BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

ORWELL NATURAL GAS COMPANY

Case No. 14-1654-GA-CSS

Complainant,

v.

ORWELL-TRUMBULL PIPELINE COMPANY, LLC,

Case No. 15-0637-GA-CSS

Respondent.

ORWELL TRUMBULL PIPELINE COMPANY'S

MEMO CONTRA
ORWELL NATURAL GAS COMPANY'S
MOTION FOR AN ORDER SUSPENDING THE ARBITRATION PROVISION, REQUEST FOR DECLARTORY RULING, AND REQUEST FOR EXPEDITED TREATMENT

I. INTRODUCTION

By Motion filed November 12, 2015 (the "Motion"), Orwell Natural Gas Company ("ONG") asks this Commission to "suspend" an arbitration provision contained in a Commission-approved[1] contract (the "OTPC-ONG Contract") between it and respondent Orwell Trumbull Pipeline Company ("OTPC"). ONG also asks this Commission to declare that the Commission, alone, may adjudicate disputes arising under the OTPC-ONG Contract. In its Memorandum supporting this motion, ONG admits that it seeks this relief in order to prevent an arbitrator from exercising jurisdiction over the same claims at issue in Case No. 15-0637-GA-CSS. ONG justifies this extraordinary request by asserting that these claims "directly impact regulated customers." (Memo in Support, p. 6).

[1] Entry dated December 19, 2008 in Case No. 08-1244-PL-AEC.

It is unclear whether this Motion modifies, or is in addition to, an oral motion ONG made at the end of two days of hearings in these matters, requesting the Hearing Examiner to order the pending arbitration proceeding "stayed." Perhaps recognizing this Commission has no jurisdiction to enjoin an arbitration conducted pursuant to the American Arbitration Association rules, ONG is modifying its request for a stay. Or perhaps ONG still contends that the Commission has the power to enjoin another tribunal, and thus its latest motion is in addition to its oral motion.

In either event, this Commission has no authority to enjoin another tribunal, no authority to issue declaratory judgments, [2] and no authority to "suspend" the operation of provisions of a valid contract. ONG's oral and written Motions addressing the arbitration provision are based upon multiple, fundamental, misstatements of law and fact. For all the reasons that follow, this Commission must deny ONG's pending Motions.

II. MATERIAL FACTS

ONG concedes (Memo in Support, p. 1) that OTPC imitated action to resolve various disputes between the parties arising from the terms of the OTPC-ONG Contract on March 12, 2015, when OTPC filed a demand for arbitration with the American Arbitration Association. In that action, OTPC claims ONG was (and remains) in breach of a provision of the OTPC-ONG Contract that provides as follows:

> [ONG] agrees that during the term of this Transportation Services Agreement it will use only OTPC's pipelines to transport gas for any of its customers; provided, however, that this exclusive use of the OTPC pipelines shall remain in effect as long as OTPC has available capacity within its pipelines. Should available capacity not

[2] "Declaratory judgments" are simply rulings in which rights and obligations are declared, but no order granting specific relief is issued. Because judicial bodies were historically unwilling to issue "advisory" opinions but instead demanded litigants plead and prove specific facts demonstrating a right to relief, legislative bodies created the "declaratory" judgment through statutes. In Ohio, that scheme is set forth in Chapter 2721 of the Revised Code. ONG has identified no similar grant of authority to this Commission. Of course, ONG is also seeking specific relief, so it is unclear as to how the ruling it seeks is in any way "declaratory."

exist, then during that period only Orwell may use other pipelines to transport its gas requirements.[3]

ONG responded by filing case no. 15-637-GA-CSS, in a transparent attempt to avoid OTPC's arbitration demand. Its complaint was filed in that matter the day before its answer was due in the arbitration proceeding. It is certainly worthy of comment that ONG necessarily breached the arbitration provision within the OTPC-ONG Contract in order to do so.

