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August 26, 2016

Barcy McNeal  
Public Utilities Commission of Ohio  
180 East Broad Street, 11th Floor  
Columbus, OH 43215

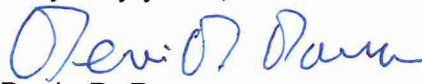
**Re: Case Nos. 16-354-GA-AIS and 16-355-GA-UNC – filings in  
compliance with the Stipulation and Recommendation**

Dear Ms. McNeal:

On August 22, 2016, Brainard Gas Corp, Northeast Ohio Natural Gas Corp., Orwell Natural Gas Company, Spelman Pipeline Holdings, LLC ("Spelman") (collectively referred to as the "Companies"), and Commission Staff filed a Stipulation and Recommendation ("Stipulation") in the above-referred cases. Pursuant to paragraph III.A.13 of the Stipulation, the Companies agreed to file orders from other jurisdictions regarding subsidiaries of Gas Natural Inc. ("GNI") that are seeking financing approval. Enclosed are orders from regulatory commissions in Maine and North Carolina regarding approval of financing applications. As of today, a final order has not been issued by the Montana Public Service Commission ("MPSC"). The Companies will file an order of the MPSC once it is issued in accordance with paragraph III.A.13 of the Stipulation.

The Companies also agreed to file a letter from Kevin Degenstein, Chief Operating Officer and Chief Compliance Officer of GNI, pursuant to paragraph III.B.5 of the Stipulation. Enclosed is a copy of the August 23, 2016 letter of Mr. Degenstein.

Very truly yours,



Devin D. Parram

DDP/

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2016-00030

August 19, 2016

BANGOR GAS COMPANY, L.L.C.  
Request for Approval Relating to Long-  
Financing, Affiliated Interest Transactions  
and Reorganization Pursuant to  
35-A M.R.S. §§ 707, 708, 901 and 902

ORDER APPROVING  
STIPULATION

VANNOY, Chairman; MCLEAN and WILLIAMSON, Commissioners

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**I. SUMMARY**

The Commission approves a Stipulation signed by the Bangor Gas Company, LLC (Bangor Gas, BGC or the Company) and the Office of the Public Advocate (OPA) and filed on August 1, 2016. The August 1<sup>st</sup> Stipulation identifies three categories of transactions for which Bangor Gas seeks approval: (1) a proposed corporate reorganization; (2) three intercompany loan agreements; and (3) a Support Services Agreement. These approvals are conditionally granted pursuant to 35-A M.R.S. §§ 707, 708, 901, and 902 and Chapter 820 of the Commission's Rules.

**II. BACKGROUND**

**A. 1998 Through Filing of Application in this Proceeding**

Bangor Gas is a Maine natural gas local distribution company (LDC) and public utility engaged in the business of purchasing, distributing and selling natural gas for the benefit of retail customers in Bangor, Maine and other cities and towns in Maine. Bangor Gas received its certifications to provide local gas distribution service in 1998. See Docket Nos. 1997-00795 and 1998-00468.

On November 21, 2007, in Docket No. 2007-00151, the Maine Public Utilities Commission (Commission) approved the reorganization of Bangor Gas through the sale of its parent company Penobscot Natural Gas, Inc. (Penobscot) and its interest in Bangor Gas to Energy West Incorporated (EWI), and approved the current Support Services Agreement with EWI and Penobscot.<sup>1</sup> Bangor Gas operates under an alternative rate plan (ARP) that was approved by the Commission in Docket No. 2012-00598. This ARP is due to expire on December 31, 2021.

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<sup>1</sup> The current Support Services Agreement between Bangor Gas, Penobscot, and EWI was reviewed by the Commission in the last rate case for the Company in Docket No. 2012-00598. The proposed Support Services Agreement has not yet been the subject of any review in the context of a ratemaking proceeding.

Bangor Gas is owned by Penobscot, which in turn is owned by EWI. EWI is a wholly-owned subsidiary of Gas Natural, Inc. (GNI). Accordingly, EWI, GNI and Bangor Gas are "affiliated interests" as that term is defined in 35-A M.R.S. § 707. Neither GNI nor EWI are gas utilities under Maine law.

On July 14, 2009, in Docket No. 2008-00271, the Commission granted approval under 35-A M.R.S. § 708 of EWI's formation into a holding company structure subject to conditions imposed in the Commission's Order approving EWI's acquisition of Bangor Gas in Docket No. 2007-00151.

On August 17, 2012, in Docket No. 2012-00104, the Commission approved a revised stipulation and granted necessary affiliated interest and financing approvals relating to amendments and expansion of a revolving credit and long-term debt facilities and corporate guarantees. The terms of the current financing are due to expire in 2017.

Since the Commission's approval of (1) the reorganization that resulted in the sale of Bangor Gas to EWI in 2007 and (2) Bangor Gas' current financing in Docket No. 2012-00104, the Company has made certain infrastructure investments and added customers. Bangor Gas' customer base has increased from approximately 400 in 2007 to over 6,000 today.

**B. Bangor Gas' February 17, 2016 Application in this Proceeding**

Bangor Gas filed an Application on February 17, 2016 (February 17<sup>th</sup> Application), which was assigned Docket No. 2016-00030. In the February 17<sup>th</sup> Application, Bangor Gas requests consideration and approval of a series of reorganizations and affiliated transactions under sections 707, 708, 901 and 902 of Title 35-A. Specifically, Bangor Gas seeks approval of the three intercompany notes and loan agreements with GNI, including two term debts and a revolving line of credit. As discussed in more detail below, these are affiliated interest transactions under 35-A M.R.S. § 707(1) because they are affiliated interest financing agreements (agreements for the extension or receipt of credit) that are subject to approval by this Commission pursuant to section 707. They are also "notes" or "evidence of indebtedness," subject to approval under 35-A M.R.S. §§ 901 and 902.

The Company also seeks affiliated interest approval under section 707 for a new Support Services Agreement between Bangor Gas, GNI, and a "new intermediary company" (NIC). The newly proposed agreement, which is Exhibit 13 to the February 17<sup>th</sup> Application, is virtually identical to the Support Services Agreement that was approved by the Commission between Bangor Gas, Penobscot, and EWI in Docket No. 2007-00151 (Exhibit 12 to the February 17<sup>th</sup> Application) except that Penobscot has been replaced by NIC and EWI has been replaced by GNI, which will be providing the shared services. Exhibit A of the Support Services Agreement provides a description of the support service available to Bangor Gas from GNI and NIC.

Chapter 820 of the Commission's Rules governs the allocation of costs for facilities, services, or intangibles that are shared between regulated and unregulated

activities of a utility and determines the method by which utilities must pay for services provided to them by their affiliates. In its February 17<sup>th</sup> Application, Bangor Gas also seeks a waiver of the requirements of Chapter 820, section 4(E).

Finally, the Company seeks reorganizational approval under section 708 with regard to a new corporate framework that will realign all of the regulated entities, including Bangor Gas, under a common parent. Bangor Gas asserts that this new structure is consistent with the interests of its ratepayers and investors pursuant to section 708.

### III. PROCEDURAL HISTORY

The OPA filed a Petition to Intervene in this case on February 19, 2016.<sup>2</sup> The Examiner issued a Notice of Proceeding regarding the Company's February 17<sup>th</sup> Application on March 18, 2016 that set a deadline for persons wishing to intervene and scheduled an initial case/technical conference for April 5, 2016. No additional Petitions to Intervene were filed in this case.

The March 18<sup>th</sup> Notice also discussed the various statutory deadlines associated with sections 707, 708, and 902<sup>3</sup> and requested Bangor Gas to file a letter in which it indicates (1) whether it is willing to have all approvals sought in this case reviewed and decided on the same schedule and (2) whether it is willing to have this case processed in accordance with the review period set forth in section 708 and waive the shorter deadline for that portion of its filing that requires a decision within 120 days of the filing date.

On March 28, 2016, the Company filed a letter indicating that it is "amenable to having its financing, reorganization, and affiliate transaction approvals processed within the 180 day timeframe from the date that its application was submitted." Bangor Gas further noted that "[i]t also appears at this time that such a schedule would be roughly consistent with the timeframes that other applications are being processed for other subsidiaries and affiliates of Gas Natural, Inc. ("GNI"), and should ensure sufficient time for consideration without jeopardizing the current financing facilities proposed at the GNI level."

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<sup>2</sup> The OPA's Petition to Intervene was granted by the Examiner during the case/technical conference that took place on April 5, 2016.

<sup>3</sup> Section 707 provides that the Commission must act within 60 days of the filing unless the filing is suspended for an additional 60 days. Section 708 requires the Commission to review reorganizations within 60 days and includes a 120-day suspension period. Section 902 requires the Commission to approve a proposed issuance of stock, bonds, or notes within 60 days, "unless the commission makes an affirmative finding that additional time is necessary..." and does not include a specific suspension period.

On March 29, 2016, the Commission issued an Extension of Review Period in which it determined that the investigation of the Company's February 17<sup>th</sup> Application cannot be concluded within 60 days of its filing and extended the review period of Bangor Gas' February 17<sup>th</sup> Application for an additional period of up to 120 days, for a total review period of up to 180 days, unless otherwise ordered.<sup>4</sup>

During an April 5<sup>th</sup> case/technical conference, Staff and the OPA (1) questioned the Company about its February 17<sup>th</sup> Application and the various pre-filed testimony and exhibits and (2) made several various oral data requests (ODRs) which were responded to in a timely fashion by the Company.

Two protective orders were issued in this proceeding. On April 11, 2016, Bangor Gas requested an order to protect the confidentiality of certain confidential business information, customer growth data and projections, system expansion information, and capital investment projections. The Examiner issued the requested Protective Order No. 1 on April 19, 2016. On April 28, 2016, the Company requested the Examiner issue a second order to protect the confidentiality of certain affiliate data. The Examiner issued Protective Order No. 2 in this proceeding on April 29, 2016.

A second technical conference was held on May 2, 2016, during which Staff, the OPA, and the Company discussed procedural issues and Staff and the OPA asked a second set of ODRs to which the Company filed timely responses. By Procedural Order issued on May 11, 2016, the OPA was given an opportunity to file written data requests to which the Company filed timely responses.

On May 27, 2016, a technical/settlement conference was held at which the OPA and Staff asked additional follow-up questions on the Company's responses to the two sets of ODRs and the OPA's written requests. At the conclusion of the May 27<sup>th</sup> conference, Bangor Gas, the OPA, and Staff discussed the possibility of settlement of issues in the case. Both the Company and the OPA agreed that the involvement of Staff in settlement discussions was desirable and would help the parties in reaching a potential settlement.

On June 14, 2016, Bangor Gas circulated to Staff and the OPA an outline that summarized proposed settlement terms, proposed Commission findings, and draft conditions for various approvals sought. A settlement conference was held with Staff and the OPA on June 15, 2016. In advance of the conference, the OPA and its consultants provided written comments and edits on the Company's outline and included additional potential conditions that could be part of a stipulation. At the June 15, 2016 conference, the Company summarized and explained proposed terms of a potential settlement as well as proposed Commission findings and conditions of approval relating to the financing, reorganization, and other requested approvals. During the June 15<sup>th</sup> conference, Staff and the OPA provided some initial feedback and questioned the Company about the proposed settlement terms. An additional

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<sup>4</sup> This established August 15, 2016 as the deadline for final Commission action on the Company's February 17<sup>th</sup> Application.

settlement conference was scheduled for June 22, 2016. In advance of the June 22<sup>nd</sup> conference, Staff circulated some written comments in response to the Company's settlement outline.

