

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Investigative Audit of	)	
Northeast Ohio Natural Gas Corporation,	)	
Orwell Natural Gas Company, and Brainard	)	Case No. 14-205-GA-COI
Gas Corporation	)	

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**MOTION FOR EXTENSION OF PROTECTIVE ORDER OF NORTHEAST OHIO  
NATURAL GAS CORPORATION, ORWELL NATURAL GAS COMPANY, AND  
BRAINARD GAS CORPORATION**

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Pursuant to Ohio Administrative Code (“O.A.C.”) Rule 4901-1-24(D), Northeast Ohio Natural Gas Corporation (“Northeast”), Orwell Natural Gas Company (“Orwell”), and Brainard Gas Corporation (“Brainard”) (collectively referred to as the “Companies”) respectfully move for an order extending protective treatment afforded certain portions of the Investigation Report submitted by Rehmann Corporate Investigative Services, LLC (“Rehmann” or the “Auditor”) filed in the above-captioned matter. See *Northeast*, Case No. 14-205-GA-COI, Attorney Examiner Entry (August 4, 2015). The Companies request that the Commission continue to provide protective treatment for the redacted portions of the Investigation Report which were filed by the Companies on June 3, 2015. The reasons supporting this motion are fully set forth in the attached Memorandum in Support.

Respectfully submitted on behalf of  
NORTHEAST OHIO NATURAL GAS CORPORATION,  
ORWELL NATURAL GAS COMPANY,  
BRAINARD GAS CORPORATION



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## MEMORANDUM IN SUPPORT

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### I BACKGROUND

On November 13, 2013, the Commission issued an Opinion and Order *in In re Northeast Ohio Natural Gas Corp. and Orwell Natural Gas Company*, Case Nos. 12-209-GA-GCR et al (“2012 GCR Order”). In the 2012 GCR Order, the Commission stated that an investigative audit of the Companies should be performed. 2012 GCR Order at 3. On April 2, 2014, the Commission established this case (Case No. 14-205-GA-COI) for the purpose initiating an investigative audit into the Companies. The Commission selected Rehmann Corporate Investigative Services, LLC (“Rehmann” or the “Auditor”) as the auditor to perform the investigative audit. Rehmann filed its Investigative Report with the Commission on January 23, 2015.

On May 29, 2015, the Companies filed a motion for protective order seeking protective treatment for portions of exhibits to the Investigative Report. On June 3, 2015, the Companies filed proposed redactions regarding the following information:

- Exhibit 10 (pgs. 2-4); Exhibit 14 (pgs. 6-9); and Exhibit 19 (pg. 11) - Checking account numbers and customer identification numbers listed on several invoices from gas suppliers.
- Exhibit 20 (pgs. 15-17) - Memorandum describing Northeast’s gas procurement strategy.
- Exhibit 46, (pgs. 29) - account number listed on invoice from equipment supplier.
- Exhibit 50 (pgs. 34-35); Exhibit 53 (pg. 38); Exhibit 55 (pg. 90); Exhibit 56 (pg. 93); Exhibit 62 (pgs. 96- 97, and 101) - Account numbers listed on credit card statements, bank statements, copies of checks, invoices from gas suppliers, and wire transfer requests.

- Exhibit 63 (pgs. 104-105) - References to customer account and usage information.
- Exhibit 65 (pgs. 111, 113, 118-119, and 121-122) - Customer account and usage information and utility's account information.
- Exhibit 66, Page 138 - The list of names of interviewees.

On August 4, 2015, the Attorney Examiner granted the Companies' motion for protective order for a period of two years.

## II. LAW & ARGUMENT

### A. An exception to disclosure of public records under the Ohio Public Records Act is "trade secret" information.

One of the exemptions under the Ohio Public Records Act (the "Act") is information that "the release of which is prohibited by state or federal law." R.C. 149.43(A)(1)(v). "Trade secret" information has commonly been viewed as fitting within this exemption. The Commission's Rules allow for protective treatment of certain trade secrets filed at the Commission in order to prevent disclosure of such information. O.A.C. Rule 4901-1-24(D) states in part:

"(D) Upon motion of any party or person with regard to the filing of a document with the commission's docketing division relative to a case before the commission, the commission, the legal director, the deputy legal director, or an attorney examiner may issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where the information is deemed by the commission, the legal director, the deputy legal director, or the attorney examiner to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. Any order issued under this paragraph shall minimize the amount of information protected from public disclosure."

(emphasis added).

