

FILE

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of )  
Ohio Intrastate Energy, LLC )  
for Approval of Tariffs and to Become )  
a Pipeline Company/Public Utility )

Case No. 05-468-PL-ATA

APPLICATION

COMES NOW Ohio Intrastate Energy, LLC ("OIE"), by its attorney, and respectfully submits this Application pursuant to Sections 4905.02, 4905.03(A)(7), and 4905.30, Ohio Revised Code, seeking Commission authorization to operate as a pipeline company in the State of Ohio, stating the following:

1. OIE is a limited liability company with its principal office in Findlay, Ohio.
2. OIE is currently acquiring pipeline facilities and delivery points located in Butler County, Ohio. A map depicting the location of the pipeline and a list of Receipt and Delivery Points are attached as Exhibit A and hereby incorporated as part of this Application.
3. OIE has the requisite technical, financial, and managerial capability needed to operate this type of transmission system. (See attached Exhibits B and C.)
4. OIE seeks Commission approval to become a pipeline company which will operate, maintain, and transport natural gas through such system to natural gas retail suppliers, local distribution customers, and all other customers on a nondiscriminatory, open-access basis.
5. In support of this Application, OIE is providing the Commission with the following exhibits:

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business  
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Exhibit A - Pipeline Map and List of Receipt and Delivery Points

Exhibit B - Summary of Technical and Managerial Background


Exhibit C - Pro Forma Financials

Exhibit D - Proposed Tariff

WHEREFORE, Ohio Intrastate Energy, LLC respectfully requests that the Commission approve the subject application, proposed tariff, and any other relief that the Commission deems appropriate.

Respectfully submitted,

OHIO INTRASTATE ENERGY, LLC.

By: 

Andrew J. Sonderman (0008610)

Cooper & Elliott, LLC

60 E. Broad Street, Suite 400

Columbus, Ohio 43215

Attorney for Applicant,

Ohio Intrastate Energy, LLC

# **EXHIBIT A**

## **PIPELINE MAP AND RECEIPT/DELIVERY POINT LIST**

## Ohio Intrastate Energy, Delivery Points

### Butler County, Ohio – Lemon Township



**Exhibit A**

Page 2 of 2

**OHIO INTRASTATE ENERGY, LLC****RECEIPT & DELIVERY POINTS**

<b>NAME/LOCATION</b>	<b>RECEIPT/ DELIVERY POINT DESIGNATION</b>
Panhandle Eastern/Texas Eastern Capacity; Lebanon, Warren County, Ohio	(Receipt) Meter No. 72770
ANR/Texas Eastern (Lebanon Lateral/ANR Capacity); Lebanon, Warren County, Ohio	(Receipt) Meter No. 79441
Texas Eastern Lebanon Lateral Takeaway Point-Mainline; Lebanon, Warren County, Ohio	(Receipt) Meter No. 79951
Texas Gas-Lebanon; Lebanon, Warren County, Ohio	(Receipt) Meter No. 770215
AK Meter, Lemon Township, Butler County, point of interconnection with Texas Eastern Line-1	(Delivery) Meter Station 2344
Ford Meter, Lemon Township, Butler County, point of interconnection with Texas Eastern Line-1	(Delivery) Meter Station 1841

# EXHIBIT B

## **TECHNICAL AND BACKGROUND EXPERIENCE OF KEY PERSONNEL**

## **Ohio Intrastate Energy, LLC**

### **Key Personnel**

#### **A. Scott Rothey**

##### **Manager**

Mr. Rothey's career spans over thirty years in the natural gas industry. He served in staff positions of increasing responsibility with the Public Utilities Commission of Ohio from 1972 to mid-1975, as its Chief Economist. He has extensive operational and financial experience with jurisdictional natural gas companies. Following his tenure with the Commission's Staff, Mr. Rothey was president of Rothey, Bell and Taub, Inc., a utility consulting firm. As a utility consultant, Mr. Rothey has presented testimony before numerous state commissions and the FERC.

In 1986, Mr. Rothey became Executive Vice President of Suburban Natural Gas Company, an Ohio Regulated Natural Gas Distribution Company, a position which he held until early 1989. During his tenure, Suburban initiated a significant capital construction program in Delaware and northern Franklin Counties. He was responsible for all aspects of the operation of this company. Subsequently, Mr. Rothey became President of Kalida Natural Gas Company, now KNG Energy, Inc., another Ohio Regulated Natural Gas Distribution Company, serving in that capacity until December, 2002. As President of KNG, Mr. Rothey was also involved in the development of North Coast Gas Transmission. He was responsible for all aspects of the operation of both KNG Energy and North Coast Gas Transmission.

As Manager of Ohio Intrastate Energy, LLC, Mr. Rothey is responsible for implementing its strategy of acquiring and operating regulated and non-regulated energy assets. This is a start-up company. It is anticipated that additional jurisdictional facilities will be built and/or acquired.

Mr. Rothey is an economist, having received a B.A. from the University of Utah and an M.A. degree from The Ohio State University where he also passed the written exams for a Ph. D. in Economics.

#### **Utility Technology International Corporation ("UTI")**

UTI was established in 1993 to provide management, engineering, design, construction, operations, maintenance and training services to natural gas companies. Headquartered at 2685 Plain City-Georgesville Road in West Jefferson, Ohio, UTI offers assistance in pipeline construction and maintenance, inspection and pipeline safety compliance. Ohio Intrastate Energy, LLC has arranged for operational support services with UTI.

