

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Regulation of the :  
Purchased Gas Adjustment Clauses : Case No. **11-206-GA-GCR**  
Contained Within the Rate Schedules of :  
**Brainard Gas Corporation.** :

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**REPLY BRIEF  
SUBMITTED ON THE BEHALF OF THE STAFF OF THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

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**Michael DeWine**  
Ohio Attorney General

**William L. Wright**  
Section Chief

**Werner L. Margard**  
**Devin D. Parram**  
Assistant Attorneys General  
Public Utilities Section  
180 East Broad Street, 6<sup>th</sup> Floor  
Columbus, OH 43215  
Telephone: 614-466-4395  
Facsimile: (614) 644-8764  
[werner.margard@puc.state.oh.us](mailto:werner.margard@puc.state.oh.us)  
[devin.parram@puc.state.oh.us](mailto:devin.parram@puc.state.oh.us)

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**I. INTRODUCTION**

Brainard avoids a very important question in its Initial Brief – what cost did it incur for the 11,926 Mcf of gas it wants Staff to account for? The answer to this question is “none.” Thus, Brainard had no right to recover from customers for these volumes of gas.

The purpose of the GCR hearing is to match the gas cost incurred by the company with the revenue it collected from its GCR customers. Brainard claims Staff incorrectly disregarded a total of 11,926 Mcf in calculating its actual adjustment.<sup>1</sup> But nowhere in Brainard’s Initial Brief does it identify the cost it incurred for these volumes. To the

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<sup>1</sup> Brainard Initial Brief at 11.

contrary, Brainard admits it incurred no cost for a large portion of this gas.<sup>2</sup> Brainard apparently believes it should recover money from its GCR customers for gas it incurred no cost for. This position is very troubling to Staff. It's contrary to purpose of the GCR mechanism, which provides for the dollar-for-dollar recovery of gas purchased by the utility and then sold to GCR customers. The GCR process was never intended to be a mechanism where a gas company profits off of its GCR customers by recovering for gas that it incurred absolutely no cost for.

Brainard failed to prove it incurred any cost for a substantial portion of the gas it sold its GCR customers. And it failed to refute Staff's GCR calculations set forth in Exhibit RS-1 and Exhibit RS-2. Furthermore, Brainard's inability to explain the shortfall between sales and purchase volumes is largely due to its failure to comply with the Commission's 2009 Order and its failure to comply with its transportation tariffs. Thus, the Commission should disregard Brainard's excuses and adopt Staff's modified actual adjustment of \$104,331.

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<sup>2</sup>

April 12, 2012 Hearing Tr. at 239, ln. 22-24; Brainard Initial Brief at 11.

## II. ARGUMENT

### A. Brainard's own witness acknowledged that there was a shortfall between sales and purchase volumes.

Brainard claims that Staff's conclusion that there is shortfall between sales and purchase volumes is "unwarranted" and "hypothetical."<sup>3</sup> But Brainard's own witness acknowledges that there was a shortfall between sales and purchase volumes.

Ms. Noce calculated that the total volume of gas "burned" or sold by Brainard (excluding deliveries from Orwell Trumbull Pipeline and Great Plains) was 54,021.9 Mcf.<sup>4</sup> She then subtracted from this amount the "supplier invoices for volumes received by Brainard into its system." (45,299.5 Mcf).<sup>5</sup> This led to a shortfall between sales and purchase volumes of 8,722.4 Mcf (54,021.9 - 45,299.5 = 8,722.4).<sup>6</sup> This 8,722.4 Mcf shortfall represents more volumes of gas sold by Brainard than it incurred any cost for. Staff and Brainard may disagree as to the specific amount of the shortfall. But based upon Ms. Noce's Exhibit 2, it is undisputed that Brainard sold more gas than it purchased.

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<sup>3</sup> Brainard Initial Brief at 4.

<sup>4</sup> Company Exh. AMN, Noce Direct-Exhibit 2 (Column K).

<sup>5</sup> Company Exh. AMN, Noce Direct at 7, ln. 23-24; Noce Exhibit 2 (Column L).

<sup>6</sup> Company Exh. AMN, Noce Direct at 7, ln. 23-24; Noce Exhibit 2 (Column O).