Under R.C. 1333.61(0), "Trade secret" means:

“information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:

(1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

(2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

Expounding upon the definition of “trade secret,” the Supreme Court of Ohio has delineated factors to be considered when analyzing a trade secret claim:

(1) The extent to which the information is known outside the business, (2) the extent to which it is known to those inside the business, *i.e.*, by the employees, (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information, (4) the savings effected and the value to the holder in having the information as against competitors, (5) the amount of effort or money expended in obtaining and developing the information, and (6) the amount of time and expense it would take of others to acquire and duplicate information.

*State ex. rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St. 3d 513, 687 N.E.2d 661 (1998).

In accordance with the criteria set forth above, state law prohibits the release of the trade secret information.

**B. The Commission should continue to provide protective treatment for redacted information because it constitutes “trade secrets”.**

*1. Account numbers, credit card statements, bank statements, copies of checks, invoices, and wire transfer requests.*

A number of the exhibits contain sensitive financial/account information which is not disclosed to public. This information includes account numbers, credit card statements, bank statements, copies of checks, invoices, and wire transfer requests. Information contained on these documents can be used to access the Companies’ financial information and access

information regarding the Companies' gas purchasing history with particular suppliers. If these account numbers are disclosed, a third-party could potentially use this information to gain unauthorized access to the Companies' sensitive business information.

When the Companies' filed their initial motion for protective order in 2015, the Companies proposed very limited redactions which protected only the sensitive account information at issue. The Commission granted the Companies proposed redactions. The Companies request that the Commission continue to provide protective treatment for the redacted portions of the exhibits of the Investigative Report, which will ensure that the sensitive account information remains under seal.

## *2. Natural gas procurement procedures and strategies*

One of the exhibits of the Report is a document that outlines the Companies' natural gas procurement procedures and strategies. This document was created based upon years of gas purchasing experience, and details the Companies' on-going methodology for procuring gas. Although these documents were contained in the Investigative Report from 2014, this information continues to be a trade secret because the Companies continue to use essentially the same procurement procedures and strategies today. If this information is disclosed, the Companies would be at a competitive disadvantage because the Companies' natural gas procurement strategies would be in the public domain.

## *3. Customer usage information*

Customer usage information constitutes a "trade secret" because this information can put the customer at a competitive disadvantage if it disclosed to the public. Competitors and potential suppliers can use this information to obtain a competitive advantage over the commercial customers. The Commission regularly protects against public disclosure of this type

of customer usage information and initially determined that this information constituted “trade secrets” when it granted the Companies’ 2015 motion for protective order. This information continues to be competitively sensitive because the information can still be used to determine these particular customers’ usage levels and patterns, which could then be used in potential natural gas procurement negotiations. This information has independent economic value because it not shared with the public. As such, the Commission should continue to provide this information protective treatment.

**C. Some of the exhibits contain “personal information” that should be protected from public disclosure under R.C. 149.45(C)(1).**

In addition to protecting against the disclosure of the Companies’ trade secrets, the Commission should not disclose any of the “personal information” of the Companies. Some of the documents contain checking account numbers for the Companies. This is “personal information” protected from disclosure under R.C. 149.45(C)(1). R.C. 149.45(A)(1)(d) specifically defines “personal information” as an “individual’s checking account number” or “credit card number.” There are documents in the Investigative Report that contains checking account numbers or credit card numbers. And, as discussed above, some of these documents contain the Companies’ account numbers with gas suppliers. These account numbers with gas suppliers can be just as sensitive as social security numbers or checking account numbers and could be used by an individual to access the private business information of the Companies. The Commission should continue to provide protective treatment for this information.

**D. The Commission should not disclose the names of witnesses that were interviewed by the Auditor to protect those individuals from harassment, intimidation, or retaliation.**

The Investigative Report contains information that was derived through employee interviews. Some of the allegations made by these employees, if shown to be true, could be

considered damaging for individuals that were engaged in the alleged misconduct. Some of the employees that were interviewed by the Auditor are still employed with the Companies, while others are not. Before the Investigative Report was published, the Companies requested that the names of the interviewees be redacted to protect the individuals who decided to cooperate with Auditor. The Auditor agreed to redact these individuals' names, and noted in its report that **“publication of names and information may subject interviewees to possible adverse action or unwanted scrutiny.”** Investigative Report at 31 (emphasis added.)

The Commission should grant the Companies' motion for protective order with respect to those portions of the Investigative Report that contain the names of interviewees to continue to protect these individuals from “possible adverse action or unwanted scrutiny.”

