

**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,)	Case No. 10-2395-GA-CSS
)	
v.)	
)	
Interstate Gas Supply, Inc.)	
)	
Respondent.)	

**REPLY OF THE NORTHEAST OHIO PUBLIC ENERGY COUNCIL TO
INTERSTATE GAS SUPPLY'S
MEMORANDUM CONTRA MOTION TO STRIKE**

Interstate Gas Supply Inc. ("IGS") filed its Motion for Summary Judgment on November 1, 2011, less than one week before the start of the evidentiary hearing in this case. On November 4, 2011, the Northeast Ohio Public Energy Council ("NOPEC") filed a Motion to Strike IGS' Motion for Summary Judgment (the "Motion to Strike"). On November 18, 2011, IGS filed a Memorandum Contra NOPEC's Motion to Strike.

Although NOPEC incorporates by reference the arguments set forth in its Motion to Strike, there are several additional points that merit the Commission's attention. First, the Motion for Summary Judgment filed by IGS is moot. In *William Steven Gandee, D.C. and Brian Longworth, D.C. v. Choice One Communications of Ohio, Inc. dba One Communications*, PUCO Case Nos. 09-51-TP-CSS and 09-52-TP-CSS, a Commission Entry dated October 4, 2010 explained: "Summary judgment is appropriate only if the undisputed facts and the laws make it clear that it is impossible for one party to prevail should the matter proceed to hearing." Implicit

in this holding is that a motion for summary judgment is only appropriate in order to dispose of a case prior to trial (or in this case, the evidentiary hearing). Yet, IGS filed its Motion for Summary Judgment just six (6) days before the start of the evidentiary hearing. Now, the merits of the case have been fully litigated by way of an evidentiary hearing that lasted for two (2) days. As a result, the merits of the issues raised in the complaint have been fully litigated, and the purpose of IGS' Motion for Summary Judgment (disposing of the case prior to the hearing) is moot.¹

If the Commission denies NOPEC's Motion to Strike, the Motion for Summary Judgment filed by IGS should also be denied because the Commission's rules do not provide for the filing of such a motion. For example, in *Debra and Andrew Dennewitz and State Farm Fire & Casualty Company v. East Ohio Gas Company dba Dominion East Ohio*, PUCO Case No. 07-517-GA-CSS (*Entry* dated October 24, 2007), the Commission explained that "[t]here is no summary judgment provision in the Commission's Administrative Provisions and Procedures at Chapter 4901-1 of the Ohio Administrative Code." Expounding upon this concept in *Chester Simons, d.b.a. Starlink v. ALLTEL Ohio Inc. and Western Reserve Telephone Company*, PUCO Case No. 96-1405-TP-CSS (*Entry* dated October 17, 1997 at paragraph 8), the Attorney Examiner noted:

the Commission's rules of practice do not include a provision that would allow a party to seek summary judgment. While many aspects of the rules of civil procedure are similar to the Commission's rules of procedure, there is no equivalent in the Commission's rules for summary judgment.

Finally, in *Constance A. Weir v. Ohio Edison Company*, PUCO Case No. 89-486-EL-CSS (*Entry* dated May 1, 1989), the Attorney Examiner appropriately concluded:

¹ If the Attorney Examiner chooses to deny the Motion for Summary Judgment as moot, NOPEC agrees that its motion to strike would also be mooted.

summary judgment is a device designed to effect a prompt disposition of controversies on their merits without the need for hearing. Rule 56 of the Ohio Rules of Civil Procedure provides for summary judgment in civil proceedings where there is no genuine issue as to any material fact. There is no similar rule in Rules 4901-1-01 through 4901-1-35 of the Ohio Administrative Code. This action is governed by the requirements of Section 4905.26, Revised Code, which states, in pertinent part, "Upon complaint in writing against any public utility by any person, . . . if it appears that reasonable grounds for complaint are stated, the Commission shall fix a time for hearing. . . ." This statute makes no provision for the dismissal of actions based upon affidavits and other evidence submitted prior to the onset of a hearing. Respondent's motion for summary judgment should, therefore, be denied.

To the best of NOPEC's knowledge, the Commission has never granted a motion for summary judgment. Continuing to argue about IGS' meritless (and procedurally improper) Motion for Summary Judgment is unnecessary, inefficient, a waste of resources, and prejudicial to NOPEC—especially in light of the fact that the case moved beyond the motion to dismiss stage, and the evidentiary hearing has been completed. See e.g. *Debra and Andrew Dennewitz and State Farm Fire & Casualty Company v. East Ohio Gas Company dba Dominion East Ohio*, PUCO Case No. 07-517-GA-CSS (*Entry* dated October 24, 2007) (stating that "When faced with a summary judgment motion, the Commission has denied the motion where it has jurisdiction and reasonable grounds for complaint are stated.").

For the reasons set forth in NOPEC's Motion to Strike and this Reply, NOPEC urges the Commission to grant its Motion to Strike and decide this case upon the merits. In the alternative, the Commission should deem the Motion for Summary Judgment moot, and allow the parties to address their respective legal arguments during the already scheduled briefing process.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon the following parties of record by electronic mail this 25th day of November, 2011:


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Summary: Reply REPLY OF THE NORTHEAST OHIO PUBLIC ENERGY COUNCIL TO
INTERSTATE GAS SUPPLY'S MEMORANDUM CONTRA MOTION TO STRIKE
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