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# **EXHIBIT C**

## **PRO FORMA FINANCIAL STATEMENT**



**Exhibit C**

Page 1 of 1

**OHIO INTRASTATE ENERGY, LLC**

**STATEMENT OF REVENUES AND EXPENSES (PROJECTED)  
FOR THE YEAR ENDING DECEMBER 31, 2005  
(\$)**

**Revenue:**

Transportation Service	87,600
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**Expenses:**

Gross Receipts Tax	4200
Property Tax	3000
Professional Fees	10,000
Insurance	5,000
Other Operating Expenses	15,000
Administrative	25,000
Depreciation	8,000
Amortization	4,000
Interest	2,100

Total Expenses	76,300
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<b>Net Income</b>	<b>11,300</b>
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NOTE: This is a start-up operation. Results are expected to improve as new business and additional facilities are built and/or acquired.

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# **EXHIBIT D**

## **PROPOSED TARIFF**

Ohio Intrastate Energy, LLC

Original Title Sheet  
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**RULES AND REGULATIONS GOVERNING  
THE PIPELINE TRANSPORTATION OF GAS**

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Filed pursuant to PUCO Entry dated \_\_\_\_\_, 2005 in Case No. 05-\_\_\_\_ - PL-ATA

ISSUED: April \_\_\_\_\_, 2005

EFFECTIVE: \_\_\_\_\_, 2005

Issued By  
Ohio Intrastate Energy, LLC  
A. Scott Rothey, Manager

**RULES AND REGULATIONS GOVERNING  
THE PIPELINE TRANSPORTATION OF GAS**

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**GAS TRANSPORTATION SERVICE**

**1. DEFINITIONS**

As used herein in conjunction with transportation service, the following terms shall have the meanings indicated below:

- A. "Btu" shall mean the British thermal unit as defined by international standards.
- B. "Business Day" shall mean any weekday, excluding federal banking holidays.
- C. "Central Clock Time" (C.T.) shall mean Central Standard Time adjusted for Daylight Savings Time.
- D. "Company" means Ohio Intrastate Energy, LLC, its successors and assigns.
- E. "Customer" means any individual, governmental, or corporate entity taking transportation service hereunder.
- F. "Dekatherm" or "Dth" means the Company's billing unit measured by its thermal value. A dekatherm is 1,000,000 Btus or one (1) MMBtu. Dekatherm and MMBtu shall be synonymous, and dekatherm shall be the standard unit for purposes of nominations, scheduling, invoicing, and balancing. It shall be proper for the Company to rely on the heating value measurements or assumptions provided to the Company by upstream suppliers for purposes of the Company's determination of the heating value of the gas received by the Customer. The Company shall not be required to install any equipment to measure heating value at the Customer's service address for the purpose of converting volumetric measurements into Dth. Btu is the abbreviation employed to denote a British thermal unit.
- G. "Delivery Point(s)" shall mean the specific measurement location(s) listed on Exhibit A of the Service Agreement at which the Company delivers Customer-owned gas to Customer and Customer receives such gas from the Company. All Delivery Points of the Company are interconnections with a pipeline or local distribution company.
- H. "Delivery Volume" shall mean the volume of Gas actually nominated and confirmed at the Delivery Point(s) by or on behalf of the Customer.
- I. "Firm" shall mean that each Dth the Customer nominates and the Company confirms at the Receipt Point(s), within the Customer's MDQ, will be delivered to the Customer's Delivery Point(s) minus the Company's Shrinkage without interruption except under Force Majeure conditions or an energy emergency declared by the Commission.

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- J. "Gas" shall mean natural gas of interstate pipeline quality.
- K. "Gas Day" or "Day" shall mean a period of 24 consecutive hours, beginning at 9:00 am Central Clock Time and the date of the Day shall be that of its beginning.
- L. "Heating Value" shall mean the gross heating value on a dry basis, which is the number of British thermal units produced by the complete combustion at constant pressure of the amount of dry gas (gas containing no water vapor) that would occupy a volume of one Cubic Foot at 14.73 psia and 60° F with combustion air at the same temperature and pressure as the gas, the products of combustion being cooled to the initial temperature of the gas and air, and the water formed by combustion condensed to the liquid state.
- M. "Imbalance" shall mean the daily difference between the Dth tendered by or for the Customer's account at the Receipt Point(s) minus the Company's Shrinkage and the confirmed nomination volumes allocated to the Customer at the Delivery Point(s).
- N. "Interruptible" shall mean that each Dth the Customer nominates and the Company confirms at the Receipt Point(s), in excess of the Customer's MDQ, will be delivered to the Customer's Delivery Point(s) less the Company's Shrinkage, if the Company, using reasonable judgment, determines that capacity exists after all the Firm transport needs are accounted for to permit redelivery of tendered gas.
- O. "Maximum Daily Quantity (or "MDQ") shall mean the maximum daily firm natural gas quantity which the Customer shall be entitled to nominate during any 24-hour period. The Customer's MDQ shall be negotiated between the Customer and the Company and incorporated into the Customer's Service Agreement with the Company.
- P. "Month" shall mean a calendar month beginning at 9:00 a.m. Central clock time on the first day of the calendar month and ending at 9:00 a.m. Central clock time the first day of the following calendar month.
- Q. "Nomination" shall mean the confirmed Quantity of Gas which the Customer shall arrange to have delivered to the Receipt Point(s) for redelivery by the Company to the Delivery Point(s). The Nomination shall include sufficient gas to account for the Company's Shrinkage.
- R. "Ohio Intrastate Energy, LLC System" or "OIE System" shall mean all natural gas pipelines operated by, or any expansion, additions to, or replacement of these pipelines.
- S. "Operational Flow Order" or "OFO" shall mean a declaration made by the Company that conditions are such that the Company can only safely transport a quantity of Gas during a Gas Day equal to the quantity of Gas which the Customer will actually deliver at the Receipt Point(s) on that Gas Day. The Company shall only declare an Operational Flow

