

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	)	Case No. 10-2330-GA-AIS
Natural Gas Company for Approval of	)	
Long-Term Financing Arrangements.	)	

FINDING AND ORDER

The Commission finds:

- (1) Applicants, Brainard Gas Corporation (Brainard), Northeast Ohio Natural Gas Corporation (NEONG), and Orwell Natural Gas Company (ONG), are Ohio corporations, public utilities and natural gas companies as defined in Sections 4905.02 and 4905.03(A)(5), Revised Code, and are subject to the jurisdiction of this Commission.
- (2) On October 8, 2010, as supplemented on October 20, 2010, October 22, 2010 and November 18, 2010, and amended on February 11, 2011 and March 7, 2011, Brainard, NEONG and ONG (collectively, the Joint Applicants) filed a Joint Application, under the provisions of Sections 4905.40 and 4905.41, Revised Code.
- (3) Joint Applicants are requesting Commission approval to enter in to an Amended Note Purchase Agreement (Note Agreement), pursuant to which the Joint Applicants will issue Senior Secured Notes (the New Notes) to Sun Life Assurance Company of Canada (Sun Life) for a term loan of up to \$15,334,000, pursuant to the terms and conditions as set forth in the Joint Application and Exhibits.
- (4) The New Notes will mature in June 2017, without principal amortization with interest, and other terms, as set forth in the Joint Application and Exhibits.
- (5) The New Notes will be the joint and several obligations of Joint Applicants. Joint Applicants state that, by combining their debt requirements, they create larger debt issues at more attractive interest rates and lower transaction costs than otherwise would be available.

- (6) The New Notes will be guaranteed by Gas Natural, Inc. (Gas Natural, the holding company of Brainard), Great Plains Gas Company (the parent company of NEONG), Lightning Pipeline Company, Inc. (the parent company of ONG), and by any existing or future subsidiary of Gas Natural.
- (7) Brainard will apply the proceeds from the New Notes to repay a demand note (Demand Note) to R. M. Osborne, in the amount of \$52,174, pay transaction expenses, and fund the debt service reserve under the Note Agreement, as described in the Joint Application and Exhibits, all pursuant to Section 4905.40, Revised Code.
- (8) NEONG will apply the proceeds from the New Notes to reimburse its treasury for monies expended to refinance an existing term note and a line of credit in the amounts of \$6,359,161, and \$1,103,000, respectively; pay off the long-term debt of its nonregulated affiliate, Great Plains Land Development Company, in the amount of \$764,543 to acquire two parcels of real estate and buildings and improvements; refinance \$216,329 of vehicle equipment loans; fund capital program expenditures up to a maximum amount of \$1,615,000 to be incurred in 2011; pay transaction expenses; and fund the debt service reserve, as described in the Joint Application and Exhibits, all pursuant to Section 4905.40, Revised Code.
- (9) ONG will apply the proceeds from the New Notes to reimburse ONG's treasury for monies expended to refinance a long-term debt facility with Huntington National Bank for \$2,047,000, refinance vehicle/equipment loans of \$110,991, fund its capital program expenditures of up to a maximum amount of \$1,785,000 to be incurred in 2011, pay transaction expenses, and fund the debt service reserve as described in the Joint Application and Exhibits, all pursuant to Section 4905.40, Revised Code.
- (10) Joint Applicants state that they will not use any of the funds from the financing approved in this proceeding to pay, directly or indirectly, or to reimburse, directly or indirectly, any construction expenditures which were incurred in calendar year 2010 and which were not approved by the Commission (Amended Joint Application, dated February 11, 2011, at page 4 and 6).
- (11) Joint Applicants state that the proceeds of the New Notes issued pursuant to the Note Agreement shall not be used for any other purposes than specified in the Joint Application (Amended Joint Application, dated February 11, 2011, at page 4 and 7).