After initiating case no. 15-637, however, ONG filed its answer to OTPC's arbitration demand. ONG raised several counterclaims in that answer. It asserted, for example, that OTPC is itself in breach of the Contract by failing to maintain system pressures, and by overcharging ONG for shrinkage. (Memo in Support, p. 2). ONG also chose to mimic the relief it had just demanded in this proceeding, from this Commission.[4] It concedes it asked the arbitrator to set aside the OTPC-ONG Contract on the basis that it was not the result of an arms-length transaction. (*Id.*) ONG was not seeking this relief from the arbitrator in good faith, however. It instead used its own demand for relief to argue, both within the arbitration and to this Commission, that this Commission alone can hear the dispute, because the arbitrator allegedly lacks the authority to order the very relief that ONG, itself, demanded the arbitrator provide it.

[3] Orwell does not mention that OTPC sought damages as its only remedy for the alleged breach of contract. That fact is established, however, by OTPC's demand for arbitration, OTP Exhibit No. 2, p. 2.

[4] In its complaint to this Commission, ONG's prays ". . . that the PUCO determine the following:"

2. The [OTPC-ONG Contract] as approved by the PUCO, must be re-evaluated and/or re-addressed to determine more suitable arrangements for both parties and consumers within the State of Ohio, including the termination of the Agreement.
3. The PUCO require OTPC to file new tariff rates for transportation services;
4. A hearing be set for parties to determine the appropriate rate for consumers of ONG; and
5. Order any other relief that the Commission deems appropriate, just and reasonable.

III. LAW AND ARGUMENT

A. ONG'S FIRST FUNDAMENTAL ERROR:

THIS COMMISSION'S JURISDICTION IS CERTAINLY NOT EXCLUSIVE, AS ONG REPEATEDLY ASSERTS.

Initially, ONG correctly asserts that the OTPC-ONG Contract is a "reasonable arrangement" subject to Ohio Rev. Code section 4905.31. In its first error of law and fact, however, ONG then claims that the General Assembly vested this Commission with "exclusive jurisdiction" over all such "reasonable arrangements" (Memo in Support p. 3).

As this Commission is of course aware, ONG's statement is simply untrue. This Commission's jurisdiction over contracts – including those contracts that qualify as "reasonable arrangements" subject to Ohio Rev. Code section 4905.31 – is certainly not exclusive. Specifically, this Commission has no jurisdiction to determine the "legal rights and liabilities, or adjudicate controversies between parties as to contract rights or to property rights." *New Bremen v. PUCO* (1921), Ohio St. 23, 30, 132 N.E. 162, 164. *Accord*, *State ex rel. Dayton Power & Light Co. v. Riley* (1978), 53 Ohio St. 2d 168, 169, 373 N.E.2d. 385, 386.

The *New Bremen* limitation upon this Commission's jurisdiction should alone be fatal to ONG's Motion. When it asked the arbitrator to award it damages based upon ONG's breach of contract, OTPC plainly sought no more than an adjudication of ". . . controversies between parties as to contract rights. . . ." Similarly, the majority of ONG's claims seek an adjudication of rights arising from that same contract and thus also concern mere ". . . controversies between parties as to contract rights . . ." *But for the arbitration provision,* any of these claims and counterclaims could have been the subject of an action in a court of common pleas. Because of the arbitration provision, OTPC and ONG were required to submit their disputes to an arbitrator. Both have done so.

ONG's demand that the arbitrator vacate the OTOPC-ONG Contract, however, is admittedly unlike the other claims submitted for arbitration. That claim invokes an extraordinary power to change, alter, or modify contracts that Ohio's courts simply do not possess, but which this Commission does possess because the General Assembly expressly conferred such power upon it – subject to Constitutional limitations – through Ohio Rev. Code §4905.31(E).

Again, *but for the arbitration provision in the OTPC-ONG Contract,* ONG's demand for this relief would necessarily have compelled a court to decide that the relief it seeks is not available in the courts, but is available through this Commission's exercise of its 4905.31 jurisdiction.[5] The arbitration provision, however, completely changes the analysis, as discussed next.

