

**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.	:	

**NORTHEAST OHIO NATURAL GAS CORPORATION
AND ORWELL NATURAL GAS COMPANY'S
POST-HEARING BRIEF**

Mark S. Yurick (0039176)
Email: myurick@taftlaw.com
Direct: (614) 334-7197
Zachary D. Kravitz (0084238)
Email: zkravitz@taftlaw.com
Direct: (614) 334-6117
TAFT STETTINIUS & HOLLISTER LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215
Telephone: (614) 221-2838
Facsimile: (614) 221-2007

August 19, 2013

**Attorneys for Northeast Ohio Natural Gas
Corporation and Orwell Natural Gas Company**

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I. INTRODUCTION.

The evidentiary record in this proceeding was completed on July 22, 2013. In accordance with the schedule established by the Attorney Examiner, Northeast Ohio Natural Gas Corporation (hereinafter "NEO" or "Northeast") and Orwell Natural Gas Company ("Orwell") submit their Post-Hearing Brief for consideration of the Public Utilities Commission of Ohio. (hereinafter "Commission" or "PUCO").

The PUCO Staff (hereinafter the "Staff") and the Office of the Ohio Consumers' Counsel (hereinafter the "OCC") have urged the Commission to deny the Companies' the ability to recover a substantial portion of the actual gas costs incurred by the Companies during the audit period, which costs make reliable gas supply available to

the Companies' customers. The Staff and the OCC have also recommended that the Commission reject the results of the RFP issued by the Companies on October 1, 2012.

As will be discussed more fully herein, the Companies intrastate gas purchasing policies were prudent and reasonable, and resulted in fair market prices for intrastate gas supplies.¹ The Staff and the OCC have not shown that the Companies' intrastate purchases were unreasonable, and they have not rebutted the presumption that the Companies' purchases were prudent. Additionally, to the prejudice of the Companies, the Staff has improperly extended the audit period far beyond the Commission's Entry in this proceeding, resulting in the Staff's and the OCC's recommendations for disallowances that are beyond the scope of the deadline established by the Commission's Entry and highly prejudicial to the Companies. With regard to the RFP, the Staff's and the OCC's claim that the result of the RFP was anticompetitive also lacks merit. It is impossible to determine whether the result of the RFP was fair and competitive at this time because the audit period of the gas purchases of the RFP's successful bidder is currently ongoing.

Before addressing these issues, it is important to discuss the standard of review and the burden that the OCC and the Staff must overcome before the commission can disallow cost recovery of actual expenditures based on claims that the Companies' business judgment should be substituted for the judgment of the OCC and the Staff. The regulatory history of this case requires specific attention, because it clearly shows that the current audit period was well underway for the Companies by the time that the commission issued its Order modifying and approving the Stipulation. In fact, the

¹ Any failure of the Companies to specifically address a proposal by the Staff or the OCC should not be construed as agreement with such proposal.

current audit period had ended for NEO and was already fourteen months completed for Orwell at the time the Commission issued its Order.

Accordingly, the Companies respectfully request that the Commission find that the Companies' procurement policies for intrastate gas during the audit period approved by the Commission were reasonable and prudent. Further, the Companies request that the Staff's and the OCC's recommendations for a disallowance and that the Staff's repricing recommendation be rejected.

II. BACKGROUND OF PROCEEDINGS.

By Entry issued January 20, 2010 in Case Nos. 10-0209-GA-GCR and 10-209-GA-GCR, the Commission initiated financial/GCR audits for Northeast and Orwell. *In the Matter of the Regulation of the Purchased Gas Adjustment Clauses Contained Within the Rate Schedules of Northeast Ohio Natural Gas Corporation and Orwell Natural Gas Company*, Case Nos. 10-0209-GA-GCR; 10-209-GA-GCR, Opinion and Order at 2 (October 26, 2011)(“Oct. 26, 2011 Opinion”). The Commission set Northeast's audit period from March 1, 2008 through February 28, 2010. *Id.* Orwell's audit period was July 1, 2008 through June 30, 2010. Staff filed its audit report of the Companies on November 24, 2010. *Id.* On April 25, 2011, a public hearing was held, which continued through May 23, 2011. *Id.*

On August 18, 2011, the Companies, the Staff, and the OCC submitted a Stipulation and Recommendation (“Stipulation”) in the Companies' prior GCR case for the Commission's consideration.² (Oct. 26, 2011 Opinion at 21). In the October 26, 2011 Opinion and Order, the commission modified and approved the Stipulation. The provisions of the Stipulation pertinent to the current audit period are as follows:

² The Stipulation filed with the Commission on August 18, 2011 is attached as “Attachment A.”

3. Recommendations pertaining to both Companies:

a. The Companies and their affiliated natural gas company Brainard Gas Corporation ("Brainard") will terminate their currently effective contracts for purchases of local production and the arrangement of purchases of natural gas in the interstate market, and such other contracts as must be terminated in order to effectuate the termination of those contracts, all as identified in Attachment A to this Stipulation and Recommendation, forthwith upon the entry of the Commission's Order adopting this Stipulation and Recommendation.

b. Gas Natural Service Company will continue to act as gas procurement manager and asset manager for the Companies and Brainard free of the restrictions currently in place by virtue of the terminated contracts identified in Attachment A to this Stipulation and Recommendation pending implementation of competitive bidding for the gas supply requirements of the Companies. Gas Natural Service Company will receive any FERC ordered refunds or rebates allocated to each upstream pipeline capacity contract it is managing, and flow such refunds and rebates through to Northeast and Orwell's GCR customers.

c. The Companies and Brainard will not permit their available lines of credit to be employed to acquire natural gas for non-utility affiliated companies or related parties.

d. Gas Natural Service Company will not acquire natural gas on behalf of the Companies or Brainard for non-GCR customers, including shrinkage, fuel and company use gas.

e. Gas Natural Service Company will coordinate with Staff and the OCC in designing and implementing the request for proposal(s) ("RFP") and the selection criteria that identifies in detail all services to be provided by the successful bidder. OCC shall have the right to fully participate in the RFP process to the extent it determines necessary in order to assure the Northeast and Orwell GCR customers are protected from the potential harm from onerous contract terms procuring their natural gas requirements and/or managing their capacity and storage assets. The request for proposal process shall lead to the receipt of competitive bids to manage the interstate transportation and storage capacity assets of the Companies and procure the gas requirements of the Companies' GCR

customers and Brainard's GCR customers in the local and interstate markets. It is agreed that bids received from competitive bidders will be provided to Gas Natural Service Company, the Companies and Brainard, Staff and the OCC contemporaneously. Gas Natural Service Company will select the successful bidder in consultation with Brainard, Northeast, and Orwell. It is the intention of the Signatory Parties that the competitive bidding process will be completed by November 11, 2011.

f. Marketers who are affiliated with or related parties to the Companies and Brainard shall be accorded the opportunity to participate in the competitive bidding process on the identical terms and access to information as non-affiliated marketers.

g. After the effective date of termination of contracts identified in Attachment A to this Stipulation and Recommendation, and until the date of initiation of gas procurement services and/or asset management services by the successful competitive bidder, Gas Natural Service Company will continue to acquire local gas supplies for the Companies from John D. Oil and Gas Marketing. The Companies agree that such purchases from John D. will be subject to Staff review in future GCR proceedings.

The Companies filed their Application for rehearing on November 11, 2011. On December 14, 2011, the commission denied the Application for Rehearing. A final entry in the case was not issued by the commission amending the Commission's Entry on Rehearing until January 23, 2012.³

The instant case was initiated by Commission Entry on January 23, 2012. The Commission ordered the Audit Period for NEO to extend two years, from March, 1 2010 through February 29, 2012. The Commission's Order set the timeframe for the Orwell audit period as July 1, 2010 through June 30, 2010. The Staff issued its audit report for the current audit period (the "Audit" or "Audit Report") on February 29, 2013. Pursuant

³ The Application for Rehearing, the Entry Denying the Companies Application for rehearing, and the Entry ordering the Commission's Entry on Rehearing be amended, *nunc pro tunc* are all publicly available in PUCO Dockets for Case Nos. 10-0209-GA-GCR and 10-209-GA-GCR.

to O.A.C. 4901:1-14-07(A), a hearing was held to review the audit findings, conclusions, and recommendations; and such other matters relating to the gas or natural gas company's gas cost recovery rates as the commission considers appropriate

III. LAW AND ARGUMENT.

A. Gas Cost Recovery Audits and Hearings.

Pursuant to a "purchased gas adjustment clause," natural gas companies are permitted to, without adherence to R.C. 4909.18 or 4909.19 (the procedures for an application for a rate increase), adjust the rates they charge to customers in accordance with any fluctuation in the cost to the natural gas company of obtaining the gas that it sells, that has occurred since the time any order has been issued by the public utilities commission establishing rates for the company pertaining to those customers. R.C. 4905.302(A).

Revised Code 4905.302(C)(1) authorizes the commission to promulgate a purchased gas adjustment rule "that establishes a uniform purchased gas adjustment clause to be included in the schedule of gas companies and natural gas companies subject to the jurisdiction of the public utilities commission and that establishes procedures and proceedings including, but not limited to, periodic reports, audits, and hearings. The Commission promulgated these rules in O.A.C. 4901:1-14-01 *et seq.*

O.A.C. 4901:1-14-01(K) defines "Gas cost recovery rate (GCR)" as "the quarterly update, or other periodic update as approved by the commission, of the gas cost adjustment determined in accordance with the appendix to rule 4901:1-14-05 of the Administrative Code." The gas cost recovery rate equals:

- (1) The gas or natural gas company's expected gas cost for the upcoming quarter, or other period as approved by the

commission, pursuant to paragraph (K) of rule 4901:1-14-01 of the Administrative Code, plus or minus;

2) The supplier refund and reconciliation adjustment, which reflects:

(a) Refunds received from the gas or natural gas company's interstate pipeline suppliers or other suppliers or service providers plus ten per cent annual interest; and

(b) Adjustments ordered by the commission following hearings held pursuant to rule 4901:1-14-08 of the Administrative Code, plus ten per cent annual interest, plus or minus;

(3) The actual adjustment, which compensates for differences between the previous quarter's, or other commission-approved period's, expected gas cost and the actual cost of gas during that period, plus or minus; and

(4) The balance adjustment, which compensates for any under- or over collections which have occurred as a result of prior adjustments, plus or minus.

Pursuant to O.A.C. 4901:1-14-07(A), the commission shall conduct periodic financial and management/performance audits of each natural gas company. Unless otherwise ordered by the commission, the audits shall be conducted annually. O.A.C. 4901:1-14-07(A). At least sixty days after the filing of each audit report, the commission shall hold a public hearing to review:

(1) The audit findings, conclusions, and recommendations; and

(2) Such other matters relating to the gas or natural gas company's gas cost recovery rates as the commission considers appropriate

(O.A.C. 4901:1-14-08(A)).

B. Standards of Review.

At the hearing, the natural gas company must show that its gas cost recovery rates were fair, just, and reasonable and that its gas purchasing practices and policies promote minimum prices consistent with an adequate supply of gas. In determining

whether the natural gas company met those standards, the commission shall consider, to the extent applicable:

- (1) The results of the management/performance audit;
- (2) The results of the financial audit;
- (3) Compliance by the gas or natural gas company with previous commission performance recommendations;
- (4) The efficiency of the gas or natural gas company's gas production policies and practices; and
- (5) Such other practices, policies, or other factors as the commission considers appropriate.

