

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Purchased Gas Adjustment Clauses Contained)	
Within the Rate Schedules of Brainard Gas)	Case No. 14-206-GA-GCR
Corporation, Northeast Ohio Natural Gas)	Case No. 14-209-GA-GCR
Corporation, and Orwell Natural Gas Company)	Case No. 14-212-GA-GCR
and Related Matters.)	
)	

**MEMORANDUM CONTRA
MOTION FOR LEAVE TO FILE OUT OF TIME
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

On July 15, 2015, Brainard Gas Corporation (“Brainard”), Northeast Ohio Natural Gas Corporation (“Northeast”), and Orwell Natural Gas Company (“Orwell”) (collectively “the Utilities”) filed a Motion for Leave to File *Instantly* the Direct Testimony of Martin K. Whelan and Request for Expedited Treatment in the above-captioned proceeding. Under Ohio Adm. Code 4901-1-35(B), the Office of the Ohio Consumers’ Counsel (“OCC”) hereby submits this memorandum contra the motion for leave to file testimony out of time.

The above-captioned proceeding involves, inter alia, the Public Utilities Commission of Ohio’s (“PUCO”) review of the Utilities’ gas cost recovery (“GCR”) charges to determine whether the charges were fair, just, and reasonable.¹ The PUCO’s Audit in this proceeding also involves a review of the Utilities’ natural gas purchasing policies and practices and whether those practices and policies were reasonable and

¹ See R.C. 4905.302, Ohio Adm. Code 4901:1-14-07, and Ohio Adm. Code 4901:1-14-08(B); see also Entry at 2, 5 (February 13, 2014) (directing Staff to conduct GCR audits, uncollectible expenses (UEX) rider audits, and percentage of income payment plan (PIPP) rider audits).

prudent.² OCC, under its statutory authority to represent the interests of the residential utility customers of the three Utilities,³ moved to intervene in the three GCR cases and was granted intervention on April 22, 2014 and June 11, 2014.

On January 22, 2015, Staff filed the GCR Financial Audits of the Utilities. Staff also filed the UEX Audits of Northeast and Orwell and the PIPP Rider Audit of Northeast on January 27, 2015. The hearing for the Utilities' GCR cases was originally scheduled for January 20, 2015.⁴ After numerous continuances of the hearing,⁵ the hearing is currently scheduled for July 28, 2015.⁶ In each Entry granting the continuances, the Attorney Examiner set forth the deadline for the filing of the Utilities' testimony: "direct testimony of any witnesses testifying on behalf of each company should be filed at least 16 days prior to the hearing."⁷ The initial PUCO order directing that the audits be conducted and setting the initial hearing date of January 20, 2015 also directed that the Utilities' direct testimony be filed at least 16 days prior to hearing.⁸ Accordingly, for a hearing scheduled to commence on July 28, 2015, the deadline for filing the Utilities' testimony was July 10, 2015.

Despite the repeated directive, on July 15, 2015 at 5:20 p.m., the Utilities requested leave, after the fact, to file testimony out of time -- five days after the deadline

² Ohio Adm. Code 4901:1-14-08(F).

³ R.C. Chapter 4911.

⁴ Entry at 3 (February 13, 2014).

⁵ Entry at 3 (November 25, 2015)(continuing the hearing until March 24, 2015); Entry at 3 (January 23, 2015)(continuing the hearing until April 7, 2015); Entry at 2 (March 23, 2015)(continuing the hearing until June 2, 2015).

⁶ Entry at 2 (May 15, 2015)(continuing the hearing until July 28, 2015).

⁷ Entry at 3 (November 25, 2015)(continuing the hearing until March 24, 2015); Entry at 2 (January 23, 2015)(continuing the hearing until April 7, 2015); Entry at 2 (March 23, 2015)(continuing the hearing until June 2, 2015); Entry at 2 (May 15, 2015)(continuing the hearing until July 28, 2015).

⁸ Entry at 4 (February 13, 2014).

had passed. The Utilities attached their testimony to their motion, thereby filing their testimony 12 days prior to the hearing, instead of the required minimum of 16 days. The rationale stated by the Utilities for not filing testimony on time was that they were “actively pursuing some form of settlement that may have satisfied all the parties to this case.”⁹ This is not new. As indicated in the entries granting continuances, the parties have been engaged in settlement discussions since at least March 2015¹⁰ (well beyond the two months referenced in the Utilities’ Motion¹¹). On May 15, 2015, the Attorney Examiner granted his fourth and, what appeared to be, final continuance, explaining that he was denying the request to continue the hearing until September 1, 2015. The Attorney Examiner acknowledged the ongoing settlement discussions, but determined that the hearing should move forward more quickly than September and scheduled the hearing for July 28, 2015.

Nevertheless, the Utilities are requesting, what amounts to another continuance of the hearing. On numerous occasions and for several gas companies’ GCR proceedings, the PUCO has determined that 16 days was a reasonable period for a utility’s GCR testimony to be filed.¹² The PUCO has also determined that providing intervenors with eight days to review the utility’s GCR testimony and file their own testimony, which is required to be filed at least seven days prior to the hearing, is reasonable.¹³ The Utilities, however, are either asking the PUCO to shorten the period of time for other parties to

⁹ Motion for Leave, Memorandum in Support at 1.

¹⁰ Entry at 2 (March 23, 2015).

¹¹ Motion for Leave, Memorandum in Support at 1.

¹² Supra n.7 and n.8.

¹³ Id.

review the Utilities' testimony and file their own testimony, or to further continue the hearing.

Contrary to the assertion of the Utilities, shortening the period of time for OCC to review the Utilities testimony and file its own testimony challenging said testimony is prejudicial. This is true even if OCC has been involved in settlement discussions up until the time that a settlement was filed. In fact, the filing of a Stipulation exacerbates the prejudice as now OCC will have to review the Stipulation, in addition to testimony, and either modify its Direct Testimony or file stand-alone testimony opposing said Stipulation. Affording OCC a mere five days to review testimony, the filed Stipulation, and file its own testimony is unreasonable and prejudicial. Whether or not the Utilities believe that OCC "should not be surprised by the terms of the Stipulation" is of no consequence.

OCC should be afforded sufficient time (at least the eight days prescribed by the PUCO numerous times) to review the testimony and file its own testimony. At a minimum, fairness dictates that OCC should also be provided the stated 16 days to analyze the testimony prior to proceeding to hearing.

WHEREFORE, OCC respectfully requests that the PUCO deny the Utilities' request to file testimony out of time and find that the testimony is untimely and should be stricken.

Respectfully submitted,

BRUCE J. WESTON
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/s/ Joseph P. Serio

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Memorandum Contra* was provided to the persons listed below, electronically, this 20th day of July, 2015.

/s/ Joseph P. Serio

Joseph P. Serio

Assistant Consumers' Counsel

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Summary: Memorandum Memorandum Contra Motion for Leave to File Out of Time by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Serio, Joseph P.