

FOR USE ONLY - Version 1.0/		
Date Received	Case Number	Certification Number
	12-1134 GA-CRS	

CERTIFICATION APPLICATION COMPETITIVE RETAIL NATURAL GAS SUPPLIERS

Please **type or print** all required information. Identify all attachments with an exhibit label and title (*Example: Exhibit A-16 - Company History*). All attachments should bear the legal name of the Applicant. Applicants should file completed applications and all related correspondence with the Public Utilities Commission of Ohio, Docketing Division, 13th Floor, 180 East Broad Street, Columbus, Ohio 43215-3793.

This PDF form is designed so that you may directly input information onto the form. You may also download the form by saving it to your local disk.

SECTION A - APPLICANT INFORMATION AND SERVICES

A-1 Applicant intends to be certified as: (check all that apply)

☐ Retail Natural Gas Aggregator ☐ Retail Natural Gas Broker ☒ Retail Natural Gas Marketer

A-2 Applicant information:

Legal Name North American Power and Gas, LLC
Address One Marshall St. Ste 205 - Norwalk, CT 06854
Telephone No. (203) 939-1155 Web site Address www.napower.com

A-3 Applicant information under which applicant will do business in Ohio:

Name North American Power and Gas, LLC
Address One Marshall Street, Suite 205 - Norwalk, CT 06854
Web site Address www.napower.com Telephone No. (203) 939-1155

A-4 List all names under which the applicant does business in North America:

North American Power and Gas, LLC North American Power

A-5 Contact person for regulatory or emergency matters:

Name Michael D'Angeló, Esq. Title General Counsel
Business Address One Marshall Street, Suite 205 Norwalk, CT 06854
Telephone No. (203) 663-9763 Fax No. (203) 286-2064 Email Address mdangelo@napower.com

(CRNGS Supplier- Version 1.07) Page 1 of 7

A-6 Contact person for Commission Staff use in investigating customer complaints:

Name Chad Klein Title Director of Compliance
Business address One Marshall Street, Suite 205 Norwalk, CT 06854
Telephone No. (203) 663-9724 Fax No. (203) 286-2064 Email Address cklein@napower.com

A-7 Applicant's address and toll-free number for customer service and complaints

Customer service address One Marshall Street, Suite 205 Norwalk, CT 06854
Toll-Free Telephone No. (888) 313-9086 Fax No. (203) 286-2064 Email Address customercare@napower.com

A-8 Provide "Proof of an Ohio Office and Employee," in accordance with Section 4929.22 of the Ohio Revised Code, by listing name, Ohio office address, telephone number, and Web site address of the designated Ohio Employee

Name KBHR Statutory Agency Title Statutory Agent
Business address 65 E. State Street, Suite 1800 Columbus Ohio 43215
Telephone No. (614) 462-5400 Fax No. (614) 462-2634 Email Address n/a

A-9 Applicant's federal employer identification number 271077320

A-10 Applicant's form of ownership: (Check one)

- | | |
|--|---|
| <input type="checkbox"/> Sole Proprietorship | <input type="checkbox"/> Partnership |
| <input type="checkbox"/> Limited Liability Partnership (LLP) | <input checked="" type="checkbox"/> Limited Liability Company (LLC) |
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Other |

A-11 (Check all that apply) Identify each natural gas company service area in which the applicant is currently providing service or intends to provide service, including identification of each customer class that the applicant is currently serving or intends to serve, for example: residential, small commercial, and/or large commercial/industrial (mercantile) customers. (A mercantile customer, as defined in Section 4929.01(L)(1) of the Ohio Revised Code, means a customer that consumes, other than for residential use, more than 500,000 cubic feet of natural gas per year at a single location within the state or consumes natural gas, other than for residential use, as part of an undertaking having more than three locations within or outside of this state. In accordance with Section 4929.01(L)(2) of the Ohio Revised Code, "Mercantile customer" excludes a not-for-profit customer that consumes, other than for residential use, more than 500,000 cubic feet of natural gas per year at a single location within this state or consumes natural gas, other than for residential use, as part of an undertaking having more than three locations within or outside this state that has filed the necessary declaration with the Public Utilities Commission.)

Applicant is not currently supplying natural gas in Ohio, but intends to serve all applicable territories and customer classes as indicated below.

<input checked="" type="checkbox"/> Columbia Gas of Ohio	<input checked="" type="checkbox"/> Residential	<input checked="" type="checkbox"/> Small Commercial	<input checked="" type="checkbox"/> Large Commercial / Industrial
<input checked="" type="checkbox"/> Dominion East Ohio	<input checked="" type="checkbox"/> Residential	<input checked="" type="checkbox"/> Small Commercial	<input checked="" type="checkbox"/> Large Commercial / Industrial
<input checked="" type="checkbox"/> Duke Energy Ohio	<input checked="" type="checkbox"/> Residential	<input checked="" type="checkbox"/> Small Commercial	<input checked="" type="checkbox"/> Large Commercial / Industrial
<input checked="" type="checkbox"/> Vectren Energy Delivery of Ohio	<input checked="" type="checkbox"/> Residential	<input checked="" type="checkbox"/> Small Commercial	<input checked="" type="checkbox"/> Large Commercial / Industrial

A-12 If applicant or an affiliated interest previously participated in any of Ohio's Natural Gas Choice Programs, for each service area and customer class, provide approximate start date(s) and/or end date(s) that the applicant began delivering and/or ended services.

☐ Columbia Gas of Ohio

<input type="checkbox"/> Residential	Beginning Date of Service	End Date
<input type="checkbox"/> Small Commercial	Beginning Date of Service	End Date
<input type="checkbox"/> Large Commercial	Beginning Date of Service	End Date
<input type="checkbox"/> Industrial	Beginning Date of Service	End Date

☐ Dominion East Ohio

<input type="checkbox"/> Residential	Beginning Date of Service	End Date
<input type="checkbox"/> Small Commercial	Beginning Date of Service	End Date
<input type="checkbox"/> Large Commercial	Beginning Date of Service	End Date
<input type="checkbox"/> Industrial	Beginning Date of Service	End Date

☐ Duke Energy Ohio

<input type="checkbox"/> Residential	Beginning Date of Service	End Date
<input type="checkbox"/> Small Commercial	Beginning Date of Service	End Date
<input type="checkbox"/> Large Commercial	Beginning Date of Service	End Date
<input type="checkbox"/> Industrial	Beginning Date of Service	End Date

☐ Vectren Energy Delivery of Ohio

<input type="checkbox"/> Residential	Beginning Date of Service	End Date
<input type="checkbox"/> Small Commercial	Beginning Date of Service	End Date
<input type="checkbox"/> Large Commercial	Beginning Date of Service	End Date
<input type="checkbox"/> Industrial	Beginning Date of Service	End Date

A-13 If not currently participating in any of Ohio's four Natural Gas Choice Programs, provide the approximate start date that the applicant proposes to begin delivering services:

<input checked="" type="checkbox"/>	[REDACTED]	[REDACTED]	[REDACTED]
<input checked="" type="checkbox"/>	Dominion East Ohio	Intended Start Date	4/15/12
<input checked="" type="checkbox"/>	[REDACTED]	[REDACTED]	[REDACTED]
<input checked="" type="checkbox"/>	Vectren Energy Delivery of Ohio	Intended Start Date	4/15/12

PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED.

- A-14 **Exhibit A-14 "Principal Officers, Directors & Partners,"** provide the names, titles, addresses and telephone numbers of the applicant's principal officers, directors, partners, or other similar officials.
- A-15 **Exhibit A-15 "Corporate Structure,"** provide a description of the applicant's corporate structure, including a graphical depiction of such structure, and a list of all affiliate and subsidiary companies that supply retail or wholesale natural gas or electricity to customers in North America.
- A-16 **Exhibit A-16 "Company History,"** provide a concise description of the applicant's company history and principal business interests.
- A-17 **Exhibit A-17 "Articles of Incorporation and Bylaws,"** if applicable, provide the articles of incorporation filed with the state or jurisdiction in which the applicant is incorporated and any amendments thereto.
- A-18 **Exhibit A-18 "Secretary of State,"** provide evidence that the applicant is currently registered with the Ohio Secretary of the State.

SECTION B - APPLICANT MANAGERIAL CAPABILITY AND EXPERIENCE

PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED

- B-1 **Exhibit B-1 "Jurisdictions of Operation,"** provide a current list of all jurisdictions in which the applicant or any affiliated interest of the applicant is, at the date of filing the application, certified, licensed, registered, or otherwise authorized to provide retail natural gas service, or retail/wholesale electric services.
- B-2 **Exhibit B-2 "Experience & Plans,"** provide a current description of the applicant's experience and plan for contracting with customers, providing contracted services, providing billing statements, and responding to customer inquiries and complaints in accordance with Commission rules adopted pursuant to Section 4929.22 of the Revised Code and contained in Chapter 4901:1-29 of the Ohio Administrative Code.
- B-3 **Exhibit B-3 "Summary of Experience,"** provide a concise and current summary of the applicant's experience in providing the service(s) for which it is seeking to be certified to provide (e.g., number and types of customers served, utility service areas, volume of gas supplied, etc.).
- B-4 **Exhibit B-4 "Disclosure of Liabilities and Investigations,"** provide a description of all existing, pending or past rulings, judgments, contingent liabilities, revocations of authority, regulatory investigations, or any other matter that could adversely impact the applicant's financial or operational

status or ability to provide the services it is seeking to be certified to provide.

