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Case Number: 99-1160-GA-AEC

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14 pgs.



unredacted version of application

at Case #99-1160 -GA-AEC Pursuant to

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In the Matter of the Application of
Waterville Gas Company for Approval of
Contract Pursuant to Section 4905.31,
Revised Code, and The Commission's Gas
Transportation Program Guidelines.

PUCO

Case No. 99-1160-GA-AEC

APPLICATION

COMES NOW **Waterville Gas Company** (hereinafter referred to as "applicant"), pursuant to Section 4905.31, Revised Code, and the Commission's Gas Transportation Program Guidelines, respectfully files this application for approval of a gas transportation agreement between applicant and **Johns Manville International, Inc.** (hereinafter referred to as "JM"), a copy of which is attached hereto as Exhibit A and incorporated herein by this reference.

In support of its application, applicant respectfully states the following:

1. Applicant is a natural gas company and a public utility within the meaning of Sections 4905.02 and 4905.03, Revised Code, and subject to the jurisdiction of this Commission.
2. On August 24, 1999, applicant entered into a gas transportation agreement with JM as set forth in Exhibit A.

3. As required by Paragraph (5) of the Commission's Gas Transportation Program Guidelines, issued as of November 2, 1995, applicant submits the following information and makes the following representatives with respect to said agreement:

- (a) Applicant's restrictions relating to the curtailment of existing service or the extension of new service would not be altered or modified if the agreement were approved by this Commission.
- (b) The agreement conforms with the Commission's guidelines.
- (c) JM's address and telephone number are 717 Seventeenth Street (80202), P. O. Box 5108, Denver, Colorado, 80217-5108 and (303) 978-4965.
- (d) Neither party to the agreement holds any interest in the other party to the agreement nor in any public utility subject to the jurisdiction of the Commission.
- (e) The intended points of consumption are located at Waterville, Ohio.
- (f) The agreement replaces a previous transportation agreement filed with the Commission in Case No. 94-1763-GA-AEC and approved by entry dated December 29, 1994.

- (g) The types of services are set forth in Exhibit A. The rates to be charged are being withheld pursuant to Paragraph (7) (a) of the Gas Transportation Program Guidelines and applicant hereby requests confidential treatment thereof since disclosure of the negotiated rates will jeopardize applicant's ability to optimize revenue in future rate negotiations. Applicant is supplying the Commission Staff with written justification of its request for confidential treatment simultaneous with the filing of this application.
- (h) The agreement provides that no alteration, modification, assignment, or termination shall be made without specific approval of the Commission. (See Exhibit A, Paragraph 9).
- (i) The agreement provides that JM will tender to applicant for delivery to its Waterville facilities those volumes of gas delivered to Waterville Gas Company's city gate station, and applicant will, subject to the provisions of the agreement, deliver said volumes of gas on a firm basis.
- (j) Applicant will promptly pay JM's actual cost of gas, including any transportation costs incurred in delivering the gas to Waterville, in the event of an appropriation of gas pursuant to applicant's curtailment plan and/or contractual arrangement. (Exhibit A, Paragraph 3).

(k) In the event JM's consumption at its Waterville facilities is not reduced within twelve (12) hours of notification of any curtailment situation described in the agreement and JM exceeds the reduced volumes, JM may be liable to applicant for liquidated damages not to exceed applicant's actual additional costs associated with such overrun. (Exhibit A, Paragraph 3).

WHEREFORE, applicant respectfully requests approval of its application forthwith.

Respectfully Submitted,

WATERVILLE GAS COMPANY

By  _____
Robert S. Black
President
Waterville Gas Company
P. O. Box 259
Waterville, Ohio 43566
(419) 878-4972

TRANSPORTATION AGREEMENT

THIS AGREEMENT made and entered into this 24th day of August, 1999, by and between WATERVILLE GAS COMPANY ("WGC"), an Ohio corporation and JOHNS MANVILLE INTERNATIONAL, INC., f/k/a Schuller International, Inc. ("Johns Manville"), a Delaware corporation.

WITNESSETH:

WHEREAS, Johns Manville operates manufacturing facilities located in and around Waterville, Ohio (the "Facilities") that are served by WGC pursuant to contracts submitted to and approved by the Public Utilities Commission of Ohio ("PUCO"), including a Transportation Agreement dated September 6, 1994; and

WHEREAS, Johns Manville and WGC desire to supersede said agreement in the manner set forth herein.

