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 November 1, 2011, Stand filed a motion for a subpoena to compel Scott White, President of IGS, and the person who, on behalf of IGS, signed the licensing agreement that precipitated the filing of this complaint to appear at the November 7, 2011, hearing.

(5) On November 1, 2011, NOPEC filed a motion for a subpoena seeking to compel Scott White, and one or more of IGS' officers, agents, employees, or other persons authorized to testify on its behalf to appear at a deposition to be held on November 3, 2011. In support of its motion, NOPEC explains that it filed its notice of the deposition on October 26, 2011. NOPEC further explains that IGS responded to its notice of deposition via email on October 28, 2011, indicating that neither Mr. White nor any other IGS representative would be made available for the November 3, 2011, deposition. According to NOPEC, none of its attempts to reach an agreement regarding the deposition were successful despite the fact that NOPEC: provided advanced notice to Mr. White; scheduled the court reporter; agreed that Mr. White would not need to bring any documents to the deposition; and attempted to schedule the deposition at a mutually convenient date, time, and location.

(6) On November 1, 2011, IGS filed a motion to quash the subpoena filed by NOPEC. IGS argues, in support of its motion, that NOPEC's attempt to subpoena Mr. White is procedurally improper because Rule 45(A) of the Ohio Rules of Civil procedure provides that "a subpoena may not be used to obtain the attendance of a party or the production of documents by a party in discovery. Rather, a party's attendance at a deposition may be obtained only by notice under Civ. R. 30. . . ." In addition, IGS argues that the subpoena should be quashed because it is unreasonable and oppressive under Rule 4901-1-25(C), Ohio Administrative Code (O.A.C.). IGS explains that NOPEC's notice of deposition, filed October 26, 2011, and its motion for subpoena filed November 1, 2011, is extremely late, especially when one considers the amount of time this complaint has been pending. In addition, IGS further explains that Mr. White will not be available on November 3, 2011, and will be in attendance at another meeting which has been scheduled for several weeks and cannot be rescheduled. IGS also asserts that NOPEC represented in prior discussions that, if the notice of deposition could not be worked out between the parties, it would be filing a motion to compel. Therefore, IGS requests that the subpoena to compel Mr. White's attendance at the deposition on November 3, 2011, be quashed. It does not appear that IGS is challenging the November 1, 2011, subpoena to compel Mr. White's attendance at the November 7, 2011, hearing in this matter.

(7) Rule 4901-1-12(F), O.A.C., provides that an attorney examiner may, upon their own motion, issue an expedited ruling on any motion,

with or without the filing of memoranda, where the issuance of such a ruling will not adversely affect a substantial right of any party. Given the expedited timeframe for the consideration of IGS' motion to quash the subpoena filed by NOPEC, the attorney examiner elects to issue an expedited ruling.

(8) Rule 4901-1-25, O.A.C., provides that "an attorney examiner may, upon their own motion or upon motion of any party, quash a subpoena if it is unreasonable or oppressive."

(9) In reviewing the motion to quash, in light of the fact that the joint complaint has been pending for over a year, as well as the November 7, 2011, hearing date, the attorney examiner agrees with the assertion of IGS that the subpoena seeking to compel Mr. White's attendance at a deposition at this late stage of the procedural schedule is unreasonable. Moreover, the affidavit attached to the motion to quash indicates that Mr. White will be unavailable on November 3, 2011. Accordingly, the attorney examiner finds that NOPEC's November 1, 2011, subpoena is unreasonable and should be quashed. However, in reaching this ruling, the attorney examiner is mindful that IGS is not contesting the subpoena compelling Mr. White's attendance at the November 7, 2011, hearing, thus, NOPEC will have the opportunity to question Mr. White at that time.

It is, therefore,

ORDERED, That IGS' motion to quash the subpoena filed by NOPEC on November 1, 2011, be granted. 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

JRJ
/dah

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Betty McCauley
Secretary