**B. Brainard should not be allowed to use its failure to comply with the 2009 Order and its transportation tariffs as an excuse for inadequately monitoring its own system.**

A recurring theme throughout this case is Brainard's inability to adequately monitor the volumes of gas sold and transported on its system. Brainard repeatedly raises this excuse in its Initial Brief. This is a problem of Brainard's own making. If Brainard would have complied with its transportation tariff, it could have adequately monitored the imbalance levels of its transportation customers. If Brainard would have complied with the 2009 Order, it could have monitored exactly how much gas was brought into its system and how much was sold or transported to its customers. Instead of taking these steps, Brainard continued to perform business as usual. Now, Brainard is unable to explain how much (if any) costs it incurred for a substantial portion of the gas it sold. It was Brainard's obligation to (1) monitor the volumes of gas on its system and (2) establish its cost in this GCR hearing. It failed to do either. Thus, Brainard's excuses are not compelling and do not support its case.

**1. Brainard's failure to monitor the imbalances of its transportation customers violates its tariff.**

This case is about Brainard's obligation to prove the amount of cost it incurred in its purchase of gas. Brainard failed to meet this obligation. Brainard, however, wants to distract the Commission and focus on how Cobra and Dominion East Ohio ("DEO") allocate deliveries between transportation and sales customers.<sup>7</sup> What Cobra and DEO

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<sup>7</sup> Brainard Initial Brief at 4.

may or may not do is irrelevant to this case. Brainard is obligated, under its transportation tariffs, to monitor its transportation customers' imbalances - not Cobra. As a gas company providing transportation services, Brainard is required under its tariff to comply with the "Self-Help Program Guidelines".<sup>8</sup> The "Self-Help Program Guidelines" state:

The public utility is responsible for safeguarding the interest of all system customers by establishing reasonable procedures and mechanisms for making transportation customers responsible for balancing, on a timely basis, transportation gas deliveries with the transportation customers' consumption.<sup>9</sup>

Under its tariffs, Brainard is required to monitor its transportation customers' imbalances to ensure that its GCR customers are safeguarded from the very issues that arose in this case. Instead of implementing procedures to monitor imbalances, Brainard simply allowed Cobra to inaccurately monitor the imbalance levels of its transportation customers. Brainard cannot simply rely upon Cobra to ensure that Brainard's customers are adequately protected from issues with imbalances and inaccurate meter reads.

Furthermore, it is factually incorrect to compare DEO and Cobra. Cobra is a pipeline, as opposed to a local distribution company. Cobra has no obligation to monitor transportation customer's imbalances behind the Bridge Road meter – that's Brainard's

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<sup>8</sup> Brainard Gas Corp. Tariff PUCO No. 1, Original Sheet No. 18 (Issue and Effective Date August 19, 1999). A copy of this tariff is attached this brief in **Appendix A**.

<sup>9</sup> *In the Matter of the Commission Ordered Investigation of the Availability of Gas Transportation Service Provided by Ohio Gas Distribution to End-Use Customers*, Case No. 85-800-GA-COI (Commission Order – Appendix A, paragraph 1(e)). A copy of the "Self-Help Program Guidelines" is attached this brief in **Appendix A**.

responsibility. DEO, on the other hand, does have certain obligations under its tariff to monitor the imbalances of its customers. In order to monitor imbalances, DEO eliminated imbalances and tied market prices to volumes of gas by cashing-out customers on monthly basis.<sup>10</sup> Cobra, on the other hand, never performed any cash-outs during the audit period, which further exacerbated the problems with monitoring the imbalances. This is exactly why Brainard should have been monitoring the imbalances of its customers on its system as required by its tariff, and not simply relying upon Cobra to do it.

## **2. Brainard failed to comply with the Commission's 2009 Order.**

In its 2009 GCR Order, the Commission ordered Brainard to synchronize the reading of its transportation customers' meters with the reading of the Bridge Road meter.<sup>11</sup> Brainard admits it failed to comply with the 2009 Order.<sup>12</sup> Brainard blames others for this failure. But these excuses defy reason and are inconsistent with the facts of this case.

First, when considering the substantial amount of overlap between the representatives of Brainard and the representatives of Cobra, it's hard to believe that nobody was able to synchronize the reading of the meters. Ms. Noce allegedly discussed

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<sup>10</sup> March 27, 2012 Hearing Tr. at 158, ln. 17-22.

<sup>11</sup> Staff Exhibit 2, *In the Matter of the Regulations of the Purchased Gas Adjustment Clauses Contained within the Rate Schedules of Brainard Gas Corp. and Related Matters*, Case No. 09-206-GA-GCR (Opinion and Order at 4, 7) (January 20, 2010) (hereinafter 2009 GCR Case Order and Opinion).

<sup>12</sup> Brainard Initial Brief at 8-10; October 25, 2011 Hearing Tr. at 15, ln. 17-25.

synchronizing the meter reads with Becky Howell, her supervisor at Brainard.<sup>13</sup> In October of 2011, Ms. Howell had been the President of Cobra for approximately a year and a half.<sup>14</sup> Before Ms. Howell was President for Cobra, Mr. Smith (Brainard's current President) was President for Cobra.