1. *The names of private citizens that were interviewed during the investigation are not considered “public records.”*

The Supreme Court of Ohio has held that names of private individuals that happen to be in the possession of a public agency do not automatically constitute a “public record.” *State ex rel. McCleary v. Roberts*, 88 Ohio St. 3d 365, 370, 725 N.E.2d 1144 (2000). In *McCleary*, the Court determined that the names of private citizens did not constitute “public records” because the names of these citizens did not “document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.” *Id.* The Court indicated that the individuals were not employees of the agency and their names were not contained in a personnel file. *Id.* The Court found that disclosure of the individuals' names, standing alone, did nothing to document any aspect of the public agency's operations. *Id.* at 368. See also *State ex rel. Beacon Journal Publ'g Co. v. Bond*, 98 Ohio St. 3d 146, 2002-Ohio-7117, 781 N.E.2d 180, ¶¶ 12-13. (The Court held the names of private citizens were not “records” under the Act because the names did not document the public agency's performance of its statutory duty.).



The names of the individuals who were interviewed by the Auditor do not document any of the activities of the Commission. The names of these individuals do not document any of the activities of the Companies because the identities of the individuals are not important to the Commission's investigation. The only information that is arguably relevant regarding these individuals is the information they shared with the Auditor regarding the alleged conduct of the Companies' prior management, which is already publicly available in the text of the Investigative Report. Disclosure of these individuals' names would not further the purpose of the Public Records Act, and will not help enlighten anyone regarding the Commission's or the Companies' performance of their duties. The Commission should continue to provide protective treatment regarding the names because this information does not constitute a "public record."

2. *The names of the interviewees should not be disclosed because this information is exempt under R.C. 149.43(A)(1)(v).*

Even if the Commission decides that the interviewees' names constitute a "public record", the information is exempt under R.C. 149.43(A)(1)(v) because disclosing this information will violate these individuals' privacy rights. In *McCleary*, the court held that certain private information could be protected even if the information constituted a "public record." The Court determined that the public agency was under no obligation to release the names of children due to the "unacceptable risk" that the children could be victimized if their names were released to the public. See also *State ex rel. Keller v. Cox*, 85 Ohio St. 3d 279, 282, 707 N.E.2d 931 (1996) (The Court determined that personal information of police officers, such as their names and addresses, should not be released because the information might be "use[d] the information to achieve nefarious ends."). The Supreme Court of Ohio has also taken steps to protect individuals' privacy by recognizing a privacy exemption for social security numbers. *State ex rel. Beacon Journal Publ'g Co. v. Akron*, 70 Ohio St. 3d 605, 612, 640 N.E.2d 164 (1994) ("We

find today that the high potential for fraud and victimization caused by the unchecked release of city employee SSNs outweighs the minimal information about governmental processes gained through the release of the SSNs.”).

The unredacted version of the Investigative Report contains the names of employees who provided information to the Auditor. To protect the employees who provided information to the Auditor, the Companies specifically requested that these individuals’ names be removed from the public version of the Investigative Report. There is no value in the disclosure of these individuals’ names. There is, however, a substantial amount of risk associated with disclosure of this information. These individuals may be harassed or intimidated for providing information to the Auditor. Such harassment may deter individuals from cooperating in future Commission investigations. Considering the negative consequences of disclosure, it is critical that the Commission continue to protect from public disclosure of the interviewees’ names.

Although it has been two years since the Commission issued its protective order regarding the names of the interviewees, there remains the threat of harassment of interviewees. As the Commission is aware, Mr. Richard M. Osborne has been involved in numerous contentious lawsuits involving his current and prior companies over the years. Some of these lawsuits are still ongoing, and the interviewees still may be harassed or dragged into litigation as retribution for assisting with the Commission’s investigation. This potential for harassment or litigation has not waned since the Commission initially granted protective treatment in 2015. The Commission should grant the Companies’ motion for protective treatment to continue to protect those individuals who cooperated with the Auditor.

### III. CONCLUSION

Based on the foregoing, the Companies request that the Commission grant this motion for protective treatment and continue protective treatment for information initially protected in the August 4, 2017 Attorney Examiner Entry.

Respectfully submitted on behalf of  
NORTHEAST OHIO NATURAL GAS CORPORATION,  
ORWELL NATURAL GAS COMPANY,  
BRAINARD GAS CORPORATION



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of foregoing was served this 29<sup>th</sup> day of December 2017 by electronic mail upon the following.



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Summary: Motion for Extension of Protective Order of Northeast Ohio Natural Gas Corporation, Orwell Natural Gas Company, and Brainard Gas Corporation electronically filed by Teresa Orahod on behalf of Devin D. Parram