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## BEFORE

Case No. 12-0209-GA-GCR  
Case No. 12-0212-GA-GCR

Case No. 12-0309-GA-UEX

Case No. 12-0312-GA-UEX

**MOTION TO QUASH SUBPOENAS AND**

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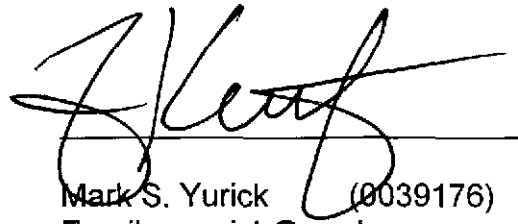
Additionally, the Companies respectfully move this Commission to quash the July 3, 2013 Subpoena issued by the Office of the Ohio Consumers' Counsel ("OCC") to Northeast Chief Administrative Officer Stephanie Patton to appear as a witness for the OCC in the above-captioned proceeding on Monday, July 8, 2013 at 10:00 A.M. at the offices of the Commission, and attend from day to day until called to testify by the OCC. Through this Motion, the Companies hereby respond to the OCC's July 3, 2013 Motion for Subpoenas.

Pursuant to O.A.C. 4901-1-12 and numerous Entries issued in this case, the Companies also respectfully move this Commission to exclude the testimony at the hearing scheduled to commence on July 8, 2013 of the Staff's proposed witnesses: Rebecca Howell, Jonathan Harrington, Heather Lipnis, and Cindy Bates; and to exclude the testimony of the OCC's proposed witness: Stephanie Patton. The Staff and the OCC failed to file testimony for any of the proposed witnesses, or at the minimum, provide notice to the Companies of additional witnesses, within the time proscribed by the Commission and the Attorney Examiner in several Entries setting the procedural schedule in this case.

In the alternative, if the Commission denies the Companies' Motion to Quash Subpoenas and Motion to Exclude Testimony, the Companies respectfully request a continuance of the hearing to allow the Companies time to conduct discovery and prepare for hearing in light of the OCC's and Staff's late additions to their witness lists.

The reasons for this Motion and Response thereto are more fully set forth in the Companies' attached Memorandum In Support.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Yurick', is written over a horizontal line.

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Attorneys for

Orwell and Northeast

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Regulation of the	:	
Purchased Gas Adjustment Clauses	:	Case No. 12-0209-GA-GCR
Contained within the Rate Schedules of	:	Case No. 12-0212-GA-GCR
Northeast Ohio Natural Gas Corporation and	:	
Orwell Natural Gas Company.	:	
	:	
In the Matter of the Regulations of the	:	
Purchased Gas Adjustment Clauses	:	Case No. 12-0309-GA-UEX
contained within the Rate Schedules of	:	
Northeast Ohio Natural Gas Corporation and	:	
related matters.	:	
	:	
In the Matter of the Uncollectible Expense	:	Case No. 12-0312-GA-UEX
Rider of Orwell Natural Gas Company.	:	

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**MEMORANDUM IN SUPPORT**

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**I. Introduction.**

This proceeding was initiated on January 23, 2012 by Entry of the Commission initiating the Gas Cost Recovery ("GCR") financial audits of Orwell and Northeast, pursuant to R.C. 4905.302 and O.A.C. 4901:1-14-07.<sup>1</sup> In connection with the financial audits, pursuant to O.A.C. 4901:1-14-08, the Commission shall hold a hearing "to allow the Commission to review the gas purchasing practices and policies of the companies and the operations of their purchased gas adjustment clause and related matters."<sup>2</sup> The Commission scheduled the GCR hearing for Northeast and Orwell to be held at the Commission on February 19, 2013.<sup>3</sup> Also in the January 23, 2012 Entry, the

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<sup>1</sup> Case Nos. 12-0209-GA-GCR, *et al.*, Entry (January 23, 2012).

<sup>2</sup> *Id.* at Finding 6.

<sup>3</sup> *Id.* at Finding 6.

Commission made the following order with respect to the procedural schedule and the witnesses to be called at hearing by all parties:

The direct testimony of any witnesses testifying on behalf of each company should be filed at least 16 days prior to the GCR hearing. All direct testimony to be presented by any other party should be filed at least seven days prior to the hearing.