During the June 22<sup>nd</sup> conference, Staff summarized its comments regarding the Company's settlement terms and the observations of the OPA. At the conclusion of the conference, Bangor Gas and the OPA agreed to continue discussing the proposed settlement terms that remained in dispute. A final settlement conference took place on July 8, 2016, during which the parties and Staff discussed open issues relating to the draft stipulation. At the conclusion of the July 8<sup>th</sup> conference, Bangor Gas and the OPA indicated that they anticipated working out the remaining details and submitting a draft stipulation for Staff to review shortly after the July 8<sup>th</sup> conference.

On July 20, 2016, the Examiner issued a Procedural Order expressing concern that Staff hadn't received a status report from the parties since the July 8<sup>th</sup> conference. The July 20<sup>th</sup> Procedural Order directed the Company and the OPA to jointly file responses to seven specific questions regarding the status of the stipulation and the ability of the parties and the Staff to process the stipulation in a way that would allow for a final Commission decision on the stipulation prior to the August 15, 2016 deadline in the case.

On July 22, 2016, the Company and the OPA filed a response to the questions posed in the July 20<sup>th</sup> Procedural Order. Also on July 22, 2016, the Company provided the latest draft of the stipulation to Staff by e-mail.

Bangor Gas filed a final version of the Stipulation on August 1, 2016. (August 1<sup>st</sup> Stipulation) that was signed by Bangor Gas and the OPA. With the Stipulation, Bangor Gas filed two letters from GNI that explain and support the provisions of the August 1<sup>st</sup> Stipulation.

#### **IV. LEGAL STANDARDS**

##### **A. Reorganization**

Parts of Bangor Gas' February 17<sup>th</sup> Application constitute a "reorganization" that requires Commission approval pursuant to 35-A M.R.S. § 708.<sup>5</sup> Under section 708, the

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<sup>5</sup> Section 708(A) defines "reorganization" as

any creation, organization, extension, consolidation, merger, transfer of ownership or control, liquidation, dissolution or termination, direct or indirect, in whole or in part, of an affiliated interest as defined in section 707 accomplished by the issue, sale, acquisition, lease, exchange, distribution or transfer of voting securities or property. The commission may decide what other public utility actions constitute a reorganization to which the provisions of this section apply. Reorganizations include any reorganization for which a proceeding for approval is pending before any

Commission may approve a reorganization only if the applicant establishes that approval is consistent with the interests of a utility's ratepayers and investors.

The Commission has previously found that the approval requirements of section 708 are met if the rates or services to customers of the affected utility will not be adversely affected by the transaction. See e.g., *Northern Utilities, Inc., Request for Approval of Reorganization (NiSource/Columbia Merger and Related Transactions)*, Docket No. 2000-322, Order (June 30, 2000); *Consumers Maine Water Co., Request for Approval of Reorganization Due to Merger with Philadelphia Suburban Corp.*, Docket No. 98-648 (Jan. 12, 1999); *New England Telephone & Telegraph Company and NYNEX Corp., Reorganization Intended to Effect the Merger with Bell Atlantic*, Docket No. 96-388 (Feb. 6, 1997); *Bangor Hydro-Electric Company and Stonington and Deer Isle Power Company, Joint Application to Merge Property, Franchises and Permits and for Authority to Discontinue Service*, Docket No. 87-109, Order Approving Stipulation and Merger (Nov. 10, 1987); and *Greenville, Millinocket and Skowhegan Water Company, Joint Application to Sell Utility Property to Wanakah Water Company and to Discontinue Service*, Docket No. 92-250, Order Approving Stipulation (Dec. 15, 1992). Consistent with the findings in these cases, a proposed reorganization should be approved if the total benefits flowing from the transaction are equal to or greater than the detriments or risks resulting from the transaction for both ratepayers and shareholders. See *Bell Atlantic* at 8. The burden of proof is on the applicant to make this showing. 35-A M.R.S. § 708(2) (no reorganization may be approved unless it is established by the applicant that the reorganization is consistent with the interests of ratepayers and investors).

Given these standards, the Commission must review the evidence presented by BGC and the other parties and determine whether the benefits of the reorganization put forth by the Company are at least equal to any likely risks, to ensure no harm to ratepayers and shareholders. Furthermore, section 708 provides that if the Commission grants approval, it shall impose such conditions as "are necessary to protect the interests of ratepayers." Accordingly, in weighing the risks, it is appropriate for the Commission to consider the mitigating effects of any such conditions.

#### B. Intercompany Financing Agreements

As noted above, parts of Bangor Gas' February 17<sup>th</sup> Application constitute transactions between "affiliated interests" that require Commission approval pursuant to 35-A M.R.S. § 707.<sup>6</sup>

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state or federal agency or court on or after July 13, 1982. For purposes of this subsection, a reorganization does not include any proceeding under the federal antitrust laws or the transfer of voting securities by gift, device or inheritance.

<sup>6</sup> Section 707(A)(1) defines an "affiliated interest" as

(1) With respect to a public utility other than a provider of provider of last resort service:

Section 707(3) prohibits utilities from transacting for services with affiliates unless the Commission has found that the arrangement is not adverse to the public interest and has given the utility written approval. Section 707(3)(B) authorizes the Commission to grant approval subject to such terms and conditions as it determines necessary to safeguard the public interest. Section 707(3)(D) states that approval of an arrangement under that section does not limit or restrict the Commission's authority under Title 35-A in determining any rate, charge, or schedule.

The intercompany agreements proposed by Bangor Gas in this case are also subject to approval under 35-A M.R.S. § 902 that includes consideration of (1) the reasonableness of the purpose or purposes for which the proceeds of the issue will be applied, (2) other resources which the utility has available or may have available for those purposes, and (3) the justness and reasonableness of the estimated cost to the utility of the issue and the effect of the issue upon the utility's capital structure.

C. Support Services Agreement

Section 707(3) of Title 35-A prohibits utilities from transacting for services with affiliates unless the Commission has found that the arrangement is not adverse to the public interest and has provided written approval of the proposed transaction. Section 707(3)(B) authorizes the Commission to grant approval subject to such terms and conditions as it determines necessary to safeguard the public interest. Section

707(3)(D) states that approval of an arrangement under this section does not limit or restrict the Commission's authority under Title 35-A in determining any rate, charge, or schedule.

Chapter 820 of the Commission's Rules governs the record keeping, accounting, and structural requirements for non-core utility activities and transactions between affiliates. Section (4)(E) of the Rule specifies that equipment, facilities, services or personnel of an affiliate *used by a utility* shall be priced at the same price charged non-affiliates, or, if no such price is available, at market price. Similarly, in the absence of a

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- (a) Any person who owns directly, indirectly or through a chain of successive ownership 10% or more of the voting securities of a public utility;
  - (b) Any person, 10% or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in division (a);
  - (c) Any person, 10% or more of whose voting securities are owned, directly or indirectly, by a public utility;
  - (d) Any person, or group of persons acting in concert, that the commission may determine, after investigation and hearing, exercises substantial influence over the policies and actions of a public utility, if the person or group of persons beneficially owns more than 3% of the public utility's voting securities; or
  - (e) Any public utility of which any person defined in divisions (a) to (d) is an affiliated interest;



tariffed rate or market price, section (4)(A) requires that utility services *provided to affiliates* be priced using a fully distributed cost (FDC) methodology as a proxy for market value. Section 9 of the Chapter 820 allows the Commission to waive the requirements of the Rule if good cause is shown and that if the waiver would not be inconsistent with the requirements of sections 707, 708, 713, 714 and 715 of Title 35-A.<sup>7</sup>

## **V. DESCRIPTION OF STIPULATION**

As discussed in part II(B) above, the August 1<sup>st</sup> Stipulation identifies three categories of transactions for which Bangor Gas seeks approval: (1) a proposed corporate reorganization; (2) three intercompany loan agreements; and (3) a Support Services Agreement. These approvals are sought pursuant to 35-A M.R.S. §§ 707, 708, 901, and 902 and Chapter 820 of the Commission's Rules.

The August 1<sup>st</sup> Stipulation includes proposed Commission findings and recommended conditions relating to each of these three categories of transactions. These proposed findings and recommended conditions are discussed in detail in part VI(C) below.

The August 1<sup>st</sup> Stipulation includes a provision that allows the Staff and Commission to discuss the issues in this case without providing to the parties an Examiner's Report or the opportunity to file exceptions to such a report.

## **VI. ANALYSIS AND DECISION**

To approve a stipulation, the Commission must consider the following four criteria:

- 1) Whether the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;
- 2) Whether the process that led to the stipulation was fair to all parties;
- 3) Whether the stipulated result is reasonable and is not contrary to legislative mandate; and
- 4) Whether the overall stipulated result is in the public interest.

Ch. 110, § 8(D)(7) of the Commission's Rules. For the reasons summarized below, the Commission finds that all of these stipulation approval criteria have been satisfied in this

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<sup>7</sup> As discussed above, section 707 governs affiliate dealings and section 708 governs reorganizations. Sections 713 and 714 govern unregulated business ventures of utilities. Section 715 provides the authority for the Commission to promulgate Chapter 820.

instance.

A. Sufficiently Broad Spectrum of Interests; No Actual or Apparent Disenfranchisement

The August 1<sup>st</sup> Stipulation was signed by Bangor Gas and the OPA, which were the only parties in this case. In the past, the Commission has held that a utility and the OPA, with differing views and interests, represent a broad spectrum of ratemaking interests. *Central Maine Power Company, Annual Price Change Pursuant to Alternative Rate Plan (ARP 2000)*, Docket No. 2012-00063, Order Approving Stipulation (June 21, 2012). The Commission finds that the parties joining in the August 1<sup>st</sup> Stipulation represent a sufficiently broad spectrum of interests in this case. The Commission further finds that there is nothing in the record to indicate that there is any appearance or reality of disenfranchisement in this case. The active participation of Staff in the case lends support to both of these findings.

B. Fair Process

The process that led to the August 1<sup>st</sup> Stipulation included multiple opportunities for the parties and Staff to evaluate and discuss the merits of the Company's February 17<sup>th</sup> Application. The process included three technical conferences and four settlement conferences during which the OPA and Staff were active participants. The process also included opportunities for the OPA and Staff to make oral and written data requests to which the Company made timely responses. The Commission finds that this process was fair to all parties and that the second criterion for the Commission's approval of a stipulation has been satisfied.

C. Stipulated Result is Reasonable, Not Contrary to Statutory Mandate, and in the Public Interest

The third stipulation evaluation criterion is that the stipulation is reasonable and not contrary to legislative mandate. The fourth evaluation criterion is that the stipulation is in the public interest. In this part of the Order, the Commission addresses both of these stipulation evaluation criteria.

As discussed in part II(B) above, the Company's February 17<sup>th</sup> Application requires Commission review and approval of the following three categories of transactions: (1) the proposed reorganization under section 708; (2) the proposed intercompany financing transactions under sections 707, 901, and 902; and (3) the proposed Support Services Agreement under section 707 and Chapter 820 of the Commission's Rules. The August 1<sup>st</sup> Stipulation addresses each of the three categories of transaction identified in the February 17<sup>th</sup> Application. The reasonableness of, and statutory requirements relating to, each of these three components of the Company's February 17<sup>th</sup> Application and the August 1<sup>st</sup> Stipulation, are discussed separately below.

1. Reorganization

a. Summary of Proposed Reorganization

Bangor Gas seeks Commission approval under section 708 of a new corporate structure. Under the proposed reorganization, Penobscot will be merged with Bangor Gas, resulting in a surviving entity bearing the name of "Bangor Gas Company." In addition, EWI will be dissolved and Bangor Gas and other regulated entities<sup>8</sup> will be realigned under NIC, an intermediate holding company. NIC will be a wholly-owned subsidiary of GNI.

