

**In the Matter of the Complaint of Interstate
Gas Supply, Inc. d/b/a IGS Energy,

Complainant,

v.

Santanna Natural Gas Corporation, d/b/a
Santanna Energy Services,

Respondent,**

**REPLY IN SUPPORT OF INTERSTATE GAS SUPPLY, INC.'S MOTION TO COMPEL
DISCOVERY**

Since March 4, 2019, Interstate Gas Supply, Inc (“IGS” or “IGS Energy”) has sought meaningful responses to a specific set of requests made in IGS’ First Set of Interrogatories, Requests for Admissions, and Requests for Production of Documents from Santanna Natural Gas Corporation (“Santanna”). In the months that followed, IGS made several attempts to resolve the discovery dispute and obtain the supplemental information requested, but in each instance Santanna rebuffed IGS with a series of objections, evasive and incomplete responses, and/or outright rejections of its request(s) to supplement the responses provided. Realizing that any additional attempt to obtain the information requested would be futile absent intervention from the Public Utilities Commission of Ohio (“PUCO” or the “Commission”), IGS filed a motion to compel discovery on June 7, 2019.

On June 24, 2019, Santanna filed a memorandum contra (“memorandum”) IGS’ motion to compel discovery. Throughout its memorandum Santanna attempts to justify its refusal to

supplement its discovery responses by mischaracterizing the scope of IGS' Complaint, and arbitrarily limiting the allegations of misconduct contained therein to Santanna's telephonic sales representatives. In doing so, Santana argues that any request to supplement information related its door-to-door sales, marketing, and enrollment practices is irrelevant and beyond the scope of IGS' Complaint.¹ IGS, however, has a substantial basis to believe that Santanna's door-to-door sales representatives were making outbound telephone calls – effectively operating a rogue call center – to mislead, deceive, and improperly enroll customers in violation of Ohio law and the Commission's rules.

Santanna's telephonic and door-to-door sales and marketing practices – both telephonic and door-to-door – are squarely at issue in the Complaint; therefore, the supplemental information IGS requested regarding the sales, marketing, and enrollment practices of Santanna's door-to-door sales representatives is relevant to demonstrate that the misconduct occurred. The information is also likely to lead to the discovery of admissible evidence in that it will enable IGS to identify the full scope of the misconduct and extent of harm caused. Any attempt by Santanna to arbitrarily limit the scope of IGS' inquiry is unreasonable and should be denied.

For the reasons set forth below, the Commission should reject the arguments raised in Santanna's memorandum and grant IGS' request to compel discovery of the specific interrogatories, requests for admissions, and requests for production of documents identified in the supporting memorandum to its Motion to Compel.

II. ARGUMENT

(A) Santanna's Memorandum Contra Mischaracterizes the Scope and Substance of IGS' Complaint and Should Be Dismissed.

¹ Santanna Memorandum Contra (June 24, 2019).

Santanna attempts to justify its refusal to supplement its responses to IGS' First Set of Discovery by mischaracterizing the scope of IGS' Complaint, and desperately trying to limit the scope of discoverable information in this case exclusively to Santanna's telephonic agents' sales and marketing practices.² Santanna argues that because IGS' Complaint alleges that Santanna improperly solicited customers by telephone - and does not specifically allege that Santanna violated any laws regarding its door-to-door solicitation practices - IGS is not entitled to discover any information related to Santanna's door-to-door sales channel.³ Santanna's arguments are supported by flawed logic and should be dismissed.

Santanna argues that IGS' is not entitled to obtain the supplemental discovery information requested because IGS' Complaint does not specifically allege misconduct regarding door-to-door solicitations or the enrollment of Jennifer White. First, Santanna claims that IGS' Complaint falls short of incorporating Santanna's door-to-door sales representatives by reference because Paragraph 5 to the Complaint, which IGS cited in its Motion to Compel, does not specifically mention Santanna by name.⁴ In support, Santanna relies on the plain language of that Paragraph, which states in pertinent part: "electric service companies and retail natural gas suppliers market their products and services to Ohio consumers through various means, including telemarketing and door-to-door solicitations."⁵ Santanna argues that because it is not specifically mentioned in that Paragraph by name, IGS' statement is neither an allegation nor statement of fact regarding

² *Id.* at 6.

