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PUCO

December 12, 2011

VIA UPS NEXT DAY AIR SAVER

Public Utilities Commission of Ohio
Docketing Division
13th Floor
180 East Broad Street
Columbus, OH 43215-3793

Re: Case No. 10-2395-GA-CSS

Ladies and Gentlemen:

Enclosed for filing are the Original and 10 copies of *Stand Energy Corporation's Memorandum Contra the IGS Motion For Protective Treatment*.

Please contact Stand Energy if you have any questions regarding this filing.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Dosker".

John M. Dosker
General Counsel

Enclosures

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
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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.,)

Case No. 10-2395-GA-CSS

Complainants,
v.)

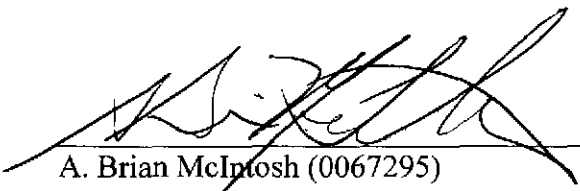
Interstate Gas Supply d/b/a Columbia
Retail Energy,)

Respondent.)

**STAND ENERGY CORPORATION'S MEMORANDUM CONTRA
THE IGS MOTION FOR PROTECTIVE TREATMENT**

Stand Energy Corporation, by and through the undersigned counsel and pursuant to OAC 4901-1-24(D) and R.C. 1333.65 submits this Memorandum Contra the IGS Motion For Protective Treatment for the Service Mark Licensing Agreement allegedly entered between IGS and NiSource Retail Services, Inc. as well as the allegedly confidential portions of the Hearing Transcript from the November 7-8, 2011 hearing in the above-numbered and captioned case.

Respectfully submitted,



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Attorney For Stand Energy Corporation

I. INTRODUCTION

On November 29, 2011, Respondent, IGS Energy filed a Motion For Protective Treatment for the Service Mark Licensing Agreement allegedly entered between IGS Energy and NiSource Retail Services, Inc. as well as certain portions of the Hearing Transcript from the November 7-8, 2011 hearing which were also designated as confidential by IGS Energy. For the reasons set forth herein, Stand Energy Corporation urges the Hearing Examiner to deny the motion and allow the public interest to be served by disclosure of the allegedly confidential or trade secret information. The information is not confidential and it belongs in the public realm.

II. LEGAL ARGUMENT

1. IGS Does Not Have A Clear Legal Right To Protective Treatment

Because a Magistrate or Hearing Officer has discretion under the law to issue or not issue the protective order requested by IGS Energy, no clear legal right to the issuing of such a protective order exists. See, *State ex rel. Berger v. McMonagle* (1983), 6 Ohio.St.3d 28, and *State ex rel. Keenan v. Calabrese* (1994) 69 Ohio.St.3d 176. (Emphasis added).

A. IGS Has Failed To Meet The Burden of Proof.

The stated authority for IGS's Motion is OAC 4901-1-24(D) which only protects information to the extent that it is protected by State or Federal Law, or is "trade secret" under Ohio law or where nondisclosure of the information is not inconsistent with purposes of Title 49 of the Revised Code. *Id.* In order to qualify as a "trade secret" under Ohio law, the information must "derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use." R.C. 1333.61(D)(1).

IGS has submitted a redacted copy of the IGS - NiSource Service Mark Licensing Agreement with substantial redactions into the public record in this case. NOPEC and Stand Energy indicated their position that the Service Mark Licensing Agreement is not a protected trade secret or otherwise entitled to confidential treatment or protection during the hearing herein and arguments associated with admission into evidence of IGS Exhibits 5 and 5a. Stand Energy's position is that the information contained in the redactions does not meet the requirements of law to remain protected.

B. Who or What Owns The Columbia Name and Logo?

Absent proof to the contrary, any reasonable person would assume that Columbia Gas owns the rights to its own name and logo. To date, Stand Energy has accepted the possibility and suggestion by IGS that the name and logo were perhaps transferred to NiSource incident to the Merger with NiSource in approximately 1999. Unfortunately, IGS has presented no proof on this issue. Nowhere in the record has IGS presented any proof that the name and logo of Columbia was ever transferred from Columbia to any other specific legal entity, let alone the specific NiSource subsidiary alleged by IGS Energy to currently own the name and logo. Clearly, only the owner of the name and logo of Columbia Gas can assign it to IGS Energy. So where's the proof? There is literally no evidence on this fundamental issue of ownership of the license which has been raised and suggested throughout these proceedings.