As a result of such a hearing, Revised Code Section 4905.302(F) provides:

The commission shall not at any time prevent or restrain such costs as are distributable under from being so distributed, unless the Commission has reason to believe that an arithmetic or accounting inaccuracy exists with respect to such a distribution or that the company has not accurately represented the amount of the cost of a special purchase, or has followed imprudent or unreasonable procurement policies and practices, has made errors in the estimation of cubic feet sold, or has employed such other practices, policies, or factors as the commission considers inappropriate.

The law is clear that natural gas companies are entitled to recover all actual gas costs unless there exists sufficient evidence to support a commission finding of arithmetic error, imprudence, or unreasonableness, in the company's gas procurement practices and policies. Accordingly, Section 4905.302(F) identifies the limited circumstances that permit the commission to deprive natural gas companies of the ability to recover the actual costs incurred to make a reliable gas supply available to its sales customers.

When the commission must determine whether a company has engaged in imprudent or unreasonable procurement policies and practices or other inappropriate

practices or policies, additional analysis is required. *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Vectren Energy Delivery of Ohio, Inc. and Related Matters*, Case No. 02-220-GA-GCR (June 14, 2005). The commission has established a three-pronged standard for evaluating the reasonableness of utility decisions:

...The commission is almost continually confronted with evaluating the reasonableness of decisions made by utility management, which decisions affect nearly every facet of utility operations and which were perhaps made only one week ago or several years earlier. Despite this diversity in decisions, there are several areas of inquiry which have almost universal applicability in the evaluation process. One area encompasses the facts and circumstances known or reasonably anticipated at the time the decision was made and whether such facts and circumstances were taken into proper consideration in the decision-making process. A second area involves the inquiry of whether any intervening circumstances occurred or facts become known which impacted the initial decision's results, whether such intervening factors caused or should have caused management to re-think the initial decision, and whether any action or nonaction in light of the intervening factors was appropriate. A third area is an examination of the actual results achieved by virtue of the decision. In the commission's opinion, these three areas together comprise the proper standard for evaluating the reasonableness of utility decisions. However, the weight to be accorded the three aspects of the standard will vary, depending on the type of decision made and how long ago it occurred. In other words, the standard for evaluating the reasonableness of utility decisions involves the three areas of inquiry just discussed, with the weight to be accorded each area to be determined on an issue by issue basis within the commission's discretion.

In the Matter of Regulation of the Fuel Cost Adjustment Clause Contained Within the Rate Schedules of the Ohio Power Company and Related Matters, Case No. 79-234-EL-FAC (Subfile A), Entry on Applications for rehearing at 3 (Oct 15, 1980); see also *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within*

the Rate Schedules of Vectren Energy Delivery of Ohio, Inc. and Related Matters, Case No. 02-220-GA-GCR, Opinion and Order at 9 (June 14, 2005).

The assessment of the prudence of utility decisions should be made in accordance with the following four guidelines:

- (1) There should exist a presumption that the decisions of utilities are prudent.
- (2) The standard of reasonableness under the circumstances should be used.
- (3) Hindsight should not be used in determining prudence, although consideration of the outcome may legitimately be used to overcome the presumption of prudence.
- (4) Prudence should be determined in a retrospective, factual inquiry.

In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Vectren Energy Delivery of Ohio, Inc. and Related Matters, Case No. 02-220-GA-GCR, Opinion and Order at 9 (June 14, 2005); *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained within the Rate schedules of Syracuse Home Utilities Company, Inc. and Related Matters*, Case No. 86-0012-GA-GCR, Opinion and Order at 10 (December 30, 1986) (“*Syracuse*”).

In *Syracuse*, the commission recognized the importance of the presumption of prudence and the requirements borne by the party seeking to overcome the presumption:

The first . . . guideline is important in this case because the effect of a presumption of prudence is to shift the ‘burden of producing evidence’ (or ‘burden of production’) to the opposing party. While the ‘burden of persuasion’ (or ‘burden of proof’) generally rests throughout a proceeding on the same party, the burden of producing evidence can shift back and forth. Here, pursuant to Rule 4901:1-14-08, Ohio Administrative Code, Syracuse always has the burden of proving that its gas cost recovery rates were fair, just and

reasonable and that its gas purchasing practices and policies promote minimum prices consistent with an adequate supply of gas. The effect of presuming that Syracuse's decisions . . . were prudent shifts to the Staff the burden of producing evidence to rebut that presumption. The Staff has simply produced no evidence sufficient to overcome the presumption. The Staff's evidence consists primarily of conclusory statements or unsubstantiated references.

Id. at 10. Finding that the Staff's positions lacked evidentiary support, the commission observed that "... Syracuse's evidence, while admittedly also not empirically conclusive, supports the basic facts underlying the presumption." Consequently, the commission found that ". . . [t]he Staff must do more than essentially state 'we disagree' to shift the burden of producing additional evidence back to the Company." *Id.* at 11.

C. By Improperly Changing the Audit Period Without Commission Approval, the Staff Prejudiced the Companies and the Public.

When the October 26, 2011 Opinion and Order was issued modifying and adopting the Stipulation in the last GCR cases for the Companies, *NEO's current audit period was already over*. O.A.C. 4901:1-14-07(A) provides in pertinent part: "Unless otherwise ordered by the commission, the [financial] audits shall be conducted annually." The Commission opened the current CGR case on January 4, 2012. On January 23, 2013, the Commission issued an Entry initiating the GCR financial audits for NEO and Orwell. (Jan. 23, 2013 Entry at 2). Pursuant to O.A.C. 4901:1-14-07(A), the Commission ordered the Audit Period for NEO to extend two years, from March, 1 2010 through February 29, 2012. (*Id.*).

At the hearing, Staff Witness Sarver explained that the dates of the Audit Period "confuse[] people" because they "represent the effective period that's listed on the cover page of each of the GCR filings." (Sarver 752:15-18). For example, the cover page of

NEO's financial audit states that the audit period is March 1, 2010 through February 29, 2012. However, Mr. Sarver explained that the *reporting period* of a financial audit actually lags six months behind the audit period. (Sarver 752:18-21). That is, the Staff audited the purchased gas costs for NEO beginning in September 2009. (Sarver 751:8-19). Pursuant to the Commission's January 23, 2012 Entry, the audit period ended February 29, 2012. However, the *reporting period* was completed six months prior to February 29, 2012, which would be on August 31, 2011 – nearly two months before the Opinion and Order in the last GCR case.⁴

When the Staff issued their financial audit on February 28, 2013, the Staff, *sua sponte*, and in contravention of the Commission's Entry, decided to extend NEO's audit period to December 31, 2012. This is demonstrated on page 38 of the Audit Report in

⁴ This process is confirmed by reviewing NEO's Financial Audit from the prior audit period filed with the Commission on November 24, 2010 in Docket No. 10-209-GA-GCR. The audit period is March 1, 2008 through February 28, 2010; however, the reporting period is November 30, 2007 through August 31, 2009. The final quarter of the 2010 audit is on Page 13 of the 2010 audit report and is reproduced below:

	<u>Per Staff</u>	<u>Jun-09</u>	<u>Jul-09</u>	<u>Aug-09</u>	<u>AA</u>	<u>Difference</u>
Quarter	Supply Cost \$	\$893,513	\$248,065	\$193,742		
End:	Jur. Sales MCF	125,020	116,440	42,937		
Aug-09	Total Sales MCF	125,020	116,440	42,937		
	Book Cost \$/ MCF	\$7.1470	\$2.1304	\$4.5123		
	EGC\$/MCF	\$8.0768	\$8.2849	\$7.0297		
	Diff. \$/MCF	(\$0.9298)	(\$6.1545)	(\$2.5174)		
	Cost Diff. \$	(\$116,244)	(\$716,632)	(\$108,089)	(\$940,964)	
	<u>Per Company</u>					
	Supply Cost \$	\$932,129	\$289,696	\$221,257		
	Jur. Sales MCF	125,892	117,023	43,484		
	Total Sales MCF	125,892	117,023	43,484		
	Book Cost \$/ MCF	\$7.4042	\$2.4517	\$5.0883		
	EGC\$/MCF	\$8.0768	\$8.2849	\$7.0297		
	Diff. \$/MCF	(\$0.6726)	(\$5.8332)	(\$1.9414)		
	Cost Diff. \$	(\$84,675)	(\$682,618)	(\$84,419)	(\$851,712)	(\$89,252)
TOTAL:						(\$1,057,799)

the Actual Adjustment, which section shows that the final reporting period extended through May 31, 2012 (six months prior to December 31, 2012):

	<u>Per Staff</u>	<u>Mar-12</u>	<u>Apr-12</u>	<u>May-12</u>	<u>AA</u>	<u>Difference</u>
Quarter	Supply Cost \$	\$745,265	\$449,874	\$287,292		
End:	Jur. Sales MCF	243,633	131,411	115,282		
May-12	Total Sales MCF	243,633	131,411	115,282		
	Book Cost \$/ MCF	\$3.0590	\$3.4234	\$2.4921		
	EGC\$/MCF	\$4.6672	\$4.3646	\$4.6264		
	Diff. \$/MCF	(\$1.6082)	(\$0.9412)	(\$2.1343)		
	Cost Diff. \$	(\$391,811)	(\$123,684)	(\$246,046)	(\$761,541)	
	<u>Per Company</u>					
	Supply Cost \$	\$825,062	\$445,721	\$299,590		
	Jur. Sales MCF	243,633	131,411	115,282		
	Total Sales MCF	243,633	131,411	115,282		
	Book Cost \$/ MCF	\$3.3866	\$3.3918	\$2.5868		
	EGC\$/MCF	\$4.6672	\$4.3646	\$4.6264		
	Diff. \$/MCF	(\$1.2806)	(\$0.9728)	(\$2.0276)		
	Cost Diff. \$	(\$311,997)	(\$127,637)	(\$233,745)	(\$673,579)	(\$87,962)

Total Actual Adjustment (\$2,457,141)

(Audit 38). When questioned at the hearing, Mr. Sarver stated that the Staff added one quarter to the audit period, but, in reality, the Staff extended the audit period by three quarters. (Sarver 753:14-16). The Staff never sought approval from the commission to extend the audit period for NEO, and the Staff never informed the commission or explained their rationale for this decision until filing testimony and cross-examination.

Mr. Sarver stated:

So in the course of these 2012 audits, what we did is take the standardized language for the audit periods, incorporated those into the entries that initiated the audits, and then because we were trying to sync the Orwell along with the Northeast audit periods because of the impending RFP process, we moved or extended the purchased gas audit period as far forward as we could, but it does not

exceed the effective period that's listed here [on the cover of the Audit Report].

(Sarver 752:22 – 753:5). The Audit Report states that the effective GCR period ends February 29, 2011, but it actually ended – *as decided by Staff alone* – on December 31, 2012. Accordingly, the reporting period was also changed from August 31, 2011 to May 31, 2011, which is outside of the commission ordered audit period.

Similarly for Orwell, the commission's Order set the timeframe for the Orwell audit period as July 1, 2010 through June 30, 2010. The corresponding reporting period for this audit should therefore be February 1, 2010 through January 31, 2012. However, Orwell's reporting period does not lag behind the audit period by six months; the audit and reporting period in this instance are concurrent. The Companies cannot reconcile these dates with Mr. Sarver's statement regarding the six month lag between the reporting period and the audit period. Nevertheless, Orwell was already fourteen months into the audit period when the October 23, 2011 Opinion was issued, and the audit period was completed prior to the issuance of the RFP.