- B-5 Exhibit B-5 "Disclosure of Consumer Protection Violations,"** disclose whether the applicant, affiliate, predecessor of the applicant, or any principal officer of the applicant has been convicted or held liable for fraud or for violation of any consumer protection or antitrust laws within the past five years.

☐ No ☒ Yes

If Yes, provide a separate attachment labeled as **Exhibit B-5 "Disclosure of Consumer Protection Violations,"** detailing such violation(s) and providing all relevant documents.

- B-6 Exhibit B-6 "Disclosure of Certification Denial, Curtailment, Suspension, or Revocation,"** disclose whether the applicant or a predecessor of the applicant has had any certification, license, or application to provide retail natural gas or retail/wholesale electric service denied, curtailed, suspended, or revoked, or whether the applicant or predecessor has been terminated from any of Ohio's Natural Gas Choice programs, or been in default for failure to deliver natural gas.

☒ No ☐ Yes

If Yes, provide a separate attachment, labeled as **Exhibit B-6 "Disclosure of Certification Denial, Curtailment, Suspension, or Revocation,"** detailing such action(s) and providing all relevant documents.

SECTION C - APPLICANT FINANCIAL CAPABILITY AND EXPERIENCE

PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED

- C-1 Exhibit C-1 "Annual Reports,"** provide the two most recent Annual Reports to Shareholders. If applicant does not have annual reports, the applicant should provide similar information, labeled as Exhibit C-1, or indicate that Exhibit C-1 is not applicable and why.
- C-2 Exhibit C-2 "SEC Filings,"** provide the most recent 10-K/8-K Filings with the SEC. If applicant does not have such filings, it may submit those of its parent company. If the applicant does not have such filings, then the applicant may indicate in Exhibit C-2 whether the applicant is not required to file with the SEC and why.
- C-3 Exhibit C-3 "Financial Statements,"** provide copies of the applicant's two most recent years of audited financial statements (balance sheet, income statement, and cash flow statement). If audited financial statements are not available, provide officer-certified financial statements. If the applicant has not been in business long enough to satisfy this requirement, it shall file audited or officer-certified financial statements covering the life of the business.
- C-4 Exhibit C-4 "Financial Arrangements,"** provide copies of the applicant's current financial arrangements to conduct competitive retail natural gas service (CRNGS) as a business activity (e.g., guarantees, bank commitments, contractual arrangements, credit agreements, etc.)
- C-5 Exhibit C-5 "Forecasted Financial Statements,"** provide two years of forecasted financial statements (balance sheet, income statement, and cash flow statement) for the applicant's CRNGS operation, along with a list of assumptions, and the name, address, email address, and telephone number of the preparer.

- C-6 **Exhibit C-6 "Credit Rating,"** provide a statement disclosing the applicant's current credit rating as reported by two of the following organizations: Duff & Phelps, Dun and Bradstreet Information Services, Fitch IBCA, Moody's Investors Service, Standard & Poors, or a similar organization. In instances where an applicant does not have its own credit ratings, it may substitute the credit ratings of a parent or affiliate organization, provided the applicant submits a statement signed by a principal officer of the applicant's parent or affiliate organization that guarantees the obligations of the applicant.
- C-7 **Exhibit C-7 "Credit Report,"** provide a copy of the applicant's current credit report from Experian, Dun and Bradstreet, or a similar organization.
- C-8 **Exhibit C-8 "Bankruptcy Information,"** provide a list and description of any reorganizations, protection from creditors, or any other form of bankruptcy filings made by the applicant, a parent or affiliate organization that guarantees the obligations of the applicant or any officer of the applicant in the current year or since applicant last filed for certification.
- C-9 **Exhibit C-9 "Merger Information,"** provide a statement describing any dissolution or merger or acquisition of the applicant within the five most recent years preceding the application, or at any time as a participant in the Ohio Natural Gas Choice programs.

SECTION D – APPLICANT TECHNICAL CAPABILITY

PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED.

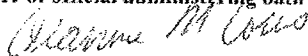
- D-1 **Exhibit D-1 "Operations,"** provide a current written description of the operational nature of the applicant's business. Please include whether the applicant's operations will include the contracting of natural gas purchases for retail sales, the nomination and scheduling of retail natural gas for delivery, and the provision of retail ancillary services, as well as other services used to supply natural gas to the natural gas company city gate for retail customers.
- D-2 **Exhibit D-2 "Operations Expertise,"** given the operational nature of the applicant's business, provide evidence of the applicant's current experience and technical expertise in performing such operations.
- D-3 **Exhibit D-3 "Key Technical Personnel,"** provide the names, titles, email addresses, telephone numbers, and background of key personnel involved in the operational aspects of the applicant's current business.

Applicant Signature and Title


Vice President

Sworn and subscribed before me this 13 day of March Month 2012 Year

Signature of official administering oath



Print Name and Title

Paul Rossi
Vice President, North American Power and Gas, LLC

My commission expires on

DEANNE M. CORRIS
NOTARY PUBLIC OF CONNECTICUT
My Commission Expires 6/30/2016

(CRNGS Supplier - Version 1.07) Page 6 of 7



The Public Utilities Commission of Ohio

Competitive Retail Natural Gas Service
Affidavit Form
(Version 1.07)

In the Matter of the Application of)

for a Certificate or Renewal Certificate to Provide)
Competitive Retail Natural Gas Service in Ohio.)

Case No. - - -GA-CRS

County of Fairfield
State of CT

Paul Rossi

[Affiant], being duly sworn/affirmed, hereby states that:

- (1) The information provided within the certification or certification renewal application and supporting information is complete, true, and accurate to the best knowledge of affiant.
- (2) The applicant will timely file an annual report of its intrastate gross receipts and sales of hundred cubic feet of natural gas pursuant to Sections 4905.10(A), 4911.18(A), and 4929.23(B), Ohio Revised Code.
- (3) The applicant will timely pay any assessment made pursuant to Section 4905.10 or Section 4911.18(A), Ohio Revised Code.
- (4) Applicant will comply with all applicable rules and orders adopted by the Public Utilities Commission of Ohio pursuant to Title 49, Ohio Revised Code.
- (5) Applicant will cooperate with the Public Utilities Commission of Ohio and its staff in the investigation of any consumer complaint regarding any service offered or provided by the applicant.
- (6) Applicant will comply with Section 4929.21, Ohio Revised Code, regarding consent to the jurisdiction of the Ohio courts and the service of process.
- (7) Applicant will inform the Public Utilities Commission of Ohio of any material change to the information supplied in the certification or certification renewal application within 30 days of such material change, including any change in contact person for regulatory or emergency purposes or contact person for Staff use in investigating customer complaints.
- (8) Affiant further sayeth naught.

Affiant Signature & Title

Paul Rossi
Vice President

Sworn and subscribed before me this

13

day of

March

Month

2012

Year

Signature of Official Administering Oath

Deanne M. Corris

Print Name and Title

Paul Rossi
Vice President, North American Power and Gas, LLC

My commission expires on

DEANNE M. CORRIS
NOTARY PUBLIC OF CONNECTICUT
My Commission Expires 6/30/2016

(CRNGS Supplier -Version 1.07) Page 7 of 7

Exhibit A-14 "Principal Officers, Directors & Partners" provide the names, titles, addresses and telephone numbers of the applicant's principal officers, directors, partners, or other similar officials.

Kerry Breitbart, CEO

One Marshall Street
Suite 205
Norwalk, CT 06854
203-663-9763

Carey Turnbull, Chairman

One Marshall Street
Suite 205
Norwalk, CT 06854
203-663-9763

Bill Kinneary, President and Chief Compliance Officer

One Marshall Street
Suite 205
Norwalk, CT 06854
203-663-9763

Chris Sattler, COO

One Marshall Street
Suite 205
Norwalk, CT 06854
203-663-9763

Matthew Reditt, CFO

One Marshall Street
Suite 205
Norwalk, CT 06854
203-663-9763

Taff Tschamler, Senior Vice President, Business Development

One Marshall Street
Suite 205
Norwalk, CT 06854
203-663-9763

Greg Breitbart, CMO

One Marshall Street
Suite 205
Norwalk, CT 06854
203-663-9763

John Costino, Vice President of Sales and Training

One Marshall Street
Suite 205
Norwalk, CT 06854
203-663-9763

Bradley J. Tayles, Vice President of Operations

One Marshall Street
Suite 205
Norwalk, CT 06854
203-663-9763

Michael D'Angelo, General Counsel

One Marshall Street
Suite 205
Norwalk, CT 06854
203-663-9763

Paul Rossi, VP – Natural Gas Division

One Marshall Street
Suite 205
Norwalk, CT 06854
203-663-9763

Exhibit A-15 "Corporate Structure," provide a description of the applicant's corporate structure, including a graphical depiction of such structure, and a list of all affiliate and subsidiary companies that supply retail or wholesale electricity or natural gas to customers and companies that aggregate customers in North America.

Applicant has no affiliate or subsidiary companies that supply retail or wholesale electricity or natural gas to customers in North America. No graphical description is applicable.

Exhibit A-16 "Company History," Provide a concise description of the applicant's company history and principal business interests.