The mere existence of the Service Mark Licensing Agreement with seemingly appropriate signatures affixed thereto does not prove anything. There is no documentation in evidence in this case proving how an unregulated subsidiary of NiSource, with a principal place of business in the State of Indiana, came to allegedly have ownership rights or legal control of the name and logo of Columbia Gas of Ohio - a regulated utility in Ohio.

C. IGS's Motion For Protective Treatment Should Be Denied.

The legal entity that IGS alleges currently owns the name and logo of Columbia Gas is allegedly called *NiSource Retail Services, Inc.* Nowhere in the Affidavit of Dean Bruno, attached to the IGS Motion for Protective Treatment, is the fundamental question of how NiSource Retail Services, Inc. might have allegedly come to own the name and logo of Columbia Gas, addressed. Certainly the alleged ownership of the license has been questioned significantly in various filings to date in this case. IGS has failed to show any "chain of title or ownership" of the name and logo during the hearing and has failed to attach necessary proof to its Motion for Protective Treatment relative to the alleged ownership of the name and logo of Columbia Gas. IGS's Motion must fail. IGS has not shown any evidence that NiSource Retail Services, Inc., or any other specific legal entity, other than Columbia Gas, owns the rights to the Columbia Gas name and logo which is a necessary prerequisite and predicate to having the legal authority to assign or License it to IGS Energy.

Furthermore, the Affidavit of Vince Parisi, also attached to the IGS Motion for Protective Treatment, states at paragraph three (3) that, "IGS was involved in extensive confidential negotiations with *NiSource Corporate Services Company* ("NSC") on behalf of NRS with respect to the Agreement;". Who or what is *NiSource Corporate Services*? What authority does NiSource Corporate Services have to negotiate on behalf of NiSource Retail Services? These are allegedly distinct legal entities after all. Legal formalities should have been observed and documented. Yet, IGS has failed in its burden of proof to prove any legal authority on behalf of *NiSource Retail Services* or *NiSource Corporate Services* having any legal rights whatsoever incident to the Columbia name and logo. IGS Energy has even failed to show any proof that NiSource acquired the name and logo of Columbia Gas in the merger, if NiSource did acquire it.

IGS has shown no source of the alleged ownership of *NiSource Retail Services* or traced that source back to Columbia Gas. It is essential to require IGS Energy to prove fundamental facts establishing, without question, the ownership of the Columbia name and logo before addressing the attempted assignment or moving for Protective Treatment of discussions surrounding those topics. Without proof of ownership, and without any Columbia or NiSource witness to authenticate the license, the record in this case is silent except for uncorroborated, self-serving testimony of IGS witnesses Scott White and Vince Parisi.

IGS's counsel was less than receptive to the "opinions" of Stand Energy's witnesses. Every Stand Energy Witnesses' opinion was derided, or mimicked or otherwise minimized by counsel for IGS as unsupported by "facts" or "relying on hearsay" Relative to this Motion For Protective Treatment, it appears it is IGS Energy that is now suggesting fundamental predicative facts and the answer to the ultimate issue, without establishing ownership of the name and logo - and it is too late for IGS to supplement the record now on this or any issue.

**D. If the Hearing Examiner Finds IGS Energy has met its Burden of Proof
Stand Energy Requests Minimal Redactions to the Public License Version.**

If the Hearing Examiner finds IGS Energy has met its burden of proof on its motion for Protective Treatment, Stand Energy Corporation respectfully requests that IGS Exhibits 5 and 5a be placed side-by-side and the Hearing Examiner should then determine whether each proposed redaction is independently deserving of legal protection. The Hearing Examiner should then immediately authorize the release of the public version of the License that includes approved redactions, if any, into the public domain. The public, but especially Columbia Gas stockholders and ratepayers, have a vested interest and arguably a right-to-know the basic principles that are being litigated in this case. The important facts would include whether NiSource/Columbia is receiving compensation or remunerations from IGS Energy related to the number of gas

customers. The license agreement by itself is not a "trade secret" in Ohio because its disclosure would not, without additional information, assist any other persons, "to obtain economic value from its disclosure or use." as required by R.C. 1333.61(D)(1) to remain confidential and protected. Knowing what IGS paid to NiSource in the past for the use of the Columbia name and logo would not necessarily give any competitor the ability to win the business from NiSource in the future.

At a minimum, the Commission should release a version of the license that enables the public to understand and appreciate the structure of the transaction which is complained of in this case.

