

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint and Appeal of :  
Oxford Natural Gas Company from Ordinance :  
No. 2896 Passed by Council of the City of :  
Oxford on February 7, 2006. :

Case No. 06-350-GA-CMR

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**DIRECT TESTIMONY  
OF**

**KENNETH N. ROSSELET, JR.**

**ON BEHALF OF  
THE CITY OF OXFORD, OHIO**

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**March 5, 2007**

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**I. INTRODUCTION**

**Q. Please state your name and business address.**

A. My name is Kenneth N. Rosselet, Jr. My business address is 7390 Mapleleaf  
Boulevard, Columbus, Ohio 43235.

**Q. By whom are you employed?**

A. I am self-employed as a consultant on utility regulatory matters. The primary  
focus of my practice is ratemaking and regulatory accounting issues.

**Q. Please briefly summarize your educational background and professional  
experience.**

A. I received my formal education at The Ohio State University, Franklin University,  
and LaSalle Extension University. The focus of my education was in the area of  
accounting. My work experience in public utility regulation and accounting began

1 with my employment at the Public Utilities Commission of Ohio ("Commission") in  
2 1970. During my employment with the Commission, I advanced from an entry-  
3 level position of utility examiner in the Accounts and Valuation Division of the  
4 Utilities Department to a supervisory position as a team leader in the division. As  
5 a team leader, my primary duties included the supervision of rate audits,  
6 preparation of the Accounts and Valuation section of the Staff Reports of  
7 Investigation issued in connection with utility rate increase applications filed with  
8 the Commission, and presentation of testimony in support of the Accounts and  
9 Valuation portion of those Staff Reports. During my employment with the  
10 Commission, I participated directly or indirectly in approximately seventy-five rate  
11 case audits.

12  
13 I was employed by the Ohio Consumers' Counsel ("OCC") from June 1977  
14 through June 2000, where I served in various supervisory positions. My last  
15 position with OCC was as a Principal Regulatory Analyst. My responsibilities  
16 with OCC included the review and analysis of utility rate applications and other  
17 filings before the Commission, preparing technical evaluations and  
18 recommendations on utility-related matters, and the preparing and presenting  
19 written reports and testimony before the Commission and other local, state, and  
20 federal governmental bodies. I also represented OCC on various panels and  
21 forums.

1 I retired from OCC in June 2000. I began providing utility-related consulting  
2 services in January 2001. As a consultant, I have provided services to both  
3 utilities and utility customers.  
4

5 **Q. Have you been a member of any organization whose focus was utility**  
6 **regulation?**

7 A. Yes. I served from 1985 to 1995 as the representative of the National Association  
8 of State Utility Consumer Advocates to the National Association of Regulatory  
9 Utility Commission's Staff Subcommittee on Accounts. I also served on that  
10 subcommittee's Tax Committee.  
11

12 **Q. Have you previously submitted testimony in proceedings before this**  
13 **Commission?**

14 A. Yes. In my thirty-seven years of regulatory experience with the Commission,  
15 OCC, and in my private consulting practice, I have provided testimony in forty-  
16 two cases before the Commission and in one case before the Federal Energy  
17 Regulatory Commission. Five of the cases in which I presented testimony were  
18 during my employment with the PUCO, thirty-five of the cases were during my  
19 employment with the OCC, and two were as a private consultant. These cases  
20 are listed in Attachment A to my testimony.  
21

22 **Q. On whose behalf are you testifying in this proceeding?**

1 A. I am testifying on behalf of the city of Oxford, Ohio ("Oxford"), an intervenor in  
2 this case.

3  
4 **Q. What is the purpose of your testimony in this proceeding?**

5 A. The purpose of my testimony is to support the objections to the Staff Report of  
6 Investigation filed in this docket by Oxford.

7  
8 **II. OXFORD ORDINANCE NO. 2896**

9 **Q. Did you have a role in the development of the rates and charges**  
10 **contained in Oxford Ordinance No. 2896, the municipal rate ordinance from**  
11 **which this complaint and appeal was taken?**

12 A. Yes. I was initially retained by Oxford in the latter part of 2005 to assist the city in  
13 evaluating the reasonableness of the rates and charges contained in existing  
14 Oxford Ordinance No. 2433, the ordinance governing the rates Oxford Natural  
15 Gas Company ("ONG") was entitled to charge for providing natural gas service to  
16 customers within the city. A copy Oxford Ordinance No 2433 is attached to my  
17 testimony as Attachment B.

18  
19 **Q. Why were you asked to perform such an evaluation at that time?**

20 A. Ordinance No. 2433, which had been enacted in December of 1995, had a term  
21 ending December 31, 2005. However, Ordinance No. 2433 also provided that, if  
22 the city did not enact an ordinance to replace and supercede Ordinance No.  
23 2433, ONG would continue to render service pursuant to the terms of Ordinance

1 No. 2433 until a new ordinance contract was entered into or until rates were  
2 established by the Commission, presumably as the result of a general rate  
3 increase application filed by ONG. Thus, Oxford requested that I provide an  
4 assessment of the existing ordinance to be used in determining whether to permit  
5 the rates and charges contained in Ordinance No. 2433 to continue in effect or to  
6 enact a new rate ordinance. I was advised by Oxford that this was a matter of  
7 some urgency as a result of information the city had received from ONG  
8 regarding a possible sale of the company. Oxford expressed concern that  
9 prospective purchasers understand that the current rates might not remain in  
10 effect, and, in fact, might be reduced if an analysis showed that the existing rates  
11 were too high.

12  
13 **Q. Did you conduct the evaluation of the rates and charges contained in**  
14 **Ordinance No. 2433 requested by the city?**

15 A. Yes. However, as I explained to Oxford at the time, my ability to determine the  
16 reasonableness of the Ordinance No. 2433 rates was limited due to the lack of  
17 current, reliable information necessary to estimate ONG's current revenue  
18 requirement with any degree of precision.

19  
20 **Q. In view of the lack of current, reliable ONG information, how did you**  
21 **evaluate the rates and charges contained in Ordinance No. 2433?**

22 A. I relied on the publicly available information contained in ONG's annual report to  
23 the Commission for 2004. I used the net plant account balances and other

1 relevant information from the annual report to approximate ONG's rate base, and  
2 the revenue and expense information from the annual reports to derive an  
3 estimate ONG's annual net operating income under current rates. As a part of  
4 this process, I made certain adjustments to the reported information to exclude  
5 categories of costs and expenses that I believed would not normally be  
6 recognized for ratemaking purposes. Although I had no opportunity to audit the  
7 various expenses reported by ONG in its annual report to determine if they were  
8 reasonable, I did reduce the 2004 expenses by \$200,000 based on a  
9 representation by ONG that its 2005 expenses would be some \$200,000 less  
10 than those reported for 2004. I then applied the resulting net operating income to  
11 the rate base to derive the rate of return under current rates, and compared that  
12 rate of return to a rate of return of 9.5%, which was within the rate of return range  
13 that had been recommended by the Commission staff in recent Staff Reports  
14 involving smaller utilities.

15  
16 **Q. What did you conclude based on the results of this exercise?**

17 **A.** I concluded that, based on the information I had available, the current rates were  
18 generating a rate of return far in excess of the 9.5% rate of return the staff was  
19 recommending at the time. Although this was obviously a back-of-the-envelope  
20 analysis, the degree by which the indicated realized rate of return exceeded the  
21 9.5% rate of return I used as a benchmark strongly suggested to me that  
22 Ordinance No. 2433 rates were too high.

1   **Q.    Did it strike you as counter-intuitive that your evaluation suggested that**  
2       **rates established in 1995 were too high when tested against 2004 data?**

3   **A.    No, not at all. First, although one might expect ONG's costs to have increased**  
4       **since Ordinance No. 2433 was enacted in 1995, this tells us nothing about the**  
5       **reasonableness of the Ordinance No. 2433 rates at the time they were**  
6       **established. If the rates were too high to begin with, the rates could still be**  
7       **producing an excessive return even if ONG's costs had increased over the**  
8       **period. Second, Ordinance No. 2433 provided for stepped increases in the**  
9       **general service rate and monthly customer charge over its term, and also**  
10      **provided for annual inflation adjustments after the final step increases in the base**  
11      **rate and customer charge took effect in January 2000. Although these rate**  
12      **features presumably were intended to keep pace with ONG's costs over the term**  
13      **of the ordinance, it could well be that, as a result of these mechanisms, the rates**  
14      **were increasing fast than ONG's costs. Couple this with the possibility that the**  
15      **rates were too high to start with, and it becomes apparent that there was nothing**  
16      **that was per se illogical about the results of my evaluation. I also compared the**  
17      **current ONG general service rate of \$3.05 per Mcf and the customer charge of**  
18      **\$8.00 with the residential rates and customer charges of other Ohio natural gas**  
19      **distribution companies and found that the ONG base rate and customer charge**  
20      **were among the highest in the state, including those of utilities whose rates and**  
21      **charges had been established by the Commission relatively recently. I certainly**  
22      **do not intend to suggest that the rates and charges of other utilities can be used**  
23      **as a conclusive test of the reasonableness of the rates and charges of the utility**



1 under study, but this comparison did provide a sanity check on my conclusion.  
2 Indeed, what struck me as counter-intuitive was that ONG had one of the highest  
3 customer charges in the state even though it has a relatively small, concentrated  
4 service area.  
5

6 **Q. What happened after you provided your initial evaluation to Oxford?**

7 A. I was asked by Oxford's counsel to develop a general service rate for inclusion in  
8 a new rate ordinance to replace Ordinance No. 2433 upon its expiration. I  
9 refined my original analysis to the extent possible in view of the limited  
10 information I had available. This resulted in an indicated general service rate of  
11 \$2.30 per Mcf, or \$0.75 less than the current rate. Again, I assumed a 9.5% rate  
12 of return for purposes of this analysis.  
13

14 **Q. Did you calculate a proposed monthly customer charge for inclusion in the**  
15 **new ordinance?**

16 A. No. The \$6.50 customer charge included in Ordinance No. 2896 was not based  
17 on the results of a specific calculation, but, rather, was determined based on a  
18 review of the current customer charges contained in the Commission-approved  
19 tariffs of other Ohio natural gas distribution utilities. The pro forma revenues  
20 associated with this customer charge were backed out in the final calculation of  
21 the proposed general service rate.  
22

1    **Q.    Did Oxford share your analysis with ONG prior to enacting Ordinance No.**  
2        **2896 on February 7, 2006?**

3    A.    Yes. It is my understanding that Oxford shared my original evaluation with ONG  
4        prior to the scheduled first reading of the ordinance in mid-December 2005, and  
5        postponed the scheduled first reading to provide ONG with an opportunity to  
6        provide information to support its current rate, which ONG was seeking to retain.

7  
8    **Q.    Did ONG subsequently provide a cost analysis that purported to**  
9        **demonstrate that its current rate was not excessive?**

10   A.    Yes. The first reading of Ordinance No. 2896 had been rescheduled to Oxford  
11        Council's January 17, 2007 meeting. On January 13, the Friday preceding the  
12        Tuesday, January 17 Oxford Council meeting, counsel for Oxford and I met with  
13        representatives of ONG and its attorneys to discuss the proposed ordinance  
14        rates. At that meeting, ONG presented a revenue requirements analysis that  
15        was supposedly based on 2005 data and a second revenue requirements  
16        analysis that was supposedly based on partially-projected data. The former  
17        purported to justify an increase to the current rate of \$0.67 per Mcf, while the  
18        latter purported to justify an increase to the current rate of \$1.41 per Mcf.

19  
20   **Q.    What was your response?**

21   A.    I immediately identified several conceptual problems with these analyses, but in  
22        the interest of developing rates that reflected ONG's costs as accurately as  
23        possible, I agreed to consider the information presented to determine if an

1 adjustment to the \$2.30 rate I had initially proposed was warranted. I asked that  
2 ONG redo its analyses to correct the conceptual problems I identified and also  
3 asked that certain additional information be supplied, including a breakdown of  
4 the 2005 expenses used in the ONG analyses. The ONG representatives  
5 agreed to make the changes I had requested and also agreed to provide this  
6 additional information. Following the meeting, I sent an email to ONG's attorneys  
7 requesting answers to few additional questions.  
8

9 **Q. Did you subsequently receive the revised analyses and the additional**  
10 **information ONG had agreed to provide?**

11 A. No. Shortly after noon on January 17, 2006, I received an email from ONG's  
12 president, Robert Sanders, transmitting a revised analysis. However, not only  
13 did this analysis not reflect the changes I had requested, but it included additional  
14 costs not previously presented and purported to show that a base rate of over  
15 \$6.00 per Mcf was justified, notwithstanding that such a rate was double the  
16 current rate and on the order of twice as high as the highest base rate of any  
17 other Ohio natural gas distribution utility.  
18

19 **Q. What did you do upon receipt of this new analysis from ONG?**

20 A. I asked Oxford's attorney to communicate to ONG that this was not the analysis  
21 I had requested and that, in any event, it would not be possible for me to react to  
22 this new analysis prior to that evening's Oxford Council meeting. I also asked  
23 Oxford's attorney to communicate to ONG that I was more than willing to

1 recommend an adjustment to the proposed \$2.30 general service rate if the  
2 information I had requested supported a higher revenue requirement .  
3

4 **Q. Was this response communicated to ONG?**

5 A. I assume that it was based on a phone call I received from Mr. Sanders late in  
6 the afternoon of January 17, 2006. Mr. Sanders expressed outrage that I had not  
7 changed the proposed rate based on the information he had supplied a few  
8 hours earlier. I again indicated that, once the information I requested was  
9 provided, I would review the information, and, if the information warranted, I  
10 would revise my analysis.  
11

12 **Q. Did you subsequently receive any additional information from ONG?**

13 A. No. However, I did revise my analysis to include a working capital allowance, a  
14 measure I had agreed to at the January 13 meeting. This revision resulted in an  
15 indicated base rate of \$2.39 per Mcf.  
16

17 **Q. Was this revision reflected in the new ordinance that was ultimately**  
18 **enacted by Oxford Council on February 7, 2006?**

19 A. Yes. The proposed ordinance was amended at its final reading. Thus,  
20 Ordinance No. 2896 provided for the \$2.39 general service rate rather than \$2.30  
21 rate I had originally proposed.

1 **Q. Is the purpose of your testimony in this proceeding to defend the revenue**  
2 **requirements analysis that resulted in the \$2.39 per Mcf base rate**  
3 **contained in Ordinance No. 2896?**

4 A. No. My shorthand analysis is obviously no substitute for the full investigation  
5 conducted by the Commission staff in determining ONG's revenue requirement  
6 for purposes of this complaint and appeal. However, I would note that the  
7 revenue requirement I used to develop the \$2.39 base rate was actually some  
8 \$200,000 higher than revenue requirement recommended by the staff in the Staff  
9 Report in this case.

10  
11 **Q. How does the staff's proposed general service rate compare to the general**  
12 **service rate contained in Ordinance No. 2896?**

13 A. The staff has proposed a general service rate of \$0.7623 per Mcf, while the  
14 general service rate in the challenged ordinance is \$2.39 per Mcf.

15  
16 **Q. What factors contribute to this difference?**

17 A. Obviously, the staff had access to information that was not available to me when  
18 I performed my analysis and was able to conduct a rigorous audit of ONG's costs  
19 and expenses in developing its recommended revenue requirement. In addition,  
20 because I did not have the necessary information, my analysis was a total-  
21 company analysis, and did not distinguish between the general service  
22 customers subject to the ordinance and ONG's special contract customers,  
23 whose rates were not affected by the ordinance. In this same vein, I was not

1       able to exclude costs and expenses associated with services ONG provided to  
2       Verona Natural Gas Company ("VNGC"), a sister company, which were not  
3       separately identified in either the annual report or the information presented by  
4       ONG at the January 13, 2006 meeting. As a result of these constraints, my  
5       analysis did not credit ONG's general service customers with the full amount of  
6       the revenue reduction I had proposed. The staff also made a weather  
7       normalization adjustment, which resulted in higher sales volumes than I had used  
8       in my analysis. These factors, along with the staff's lower revenue requirement,  
9       all contributed to the difference between the staff's proposed general service rate  
10      and that contained in Ordinance No. 2896.

11  
12   **Q.   Was Oxford aware that the general service rate you proposed for inclusion**  
13       **in Ordinance No. 2896 did not credit general service customers with the full**  
14       **amount of the revenue reduction?**

15   **A.**   Yes. I communicated this to Oxford. However, in view of the rough-and-ready  
16       nature of my analysis and the fact that the indicated rate reduction was already  
17       substantial, I believed that further fine-tuning of this type might place ONG at risk.  
18       At \$2.39 per Mcf, my proposed general service rate was not inconsistent with the  
19       general service rates charged by other Ohio natural gas distribution utilities at the  
20       time. Our general sense was that, because other companies apparently could  
21       operate successfully with general service rates in this zone, ONG, with efficient  
22       management, should be able to do so as well.