B. ONG'S SECOND FUNDAMENTAL ERROR:

ONG NOT ONLY MISAPPREHENDS THE NATURE OF THIS COMMMISSION'S JURISDICTION, IT MISAPPREHENDS THE NATURE AND SCOPE OF ARBITRATION, ITSELF.

ONG's second fundamental error is its failure to understand – or unwillingness to acknowledge – the nature of arbitration and the jurisdiction possessed by arbitrators. In *Academy of Medicine of Cincinnati v. Aetna Health Inc*., 108 Ohio St.3d 185, 2006-Ohio-657, the Ohio Supreme Court expressly endorsed the application of federal tests consistent with Ohio law to determine the arbitrability of claims. It is significant, therefore, that the United States District Court for the Southern District of Ohio has stated that "[**th]e jurisdiction of the arbitrator is contractually granted by the parties,** the question as to whether a particular dispute is arbitrable necessarily depends upon whether the parties agreed to submit the dispute to

[5] Of course, ONG then (erroneously) claimed that *all* the issues submitted for arbitration are within the Commission's exclusive jurisdiction and demanded the arbitrator terminate the arbitration proceeding by dismissing OTPC's demand. ONG acknowledges that the arbitrator declined to do so. (Memo in Support, p. 3).

arbitration." *I & F Corp. v. Int'l. Ass'n. of Heat & Frost Insulators*, 493 F. Supp. 147, 150 (S.D. Ohio, 1980) (Emphasis supplied). *Accord, Citibank S. Dakota, NA v. Wood* (2d Dist. Ct. App.) 2006-Ohio-5755, ¶35. ("In determining whether an arbitrator has jurisdiction to determine an issue, one must look to the provision in the contract that authorizes the arbitration; **the arbitrator's authority is derived solely from the contract."**) (Emphasis supplied.)

The law of arbitration, therefore, is that the jurisdiction of the arbitrator is defined by the parties themselves, through the language contained in the arbitration provision. In this case, the language within the OTPC-ONG Contract is extremely broad – and plainly permits the arbitrator to exercise the same authority that this Commission possesses to modify, change or alter contracts, assuming the arbitrator concludes such relief to be appropriate:

> 7.6 The parties agree that ***any dispute arising hereunder or related to this Agreement*** shall be resolved by binding arbitration under the auspices of the American Arbitration Association. Prehearing discovery shall be permitted in accordance with the procedures of the Ohio Rules of Civil Procedure. ***The arbitrator or arbitrators shall have authority to impose any remedy at law or in equity***, including injunctive relief. The parties agree that any heating [*sic*] will be conducted in Lake County, Ohio.

OTPC-ONG Contract, §7.6. (Emphasis supplied.) In view of this language, ONG's repeated assertions that the arbitrator lacks jurisdiction over claims arising from the OTPC-ONG Contract is plainly as erroneous as its repeated claims that this Commission's jurisdiction is exclusive.

The Court's opinion in *Aetna Health Inc*., *supra*, provides still further guidance to this Commission. In that case, a number of physicians alleged that United Health Care of Ohio ("UHCO") had engaged in a conspiracy with other healthcare providers to maintain low reimbursement rates to physicians, in violation of Ohio's Valentine Act. UHCO claimed these physicians were compelled to arbitrate that claim by terms in their individual provider agreements. The physicians insisted their claims were not within the scope of the arbitration

clauses, but also argued they could not be compelled to arbitrate their claims because those claims were based upon statutes that created rights not addressed within their agreements.