Under the proposed reorganization, (1) each state-regulated utility will be treated separately, without regard to actions in other jurisdictions and (2) Bangor Gas will continue to be independently operated and managed.

As part of the proposed reorganization, NIC will be organized and operated as an intermediary holding company to the regulated utilities within the GNI corporate structure. The Company's February 17<sup>th</sup> Application indicates that NIC will: (1) have no employees; (2) provide no public utility service in any of the states in which its utility subsidiaries operate; and (3) make no operational, regulatory or financial decisions for any of its operating utilities. The February 17<sup>th</sup> Application provides that decisions relating to Bangor Gas will be made by the appropriate board, executive, and administrative personnel within Bangor Gas. According to the Company's February 17<sup>th</sup> Application, the function of NIC will be to serve as a conduit through which the dividends or distributions approved by each regulated utility are sent on to GNI. The February 17<sup>th</sup> Application asserts that the board of NIC will be comprised of the Presidents of each public utility plus the chief operating officer of GNI. According to the February 17<sup>th</sup> Application, the NIC board will be a consulting resource to the regulated utilities which will enhance regulatory compliance and operational best practices across the operating utilities.

b. Conditions of Approval

Section 708 provides that, as part of its review of a proposed reorganization, the Commission "shall impose such terms, conditions or requirements as, in its judgment, are necessary to protect the interests of ratepayers." Section 708(2)(A). Section 708 includes a list of conditions that the Commission must consider in its review under section 708.<sup>9</sup>

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<sup>8</sup> Under the proposed reorganization, the following regulated entities will exist in other jurisdictions: Cut Bank Gas Company (Montana), Energy West Montana, Inc. (Montana), Frontier Natural Gas Company (North Carolina), NE Ohio Natural Gas (Ohio), Brainard Gas Corp. (Ohio), Orwell Natural Gas (Ohio), and Spelman Pipeline, LLC (Ohio).

<sup>9</sup> Section 708(2)(A) includes the following text and list of conditions:

The August 1<sup>st</sup> Stipulation includes several recommended conditions that track the conditions articulated in section 708(2)(A). These recommended conditions are separately numbered in the August 1<sup>st</sup> Stipulation and are explicitly intended to "supersede conditions previously imposed by the Commission in Docket Nos. 2007-00151, 2008-00271, and 2012-00104." August 1<sup>st</sup> Stipulation at 13. These recommended conditions:

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These conditions shall include provisions which assure the following:

- (1) That the commission has reasonable access to books, records, documents and other information relating to the utility or any of its affiliates, except that the Public Utilities Commission may not have access to trade secrets unless it is essential to the protection of the interests of ratepayers or investors. The commission shall afford trade secrets and other information such protection from public disclosure as is provided in the Maine Rules of Civil Procedure;
- (2) That the commission has all reasonable powers to detect, identify, review and approve or disapprove all transactions between affiliated interests;
- (3) That the utility's ability to attract capital on reasonable terms, including the maintenance of a reasonable capital structure, is not impaired;
- (4) That the ability of the utility to provide safe, reasonable and adequate service is not impaired;
- (5) That the utility continues to be subject to applicable laws, principles and rules governing the regulation of public utilities;
- (6) That the utility's credit is not impaired or adversely affected;
- (7) That reasonable limitations be imposed upon the total level of investment in nonutility business, except that the commission may not approve or disapprove of the nature of the nonutility business;
- (8) That the commission has reasonable remedial power including, but not limited to, the power, after notice to the utility and all affiliated entities of the issues to be determined and the opportunity for an adjudicatory proceeding, to order divestiture of or by the utility in the event that divestiture is necessary to protect the interest of the utility, ratepayers or investors. A divestiture order shall provide a reasonable period within which the divestiture shall be completed; and
- (9) That neither ratepayers nor investors are adversely affected by the reorganization.

- Guarantee Commission access to books and records of Bangor Gas and its affiliates (Condition 1);
- Require Bangor Gas to maintain separate books and records (Condition 2);
- Require Bangor Gas to provide the Commission with copies of relevant Orders from other jurisdictions (Condition 3);
- Require Bangor Gas to notify the Commission after designated components of the proposed reorganization have been finalized (Condition 4);
- Require Bangor Gas to notify the Commission of certain new investments of a regulated affiliate (Condition 5);
- Require Bangor Gas to provide notice to the Commission of the filing of certain forms with the Securities and Exchange Commission (Condition 6);
- Limit distributions/dividends paid by Bangor Gas to NIC (Condition 7);
- Limit Bangor Gas' payments of distributions/dividends to NIC if the Company's access to funds under the Intercompany Revolving Facility becomes impaired (Condition 8);
- Specify the Commission's authority to reopen this proceeding to review the status of Bangor Gas' distributions/dividends under certain circumstances (Condition 9);
- Require Bangor Gas to maintain a common equity capital level at or greater than 45% of total Adjusted Capital (Condition 10);
- Require Bangor Gas to notify the Commission if Richard Osborne regains management responsibility, majority ownership, or control over GNI (Condition 11); and
- Require Bangor Gas to file specified documents relating to the merger of Penobscot and Bangor Gas (Condition 12).

c. Findings and Conclusions

As noted above, under section 708, the Commission must find that a proposed reorganization is consistent with the interests of the utility's investors and ratepayers, which means there is likely to be no net harm from the proposed reorganization. The Commission has reviewed the Company's February 17<sup>th</sup> Application, including GNI's current organizational structure as set forth in Exhibit 10 of the February 17<sup>th</sup> Application, and the proposed corporate organization as set forth in Exhibit 11 of Bangor Gas' application. The Commission has also reviewed the terms of the August 1<sup>st</sup> Stipulation, including the recommended conditions that are discussed above.

The proposed reorganization eliminates intermediate companies that may serve little purpose (e.g. Penobscot), consolidates the GNI regulated utilities under one holding company, NIC, and organizationally insulates Bangor Gas from the regulated LDC operations on other states. Additionally, the proposed organizational structure is consistent with the proposed structure of the revised credit facilities and aligns with the completely separate sub-credit limits available to each regulated utility and un-regulated entity within the GNI structure. In that way, the Company's access to capital is less likely to be affected by the usage of the credit facilities by Bangor Gas' sister companies. The proposed reorganization has no effect on the operations of Bangor Gas and does not pose any additional risks to its ratepayers.

Based on our review of the reorganization, the Commission finds that the proposed restructuring and realignment of GNI subsidiaries, including, but not limited to, the merger of Penobscot with Bangor Gas, the elimination of EWI, and the creation of NIC as a holding company between GNI and Bangor Gas, subject to the conditions set forth in the August 1<sup>st</sup> Stipulation, is reasonable and satisfies the requirements of section 708. The Commission further finds that the proposed reorganization is (1) not contrary to any legislative mandate, (2) in the public interest, and (3) consistent with the interests of Bangor Gas' ratepayers and investors.

Section 708 also requires the applicant to establish that the proposed reorganization is consistent with the interests of the utility's investors. In this case, GNI management and the GNI Board have been involved in developing the restructuring plans and have submitted the proposed reorganization in four state jurisdictions. The Company has stated that the GNI Board intends to take formal action to approve the reorganization upon receipt of approvals from all of the state jurisdictions. Because of the GNI Board approval of the reorganization, the Commission has limited its review of the impact of the reorganization only to ratepayers.

## 2. Intercompany Financing Agreements

### a. Summary of Proposed Transactions

There are three separate financing commitments at the GNI level: a revolving facility in the amount of \$42 million, a proposed private placement offering, issuance and sale of up to \$50 million in senior debt securities (known together as the BOA Refinancing Package) and a separate term note for an additional \$7 million for acquisition of the SAP Operating Platform licensing and implementation (SAP Financing). The proceeds from these GNI facilities will be "down streamed" to Bangor Gas and other GNI subsidiaries through intercompany loan agreements and notes. Bangor Gas seeks approval under 35-A M.R.S. §§ 707, 901 and 902, of the three proposed intercompany loan arrangements pertaining to the portions of the BOA Refinancing Package and the SAP financing that will be made available to Bangor Gas.

Under section 707, approval is contingent upon demonstration by a utility that the proposed affiliated interest transactions are not adverse to the public interest. As discussed in part IV(B) above, the Commission has interpreted this "not adverse to the

public interest" standard to mean that the transactions will not result in any net harm to the Company's ratepayers.

The intercompany agreements are also subject to approval under 35-A M.R.S. § 902 that includes consideration of (1) the reasonableness of the purpose or purposes for which the proceeds of the issue will be applied, (2) other resources which the utility has available or may have available for those purposes, and (3) the justness and reasonableness of the estimated cost to the utility of the issue and the effect of the issue upon the utility's capital structure.

i. \$8.1 Million Revolving Line of Credit

As discussed in the February 17<sup>th</sup> Application and the August 1<sup>st</sup> Stipulation, Bangor Gas proposes to execute with GNI a 5-year intercompany revolving loan agreement (Intercompany Revolver Agreement or Revolver) pursuant to which Bangor Gas will have access to \$8.1 million as a line of credit under the same terms and at the same interest rate applicable to GNI's Revolving Line of Credit with BOA. The proposed revolving credit agreement replaces the existing \$8.1 million revolving credit agreement between Bangor Gas and EWI. The draft Intercompany Revolver Agreement contains substantially the same material terms as the one to be executed between Bank of America and GNI. Interest rates and pricing terms available to Bangor Gas are based on the same terms available to GNI under its revolver facility. Specifically, the revolving credit facility includes: an upfront fee of 0.80% of the principal amount; an unused facility fee that ranges from 0.25% to 0.45% based on the debt-to-capital ratio of GNI; and an interest rate based on either the BOA Prime Rate or LIBOR plus 1.75% to 2.25%, also based on the GNI debt-to-capital ratio. The GNI facility includes the requirement that GNI maintain a debt-to-capital ratio of no greater than 45% and a minimum interest coverage ratio of 2:1. These financial covenants are not passed through to the GNI subsidiaries, including BGC. Bangor Gas avers the \$8.1 million revolving credit is sufficiently sized to allow for Bangor Gas' recurring operational expenses, as well as its forecasted expansion capital needs.

Bangor Gas states that any changes or amendments to the senior revolver facility between GNI and BOA will not affect the terms of the Intercompany Revolver Agreement between Bangor Gas and GNI.<sup>10</sup> The draft Intercompany Revolver Agreement was attached as Exhibit 7 to the Company's February 17<sup>th</sup> Application.

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<sup>10</sup> The August 1<sup>st</sup> Stipulation includes footnote 2 on page 6 which states, "There have been some changes to some terms of the BOA Refinancing Package since the Company's February 17<sup>th</sup> application. However, these provisions have been reviewed by Staff and the OPA and will not have a material impact on regulated utilities such as Bangor Gas." To the extent that any changes to the documents as they were filed on February 17<sup>th</sup> have been provided to Commission Staff, this statement is accurate. The Commission notes, however, that the BOA Refinancing Package documents are not yet final. The Commission makes no statement of finding with respect to the impact of any documentation changes that may still be made.

ii. \$9.75 Million Term Debt

Bangor Gas also proposes to execute with GNI an intercompany long-term note in the amount of \$9.75 million to refinance its current debt obligations. The draft Intercompany Term Debt Agreement to be executed by Bangor Gas and GNI is attached to the Company's February 17<sup>th</sup> Application as Exhibit 8. The Intercompany Term Debt Agreement provides that the interest rate obtained by GNI will be passed through to Bangor Gas. Confidential Appendix A to the August 1<sup>st</sup> Stipulation contains the maturity and long-term interest rates available to GNI under a private note placement being arranged through Merrill Lynch. These pricing terms will be available to Bangor Gas. The GNI term facility contains the same financial covenants as the revolving credit facility, which are not passed through to Bangor Gas.

iii. \$2.1 Million in SAP Term Debt

Bangor Gas also proposes to execute with GNI an intercompany long-term note in the amount of \$2.1 million that represents Bangor Gas' portion of the Intercompany SAP Term Debt. This note will offer Bangor Gas the same interest rate and other terms that are available to GNI from BOA.

