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 and Orwell Natural Gas Company.	)))))	Case No. 12-209-GA-GCR Case No. 12-212-GA-GCR
In the Matter of the Regulation of the Uncollectible Expense Riders of Northeast Ohio Natural Gas Corporation and Orwell Natural Gas Company.	)))))	Case No. 12-309-GA-UEX Case No. 12-312-GA-UEX

ENTRY ON REHEARING

The Commission finds:

(1) On November 13, 2013, the Commission issued its Opinion and Order in the above-captioned cases regarding, in part, the purchased gas adjustment or gas cost recovery (GCR) costs of Northeast Ohio Natural Gas Corporation (Northeast) and Orwell Natural Gas Company (Orwell), (collectively referred to as the Companies). In the Opinion and Order, the Commission adopted Staff's recommendations with regard to the uncollectible expense and GCR audits for Northeast and Orwell to the extent set forth in the Order, reflecting the audit period ordered by the Commission, as well as the disallowance of certain fees for nonprocessed gas and premiums payments to its affiliate John D. Oil and Gas Marketing (JDOGM). Through this Order the Commission also directed that: an investigative audit of the Companies and all affiliated and related entities be initiated to examine the Companies' management and relationships with its affiliates and related companies; the Companies coordinate with Staff and the Ohio Consumers' Counsel (OCC) to develop and implement a new request for proposal (RFP) for the purchase of gas supplies overseen by Staff; and that Northeast pay a civil forfeiture of $26,000 and Orwell pay a civil forfeiture of $50,000 for statutory violations.

(2) R.C. 4903.10 states that any party to a Commission proceeding may apply for rehearing with respect to any matter determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.

(3) On December 13, 2013, the Companies filed an application for rehearing and request for clarification of the Commission's November 13, 2013 Opinion and Order and a motion to stay the enforcement of civil forfeitures pending an appeal to the Ohio Supreme Court. In their application for rehearing and request for clarification, the Companies raise 15 assignments of error and a request to stay the enforcement of the ordered civil forfeitures.

(4) On December 23, 2013, OCC filed a memorandum contra the application for rehearing.

(5) In their first assignment of error, the Companies request clarification of the Opinion and Order to allow the Companies to purchase local and interstate gas production in-house. The Companies assert that the Opinion and Order is unclear as to whether, as an alternative, the Commission would permit the Companies to purchase local and interstate gas for its GCR customers using in-house employees of the Companies in lieu of establishing a new RFP process.

(6) In its memorandum contra, OCC contends that, if the Commission permits the use of in-house personnel, certain customer protections are warranted. OCC argues that the purchases made by in-house personnel should be reviewed as part of future biannual GCR cases and that the Companies should purchase such gas supplies in a manner that provides benefits to customers.

(7) In the Opinion and Order, we directed that, "until the completion of the new RFP process, as ordered by the Commission herein, beginning 70 days from the date of this Opinion and Order, the Companies shall purchase any and all local production using in-house employees***." To the extent the Opinion and Order is unclear, we clarify our Opinion and Order to allow the Companies to purchase local and interstate production using in-house employees until

such time as a new RFP is implemented. In addition, as with any purchases of gas by the Companies, all such purchases utilizing in-house personnel or through the use of an RFP will be subject to future Commission-ordered audits. We still believe that an RFP process will be the most effective means for the Companies to purchase gas for GCR customers. Therefore, to the extent the Companies request rehearing on this issue, we find that the request should be denied.

(8) In their second assignment of error, the Companies assert that the effective audit periods are ambiguous and unreasonable and should be clarified or modified on rehearing. The Companies contend that there is a need for clarification because Staff witness Sarver testified that there is a difference between the audit periods and reporting periods of the Companies. The Companies point out that, according to Staff witness Sarver, the reporting period for Northeast lags behind six months; however, the reporting period for Orwell does not lag behind six months. Thus, while the 24-month audit period ordered by the Commission for Northeast in these cases was March 1, 2010 through February 29, 2012, Staff audited the costs for Northeast beginning in September 2009. Therefore, the Companies assert that the two-year reporting period of Northeast's audit is September 1, 2009 through August 31, 2011, rather than the March 1, 2010 through February 29, 2012 period stated in the Order.