1 **Q. Did the staff perform any analysis to test the reasonableness of the general**  
2 **service rate contained in Ordinance No. 2896?**

3 A. No. The staff confined its analysis to the general service rate proposed by ONG  
4 in its complaint and appeal. Although the staff did compare the revenues that  
5 would be generated by the rates proposed by ONG to the revenues under the  
6 current rates, the staff performed no analysis of the revenues that would be  
7 generated by rates and charges contained in Ordinance No. 2896, the ordinance  
8 from which this complaint and appeal was taken.  
9

10 **Q. In the absence of such an analysis, is it possible for the Commission to**  
11 **determine whether the rates and charges contained in Ordinance No. 2896**  
12 **are unjust, unreasonable, or insufficient to yield reasonable compensation**  
13 **to ONG for the term of the ordinance?**

14 A. No, not in my opinion.  
15

16 **Q. Are you suggesting that because the general service rate recommended by**  
17 **the staff is below the general service rate contained in the ordinance, the**  
18 **Commission should ratify the ordinance rate?**

19 A. No, not necessarily. The rate should be determined by the Commission in  
20 accordance with the statutory ratemaking formula. However, the possibility  
21 exists that revenue requirement ultimately approved by the Commission may be  
22 higher than that recommended by the staff. Moreover, I have been unable to  
23 replicate the staff calculation that lead to the \$0.7623 per Mcf general service

1 rate, so it may be that the Commission will find that the staff calculation was in  
2 error. Thus, under certain scenarios, the Commission might well determine that  
3 the general service rate contained in the ordinance was not unreasonable and  
4 should be ratified.

5  
6 **Q. Did the staff perform any analysis of the reasonableness the other charges,**  
7 **terms, and conditions contained in Oxford Ordinance No. 2896?**

8 A. No. The staff started with the tariffs proposed by ONG in its complaint and  
9 appeal and made no findings regarding the charges, terms, and conditions of the  
10 ordinance that is the subject of this case. Many of the specific charges  
11 recommended by the staff in the Staff Report, including the late payment charge,  
12 field collection fee, and service tap charge, are identical to the charges for these  
13 items contained in Ordinance No. 2896. Several others, such as the returned  
14 check charge and the reconnection charge are so close that I do not believe it  
15 can be fairly said that the charges contained in the ordinance for these items are  
16 unreasonable. Thus, staff should have recommended that these provisions of  
17 the ordinance be ratified by the Commission. In addition, staff provided no  
18 recommendations with respect to the non-rate provisions of the ordinance,  
19 including various notice and reporting requirements, which Oxford regards as  
20 very important considering the troubled history of this company referred to in  
21 Oxford's first objection to the Staff Report (Oxford Objection No. 1). These  
22 provisions were placed in issue by ONG's rejection of the ordinance and should  
23 have been addressed by staff.



1 **III. REVENUE REQUIREMENT**

2 **Q. In its second objection to the Staff Report (Oxford Objection No. 2), Oxford**  
3 **takes issue with the revenue requirement recommended by staff. Please**  
4 **explain the basis for this objection.**

5 A. Although Oxford generally supports the staff's revenue requirement analysis,  
6 there are several specific aspects of that analysis which Oxford questions. Thus,  
7 this general objection is tied to the specific objections I will discuss below.  
8

9 **IV. LABOR EXPENSE**

10 **Q. In its third objection to the Staff Report (Oxford Objection No. 3), Oxford**  
11 **objects to the staff's proposed allowance for test-year labor expense.**  
12 **Please explain the basis for this objection.**

13 A. The staff calculated its proposed allowance for labor expense by annualizing the  
14 hourly rate of ONG employees as of the end of the test year, and adjusting that  
15 amount for overtime hours and related employee benefits. This approach  
16 eliminated any allowance for the "General Manager-Prior" and  
17 "President/Employee" positions shown ONG's SFR Schedule WPC-2.1C, for  
18 which ONG had claimed a combined allowance of almost \$234,000. I agree with  
19 and fully support the staff's treatment with respect to the salaries and related  
20 costs associated with these positions in that ONG's prior general manager is no  
21 longer employed by the company and, as I understand it, ONG's president is  
22 barred by an agreed judgment entry in the UHIA shareholder lawsuit from  
23 participating in its day-to-day operations. A copy of this entry is attached to my

1 testimony as Attachment C. However, the staff approach eliminated any  
2 allowance for a management position, even though, based on an ONG response  
3 to Oxford's discovery, it appears that Mr. Robert Stenger, who had directed the  
4 day-to-day operations of the company as an independent consultant after the  
5 prior general manager was terminated, was appointed general manager of the  
6 company prior to the end of the test year.

7  
8 It is obviously critical to ONG operating as an efficient, well-managed utility in the  
9 future that ONG have an experienced general manager to oversee its day-to-day  
10 operations. Thus, Mr. Stenger's annual salary and related benefits should have  
11 been included as an allowable expense, even though he did not hold the position  
12 throughout the test year.

13  
14 **Q. Would not the inclusion of an allowance for the general manager position**  
15 **in labor expense result in an increase in ONG revenue requirement above**  
16 **that recommended by the staff?**

17 **A.** Yes. However, Oxford believes that it is in the long-term best interests of ONG's  
18 customers to have a qualified general manager in place. If there is no allowance  
19 for the position built into the rates, Oxford fears that ONG will not be able to  
20 retain Mr. Stenger and may revert to the type of management that produced its  
21 well-documented financial difficulties.

22  
23 **Q. What allowance for the general manager position do you recommend?**

1 A. As a part of its discovery, Oxford requested that ONG identify Mr. Stenger's  
2 annual salary. In response, ONG stated that Mr. Stenger's annual salary is  
3 \$125,000. I have some reservations regarding the level of this salary based on  
4 my understanding that Mr. Stenger is also employed in a management position  
5 by another natural gas company, which leads me to question how he divides his  
6 time between the two companies. On the other hand, I also recognize that he is  
7 now performing the duties that were previously, at least in theory, being  
8 performed by two individuals with combined annual salaries nearly double that  
9 amount. In my view, this clearly shows that the test-year labor expense  
10 associated with these management positions was excessive. Thus, despite my  
11 reservations, I recommend that Mr. Stenger's actual salary be included in the  
12 allowance for labor expense.

13  
14 **Q. Is there any other aspect of the staff's proposed allowance for labor**  
15 **expense with which you disagree?**

16 A. Yes. As noted in Oxford Objection No. 3, the staff methodology also resulted in  
17 the exclusion of any allowance for the "Accountant-Controller" position shown on  
18 ONG's SFR Schedule WPC-2.1C. Based on ONG's discovery responses, it  
19 appears that this position, which is now filled, replaced the "Accountant-Prior"  
20 position, which was simply a bookkeeping position. According to the discovery  
21 responses, the "Accountant-Controller" position, in addition to the bookkeeping  
22 function, will also have certain managerial responsibilities. Any well-run utility  
23 needs accounting expertise, whether in the form of a qualified salaried in-house

1 employee or by retaining the services of a qualified outside accountant. This is  
2 particularly true in the case of ONG in view of the number of staff findings  
3 regarding the company's failure to maintain its financial records in accordance  
4 with the Uniform System of Accounts, and the need to establish and maintain a  
5 reliable continuing property record.

6  
7 **Q. What allowance do you recommend for the "Accountant-Controller"**  
8 **position?**

9 A. ONG's SFR Schedule WPC-2.1C included an estimated salary for this position of  
10 \$50,000. However, I would recommend that the company provide the actual  
11 annual salary of the individual filling this position, and, assuming the amount  
12 appears to be reasonable, that the actual salary and related benefits be included  
13 in the allowance for labor expense. Although I recognize that this will also  
14 increase the revenue requirement above that recommended by the staff, this is  
15 an ordinary and necessary business expense that should be recognized in the  
16 rates established in this proceeding.

17  
18 **V. RATE CASE EXPENSE**

19 **Q. In its next objection to the Staff Report (Oxford Objection No. 4), Oxford**  
20 **takes issue with the allowance for rate case expense proposed by the staff.**  
21 **Please explain the basis of this objection.**

22 A. This objection is based on three separate grounds. First, the staff conducted no  
23 analysis of the \$100,000 rate case expense estimate proposed by ONG.

1        Instead, in keeping with its usual practice, staff included the company estimate  
2        as the allowance for this item, but directed the company to file a revised estimate  
3        as a late-filed exhibit after the close of the hearing for the Commission's review  
4        before making a final determination as to the appropriate level of rate case  
5        expense. In my experience, what typically happens as a result of this process is  
6        that the Commission simply approves the estimated amount included in Staff  
7        Report even if the updated estimate is higher. Because staff conducted no  
8        analysis of the reasonableness of the initial estimate, and because the revised  
9        estimate is not normally subject to record review, the Commission will have no  
10       evidentiary basis upon which to make a determination of a reasonable allowance  
11       for this item. Thus, I recommend that, once the updated rate case estimate is  
12       filed, the staff and the parties be given an opportunity to review the underlying  
13       cost information and that, if there is a dispute as to the reasonableness of  
14       updated claim for rate case expense, the Commission reopen the record for the  
15       taking of additional evidence on this subject.

16  
17    **Q.    What is the second ground for Oxford's objection to the allowance for rate**  
18    **case expense proposed by the staff?**

19    **A.**    I believe that the \$100,000 estimate submitted by the company is, on its face,  
20        extraordinarily high for a utility filing as a small utility under the SFRs. ONG was  
21        not required to perform a cost-of-service study, and it appears that all the SFR  
22        schedules that were filed were prepared in-house without the assistance of any  
23        outside consultant. Although the Commission did approve rate case expense

1 allowances of \$100,000 in recent rate cases involving Pike Natural Gas (Case  
2 No. 05-824-GA-AIR) and Eastern Natural Gas (Case No. 05-1779-GA-AIR),  
3 these companies have almost twice as many customers as ONG, and both cases  
4 involved full-blown filings as opposed to the minimal information ONG was  
5 required to file in this case.

6  
7 **Q. But ONG was required to retain a consulting firm to perform a plant**  
8 **evaluation study in connection with this case, was it not?**

9 A. Yes. However, the staff has included a separate allowance for the cost of that  
10 study and has not included that cost in the rate case expense allowance.

11  
12 **Q. Did ONG provide any detail to support its \$100,000 rate case expense**  
13 **estimate?**

14 A. No. Moreover, as I previously noted, the staff conducted no analysis of the  
15 reasonableness of this estimate.

16  
17 **Q. Are you proposing an adjustment to the staff's proposed allowance for rate**  
18 **case expense?**

19 A. No, not at this time. Although the staff conducted no analysis of the ONG's claim  
20 for rate case expense, the staff, in the context of its examination of ONG's test-  
21 year invoices for legal expense, did identify invoiced amounts attributable to the  
22 preparation and prosecution of this complaint and appeal. In reviewing the staff  
23 workpapers, I found that ONG had engaged the services of two separate law

1 firms in connection with the complaint and appeal, which I regard as a less than  
2 prudent business decision on ONG's part. Thus, I recommend that in the final  
3 determination or rate case expense, the amounts attributable to the complaint  
4 and appeal paid to the law firm that is no longer representing ONG in this matter  
5 be excluded from the allowance.

6  
7 **Q. What is the third ground for Oxford's objection to the allowance for rate**  
8 **case expense proposed by the staff?**

9 A. Staff has recommended a three-year amortization of the amount allowed for rate  
10 case expense, despite the fact that in other recent rate cases involving smaller  
11 utilities, including the Pike and Eastern cases mentioned above, the Commission  
12 has approved five-year amortizations of rate case expense. In this connection, I  
13 would also note that this company has not had a rate case or complaint and  
14 appeal before this Commission for over twenty-five years. Moreover, had ONG  
15 been more forthright and forthcoming during the period leading up to the  
16 enactment of Ordinance No. 2896, it may well be that this complaint and appeal  
17 could have been avoided entirely. In view of all these circumstances, I believe a  
18 five-year amortization of rate case expense is reasonable.

19  
20 **VI. ALLOWANCE FOR PLANT EVALUATION STUDY COST**

21 **Q. Oxford has also objected (Oxford Objection No. 5) to the staff's**  
22 **recommended five-year amortization of the cost of the plant evaluation**

1        **study ONG was required to undertake in connection with this case. Please**  
2        **explain the basis for this objection.**

3        A.     ONG was required to engage an outside consulting firm (Burgess & Niple) to  
4        perform a plant evaluation study because it had not maintained adequate plant  
5        accounting records that could be used in determining the company's rate base  
6        for purposes of this case. Although I would suggest that ONG's failure to  
7        maintain reliable plant account records, is, of itself, evidence of less than prudent  
8        and responsible management, Oxford agrees that establishing and maintaining  
9        accurate continuing property records is in the long-term best interests of both  
10       ONG and its customers. Thus, Oxford has not objected to the recognition of the  
11       \$79,900 cost of this study in the rates to be established in this case. However, I  
12       believe that, under the circumstances, the five-year amortization of the cost of  
13       this study is too short and that these costs should be spread over a longer  
14       period.

15  
16       **Q.     What are the circumstances to which you refer?**

17       A.     I believe that due diligence at the time UHIA acquired ONG's stock from its  
18       previous owner in 2001 should have dictated that such a study be performed in  
19       connection with that transaction so that the UHIA shareholders would have  
20       known whether the ONG assets they were acquiring were fairly valued. If the  
21       study had been performed in the context of that transaction, it would have been a  
22       cost to the holding company, and ONG ratepayers would not now be asked to  
23       bear this cost. Further, ONG has ongoing responsibility as a part of its public



1 utility obligations to maintain adequate, reliable records. The benefits of  
2 establishing a reliable continuing property record will extend far into the future.  
3 Thus, I believe a ten-year amortization period is more appropriate than the five-  
4 period recommended by the staff.

## 6 **VII. LEGAL EXPENSE**

7 **Q. In its next objection to the Staff Report (Oxford Objection No. 6), Oxford**  
8 **objects to the staff's proposed allowance for legal expense. What is the**  
9 **basis of this objection?**

10 **A.** Although the staff did adjust test-year legal expense in attempt to produce a  
11 reasonable allowance for this item, the staff-proposed allowance is still excessive  
12 for a company of this size.

13  
14 **Q. How did the staff determine its proposed allowance for legal expense?**

15 **A.** The staff reviewed ONG's test-year invoices for legal services, which totaled in  
16 excess of \$427,000, and allocated these charges to the following categories in  
17 the amounts shown: Corporate Governance - \$82,113, Gas Supply - \$34,534,  
18 Rate Case - \$32,534, Refinance - \$159,043, Sanders Byrnes Conway - \$4,346,  
19 and UHIA Shareholder Dispute - \$114,970. The staff then correctly excluded the  
20 expenses assigned to Rate Case, Refinancing, Sanders Byrnes Conway, and the  
21 UHIA Shareholder dispute categories, none of which should be allowed for  
22 ratemaking purposes, including expenses in the Rate Case category, which are  
23 addressed through a separate allowance as discussed above. This left some

1       \$116,324 in Corporate Governance and Gas Supply categories, categories  
2       which the staff deemed to be allowable. Although I was unable to determine the  
3       precise basis for the adjustment from my review of the staff workpapers, staff  
4       then reduced the Corporate Governance expense component by \$28,210 for an  
5       amount reported as Corporate Governance by ONG, but which staff identified as  
6       rate case expense, leaving test-year legal expense in allowable categories of  
7       \$88,114.

8  
9       Apparently recognizing that test-year legal expense of this magnitude, was, on its  
10      face, still unreasonable for a company of this size, the staff attempted to produce  
11      a more representative annual allowance by averaging the test-year expense in  
12      these categories with the annual legal expense reported by ONG in its annual  
13      reports to the Commission for the years 2003 and 2004 of \$31,967 and \$ 42,528,  
14      respectively. This calculation produced adjusted test-year legal expense of  
15      \$54,203, which staff then allocated between ONG and VNGC, resulting in a  
16      recommended allowable legal expense for ONG of \$51,921.

17  
18      As I indicated, I was not able to determine the basis for the staff's additional  
19      \$28,210 adjustment to Corporate Governance, so it may be that this had the  
20      effect of excluding rate case legal costs twice. However, because this entire  
21      approach is flawed, I did not pursue this further.

22  
23   **Q.   What are the flaws in the staff's approach to which you refer?**

1 A. First, I was unable to determine the specific nature of the expenses included in  
2 the Corporate Governance and Gas Supply categories from my review of the  
3 staff workpapers. I find it very difficult for me to believe that a company of this  
4 size would have annual legal expenses associated with normal corporate  
5 governance activities in the amount of \$82,113. Notwithstanding that legal  
6 expenses associated with the financial woes of UHIA and the UHIA shareholder  
7 litigation were purportedly excluded, I would be extremely surprised if the  
8 \$82,113 total identified as corporate governance did not include significant  
9 amounts actually attributable to these causes. Similarly, I would be extremely  
10 surprised if the bulk of the legal expenses in the gas supply category were not  
11 incurred in connection with disputes with ONG's suppliers caused by ONG's  
12 failure to meet its payment or security obligations. In no event should any of  
13 these costs be visited on ONG's ratepayers. The staff workpapers do not  
14 provide sufficient detail to assure that this will not happen.

15  
16 Second, although averaging the test-year legal expense with the legal expense  
17 reported by ONG for 2003 and 2004 did serve to reduce the allowance legal  
18 expense allowance ultimately recommended by the staff, the staff conducted no  
19 investigation of the 2003 and 2004 legal expenses to determine if those  
20 expenses were reasonable and appropriate. This company's problems did not  
21 begin in 2005. Obviously, averaging three wrong numbers does not produce a  
22 correct result.

