

## BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Regulation of the	)	
Purchased Gas Adjustment Clauses	)	Case No. 10-209-GA-GCR
Contained Within the Rate Schedules	)	Case No. 10-212-GA-GCR
of Northeast Ohio Natural Gas	)	
Corporation and Orwell Natural Gas	)	
Company	)	
	)	
	)	
In the Matter of the Uncollectible	)	Case No. 10-309-GA-UEX
Expense Riders Contained Within the	)	Case No. 10-312-GA-UEX
Rate Schedules of Northeast Ohio	)	
Natural Gas Corporation and Orwell	)	
Natural Gas Company	)	

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## APPLICATION FOR REHEARING

Pursuant to Ohio Rev. Code §4903.10 and Ohio Admin. Code 4901-1-35, Northeast Ohio Natural Gas Corporation ("Northeast") and Orwell Natural Gas Company ("Orwell"; Northeast and Orwell also collectively referred to as "Companies") hereby respectfully make Application to the Public Utilities Commission of Ohio ("Commission") for Rehearing of its October 26, 2011 Opinion and Order ("Opinion and Order"). The Companies respectfully submit that the Opinion and Order is unreasonable or unlawful thus justifying Rehearing on the following specific grounds:

1. The Stipulation and Recommendation at page 4, Section III(A)(1)(a) reflected the agreement of the Signatory Parties (the Office of the Ohio Consumers' Counsel, the Staff of the Commission and the Companies) that Orwell should make a Reconciliation Adjustment to its GCR in the customers' favor in the amount of \$964,410. It was further agreed and recommended that the Reconciliation

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Adjustment be over a period of twenty-four months, without the accrual of interest.

2. In its Opinion and Order entered on October 26, at Page 24 the Commission made a finding:

“...that it is in the best interest of the regulated ratepayers for the companies to refund the amounts in a much more reasonable timeframe and with interest. Accordingly, the Commission concludes that the stipulation should be modified to require that Northeast and Orwell shall refund the over-collected amounts to customers through the RAs and the refunds shall include interest on the unpaid balances. The refunds shall be provided over a 12-month period commencing in the month after our order in these cases.”

3. For reasons that will be described in this Application and Memorandum in Support, the above modification to the Stipulation and Recommendation is material in that the substituted one year refund period creates an unsustainable financial hardship for Orwell. Upon rehearing, Orwell should be permitted to make the required refund of \$964,410 over a two year period as the Signatory Parties recommended to avoid placing Orwell in a financially perilous position. Orwell proposes to modify the Stipulation and Recommendation upon rehearing to provide that it will pay interest pursuant to Rule 4901:1-14-05(A)(2)(b), Ohio Administrative Code on the unrecovered balance. This protects the interest of regulated ratepayers without jeopardizing the financial viability of the Company.
4. The quoted passage of the Opinion and Order also alludes to refunds through the RA of Northeast Ohio over a twelve-month period. However, pursuant to the Stipulation and Recommendation at page 5, Section III(A)(2), the Signatory Parties agreed that Northeast had undercollected its gas costs , and that Northeast should recover through its RA the undercollection of \$1,100,635 over a two year

period, with interest on the unrecovered balance. Upon Rehearing, the Opinion and Order should be modified to recognize that Northeast is authorized to recover through its RA the undercollection through the twenty-four month period following the final order, with interest calculated on the same basis as the interest on overcollections to be refunded by Orwell.

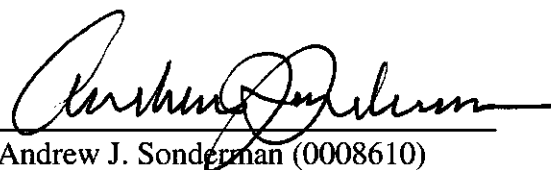
5. Attached to this Application for Rehearing is the Affidavit of Anita Noce, Senior Accountant for Orwell, confirming that if this modification to the Stipulation and Recommendation at page 24 of the Opinion and Order is not rescinded, Orwell projects (based on historical usage data and current base rates) that it will be placed in a negative operating revenue position in eight months during the twelve month refund period, and will experience a cumulative operating loss of (\$433,139). However, if the twenty-four month refund period is restored, but modified to include payment of interest on the refund, Orwell projects operating income of \$75,587 in the corresponding twelve month period. Orwell submits that it is not in the public interest to deliberately place any public utility in an operating loss position, when there is a reasonable alternative that protects the interests of its regulated ratepayers through the payment of interest, while permitting the Company to maintain its financial integrity, as the Signatory Parties recommended.
6. As required by the terms of the Stipulation and Recommendation, the Signatory Parties met promptly after the Companies determined that the Opinion and Order was not adopted without material modification, in order to seek to achieve an outcome that substantially satisfies the intent of the Stipulation or proposes a

reasonable equivalent thereto to be submitted to the Commission for its consideration (Stipulation and Recommendation, p. 3). Ultimately the Companies timely advised the Signatory Parties of its intention to file this Application for Rehearing.

