BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Regulation of the Purchased Gas Adjustment Clauses Contained Within the Rate Schedules of Northeast Ohio Natural Gas Corporation.	))))	Case No. 12-209-GA-GCR
In the Matter of the Regulation of the Purchased Gas Adjustment Clauses Contained Within the Rate Schedules of Orwell Natural Gas Company.	))))	Case No. 12-212-GA-GCR

MEMORANDUM CONTRA NORTHEAST NATURAL GAS CORPORATION AND ORWELL NATURAL GAS COMPANY APPLICATION FOR REHEARING AND REQUESTS FOR CLARIFICATION, AND IN THE ALTERNATIVE, MOTION TO STAY THE ENFORCEMENT OF CIVIL FORFEITURES PENDING AN APPEAL TO THE OHIO SUPREME COURT BY OFFICE OF THE OHIO CONSUMERS' COUNSEL

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I. INTRODUCTION

These cases presented the Public Utilities Commission of Ohio ("PUCO") with important issues surrounding what constitutes reasonable purchasing practices of a natural gas distribution company ("LDC") in terms of purchasing natural gas from affiliates. These cases also present questions about the utilities underlying management practices and qualifications.[1] Much like the 2010 GCR Cases,[2] these cases affect the GCR rates customers pay for the natural gas commodity provided by Northeast Natural

[1] Order at 54.

[2] *In the Matter of the Regulation of the Purchased Gas Adjustment Clauses Contained Within the Rate Schedules of Northeast Ohio Natural Gas Corporation*, Case No. 10-209-GA-GRC and *In the Matter of the Regulation of the Purchased Gas Adjustment Clauses Contained Within the Rate Schedules of Orwell Natural Gas Company*, Case No. 10-212-GA-GCR ("2010 GCR Cases").

Gas Corporation ("Northeast") and Orwell Natural Gas Company ("Orwell") (together "the Utilities").[3] Accordingly, the focus of the Office of the Ohio Consumers' Counsel ("OCC") in these cases was ensuring that Gas Cost Recovery ("GCR") rates customers pay includes only just and reasonable gas costs as required by R.C. 4905.302 and 4901:1-14 Ohio Adm. Code.

As noted by the PUCO in its November 13, 2013 Opinion and Order ("Order"), the evidence presented by OCC and the PUCO Staff demonstrated that Northeast and Orwell failed to provide gas to their GCR customers at minimal prices because the Utilities' purchasing practices and policies were not fair, just and reasonable as required by R.C. 4905.302 and Ohio Adm. Code 4901:1-14-08(B).[4] In large part, the purchasing practices and policies were not fair, just or reasonable because the Utilities' decided to: 1) contract with affiliates for the provision of the natural gas commodity; 2) consistently fail to enforce the terms of those contracts and; 3) pay affiliates for services that were not provided.[5] In addition, the PUCO imposed some civil penalties[6] on the Utilities as a result of Utilities' imprudent behavior.

The Utilities' actions during the audit period in these cases were unjust and unreasonable and warranted the disallowances ordered by the PUCO. The Utilities imprudent activities were exacerbated by the fact that these cases mark the second consecutive audit period marred by the same imprudent management practices and policies that were addressed and presumed corrected from the prior GCR Audit.[7]

[3] 2010 GCR Cases, Staff Ex. Nos. 2 and 3 (Staff Report of Orwell Natural Gas and Northeast Natural Gas) (November 24, 2010).

[4] Order at 63-64.

[5] Order at 39-45.

[6] Order at 57-62.

[7] Order at 54.

II. ARGUMENT

A. The Request For Proposal ("RFP") Process

The Utilities' Application for Rehearing alleges that the Order is unreasonable because it does not permit the Utilities to purchase local and interstate supplies using in-house personnel (rather than using an external asset manager).[8] The Utilities claim that it is unclear whether the PUCO would allow the Utilities to use in-house personnel to purchase local and interstate gas supplies.[9] The Utilities seemed to indicate that using in-house personnel (instead of the use of an external asset manager) could result in lower gas costs for customers.[10]

If the PUCO permits the use of in-house personnel by the Utilities, then certain customer protections are warranted. Those protections include all purchases and purchasing practices being reviewed in future bi-annual GCR cases as part of the review of the Utilities gas purchasing practices and policies. In those proceedings, the Utilities would have the burden of proving that those practices and policies were just and reasonable as required by R.C. 4905.302 and Ohio Adm. Code 4901:1-14-08 (B). More specifically, any in-house personnel used to purchase either local or interstate gas supplies should act in a manner that provides benefits to customers, and puts the interests of customers ahead of those of any affiliated or non-affiliated companies. The Utilities in-house personnel and management must adhere to their fiduciary duty customers.[11]

To the extent that the Utilities want to do all gas purchasing using in-house personnel, another potential option would be for the Utilities to hire someone from the

[8] Utilities App. for Rehearing at 2.