Throughout the course of this proceeding, the predominant theme of the Staff's Audit, and hearing testimony of the OCC and Staff, has been that the Companies' practices purchasing intrastate gas in the "audit period" had not changed since the prior audit and were in violation of the Commission Order in the prior case. These claims lack merit and are disingenuous because the audit period for Northeast had already ended when the October 23, 2011 Commission Order was issued in the prior audit. To hold the Companies to a higher standard and find them noncompliant with previous Commission Orders pursuant to O.A.C. 4901:1-14-08(B)(3) is highly unjust and prejudicial given the actual timeframe of the audit period. Likewise, the RFP was not

issued after both NEO and Orwell's audit period were over, which is discussed more fully herein.

Moreover, the public at large is harmed when the commission publishes an Order stating one audit period and the Staff, on its own accord, selects an alternative audit period. The public will not know for what period of time the audit is being conducted.⁵ As a result, the public could not have a fair opportunity to raise issue with the commission regarding gas cost recovery rates in this case or the next case. Based on the Staff's explanation of the current audit period for NEO, it is impossible to determine what the audit period for the next audit will be. Looking forward, if the next audit period is March 1, 2012 through February 29, 2014, as one would assume, the public will not have an opportunity to address a full nine months of the audit (i.e. the reporting period between September 1, 2011 through May 31, 2012) since the issues will already be decided in this docket.

Based on the foregoing, the Companies respectfully urge the commission to limit its review of the audit period to the timeframe set forth in the January 23, 2011 Commission Entry pursuant to O.A.C. 4901:1-14-07(A).

D. The Companies' Natural Gas Procurement Policy for Intrastate Gas Reasonably Ensures Reliable Service at Optimal Prices.

i. The Staff's and the OCC's Implementation of a "Least Cost" Standard of Gas Purchasing Is Not Supported by the Commission.

The Companies' policies related to the procurement of natural gas "reasonably ensure reliable service at optimal rates," which is the standard set forth by the Commission. Throughout the course of this proceeding, the Staff and the OCC have

⁵ This was clearly the case with the two public witnesses that testified at the hearing, both whom testified nearly entirely about time periods examined in the prior audit.

attempted to hold the Companies to a higher standard – a “least cost standard.” However, least cost is not the standard approved by the Commission. A least cost standard relies on hindsight, which the Commission discourages when evaluating prudence. The Staff and the OCC’s proposed least cost standard ignores that the Companies’ business decisions were forward looking – they were made without knowing in advance what the result would be. If least cost was the standard approved by the Commission, the Staff could likely recommend a disallowance in every case because there will always be numerous options to purchase gas, and companies cannot guarantee that they will always find the lowest price. Dr. Overcast’s testimony demonstrates that, *based on the market conditions during the audit period*, the Companies’ purchases were reasonable and prudent.

The Staff and the OCC seem to combine two very different issues in their analysis of the Companies’ gas cost recovery rate: (1) the actual price that the Companies paid for intrastate production and (2) the fact that the Companies purchased gas from JDOGM, an affiliated marketer. The former is an acceptable factor to consider when determining the gas cost recovery rate; the latter is not. The Companies’ purchases should be reviewed based on the prevailing market conditions at the time. The OCC and the Staff essentially conclude that the Companies’ gas cost recovery rate was unreasonable *because* the Companies purchased from JDOGM. Rather than undergoing a retrospective, factual inquiry into the Companies’ rates, as the Commission requires, the OCC and the Staff have summarily concluded, without adequate support, that Companies’ rates were unreasonable. While the Staff’s and the OCC’s objections to the purchasing of local production gas from JDOGM may be an

argument in support of their recommendation for a management/performance audit, that fact alone does not, in itself, necessitate a finding that the Companies' local production gas purchase costs were too high. The Staff and the OCC have improperly blurred these two different arguments together. The Companies recommend that the commission review the Companies' gas cost recovery rate based on objective, measurable indicators: actual purchases and market conditions; not based on the parties to the contract.

ii. The Companies' intrastate gas purchases were reasonable and prudent

The prices that the Companies paid for intrastate gas⁶ in the audit period were reasonable and based on prudent decision making. To demonstrate that the Companies' purchases were prudent and reasonable, the Companies' Expert Witness Dr. Overcast compared intrastate gas to interstate gas as delivered at the city gate. (Overcast 13:4-6).⁷ Neither the OCC nor the Staff made any recommendations with respect to disallowing the Companies interstate gas costs. Accordingly, the Companies' interstate gas costs were reasonable, and therefore, these costs represent the best sample of market prices for interstate gas because they are the actual prices that the Companies paid.

If the actual volumes and prices are examined, as Dr. Overcast explains in Schedule 1 of his direct testimony, it is clear that NEO and Orwell's intrastate purchases were less expensive than the market cost of interstate gas delivered. (Overcast Schedule 1). Dr. Overcast's methodology is based on a month by month comparison

⁶ The terms "intrastate gas" and "local production" are used interchangeably to refer to gas purchased from local producers.

⁷ As will be discussed herein, the Staff also compared the Companies' intrastate purchases to interstate prices.

using the Companies' actual gas purchases during the audit period. (Overcast 11:15-18). Schedule 1 to Dr. Overcast's pre-filed testimony shows the average monthly city gate cost per Mcf for each month for both intrastate and interstate gas purchases. (Overcast 11:18-22; Schedule 1). Dr. Overcast then compares the prices paid for intrastate gas for each month during the audit period with the prices paid for interstate gas for the corresponding month during the audit period. (Overcast 11:18-22). The monthly average cost difference between intrastate and interstate purchases is then multiplied by the actual volume of intrastate gas purchased that month to determine the net benefit or cost of the intrastate gas purchases. (Overcast 11:20-22). Those values are summed to calculate the net benefit or cost of intrastate gas purchases. (Overcast 11:22-23).

For Orwell, the savings from purchasing local gas rather than interstate gas delivered was \$39,000 during the Audit Period. For NEO, the savings achieved by purchasing local gas rather than interstate gas was approximately \$747,000 in favor of the customers during the Audit Period. (Overcast Schedule 1). These values do not take into account the significantly higher BTU content of locally produced gas, which would increase the savings for customers since customers may use fewer BTUs of high BTU intrastate gas to meet their load requirements. (Overcast 12:4-14). Although not factored into the Companies' Schedule 1 calculation, capacity values for local production and margins required to provide requirements service as compared to a NYMEX strip further increased savings for the Companies' customers. (Overcast 12:16-21).

The Staff's analysis of the Companies' purchase price for gas does not recognize that the gas sold to NEO and Orwell is not based on a customary NYMEX contract; rather, these local production contracts were "full requirements" contracts. The difference between these two types of contracts is critical to consider when analyzing NEO and Orwell's comparison cost of gas. As Dr. Overcast explained, local production is the only source of gas for some customers and a partial source for other customers. Because the contracts are not based on a ratable flow like a true NYMEX contract, required quantities for NEO's and Orwell's customers vary daily based on daily demand requirements, system requirements, and nominations from other sources. (Overcast 10:25 – 11:1-6). The uncertainty of the daily requirement sales on these systems in a full requirements contract has a cost that expectantly results in a higher premium for a full requirements contract with variable quantities as compared to a fixed volume contract, like customary NYMEX contracts (Overcast 10:5-6). The least cost standard employed by the Staff is therefore inappropriate because it fails to take into account the importance of reliability of gas supply, which in some cases requires local production. (Overcast 13:15 – 14:2).⁸

⁸ Mr. Slone stated that the "reliability of supply would enter into a prudence evaluation." (Slone 202:9-10).

- iii. The Staff's repricing methodology is unreasonable and should be rejected by the Commission.

Staff recommended in the prior audit that the Companies reject supply and asset management agreements with John D. Oil and Gas Marketing ("JDOGM"), an affiliated, non-regulated gas marketer. Because pricing of local production was a concern for the Staff in both the past audit and the current audit, the Staff recommending repricing the local production for the audit period based on the following inputs ("Table 2"):

Local Producers	Avg. NYMEX for the Audit Period ⁹	Staff Alternative Premium NYMEX Plus	JDOG Premium NYMEX Plus	Difference
Cobra ¹⁰	\$3.834	\$0.50	\$1.091	\$0.591
NEO non-Cobra ¹¹	\$3.82	\$0.70	\$1.61	\$0.91
Orwell ¹²	\$4.01	\$0.25	\$1.46	\$1.21

According to Mr. Sarver, the average NYMEX for the Audit Period represents the weighted average cost of purchasing the volumes during the Audit Period each month based on the NYMEX price at the time. (Sarver 722:21-23). The average NYMEX varied between Cobra, NEO non-Cobra, and Orwell because each source had different purchase quantities for different months, and the NYMEX price index changed each month. (Sarver 723:2-3).

With respect to the Staff's decision to base its repricing of local production on the basis of NYMEX, Dr. Overcast explained that the Staff failed to justify the use of the NYMEX as an appropriate market indicator of local gas supply in Ohio, and that the price of local production at the Dominion delivery point would be a more accurate indicator of local gas prices. (Overcast 7: 7-12). By repricing intrastate gas based on

⁹ These represent the weighted average cost of purchasing the NYMEX based on the volumes purchased each month and the NYMEX price for the corresponding month. (Sarver 723:2-12).

¹⁰ Local producers that are physically connected to the Cobra pipeline. (Sarver 722:2-3).

¹¹ Any producer that NEO purchased from who is not physically connected to Cobra. (Sarver 722:6-7).

¹² Local producers that feed into Orwell. (Sarver 722:10).

NYMEX, the Staff failed to consider basis differential in the Staff's recommended price of gas, even though the Staff acknowledged that producers who sell at NYMEX negotiate shorter contracts to "capture the changing basis differential." (Overcast 7:9-12). In comparison, the spot price for Dominion averaged \$0.15 per month per dekatherm (based on the average of daily basis for the monthly average) higher than the spot price at the Henry Hub. (Overcast 7:14-16). Incidentally, Mr. Sarver's testimony at the hearing supports Dr. Overcast's analysis:

Q. Would you at least agree with me that there is no index like a NYMEX that would tell me by going to it what a fair price for local production would be?

A. I disagree with that too.

Q. You would disagree with that.

A. Because what I would say is that in Ohio about 80 Bcf a year is produced currently in 2012. And of that 80 Bcf[,] 60 Bcf of it flowed into the Dominion East Ohio system. The Dominion East Ohio system is set with a ceiling price established by Dominion Appalachian or Dominion Transmission. The other 20 Bcf largely goes into Columbia Gas Transmission and is set by the TCO Appalachian Index. There is a very small amount of local production that is consumed by isolated systems in the state of Ohio. *So I would say that the prevailing pricing in the market is going to be set by the Appalachian Index and the Dominion Transmission Index.*

(Sarver 720:16 – 721:9)(*Emphasis added*).

Thus, the market comparison price for the Staff's methodology should actually be NYMEX plus the basis differential (the price at the Dominion delivery point). (Overcast 7:18-19). Dr. Overcast explained that the load weighted basis differential for NEO is \$0.17 per MMBTU and for Orwell it is \$0.14 per MMBTU during the audit period. (Overcast 7:16-18).

