

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of the Office of the Ohio  
Consumers' Counsel, et al. )

Complainants, )

v. )

Interstate Gas Supply, Inc. )

Respondent. )

Case No. 10-2395-GA-CSS

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**NORTHEAST OHIO PUBLIC ENERGY COUNCIL'S  
MOTION TO COMPEL DISCOVERY**

Pursuant to Ohio Administrative Code ("OAC") Rule 4901-1-23, the Northeast Ohio Public Energy Council ("NOPEC") hereby moves the Public Utilities Commission of Ohio ("Commission") to issue an order against Interstate Gas Supply, Inc. ("IGS") compelling IGS to respond to NOPEC's Notice of Deposition, Duces Tecum, Upon Oral Examination of Interstate Gas Supply, Inc., Witnesses, dated October 26, 2011. The reasons supporting this Motion are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

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Attorneys for Northeast Ohio Public Energy Council

**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,

v.

Interstate Gas Supply, Inc.

Respondent.

Case No. 10-2395-GA-CSS

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

On August 6, 2010, Interstate Gas Supply, Inc. ("IGS") filed a Notice of Material Change ("Notice") with the Public Utilities Commission of Ohio (the "Commission") in Case No. 02-1683-GA-CRS (the "Name Change Case") that would allow IGS to offer competitive retail natural gas service under a new trade name, "Columbia Retail Energy." The use of this new trade name would allow IGS to market retail natural gas service to consumers in the Columbia Gas of Ohio ("Columbia Gas") service territory using the "Columbia" name and starburst logo, even though IGS is not affiliated with Columbia Gas. Concerned about IGS' unprecedented filing, which not only presents an issue of first impression before this Commission but likely any other public utilities commission in the United States, NOPEC filed a Motion to Intervene and Motion for an Evidentiary Hearing in the Name Change Case.

NOPEC, along with a number of other interested parties (including each of the Respondents in this case) undertook significant efforts to protest IGS' use of the Columbia Retail Energy trade name in the Name Change Case, including: seven (7) Motions to Intervene,<sup>1</sup> three (3) Motions for an Evidentiary Hearing, one (1) Request for a Rulemaking, two (2) Motions to Compel Discovery,<sup>2</sup> one (1) Motion to Cease and Desist, and one (1) Motion for Sanctions.<sup>3</sup> An Entry dated November 10, 2010 denied many of the pending motions, and suggested that a complaint case would be the proper forum for review of IGS' proposal.

In response to the Commission's November 10<sup>th</sup> Entry, many of the same parties to the Name Change Case, including NOPEC, collectively filed a complaint against IGS in the above-captioned proceeding on October 21, 2010. The joint complainants alleged that IGS has engaged in marketing, solicitation, and/or sales acts or practices which are unfair, misleading, deceptive, or unconscionable. Since filing the complaint, the parties (including NOPEC) engaged in limited discovery and substantive settlement discussions. Recently, however, settlement negotiations broke apart, and NOPEC turned its attention to preparing for the evidentiary hearing scheduled for November 7, 2011.

As part of its preparation for the evidentiary hearing, NOPEC duly served its Notice of Deposition, Duces Tecum, Upon Oral Examination of IGS on October 26, 2011. In its deposition notice, a copy of which is attached to the Affidavit of Matthew W. Warnock as Exhibit 1, NOPEC indicated that it would take the deposition of Scott White, President of IGS, along with any other persons duly authorized by IGS to testify on its behalf. The specific topics

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<sup>1</sup> Motions to Intervene: OCC (August 20, 2010), Border (August 31, 2010), NOPEC (August 31, 2010), Stand Energy (September 7, 2010), Retail Energy Supply Association ("RESA") (September 7, 2010), Delta (September 15, 2010) and Ohio Farm Bureau Federation ("OFBF") (October 5, 2010).

<sup>2</sup> OCC (September 17, 2010) and NOPEC (September 29, 2010).

<sup>3</sup> OCC, NOPEC, Border, Stand, and Delta (September 28, 2010).

to be addressed during the deposition included: (1) IGS' use of the trade name Columbia Retail Energy; (2) IGS' discussions with Commission Staff 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.