In fact, Mr. Smith was acting as President for both Brainard and Cobra since 2006 and ultimately reporting to Richard Osborne, the owner of both Brainard and Cobra.<sup>15</sup> Furthermore, Mr. Smith was more than likely acting as the President of both companies when the 2009 Order was issued.<sup>16</sup> Because of this overlap between Brainard and Cobra, there is no reason why it took Brainard almost two years to synchronize the reading of the meters.

Another problem with Brainard's "good faith effort" excuse is that, for much of the audit period, Brainard had the ability to read the Bridge Road meter electronically. As reflected on Cobra's invoices, Cobra has continually charged Brainard \$125 a month for electronic metering beginning in April of 2009.<sup>17</sup> Brainard had the ability to electronically read the Bridge Road meter well before the Commission issued the 2009 Order, which was issued on January 20, 2010. But Brainard decided not to use the

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<sup>13</sup> March 27, 2012 Hearing Tr. at 125, ln. 2-14.

<sup>14</sup> October 25, 2011 Hearing Tr. at 17, ln. 16-22.

<sup>15</sup> *Id.*; Tr. at 17, ln. 10-17.

<sup>16</sup> Staff Exhibit 2, 2009 GCR Case Order and Opinion.

<sup>17</sup> Staff Exhibit 6, Cobra Invoices, April 2009 invoices through September 2009, at 26-50 ("Electronic Metering Fee of \$125").

telemetering function to synchronize the meter reads until September of 2011, one month after the Staff Report was filed in this case.<sup>18</sup> The timing of when Brainard synchronized the reading of the meters is telling. Brainard did not comply with the Commission's 2009 Order until after Staff recommended, for the second time, that Brainard synchronize the reading of the meters.<sup>19</sup>

Staff believes Brainard was in direct violation of the 2009 Order. But Staff's concerns go beyond ensuring utilities comply with the Commission's Orders. Brainard's entire defense relates to its inability to adequately monitor the volumes of gas sold on its system. Many, if not all, of these problems would have been alleviated if Brainard simply would have complied with its transportation tariffs and the Commission's 2009 Order. It had the technology and personnel in place to do so. It just chose not to. Thus, Brainard should not be able to use its failure to properly monitor its own system as an excuse in this case.

**C. Brainard's "malfunctioning meter" excuse does not prove Brainard incurred cost for this gas.**

By asking the Commission to recognize another 5319 Mcf of gas, Brainard is essentially claiming that this amount of gas was sold to GCR customers because of a transportation customer's "malfunctioning meter". This argument fails for a number of

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<sup>18</sup> Brainard Initial Brief at pg. 9, March 27, 2012 Hearing Tr. at 170, ln. 18-24.

<sup>19</sup> . *In re Brainard Gas Corp.*, Case No. 09-206-GA-GCR (Financial Audit of the Gas Cost Recovery Mechanism for the Effective GCR Period April 1, 2007 through March 31, 2009 at 5-6) (filed Oct. 10, 2009).

reasons. First, this meter reading adjustment only increased the metered usage of gas for transportation customers, which should have increased transportation customers' imbalances on Brainard's system.<sup>20</sup> It did not increase the volumes of gas consumed by GCR customers and did not have an effect on GCR customers' imbalances.<sup>21</sup> Second, these imbalance accounting errors all stem from Brainard's failure to monitor the imbalances of its transportation customers as required by its tariff. Third, Brainard has not proven any cost for these volumes, and has not explained why GCR customers should foot the bill. Thus, Brainard's entire "malfunctioning meter" argument should be ignored.

**D. Brainard admits it did not incur any cost for the Excalibur volumes but still claims these volumes should be accounted for in this GCR audit.**

Brainard admits it incurred no cost for the 3507 Mcf of gas from Excalibur.<sup>22</sup> This should be the end of the story on this issue. But Brainard claims that it is still entitled to recover from GCR customers for these volumes of gas. This claim should be outright rejected by the Commission. Allowing Brainard to recover for gas it incurred no cost for would essentially be giving Brainard something for nothing at the expense of GCR customers.

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<sup>20</sup> Staff Exhibit 4A, Errata to Prepared Direct Testimony of Roger L. Sarver ("Sarver Errata") at 13.

<sup>21</sup> *Id.*

<sup>22</sup> April 12, 2012 Hearing Tr. at 239, ln. 22-24; Brainard Initial Brief at 11.