1 **Q. What do you recommend?**

2 A. I recommend that, before ONG is permitted any allowance for legal expense, it  
3 be required to present a detailed analysis showing the purpose for which each  
4 claimed legal expense was incurred and demonstrating that each such expense  
5 is an ordinary and necessary expense of operating a natural gas distribution  
6 utility, that the expense was not incurred as the result of mismanagement or  
7 imprudence, and that the expense is properly chargeable to ONG as opposed to  
8 UHIA.

9  
10 **VIII. UNCOLLECTIBLE ACCOUNT EXPENSE**

11 **Q. Oxford's final objection in the operating income area (Oxford Objection No.**  
12 **7) goes to staff's treatment of bad debt expense. Please explain Oxford's**  
13 **position with respect to this expense item.**

14 A. The staff has proposed that, in the future, ONG be authorized to recover its bad  
15 debt expense through a separate uncollectible expense rider rather than through  
16 its base rate. As a result, staff did not identify the amount of ONG's test-year bad  
17 debt expense that is properly recognized for ratemaking purposes. As discussed  
18 later in my testimony, Oxford has objected to the establishment of an  
19 uncollectible expense rider for this company. If that objection is sustained, it will  
20 be necessary to determine the appropriate amount of bad debt expense to be  
21 included in allowable test-year expenses so that such amount can be built into  
22 the general service rate established in this case. In addition, Oxford has also  
23 objected to the specific procedure proposed by the staff for the implementation of

1 its proposed uncollectible expense rider, and believes that, if such a rider is to be  
2 authorized, it should be set at an initial rate that reflects the allowable level of  
3 test-year bad debt expense. Thus, this information is necessary under either  
4 scenario. Further, I believe that this is information the Commission would want in  
5 any event in evaluating whether to authorize an uncollectible expense rider for  
6 ONG.

#### 8 X. RATE OF RETURN

9 **Q. Oxford has also filed an objection relating to the staff's rate of return**  
10 **recommendation (Oxford Objection No. 8). Please explain the basis for this**  
11 **objection.**

12 **A.** In this case, as in most cases involving smaller utilities, staff did not perform a  
13 comprehensive cost of capital analysis as a basis for its rate of return  
14 recommendation. Instead, staff recommended what I would characterize as a  
15 "generic" rate of return range – a rate of return range which staff believes is  
16 generally appropriate for small Ohio utilities under prevailing interest rates and  
17 general economic conditions. Staff typically takes the position that any point  
18 within its recommended range is reasonable, and leaves the selection of the  
19 specific rate of return within the range to be authorized to the discretion of the  
20 Commission. However, I believe there are factors present in this case which  
21 should have led the staff to conclude that its generic rate of return range, while  
22 generally appropriate for small Ohio utilities, may not be appropriate for ONG. In  
23 no event should the Commission authorize a rate of return that exceeds the

1 lower bound of the staff's generic range, which, coincidentally, is the rate of  
2 return I used in developing the rates contained in Ordinance No. 2896.

3  
4 **Q. What are the factors that support limiting the rate of return authorized in**  
5 **this case to the 9.5% lower bound of the staff's recommended range?**

6 A. First, as the staff points out in the "Rate of Return" section of the Staff Report, the  
7 determination of a fair rate of return assumes "prudent, honest, and efficient  
8 management." The recent judgment entry and auditor's report issued in the  
9 shareholder lawsuit attached to my testimony as Attachment D establish that the  
10 prior management of this company did not meet these criteria. Although staff  
11 has done a commendable job in excluding expenses that were not prudently  
12 incurred, there should be no increment in the authorized rate of return that in any  
13 way rewards UHIA's shareholders for the imprudence, dishonesty, and  
14 inefficiency of ONG's prior management.

15  
16 Second, it is important that the Commission recognize that ONG, by filing this  
17 complaint and appeal, has been permitted to continue to charge and collect rates  
18 from its customers that the staff's analysis shows are significantly too high. In  
19 the typical rate case, customers benefit from delays in processing the application  
20 because such delays push out the date when new, higher rates will go into effect.  
21 However, in this case, the failure of ONG to supply required information on a  
22 timely basis has worked to the customers' disadvantage, because it has further  
23 delayed the rate reduction to which they are obviously entitled. ONG has already

1 benefited substantially from the delays it has caused, and should not be  
2 rewarded a second time by Commission approval of a rate of return that is above  
3 the lower bound of the staff's proposed range.

4  
5 Finally, although the staff did not perform a comprehensive cost of capital  
6 analysis in this case, staff should have at least compared the capital structures of  
7 ONG and its parent, UHIA, to the capital structures of other small Ohio utilities  
8 before concluding that any point in its generic rate of return range was  
9 reasonable and appropriate for ONG. Although ONG has reported in the SFRs  
10 that its capital structure is 100% equity, according to an ONG discovery  
11 response, UHIA's capital structure is almost 80% debt, all or nearly all of which is  
12 secured by ONG's physical assets. Although I have no way to verify this debt  
13 ratio, which ONG acknowledges is based on numbers that have not been  
14 audited, it is apparent that this company is very highly leveraged. This also  
15 suggests that the rate of return authorized in this case should not exceed the  
16 lower bound of a rate of return range that is generally appropriate for small Ohio  
17 utilities.

## 18 19 **X. MONTHLY CUSTOMER CHARGE**

20 **Q. Oxford's next objection (Oxford Objection No. 9) takes issue with the \$6.00**  
21 **monthly customer charge recommended by the staff in the "Rates and**  
22 **Tariffs" section of the Staff Report. Please explain the basis of this**  
23 **objection.**

1 A. The monthly customer charge is intended recover those costs the utility incurs  
2 simply by virtue of a customer being on its system, without regard to the  
3 customer's actual consumption during the month. As noted in the Staff Report,  
4 the staff typically computes the customer charge by applying its traditional  
5 customer charge formula. However, in this case, due to its lack of confidence in  
6 the numbers provided by ONG, staff did not use the formula approach, but,  
7 instead, appears to have based its recommended \$6.00 customer charge on an  
8 exercise of judgment, *influenced, to some extent, by the level of the overall*  
9 *revenue reduction recommended by the staff.*  
10

11 **Q. Are you suggesting this was inappropriate and that staff should have**  
12 **computed the customer charge by using its traditional formula?**

13 A. No. I agree with staff that the customer charge merely approximates the costs it  
14 is intended to recover, and that mathematical precision is not required. Clearly,  
15 there are other factors that can and should be considered. However, because  
16 the staff did not utilize its formula in this case and based its recommended  
17 customer charge solely on judgment, I do not believe that there is any basis for a  
18 Commission finding that the \$6.50 customer charge contained in Ordinance No.  
19 2896 is unreasonable. Although this \$6.50 customer charge also represents a  
20 significant reduction from the customer charge now being charged pursuant to  
21 Ordinance No. 2433, Commission ratification of the \$6.50 charge would better  
22 recognize the principle of gradualism cited by the staff as a relevant  
23 consideration. Ratification of the \$6.50 charge would reduce the revenue shift



1 between low and high volume general service customers that would result from  
2 moving to the \$6.00 customer charge recommended by the staff and would also  
3 better serve the interest of revenue stability than the \$6.00 charge.

4  
5 **Q. Do you have any other comments relating to the customer charge issue?**

6 A. Yes. Ordinance No. 2433 contains a provision stating that the customer charge  
7 will not be imposed in any month in which there is no consumption as a result of  
8 a voluntary request of the customer for the shutoff of the meter. This  
9 longstanding provision was also included in Ordinance No. 2896. However, staff  
10 once again totally ignored the terms or the ordinance that are the subject of this  
11 complaint and appeal, and simply focused on the proposed tariff filed in this case  
12 by ONG, which does not contain this provision. I do not believe there is any  
13 basis for the Commission to find that this provision is unreasonable, and, giving  
14 due regard for the principle of continuity, the Commission should ratify this  
15 provision.

16  
17 **XI. UNCOLLECTIBLE EXPENSE RIDER**

18 **Q. Oxford's final objection to the Staff Report (Oxford Objection No. 10) goes**  
19 **to the staff's proposed uncollectible expense rider. What is Oxford's**  
20 **position with respect to this proposed rider?**

21 A. Oxford opposes the implementation of a rider to recover bad debt expense and  
22 believes that bad debt expense should be recovered through an allowance for  
23 this item in the base rate revenue requirement. Oxford also objects to the

1 specific procedure proposed by staff for implementing its recommended  
2 uncollectible expense rider.

3  
4 **Q. Why does Oxford believe that bad debt expense should be recovered**  
5 **through an allowance in base rates instead of through a separate**  
6 **uncollectible expense rider?**

7 A. Traditionally, Ohio utilities have recovered bad debt expense through base rate  
8 recovery of the allowable test-year bad debt expense determined in their last rate  
9 case. Several years ago, the Commission, in Case No. 03-1172-GA-UNC,  
10 approved the concept of an uncollectible expense rider for natural gas  
11 companies to address the impact rapidly escalating commodity costs in that time  
12 frame were having on collections. Upon application by a natural gas distribution  
13 utility subject to Case 03-1172-GA-UNC order, the utility was authorized to back  
14 out the bad debt expense allowance reflected in its current rates, and to recover  
15 that amount through a separate uncollectible expense rider rate, which would  
16 then be adjusted annually to recognize increases (or decreases) in bad debt  
17 expense which differed from the prior year's experience, so long as the  
18 difference exceeded a specified threshold. The companies were permitted to  
19 accrue carrying charges on any unrecovered balance, which would then figure in  
20 the mix in the following year's analysis.

21  
22 Although Oxford Ordinance No. 2896 includes an Mcf tax rider, a gross receipts  
23 tax rider, and a PIPP cost recovery rider, it made no provision for a rider to permit

1 current recovery of increases in bad debt expense. Thus, the initial question for  
2 the Commission is whether Oxford's failure to include an uncollectible expense  
3 rider in Ordinance No. 2896 was unreasonable. Because utilities, historically,  
4 had always recovered bad debt expense through their base rates as  
5 contemplated by Ordinance No. 2896, I do not believe it can fairly be said that  
6 that Oxford's failure to provide for a uncollectible expense rider in Ordinance No.  
7 2896 was unreasonable, particularly since staff conducted no analysis that would  
8 suggest that the traditional method for recovering bad debt expense will have  
9 adverse consequences for ONG.

10  
11 **Q. Why does Oxford object to the specific procedure proposed by the staff for**  
12 **implementing its recommended uncollectible expense rider?**

13 **A.** As a result of a number of deficiencies staff identified in reviewing the  
14 uncollectible expense rider proposed by ONG in its filing, staff has recommended  
15 that the initial rider rate be set at zero, and that ONG be authorized to defer bad  
16 debt expense incurred after the rates approved in this case are implemented,  
17 and to calculate carrying charges on the deferred balance. As I understand it,  
18 one year down the road, ONG would then file an application for approval of a  
19 rider rate designed to recover this balance, plus carrying charges, which would  
20 thereafter be adjusted annually in accordance with the procedure approved by  
21 the Commission for subsequent rider rate adjustments by those natural gas  
22 companies that have been authorized to implement uncollectible expense riders.  
23 My concern is that this approach will result in ONG's bad debt expense claims

1 receiving far less scrutiny than they would if the initial rider rate were established  
2 in this case based on the allowable level of test-year bad debt expense  
3 determined to be reasonable as a result of a staff audit. In addition, I believe that  
4 the carrying charge feature of the staff's proposed implementation procedure  
5 may result in customers ultimately paying more than they would have if the initial  
6 rider rate was based on allowable test-year bad debt expense. Thus, if an  
7 uncollectible expense rider is to be implemented as the result of this proceeding,  
8 I recommend that the staff be required to determine a reasonable annual  
9 allowance for bad debt expense based ONG's test-year experience, and that the  
10 initial rider rate be designed to recover that amount.

## 12 XII. OTHER MATTERS

13 **Q. Oxford Ordinance No. 2896 includes an interruptible rate that reflects a**  
14 **\$0.10 discount from the general service rate. Please explain why this rate**  
15 **was included in Ordinance No. 2896.**

16 **A.** Ordinance No. 2433 included a similar discounted rate for gas delivered to  
17 customers using more than 1 Mcf per hour, who, by contract, had agreed to  
18 curtail or interrupt service at the request of the company so as to permit the  
19 company to give service priority to other customers in the event of shortfall in gas  
20 supply. In early 2004, ONG proposed a rate ordinance to replace Ordinance No.  
21 2433 upon its expiration at December 31, 2005. There were no negotiations  
22 regarding this ordinance at the time because Oxford regarded the proposal as  
23 premature. When ONG again raised this matter with Oxford in the spring of

1       2005, Oxford requested that ONG provide cost information in support of the rates  
2       contained in the proposed ordinance, but no such information was supplied.  
3       However, because the ordinance proposed by ONG provided for an interruptible  
4       rate similar to that contained in Ordinance No. 2433, Oxford assumed that ONG  
5       wished to continue to offer an interruptible rate, and, accordingly, included a  
6       discounted interruptible rate in Ordinance No. 2896. Oxford subsequently  
7       learned that ONG has no interruptible customers and, based on the proposed  
8       tariffs filed with the complaint and appeal in this case, assumes that ONG no  
9       longer wishes to offer an interruptible rate. Thus, although Oxford has generally  
10      objected to the staff's failure to address all the rates, charges, and terms and  
11      conditions of service contained in Ordinance No. 2896, Oxford has no objection  
12      to a Commission finding that the interruptible rate should not be ratified.

13  
14   **Q.   Does this conclude your testimony?**

15   **A.   Yes.  However, I reserve the right to file supplemental and/or rebuttal testimony.**

**ATTACHMENT A**

**KENNETH N. ROSSELET, JR.**

**TESTIMONIES**

**CINCINNATI BELL TELEPHONE**

**80-476-TP-AIR  
96-899-TP-ALT**

**CINCINNATI GAS & ELECTRIC**

**79-11-EL-AIR  
81-1402-EL-CSS  
82-1402-EL-AIR  
01-1228-GA-AIR**

**CLEVELAND ELECTRIC ILLUMINATING**

**83-1342-EL-ATA**

**COLUMBIA GAS OF OHIO**

**76-704-GA-AIR  
77-1428-GA-AIR  
78-1008-GA-CMR  
78-1118-GA-AIR  
78-1161-GA-AIR  
82-0852-GA-AIR  
82-1002-GA-AIR  
81-1070-GA-AIR  
82-1129-GA-AIR  
82-1151-GA-AIR  
82-1152-GA-AIR  
82-1174-GA-AIR  
82-1175-GA-AIR**

**COLUMBUS SOUTHERN POWER (formerly C&SOE)**

**78-1439-EL-AEM  
81-1508-EL-AIR  
83-314-EL-AIR**

**DAYTON POWER & LIGHT**

**76-115-HT-AIR  
76-823-EL-AIR  
76-88-GA-AIR  
78-92-EL-AIR  
79-372-GA-AIR**

EAST OHIO GAS	93-2006-GA-AIR 96-1019-GA-ATA
MONONGAHELA POWER COMPANY	94-1918-EL-AIR
OHIO BELL TELEPHONE COMPANY	83-300-TP-AIR 93-576-TP-CSS
OHIO EDISON COMPANY	75-131-EL-AIR
OHIO GAS COMPANY	83-505-GA-AIR
OHIO POWER COMPANY	83-98-EL-AIR
OXFORD NATURAL GAS CO.	78-1404-GA-AIR 79-292-GA-CMR
COMMISSION RULE MAKING	80-90-GE-UNC
TENNESSEE GAS PIPELINE	RP-91-203 RP-92-132
WATER & SEWER LLC	03-318-WS-AIR
WEST OHIO GAS	80-256-GA-AIR 89-275-GA-AIR

**ATTACHMENT A**

**KENNETH N. ROSSELET, JR.**

**TESTIMONIES**

**CINCINNATI BELL TELEPHONE**

**80-476-TP-AIR  
96-899-TP-ALT**

**CINCINNATI GAS & ELECTRIC**

**79-11-EL-AIR  
81-1402-EL-CSS  
82-1402-EL-AIR  
01-1228-GA-AIR**

**CLEVELAND ELECTRIC ILLUMINATING**

**83-1342-EL-ATA**

**COLUMBIA GAS OF OHIO**

**76-704-GA-AIR  
77-1428-GA-AIR  
78-1008-GA-CMR  
78-1118-GA-AIR  
78-1161-GA-AIR  
82-0852-GA-AIR  
82-1002-GA-AIR  
81-1070-GA-AIR  
82-1129-GA-AIR  
82-1151-GA-AIR  
82-1152-GA-AIR  
82-1174-GA-AIR  
82-1175-GA-AIR**

**COLUMBUS SOUTHERN POWER (formerly C&SOE)**

**78-1439-EL-AEM  
81-1508-EL-AIR  
83-314-EL-AIR**

**DAYTON POWER & LIGHT**

**76-115-HT-AIR  
76-823-EL-AIR  
76-88-GA-AIR  
78-92-EL-AIR  
79-372-GA-AIR**



EAST OHIO GAS	93-2006-GA-AIR 96-1019-GA-ATA
MONONGAHELA POWER COMPANY	94-1918-EL-AIR
OHIO BELL TELEPHONE COMPANY	83-300-TP-AIR 93-576-TP-CSS
OHIO EDISON COMPANY	75-131-EL-AIR
OHIO GAS COMPANY	83-505-GA-AIR
OHIO POWER COMPANY	83-98-EL-AIR
OXFORD NATURAL GAS CO.	78-1404-GA-AIR 79-292-GA-CMR
COMMISSION RULE MAKING	80-90-GE-UNC
TENNESSEE GAS PIPELINE	RP-91-203 RP-92-132
WATER & SEWER LLC	03-318-WS-AIR
WEST OHIO GAS	80-256-GA-AIR 89-275-GA-AIR

**ATTACHMENT B**

## ORDINANCE NO. 2433

AN ORDINANCE TO REGULATE THE RATES AND PRICES TO BE CHARGED AND THE SERVICES TO BE RENDERED BY THE OXFORD NATURAL GAS COMPANY, ITS SUCCESSORS AND ASSIGNS, FOR GAS AND GAS SERVICE FURNISHED TO ALL OF ITS CUSTOMERS WITHIN THE LIMITS OF THE CITY OF OXFORD DURING THE PERIOD ENDING DECEMBER 31, 2005; AND REPEALING AND SUPERSEDING ORDINANCE NO. 2126 AND ORDINANCE NO. 2255-1, PREVIOUSLY REGULATING THE RATES AND PRICES OF THE OXFORD NATURAL GAS COMPANY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OXFORD, BUTLER COUNTY, STATE OF OHIO, THAT:

SECTION 1: An Ordinance to regulate the rate and prices to be charged and the services to be rendered by the Oxford Natural Gas Company, its successors and assigns, for gas and gas service furnished to all of its customers within the limits of the City of Oxford during the period ending December 31, 2005; and repealing and superseding ordinance No. 2126 and Ordinance No. 2258, previously regulating the rates and prices of the Oxford Natural Gas Company, is hereby adopted as follows:

1. Definitions. The following definitions shall apply in the interpretation and enforcement of this ordinance unless the context clearly shows a different meaning is intended:

"City" means City of Oxford, Ohio.