(9) In its memorandum contra, OCC claims that there is no need for the Commission to clarify the difference between what the Companies describe as the audit period and the reporting period because the Commission ordered that the financial adjustments be recalculated for the specific dates for the audit period.

(10) With regard to the Companies' second assignment of error, we find that the Order in these cases directed Staff to recalculate all of the financial adjustments to reflect the costs incurred during the audit period from March 1, 2010 to February 29, 2012, for Northeast and from July 1, 2010 to June 30, 2010 for Orwell. However, as pointed out by the Companies, for the audit of Northeast, the record also

reflects that Staff reviewed a six-month reporting period that commenced at the conclusion of the 2010 audit, on September 1, 2009; thus, ensuring that there was no gap between the previous audit in Case Nos. 10-209-GA-GCR and 10-212-GA-GCR (*2010 GCR Audit Cases*) and the audit conducted in these cases. The record reflects that Staff's audit and testimony in these cases included the period of September 1, 2009 through February 29, 2012. Thus, based on the fact that the gas purchases and prices paid by Northeast between September 1, 2009 and February 29, 2010, were clearly at issue in these cases, and open for discovery and cross-examination, the Companies were aware that Staff's examination of the incurred costs for this six-month time period were included in our consideration of the record in these cases. From their arguments, it appears as if the Companies are trying to hold the Commission to a strict 24-month time period, as opposed to a period that ensures that all of the Companies' purchases and prices were properly accounted for. Absent inclusion of the record evidence relating to the time period beginning on September 1, 2009, there would be a gap following the audit conducted in the *2010 GCR Audit Cases*. Such a gap in audit periods and adjustments would result in the disallowance of costs and charges that should be properly accounted for as balance adjustments and actual adjustments in contravention of the statutory mandate for GCR recovery. Therefore, we clarify our Order to direct Staff to include the time period for the GCR adjustments for Northeast to commence on September 1, 2009 through February 29, 2012. Accordingly, we conclude that the Companies' second assignment of error requesting the audit period be defined as a 24-month period for Northeast should be denied.

(11) In their third assignment of error and request for clarification, the Companies request that the adjustments related to the disallowance of JDOGM fees and the Cobra processing fees be limited to the audit period. The Companies contend Staff determined that $145,363 in Cobra processing fees should be disallowed and that this amount was based on the volume of gas purchased from September 1, 2009, to May 31, 2012. The Companies also contend that the Commission's disallowance of JDOGM fees in the amount of $583,417.80, and for Orwell of $224,991.60,

were based on the audit period derived by Staff. The Companies dispute the reasonableness and lawfulness of the disallowance; however, the Companies assert that, if the Commission affirms the disallowance, the Opinion and Order should be modified or clarified to align the disallowance of the JDOGM fees and Cobra processing fees with the Commission's adjusted audit period.

(12) We first note that the Companies have not set forth in detail in this assignment of error any error as to the Commission's findings regarding the impropriety of the processing fees charged or the premiums paid to JDOGM. Moreover, as we stated previously, the audit period for Northeast commences on September 1, 2009 through February 29, 2012. Therefore, we conclude that the Companies' third assignment or error should be denied.