The draft Intercompany SAP Term Debt Agreement, that contains substantially the same material terms as the one to be executed by Bangor Gas and GNI, is attached to the Company's February 17<sup>th</sup> Application as Exhibit 9. The proposed terms are for a 48-month loan at a rate tied to a short term Index Rate from the Bloomberg Daily Summary. The indicative rate in effect at the time of the BOA proposal (December 2015) was 3.13% and would be increased or decreased based on the difference between the Index Rate in December 2015 and a date closer to closing.

b. Conditions of Approval

The August 1<sup>st</sup> Stipulation provides that the intercompany agreements between GNI and Bangor Gas should be expressly conditioned on the following conditions that are recommended by the Company and the OPA which:

- Require Bangor Gas to submit fully executed copies of the intercompany agreements (Condition 13);
- Prohibit Bangor Gas from making a loan to, or assuming any obligation of any affiliate of Bangor Gas, without prior Commission approval (Condition 14);
- Require Bangor Gas to file a report of the principal amounts outstanding on the intercompany revolver facility at the beginning of each quarter and outstanding at the end of each quarter (Condition 15);
- Require Bangor Gas to inquire, obtain, and report to the Commission any compliance certificate(s) that may be required of GNI or NIC under the BOA/Merrill Lynch financing agreements (Condition 16);



- Require Bangor Gas to report to the Commission any material default with regard to its obligations under any of the intercompany agreements with GNI (Condition 17);
- Require Bangor Gas to report to the Commission any material default on an obligation that is material to GNI, NIC, or another affiliate (Condition 18);
- Require GNI to report directly to the Commission if GNI, or an affiliate of GNI, files for bankruptcy (Condition 19);
- Require Bangor Gas to suspend any distributions/dividends to NIC if Conditions 17, 18, or 19 are triggered (Condition 20);
- Provide that funds under the Intercompany Revolver Agreement must be used for general business needs and may not be used for the acquisition or expansion of utilities located outside of the State of Maine (Condition 21); and
- Require Bangor Gas to provide to the Commission and the OPA annual financing forecasts in the format of pro forma financial statements with supporting assumptions that cover a prospective period for repayment or the term notes and revolving facilities (Condition 22).

c. Findings and Conclusions

Section 707(3)(B) of Title 35-A authorizes the Commission to grant approval of affiliated transactions subject to such terms and conditions as it determines necessary to safeguard the public interest. The proposed affiliated transactions are also subject to approval under Title 35-A, section 902, which requires the Commission to consider (1) the reasonableness of the purpose or purposes for which the proceeds of the issue will be applied, (2) other resources which the utility has available or may have available for those purposes, and (3) the justness and reasonableness of the estimated cost to the utility of the issue and the effect of the issue upon the utility's capital structure.

The Commission has reviewed the three financing commitments proposed by Bangor Gas and attached as Exhibits 7, 8, and 9, to the Company's February 17<sup>th</sup> Application. The Commission has also reviewed the corresponding terms of the August 1<sup>st</sup> Stipulation, including the recommended conditions that are summarized above. Based on this review, the Commission finds that the terms set forth in the Intercompany Agreements between Bangor Gas and GNI for the Term Note of \$9.75 million, the SAP Term Note of \$2.1 million, and the Revolving Facility of \$8.1 million are reasonable, not contrary to any legislative mandate, and are in the public interest.

The three credit facilities represent a reasonable financial structure for Bangor Gas. The \$8.1 million revolving credit is in the same amount as the existing facility and is needed for Bangor Gas' working capital and gas procurement needs. The term credit facility reflects the Company's significant growth over the past several years and the refinancing of its short-term debt.

The structure of the proposed credit facilities, by which borrowed funds flow through GNI to Bangor Gas and the other subsidiaries, may cause concern in the event that GNI's access to the credit facilities is impaired in some fashion. The August 1<sup>st</sup> Stipulation includes a provision to mitigate that risk. Prior to any quarterly dividend/distribution by Bangor Gas to NIC/GNI, the Company is required to ensure that its access to capital is not impaired in any way. In the event Bangor Gas determines that its access to funds is impaired, the Company shall suspend any dividends/distributions and shall not resume the payment of any dividends/distributions without Commission approval. (Condition 8) The August 1<sup>st</sup> Stipulation also carries forward several ring-fencing provisions that were included in the Stipulation approved in Docket No. 2012-00104, including restrictions on dividend payout ratios (Condition 7) and the requirement to maintain common equity capital at or above 45% of total capital (Condition 10). Thus, the conditions included in the August 1<sup>st</sup> Stipulation reduce the risk that problems at GNI unrelated to Bangor Gas might interfere with Bangor Gas' access to capital.

For the reasons discussed above, the Commission finds that the intercompany financing agreements proposed by Bangor Gas in this case are not adverse to the public interest and satisfy the requirements of 35-A M.R.S. § 707. The Commission further finds that the requested approval of the three credit facilities is in the public interest and is required in good faith by Bangor Gas for the purposes enumerated in 35-A M.R.S. § 901. Consistent with the Commission's normal practice and pursuant to 35-A M.R.S. § 902(4), approval of the credit facilities does not constitute approval of the Company's capital needs or capitalization ratio for ratemaking purposes, nor does such approval limit or restrict the powers of the Commission in determining or fixing any rate which remain subject to future Commission review.

### 3. Support Services Agreement

#### a. Summary of Proposed Agreement

As part of the Commission's approval of Bangor Gas' reorganization in Docket No. 2007-00151, the Commission approved the Company's current Support Services Agreement with EWI and Penobscot. Bangor Gas proposes to execute a new Support Services Agreement with GNI and NIC that is attached as Exhibit 13 to its February 17<sup>th</sup> Application. As discussed above, the proposed Support Services Agreement is virtually identical to the agreement the Commission approved in Docket No. 2007-00151 except that Penobscot has been replaced by NIC, and EWI has been replaced by GNI. As an intermediate holding company with no employees, NIC is not expected to be a provider of services. GNI will be the primary provider of services. Approval of this agreement requires findings under section 707 that the agreement is consistent with the interests of Bangor Gas' investors and ratepayers and will result in no net harm to the Company's ratepayers. The Support Services Agreement must also satisfy the requirements of Chapter 820 of the Commission's Rules.

b. Conditions of Approval

The August 1<sup>st</sup> Stipulation includes several recommended conditions that relate to the proposed Support Services Agreement which are separately numbered and are intended to supersede conditions relating to the current Support Services Agreement that were approved by the Commission in prior dockets. These recommended conditions:

- Require Bangor Gas to inform the Commission of significant operational transfers and changes in support services from GNI to Bangor Gas (Condition 23);
- Require Bangor gas to file the allocation percentages that result from the application of the Four Part Allocation method used in the Support Services Agreement (Condition 24);
- Prohibit the allocation of shared costs to Bangor Gas in any other manner than the methodology set forth in Four Part Allocation method (Condition 25);
- Require Bangor Gas to explain why market rates were not used in accordance with Chapter 820 in any instance in which Bangor Gas proposes to include in rates a cost for affiliate services that will be provided at other than market price (Condition 26);
- Require Bangor Gas to file copies of any filings with FERC made by or related to Bangor Gas, and any waiver requests made by NIC/GNI to FERC (Condition 27);
- Require Bangor Gas to notify the Commission and seek approval by separate petition or application of any material additions or modifications to the scope of services for which approval would be required under 35-A M.R.S. § 707 (Condition 28);
- Require Bangor Gas to, upon request, file copies of board minutes and documents presented to the NIC Board and minutes from the GNI Board that relate to BGC<sup>11</sup> (Condition 29);

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<sup>11</sup> Condition 29, found on page 18 of the August 1<sup>st</sup> Stipulation, reads as follows: "Bangor Gas, upon request, shall be responsible to inquire and obtain from NIC, and provide to the Commission, copies of board minutes and documents presented to the NIC Board and GNI board that affect Bangor Gas." The Commission believes this language is unclear and interprets it to mean that, upon request, Bangor Gas will provide to the Commission (1) copies of the minutes of the NIC Board, (2) copies of documents presented to the NIC Board, (3) copies of minutes of the GNI Board that relate to Bangor Gas, and (4) copies of documents presented to the GNI board that relate to Bangor Gas.

- Require Bangor Gas to notify the Commission of the formation of service companies and how these changes will affect Bangor Gas (Condition 30); and
- Require Bangor Gas to file a final signed version of the revised Support Services Agreement (Condition 31).

c. Findings and Conclusions

Section 707(3)(B) of Title 35-A authorizes the Commission to grant approval of affiliated transactions subject to such terms and conditions as it determines necessary to safeguard the public interest. The proposed Support Services Agreement is almost identical to the Support Services Agreement that is currently in effect and which was approved by the Commission in Docket No. 2007-00151 except that NIC has been added as Bangor Gas' immediate parent due to the merger of Penobscot and the elimination of EWI. The services available to Bangor Gas from NIC and GNI are consistent with the services that a utility subsidiary would receive from either a parent or service company within this type of organizational structure and are reasonable.

The Commission finds that the proposed Support Services Agreement between GNI, Bangor Gas and NIC (1) is not adverse to the public interest, (2) will likely not result in any net harm to ratepayers, (3) is reasonable, (4) is not contrary to any legislative mandate, and (5) is in the public interest. Accordingly, the proposed Support Services Agreement that is attached as Exhibit 13 to the Company's February 17<sup>th</sup> Application, is conditionally approved pursuant to 35-A M.R.S. § 707 and subject to the Conditions that are summarized above.

As the Company did in Docket No. 2007-00151, Bangor Gas has demonstrated in this case that good cause exists to waive the provisions of Chapter 820, § (4)(E) to allow GNI to provide services to Bangor Gas at fully distributed costs using its proposed methodologies, rather than market price. Such a waiver is not inconsistent with the requirements of sections 707, 708, 713, 714 and 715 of Title 35-A.

4. Other Conditions

The August 1<sup>st</sup> Stipulation includes additional recommended conditions that are intended to address the concerns identified in 35-A M.R.S. §§ 707, 708, 901, and 902 and Chapter 820 of the Commission's Rules. These additional conditions:

- Require Bangor Gas to file a written statement, within 30 days of creation of NIC or execution by GNI of the facilities with BOA/Merrill Lynch (whichever occurs later), that it will act in relationship with GNI and NIC in a way that is consistent with the terms of the August 1<sup>st</sup> Stipulation and this Order (Condition 32);
- Require Bangor Gas to notify the Commission of any new investment in a regulated utility or a non-regulated business that represents 10 percent or more of GNI's or NIC's book capitalization (Condition 33);

- Acknowledge the Commission's right to amend, alter, or modify this Order for any reason that may be necessary to address any issues affecting Bangor Gas that result from regulatory approvals or findings made in other jurisdictions with regard to other affiliates and subsidiaries of GNI (Condition 34);
- Acknowledge that nothing on the August 1<sup>st</sup> Stipulation shall be construed to limit in any manner the Commission's jurisdiction over rates, affiliate transactions, or access to records, or any other area which relates to the Company's provision of safe, adequate, and reliable service as provided in Title 35-A or any other applicable provision of Maine law (Condition 35); and
- Acknowledge that Bangor Gas will comply with the Other Maintenance, Operation Conditions, Pipeline Safety, and Leak Odor Response requirements set forth in Chapter 420 of Commission's Rules and the SQI metrics imposed by Commission in Docket No. 2012-00598 (Condition 36).

