

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of Interstate Gas     )  
Supply, Inc., d/b/a IGS Energy, v. Santanna     )  
Natural Gas Corporation, d/b/a Santanna     ) Case No. 19-362-GE-CSS  
Energy Services, for Actions in Violation of the     )  
Ohio Revised and Administrative Codes.     )

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**REPLY TO INTERSTATE GAS SUPPLY INC.'S MEMORANDUM CONTRA  
MOTION FOR PROTECTIVE ORDER TO PREVENT FURTHER UNDULY  
BURDENSOME AND HARASSING DISCOVERY REQUESTS  
BY  
SANTANNA NATURAL GAS CORPORATION**

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**I. INTRODUCTION**

The Memorandum Contra filed by Interstate Gas Supply, Inc. d/b/a IGS Energy (IGS) on August 14, 2019 with the Public Utilities Commission of Ohio (Commission), serves only to underscore the necessity of Santanna Natural Gas Corporation d/b/a Santanna Energy Services' (Santanna) Motion for Protective Order to Prevent Further Unduly Burdensome and Harassing Discovery Requests (Motion). Specifically, IGS claims that it satisfied the Commission's pleading standard "when it alleged that Santanna's sales representatives made certain misrepresentations to IGS' customers via telephone that violated Ohio law and the Commission's rules and included statements of the relief requested."<sup>1</sup> In essence, IGS has admitted that "the facts which constitute the basis of the complaint," as required by Ohio Adm. Code 4901-9-01(B), are alleged

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<sup>1</sup> IGS' Memorandum Contra at 4 (internal footnotes omitted).

misrepresentations made by Santanna's sales representatives to IGS' customers via telephone. Nothing more.

With that Complaint, IGS defined the scope of this proceeding and, pursuant to Ohio Adm. Code 4901-1-16, the scope of the discovery process. Nonetheless, despite the concession in its Memorandum Contra, IGS still claims it is entitled to discovery related to Santanna's direct solicitation processes (despite not alleging wrongdoing in that area of Santanna's solicitation business), the enrollment of specific customers (despite not alleging wrongdoing with regard to any specific enrollments in its Complaint), and *all* enrollments performed by certain Santanna vendors. By the express terms of the Complaint, such discovery is not relevant and not likely to lead to the discovery of admissible evidence. On this basis alone, Santanna's Motion should be granted.

Ohio law is very clear: a party cannot use the discovery process to identify a claim to pursue, determine whether a case exists at all, or merely fish around in an effort to locate incriminating evidence. Yet, that is precisely what IGS is attempting to do with the discovery requests at issue in the Motion. Despite its allegations in the Complaint, when asked in discovery, IGS has not been able to identify any misrepresentations allegedly made by Santanna or provide the identity of any IGS customers who were improperly solicited by Santanna via telephone with specificity. This is not surprising since IGS appears to have simply regurgitated its allegations against another competitor in another proceeding in the Complaint here.<sup>2</sup> But, when "push comes to shove," IGS cannot substantiate those regurgitated allegations against Santanna. Instead, IGS wants a

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<sup>2</sup> Cf. Complaint with *In the Matter of the Complaint of Interstate Gas Supply, Inc., d/b/a IGSY Energy v. Titan Gas LLC d/b/a Titan Gas & Power*, 17-2452-GE-CSS, Complaint (December 1, 2017).

competitor, Santanna, to open its books and allow discovery on all of its inner workings so that IGS can poke around in an effort to locate incriminating evidence and/or gain a competitive advantage. That is an undisputed abuse of the discovery process and should not be countenanced by Commission.

Finally, and perhaps most importantly, the Commission should be concerned with the slippery slope impact of IGS' litigation and discovery abuses in this case. In essence, IGS filed a Complaint against Santanna for which it has admitted in discovery it does not have any evidence to support.<sup>3</sup> IGS merely used a cookie-cutter complaint that it had filed against another competitor and through which it successfully removed that competitor from the market for two years. It appears clear that IGS is attempting to reduce its competitors in Ohio's consumer Choice program through the litigation process. And, if it has no evidence at the outset to support the factual allegations in the Complaint, IGS simply thinks it can serve open-ended and fishing discovery requests in an effort to try to find evidence of misconduct. It is a win-win for IGS: either it has rid itself of a competitor through a Complaint (or settlement) of its litigation claims or it has gained valuable and commercially sensitive intel on how its competitor markets, solicits, and operates, giving IGS a competitive advantage in the market. And despite IGS' assurances to the contrary, given the type of claim, the discovery sought, and the IGS representatives involved in this matter, a confidentiality agreement is insufficient to protect against the latter objective. Such abuse of the litigation and discovery processes should not be supported by the Commission.

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<sup>3</sup> See Interstate Gas Supply Inc.'s Response to Santanna Natural Gas Corporation's Second Set of Interrogatories and Requests for Production of Documents (IGS' Discovery Responses) at SANT-INT-02-001, attached as Attachment E.

In short, by way of Ohio's Choice program, customers come and go from service providers. It does not mean that every time a customer chooses differently, there was something nefarious, fraudulent, or improper. To carry out IGS' theory, then every single time a customer leaves IGS, IGS could file a complaint against the competitor that the customer chose and fish around in discovery to determine if it has a claim against that competitor. And, for that matter, Santanna or any other competitor could file a complaint against IGS every single time it loses a customer to IGS and force IGS to open its books and allow its competitors access to commercially sensitive information. The Commission's complaint docket should not be manipulated in a manner to thwart competition. Under Ohio law, IGS must have evidence to support the factual allegations in its Complaint against Santanna. It cannot use the discovery process to expand upon the scope of the Complaint to try to find evidence of wrongdoing.