On October 28, 2011, counsel for IGS indicated by e-mail that IGS would not be making Mr. White or any other IGS representative available for deposition. More specifically, opposing counsel claimed that: (1) the deposition notice was "late"; (2) the deposition notice was non-compliant with the time frame for responding to a request for production of documents under the Ohio Rules of Civil Procedure; (3) the deposition would "cause IGS, Mr. White and counsel undue burden and expense"; and (4) "IGS did not list Mr. White as a potential witness in this case and NOPEC never filed a witness list."<sup>4</sup> This position was confirmed during a telephone conversation between counsel for IGS and NOPEC on October 31, 2011. In response, and in accordance with OAC Rule 4901-1-23(C), NOPEC attempted to exhaust all reasonable means of resolving this dispute by email and telephone. See email from NOPEC's counsel dated October 31, 2011, and attached to the Affidavit of Matthew W. Warnock as Exhibit 2. More specifically, NOPEC agreed 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

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<sup>4</sup>The Affidavit required by OAC Rule 4901-1-23 (C)(3) is attached hereto as Exhibit A.

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.

When IGS refused to reasonably resolve the dispute, NOPEC had no choice other than to file a motion to compel attendance at the properly noticed deposition.<sup>5</sup>

## **II. LEGAL ARGUMENT**

OAC Rule 4901-1-16 governs discovery in Commission proceedings. Together, subsections (A) and (B) of this rule establish the Commission's policy of encouraging the use of pre-hearing discovery<sup>6</sup>, and allowing "any party to a commission proceeding" to "obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding."

Pursuant to OAC Rule 4901-1-23(A)(3), a party seeking discovery may file a motion to compel based upon any failure of a deponent to appear at a noticed deposition. By refusing to make Mr. White, or any other IGS representative available for deposition, IGS thwarts the discovery process in this case, and disregards this Commission's discovery rules. For this reason and the reasons set forth below, NOPEC requests that the Commission order IGS to make Mr. White and any other IGS corporate representatives available for deposition on November 3, 2011 pursuant to NOPEC's deposition notice. If Mr. White fails to appear at the properly noticed deposition in this case, and continues to ignore the Commission's discovery rules, NOPEC and its co-complainants intend to ask the Commission to require IGS to reimburse NOPEC for the

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<sup>5</sup> To cover all appropriate avenues for relief, NOPEC issued a subpoena on November 1, 2011 to IGS requiring the attendance of Mr. White and any other persons duly authorized by IGS to testify on its behalf.

<sup>6</sup> OAC Rule 4901-1-16(A) explains that the "purpose of rules 4901-1-16 to 4901-1-24 of the Administrative Code is to encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings."

costs, including attorneys' fees, relating to preparing for and attending the properly noticed deposition.

## **2. The Relevancy of the Disputed Discovery**

As required by OAC Rule 4901-1-16(A) and (B), the depositions sought by NOPEC are relevant, reasonably calculated to lead to the discovery of admissible evidence, and necessary to facilitate a thorough and adequate review of IGS' attempted use of a regulated utility's trade name and logo.

Mr. White's deposition is directly related to NOPEC's involvement in this case and is likely to lead to the discovery of admissible evidence. IGS is the sole named Respondent in this case. Mr. White is the President of IGS, with ultimate oversight of the company's marketing functions, including its use of the "Columbia Retail Energy" trade name and logo. Perhaps most importantly, Mr. White signed the licensing agreement between IGS and NiSource that allows IGS to provide retail natural gas services to customers in the Columbia Gas of Ohio service territory using the "Columbia" trade name and logo—the very issue at the heart of this case. If Mr. White is not a proper deponent in this case, it is not clear who would be. In addition, Mr. White has been listed as a witness on Stand Energy Corporation's witness list; and, on November 1, 2011, Stand served a subpoena (signed by the attorney examiner) compelling Mr. White's attendance and testimony at the November 7<sup>th</sup> evidentiary hearing. The inability to depose Mr. White will prevent NOPEC and the other complainants from completing the type of thorough and adequate review of a disputed issue contemplated by the Commission's rules.

## **3. Response to IGS' Objections**

As required by OAC Rule 4901-1-16(C)(1)(c), NOPEC's motion to compel must offer "[r]esponses to any objections raised by the party or person from whom discovery is sought." In

particular, opposing counsel raised four specific objections identified by NOPEC (none of which are proper): (1) the deposition notice was “late”; (2) the deposition notice was non-compliant with the time frame for responding to a request for production of documents under the Ohio Rules of Civil Procedure; (3) the deposition would “cause IGS, Mr. White and counsel undue burden and expense”; and (4) “IGS did not list Mr. White as a potential witness in this case and NOPEC never filed a witness list.”