Please visit us at: <http://www.napower.com/>

Our Mission

Our mission is to be the most effective supplier available to the energy industry and to help consumers manage their energy costs through effective energy purchasing strategies.

Overview

North American Power is an energy company founded to help homeowners and businesses take full advantage of deregulated rates. Our team is led by electricity and natural gas industry veterans with complementary experience at the very highest levels. North American Power places community at the center of its mission, helping consumers make smarter energy choices, giving back to local non-profits through an innovative Perpetual Funding program and creating sustainable income opportunities for its growing sales force. Plus, the NAP Green™ program offers eco-conscious consumers a variety of choices that positively impact the environment.

North American Power currently serves customers in the deregulated jurisdictions of Maryland, Connecticut, Illinois, Ohio, New York, New Jersey and Pennsylvania.

Exhibit A-17 "Articles of Incorporation and Bylaws," if applicable, provide the articles of incorporation filed with the state or jurisdiction in which the Applicant is incorporated and any amendments thereto.



CONFIDENTIAL

Exhibit A-18 "Secretary of State," provide evidence that the applicant has registered with the Ohio Secretary of the State.

DATE:
10/20/2011

DOCUMENT ID
201129201310

DESCRIPTION
REG. OF FOR. PROFIT LIM. LIAB. CO.
(LFP)

FILING
125.00

EXPED
.00

PENALTY
.00

CERT
.00

COPY
.00

Receipt

This is not a bill. Please do not remit payment.

NRAI CORPORATE SERVICES LLC
16055 SPACE CENTER BLVD
STE 235
HOUSTON, TX 77062

**STATE OF OHIO
CERTIFICATE**

Ohio Secretary of State, Jon Husted

2054849

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

NORTH AMERICAN POWER AND GAS, LLC

and, that said business records show the filing and recording of:

Document(s):

REG. OF FOR. PROFIT LIM. LIAB. CO.

Document No(s):

201129201310



United States of America
State of Ohio
Office of the Secretary of State

Witness my hand and the seal of the
Secretary of State at Columbus, Ohio
this 13th day of October, A.D. 2011.

Jon Husted

Ohio Secretary of State

B. APPLICANT MANAGERIAL CAPABILITY AND EXPERIENCE

Exhibit B-1 “Jurisdictions of Operation,” provide a list of all jurisdictions in which the applicant or any affiliated interest of the applicant is, at the date of filing the application, certified, licensed, registered, or otherwise authorized to provide retail natural gas service or retail/wholesale electric services including aggregation services.

As of the date of this filing, North American Power is licensed, certified, registered or otherwise authorized to provide retail or wholesale electric supply services in Ohio, Maryland, Connecticut, Pennsylvania, New York, Illinois, and New Jersey.

Applicant is licensed, certified, registered or otherwise authorized to provide retail natural gas supply services in New York and New Jersey.

Exhibit B-2 "Experience & Plans," provide a description of the applicant's experience and plan for contracting with customers, providing contracted services, providing billing statements, and responding to customer inquiries and complaints in accordance with Commission rules adopted pursuant to Section 4929.22 of the Revised Code and contained in Chapter 4901:1-29 of the Ohio Administrative Code.

North American Power and Gas, LLC ("NAP") has a proven track record in the electric and natural gas industry as supplier/marketer licensed in and serving the Energy Supplier Markets in Ohio, Pennsylvania, Illinois, Maryland, New York, New Jersey, and Connecticut.

NAP follows certain protocols and sets company policy to both monitor and control the quality of its outreach and to fulfill its duty as a Marketer. First, any and all employees who will have contact with the public are trained in the energy industry basics and then are trained specific to each program it offers to the consumer within each program guideline and all applicable regulations that govern each jurisdiction's competitive market. Company disciplinary procedures and implementation of those procedures are also keyed to the industry and designed from the view of complete professionalism on the part of every company employee.

When customers enroll with NAP, they continue to have their natural gas delivered to them by their LDC, who also services on-site issues and responds to emergencies.

North American Power has dedicated marketing, compliance and legal departments fully versed in each jurisdiction's rules, regulations, statutes and orders. Under advice of the General Counsel, all marketing staff and employees who have contact with customers or potential customers are constantly updated and trained in the most current industry regulations and company procedures. Any marketing materials provided to potential customers in any form whatsoever will be in plain language and fully disclose all required information including, but not limited to, term of service, pricing, conditions of service, emergency contact information, and any termination fees if applicable. Additionally, NAP has a dedicated Natural Gas Division headed by their Vice President, Paul Rossi, who brings over thirty years of experience in the natural gas industry.

North American Power maintains a Customer Service department dedicated to quickly resolve any customer questions or complaints that may occur with its own dedicated toll free number at 888-313-9086. NAP fully acknowledges its responsibility to comply with Commission rules adopted pursuant to Section 4929.22 of the Revised Code and contained in Chapter 4901:1-29 of the Ohio Administrative Code.

Customers can reach NAP twenty-four hours a day via www.napower.com, email at customercare@napower.com, or via or toll-free phone number (888-313-9086).

Exhibit B-3 "Summary of Experience," provide a concise and current summary of the applicant's experience in providing the service(s) for which it is seeking to be certified to provide (e.g., number and types of customers served, utility service areas, volume of gas supplied, etc.).

North American Power and Gas ("NAP") was founded in 2010 and has enrolled tens of thousands of residential, commercial and industrial customers in each jurisdiction in which NAP is licensed.

Applicant currently provides natural gas supply service in two markets; New Jersey and New York, serving all territories and all customer classes in each respective jurisdiction. North American Power and Gas supplies natural gas services to residential, industrial and commercial accounts in the aforementioned markets. Additionally, NAP has a dedicated Natural Gas Division headed by their Vice President, Paul Rossi, who brings over thirty years of experience in the natural gas industry.

We accomplish our mission by continuous research into the energy markets around the country. NAP has built a successful team of seasoned Sales Managers and Sales Consultants who are continuously educated in issues concerning the energy services industry. NAP is proud to serve the industry and its customers by maintaining and ensuring a degree of excellence and competence by training all those who work within NAP on the important issues and regulations applicable to the Energy Industry, thereby providing the highest possible services to consumers.

Exhibit B-4 "Disclosure of Liabilities and Investigations," provide a description of all existing, pending or past rulings, judgments, contingent liabilities, revocation of authority, regulatory investigations, or any other matter that could adversely impact the applicant's financial or operational status or ability to provide the services it is seeking to be certified to provide.

North American Power and Gas, LLC has never had any existing, pending or past ruling, judgment, contingent liabilities, revocation of authority, regulatory investigations, or any other matter that could adversely impact the applicant's financial or operational status or ability to provide the services it is seeking to be certified to provide.

Exhibit B-5 "Disclosure of Consumer Protection Violations," disclose whether the applicant, affiliate, predecessor of the applicant, or any principal officer of the applicant has been convicted or held liable for fraud or for violation of any consumer protection or antitrust laws within the past five years.

North American Power and Gas, LLC ("NAP") has never been convicted or held liable for fraud or violation of any antitrust laws within the past five years. Please see the below for a synopsis of a consumer protection investigation which has since been resolved.

Maryland

In early 2011 The Maryland PSC did initiate an investigation against NAP and eventually imposed a \$100,000 penalty against NAP which NAP immediately paid. The Maryland Commission recognized that NAP fully cooperated with the Maryland Staff and Commission investigation. The Maryland Commission also specifically found that NAP did not intentionally violate any Maryland provision, but rather that the violations resulted from issues created by rapid expansion into Maryland's electricity supply market. NAP has learned from its Maryland experience and has implemented numerous measures to ensure full compliance in all states of operation, including but not limited to the following.

Many steps have been taken including hiring additional executives with lengthy experience in the energy business to provide additional depth and oversight of marketing and related competitive supply operations.

Those executives are:

Bill Kinneary, President and Chief Compliance Officer, who has over 38 years of experience in the energy industry, including specific experience with both the technical and managerial requirements of operating an alternative electric supplier; and Michael D'Angelo, Esq., General Counsel, who has over 19 years of compliance experience with 10 years of compliance experience in the energy industry. Additionally, NAP has a dedicated Natural Gas Division headed by their Vice President, Paul Rossi, who brings over thirty years of experience in the natural gas industry.

NAP engaged local Maryland counsel (two law firms) to assist with review and approval of all Maryland-specific marketing materials and operations. Create a compliance Department dedicated toward ensuring full compliance with all federal, state, and local laws, regulations policies and procedures. NAP implemented a zero tolerance anti-slamming policy.

Currently all Maryland issues have been resolved and there are no pending complaints and/or investigations in any jurisdiction in which NAP is licensed.

All of NAP's above-referenced resources and protocols designed to minimize potential customer problems associated with marketing will apply equally to all states of operation.