[9] Utilities App. for Rehearing at 2.

[10] Utilities App. for Rehearing at 3.

[11] Order at 35-39.

outside to take over that function. Hiring someone from the outside -- who has no ties to the Utilities or any of their affiliates -- is an option that should be considered.

Absent the use of in-house personnel to purchase either local or interstate production, then the entity selected to make those purchases must be subject to an RFP and RFP process as set forth in the Order.

B. The Order Established The Time For The Audit Period.

The Utilities argue that there is a need for clarification of the length of the Audit Period and that the PUCO should identify the specific dates of Audit Period.[12] In addressing this matter, the PUCO concluded:

> **We do not believe that Staff's more thorough examination of the Companies in this audit prejudices the Companies**, as the financial information gleaned from Staff's extended review was for then gas purchases of Northeast. The gas purchases made and the process paid by the Companies for those gas purchases are facts and do not change depending on whether they are reviewed in the context of this audit or the next audit.[13] (Emphasis added).

Having concluded that there was no prejudice and that the PUCO Staff had not exceeded its authority by continuing to audit the Utilities, the PUCO nonetheless ordered that appropriate adjustments be made to only account for the effective time periods of March 1, 2010 through February 29, 2012 for Northeast and July 1, 2010 through June 30, 2012 for Orwell.[14] Accordingly, there is no need for the PUCO to clarify the difference between what the Utilities describe as the "audit period" and the "reporting period"[15] because the PUCO ordered that the financial adjustments are to be recalculated for the specific dates for the audit period,

[12] Utilities App. for Rehearing at 3-4.

[13] Order at 46.

[14] Order at 46.

[15] Utilities App. for Rehearing at 3.

The PUCO correctly concluded that there had been no prejudice to the Utilities from the PUCO Staff's extended audit. The PUCO also correctly concluded that the timing of the audit periods does not change the facts surrounding the Utilities' actions.

The Utilities' requested rehearing to reduce the Cobra Fees and Affiliate Fees disallowances.[16] However, there is no factual dispute regarding the Cobra Pipeline Processing Fees. It is a fact that Northeast paid its affiliate Cobra for services that were not rendered. Thus, even if PUCO were to determine that the $145,363 in Cobra Processing Fees should be adjusted, to take into account the above noted effective audit period issue, the PUCO should also determine that the Utilities actions' in delaying a refund of overcharges to customers warrants the PUCO applying an annual interest rate of ten percent as required by 4901:1-14-05 (A)(2)(b):

> (b) Adjustments ordered by the commission following hearings held pursuant to rule 4901:1-14-08 of the Administrative Code, plus **ten per cent annual interest**, plus or minus. (Emphasis added).

Absent this annual interest payment to its customers, the Utilities will have been enriched through their ability to retain customers' money that they imprudently collected until the next audit case. To the extent that some of the over-collection dates back to 2010[17] and any refunds from the next audit period may not flow to customers until 2015,[18] customers need to be fairly compensated for the delay in receiving refunds. The annual ten percent interest rate will prevent the Utilities from unjustly benefitting from

[16] Utilities App. for Rehearing at 5-6.

[17] As noted above, the current Audit was for the effective time periods of March 1, 2010 through February 29, 2012 for Northeast and July 1, 2010 through June 30, 2012 for Orwell.

[18] The last GCR case was a 2010 case that was litigated in 2011 with an Opinion and Order on October 26, 2011. The current case was a 2012 case that was litigated in 2013 with an Opinion and Order on November 13, 2013. The next Audit case will be a 2014 case and may not have an Opinion and Order until sometime in 2015.

their imprudent actions and will fairly compensate customers who will be denied the use of their money until the refunds occur in the next audit case.

The same circumstances and arguments would also apply if the PUCO were to determine that any adjustment should be made to the $808,491.40 disallowance related to Fees paid to their affiliate John D. Oil and Gas ("JDOG"). Any reduction by the PUCO to the amount of the JDOG Fees disallowance due to an adjustment of the Audit Periods should require the annual ten percent interest factor.