NOW, THEREFORE, in consideration of the premises and the covenants and agreements herein set forth, WGC and Johns Manville mutually agree as follows:

1. Deliveries. The billing period for determining deliveries to be made to Facilities under this Agreement shall be the calendar month. WGC will deliver to the Facilities those volumes of gas delivered by or for Johns Manville's account to WGC less Johns Manville's ratable share of WGC's average system-wide unaccounted for gas percentage. The service provided by WGC to Johns Manville hereunder shall be on a firm basis, subject to the provisions of this Agreement.

WGC's obligation to deliver any volumes of gas under this Agreement is hereby made expressly subject to the physical limitations of WGC's distribution system, the physical limitations of Columbia Gas Transmission Corporation's ("TCo's") measuring and regulating equipment for Station 727644 and such factors as, but not limited to, the pressure at which gas is delivered by or for Johns Manville's account to WGC's system, the time of such deliveries, variations in weather conditions, levels of

curtailment as may from time to time be imposed as provided in Paragraph 3 of this Agreement, and the quality of the gas delivered to WGC by or for Johns Manville's account.

Johns Manville will not be obligated to accept gas delivered by WGC that is not within the quality specifications of the upstream transporting pipelines.

2. Delivery Charges. For all gas received by WGC for delivery to the Facilities pursuant to this Agreement, Johns Manville will pay to WGC a delivery charge equal to the rates set forth in a schedule filed with the PUCO and maintained in accordance with the PUCO's transportation guidelines governing confidentiality. Said rates do not reflect or recognize any sale of gas but are an agreed upon delivery charge which shall be due and payable fifteen (15) days after invoice is received. If payment is not received within fifteen (15) days of receipt of such invoice, interest may be added to such invoice at the prime rate as published from time to time in the Wall Street Journal, plus 2%. Said rates may be amended from time to time by mutual agreement of the parties and the filing of an amended schedule with the PUCO.

3. Curtailment and Interruption of Service. Whenever WGC anticipates its total physical deliveries through TCo into its city-gate stations will exceed ten thousand (10,000) Dth per day, WGC will notify Johns Manville that peak day curtailments may be necessary and Johns Manville will comply with WGC's curtailment policy for firm service.

During force majeure situations (herein defined to mean acts of God, strikes, lockouts or other labor disturbances, acts of a public enemy, war, blockades, insurrections, riots, epidemics, fire, floods, washouts, civil disturbances, explosion, breakage, or accidents to machinery or pipelines, freezing of wells, pipelines or pipeline components, partial or entire failure to such wells, failure or curtailment of firm service on upstream pipelines, or any other cause not otherwise provided for herein, whether of the kind herein enumerated or otherwise, not reasonably within the control of WGC or Johns Manville), if and when it becomes necessary for WGC to curtail or interrupt service to its firm service WGC shall

curtail deliveries of the volumes tendered by Johns Manville for delivery by WGC to the Facilities to the same extent that WGC curtails or interrupts service to its other firm service customers. It is further agreed that peak day, weather-associated curtailment or other curtailments shall be of the same kind and subject to the same plan of curtailment priorities as is from time to time imposed upon WGC's firm service customers pursuant to regulatory requirements or sanctions.

In the event Johns Manville's consumption at the Facilities is not reduced within twelve (12) hours of notification of any of the above curtailment situations and Johns Manville exceeds these reduced volumes, Johns Manville may be liable to WGC for liquidated damages not to exceed WGC's actual additional costs associated with such overrun. The twelve-hour notification by WGC to Johns Manville required in this preceding sentence shall be given by telephone to Dave Spangler of Johns Manville at work (419) 878-1380; home (419) 877-0817; or cell number (419) 261-0929.