ORDER NO. 84096

IN THE MATTER OF IN THE MATTER OF THE COMPLAINT OF THE STAFF OF THE PUBLIC SERVICE COMMISSION AGAINST NORTH AMERICAN POWER & GAS, LLC	* * * * * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND _____ CASE NO. 9253 _____
---	---------------------------------	---

Issue Date: June 9, 2011

To: Service List in Case No. 9253

In this Order, the Maryland Public Service Commission (the "Commission") finds that North American Power and Gas, LLC ("NAP") engaged in multiple practices that violate State law and Commission regulations. As a result, and based on the factual findings detailed below, we impose a civil penalty of \$100,000 and require NAP, as a condition of retaining its license to sell electricity and electricity supply services, to undertake certain remedial measures to ensure full regulatory compliance going forward.¹ Based upon the record before us, we conclude that NAP's proposed \$35,000 voluntary contribution to the Fuel Fund of Central Maryland, Inc. ("Fuel Fund") is not an appropriate substitute for a civil penalty in this case, given the serious nature of the violations that occurred here.² We note that the relevant statutory provisions — Public

¹ Most of these remedial measures are contained in the Joint Recommendation submitted by Commission Staff ("Staff") and NAP ("Joint Recommendation") or in Comments submitted by the Office of People's Counsel ("OPC"). Case No. 9253, Items 13 and 14.

² Nor did we identify any basis in statute or Commission precedent that would support our requiring a contribution to the Fuel Fund in this case.

Utilities Article ("PUA") §§ 7-507 and 13-201³ – would support a significantly higher civil penalty on these facts than the civil penalty we are assessing, and also provide for other sanctions, such as suspension or revocation of NAP's license as an electricity supplier in Maryland, that we decline to impose here.

We intend the penalty and remedial actions required by this Order to send a very clear message to NAP that in a deregulated market, customers' ability to make rational, well-informed choices among competing suppliers is directly undermined by deceptive misrepresentations such as those that gave rise to this case. At the same time, we acknowledge that NAP has cooperated with Staff and the Commission to address many of these violations in a timely manner and has demonstrated a willingness to continue its efforts to avoid further violations. Although an intent to deceive is not a necessary precondition to imposing sanctions, we also recognize that the record supports NAP's contention that its violations resulted from inattention and a nascent understanding of how to properly manage its rapid expansion into Maryland's electricity supply market, rather than a deliberate intent on NAP's part to deceive potential customers. Nevertheless, companies that misinform, mislead or deceive consumers poison the well for everyone, whether they do so intentionally or not. This case should be read to stand emphatically for the proposition that this Commission cannot and will not tolerate misleading or deceptive advertising or sales tactics in the retail electricity space, and that we intend to react severely when we find that they have occurred.

³ PUA § 13-201 largely mirrors PUA § 7-507 in terms of potential civil penalties and the factors we must consider in assessing the appropriate civil penalty. For the balance of this Order, we will refer exclusively to PUA § 7-507 for ease of reference.

A. Background

NAP is an electricity supplier with principal offices in Norwalk, Connecticut.⁴ We licensed NAP to supply electricity and electricity supply services in Maryland on July 21, 2010.⁵ As of January 2011, NAP was licensed in Maryland, Connecticut and Pennsylvania, serving approximately 12,000 Maryland customers and 85,000 customers overall.⁶

NAP employs a multi-layer marketing system to solicit customers to switch from their current electricity supplier to NAP. Pursuant to this system, potential NAP representatives pay \$49.00 to cover the costs of a background check, a badge and basic training regarding the policies and procedures they must follow while soliciting customers.⁷ They also receive a Policies and Procedures Manual which they are required to read.⁸ As of the date of the Complaint, NAP required its representatives to undertake approximately 1-1½ hours of live training regarding the policies NAP expected them to follow conducted by one of NAP's area managers.⁹ NAP representatives are compensated based upon the number of customers they sign up to switch electricity supply service to NAP.¹⁰ NAP estimates it currently has approximately 2,000 such representatives in Maryland.¹¹

⁴ January 7, 2011 Staff Complaint (the "Complaint") against North American Power and Gas, LLC, Case No. 9253, Item 1 at 1.

⁵ *Id.* at 2.

⁶ Tr. 81, 90-91 (Jan. 26, 2011).

⁷ Tr. 87 (Jan. 26, 2011).

⁸ Tr. 89-90 (Jan. 26, 2011).

⁹ Tr. 150-151 (Jan. 26, 2011).

¹⁰ Although NAP's corporate name suggests it also sells natural gas products, it has not yet entered the natural gas market in any state. Tr. 109 (Jan. 26, 2011).

¹¹ Tr. 129 (Jan. 26, 2011).

At the time of the Complaint, NAP representatives could use their “warm” personal relationships to obtain customers or they could perform cold calls through door-to-door marketing.¹² They were prohibited from selling on behalf of any supplier except NAP.¹³ In addition to soliciting customers through its representatives, NAP also contracted with Data Exchange, a telecommunications company, to perform telemarketing services on behalf of NAP through a call center.¹⁴

B. The Complaint and Subsequent Procedural History

Staff filed its Complaint on January 7, 2011, requesting that NAP show cause why it should not 1) have its license suspended or revoked, 2) be precluded from soliciting additional Maryland customers, or 3) be subject to a civil penalty for “committing fraud and engaging in deceptive practices” as set forth in PUA § 7-507 and COMAR 20.53.07.¹⁵ The Complaint alleges several fraudulent or deceptive practices committed by NAP:¹⁶

1. That at least one of NAP’s representatives falsely claimed to be a “broker” within the Baltimore Gas and Electric Company (“BGE”) service territory;¹⁷
2. That at least one of NAP’s representatives falsely claimed that “BGE encourages their [sic] customers to find a new supplier”;¹⁸
3. That at least one of NAP’s representatives falsely claimed that there was “no contract to sign” for prospective customers to switch to NAP as their electricity supplier;¹⁹

¹² Tr. 87 (Jan. 26, 2011).

¹³ Tr. 138 (Jan. 26, 2011).

¹⁴ Tr. 176-178 (Jan. 26, 2011).

¹⁵ Complaint at 1.

¹⁶ NAP admits to being responsible for the actions of its representatives, although it disputes whether some of the representations at issue were deceptive. Tr. 7-8 (Jan. 26, 2011).

¹⁷ Complaint at ¶ 5.

¹⁸ *Id.*

¹⁹ *Id.*

4. That at least one of NAP's representatives falsely claimed that customers could "save up to 20%" by switching to NAP as their electricity supplier;²⁰
5. That at least one NAP representative falsely claimed to be an employee of the Commission;²¹
6. That NAP uses "false, misleading, and deceptive practices in displaying its terms and conditions." Specifically, the Complaint alleges that these terms and conditions
 - a. falsely state that the terms of service displayed on NAP's website have been approved by the Commission, and
 - b. deceptively imply that NAP's variable rate may lead to certain savings;²²
7. That NAP fails to include in its Terms and Conditions certain minimum requirements pursuant to COMAR 20.53.07.08, including a price description for each service, a dispute resolution procedure, and the Commission's toll free number and Internet address.²³

On January 14, 2011, we issued an Order to Show Cause directing NAP to appear at a hearing scheduled for January 26, 2011 and to provide evidence to rebut these allegations.²⁴ NAP submitted a "Preliminary Response" on January 21, 2011, in which it claimed it had suspended all telemarketing and door-to-door activities in Maryland as a sign of good faith while it investigated the allegations.²⁵ On January 26, 2011, we

²⁰ *Id.* All of these first four allegations arise from the same advertisement placed on a disposable restaurant placemat, Exhibit 4 to the Complaint. After investigation, NAP subsequently learned that this same advertisement had been used by three additional NAP representatives who simply substituted their own contact information. Tr. 88-89 (Feb. 28, 2011).

²¹ *Id.* at ¶ 6.

²² *Id.* at ¶ 7.

²³ *Id.* at ¶ 8.

²⁴ Case No. 9253, Order No. 83785. NAP also requested a continuance of the January 26, 2011 hearing, which we denied while recognizing that additional proceedings may be necessary once NAP had additional time to investigate the allegations.

²⁵ Case No. 9253, Item 6.

conducted an evidentiary hearing at which time all parties presented evidence and argument regarding the allegations in the Complaint. We then scheduled a follow-up hearing for February 28, 2011 to resolve any outstanding issues that the parties believed still needed to be addressed. In the interim, on February 22, 2011, Staff and NAP submitted their Joint Recommendation.²⁶ The Office of People's Counsel ("OPC") did not join the Joint Recommendation, but instead submitted separate Comments containing an additional recommended remedial measure.²⁷

C. Law and Decision

At each of the two evidentiary hearings, we received extensive evidence regarding the allegations against NAP. NAP conceded that some of these allegations are violations for which we may impose sanctions pursuant to PUA § 7-507, and, at the close of the evidence, Staff retracted its allegation that NAP's Terms and Conditions deceptively claimed to offer a variable rate.²⁸ We will address the evidence and our conclusions regarding each allegation separately before explaining why we decided to impose the sanctions that we have.

1. Alleged Deceptive Statements Contained in NAP's Placemat Advertisement

The original placemat in dispute was created by Mr. John Huber, whom all parties acknowledge was a NAP representative at the time.²⁹ NAP further concedes that it pre-approved this advertisement.³⁰ The first allegedly deceptive statement in this

²⁶ Case No. 9253, Item 13.

²⁷ Case No. 9253, Item 14.

²⁸ Tr. 155-156 (Feb. 28, 2011).

²⁹ Tr. 96 (Jan. 26, 2011). This placemat was admitted as NAP Exhibit 3.