"Company" means Oxford Natural Gas Company, its successors and assigns.

"Council" means City Council of the City of Oxford, Ohio.

"Gas," "Gas Costs" and "Cost of Gas" have the same meaning as defined in OAC Chapter 4901:1-14.

"OAC" means Ohio Administrative Code.

"PIPP" means "per cent of income payment plan" as set forth in Section 8 of this ordinance.

"PUCO" means Public Utilities Commission of Ohio.

"Self-Help Arrangement" has the same meaning as defined in OAC Chapter 4901:1-14.

"Supplier(s)" means any pipeline, transmission company, broker or producer supplying gas.

2. Gas Distribution Charges. From the effective date of this ordinance and for the period ending December 31, 2005, the Company may charge for gas furnished to all of its customers within the City limits the following rates and prices:

- a. General Service Rate. The general service rate is the rate authorized for all customers. For each one thousand cubic feet (1 Mcf), the rate will be as follows:

- i. For bills rendered on and after the effective date of this ordinance through December 31, 1999, the rate shall be \$2.90;
- ii. For bills rendered on and after January 1, 2000 through December 31, 2000, the rate shall be \$3.00;
- iii. For bills rendered on and after January 1, 2001 through the end of the term of the ordinance, the rate shall be \$3.00 subject to the adjustments as set forth in Section 3 of this ordinance.

- b. Interruptible Rate. The interruptible rate is to be charged those customers who use more than one thousand cubic feet (1 Mcf) per hour and who have contracted with the Company agreeing to curtail or interrupt the use of gas so as to give service priority to other customers during periods of peak demand, subsequent normally to twenty-four hours notice by the Company to a customer of any proposed curtailment or interruption. Nothing in this ordinance prevents the Company from raising the customers in this rate class to the general service rate. For each one thousand cubic feet (1 Mcf), the price will be as follows:

- i. For bills rendered on and after the effective date of this ordinance through December 31, 1999, the rate shall be \$2.80;

- ii. For bills rendered on and after January 1, 2000 through December 31, 2000, the rate shall be \$2.90;
  - iii. For bills rendered on and after January 1, 2001 through the end of the term of the ordinance, the rate shall be \$2.90 subject to the adjustments set forth in Section 3 of this ordinance.
- c. Customer Service Charge. A customer service charge shall be charged each customer/meter each month and shall not be prorated. Any customer voluntarily requesting shutoff of a customer/meter shall not be charged a customer service charge until the meter is turned back on and gas service is resumed. The customer service rate shall be as follows:
- i. For bills rendered on and after the effective date of this ordinance through December 31, 1999, the rate shall be \$6.70;
  - ii. For bills rendered on and after January 1, 2000 through December 31, 2000, the rate shall be \$6.96;
  - iii. For bills rendered on and after January 1, 2001 through the end of the term of the ordinance, the rate shall be \$6.96 subject to the adjustments set forth in Section 3 of this ordinance.
- d. Self-Help Arrangements. Nothing contained in this ordinance shall prevent the Company from entering into Self-Help Arrangements providing for the transportation of gas owned by the customer, so long as the arrangements are approved by the PUCO.
3. Rate Adjustments. As provided in Sections 2.a.iii., 2.b.iii., and 2.c.iii. of this Ordinance, the Company may increase its rates in the following manner:
- a. Effective for bills rendered on January 1, 2001 and on each successive January 1 through January 1, 2005, when the "GNP Deflator" index, or its equivalent, reported by the U.S. Department of Commerce, Bureau of Economic

Analysis, exceeds three percent (3%) during the most immediate previous twelve-month period for which that index is reported, the rates may be increased by the same percentage.

- b. Prior to 45 days in advance of any such rate increase, the Company shall notify the City Manager in writing of its intent to increase the general service rate, interruptible service rate, and customer service charge, the amount of the increase or decrease, and the resulting new rate. The Company also shall provide a report of the above-named index and any other supporting information.

4. Gas Cost Recovery.

- a. Rates and prices for gas distribution service as specified above do not include the Cost of Gas.
- b. The Cost of Gas obtained by the Company for sale to its customers shall be added to the general service rate. The Cost of Gas shall be computed on a calendar quarterly basis in the manner provided in OAC Chapter 4901:1-14, except as hereinafter provided. Effective for all bills rendered on and after the effective date of this ordinance, fixed charges from the Cincinnati Gas & Electric Company associated with the transportation pipeline completed in 1994 shall be included as a Cost of Gas at \$200,000 a year (\$50,000 each calendar quarter) and amounts in excess of \$200,000 shall be excluded from the gas cost recovery rate. All costs associated with providing service to Self-Help Arrangement customers pursuant to Section 2.d. of the ordinance shall be excluded from the Cost of Gas.
- c. The Company shall provide a proposed gas cost recovery adjustment to the City Manager thirty (30) or more days prior to the end of each calendar quarter. With the proposed adjustment, the Company shall provide all information and calculations used to calculate the proposed adjustment and the City shall be entitled to verify same by inspecting any Company books or records as

may be necessary to justify the adjustment proposed by the Company.

- d. The City has the right to conduct financial and management/performance audits of the Company's gas cost recovery rate and gas procurement practices no more frequently than once every twelve months. The City may hire independent auditors to conduct these audits with the costs to be paid by the Company, following the City Manager's approval of the auditors' invoices. The amounts paid by the Company shall be included in the gas cost recovery rate over a twelve month period.
- e. The Company will be permitted to include in the gas cost recovery rate an initial charge of \$0.04 per Mcf to recover an anticipated shortfall in revenues created by PIPP, which the company shall implement pursuant to Section 8 of this ordinance. The charge shall be effective for bills rendered on and after the later of January 1, 1996 or the date that this ordinance takes effect. The Company shall not recover any arrearages incurred prior to November 1, 1995.

The PIPP charge shall be reconciled and adjusted on a quarterly basis so that, as nearly as possible, the charge recovers, over the course of the quarter, an amount equal to the PIPP arrearages accumulated over that quarter plus or minus any deficiency or excess amounts from the charge during the prior year.

- 5. Automatic Tax Adjustment. In the event the State of Ohio or the City should impose a tax upon the Company that was not imposed as of the effective date of this ordinance, or should increase the rate of any tax now imposed upon the Company or should remove an existing tax or lessen an existing tax rate, other than income tax or other than the rate on property listed in the real estate list and duplicate, then the rates prescribed above shall be increased to the extent necessary to compensate the Company for the increase in cost due to such new tax or higher tax rate, or shall be decreased to the extent necessary to lessen revenue to the Company in the amount of any such savings to the Company as a result of the removal of a tax or the lessening of a tax rate. Such

increase or decrease in rates prescribed above shall be computed and calculated as follows:

- a. If the new tax or higher tax rate or the tax removed or lessened is or was computed in direct relation to gas sold or revenues received for the sale of gas, the rates set forth herein shall be adjusted to the extent necessary to recompense the Company for the amount thereof, or to decrease revenue to the Company by the amount of such decreased cost to the Company.
- b. If the new tax or higher tax rate or the removal of tax or the lessening of tax rate is or was not related directly to gas sold or to revenues received for the sale of gas, then the total dollar effect upon the cost of serving gas by the Company shall be determined, based on operations of the Company during the most recently available 12-month period ending on the last day of the December preceding the affected date of the new tax, higher tax rate, removal of tax or lessening of tax rate; the total dollars so computed shall then be divided by the total sales made to the classes of customers covered by this ordinance during the same 12-month period. The rates prescribed herein shall be correspondingly adjusted, being either increased or decreased.

The adjustment or the rate prescribed in this ordinance, as provided in subparagraphs a. and b. above, shall be made by rounding the mathematical result of the computation so prescribed to the nearest one-quarter (\$0.0025) cent per one thousand cubic feet.

The adjusted rate shall be placed in effect and shall apply to all meter readings occurring on or after the effective date of the statute, ordinance or resolution pursuant to which the new tax or increased tax rate is imposed.

Written notification of the adjustment shall be sent to the City Manager within ten days of the determination of the effect of the new tax, the higher tax rate, removal of a tax or lessening of a tax rate.



The Company shall provide, with the adjustment notification to the City Manager, the figures, computations and calculations used to corroborate the increase or decrease and the City shall be entitled to verify the same by inspecting any Company books or records as may be necessary to justify the adjustment calculations arrived by the Company.

6. Other Service Charges. The Company may charge for gas furnished to all of its customers the following additional rates and prices:
- a. Returned Check Charge. Where a bank returns a customer's check for nonsufficient funds, which check was issued to the Company as payment for services rendered, the customer shall be assessed a returned check charge of \$15.00.
  - b. Deposits. As security for prompt payment of a customer's bill, the Company may require any new customer or current delinquent customer to provide a deposit equal to 130% of the estimated average monthly bill based on annual consumption. In lieu thereof, the Company may accept the written guarantee of prompt payment of a customer's bills from any person owning real estate within the City. The Company shall pay simple interest at the rate of six percent per annum on such deposit and will refund the same to the customer together with interest, if any, less any unpaid charges when service is discontinued or the customer's credit has been established to the satisfaction of the Company. In a case where the Company must charge any sums owed and unpaid against any deposit or the Company must proceed under the guarantee provided in lieu thereof, the Company shall be entitled to recover any expenses permitted by law in addition to recovery of the amount due from the customer.
  - c. Credit Check Processing Charge. Upon request by a customer who is required to pay a deposit pursuant to Section 6.b. above, the Company will run a credit check for the customer to determine if the customer possesses a credit history of such quality that the Company can

waive the deposit. A waiver of the Company's deposit requirement will be at the Company's sole discretion. The customer shall be assessed a credit check processing charge of \$5.00 for this service.

- d. Deferred Payment Charges. All bills will be rendered monthly and are due when rendered. To all such bills not paid within 25 days from the date the bill is postmarked, ten percent may be added as a deferred payment charge.
  - e. Field Collection Fee. In the event of a delinquent account where a customer desires to pay the Company employee who has been dispatched to the customer's premises to terminate service pursuant to OAC Rule 4901:1-18-06(C), the Company employee may accept full payment owing the Company; but the Company may assess a \$5.00 field collection charge either at the time the delinquent payment is collected or on the next bill after the full delinquent payment has been made.
  - f. New Service Tap Charge. Customers that are applying for a new tap on the Company's system shall be assessed a new service tap charge of \$250.00.
  - g. Reconnection Charge. Where reconnection is requested pursuant to OAC Rule 4901:1-18-06(A) and (B), the customer shall be assessed a \$25.00 reconnection charge.
7. Disconnection for Nonpayment
- a. Residential Customers: The Company shall comply with the provisions of the disconnection rules set forth in OAC Chapter 4901:1-18-05 as amended, including providing the customer with notice of the right to continue service under PIPP as set forth in Section 8 of this ordinance.
  - b. Non-Residential Customers: An account will be considered delinquent and subject to the Company's disconnection procedures for non-payment if any bill remains unpaid after the due date. The Company will mail or otherwise give notice of impending disconnection for nonpayment to the customer prior to disconnection.

8. Per Cent of Income Payment Plan ("PIPP")

a. The following definitions apply to this section:

- i. "Household income" has the meaning attributed to it by the Division of Energy, Department of Development, in the administration of the Home Energy Assistance Program.
- ii. "Primary source of heat" means that energy which is the heat source for the central heating system of the residence or, if the residence is not centrally heated, that energy which makes up the bulk of the energy used for space heating.
- iii. "Secondary source of heat" means that energy which is the heat source for space heating other than that provided by the central heating system of the residence or, if the residence is not centrally heated, that energy which does not make up the bulk of the energy used for space heating or, if the residence is centrally heated using some other form of energy, the energy required to operate equipment needed for the proper functioning of the central heating system.

b. The Company shall not disconnect the service of any residential customer for nonpayment or refuse to reconnect because of an arrearage the service of a residential customer who has requested to transfer service from one address to another as long as that customer meets each of the following qualifications:

- i. Has a household income for the past three months which if annualized would equal one hundred fifty percent of the federal poverty level or less, or if the household income for the past three months annualized is more than one hundred fifty percent of the federal poverty level, the customer has a household income for the past twelve months equal

to one hundred fifty percent of the federal poverty level or less.

ii. For usage during any billing period pays at least:

(1) Five per cent of the customer's monthly household income to the Company when another utility company or person provides the primary source of heat; or

(2) Ten per cent of the customer's monthly income to the Company when the Company provides the primary source of heat and another utility company or person provides the secondary source of heat.

(3) Fifteen per cent of the customer's monthly household income to the Company if it provides both primary and secondary sources of heat.

iii. Applies for all public energy assistance for which the customer is eligible.

iv. Applies for all weatherization programs for which the customer is eligible.

v. Provides proof to the Company no less often than once in every twelve months that the customer qualifies for this plan.

vi. Signs a waiver permitting the Company to receive information from any public agency or private agency providing income or energy assistance and from any employer whether public or private.

c. For the purpose of sections 8.b.i. and 8.b.ii. of this ordinance, any money provided to the Company on a regular monthly basis on behalf of the customer by a public or private agency as energy assistance shall not be considered as household income nor shall it be counted as part of the monies paid by the customer to meet the percentage of income requirement. Any money provided to

the Company on an irregular or on an emergency basis by a public or private agency for the purpose of paying utility bills shall not be considered as household income. These monies shall first be applied to the customer's current monthly payment obligation as determined in accordance with section 8.b.ii. of this ordinance with any money in excess of the amount necessary to satisfy such current monthly payment obligation being applied to either the amount the customer is in default on an extended payment plan, or if no such default exists, then to the customer's arrearages.

- d. A customer's failure to make any payment provided for under this rule shall entitle the Company to terminate service in accordance with the procedures set forth in OAC Rule 4901:1-18-05.
- e. When a PIPP customer ceases to be eligible for the PIPP program because the customer's income exceeds the eligibility level:
  - i. The customer will be allowed to make the monthly payment required in section 8.b.ii. of this ordinance during the twelve months following the loss of eligibility.
  - ii. No later than in the thirteenth month following the loss of PIPP eligibility, the customer shall pay the actual monthly bill.
  - iii. No later than in the twenty-fifth month following the loss of PIPP eligibility, the customer shall pay the actual monthly bill, plus an arrearage component which shall consist of the sum of the customer's arrearage balance existing at the end of the last month of PIPP eligibility, plus any arrearage balance accumulated thereafter, divided by the number of months the customer was enrolled in PIPP plus twenty-four, but in no event shall the arrearage component be required to exceed twenty dollars (\$20.00) per month. Beginning the twenty-

fifth month and thereafter, no less than once every six months, the customer's arrearage balance will be reduced by an amount equal to the arrearage component dollars actually paid during the applicable period. As long as the customer has paid the amounts due under the actual monthly bill during the applicable period, failure to make an arrearage component payment in any month shall not affect the arrearage credit provided herein. All payments made by the customer during this period shall be first applied to the current bill obligation and second to the arrearage component.

- iv. Any customer may pay any amount in excess of what is required under section 8.e.i.-iii. Such excess shall be considered a payment toward that month's actual bill or the arrearage component, whichever is applicable.