## VII. CONCLUSION

Bangor Gas' February 17<sup>th</sup> Application and the August 1<sup>st</sup> Stipulation require Commission review and approval of the following three categories of transactions: (1) the proposed reorganization under section 708; (2) the proposed intercompany financing transactions under sections 707, 901, and 902; and (3) the proposed Support Services Agreement under section 707 and Chapter 820 of the Commission's Rules. For the reasons discussed above, the Commission approves these transactional components of the February 17<sup>th</sup> Application, subject to the conditions contained in the August 1<sup>st</sup> Stipulation.

Accordingly, the Commission

## ORDERS

1. That the Stipulation dated August 1, 2016 and signed by the Bangor Gas Company, LLC and the Office of the Public Advocate, is attached to and incorporated into this Order and is approved subject to the conditions enumerated in the Stipulation and described in the body of this Order;
2. That the reorganization involving Bangor Gas, Penobscot, EWI, NIC and GNI as described in the August 1<sup>st</sup> Stipulation, the Company's February 17<sup>th</sup> filings and Exhibit 11 to the February 17<sup>th</sup> Application is conditionally approved pursuant to 35-A M.R.S. § 708;
3. That the proposed credit facilities and Intercompany Loan Agreements are conditionally approved pursuant to 35-A M.R.S. §§ 707, 901 and 902. Specifically, the credit facilities and agreements approved are:

- a. The \$8.1 million revolving line of credit under the terms and provisions as described in the August 1<sup>st</sup> Stipulation and in the body of this Order and Intercompany Revolver Agreement substantially in the form as provided in Exhibit 7 to the Company's February 17<sup>th</sup> Application;
  - b. The \$9.75 million term debt under the terms and provisions as described in the August 1<sup>st</sup> Stipulation and in the body of this Order and Intercompany Term Debt Agreement substantially in the form as provided in Exhibit 8 to the Company's February 17<sup>th</sup> Application;
  - c. The \$2.1 million SAP Loan under the terms and provisions as described in the August 1<sup>st</sup> Stipulation and in the body of this Order and Intercompany SAP Term Debt Agreement substantially in the form as provided in Exhibit 9 to the Company's February 17<sup>th</sup> Application;
4. That, consistent with the Commission's normal practice and pursuant to 35-A M.R.S. § 902(4), approval of the credit facilities does not constitute approval of the Company's capital needs or capitalization ratio for ratemaking purposes, nor does such approval limit or restrict the powers of the Commission in determining or fixing any rates which remain subject to future Commission review;
  5. That the proposed Support Services Agreement described in the August 1<sup>st</sup> Stipulation and in the body of this Order and substantially in the form as provided in Exhibit 13 to the Company's February 17<sup>th</sup> Application is conditionally approved pursuant to 35-A M.R.S. §§ 707;
  6. That Bangor Gas' request for a waiver of Chapter 820, section 4 (E) of the Commission's Rules is conditionally granted; and
  7. That Bangor Gas shall file copies of all documents executed in connection with the transactions approved pursuant to this Order with the Commission's Administrative Director within sixty (60) days of execution of the same.

Dated at Hallowell, Maine, this 19<sup>th</sup> day of August, 2016.

BY ORDER OF THE COMMISSION

/s/Harry Lanphear

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Harry Lanphear  
Administrative Director

COMMISSIONERS VOTING FOR: Vannoy  
McLean  
Williamson

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. G-40, SUB 133

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Frontier Natural Gas	)	
Company, LLC for Conditional Approvals	)	ORDER GRANTING
Relating to Corporate Reorganization	)	CONDITIONAL APPROVALS
and Debt Refinancing	)	

BY THE COMMISSION: On February 17, 2016, Frontier Natural Gas Company, LLC (Frontier or the Company), pursuant to G.S. 62-111, G.S. 62-160, et seq., and Commission Rule R1-16, filed an Application for Conditional Approvals of Corporate Reorganization and Debt Refinancing (Application). The Application requests approval for reorganization of Frontier's relationship with its corporate parents, and for conditional approval of debt financing for Frontier (Frontier 2016 Financing) by its parent Gas Natural Inc. (GNI). The Frontier 2016 Financing consists of: (1) the intercompany loan agreement between GNI and Frontier (Intercompany Revolving Loan Agreement), (2) the long-term intercompany note payable by Frontier to GNI (Term Debt Note), and (3) the shorter term intercompany note payable by Frontier to GNI (SAP Loan Agreement).

On February 25, 2016, Frontier filed a letter with the Commission stating that Frontier waives the requirement of G.S. 62-164 that the Commission render a decision on the utility financing arrangement within thirty (30) days of the filing.

On March 9, 2016, the Commission issued its Order Requesting Additional Information, Investigation by the Public Staff and Comments. In that Order, the Commission accepted Frontier's waiver of the 30-day requirement of G.S. 62-164, ordered Frontier to answer questions attached to the Order, and set a procedural schedule for intervention and the filing of comments, briefs, and proposed orders.

On March 14, 2016, the Public Staff – North Carolina Utilities Commission (Public Staff) filed a letter identifying and requesting information required by Commission Rule R1-16. On March 22, 2016, Frontier filed supplemental information, as requested by the Public Staff.

On April 7, 2016, Frontier filed the information requested by the Commission in its March 9, 2016 Order, along with the affidavits of Fred A. Steele, President and General Manager of Frontier, and James E. Sprague, Chief Financial Officer of GNI.

On April 8, 2016, Frontier filed an Amended Appendix A-2 to the Application.



On May 5, 2016, the Public Staff filed a motion requesting that the Commission issue an order extending the time to file comments and proposed orders. On May 5, 2016, the Commission granted in part the requested extensions of time.

On May 23, 2016, the Public Staff filed its Comments, and on June 15, 2016, Frontier filed its Reply Comments. No other party intervened or filed comments in this docket.

On June 30, 2016, Frontier filed a second affidavit of James E. Sprague that provided information about the GNI Term Loan and the Term Debt Note. The Application for Approvals of Corporate Reorganization and Debt Refinancing filed on February 17, 2016, and the additional information and affidavits filed by Frontier on and since that date described immediately above are collectively referred to as the Application.

On July 1, 2016, the Public Staff filed proposed Ordering Paragraphs and Regulatory Conditions that had been agreed to by Frontier and the Public Staff.

Also on July 1, 2016, Frontier filed a Proposed Order Granting Approval that incorporated the proposed Ordering Paragraphs and Regulatory Conditions agreed upon with the Public Staff, and that would grant approval of the proposed debt financing transactions as described in Frontier's Application.

Based upon the verified Application in this proceeding and the exhibits attached thereto, and the Commission's files and records regarding Frontier's previous financing and corporate structure, the Commission makes the following:

#### FINDINGS OF FACT

1. Frontier is a limited liability company duly organized and existing under the laws of the State of North Carolina for the purpose of providing natural gas service in certain parts of North Carolina pursuant to Certificates of Public Convenience and Necessity that have been issued by the Commission. Under the laws of this State, Frontier is a public utility operating in North Carolina and is, therefore, subject to the jurisdiction of the Commission.

2. Frontier began construction of its natural gas transmission and distribution systems in 1998 and completed construction of its transmission system in 2002. The construction of distribution pipelines and facilities for service to new customers continues in all six of Frontier's franchised counties. Frontier has experienced significant customer growth and significant growth in sales and transportation volumes. The number of customers served by Frontier has increased 26% from 2011 to 2012, 28% from 2012 to 2013, 27.7% from 2013 to 2014, and 11.8% from 2014 to 2015.

3. Frontier is still considered a relatively new company, and as such is a unique local distribution company. Although it has experienced strong growth, it has a low market saturation rate, and thus has excellent growth prospects.

4. Frontier is currently a wholly-owned subsidiary of Frontier Utilities of North Carolina, Inc. (Frontier Utilities). Frontier Utilities is a corporation organized and existing under the laws of the State of North Carolina. Frontier Utilities is currently a wholly owned subsidiary of Energy West, Incorporated (EWI), a Montana corporation doing business in Montana as a regulated natural gas utility. The Commission approved EWI's purchase of the stock of Frontier Utilities and the consequent transfer of control of Frontier to EWI pursuant to its Order Approving Purchase of Stock and Transfer of Control of Company issued on September 13, 2007, in Docket No. G-40, Sub 67 (Order of CPCN Transfer). EWI consummated its purchase of Frontier on October 1, 2007.

5. Pursuant to Regulatory Condition No. 3, attached to the Order of CPCN Transfer, Frontier and Frontier Utilities are considered to be a consolidated entity to the extent that Frontier Utilities' affiliation with Frontier has an effect on Frontier's rates or services so as to cause Frontier Utilities to be a public utility under G.S. 62-3(23)c.

6. On June 27, 2008 in Docket No. G-40 – Company Folder, Frontier filed with the Commission a Notice of Corporate Reorganization of Parent Company regarding EWI's formation into a holding company structure. In that Notice, Frontier reported that EWI had filed a petition for approval of the reorganization with the Montana Public Service Commission (Montana Commission) and that a similar petition would be filed with the Wyoming Public Service Commission (Wyoming Commission).

7. In a Status Update letter filed with the Commission on May 19, 2009, in Docket No. G-40 – Company Folder, Frontier provided the Joint Proposal for Approval of Corporate Reorganization Petition and Ring-Fencing Measures and a Stipulation for Approval of Corporate Reorganization and Ring-Fencing Measures (Montana Stipulation) that had been filed with the Montana Commission in Docket No. D2008.5.57 (Petition of Energy West Incorporated for an Order Approving its Corporate Reorganization to Create a Holding Company Structure.) The Montana Stipulation was entered into by EWI and the Montana Consumers Counsel for resolution of the pending reorganization proceeding. The Montana Stipulation contained Sub-paragraph 3(d), which established "ring-fencing measures," that could affect Frontier. On June 23, 2009, the Montana Commission issued Order No. 6960a in that docket approving the Montana Stipulation.

8. Frontier acknowledged in the Status Update Letter that a change in the direct ownership of Frontier Utilities by EWI to a holding company would constitute a transaction requiring Commission approval pursuant to G.S. 62-111(a). Frontier stated that a change in the terms of the debt financing (the triggering event for the timing of the contemplated future spin-off of Frontier Utilities) would require approval by the Commission pursuant to G.S. 62-160 et seq. Accordingly, Frontier committed to filing an application for approval of any new debt financing and/or transfer of ownership of Frontier Utilities to the holding company, if such transfer of ownership were to occur.

9. On July 16, 2010, in Docket No. G-40 – Company Folder, Frontier filed with the Commission a Notice of Corporate Reorganization of Affiliated Company, advising

the Commission that Energy, Inc. was the parent company of EWI and that, effective July 9, 2010, Energy, Inc. and GNI had merged, with GNI remaining as the surviving entity after the merger. GNI was reincorporated with the Ohio Secretary of State as an Ohio Corporation on July 9, 2010.

10. On March 7, 2012, in Docket No. G-40, Sub 105, Frontier filed an Application for Approval of Debt Refinancing Transactions by Energy West Incorporated, and on June 22, 2012, Frontier filed an Amended Application for Approval of Debt Refinancing Transactions by Energy West Incorporated that described the restructuring of EWI. EWI also requested approval of the reorganization from the Montana, Wyoming, and Maine Commissions. In its Order Granting Conditional Approval issued on August 8, 2012, the Commission conditionally approved the Amended Application.