The alleged existence of the license along with other evidence produced during the hearing would lead any reasonable person to question the relationship of IGS Energy and NiSource and provide a sound basis for challenging the PUCO's self-characterization of its "Mission Statement" as including the accomplishments of "fostering competition" (9th Bullet) and "Regulating utilities' rates and terms of service for monopoly and non-competitive services" (4th Bullet). (Public Utilities Commission of Ohio, *2010 Annual Report*, Mission Statement, page 2, Attached hereto as Exhibit 1). The PUCO or another agency of the State of Ohio, such as the Attorney General's Office, could have and arguably should have, prosecuted this Complaint case against IGS Energy without a complaint from Stand Energy, NOPEC, OCC or anyone else. Instead, political considerations and political contributions appear to have been responsible for the complete removal of any public obstacle that might have otherwise existed. Amazingly, no Ohio Board, Commission, Agency or Department has questioned anything about the transaction or even asked to see the Service Mark License Agreement at issue!

2. **The Motion For Protective Treatment Cannot Be Reconciled with Title 49 of the Ohio Revised Code.**

A. The Commission Had Jurisdiction To Decide This Issue Absent a Complaint

(4) A gas company, when engaged in the business of supplying artificial gas for lighting, power, or heating purposes to consumers within this state or when engaged in the business of supplying artificial gas to gas companies or to natural gas companies within this state, but a producer engaged in supplying to one or more gas or natural gas companies, only such artificial gas as is manufactured by that producer as a by-product of some other process in which the producer is primarily engaged within this state is not thereby a gas company. All rates, rentals, tolls, schedules, charges of any kind, or agreements between any gas company and any other gas company or any natural gas company providing for the supplying of artificial gas and for compensation for the same are subject to the jurisdiction of the public utilities commission. R.C. 4905.03(4). Emphasis added.

R.C. 4905.03(4), in conjunction with PUCO Mission Statement the allegations in the Complaint herein, clearly gives the Public Utilities Commission of Ohio multiple and independent grounds to exercise jurisdiction and investigate the relationship between NiSource and IGS ("any gas company and any other gas company") and to rule on the propriety of that relationship in light of existing laws, regulations and the public policy of the state. It cannot be argued by IGS that scrutiny of this transaction is outside the scope of Title 49 because R.C. 4905.03(4) applies to the facts of this case even in the absence of a filing of a Complaint.

B. If NiSource/Columbia is Incrementally Enriched By Each New Columbia Retail Energy Customer Sign-up - That is a Violation of Title 49.

If the license agreement between NiSource and IGS Energy includes an incremental payment (as required by most service/trademark license agreements) such a payment simply cannot be reconciled with Title 49 of the Revised Code and the principle of maintaining a level playing field in the competitive energy markets of Ohio. If the parent company of Columbia Gas of Ohio benefits incrementally with each new enrollee signed by Columbia Retail Energy, there is an obvious conflict of interest with the risk of Columbia Gas of Ohio not treating all marketers

equally. If such were the case, Columbia/NiSource would actually benefit financially more from the performance of a single, unaffiliated gas supplier compared to the performance of all other gas marketers. Such financial incentives would certainly appear to be clear violations of the competitive provisions of Title 49. Stand Energy's reasonable concern for competition and the Columbia Gas of Ohio ratepayers is exacerbated by the fact that Columbia Gas of Ohio, and the marketers on its system, are continuing to engage in ongoing discussions that will affect the competitive landscape on the Columbia Gas of Ohio system for years to come. It is simply inappropriate for Columbia Gas of Ohio, or its parent company, to have even a potential financial stake, or potentially receive a financial benefit, from the performance of only one of those Columbia "stakeholders". The Commission must act immediately to take away this obvious and inappropriate advantage to IGS Energy and to re-establish a level playing field in Ohio by denying the Motion For Protective Treatment.

C. The Public Policy of Ohio Favors Competition in Natural Gas

The PUCO website has numerous references to "Competitive Retail Natural Gas" which has essentially become a prefix for many new regulatory terms and phrases describing the competitive natural gas landscape in Ohio, including but not limited to the following:

- Competitive Retail Natural Gas Aggregator
- Competitive Retail Natural Gas Aggregation Service
- Competitive Retail Natural Gas Broker
- Competitive Retail Natural Gas Brokerage Service
- Competitive Retail Natural Gas Marketer
- Competitive Retail Natural Gas Marketing Service
- Competitive Retail Natural Gas Service
- Competitive Retail Natural Gas Supplier

Stand Energy is the only competitor of IGS Energy that remained in the case at the time of the hearing. As a competitor of IGS Energy, Stand Energy can honestly and affirmatively

state that the on-going relationship between IGS and Columbia/NiSource is a continuing problem and a risk to natural gas competition in the State of Ohio. The opinion about the risk to competition was obviously shared by every party that joined the Complaint herein.