Furthermore, the Company wants to incorporate all 3507 Mcf into this case as if all 3507 Mcf were available to GCR customers. But 92% of all gas brought into Brainard's system goes to transportation customers.<sup>23</sup> This means only approximately 291 Mcf of these Excalibur volumes were consumed by GCR customers. Thus, there is no evidentiary basis for forcing GCR customers to pay for all 3507 Mcf, especially when Brainard admittedly incurred no cost for this gas.

**E. Brainard's incorrect assessment of a positive UFG for transportation customers also explains the shortfall between Brainard's sales and purchases volumes.**

Brainard ignores that fact that the shortfall between sales and purchases was also caused by its incorrect assessment of a positive unaccounted-for-gas ("UFG") rate to transportation customers. During the audit period, Brainard had a negative UFG percentage, which means it sold or transported more gas than it brought into its system.<sup>24</sup> To remedy this situation, Brainard had two options: (1) do not assess any UFG rate to its transportation customer or (2) assess a slight negative UFG rate to its transportation customers.<sup>25</sup> Brainard did not do either. Instead, Brainard incorrectly assessed transportation customers a positive UFG rate, which means transportation customers paid for more gas than they actually consumed.<sup>26</sup> This ultimately led to GCR customers

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<sup>23</sup> Commission Ordered Exhibit 1 (Staff Report) at 8.

<sup>24</sup> *Id.* at 12.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

consuming these excess volumes of gas that were not consumed by transportation customers.<sup>27</sup> This is yet another example of Brainard failing to properly monitor its system, which has led to Brainard's inability to prove its gas cost.

### **III. CONCLUSION**

At the end of the day, the purpose of the GCR process is match actual cost incurred with the revenues collected. Brainard is unable to prove its cost and has failed to refute Staff's calculation of cost. Brainard's inability to adequately monitor its system has made it impossible for Brainard to prove it incurred a cost for the gas it sold GCR customers. GCR customers did not cause this problem and should not be forced to pay for Brainard's refusal to monitor its own system. Thus, Staff recommends that an actual adjustment of \$104,331 be refunded to Brainard's customers over two years with interest.

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<sup>27</sup>

Commission Ordered Exhibit 1 (Staff Report) at 12.

Respectfully submitted,

**Michael DeWine**  
Ohio Attorney General

**William L. Wright**  
Section Chief, Public Utilities Section

*/s/ Devin D. Parram*

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**Werner L. Margard**  
**Devin D. Parram**  
Assistant Attorney General  
Public Utilities Section  
180 East Broad Street, 6<sup>th</sup> Fl  
Columbus, OH 43215-3793  
(614) 466-4397 (phone)  
(614) 644-8764 (fax)  
[werner.margard@puc.state.oh.us](mailto:werner.margard@puc.state.oh.us)  
[devin.parram@puc.state.oh.us](mailto:devin.parram@puc.state.oh.us)

**Counsel for the Staff of**  
**The Public Utilities Commission of Ohio**

**PROOF OF SERVICE**

I hereby certify that a true copy of the foregoing **Reply Brief**, submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by via electronic mail upon the following parties of record, this 6th day of June, 2012.

*/s/ Devin D. Parram*

**Devin D. Parram**  
Assistant Attorney General

**Parties of Record:**

**Andrew J. Sonderman**  
Of Counsel  
Kegler Brown Hill & Ritter LPA  
Capitol Square, Suite 1800  
Columbus, Ohio 43215  
(614) 462-5496 [Direct]  
asonderman@keglerbrown.com

*Attorney for Brainard Gas Corporation*

# **APPENDIX**

RULES AND REGULATIONS GOVERNING THE DISTRIBUTION  
AND SALE OF GAS

SECTION V - TRANSPORTATION SERVICE

1. **Applicability.** Applicable to all customers of the Company who purchased natural gas from another supply source and request Company to transport such gas. Company shall transport gas on a non-discriminatory basis subject to the capacity of its facilities to customers who desire to enter into contractual arrangements for the transportation of natural gas in compliance with the "SELF-HELP PROGRAM GUIDELINES" appended to Commission Order 85-800.
2. **Transportation Service.** Company shall offer transportation service on either a firm or fully interruptible basis on a first-come, first-served basis.

(a) Firm service arrangements

Company shall include provision for the reservation of capacity in Company's facilities, subject to Company's determination that rendering said service would not be detrimental to meeting the needs of general service customers, existing firm transportation customers, or the operation of said facilities.