**A. NOPEC’s deposition notice is timely and comports with the Commission’s discovery rules.**

The timing of the deposition notice in this case should not be an issue. The Commission's discovery rules do not limit the time period during which a discovery deposition must occur. In fact, the Commission's discovery rules simply require that discovery be completed prior to the start of the evidentiary hearing. NOPEC's deposition comports with the requirements in OAC Rule 4901-1-21(B), establishes a proposed deposition date of November 3, 2011 (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 nearly identical to the time frame set forth in IGS’ recently filed second amended notice of deposition to NOPEC. In fact, the second amended deposition notice to NOPEC was filed with the Commission on October 20, 2011 and required Mr. Herington to appear for a deposition just six (6) days later on October 26, 2011. Not only did NOPEC’s counsel contact IGS to arrange for an alternative deposition date (October 31, 2011), but Mr. Herington appeared, provided documents responsive to the duces tecum portion of the notice, and was deposed. NOPEC has gone out of its way to cooperate with



IGS, but to no avail. IGS' improper (and hypocritical) arguments about the timeliness of the deposition notice should be ignored.

**B. Although neither IGS nor NOPEC identified Scott White as a potential witness, both Stand Energy Corporation ("Stand") and OCC did.**

The fact that neither IGS nor NOPEC identified Mr. White as a witness in this case has no bearing on the appropriateness of NOPEC's deposition notice. The only requirement for discovery, including the holding of a deposition, is that it pertains 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 (and any corporate representative designated by IGS) is relevant to a case in which IGS is the sole respondent, and that focuses solely on IGS' use of the "Columbia" trade name and starburst logo. Further, Mr. White is the IGS representative who signed the very licensing agreement with NiSource that gave rise to this complaint case. And, perhaps most importantly, Stand Energy and OCC, two of NOPEC's co-complainants in this case, identified Mr. White on their witness lists. On November 1, 2011, Stand Energy issued a subpoena for Mr. White's attendance at the evidentiary hearing that was signed by the Attorney Examiner in this case. This fact alone justifies the deposition of Mr. White.

**C. There is no undue burden and expense associated with the properly noticed depositions.**

Counsel for IGS argues that the deposition of Mr. White will subject IGS to undue burden and expense. But, IGS has failed to offer anything showing the type of burden and expense that would justify failing to appear at a properly noticed deposition. IGS' corporate headquarters (and presumably Mr. White's office) are located in Dublin, Ohio, less than 20 miles from downtown Columbus. Counsel for IGS is located in central Ohio, and a short walk on State

Street from the proposed deposition location. Even if one or two of the attorneys representing IGS prove unable to attend Mr. White's deposition, there are at least three other attorneys listed on the pleadings from the firm representing IGS that could adequately defend those depositions. Further, NOPEC has worked to find a mutually agreeable date and time for the deposition; however, until the eleventh hour, specifically 3:48 p.m. on November 2<sup>nd</sup> (the day before the scheduled deposition), IGS refused to engage in such discussions. See the e-mail from counsel for IGS attached to the Affidavit of Matthew W. Warnock as Exhibit 4. Even in IGS' proposal, the proposed start date and time (6 a.m. on November 3<sup>rd</sup>) was the only option presented; and it would only be for a limited period of time (until 10 a.m.) based on Mr. White's travel schedule. At this point, IGS' bald assertions of undue burden and expense are simply attempts to evade the Commission's discovery rules.

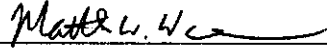
NOPEC's Notice of Deposition is properly targeted to obtain the information necessary to analyze the unprecedented actions of IGS in this proceeding. Ohio consumers eligible for participation in NOPEC's natural gas governmental aggregation program deserve the right to have a careful review of the issues of first impression raised in this proceeding—a task that can only be accomplished through the discovery process. NOPEC simply asks that the Commission require IGS to follow this Commission's longstanding discovery rules and provide immediate responses to the proper discovery requests submitted by NOPEC.

#### **IV. CONCLUSION**

As noted above, the purpose of discovery is to “encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings” OAC Rule 4901-1-16 (A). NOPEC's Notice of Deposition is relevant and necessary for NOPEC to adequately review this unprecedented action

taken by IGS. NOPEC simply asks that the Commission require IGS to follow this Commission's longstanding discovery rules, and issue an order compelling IGS to make Mr. White and any other corporate designee available for deposition.