(13) In their fourth assignment of error, the Companies contend that the Commission's adoption of the Staff's repricing methodology is unreasonable and unlawful. The Companies argue that the Commission failed to address the Companies' arguments related to Staff's unreasonable repricing methodology detailed in its post-hearing brief. The Companies specifically point to Staff's determination of its Alternative Premium New York Mercantile Exchange (NYMEX) Plus calculation for local production and for JDOGM premiums that they claim is unreasonable. The Companies also assert that Staff's repricing of local production was unreasonable and unsupported by the record, and that Mr. Sarvers' utilization of NYMEX for the audit period was flawed. Additionally, the Companies claim the Commission did not address Staff's unsupported basis for its adjustment to the prices paid to JDOGM, and did not fully consider the analysis of the Companies' witness Dr. Overcast who determined the Companies purchase prices was the best index to evaluate prevailing prices. The Companies further argue that the Commission did not address Staff's unsupported basis for its calculation of local production. Further, the Companies contend that Staff's repricing methodology requires a public utility to turn over contracts that belong to an unregulated entity and the Commission does not have regulatory authority over JDOGM or its unregulated local producers, and it approved

Staff's repricing methodology under the unlawful premise that the Companies were somehow in control of JDOGM's contracts or had the power to access those contracts.

(14) In its memorandum contra, OCC argues that the Commission's' findings related to local production costs were both lawful and reasonable. OCC asserts that the Companies' arguments are based on the belief that their witness Dr. Overcasts' evaluation is more accurate than that of Staff witness Sarver. OCC maintains that the Companies have failed to raise any new factual or legal arguments and merely rehash the same arguments in regards to the costs of local production they made in their post-hearing brief that the Commission already considered and rejected. According to OCC, the Commission 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; however, Staff's analysis was based on NYMEX prices and was the best evidence of record. Further, OCC argues that the Companies ignored the analysis performed by its witness Mr. Slone.

(15) We find no merit to this fourth assignment of error. As noted by OCC, the arguments raised by the Companies related to this assignment of error were fully considered and addressed by the Commission on pages 27 through 39 of the Opinion and Order and the Companies have raised no new arguments related to this assignment of error. We found that Dr. Overcasts' calculation of local production was flawed for a number of reasons as cited on page 38. We also found that Staff witness Sarver's calculation of the costs of local production was lawful and reasonable, and constituted the best evidence. In addition, we determined not to utilize Staff's calculation of Alternative Premium NYMEX Plus to calculate an alternative premium to be paid to JDOGM and, thus, had no reason to address the arguments of the Companies related to Staff's Alternative Premium NYMEX Plus analysis for premiums paid to JDOGM. Furthermore, as noted by OCC, we found that the findings of the audit report reflect consistency with the calculations of OCC witness Sloan who made similar findings on the costs of local production through a different analysis.

As to the Companies' claims that they were not in control of JDOGM contracts and did not have power to access those contracts, we similarly find no merit. We specifically addressed these arguments, first raised by the Companies in their brief, on page 38-39 or our Order where we stated:

> They provided no evidence they ever: attempted to obtain the contracts sought by Staff from JDOG; inquired as to the reasons why gas costs had increased; attempted to find other suppliers prior to the implementation of the RFP; attempted to contact the Commission or Staff to inquire what steps to take in order to obtain this information; or attempted to contact the Commission or Staff to question how to revise or revamp the RFP to require JDOG provide the underlying contracts that would reveal the actual price of local production. Such actions would have demonstrated an attempt by the Companies to appropriately and prudently respond to the issues***Nevertheless, given the failure of the Companies to produce the underlying contracts evidencing the actual costs of local production paid by JDOG, coupled with the fact that many of the contracts used in the audit in the *2010 GCR Audit Cases* were still in effect for portions of the audit, and these contracts were based on NYMEX prices, we believe that Staff's reliance on such information provides not only a reasonable and appropriate basis on which to determine the underlying costs of local production, but the best evidence of record.

We find the Companies have raised no new arguments related to this issue. Accordingly, we find that the Companies' fourth assignment of error should be denied.

(16) In their fifth assignment of error, the Companies contend the Commission erred because it evaluated the fairness of prices based on the profits of an unregulated marketer, which constitutes de facto regulation of unregulated markets. The

Companies assert that they made arguments related to Staff's proposed repricing that could have a chilling effect on the market by signaling price ceilings to marketers, but the Commission never addressed the arguments. Consistent with our previous finding, we find no merit to this assignment of error and, therefore, it should be denied. We fully addressed the arguments raised by the Companies in our Order and the Companies have raised nothing new herein.