C. The Disallowance Of Local Gas Cost Was Just And Reasonable.

The Utilities argue that the disallowance of $506,909 in local production costs was unlawful and unreasonable.[19] The Utilities' argument is based on the belief that Dr. Overcast's evaluation is more accurate than that of PUCO Staff witness Sarver.[20] In making this argument, the Utilities fail to raise any new factual or legal arguments.[21] Instead, the Utilities merely rehashed the same arguments they made in their post hearing briefs that the PUCO already considered and rejected. The PUCO reviewed the testimony of Dr. Overcast and concluded that his analysis had no merit in part because it was not based on the best evidence.[22] Instead, the PUCO found that the PUCO Staff analysis was based on NYMEX prices and was the best evidence of record.[23]

[19] Utilities App. for Rehearing at 6-11.

[20] Utilities App. for Rehearing at 7.

[21] Utilities App. for Rehearing at 6-11.

[22] Order at 38.

[23] Order at 38.

In addition, the Utilities argument ignores the analysis done by OCC witness Slone[24] which was unchallenged by their Application for Rehearing. The fact remains that the PUCO in the Order found that:

> **We also note that the findings of the audit report reflect consistency with the calculations of OCC witness Sloan who made similar findings of the AA through a different analysis**. Mr. Sloan analyzed the prices paid for local production by three small Ohio LDCs. Mr. Sloan's findings and calculations of the AA were consistent with Staff's findings. **Of note was the analysis provided by Mr. Sloan** who compared the price Piedmont paid for local production to the prices paid by Northeast and Orwell from 2010 through 2012. **One of the more telling of Mr. Sloan's findings was that Piedmont's purchases of local production from JDOG were significantly lower than the prices Northeast and Orwell paid JDOG for local production in those same years**.[25] (Emphasis added).

The Utilities did not challenge the PUCO's Order in regard to its reliance on Mr. Slone's analysis in their Application for Rehearing. Accordingly, the PUCO should deny the Utilities' Application for Rehearing related to the disallowance of local gas costs.

D. The PUCO Has The Authority To Order An Investigative Audit.

Even though the PUCO ordered the investigative Audit as a result of the evidence produced as part of a GCR proceeding, the PUCO's authority to order a future investigative Audit is not limited to R.C. 4905.302 (C)(3)(b). The PUCO also has authority under R.C. 4905.04 (Power to Regulate), R.C. 4905.05 (Scope of Jurisdiction) and R.C. 4905.06 (General Supervision) which states:

> The public utilities commission has general supervision over all public utilities within its jurisdiction as defined in section 4905.05 of the Revised Code, **and may examine such public utilities and keep informed as to their general condition,** capitalization, and franchises, **and as to the manner in which their properties are leased, operated, managed, and conducted** with respect to the

[24] OCC Ex. No. 12 (Direct Testimony of Greg Slone) at 28-30 (July 1, 2013).

[25] Order at 38.

> adequacy or accommodation afforded by their service, the safety and security of the public and their employees, and their compliance with all laws, orders of the commission, franchises, and charter requirements.[26] (Emphasis added).

The Utilities challenge[27] the PUCO's decision to order an investigative Audit, by an outside auditor, of the Utilities and all affiliated and related companies.[28] In making their arguments, the Utilities ignored the precedent of the PUCO's actions in ordering a similar Audit of Columbia Gas of Ohio, Inc.[29] The Utilities Application for Rehearing does not even mention the Columbia Commission Ordered Investigation ("COI") Case, even though both the OCC and the PUCO Staff cited the case.[30] The Utilities raised a number of claims addressed below.

1. The Utilities And Their Affiliates Had Notice.

The Utilities argue that their affiliate entities have been denied their due process rights because they had no notice opportunity regarding the investigative Audit.[31] In making this argument, the Utilities have misunderstood and misapplied the notice requirement. In ordering the Audit, the PUCO is providing the Utilities and all of their affiliated and related entities with notice that an investigative Audit will occur. As part of that investigative Audit, there is no reason to believe that the Utilities, their affiliated and related entities will not have every opportunity to present witnesses and exhibits at an evidentiary hearing, and to cross-examine other witnesses presented as part of that case.

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[26] R.C. 4905.06.

[27] Utilities App. for Rehearing at 13-22.

[28] Order at 57.

[29] *In the Matter of the Investigation Into the Gas Purchasing Practices of Columbia Gas of Ohio, Inc.,* Case No. 83-135-GA-COI, and *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Columbia Gas of Ohio, Inc. and Related Matters,* Case No. 84-6-GA-GCR, Opinion and Order (October 8, 1985) ("Columbia COI Case").