Upon motion by Staff, on January 23, 2013, the Attorney Examiner issued an Entry granting the Staff's motion for an extension of time to file the audit reports and Staff's motion for a continuance of the hearing.<sup>4</sup> The Attorney Examiner set the continued hearing date for April 30, 2013 and ordered the same timeframe be kept with respect to the filing of witness testimony.<sup>5</sup>

Upon motion by the Companies, which motion was supported by all parties, the Attorney Examiner issued an Entry granting the Companies expedited motion for extension of the procedural schedule.<sup>6</sup> The Entry set the hearing for July 8, 2013 and modified the procedural schedule consistent with all prior Entries in the case.<sup>7</sup>

On July 3, 2013, five days prior to hearing, the OCC filed its Motion for Subpoena, including a signed subpoena, for Northeast Chief Administrative Officer Stephanie Patton. The OCC filed the Motion for Subpoena at 3:49 P.M. as indicated on the Commission's time-stamp on the motion (attached hereto as Exhibit 1).

Also on July 3, 2013, the Staff filed its Motion for Subpoena, including a signed subpoena, for Northeast Corporate Controller Rebecca Howell and former Gas Natural Corporate Controller Jonathan Harrington. The Staff served the Companies with the

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<sup>4</sup> Case Nos. 12-0209-GA-GCR, *et al.*, Entry (January 23, 2013).

<sup>5</sup> *Id.* at Finding 7.

<sup>6</sup> Case Nos. 12-0209-GA-GCR, *et al.*, Entry (April 29, 2013).

Motion for Subpoena on July 3, 2013 at 5:22 P.M. as indicated on the Motion (attached hereto as Exhibit 2). Included in the Staff's Motion for Subpoenas was a late notice to the Companies that the Staff would also be calling two former employees of the Companies, Corporate Controller Heather Lipnis and accountant Cindy Bates.

The OCC and the Staff have attempted to add additional witnesses to their witness list outside of the timeframe permitted by the Commission to submit testimony in this case. The subpoenas and notices of additional witnesses are unreasonable and prejudicial, and, accordingly, the Companies Motion to Quash the Subpoenas and Motion to Exclude Testimony should be granted.

## **II. Argument.**

### **A. The OCC and the Staff's Subpoenas Are Unreasonable and Oppressive.**

Ohio Administrative Code Section 4901-1-25(C) states that a Subpoena may be quashed upon motion of any party if it is unreasonable or oppressive. The Companies submit that the subpoenas of Rebecca Howell, Jonathan Harrington and Stephanie Patton to appear at the hearing to testify as witnesses for the Staff and the OCC are unreasonable and oppressive.

With merely five days prior to the hearing date in this case, the OCC and the Staff filed Motions for Subpoenas to call a Northeast employee, an employee of Gas Natural (the parent company of Northeast), and a former employee of Gas Natural. The procedural schedule in this case was finalized on April 29, 2013 pursuant to the Attorney Examiner's Entry in the case. The Commission then ordered that "[a]ll direct testimony to be presented by any other party should be filed at least seven days prior to the hearing." While the Companies acknowledge that the OCC and Staff could not pre-

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<sup>7</sup> *Id.*

file direct testimony for Rebecca Howell and Stephanie Patton, the OCC and the Staff had an obligation pursuant to the Entries in this case to notify the Companies of their intention to call Rebecca Howell and Stephanie Patton<sup>8</sup> as witnesses for direct examination by July 1, 2013, which is seven days prior to hearing. Because the Motions for Subpoenas were filed on July 3, 2013, the motions are unreasonable and in violation of the Entries in this case.

Likewise, the Motion for Subpoena of Jonathan Harrington should be quashed because it is also late – the Staff did not file any pre-filed testimony for Mr. Harrington nor did the Staff provide notice of his testimony prior to July 3, 2013 – and because the very late notice is highly unreasonable and oppressive to the Companies. The subpoena, served at the end of the day on July 3, 2013, with the Commission's offices closed on July 4, 2013 in observance of Independence Day, provides, in effect, no time to conduct any discovery of Mr. Harrington in advance of the hearing. Mr. Harrington no longer works for Gas Natural; he is likely an adverse witness to the Companies. The Companies should have been given notice – at the latest – on July 1, 2013 that the Staff intended to call Mr. Harrington so that the Companies could have an opportunity to defend itself against accusations of an ex-employee that was recently terminated by Gas Natural.

For the foregoing reasons, the Companies respectfully request that the Subpoenas of Rebecca Howell, Stephanie Patton, and Jonathan Harrington be quashed.

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<sup>8</sup> Stephanie Patton was deposed by the OCC on July 1, 2013; however, the OCC did not confirm that the OCC would call Ms. Patton as a witness at the hearing until July 3, 2013.

B. The Testimony of Heather Lipnis, Cindy Bates, and Jonathan Harrington Should be Excluded from Presentation at Hearing.