- 9. Meters. Meters shall be furnished without charge to all customers. Meters will be read at least bimonthly (two month periods) and bills will be rendered monthly.
- 10. Customer Complaints. The Company shall, by notice to the City Manager, designate a place in the City where charges and fees for consumption and use of gas and services may be paid by customers and where complaints and notices may be filed by the City and its inhabitants. The place or places so designated may be changed at any time by written notice to the City Manager. It shall be incumbent upon any customer served by the Company pursuant to the terms of this ordinance to attempt to resolve any complaints said customer might have against the Company regarding its rates or services in discussion with the Company, before the City Council takes any other action against the Company.
- 11. Information Access. The Company will provide quarterly and annual financial statements to the City Manager within seven days of availability, and no later than sixty days after the end of each fiscal period. The financial statements to be provided include a balance sheet, statements of income, retained earnings, and cash flow. The annual financial

statements shall be audited by any public accounting firm, including J. Richard Howe, P.C., Certified Public Accountants.

12. General Terms and Conditions. The following general terms and conditions will be applicable to all new customers:

- a. Application of Rates. A copy of all rates, rules and regulations under which service will be supplied is posted or filed for the convenience of the public in the offices of the Oxford Natural Gas Company (herein Company) located in Oxford, Ohio, and is available for review during normal business hours.

A written application for gas service on forms provided for the purpose, or properly executed contract, may be required from the customer before service will be supplied. The Company shall have the right to reject, for any valid reason, any application for service. The Company has the right to inspect the installation for the use of natural gas.

The rate schedules of the Company contemplate that service will be supplied to each separate premise as one customer with one and only one meter. The gas used by the same individual, firm, or corporation at different premises shall be separately measured and billed.

If service is taken on more than one meter on the same premises for the convenience of the customer, the gas registered on each meter will be billed separately. Where service is taken on more than one meter on the same premises for the convenience of the Company, the gas registered on each meter will be added and billed as one customer.

- b. Resale of Gas. Gas furnished by the Company is for the sole use of the customer and shall not be resold by customer except on written permission obtained from the Company. The renting of premises with the cost of gas service included in the rental as an incidence of tenancy will not be considered a resale of such services.

- c. Multiple Dwellings. Where gas service is supplied through one meter to an apartment house or multiple dwelling, for billing purposes, the rates will be applied as a single customer.

The customer may arrange customer's piping, at customer's expense, so as to separate the combined service and permit the Company to install a separate meter for each individual apartment. In such cases, each individual apartment shall be billed as a single customer.

- d. Character of Service. The Company does not guarantee but will endeavor to furnish a continuous supply of gas. The Company shall not be held liable for loss or damage occurring under or by virtue of the exercise of authority or regulation by governmental, military or lawfully established civilian agencies, or due to conditions or causes beyond the Company's control.
- e. Payment of Bills. Bills shall be paid by the customer by mail, at the Company's office, at the Company's customer Drive-up, or at any bank or collection agent designated by the Company to receive gas bill payments; or to Company employees in lieu of disconnection for nonpayment of bills. Any remittance received by mail bearing a U.S. Post Office cancellation date corresponding with or previous to the last date of the net payment period will be accepted as within the net payment period.
- f. Access to Customer Premises. The Company's authorized agents shall have access to the exterior of the customer's premises at all reasonable hours to install, inspect, read, repair, or remove its meters and other property.
- g. Meter Reading and Billing. Meters will be read and bills rendered monthly or bimonthly. When the Company is unable to read the meter due to physical conditions, the bill for the month will be estimated on the basis of past service records or other available data. Bills rendered for gas service in months in which meters are not read



shall have the same force and effect as those based on actual readings. Any customer who does not desire to receive an estimated bill may read the meter and send the readings to the Company on appropriate forms which will be provided by the Company.

- h. Quantity of Gas Delivered by Meter. Gas will be measured by a meter installed by the Company without charge to the customer, which shall remain the property of the Company. Subject to certain exceptions, enumerated below, consumption shall be determined on the basis of the meter registrations, and bills shall reflect the consumption so registered. Any mistake in reading the registrations, however, shall not affect the liability for gas consumed as determined by a corrected reading of the registration.

Without prejudice to its providing metered service where warranted, the Company may provide gas light service on a non-metered basis, using for filing purposes, the approximate average consumption of such appliances at the rate applicable in the area.

When the meter is not read, the Company may estimate the quantity of gas consumed and render a bill for such quantity.

A meter registering between three percent (3%) fast and three percent (3%) slow shall be deemed for all purposes to be registering correctly. A meter registering incorrectly shall be replaced by the Company at its expense.

During any period that incorrect registration can be established, the meter readings and bills based thereon shall be adjusted by the Company on the basis of all available information concerning the use of gas by the customer as well as degree day data. The Company employs actual degree day data supplied by the Miami University Institute of Aviation applied to historical usage at the customer's address for the month(s) in question to determine consumption for the months the meter failed to register properly.

If, as a result of such meter testing, overpayments or underpayments are shown to have occurred, when the customer is not a residential customer, the Company shall reimburse the customer in the amount of such overpayment or the customer shall pay the Company the amount of such underpayments, in either case, such adjusted payments not to exceed a six (6) month period.

If, as a result of such meter testing, overpayments are shown to have occurred, in the case of residential customers, the Company shall reimburse the residential customer in the amount of such overpayments or, if underpayments of charges by the residential customer are involved, the residential customer shall pay the Company the amount of such underpayments consistent with section 4933.28 of the Ohio Revised Code. In determining the amount of such underpayments, the Company may bill the residential customer for the amount of the unmetered gas rendered in the three hundred sixty-five (365) days immediately prior to the date the Company remedies the meter inaccuracy. In calculating the amount of such overpayments, the Company is responsible for reimbursing the residential customer for the amount of the improperly metered gas rendered in the three hundred sixty-five (365) days immediately prior to the date the Company remedies the meter inaccuracy.

The time over which such overpayments shall be credited to the residential customer's bill or over which such underpayments shall be collected from the residential customer shall be the twelve (12) consecutive months after the overpayments or underpayments are discovered and remedied by the Company, although the Company and residential customer may agree to the adjusted payments over a shorter or longer period. The first bill from the Company to the residential customer shall state the total amount of the reimbursement to the residential customer if overpayments are involved or the total amount of the underpayment. The amount of such adjustment per monthly bill shall be the total amount divided by twelve. The residential customer shall continue to pay the amounts billed pending the adjustment. The Company shall not

discontinue gas service to the residential customer because of such underpayments pending the adjustment, except for safety reasons or in the event of a request from the residential customer to disconnect service or when disconnection is the result of the residential customer's nonpayment of a lawfully owing past due amount.

The adjustments to residential customers' bills for underpayments shall be billed and payable in addition to the charges incurred during the period reflected in the bill. The adjustments for overpayments shall be reflected as a credit to the amount billed for the period reflected in each monthly bill. If at the end of the twelve month (or otherwise agreed-to different) period over which the adjustment is to be made, the residential customer has not been reimbursed for all of the adjustment for overpayments, there shall be a final payment to the residential customer by the Company of the amount of adjustment still outstanding.

There shall be no adjustment for any customer's overpayment in the event of the customer's tampering with utility equipment or theft of utility service as defined in sections 4933.18 and 4933.19 of the Ohio Revised Code, or where a physical act of a customer or its agent causes inaccurate or no recording of the meter reading, or inaccurate or no measurement of the gas provided.

The Company shall test the meter at the request of the customer, and, if the customer desires, in the customer's presence, with a tested and sealed meter-prover. If the meter is found to be correct, as above defined, the customer shall pay a charge of \$25.00 for removing and testing it. The date of reinspection shall be recorded.

- i. Meters and Metering Equipment. The customer shall provide, free of expense to the Company and close to the point of service entrance, suitable space for the installation of the Company's metering equipment. The customer shall permit only authorized agents of the Company, or other lawfully authorized persons, to

inspect, test, or remove the same. If the meters or metering equipment are damaged or destroyed through the neglect of the customer, the cost of necessary repairs or replacements shall be paid by the customer.

- j. Meter and Equipment Location. The Company shall determine the location of the meter and other Company owned equipment. When changes in a building or arrangements therein render the meter inaccessible or exposed to hazards, the Company may require the customer, at the customer's expense, to relocate the meter setting together with any portion of the customer's service line necessary to accomplish such relocation.
- k. Meters Covered by Bushes. Meters shall at all times be accessible for meter reading and turn-off for emergencies. Whenever and wherever shrubs and bushes hinder accessibility to a meter, the Company will notify the customer requesting the shrubs or bushes be pruned or trimmed within thirty (30) days, after which the Company shall disconnect the meter without further notice if the meter has not been made accessible.
- l. Only Company Can Connect Meter. The owner or customer shall not permit anyone who is not an authorized agent of the Company to connect or disconnect the Company's meters, regulators or gauges or in any way alter or interfere with the Company's meters, regulators or gauges.
- m. Customer's Responsibility. The Customer assumes all responsibility for property owned by the customer on customer's side of the point of delivery, generally the outlet side of the curb cock, for the service supplied or taken, as well as for the installation and appliances used in connection therewith, except the Company shall not be relieved of any duties and obligations under the Natural Gas Pipeline Safety Act of 1968, as amended, 49 U.S.C. 1671, et seq. 49 C.F.R. Part 192, and Chapter 4901:1-16 of the OAC. The customer will save Company harmless from and against all claims for injury or damage to persons or property occasioned by or in any way

resulting from such service or the use thereof on customer's side of the point of delivery.

- n. Customer's Piping. The customer shall install and maintain, at the customer's expense, the house piping from the outlet of the meter to gas burning appliances.
- o. Customer's Appliances. The customer shall install and maintain all appliances, at the customer's expense.
- p. Standards for Customer Property. The house lines, fittings, valve connections and appliance venting shall be installed with materials and workmanship which meet the requirements of American National Standard Code and subject to the rules of the City of Oxford Heating Code. A copy of the American National Standard Code is available at Company's offices.
- q. Defect in Customer Property. If the customer's service line, other gas lines, fittings, valves, connections, gas appliances or equipment on a customer's premises are defective or in such condition as to constitute a hazard, the Company, upon notice to it of such defect or condition, may discontinue the supply of gas to such appliances or equipment until such defect or condition has been rectified by the customer in compliance with the reasonable requirements of the Company and/or the City.
- r. Altered Piping. It shall be the duty of the customer to notify the Company promptly of any additions, changes, alterations, remodeling or reconstruction affecting gas piping on the customer's premises.
- s. Extension of Distribution Mains. The Company will extend its distribution mains (not to exceed two inches in diameter) on any dedicated street within the limits of the City of Oxford without cost up to but not more than a distance of two hundred fifty (250) feet for each residential Applicant. Upon application for a domestic service extension in excess of two hundred fifty (250) feet for each Applicant, the Company may enter into a main extension agreement providing for a deposit with the

Company of a sum deemed adequate by the Company to cover the cost to be incurred by it for that portion of the main extension in excess of the footage which the Company will construct without cost to the Applicant. The amount of deposit shall be determined by multiplying the excess footage as hereinabove determined by the average cost per foot to the Company of a similar size distribution main installed during the current calendar year, or if there has been no extension of a similar size line during the current calendar year, substituting figures for the nearest preceding year. The sum deposited shall be subject to refund on the basis of the cost per foot deposited multiplied by one hundred (100) for each additional Applicant who becomes a gas consuming customer connected to the extension but not to laterals therefrom or to further extensions thereof. No refunds shall be paid after the expiration of ten (10) years from the date of the agreement.

Where a main extension is necessary to provide service availability to plots of lots or real estate subdivisions and such main extension is not deemed justified at the Company's expense, the owners or promoters of such plots or lots or real estate subdivisions shall enter into a main extension agreement and shall deposit with the Company the estimated cost of such extension. This deposit will be refunded at the average cost of one hundred (100) feet for each gas consuming customer connected to the extension but not to laterals therefrom or to further extensions thereof. No refunds shall be paid after the expiration of ten (10) years from the date of the agreement.

Where a main extension is requested for service for commercial, industrial or residential subdivision development purposes and such main extension is determined by the Company to be economically feasible, the Applicant(s) may enter into a main extension agreement and shall deposit with the Company the estimated cost of such extension. This deposit will be refunded at the rate of forty percent (40%) of the semiannual base rate revenue received for gas consumed

directly from the extension, such refunds to be made semiannually for a period not to exceed ten (10) years from the date of extension agreement.

In no case shall the total of refunds exceed the amount deposited for the extension. Deposits will not draw interest. All extensions shall be the property of the Company.

Notwithstanding any other provision of this section 12.s., if the amount deposited for a main extension exceeds the actual cost of constructing the main, the excess deposit will be refunded by the Company within thirty days of completion of the main extension.

The Company shall have no obligation to make any extensions during the months of December, January, February, or March.

13. Tariff Provisions Changes. It shall be the obligation of the Company:
  - a. Upon written acceptance of this ordinance, to provide to the City Manager a complete copy of all Company tariff provisions on record with the PUCO which may be in force in the City at the time of the effective date of this ordinance; and
  - b. Upon submission by the Company to the PUCO of any change in its tariff provisions, to forward a copy of the submission to the City Manager simultaneously with the filing with the PUCO.
14. Rates and Charges During Term of Franchise. In the event that the City Council and the Company shall not have entered into a new ordinance contract to replace and supersede this ordinance upon its expiration date, the Company's rates, charges, terms and conditions for service within the City limits on the date the ordinance expires shall continue to govern until such time as a new ordinance contract is entered into or until rates, charges, terms and conditions have been authorized by the PUCO.

15. Miscellaneous.

- a. All costs related to the pension/retirement benefits for Donald D. Clark and Roberta R. Weichelt, as detailed in the contract of sale dated August 17, 1994 between Utility Holdings, Inc. and Donald D. Clark, and all amendments thereto, are not included as an expense for the purpose of establishing the revenue requirement or rates set by this ordinance and will never be includable expenses for the purpose of establishing revenue requirements or rates in any other ordinance with the City or in any case before the Public Utilities Commission of Ohio.
- b. The interest that the Company has ceased accruing on Donald D. Clark's note payable to the Company, as detailed in the contract of sale dated August 17, 1994 between Utility Holdings, Inc. and Donald D. Clark, and all amendments thereto, has not been construed or included as an expense for the purpose of establishing the revenue requirement or rates set by this ordinance and will never be includable as an expense for the purpose of establishing revenue requirements in any other ordinance with the City or in any case before the Public Utilities Commission of Ohio.
- c. The cost of the advance to the Company from its parent, Utility Holdings, Inc., as detailed in the contract of sale dated August 17, 1994 between Utility Holdings, Inc. and Donald D. Clark, and all amendments thereto, has not been included as an expense for purposes of establishing the Company's revenue requirement or rates in this ordinance, and will never be an includable expense for purposes of establishing the Company's revenue requirement or rates in any other ordinance with the City or in any case before the Public Utilities Commission of Ohio.
- d. The Company will hold its customers, with the exception of Donald D. Clark, harmless from any rate impact that

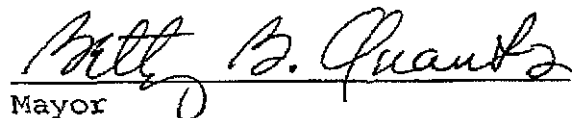


the litigation over the ownership of the stock of the Company might have.

SECTION 2: Repeal of Prior Ordinances. Ordinance No. 2126 as previously adopted on September 18, 1990, and as amended by Ordinance No. 2258, previously regulating the rates and prices of the Company, are hereby repealed and superseded by this ordinance.

SECTION 3: Company Acceptance of Ordinance. If written acceptance of this ordinance by the Company is filed with the Clerk of the City within 30 days after its passage by the City Council, this ordinance shall constitute a contract between the City and the Company for the period heretofore stated.

SECTION 4. Effective Date. This ordinance shall take effect at the earliest time allowed by law.

  
Mayor

ADOPTED: December 5, 1995

ATTEST: \_\_\_\_\_

  
CLERK OF OXFORD CITY COUNCIL

INTRODUCED BY: JANIS DUTTON

PREPARED BY: LAW (STAFF)

a:ordinanc.doc

**ATTACHMENT C**

Fax: 228-0201

FILED

2006 JUN 28 PM 2:05

COURT OF COMMON PLEAS  
BUTLER COUNTY, OHIOCOURT REPORTER  
BUTLER COUNTY  
CLERK OF COURTS

(12)

KEITH G. SMITH, Individually and  
Derivatively on behalf of UHI  
ACQUISITION CORPORATION, *et al.*,

Plaintiffs,

-v-

ROBERT M. SANDERS, *et al.*,

Defendants.

