commission's procedural rules and that, instead, NOPEC should have joined Stand's motion. NiSource and NRS also explain that they are not public utilities, subject to the jurisdiction of the Commission and, therefore, should not be joined as respondents.
- (10) On October 17, 2011, IGS also filed a motion to strike NOPEC's memorandum in support, arguing that it is procedurally improper. IGS further contends that NOPEC's memorandum inappropriately asserts new grounds for complaint which are untimely and will result in undue prejudice to IGS.
- (11) On October 17, 2011, Stand filed a reply to the memorandum contra filed by NiSource and Columbia. In its reply, Stand explains that it does not intend to pursue any new or additional relief in its amended complaint, only to join the additional parties. Moreover, Stand explains that it is in the process of resolving issues regarding

its representation by an attorney licensed to practice in Ohio. In response to arguments by NiSource and NRS that the Commission does not have jurisdiction over them, Stand argues that NiSource and NRS should not be able to avoid Commission jurisdiction while doing business in Ohio. Therefore, Stand requests that the Commission grant its motion for leave to amend.

- (12) On October 26, 2011, NOPEC filed a memorandum contra the motions to strike its memorandum filed by IGS, NiSource, and NRS, arguing that the Commission has allowed the filing of such motions in the past and that no party is prejudiced by its memorandum. NOPEC further avers that it would agree to the filing of a responsive pleading by IGS with respect to its objections to the addition of NRS as a necessary respondent. NOPEC continues to maintain that the Commission has jurisdiction over NiSource and NRS.
- (13) As an initial matter, the attorney examiner notes that Stand's motion for leave to file an amended complaint filed on September 22, 2011, which was the first independent filing Stand has made in this proceeding, was not signed by an attorney licensed to practice law in Ohio or admitted to practice *pro hac vice*. Rule 4901-1-08, Ohio Administrative Code, provides that "each party not appearing *in propria persona* shall be represented by an attorney-at-law authorized to practice before the courts of this state. Corporations must be represented by an attorney-at-law." Although Stand has since filed a notice of appearance of an attorney licensed to practice law in the state of Ohio, this does not retroactively cure the defect in Stand's motion to amend the complaint. Moreover, should Stand's original counsel be admitted to practice *pro hac vice*, such admission will not apply retroactively to cure the procedural defect in its motion. Accordingly, the attorney examiner finds that Stand's motion is procedurally defective and should be denied.
- (14) Moreover, even if Stand's motion were not procedurally defective, the attorney examiner would remind Stand that the jurisdiction of this Commission is statutorily defined. Section 4905.26, Revised Code, provides that the Commission may hear complaints in writing against any public utility. NiSource and NRS are not "public utilities" within the definition contained in Section 4905.02, Revised Code. Moreover, with respect to Stand's attempt to join Columbia, Stand does not make any credible claim regarding how

Columbia is involved in the issues presented by the complainants in this case. Stand neither alleges any actions associated with Columbia for which relief could be granted, nor does it set forth a request for relief from Columbia. Stand states that it does not even intend to amend the original complaint, which means that no claim for relief from Columbia exists in the record. In addition, nothing prohibited Stand from seeking to join additional respondents when the initial claim was filed over one year ago. Accordingly, even if procedurally proper, the attorney examiner would have serious reservations regarding Stand's motion to amend its complaint at such a late stage in the process of this case. As a final matter, the attorney examiner notes that, with regard to Stand's motion for leave to amend, the original complaint was filed by joint complainants. Stand's motion gives no indication of whether OCC or OFBF join in Stand's motion or oppose the motion.

- (15) Turning to NOPEC's attempt to join NRS as a respondent in its memorandum in support of Stand's motion to amend, NOPEC's request is procedurally defective in that it was not properly filed in the form of a motion to amend. In any event, as stated previously, NRS is not a "public utility" within the statutory definition.
- (16) Finally, with respect to the motions to strike NOPEC's memorandum in support filed by IGS, NiSource, and NRS, given our disposition of Stand's motion for leave to amend and NOPEC's attempt to also join NRS, we find that it is not necessary to rule on these motions to strike as they are rendered moot.

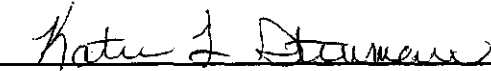
It is, therefore,

ORDERED, That Stand's motion for leave to amend the joint complaint be denied. It is, further,


ORDERED, That the motions to strike NOPEC's memorandum in support filed by IGS, NiSource, and NRS are moot. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

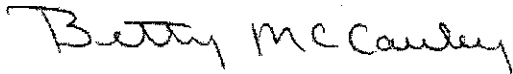


By/ Katie L. Stenman  
Attorney Examiner

  
/dah

Entered in the Journal

NOV 02 2011



Betty McCauley  
Secretary