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**RULES AND REGULATIONS GOVERNING  
THE PIPELINE TRANSPORTATION OF GAS**

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- Order if an upstream pipeline declares an operational flow order or otherwise restricts the flow of Gas which normally would be delivered to the Company at the Receipt Point(s).
- T. "Overrun" shall mean any volume of Gas actually transported which, as measured on a daily basis, exceeds the MDQ established by the Service Agreement.
- U. "PUCO" or "Commission" means the Public Utilities Commission of Ohio, or any successor governmental authority.
- V. "Quantity" or "Volume" of Gas shall mean the number of units of gas expressed in Dth unless otherwise specified.
- W. "Receipt Point(s)" shall mean those measurement locations where Customer-owned gas is tendered to the Company for re-delivery.
- X. "Service Agreement" Each Customer shall sign an individual contract with the Company prior to commencement of service that identifies the Receipt Point(s) and Delivery Point(s), the MDQ, declares whether the transportation is Firm or Interruptible and establishes the cost for the transportation. The Service Agreements shall be filed with the Commission in compliance with Section 4905.31, Revised Code for the Commission's approval.
- Y. "Shrinkage" shall mean the quantity of Gas required by the Company to replace the estimated quantity of Gas which is required for compressor fuel and for lost-and-unaccounted-for Gas when transporting the tendered quantities. This percentage shall be set forth in a Customer's Service Agreement, and may be adjusted annually by the Company. Because the Company's system consists of non-contiguous facilities and may involve unconnected systems, shrinkage shall be based on the specific characteristics of each particular system or set of facilities. No shrinkage shall be applicable to gate service or to backhaul service.
- Z. "Written Notice" shall mean a legible communication received by the intended recipient of the communication by United States mail, express courier, or confirmed facsimile. All notices mailed in the United States mail shall be deemed to have been given two (2) business days after being deposited in the mail. Written Notice may also be provided by E-mail, but shall not be effective until such time as (a) the E-mail is acknowledged by the intended recipient; or (b) a copy of such E-mail is received by the intended recipient by US mail, express courier, or confirmed facsimile.

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**RULES AND REGULATIONS GOVERNING  
THE PIPELINE TRANSPORTATION OF GAS**

**2. Applicability**

Transportation service pursuant to this Tariff is available to all Customers on an open access, non-discriminatory basis who sign a Service Agreement with the Company; demonstrate credit-worthiness to the Company; document that they have the ability to tender natural gas to the Receipt Point(s); and document suitable arrangements for such tendered volumes to be received at the Delivery Point(s) called for in the Service Agreement.

**3. Term**

Customers that elect to request transportation service will be required to execute a written Service Agreement prior to the commencement of any transportation service. Unless otherwise agreed, service agreements shall provide for a primary term of one (1) year, continuing thereafter on a month to month basis subject to cancellation by the Company or the Customer on 30 days' written notice or as otherwise agreed by the Company.

In keeping with the Commissions current policy, service contracts filed under Section 4905.31, Revised Code shall go into effect upon filing with the Commission. The term of the Service Agreement, unless otherwise agreed to as part of the Service Agreement, shall commence upon the filing of the Service Agreement by the Company.

**4. Types of Service and Capacity**

The Company shall offer Firm service if the Company using good industry practice believes it has sufficient pipeline capacity available after accounting for the projected demand of the existing Firm service load. The Company shall offer Interruptible service to all Customers who request such service, meet the tariff standards and execute a Service Agreement. Provided, that any Customer employing backhaul service from Receipt Point(s) to Delivery Point(s) for Interruptible service shall document to Company's satisfaction that Customer has arranged for delivery of volumes to the Receipt Point(s) designated in the Customer's Service Agreement on a firm basis.

Where the Company has agreed to provide a Customer with Firm service, the Service Agreements shall specify the Company's pipeline capacity allocated to and reserved on behalf of the Customer for redelivery of the Customer's supply in terms of the MDQ that can be tendered to the Receipt Point(s) on a daily basis, and the maximum amount which can be transported to a particular Delivery Point. A Customer may have more than one Delivery Point, but a Customer's aggregate nomination for all Delivery Points on any day may not exceed the MDQ adjusted for Shrinkage.

The Company shall have no obligation to accept any Nomination in excess of the Customer's MDQ. If requested by the Customer, the Company may accept a nomination and subsequent tender of an Overrun if the Company reasonably believes it can physically accommodate the request.

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**5. Delivery and Transportation**

The Customer shall arrange with its Gas suppliers to have Gas tendered to the Receipt Point(s) for delivery to the Delivery Point(s) which volume shall be the Customer's nomination at the Delivery Point(s) plus Shrinkage for each Day in an amount not to exceed the Customer's MDQ. The Company shall then redeliver, on a firm basis or on an interruptible basis as specified in the Customer's Service Agreement, such quantities, less the Company's Shrinkage, to the Customer at the Delivery Point(s) as specified on Exhibit A of the Customer's Service Agreement. Transportation service under the Service Agreement shall be governed by: 1) the Service Agreement; 2) this Tariff and 3) the rules and orders of the Commission.

For planning purposes, the Customer shall provide Written Notice, at least three (3) business days prior to the start of each calendar Month, to the Company of the amount of Gas it forecasts to transport during the upcoming Month.