Curtailment shall not be imposed upon the volumes tendered by Johns Manville for delivery, by displacement, to it at the Facilities unless it becomes necessary to utilize all or a portion of such volumes to supply the needs of WGC's residential customers. If it becomes necessary for WGC to curtail deliveries to Johns Manville pursuant to this Agreement in order to direct such gas to its residential customers, Johns Manville, subject to force majeure situations, will continue to cause deliveries of gas to WGC; but such deliveries may be limited to one-half of the volumes delivered to WGC during the monthly period prior to the month in which residential curtailment occurs. WGC will promptly pay Johns Manville's actual cost of the gas delivered to WGC's residential customers, including any transportation costs incurred in delivering such gas to WGC. If payment is not received within fifteen (15) days of receipt of such invoice, interest may be added to such invoice at the prime rate as published from time to time in the Wall Street Journal, plus 2%.

4. Commission Approval. This Agreement is entered into subject to the PUCO's approval.
5. Governing Law. This Agreement shall be governed by the laws of the State of Ohio.

6. Assignment. Except for assignment to an affiliate of the parties, this Agreement shall not be assigned without the written consent of the other party, which consent shall not be unreasonably withheld.

7. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

8. Notices. Any notices required or permitted to be given hereunder shall be effective only when delivered to an officer or authorized representative of the party being notified addressed as follows:

If to WGC:

Waterville Gas Company
P.O. Box 259
Waterville, OH 43566
Attention: Mr. Robert S. Black, President

If to Johns Manville:

Johns Manville International, Inc.
717 17th Street (80202)
P.O. Box 5108
Denver, CO 80217-5108
Attention: Energy Resources

Either party may change the address to which notice to it should be addressed by notifying the other party in the manner above stated.

9. Entire Agreement. This Agreement and any applicable rate schedule constitutes the entire agreement between the parties hereto respecting the subject of this Agreement. This Agreement supercedes all prior agreements and understandings between the parties concerning the matters addressed herein and, specifically supercedes that certain Transportation Agreement dated September 6, 1994 except to the extent preserved in Section 12 hereof. There are no other terms, conditions, promises, or understandings, express or implied, concerning the activities and arrangements contemplated by this

Agreement which may not be altered, modified or assigned without the approval of the PUCO, and the parties hereto.

10. No Dedication. Neither this Agreement nor any deliveries of gas pursuant hereto shall be construed to constitute a dedication or to evidence in any way dedication by Johns Manville of any gas, wells or acreage to WGC; and Johns Manville shall be solely responsible for all costs and risks associated with delivery of gas hereunder to WGC.

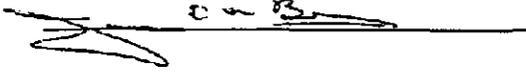
11. Term. This Agreement shall extend for an initial period of one (1) year commencing on the later of January 1, 2000 or the date the PUCO approves this Agreement. Thereafter, this Agreement shall automatically renew on a year to year basis unless terminated by written notice provided by either party not less than four (4) months prior to the expiration date of the initial term or any renewal term hereof. In the event the PUCO has not approved this Agreement on or before January 1, 2000, the Transportation Agreement dated September 6, 1994 between the parties shall remain in effect until such time that the PUCO approves this Agreement, except that the minimum volume requirement in the September 6, 1994 agreement shall be of no force and effect on and after January 1, 2000.

12. Early Termination. Should Johns Manville sell or otherwise dispose of its Facilities to an unaffiliated third party, Johns Manville may upon ninety (90) days written notice terminate the agreement as to the sold facility, without any liability to WGC.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date hereinabove first mentioned.

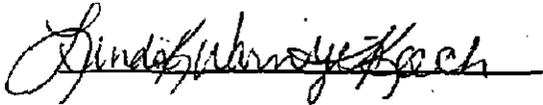
ATTEST:

A handwritten signature in black ink, appearing to be "C. B.", written over a horizontal line.

WATERVILLE GAS COMPANY

By: Robert J. Blal
Title: President
Date: August 30, 1999

ATTEST:

A handwritten signature in black ink, appearing to be "Dinah...", written over a horizontal line.

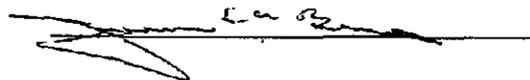
JOHNS MANVILLE INTERNATIONAL,
INC.

By: Scott M. Hadkinson
Title: Manager, Energy Supply
Date: August 24, 1999

**WATERVILLE GAS COMPANY/JOHNS MANVILLE INTERNATIONAL, INC.
TRANSPORTATION AGREEMENT DATED AUGUST 24, 1999
RATE SCHEDULE**

Pursuant to Paragraph 2 of the above-described agreement, Johns Manville will pay to WGC a delivery charge of \$0.30 per Dth.