Respectfully submitted



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Attorneys for Northeast Ohio Public Energy Council

**toBEFORE  
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Interstate Gas Supply, Inc. )

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**AFFIDAVIT OF MATTHEW W. WARNOCK IN SUPPORT OF  
NORTHEAST OHIO PUBLIC ENERGY COUNCIL'S  
MOTION TO COMPEL DISCOVERY**

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STATE OF OHIO )

COUNTY OF FRANKLIN )

ss:

I, Matthew W. Warnock, being duly sworn and cautioned, state that I am competent to testify to the matters stated in this affidavit and further state the following based upon my personal knowledge:

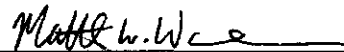
1. I am one of the attorneys representing the Northeast Ohio Public Energy Counsel ("NOPEC") in this matter.
2. This affidavit addresses NOPEC's efforts to reach an accommodation with respect to the Notice of Deposition at issue herein and served on IGS on October 26, 2011 ("NOPEC Notice of Deposition"). A true and accurate copy of the NOPEC Notice of Deposition is attached hereto as Exhibit 1.

3. The NOPEC Notice of Deposition sought to take the deposition of Scott White, President, Interstate Gas Supply, Inc., and pursuant to OAC 4901-1-21(F), one or more of IGS' officers, agents, employees, or other persons duly authorized to testify on its behalf.
4. On October 28, 2011, counsel for IGS indicated by e-mail that IGS would not be making Mr. White or any other IGS representative available for deposition. A true and accurate copy of the October 28, 2011 email is attached hereto as Exhibit 2.
5. In response, and in accordance with OAC Rule 4901-1-23(C), I attempted to exhaust all reasonable means of resolving this dispute by sending an email dated October 31, 2011 to counsel for IGS. A true and accurate copy of the October 31, 2011 email is attached hereto as Exhibit 3.
6. In the October 31, 2011 email, NOPEC agreed 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.”


7. Counsel for IGS did not provide any alternative date, time or location for the deposition of Mr. White or any other IGS corporate designee, until an e-mail was sent at 3:47 p.m. on the afternoon of November 2, 2011. A true and accurate copy of the November 2, 2011 email is attached hereto as Exhibit 4.
8. In the email, the proposed start time for the deposition was 6:00 a.m. on November 3, 2011, with Mr. White having to leave no later than 10 am due to travel plans.
9. Based upon the representations of IGS’ counsel, NOPEC is filing a motion to compel.

Further affiant sayeth naught.

  
Matthew W. Warnock

Before me, a Notary Public in and for said State, personally appeared Matthew W. Warnock, who being by me duly sworn, hereby certifies that the facts set forth in this affidavit are true and correct.

Sworn to before and signed in my presence this 2<sup>nd</sup> day of November 2011.

  
Notary Public

[SEAL]



TERESA E. ORANHOOD  
Notary Public, State of Ohio  
My Commission Expires October 19, 2015

FILE

**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, )

v. )

Interstate Gas Supply, Inc. )

Respondent. )

Case No. 10-2395-GA-CSS

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**NOTICE OF DEPOSITION, DUCES TECUM, UPON ORAL EXAMINATION OF  
INTERSTATE GAS SUPPLY, INC. WITNESSES**

PLEASE TAKE NOTICE that, pursuant to Rule 4901-1-21(A) of the Ohio Administrative Code ("OAC"), counsel for the Northeast Ohio Public Energy Council ("NOPEC") will take the deposition of Scott White, President, Interstate Gas Supply, Inc., 6100 Emerald Parkway, Dublin, Ohio 43016.

Additionally, and pursuant to OAC 4901-1-21(F), IGS shall choose one or more of its officers, agents, employees, or other persons duly authorized to testify on its behalf, and shall set forth, for each person designated, the matters on which he or she will testify. The persons so designated shall testify as to matters known or reasonably available to IGS.

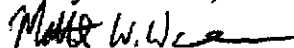
In accordance with OAC Rule 4901-1-21(E), NOPEC requests that the witness(es) subject to this deposition bring all documents and correspondence related to the matters that will be examined during the deposition. The deposition is requested to examine Mr. White, and any other persons duly authorized by IGS to testify on its behalf, on matters pertaining 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

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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.