(b) Interruptible service arrangements

Company shall use its "best efforts" to deliver all gas for redelivery. Company will only interrupt or curtail the redelivery or transportation of gas when, in the judgment of Company, such curtailment or interruption is necessary to maintain deliveries to high priority customers or to respond to an emergency.

Storage services, banking services, or pooling services are not presently available, and therefore are not offered. All transportation customers must warrant that they have good title to the gas to be transported, and that the gas delivered for transportation is of pipeline quality.

As Company is offering a transportation service, it shall not be responsible for interruptions in customer sources of supply.

Filed pursuant to PUCO Finding and Order dated August 19, 1999, in  
Case No. 99-825-GA-ATA

ISSUED: August 19, 1999

EFFECTIVE: August 19, 1999

Issued by Edward Bonk, President

RULES AND REGULATIONS GOVERNING THE DISTRIBUTION  
AND SALE OF GAS

3. Rates. The stated rate for firm transportation is two dollars and thirty cents (\$2.30) per 1,000 cubic feet (Mcf) of gas transported and the stated rate for interruptible transportation is two dollars and ten cents (\$2.10) per 1,000 cubic feet (Mcf) of gas transported. These rates are subject to the Ohio Gross Receipts Tax Recovery Rate set forth on Original Sheet No. 4. Transportation service is offered on a non-discriminatory basis.

The Company may flex down from its stated rate however, the Company will not flex below its actual system specific cost of providing the respective transportation service.

Any transportation arrangement that falls outside of the stated rate and/or flex down rate will be treated as a "Special Arrangement" and as such shall be presented to the Commission for specific approval.

Meter reading, billing, and related administrative costs when applicable shall be specifically disclosed in each arrangement.

4. Late Payment Charge. Payment of the total amount due shall be received in Company's office by the due date shown on the bill. When not so paid, an additional amount equal to one and one-half percent (1.5%) of the unpaid balance is due and payable.
5. Terms and Conditions. Payment of the total amount due shall be received in Company's office by the later of two weeks after mailing or the due date shown on the bill. When not so paid, a penalty amount equal to one and one-half percent (1.5%) of the unpaid balance is due and payable.

The Customer shall enter into a written agreement with Company. Such agreement shall set forth the specific arrangements between Customer and Company, all of which shall be in conformance with Commission Order 85-800.

The Customer shall be responsible to make all necessary arrangements and secure all requisite regulatory or governmental approvals, certificates, or permits to enable the transported gas to be delivered to Company's facilities.

The supplying of, and billing for, service and all conditions applying thereto are subject to the jurisdiction of the Public Utilities Commission of Ohio.

Filed pursuant to PUCO Finding and Order dated August 19, 1999, in  
Case No. 99-825-GA-ATA

ISSUED: August 19, 1999

EFFECTIVE: August 19, 1999

Issued by Edward Bonk, President

## APPENDIX A

### GAS TRANSPORTATION PROGRAM GUIDELINES

The following standards and guidelines: (1) will be utilized to determine whether arrangements for furnishing natural gas or synthetic gas meet the reasonableness requirements of Section 4905.31, Revised Code; and (2) will be considered in applications made pursuant to Section 4909.18, Revised Code. However, the guidelines should not be understood or interpreted as barring the submission or approval of any arrangement which has been agreed to between the public utility (also referred to as the local distribution company) and a customer, a group of customers, or a previously unserved customer (hereafter referred to as "party").

These guidelines are intended to facilitate gas transportation within the state of Ohio. They do not supplant approved curtailment or emergency plans or activities.

These guidelines are intended to provide broad guidance while individual transportation tariffs and special contract language may detail specific terms and conditions.

- (1) Each gas or natural gas utility subject to the jurisdiction of the Commission that elects to provide transportation of gas shall do so on a non-discriminatory basis subject to the capacity of its system. Transportation services will be available pursuant to tariffs filed with and approved by the Commission. Such tariffs shall specify all rates and charges for both firm and interruptible transportation services. A range of rates may be published as part of the tariff. The range shall specify a minimum and a maximum transportation rate. The minimum rate shall cover the variable costs of serving a customer plus make a contribution to total company fixed costs. Only arrangements which vary from the tariff or which involve agency gas service or utility brokerage operations shall be filed in accordance with section 4905.31, Revised Code. The utility will periodically publish and file with the Commission, no less often than annually, a list of the unbundled and optional transportation services that it provides, and make such list available upon request.
  - (a) End-users who satisfy the definition of human needs and public welfare

customers, as set forth in this appendix, must purchase backup supply service from the local gas distribution company (LDC), or have arranged for reliable alternative natural gas commodity, capacity and delivery from another supplier, or have alternative fuel capability, or have a combination thereof sufficient to maintain minimal operations.