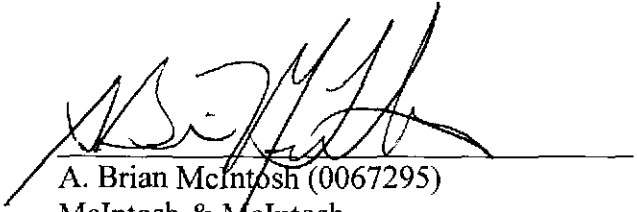
The supposed issue of Confidentiality and Trade Secrets raised by IGS Energy is a "red herring" to distract the parties and more importantly, Hearing Examiner Stenman, away from the real issues presented and to increase the cost and complexity of participating in the case for the Complainants.

IGS has employed a win-at-all-costs strategy of attrition which is well documented in the record of this case. The two parties that IGS could not intimidate into withdrawing or settling for enhanced disclaimers, Stand Energy and NOPEC, were subjected to extremely aggressive last minute legal tactics (which are the subject of an interlocutory appeal). This no-holds barred litigation strategy clearly demonstrates IGS's desperation to achieve its objective - approval of the license agreement with NiSource, at any cost to themselves or others.

III. CONCLUSION

IGS's Motion For Protective Treatment of the alleged license agreement and the related hearing testimony, should all be denied because no proper foundation was laid establishing any chain of ownership of, or title to, the Columbia name and logo with any specific legal entity by any testimony or any documentary evidence. The Hearing Officer cannot simply assume that a NiSource entity, based in Indiana, has the legal right to license the name and logo of a regulated utility in Ohio without documentary and testimonial evidence to support that claim.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of "Stand Energy Corporation's Memorandum Contra The IGS Motion For Protective Treatment" was served this 12th day of December, 2011 by regular U.S. Mail upon the following:

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A. BRIAN MCINTOSH

Ohio

Public Utilities Commission

2010 Annual Report

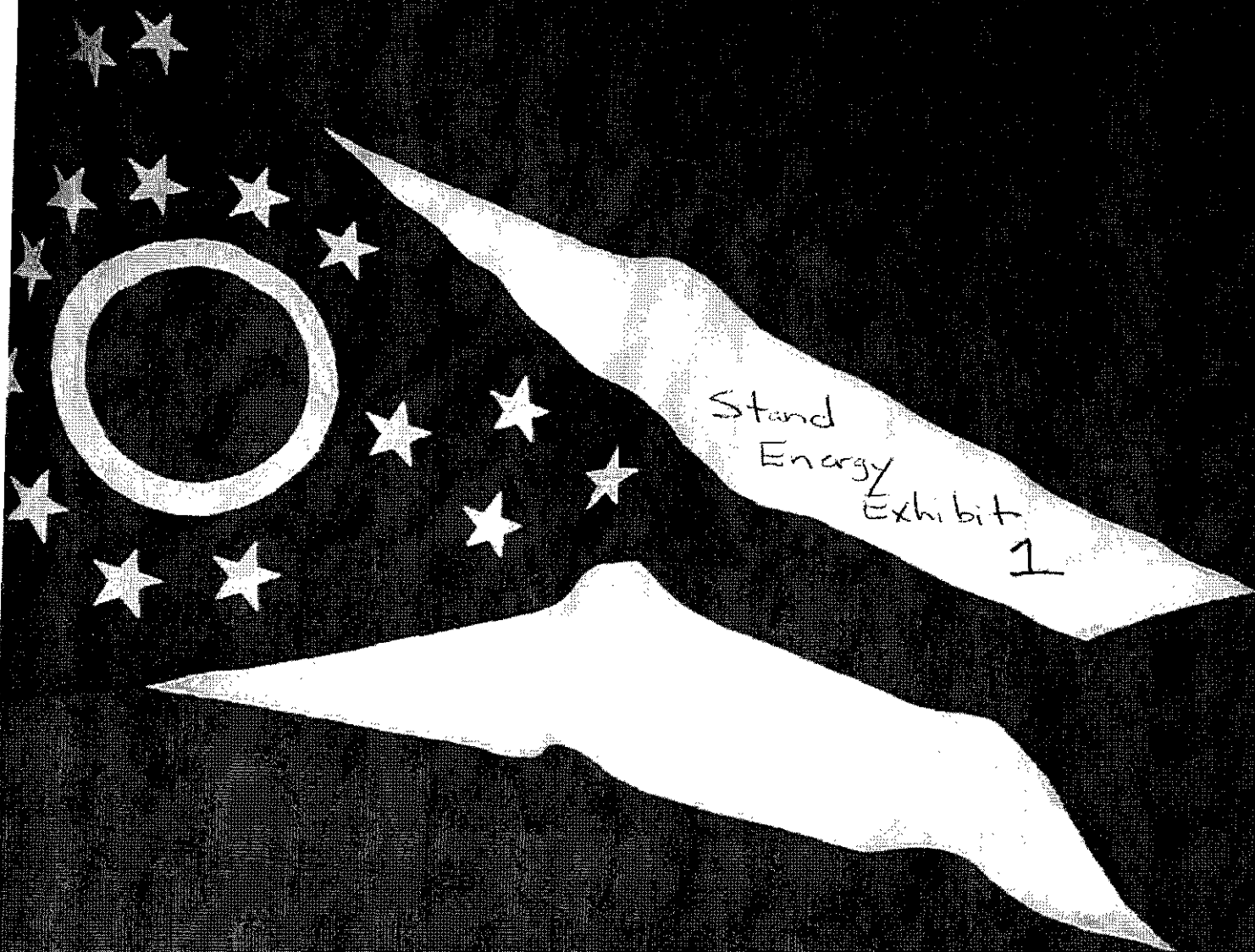


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Mission Statement

To assure all residential and business customers access to adequate, safe, and reliable utility services at fair prices, while facilitating an environment that provides competitive choices

This mission is accomplished by:

- Mandating the availability of adequate, safe, and reliable utility service to all business, industrial, and residential consumers.
- Ensuring financial integrity and service reliability in the Ohio utility industry.
- Promoting utility infrastructure investment through appropriate regulatory policies and structures.
- Regulating utilities' rates and terms of service for monopoly and non-competitive services.
- Monitoring and Enforcing compliance with rules and statutory protections against deceptive, unfair, unsafe, and anti-competitive utility practices.
- Safeguarding the security of Ohio's regulated motor carrier and rail operations, through aggressive inspection, training, monitoring, and education programs.
- Enhancing safety at all public highway-railroad grade crossings in Ohio through education and the installation of lights and gates and other safety devices.
- Resolving through mediation, arbitration, and adjudication disputes between utilities and residential, commercial, and industrial customers, as well as between competing utilities.
- Fostering competition by establishing and enforcing a fair competitive framework for all utilities.
- Utilizing advanced technology for monitoring and enforcing utility compliance, facilitating the provision of information to stakeholders, and sharing information between state and federal agencies.



Public Utilities Commission

John R. Kasich, Governor
Todd A. Snitchler, Chairman

Commissioners

Paul A. Centolella
Cheryl Roberto
Steven D. Lesser
Andre T. Porter

Dear Gov. Kasich and members of the General Assembly:

The Public Utilities Commission of Ohio (PUCO) is the state agency charged with regulating Ohio's investor-owned utilities and enforcing federal safety standards for motor carriers, railroads and natural gas pipelines. The PUCO works hard to realize its mission of assuring all residential and business consumers access to adequate, safe and reliable utility services at fair prices, while facilitating an environment that provides competitive choices.

The PUCO continues to work to implement Senate Bill 221. A new electric security plan was approved for FirstEnergy which establishes electric generation prices through 2014. Additionally, more than 700 facilities were certified by the PUCO as renewable generation facilities.

The PUCO held auctions for three of the four largest natural gas distribution companies to set retail prices for consumers. The PUCO continues to register competitive natural gas suppliers and assist consumers in comparing rate offers with our *Apples to Apples* charts.

Ohio's new low-income assistance program, PIPP Plus, went into effect. PIPP Plus changes the way participants pay their utility bills by implementing a new debt reduction mechanism, encouraging more frequent and timely payments.

In February, the PUCO approved a merger between Frontier Communications and Verizon North. Frontier assumed ownership of Verizon's more than 400,000 lines and made commitments to expanding broadband service throughout its territory. New administrative rules were also established in response to Substitute Senate Bill 162 which made changes to telephone service throughout Ohio.

The PUCO approved hazardous material grants to local government agencies and educational institutions across Ohio totaling nearly \$400,000. The grants are used to train public safety and emergency personnel in the proper techniques for the management of hazardous materials transportation and spills. Through these grants, the PUCO helps to keep Ohio's roadways safe.

Railroad crossing safety continues to improve under the PUCO's watch. Over the past two decades, the annual number of train-motor vehicle crashes in Ohio has decreased significantly, from 326 in 1990 to 64 in 2010.

The PUCO remains committed to our mission of ensuring safe and reliable utility services at fair prices. We look forward to working with you on the evolving issues that will develop in the future.

Sincerely,



Todd A. Snitchler
Chairman

180 East Broad Street
Columbus, Ohio 43215-3793

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