



Contract, including the Arbitration Provision, by an Entry dated December 19, 2008, in Case No. 08-1244-PL-AEC.

As demonstrated in the attached Memorandum in Support, the ruling in question presents novel questions of law and policy to the Commission. An immediate determination by the Commission is necessary to prevent the likelihood of undue prejudice to OTP and expense to all parties, should the Commission ultimately reverse the ruling in question.

Respectfully submitted,

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PIPELINE COMPANY, LLC

## CERTIFICATE OF SERVICE

The PUCO's e-filing system will serve notice of this filing upon counsel for the for the Complainant, the Ohio Consumers' Council, and the Staff of the Public Utilities Commission of Ohio.

Further, I hereby certify that a true and accurate copy of the foregoing was served upon counsel for the Complainant, the Ohio Consumers' Council, and the Staff of the Public Utilities Commission this November 9, 2015, by electronic mail:

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/s/ Michael D. Dortch

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

ORWELL NATURAL GAS COMPANY,	:	
	:	CASE NO. 14-1654-GA-CSS
Complainant,	:	
	:	CASE NO. 15-637-GA-CSS
v.	:	
	:	
ORWELL-TRUMBULL PIPELINE	:	
COMPANY, LLC,	:	
	:	
Respondent.	:	

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**MEMORANDUM IN SUPORT OF  
ORWELL-TRUMBULL PIPELINE COMPANY, LLC’S  
REQUEST FOR CERTIFICATION AND APPLICATION FOR REVIEW OF AN  
INTERLOCUTORY APPEAL OF THE ATTONREY EXAMINER’S ORAL RULING**

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Respondent Orwell-Trumbull Pipeline Company, LLC (“OTP”) seeks the certification of an interlocutory appeal from, and the reversal of, the Attorney Examiner’s November 3, 2015, ruling (the Ruling)<sup>1</sup> on an oral motion presented at the outset of the hearing in this matter. The motion asked the Public Utilities Commission of Ohio (the “Commission”) to enforce an arbitration provision contained within a contract previously approved by this Commission<sup>2</sup> by staying the hearing in this case pending arbitration between OTP and ONG, and by issuing an Order directing the parties to arbitrate their disputes. The Ruling denied that motion.

OTP respectfully suggests that the Ruling contravenes the public policy of Ohio by: (a) failing to encourage the use of arbitration to settle disputes; (b) failing to enforce an arbitration

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<sup>1</sup> Pursuant to Rule 4901-1-15(C), the portion of the record containing the Attorney Examiner’s November 3, 2015 ruling is not yet available (Attorney Examiner stated that transcript of hearing would be available on November 18, 2015), but the ruling is described with particularity in this filing. OTP will file the portion of the record containing the Attorney Examiner’s decision as a supplement to this filing when it becomes available.

<sup>2</sup> This Commission approved the contract between OTP and Orwell Natural Gas Company (“ONG”) entered into on July 1, 2008 (“2008 Contract”), including, clause 7.6 (“Arbitration Provision”), by Entry dated December 19, 2008, in Case No. 08-1244-PL-AEC.

provision contained within a contract, and (c) failing to enforce the unambiguous terms of contract as written. In addition, the ruling threatens to undermine public confidence in contracts approved by the Commission.

## **I. STANDARD OF REVIEW**

Ohio Administrative Code Rule 4901-1-15(B) permits an Attorney Examiner to certify an interlocutory appeal at the request of a party adversely affected by an oral ruling upon a finding that: (a) the appeal presents a new or novel question of law or policy; and (b) an immediate determination by the Commission is necessary to avoid the likelihood of undue prejudice or expense to one or more of the parties, should the Commission ultimately reverse the ruling in question.

Because the Ruling presents new or novel questions of law or policy, because the Ruling would deny OTP a contractual right, and because the Ruling imposes unnecessary – and therefore undue – expense upon all parties, an interlocutory appeal should be certified and the Commission should reverse the Ruling.

## **II. THE APPLICABLE LAW OF OHIO FAVORS ARBITRATION.**

Arbitration has long been favored in the law, generally, and by Ohio's courts, specifically. *Hayes v. The Oakridge Home*, 2009-Ohio-2054, ¶15, 122 Ohio St. 3d 63, 908 N.E.2d 408. See also, *Findlay City School Dist. Bd. of Edn. v. Findlay Edn. Assn.* (1990), 49 Ohio St.3d 129, 551 N.E.2d 186; and *Mahoning Cty. Bd. of Mental Retardation v. Mahoning Cty. TMR Edn. Assn.* (1986), 22 Ohio St.3d 80, 22 OBR 95, 488 N.E.2d 872.

The Ohio General Assembly plainly concurs with Ohio's judiciary, and thus Ohio Rev. Code §2711.01 expressly provides:

A provision in any written contract... to settle by arbitration a controversy that subsequently arises out of the contract... shall be valid, irrevocable, and enforceable, except upon grounds that exist at law or in equity for the revocation of any contract.

The Ohio Supreme Court has further found that in light of Ohio's strong public policy favoring arbitration, "all doubts" are to be resolved in favor of arbitration. *Oakridge Home*, ¶15. Accordingly, "grounds that exist at law or in equity" upon which arbitration provisions might be ignored are construed to be extremely narrow.