³⁰ Tr. 96-97 (Jan. 26, 2011).

advertisement is Mr. Huber's representation of himself as a "broker."³¹ NAP's CEO, Mr. Kerry Breitbart, testified that he originally called the company's representatives "brokers" based upon his own fond recollection of entering the energy industry as a "broker" many years ago.³² However, NAP concedes, and we agree that the term "broker" strongly implies to the customer that the person is licensed and authorized to recommend any of several competing products. It does not refer to an agent authorized to sell power from only one supplier. NAP concedes that Mr. Huber is not a "broker" and has ceased referring to its representatives in this way.³³ Nonetheless, we conclude that the use of this term was deceptive, thereby constituting "just cause" to impose a civil penalty under PUA § 7-507(k)(3)(iv) and a violation of COMAR 20.53.07.07A(2).

The same placemat advertisement also claimed that "BGE encourages their customers to find a new supplier."³⁴ NAP disputes whether this claim is deceptive, relying upon a BGE advertisement in the Annapolis Sunday *Capital*, portraying customers as claiming that "[w]e found energy suppliers that were right for us."³⁵ Although NAP denies that its statement is deceptive, it concedes that its placemat and BGE's advertisement do not say the same thing.³⁶ NAP also testified that its representatives are prohibited from making any claims along these lines in the future.³⁷

We conclude that this statement was deceptive. The distinction between BGE's statement that some customers have chosen other suppliers and NAP's claim that BGE

³¹ NAP Exhibit 3.

³² Tr. 95-96 (Jan. 26, 2011).

³³ Tr. 95-96, 181-182 (Jan. 26, 2011).

³⁴ NAP Exhibit 3.

³⁵ Tr. 101-102 (Jan. 26, 2011).

³⁶ Tr. 189-191 (Jan. 26, 2011).

³⁷ Tr. 103 (Jan. 26, 2011).

actively encourages its customers to leave is not hair-splitting, and we conclude it misled the public regarding BGE's views on competing suppliers.

The same placemat ad also misled customers when it assured them that there is "no contract to sign."³⁸ NAP admits that this is not true, as it must, because all customers must agree to NAP's Terms and Conditions, which contain a variety of contractual obligations.³⁹ However, NAP contends that a layperson would understand "no contract" to mean only that there is no minimum term and no penalty for leaving.⁴⁰ We are not persuaded, and conclude that the statement was inaccurate and deceptive.

Finally, the same placemat claimed that customers can "save up to 20%." NAP contends that this statement is not inaccurate, although it acknowledges that actual savings have been in the 5-15% range.⁴¹ Even these savings are measured at a single point in time as opposed to an extended comparison of NAP's rates with SOS rates.⁴² We understand that the nature of advertising involves placing one's product in the best light possible, but we conclude that suggesting that customers might obtain savings in excess of anything an actual customer has ever realized is plainly misleading.

To summarize, we conclude that this placemat ad contained four separate deceptive statements that constitute "just cause" for civil penalties under PUA § 7-507(k)(3)(iv) and violations of COMAR 20.53.07.07A(2). We note that these four statements appeared within an advertisement that contained only six statements in total. NAP's investigation has revealed that three other NAP representatives used the same

³⁸ NAP Exhibit 3.

³⁹ Tr. 105 (Feb. 28, 2011) (Kerry Brentbart: "Strictly speaking, there was a contract.").

⁴⁰ Tr. 104-105 (Jan. 26, 2011).

⁴¹ Tr. 106-107 (Jan. 26, 2011).

⁴² SOS rates are the Standard Offer Service rates offered by utilities in the absence of an affirmative choice by the customer to purchase electricity from an alternative supplier such as NAP.

advertisement. Therefore, based upon this record, we will attribute to NAP a total of 16 separate violations from the creation and dissemination of this placemat.⁴³ This total is modest compared to the number of violations we could have recognized. The record reflects that this advertisement ran for ninety (90) days, in five separate restaurants,⁴⁴ and that as many as 507,000 different placemats containing the ad may have been disseminated.⁴⁵ However, we recognize that NAP took steps to remove these placemats from circulation once these issues arose, and the record contains no evidence that NAP made these misstatements deliberately, a conclusion that would have significantly increased the appropriate penalty.⁴⁶

2. NAP Representative Alleging that He Was Employed by the Commission

The Complaint includes the affidavits of two Commission employees who also testified at the initial show cause hearing.⁴⁷ First, Ms. Jackie McKay, an administrative specialist in the Commission's Office of External Relations ("OER"), testified that she received a call from a BGE customer who informed her that a man, claiming to be a Commission employee, had knocked on his door and stated that he was investigating whether the caller qualified for discounts on his gas bill.⁴⁸ The man left his first name - Chris - and telephone number.⁴⁹ The caller had contacted Ms. McKay because he was not aware this Commission's responsibilities included such home visits. After assuring

⁴³ Tr. 88-89 (Feb. 28, 2011).

⁴⁴ Tr. 90-91 (Feb. 28, 2011).

⁴⁵ Tr. 91 (Feb. 28, 2011). NAP could not ascertain how many placemats were actually used, as opposed to printed, because that total would vary based upon the number of diners. Tr. 95 (Feb. 28, 2011).

⁴⁶ Tr. 93 (Feb. 28, 2011).

⁴⁷ Exhibits 5-1 and 5-2 to the Complaint.

⁴⁸ Complaint at Exhibit 5-1.

⁴⁹ *Id.*

the caller that they did not. Ms. McKay referred the matter to her supervisor, Mr. Vincent Tyler, an administrative officer in OER.⁵⁰

Mr. Tyler called the phone number provided by Chris, and a man identifying himself as Chris answered the phone.⁵¹ Mr. Tyler asked Chris whether he worked for the Commission, and Chris said he did not.⁵² Chris stated that he worked for NAP and began soliciting Mr. Tyler as a customer.⁵³ Mr. Tyler did not inquire whether Chris had ever previously held himself out as a Commission employee.⁵⁴

We note initially that this alleged violation, if true, would have constituted the most serious violation in this case. Suggesting to potential customers that a particular supplier or its agent is employed by or otherwise affiliated with this Commission would support revocation of the supplier's license to sell electricity in Maryland in the absence of extraordinary mitigating circumstances. However, we are not convinced by the record that this specific alleged misrepresentation was made. This allegation relies upon two levels of hearsay, and any number of misunderstandings between the caller and NAP's representative could have occurred. We place particular emphasis upon the fact that Chris denied he was a Commission employee when Mr. Tyler directly inquired.

⁵⁰ Tr. 29 (Jan. 26, 2011).

⁵¹ Tr. 48-49 (Jan. 26, 2011).

⁵² Tr. 49-50 (Jan. 26, 2011).

⁵³ Tr. 50 (Jan. 26, 2011).

⁵⁴ Tr. 54-55 (Jan. 26, 2011). Mr. Tyler later obtained Chris' last name, and NAP testified that it had terminated this representative prior to receiving the Complaint based upon a high percentage of customers Chris had enrolled that NAP determined had not been enrolled in compliance with company policy. Tr. 34-35 (Feb. 28, 2011).

3. NAP's Terms and Conditions

Preliminarily, we note that NAP has replaced the "Terms and Conditions" at issue here and submitted a revised version for review by Staff. NAP's cooperation with Staff and its apparent good faith efforts to remediate these violations weigh in its favor.

NAP's earlier Terms and Conditions, however, contained a statement that they had been approved by this Commission.⁵⁵ In fact, we had not approved NAP's Terms and Conditions, and NAP concedes that claiming otherwise was inaccurate.⁵⁶ We also note that the same false claim remained on NAP's website almost three weeks after Staff filed the Complaint.⁵⁷ NAP claims that it did not intend to deceive and that the misunderstanding arose because the Connecticut Department of Public Utility Control had approved its Terms and Conditions.⁵⁸ Nonetheless, NAP concedes that this claim was entirely untrue⁵⁹ and we conclude that it constitutes a violation of COMAR 20.53.07.07A(2) and just cause for civil penalties under PUA §§ 7-507(k)(3)(iv).

The Complaint further alleges that NAP wrongly claims in its Terms and Conditions that it offers a variable rate, although the grounds for this claim are not entirely clear and cannot be readily distinguished from Staff's claim that NAP failed to include a price description in its Terms and Conditions, as required by COMAR (see below). Regardless of the basis for the initial allegation, Staff testified that this provision

⁵⁵ Complaint at Exhibit 6 ("This Agreement has been approved by the Maryland Public Service Commission.").

⁵⁶ Tr. 194-195 (Jan. 26, 2011).

⁵⁷ Tr. 195 (Jan. 26, 2011).

⁵⁸ Tr. 113-115 (Jan. 26, 2011).

⁵⁹ Tr. 111 (Feb. 28, 2011).

of NAP's Terms and Conditions was not deceptive.⁶⁰ We agree and find no violation here.

Finally, the Complaint alleges that NAP's Terms and Conditions fail to include certain information required by COMAR 20.53.07.08, specifically "[a] price description of each service, including all fixed and variable costs,"⁶¹ "[a] dispute procedure,"⁶² and "[t]he Commission's toll-free number and Internet address."⁶³ With regard to NAP's price description, we find that the Terms and Conditions do not sufficiently describe the price that customers will receive. Counsel for NAP contends that the prices are accurately described as a "variable rate" in the Terms and Conditions and that the welcome letter customers receive includes the introductory rate.⁶⁴ However, we conclude that COMAR requires all available price information to be contained in the same document signed by the customer.⁶⁵

Additionally, NAP's Terms and Conditions stated that "potential savings can fluctuate from month to month."⁶⁶ NAP concedes that this statement "could mislead," and we conclude that it is deceptive - it strongly suggests that the customer will always realize some degree of savings, with the extent of the savings being the only variable.⁶⁷ We therefore conclude that NAP violated COMAR 20.53.07.08A(2)(d) by failing to provide a complete and accurate price description in its Terms and Conditions.