Turning to the column, "Staff Alternative Premium NYMEX Plus," Staff repriced the premium to be paid to JDOGM during the current Audit Period based on contracts

between JDOGM and local producers in the *prior* audit period. (Sarver 725:4-13). The Audit states: "In its determination of the prices paid to local producers, Staff started with the NYMEX based price paid to the producer using the contracts and pricing sheets provided in the 2012 audit." (Audit 14).

Referring to the second row in Table 2, Mr. Sarver explained:

So if I start at – with Cobra \$3.83 which is just the average, but if I start and go to the staff audit report and I turn to page 15, and I look at the table at the top of that page and I look to see what local producers were paid under the contracts that were provided in the 2010 case, it would show me that Cobra producers are paid a weighted average of \$3.37 which is 45 cents less than their weighted average NYMEX.

So when I'm looking at these alternatives, I have to look at what the producers were paying to determine what amount needs to be added on to them. (Sarver 725:1-17).

The table Mr. Sarver referred to on page 15 of the Audit Report is inserted below ("Table 3"):

Systems	Avg. NYMEX Price	Weighted Avg. Price Paid to Producers	Volumes Billed to Companies by JDOG Dth	Weighted Difference
Cobra	\$3.834	\$3.376 Dth	953,472 Dth	\$(0.458)
Non-Cobra	\$3.82	\$4.40 Mcf ¹³	280,003 Mcf	\$0.580
Orwell	\$4.01	\$4.11 Mcf	63,693 Mcf	\$0.10

(Audit 15). The weighted average prices paid to local producers are the weighted average prices that JDOGM paid to local producers in the prior audit period, which are based on contracts between JDOGM and local producers. (Sarver 726:16-25). The weighted difference in the fourth column represents the difference between

¹³ In the Audit, the Weighted Average Price Paid to Producers for Non-Cobra was listed as measured in Dth. Mr. Sarver testified that this unit should be changed to Mcf. No conversion from Dth to Mcf was needed. (Sarver 726:10-11).

the weighted average price paid to local producers during the prior audit period and the weighted average NYMEX price in the current audit period.

The Staff does not state in the audit or in testimony the significance of the weighted difference calculation or its relationship to the Staff Alternative Premium NYMEX Plus. It appears instead that the Staff's estimation for JDOG's premium is unsupported and unrelated to the weighted difference calculation. Following Mr. Sarver's example using the Cobra calculations, the weighted average price paid to local producers in the prior audit period was forty-five cents less than the weighted average price of NYMEX quantities in the current audit period. There is no stated or apparent correlation between the 45 cent "weighted difference" and the Staff's 50 cent Alternative Premium NYMEX Plus. The Staff's 50 cent Alternative Premium NYMEX Plus is apparently a totally arbitrary figure unrelated to any actual calculation of weighted difference or any other objective criteria. It is simply a guess.

If Non-Cobra prices are examined based on the Staff's repricing, there is similar confusion. Based on Table 3, the weighted average price paid to local producers in the prior audit is *higher* than the weighted average NYMEX price, resulting in a 58 cent weighted difference. With regard to Non-Cobra gas, the Staff *accepts* in its calculation that JDOGM paid more to local producers than the weighted average NYMEX price. However, in Staff Witness Sarver's pre-filed testimony, he states that "[s]taff found the prices JDOG charged to the Companies distorted the cost of purchasing local production to where, in most months, these purchases exceeded the cost of purchasing interstate supplies, *which should not have been the case.*" (Sarver Direct 13-17)(*Emphasis added*). The Staff cannot reconcile these inconsistent positions in its

repricing. Without explanation, the Staff allowed a 70 cent premium for Non-Cobra local production. Again, the Companies are left to wonder, "What is the significance of the weighted difference?"

Further, the basis for the repricing appears to be an evaluation of a "fair" premium for the seller rather than any objective evaluation as to a prudent purchase cost. These concepts are not synonymous. The Commission lacks authority to regulate the profits of a non-regulated seller. By repricing gas purchased from a marketer, the Staff is inserting itself into the market and questioning the prudence of decisions made by the Companies in the market. Without some degree of certainty that the Companies' purchases were not market based, the Staff's proposed repricing could have a chilling effect on the market by signaling price ceilings to marketers.

The same repricing column for non-Cobra rates suffers additional problems because the Staff includes gas purchased from Gatherco, a non-affiliated company, which gas is delivered to the NEO system. Gatherco gas costs NYMEX plus \$1.50 per Mcf based on local market services and Gatherco contracts. (Overcast 9:4-8). The Gatherco volumes were necessary to serve customers at the beginning of the audit period, and the resulting price (NYMEX plus \$1.50) was a market based price. (Overcast 9:8-11). The Audit does not adjust for these costs, and instead, the Staff add approximately \$261,000 to the NYMEX cost excluding basis. (Overcast 9:11-13).

The Staff's proposed repricing is even less supportable when one considers that the Staff based its cost model on NYMEX prices from 2007 through 2009. There is no reason to believe that the Staff's prices in Table 3 are associated with any actual costs attributable to NEO or Orwell during the audit period. (Overcast 9:22-23). The Staff, in

an effort to determine the *current* price that JDOGM paid to local producers in the audit period, based their analysis entirely on outdated JDOGM contracts with local producers in the *prior* audit period. (Overcast 9:19-20). The NYMEX monthly prices were not the same in the prior audit as they were in the current audit period. NYMEX prices change daily, monthly and yearly. At the hearing, Mr. Sarver stated that the price for gas in 2008 would be different than a price for gas during the audit period because the time period is different and the price of gas fluctuates over time. (Sarver 691:8-13). It is simply not rational or reasonable to base the repricing of the Companies' natural gas purchases on prices that have no connection to the prices actually paid by the Companies in the current Audit Period.

Furthermore, the direct comparison Staff made between the current weighted average NYMEX and the weighted average price paid to producers in the prior audit is an apples to oranges comparison. These quantities are simply based on different prices. The Staff cannot compare the price paid to a local producer based on one NYMEX price with an entirely different NYMEX price index and find any rational value from the comparison. The result of the comparison when based on such inapposite sources and quantities is meaningless in determining a prudent price for local production. Additionally, it is also unclear whether the weighted average price paid to local producers is based on the volumes purchased in the prior audit period or the current audit period, which could account for a very large variance based on seasonal and yearly fluctuations in gas prices.

Staff's Alternative premium for JDOG for intrastate gas for NEO on the Cobra pipeline, NEO on non-Cobra pipelines, and Orwell are \$0.50, \$0.70, and \$.025,

respectively. The Staff failed to provide any justification or source for these alternative premiums. According to Cobra's PUCO approved tariff, transportation fees are \$0.50 per Dth with shrinkage of 3.5 percent. Excluding shrinkage, the transportation cost for NEO on Cobra is \$359,029. (Overcast 8: 9-12). Thus, according the Audit, the Staff's allowed premium for JDOG does not even cover transportation on Cobra, which is a clearly prudent and recoverable cost. (Overcast 8:12-13).

The Staff and the Companies both based their review of the prudence of the Companies' intrastate purchases by using interstate gas prices as a comparison. The Staff recommended using the NYMEX as its base price for intrastate gas. As discussed above, this price does not take into account basis differential, transportation fees, agency fees, or shrinkage. Because the Companies' interstate gas purchases have not been repriced and are reasonable, a far better basis for comparison is to the Companies actual interstate purchases, because those purchases represent the "all-in" cost of getting interstate gas to the city gate based on the current market conditions at the time the gas was purchased, which is the comparison Dr. Overcast rightly made. Additionally, the Companies use of actual intrastate purchases during the audit period is more reliable than the Staff's use of historical prices paid to marketers in a prior audit period, which the Staff could not confirm were the actual prices paid during the current audit period. Finally, the actual difference between the Companies' market interstate purchases and the Companies' intrastate purchases shows exactly how much less the Companies paid for intrastate gas as compared to interstate gas. Whereas, the Staff's use of the "weighted difference" is incomprehensible and not related in any discernible way to the Staff's proposed premium. Consequently, the Staff's calculations are

unsupportable, and they unreasonably and unlawfully disallow the Companies from recovering gas costs in regulatory rates that are prudently incurred and lawfully recoverable. The Staff have not met their burden to rebut the presumption that the Companies' gas purchases were prudent.

iv. The OCC's repricing methodology is unreasonable and should be rejected by the Commission.

The OCC's analysis of the Companies' GCR rates is essentially a comparison to the local gas purchases of three local distribution companies("LDCs"): Piedmont Gas Co. ("Piedmont"), Ohio Cumberland, and Eastern Natural Gas ("Eastern") (Slone 208:17 – 209:3). OCC exhibit 12A shows the prices paid by the LDCs over a ten year period. The graph shows that prices the LDCs paid over the ten year period varied substantially by quarter, and there was no consistency between which LDC paid the most or least for gas over the period, except that, generally, Eastern paid more than Ohio Cumberland and Piedmont. (Slone 211:2 – 213:16). Mr. Slone testified that it is not easy to explain why the prices vary so widely. (Slone 213:21-22). In fact, he stated that there are many factors that contribute to the pricing of local gas, and it difficult to determine why one company is paying a certain amount for gas simply by looking at a pricing chart. (Slone 213:23 – 214:9).

According to the OCC, JDOGM's purchases of local gas production for NEO for the period of 2008 through 2012 averaged \$0.85 per Mcf more than the average cost of interstate gas. (Slone Direct 18:8-11). There are two clear problems with these figures. First, the OCC bases its prudence evaluation on a timeframe outside of the audit period. If the OCC's calculations are limited to the actual audit period from 2009 through 2011 (which still include months outside the audit period), NEO's average price of local gas

would only be \$0.59 per Mcf more than the price of interstate gas. (Slone Direct Attachment 7). Second, the OCC's figure is not a weighted average; it is an arithmetic average. (Slone 200:21 – 201:2). The \$0.85 average does not take into account the volume of gas delivered each year. Thus, the figure does not accurately represent the average cost of gas since it is not adjusted for volume.

Similarly, the OCC states that between 2000 and 2007, NEO purchased local production gas at an average rate of \$1.03 per Mcf less than the average cost of interstate gas supplies. (Slone Direct 28:15-19). This calculation also suffers because it is used to compare prices from different time periods that could vary due to a large number of different factors affecting the local production market prices. Additionally, the \$1.03 value is also not a weighted average.