#### CORPORATE REORGANIZATION

11. According to the Application, GNI's corporate structure has evolved through mergers, acquisitions, the formation of new companies, and the dissolution of old ones. GNI currently has nine direct subsidiaries: EWI; Brainard Gas Corporation; Independence Oil, LLC (Independence Oil); Gas Natural Service Company, LLC; Gas Resources, LLC; Lightning Pipeline Company, Inc.; Great Plains Natural Gas Company; Gas Natural Resources, LLC; Public Gas Company, Inc.; and Lone Wolfe Insurance, LLC (collectively, Direct Subsidiaries).

12. According to the Application, EWI currently has eight direct subsidiaries: Frontier Utilities, Penobscot Natural Gas Company, Inc., Energy West Montana, Inc., Cut Bank Gas Company, Energy West Development, Inc., Energy West Resources, Inc., Energy West Propane, Inc., and Energy West Properties, LLC (collectively, Energy West Subsidiaries). Some of the GNI Direct Subsidiaries and some of the Energy West Subsidiaries have, themselves, subsidiaries, so that, in total, twenty-seven companies are in the GNI organization.

13. According to the Application, Frontier requests conditional approval of the reorganization which simplifies its relationship with its corporate parents. Under the current corporate structure, GNI is the parent of several entities, including EWI. GNI separately owns other regulated utilities that operate distribution systems and an intrastate pipeline in Ohio. GNI is also the parent of several unregulated entities. EWI is the parent of Frontier Utilities and regulated utilities in Montana and Maine.

14. According to the Application, under the current corporate structure, having EWI, which is regulated by the Montana Commission, serve as the parent of Frontier Utilities and other regulated utilities, as well as GNI's ownership of other unregulated businesses in other states, has created the potential for jurisdictional conflict, confusion in accountability, and the potential for inconsistent practices among subsidiaries.

15. According to the Application, under the proposed corporate structure, GNI would continue to be the ultimate parent of Frontier. Frontier Utilities and EWI would be

dissolved, and EWI would be replaced by New Intermediate Company (NIC), a newly formed intermediary company. NIC would serve as the holding company for the regulated utilities, which includes Frontier as well as the other regulated utilities operating in Ohio, Montana, and Maine. NIC will have no subsidiaries other than regulated entities. The regulated subsidiaries would all become direct, separate subsidiaries of GNI through NIC. All of the former EWI and GNI unregulated business entities would be directly owned by GNI. The proposed holding company structure would place all GNI regulated subsidiaries under NIC, with all unregulated GNI subsidiaries being separate from NIC. The new corporate structure would facilitate a much simpler financing by allowing each subsidiary to be responsible for its own debt, without the complexities and risks of cross-collateralization, guarantees, or funds pooling.

16. According to the Application, the new corporate structure will accomplish several key goals and is beneficial because it:

- (a) eliminates divested companies and discontinued operations;
- (b) separates non-regulated activities completely from regulated activities, and provides an intermediary company between GNI and the regulated operating utilities;
- (c) simplifies the organizational structure and clarifies lines of responsibility by reducing intermediary companies from five to one;
- (d) clearly establishes the regulated operating utilities under the single intermediary company level to ensure appropriate separation from GNI, efficiencies and coordination of regulatory compliance activities, and operational consistency through the implementation of best practices; and
- (e) provides a structure for clear and understandable state- and utility-specific access to short-term and long-term debt while permitting discrete, distinctive, and independent utility-specific obligations and ring-fencing -- limited to each of the in-state activities and debt obligations and shielded from out-of-state obligations and unregulated activities and risks.

17. Frontier contends that the elimination of Frontier Utilities as a legal entity is consistent with Regulatory Condition No. 3 attached to the Order of CPCN Transfer issued on September 13, 2007, in Docket No. G-40, Sub 67, pursuant to which Frontier and Frontier Utilities are considered to be a consolidated entity for Commission regulatory purposes.

#### CURRENT FINANCING ARRANGEMENT

18. In the Order Granting Conditional Approval issued in Docket No. G-40, Sub 105, on August 8, 2012, the Commission conditionally approved an amended and restated credit agreement between Bank of America, N.A. (BOA) and EWI (Amended and Restated Credit Agreement), an intercompany credit agreement and continuing guaranty of Frontier Utilities and Frontier to EWI, and a term note between Frontier and EWI. The Amended and Restated Credit Agreement consisted of a \$30 million unsecured revolving line of credit and a \$10 million unsecured long-term debt facility. Frontier was a part of the pool of guarantors of this financing, along with other EWI subsidiaries, and Frontier

provided a limited recourse guarantee of \$12.8 million of the Energy West debt amount. Frontier issued to Energy West a term note payable in the principal amount of approximately \$6.1 million as its share of the notes. The \$6.7 million balance represented Frontier's share of the revolving line of credit that it could access. EWI's current line of credit, which is still in effect, will expire on April 1, 2017.

#### EFFORTS TO OBTAIN FINANCING FROM AN INDEPENDENT LENDER

19. Frontier states that since the Commission's approval of its current financing in 2012, Frontier has taken numerous actions to improve its creditworthiness and ability to obtain standalone financing from independent, unrelated parties. Frontier contacted several lending institutions to request proposals for the financing of Frontier. Despite the requests, only one financial institution submitted a term sheet to Frontier. Upon evaluation of the proposal, Frontier found the terms and conditions required by that bank to be unacceptable. Thus, Frontier has not received an alternative standalone proposal with terms that would be in the best interest of Frontier and its customers. Frontier is of the opinion that its small size was a major impediment to receiving attractive financing options from independent lenders. Also, if Frontier had obtained financing from an independent lender, Frontier would have been required to pledge its assets and GNI would have been required to serve as a guarantor for the financing.

#### PROPOSED REFINANCING

20. The Application states that due to the expiration of the current financing in 2017, Frontier requires both short-term and long-term debt resources in order to have sufficient access to meet cyclical cash flow needs throughout the year, to pay fixed expenses during non-heating months, to benefit from seasonal opportunities and provide operational flexibility to lower overall costs. In addition, Frontier needs long-term financing for capital investments to allow it to continue to grow as it has over the past few years. Frontier will use funds from the refinancing for repayment of its current outstanding debt, short-term funding of capital additions and system expansions, funding of system betterment and replacements, payment for working capital needs, payment for flowing gas and gas storage, payment for support services benefitting Frontier, its general corporate needs, and financing the SAP accounting system software, licenses and installation.

21. According to the Application, in order to replace the Amended and Restated Credit Agreement before its expiration GNI has entered into a proposed financing arrangement with BOA that will provide funds for debt financing for Frontier. GNI's financing will consist of the following components:

(a) BOA Revolving Credit Facility. The unsecured revolving credit facility (BOA Revolving LOC) is in the amount of \$42,000,000 and will be available for a period of five years, until 2021. The BOA Revolving LOC can be paid down and re-utilized over the term of the loan, is at a market-rate-based Federal Funds Rate and Eurodollar Rate, when

applicable, and is sufficiently sized to allow for GNI to provide funds pursuant to intercompany notes to Frontier and the other regulated operating utilities.

(b) GNI Term Loan. The GNI Term Loan will be placed by Merrill Lynch, Pierce, Fenner & Smith (the lending party(ies) being the Note Purchaser(s)) for the issuance and sale of up to \$50,000,000 in senior debt securities. According to the Second Affidavit of James Sprague, it will have a term of twelve years, and GNI has locked-in an interest rate of 4.23%, if closed by October 27, 2016. This pricing will be incorporated into the Term Debt Note between Frontier and GNI for the \$8.7 million portion of Frontier's financing. Frontier states that in the course of the negotiations with the Note Purchasers, there may be some minor changes from the precise terms of the sample Note Purchase Agreement that was filed as Exhibit 6 to the Application. However, these changes will not affect the terms of the Term Debt Note with Frontier, which will be in substantially the same form as the document filed as Exhibit 9 to the Application.

(c) SAP Loan. The loan from Banc of America Leasing & Capital, LLC is in the amount of \$7,000,000, payable over a forty-eight (48) month-period. The SAP Loan will be used to refinance multiple other loan obligations, including its capital lease obligation with Varilease, Inc., for the acquisition of the SAP Operating Platform software, licensing, and implementation used by all of the subsidiaries of GNI. The SAP software, license, and installation would serve as collateral for this loan.

The BOA Revolving LOC, the GNI Term Loan, and the SAP Loan are collectively referred to as the BOA Refinancing Package.

22. According to the Affidavit of James Sprague, the allocation and apportionment of the total debt among the GNI subsidiaries is based upon necessary and appropriate debt/equity limitations, company financing needs, growth projections, and forecasts. According to the Application, the financing for each of GNI's regulated utilities in Maine, Montana, Ohio, and North Carolina (the respective Financing Packages) will need to be approved by the respective regulatory authorities in each state where the utilities operate.

23. According to the Application, neither Frontier nor any of GNI's other regulated utilities will have any obligation for the activities, borrowings, or guarantees provided by any other GNI company under the BOA Refinancing Package. In the unlikely event of a default in repayment of any other company's specific obligations, neither GNI nor BOA can pursue or demand repayment beyond the defaulting party's specific and limited borrowing.

24. According to the Application, Frontier will not guarantee the BOA Refinancing Package, and it will not be an obligor of any obligations directly to BOA. The BOA Refinancing Package is unsecured by assets of Frontier and the other regulated utilities, with the exception of the SAP accounting system, software, and licenses, which are being financed by and, therefore, serve as collateral for the SAP Loan. Thus, in the

event of default, neither BOA nor the holder of the long-term senior debt securities will have any recourse against the utility assets of Frontier.

25. Frontier's financing for which approval is requested will consist of the following three components (collectively Frontier 2016 Financing):

(a) The Intercompany Revolving Loan Agreement, which is an agreement that Frontier will enter into with GNI, will provide Frontier access to \$7.2 million as a revolving line of credit under the same terms and at the same interest rate applicable to the BOA Revolving LOC.

(b) The Term Debt Note is an intercompany long-term note in the amount of \$8.7 million that Frontier will issue to GNI to refinance its current debt obligations under the same terms and at the same interest rate applicable to the GNI Term Note. The term and pricing of the GNI Term Note will be incorporated into Frontier's Term Debt Note, and thus will have an interest rate of 4.23% and a term of twelve years if closed by October 27, 2016.

(c) The SAP Loan Agreement is a shorter term intercompany note payable by Frontier to GNI in the amount of \$1,075,000 to finance a portion of the SAP Operating System that has been installed and is being used by Frontier. The SAP Loan Agreement will also provide Frontier with additional funding from the SAP Loan under the same terms and at the same interest rate applicable to the SAP Loan.

26. According to the Application, there will be no cross-default, cross-collateralization, or cross-border obligations by or to Frontier under the Intercompany Revolving Loan Agreement, the Term Debt Note, or the SAP Loan Agreement.

27. Frontier asserts that the Frontier 2016 Financing should be approved by the Commission since the assumption of liabilities in connection with the debt refinancing is (i) for some lawful object within the corporate purposes of the public utility, (ii) is compatible with the public interest, (iii) is necessary or appropriate for or consistent with the proper performance by such utility of its service to the public and will not impair its ability to perform that service, and (iv) is reasonably necessary and appropriate for such purpose.

#### PUBLIC STAFF RECOMMENDATION

28. The Public Staff believes that the Frontier 2016 Financing, as provided by GNI, provides tangible benefits for Frontier's ratepayers without some of the accompanying obligations that are typically part of standalone financing from independent lenders. Such benefits are as follows:

(a) If Frontier had obtained standalone financing, the Public Staff believes that the pledging of assets required for such financing would have created a degree of risk for Frontier ratepayers if the Company were to default on its obligation. Since the agreement

between BOA and GNI does not require Frontier to provide a guarantee or pledge any assets, Frontier's assets will not be placed at risk and are isolated from being used for the obligations and rights of GNI's other subsidiaries. The Public Staff believes that this isolation is a benefit to Frontier's ratepayers without an accompanying obligation.