Accordingly, Santanna's Motion should be granted, precluding IGS from seeking further unduly burdensome and harassing discovery that is beyond the scope of the allegations contained within the Complaint.

## **II. DISCUSSION**

### **A. IGS Cannot as a Matter of Law Use the Discovery Process as a Fishing Expedition to Locate Incriminating Evidence and Identify a Claim to Pursue.**

It is well-established Ohio law that a party cannot use the discovery process to identify a claim to pursue, determine whether a case exists at all, or merely fish around in an effort to locate incriminating evidence. "The court may permissibly limit discovery so as to prevent mere 'fishing expeditions' *in an effort to locate incriminating*

evidence.”<sup>4</sup> Indeed, the Commission has recognized that discovery cannot be used to have a respondent prepare the complainant’s own direct case for it: “[D]iscovery is not unlimited; and it cannot be used as a fishing expedition nor can it be used to ask an adverse party to prepare one’s own direct case.”<sup>5</sup>

Thus, IGS’ attempt to distinguish the *Williams* decision<sup>6</sup> is unavailing as the underlying principles are well-established at the Commission. Regardless of whether the complainant in *Williams* was a *pro se* litigant, discovery cannot be used as a fishing expedition in an effort to have a respondent prepare the complainant’s case for it, to locate potentially incriminating evidence, to stumble across unforeseen information that may assist the complainant’s case, or to determine whether a case exists at all.

Yet, that is precisely what IGS is doing in discovery in this proceeding. Indeed, IGS concedes that its open-ended discovery is intended “to ascertain the scope and degree

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<sup>4</sup> *Bland v. Graves*, 85 Ohio App.3d 644, 659, 620 N.E.2d 920, 930 (9th Dist.1993) (emphasis added), citing *Manofsky v. Goodyear Tire & Rubber Co.*, 69 Ohio App.3d 663, 668, 591 N.E.2d 752, 755 (9th Dist. 1990); *Henderson v. Speedway L.L.C.*, 8th Dist. Cuyahoga No. 106737, 2018-Ohio-4605, ¶ 15 (same); *Townsend v. Ohio Dept. of Transp.*, 10th Dist. Franklin No. 11AP-672, 2012-Ohio-2945, ¶ 43 (same); *Insulation Unlimited, Inc. v. Two J’s Properties, Ltd.*, 95 Ohio Misc.2d 18, 23, 705 N.E.2d 754, 757 (C.P.1997) (“[A] court may limit discovery to prohibit ‘fishing expeditions’ in which a party gives an overly broad discovery request in hopes of stumbling across unforeseen information that aids his case.”); *Webler v. Dyneer Corp.*, 5th Dist. Stark No. CA-6901, 1986 WL 12974, \*2 (“[A]ll courts agree that discovery is not to be used as a means of determining whether a case exists at all; discovery is prohibited unless and until it is clear that a viable suit exists.”).

<sup>5</sup> *In the Matter of the Regulation of the Fuel Cost Adjustment Clause Contained Within the Rate Schedules of the Monongahela Power Co. & Related Matters.*, Case No. 78-625-EL-FAC, Entry (July 24, 1978), 1978 WL 443352, \*2; see also *In the Matter of the Application of the Cleveland Elec. Illum. Co. for Auth. to Amend & to Increase Certain of Its Filed Schedules Fixing Rates & Charges for Elec. Serv.*, Case No. 80-376-EL-AIR, Entry (Nov. 14, 1980), 1980 WL 625218, \*1, citing *Monongahela Power Company*, Case No. 78-625-EL-FAC (Entry, July 24, 1978) (“The Commission has noted with some concern that the practice of making sweeping demands for information has continued, despite Commission rulings that discovery is not unlimited, and that it cannot be used as a fishing expedition.”); *In the Matter of the Application of the Cleveland Elec. Illum. Co. for Auth. to Amend & to Increase Its Filed Schedules for Fixing Rates & Charges for Elec. Serv.*, Case No. 71-634-Y, Minority Entry On Rehearing (1974), 1974 WL 383753, \*7 (“The Commission will not permit discovery tactics which are, at best, fishing expeditions.”).

<sup>6</sup> See *In the Matter of the Complaint of Diana Williams v. Ohio Edison Co.*, Case No. 08-1230-EL-CSS, Finding and Order at ¶ 13 (October 28, 2009).

of Santanna's wrongdoing."<sup>7</sup> It is not intended to support or investigate the actual factual allegations in the Complaint. The alleged misconduct in IGS' Complaint should be fact-specific. In fact, IGS already claims to have purported evidence to support the allegations in the Complaint, which Santanna would dispute as no such evidence has been produced to support such claims even though it was requested.<sup>8</sup> If such is true, however, IGS should have pled with specificity in its Complaint. If such is true, IGS should have also turned over the evidence in discovery. If such is true, no additional discovery is needed. IGS simply wants to fish around in an effort to find wrongdoing by Santanna. That amounts to poking around to locate potentially incriminating evidence.