The above figures are necessary for the OCC's repricing, which has many faults. The OCC reprices local production by reducing the average annual price of interstate gas for 2009 through 2012 by the average difference between local gas and interstate gas of \$1.03 per Mcf from the previous eight-year period (2000 – 2007).¹⁴ (Slone 29:5-11). Essentially, the OCC is using cost information from outside the audit period to determine current market conditions. The OCC's proposed repriced gas for NEO is as follows:

Year	Price of Interstate Gas for NEO	Price of Local Gas for NEO	Repriced Gas (Interstate minus \$1.03)	Difference between Price of Local Gas and Repriced Gas ("average overpayment")
2009	\$5.91	\$5.83	\$4.88	\$0.95
2010	\$6.26	\$7.01	\$5.23	\$1.78
2011	\$5.47	\$6.57	\$4.45	\$2.12
2012	\$3.21	\$4.33	\$2.18	\$2.15

The OCC bases the value of the repriced gas on the NEO's interstate gas purchases. If NEO's prices for interstate gas are relatively low as compared to the market, then NEO will be unjustly penalized because the lower priced interstate gas will create a higher repriced gas, which in turn, will create a larger average overpayment. To determine whether NEO's interstate gas is lower than market, the Companies have used the OCC's comparables for interstate gas, Eastern Natural Gas, found in

¹⁴ Mr. Slone's Direct Pre-filed Testimony states that "Reducing the average annual price of *local production* for 2008 through 2012 by the average difference between local gas and interstate gas of \$1.03 per Mcf from the previous eight-year period (2000-2007) provides a more appropriate price for local gas during the audit period." (Slone 29:5-11). This statement does not match the calculations in Attachment 7 or the final overpayment stated on page 29, lines 22-23 of Mr. Slone's testimony. Additionally, the OCC only repriced gas from 2009 through 2012. These statements appear to be in error, and the Companies have corrected this by using the average annual price of interstate gas in addressing this argument.

Attachment 8 to Mr. Slone's Pre-filed testimony. The difference between NEO's and Eastern's interstate gas prices are as follows:

Year	NEO	Eastern	Difference
2010	\$6.26	\$7.70	\$(1.44)
2011	\$5.47	\$8.10	\$(2.63)
2012	\$3.21	\$5.70	\$(2.49)

It is clear that NEO purchased interstate gas at a lower cost than Eastern. On average over the three years, NEO paid \$2.18 less than Eastern for interstate gas. Without a market to compare NEO's interstate gas prices, the OCC's use of NEO's interstate purchases to determine the overpayment is highly prejudicial to NEO. For example, if Eastern represented a comparable and fair market for interstate gas, then NEO's repricing would look much different by adding \$2.18 to its interstate totals:

Year	Price of Interstate Gas for NEO plus \$2.18	Price of Local Gas for NEO	Repriced Gas (Interstate minus \$1.03)	Difference between Price of Local Gas and Repriced Gas ("average overpayment")
2009	\$8.09	\$5.83	\$7.06	\$(1.23)
2010	\$8.44	\$7.01	\$7.41	\$(0.40)
2011	\$7.65	\$6.57	\$6.62	\$(0.05)
2012	\$5.39	\$4.33	\$4.36	\$(0.03)

This example highlights how the market for interstate gas is critical to the OCC's repricing. When using Eastern's interstate prices as a market, the OCC's repricing

would actually result in an underpayment. As such, NEO is penalized under the OCC's methodology for purchasing well-priced interstate gas.

There is a similar market-related flaw with the OCC's resulting repriced gas. The OCC uses the difference between actual price of local gas and the repriced gas as the average price per Mcf that NEO overpaid for local production gas. (Slone 29:15-17). The OCC then multiplies the average overpayment by the adjusted volumes of local production based on the Staff's audit period timeframe. (Slone 29:17-20). In order to put the repriced gas into perspective, the following table compares the OCC's repriced local production to Piedmont's price paid for local production between 2010 and 2012.

Year	OCC's Repriced NEO Local Production	Piedmont Local Production ¹⁵	Difference
2010	\$5.23	\$5.48	\$(0.25)
2011	\$4.45	\$5.04	\$(0.59)
2012	\$2.18	\$4.14	\$(1.96)

Accordingly, the OCC's repriced local production is, on average, \$0.93 less expensive than Piedmont's local production. Consequently, if Piedmont's intrastate gas purchases represent a comparable and fair market for intrastate gas, NEO will be unjustly penalized because the repriced gas is significantly less expensive than Piedmont's, which results in a larger average overpayment and overall overpayment. The OCC's failure to use actual market conditions in its repricing methodology undermines its analysis. The Companies should not be penalized for purchasing interstate gas at reasonable costs and by the OCC's arbitrary and below-market formula for intrastate

¹⁵ Source is Attachment 8 to Mr. Slone's Testimony

gas. Therefore, the OCC has failed to rebut the presumption that the Companies' intrastate purchases were prudent.

E. The Companies' Natural Gas Procurement Policy for Interstate Gas Reasonably Ensures Reliable Service at Optimal Prices.

The Staff does not believe there was any bias or favoritism towards any related companies with respect to the purchase of interstate gas production. (Sarver 3:11). The Staff and the OCC have not suggested that the Companies paid an inappropriate or imprudent amount for interstate gas supplies. (Sarver 747:1-4; Slone 203:14-15).

F. The Companies' Request for Proposal for Full Requirements Gas Contracts Reasonably Ensures Reliable Service at Optimal Prices.

i. The Request for Proposal Process Did Not Occur During the Current Audit Period and Should Not Be an Issue in this Proceeding.

The RFP process was a competitive process that resulted in a competitive bid. However, as discussed above, the discussion of the RFP is not ripe for review by the Commission. The RFP was issued October 1, 2012. (Direct Testimony of Martin K. Whelan 3:19-20). The Commission ordered audit period for the Companies was concluded February 29, 2012, and the reporting period ended on September 30, 2011. Based on the Staff's *sua sponte* extension of the reporting period, the Staff reviewed the Companies gas costs through May 2012 for NEO and June 2012 for Orwell. Simply put, the RFP was not issued in the Audit Period. The results of the RFP have no bearing on the gas cost recovery rate analyzed in the current audit. The bid selected and the price of interstate and intrastate gas under the RFP will not change any analysis of the gas cost recovery rate in the current audit.

ii. The Resulting Contracts from the RFP Should Not Be Evaluated Before the Next Audit Period.

It is premature to evaluate the result of the RFP and the performance of the successful bidder. The Companies entered into a contract with JDOGM pursuant to the results of the RFP issued in December of 2012. On February 28, 2013, the Staff issued its Audit Report, which states that the “Staff recommends that the Commission find that the RFP process did not lead to competitive bids as required by the Stipulation and as ordered by the Commission” (Audit 59). While it is clear that the Staff is eager to judge the RFP as inadequate, it is appropriate to wait until the next audit period to examine the actual results of the RFP – *i.e.* the prices that the Companies actually paid to JDOGM for gas and associated fees. Instead, the Staff has based its decision that the RFP did not lead to a competitive results largely on the fact that the Companies received only one conforming response to the RFP. The Staff states that the winning bid in the Audit would complete the requirements in the audit for a six cent agency fee in addition to the “purchases.” (Audit 57).

The Staff and the OCC both conclude that an RFP may follow a perfectly competitive process, but the *result* could still be uncompetitive depending upon whether there are sufficient responses. In other words, the *result* of the RFP is the sole determining factor to be considered to determine whether an RFP is competitive. Although that is simply not the case, it would be appropriate to at least wait for the results – JDOGM's invoices to the Companies – and examine the actual purchases and costs of gas during the audit period that corresponds with purchases from the selected bidder.

iii. The RFP's process was fair and competitive.

In connection with the RFP, the Stipulation between the parties filed in the prior audit case states in pertinent part:

b. Gas Natural Service Company will continue to act as gas procurement manager and asset manager for the Companies and Brainard free of the restrictions currently in place by virtue of the terminated contracts identified in Attachment A to this Stipulation and Recommendation pending implementation of competitive bidding for the gas supply requirements of the Companies. Gas Natural Service Company will receive any FERC ordered refunds or rebates allocated to each upstream pipeline capacity contract it is managing, and flow such refunds and rebates through to Northeast and Orwell's GCR customers.

e. Gas Natural Service Company will coordinate with Staff and the OCC in designing and implementing the request for proposal(s) ("RFP") and the selection criteria that identifies in detail all services to be provided by the successful bidder. OCC shall have the right to fully participate in the RFP process to the extent it determines necessary in order to assure the Northeast and Orwell GCR customers are protected from the potential harm from onerous contract terms procuring their natural gas requirements and/or managing their capacity and storage assets. The request for proposal process shall lead to the receipt of competitive bids to manage the interstate transportation and storage capacity assets of the Companies and procure the gas requirements of the Companies' GCR customers and Brainard's GCR customers in the local and interstate markets. It is agreed that bids received from competitive bidders will be provided to Gas Natural Service Company, the Companies and Brainard, Staff and the OCC contemporaneously. Gas Natural Service Company will select the successful bidder in consultation with Brainard, Northeast, and Orwell. *It is the intention of the Signatory Parties that the competitive bidding process will be completed by November 11, 2011.*

f. Marketers who are affiliated with or related parties to the Companies and Brainard shall be accorded the opportunity to participate in the competitive bidding process

on the identical terms and access to information as non-affiliated marketers.

(Stipulation)(Emphasis added).

The Opinion and Order modifying and approving the Stipulation was issued on October 26, 2011. An application for rehearing was filed by the Companies, and the final entry was not issued until January of 2012. Based on the date of the first Opinion and Order, the Companies would only have sixteen days – until November 11, 2011 – to create an RFP, coordinate with Staff and the OCC regarding the RFP process, issue an RFP, allow enough time for bidders to examine the RFP, and accept the winning bid. Through no-fault of any party, the timetable in the Stipulation was impossible to meet given the close proximity to the issuance of the Order. As such, there was a delay in issuing the RFP.

Delay aside, the current President of NEO, Martin K. Whelan, testified that when the Companies eventually created and issued the RFP, the process and result of the RFP were competitive. (Direct Testimony of Martin K. Whelan 6:14-22)(hereinafter “Whelan”). Pursuant to the terms of the Stipulation, the OCC and the Staff were involved in the drafting of the RFP. (Direct Testimony of Patrick Donlon Attachment 2)(“hereinafter Donlon Direct”). It is clear from the correspondence in Attachment 2 to Mr. Donlon’s testimony that the Staff and the Companies, through their counsel came to an impasse regarding certain language in the RFP; however, the Staff did not have the regulatory authority to determine the language in the RFP. It was the Companies’ responsibility to finalize the RFP.

RFPs vary tremendously based on several factors that affect the process and result of the RFP. The Staff and the OCC recognize that there is no standardized form

for an RFP. (Sarver 682:1-13; Donlon 485:3; Slone 183:2-5). The Company was not provided a template RFP by the Commission or the OCC. (Sarver 681:5-15). Mr. Sarver stated that each RFP "is specific to the entity that is requesting a solicitation of bids." (Sarver 682:5-6). Additionally, RFPs will differ based on situational aspects of the RFP. (Slone 183:15-17). The Staff is not aware of any rule, regulation, statute, or any other codified material setting forth: the minimum acceptable standards for inclusion in an RFP for gas purchasing services, the minimum response time for responders to an RFP, the minimum number of responders to an RFP in order for the RFP process to be considered competitive. (Sarver 682:14-23). Likewise, there are not a minimum number of potential responders that must receive the RFP in order for it to be considered competitive. (Slone 184:11-21). That is because these standards do not exist; nor were they incorporated into the August 18, 2011 Stipulation modified and approved by the commission.

The Companies created a process for the RFP that ensured a competitive process and result. The Companies hired an independent bid program administrator ("RFP Administrator"), James E. Sprague, a certified public accountant with Waltshall, Drake and Wallace, LLP, to administer the RFP. (Whelan 4:5-9). The RFP Administrator provided potential bidders with a confidential bid number and instructions to access the supply and capacity contracts and other information contained in the online data room. (Whelan 4:7-9). Additionally, the Companies hired an independent data room manager ("Data Room Manager"), RJ Donnelly and Sons Company. (Whelan 4:11-12). The Data Room Manager ensured that the entire RFP process

remained anonymous and protected the confidential information in the data room. (Whelan 5:14-16).

