

In the Matter of the Application of)
Brainard Gas Corporation, Northeast Ohio)
Natural Gas Corporation, and Orwell) Case No. 10-2330-GA-AIS
Natural Gas Company for approval of)
Long Term Financing Arrangements and)
for Expedited Consideration.)

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where Brainard Natural Gas Corporation ("Brainard"), Northeast Ohio Natural Gas Corporation ("Northeast"), and Orwell Natural Gas Company ("Orwell") (together "the Companies") seek expedited consideration of long term financing arrangements. OCC is filing on behalf of the Companies' residential utility customers. The PUCO should grant OCC's Motion for the reasons set forth in the attached Memorandum in Support.

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Brainard Gas Corporation, Northeast Ohio)	
Natural Gas Corporation, and Orwell)	Case No. 10-2330-GA-AIS
Natural Gas Company for approval of)	
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MEMORANDUM IN SUPPORT

This case involves the review of the reasonableness of the Companies' request for expedited consideration of long term financing arrangements. More specifically, The Companies seek expedited consideration for the funding of approximately \$17.7 million. This amount represents significant dollars, especially for three small natural gas utility companies. OCC has authority under law to represent the interests of all the approximately 18,618 residential utility customers of the Companies,¹ pursuant to R.C. Chapter 4911.

R.C. 4903.221 provides, in part, that any person "who may be adversely affected" by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio's residential customers may be "adversely affected" by these cases, especially if the customers were unrepresented in proceedings where the Companies are seeking \$17.7

¹ See 2009 Northeast Annual Report to the PUCO at page 49, 2009 Orwell Annual Report to the PUCO at page 49, 2009 Brainard Annual Report to the PUCO at page 49.

million in long term financing. Thus, customers may be adversely affected and this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission to consider the following criteria in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is representing the Companies' residential customers in an attempt to eliminate or limit any potential adverse impact to these customers as a result of the Companies' \$17.7 million long term financing arrangements. OCC is concerned because the sheer magnitude of the long term financing -- \$17.7 million -- is so large when compared to 1) the Companies' combined annual net income for 2009 of \$2.5 million,² 2) the Companies' combined current annual interest related expenses for 2009 of \$483,922,³ and 3) the Companies' current shareholder equity for 2009 of \$14.3 million.⁴ Moreover, the level of the requested long term financing -- \$17.7 million -- could commit the Companies to a combined annual interest payment of approximately \$1,000,000. That interest payment is almost double the current payment. The nature and extent of OCC's interest is different than that of any

² The Companies' Application (October 8, 2010), Exhibit C.

³ The Companies' Application (October 8, 2010), Exhibit C.

⁴ The Companies' Application (October 8, 2010), Exhibit B.

other party and especially different than that of the Companies whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for customers will include the position that the PUCO should ensure customers are served and not harmed now or in the future by the long term financing arrangements and that any arrangements be just and reasonable. For example, the PUCO Staff has filed an audit, in recent on-going gas cost recovery cases, raising concerns regarding the natural gas purchasing practices of Northeast and Orwell from affiliated companies.⁵ In the context of what is pending with regard to the audits, the PUCO should consider positions of parties as to whether the long term financing arrangements are just and reasonable. OCC's position is therefore directly related to the merits of these cases that are pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio.

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of these cases with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding these cases in the public interest.

⁵ *Orwell Natural Gas Company*, Case No. 10-212-GA-GCR, Financial Audit of the Gas Cost Recovery Mechanisms for the Effective GCR Periods July 1, 2008 through June 30, 2010, (November 24, 2010); *Northeast Ohio Natural Gas Corporation*, Case No. 10-209-GA-GCR, Financial Audit of the Gas Cost Recovery Mechanisms for the Effective GCR Periods July 1, 2008 through June 30, 2010, (November 24, 2010).

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a “real and substantial interest” according to Ohio Adm. Code 4901-1-11(A)(2). As the residential utility customer advocate, OCC has a very real and substantial interest in these cases where small Ohio natural gas utilities subject to the Commission’s jurisdiction have applied to enter into long term financing arrangements for \$17.7 million.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the “extent to which the person’s interest is represented by existing parties.” While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio’s residential utility customers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed OCC’s right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC’s intervention and that OCC should have been granted intervention.⁶

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf

⁶ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

of Ohio residential customers, the Commission should grant OCC's Motion to Intervene in these cases.

Respectfully submitted,

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/s/ Joseph P. Serio

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene by the Office of the Ohio Consumers' Counsel* was served on the persons stated below via regular U.S. mail service, postage prepaid, this 26th day of January, 2011.

/s/ Joseph P. Serio

Joseph P. Serio
Assistant Consumers' Counsel

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Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel
electronically filed by Mrs. Mary V. Edwards on behalf of Serio, Joseph P. Mr. and Office of the
Ohio Consumers' Counsel