BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Application of Brainard Gas Corporation, Northeast Ohio Natural Gas Corporation and Orwell Natural Gas Company for Approval of Long Term Financing Arrangements and for Expedited Consideration

Case No. 10-2330-GA-AIS

MEMORANDUM IN OPPOSITION TO MOTION TO INTERVENE BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

Joint Applicants, by and through counsel, hereby submit their Memorandum in Opposition to the Motion to Intervene (hereinafter, "OCC Motion") filed in this case by the Office of the Ohio Consumers' Counsel (hereinafter, "OCC") on January 26, 2011.

First, the OCC Motion should be denied for the reason that the delay in its submission and participation by the OCC now is inherently prejudicial to Joint Applicants. The OCC's participation at this stage of the proceeding will, contrary to the assertions of the OCC Motion, unduly prolong or delay the resolution of this case. For this reason, The Commission in the exercise of its informed discretion should find pursuant to Ohio Rev. Code §4903.221(B)(3) that intervention by the OCC will, in fact, unduly prolong or delay the proceeding.

Joint Applicants note that on page 3 of its Memorandum in Support, OCC states that it is concerned that the that the "sheer magnitude" of the requested long term financing is "so large" in comparison to Joint Applicants' 2009 net income, its 2009 combined interest expense and 2009 shareholder equity. However, interest expenses

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associated with debt financing are serviced through cash flow, not net income. For 2009, Joint Applicants' EBITDA/debt coverage was approximately 4.0 times. Joint Applicants note that their current equity is approximately \$20 million. Thus the requested long term financing will not result in an excessively leveraged capital structure. There is no basis for concern that the requested long term debt facility is disproportionately "large". The point is that OCC's concerns in this regard readily could have been satisfied through intervention granted after a timely motion.

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Joint Applicants and the Commission Staff have engaged in extensive discussions and negotiations since the Joint Application was filed on October 8, 2010, more than three and a half months prior to the filing of the OCC Motion. These discussions have produced a basis for consensus that may avoid the expense and delay of a contested hearing. To permit the Office of Consumers' Counsel to intervene at this late date without excuse or explanation of the reason for the delay is highly prejudicial to Joint Applicants, whose need for the requested long term financing is immediate and significant.

Second, Joint Applicants dispute the assertion of the OCC Motion that its intervention will significantly contribute to the full development and equitable resolution of the factual issues, thus failing to meet the standard for grant of the Motion in the exercise of the Commission's informed discretion pursuant to Ohio Rev. Code §4903.22(B)(4). As noted above, its concern regarding the "sheer magnitude" of the requested facility is easily disposed of.

The second proffered basis for OCC's intervention in this proceeding is the Staff Reports filed by Commission Staff in the GCR Audits of Northeast and Orwell in Case

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Nos. 10-209-GA-GCR and 10-212-GA-GCR, respectively. OCC contends that "in the context of what is pending in the audits, the PUCO should consider positions of parties as to whether the long term financing arrangements are just and reasonable." (OCC Motion, Memorandum in Support, p. 4).

OCC confuses and conflates the standard for the Commission's consideration of an application for approval of a long term debt issuance under Ohio Rev. Code §4905.41 with the standard governing the Commission's consideration of an application for an increase in rates pursuant to Ohio Rev. Code §4909.18. Under Section 4909.18, it is the Company's burden to demonstrate that its proposed rate increases are just and reasonable. In contrast, the Commission can authorize a long term debt issuance under section 4905.41 (A) when it determines that the utility has sustained its burden to prove that the issuance is "necessary" (1) for the acquisition of property, construction, completion, extension, renewal or improvement of its facilities or services; or (2) for the reorganization of its indebtedness and capitalization, the discharge or lawful refunding of its obligation, or the reimbursement of moneys actually expended for such purposes or other moneys in the treasury expended for such purposes. The Commission Staff is completely capable of ensuring that the Joint Applicants have kept their accounts and vouchers of such expenditures to enable the Commission to ascertain the amount and purposes of such expenditures.

Joint Applicants note that OCC's motion to intervene in Case Nos. 10-209-GA-GCR and 10-212-GA-GCR has been granted and OCC is participating in those consolidated proceedings. Clearly, OCC has the ability to protect the interests it identifies in its Motion and Memorandum in Support in those proceedings, and in any

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subsequent rate proceeding brought pursuant to Ohio Rev. Code §4909.18. Those are the appropriate proceedings in which to do so.

For all the foregoing reasons, Joint Applicants request that the Motion to Intervene filed by the Office of Consumers' Counsel be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel for Joint Applicants hereby certifies that the foregoing Memorandum in Opposition has been served on the following counsel electronically on this 31st day of January, 2011:

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