On October 1, 2012, the invitation to bid on the RFP was issued to fifteen marketers. (Whelan 3:19-22). Six marketers submitted pre-qualification agreements to the independent bid program administrator. (Direct Examination of Whelan 31:5-7). The initial date for bid submission was October 23, 2012; however the bidding period was extended to November 9, 2012 because some potential bidders requested more time to evaluate the RFP. (5:7-14). Thus, potential bidders had 40 days to evaluate the RFP and submit a bid.

On November 12, 2012, the RFP Administrator opened the bids and sent them to Mr. Whelan, on behalf of NEO, and Mr. Daryl Knight, on behalf of Orwell. (Whelan 5:12-14). The Companies received only one anonymous bid. (Whelan 5:19-22). The RFP provided that Gas Natural could select the lowest and best bid or reject all of the bids. (Whelan 6:7-10). Mr. Whelan and Mr. Knight evaluated the single bid and believed the single bid was a competitive and responsive to the RFP. (Whelan 6:7-10). Gas Natural accepted the bid without knowing the identity of the bidder. (Whelan 6:10-12).

The RFP created a contestable market for supplying NEO and Orwell in connection with local production. (Overcast 10:4-5). The market was contestable because there were multiple qualified bidders for the RFP that determined the pricing arrangements for the intrastate services of NEO and Orwell. (Overcast 6-8). In a contestable market, the margin earned by a market participant is the competitive margin. (Overcast 10:4-6). Even though only one bid was submitted in response to the

RFP, the outcome was still competitive because the winning bidder did not know the number of qualified bidders or the number of qualified bidders that would submit a bid. (Overcast 10:6-12). In a competitive market, bidders will expect multiple bids and the resulting winning bid will be competitive because it was bid to be lower than any other potential bidder, whether those potential bidders actually bid, or not. (Overcast 10:11-12).

While the Staff had no issues with the results of the RFP with respect to the bid for interstate production,¹⁶ the Staff had several criticisms the Companies RFP process. Mr. Donlon provided expert opinion related to the qualities that make an “effective RFP.” (Donlon Direct 5:84 – 6:98). Mr. Donlon supplied no outside source material or other regulation or laws that provide support for his criteria for an effective RFP, and Mr. Donlon stated that there were none. (Donlon 494:8-20). Mr. Donlon stated that his criteria for an effective RFP were based on his “training, education, and experience” and “google researches.” (Donlon 494:21 – 495:3). However, Mr. Donlon has never been involved in the issuance of an RFP nor has he been responsible for the final determination of evaluating an RFP. (Donlon 469:11-15; 471:24-25). With due respect to Staff Witness Donlon, he is simply not properly qualified to determine that the Companies’ RFP was not competitive and his stated criteria to create an effective RFP should not be adopted by the Commission.

Aside from the Staff’s unsupported objections to the lack of adequate background information,¹⁷ historical data,¹⁸ executive summary¹⁹ and explanation of the

¹⁶ (Sarver 695:23 – 696:2).

¹⁷ Mr. Donlon stated in the hearing that the Companies “gave some [background information]. There’s some information to it. It wasn’t really great background so my response was, no, there wasn’t so it’s not adequate - - in my mind. (Donlon 496:15-19). This “great background” standard that the Staff relies on

selection process,²⁰ the Staff is left with two specific objections to the substance of the RFP: the timeline to submit a prequalification bid was too short and the language related to the provision of intrastate gas was unclear. First, the Staff states that the three-day period to submit a pre-qualification agreement was unreasonably short. (Donlon Direct 8:139 – 149). Mr. Donlon testified that “[a] three day response time is not a reasonable amount of time for vendors to sign and return a legal document stating their interest in participating in the RFP process.” (Donlon Direct 8:147-149). To support this conclusion, Mr. Donlon stated:

Most vendors will need time to evaluate the potential profit margin of the services requested in the RFP prior to determining if they are interested in submitting a bid. Few companies would have the ability to provide even a cursory evaluation of the potential profit margin in three days. Additionally, to provide a signed legal document back to the Companies, the vendor would need to not only determine if they were interested in determining the services but would also need to have their legal advisors review the document prior to the document being signed and submitted. (Donlon Direct 9:173 – 10:180).

Not only is every justification in the above quote pure speculation, they also appear to be incorrect, because it is uncontroverted in the record that six bidders submitted pre-qualification agreements.

has no objective basis or support. Further, Mr. Donlon acknowledged that the bidders were sophisticated, expert bidders in gas markets and likely already had an understanding of the background of the Companies. (Donlon 496:22 – 497:2).

¹⁸ One year of historical data was provided. (Donlon Direct 7:129-130). However, if the bidders wanted additional historical data, they could request this information in the data room. (Donlon 500:1-11).

¹⁹ When asked whether a prudent responder to an RFP would submit a bid based on an executive summary, Mr. Donlon stated that “That’s not what an executive summary is for.” (Donlon 499:4). Thus, it is axiomatic that an executive summary is not a necessary component to an RFP, nor is the lack of a superior executive summary, in itself, fatal to an RFP.

²⁰ Mr. Donlon’s only statement regarding this criteria was that the “RFP [selection process] was not clear; the document had many ambiguous statements and was not intuitive to the readers of what the solicitor was requesting.” (Donlon Direct 11:198-199). Mr. Donlon did not provide specific examples of the ambiguous statements or explain how he knew that the document was not intuitive to the bidders.

Both Mr. Sarver and Mr. Donlon criticized the following statement in the RFP: "Local Production is currently under contract with [JDOGM]. Successful bidder must account for such supplies John D will continue to manage under 64 Base contracts covering 218 receipt points in 7 separate market areas." (PUCO Ex.). Staff argues that this language should have been removed from the RFP. (Sarver 699:20-24). However, the Staff recognized that there are isolated systems within NEO's and Orwell's service territory (Sarver 700:5-9), and that these sections of the system may only be supplied through local production. (Sarver 700:10-16; Donlon 473:22 – 474:1-12). Furthermore, if any bidder required additional information about this portion of the RFP, any bidder could anonymously ask questions regarding any requirements in the bid through the data room. (Whelan 4:21-22). As Mr. Whelan testified, if a bidder had a question about an ambiguity in the RFP, they could submit a question, and receive an answer from the Companies. (Whelan 5:1-6). The Companies published answers to all questions for all bidders to view in the data room. (Whelan 4:21-22).

The OCC argues that the RFP did not lead to a competitive result. However, Mr. Slone stated that going through an RFP process does not necessarily guarantee that the entity requesting proposals will receive a bid with the lowest priced supply. (Slone 192:1-9). OCC Witness Slone's critique of the RFP is of limited value because Mr. Slone admittedly did not look "too closely" at the RFP process:

I believe what I looked at - - and I think I said I didn't really look too closely. I don't recall exactly what the process was that was sent out. But from what little I read of it, it looked like a - - competitive process was being established, although I did have some concerns about the RFP itself. (Slone 185:22 – 186:3).

Mr. Slone testified that there could not be a competitive result to an RFP if there were only one bid. (Slone 188:3-7). In contrast, Dr. Overcast explained that a contestable market was created by the RFP so that if the Companies only received one bid it would still be a competitive bid. Additionally, as discussed above, it is too early to judge whether the RFP resulted in a competitive prices because the audit period for the RFP is currently ongoing. The OCC also objected to the RFP because JDOGM participated in the RFP, and therefore, the RFP cannot be competitive. (Slone 193:4-17). However, the stipulation requiring the RFP process specifically provided that affiliated marketers were permitted to bid. This prejudicial argument should be given no weight because the OCC signed on to the Stipulation in the prior audit, which Stipulation provides that [m]arketers who are affiliated with or related parties to the Companies and Brainard shall be accorded the opportunity to participate in the competitive bidding process on the identical terms and access to information as non-affiliated marketers.” Frankly, it is disingenuous for the OCC to now find fault in the Companies for something the OCC previously approved.

IV. CONCLUSION.

For the foregoing reasons, the Companies urge the Commission to find that the Staff’s reconciliation adjustments in the amount of \$234,801 for Orwell and \$2,457,141 for NEO in the customers’ favor be rejected by the Commission because the Staff and the OCC cannot prove that the Companies’ procurement policies were unreasonable and imprudent.

Additionally, the Companies urge the Commission to find that the Audit Period as set by the Commission in its January 23, 2012 Order be implemented and that the Staff’s alternative audit period be rejected by the Commission.

Finally, the Companies request that the Commission withhold evaluation of the RFP process because it is not ripe for adjudication. If the Commission chooses to evaluate the RFP, the Companies urge the Commission to find that the RFP was competitive and based on prudent and reasonable procurement policies.



Mark S. Yurick (0039176)
Email: myurick@taftlaw.com
Direct: (614) 334-7197
Zachary D. Kravitz (0084238)
Email: zkravitz@taftlaw.com
Direct: (614) 334-6117
TAFT STETTINIUS & HOLLISTER LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215
Telephone: (614) 221-2838
Facsimile: (614) 221-2007

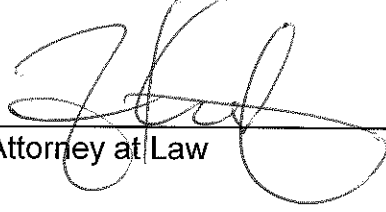
**Attorneys for Northeast Ohio Natural Gas
Corporation and Orwell Natural Gas Company**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this 19th day of August, 2013 by electronic mail upon the following:

William A. Wright
Werner L. Margard
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
Email: bill.wright@puc.state.oh.us
Email: werner.margard@puc.state.oh.us

Joseph P. Serio
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215
Email: serio@occ.state.oh.us



Attorney at Law

31434657.2

ATTACHMENT A

FILE

17

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Regulation of the)	
Purchased Gas Adjustment Clauses)	
Contained Within the Rate Schedules of)	Case No. 10-209-GA-GCR
Northeast Ohio Natural Gas Corporation)	Case No. 10-212-GA-GCR
and Orwell Natural Gas Company)	
)	
)	
In the Matter of the Uncollectible)	
Expense Riders Contained Within the)	Case No. 10-309-GA-UEX
Rate Schedules of Northeast Ohio Natural)	Case No. 10-312-GA-UEX
Gas Corporation and Orwell Natural Gas)	
Company)	

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STIPULATION AND RECOMMENDATION

I. BACKGROUND

Rule 4901:1-30, Ohio Administrative Code ("O.A.C.") provides that any two or more parties to a proceeding may enter into a written or oral stipulation concerning the issues presented in such proceeding. Pursuant to Rule 4901:1-10(C), O.A.C. the Staff of the Public Utilities Commission of Ohio ("Staff") is considered a party for the purpose of entering into a stipulation under 4901:1-1-30, O.A.C.

The purpose of this document is to set forth the understanding of Northeast Ohio Natural Gas Corporation ("Northeast"), Orwell Natural Gas Company ("Orwell"; Northeast and Orwell also collectively referred to as "Companies"), the Office of the Ohio Consumers' Counsel ("OCC") and the Staff (collectively, the "Signatory Parties") and to resolve all issues pertaining to Northeast and Orwell in these proceedings.