[30] OCC Initial Brief at 39-53, PUCO Staff Initial Brief at 16-40.

[31] Utilities App. for Rehearing at 14.

The Utilities argue, apparently on behalf of their non-party (i.e. not party to these GCR cases) affiliates that the non-party affiliates have not had notice. To the extent that the Utilities are making this argument for the non-party affiliates, they are acting as agents of the non-party affiliates. If that is the case, then since the Utilities had notice, then so too did their non-party affiliates. If on the other hand, the Utilities are not an agent of the non-party affiliates, then they are not the proper party to raise these argument and the issues are not ripe for review by the PUCO. If the latter is the situation, then the non-party affiliates had an avenue to present their arguments as noted in R.C. 4903.10, but have failed to do so. R.C. 4903.10 states:

> Notwithstanding the preceding paragraph, in any uncontested proceeding or, by leave of the commission first had in any other proceeding, **any affected person, firm, or corporation may make an application for a rehearing within thirty days after the entry of any final order upon the journal of the commission**. (Emphasis added).

Thus, the non-party affiliates had an opportunity to raise these arguments in their own Application for Rehearing but elected not to do so.

2. The PUCO Did Not Impose Any Of The Utilities Liability On Their Affiliates.

The Utilities argue that the PUCO erred by holding non-party affiliates liable for the actions of the Utilities.[32] In raising this allegation, the Utilities again misunderstand the PUCO's Order. The Order does not hold any non-party affiliate liable for the actions of the Utilities. Rather, the Order found that the Utilities acted in a manner that was imprudent regarding their natural gas purchasing practices and policies.[33] To the extent that the imprudent actions involved non-party affiliates, the PUCO held the Utilities liable and not the other entity. For example, with regard to the Cobra Processing Fees,

[32] Utilities App. for Rehearing at 17-18.

[33] Order at 38-39.

the PUCO decision to disallow the $145,363 impacts Northeast, not Cobra. Thus the liability is only on the regulated entity (Northeast) and not the non-party affiliate (Cobra). The same holds true with regard to the $808,491.40 in JDOG Fees that the Utilities paid but were disallowed by the PUCO. In both instances the non-party affiliate retains the payment made by the Utilities. It is only the regulated entities -- the Utilities -- who are impacted by the disallowance. Finally, although the Utilities make this claim, the Application for Rehearing fails to cite to any page or paragraph of the Order that holds a non-party affiliate liable for the actions of the Utilities.

3. The PUCO Ordered Investigative Audit Is Not Of Unregulated Entities.

The Utilities argue that the PUCO exceeded its jurisdiction by ordering an investigative Audit of unregulated entities.[34] However, the PUCO has the jurisdiction and authority to investigate and audit any and all regulated companies.[35] In addition, the PUCO has the authority to investigate and audit any and all transactions made by regulated companies -- regardless of whether those transactions involved other regulated companies or non-regulated companies.[36] The PUCO has the authority to investigate and audit those transactions and to hold the regulated entities responsible for any actions which are found to be imprudent.

4. The PUCO Did Not Pierce The Corporate Veil.

The Utilities argue that by ordering the Utilities to pay for the investigative Audit, the PUCO is somehow piercing the corporate veil.[37] The Utilities are misinterpreting the language of the Order. The PUCO ordered an investigative Audit of the Utilities and

[34] Utilities App. For Rehearing at 18-19.

[35] R.C. 4905.302, R.C. 4905.04, R.C. 4905.05, and R.C. 4905. 06.

[36] R.C. 4905.302, R.C. 4905.04, R.C. 4905.05, and R.C. 4905. 06.

[37] Utilities App. for Rehearing at 21-22.

their affiliated and related companies. As noted above, the PUCO has the authority and jurisdiction to Audit all regulated entities and their transactions. To the extent that the PUCO conducts such an investigative Audit, it is clear that the PUCO has the authority pursuant to R.C. 4905.302 to order Utilities to pay for such an Audit. The Utilities' arguments regarding piercing the corporate veil are not relevant and should be ignored.