IGS should know, and indeed, claims to know,<sup>9</sup> the alleged misrepresentations made, the identity of IGS' customers to whom those alleged misrepresentations were made, and the telephone numbers used to communicate those alleged misrepresentations. IGS is not entitled to an open door to the inner workings of Santanna unrelated to those allegations. Nor should IGS be entitled to discover the potentially "thousands of customers" that Santanna's "outbound telemarketing campaign [] could have potentially touched[.]"<sup>10</sup> IGS should know its current or former customers who have allegedly complained about Santanna. The truth of the matter is that, as set forth in the Motion, the Commission's public records demonstrate that no customer ever called the Commission complaining about solicitations from Santanna in the name of IDS during the requisite time

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<sup>7</sup> IGS's Memorandum Contra at 4.

<sup>8</sup> Id.

<sup>9</sup> See IGS' Memorandum Contra at 4.

<sup>10</sup> See Attachment E, IGS' Discovery Responses at SANT-INT-02-001.

period.<sup>11</sup> And, IGS' discovery responses confirm that it cannot identify any customers who allegedly were improperly solicited by Santanna and further claim that it does not have any documents relating to the specific allegations in the Complaint.<sup>12</sup> In essence, IGS wants Santanna to do its job for it and help it come up with its direct case against Santanna. That is improper under Ohio law. As such, Santanna should not have to open its entire customer or potential customer list to enable IGS to identify a claim to pursue.

Simply stated, IGS cannot use the discovery process in an effort to identify a claim it can pursue against Santanna. Such misuse and abuse of the discovery process is unduly burdensome and harassing, and more importantly, contrary to well-established Ohio Law. Therefore, Santanna's Motion should be granted.

**B. IGS' Discovery Requests regarding Santanna's Door-To-Door or Direct Solicitations, Enrollments, and Practices are Not Related to the Allegations IGS Made in Its Complaint.**

IGS' discovery requests are not directly related to the allegations made in its Complaint. For example, as its purported justification for discovery related to Santanna's door-to-door or direct solicitations, enrollments, and practices, IGS claims that the "*Complaint does not limit the acts complained of to Santanna's telephonic representatives only*" and goes onto assert that "IGS did not specifically identify Santanna's *telephonic* sales representatives as the offending parties in Paragraph 8 of the Complaint . . ."<sup>13</sup> But, in fact, it does. A review of the express language of the Complaint proves IGS' assertions false:

- Paragraph 7: "Upon information and belief, Respondent advertises its products and services to Ohio consumers *via telemarketing*;

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<sup>11</sup> See Attachment D to Motion.

<sup>12</sup> See Attachment E, IGS' Discovery Responses at SANT-INT-02-001 – SANT-INT-02-009.

<sup>13</sup> IGS' Memorandum Contra at 5-6.

- Paragraph 8: “Starting on or about January 9, 2018, Respondent’s sales representatives *began contacting* both IGS’ customers, and other individuals, *via telephone using the numbers 1-800-429-5708 at ext. 234 and 708-283-0947 . . .*”;
- Paragraph 10: References a request by Respondent that “the customer *contacts Respondent to discuss* his or her account in more detail”;
- Paragraph 11: References that “IGS’ customers *will call* Respondent to inquire about the status of their account”;
- Paragraph 12: Alleges that during the call referenced in Paragraphs 10 and 11 that “Respondent then solicits the IGS customer . . .”; and
- Paragraph 13: Alleges that Respondent’s conduct “has the potential to adversely impact other IGS customers that may find themselves *on Respondent’s call list.*”<sup>14</sup>

These facts form the bases for, and are incorporated into, IGS’ five causes of action. And, each fact is, by its express terms, related to telephone calls, i.e., telemarketing and telephonic solicitations. There simply is no reference in the Complaint whatsoever to door-to-door or direct solicitations.

Presumably recognizing that the specific factual allegations of the Complaint are based solely upon telemarketing efforts, in its Memorandum Contra, IGS argues that a single general, non-specific allegation in Paragraph 5 of the Complaint as to how Ohio’s consumer Choice program works is somehow sufficient to allow discovery related to Santanna’s door-to-door or direct solicitations, enrollments, and practices.<sup>15</sup> IGS is incorrect. IGS also claims that Jennifer White was improperly enrolled telephonically. IGS is incorrect again as Jennifer White was not solicited by Santanna. What the evidence shows is that Matt White, IGS’ General Counsel, voluntarily contacted a vendor and

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<sup>14</sup> See Complaint (emphasis added).

<sup>15</sup> See IGS’ Memorandum Contra at 7.



unfittingly enrolled his wife's account.<sup>16</sup> Thus, the enrollment cannot be alleged to be improper by Santanna under the Complaint.

While in the context of a motion to dismiss a complaint must be construed in the light most favorable to the complainant, Ohio law is equally clear that claims premised upon fraud and/or misrepresentation must be pled with specificity. It is well-established at the Commission that "[w]ithout limiting the commission's discretion the Rules of Civil Procedure should be used wherever practicable."<sup>17</sup> And, Ohio Rule of Civil Procedure 9(B) mandates that claims premised upon fraud or misrepresentation must be pled with specificity.<sup>18</sup> It is undisputed that IGS' Complaint is premised upon fraud and misrepresentation.<sup>19</sup> IGS admits as much in its Memorandum Contra.<sup>20</sup> Thus, IGS cannot merely rely upon a single general allegation regarding Ohio's customer Choice program as a whole – without any specific reference to Santanna – to justify gaining access to discovery regarding Santanna's door-to-door or direct solicitations, enrollments, and practices. As such, Santanna's Motion should be granted.