(b) Standalone financing would require Frontier to provide regular financial statements and be subject to regular audits by the lender, which would have resulted in additional costs. The Public Staff notes that these costs would have increased Frontier's operating expenses and the cost of providing natural gas utility service to Frontier's ratepayers. In addition, the issuance of debt at the holding company level allows for allocation of debt issuance expenses across a greater number of customers.

(c) By obtaining financing at the holding company level, GNI is able to replace current debt held by EWI with less expensive debt and with more favorable and less restrictive terms. The larger size of the loan and the creditworthiness of GNI allows Frontier to receive more favorable interest rates, terms, and conditions. The interest rate on a 12-year term note has been locked in at 4.3%, while the interest rate on the debt being refinanced is 6.16%. This reduced borrowing cost with the longer term 12-year note is expected to improve GNI's and Frontier's creditworthiness, which is beneficial to Frontier's ratepayers.

29. The Public Staff concluded that the debt refinancing meets the requirements of G.S. 62-161(b) and recommends that the Commission conditionally approve the GNI Refinancing Package and authorize Frontier to execute the Intercompany Revolving Loan Agreement, the Term Debt Note, and the SAP Loan Agreement, so long as Frontier satisfies certain conditions recommended by the Public Staff.

30. The Public Staff recommended that Frontier file with the Commission the fully executed financing agreements between GNI and BOA, and the fully executed Intercompany Revolving Loan Agreement, Term Debt Note, and the SAP Loan Agreement payable to GNI within ten (10) days of their execution and no later than ninety (90) days following the date of the Commission's order in this docket.

31. The Public Staff recommended that Frontier enter into separate support services agreements with GNI and NIC, and that the support services agreements include a list of all requested services and the cost allocation basis by category or tier that will be used to directly assign or allocate expenditures to Frontier from each holding company. The Public Staff also recommended that Frontier file the new support services agreements with the Commission for approval no later than thirty (30) days from the approval of the corporate reorganization.

32. The Public Staff further recommended that if Frontier plans to take service or provide service to another subsidiary of GNI or NIC, then Frontier should execute a new support services agreement with each such subsidiary and file the agreements with the Commission pursuant to G.S. 62-153.



33. The Public Staff recommended that Frontier file notices with the Commission within ten (10) days after Energy West and Frontier Utilities have been dissolved and NIC has been created.

34. As the business operations of Independence Oil, a North Carolina limited liability company and unregulated subsidiary of GNI, have ceased and Frontier is hopeful that the legal entity will be dissolved in the near future, the Public Staff recommended that Frontier file notice with the Commission within ten (10) days after Independence Oil has been dissolved.

35. The Public Staff recommended that Frontier file with the Commission a chart of the new organizational structure of GNI and its subsidiaries within ten (10) days of the execution of the final document(s) needed to effectuate the reorganization described herein.

36. The Public Staff recommended that Frontier work with the Public Staff to provide a revised annual affiliated transaction report format beginning with the first annual report due after approval of the corporate reorganization.

WHEREUPON, the Commission now reaches the following

#### CONCLUSIONS

The corporate reorganization requested in the Application is justified by the public convenience and necessity as required by G.S. 62-111(a) and should be approved.

Pursuant to G.S. 62-153, the Intercompany Revolving Loan Agreement, Term Debt Note and SAP Loan Agreement should be accepted for filing as affiliate agreements, and Frontier should be authorized to make payments under those agreements, subject to the Regulatory Conditions and other provisions of this Order.

The Commission has the authority pursuant to G.S. 62-162 to approve a debt issuance and a guarantee of debt upon such terms and conditions as the Commission may deem necessary or appropriate in the circumstances.

Based upon the foregoing Findings of Fact and the entire record in the proceeding, the Commission is of the opinion and so concludes that the Frontier 2016 Financing will be:

- (a) For a lawful object within Frontier's corporate purposes;
- (b) Compatible with the public interest;
- (c) Necessary and appropriate for and consistent with the proper performance by Frontier of its service to the public and that it will not impair its ability to perform that service; and

(d) Reasonably necessary and appropriate for such services.

The Commission further concludes that these approvals should be conditioned upon Frontier's compliance with the Regulatory Conditions attached as Appendix A and incorporated herein by reference.

IT IS, THEREFORE, ORDERED as follows:

1. That the corporate reorganization described herein is conditionally approved, provided that Frontier complies with the Regulatory Conditions attached hereto as Appendix A;

2. That Frontier shall file with the Commission a chart of the new organizational structure of GNI and its subsidiaries within ten (10) days of the execution of the final document(s) needed to effectuate the reorganization described herein;

3. That Frontier shall file notices with the Commission within ten (10) days after Energy West has been dissolved, after Frontier Utilities has been dissolved, and after NIC has been created;

4. That Frontier shall file notice with the Commission within ten (10) days after Independence Oil has been dissolved;

5. That the Frontier 2016 Financing described herein is conditionally approved and Frontier is conditionally authorized to execute and deliver the Intercompany Revolving Loan Agreement, the Term Debt Note, and the SAP Loan Agreement substantially in the forms previously filed in this docket, provided that Frontier complies with the Regulatory Conditions attached hereto as Appendix A;

6. That Frontier is conditionally authorized to execute and deliver such documents and to perform such other acts that may be or may become necessary or appropriate to facilitate the financing transactions described herein;

7. That Frontier shall file copies of the fully executed BOA Revolving LOC, GNI Term Loan, SAP Loan, Intercompany Revolving Loan Agreement, Term Debt Note, and SAP Loan Agreement within ten (10) days of their execution and no later than ninety (90) days following the date of this Order;

8. That the Intercompany Revolving Loan Agreement, the Term Debt Note, and the SAP Loan Agreement filed by Frontier in this docket are accepted for filing pursuant to G.S. 62-153 and the payment of compensation from Frontier to GNI pursuant to G.S. 62-153 is authorized;

9. That Frontier shall enter into separate support services agreements with GNI and NIC, and that the support services agreements shall include a list of all requested services and the cost allocation basis by category or tier that is intended to be used to

directly assign or allocate expenditures to Frontier from each holding company, and that Frontier shall file the new support services agreements with the Commission for acceptance pursuant to G.S. 62-153 no later than thirty (30) days from the closing of the corporate reorganization;

10. That if Frontier plans to take service from or provide service to another subsidiary of GNI or NIC, then Frontier shall execute a new support services agreement with each such subsidiary and file the agreement(s) with the Commission for acceptance pursuant to G.S. 62-153;

11. That Frontier shall work with the Public Staff to develop a revised annual affiliated transaction report format;

12. That Frontier shall comply with the Regulatory Conditions attached hereto as Appendix A, which shall replace and supersede those previously ordered in Docket No. G-40, Subs 67 and 105, and those dockets shall be closed;

13. That nothing in this Order shall be construed to deprive the Commission of its regulatory authority under law, including its right to review and adjust, if deemed appropriate, the Company's cost of capital or expenses in future ratemaking proceedings for the effects of these transactions. Furthermore, for ratemaking purposes, the authority granted by this Order is without prejudice to the right of any party to take issue with the cost of capital, cost of debt expenses and provisions of the affiliated agreements in question in a future proceeding;

14. That Frontier shall file with the Commission copies of all orders from the state commissions in Montana, Ohio, and Maine related to the corporate reorganization of GNI and its subsidiaries and the respective Financing Packages of each of GNI's utilities within ten (10) days of issuance;

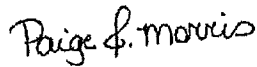
15. That this docket shall remain open for the purpose of receiving the filings required by the Regulatory Conditions; and

16. That any future application filed by Frontier pursuant to G.S. 62-160, et seq., and Commission Rule R1-16 for the purpose of replacing the 2016 Financing shall include information describing Frontier's continuing effort to obtain standalone financing, and information demonstrating that the proposed financing will provide the best tangible benefits for Frontier's ratepayers.

ISSUED BY ORDER OF THE COMMISSION.

This the 2<sup>nd</sup> day of August, 2016.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script that reads "Paige J. Morris".

Paige J. Morris, Deputy Clerk

Chairman Edward S. Finley, Jr., did not participate in this decision.

**DOCKET NO. G-40, SUB 133  
REGULATORY CONDITIONS**

These Regulatory Conditions set forth commitments made by Frontier Natural Gas Company, LLC (Frontier) as a precondition of approval of the application by Frontier pursuant to G.S. 62-111, G.S. 62-160, et seq., and Commission Rule R1-16, for Conditional Approvals of Corporate Reorganization and Debt Refinancing filed in this docket on February 17, 2016. These Regulatory Conditions become effective upon closing of the Frontier 2016 Financing, as defined herein.

For purposes of these Regulatory Conditions, Energy West Incorporated is referred to as "Energy West," Gas Natural Inc. is referred to as "GNI", New Intermediate Company is referred to as "NIC," the North Carolina Utilities Commission is referred to as "the Commission," and the Public Staff – North Carolina Utilities Commission is referred to as "the Public Staff." "Related Party or Parties" shall include officers, directors, five percent (5%) beneficial holders of GNI, Frontier, NIC, close family members of these individuals, and companies owned or controlled by such persons. Bank of America, N.A. is referred to as "BOA." "BOA Refinancing Package" shall refer collectively to GNI's financing arrangement with BOA, which consists of: (1) the revolving credit facility ("BOA Revolving LOC"), (2) the term loan placed by Merrill Lynch, Pierce, Fenner & Smith (the lending party(ies) being the "Note Purchaser(s)") ("GNI Term Loan"), and (3) the loan from Banc of America Leasing & Capital, LLC ("BAL") to refinance the acquisition of the SAP Operating Platform software, licensing, and implementation ("SAP Loan"). Frontier's allocated portion of the BOA Refinancing Package from GNI shall be collectively referred to as the "Frontier 2016 Financing" and consists of (1) the intercompany loan agreement between GNI and Frontier ("Intercompany Revolving Loan Agreement"), (2) the long-term intercompany note payable by Frontier to GNI ("Term Debt Note"), and (3) the shorter term intercompany note payable by Frontier to GNI ("SAP Loan Agreement"). "Affiliate" shall mean GNI and any business entity of which ten percent (10%) or more is owned or controlled, directly or indirectly, by GNI. For purposes of these Regulatory Conditions, GNI and each business entity so controlled by it are considered to be Affiliates of Frontier.

- 1 **Utilization of the Frontier 2016 Financing.** Frontier may utilize the Frontier 2016 Financing for the following purposes: refinancing of Frontier's current outstanding debt obligations, including debt related to acquisition of the SAP accounting system software, licenses, and installation; short-term funding of capital additions and system expansions; funding of system betterment and replacements; payment for working capital needs (e.g., paying bills and paying for gas supply); payment for support services benefitting Frontier; and payment for non-regulated activities that benefit Frontier, if approved by the Commission. GNI, NIC, or any other Affiliate of Frontier may not utilize any funds provided under the Frontier 2016 Financing unless approved by the Commission.
- 2 **Intercompany Revolving Loan Agreement and SAP Loan Agreement Reports.** Within forty-five (45) days following the end of each month, Frontier shall

file a report of the principal amounts outstanding at the beginning of the month, drawn during the month, repaid during the month, and outstanding at the end of each month on the Intercompany Revolving Loan Agreement and the SAP Loan Agreement.