The Customer shall submit its Nomination to the Company by no later than 11:30 am Central Clock Time for Gas flow the following day. Should the Customer desire to modify its Nomination either on the current Day or after the Nomination deadline for Gas flow the following day, the Company shall make every attempt to accommodate the Customer's request provided the Company can confirm such quantities with the upstream pipeline at the Receipt Point(s) and downstream entity at the Delivery Point(s).

After the Customer delivers gas or causes gas to be delivered to the Company at the Receipt Point(s) specified in the Service Agreement, the Company shall be deemed to be in control and possession of the gas until thermally equivalent quantities (less Shrinkage) are redelivered to the Customer or for the account of the Customer at the Delivery Point(s). The Customer shall have no responsibility with respect to any gas deliverable by the Company or on account of anything which may be done, happen, or arise with respect to such gas until the Company delivers such gas to the Customer or for the account of the Customer. The Company shall have no responsibility with respect to such gas before the Customer delivers or causes such gas to be delivered to the Company or after the Company redelivers such gas to the Customer or for the account of the Customer, or on account of anything which may be done, happen, or arise with respect to such gas before such delivery or after such redelivery.

**6. Shrinkage**

Unless otherwise agreed, the Customer shall have the right to retain, pursuant to this Tariff, 100% of the gas delivered to the Receipt Point(s), less the Shrinkage.

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**RULES AND REGULATIONS GOVERNING  
THE PIPELINE TRANSPORTATION OF GAS****7. Transportation Rate**

The rates and charges for transportation services will be established pursuant to contracts submitted to the Commission for approval under Section 4905.31, Revised Code.

**8. Imbalances**

The following shall apply unless otherwise agreed to by the Parties and approved by the Commission:

Customer shall be entitled to take, at the Delivery Point(s) on a daily basis the tendered quantity at the Receipt Point(s) minus the Shrinkage. The Service Agreement shall set out the time period in which the volumes tendered minus the Shrinkage will be balanced against the volumes taken at the Delivery Point(s). When the volume of natural gas tendered at the Receipt Point(s) minus the Shrinkage exceeds the volume redelivered to the Delivery Point(s) ("overtender") for the period of time listed in the Service Agreement for which cash-out penalties may apply, the Company may either carry forward the overtender for subsequent redelivery at a time requested by the Customer and approved by the Company, or the Company may cash out the overtender by paying the Customer the overtender Daily Price, defined as the "midpoint price reported in Platts Gas Daily, Daily Price Survey" at the Henry Hub, for the calendar day prior to the Gas Day on which an overtender occurs, minus a percentage penalty as determined from the chart below for the overtendered volume. If the volume of natural gas tendered at the Receipt Point(s) minus the Shrinkage is less than the volume of gas taken by the Customer at the Delivery Point(s) ("undertender") for the period of time listed in the Service Agreement for which cash-in penalties may apply, then the Company may either carry forward the undertender for subsequent make up by the Customer at a time requested by the Customer and approved by the Company, or the Company may cash-in the Customer by charging the Customer the undertender Daily Price, defined as the "midpoint price reported in Platts Gas Daily, Daily Price Survey" at the Dominion South Point on the calendar day prior to the Gas Day on which the undertender occurs, plus a percentage penalty as determined from the chart below for the undertendered amount.

<u>Imbalance Level</u>	<u>Penalty</u>
0-10%	No penalty for cash-outs or cash-ins.
10-20%	Ten Percent (10%) penalty fee on all Dth cashed-out or cashed-in.
>20%	Twenty Percent (20%) penalty fee on all Dth cashed-out or cashed-in.

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**RULES AND REGULATIONS GOVERNING  
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**9. Title to Gas**

Any Customer taking natural gas transportation service pursuant to this schedule warrants that it has title to the gas delivered to Company free and clear of all claims, liens and encumbrances, and covenants and agrees to indemnify and hold harmless Company from all suits, actions, debts, accounts, damages, costs, losses, liens, judgments, orders, attorneys fees, expenses and liabilities arising from or attributable to the adverse claims of any and all other persons or parties to such gas.

The Customer and the Company each assume full responsibility and liability for the maintenance and operation of its respective properties and shall indemnify and save harmless the other party from all liability and expense on account of any and all damage, claims or actions, including injury to and death of persons, arising from any act or accident in connection with the installation, presence, maintenance and operation of the property and equipment of the indemnifying party; provided however, that neither party agrees to indemnify the other party for the negligence of the other party, its agents, servants or employees.

**10. Operational Flow Orders**

In the event any one of the following occur: 1) any Upstream Interstate Pipeline supplying the Company declares a Force Majeure event or an operational flow order; 2) the Commission or the Governor declare an energy emergency; or 3) if weather and usage conditions create a situation in which the Company reasonably believes that it cannot accommodate an imbalance from the Customer, the Company may issue an Operational Flow Order. During an Operational Flow Order the Customer may only tender and receive those volumes which the Company believes the Customer can actually both tender to the Receipt Point(s) and receive at the Delivery Point(s) on a daily basis. The Company will use its best efforts to avoid an Operational Flow Order if reasonably possible, and maintain the Operational Flow Order for as limited a period of time as is reasonably possible.

**11. Quality**

The gas made available to Company by Customer for redelivery shall be of quality equal to or better than the quality specifications of the upstream pipeline interconnect with the Receipt Point(s). The Gas delivered by the Company to the Customer at the Delivery Point(s) shall be odorized with mercaptan, and shall be of interstate pipeline quality.

**12. Billing and Payment.**

On or before the tenth (10th) day of each calendar month, the Company shall render to the Customer a statement setting forth the total quantity of Gas nominated by the Customer and confirmed by the Company pursuant to this Tariff during the immediately preceding Month, the

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billing date and the amount due. Billing statements shall be deemed as rendered when such statements are deposited by the Company with the U.S. Mail for first-class delivery, as evidenced by the postmark date, or when deposited by the Company with an overnight courier service for delivery to the Customer, or when sent via facsimile machine to the Customer or when hand-delivered to the Customer's office.