- (12) Joint Applicants state that they will file a written report with the Commission with the terms and full particulars, as promptly as possible, but in no event later than 30 days after executing the New Notes authorized by this Commission Order (Amended Joint Application, dated February 11, 2011, at page 4 and 6).
- (13) On January 26, 2011, the Ohio Consumers' Council (OCC) filed a Motion to Intervene in this proceeding citing the large magnitude of the Joint Applicants' proposed financing, their excessively leveraged capital structure, and the resulting annual interest payment commitment as its primary concerns with respect to the proposed financing by the Joint Applicants. In support of its Motion to Intervene, OCC states that it represents the residential utility customers in the Joint Applicants' service territories and these customers' interests may be adversely affected if OCC is not granted intervention. Furthermore, OCC offers that it will not prolong or delay this case and that it will contribute to the resolution of the issues. On January 31, 2011, the Joint Applicants filed their Memorandum Contra stating that OCC's Motion to Intervene should be denied. On February 7, 2010, OCC filed its Reply to the Joint Applicants' Memorandum Contra. Upon consideration of OCC's Motion to Intervene, the Commission finds that it is reasonable and should be granted.
- (14) The Commission finds that the written report of Joint Applicants, to be filed no later than 30 days after executing the new notes, in addition to the terms and full particulars about the issuance of the New Notes, should also include details confirming that Joint Applicants have applied the proceeds from the New Notes (excluding \$3,400,000 of the proceeds earmarked for Joint Applicants' 2011 capital expenditures) to reimburse their respective treasuries for monies expended to refinance their long-term debt facilities, acquire properties by NEONG, and refinance the vehicle/equipment loans of ONG and NEONG, as set forth in Schedule 5.14 of the Note Agreement to the Joint Application.
- (15) Joint Applicants state that they will file a written report confirming the 2011 capital program expenditures which will be funded with proceeds of the New Notes for which approval is sought herein. The Commission finds that the Applicants should be required to file two written reports, namely, a mid-year report covering the period of January through June 2011, no later than July 31, 2011, and a year-end report covering the period of July through December 2011, no later than January 31, 2012, to confirm that Joint Applicants have funded up to \$3,400,000 of the proceeds of the New Notes for their 2011 capital expenditures.

- (16) Section 7 of the Note Agreement, among other things, requires Joint Applicants to deliver to Sun Life periodic reports, such as quarterly and annual financial statements. The Commission finds that the Joint Applicants should file copies of quarterly, as well as annual financial statements, with the Commission no later than 15 days after the Joint Applicants have delivered these reports to Sun Life.
- (17) Section 10.4 of the Note Agreement, among other things, requires that the Joint Applicants maintain their coverage ratio, determined quarterly, for the preceding 12 months, to be not less than 2.0 to 1.0, and, that their indebtedness should not exceed 60 percent of their capitalization. The Commission finds that the Joint Applicants should file quarterly reports with the Commission to demonstrate that their coverage ratio and their total indebtedness as a per cent of their capitalization complies with the above-mentioned provisions, as prescribed in Section 10.4 of the Note Agreement.
- (18) Sections 4905.40 and 4905.41, Revised Code, require Ohio regulated public utilities to seek prior approval from the Commission for the issuance of all long-term obligations, including but not limited to, transactions such as the Brainard's Demand Note. The Commission notes that Brainard should have sought prior approval from the Commission before entering into the Demand Note. Brainard is put on notice that it must seek approval from the Commission prior to the issuance of any additional long-term obligations in the future. Noncompliance with this directive will not be tolerated. With respect to the failure to file written reports by ONG and NEONG after the consummation of financing transactions, as required by the prior Orders of the Commission<sup>1</sup>, such noncompliance will not be accepted by the Commission in the future.
- (19) The Commission notes that the Joint Applicants intend to use a substantial portion of the \$15,334,000 for refinancing and consolidation of their existing debt obligations. Moreover, the Note Agreement, among other things, requires the Joint Applicants to maintain their interest coverage ratio and capitalization at certain levels. Therefore, the Commission finds that the amount of the proposed financing, leveraged capital structure, and the resulting annual interest payment

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<sup>1</sup>In the Matter of the Application of Orwell Natural Gas Company for Approval of LongTerm Financing Arrangements, Case No. 07-1087-GA-AIS, Finding and Order (November 1, 2006) and In the Matter of the Application of Northeast Ohio Natural Gas Company for Approval of Long Term Financing Arrangement, Case No. 08-669-GA-AIS, Finding and Order (July 23, 2008).

commitment as proposed in the Joint Application, as amended, is appropriate and reasonable.

- (20) The aggregate amount of the Notes, the terms thereof, and the probable cost to Joint Applicants, within the parameters set forth in the Joint Application and Exhibits, do not appear to be unjust or unreasonable.
- (21) The effect of the issuance of the New Notes on Joint Applicants' revenue requirements will be considered in the determination of required revenue in rate proceedings in which all factors affecting rates will be taken into account according to law.
- (22) Based on the information contained in the Joint Application and Exhibits thereto, as amended and supplemented, the purposes to which the proceeds from the Notes shall be applied appear to be reasonably required by Joint Applicants to meet their lawful capital purposes, and the Commission is satisfied that consent and authority should be granted.