7. Ohio Rev. Code §4903.10 provides that the Commission may grant rehearing and hold such rehearing on the matter specified in the application “if in its judgment sufficient reason therefor is made to appear”. Section 4903.10 further requires the Commission to specify the scope of additional evidence, if any, that will be taken but shall not on rehearing take evidence that could have been offered at hearing “with reasonable diligence”.
8. Should the Commission deem it necessary to adduce additional testimony pursuant to Section 4903.10 regarding the financial hardship that the revised twelve month refund period will cause the Company, Orwell requests that on rehearing such additional evidence be submitted through sworn testimony. Orwell states that it could not have anticipated the need to present evidence during the evidentiary hearings regarding the financial hardship inherent in a one year refund period through the RA, first because the litigation positions of the parties as reflected in testimony were substantially at variance with respect to the level of overcollection to be recovered through Orwell’s RA; and second, because the overall settlement position on which the Signatory Parties agreed regarding the overcollection to be refunded through the RA was unknown as of the evidentiary hearings.

WHEREFORE, Orwell Natural Gas Company and Northeast Ohio Natural Gas Corporation respectfully ask the Commission to grant rehearing for the reason that the Opinion and Order is unlawful or unreasonable in materially modifying the Stipulation and Recommendation as specifically identified herein. A Memorandum in Support is attached hereto.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew J. Sonderman", is written over a horizontal line.

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Counsel for  
Northeast Ohio Natural Gas Corporation  
Orwell Natural Gas Company

## **MEMORANDUM IN SUPPORT**

### **I. BACKGROUND**

On November 24, 2010, Staff filed its Report of its Financial Audit of the Gas Cost Recovery (“GCR”) Mechanisms for Northeast and Orwell. Northeast’s Audit covered the effective GCR Periods of March 1, 2008 through February 28, 2010. Orwell’s Audit covered the effective GCR Periods of July 1, 2008 through June 30, 2010. On May 9-13 and May 23, 2011, evidentiary hearings were conducted with respect to the Staff Audits. Following the conclusion of the evidentiary hearings, the parties engaged in a series of discussions leading to the Stipulation and Recommendation filed on August 18, 2011 (“Stipulation and Recommendation”).

As part of the Stipulation and Recommendation, the Signatory Parties agreed on the following pertaining to Orwell:

#### **1. Recommendations Pertaining to Orwell**

- a. The Signatory Parties agree that Orwell overcollected \$948,937 from customers during the audited periods, and agree that this overcollected amount will thus be reflected in the Actual Adjustment (“AA”) for refund to customers. The Balance Adjustment (“BA”) should be a refund of \$15,473 to customers. The Signatory Parties agree that a Reconciliation Adjustment of \$964,410 should be made in the customers’ favor and should thus be refunded by Orwell to customers over a twenty-four month period commencing in the month after the Commission’s Order adopting this Stipulation.

- b. The Reconciliation Adjustment (“RA”) refund to be made by Orwell will not include interest on the unpaid balance.

(Stipulation and Recommendation, pp. 4-5) (Emphasis added). The Commission accepted the proposed RA amount to be refunded of \$964,410. However, the Opinion and Order required Orwell to refund the overcollected amounts over a twelve (12) month period with interest instead of twenty-four months without interest as the Signatory Parties had proposed. (*See Order*, p. 24).

In reaching its decision, the Commission employed the three criteria endorsed by the Ohio Supreme Court to determine the reasonableness of the Stipulation. (*See Order*, p. 24). The criteria are as follows:

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?
2. Does the settlement, as a package, benefit ratepayers and the public interest?
3. Does the settlement package violate any important regulatory principle or practice?

(*Order*, p. 24 (citing *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St. 3d 559 (internal citations omitted))).

In examining the second criterion, the Commission held:

With regard to the second criterion, the Commission finds that the stipulation does advance the public interest by attempting to resolve all of the issues related to the review of the company’s GCR and fuel-related policies and practices, as well as the UEX rider issues, during the audit period. However, we are concerned about the provisions of the stipulation which allow the companies to refund the over-collected amounts to customers over a 24-month period, with no interest. To date, the companies have benefited from undesirable market conduct and the Commission finds that the behavior is unacceptable. Therefore, we find that it is in the best interest of the regulated ratepayers for the companies to refund the amounts in a much more reasonable timeframe and with interest. Accordingly, the Commission concludes that the stipulation should be modified to require that Northeast and Orwell Shall refund the over-collected amounts to customers through the RAs and the refunds shall include interest on the unpaid balances.

The refunds shall be provided over a 12-month period commencing in the month after our order in these cases.

(Order, p 24) (Emphasis added).