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<sup>16</sup> See Attachment E, IGS' Discovery Responses at SANT-RFA-02-004.

<sup>17</sup> *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789, 856 N.E.2d 213, ¶ 82 (2006), citing R.C. 4903.22 ("Except when otherwise provided by law, all processes in actions and proceedings in a court arising under Chapters 4901., 4903., 4905., 4906., 4907., 4909., 4921., 4923., and 4927. of the Revised Code shall be served, and the practice and rules of evidence in such actions and proceedings shall be the same, as in civil actions.").

<sup>18</sup> See Ohio R. Civ. P. 9(B); see also *Sutton Funding, L.L.C. v. Herres*, 2010-Ohio-3645, ¶ 50, 188 Ohio App. 3d 686, 697, 936 N.E.2d 574, 582 (quoting *Rieger v. Podeweltz*, Montgomery App. No. 23520, 2010-Ohio-2509, 2010 WL 2225398, ¶ 9) ("Failure to specifically plead the operative facts constituting an alleged fraud presents a defective claim that may be dismissed. *Universal Coach, Inc. v. New York Transit Auth., Inc.* (1993), 90 Ohio App.3d 284[, 629 N.E.2d 28]. The 'particularity' requirement of Civ.R. 9(B) means that the pleading must contain allegations of fact which tend to show each and every element of a cause of action for fraud.").

<sup>19</sup> See Complaint.

<sup>20</sup> See IGS' Memorandum Contra at 4.

**C. IGS Cannot Use the Litigation and Discovery Processes To Rid Itself of Competitors Thereby Reducing the Choices that Consumers Have and/or Gain Access to Its Competitors' Commercially Sensitive Information and Trade Secrets to Gain a Competitive Advantage.**

It is well-established in Ohio that the litigation process cannot be used to thwart competition or otherwise force competitors out of business. Specifically, it has been held improper and an abuse of the litigation process “to pervert the legal process with the ulterior motive of disrupting and ruining the successful business of a competitor.”<sup>21</sup> Likewise, as set forth above, it is equally well-established in Ohio that the discovery process cannot be used to identify a claim to pursue, determine whether a case exists at all, or merely fish around in an effort to locate incriminating evidence. Nonetheless, IGS filed a Complaint against Santanna for which it has admitted in discovery it does not have any evidence to support “the facts which constitute the basis of the complaint,” as required by Ohio Adm. Code 4901-9-01(B).<sup>22</sup> IGS wants the Commission to allow it to rectify this deficiency by allowing open-ended and fishing discovery in an effort to try to find evidence of misconduct. For the reasons set forth above, that is improper.

Moreover, IGS cannot be allowed to use the litigation process in an effort to reduce its competitors in Ohio’s consumer Choice program. Under Ohio’s consumer Choice program, customers come and go from service providers. It does not mean that every time

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<sup>21</sup> Kurinsky v. Natl. Cable Television Assn., 98 Ohio App. 3d 716, 726, 649 N.E.2d 860, 866 (1994) (reversing and remanding to trial court for further proceedings); see also Hildreth Mfg., L.L.C. v. Semco, Inc., 2003-Ohio-741, ¶ 73, 151 Ohio App. 3d 693, 717–18, 785 N.E.2d 774, 793–94 (denying a motion to dismiss an abuse of process counterclaim where it was alleged that “the proceeding has been perverted to attempt to accomplish an ulterior purpose for which it was not designed, i.e. interfering with the Hildreth parties’ ability to lawfully conduct a competing business and to put it out of business”).

<sup>22</sup> See Attachment E, IGS’ Discovery Responses at SANT-INT-02-001 – SANT-INT-02-009. Interestingly, in its Memorandum Contra, IGS claims to have “evidence to independently support the allegations in the Complaint.” See IGS’ Memorandum Contra at 4. Yet, IGS has not provided it in discovery, instead claiming that it needs to get access to Santanna’s records to get the purported evidence.

a customer chooses differently, there was something nefarious, fraudulent or improper. As explained previously, to carry out IGS' theory, then every single time a customer leaves IGS, IGS could file a complaint against the competitor that the customer chose and fish around in discovery to determine if it has a claim against that competitor. IGS should not be allowed to use the complaint process to thwart competition.

Under Ohio law, IGS must have evidence to support the factual allegations in its Complaint against Santanna. It cannot use the discovery process to expand upon the scope of the Complaint to try to find evidence of wrongdoing. Such abuse of the litigation and discovery processes should be rejected.

### **III. CONCLUSION**

The Commission's rules require that discovery be taken only on matters that are within the scope of the Complaint. Therefore, for the reasons set forth above and in Santanna's Motion, Santanna respectfully requests an order from the Commission precluding IGS from seeking further unduly burdensome and harassing discovery that is beyond the scope of the allegations contained within the Complaint, which is unjust and unreasonable.

Respectfully submitted,

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*Counsel for Santanna*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing was served on August 21, 2019 by electronic mail upon all parties of record.