Prior to any quarterly dividend payments made by Frontier to GNI (directly or through NIC) (generally which occur at the end of each quarter), Frontier shall ensure that its access to funds under the Intercompany Revolving Loan Agreement are not impaired and, further, that if Frontier's access becomes impaired, it shall submit a report to the Commission within three (3) business days of learning of such impairment describing the circumstances surrounding the same and shall suspend any dividend payments to GNI (directly or through NIC) until after such time as Frontier regains access to the Intercompany Revolving Loan Agreement.

3. **BOA Revolving LOC Reports.** Within forty-five (45) days following the end of each quarter, Frontier shall file a report of the principal amounts outstanding on the BOA Revolving LOC at the beginning of that quarter and outstanding at the end of that quarter for each GNI subsidiary.
4. **Default or Violation of BOA Refinancing Package Terms.** Frontier shall notify the Commission of any default or violation of the terms of the BOA Refinancing Package that could have an adverse effect on Frontier's ability to draw on its Intercompany Revolving Loan Agreement, Term Debt Note, or SAP Loan Agreement. Such notification shall be filed within ten (10) days of notice from BOA or the Note Purchaser(s) and should include a plan for remedying the default or violation(s).
5. **Default or Violation of Frontier 2016 Financing Terms.** Frontier shall notify the Commission of any default or violation of the terms of the Frontier 2016 Financing that could have an adverse effect on Frontier's ability to draw on its Intercompany Revolving Loan Agreement, Term Debt Note, or SAP Loan Agreement. Such notification shall be filed within ten (10) days of notice from GNI and should include a plan for remedying the default or violation(s).
6. **Distributions to GNI and NIC.** Frontier shall not pay to GNI (directly or through NIC) any distribution exceeding 100% of Frontier's net income calculated on a two-year rolling average basis. In addition, Frontier shall limit cumulative distributions paid to GNI (directly or through NIC) subsequent to closure of the Frontier 2016 Financing to (i) the amount of its retained earnings on the day prior to the closure of the Frontier 2016 Financing, plus (ii) any future earnings recorded by Frontier subsequent to closure of the Frontier 2016 Financing. Frontier shall not make any distributions to any Affiliates other than NIC and GNI, unless approved by the Commission. The Commission retains the right to impose future limitations on the distributions of Frontier.
7. **Obligations with Affiliates and Related Parties.** Frontier will not make a loan to any Affiliate or Related Party, issue a guarantee for an obligation of any Affiliate or

Related Party, or otherwise assume any obligation of any Affiliate or Related Party without prior Commission approval.

8. **Acquisition / Expansion of Utilities.** The funds that Frontier utilizes from the Frontier 2016 Financing will not be used for the acquisition or expansion of utilities located outside the State of North Carolina, unless the use of the funds for such acquisition or expansion is approved by the Commission.
9. **Notice of Certain GNI Investments.** Frontier shall file a notice with the Commission, subsequent to GNI Board approval and as soon as practicable following any public announcement, of any new investment in a regulated utility or a non-regulated business that represents ten percent (10%) or more of GNI's book capitalization.
10. **Notice of Certain NIC Investments.** Frontier shall file a notice with the Commission, subsequent to NIC Board approval and as soon as practical following any public announcement, of any new investment in a regulated utility.
11. **Notice of Level of Non-Utility Investment by GNI.** Frontier shall notify the Commission within ten (10) days following the filing of the GNI 10K or 10Q reports to the Securities and Exchange Commission for which GNI reports in its audited financial statements assets in its operations other than regulated utilities that are in excess of 15% of its consolidated total assets of GNI. For purposes of this computation, companies subject to the regulation by a state utilities regulatory commission are considered regulated utilities.
12. **Notice by Frontier of Default or Bankruptcy of Affiliate or Related Party.** If an Affiliate or Related Party of Frontier experiences a default on an obligation that is material to GNI or files for bankruptcy, and such bankruptcy is material to GNI, Frontier shall notify the Commission in advance, if possible, or as soon as possible but not later than ten (10) days from such event. For purposes of this section, materiality shall be any default or bankruptcy that would be required to be disclosed in the audited financial statements of GNI.
13. **Annual Financing Forecasts.** By the end of the first quarter of each calendar year, Frontier will provide to the Public Staff annual financing forecasts in the format of pro forma financial statements with supporting assumptions that cover a prospective five year period for repayment of the principal at the maturity date and the periodic interest payments of the Term Debt Note payable to GNI by Frontier. The annual financing forecasts shall cover the appropriate capitalization types, amounts, ratios, and cost rates of short-term and long-term financings that Frontier intends to execute in order to provide adequate service. These forecasts shall be confidential and subject to a Non-Disclosure Agreement between Frontier and the Public Staff.
14. **Revised Affiliate Transactions Report.** Frontier shall file an annual report of affiliated transactions with the Commission in a revised format prescribed by the Commission. The first such report on affiliated transactions shall be filed on March

31, 2017, for activity through December 31, 2016, and annually thereafter on March 31.

15. **Revised GS-1 Report Format.** Effective with the filing for the quarter ending March 31, 2017, Frontier will begin utilizing a revised NCUC GS-1 Earnings Surveillance Report format that is similar to the format of the ES-1 Earnings Surveillance Report that is submitted to the Commission by the electric utilities.
16. **Post-Closing Financial Information.** Frontier shall file pre- and post-closing balance sheets and the journal entries, including relevant descriptions and disclosures for the transactions recorded, for GNI, NIC, and itself concurrent with GNI's first regularly scheduled 10Q or 10K filing with the Securities and Exchange Commission.
17. **Regulatory Staffing.** Frontier shall maintain sufficient, adequately trained personnel to ensure that regulatory reporting requirements are complied with in a timely and accurate manner, including the reporting requirements listed on Attachment A hereto.
18. **Natural Gas Bond Fund Report.** Frontier shall file a Natural Gas Bond Fund Economic Feasibility Report on November 30, 2017, and every two years thereafter. Frontier shall utilize the same report format as has been filed by Frontier in Docket No. G-40, Sub 67.
19. **Service Company Formation.** Frontier shall notify the Commission of its plans or the plans of any Affiliate to form a service company at least 60 days prior to the formation of such a service company. In addition, Frontier shall notify the Commission posthaste in the event Frontier or any Affiliate receives a formal request to form such a service company. Frontier shall bear the full risk of any preemptive effects and consequences related to the formation of such a service company and will take all such actions as the Commission finds necessary and appropriate to hold North Carolina ratepayers harmless from any preemption.
20. **Allocation Methods and Procedures.** Frontier shall file a description of the methods and procedures used to allocate and assign costs to and from Affiliates within 60 days of the closing. Frontier shall notify the Commission and Public Staff of any plans to modify its corporate cost allocation methods and procedures at least 90 days prior to implementation of the change.
21. **Access to Books and Records.** In accordance with North Carolina law, the Commission and the Public Staff shall continue to have access to the books and records of Frontier, GNI, NIC, and other Affiliates.
22. **Changes to Board of Directors or Management.** Frontier shall notify the Commission within ten (10) days of any changes to the Board of Directors or management of GNI, NIC, or Frontier.
23. **Compliance with Sub 124 Stipulation.** Frontier shall continue to remain bound by the terms and conditions of the Stipulation entered into with the Public Staff on June 27, 2014, as amended on September 14, 2015, and filed in Docket No. G-



40, Sub 124, to the extent that those terms and conditions are ongoing and have not previously been satisfied.

**FRONTIER NATURAL GAS COMPANY, LLC  
REGULATORY REPORTING REQUIREMENTS**

Item #	Description	Frequency	Deadline	Requirement	Docket/Statute/Rule Reference
1.	FERC Form 2 Report	Annual	120 days	One copy filed with PS Acctng. Div. Copies provided to PS Natural Gas Div and NCUC Fiscal Management Div.	Rule R6-5(9)
2.	Financial & Operating Report	Monthly	45 days	Provided to PS Acctng. Div.	G.S. 62-36. Official NCUC Request.
3.	Deferred Account Report	Monthly	45 days	Filed w/Chief Clerk. Detailed workpapers provided to PS Acctng. Div.	Rule R1-17(k)(5)(c)
4.	Annual Review Of Gas Costs Filing	Annually	October 1	Filed w/Chief Clerk.	G.S. 62-133.4(c) and Rule R1-17(k)
5.	Daily Dispatch Report for last day of month	Monthly	3 days	Filed with Chief Clerk and provided to PS Natural Gas Div.	Rule R6-5(7)
6.	Source of Supply, Sales, Customers and Transportation	Monthly	45 days	Filed w/Chief Clerk.	G-100, Sub 24
7.	Customer Bill Formats	Each Time Changed		Filed w/Chief Clerk and provided to PS Natural Gas Div.	Rule R6-5(3)
8.	Natural Gas Bond Fund Economic Feasibility Report	Biennially	November 30	Filed w/Chief Clerk.	Rule R6-93
9.	Meter Report	Monthly	30 days	Filed w/Chief Clerk and provided to PS Natural Gas Div.	Rule R6-5(7)b
10.	Contracts with Customers	Each Occurrence	Prior to effective date	If term > 1 year, then filed w/ Chief Clerk for approval. If term < 1 year, then provide to PS Acctng. Div. in Annual Review.	Rule R6-5(2)

Attachment A

FRONTIER NATURAL GAS COMPANY, LLC  
REGULATORY REPORTING REQUIREMENTS

Item #	Description	Frequency	Deadline	Requirement	Docket/Rule Reference
11.	Incentive Plans	Each Program	Prior to Offer	Filed w/Chief Clerk. Approval required.	G.S 62-140(c), Rule R6-95
12.	Regulatory Fee Report	Quarterly	45 days	Filed w/NCUC Fiscal Management Div.	Rule R15-1
13.	Notice of Supplier Refunds Received	Each Occurrence	1 week	Filed w/Chief Clerk.	G-100, Sub 57
14.	Construction Budget	Annual		Filed w/Chief Clerk.	Rule R6-5(6)
15.	GS-1 Report 1/	Quarterly	45 days	Provided to NCUC Operations Div. and PS Acctng. Div.	G.S. 62-36. NCUC Official Request by letter dated April 25, 1972.
16.	Gas Pipeline Safety Reports	Various	Various	Filed w/Chief Clerk, otherwise contact the NCUC Pipeline Safety Div.	G.S. 62-50, Rules Chapter 6, and G-100, Sub 92
17.	Annual Affiliated Transactions Report	Annual	March 31	Filed w/Chief Clerk.	NCUC Final Order Docket No, G-40, Sub 133, Attachment A.

1/ Frontier will begin filing GS-1 Reports as of December 31, 2015, and will file on a quarterly basis going forward.

# gas natural inc.

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August 23, 2016

Ohio Public Utilities Commission  
180 East Broad Street  
Columbus, OH 43215

RE: Gas Natural Inc.

Dear Ohio Public Utility Commissioners:

GNI recognizes that the Public Utilities Commission of Ohio has broad statutory authority under Revised Code Title 49 regarding access to books, records, accounts, and other relevant information related to affiliate transactions and reorganizations with the regulated utilities under its jurisdiction. The Gas Natural Inc. Ohio Utilities have committed to having the affirmative obligation to inquire and obtain certain information that is required under the proposed stipulation. With this letter, Gas Natural Inc. acknowledges that with a Commission Order approving the proposed stipulation, the Ohio Utilities have these stipulated obligations and commits to providing information to the Ohio Utilities to assist with meeting these obligations.

Sincerely,



Kevin Degenstein  
Chief Operating Officer and Chief Compliance Officer  
Gas Natural Inc.

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**8/26/2016 3:23:54 PM**

**in**

**Case No(s). 16-0354-GA-AIS, 16-0355-GA-UNC**

Summary: Stipulation Filings in compliance with Stipulation and Recommendation electronically filed by Mr. Devin D. Parram on behalf of Brainard Gas