Case No. 2005 CV 030769

(Judge Oney)

AGREED JUDGMENT ENTRY

As a result of the resolution of all matters in controversy herein, all of the parties hereto, Keith Smith, UHI Acquisition Corp. and its affiliates, Utility Holdings, Inc., Oxford Natural Gas Company ("ONG"), Verona Natural Gas Company and Utility Construction, Inc. (UHI Acquisition Corp and all of its affiliates, including but not limited to ONG, shall be referred to collectively herein as "UHI"), by and through counsel, hereby stipulate and agree that final judgment shall be and hereby is rendered in these proceedings against Robert Sanders, Carol Sanders and Frank Sanders as follows, which shall remain binding on all parties hereto for as long as Keith Smith remains a shareholder of UHI. The agreement by Robert Sanders, Carol Sanders and Frank Sanders to the terms of this Agreed Judgment Entry does not constitute an admission by them of liability with respect to any of the claims or allegations in this action. Accordingly, it is hereby ORDERED, ADJUDGED and DECLARED as follows:

- 2 -

1. The existing Employment Agreements between ONG and Robert Sanders and ONG and Frank Sanders, are hereby terminated and rescinded effective upon entry of the Agreed Judgment and are declared to be void and of no further force or effect; provided, however, that all benefits, allowances, payments of expenses, reimbursement of expenses, travel and entertainment expenses, reimbursement of military expenses, and other payments to, or for the benefit of, Robert Sanders and Frank Sanders, pursuant to their ONG Employment Agreement (except for their base salary), shall be subject to review under the Hart & Gersbach Agreed Upon Procedures process described in Section 7 hereof and to the offset procedure set forth in Section 9 hereof.

2. Robert Sanders hereby resigns as an officer of UHI and shall withdraw completely from active management of the companies upon entry of this Agreed Judgment. This shall include elimination of signatory authority on all UHI bank accounts. Robert Sanders will remain a member of the UHI/ONG Board of Directors. Robert Sanders will continue to be paid a salary of \$115,000.00 per year, plus reasonable fringe benefits as mutually agreed upon by him and Keith Smith. In consideration of this payment, Robert Sanders shall consult with and provide all necessary services to ONG in connection with the pending Public Utilities Commission of Ohio rate case. If Sanders materially violates any of the terms of this Agreed Judgment he shall forfeit his right to payment of this \$115,000 salary and UHI shall cease paying it. Frank Sanders has previously resigned as an officer and director with UHI but shall serve as General Manager of UHI through June 30, 2006 at his current salary. No bonuses will be paid to Robert Sanders or Frank Sanders. Carol Sanders hereby resigns from all positions which she holds at UHI upon entry of this Agreed Judgment.

- 3 -

3. Robert Sanders, Frank Sanders, Carol Sanders and their officers, agents, servants, employees, attorneys and persons acting in concert with them are hereby permanently enjoined from:

- a. Misappropriating or wasting any assets of UHI;
- b. Causing UHI to pay any of their personal expenses;
- c. Taking any company property or assets of UHI for personal use and/or diverting corporate assets;
- d. Using UHI's bank accounts and credit cards for personal benefit or for any purpose not directly related to the business of UHI and approved in advance by Keith Smith.

4. Kristy Smith is hereby appointed acting Controller of UHI with agreed upon duties including providing a weekly summary of all mail, cash receipts and disbursements of the business which shall be sent simultaneously to both Keith Smith and Robert Sanders. She will have signatory authority on all accounts.

5. Within (5) days of the entry of this Agreed Judgment, ONG shall pay \$25,000.00 to John Stenger in full payment of the consulting payment which was due May 1, 2006. In consideration of this payment, John Stenger shall serve as a technical consultant for Kristy Smith and to the Service Department Staff for the duration of his 2006 Consulting Agreement which expires on April 30, 2007.

6. Within (15) days of the entry of this Agreed Judgment, Robert Sanders will provide a full and complete accounting of the current financial position of UHI and disclose in writing all bank accounts, deposits, and other assets of UHI about which he has knowledge or

- 4 -

which are in his possession, custody, or control. This will include all accounts, active, inactive and/or closed since September 13, 2001.

7. UHI shall hire the firm of Hart and Gersbach, Inc., CPA ("Hart & Gersbach"), to complete the audit of UHI and its affiliates which was begun by Jackson, Rolfe, Spurgeon & Co. Hart & Gersbach shall audit the period of January 1, 2005 to December 31, 2005 and issue their opinion within 120 days of the entry of this Agreed Judgment, unless the pending PUCO rate proceeding prevents the issuance of such financials in which case the opinion shall be issued as soon as practicable. Hart & Gersbach also will be immediately engaged to perform the following Agreed Upon Procedures for which they will issue their Agreed Upon Procedures Report and Findings within 90 days of the entry of this Agreed Judgment:

- a. With respect to the Richard Howe Personal Goodwill Agreement and the Richard Howe Noncompete Agreement (the "Howe Agreements"), Hart & Gersbach will recapitulate all transactions to date, in order to provide a complete history and a current calculation of the correct beginning balance thereof, all payments of principal and/or interest, the amount presently owed and any accrued interest (the "Recalculated Howe Agreements").
- b. Hart & Gersbach will prepare a schedule of all disbursements such as bonuses, interest payments, car allowances, credit card payments, tuition payments, payments of personal expenses, payments to third party vendors, equipment purchases, travel and entertainment expenses, reimbursement for military expenses, and all other payments made to or for the benefit of Robert Sanders, Frank Sanders or Carol Sanders since January 1, 2002, (including but not limited to the payments challenged in

- 5 -

this action), which are not ordinary and necessary and reasonably related to the business of UHI; and

- c. Hart & Gersbach will provide a schedule of payments previously made on behalf of Robert Sanders and previous reductions made to the balance of the Howe Agreements to reimburse UHI for any of the disbursements listed in the schedule provided in Section 7(b) above and, if possible, information regarding the source of such reimbursements.
- d. Robert Sanders shall have the right to submit to Hart & Gersbach any information relevant to its Agreed Upon Procedure Report and Findings and Hart & Gersbach shall reasonably consider and take into account any such information submitted by Robert Sanders prior to issuing their Agreed Upon Procedure Report and Findings. The Hart & Gersbach Agreed Upon Procedure Report and Findings shall be final, binding and conclusive on all parties to the Judgment Entry.

8. Robert Sanders shall fully and completely cooperate in the accounting and disclosure described in Section 6 hereof and in the Hart & Gersbach audit and Agreed Upon Procedure Report described in Section 7 hereof. If, in the reasonable opinion of Hart & Gersbach, Sanders does not fully and completely cooperate, which opinion shall specify in writing with specificity how Sanders did not fully and completely cooperate, the \$115,000.00 payments provided for in Section 2 of this Agreed Judgment shall cease and UHI shall stop making such payments.

9. Robert Sanders shall repay all payments made to him, to Frank Sanders and/or to Carol Sanders, or for their respective benefit which are determined by Hart & Gersbach under

- 6 -

Section 7 hereof to have been not ordinary and necessary and reasonably related to the business of UHI by offsetting this amount against and reducing the amount of principal and interest owed under the Recalculated Howe Agreements. Following such offset and reduction, Sanders shall be paid interest at the rate of interest provided for in the Howe Agreements; provided, however, that such interest shall accrue only on the remaining balance of the Recalculated Howe Agreements, if any, after the offset and reduction provided for in this Section and in Section 13 hereof.

10. Keith Smith and Robert Sanders shall agree upon a third director for UHI and ONG within thirty days of the entry of this Agreed Judgment. If such parties are unable to agree upon such a director, John McCoy, counsel to the company, shall appoint a third person who shall be independent of both Keith Smith and Robert Sanders.

11. Following the entry of this Agreed Judgment Entry, Keith Smith and Robert Sanders shall be provided with quarterly financial reports prepared by Hart and Gersbach and the parties shall hold quarterly meetings with UHI management to discuss operations, results, budgets, planning, etc.

12. Based upon the benefit conferred upon UHI as a result of the pending derivative action, UHI will reimburse Keith Smith for all his legal and professional expenses associated with the derivative litigation in a manner and upon a periodic payment schedule to be agreed upon by him and Robert Sanders; provided, however, that all of such expenses shall be reimbursed, in full, no later than March 31, 2007.

13. Within thirty (30) days of the entry of this Agreed Judgment, Robert Sanders will provide a complete and final accounting of the legal and professional expenses that UHI and its affiliates have incurred associated with the JP Chase Morgan and Keith Smith litigation and



- 7 -

related proceedings. Hart & Gersbach shall review such legal expenses and shall determine which legal expenses are ordinary and necessary and reasonably related to the business of UHI and/or ONG and which are for the personal benefit of Robert Sanders. Robert Sanders shall have the right to submit any information to Hart & Gersbach which is relevant to this determination and Hart & Gersbach shall reasonably consider and take into account any such information submitted by Robert Sanders prior to making its determination. Any legal expenses determined by Hart & Gersbach to have been for the personal benefit of Robert Sanders shall be repaid by offsetting this amount against the Recalculated Howe Agreements as provided in Section 9 hereof, which is incorporated herein by reference; provided, however, that the amount of any such offset for legal expenses as provided in this Section shall not exceed the sum of One Hundred Thousand Dollars (\$100,000.00). The Hart & Gersbach determination with respect to legal fees as provided in this Section shall be final, binding and conclusive on all parties hereto.

14. Robert Sanders will provide a complete and accurate certification of all corporate liabilities of UHI and ONG as of May 31, 2006 within thirty (30) days of the entry of this Agreed Judgment order.

15. Robert Sanders on behalf of UHI shall be permitted to continue to seek a refinancing of the existing JP Morgan/Chase loan to UHI. If Robert Sanders is able to procure such refinancing on commercially reasonable terms, Keith Smith will agree to such a refinancing even if Keith Smith's shares are not redeemed in connection with such refinancing transaction.

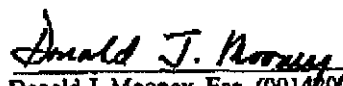
16. Up to and including April 15, 2007 UHI shall have an option to redeem Keith Smith's shares of UHI common stock at an option price of \$1.75 million plus any unpaid amount owed by Robert Sanders on the First Financial Bank debt, which option price shall be payable in cash at closing.

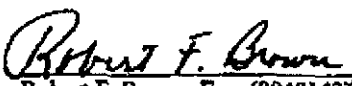
- 8 -

SO ORDERED this 27 day of June, 2006.  
Judge Patricia Oney

Have Seen and Agreed to:

  
James E. Burke (0032731)  
Christy M. Nageleisen (0076600)  
Keating, Muething & Klekamp, PLL  
One East Fourth Street, Suite 1400  
Cincinnati, Ohio 45202  
Tel: (513) 579-6428  
Fax: (513) 579-6457  
[jburke@kmklaw.com](mailto:jburke@kmklaw.com)  
[cnageleisen@kmklaw.com](mailto:cnageleisen@kmklaw.com)  
Attorneys for Plaintiff,  
Keith G. Smith on Behalf of UHI Acquisition

  
Donald J. Mooney, Esq. (0014202)  
B. Scott Boster, Esq. (0031541)  
Ulmer & Berne, LLP  
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Cincinnati, Ohio 45202-2409  
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Counsel for Defendants

  
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[rfr@rendigs.com](mailto:rfr@rendigs.com)  
Counsel for UHI Acquisition Corp.

1644639.3

**ATTACHMENT D**

**COURT OF COMMON PLEAS**

**BUTLER COUNTY, OHIO**

**KEITH G. SMITH, Individually and ) Case No. 2005 CV 030769**  
**Derivatively on behalf of UHI )**  
**ACQUISITION CORPORATION, et al., ) (Judge Oney)**

**Plaintiffs, )**  
**COURT )**

**-v-**

**FEB 12 2006**

**ROBERT M. SANDERS, et al., ) AGREED SUPPLEMENTAL**  
**CINDY L. SANDERS, ) JUDGMENT ENTRY**  
**GLENN H. SANDERS )**

**Defendants. )**

This matter came before the Court upon the Motion of Plaintiffs Keith G. Smith and UHI Acquisition Corp. ("UHI") on their behalf and on behalf of the UHI affiliates Utility Holdings, Inc., Oxford Natural Gas Company, Verona Natural Gas Company and Utility Construction, Inc. (also referred to collectively herein as "UHI"), for a Supplemental Judgment Entry against Robert M. Sanders in the amount of \$999,133.31. Based upon the Motion, the Affidavit of Richard Perkins and the attachments thereto and all other pleadings and matters of record in this proceeding, this Court is fully advised of the premises and finds that Plaintiffs' motion is well taken and shall be and hereby is granted.

IT IS THEREFORE ORDERED that the Plaintiffs' Motion for Entry of Supplemental Judgment is granted and judgment is hereby rendered jointly and severally in favor of UHI against Defendant Robert M. Sanders in the amount of \$999,133.31, plus interest thereon from the date hereof, until paid, as provided by law.

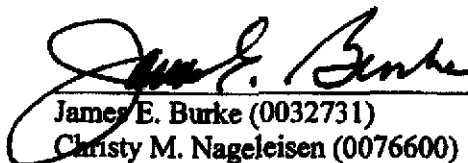
IT IS FURTHER ORDERED that as a result of the amounts taken from UHI by Sanders, any and all debts, duties and obligations of UHI pursuant to the Richard Howe Personal

Goodwill Agreement and the Richard Howe Noncompete Agreement have been fully paid, satisfied, and performed and that any and all debts, duties and obligations of UHI to Sanders and/or to any other parties under the Richard Howe Personal Goodwill Agreement and the Richard Howe Noncompete Agreement are hereby fully and completely released and discharged.

SO ORDERED this \_\_\_\_ day of February, 2007.

\_\_\_\_\_  
Judge Patricia Oney

Have Seen and Agreed to:

  
James E. Burke (0032731)  
Christy M. Nageleisen (0076600)

Keating, Muething & Klekamp, PLL  
One East Fourth Street, Suite 1400  
Cincinnati, Ohio 45202  
Tel: (513) 579-6428  
Fax: (513) 579-6457

[jburke@kmklaw.com](mailto:jburke@kmklaw.com)

[cnageleisen@kmklaw.com](mailto:cnageleisen@kmklaw.com)

*Attorneys for Plaintiff,*

*Keith G. Smith on Behalf of UHI Acquisition*



David P. Kamp, Esq.  
White, Getgey & Meyer Co. LPA  
1700 Fourth & Vine Tower  
One West Fourth Street  
Cincinnati, Ohio 45202-3621  
*Counsel for Defendants*

**FILED**  
2007 FEB -8 AM 9:38  
**COURT OF COMMON PLEAS**  
**BUTLER COUNTY, OHIO**

<b>KEITH G. SMITH, et al.,</b>	)	Case No. 2005 CV 030769
<b>Derivative of UHI</b>	)	
<b>ACQUISITION CORPORATION, et al.,</b>	)	(Judge Oney)
	)	
<b>Plaintiffs,</b>	)	
	)	
-v-	)	
	)	<b>SUPPLEMENTAL JUDGMENT</b>
<b>ROBERT M. SANDERS, et al.,</b>	)	<b>ENTRY</b>
	)	
<b>Defendants.</b>	)	

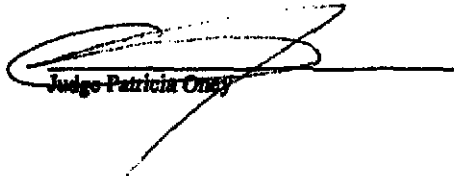
This matter came before the Court upon the Motion of Plaintiffs Keith G. Smith and UHI Acquisition Corp. ("UHI") on their behalf and on behalf of the UHI affiliates Utility Holdings, Inc., Oxford Natural Gas Company, Verona Natural Gas Company and Utility Construction, Inc. (also referred to collectively herein as "UHI"), for a Supplemental Judgment Entry against Robert M. Sanders in the amount of \$999,133.31. Based upon the Motion, the Affidavit of Richard Perkins and the attachments thereto and all other pleadings and matters of record in this proceeding, this Court is fully advised of the premises and finds that Plaintiffs' motion is well taken and shall be and hereby is granted.

IT IS THEREFORE ORDERED that the Plaintiffs' Motion for Entry of Supplemental Judgment is granted and judgment is hereby rendered jointly and severally in favor of UHI against Defendant Robert M. Sanders in the amount of \$999,133.31, plus interest thereon from the date hereof, until paid, as provided by law.

IT IS FURTHER ORDERED that as a result of the amounts taken from UHI by Sanders, any and all debts, duties and obligations of UHI pursuant to the Richard Howe Personal

Goodwill Agreement and the Richard Howe Noncompete Agreement have been fully paid, satisfied, and performed and that any and all debts, duties and obligations of UHI to Sanders and/or to any other parties under the Richard Howe Personal Goodwill Agreement and the Richard Howe Noncompete Agreement are hereby fully and completely released and discharged.

SO ORDERED this 7 day of February, 2007.

  
Judge Patricia Oney



~ (513) 245-1010 ~

**FILE**

October 5, 2006

Board of Directors  
UHI Acquisition Corporation and Subsidiaries

Our firm has been engaged to complete the audit of UHI and its affiliates for the period of January 1, 2005 to December 31, 2005. We also have been engaged to perform certain Agreed Upon Procedures per the Agreed Judgment Entry from the Court of Common Pleas, Butler County, Ohio, dated June 28, 2006. Our Agreed Upon Procedures report was due within 90 days of the entry of the Agreed Judgment. On September 25, 2006, we informed management and the Board of Directors of UHI, that due to the significant number of transactions to review and the number of questionable items, we needed additional time to complete the Agreed Upon Procedures Report.