/s/ Kimberly W. Bojko  
Kimberly W. Bojko

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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Santanna Natural Gas Corporation, d/b/a ) Case No. 19-362-GE-CSS  
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Violation of the Ohio Revised and )  
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)

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**INTERSTATE GAS SUPPLY INC.'S RESPONSE TO SANTANNA NATURAL GAS  
CORPORATION'S SECOND SET OF INTERROGATORIES AND REQUESTS FOR  
PRODUCTION OF DOCUMENTS**

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Interstate Gas Supply, Inc., d/b/a IGS Energy, hereby submits its responses to Santanna Natural Gas Corporation's Second Set of Interrogatories and Requests for Production of Documents pursuant to Ohio Administrative Code ("OAC") Rules 4901-1-16, 4901-1-17, 4901-1-18, 4901-1-19, 4901-1-20, and 4901-1-22.

### **GENERAL OBJECTIONS AND RESERVATIONS**

Each of IGS' responses, in addition to any specifically stated objections, is subject to and incorporates the following general responses and objections. The assertion of the same, similar, or additional objections, or a partial response to any individual request does not waive any of IGS' general responses and objections.

1. The following responses reflect the current state of IGS' knowledge, understanding and belief with respect to matters about which the inquiry has been made. IGS expressly reserves the right to supplement or modify these responses with such pertinent information as it may hereafter discover, and will do so to the extent required by the Ohio Rules of Civil Procedure. IGS expressly reserves the right to rely on, at any time, subsequently discovered documents and/or materials that have been produced promptly upon discovery. Ohio Adm. Code § 4910-1-16(D).

2. IGS objects to any interrogatory, or request for production of documents, that seeks information constituting or containing information concerning communications between IGS and its counsel, which are protected by the attorney-client privilege. Ohio Admin. Code § 4901-1-16(B).

3. IGS objects to any interrogatory, or request for production of documents, that seeks information constituting or containing information prepared in anticipation of or

as a result of litigation or which is otherwise protected by the work product doctrine or other available privilege or protection. Ohio Admin. Code § 4901-1-16(B).

4. The inadvertent provision of information or the production by IGS of documents containing information protected from discovery by the attorney-client privilege, work product doctrine or any other applicable privilege, shall not constitute a waiver of such privileges with respect to that information or those or any other documents. In the event that inadvertent production occurs, Santanna Natural Gas Corporation shall return all inadvertently produced documents to IGS upon request, and/or shall make no use of the contents of such information or documents nor premise any further discovery on information learned therefrom.

5. IGS objects to and declines to respond to each and every discovery request to the extent that it seeks information that is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. Ohio Admin. Code § 4901-1-16(B).

6. IGS objects to and declines to respond to each and every discovery request to the extent that it is harassing, unduly burdensome, oppressive or overbroad. Ohio Admin. Code § 4901-1-16(B) and 4901-1-24(A).

7. IGS objects to each and every discovery request to the extent that it seeks information that is proprietary, competitively sensitive or valuable, or constitutes trade secrets. Ohio Admin. Code § 4901-1-24(A).

8. To the extent that interrogatories seek relevant information that may be derived from the business records of IGS or from an examination or inspection of such records and the burden of deriving the answer is the same for the party requesting the information as it is for IGS, IGS may specify the records from which the answer may be

derived or ascertained and afford the party requesting the information the opportunity to examine or inspect such records. Ohio Admin. Code § 4901-1-19(D).

9. IGS objects to each and every discovery request to the extent that it calls for information that is not in IGS' current possession, custody, or control or could be more easily obtained through third parties or other sources. Ohio Admin. Code § 4901-1-19(C) and 4901-1-20(D). IGS also objects to each and every discovery request that seeks information that is already on file with the Public Utilities Commission of Ohio or the Federal Energy Regulatory Commission. To the extent that each and every discovery request seeks information available in pre-filed testimony, pre-hearing data submissions and other documents that IGS has filed with the Commission in the pending or previous proceedings, IGS objects to it. Ohio Admin. Code § 4901-1-16(G).

10. IGS reserves its right to redact confidential or irrelevant information from documents produced in discovery. All documents that have been redacted will be stamped as such.

11. IGS objects to each and every discovery request to the extent that it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning, and may, therefore, make responses misleading or incorrect.

12. IGS objects to each and every discovery request to the extent that it calls for a legal conclusion, and thus seeks information that cannot be sponsored by a witness.

13. IGS objects because these discovery requests seek information that IGS does not know at this time.



14. IGS objects to the request to the extent that it mischaracterizes previous statements or information or is an incomplete recitation of past statements or information or takes those statements or information outside of the context in which they were made.

\*Please note that Santanna's Second Set of Discovery Requests to IGS were mislabeled. For the sake of clarity, IGS relabeled Santanna's Interrogatories, Requests for Admissions, and Requests for Production of Documents to reflect their designation as the second set in the series.

### **INTERROGATORIES**

SANT-INT-02-001                      What are the names of each IGS customer that IGS believes was improperly solicited by Santanna, Santanna's representatives, or one of Santanna's third-party vendors?

**Response:**                              IGS objects to this Interrogatory as it requests information that is already in Santanna's possession, custody, or control or could be more easily obtained through third parties. IGS objects to this Interrogatory as it seeks information constituting or containing information prepared in anticipation of or as a result of litigation or which is otherwise protected by the work product doctrine or other available privilege or protection. IGS also objects in that the request is unduly burdensome. Subject to and without waiving the foregoing objection or the General Objections, IGS cannot know the total extent of the total effected customers that were improperly solicited as Santanna's agent was conducting an illicit outbound telemarketing campaign that could have potentially touched thousands of customers, and it is Santanna's obligations under the PUCO rules to record the sales calls of its agents.