Such depositions will take place at 10:00 A.M. on November 3, 2011, at the offices of Bricker & Eckler LLP, 100 South Third Street, Columbus, Ohio 43215; or at an alternative time and place to be agreed upon by counsel, and will continue from day to day thereafter until completed. The depositions will be taken by a person authorized to administer oaths in the place where the depositions are taken.

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 26<sup>th</sup> day of October 2011.

  
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**Warnock, Matthew**

---

**From:** Zachary D. Kravitz [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; tmrogers@nisource.com; LARRY SAUER; lgearhardt@offb.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,

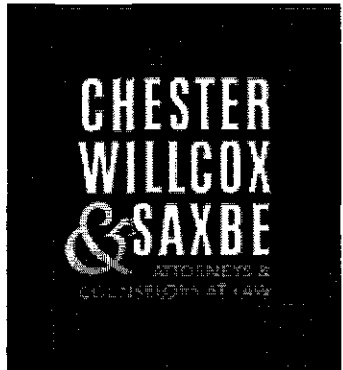
We received NOPEC's notice of deposition, duces tecum, of Scott White and IGS. We believe your Notice is late and will cause IGS, Mr. White and counsel undue burden and expense. The Ohio Rules of Civil Procedure provide 28 days for a party to respond to a deposition duces tecum while the Commission's 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><b>CHESTER WILLCOX &amp; SAXBE</b> ATTORNEYS &amp; COUNSELORS AT LAW</p>	<p>Zachary D. Kravitz</p> <p>DIRECT: 614.334.6117 <a href="mailto:zkravitz@cwsllaw.com">zkravitz@cwsllaw.com</a> Chester Willcox &amp; Saxbe, LLP 65 East State Street, Suite 1000 Columbus, OH 43215 MAIN: 614.221.4000 FAX: 614.221.4012 <a href="#">V-Card</a> <a href="#">Bio Page</a></p> <p>Check out the new <a href="http://www.cwsllaw.com">www.cwsllaw.com</a></p>
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**Warnock, Matthew**

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**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](mailto:tobrien@bricker.com)) if you have any questions this afternoon.

Matt Warnock  
Bricker & Eckler LLP

11/2/2011

Direct Dial - 614-227-2388

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**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.

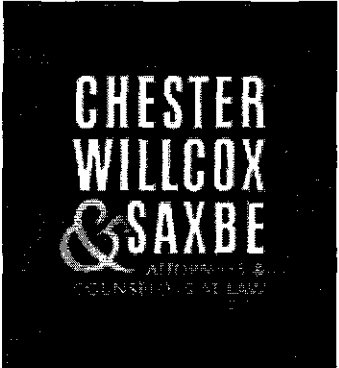
Moreover, you have had a year to decide to take these depositions. IGS did not list Mr. White as a potential witness in this case and NOPEC never filed a witness list. We do not understand why, at this late hour, you now want to engage in discovery through depositions of a witness neither party intends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

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 <p><b>CHESTER WILLCOX &amp; SAXBE</b> ATTORNEYS &amp; COUNSELLORS AT LAW</p>	<p><b>Zachary D. Kravitz</b></p> <p>DIRECT: 614.334.6117 <a href="mailto:zkravitz@cwsllaw.com">zkravitz@cwsllaw.com</a> Chester Willcox &amp; Saxbe, LLP 65 East State Street, Suite 1000 Columbus, OH 43215 MAIN: 614.221.4000 FAX: 614.221.4012 <a href="#">V-Card</a> <a href="#">Bio Page</a></p> <p>Check out the new <a href="http://www.cwsllaw.com">www.cwsllaw.com</a></p>
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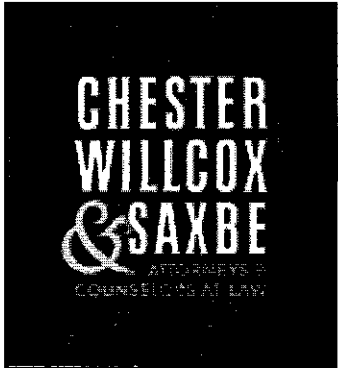
## EXHIBIT 4

**Warnock, Matthew**

**From:** Sarah D. Morrison [smorrison@cwsllaw.com]  
**Sent:** Wednesday, November 02, 2011 3:47 PM  
**To:** Krassen, Glenn; Warnock, Matthew; O'Brien, Thomas; Bentine, John; Zachary D. Kravitz; Vincent Parisi  
**Subject:** RE: White deposition, Case No. 10-2395-GA-CSS  
Counsel,

