

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

Complainants,

 \mathbf{V}_i

**Interstate Gas Supply d/b/a Columbia
Retail Energy**

Respondent.

Case No. 10-2395-GA-CSS

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**INTERSTATE GAS SUPPLY, INC.'S MEMORANDUM CONTRA NOPEC'S MOTION
TO STRIKE**

I. INTRODUCTION

Northeast Ohio Public Energy Council's Motion to Strike is moot now that IGS has provided additional time to respond to the summary judgment motion. However, even assuming *arguendo* that NOPEC's Motion is not moot, IGS Motion for Summary Judgment should not be stricken because the Motion has not prejudiced NOPEC. The reasons for this Memorandum Contra are more fully set forth below.

II. ARGUMENT

IGS filed its Motion for Summary Judgment on November 1, 2011. NOPEC's central objection to IGS' motion concerned NOPEC's ability to file a responsive pleading prior to the November 7, 2011 hearing. However, NOPEC did not file a memorandum contra prior to the hearing, and instead, filed the Motion to Strike. At the hearing, IGS indicated that NOPEC could file its memorandum contra in conjunction with NOPEC's

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post-hearing brief on November 29, 2011. As such, NOPEC has a total of twenty-eight days to respond to the Motion. Accordingly, NOPEC was not prejudiced by the timing of IGS' filing and NOPEC's Motion to Strike is moot.

Assuming *arguendo*, that NOPEC's Motion to Strike is not moot, IGS' Motion for Summary Judgment has not, and will not, prejudice NOPEC. NOPEC claims that IGS' Motion was filed too late to provide time for a response before the hearing. However, at the time IGS filed its Motion for Summary Judgment, the Attorney Examiner had not yet ruled on Stand Energy Company's ("Stand") Motion for Leave to amend the complaint and NOPEC's Memorandum in Support of Stand's Motion, which were filed on September 22, 2011 and October 7, 2011, respectively. In those two filings, Stand and NOPEC requested leave to amend the complaint and add three new parties to the case: NiSource Corporate Services Co., NiSource Retail Services, Inc., and Columbia Gas of Ohio. In the event the motions were granted, NOPEC requested that the procedural schedule be extended to allow time for the new parties file answers.¹ The addition of three new parties would likely have required the procedural schedule to be extended to allow time for new discovery, motions, prehearings, and a new hearing date. IGS' motion was not a prejudicial to NOPEC. Rather, IGS' motion was an attempt to end this case on the merits before IGS was dragged into a renewed, extended, and very costly, proceeding.

NOPEC also incorrectly claims that IGS' filed the Motion for Summary Judgment as an "eleventh hour tactic" to divert NOPEC's attention from preparing for the evidentiary hearing and "encumbering NOPEC's ability to meaningfully respond to the

¹ NOPEC's Memorandum Contra NiSource Corporate Services Co. and IGS' Motions to Strike, at 3 (Oct. 26, 2011).

Motion and/or discovery motions.”² IGS did not file – as NOPEC points out – a 39 page motion with 15 exhibits to distract NOPEC from the hearing or responding to two discovery motions. IGS filed the Motion for Summary Judgment in an effort to brief the issues for an expeditious resolution to this matter.

Furthermore, IGS did not file the Motion for Summary Judgment, Motion for Protective Order and the Motion to Quash as a simultaneous attack on NOPEC to divert attention and prejudice NOPEC's ability to prepare for the hearing. In actuality, the Motion to Quash and Motion for Protective Order were “defensive” motions, which were necessary to respond to NOPEC's “unreasonable”³ Notice of Deposition and Motion for Subpoena.

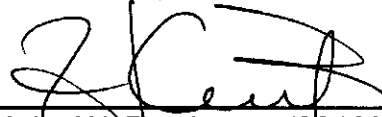
III. CONCLUSION

For the foregoing reasons, IGS respectfully requests that the Commission deny NOPEC's Motion to Strike IGS' Motion for Summary Judgment.

² NOPEC's Motion to Strike, at 3 (Nov. 4, 2011)

³ Entry at ¶19.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Interstate Gas Supply, Inc.'s Memorandum Contra NOPEC's Motion to Strike* was served this 18th day of November, 2011 by U.S. First Class Mail and electronic mail upon the following:

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