As noted in the Application, the quoted portion of the Opinion and Order also directs Northeast to make a refund through its RA. In fact, the Signatory Parties concurred after evidentiary hearings concluded that Northeast had undercollected its gas costs during the audit period so that its RA should recover \$1,100,635 from its retail sales customers over a twenty-four month period.

Concluding that the specified findings of the Commission constitute a material modification of the Stipulation, the Companies alerted the other Signatory Parties as required by the terms of the Stipulation and Recommendation, conducted discussions seeking to effect the intent of the Stipulation and Recommendation and now file the foregoing Application for Rehearing. The Commission's Order, in its current form, would create serious consequences for Orwell such that the company would only be able to continue operations during the refund period at a loss. It is respectfully submitted that this is not in the public interest.

## **II. REHEARING IS JUSTIFIED UNDER THE CIRCUMSTANCES PRESENTED HERE.**

As the Commission states in its Order, the Ohio Supreme Court has endorsed the Commission's analysis using the three-prong criteria set out in *Consumers' Counsel v. Pub. Util. Comm.*<sup>1</sup> "to resolve cases by a method economical to ratepayers and public utilities." (Order, p. 24 (citing *Indus. Energy, supra*). However, the Commission's application of the second prong of those criteria does not result in a just and fair resolution for Orwell. The Order, as submitted by the Commission, will have a severe impact on the economic stability of Orwell. The Company would be operating at a loss cumulatively over the twelve month refund period and for eight

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<sup>1</sup> (1992), Ohio St. 3d 123.



months during that period. This analysis is supported by the Affidavit of Senior Accountant Anita Noce, attached hereto.

Orwell performed a calculation of the financial impact paying back the overcollected funds with interest over a twelve (12) month period. (Noce Affidavit). In making this calculation, Orwell utilized the ten percent (10%) interest rate as provided by Rule 4901:1-14-05(A)(2)(b) and that Rule's "Appendix Gas Cost Recovery Rate Calculation". Under the Commission's rule, the gas cost recovery rate equals:

- (1) The gas or natural gas company's expected gas cost for the upcoming quarter, or other period as approved by the commission, pursuant to paragraph (K) of the rule 4901:1-14-01 of the Administrative Code, plus or minus;
- (2) The supplier refund and reconciliation adjustment, which reflects:
  - a. Refunds received from the gas or natural gas company's interstate pipeline suppliers or other suppliers or service providers plus ten percent annual interest; and
  - b. Adjustments ordered by the commission following hearings held pursuant to rule 4901:1-14-08 of the Administrative Code, plus ten percent annual interest...

(Rule 4901:1-14-05(A), Ohio Admin. Code.).

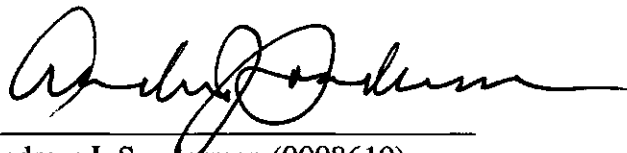
With the ten percent (10%) interest applied, the total to be refunded to customers would be \$1,017,453. Under the terms of the Stipulation, Orwell would have been required to pay a total refund of \$964,410 to its customers without interest. See Noce Affidavit. As noted in the foregoing Application, Orwell agrees to modify the Stipulation and Recommendation to provide for the payment of interest to its customer on the over-recovery. However, the compression of the refund period to twelve months from twenty-four months has the unintended consequence of forcing Orwell to operate at a loss while the refund is completed.

Given the devastating economic impact of the twelve month refund period substituted by the Opinion and Order for the twenty-four month period recommended by the Signatory Parties, Orwell proposes that upon rehearing the Commission authorize Orwell to pay back the overcollected amount approved for refund through the RA over a twenty-four (24) month time period with interest on the unrecovered balance at the rate of ten percent (10%) as established by rule. This modification will protect the interests of regulated ratepayers by recognizing and compensating them for the time value of the unrecovered balance, yet at the same time preventing Orwell severe financial hardship while it accomplishes the refund.

### **III. CONCLUSION**

For the foregoing reasons, the Companies respectfully submit that good cause has been demonstrated for the Commission to grant rehearing and upon rehearing to: (a) authorize a refund by Orwell of the overcollected amount over a twenty-four (24) month period through its RA, with interest on the unrecovered balance payable at the rate of ten percent (10%); and (b) to expressly authorize Northeast to recoup its underrecovery over the same time frame with interest calculated in identical fashion. If the Commission deems necessary, the Companies request that the record be reopened on rehearing to allow for the submission of evidence regarding the disparate financial impact of the twelve month refund as directed in the Opinion and Order in comparison to the refund recommended by the Signatory Parties over twenty-four months, modified however to provide for interest per the Commission's rule on the unrecovered balance.