SANT-INT-02-002                      For each IGS customer identified in response to SANT-INT-02-001, state the circumstances under which that customer was solicited.

**Response:**                              IGS objects to this Interrogatory as it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning. IGS objects to this Interrogatory as it requests information that is already in Santanna's possession, custody, or control or could be more easily obtained through third parties. Subject to and without waiving the foregoing objection or the General Objections, see response to SANT-INT-02-001.

**SANT-INT-02-003** For each IGS customer identified in response to SANT-INT-02-001, state whether or not the customer ultimately enrolled with Santanna.

**Response:** IGS objects to this Interrogatory as overly broad and unduly burdensome and seeks information that is neither relevant to the subject matter of this action nor proportional to the needs of the case. IGS objects to this Interrogatory as it requests information that is already in Santanna's possession, custody, or control or could be more easily obtained through third parties. Subject to and without waiving the foregoing objection or the General Objections, see response to SANT-INT-02-001.

**SANT-INT-02-004** For each customer identified in response to SANT-INT-02-003 who ultimately enrolled with Santanna, state whether the customer has since re-enrolled with IGS.

**Response:** IGS objects to this Interrogatory as overly broad and unduly burdensome and seeks information that is neither relevant to the subject matter of this action nor proportional to the needs of the case. This request further calls for information that may be protected by the attorney client privilege or work product doctrine. IGS objects to this Interrogatory as it requests information that is already in Santanna's possession, custody, or control or could be more easily obtained through third parties. Subject to and without waiving the foregoing objections or the General Objections, see response to SANT-INT-02-001.

**SANT-INT-02-005** For each IGS customer identified in response to SANT-INT-02-001, state the information, documents, recordings, or other evidence that IGS relied upon in forming its belief that the customer was improperly solicited by Santanna, Santanna's representatives, or one of Santanna's third-party vendors.

**Response:** IGS objects to this Interrogatory as it seeks information constituting or containing information prepared in anticipation of or as a result of litigation or which is otherwise protected by the work product doctrine or other available privilege or protection. IGS also objects in that the request is unduly burdensome. Subject to and without waiving the foregoing

objection or the General Objections, see response to SANT-INT-02-001.

SANT-INT-02-006

What are the names of the IGS customers who were contacted via telephone using the number 1-800-429-5708, as referenced in Paragraph 8 of the Complaint?

**Response:**

IGS objects to this Interrogatory as it requests information that is already in Santanna's possession, custody, or control or could be more easily obtained through third parties. IGS objects to this Interrogatory as it seeks information constituting or containing information prepared in anticipation of or as a result of litigation or which is otherwise protected by the work product doctrine or other available privilege or protection. IGS also objects in that the request is unduly burdensome. Subject to and without waiving the foregoing objection or the General Objections, see response to SANT-INT-02-001.

SANT-INT-02-007

What are the names of the IGS customers who were contacted via telephone using the number 708-283-0947, as referenced in Paragraph 8 of the Complaint?

**Response:**

IGS also objects in that the request is overly broad and unduly burdensome. IGS objects to this Interrogatory as it requests information that is already in Santanna's possession, custody, or control or could be more easily obtained through third parties. IGS objects to this Interrogatory as it seeks information constituting or containing information prepared in anticipation of or as a result of litigation or which is otherwise protected by the work product doctrine or other available privilege or protection. Subject to and without waiving the foregoing objection or the General Objections, see response to SANT-INT-02-001.

SANT-INT-02-008

What are the names of the other individuals who were contacted via telephone using the number 1-800-429-5708, as referenced in Paragraph 8 of the Complaint?

**Response:**

IGS objects to this Interrogatory as it requests information that is already in Santanna's possession, custody, or control or could be more easily obtained through third parties. IGS objects to this Interrogatory as it seeks information

constituting or containing information prepared in anticipation of or as a result of litigation or which is otherwise protected by the work product doctrine or other available privilege or protection. IGS also objects in that the request is unduly burdensome. Subject to and without waiving the foregoing objection or the General Objections, see response to SANT-INT-02-001.

SANT-INT-02-009

What are the names of the other individuals who were contacted via telephone using the number 708-283-0947, as referenced in Paragraph 8 of the Complaint?

**Response:**

IGS objects to this Interrogatory as it requests information that is already in Santanna's possession, custody, or control or could be more easily obtained through third parties. IGS objects to this Interrogatory as it seeks information constituting or containing information prepared in anticipation of or as a result of litigation or which is otherwise protected by the work product doctrine or other available privilege or protection. IGS also objects in that the request is unduly burdensome. Subject to and without waiving the foregoing objection or the General Objections, see response to SANT-INT-02-001.

SANT-INT-02-010

Given that the Commission has now issued an Order granting IGS' request for waiver and has authorized the exchange of customer information, please supplement IGS' responses to Interrogatory Nos. SANT-INT-01-001 through SANT-INT-01-100 accordingly.