(17) In their sixth assignment of error, the Companies contend the Commission erred by disallowing all of JDOGM's agency fees because the Commission approved Staff's repricing of local production, which repricing already discounted the Companies' agency fees to JDOGM. The Companies claim that, by disallowing the JDOGM fees, the Commission disallowed more premium payments than were actually paid to JDOGM. The Companies claim the difference between JDOGM's premium and Staff's premium has already been discounted from the Staff's actual adjustment (AA), and, if the Commission requires the Companies to adjust their GCRs by using the Staff's AA, plus the full disallowance of JDOGM's premiums, then there will be a double disallowance on the difference.

(18) We find no merit to this sixth assignment of error. Staff's calculation of the AA related to the costs of local production is separate and distinct from Staff's calculation of the premiums paid to JDOGM. While it is accurate that Staff's determination of its Alternative Premium NYMEX Plus calculation did account for the premiums paid to JDOGM, we did not adopt this calculation. Therefore, the disallowance of the JDOGM premiums was separate and distinct from Staff's determination of the costs of local production and any suggestion that we are attempting to calculate the disallowance twice is inaccurate. Accordingly, this assignment of error should be denied.

(19) In their seventh assignment of error, the Companies argue the Commission erred by subjecting the Companies' affiliated entities to investigative audits because the affiliate entities have not had an opportunity for notice and hearing in these matters, which violates due process rights. The

Companies raise similar arguments that they raised in their brief regarding denial of due process to affiliates subject to any audit, not giving notice of the hearing in these cases, or having the ability to present evidence or witnesses or file briefs.

(20) In its memorandum contra, OCC argues the Commission has given proper notice to the Companies and all of their affiliated and related entities with notice that an investigative audit will occur and they will have every opportunity to present witnesses and exhibits at an evidentiary hearing. OCC maintains that, to the extent that the Companies are making these arguments for the nonparty affiliates, they are acting as agents of the nonparty affiliates and, thus, these nonparty affiliates have notice.

(21) We find no merit to this seventh assignment of error. As explained in the Opinion and Order, we found, in part, that there was a need for an investigative audit based on our review of the evidence of record in these cases. At the initiation of these proceedings, the parties of interest were the Companies subject to the financial audits. At that time, there was no evidentiary record on which we could find justification for providing notice to any entity not named as a party. Only after having conducted a hearing and reached findings regarding the necessity of conducting an audit, was the Commission in a position to order such audit. As we have noted, at the time such audit is conducted, any parties named to be part of the investigative audit will be given notice of the proceeding and the opportunity to participate in any hearings, the opportunity to present or cross-examine witnesses, and permitted to present evidence on any subject to be examined at the hearing.

(22) In their eighth assignment of error, the Companies argue that the Commission's Opinion and Order is unlawful and unreasonable because it holds the Companies' sister corporation liable of the Companies' acts. The Companies argue that any wrongful act committed by one sister corporation might have been instigated by the corporations' owners, but it could not have been instigated by the corporation's sister. In addition, the Companies claim the fact that the nonparty affiliates share officers and directors

with the Companies is irrelevant and separate legal identities of related corporations must be respected, even where directors and officers serve in various capacities in multiple entities.

(23) In its memorandum contra, OCC maintains that the Commission has the authority to investigate and audit any and all transactions made by regulated companies, regardless of whether those transactions involve other regulated companies or nonregulated companies.