Management has informed our firm of the dire cash flow shortage and the upcoming October 15, 2006 Bank payment obligation. Section 9 of the Agreed Judgment Entry states, "Robert Sanders shall repay all payments made to him, to Frank Sanders and/or to Carol Sanders, or for their respective benefit which are determined by Hart & Gersbach under Section 7 hereof to have been not ordinary and necessary and reasonable related to the business of UHI ....". Management has requested that we supply an advanced look at an Executive Summary so that all parties can explore whether repayments from Mr. Sanders can be made in the immediate future to alleviate the existing cash flow shortage. This summary is attached and constitutes a "soft" DRAFT of the Final Agreed Upon Procedures findings. The attached summary reflects the questionable items that our firm will include in our final Agreed Upon Procedures Report. The summary of items attached is accurate and well documented. The interest calculations are "estimated interest calculations" that will be finalized in our Final Report over the next two to three weeks. The attached summary is a DRAFT and is not to be construed as being a final report. Although it is an accurate reflection of our overall conclusions. More work needs to be done to finalize the information and refine the exact amounts.

Regards,

A handwritten signature in black ink, reading "Thomas J. Hart".

Thomas J. Hart CPA

NORTHGATE OFFICE: 3377 Compton Road (at Colerain) • Suite 110 • Cincinnati, Ohio 45251-2507 • Fax (513) 385-5503

HAMILTON OFFICE: Key Building • Suite 700 • Hamilton, Ohio 45011-2751 • Fax (513) 868-2102

E-mail: hartgersbach@fuse.net



# **EXECUTIVE SUMMARY DRAFT** **AGREED UPON PROCEDURES REPORT** As of October 5, 2006

	DESCRIPTION	DIVERTED AMOUNTS
1	American Express Expenses - Un-reimbursed personal expenses - detail in final Agreed Upon Procedures Report	\$ 446,816.71
2	Unpaid Advances/Unsupported Invoices to Bynes Conway: 2004 2005 2006	\$ 16,019.48 \$ 33,822.68 \$ 25,000.00
3	Interest on Total Advances to Bynes Conway - activity starting in 2001 through 2006 Unauthorized Loans/Advances to Bynes Conway Interest at 10% - estimated using the same rate as Subordinated Debt Interest calculation is "SOFT" - will be finalized in Final Agreed Upon Procedures Report	
	Total Advances	\$ 754.62
	2001	\$ 40,716.71
	2002	\$ 10,757.39
	2003	\$ 2,516.03
	2004	\$ 2,467.81
	2005	\$ 1,438.38
	2006	
	Total Advances of:	\$ 945,966.68
4	Invoices From Bynes Conway - Labor/Installation Work in excess of market values: Details To Be Provided in Final Agreed Upon Procedures Report	
	Invoice Amount	Estimated Market Value
	\$ 11,200.00	\$ 11,200.00
	\$ 9,000.00	\$ 9,000.00
	\$ 52,200.00	\$ 44,370.00
	\$ 23,300.00	\$ 1,581.00
	\$ 750.00	\$ 750.00
	\$ 63,500.00	\$ 43,520.00
	\$ 5,472.00	\$ -
	\$ 2,664.00	\$ 2,664.00
		\$ 7,830.00
		\$ 21,719.00
		\$ 19,980.00
		\$ 5,472.00

**EXECUTIVE SUMMARY DRAFT  
AGREED UPON PROCEDURES REPORT  
As of October 5, 2006**

DESCRIPTION		DIVERTED AMOUNTS																									
5	Lebanon Citizens National Bank - Diversion of ONG and UCI Monies	\$ 317,797.13																									
6	Sherefax Creditk Union - Change of endorsement of ProLiance Check # 7217 dated 5-21-04, payable to ONG Endorsement Changed By Robert Sanders and Deposited into his personal account	\$ 100,000.00																									
7	Salary & Bonus - Unauthorized Increases/Payments - Robert and Frank Sanders																										
	<table><tr><td></td><td>Robert</td><td>Frank</td></tr><tr><td>2002 - Salary/Bonus - Expected Authorized Salary - Each Year</td><td>\$ 62,730.80</td><td>\$76,923</td></tr><tr><td></td><td colspan="2">\$100,000 Annualized</td></tr><tr><td>2003 - Unauthorized Salary/Bonus - In excess of 2002</td><td>\$ 3,200.00</td><td>\$ 15,538.70</td></tr><tr><td>2004 - Unauthorized Salary/Bonus - In excess of 2002</td><td>\$ 9,200.00</td><td>\$ 15,414.82</td></tr><tr><td>2005 - Unauthorized Salary/Bonus - In excess of 2002</td><td>\$ 54,249.16</td><td>\$ 17,391.86</td></tr><tr><td>2006 - Unauthorized Salary/Bonus - In excess of 2002</td><td>\$ 55,000.00</td><td>\$ 10,486.89</td></tr></table>		Robert	Frank	2002 - Salary/Bonus - Expected Authorized Salary - Each Year	\$ 62,730.80	\$76,923		\$100,000 Annualized		2003 - Unauthorized Salary/Bonus - In excess of 2002	\$ 3,200.00	\$ 15,538.70	2004 - Unauthorized Salary/Bonus - In excess of 2002	\$ 9,200.00	\$ 15,414.82	2005 - Unauthorized Salary/Bonus - In excess of 2002	\$ 54,249.16	\$ 17,391.86	2006 - Unauthorized Salary/Bonus - In excess of 2002	\$ 55,000.00	\$ 10,486.89	<table><tr><td>\$ 18,738.70</td></tr><tr><td>\$ 24,614.82</td></tr><tr><td>\$ 71,641.04</td></tr><tr><td>\$ 65,486.89</td></tr></table>	\$ 18,738.70	\$ 24,614.82	\$ 71,641.04	\$ 65,486.89
	Robert	Frank																									
2002 - Salary/Bonus - Expected Authorized Salary - Each Year	\$ 62,730.80	\$76,923																									
	\$100,000 Annualized																										
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\$ 18,738.70																											
\$ 24,614.82																											
\$ 71,641.04																											
\$ 65,486.89																											
8	Robert M. Sanders - unauthorized car Allowance and Interest Payments - Taken As Payroll Add Items to Payroll Checks	<table><tr><td>Car Allowance</td><td>\$ 27,776.00</td></tr><tr><td>Interest</td><td>\$ 43,885.38</td></tr></table>	Car Allowance	\$ 27,776.00	Interest	\$ 43,885.38																					
Car Allowance	\$ 27,776.00																										
Interest	\$ 43,885.38																										
9	Legal and Professional Expenses paid by the Company for the personal benefit of Robert Sand Total Legal and Professional Expenses: \$ 679,130.84 Personal Expenses Paid On Behalf of Robert Sanders Break Out of Personal Expenses versus Company Related expenses not provided by Bob Sanders as required under Item #13 of the Agreed Judgment Entry. Amount due to be reimbursed by Robert Sanders Shall Not Exceed \$100,000 per the Agreed Judgment Entry	<table><tr><td>Limit</td><td>\$ 100,000.00</td></tr><tr><td>???</td><td>???</td></tr></table>	Limit	\$ 100,000.00	???	???																					
Limit	\$ 100,000.00																										
???	???																										
10	Other personal disbursements that were made by the Company on behalf of Robert Sanders: Detail Listing of Checks and Payee - to be provided in final Agreed Upon Procedures Report	\$ 120,042.06																									

**EXECUTIVE SUMMARY DRAFT  
AGREED UPON PROCEDURES REPORT  
As of October 5, 2006**

	<u>DESCRIPTION</u>	<u>DIVERTED AMOUNTS</u>
11	Scott Moody - January 2002 to August 2002 Payroll Incurred While Subcontractor to ONG - Services rendered for Robert Sanders personally and not ONG	\$ 12,320.00
12	Oxford Fire & Security Systems - Expenses Paid on Behalf of Robert Sanders' Family	\$ 1,149.36
13	Frank Sanders - unaccounted for cash taken by presenting "counter check" at Bank One 7-1-02 for "CASH" Cash proceeds accounted for - no copy of Bank One Large Currency Report	\$ 40,000.00
14	Frank Sanders - check #3556 dated 12-4-02 - presented as reimbursement for down payment on Howe Subordinated Debt for money withdrawn from Frank's IRA. However, no record of such money being deposited into ONGUHI account but reimbursed from ONG back to Frank Sanders	\$ 75,054.51
15	2002 Forgiveness of Loan to Frank Sanders	\$ 12,642.03
16	Bank Financing Fees - Community South Bank - Due Diligence Fee not reimbursed to ONG	\$ 5,000.00
17	Larry Fanning - invoices paid by ONG for services rendered to Robert Sanders & Related Parties	\$ 2,500.00
18	UCI Invoices - marked paid but payments are not traceable into cash receipts Journal - Hart & Gersbach CPAs is still reviewing where these checks were deposited - Details to Be provided in Final Agreed Upon Procedures Report	\$ 18,106.28
19	Mileage Expenses - ONG employees using ONG trucks - driving to Bymes Conway Project Sites - amounts being calculated by Hart & Gersbach and will be included in their Final Agreed Upon Procedures Report	????
20	Check to the IRS for the benefit of Robert Sanders - untraceable into the general ledger - should have been a dividend however the payment was not included in the 2002 audited financial statements as dividend, final accounting treatment will be verified by Hart & Gersbach in their Final Agreed Upon Procedures Report Check #1737, dated 4-15-02	\$ 67,000.00

**EXECUTIVE SUMMARY DRAFT  
AGREED UPON PROCEDURES REPORT  
As of October 5, 2006**

	DESCRIPTION	DIVERTED AMOUNTS
21	Estimated interest on diverted monies by Robert Sanders - estimated at 10%	\$ 369,361.42
	<b>TOTAL - AMOUNT OF MONEY - To Be Reimbursed by ROBERT SANDERS</b>	<b><u>\$ 2,128,225.30</u></b>

<b>A</b>	<b>NOTE PAYABLE - SUBORDINATED DEBT - Robert Sanders' Purchase of Richard Hows Positions</b>	
	Corrected Balance - amount paid by Robert Sanders In total for Howe's Position	\$ 1,250,000.00
	Payments Made out of ONG/UHI on the Subordinated Debt to Robert Sanders:	
	2002 Subordinated Debt Payment - ONG check #3405, dated 10-21-02	\$ (160,000.00)
	2004 Subordinated Debt Payment - ONG check #5679, dated 1-28-04	\$ (40,000.00)
	2004 Interest payment on subordinated debt - UHI check #1039, dated 3-23-04	\$ (43,874.33)
	2004 Subordinated Debt Payment - UHI check #1044, dated 4-28-04	\$ (2,000.00)
	2004 Subordinated Debt Payment - UHI check #1046, dated 4-28-04	\$ (147,000.00)
	2005 Subordinated Interest payment check #1057 dated 4-4-05	\$ (43,386.51)
	2005 Subordinated Interest payment check #9574 dated 10-3-05	\$ (16,718.24)
	Total Subordinated Payments to Robert Sanders	<u>\$ (452,979.08)</u>

	Estimated remaining balance due under Subordinated Debt	\$ 797,020.92
<b>B</b>	Estimated interest On Note Payable - Subordinated Debt - estimated at 10%	\$ 413,893.36
	<b>ESTIMATED - AMOUNT OF MONEY - PAYABLE TO ROBERT SANDERS - SUBORDINATED DEBT</b>	<b><u>\$ 1,210,914.28</u></b>
	Estimated - AMOUNT DUE FROM ROBERT M. SANDERS - per Item #9 of Agreed Judgment Entry	<u>\$ 917,311.02</u>



November 14, 2006

Board of Directors  
UHI Acquisition Corporation and Subsidiaries

Our firm has been engaged to complete the audit of UHI and its affiliates for the period of January 1, 2005 to December 31, 2005. We also have been engaged to perform certain Agreed Upon Procedures per the Agreed Judgment Entry from the Court of Common Pleas, Butler County, Ohio, dated June 28, 2006. Our Agreed Upon Procedures report was due within 90 days of the entry of the Agreed Judgment. On September 25, 2006, we informed management and the Board of Directors of UHI, that due to the significant number of transactions to review and the number of questionable items, we needed additional time to complete the Agreed Upon Procedures Report.

Section 9 of the Agreed Judgment Entry states, "Robert Sanders shall repay all payments made to him, to Frank Sanders and/or to Carol Sanders, or for their respective benefit which are determined by Hart & Gersbach under Section 7 hereof to have been not ordinary and necessary and reasonable related to the business of UHI ....". Our firm has completed, to the extent possible, our Agreed Upon Procedures. We offer the Board of Directors and UHI's management an Executive Summary of our Final Report. Although we have completed some additional transactions that remain, in our opinion, "questionable" - for sake of issuing our Final Report, they have not been listed on the attached Executive Summary. Those items are adequately covered and explained in the narrative section of our detail written report, which we will issue over the next five (5) to ten (10) days.

Should you have any questions, please contact me directly.

Regards,

Thomas J. Hart CPA

*Thomas J. Hart, CPA*

NORTHCAPE OFFICE: 3377 Compton Road (at Colerain) • Suite 110 • Cincinnati, Ohio 45251-2507 • Fax (513) 385-5503  
HAMILTON OFFICE: Key Building • Suite 700 • Hamilton, Ohio 45011-2751 • Fax (513) 868-2102  
E-mail: hartgersbach@fuse.net

# **FINAL - EXECUTIVE SUMMARY** **AGREED UPON PROCEDURES REPORT**

DESCRIPTION		DIVERTED AMOUNTS
1	American Express Expenses - Un-reimbursed personal expenses - See detail in narrative of final Agreed Upon Procedures Report	\$ 446,461.88
2	Unpaid Advances/Unsupported Invoices to Bynnes Conway: Bynnes Conway is an affiliated company owed and controlled by Robert Sanders that was foreclosed upon by JP Morgan	
	2002	\$ 3,000.00
	2004	\$ 16,019.48
	2005	\$ 33,622.68
	2006	\$ 25,000.00
3	Interest on Total Advances to Bynnes Conway - activity starting in 2001 through 2006 Unauthorized Loans/Advances to Bynnes Conway Interest at 10% - using the same rate as Subordinated Debt	
	2001	\$ 180.68
	2002	\$ 17,988.78
	2003	\$ 2,638.33
	2004	\$ 3,555.81
	2005	\$ 5,861.78
	2006	\$ 2,171.05
	Total Advances of:	\$ 948,306.88
4	Invoices From Bynnes Conway - Labor/Installation Work in excess of market values: Details Are Provided in Final Narrative of the Agreed Upon Procedures Report	
	Invoice Amount	Estimated Market Value
	\$ 11,200.00	\$ 11,200.00
	\$ 9,000.00	\$ 9,000.00
	\$ 52,200.00	\$ 44,370.00
	\$ 23,300.00	\$ 1,581.00
	\$ 750.00	\$ 750.00
		\$ 7,830.00
		\$ 21,719.00

# **FINAL - EXECUTIVE SUMMARY** **AGREED UPON PROCEDURES REPORT**

	DESCRIPTION	DIVERSED AMOUNTS		
5	<p>Lebanon Citizens National Bank (LCNB) - Diversion of ONG and UCI Monies</p> <p>LCNB account was opened by Frank and Robert Sanders using ONG's name and federal ID.</p> <p>ONG and UCI checks were deposited into the LCNB account and disbursements were made from the account directly to Robert, Frank and Carol Sanders, and other entities on behalf of the Sanders.</p> <p>The LCNB account was never recorded on the final records of ONG nor UCI. The account was never disclosed to the independent auditors nor JP Morgan during its duration of 2003-2006. The independent auditors have since issued a retraction notice regarding the 2004 audited financial statements and their audit opinion due to immaterial misstatement.</p>	\$ 63,500.00	\$ 43,520.00	\$ 19,980.00
		\$ 5,472.00	-	\$ 5,472.00
		\$ 2,864.00	2,864.00	-
				\$ 317,797.13
6	<p>Sharefax Credit Union - Change of endorsement of ProLiance Check # 7217 dated 5-21-04, payable to ONG</p> <p>Endorsement Changed By Robert Sanders and Deposited into his personal account at Sharefax Credit Union</p>		\$	100,000.00
7	<p>Salary &amp; Bonus - Unauthorized Increases/Payments - Robert and Frank Sanders</p> <p>2002 - Salary/Bonus - Expected Authorized Salary - Each Year</p> <p>2003 - Unauthorized Salary/Bonus - In excess of 2002</p> <p>2004 - Unauthorized Salary/Bonus - In excess of 2002</p> <p>2005 - Unauthorized Salary/Bonus - In excess of 2002</p> <p>2006 - Unauthorized Salary/Bonus - In excess of 2002</p>	Robert	Frank	
		\$ 62,730.60	\$76,923	
		\$100,000 Annualized		
		\$ 3,200.00	\$ 15,538.70	\$ 18,738.70
8	<p>Robert M. Sanders - unauthorized car Allowance and Interest Payments - Taken As Payroll Add Items to Payroll Checks</p> <p>2003 - Unauthorized Salary/Bonus - In excess of 2002</p> <p>2004 - Unauthorized Salary/Bonus - In excess of 2002</p> <p>2005 - Unauthorized Salary/Bonus - In excess of 2002</p> <p>2006 - Unauthorized Salary/Bonus - In excess of 2002</p>	\$ 9,200.00	\$ 15,414.82	\$ 24,614.82
		\$ 54,248.18	\$ 17,391.86	\$ 71,640.04
		\$ 55,000.00	\$ 10,486.89	\$ 65,486.89
8	<p>Robert M. Sanders - unauthorized car Allowance and Interest Payments - Taken As Payroll Add Items to Payroll Checks</p>	Car Allowance	\$	27,776.00
		Interest	\$	43,685.38