Any application for service made to an LDC, requesting alternative natural gas backup, must demonstrate to the LDC that the applicant has contracted for reliable delivery and reliable alternative commodity supply.

- (b) Those end-users who do not satisfy the definition of human needs and public welfare customers or those customers who utilize the services of the LDC for transportation only are not required to have backup supplies.
- (c) Rates for backup supply, provided by the utility, shall be cost based. Backup supply shall be considered as the same priority, class, subdivision or category as that customer would be entitled to receive as a firm sales customer of the utility.
- (d) Customers who elect to relieve the LDC of the merchant function by engaging in gas transportation or bypass should bear the market risks of the choices that they make about sources of supply. Thus, while the utility retains an obligation to provide to its transportation customers transportation and related services, the public utility's obligation to provide commodity to these customers is on a best efforts basis and does not include an obligation to provide commodity service under the GCR regulated system supply as

replacement of transportation or bypass volumes at prevailing GCR rates. All costs incurred by the utility in providing commodity to these customers should be borne by the customers who were provided such service.

- (e) The public utility is responsible for safeguarding the interests of all system customers by establishing reasonable procedures and mechanisms for making transportation customers responsible for balancing, on a timely basis, transportation gas deliveries with the transportation customer's consumption. The transportation customer is responsible for fully compensating the LDC, on behalf of the system sales customers, and other transportation customers as applicable, for any additional costs incurred as a result of that transportation customer's unreasonable imbalance between delivery and consumption. The reasonableness of such procedures and mechanisms are subject to evaluation by the Commission.

- (F) TO STRENGTHEN THE KNOWLEDGE BASE AMONG TRANSPORTATION CUSTOMERS, AND SCHOOLS IN PARTICULAR, LDC'S SHOULD DEVELOP INFORMATION PROGRAMS - SUCH AS BROCHURES AND FORUMS, AS APPROPRIATE - TO ACQUAINT POTENTIAL TRANSPORTATION PARTICIPANTS, ON AN ANNUAL BASIS, WITH OPERATIONAL REQUIREMENTS, COSTS, LIABILITIES, AND BENEFITS OF ENGAGING IN NATURAL GAS TRANSPORTATION.

LDC'S SHALL FILE, ANNUALLY BY DECEMBER 31ST, WITH THE STAFF, A RECORD OF INFORMATIONAL PROGRAMS PERFORMED AND COPIES OF ANY MATERIALS UTILIZED IN THIS INFORMATIONAL EFFORT.

(G) IT IS NOTED THAT SCHOOL FACILITIES OFTEN FUNCTION AS EMERGENCY SHELTERS. ALL LDC'S PROVIDING TRANSPORTATION SERVICE ARE REQUIRED TO IDENTIFY ALL SCHOOL FACILITIES WITHIN THEIR SERVICE TERRITORY ENGAGING IN NATURAL GAS TRANSPORTATION AND DESIGNATED AS EMERGENCY SHELTERS, AND COORDINATE THIS LIST ANNUALLY WITH THE PUBLIC UTILITIES COMMISSION OF OHIO EMERGENCY/OUTAGE COORDINATOR AND THE RESPECTIVE LOCAL COUNTY EMERGENCY MANAGEMENT DIRECTOR. THIS LIST SHOULD PROVIDE COMPLETE LOCATIONAL DETAILS AND POINTS OF CONTACT. IN THE ABSENCE OF BACK-UP SERVICE, IN AN EMERGENCY, THESE FACILITIES WOULD BE ENTITLED TO SPECIAL CONSIDERATION FOR GAS SUPPLY ONLY IF THEY WERE ACTIVATED AS EMERGENCY SHELTERS.

(2) The party making available supplies of natural gas or synthetic gas should have the following commodity and capacity rights and be subject to the following conditions:

- (a) To the extent that a party makes supplies of natural or synthetic gas available, the party shall have a right to retain, pursuant to an approved arrangement, 100% of the gas delivered to the transporting utility or utilities, less the average system-wide unaccounted-for gas percentage, or a different percentage when such is justified by the utility in any application approved by the Commission pursuant to either Sections 4905.31 or 4909.18, Revised Code.
- (b) Planning for system supply customers shall not assume that the gas supply or capacity entitlement of transportation customers will or can be used to meet system supply customers' design requirements unless a transportation customer has agreed otherwise. This will be reviewed in each company's LTRF filings and/or GCR proceedings.