Both the Customer and the Company have the right to examine, at reasonable times agreed to by both parties, any books, charts, records or other pertinent information of the other to the extent necessary to verify the accuracy of any charge, computation, and statement made pursuant to any of the provisions within this Tariff.

If it shall be found that at any time or times the Customer has been overcharged or under-charged in any form whatsoever under this Section and the Customer has actually paid the bills containing such overcharge or undercharge, the Company shall refund the amount of any such overcharge or the Customer shall pay the amount of any such undercharge within thirty (30) days after final determination of such amounts. In the event an error is discovered in the amount billed in any statement rendered by the Company, such error shall be adjusted within thirty (30) days from the date of discovery of such error but in any event within six (6) months from the date of such statement with a three (3) month rebuttal period.

The Customer shall make payment to the Company for services purchased during the preceding month and billed pursuant to the provisions of this Tariff on or before the twenty-fifth (25th) day of the month, unless otherwise agreed to by the parties. Payment shall be made by wire transfer of Federal Funds at such bank account designated by the Company, except when such day of the month is a Saturday, Sunday or federal bank holiday, in which case payment is due on the following Business Day. All such payments shall be considered to have been made on the date when the Company has use of such funds.

If the rendering of the bill is delayed after the tenth (10th) day of the month following the month of actual delivery, then the time of payment shall be extended by the same number of days as the delay. If the Customer is responsible for the delay, the provisions of the previous paragraph remain as applicable.

If the Customer, in good faith, disputes the amount of any such invoice or any part thereof, the Customer will pay such amount as it concedes to be correct. Provided, however, if the Customer disputes the amount due, it must provide supporting documentation acceptable in industry practice to support the amount paid or disputed. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.

If the Customer fails to remit the full amount when due, the amount not paid by the due date shall be increased by 1.5 percent (1.5%) of the amount not timely paid each month.

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The Company reserves the right to review the Customer's credit worthiness at any time. Upon request, but not more than twice in any 12-month period, the Customer must provide current financial credit information. If the Customer's current financial or credit status will not support the level of service contracted for, the Company may request that the Customer post the appropriate amount of collateral. Collateral may be in the form of a prepayment, cash deposit, letter of credit, creditworthy parent guarantee or other security acceptable to the Company.

**13. General Terms and Conditions**

- A. Services provided under this schedule are subject to all Federal, State of Ohio and local laws and to the orders, rules and regulations of any federal, State or local agencies having jurisdiction thereof.
- B. The Company, at its sole election, may terminate service under this schedule in the event Customer failed to cause its gas supply made available to Company at the Receipt Point(s) to match the gas supply consumed at the Delivery Point(s). The imbalance charges specified herein shall not be construed as Company's exclusive remedy in the event that Customer fails to fulfill its balancing obligations. In addition, nothing herein shall preclude Company from waiving an imbalance rate or charge provided Customer has undertaken reasonable efforts to eliminate the imbalance condition, the frequency and magnitude of the imbalance condition does not, in the Company's judgment, indicate Customer is utilizing the imbalance to obtain an economic advantage related to the cost of natural gas or transportation and related services or the imbalance condition does not disadvantage other customers or Company.

If the Company believes that the Customer may be creating imbalances on the Company's system in order to obtain an economic advantage, it will notify the Customer and any involved marketer in writing of such belief and the Customer will have the opportunity to respond. If, within the sixty (60) day period following such notice, the Company concludes that the Customer has engaged in such imbalance activity, the Company may terminate Gas Transportation Service by giving the Customer and any involved marketer ten (10) days' notice prior to the end of the calendar month.

- C. With reasonable prior notice, Customer shall have the right to review the records of the Receipt Point(s) meter(s) and/or Delivery Point(s) meter(s), during normal business hours. Either Customer or Company may, at its election, have any or all of the Receipt Point(s) meter(s) and/or Delivery Point(s) meter(s) tested for accuracy and adjusted in accordance with good industry practice. If the meters test within 2% or better of accurate measurement, then the cost of the test shall be paid by Party requesting the test. If the meters are found to be inaccurate by more than 2%, the Party owning the meter shall pay for the test. No adjustment based upon meter inaccuracies shall be made for delivery charges or natural gas imbalances unless a meter tests inaccurate by more than 5%. Any

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A. Scott Rothey, Manager

**RULES AND REGULATIONS GOVERNING  
THE PIPELINE TRANSPORTATION OF GAS**

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such billing correction shall only be to the 2% error level for a period of time no longer than to the last meter testing or six months, whichever is less.

- D. No waiver by the Company or the Customer of one or more defaults by the other of the provisions of service under this schedule shall be construed as a waiver of any other or further default or defaults, whether of a like or a different character.
- E. The Company is also subject to the Commission's current Gas Transportation Guidelines which are incorporated by reference and attached as Appendix A to this tariff.
- F. Except with regards to a Customer's obligation to make payment, neither Customer nor Company shall be liable to the other for failure to perform a Firm obligation to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension of the obligation.

Force Majeure shall include, but shall not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, or explosions, (ii) breakage or accident or necessity of repairs or routine maintenance to machinery or equipment or lines of pipe; (iii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iv) interruption of firm transportation and/or storage by upstream interstate pipeline(s); (v) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars; and (vi) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, or regulation promulgated by a governmental authority having jurisdiction. Customer and Company shall make reasonable efforts to avoid the adverse impacts of a Force Majeure event and to promptly resolve any such event once it has occurred in order to resume performance.