(24) We find no merit to this eighth assignment of error. While the Companies appear to be arguing about the responsibilities for wrongful acts of corporations or their affiliates, no such determinations have been made in these proceedings. In our Opinion and Order, we ordered that an investigative audit be conducted based on the evidence of record. We made no findings of wrongdoing or liability with respect to any affiliates of the Companies. Our reference to the affiliates of the Companies as it concerns the ordered investigative audit ensures that a comprehensive analysis of the corporate structure of the Companies is undertaken. Further, should any affiliate of the Companies be included in the audit, that affiliate will have the right to participate in such a proceeding. However, our subsequent investigative audit and the actual scope of that proceeding will be adjudicated separately from these proceedings. Thus, any attempt to find error in the Order in these cases due to our mention of the Companies' affiliates is misplaced and premature. As such, an argument is more appropriately suited for the determination of the scope in the subsequent investigative audit proceeding. Accordingly, the Companies' eighth assignment of error should be denied.

(25) In their ninth assignment of error, the Companies argue the Commission exceeded its statutory authority by ordering investigative audits of all of the Companies' affiliates and related parties. According to the Companies, by ordering such audits of any of the Companies' affiliates that are not public utilities within Ohio, the Commission's Opinion and Order is unlawful and should be modified to comply with Ohio law.

(26) We find that the arguments raised by the Companies related to this ninth assignment of error have no merit. As previously stated, the scope of the investigative audit has not been determined at this time and the entities subject to this audit have not been identified; therefore, the arguments made by the Companies in their application for rehearing regarding the entities subject to such audit are untimely, having been made in advance of such audit. At the point in time after the Commission has issued an entry to conduct the investigative audit and has set forth the parameters of the audit, the Companies will have the opportunity to advance their positions related to such audit.

(27) In their tenth and eleventh assignments of error, the Companies argue the Commission failed to set forth the specific matters to be audited, investigated, or subjected to hearing, and improperly ordered Brainard Natural Gas Company (Brainard) to be subject to such audit. In addition, the Companies submit the Commission's delegation of power to Staff to decide the outlines and extent of the investigative audit is unreasonable. The Companies also contend that, to the extent the Commission's Order intended to order an investigative audit of Brainard and Orwell, both companies having less than 15,000 customers, it is unlawful because it fails to satisfy R.C. 4905.302, which requires good cause to conduct an audit of a natural gas company with 15,000 or fewer customers. In addition, the Companies assert the Commission erred by authorizing Staff to order an investigative audit beyond the scope of R.C. 4905.(C)(3)(b). The Companies claim the evidence introduced by the OCC and Staff in these GCR proceedings went far beyond the scope of a management and performance audit. Moreover, to the extent the Commission authorized Staff to initiate an investigative audit based on the evidentiary record in these cases, such delegation by the Commission to Staff, exceeds the statutory limits of an audit set forth in R.C. 4905.302(C)(2), and such order is unreasonable.

(28) In its memorandum contra, OCC maintains the Commission has the authority to order an investigative audit that is not limited to R.C. 4905.302(C)(3)(b). OCC contends that, under R.C. 4905.04 and R.C. 4905.05, the Commission has general supervision over all public utilities within its jurisdiction

and may examine such public utilities and keep informed as to their general conditions, capitalization, and franchises and the manner in which their properties are leased, operated, managed, and conducted.

(29) We find no merit to the Companies tenth and eleventh assignments of error. As we noted in our Opinion and Order, an investigative audit of the Companies and all affiliated and related companies should be undertaken by an outside auditor. We further noted that "The outlines and extent of the investigative audit shall be proposed by Staff based on the evidence of record from this audit" (emphasis added). As with any audit conducted by an outside auditor, the Commission will ultimately issue the RFP setting forth the scope of the audit and requesting bids from qualified bidders. In addition, it will be the Commission that will select the outside auditor and will order the commencement of such audit with specific directives as to the matters to be investigated. While Staff is tasked with proposing the scope of the audit, the Commission, not Staff, would be the final determiner of the scope and matters to be investigated.

As to the portion of this assignment of error related to R.C. 4905.302, we similarly find no merit. First, R.C. 4905.302(C)(4) provides:

> [u]nless otherwise ordered by the commission for good cause shown either by an interested party or by the commission on its own motion, no natural gas company having fifteen thousand or fewer customers in this state shall be subject under the purchased gas adjustment rule to any audit or other investigation or any related hearing, other than a financial audit or, as necessary, any hearing related to a financial audit.