In response to the "statutory rights" arguments, the Supreme Court held:

> ¶ 17 We look first to whether the arbitration clause itself or the statute at issue contains limitations as to arbitrability. Had the parties removed statutory claims from the scope of the arbitration provision, or had the General Assembly "evinced an intention to preclude a waiver of judicial remedies for the statutory rights" created by the Valentine Act, appellee's claims could not have been within the scope of the arbitration agreement. However, the arbitration clause at issue does not remove statutory claims from the scope of the agreement, and the Valentine Act does not preclude a waiver of judicial remedies for the rights it creates.
>
> ¶ 18 Our next consideration is whether the arbitration clause limits itself only to certain aspects of the underlying contract. "To determine whether the claims asserted in the complaint fall within the scope of an arbitration clause, the Court must 'classify the particular clause as either broad or narrow.' An arbitration clause that contains the phrase 'any claim or controversy arising out of or relating to the agreement' is considered 'the paradigm of a broad clause.' The arbitration provision in this case purports to cover any disputes about the parties' business relationship and must be considered a broad clause.
>
> ¶ 19 Arbitration is not limited to claims alleging a breach of contract, and creative pleading of claims as something other than contractual cannot overcome a broad arbitration provision. The overarching issue is whether the parties agreed to arbitrate the issue. "There is no reason to depart from these guidelines where a party bound by an arbitration agreement raises claims founded on statutory rights."

Id., ¶¶*17-19* (internal citations omitted). Thus, the Court refused to find that claims arising out of rights created by statute are not arbitrable. Applying that holding to this case, the fact that the relief ONG seeks is available only because of R.C. §4905.31(E) is simply not a basis that precludes arbitration.

The Supreme Court then turned to the second question: Whether the claims fell within the scope of the arbitration provisions in the first place. In this regard, the Court noted that "a dispute within the scope of the contract" is a condition precedent to the compelled arbitration of the dispute. Again looking to federal law for guidance, the Court approved the Court of

Appeals' reliance upon a test stated in *Fazio v. Lehman Bros., Inc.* (Sixth Cir., 2003), 340 F.3d 386, to determine whether the *particular* conspiracy claims before it were fairly within the scope of arbitration provisions contained in the provider agreements. In *Fazio*, the court held that "a proper method of analysis * * * is to ask if an action could be maintained without reference to the contract or relationship at issue. If it could, it is likely outside the scope of the arbitration agreement." *Id.* at 395.

Applying the *Fazio* test to the facts before it in *Aetna*, the Supreme Court concurred with the appellate court, which had found that "the doctors' antitrust claim could be maintained without reference to [the arbitration provisions within] their individual provider agreements. Their allegations [regarding violations of the *Valentine Act*] did not even presume the existence of an underlying provider agreement." Id. at ¶ 7.

Applying the tests from *Aetna* to the facts in this matter, however, results in a different conclusion: ONG's claims are plainly arbitrable, including even its claims under §4905.31(E). First, the arbitration clause in the OTPC-ONG Contract does not prohibit the arbitration of claims that invoke Rev. Code §4905.31 or any other powers vested in this Commission, nor has the Ohio General Assembly ever acted to exclude claims arising under that statute (or within Commission jurisdiction, generally) from claims that are arbitrable in Ohio. In fact, the arbitration clause expressly permits the arbitrator to award ***any relief available in law or equity.*** ONG may therefore not avoid arbitration for the reasons discussed in paragraphs 17 – 19 of *Aetna.*

Next, the arbitration clause in the OTPC-ONG Contract – which provides that "***any*** dispute ***arising hereunder*** or ***related to*** this Agreement" is to be arbitrated – is practically identical to the "paradigm" of a broad clause identified by the Ohio Supreme Court. Therefore,

so long as ONG's claims are in fact "related to" the OTPC-ONG Contract, the dispute is to be arbitrated.

Finally, applying the *Aetna/Fazio* test to determine the "relation to" question, it is immediately apparent that ONG's complaints are entirely dependent upon the existence of the OTPC-ONG Contract. ONG cannot complain that the terms contained in the contract are unjust or unreasonable, nor may it demand that the contract be set aside, without reference to the contract. As a result, its claims are plainly within the scope of the arbitration provision. *Aetna, supra; see also Alexander v. Wells Fargo Financial Ohio1, Inc.* 122 Ohio St. 3d 3451, 2009-Ohio-2962, ¶25-26.