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II. STIPULATION AND RECOMMENDATION

- A.** It is understood by the Signatory Parties that this Stipulation and Recommendation is not binding upon the Public Utilities Commission of Ohio ("Commission"). This Stipulation and Recommendation is based upon the Signatory Parties' desire to arrive at a reasoned and reasonable result considering the law, facts and circumstances in this case. Accordingly, the Signatory Parties believe this Stipulation and Recommendation should be given careful consideration by the Commission and should be adopted. This Stipulation is supported by adequate data and information; represents a just and reasonable resolution of all issues in these proceedings; violates no regulatory principle; and is the product of serious bargaining among knowledgeable and capable parties in a cooperative process undertaken by the Signatory Parties to settle these cases. While this Stipulation is not binding on the Commission, it is entitled to careful consideration by the Commission, where, as here, it is sponsored by a wide range of interests, including the Staff.
- B.** This Stipulation is a compromise involving a balance of competing positions, and it does not necessarily reflect the positions that one or more of the Signatory Parties have taken during the course of litigation in these cases. The Signatory Parties believe that this Stipulation represents a reasonable compromise of varying interests when it is considered in its

entirety. This Stipulation is expressly conditioned upon adoption in its entirety by the Commission without material modification by the Commission. Should the Commission reject or materially modify all or any part of this Stipulation, each Signatory Party shall have the right, within thirty days of issuance of the Commission's order, to file an application for rehearing, or to terminate and withdraw from the Stipulation by filing a notice with the Commission in this proceeding, with service to all Parties. Upon the Commission's issuance of an entry on rehearing that does not adopt the Stipulation in its entirety without material modification, any Party may terminate and withdraw from the Stipulation by filing a notice with the Commission within thirty (30) days of the Commission's entry on rehearing. Prior to any Party seeking rehearing or terminating and withdrawing from this Stipulation pursuant to this provision, the Signatory Parties agree to convene immediately to work in good faith to achieve an outcome that substantially satisfies the intent of the Stipulation or proposes a reasonable equivalent thereto to be submitted to the Commission for its consideration. Upon notice of termination or withdrawal by any Party, pursuant to the above provisions, the Stipulation shall immediately become null and void. In such event, this proceeding shall go forward from the procedural point at which this Stipulation was filed, and the Signatory Parties will be afforded the opportunity to brief all issues which shall be decided based upon the

evidentiary record and briefs as if this Stipulation never had been executed.

C. For purposes of resolving all issues presented in these proceedings, the Signatory Parties stipulate, agree, and recommend that the Commission make the following findings and issue its Order ("Order") in this proceeding as set forth below.

III. GCR FINANCIAL AUDIT MATTERS

A. On November 24, 2010, Staff filed its Report of its Financial Audit of the Gas Cost Recovery ("GCR") Mechanisms for Northeast for the effective GCR Periods March 1, 2008 through February 28, 2010 and for Orwell for the effective GCR Periods July 1, 2008 through June 30, 2010. Evidentiary hearings were conducted on May 9 - 13 and May 23, 2011. Following the conclusion of the evidentiary hearings the Signatory Parties engaged in a series of discussions leading to this Stipulation. The Signatory Parties agree to the following recommendations:

1. Recommendations pertaining to Orwell:

a. The Signatory Parties agree that Orwell overcollected \$948,937 from customers during the audited periods, and agree that this overcollected amount will thus be reflected in the Actual Adjustment ("AA") for refund to customers. The Balance Adjustment ("BA") should be a refund of \$15,473 to customers. The Signatory Parties agree that a Reconciliation Adjustment of \$964,410 should be made in the customers' favor and should thus be refunded by Orwell to customers over a twenty-four month period commencing in the month after the Commission's

Order adopting this Stipulation.¹

b. The Reconciliation Adjustment ("RA") refund to be made by Orwell will not include interest on the unpaid balance.

2. Recommendations pertaining to Northeast:

a. The Signatory Parties agree that Northeast undercollected \$1,279,446 from customers during the audited periods, and agree that this undercollected amount will thus be reflected in the AA. In addition, the Signatory Parties further agree that the BA was overcollected and should be a refund of \$178,811 to customers. Finally, the Signatory Parties agree that a RA of \$1,100,635 should be collected by Northeast through the GCR mechanism over a twenty-four month period commencing in the month after the Commission's findings and Order adopting this Stipulation.²

b. The RA to be collected by Northeast shall include interest at an annual rate of ten percent on the unrecovered balance.

3. Recommendations pertaining to both Companies:

a. The Companies and their affiliated natural gas company Brainard

¹ In its Report submitted on November 24, 2010 in Case No. 10-212-GA-GCR, Staff had originally recommended, as a litigation position, that Orwell had overcollected from customers during the audit periods, and determined that this overcollection would be reflected in the AA as a refund of \$1,305,250. Additionally, the BA was also an overcollection from customers and should be a refund of \$13,680, resulting in an RA in the customers' favor of \$1,318,930. Staff Report, p. 3.

² In its Report submitted on November 24, 2010 in Case No. 10-209-GA-GCR, Staff had recommended an overcollection from customers during the audit periods resulting in an AA of \$1,068,218. The Staff had determined that the BA was overcollected from customers in the amount of \$178,811 thereby resulting in an RA of \$1,247,029. However, Staff had noted at p.6 of the Report that the AA calculation was subject to change pending Northeast providing additional documentation regarding purchases of local production. After this documentation was provided, Staff revised this recommendation in the testimony of its witness R. Sarver. Staff recommended that Northeast had actually undercollected from customers resulting in an AA of \$1,032,515, so that Staff's litigation position was to recommend an RA of \$860,658 to be collected from customers.

Gas Corporation ("Brainard") will terminate their currently effective contracts for purchases of local production and the arrangement of purchases of natural gas in the interstate market, and such other contracts as must be terminated in order to effectuate the termination of those contracts, all as identified in Attachment A to this Stipulation and Recommendation, forthwith upon the entry of the Commission's Order adopting this Stipulation and Recommendation.

b. Gas Natural Service Company will continue to act as gas procurement manager and asset manager for the Companies and Brainard free of the restrictions currently in place by virtue of the terminated contracts identified in Attachment A to this Stipulation and Recommendation pending the implementation of competitive bidding for the gas supply requirements of the Companies. Gas Natural Service Company will receive any FERC ordered refunds or rebates allocated to each upstream pipeline capacity contract it is managing, and flow such refunds and rebates through to Northeast and Orwell's GCR customers.

c. The Companies and Brainard will not permit their available lines of credit to be employed to acquire natural gas for non-utility affiliated companies or related parties.

d. Gas Natural Service Company will not acquire natural gas on behalf of the Companies or Brainard for non-GCR customers, including shrinkage, fuel and company use gas.

e. Gas Natural Service Company will coordinate with Staff and the OCC in designing and implementing the request for proposal(s) ("RFP") and the selection criteria that identifies in detail all services to be provided by the successful bidder. OCC shall have the right to fully participate in the RFP process to the extent it determines necessary in order to assure that Northeast and Orwell GCR customers are protected from the potential harm from onerous contract terms procuring their natural gas requirements and/or managing their capacity and storage assets. The request for proposal process shall lead to the receipt of competitive bids to manage the interstate transportation and storage capacity assets of the Companies and procure the gas requirements of the Companies' GCR customers and Brainard's GCR customers in the local and interstate markets. It is agreed that bids received from competitive bidders will be provided to Gas Natural Service Company, the Companies and Brainard, Staff and the OCC contemporaneously. Gas Natural Service Company will select the successful bidder in consultation with Brainard, Northeast and Orwell. It is the intention of the Signatory Parties that the competitive bidding process will be completed by November 1, 2011.

f. Marketers who are affiliated with or related parties to the Companies and Brainard shall be accorded the opportunity to participate in the competitive bidding process on the identical terms and access to information as non-affiliated marketers.

g. After the effective date of termination of contracts identified in Attachment A to this Stipulation and Recommendation, and until the date of initiation of gas procurement services and/or asset management services by the successful competitive bidder, Gas Natural Service Company will continue to acquire local gas supplies for the Companies from John D. Oil and Gas Marketing. The Companies agree that such purchases from John D. will be subject to Staff review in future GCR proceedings.

h. Staff and OCC will not assert a claim for civil forfeiture pursuant to Ohio Revised Code Sections 4905.22 or 4905.54 with respect to any purchases made by the Companies pursuant to the contracts to be terminated as identified in Attachment A to this Stipulation and Recommendation, during the GCR periods covered by the audits in these proceedings and in any subsequent periods covered by future GCR audits.

i. Except as specified herein, this Stipulation and Recommendation shall not preclude any Party from taking any position with respect to GCR audits for any periods subsequent to the audit periods in these proceedings.

IV. UNCOLLECTIBLE EXPENSE RIDER AUDITS

On November 24, 2010, Staff filed its Audit Reports covering the Uncollectible Expense Mechanisms of Northeast and Orwell for the period January 2007 through December 2009. In each audit, the Signatory Parties agree with the

findings and recommendations of Staff in those reports and recommend that the Commission adopt the Uncollectible Expense Audit findings and recommendations submitted by Staff in these proceedings.

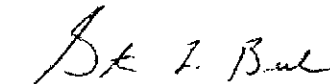
V. PROCEDURAL MATTERS

- A.** The Signatory Parties agree that the proofs of publication submitted in the GCR proceedings as Company Exhibit 1 and admitted into the record demonstrate that reasonable and adequate notice of these proceedings has been published in compliance with the Commission's rules and Orders of the Attorney Examiner.
- B.** The Signatory Parties agree that the Companies' testimony, Staff's testimony and OCC's testimony, including pre-filed testimony and that presented orally at the evidentiary hearings and the exhibits admitted into evidence in the record of these proceedings support the reasonableness of this Stipulation and Recommendation, taken as a whole, consistent with the criteria that the Commission has adopted for purposes of evaluation of settlements.
- C.** Notwithstanding anything to the contrary in any pre-filed testimony or testimony submitted orally at the evidentiary hearings in these proceedings, the Signatory Parties agree that, to the extent that any specific recommendations or positions proposed by the witnesses in these proceedings are not explicitly adopted by this Stipulation and Recommendation, said recommendations or positions are excluded from and not supported by the Signatory Parties as part of this Stipulation and Recommendation.
- D.** The Signatory Parties agree and intend to support the reasonableness of this *Stipulation and Recommendation* before the Commission and in any appeal from

the Commission's adoption or enforcement of this Stipulation and Recommendation. If not finally adopted by the Commission or if rejected by any appellate court, this Stipulation and Recommendation shall not prejudice any of the positions taken by any Signatory Party on any issue before the Commission in this or any other proceeding, is not an admission of fact by any of the Signatory Parties, and shall not be admissible evidence in this or any other proceeding. This Stipulation and Recommendation is submitted for purposes of this case only, and it and any ruling adopting it may not be relied upon or used in any other proceeding except as necessary to enforce the terms of this Stipulation and Recommendation. Except as necessary to enforce the terms of this Stipulation and Recommendation, neither this Stipulation nor the information and data contained herein or attached, nor the Commission Order approving the Stipulation shall be cited as precedent in any future proceeding for or against any Signatory Party, or the Commission itself, if the Commission approves this Stipulation and Recommendation. Nor shall the acceptance of any provision as part of the settlement agreement be cited by any Signatory Party or the Commission in any forum so as to imply or state that any Signatory Party agrees with any specific provision of the settlement.