**Response:**

IGS objects to this Interrogatory as it requests information that is already in Santanna's possession, custody, or control or could be more easily obtained through third parties. IGS objects to this Interrogatory as it seeks information constituting or containing information prepared in anticipation of or as a result of litigation or which is otherwise protected by the work product doctrine or other available privilege or protection. IGS also objects in that the request is overly broad and unduly burdensome. Subject to and without waiving the foregoing objection or the General Objections, IGS states that Santanna requested the same, or similar information, in its request for IGS to supplement its first set of discovery responses. IGS has already used its best efforts to supplement those responses, which were provided to counsel for Santanna via email on June 7, 2019.

**REQUESTS FOR ADMISSION**

SANT-RFA-02-001      Admit that Jennifer White, who is referenced in IGS-INT-01-24 and several other discovery requests propounded by IGS, is the spouse of Matt S. White, who is employed as the general counsel of IGS

**Response:**      IGS objects to this request for admission as it seeks information that is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the objection, IGS admits.

SANT-RFA-02-002      Admit that Matt S. White, general counsel of IGS, called the telephone number 1-800-429-5708 at ext. 234 at some point prior to the filing of the Complaint in this case.

**Response:**      IGS objects to this request for admission as it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning. IGS also objects to this request as it seeks information constituting or containing information prepared in anticipation of or as a result of litigation or which is otherwise protected by the work product doctrine or other available privilege or protection. IGS also objects because the request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Further, IGS objects to this request because it seeks information that is already in Santanna's possession, custody, or control or could be more easily obtained through third parties. Notwithstanding the objections, IGS admits.

SANT-RFA-02-003      Admit that Matt S. White, general counsel of IGS, called the telephone number 708-283-0947 at some point prior to the filing of the Complaint in this case.

**Response:**      IGS objects to this request for admission as it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning. IGS objects to this request for admission as it seeks information constituting or containing information prepared in anticipation of or as a result of litigation or which is otherwise protected by the work product doctrine or other available privilege or protection. IGS also objects because the request seeks

information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Further, IGS objects to this request because it seeks information that is already in Santanna's possession, custody, or control or could be more easily obtained through third parties. Notwithstanding the objections, IGS denies.

SANT-RFA-02-004

Admit that Matt S. White, general counsel of IGS, and/or Jennifer White enrolled in electric and/or natural gas services with Santanna after calling the telephone number 1-800-429-5708 at ext. 234 at some point prior to the filing of the Complaint in this case.

**Response:**

IGS objects to this request for admission as it seeks information constituting or containing information prepared in anticipation of or as a result of litigation or which is otherwise protected by the work product doctrine or other available privilege or protection. IGS also objects because the request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Further, IGS objects to this request for admission as it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning. Finally, IGS objects because the request seeks information that is already in Santanna's possession, custody, or control or could be more easily obtained through third parties. Notwithstanding the objections, IGS admits.

SANT-RFA-02-005

Admit that Matt S. White, general counsel of IGS, and/or Jennifer White enrolled in electric and/or natural gas services with Santanna after calling the telephone number 708-283-0947 at some point prior to the filing of the Complaint in this case.

**Response:**

IGS objects to this Interrogatory as it seeks information constituting or containing information prepared in anticipation of or as a result of litigation or which is otherwise protected by the work product doctrine or other available privilege or protection. IGS also objects because the request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Finally, IGS objects because the request seeks information that is already in Santanna's possession, custody, or control or could be

more easily obtained through third parties. Notwithstanding the objections, IGS denies.

SANT-RFA-02-006

Admit that Matt S. White and Jennifer White did not receive a phone call initiated by a Santanna sales representative to solicit natural gas service.

**Response:**

IGS objects to this request for admission as it seeks information that is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. IGS also objects to this request for admission as it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning. IGS objects to this request because it seeks information that is already in Santanna's possession, custody, or control or could be more easily obtained through third parties. Notwithstanding the objections, IGS can neither confirm nor deny SANT-RFA-02-006.

SANT-RFA-02-007

Admit that Matt S. White and Jennifer White did not receive a phone call initiated by a Santanna sales representative to solicit electric service.

**Response:**

IGS objects to this request for admission as it seeks information that is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. IGS objects to this request for admission as it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning. IGS also objects to this request because it seeks information that is already in Santanna's possession, custody, or control or could be more easily obtained through third parties. Notwithstanding the objection, IGS can neither confirm nor deny SANT-RFA-02-007.

SANT-RFA-02-008

Admit that Matt S. White and Jennifer White did not receive a phone call initiated by a Santanna sales representative wherein the sales representative stated that he or she was an account manager employed by IDS Energy.

**Response:**

IGS objects to this request for admission as it seeks information that is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. IGS objects



to this request for admission as it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning. IGS also objects to this request because it seeks information that is already in Santanna's possession, custody, or control or could be more easily obtained through third parties. Notwithstanding the objections, IGS can neither confirm nor deny SANT-RFA-02-008.

SANT-RFA-02-009

Admit that Matt S. White contacted a sales representative and engaged the sales representative in a discussion about energy services and enrolling his wife's account with a new supplier.

**Response:**

IGS objects to this request for admission as it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning. IGS also objects to this request because it seeks information that is already in Santanna's possession, custody, or control or could be more easily obtained through third parties. Notwithstanding the objections, IGS can neither confirm nor deny SANT-RFA-02-009.

SANT-RFA-02-010

Admit that Matt S. White contacted the sales representative and engaged the representative in a discussion about his energy services and enrollment from IGS' offices.