³ *Id.* at 3.

⁴ *Id.* at 5.

⁵ *In the Matter of the Complaint of Interstate Gas Supply, Inc., d/b/a IGS Energy, vs. Santanna Natural Gas Corporation, d/b/a Santanna Energy Services*, Case No. 19-362-GE-CSS (February 1, 2019), at ¶ 5. (hereinafter "Complaint")

Santanna, and therefore, cannot be used to incorporate its door-to-door sales representatives by reference.⁶ Santanna misreads IGS' Complaint.

In evaluating the claims set forth in a complaint, Ohio courts must construe the complaint in the light most favorable to the plaintiff, presume all of the factual allegations in the complaint as true, and *make all reasonable inferences in favor of the plaintiff.*⁷ (emphasis added). The allegations contained in Paragraphs 14-26 of IGS' Complaint incorporate each of the preceding Paragraphs by reference. In Paragraph 2 of its Complaint, IGS established that Santanna is both a "electric services company" and "retail natural gas supplier" as those terms are defined in the Ohio Revised Code.⁸ Making all reasonable inferences in favor of IGS, its statement in Paragraph 5 that electric service companies and retail natural gas suppliers market products through door-to-door sales should be read to include Santanna as well as its door-to-door sales representatives. Accordingly, Santanna's first argument should be dismissed.

Next, Santanna argues that it is not required to supplement the discovery responses identified in IGS' Motion to Compel because IGS "only alleged wrongdoing with regard to telephonic solicitations."⁹ Santanna relies on IGS' reference to telemarketing as the solicitation method used to commit the alleged offenses to define the scope of IGS' Complaint and arbitrarily limit discovery in this case to the conduct of Santanna's telephonic sales representatives.¹⁰ In Santanna's view, since IGS' Complaint did not specifically allege wrongdoing with regard to door-

⁶ Santanna Memorandum Contra at 6.

⁷ *Grover v. Bartsch*, 170 Ohio App. 3d 188, 2006 Ohio 6115, P16, 866 N.E. 2d 547

⁸ R.C. 4928.01(A)(9); R.C. 4929.01(N).

⁹ Santanna Memorandum Contra at 7.

¹⁰ *Id.*

to-door solicitations (or the enrollment of Jennifer White), any information associated with those matters is irrelevant and unrelated to IGS' Complaint.¹¹

Santanna mischaracterizes the form and substance of IGS' Complaint and its argument should be dismissed. IGS' Complaint does not limit the scope of the alleged misconduct to Santanna's telephonic sales agents. Indeed, IGS alleged in its Complaint that Santanna's "*sales representatives*"¹² made certain misrepresentations to IGS' customers via telephone, and its Complaint should be read to include any individual Santanna retained to solicit products and services on its behalf – including its door-to-door sales representatives. IGS' reference to Santanna's "*sales representatives*" placed the acts and practices of *all* its sales agents squarely at issue in the Complaint; therefore, any inquiries related to the specific sales, marketing, and enrollment practices of Santanna's door-to-door agents are well-within the scope of the Complaint for purposes of discovery in this proceeding.

Santanna's argument that IGS' reference to "telemarketing" defines and limits the scope of the complaint to solicitations by dedicated telephonic sales agents is also misguided.¹³ Though IGS alleged that Santanna used the telephone as its preferred vehicle to mislead, deceive, and obtain invalid enrollments from IGS customers (and presumably other Ohio consumers), its reference to telephonic¹⁴ solicitation should not be taken to mean that the acts complained of were committed exclusively by Santanna's telephonic sales representatives.

Door-to-door sales representatives frequently use a wireless telephone to initiate third-party verifications prior to concluding a sale. Knowing that, IGS believes there is a distinct

¹¹ *Id.*

¹² Complaint at ¶8.

¹³ Santanna Memorandum Contra at 6.

¹⁴ Complaint at ¶8.

possibility that third-party door-to-door sales agent(s), like those employed by Santanna, could use his/her wireless device to solicit customers telephonically and obtain additional, otherwise invalid, enrollments on Santanna's behalf. Since IGS has a substantial basis to believe that Santanna's door-to-door agents either improperly contacted, or enrolled, IGS' customers – including Jennifer White – by telephone and engaged in the acts and practices alleged in the Complaint, IGS should be entitled to evaluate any and all information related to those claims.