Respectfully submitted,



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Counsel for  
Northeast Ohio Natural Gas Corporation  
Orwell Natural Gas Company

#### CERTIFICATE OF SERVICE

The undersigned counsel for the Companies hereby certifies that a true copy of this Application for Rehearing and Memorandum in Support have been personally served on the following counsel for Commission Staff and the Office of the Ohio Consumers' Counsel on November 22, 2011:

Werner L. Margard  
Steven Beeler  
Devin Perram  
Assistant Attorneys General  
Public Utilities Section  
180 East Broad Street, 6<sup>th</sup> Floor  
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Joseph P. Serio  
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Columbus, Ohio 43215-3485



Andrew J. Sonderman

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Regulation of</b>	)	
<b>the Purchased Gas Adjustment</b>	)	<b>Case No. 10-209-GA-GCR</b>
<b>Clauses Contained Within the Rate</b>	)	<b>Case No. 10-212-GA-GCR</b>
<b>Schedules of Northeast Ohio</b>	)	
<b>Natural Gas Corporation and</b>	)	
<b>Orwell Natural Gas Company</b>	)	
	)	
	)	
<b>In the Matter of the Uncollectible</b>	)	<b>Case No. 10-309-GA-UEX</b>
<b>Expense Riders Contained Within</b>	)	<b>Case No. 10-312-GA-UEX</b>
<b>the Rate Schedules of Northeast</b>	)	
<b>Ohio Natural Gas Corporation and</b>	)	
<b>Orwell Natural Gas Company</b>	)	

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**Affidavit of Anita M. Noce**

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State of Ohio            )  
                                  ) ss:  
County of Lake         )

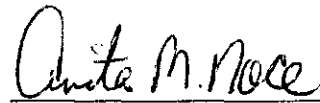
Anita M. Noce, being duly cautioned and sworn, states the following:

1. That she is Senior Accountant for Orwell Natural Gas Company and its affiliated utilities, Brainard Gas Corporation and Northeast Ohio Natural Gas Corporation.
2. That she has reviewed the Opinion and Order issued on October 26, 2011 in the consolidated cases identified herein, and specifically the Finding at p. 24 of the Opinion and Order that modifies the Stipulation and Recommendation to require that the refund by Orwell Natural Gas Company be completed with interest over a twelve month refund period instead of a twenty-four month refund period as supported in the Stipulation and Recommendation.

3. That she analyzed the financial impact on Orwell Natural Gas Company arising from the completion of the refund of the stipulated amount over a twelve month period with interest at the rate of ten percent as specified in the Commission's Rule set forth in Ohio Administrative Code 4901:1-14-05(A)(2)(b) and Appendix A to that Rule, compared with the financial impact on the Company that would result from the completion of the refund of the stipulated amount over twenty-four months as the Signatory Parties recommended.
4. That in making this analysis, she utilized currently effective base rates and the historical volumes actually experienced during the twelve months and twenty-four months ending August 31, 2011 as reasonable proxies for anticipated results during the refund periods.
5. Based on that analysis, if Orwell Natural Gas Company completed the refund of the stipulated amount of \$964,410 with interest at ten percent through its Reconciliation Adjustment over twelve months, Orwell projects a cumulative operating loss of \$433,139. Orwell Natural Gas Company would also experience negative operating income in eight of the twelve months during that twelve month refund period.
6. If Orwell Natural Gas Company completes the refund of the stipulated amount of \$964,410 with interest at ten percent through its Reconciliation Adjustment over twenty-four months as recommended by the Signatory Parties to the Stipulation and Recommendation, in the corresponding twelve months of the refund period Orwell would have projected operating income of \$75,687, and over the full twenty-four month refund period projected operating income of \$68,045.

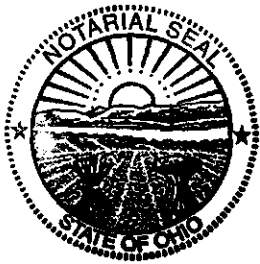
7. Orwell submits that the twelve month refund period under the Stipulation and Recommendation as modified and adopted in the Opinion and Order issued on October 26, 2011 creates financial hardship for the Company.

Further, Affiant sayeth naught.

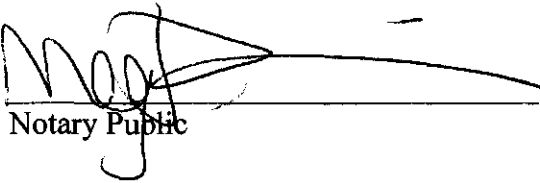


Anita M. Noce

Sworn and subscribed before me, a Notary Public for the State of Ohio, on this 21<sup>st</sup> day of November, 2011.



**MEGAN RICHARDS**  
Notary Public  
In and for the State of Ohio  
My Commission Expires  
July 18, 2015



Notary Public