In these cases, we found good cause exists to order such audit. The evidence demonstrated, among other things, that the Companies improperly charged for the processing of natural gas, improperly failed to terminate purchase contracts as ordered previously by this Commission, provided transportation service in absence of any tariff

authority, provided improper access to nonregulated affiliated and related companies, provided preferential treatment to invoice payments from related or affiliated companies over those of nonrelated companies, failed to enforce internal controls, and operated with a functional absence of responsible persons serving in management positions. As we noted in our Opinion and Order, "we find that the evidence demonstrates that there are sufficient legitimate concerns related to the management structure, personnel responsibilities and decisions and practices of and between the Companies and their affiliates, and the Companies' management structure, all of which warrant an investigative audit be undertaken of the Companies, as well as all affiliates and related companies." It is quite clear that good cause exists to conduct such an audit.

As to the inclusion in the investigative audit of affiliated gas companies with less than 15,000 customers, which includes both Brainard and Orwell, we find the arguments of the Companies to similarly have no merit. The Commission's action in ordering an investigative audit was in accordance with R.C. 4905.302 as it was based, not only on the motions of Staff and the OCC, both interested parties, but also by the Commission, based on the evidentiary record in these cases. As to the inclusion of Brainard, we believe that good cause exists to include Brainard in such an audit, not withstanding its customer base of less than 15,000 customers, because it is the subject of GCR audits before the Commission, it shares offices and employees with the Companies, and its management works with and has an ongoing relationship with the management of the Companies, for which we found serious lapses in judgment. As such, good cause exists to warrant their participation in the investigative audit. Accordingly, the Companies tenth and eleventh assignments of error should be denied.

(30) In their twelfth assignment error, the Companies argue that the Commission's Opinion and Order is unreasonable because it seeks to order the Companies to pay the costs of the audit for all of the related entities. According to the Companies, by ordering the Companies to pay for audits of their sister entities, the Commission has unlawfully pierced the Companies' corporate veil. The Companies also claim

that R.C. 4905.302 strictly limits the scope of a management and performance audit, and the laws regulating such audits do not authorize one gas company (Northeast) to audit another gas company (Brainard).

(31) In its memorandum contra, OCC maintains that the Companies' arguments regarding piercing the corporate veil by ordering the Companies to pay for the investigative audit have no merit and are not relevant.

(32) We find no merit to this twelfth assignment of error, therefore, it should be denied. As noted earlier, R.C. 4905.(C)(4) provides that the Commission is authorized to order such audits for good cause shown. We believe the evidentiary record in these cases demonstrates good cause for such audit and for imposing the costs of such audit on the Companies, notwithstanding the fact that affiliates and related companies to the Companies will be involved in the audit. Further, R.C. 4905.302(C)(5) provides that "[i]n issuing an order under division (C) (3) or (4) of this section, the commission shall file a written opinion setting forth the reasons showing good cause under such division and the specific matters to be audited, investigated, or subjected to hearing." As we have also noted, at the time the Commission issues the entry directing the audit, the reasons for the audit and the specific matters to be investigated will be fully set forth.

(33) In their thirteenth assignment of error, the Companies claim the Commission erred by ordering investigative audits of companies that are not gas companies as defined by R.C. 4905.03. The Companies contend that, although the Commission did not identify all of the parties to be audited, the Companies have affiliated regulated entities that are not gas companies that may be subjected to the audit. To the extent the Opinion and Order authorizes the audits of entities that are not gas companies and natural gas companies, the Commission order is unreasonable.

(34) We find no merit to this thirteenth assignment of error. As noted by the Companies, we have not identified all of the parties that would be included in the investigative audit. Therefore, it is premature to claim that the Commission has

taken an action in violation of a statute, by including entities not statutorily bound by the Commission's jurisdiction. Accordingly, this assignment of error should be denied.