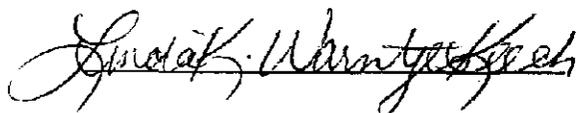
ATTEST:



WATERVILLE GAS COMPANY

By: Robert J. Blal
Title: President
Date: August 30, 1999

ATTEST:



JOHNS MANVILLE INTERNATIONAL,
INC.

By: Joe M. Madhuk
Title: Manager, Energy Supply
Date: August 24, 1999

CONFIDENTIAL

**Memorandum to PUCO Staff Submitted
Pursuant to Paragraph (7) (a) of PUCO
Gas Transportation Program Guidelines.**

Pursuant to Paragraph (7) (a) of the Commission's Gas Transportation Program Guidelines (the "Guidelines"), Waterville Gas Company ("Waterville") hereby submits this memorandum in support of its request in Case No. 99- -GA-AEC for confidential treatment of the rates to be charged Johns Manville International, Inc. ("JM") for transportation service to be provided to JM's Waterville facilities.

Background

Waterville is a natural gas company formed for the purpose of serving JM's Waterville, Ohio, Dutch Road plant and JM is Waterville's only customer. The Dutch Road plant is one of two plants operated by JM at Waterville, Ohio. The other plant is located on River Road, approximately a mile from the Dutch Road plant and within "eyesight" of the latter. The River Road plant is served by Columbia Gas of Ohio, Inc. ("COH") and has been served by Waterville as well during winter emergencies. The River Road plant facilities were installed by Waterville several years ago at JM's request to accommodate JM's desire for "back-up" service and a proposed interconnection with an interstate pipeline other than COH's affiliate, Columbia Gas Transmission Corporation ("TCO"). This interconnection was not intended to by-pass COH's service.

CONFIDENTIAL

In recent years, JM has exerted increasing pressure on Waterville to reduce rates and initiate service to both of JM's Waterville, Ohio plants. As a small gas company, Waterville has resisted taking any action likely to induce a vigorous competitive response from COH whose market leverage and resources dwarf Waterville's and its ability to compete. In this regard, it is highly probable that one of COH's competitive responses will be to attempt to by-pass Waterville's service at JM's Dutch Road plant. During current contract negotiations, however, JM has insisted on the activation of transportation service by Waterville to its River Road plant.

Grounds for Granting Request

Paragraph (7) (a) of the Guidelines provides, in pertinent part:

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

Given the competitive situation involving JM's Waterville plants, it is obvious that knowledge of the Waterville/JM rate schedule would greatly enhance COH's competitive position and jeopardize Waterville's ability to optimize revenue in future rate negotiations. In fact, to ameliorate this impact on Waterville, Waterville and JM have agreed on the inclusion in the transportation agreement of the confidentiality provision in question (See Exhibit A, Paragraph 2).

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Waterville submits that it was just such circumstances which the Commission had in mind when it promulgated Paragraph (7) (a) in the first place.

While the loss of revenue in future rate negotiations would not immediately affect other customers, given Waterville's unique situation, it will affect natural gas customers at Waterville in the long-run since certain rate subsidies inherent in the JM contract would be lost. Waterville is commonly-controlled and managed with The Waterville Gas & Oil Company and certain expenses are shared and allocated between the companies. On the other hand, since JM is Waterville's sole customer, the granting of this request will have no adverse affect on any other customer or on any member of the public.

WHEREFORE, Waterville respectfully requests the relief afforded by Paragraph (7) (a).

Respectfully Submitted,



Robert S. Black
President
Waterville Gas Company
P. O. Box 259
Waterville, Ohio 43566
(419) 878-4972

99 SEP 26 AM 11:56

CONFIDENTIAL

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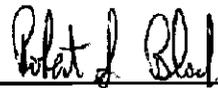
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WHEREFORE, Waterville respectfully requests the relief afforded by Paragraph (7) (a).

Respectfully Submitted,



Robert S. Black
President
Waterville Gas Company
P. O. Box 259
Waterville, Ohio 43566
(419) 878-4972