E. The PUCO Has The Authority To Impose Civil Forfeitures.

The Utilities challenge the PUCO's decision to impose civil forfeitures, arguing that the PUCO lacks authority to assess civil forfeitures in the context of a GCR case.[38] The Utilities argue that the PUCO's rules do not contemplate assessing civil forfeitures in a GCR case.[39] However, in making this argument, the Utilities ignore the fact that R.C. 4905.54 does not preclude the PUCO from imposing civil forfeitures:

> **Every public utility** or railroad and every officer of a public utility or railroad **shall comply with every order, direction, and requirement of the public utilities commission made under authority of this chapter and Chapters 4901., 4903., 4907., and 4909. of the Revised Code,** so long as they remain in force. Except as otherwise specifically provided in section 4905.95 of the Revised Code, **the public utilities commission may assess a forfeiture** of not more than ten thousand dollars for each violation or failure against a public utility or railroad that violates a provision of those chapters or that after due notice fails to comply with an order, direction, or requirement of the commission that was officially promulgated. Each day's continuance of the violation or failure is a separate offense.[40] (Emphasis added).

Rather, the PUCO has the discretion to impose civil forfeitures if an entity has failed to comply with a PUCO Order. The Utilities do not challenge the fact that the PUCO had issued an Order to terminate their affiliate gas supply contracts upon approval of the

[38] Utilities App. for Rehearing at 23-24.

[39] Utilities App. for Rehearing at 23.

[40] R.C. 4905.54.

Stipulation in the 2010 GCR case[41] and that their actions in not terminating those contracts until November 28, 2012, violated that order. The Utilities did not question -- and indeed they had informed the PUCO Staff -- that they had agreed to discontinue the Orwell residential transportation program. The Utilities did not question that they had no tariff on file permitting a residential transportation program. Thus the PUCO was well within its authority under R.C. 4905.54 in imposing the civil forfeitures for violation of a PUCO Order.

The Utilities argue that they were not afforded notice and thus the PUCO could not impose the civil forfeitures.[42] In making this claim, the Utilities are misunderstanding and misapplying the notice requirement. There is no dispute that the Utilities had notice of the PUCO's Order adopting and approving the Stipulation in the 2010 GCR Case. Thus the Utilities knew that they were required to terminate the affiliate gas supply contracts with the approval of the Stipulation, which occurred on October 26, 2011. The fact that the Utilities agreed to terminate the affiliate gas supply contracts in a Stipulation only further emphasizes that they had notice.

It is also not disputed that the Utilities are represented by counsel in these proceedings and were represented by counsel in the 2010 GCR Cases. The PUCO recognized this in addressing the Stipulation in the 2010 GCR Case when it applied the three prong test, which included prong one -- "Is the settlement a product of serious bargaining among capable, knowledgeable parties?" The PUCO concluded, "we find the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is clearly met. The companies, the PUCO Staff, their counsel, and OCC have

[41] Order at 58.

[42] Utilities App. for Rehearing at 24.

been involved in previous cases before the Commission including GCR cases."[43] Thus, the Utilities had knowledgeable counsel who was aware of the rules, including that R.C. 4905.54 authorized the PUCO to impose civil penalties if it found grounds to do so.

Instead the Utilities are claiming that R.C. 4905.54 requires they have notice that the PUCO was considering imposing the forfeitures before it could impose them. Under such an interpretation the PUCO would be required to schedule a separate evidentiary hearing prior to imposing civil forfeitures. Such a separate hearing is not contemplated nor required by R.C. 4905.54.

The Utilities cite *Vectren Energy Delivery of Ohio, Inc. v. Public Utilities Commission of Ohio* (2007), 113 Ohio St.3d 180, 2006-Ohio-1386 at ¶ 53, 863 N.E.2d 599 for the proposition that notice is required.[44] However, a reading of the *Vectren* case indicates that the Utilities had more than ample notice. In *Vectren*, the Court ruled:

> [P**53] Finally Vectren makes assorted claims that the proceedings before the commission were somehow tainted or that it was not afforded due process. These claims are without merit. This gas-cost-recovery proceeding centered around Liberty's audit report, of which Vectren had ample notice**. Vectren had a full hearing before the commission. It was permitted to present evidence through the calling of its own witnesses, the cross-examination of the other parties' witnesses, and the filing of exhibits.** Vectren was also able to argue its position through the filing of posthearing briefs and challenge the PUCO's findings through an application for rehearing.[45] (Emphasis added).

The same rings true in these cases as the Utilities had the opportunity to present their own witnesses, evidence and exhibits. However, as noted by the PUCO in its Order, in response to the Utilities attack of the PUCO Staff evidence:

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[43] 2010 GCR Cases, Opinion and Order at 26 (October 26, 2011).

[44] Utilities App. For Rehearing at 24.

[45] *Vectren Energy Delivery of Ohio, Inc. v. Public Utilities Commission of Ohio* (2007), 113 Ohio St.3d 180, 2006-Ohio-1386 at ¶ 53, 863 N.E.2d 599.