(35) In their fourteenth and fifteenth assignments of error, the Companies claim the Commission's assessment of civil forfeitures against the Companies is unlawful and unreasonable because the Commission is not authorized to assess forfeitures in GCR hearings and because such actions violate their due process rights. The Companies also claim that they were denied proper notice of the claims alleged and an opportunity to defend themselves.

(36) In its memorandum contra, OCC argues that the Commission has the discretion to impose civil forfeitures if an entity has failed to comply with a Commission Order. According to OCC, the Companies did not dispute that the Commission had issued an order to terminate their affiliate gas supply contracts. Also, the Companies did not dispute that they had informed the Commission that they had agreed to discontinue the Orwell residential transportation program. Further, the Companies did not dispute that they had no tariff on file permitted a residential transportation program. Thus, the Commission was well within its authority to impose civil forfeitures. OCC also maintains that a separate proceeding is not required or contemplated by R.C. 4905.54.

(37) We find no merit to the fourteenth and fifteenth assignments of error. The Companies have raised no new arguments that were not previously raised in their reply briefs at pages 27-29 and fully considered by the Commission in its Opinion and Order at pages 58-62. In addition, we note that the evidence that served as the basis for the Commission to impose civil forfeitures was well known to the Companies far in advance of the hearing because the evidence related to both the failure of the Companies to terminate purchase contracts and the provision of transportation service to residential customers was highlighted in the Staff Report, that was filed six months in advance of the hearing. The Companies could have introduced evidence or questioned witnesses at the hearing related to these subjects, either on cross examination or on rebuttal; however, they chose not to

do so. As to the amount of the civil forfeitures we assessed, such amount was solely in the discretion of the Commission and we believe the amounts of the civil forfeitures assessed against the Companies were reasonable based on the record evidence and in keeping with the parameters set forth in R.C. 4905.54. Further, the Commission notes that the Companies have not contested the civil forfeiture amounts calculated by the Commission. Accordingly, the Commission finds that these assignments of error should be denied.

(38) Finally, as an alternative argument, the Companies request that, if the Commission denies the Companies' application for rehearing, the Commission stay the enforcement of the civil forfeitures pending an appeal to the Ohio Supreme Court and until the record in the appeal to the Ohio Supreme Court is closed.

(39) In its memorandum contra, OCC argues that the Companies' request for a stay should be denied. OCC notes that the Ohio Supreme Court has held that there is no automatic stay of any order and that R.C. 4903.16 provides for the procedure that must be followed when seeking a stay of a final order of the Commission. According to OCC, there are four basis on which to grant a stay and the Companies' request for a stay failed to set forth the requisite basis for granting a stay.

(40) As noted previously, our imposition of civil forfeitures in these proceedings was based on the record evidence and the Companies have not contested the calculation of the amounts of those forfeitures. Now the Companies seek to delay the payment of such forfeitures. We believe the Companies had the opportunity to present any and all evidence at the hearing regarding the matters that were the subject of the civil forfeiture; however, the Companies chose not to do so. We imposed civil forfeitures as a result of the actions of the Companies, in compliance with R.C. 4905.54 for their actions in violations of R.C. 4905.30, 4905.32, and 4905.30. In addition, as noted by OCC, the Commission has favored a four-factor test governing a stay including: whether there has been a strong showing that movant is likely to prevail on the merits; whether the party seeking the

> stay has shown that it would suffer irreparable harm absent the stay; whether the stay would cause substantial harm to other parties; and where lies the public interest. As to these four factors, the Companies have failed to set forth any support for granting a stay. Accordingly, we find that the Companies' request to stay the payment of the civil forfeitures should be denied.

It is, therefore,

ORDERED, That the application for rehearing filed by the Companies be denied. It is, further,

ORDERED, That the Companies' request to stay the payment of the civil forfeitures be denied. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties and other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Lynn Slaby

M. Beth Trombold

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Entered in the Journal

JAN 08 2014

Barcy F. McNeal

Barcy F. McNeal
Secretary