Neither Customer nor Company shall be entitled to the benefit of the provision of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary firm transportation unless primary, in-path, firm transportation is also curtailed; (ii) the party claiming Force Majeure failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship. The Customer or Company claiming Force Majeure shall not relieve either party from meeting all payment obligations.

Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be entirely within the sole discretion of the party experiencing such disturbances.

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Filed pursuant to PUCO Entry dated \_\_\_\_\_, 2005 in Case No. 05-\_\_\_\_ - PL-ATA

ISSUED: April \_\_\_\_\_, 2005

EFFECTIVE: \_\_\_\_\_, 2005

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A party claiming Force Majeure must provide prompt notice to the other party. Initial notice may be given orally; however, written notification with reasonably full particulars of the event or occurrence claimed to constitute Force Majeure is required as soon as reasonably possible. Upon providing written notification of Force Majeure to the other party, the affected party will be relieved of its obligation to make or accept delivery of Gas, as applicable, to the extent and for the duration of the Force Majeure event, and neither party shall be deemed to have failed in such obligation to the other during such occurrences or event,

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## APPENDIX A

### GAS TRANSPORTATION PROGRAM GUIDELINES

The following standards and guidelines: (1) will be utilized to determine whether arrangements for furnishing natural gas or synthetic gas meet the reasonableness requirements of Section 4905.31, Revised Code; and (2) will be considered in applications made pursuant to Section 4909.18, Revised Code. However, the guidelines should not be understood or interpreted as barring the submission or approval of any arrangement which has been agreed to between the public utility (also referred to as the local distribution company) and a customer, a group of customers, or a previously unserved customer (hereafter referred to as "party").

These guidelines are intended to facilitate gas transportation within the state of Ohio. They do not supplant approved curtailment or emergency plans or activities.

These guidelines are intended to provide broad guidance while individual transportation tariffs and special contract language may detail specific terms and conditions.

- (1) Each gas or natural gas utility subject to the jurisdiction of the Commission that elects to provide transportation of gas shall do so on a non-discriminatory basis subject to the capacity of its system. Transportation services will be available pursuant to tariffs filed with and approved by the Commission. Such tariffs shall specify all rates and charges for both firm and interruptible transportation services. A range of rates may be published as part of the tariff. The range shall specify a minimum and a maximum transportation rate. The minimum rate shall cover the variable costs of serving a customer plus make a contribution to total company fixed costs. Only arrangements which vary from the tariff or which involve agency gas service or utility brokerage operations shall be filed in accordance with section 4905.31, Revised Code. The utility will periodically publish and file with the Commission, no less often than annually, a list of the unbundled and optional transportation services that it provides, and make such list available upon request.

- (a) End-users who satisfy the definition of human needs and public welfare

customers, as set forth in this appendix, must purchase backup supply service from the local gas distribution company (LDC), or have arranged for reliable alternative natural gas commodity, capacity and delivery from another supplier, or have alternative fuel capability, or have a combination thereof sufficient to maintain minimal operations.

Any application for service made to an LDC, requesting alternative natural gas backup, must demonstrate to the LDC that the applicant has contracted for reliable delivery and reliable alternative commodity supply.

- (b) Those end-users who do not satisfy the definition of human needs and public welfare customers or those customers who utilize the services of the LDC for transportation only are not required to have backup supplies.
- (c) Rates for backup supply, provided by the utility, shall be cost based. Backup supply shall be considered as the same priority, class, subdivision or category as that customer would be entitled to receive as a firm sales customer of the utility.
- (d) Customers who elect to relieve the LDC of the merchant function by engaging in gas transportation or bypass should bear the market risks of the choices that they make about sources of supply. Thus, while the utility retains an obligation to provide to its transportation customers transportation and related services, the public utility's obligation to provide commodity to these customers is on a best efforts basis and does not include an obligation to provide commodity service under the GCR regulated system supply as



replacement of transportation or bypass volumes at prevailing GCR rates. All costs incurred by the utility in providing commodity to these customers should be borne by the customers who were provided such service.

- (e) The public utility is responsible for safeguarding the interests of all system customers by establishing reasonable procedures and mechanisms for making transportation customers responsible for balancing, on a timely basis, transportation gas deliveries with the transportation customer's consumption. The transportation customer is responsible for fully compensating the LDC, on behalf of the system sales customers, and other transportation customers as applicable, for any additional costs incurred as a result of that transportation customer's unreasonable imbalance between delivery and consumption. The reasonableness of such procedures and mechanisms are subject to evaluation by the Commission.

- (f) TO STRENGTHEN THE KNOWLEDGE BASE AMONG TRANSPORTATION CUSTOMERS, AND SCHOOLS IN PARTICULAR, LDC'S SHOULD DEVELOP INFORMATION PROGRAMS - SUCH AS BROCHURES AND FORUMS, AS APPROPRIATE - TO ACQUAINT POTENTIAL TRANSPORTATION PARTICIPANTS, ON AN ANNUAL BASIS, WITH OPERATIONAL REQUIREMENTS, COSTS, LIABILITIES, AND BENEFITS OF ENGAGING IN NATURAL GAS TRANSPORTATION.

LDC'S SHALL FILE, ANNUALLY BY DECEMBER 31ST, WITH THE STAFF, A RECORD OF INFORMATIONAL PROGRAMS PERFORMED AND COPIES OF ANY MATERIALS UTILIZED IN THIS INFORMATIONAL EFFORT.