⁶⁰ Tr. 155-156 (Feb. 28, 2011).

⁶¹ COMAR 20.53.07.08A(2)(d).

⁶² COMAR 20.53.07.08A(2)(n).

⁶³ COMAR 20.53.07.08A(2)(o).

⁶⁴ Tr. 114-116 (Feb. 28, 2011).

⁶⁵ NAP's revised Terms and Conditions provide significantly more information to the customer. Tr. 114-115 (Feb. 28, 2011).

⁶⁶ Complaint at Exhibit 6.

⁶⁷ Tr. 133 (Feb. 28, 2011).

NAP does not concede that it violated COMAR 20.53.07.08A(2)(n) by failing to include a “dispute procedure.”⁶⁸ Rather, NAP contends that the inclusion of its toll-free phone number satisfies this requirement.⁶⁹ This COMAR provision is more reasonably construed to require more than the phone number of the company with whom a customer might have a dispute, but we do not find in this case that NAP violated this provision.

Finally, NAP concedes, as it must, that its Terms and Conditions failed to include the Commission’s phone number and Internet address.⁷⁰ Therefore, we conclude that NAP’s Terms and Conditions contained three separate violations: one false statement as to our approval and two omissions of information required by COMAR.

Based upon the above, we find a total of 19 deceptive practices⁷¹ attributable to NAP under PUA § 7-507(k)(3)(iv) for which PUA § 7-507(l) authorizes a civil penalty of up to \$10,000 per violation. We will not multiply this total by each day these violations occurred.⁷² Nor will we multiply the four deceptive statements in the placemat advertisements by the number of placemats in each restaurant. We note, however, that had we not given substantial weight to NAP’s good faith efforts to achieve compliance after notification of the violations, the maximum civil penalty we could impose would be many times higher.

⁶⁸ Tr. 116-117 (Feb. 28, 2011).

⁶⁹ Tr. 116-117 (Feb. 28, 2011). NAP does concede that the “dispute procedure” included in its Terms and Conditions was not “ideal.” Tr. 135 (Feb. 28, 2011).

⁷⁰ Tr. 116, 134 (Feb. 28, 2011).

⁷¹ Four separate deceptive statements in the placemat advertisement by four separate representatives in addition to the three violations in NAP’s Terms and Conditions.

⁷² PUA § 7-507(l)(2) provides that “[e]ach day a violation continues is a separate violation.”

4. Remedial Measures Taken and the Joint Recommendation by Staff and NAP

Subsequent to the Complaint, NAP prohibited the dissemination of any advertisements created by its representatives.⁷³ Going forward, all advertisements will be provided by NAP.⁷⁴ NAP has retained two full-time employees with the sole responsibility of identifying and removing non-compliant advertisements.⁷⁵ Similarly, NAP has permanently ceased all door-to-door solicitations by its representatives and suspended all telemarketing activities in Maryland.⁷⁶ Finally, NAP has increased the rescission period for customers from three to four days.⁷⁷

As noted, NAP has submitted new Terms and Conditions that Staff will review for compliance with Maryland law and Commission regulations.⁷⁸ The earlier Terms and Conditions have been removed from NAP's website.⁷⁹ NAP is in the process of hiring in-house counsel and intends to hire at least three additional employees responsible solely for compliance.⁸⁰

NAP represents that it also is upgrading its verification process for customers who choose to sign up with NAP online. Once the required software is active, a customer who signs up online will receive a pop-up containing a confirmation code and the phone number for Data Exchange, a company retained by NAP and commonly used within the

⁷³ Tr. 124-125 (Jan. 26, 2011).

⁷⁴ Tr. 53 (Feb. 28, 2011).

⁷⁵ Tr. 57-58, 73-75 (Feb. 28, 2011).

⁷⁶ Tr. 25-26 (Feb. 28, 2011). NAP is still evaluating whether to re-commence telemarketing activities in the future. Tr. 17 (Feb. 28, 2011). NAP has pointed out that none of the allegations in the Complaint arose from telemarketing activities. Tr. 28-29 (Feb. 28, 2011). We appreciate that NAP has suspended these activities in order to review the script employed by its telemarketing company for compliance with Maryland law. *Id.* We do not opine here regarding NAP's continuation of these practices in other states.

⁷⁷ Tr. 64 (Feb. 28, 2011).

⁷⁸ NAP partially explains its problematic first attempt by the fact that it was never reviewed by a Maryland attorney. Tr. 118 (Jan. 26, 2011).

⁷⁹ Tr. 49 (Feb. 28, 2011).

⁸⁰ Tr. 120-121 (Jan. 26, 2011); Tr. 83-84 (Feb. 28, 2011).

industry for third-party verification.⁸¹ The customer will then contact a Data Exchange representative who will ask specific questions to ensure that the customer is choosing to enroll with NAP and has been provided with all required information.⁸² Additionally, representatives will not be permitted to enroll customers through the representatives' own computers.⁸³ Each customer will be required to enroll through a distinct IP address to prevent unverifiable enrollments.⁸⁴

NAP also is implementing additional training for its representatives through an online training module that every representative will be required to pass annually to remain a NAP representative.⁸⁵ This new online training will emphasize compliance and be state-specific.⁸⁶

The above highlights some of the changes NAP voluntarily initiated or to which it agreed within the Joint Recommendation. Staff testified that the primary purpose in crafting the Joint Recommendation was to focus on improving the corporate oversight of NAP's representatives to avoid future infractions.⁸⁷ We certainly encourage this effort and agree that the remedial measures memorialized in the Joint Recommendation will go a long way toward achieving that goal if they are implemented diligently. Therefore, as a condition to retaining its license to sell electricity and electricity supply services in Maryland, we direct NAP to comply with the remedial steps set forth in the Joint Recommendation, as well as OPC's recommendation that NAP tailor its future training to

⁸¹ Tr. 47-48 (Feb. 28, 2011). At the time these violations occurred, customers who enrolled online received only an email confirmation. Tr. 49 (Feb. 28, 2011).

⁸² Tr. 47-48 (Feb. 28, 2011).

⁸³ Tr. 38 (Feb. 28, 2011).

⁸⁴ Tr. 38 (Feb. 28, 2011).

⁸⁵ Tr. 124 (Jan. 26, 2011); Tr. 76-77 (Feb. 28, 2011).

⁸⁶ Tr. 78-79 (Feb. 28, 2011).

⁸⁷ Tr. 145 (Feb. 28, 2011).

ensure its Maryland representatives are familiar with COMAR 20.53 *et seq.* as well as the state and federal consumer protection statutes identified in OPC's February 22, 2011 Comments.⁸⁸ We also direct NAP to submit its monthly reports on the implementation of these remedial measures to the Commission, OPC and Staff.

5. Civil Penalty

In arriving at the appropriate civil penalty, PUA § 7-507(l)(3) instructs us to consider (i) the number of previous violations, (ii) the gravity of the current violation, and (iii) the good faith of the supplier to achieve compliance after notification. We have considered each factor carefully in this decision. The record reflects that NAP has not been sanctioned for any past misconduct in Maryland, Connecticut or Pennsylvania.⁸⁹ Although we consider all of these violations very serious, we are cognizant that NAP has responded with diligence and good faith to remediate these infractions in a timely manner.

Therefore, in addition to requiring NAP to implement the remedial measures memorialized in the Joint Recommendation as well as OPC's training recommendations, we direct NAP to pay a civil penalty in the amount of \$100,000 into the General Fund of the State as a result of the 19 violations we attribute to NAP. Despite being well below what the law permits, we hope our decision here sends a clear message that we intend to enforce solicitation practices in Maryland's deregulated energy market very strictly. We do not believe a contribution to the Fuel Fund is appropriate here. Staff pointed us to a 2004 case involving BGE in which we directed BGE to spend a specific amount on

⁸⁸ OPC Comments at 3-4

⁸⁹ Tr. 92 (Jan. 26, 2011) (Kerry Breitbart).

improving public awareness of the dangers of downed wires following the death of a line worker.⁹⁰ However, in this case we have found multiple violations of State law and Commission regulations, and conclude that a civil penalty is the appropriate sanction authorized by PUA §§ 7-507(l) and 13-201(b).

D. Conclusion

For these reasons, we find that NAP is subject to civil sanctions pursuant to PUA §§ 7-507(l) and 13-201(b) as set forth above, order NAP to pay a civil penalty in the amount of \$100,000, and require NAP to implement the remedial measures memorialized in the Joint Recommendation as well as OPC's additional recommendation that NAP tailor its future training to ensure its Maryland representatives are familiar with COMAR 20.53 *et seq.* as well as the state and federal consumer protection statutes identified in OPC's February 22, 2011 Comments.⁹¹ We further direct NAP to file the reports described in the Joint Recommendation to Staff, OPC and the Commission on a monthly basis until we direct otherwise.