An allegation that Santanna improperly solicited customers telephonically should not allow Santanna to reframe IGS' Complaint to suit its objections in this dispute; nor should it allow Santanna to arbitrarily limit the scope of discovery in this case to the activity of its telephonic sales agents. Based on the foregoing, Santanna's arguments should be dismissed and the Commission should require it produce the supplemental information requested in IGS' Motion to Compel.¹⁵

(B) Santanna's Argument that its Objections Were "Well-Made" is Meritless and Should Be Dismissed.

Santanna's second argument is really no different than its first in that it argues it should not be required to supplement the 14 interrogatories, requests for admission, and requests for production of documents at issue in IGS' Motion to Compel because the objections it raised were properly made, and should therefore be sustained.¹⁶ The crux of Santanna's argument is that each of the 14 interrogatories at issue in this dispute is not discoverable because the information requested is beyond the scope of the Complaint and not reasonably calculated to lead to the discovery of admissible evidence.¹⁷ Santanna's argument, however, can only be supported by a gross mischaracterization of the scope of IGS' Complaint.

¹⁵ Motion to Compel of Interstate Gas Supply, Inc. at 9-10 (June 7, 2019).

¹⁶ Santanna Memorandum Contra at 9.

¹⁷ *Id.*

Both Ohio law and the Commission's rules permit discovery of any unprivileged matter relevant to the subject matter of the pending proceeding.¹⁸ The Commission's rules also permit discovery of information reasonably calculated to lead to the discovery of admissible evidence.¹⁹ IGS' requests for information related to the sales, marketing, and enrollment practices of Santanna's door-to-door sales agents is relevant and likely to lead to the discovery of other, admissible evidence. Accordingly, IGS respectfully requests that the Commission compel Santanna to supplement its responses to the following discovery requests:

i. Interrogatories 3 and 4

Santanna objected to IGS' interrogatories 3 and 4 arguing that both were irrelevant since Paragraph 8 of IGS' Complaint accuses Santanna's sales representatives of improperly soliciting customers by telephone.²⁰ Here again, Santanna uses flawed logic to narrow the scope of IGS' Complaint and avoid responding directly to the questions presented.

Interrogatories 3 and 4, which ask Santanna to provide the identities and business addresses of its door-to-door sales agents, are relevant because IGS' Complaint alleges that Santanna's "*sales representatives*" contacted IGS' customers by phone and engaged in misconduct that violated Ohio law and the Commission's rules.²¹ As stated above and in IGS' Motion to Compel, IGS' reference to Santanna's "*sales representatives*" is intentionally drafted to include any individual Santanna retained to solicit products and services on its behalf.

¹⁸ Ohio Adm. Code 4901-1-16(B); Civ.R. 26(B).

¹⁹ Ohio Adm. Code 4901-1-16(B).

²⁰ Santanna Memorandum Contra at 9.

²¹ Complaint at ¶8

Santanna states that “IGS’ position appears to be that an allegation of misconduct in soliciting customers telephonically allows IGS to also conduct discovery on door-to-door solicitations.”²² Once again, Santanna misconstrues the scope of IGS’ Complaint. IGS’ Complaint focuses on the solicitations made by Santanna’s *sales representatives*. Paragraph 8 does not specifically identify Santanna’s *telephonic* sales representatives as the offending parties, because IGS did not, and could not, know whether the improper conduct was perpetuated exclusively by Santanna’s telephonic sales representatives. Any suggestion that a group of third-party door-to-door agents could not use the telephone to mislead potential customers and increase enrollments on Santanna’s behalf defies logic. Therefore, because the information requested is relevant, the Commission should compel Santanna to respond to each interrogatory fully and directly.

ii. Interrogatories 26 and 27

Santanna argues that it is not required to supplement its responses to IGS’ interrogatories 26 and 27 because IGS never specifically alleged that Jennifer White’s enrollment was improper in its Complaint.²³ Santanna further alleges that because “no solicitation by Santanna’s representatives even occurred [regarding Ms. White’s enrollment] there could be no improper telephonic solicitation, which is the only allegation in the Complaint.”²⁴ Setting aside the fact that Santanna has provided no evidence to disprove whether Ms. White was ever actually contacted by its representatives, Santanna seems to overlook that IGS’ Complaint clearly alleges that Santanna engaged in misleading, deceptive, and unconscionable sales and marketing practices that violated

²² Santanna Memorandum Contra at 10.