(G) IT IS NOTED THAT SCHOOL FACILITIES OFTEN FUNCTION AS EMERGENCY SHELTERS. ALL LDC'S PROVIDING TRANSPORTATION SERVICE ARE REQUIRED TO IDENTIFY ALL SCHOOL FACILITIES WITHIN THEIR SERVICE TERRITORY ENGAGING IN NATURAL GAS TRANSPORTATION AND DESIGNATED AS EMERGENCY SHELTERS, AND COORDINATE THIS LIST ANNUALLY WITH THE PUBLIC UTILITIES COMMISSION OF OHIO EMERGENCY/OUTAGE COORDINATOR AND THE RESPECTIVE LOCAL COUNTY EMERGENCY MANAGEMENT DIRECTOR. THIS LIST SHOULD PROVIDE COMPLETE LOCATIONAL DETAILS AND POINTS OF CONTACT. IN THE ABSENCE OF BACK-UP SERVICE, IN AN EMERGENCY, THESE FACILITIES WOULD BE ENTITLED TO SPECIAL CONSIDERATION FOR GAS SUPPLY ONLY IF THEY WERE ACTIVATED AS EMERGENCY SHELTERS.

(2) The party making available supplies of natural gas or synthetic gas should have the following commodity and capacity rights and be subject to the following conditions:

(a) To the extent that a party makes supplies of natural or synthetic gas available, the party shall have a right to retain, pursuant to an approved arrangement, 100% of the gas delivered to the transporting utility or utilities, less the average system-wide unaccounted-for gas percentage, or a different percentage when such is justified by the utility in any application approved by the Commission pursuant to either Sections 4905.31 or 4909.18, Revised Code.

(b) Planning for system supply customers shall not assume that the gas supply or capacity entitlement of transportation customers will or can be used to meet system supply customers' design requirements unless a transportation customer has agreed otherwise. This will be reviewed in each company's LTFR filings and/or GCR proceedings.

- (c) Absent a condition that creates a clear and present danger to the LDC's ability to meet the demands of human needs and public welfare customers, the gas supply of a transportation customer shall be accepted and delivered by an LDC according to the terms of the applicable contract or tariff. Any interruption in the service entitlement of a transportation customer resulting from such a condition shall be remedied as quickly as reasonably possible and must be preceded by the exhaustion of other reasonable alternatives to avoid the involuntary interruption of service.
- (d) In the event all or any portion of a supply or capacity entitlement is not available to a transportation customer as a result of the direct action of the LDC pursuant to (2)(c), other than in cases of force majeure, the transportation customer not receiving the entitlement shall be entitled to compensation from the LDC. Compensation should take into consideration the cost incurred for interstate and intrastate capacity entitlements, if any, the cost of the commodity purchased, the incremental cost incurred by a transportation customer to obtain substitute energy, if an alternative is available and used, and any premium required by the market for the time of the capture.
- (e) The transportation party shall be responsible, either directly or indirectly, for all costs and risks associated with the field or plant development, production, storage and delivery of the volumes to the public utility. The transportation party shall also be responsible for compensating the LDC, for the benefit of its system sales customers,

when the transporting party uses gas to which it is not entitled. Compensation should take into consideration the cost incurred for interstate and intrastate capacity entitlements, if any, the cost of the commodity purchased, and any premium required by the market for the time of the capture.

- (3) If the party is a customer of the transporting local distribution company and satisfies the definition of a human needs and public welfare customer, the application must specify the type of alternative fuel the customer has available (i.e., backup service from the utility, reliable alternative natural gas capacity and reliable commodity supply, fuel oil, propane, coal, or other energy source).

- (4) The utility shall maintain separate accounts or subaccounts for expenses of and for all equipment installed or property devoted to the production, collection, transmission, and delivery of natural or synthetic gas pursuant to an arrangement between a party and a public utility.

Agency or brokerage staff of the utility shall not restrain competition by using information involving non-LDC brokerage or producer sales obtained through the exercise of the utility's transportation function in competing against those same non-LDC brokers or producers. Where such restraint of competition occurs, agency or brokerage sales may be canceled.

- (5) Any application for the approval of an agreement between a party and a public utility or any agreement issued in accordance with published transportation tariffs shall specifically set forth the following:

- (a) The manner in which the public utility's existing and pending restrictions relating to the curtailment of existing service or the extension of new service would be altered or modified if the proposed arrangement were approved by the Commission.

- (b) The areas where the arrangement is at variance with the guidelines used to judge the reasonableness of such arrangement, and the reasons that the variance is deemed necessary.
- (c) The name, address, and telephone number of the party.
- (d) The nature and extent of any interest which each party to the arrangement holds in any other party to the arrangement, or in any public utility subject to the jurisdiction of the Commission.
- (e) The location of the intended points of consumption.
- (f) Where an arrangement renews or replaces a previous transportation arrangement, the application should specify the case number under which the previous arrangement was filed with the Commission and the date of the entry approving the arrangement.
- (g) Types of services and rates charged and minimum and maximum volumes.
- (h) Each arrangement, filed pursuant to Section 4905.31, Revised Code, entered into between a party and a public utility for furnishing natural or synthetic gas, shall provide that no alteration, modification, assignment, or termination shall be made without specific approval of the Commission.
- (i) The portions of the transportation service provided on a firm and an interruptible basis, as indicated in the transportation agreement.
- (j) The method and manner of compensating the transporting party in the event of an appropriation of gas pursuant to the public utility's

curtailment plan and/or contractual arrangement, as indicated in the transportation agreement.