C. ONG'S THIRD FUNDAMENTAL ERROR:

THIS COMMISSION WILL NOT UNLAWFULLY "DIVEST" ITSELF OF JURISDICTION BY ENFORCING THE ARBITRATION PROVISION.

ONG next claims that this Commission would improperly "divest" itself of the jurisdiction granted it by the General Assembly if it enforces the arbitration provision. (Memo Contra, p. 4). With this argument, ONG simply underscores its complete misunderstanding of the jurisdictional issues.

Initially, arbitration provisions do not "divest" Ohio tribunals that otherwise possess jurisdiction over an arbitrable claim of that jurisdiction. *Pappas v. Richmond Towers, LLC 2011-Ohio-5259 ¶9.* Those tribunals possess the jurisdiction they possess. Arbitration provisions do not affect that jurisdiction.

It is true, of course, that Ohio tribunals regularly compel arbitration of claims over which they possess jurisdiction. This, however, is simply an exercise of their authority to enforce the terms of contracts. In fact, after arbitration is completed, the jurisdiction of the tribunal is often called upon in order to enforce the arbitration award. *See Pappas.*

Ignoring these basic aspects of Ohio law, ONG then poses a fanciful argument based upon a few words taken out of context from a New York case, applying a New York statute that has no Ohio equivalent. In *Rochester Transit Corp. v. Public Service Commission*, 271 A.D. 406, 66 N.Y.S.2d. 593, (App. Div. 1946), the City of Rochester NY entered into a contract with New York State Railways ("NYSR"), a predecessor of Rochester Transit Corp. ("RTC"). The agreement, entered into in 1920, obliged NYSR to provide "service-at-cost" within the City for a period of ten years, and included an option to renew the agreement for a second term of ten years.

It is not entirely clear from the court's opinion what legal status such agreements might have held in 1920. It is clear from the court's decision, however, that two years *after* the contract was executed, the New York legislature enacted amendments to section 49 of the Public Service Laws of New York. Subdivision 9 of those amendments expressly defined and authorized "service-at-cost" agreements, and further provided that the PSC was to approve such agreements upon satisfaction of certain specific public notice and formal hearing requirements. Subdivision 9 then provided that, upon approval of an agreement, the PSC was "divested" of all authority over the utility for the duration of the agreement. *Id.* at 411, 66 NYS2d at ___. The City and NYSR obtained approval of their "service-at cost" contract pursuant to this statute, shortly after subdivision 9 was enacted.[6]

NYSR entered receivership in 1929, was operated in receivership for a period of time, and then entered bankruptcy in 1937 or 1938. RTC acquired its rights sometime later, pursuant to a plan of reorganization approved by both the bankruptcy court and by the PSC.

[6] Interestingly, the Rochester-NYSR contract was the only "service-at-cost" contract that would ever be approved through the procedures of Subdivision 9. *Id.* at 412 (Hill, concurring).

In 1945, the PSC instituted a rate proceeding for RTC. RTC and Rochester sought a writ of prohibition, contending that they were doing business pursuant to valid "service-at-cost" agreements, and that the PSC had no jurisdiction to determine RTC's rates. The original "service at cost" contract, however, had been allowed to expire after a single term. Its renewal option had never been exercised, and NYSR (and later, RTC), continued to do business with Rochester after the contract expired under a series of shorter contracts that were never presented to nor approved by the PSC.

RTC and Rochester were therefore reduced to arguing that the PSC had either "implicitly approved" these agreements, or that the PSC was estopped to deny the validity of the agreements, by its knowledge of NYSR operations gained in other proceedings, including NYSR's receivership/bankruptcy.

The New York court easily disposed of RTC's and Rochester's arguments. It held that estoppel does not operate against a sovereign entity, and – in the quote now seized upon by ONG in this case – it held that the PSC could not "divest itself of jurisdiction" except in the matter expressly provided for by the legislature – that is, as a result of the process created by subdivision 9, which required explicit notices and formal hearings, and which did not authorize "implicit" approval of agreements not even submitted to the PSC for consideration.