It is, therefore,

ORDERED, That OCC's Motion to Intervene, be granted. It is, further,

ORDERED, That the Joint Application, as supplemented and amended, be granted and the Joint Applicants, Brainard Gas Corporation, Northeast Ohio Natural Gas Corporation, and Orwell Natural Gas Company, are hereby authorized to enter in to an Amended Note Purchase Agreement pursuant to which the Joint Applicants will issue Senior Secured Notes to Sun Life Assurance Company of Canada for a term loan of up to \$15,334,000, all consistent with the terms and conditions as set forth in the Amended Joint Application and Exhibits. It is, further,

ORDERED, That Brainard shall apply the proceeds from the Notes in the amount of \$52,174 to repay a Demand Note to Richard M. Osborne, pay transaction fees and expenses, and fund the debt service reserve, all consistent with the terms and conditions as set forth in the Amended Joint Application and Exhibits, all pursuant to Section 4905.40, Revised Code. It is, further,

ORDERED, That NEONG shall apply the proceeds from the Notes to reimburse its treasury for monies expended to refinance an existing term note and a line of credit in the amounts of \$6,359,161 and \$1,103,000, respectively; pay off the long-term debt of its nonregulated affiliate, Great Plains Land Development Company in the amount of \$764,543 in order to acquire two parcels of real estate and buildings and improvements; refinance \$216,329 of vehicle equipment loans; fund its capital program expenditures up to a maximum amount of \$1,615,000 to be incurred in 2011; and pay transaction expenses and fund the debt service reserve, all consistent with the terms and conditions as set forth in the Amended Joint Application and Exhibits, all pursuant to Section 4905.40, Revised Code. It is, further,

ORDERED, That ONG shall apply the proceeds from the Notes to reimburse its treasury for monies expended to refinance a long-term debt facility with Huntington National Bank for \$2,047,000, refinance \$110,991 of vehicle/equipment loans, fund its capital program expenditures up to a maximum amount of \$1,785,000 to be incurred in 2011, pay transaction expenses, and fund the debt service reserve, all consistent with the terms and conditions as set forth in the Amended Joint Application and Exhibits, all pursuant to Section 4905.40, Revised Code. It is, further,

ORDERED, That Joint Applicants shall file a written report with this Commission, within 30 days after executing the New Notes, with the terms and full particulars of the New Notes, including but not limited to, details confirming that Joint Applicants have applied the proceeds from the New Notes (excluding \$3,400,000 of the proceeds earmarked for Joint Applicants' 2011 capital expenditures), as set forth in Schedule 5.14 of the Note Agreement attached to the Amended Joint Application. It is, further,

ORDERED, That Joint Applicants shall file two written reports, namely, a mid-year report covering the period of January through June 2011, no later than July 31, 2011, and a year-end report covering the period of July through December 2011, no later than January 31, 2012, to confirm that Joint Applicants have funded up to \$3,400,000 of the proceeds of the New Notes for their 2011 capital expenditures. It is, further,

ORDERED, That Joint Applicants shall not use any of the funds from the financing approved in this proceeding to pay, directly or indirectly, or to reimburse, directly or indirectly, any capital expenditures which were incurred in calendar year 2010 and which were not approved by the Commission. It is, further,

ORDERED, That Joint Applicants shall file copies of quarterly and annual financial statements with this Commission no later than 15 days after the Joint Applicants' deliver these reports with Sun Life, as described in Finding 16 above. It is, further,

ORDERED, That Joint Applicants shall file 12 month ended reports, on a quarterly basis, with this Commission no later than 30 days of the end of each quarter, to demonstrate that their coverage ratio and total indebtedness to capitalization complies with the provisions, pursuant to the Note Agreement. It is, further,

ORDERED, That the authorization granted by this Finding and Order shall not be construed as limiting the Commission's determination of the appropriateness of the New Notes for future ratemaking or cost recovery treatment. It is, further,

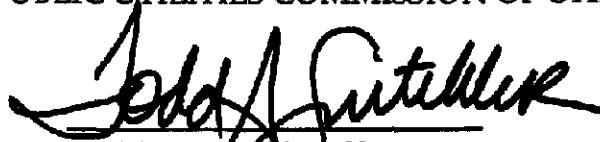
ORDERED, That nothing in this Finding and Order shall be construed to imply any guaranty or obligation by the Commission to assure completion of any specific construction project of the Joint Applicants. It is, further,

ORDERED, That nothing in this Finding and Order shall be deemed to be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That nothing in this Finding and Order shall be construed to imply any guarantee or obligation as to the New Notes on the part of the State of Ohio. It is, further,

ORDERED, That a copy of this Finding and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Sutchler Chairman

  
Paul A. Centolella

  
Valerie A. Lemmie

  
Steven D. Lesser

  
Cheryl L. Roberto

SUM, MJP:jd

Entered in the Journal

**MAR 30 2011**



Renee J. Jenkins  
Secretary