



1077 Celestial Street • Rookwood Bldg. • Suite 110  
Cincinnati, Ohio 45202-1629  
(513) 621-1113  
(800) 598-2046  
(513) 621-3773 Fax

August 23, 2012

Ms. Barcy F. McNeal, Secretary  
Public Utilities Commission of Ohio  
180 East Broad Street, 11<sup>th</sup> Floor  
Columbus, Ohio 43215

**Re: Office of Ohio Consumer's Counsel et al. v. Interstate Gas Supply, Inc.  
PUCO Case No. 10-2395-GA-CSS; Post-Hearing Ex-Parte Communications.**

Dear Ms. McNeal:

Stand Energy Corporation received a copy of a letter dated August 21, 2012 addressed to you, on August 21, 2012 via U.S. Mail, from the Ohio Consumer's Counsel's Office. The letter purported to address the requirements of O.A.C. 4901.09. Before addressing statutorily required items that are missing from the OCC letter, it would be helpful to review the actual rule:

**4901-1-09 Ex parte discussion of cases.**

After a case has been assigned a formal docket number, no commissioner or attorney examiner assigned to the case shall discuss the merits of the case with any party to the proceeding or a representative of a party, unless all parties have been notified and given the opportunity to be present or to participate by telephone, or a full disclosure of the communication insofar as it pertains to the subject matter of the case is made. When an ex parte discussion occurs, a representative of the party or parties participating in the discussion shall prepare a document identifying all the participants and the location of the discussion, and fully disclosing the communications made. Within two business days of the occurrence of the ex parte discussion, the document shall be provided to the commission's legal director or his designee or to an attorney examiner present at the discussion for review. Upon completion of the review, the final document shall be filed with the commission's docketing division within two business days and the filer shall serve a copy upon the parties to the

case and to each participant in the discussion. The document filed and served shall include the following language: **Any participant in the discussion who believes that any representation made in this document is inaccurate or that the communications made during the discussion have not been fully disclosed shall prepare a letter explaining the participant's disagreement with the document and shall file the letter with the commission and serve the letter upon all parties and participants in the discussion within two business days of receipt of this document.** (Emphasis added).

The rule requires the OCC in this situation, to either: 1) notify all parties of the settlement discussions or give them the opportunity to be present or to participate by telephone, or 2) make a full disclosure of the communication "insofar as it pertains to the subject matter of the case". Applying the rule to the facts of this case, OCC admits in footnote 1 on page 1 of its letter that Stand Energy was not notified in advance of the settlement discussions or the ex-parte discussion with Attorney Examiner Stenman.

Based upon statements made by Larry Sauer in the after-the-fact telephone call to Stand Energy Corporation, the August 21, 2012 letter and subsequent e-mail exchanges, Stand Energy believes that it has not received "full disclosure" of the communication ("insofar as it pertains to the subject matter of the case") nor has OCC tendered "a document identifying all the participants and the location of the discussion, and fully disclosing the communications made."

Stand Energy is the party that may have been most seriously injured by the ex-parte communication and any other improper conduct that may have occurred. Therefore, Stand Energy should have the right to raise legitimate questions. Stand Energy and the public have the right to expect complete, rational answers to those legitimate questions.

Here is what Stand Energy knows: Discussions were held with the Attorney Examiner, by parties to the IGS Complaint case, in an attempt to stop issuance of the Decision and Entry that Stand Energy had invested significant amounts of time, money and effort into litigating and had waited almost 9 months to receive the result. OCC on the other hand, declined to participate in litigating (beyond observing). After hearing the explanation of the settlement being discussed by OCC and IGS, Stand Energy stated that it could not settle the Complaint in exchange for IGS's agreement to use certain font types and sizes or to locate the "disclaimers" in certain places on the envelopes containing *Columbia Retail* solicitations. Stand Energy believed bigger, more important principles were at stake in the case.

When Larry Sauer of OCC called John Dosker at Stand Energy the day before the decision was released, Mr. Sauer described settlement discussions involving "IGS staying out" of unrelated PUCO cases in consideration for the "Settlement". Stand Energy had never before been informed of this detail and Stand Energy is not aware of that information being in the record to date. Furthermore, Mr. Sauer was not clear as to exactly what had happened and when. Therefore, full details of those discussions should now be made public pursuant to O.A.C. 4901-1-09.

OCC stated on the record the first day of the Hearing that it was in Settlement discussions with IGS to settle "its portion of the Complaint". Considering the fact that the OCC is the entity charged by Ohio statute with protecting the energy interests of Ohio residential consumers, then OCC should want transparency and should want to inform the public of all the relevant facts.

A reasonable person might ask, why did OCC wait nine months to follow-up and document the "settlement" on the day before the Attorney Examiner's decision was scheduled for release by the PUCO? That question should be answered. It is reasonable under these circumstances to ask these and other questions and expect reasonable answers. Although the ex parte discussion itself may have seemed harmless, do the series of events and statements put into motion by the ex parte communication reveal a much more serious problem at the PUCO? Did IGS become aware, by some unknown means, of the substance of the Attorney Examiner's Decision prior to its release to the public? If so, how and when was this information acquired? These are reasonable questions raised by the facts presented here.

Stand Energy, nor the public, know the basis for the proposed settlement - what consideration was proposed to be given and received by all the participating parties? That information needs to be disclosed at this point. The sequence and timing of the settlement discussions between and among participants in the IGS Complaint case may be important to determine the actual events that transpired. The events surrounding this prohibited ex-parte communication reveal additional and important questions that the PUCO should feel a need to answer.

Respectfully submitted,

STAND ENERGY CORPORATION

By: 

A. Brian McIntosh (0067295)  
Attorney for Stand Energy Corporation  
McIntosh & McIntosh  
1136 Saint Gregory Street  
Suite 100  
Cincinnati, Ohio 45202  
(513) 929-4040 (Phone)  
brian@mcintoshlaw.com (e-mail)

Copies via e-mail to:  
Mark S. Yurick, Esq.  
Zachary D. Kravitz, Esq.  
Joseph Serio, Esq.  
Larry S. Sauer, Esq.  
Dale Arnold  
Matthew Warnock, Esq.  
Glenn Krassen, Esq.

Copy via U.S. Mail:  
Ms. Katie Stenman, PUCO Attorney Examiner

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**8/23/2012 4:31:07 PM**

**in**

**Case No(s). 10-2395-GA-CSS**

Summary: Correspondence Response to OCC Letter informing Stand Energy of an ex-parte communication with the Hearing Examiner. electronically filed by John M. Dosker on behalf of Stand Energy Corporation