Rochester, of course, has no application to this dispute. It is not a case involving arbitration, and this is not a case interpreting a unique New York statute. ONG's "divesting" argument is nonsense.

D. ONG'S FOURTH FUNDAMENTAL ERROR:

ONG FAILS TO RECOGNIZE THAT EVEN IF IT SUCCEEDED IN SETTING ASIDE THE CONTRACT THE ARBITRATION CLAUSE WOULD STILL BE VALID.

In both its oral and written motions, ONG evinces a belief, that simply defeating the contract will necessarily negate the arbitration clause. It is once again entirely wrong.

Under Ohio law, arbitration provisions are deemed severable from the other terms of the contract, and arbitration provisions will not be set aside – even in cases in which the contract as a whole is alleged to be void for some reason – unless the arbitration provision *itself* is found void. In *ABM Farms, Inc. v. Woods* (1998), 81 Ohio St. 3d 498, 692 N.E.2d 574, for example, a woman and her husband attempted to void a brokerage contract by claiming they had been fraudulently induced to enter the contract. The contract contained an arbitration provision, and the defendants moved the trial court to stay the case in favor of arbitration between the parties.

After conducting an evidentiary hearing, the trial court denied the defendant's motion concluding that the plaintiffs had, indeed, been fraudulently induced to enter into the contract. The court therefore declared the entire contract, including the arbitration provision, to be void. The Appellate Court later affirmed the decision.

The Ohio Supreme Court reversed the lower courts. The Supreme Court declared that arbitration provisions are, in essence, a "contract within a contract." *Id.* At 501, 692 N.E.2d 577. The Court held that arbitration provisions cannot be ignored based solely upon attacks upon the contract as a whole. Instead, a party seeking to set aside an arbitration clause must make a *specific* showing that the arbitration provision, *itself*, is void. *Id. At 502 (citing, with approval, Krafcik v. USA Energy Consultants, Inc.* (1995), 107 Ohio App.3d 59, 63, 667 N.E.2d 1027,

1029). In the absence of such a showing, the arbitration clause is properly enforced, and the case is to be arbitrated.

In this case, not one of ONG's legal arguments regarding the arbitration provision is even an accurate discussion of the applicable law, let alone a winning argument. It introduced no evidence during the evidentiary hearing that even addressed the arbitration clause, except for the testimony of Mr. Zappitello, who expressed only a layman's preference that the claims be heard by the Commission. Without regard to Mr. Zappitello's opinion, however, it is not what the parties agreed – and it is what the parties agreed that counts. ONG may of course still raise claims that other terms of the contract are unenforceable for some reason within the arbitration provision. This Commission should may not permit it to do so here.

E. ONG'S FIFTH FUNDAMENTAL ERROR:

ONG CONFUSES ITS OWN INTERESTS WITH THE INTERESTS OF THE PUBLIC

ONG's also repeatedly asserts that termination of the OTPC-ONG Contract is necessary to protect ratepayers from unreasonable, unjust, service rates. Once again, ONG is focused on the entire contract, and not on the arbitration clause, which *ABM* teaches it must defeat, specifically. More importantly, ONG overlooks the obvious. It is certainly within the authority vested in this Commission[7] to insulate ONG's rate payers against any imprudently incurred costs associated with ONG's decision to enter into the OTPC-ONG Contract. Imprudent costs may simply be excluded from the costs ONG recovers in its GCR rates. Thus, even assuming that the arbitrator (or this Commission) ultimately determines on the merits that ONG acted imprudently

[7] To be clear OTPC is not asserting that the arbitrator would possess similar authority to protect rate payers. The issues subject to arbitration are disputes between the parties, not the effects of those disputes on third parties -- including rate payers. Thus, no matter whether the arbitrator concludes that the OTPC-ONG Contract must be enforced, or if he concludes that it may not be enforced, the effect of such a ruling on rate payers would still be subject to this Commission's jurisdiction and ultimate consideration, alone.