- (c) Absent a condition that creates a clear and present danger to the LDC's ability to meet the demands of human needs and public welfare customers, the gas supply of a transportation customer shall be accepted and delivered by an LDC according to the terms of the applicable contract or tariff. Any interruption in the service entitlement of a transportation customer resulting from such a condition shall be remedied as quickly as reasonably possible and must be preceded by the exhaustion of other reasonable alternatives to avoid the involuntary interruption of service.
- (d) In the event all or any portion of a supply or capacity entitlement is not available to a transportation customer as a result of the direct action of the LDC pursuant to (2)(c), other than in cases of force majeure, the transportation customer not receiving the entitlement shall be entitled to compensation from the LDC. Compensation should take into consideration the cost incurred for interstate and intrastate capacity entitlements, if any, the cost of the commodity purchased, the incremental cost incurred by a transportation customer to obtain substitute energy, if an alternative is available and used, and any premium required by the market for the time of the capture.
- (e) The transportation party shall be responsible, either directly or indirectly, for all costs and risks associated with the field or plant development, production, storage and delivery of the volumes to the public utility. The transportation party shall also be responsible for compensating the LDC, for the benefit of its system sales customers,

when the transporting party uses gas to which it is not entitled. Compensation should take into consideration the cost incurred for interstate and intrastate capacity entitlements, if any, the cost of the commodity purchased, and any premium required by the market for the time of the capture.

- (3) If the party is a customer of the transporting local distribution company and satisfies the definition of a human needs and public welfare customer, the application must specify the type of alternative fuel the customer has available (i.e., backup service from the utility, reliable alternative natural gas capacity and reliable commodity supply, fuel oil, propane, coal, or other energy source).
- (4) The utility shall maintain separate accounts or subaccounts for expenses of and for all equipment installed or property devoted to the production, collection, transmission, and delivery of natural or synthetic gas pursuant to an arrangement between a party and a public utility.

Agency or brokerage staff of the utility shall not restrain competition by using information involving non-LDC brokerage or producer sales obtained through the exercise of the utility's transportation function in competing against those same non-LDC brokers or producers. Where such restraint of competition occurs, agency or brokerage sales may be canceled.

- (5) Any application for the approval of an agreement between a party and a public utility or any agreement issued in accordance with published transportation tariffs shall specifically set forth the following:
  - (a) The manner in which the public utility's existing and pending restrictions relating to the curtailment of existing service or the extension of new service would be altered or modified if the proposed arrangement were approved by the Commission.

- (b) The areas where the arrangement is at variance with the guidelines used to judge the reasonableness of such arrangement, and the reasons that the variance is deemed necessary.
- (c) The name, address, and telephone number of the party.
- (d) The nature and extent of any interest which each party to the arrangement holds in any other party to the arrangement, or in any public utility subject to the jurisdiction of the Commission.
- (e) The location of the intended points of consumption.
- (f) Where an arrangement renews or replaces a previous transportation arrangement, the application should specify the case number under which the previous arrangement was filed with the Commission and the date of the entry approving the arrangement.
- (g) Types of services and rates charged and minimum and maximum volumes.
- (h) Each arrangement, filed pursuant to Section 4905.31, Revised Code, entered into between a party and a public utility for furnishing natural or synthetic gas, shall provide that no alteration, modification, assignment, or termination shall be made without specific approval of the Commission.
- (i) The portions of the transportation service provided on a firm and an interruptible basis, as indicated in the transportation agreement.
- (j) The method and manner of compensating the transporting party in the event of an appropriation of gas pursuant to the public utility's

curtailment plan and/or contractual arrangement, as indicated in the transportation agreement.

- (k) The arrangements, reasonable and non-punitive, between the customer and the public utility which are necessary for the public utility to manage its system and service so that the transportation customers service does not adversely affect other customers and/or the integrity of the system.
- (L) WITH RESPECT TO SCHOOL SYSTEMS ENGAGING IN NATURAL GAS TRANSPORTATION SERVICES WITHOUT LDC PROVIDED BACK-UP SERVICES, TO INSURE ADEQUATE COMMUNICATION AND UNDERSTANDING AMONG THE PARTIES PROVIDING EACH SEGMENT OF THIS SERVICE AND THE SCHOOL SYSTEM'S GOVERNING BODY, THE COMMISSION REQUIRES THAT A SCHOOL BOARD RESOLUTION WHICH ACKNOWLEDGES THE RISKS, THE RESPONSIBILITIES, AND THE POTENTIAL CONSEQUENCES OF ENGAGING IN NATURAL GAS SUPPLY AND TRANSPORTATION ARRANGEMENTS BE FILED ANNUALLY WITH THE LOCAL DISTRIBUTION COMPANY AND THAT SAID RESOLUTION ACCOMPANY ANY FILING, WITH THE COMMISSION, OF A CONTRACT PURSUANT TO RC 4905.31.
- (6) Any application for the approval of a transportation agreement shall conform to the requirements of Section 4905.31, Revised Code.
- (7) Each gas or natural gas utility that elects to offer transportation service shall provide rates for firm and interruptible service. Initial filings for such rates may be downwardly flexible from a basic transportation rate, which is defined as the otherwise applicable service and rate schedule less all GCR-related costs and less optional services. The rate may be flexed between an upper bound of the basic transportation service rate and a lower bound that recovers all variable costs of service and provides a contribution to the