IT IS THEREFORE, this 9th day of June, in the Year Two Thousand Eleven by the Public Service Commission of Maryland,

ORDERED: (1) That North American Power pay a civil penalty in the amount of \$100,000 into the General Fund of the State of Maryland within thirty (30) days of the date of this Order. The check shall be payable to "Maryland Public Service Commission" and be sent to Fiscal Division, Maryland Public Service Commission, 6 St. Paul Street, 16th Floor, Baltimore, Maryland 21202; and

⁹⁰ Tr. 13-14 (Feb. 28, 2011).

⁹¹ OPC Comments at 3-4.

(2) That North American Power implement the remedial measures contained in the Joint Recommendation, tailor its future training to ensure its Maryland representatives are familiar with COMAR 20.53 *et seq.*, as well as the State and federal consumer protection statutes identified in OPC's February 22, 2011 Comments, and report on its progress to Staff, OPC and the Commission every month until such time as the Commission concludes that additional reporting no longer is necessary.

/s/ Douglas R.M. Nazarian

/s/ Harold D. Williams

/s/ Susanne Brogan

/s/ Lawrence Brenner

/s/ Therese M. Goldsmith

Commissioners

C. APPLICANT FINANCIAL CAPABILITY AND EXPERIENCE

Exhibit C-1 "Annual Reports," provide the two most recent Annual Reports to Shareholders. If applicant does not have annual reports, the applicant should provide similar information in Exhibit C-1 or indicate that Exhibit C-1 is not applicable and why.

Applicant, North American Power and Gas, LLC, is a partnership. It has two members. It does not have Shareholders. An Annual Report to Shareholders and/or the public is not applicable.

Exhibit C-2 "SEC Filings," provide the most recent 10-K/8-K Filings with the SEC. If applicant does not have such filings, it may submit those of its parent company. If the applicant does not have such filings, then the applicant may indicate in Exhibit C-2 that the applicant is not required to file with the SEC and why.

As a privately held company, Applicant is not required to file with the Securities and Exchange Commission. Applicant, North American Power and Gas, LLC, is not an SEC registrant, had no public issuances of debt or equity and, therefore, has no SEC reporting obligations. Quarterly and annual reports, such as 10-Ks, 8-Ks and 10-Qs are not applicable.

Exhibit C-3 “Financial Statements,” provide copies of the applicant’s two most recent years of audited financial statements (balance sheet, income statement, and cash flow statement). If audited financial statements are not available, provide officer certified financial statements. If the applicant has not been in business long enough to satisfy this requirement, it shall file audited or officer certified financial statements covering the life of the business.



CONFIDENTIAL

Exhibit C-4 “Financial Arrangements,” provide copies of the applicant's financial arrangements to conduct CRNGS as a business activity (e.g., guarantees, bank commitments, contractual arrangements, credit agreements, etc.,).



CONFIDENTIAL

Exhibit C-5 "Forecasted Financials." Provide two years of forecasted financial statements (balance sheet, income statement, and cash flow statement) for the applicant's CRNGS operation, along with a list of assumptions, and the name, address, email address, and telephone number of the preparer.

The following forecasted financials were prepared by:

Paul Rossi
Vice President, Natural Gas Division
North American Power and Gas, LLC
One Marshall Street
Suite 205
Norwalk, CT 06854
T: (203) 663-9756
E: prossi@napower.com



CONFIDENTIAL

Exhibit C-6 “Credit Rating,” provide a statement disclosing the applicant’s credit rating as reported by two of the following organizations: Duff & Phelps, Dun and Bradstreet Information Services, Fitch IBCA, Moody’s Investors Service, Standard & Poors, or a similar organization. In instances where an applicant does not have its own credit ratings, it may substitute the credit ratings of a parent or affiliate organization, provided the applicant submits a statement signed by a principal officer of the applicant’s parent or affiliate organization that guarantees the obligations of the applicant.

Applicant does not subscribe to the above mentioned organizations. Please see exhibit C-7 for Applicant’s Corporate Credit Rating.

Exhibit C-7 "Credit Report," provide a copy of the applicant's credit report from Experian, Dun and Bradstreet or a similar organization.

 **CONFIDENTIAL**

Exhibit C-8 “Bankruptcy Information,” provide a list and description of any reorganizations, protection from creditors or any other form of bankruptcy filings made by the applicant, a parent or affiliate organization that guarantees the obligations of the applicant or any officer of the applicant in the current year or within the two most recent years preceding the application.

North American Power and Gas, LLC has not had any bankruptcy filings, reorganizations within the most recent two preceding years.

Exhibit C-9 “Merger Information,” provide a statement describing any dissolution or merger or acquisition of the applicant within the five most recent years preceding the application.

North American Power and Gas, LLC has not had any dissolution or merger or acquisition within the five most recent years preceding this application.

Exhibit D-1 “Operations,” provide a current written description of the operational nature of the applicant’s business. Please include whether the applicant’s operations will include the contracting of natural gas purchases for retail sales, the nomination and scheduling of retail natural gas for delivery, and the provision of retail ancillary services, as well as other services used to supply natural gas to the natural gas company city gate for retail customers.

North American Power and Gas, LLC (“NAPG”) has established business processes and systems to manage all aspects of supplying retail natural gas in Ohio. NAPG operation will not include the production of natural gas from owned assets. Instead, NAPG will purchase physical natural gas via its wholesale supply arrangement with a AA rated wholesale supplier. NAPG utilizes various financial hedging approaches to ensure that its supply obligation is properly managed under its corporate risk management policies and procedures.

In terms of customer related operations, NAPG manages established business processes and systems to ensure accurate, timely and compliant customer enrollments and interactions. NAPG operates a proprietary customer relationship management system, which is integrated with two outside vendor systems (EDI and customer information system), each operating their solutions for over a decade in competitive energy markets. NAPG’s EDI vendor is Energy Services Group (ESG), one of the largest and most experienced EDI vendors in the utility industry. ESG provides EDI services to over 90 retail energy suppliers. NAPG’s CIS vendor is Nexant (formerly Excelergy), which has the leading CIS application among retail energy suppliers and is specifically designed for companies operating in competitive markets.

Exhibit D-2 “Operations Expertise,” given the operational nature of the applicant’s business, provide evidence of the applicant’s current experience and technical expertise in performing such operations.

Kerry Breitbart, Founder & Chief Executive Officer

Mr. Breitbart has nearly 30 years of experience in commodity and energy trading, including building of emerging businesses into robust, international operations and extensive experience in with numerous aspects of the natural gas industry. Prior to North American Power, he spend 20 years at the United Companies where he started as an employee brokering crude oil and worked his way up to President and CEO. He built United from four divisions to thirteen, and the value of energy products the company brokered was in excess of \$750 Billion a year. United was the first broker of energy derivatives and did not have a competitor anywhere in the world for 2 years. When sold in 2005, the company was still the #1 broker of crude derivatives globally. Mr. Breitbart is a graduate of Carnegie-Mellon University.

Carey Turnbull, Chairman

Mr. Turnbull has 30 years of experience in the energy market and has an extensive background in the management of energy commodity price risk. Prior to North American Power, he was Senior Partner and Managing Director of energy brokerage firm Amerex, which he co-founded in 1983. While at Amerex Mr. Turnbull developed the company’s regulated futures business on the International Petroleum Exchange in London, and founded its petroleum brokerage business in Asia. He was involved with Amerex’s development of natural gas and electricity derivative instruments, and those sectors adoption of online trading. Mr. Turnbull has extensive experience with numerous aspects of the natural gas industry.

Bill Kinneary, President and Chief Compliance Officer

Mr. Kinneary has 38 years of experience in the energy industry with a variety of key responsibilities from utility general manager to executive positions in retail marketing and natural gas supply companies. Mr. Kinneary has held the top executive offices in KeySpan Energy Services, KeySpan Energy Supply and Total Gas & Electric (TG&E). Among his many career accomplishments Mr. Kinneary designed and implemented the first utility energy hedging strategy in New York State, developed power pricing tactics that resulted in profits from the largest New York City power plant, and took TG&E from the brink of punitive regulatory/legal action and financial collapse to full compliance and profitability. Most recently, he has been supporting a number of clients as an independent consultant focusing on the technical and compliance aspects of retail electricity and natural gas operations. Mr. Kinneary has served as a member of the National Energy Marketers Association’s Executive Committee since 1999 including two terms as Chairman and has been proudly serving as Chairman Emeritus since 2005. Throughout

his career Mr. Kinneary has had extensive experience with every aspect of natural gas supply and deregulated natural gas markets.

Paul Rossi, Vice President, Natural Gas Division

Former director of U.S. Natural Gas Commodity Operations for UBS Investment Bank, Mr. Rossi has 32 years of experience in the energy industry, including wholesale and retail energy commodities and regulated utilities. He was manager of regulatory affairs for UIL Holdings Corp., including its principal operating subsidiary, The United Illuminating Company, and active in Northeast energy markets as director of natural gas supply for Southern Connecticut Gas Company. Prior to joining Southern, he was senior economist at the New York Power Authority engaged in fuel supply and IPP project development. His experience includes regulatory and planning matters in California, before the California Public Utilities Commission and California Energy Commission in the finance and gas engineering divisions of San Diego Gas & Electric Company.