# **FINAL - EXECUTIVE SUMMARY AGREED UPON PROCEDURES REPORT**

DESCRIPTION		INVERTED AMOUNTS
9	<p>Legal and Professional Expenses paid by the Company for the personal benefit of Robert Sanders:                      Total Legal and Professional Expenses: \$ 678,130.64                      Personal Expenses Paid On Behalf of Robert Sanders <u>Unknown</u></p> <p><b>NOTE:</b> Break Out of Personal Expenses versus Company Related expenses not provided by Robert Sanders as required under Item #13 of the Agreed Judgment Entry. Amount due to be reimbursed by Robert Sanders Shall Not Exceed \$100,000 per the Agreed Judgment Entry</p>	<p>Limit \$ 100,000.00</p>
10	Other personal disbursements that were made by the Company on behalf of Robert Sanders: Detail Listing of Checks and Payee - See Narrative and List provided in Agreed Upon Procedures Report	\$ 117,311.68
11	Scott Moody (relative of Robert Sanders) - January 2002 to August 2002 Payroll Incurred While Subcontractor to ONG - Services rendered for Robert Sanders personally and not ONG	\$ 12,320.00
12	Oxford Fire & Security Systems - Expenses Paid on Behalf of Robert Sanders' Family Oxford Fire & Security Systems was incorporated by Robert Sanders using ONG's federal ID. The company eventually shut down with vendors and suppliers still being owned. ONG received a Summary Judgment from the Butler County Court for an unpaid claim by a supplier. The court levied ONG's Bank account for the unpaid Judgment.	\$ 1,148.38
13	Frank Sanders - unaccounted for cash taken by presenting "counter check" at Bank One 7-1-02 for "CASH" Cash proceeds unaccounted for - no copy of Bank One Large Currency Report Counter Check prepared and presented by Frank Sanders an money not accounted for in underlying accounting records.	\$ 40,000.00
14	Frank Sanders - check #3556 dated 12-4-02 - presented as reimbursement for down payment on Howe Subordinated Debt for money withdrawn from Frank's IRA. However, no record of such money (from IRA account) being deposited into ONGAUIH account but reimbursed from ONG back to Frank Sanders	\$ 75,054.61
15	2002 Forgiveness of Loan to Frank Sanders	\$ 12,642.03



# **FINAL - EXECUTIVE SUMMARY AGREED UPON PROCEDURES REPORT**

	DESCRIPTION	DIVERTED AMOUNTS
16	Larry Fanning (former employee and now consultant) - Invoices paid by ONG for services rendered to and on behalf of Robert Sanders & Related Parties personally	\$ 2,334.45
17	UCI Invoices - marked paid but payments are not traceable into cash receipts journal - Hart & Gersbach CPAs unable to track the deposits into bank statements or accounting records. See Narrative in Final Agreed Upon Procedures Report	\$ 18,108.28
18	Mileage Expenses - ONG employees using ONG trucks - driving to Bynnes Conway' Project Sites - amounts being calculated by Hart & Gersbach - See Narrative in Final Agreed Upon Procedures Report	See Report Narrative
19	Check to the IRS for the benefit of Robert Sanders - untraceable into the general ledger - should have been a dividend however the payment was not included in the 2002 audited financial statements as dividend, final accounting treatment verified by Hart & Gersbach in their Final Agreed Upon Procedures Report Check #1737, dated 4-18-02	\$ 67,000.00
21	Interest on diverted monies by Robert Sanders - 10% - compounded daily	\$ 488,037.86
<b>TOTAL - AMOUNT OF MONEY - To Be Reimbursed by ROBERT SANDERS</b>		<b>\$ 2,196,357.70</b>

<b>A</b>	<b>NOTE PAYABLE - SUBORDINATED DEBT - Robert Sanders' Purchase of Richard Howe Positions</b>	
	Corrected Balance - amount paid by Robert Sanders in total for Howe's Position	\$ 1,250,000.00
	Payments Made out of ONG/UHI on the Subordinated Debt to Robert Sanders:	
	2002 Subordinated Debt Payment - ONG check #3405, dated 10-21-02	\$ (180,000.00)
	2004 Subordinated Debt Payment - ONG check #6879, dated 1-29-04	\$ (40,000.00)
	2004 Interest payment on subordinated debt - UHI check #1039, dated 3-23-04	\$ (43,874.33)
	2004 Subordinated Debt Payment - UHI check #1044, dated 4-28-04	\$ (2,000.00)
	2004 Subordinated Debt Payment - UHI check #1045, dated 4-28-04	\$ (147,000.00)
	2005 Subordinated interest payment check #1057 dated 4-4-05	\$ (43,388.51)
	2005 Subordinated interest payment check #1058 dated 6-1-05	\$ (7,845.23)

# **FINAL - EXECUTIVE SUMMARY** **AGREED UPON PROCEDURES REPORT**

DESCRIPTION	DIVERTED AMOUNTS
2005 Subordinated Interest payment check#9574 dated 10-3-05	\$ (16,718.24)
Total Subordinated Payments to Robert Sanders	\$ (460,824.31)
Remaining balance due under Subordinated Debt	\$ 789,175.06
8 Interest On Note Payable - Subordinated Debt - at 10%- compounded daily	\$ 403,023.93
<b>TOTAL AMOUNT OF MONEY - PAYABLE TO ROBERT SANDERS - SUBORDINATED DEBT</b>	<b>\$ 1,192,199.62</b>
<b>TOTAL - AMOUNT DUE FROM ROBERT M. SANDERS - per Item #9 of Agreed Judgment Entry</b>	<b>\$ 1,003,188.08</b>

**REVISED - FINAL - EXECUTIVE SUMMARY**  
**AGREED UPON PROCEDURES REPORT**  
As of November 14, 2006

DESCRIPTION		DIVERTED AMOUNTS
1	American Express Expenses - Un-reimbursed personal expenses - See detail in narrative of final Agreed Upon Procedures Report	\$ 443,355.68
2	Unpaid Advances/Unsupported Invoices to Bymes Conway: Bymes Conway is an affiliated company owed and controlled by Robert Sanders that was foreclosed upon by JP Morgan	
	2002	\$ 3,000.00
	2004	\$ 16,019.48
	2005	\$ 33,822.68
	2006	\$ 25,000.00
3	Interest on Total Advances to Bymes Conway - activity starting in 2001 through 2006 Unauthorized Loans/Advances to Bymes Conway Interest at 10% - using the same rate as Subordinated Debt	
	2001	\$ 160.58
	2002	\$ 17,988.78
	2003	\$ 2,638.33
	2004	\$ 3,555.81
	2005	\$ 5,861.78
	2006	\$ 2,171.05
	Total Advances of:	\$ 945,895.68
4	Invoices From Bymes Conway - Labor/Installation Work in excess of market values: Details Are Provided in Final Narrative of the Agreed Upon Procedures Report	
	Invoice Amount	Estimated Market Value
	\$ 11,200.00	\$ 11,200.00
	\$ 9,000.00	\$ 9,000.00
	\$ 52,200.00	\$ 44,370.00
	\$ 23,300.00	\$ 1,581.00
	\$ 750.00	\$ 750.00
		\$ 7,830.00
		\$ 21,719.00

**REVISED - FINAL - EXECUTIVE SUMMARY**  
**AGREED UPON PROCEDURES REPORT**  
 As of November 14, 2006

DESCRIPTION		DIVERSED AMOUNTS																						
5	Lebanon Citizens National Bank (LCNB) - Diversion of ONG and UCI Monies LCNB account was opened by Frank and Robert Sanders using ONG's name and federal ID. ONG and UCI checks were deposited into the LCNB account and disbursements were made from the account directly to Robert, Frank and Carol Sanders, and other entities on behalf of the Sanders. The LCNB account was never recorded on the final records of ONG nor UCI. The account was never disclosed to the independent auditors nor JP Morgan during its duration of 2003-2006. The independent auditors have since issued a retraction notice regarding the 2004 audited financial statements and their audit opinion due to immaterial misstatement.	\$ 63,500.00 \$ 43,520.00 \$ 19,980.00 \$ 5,472.00 \$ - \$ 5,472.00 \$ 2,664.00 \$ 2,664.00 \$ -	\$ 317,797.13																					
6	Sherefax Credit Union - Change of endorsement of ProLiance Check # 7217 dated 5-21-04, payable to ONG Endorsement Changed By Robert Sanders and Deposited into his personal account at Sherefax Credit Union	\$ 100,000.00	\$																					
7	Salary & Bonus - Unauthorized Increases/Payments - Robert and Frank Sanders	<table><tr><th></th><th>Robert</th><th>Frank</th></tr><tr><td>2002 - Salary/Bonus - Expected Authorized Salary - Each Year</td><td>\$ 62,730.80</td><td>\$76,923</td></tr><tr><td></td><td colspan="2">\$100,000 Annualized</td></tr><tr><td>2003 - Unauthorized Salary/Bonus - in excess of 2002</td><td>\$ 3,200.00</td><td>\$ 15,538.70</td></tr><tr><td>2004 - Unauthorized Salary/Bonus - in excess of 2002</td><td>\$ 9,200.00</td><td>\$ 15,414.82</td></tr><tr><td>2005 - Unauthorized Salary/Bonus - in excess of 2002</td><td>\$ 54,249.18</td><td>\$ 17,391.88</td></tr><tr><td>2006 - Unauthorized Salary/Bonus - in excess of 2002</td><td>\$ 55,000.00</td><td>\$ 10,486.89</td></tr></table>		Robert	Frank	2002 - Salary/Bonus - Expected Authorized Salary - Each Year	\$ 62,730.80	\$76,923		\$100,000 Annualized		2003 - Unauthorized Salary/Bonus - in excess of 2002	\$ 3,200.00	\$ 15,538.70	2004 - Unauthorized Salary/Bonus - in excess of 2002	\$ 9,200.00	\$ 15,414.82	2005 - Unauthorized Salary/Bonus - in excess of 2002	\$ 54,249.18	\$ 17,391.88	2006 - Unauthorized Salary/Bonus - in excess of 2002	\$ 55,000.00	\$ 10,486.89	\$ 18,738.70 \$ 24,814.82 \$ 71,841.04 \$ 65,486.89
	Robert	Frank																						
2002 - Salary/Bonus - Expected Authorized Salary - Each Year	\$ 62,730.80	\$76,923																						
	\$100,000 Annualized																							
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2005 - Unauthorized Salary/Bonus - in excess of 2002	\$ 54,249.18	\$ 17,391.88																						
2006 - Unauthorized Salary/Bonus - in excess of 2002	\$ 55,000.00	\$ 10,486.89																						
8	Robert M. Sanders - unauthorized car Allowance and Interest Payments - Taken As Payroll Add Items to Payroll Checks	Car Allowance \$ 27,776.00 Interest \$ 43,866.38	\$ 27,776.00 \$ 43,866.38																					

**REVISED - FINAL - EXECUTIVE SUMMARY  
 AGREED UPON PROCEDURES REPORT  
 As of November 14, 2006**

DESCRIPTION		DIVERTED AMOUNTS
9	<p>Legal and Professional Expenses paid by the Company for the personal benefit of Robert Sanders:</p> <p style="padding-left: 40px;">Total Legal and Professional Expenses: \$ 679,130.84</p> <p style="padding-left: 40px;">Personal Expenses Paid On Behalf of Robert Sanders <u>Unknown</u></p> <p><b>NOTE:</b> Break Out of Personal Expenses versus Company Related expenses not provided by Robert Sanders as required under item #13 of the Agreed Judgment Entry. Amount due to be reimbursed by Robert Sanders Shall Not Exceed \$100,000 per the Agreed Judgment Entry</p>	\$ 100,000.00
10	Other personal disbursements that were made by the Company on behalf of Robert Sanders: Detail Listing of Checks and Payee - See Narrative and List provided in Agreed Upon Procedures Report	\$ 117,311.88
11	Scott Moody (relative of Robert Sanders) - January 2002 to August 2002 Payroll incurred While Subcontractor to ONG - Services rendered for Robert Sanders personally and not ONG	\$ 12,320.00
12	<p>Oxford Fire &amp; Security Systems - Expenses Paid on Behalf of Robert Sanders' Family</p> <p>Oxford Fire &amp; Security Systems was incorporated by Robert Sanders using ONG's federal ID. The company eventually shut down with vendors and suppliers still being owned. ONG received a Summary Judgment from the Butler County Court for an unpaid claim by a supplier. The court levied ONG's Bank account for the unpaid Judgment.</p>	\$ 1,149.38
13	Frank Sanders - unaccounted for cash taken by presenting "counter check" at Bank One 7-1-02 for "CASH" Cash proceeds unaccounted for - no copy of Bank One Large Currency Report Counter Check prepared and presented by Frank Sanders an money not accounted for in underlying accounting records.	\$ 40,000.00
14	Frank Sanders - check #3558 dated 12-4-02 - presented as reimbursement for down payment on Howe Subordinated Debt for money withdrawn from Frank's IRA. However, no record of such money (from IRA account) being deposited into ONGAUIH account but reimbursed from ONG back to Frank Sanders	\$ 75,054.51
15	2002 Forgiveness of Loan to Frank Sanders	\$ 12,642.03

**REVISED - FINAL - EXECUTIVE SUMMARY  
 AGREED UPON PROCEDURES REPORT**  
 As of November 14, 2006

	<u>DESCRIPTION</u>	<u>DIVERTED AMOUNTS</u>
16	Larry Fanning (former employee and now consultant) - invoices paid by ONG for services rendered to and on behalf of Robert Sanders & Related Parties personally	\$ 2,334.45
17	UCI Invoices - marked paid but payments are not traceable into cash receipts Journal - Hart & Gersbach CPAs unable to track the deposits into bank statements or accounting records. See Narrative in Final Agreed Upon Procedures Report	\$ 18,106.28
18	Mileage Expenses - ONG employees using ONG trucks - driving to Bynnes Conway' Project Sites - amounts being calculated by Hart & Gersbach - See Narrative in Final Agreed Upon Procedures Report	See Report Narrative
19	Check to the IRS for the benefit of Robert Sanders - untraceable into the general ledger - should have been a dividend however the payment was not included in the 2002 audited financial statements as dividend, final accounting treatment verified by Hart & Gersbach in their Final Agreed Upon Procedures Report Check #1737, dated 4-15-02	\$ 67,000.00
21	Interest on diverted monies by Robert Sanders - 10% - compounded daily	\$ 466,589.29
<b>TOTAL - AMOUNT OF MONEY - To Be Reimbursed by ROBERT SANDERS</b>		<b><u>\$ 2,191,332.93</u></b>

<b>A</b>	<b>NOTE PAYABLE - SUBORDINATED DEBT - Robert Sanders' Purchase of Richard Howe Positions</b>	
	Corrected Balance - amount paid by Robert Sanders in total for Howe's Position	\$ 1,250,000.00
	Payments Made out of ONG/UHI on the Subordinated Debt to Robert Sanders:	
	2002 Subordinated Debt Payment - ONG check #3405, dated 10-21-02	\$ (160,000.00)
	2004 Subordinated Debt Payment - ONG check #6879, dated 1-29-04	\$ (40,000.00)
	2004 Interest payment on subordinated debt - UHI check #1039, dated 3-23-04	\$ (43,874.33)
	2004 Subordinated Debt Payment - UHI check #1044, dated 4-28-04	\$ (2,000.00)
	2004 Subordinated Debt Payment - UHI check #1045, dated 4-28-04	\$ (147,000.00)
	2005 Subordinated interest payment check #1057 dated 4-4-05	\$ (43,386.51)
	2005 Subordinated interest payment check #1058 dated 6-1-05	\$ (7,845.23)

**REVISED - FINAL - EXECUTIVE SUMMARY  
 AGREED UPON PROCEDURES REPORT**

As of November 14, 2006

DESCRIPTION	DIVERGED AMOUNTS
2005 Subordinated Interest payment check#9574 dated 10-3-05	\$ (16,718.24)
Total Subordinated Payments to Robert Sanders	\$ (460,824.31)
Remaining balance due under Subordinated Debt	\$ 789,175.69
Interest On Note Payable - Subordinated Debt - at 10%- compounded daily	\$ 403,023.83
<b>TOTAL AMOUNT OF MONEY - PAYABLE TO ROBERT SANDERS - SUBORDINATED DEBT</b>	<b>\$ 1,192,199.52</b>
<b>TOTAL - AMOUNT DUE FROM ROBERT M. SANDERS - per Item #9 of Agreed Judgment Entry</b>	<b>\$ 999,133.31</b>

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the parties listed below by first-class U.S. mail, postage prepaid, this 5th day of March 2007.

  
Barth E. Royer

M. Howard Petricoff  
Stephen M. Howard  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008

Rocco O. D'Ascenzo  
Paul A. Colbert  
Duke Energy Ohio, Inc.  
2500 Atrium II  
139 East Fourth Street  
P.O. Box 960  
Cincinnati, Ohio 45201-0960