- (k) The arrangements, reasonable and non-punitive, between the customer and the public utility which are necessary for the public utility to manage its system and service so that the transportation customers service does not adversely affect other customers and/or the integrity of the system.
- (L) WITH RESPECT TO SCHOOL SYSTEMS ENGAGING IN NATURAL GAS TRANSPORTATION SERVICES WITHOUT LDC PROVIDED BACK-UP SERVICES, TO INSURE ADEQUATE COMMUNICATION AND UNDERSTANDING AMONG THE PARTIES PROVIDING EACH SEGMENT OF THIS SERVICE AND THE SCHOOL SYSTEM'S GOVERNING BODY, THE COMMISSION REQUIRES THAT A SCHOOL BOARD RESOLUTION WHICH ACKNOWLEDGES THE RISKS, THE RESPONSIBILITIES, AND THE POTENTIAL CONSEQUENCES OF ENGAGING IN NATURAL GAS SUPPLY AND TRANSPORTATION ARRANGEMENTS BE FILED ANNUALLY WITH THE LOCAL DISTRIBUTION COMPANY AND THAT SAID RESOLUTION ACCOMPANY ANY FILING, WITH THE COMMISSION, OF A CONTRACT PURSUANT TO RC 4905.31.
- (6) Any application for the approval of a transportation agreement shall conform to the requirements of Section 4905.31, Revised Code.
- (7) Each gas or natural gas utility that elects to offer transportation service shall provide rates for firm and interruptible service. Initial filings for such rates may be downwardly flexible from a basic transportation rate, which is defined as the otherwise applicable service and rate schedule less all GCR-related costs and less optional services. The rate may be flexed between an upper bound of the basic transportation service rate and a lower bound that recovers all variable costs of service and provides a contribution to the

utility's fixed costs of providing service. Transportation rate flexibility should be used as an opportunity to optimize revenue. Where gas-related services such as supply back-up are contracted for, the cost of providing such service shall be in addition to the basic transportation rate.

For contracts submitted to the Commission under Section 4905.31, Revised Code, the transportation rate may take effect upon the filing of the agreement with the Commission, but the agreement would remain subject to subsequent approval.

- (a) Information regarding the transportation rates will be treated confidentially by the Commission Staff in any application for approval of a transportation arrangement, pursuant to Section 4905.31, Revised Code, when it can be demonstrated by the utility that disclosure of the negotiated rate will jeopardize the utility's ability to optimize revenue in future rate negotiations.

All documents and records in the possession of the Commission are public records. Thus, it is only under extraordinary circumstances that material in the Commission's possession may be held in confidential status.

If there is a request for rate confidentiality, the request shall accompany the application. The rate which is the subject of the request will be treated as confidential pending a Commission finding regarding the propriety of the request.

**IN MAKING AN APPLICATION FOR CONFIDENTIAL TREATMENT, THE LDC SHOULD CONSULT WITH APPROPRIATE STAFF TO INSURE COMPLIANCE WITH CURRENT FILING REQUIREMENTS.**

- (b) Each utility shall maintain information and accounts sufficient to identify total transportation service revenue actually recovered and that which would have been recovered but for the use of transportation rate flexibility.
  - (c) A local distribution company may establish its gas transportation schedule(s) pursuant to an application(s) found to be in accordance with Section 4909.18, Revised Code. In establishing its gas transportation tariff schedule(s), the local distribution company should disclose all services and related expenses, such as administration, which occur in addition to the otherwise applicable service and rate, and those services and related expenses which need not be performed when compared with the otherwise applicable service and rate. Any such application(s) must include a complete description of all required services and documentation of associated expenses which result directly and exclusively from the provision of the transportation service(s) which is the subject of the application.
- (8) The Commission believes that the provisions of these guidelines provide the utility with adequate means to meet competitive realities and to maintain the revenue contribution of customers receiving the services. The Commission will use the rate case proceeding to scrutinize the appropriateness of recovery of any revenue deficiency from the general service customers, which deficiency arose from the loss of customers and/or from the use of pricing flexibility.
- (9) Definitions
- (a) Administration Fee - The charge and corresponding accounting entry which represent the actual cost of administering gas transportation service and its obligations.



- (b) Agency Gas Service - A function by the local distribution company wherein the LDC acts as agent for the consumer for the procurement of gas or as agent for a producer for the sale of gas.
- (c) Human Needs and Public Welfare Customer - A customer whose facilities are used for residential dwelling on either a permanent or temporary basis; commercial customers of a residential nature; other customers whose service locations are places of the kind, where the element of human welfare is the predominant factor; and civil and governmental customers whose facilities are required in the performance of protecting and preserving the public health, safety and welfare. Such facilities shall include, but are not limited to houses, apartment buildings, correctional institutions, hospitals, nursing homes, and charitable institutions. Specifically excluded are hotels and motels used for temporary lodging and not used as a principal place of residence on a monthly or yearly basis; AND PRIMARY, SECONDARY, AND OTHER NON-RESIDENTIAL SCHOOLS.
- (d) Minimal Operations - Maintenance supply of natural gas sufficient to allow a human needs and public welfare customer, who does not have a 24-hour residence requirement, to meet average worst day maintenance heating requirements based on the heating degree days record for the closest location to the building site. Supply of natural gas sufficient to allow those facilities with a residential function to provide the full requirements of the residential heating load plus maintenance levels for the non-residential portions of the facility.

- (e) Optional Services - The offering of services in addition to services provided for in the basic transportation rate.
- (f) Unbundled Services - The offering of the separate or individual components of transportation and related services and corresponding rates and charges.
- (g) Utility Brokerage Operations - Activities of an agency which is subordinate to an LDC, or subordinate to a pipeline or other holding company having organizational connection to the LDC; and which engages in commodity transactions separate from those activities normal to operation of the Gas Cost Recovery system supply.