> Staff witness Sarver's prefiled testimony was available to the Companies well in advance of the hearing and the Companies had every opportunity to cross-examine Mr. Sarver as to these exact points of inquiry. In addition, **the Companies had every opportunity to introduce any and all evidence to support these post-hearing assertions at the hearing**. Further, **we would have expected the Companies to take every opportunity to challenge the findings of Staff witness Sarver and introduce evidence at the hearing on these subjects had they believed there was any merit to any of these assertions. They did not.**[46] (Emphasis added).

F. The Utilities Request For A Stay Should Be Denied.

Through its Application, the Utilities request that the PUCO "stay the order directing the Companies to pay the civil forfeiture until the record in this case is closed."[47] In essence, the Utilities are attempting to circumvent the process created by the General Assembly that provides for stays of PUCO orders pending an appeal to the Supreme Court of Ohio.

The Supreme Court of Ohio has held that: "R.C. 4903.16 provides for the procedure that must be followed when seeking a stay of a final order of the Commission."[48] The Supreme Court has specifically found that "[p]atently, Section 4903.16, Revised Code, was designed primarily to apply to a public utility which is dissatisfied with the rates or charges as ordered by the Public Utilities Commission."[49] Commenting that R.C. 4903.17 through 4903.19 provided no further guidance on this issue, the Court cited precedent for the proposition that "**there is no automatic stay** of

[46] Opinion and Order at 39.

[47] Utilities App. For Rehearing at 25.

[48] *Office of Consumers' Counsel v. Public Utilities Commission of Ohio* (1991), 61 Ohio St.3d 396, 403.

[49] *City of Columbus v. Public Utilities Commission of Ohio* (1959), 170 Ohio St. 105, 109.

any order, but * * * it is necessary for any person aggrieved thereby to take affirmative action, and if he does so he is required to post bond."[50]

Ohio law does not provide for the automatic stay of the PUCO's order that the Utilities seek in their Application for Rehearing. And even if the Utilities were to take affirmative action and post a bond, they have failed to show that a stay should be granted. Although there is no controlling precedent in Ohio setting forth the conditions under which the PUCO will stay one of its own orders,[51] the PUCO has favored the four-factor test governing a stay that was supported in a dissenting opinion by Justice Douglas,[52] and which has been deemed appropriate by courts when determining whether to stay an administrative order pending judicial review.[53] This test involves examining:

(a) Whether there has been a strong showing that movant is likely to prevail on the merits;

(b) Whether the party seeking the stay has shown that it would suffer irreparable harm absent the stay;

(c) Whether the stay would cause substantial harm to other parties; and

(d) Where lies the public interest.[54]

Not only does the Utilities Request for a Stay not even mention these criteria, but it fails to address any of them. There is no merit to the Utilities request for a stay and it should be rejected.

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[50] *Id.* (quoting *Keco Industries, Inc. v. Cincinnati & Suburban Bell Telephone Co.* (1957), 166 Ohio St. 254, 258) (emphasis in *Keco Industries*).

[51] See *In the Matter of the Commission's Investigation Into the Modification of Intrastate Access Charges*, Case No. 00-127-TP-COI, Entry on Rehearing (February 20, 2003) ("Access Charge Decision") at 5.

[52] See *MCI Telecommunications Corp. v. Pub. Util. Comm.* (1987), 31 Ohio St.3d 604. *See also In the Matter of the Complaint of Northeast Ohio Public Energy Council*, Case No. 09-423-EL-CSS Entry at 2 (July 8, 2009) Motion for Stay Granted.

[53] Access Charge Decision at 5.

[54] Access Charge Decision at 5.

III. CONCLUSION

For all the reasons stated above, the PUCO should deny the Utilities' Application for Rehearing because the Utilities have failed to raise any new matters not previously addressed and rejected in the Opinion and Order. Moreover, the Utilities failed to demonstrate that the Opinion and Order was unlawful, unjust or unreasonable. Finally, the Utilities have not shown that they are entitled to a stay.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Memorandum Contra* was electronically served on the persons stated below this 23rd day of December, 2013.

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Summary: Memorandum Memorandum Contra Northeast Natural Gas Corporation and Orwell Natural Gas Company Application for Rehearing and Requests for Clarification, and in the Alternative, Motion to Stay the Enforcement of Civil Forfeitures Pending an Appeal to the Ohio Supreme Court by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Serio, Joseph P. Mr.