Chris Sattler, Chief Operating Officer

Mr. Sattler has worked with several suppliers in the energy industry as a consultant handling FERC filings, state licensing, wholesale procurement, and sales. He owned and operated a licensed electric aggregator in Connecticut, EnergyChoice LLC, which would broker accounts to multiple suppliers. Mr. Sattler's consulting firm, EnSatt Consulting, was initially contracted to set up North American Power as a Load Serving Entity in Connecticut. Shortly after his assignment, Mr. Sattler joined North American Power full time as the Chief Operating Officer.

Taff Tschamler, Senior Vice President, Business Development

Mr. Tschamler, a 16-year energy industry veteran, joined North American Power in March of 2011. In addition to business development, Tschamler will be involved in pricing and supply management, marketing, and compliance. Tschamler comes to North American Power from KEMA, where he served as Director of North American Retail Energy. While at KEMA, he ran the retail energy advisory service, retail benchmarking service, and was lead author of First to Market, an analysis of the emerging smart energy business. Mr. Tschamler received his Masters in Public Policy from the College of William and Mary in Virginia.

Greg Breitbart, CMO

Mr. Breitbart left a career in international luxury real estate to join North American Power at its inception when the company had only three employees. Using his background in marketing, he worked to create the North American Power brand, sales channels, consumer promise and core values. Through Greg's efforts, North American Power has become one of the fastest growing energy companies in the Northeast. Greg

places social entrepreneurship at the center of North American Power's marketing strategy and consistently looks for ways to utilize marketing to help drive growth while also driving change.

Michael D'Angelo, Esq. General Counsel

Mr. D'Angelo assumed his role as General Counsel for North American Power in 2011, bringing with him over 19 years of legal and regulatory experience. His involvement in the energy industry for the last ten years allowed him to propel numerous companies to exponential growth while remaining fully compliant. He has held numerous public and private positions over the course of his career ranging from General Counsel to Administrative Law Judge and has spent time working in the General Counsel's office at the New York State Department of Public Service. Mr. D'Angelo is an Adjunct Law School Professor at New York Law School's Center on Financial Services Law and has held leadership roles including Co-chair of Retail Natural Gas Policy and Northeast Advocacy Team at National Energy Marketers Association ("NEM"). Mr. D'Angelo has extensive experience with all aspects of the natural gas industry, including compliance, and regulatory management, with a focus on deregulated states.

Matthew Redett, CFO

Mr. Redett has been involved with all aspects of electricity deregulation since 1997. He has built retail businesses from the ground up multiple times including AES NewEnergy in the UK and Juice Energy in the US. Mr. Redett was Director of Finance and Operations for the New York and Mid-Atlantic regions of Constellation NewEnergy and most recently the Director of Finance for Gamesa Energy USA, North America, a wind farm developer.

Exhibit D-3 “Key Technical Personnel”

Cary Turnbull, Founder and Chairman
carey@napower.com
203.939.1155

Mr. Turnbull has 30 years of experience in the energy market and has an extensive background in the management of energy commodity price risk. Prior to North American Power, he was Senior Partner and Managing Director of energy brokerage firm Amerex, which he co- founded in 1983. While at Amerex Mr. Turnbull developed the company's regulated futures business on the International Petroleum Exchange in London, and founded its petroleum brokerage business in Asia. He was also involved with Amerex's development of natural gas and electricity derivative instruments, and the adoption of the online trading booth.

Kerry Breitbart, Founder and CEO
kerry@napower.com
203.663.9702

Mr. Breitbart has nearly 30 years of experience in commodity and energy trading, including building emerging businesses into robust, international operations. Prior to North American Power, he spent 20 years at the United Companies where he started as an employee brokering crude oil and worked his way up to President and CEO. He built United from four divisions to thirteen, and the notional value of the energy products the company brokered was in excess of \$750 billion per year. United was the first broker of energy derivatives and did not have a competitor anywhere in the world for 2 years. When sold in 2005, the company was still the #1 broker of crude derivatives globally.

Chris Sattler, COO
chris@napower.com
203.500.9905

As Chief Operating Officer of North American Power, Mr. Sattler is charged with management of all operations from wholesale power procurement to retail customer acquisition. Formerly a sought-after consultant for retail energy suppliers, as well as the head of EnergyChoice LLC, a CT-based electric aggregator, he brings a wealth of industry knowledge to the North American Power executive team.

Bill Kinneary, President and Chief Compliance Officer
bill@napower.com
203.663.9730

Mr. Kinneary was named President of North American Power in March of 2011. He brings with him 38 years of experience in the energy industry, where he held numerous positions, ranging from utility general manager to top-level executive positions in retail marketing and electric generation companies. He has held the top executive offices in KeySpan Energy Services, KeySpan Energy Supply and Total Gas & Electric (TG&E). Among his many career accomplishments Mr. Kinneary designed and implemented the first utility energy hedging strategy in New York state, developed power pricing tactics that resulted in profits from the largest New York City power plant, and took TG&E from the brink of punitive regulatory/legal action and financial collapse to full compliance and profitability. Mr. Kinneary has served as a member of the National Energy Marketers Association's Executive Committee since 1999 including two terms as Chairman and has been proudly serving as Chairman Emeritus since 2005.

Taff Tschamler, Senior Vice President, Business Development
ttschamler@napower.com
203.663.9733

Mr. Tschamler, a 16-year energy industry veteran, joined North American Power in March of 2011. In addition to business development, Tschamler will be involved in pricing and supply management, marketing, and compliance. Tschamler comes to North American Power from KEMA, where he served as Director of North American Retail Energy. While at KEMA, he ran the retail energy advisory service, retail benchmarking service, and was lead author of First to Market, an analysis of the emerging smart energy business. Mr. Tschamler received his Masters in Public Policy from the College of William and Mary in Virginia.

Steven Meek CTO
steven@napower.com
203.663.972737

Mr. Meek is responsible for IT infrastructure and internal applications for North American Power. Steven previously worked as a software consultant specializing in systems architecture and application design. He has worked on a wide range of IT projects as a consultant bringing a wealth of technical knowledge to North American Power.

Greg Breitbart, CMO
greg@napower.com
203.663.9701

Mr. Breitbart left a career in international luxury real estate to join North American Power at its inception when the company had only three employees. Using his background in marketing, he worked to create the North American Power brand, sales channels, consumer promise and core values. Through Greg's efforts, North American Power has become one of the fastest growing energy companies in the Northeast. Greg places social entrepreneurship at the center of North American Power's marketing strategy and consistently looks for ways to utilize marketing to help drive growth while also driving change.

Stacy Havlicek, Supply Analyst
shavlicek@napower.com
203.663.9754

Stacy Havlicek has been an energy industry professional for nearly 15 years. During that time Ms. Havlicek has held Front Office positions in both merchant energy companies, such as Mirant and Hess Corp., as well as Wall St. banking institutions, such as Morgan Stanley. Most notably, Ms. Havlicek has worked extensively in the Front Office environment implementing trading and hedging strategies, as Structuring Analyst and Trader, involving energy products including Natural Gas, Electricity, Renewable Energy, and Carbon. Ms. Havlicek earned her MBA from Emory University in Atlanta, and holds a Bachelor of Arts degree in Chemistry from the University of Pennsylvania.

Michael D'Angelo, General Counsel
mdangelo@napower.com
203.663.9736

Mr. D'Angelo assumed his role as General Counsel for North American Power in 2011, bringing with him over 19 years of legal and regulatory experience. His involvement in the energy industry for the last ten years allowed him to propel numerous companies to exponential growth while remaining fully compliant. He has held numerous public and private positions over the course of his career ranging from General Counsel to Administrative Law Judge and has spent time working in the General Counsel's office at the New York State Department of Public Service. Mr. D'Angelo is an Adjunct Law School Professor at New York Law School's Center on Financial Services Law and has held leadership roles including Co-chair of Retail Natural Gas Policy and Northeast Advocacy Team at National Energy Marketers Association ("NEM").

Paul Rossi, Vice President, Natural Gas Division
prossi@napower.com
(203) 663-9756

Former director of U.S. Natural Gas Commodity Operations for UBS Investment Bank, Mr. Rossi has 32 years of experience in the energy industry, including wholesale and retail energy commodities and regulated utilities. He was manager of regulatory affairs for UIL Holdings Corp., including its principal operating subsidiary, The United Illuminating Company, and active in Northeast energy markets as director of natural gas supply for Southern Connecticut Gas Company. Prior to joining Southern, he was senior economist at the New York Power Authority engaged in fuel supply and IPP project development. His experience includes regulatory and planning matters in California, before the California Public Utilities Commission and California Energy Commission in the finance and gas engineering divisions of San Diego Gas & Electric Company.

Matthew Redett, CFO
mredett@napower.com
(203) 939-1155

Mr. Redett has been involved with all aspects of electricity deregulation since 1997. He has built retail businesses from the ground up multiple times including AES NewEnergy in the UK and Juice Energy in the US. Mr. Redett was Director of Finance and Operations for the New York and Mid-Atlantic regions of Constellation NewEnergy and most recently the Director of Finance for Gamesa Energy USA, North America, a wind farm developer.

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/2/2012 9:16:16 AM

in

Case No(s). 12-1134-GA-CRS

Summary: Application Certification Application as Competitive Retail Natural Gas Supplier electronically filed by Ms. Margeaux Kimbrough on behalf of North American Power and Gas, LLC