As you are aware, we have filed a motion for quash the subpoena to Scott White. If that Motion is not acted upon by the Commission by the close of business, Mr. White will make himself available. However, Mr. White has a previous commitment out of Columbus tomorrow so you will need to start the deposition early in the morning. Pursuant to Mr. Warnock's email stating that they were willing to work with us on scheduling, we will make Mr. White available at the offices of Chester, Willcox & Saxbe, LLP in Columbus at **6:00 a.m. tomorrow, November 3.**

Sarah

 <p><b>CHESTER WILLCOX &amp; SAXBE</b> ATTORNEYS &amp; COUNSELLORS AT LAW</p>	<p>Sarah D. Morrison</p> <p>DIRECT: 614.334.6155 <a href="mailto:smorrison@cwsllaw.com">smorrison@cwsllaw.com</a> Chester Willcox &amp; Saxbe, LLP 65 East State Street, Suite 1000 Columbus, OH 43215 MAIN: 614.221.4000 FAX: 614.221.4012 <a href="#">V-Card</a> <a href="#">Bio Page</a></p> <p>Check out the new <a href="http://www.cwsllaw.com">www.cwsllaw.com</a></p>
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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, et al.	)	
	)	
Complainants,	)	
	)	
v.	)	Case No. 10-2395-GA-CSS
	)	
Interstate Gas Supply, Inc.	)	
	)	
Respondent.	)	

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**AFFIDAVIT OF THOMAS J. O'BRIEN IN SUPPORT OF  
NORTHEAST OHIO PUBLIC ENERGY COUNCIL'S  
MOTION TO COMPEL DISCOVERY**

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STATE OF OHIO                    )  
  )       ss:  
COUNTY OF FRANKLIN        )

I, Thomas J. O'Brien, being duly sworn and cautioned, state that I am competent to testify to the matters stated in this affidavit and further state the following based upon my personal knowledge:

1. I am one of the attorneys representing the Northeast Ohio Public Energy Counsel ("NOPEC") in this matter.
2. This affidavit addresses NOPEC's efforts to reach an accommodation with respect to the Notice of Deposition at issue herein and served on IGS on October 26, 2011 ("NOPEC Notice of Deposition").
3. The NOPEC Notice of Deposition sought to take the deposition of Scott White, President, Interstate Gas Supply, Inc., and pursuant to OAC 4901-1-



21(F), one or more of IGS' officers, agents, employees, or other persons duly authorized to testify on its behalf.


4. During this telephone conversation, counsel for IGS indicated that IGS considered the Notice of Deposition untimely and unduly burdensome, and confirmed that IGS would not be making Mr. White or any other IGS corporate designee available for deposition.
5. Based upon the representations of IGS' counsel, NOPEC is filing a motion to compel.

Further affiant sayeth naught.

  
Thomas J. O'Brien

Before me, a Notary Public in and for said State, personally appeared Thomas J. O'Brien, who being by me duly sworn, hereby certifies that the facts set forth in this affidavit are true and correct.

Sworn to before and signed in my presence this 2<sup>nd</sup> day of November 2011.

  
Notary Public

[SEAL]



**TERESA E. GRANDOOD**  
Notary Public, State of Ohio  
My Commission Expires October 18, 2015

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon the following parties of record by electronic mail and regular U.S. mail this 2<sup>nd</sup> day of November, 2011:

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

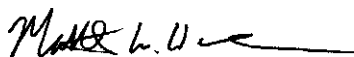
Joseph Serio  
Larry Sauer  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, OH 43215-3485  
[serio@occ.state.oh.us](mailto:serio@occ.state.oh.us)  
[sauer@occ.state.oh.us](mailto:sauer@occ.state.oh.us)

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Cincinnati, OH 45202  
[jdosker@stand-energy.com](mailto:jdosker@stand-energy.com)

A. Brian McIntosh  
McIntosh & McIntosh  
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John Bentine  
Stephen C. Fitch  
Sarah Daggett Morrison  
Zachary D. Kravitz  
Chester Wilcox & Saxbe, LLP  
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[smorrison@cwsllaw.com](mailto:smorrison@cwsllaw.com)  
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[zkravitz@cwsllaw.com](mailto:zkravitz@cwsllaw.com)

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Matthew W. Warnock