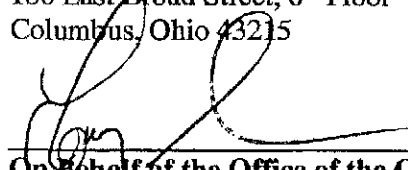
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Agreed upon and submitted this 18th day of August, 2011.



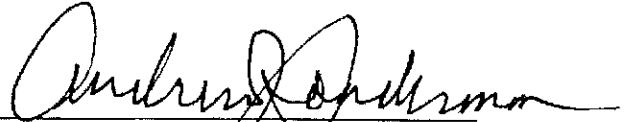
On Behalf of the Staff of the Public
Utilities Commission of Ohio

Werner L. Margard III, Counsel of Record
Steven L. Beeler
Devin D. Parram
Assistant Attorneys General
Public Utilities Commission of Ohio
180 East Broad Street, 6th Floor
Columbus, Ohio 43215



On Behalf of the Office of the Ohio
Consumers' Counsel

Joseph P. Serio, Counsel of Record
Larry S. Sauer
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215



On Behalf of Northeast Ohio Natural
Gas Corporation and Orwell Natural
Gas Company

Andrew J. Sonderman
Kegler Brown Hill & Ritter LPA
Capitol Square, Suite 1800
65 East State Street
Columbus, Ohio 43215-4294

ATTACHMENT A TO STIPULATION AND RECOMMENDATION

Case No. 10-209-GA-GCR

Case No. 10-212-GA-GCR

Contracts To Be Terminated Per Stipulation

Asset Management Agreement ORWELL2010-GTS-TCO #1.1	Executed 1/03/10 (Naming JDOG asset manager; never posted)
Asset Management Agreement ORWELL2011-GTS-TCO #1.2 Exh. OCC-3	Executed 2/24/11 (with reversion clause)
Storage Service Agreement JOHND2008-FSS-TCO #1	Executed 5/09/08
Storage Service Transportation Agreement JOHND2008-SST-TCO #2	
Asset Management Agreement JOHND2011-SSTFSS-TCO #2.1 Exh. OCC-4	Executed 2/24/11
Intrastate Natural Gas Sales Contract JOHND2011-INTRASTATESales-Service Company #2.1 Exh. OCC-5	Executed 2/23/11
Brokerage Contract for Interstate Natural Gas Sales JOHND2011-InterstateSales-Service Company #3.1 Exh. OCC-7	Executed 2/23/11
Interstate Gas Sales Contract ServiceCompany2011-InterstateSales- LDCs #4.1 Exh. OCC-9	Executed 2/23/11
Intrastate Natural Gas Sales Contract ServiceCompany2011- INTRASTATESales-LDCs #5.1 Exh. OCC-11	Executed 2/23/11
Intrastate Gas Sales Contract JOHND2008-INTRASTATESales-LDCs #1.1, OCC Exh. 1, Att. 2;	Effective 7/01/08
Appointment of Natural Gas Agent JOHND2008-InterstateSales-LDCs #1 OCC Exh. 1, Att. 3	Executed January 3, 2010 Superseded by JOHND2008- InterstateSales-LDCs #1.1 (with reversion clause)
JohnD2008-InterstateSales-LDCs #1.1	Executed 2/24/11 (with reversion clause)
Intrastate Gas Sales Contract JohnD2008-INTRASTATESales-LDCs #1.1.1	Executed 2/24/11 (with reversion clause)
Asset Management Agreement NEO2010-GTS-TCO #1.1.1	Executed 1/03/10 (naming JDOG asset manager; never posted)

ATTACHMENT A TO STIPULATION AND RECOMMENDATION

Case No. 10-209-GA-GCR

Case No. 10-212-GA-GCR

Contracts To Be Terminated Per Stipulation

Asset Management Agreement NEO2011-GTS-TCO#1.2	Executed 2/24/11 (naming GNI Service Co. as JDOG asset manager)
Intrastate Gas Sale Contract GreatPlains 2011-INTRASTATESales- Service Company #1.1	Executed April 1, 2011 (amended GreatPlains2011- INTRASTATESales-Service Company # 1)

ATTACHMENT A TO STIPULATION AND RECOMMENDATION

Case No. 10-209-GA-GCR

Case No. 10-212-GA-GCR

Contracts To Be Continued After Stipulation

Asset Management Agreement Orwell 1993 EFT-NATFUEL #1	EFT Service Agreement executed 8/01/93
Asset Management Agreement Orwell 1993-EFT-NATFUEL #1.1 Exh. OCC-2	Executed 2/23/11
Operational Balancing Agreement NEO1993-OBA-Tennessee #1	Executed 9/01/1993
Interstate Transportation NEO2004-GTS-TCO #1	GTS service agreement executed 11/01/04 rolled over to NEO2008-GTS-TCO #1.1
Interstate Transportation NEO2008-GTS-TCO#1.1	GTS service agreement executed 5/09/08 rolled over from NEO2004-GTS-TCO #1
Interstate Transportation NEO2008-FTS-TCO #1	FTS service agreement executed 5/0/08
Asset Management Agreement NEO2011-FTS-TCO#1.1	Executed 2/23/11 Note: remains in effect pending selection of successful bidder by competitive bid
Interstate Transportation ORWELL2004-GTS-TCO#1	GTS service agreement executed 1/14/04
Interstate Transportation ORWELL2008-GTS-TCO #1.0.1	Executed 2/24/11 rescinding Asset Management Agreement with JDOG/never posted
Base Contract for Sale and Purchase of Natural Gas JOHND2011-INTRASTATESales-Service Company #2 Exh. OCC-6	Executed 2/23/11 Note: Remains in effect pending selection of successful bidder by competitive bids
Base Contract for Sale and Purchase of Natural Gas JOHND2011-InterstateSales-Service Company #3 Exh. OCC-8	Executed 2/23/11 Note: Remains in effect pending selection of successful bidder by competitive bids

ATTACHMENT A TO STIPULATION AND RECOMMENDATION

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Contracts To Be Continued After Stipulation

Base Contract for Sale and Purchase of Natural Gas ServiceCompany2011-InterstateSales-LDCs #4 Exh. OCC-10	Executed 2/23/11 Note: remains effective indefinitely
Base Contract for Sale and Purchase of Natural Gas ServiceCompany2011-INTRASTATESales-LDCs #5 Exh. OCC-12	Executed 2/23/11 Note: remains effective indefinitely
GTS Service Agreement No. 37962 Orwell2004-GTS-TCO #1 Exh. OCC-1, Att. 8	Executed 1/14/04
Asset Management Agreement Orwell2010-GTS-TCO #1.1 Exh. OCC-1, Att. 12/Att. 24	Executed 1/03/10 Assigned to Service Company by ORWELL2011-GTS-TCO #1.2
Base Contract for Sale and Purchase of Natural Gas GreatPlains2011-INTRASTATESales-Service Company #1	Executed 4/01/11 Note: Remains in effect pending selection of successful bidder by competitive bid
Intrastate Transportation Agreement Orwell2010-IT-Northcoast #1	Latest Amendment executed 6/08/10
Intrastate Transportation Agreement NEO2010-IT-NorthCoast #1	Executed 9/20/2010
Intrastate Transportation Agreement NEO2005-GTS-Dominion East Ohio #1	Executed 4/18/2005
Intrastate Transportation Agreement NEO2008-IT Cobra Pipeline #1	Holmesville System Executed 1/24/2008
Intrastate Transportation Agreement NEO2008-IT-Cobra Pipeline #2	Churchtown System Executed 1/24/08
Intrastate Transportation Agreement NEO2008-IT-CobraPipeline #3	North Trumbull System Executed 1/24/08
Intrastate Transportation Agreement ORWELL2008-IT-CobraPipeline #1	Executed 1/24/08
Intrastate Transportation Agreement ORWELL2008-GDS-Columbia of Pa. #1	Executed 11/04/08
Intrastate Transportation Orwell, Brainard/Orwell-Trumbull OrwellBrainard2008IT-Orwell-Trumbull #1	07/01/08 interruptible transportation agreement

ATTACHMENT A TO STIPULATION AND RECOMMENDATION

Case No. 10-209-GA-GCR

Case No. 10-212-GA-GCR

Contracts Expired or Previously Terminated

Gas Sales Agreement JohnD2008-INTRASTATESales-LDCs #1.0 Exh. OCC-1, Att. 23	Executed July 1, 2008 Note: had been rescinded by JohnD2008- INTRASTATE-LDCs #1.0.1 and superseded by JOHND2008- INTRASTATE-LDCs #1.1
Gas Purchase Agreement ONG Marketing and Great Plains Exploration GREATPLAINS2007- INTRASTATESales-ONG #1 Exh. OCC-1, Att. 5	Effective October 1, 2007 Superseded by Gas Purchase Agreement effective October 1, 2008 Exh. OCC-1, Att. 6
Assignment Orwell2008-GTS-TCO #1.0 Exh. OCC-1, Att. 10	Executed 7/01/08, never posted on EBB and not effective Rescinded by subsequent agreement Orwell2008-GTS-TCO #1.0.1 Exh. OCC-1, Att. 11
Gas Sales Agreement ONG Marketing and Orwell Natural Gas Company ONG2006-INTRASTATESales-Orwell #1 Exh. OCC-1, Att. 14	Executed 1/01/06
Gas Sales Agreement ONG Marketing and Orwell Natural Gas Company Exh. OCC-1, Att. 15	Dated October 1, 2007 Never executed
Gas Purchase Agreement JDOG Marketing and Great Plains Exploration Exh. OCC-1, Att. 16	Executed October 1, 2008
Gas Purchase Agreement Orwell Natural Gas Company and Great Plains Exploration Exh. OCC-1, Att. 17	Dated 10/01/09 Never Executed
Gas Purchase Agreement ONG Marketing and Great Plains Exploration Exh. OCC-1, Att. 18	Dated 10/01/07 Never Executed by Great Plains
Gas Purchase Agreements John D. and Northeast Ohio Cobra Systems (Churchtown, Holmesville, North Trumbull) Exh. OCC-1, Att. 29	Executed 2/06/2008 Superseded by JOHND2008 INTRASTATESales LDCS #1.1, (OCC Exh. 1, Att. 2)

ATTACHMENT A TO STIPULATION AND RECOMMENDATION

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Case No. 10-212-GA-GCR

Contracts Expired or Previously Terminated

Gas Purchase Agreement ONG Marketing and Northeast Ohio ONG2006-InterstateSales-NEO#1	Executed 10/01/06 Superseded by JOHND2008-Interstate Sales-LDCs #1
Gas Purchase Agreement ONG Marketing and Northeast Ohio ONG2006-InterstateSales-Orwell#1	Executed 10/01/06 Superseded by JOHND2008-InterstateSales-LDCs#1
Asset Management Agreement NEO and John D. NEO2008-GTS-TCO #1.0	Executed -7/01/08, Rescinded by NEO2008-GTS-TCO #1.0.1

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Case No(s). 12-0209-GA-GCR, 12-0212-GA-GCR, 12-0309-GA-UEX, 12-0312-GA-UEX

Summary: Brief Northeast Ohio Natural Gas Corporation and Orwell Natural Gas Company's Post-Hearing Brief electronically filed by Mr. Zachary D. Kravitz on behalf of Orwell Natural Gas Company and Northeast Ohio Natural Gas Corporation