when it entered into the Contract, rate payers are not necessarily harmed, nor must the contract necessarily be set aside in order to protect rate payers.[8]

IV. CONCLUSION

Not only is ONG demonstrably in error regarding every specific legal argument it raises, there is in addition a central, underlying, theme concerning arbitration and Ohio law that ONG repeatedly ignores. Quite simply: "It is the policy of the law to favor and encourage arbitration and every reasonable intendment will be indulged to give effect to such proceedings and to favor the regularity and integrity of the arbitrator's acts." *Campbell v. Automatic Die & Products Co. 162 Ohio St. 321, 123 N.E.2d 401* (1954) (citing 6 C.J.S., Arbitration and Award, § 1, p. 152).

This public policy is not supported solely by courts sitting within Ohio, but has been further endorsed by the Ohio General Assembly, as reflected within R.C. 2711.02, which provides, part, as follows:

> (B) If any action is brought upon any issue referable to arbitration under an agreement in writing for arbitration, the court in which the action is pending, upon being satisfied that the issue involved in the action is referable to arbitration under an agreement in writing for arbitration, ***shall*** on application of one of the parties stay the trial of the action until the arbitration of the issue has been had in accordance with the agreement, provided the applicant for the stay is not in default in proceeding with arbitration.

Finally, this Commission may wish to consider that both Congress and the Ohio General Assembly have expressly endorsed the adoption of forms of alternative dispute resolution – including arbitration – by regulatory agencies. Congress did so, for example, in the context of the Telecommunications Act of 1996, by authorizing the FCC to arbitrate disputes among

[8] OTPC believes that when the merits are considered, it will demonstrate that ONG also fails to appreciate the burden it must meet to obtain the relief it seeks. OTPC will, even so, avoid the temptation to argue the merits of ONG's demand that the contract be vacated at this time, as this Commission should not consider the merits of the case when deciding whether arbitration is required. *Aetna, supra*, 2006-Ohio-657, ¶13.

telecommunication carriers, but also by encouraging the FCC to refer such disputes to the various state utility commissions willing to conduct those arbitrations. The Ohio General Assembly did so in 1999, when it directed *this Commission* to establish arbitration rules applicable to disputes between non-mercantile, nonresidential customers of electric services companies, and in addition expressly directed the Commission to enforce arbitration provisions involving commercial arbitration services in contracts between electric services companies and non-mercantile customers.[9]

"Given both the judicial and legislative predisposition to resolving disputes by arbitration, a party opposing a motion to stay proceedings pending arbitration has a heavy burden." *Cheney v. Sears, Roebuck and Co.*, 2005–Ohio–3283, ¶ 6. (10th Dist.). ONG has completely failed to meet its burden here. It provides this Commission with no sound reason why this Commission should interfere with the arbitration process to which the parties agreed. As a result, this Commission can only deny ONG's Motions.

Respectfully submitted,

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[9] Ohio Rev. Code §3928.16(A)(3) and (4). *See also* Ohio Admin. Code Chapter 4901:1-26-01 *et seq.*

CERTIFICATE OF SERVICE

The PUCO's e-filing system will serve notice of this filing upon counsel for the for the Complainant, the Ohio Consumers' Council, and the Staff of the Public Utilities Commission of Ohio. Further, I hereby certify that a true and accurate copy of the foregoing was served upon counsel for the Complainant, the Ohio Consumers' Council, and the Staff of the Public Utilities Commission this November 19, 2015, by electronic mail:

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Summary: Memorandum Contra Orwell Natural Gas Co's Motion for an Order Suspending the Arbitration Provision, Request for Declaratory Ruling, and Request for Expedited Treatment electronically filed by Mr. Michael D. Dortch on behalf of Orwell-Trumbull Pipeline Company, LLC