**Response:**

IGS objects to this request for admission as it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning. IGS also objects to this request because it seeks information that is already in Santanna's possession, custody, or control or could be more easily obtained through third parties. Notwithstanding the objections, IGS can neither confirm nor deny SANT-RFA-02-010.

SANT-RFA-02-011

Admit that a phone call to the telephone number 1-800-429-5708 at ext. 234 made by Matt S. White, general counsel of IGS, formed all or part of the basis for the allegations contained in the Complaint in this case.

**Response:** IGS objects to this request for admission as it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning. IGS also objects to this request as it seeks information constituting or containing information prepared in anticipation of or as a result of litigation or which is otherwise protected by the work product doctrine or other available privilege or protection. Notwithstanding the objections, IGS denies.

SANT-RFA-02-012 Admit that a phone call to the telephone number 708-283-0947 by Matt S. White, general counsel of IGS, formed all or part of the basis for the allegations contained in the Complaint in this case.

**Response:** IGS objects to this request for admission as it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning. IGS also objects to this request as it seeks information constituting or containing information prepared in anticipation of or as a result of litigation or which is otherwise protected by the work product doctrine or other available privilege or protection. Notwithstanding the objections, IGS denies.

SANT-RFA-02-013 Admit that Matt S. White participated in a third-party verification call with a third-party vendor.

**Response:** IGS objects to this request for admission as it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning. IGS also objects to this request because it seeks information that is already in Santanna's possession, custody, or control or could be more easily obtained through third parties. Notwithstanding the objections, IGS admits.

SANT-RFA-02-014 Admit that Matt S. White told the third-party verification vendor that the sales representative had left his personal residential property.

**Response:** IGS objects to this request for admission as it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning. IGS also objects to this request because it seeks information that is already in Santanna's possession, custody, or control or could

be more easily obtained through third parties. Notwithstanding the objections, IGS can neither confirm nor deny SANT-RFA-02-014.

SANT-RFA-02-015

Admit that Matt S. White misled the third-party verification vendor into believing that he had received a visit in his home from a door-to-door sales representative.

**Response**

IGS objects to this request for admission as it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning. IGS also objects to this request because it seeks information that is already in Santanna's possession, custody, or control or could be more easily obtained through third parties. Notwithstanding the objections, IGS denies.

SANT-RFA-02-016

Admit that Matt S. White incorrectly answered the third-party verification vendor's questions, which led to the enrollment of his personal electric and natural gas accounts with Santanna.

**Response:**

IGS objects to this request for admission as it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning. IGS also objects to this request because it seeks information that is already in Santanna's possession, custody, or control or could be more easily obtained through third parties. Notwithstanding the objections, IGS denies.

SANT-RFA-02-017

Admit that IGS is not aware of any current IGS customer, aside from Matt S. White and Jennifer White, who has specifically stated that they were subject to unlawful actions by Santanna, Santanna representatives, or Santanna third-party vendors.

**Response:**

IGS objects to this request for admission as it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning. Notwithstanding the objection, IGS denies.

**REQUESTS FOR PRODUCTION**

**SANT-RFP-02-001**                      Given that the Commission has now issued an Order granting IGS' request for waiver and has authorized the exchange of natural gas customer information under Ohio Adm. Code 4901:1-29-09(A)(1), please produce and attach the documents requested in SANT-RFP-01-001 through -052.

**Response:**                              IGS objects to this Request as it requests information that is already in Santanna's possession, custody, or control or could be more easily obtained through third parties. IGS objects to this Interrogatory as it seeks information constituting or containing information prepared in anticipation of or as a result of litigation or which is otherwise protected by the work product doctrine or other available privilege or protection. IGS also objects in that the request is overly broad and unduly burdensome. Subject to and without waiving the foregoing objection or the General Objections, IGS states that it has already used its best efforts to supplement its responses to Santanna's first set of discovery, which were provided to counsel for Santanna via email on June 7, 2019.

**SANT-RFP-02-002**                      Given that the Commission has now issued an Order granting IGS' request for waiver and has authorized the exchange of electric customer information under Ohio Adm. Code 4901: 1-29-09(A)(1), please produce and attach the documents requested in SANT-RFP-01-001 through -052.

**Response:**                              Please see IGS' response to Santanna RFP-02-001.

**SANT-RFP-02-003**                      Produce and attach all documents, recordings, records, and other evidence that forms or helps to form IGS' belief that the customers identified in response to SANT-INT-02-001 were improperly solicited by Santanna.

**Response:**                              Please see IGS' response to Santanna RFP-02-001.

Respectfully submitted,

/s/ Michael A. Nugent  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of IGS' Responses to Santanna Natural Gas Corporation's Interrogatories and Request for Production of Documents, *Second Set*, has been served via electronic transmission upon the following parties of record this 20<sup>th</sup> day of June 2019.

**/s/ Michael A. Nugent**  
Michael A. Nugent  
Attorney for Complainant  
Interstate Gas Supply, Inc.

**SERVICE LIST**

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**Case No(s). 19-0362-GE-CSS**

Summary: Reply Reply to Interstate Gas Supply Inc.'s Memorandum Contra Motion For Protective Order to Prevent Further Unduly Burdensome and Harassing Discovery Requests by Santanna Natural Gas Corporation electronically filed by Mrs. Angela Whitfield on behalf of Santanna Natural Gas Corporation