²³ *Id.* at 10.

²⁴ *Id.*

Ohio law and the Commission's rules. Ms. White's enrollment is just one example in which Santanna's agents made certain representations regarding product pricing and services that violated Ohio law and the Commission's rules.

Further, IGS is not required to specifically mention Ms. White by name in its Complaint to discover information related to her enrollment. Jennifer White is/was an IGS customer that enrolled with Santanna for retail electric and natural gas services, and IGS has a substantial basis to believe that Santanna's agent made several representations during that enrollment that were improper. Despite Santanna's contention that Ms. White was "enrolled lawfully by direct solicitation,"²⁵ IGS also has a substantial basis to believe that the sales solicitation and enrollment were performed telephonically. IGS' knowledge of Ms. White's enrollment, and Santanna's belief in the method by which that enrollment was performed, strongly suggest that a door-to-door sales agent for Santanna used the telephone to enroll Ms. White and make certain misrepresentations that violated Ohio law and the Commission's rules - just as IGS alleged in its Complaint. The information requested is relevant and will lead to the discovery of other admissible evidence; therefore, the Commission should require Santanna to supplement its responses to IGS' interrogatories 26 and 27.

iii. Interrogatories 32 and 33

Santanna argues that it is not required to disclose the identity of the third-party agent and vendor that enrolled Jennifer White, nor the number of enrollments that specific agent obtained on Santanna's behalf because of its misconception that Ms. White "was enrolled by direct

²⁵ Motion to Compel of Interstate Gas Supply, Inc., Exhibit 4 at RFA 01-06.

solicitation.”²⁶ It is for that reason, Santanna argues, that the information requested is beyond the scope of IGS’ Complaint and is not discoverable under the Commission’s rules.

IGS’ Complaint alleges that Santanna’s sales representatives – both telephonic and door-to-door – engaged in fraudulent sales and marketing practices. Although it is Santanna’s contention that Ms. White was enrolled by a door-to-door sales agent, there is a reasonable basis to believe that Ms. White was unlawfully enrolled by a door-to-door agent performing telephonic solicitations and enrollments on Santanna’s behalf. Further, Ms. White’s enrollment calls into question the validity of each and every enrollment that specific agent performed and is likely to reveal other IGS customers that were victimized by Santanna’s fraudulent sales tactics. For the foregoing reasons, the Commission should compel Santanna to respond fully and completely to IGS’ interrogatories 32 and 33.

iv. Interrogatories Nos. 36, 37, 38, and 39

Santanna objected to IGS’ interrogatories 36-39 arguing that it already responded to the questions presented.²⁷ Specifically, Santanna’s contends that its general statement that it “acts in accordance with Commission rules” regarding the alleged door-to-door natural gas enrollment of Jennifer White represents an affirmative response to each question asked.

Santanna’s responses when asked whether it obtained Ms. White’s signature on the retail natural gas contract and associated acknowledgement form, and whether it retained those documents are evasive and incomplete. If Santanna complied with the rules regarding door-to-door natural gas enrollments as it alleged, IGS should be entitled to evaluate that information to

²⁶ Santanna Memorandum Contra at 14.

²⁷ *Id.* at 15.

verify Santanna's claims. It is for that reason that the questions presented are critical to verify whether Santanna's agent acted in accordance with the Commission's rules regarding Ms. White's enrollment as Santanna alleged. The information provided - or lack thereof given that it would be impossible to obtain a written signature over the phone - should also shed light on IGS' contention that a door-to-door sales representative for Santanna utilized the telephone to improperly solicit and enroll customers. For the foregoing reasons, IGS respectfully requests that the Commission direct Santanna to respond affirmatively to IGS' interrogatories 36 through 39.

v. Request for Admission 8

Santanna objects that it should be not be required to admit (or deny) that it failed to obtain a signed acknowledgement form as part of Jennifer White's alleged door-to-door natural gas enrollment, because IGS limited the discoverable subject matter of its Complaint to telephonic solicitations. Referring to IGS' Complaint as a "fishing expedition"²⁸, Santanna argues that a request concerning the existence of a signed natural gas acknowledgement form is inappropriate and beyond the scope of discovery in this proceeding. Here again, Santanna mischaracterizes the scope of IGS' Complaint.