As discussed above, the Commission set the deadline to file direct testimony for the OCC and the Staff for July 1, 2013. On July 3, 2013, after that deadline had passed, the Staff seeks to present additional adverse witnesses to the Companies without filing testimony with the Commission in contravention of the Commission's Entries. Specifically, the Staff seeks the direct testimony of the former Corporate Controller of Gas Natural Jonathan Harrington, former Corporate Controller Heather Lipniss, and the Companies' former accountant Cindy Bates. All of these potential witnesses are disgruntled ex-employees who have recently been terminated by the Companies or Gas Natural. The Staff is late in providing notice to the Companies and the Commission that they intend to call additional witnesses and Staff did not follow the Order that required direct testimony to be filed with the Commission at least seven days prior to the hearing.

Moreover, the Staff's inclusion of the witnesses Ms. Lipnis and Ms. Bates at this late hour is especially unfair because, as the Staff stated in their Motion for Subpoenas, they "are voluntarily testifying as interested fact witnesses." (Motion for Subpoenas at 2). In their Motion for Subpoenas, the Staff has not indicated that Ms. Lipnis and Ms. Bates have been unavailable to provide direct testimony in accordance with the July 1, 2013 deadline in this case. Because this case has been open since January 23, 2012, Staff could have filed timely testimony in the case for Ms. Lipnis and Ms. Bates. Additionally, even when notice was given in the July 3, 2013 Motion for Subpoenas, the Staff provided no information to the Commission or the Companies regarding the



substance of the witnesses' testimonies. This attempt to present surprise witnesses at the July 8, 2013 hearing should be prohibited.

Furthermore, the Staff did not indicate that Mr. Harrington has been uncooperative, or that the Staff intends to treat Mr. Harrington as a hostile witness, and therefore, there is no reason to assume that Mr. Harrington is not also "voluntarily testifying as [an] interested fact witness[]" similar to Ms. Lipnis and Ms. Bates. Direct testimony for Mr. Harrington could and should have been filed in accordance with the Commission's Entries in this case, and accordingly, any attempt to have Mr. Harrington testify should be excluded.

Permitting these witnesses to testify would be highly prejudicial to the Companies. The Companies have not had an opportunity to seek discovery with respect to three witnesses and it is highly unlikely that the Companies will have an opportunity to depose Mr. Harrington, Ms. Lipnis, or Ms. Bates prior to the hearing. Additionally, the Companies have prepared for hearing based on the Staff's Audit and the pre-filed testimony. With only days left prior to the start of hearing, the Companies will need to redirect efforts and resources to defending against unspecified allegations of disgruntled ex-employees. Accordingly, the Commission should exclude the presentation of testimony from proposed Staff witnesses Mr. Harrington, Ms. Lipnis, and Ms. Bates.

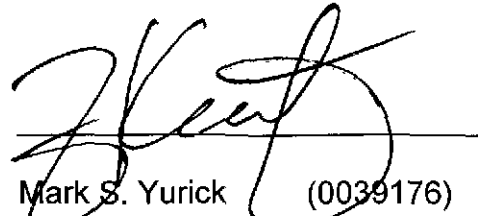
- C. If the Commission Permits Mr. Harrington, Ms. Lipnis, or Ms. Bates to Testify, the Companies Request That the Hearing Be Continued to Provide Sufficient Time to Allow Discovery and Preparation for the Hearing.

If the Commission permits Mr. Harrington, Ms. Lipnis, or Ms. Bates to testify at the hearing in this case, the Companies, in the alternative to their Motion to Quash Subpoenas and Motion to Exclude Testimony, respectfully move the Commission to continue the hearing for a reasonable period to provide the Companies with sufficient time to conduct discovery of the Staff's proposed witnesses.

**III. Conclusion.**

For the foregoing reasons, the Companies respectfully request that the Commission: Quash the Subpoenas issued to Rebecca Howell, Stephanie Patton, and Jonathan Harrington; grant the Companies' motion to exclude the testimony of Jonathan Harrington, Heather Lipnis, and Cindy Bates; or, in the alternative, grant the Companies motion to continue the hearing to provide sufficient time for the Companies to conduct discovery and prepare for hearing in light of the witnesses identified after the deadline to file testimony in the case.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'M. Yurick', is written over a horizontal line.

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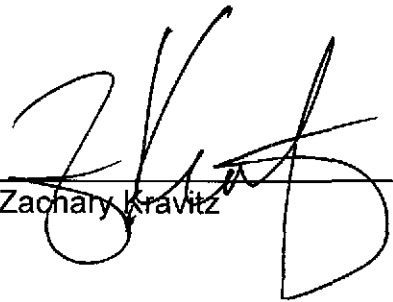
**Attorneys for  
Orwell and Northeast**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the *Motion to Quash Subpoenas and Motion to Exclude Testimony, Or, In the Alternative, Motion to Continue Hearing* was served this 5<sup>th</sup> day of July, 2013 by electronic mail upon the following:

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