utility's fixed costs of providing service. Transportation rate flexibility should be used as an opportunity to optimize revenue. Where gas-related services such as supply back-up are contracted for, the cost of providing such service shall be in addition to the basic transportation rate.

For contracts submitted to the Commission under Section 4905.31, Revised Code, the transportation rate may take effect upon the filing of the agreement with the Commission, but the agreement would remain subject to subsequent approval.

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

All documents and records in the possession of the Commission are public records. Thus, it is only under extraordinary circumstances that material in the Commission's possession may be held in confidential status.

If there is a request for rate confidentiality, the request shall accompany the application. The rate which is the subject of the request will be treated as confidential pending a Commission finding regarding the propriety of the request.

**IN MAKING AN APPLICATION FOR CONFIDENTIAL TREATMENT, THE LDC SHOULD CONSULT WITH APPROPRIATE STAFF TO INSURE COMPLIANCE WITH CURRENT FILING REQUIREMENTS.**

- (b) Each utility shall maintain information and accounts sufficient to identify total transportation service revenue actually recovered and that which would have been recovered but for the use of transportation rate flexibility.
  - (c) A local distribution company may establish its gas transportation schedule(s) pursuant to an application(s) found to be in accordance with Section 4909.18, Revised Code. In establishing its gas transportation tariff schedule(s), the local distribution company should disclose all services and related expenses, such as administration, which occur in addition to the otherwise applicable service and rate, and those services and related expenses which need not be performed when compared with the otherwise applicable service and rate. Any such application(s) must include a complete description of all required services and documentation of associated expenses which result directly and exclusively from the provision of the transportation service(s) which is the subject of the application.
- (8) The Commission believes that the provisions of these guidelines provide the utility with adequate means to meet competitive realities and to maintain the revenue contribution of customers receiving the services. The Commission will use the rate case proceeding to scrutinize the appropriateness of recovery of any revenue deficiency from the general service customers, which deficiency arose from the loss of customers and/or from the use of pricing flexibility.
- (9) Definitions
- (a) Administration Fee - The charge and corresponding accounting entry which represent the actual cost of administering gas transportation service and its obligations.

- (b) Agency Gas Service - A function by the local distribution company wherein the LDC acts as agent for the consumer for the procurement of gas or as agent for a producer for the sale of gas.
- (c) Human Needs and Public Welfare Customer - A customer whose facilities are used for residential dwelling on either a permanent or temporary basis; commercial customers of a residential nature; other customers whose service locations are places of the kind, where the element of human welfare is the predominant factor; and civil and governmental customers whose facilities are required in the performance of protecting and preserving the public health, safety and welfare. Such facilities shall include, but are not limited to houses, apartment buildings, correctional institutions, hospitals, nursing homes, and charitable institutions. Specifically excluded are hotels and motels used for temporary lodging and not used as a principal place of residence on a monthly or yearly basis; **AND PRIMARY, SECONDARY, AND OTHER NON-RESIDENTIAL SCHOOLS.**
- (d) Minimal Operations - Maintenance supply of natural gas sufficient to allow a human needs and public welfare customer, who does not have a 24-hour residence requirement, to meet average worst day maintenance heating requirements based on the heating degree days record for the closest location to the building site. Supply of natural gas sufficient to allow those facilities with a residential function to provide the full requirements of the residential heating load plus maintenance levels for the non-residential portions of the facility.

- (e) Optional Services - The offering of services in addition to services provided for in the basic transportation rate.
- (f) Unbundled Services - The offering of the separate or individual components of transportation and related services and corresponding rates and charges.
- (g) Utility Brokerage Operations - Activities of an agency which is subordinate to an LDC, or subordinate to a pipeline or other holding company having organizational connection to the LDC; and which engages in commodity transactions separate from those activities normal to operation of the Gas Cost Recovery system supply.

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Summary: Reply electronically filed by Mr. Devin D Parram on behalf of PUCO