IGS' Complaint alleges that Santanna's sales representatives contacted customers telephonically and engaged in deceitful sales and marketing tactics. IGS' reference to telephonic solicitations limits the manner in which those solicitations were performed; it does not limit the scope of misconduct exclusively to Santanna's telephonic sales representatives. Santanna alleged that Jennifer White was enrolled lawfully by direct solicitation, but IGS has reason to believe that the enrollment was performed telephonically by one of Santanna's door-to-door agents.

²⁸ *Id.*

Santanna's response to the request for admission at issue will lead to the discovery of admissible evidence and enable the parties to determine whether Santanna's agents may have violated additional provisions of Ohio law and the Commission's rules.

Put another way, if Santanna contends that Ms. White was truly enrolled through a door-to-door solicitation, it should be required to produce evidence to demonstrate the truth of that claim: including all forms required to demonstrate compliance with that door-to-door electric and natural gas enrollment. Santanna claims that it has evidence that contradicts IGS' argument that Ms. White was enrolled telephonically, but it refuses to provide discoverable information necessary to substantiate that claim. Therefore, because the information requested is well-within the scope of IGS' Complaint, the Commission should compel Santanna to respond affirmatively to IGS' Request for Admission No. 8.

vi. Request for Production of Documents 4, 5, and 6

Finally, Santanna argues that IGS' requests to produce both the natural gas and electric enrollment documentation and the corresponding third-party verification associated with Jennifer White's enrollment is irrelevant since IGS' Complaint did not specifically allege that door-to-door solicitations and Ms. White's enrollment were improper.²⁹ Santanna's attempt to reframe the scope of IGS' Complaint to justify its refusal to produce the information requested should be dismissed. Once again, Santanna has alleged an alternative set of facts, yet it refuses to produce any discovery to substantiate its defense.

Again, IGS has substantial basis to believe that Ms. White's natural gas and electric enrollments with Santanna were improper. Ms. White's enrollment is just one example in which

²⁹ *Id.* at 16.

Santanna's agents made certain representations regarding product pricing and services that it simply could not support. The purpose of discovery is to give the plaintiff an opportunity to evaluate the contentions in the complaint and attest the defenses asserted by the defendant. The presence of signed (forged or missing) natural gas and electric contracts is relevant to IGS' claim that Santanna's agents violated the Commission's rules.

The request is also highly likely to lead to admissible evidence. If Ms. White's natural gas and electric enrollments were conducted at her door and in compliance with the Commission's rules as Santanna alleged, then Santanna should be in possession of the signed documents that purportedly bear her signature. Alternatively, if Santanna's sales representatives performed improper telephonic solicitations as IGS alleged, then Santanna should possess recordings of the sales portion of those telephone calls. Either way, IGS' request for production is the first step in determining the full scope of Santanna's misconduct and the extent of harm caused.

III. CONCLUSION

There is a substantial basis to believe that Santanna's sales representatives have engaged in inappropriate and unlawful conduct. Santanna's memorandum contra, however, seeks to arbitrarily narrow the scope of IGS' Complaint to justify its refusal to produce information that is clearly tailored to lead to the discovery of relevant and admissible evidence. Accordingly, IGS respectfully request that the Commission compel Santanna to provide supplemental responses to the discovery requests identified in IGS' Motion to Compel.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Reply in Support of Interstate Gas Supply, Inc.'s Motion to Compel Discovery* has been served upon the following persons via electronic mail this 1st day of July 2019.

/s/ **Michael Nugent**

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Summary: Reply in support of IGS' Motion to Compel electronically filed by Mr. Michael A Nugent on behalf of Interstate Gas Supply, Inc.