In *ABM Farms, Inc. v. Woods* (1998), 81 Ohio St. 3d 498, 692 N.E.2d 574, for example, a woman and her husband attempted to void a brokerage contract by claiming they had been fraudulently induced to enter the contract. The contract contained an arbitration provision. The defendants moved the trial court to stay the case in favor of arbitration between the parties. After conducting an evidentiary hearing, the trial court denied the defendant's motion concluding that the plaintiffs had, indeed, been fraudulently induced to enter into the contract. The court therefore declared the entire contract, including the arbitration provision, to be void. The Appellate Court later affirmed the decision.

The Ohio Supreme Court reversed the lower courts. The Supreme Court declared that arbitration provisions are, in essence, a "contract within a contract." *Id.* At 501, 692 N.E.2d 577. The Court therefore held that arbitration provisions cannot be ignored based solely upon attacks upon the contract as a whole. Instead, a party seeking to set aside an arbitration clause must make a *specific* showing that the arbitration provision, *itself*, is void. *Id.* At 502 (citing, with approval, *Krafcik v. USA Energy Consultants, Inc.* (1995), 107 Ohio App.3d 59, 63, 667 N.E.2d 1027, 1029). In the absence of such a showing, the arbitration clause is properly enforced, and

the case is to be arbitrated. Any claim that the contract is unenforceable for some other reason may, of course, still be raised to and addressed by the arbitrator.

In *Krafcik*, homeowners sued a contractor and a supplier claiming breach of contract. The contract was between the homeowners and the contractor and it contained an arbitration provision. The contractor moved that the case be stayed, pending arbitration. The trial court denied the motion without an evidentiary hearing. Presaging the Ohio Supreme Court's decision in *ABM Farms*, the Court of Appeals reversed, holding that arbitration provisions are severable from the other terms of the contract. As a result, even claims that might render a contract invalid, generally, are not alone sufficient to render the arbitration provision itself invalid. The arbitration clause must *itself* be invalid. *Id.* At 63, 667 N.E.2d 1027, 1029.

The Court of Appeals also rejected the homeowners' alternative argument that the arbitration provision should not be enforced because they also wanted to sue the supplier – a non-party to the contract – arguing that no one can be compelled to an arbitration agreement to which it is not a party. The Court of Appeals found that this contention would “fly in the face of Ohio's strong presumption in favor of arbitrability” and that “it would be patently unfair to permit a plaintiff who has agreed to arbitration to escape that agreement by adding a defendant who is not party to the arbitration contract.” *Id.* at 64, 667 N.E.2d 1027, 1030, citing *Neubrandner v. Dean Witter Reynolds, Inc.* (1992), 81 Ohio App.3d 308, 311, 610 N.E.2d 1089, 1090, 1091; *Arnold v. Arnold Corp.* (N.D. Ohio 1987), 668 F. Supp. 625, 629.

**III. ORWELL TRUMBULL PIPELINE COMPANY'S MOTION SHOULD HAVE BEEN GRANTED BECAUSE OHIO LAW FAVORS ARBITRATION, AND BECAUSE THE PARTIES OPPOSING THAT MOTION FAILED TO RAISE ANY LEGALLY BASIS TO SET ASIDE THE ARBITRATION CLAUSE.**

When this Commission approved the Arbitration Provision as part of its approval of the contract in Case No. 08-1244-PL-AEC, it acted in conformity with the often-expressed stated public policy of the State of Ohio. At the beginning of the hearing in this matter, OTP, through counsel, orally moved to stay the cases pending before this Commission, and for the entry of an Order directing the parties to arbitration. That motion was also entirely consistent with Ohio's public policy favoring of arbitration.

OTP had initiated the arbitration proceeding many months earlier via a letter complaint to the American Arbitration Association,<sup>3</sup> pursuant to Arbitration Provision of the 2008 Contract.<sup>4</sup>

The Arbitration Provision states:

The parties agree that any dispute arising hereunder or related to this Agreement shall be resolved by binding arbitration under auspices of the American Arbitration Association. Prehearing discovery shall be permitted in accordance with the procedures of the Ohio Rules of Civil Procedure. The arbitrator or arbitrators shall have authority to impose any remedy at law or in equity, including injunctive relief. The parties agree that any hearing will be conducted in Lake County, Ohio.

ONG and the Ohio Consumers' Counsel ("OCC") opposed OTP's motion on the basis that all parties were present and each party had made preparations regarding the issues presented before the Attorney Examiner.<sup>5</sup> The Attorney Examiner then issued the Ruling denying OTP's motion, and ordered the parties to proceed with the evidentiary hearing.

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<sup>3</sup>The March 12, 2015 Complaint Letter has been attached as Exhibit 1.

<sup>4</sup> July 1, 2008 Contract between OTP and ONG has been attached as Exhibit 2.

<sup>5</sup> Neither could express surprise at OTP's motion, even so. OTP raised the existence of the arbitration provision within its answer to the complaint filed by ONG.

During the course of the hearing, ONG called Mr. Michael Zappitello, ONG's Director of Gas Procurement, ("Mr. Zappitello") and Commission Staff Member Roger Sarver ("Mr. Sarver") to the stand, and OCC called Mr. Gregory Slone, a Senior Energy Analyst employed by the OCC ("Mr. Slone"). Both ONG and OCC focused upon evidence that they contend shows that certain terms of the contract are not in the public interest. Both also argued that the 2008 Contract did not result from "arms-length" negotiations.

Mr. Sarver, however, was asked no questions regarding the Arbitration Provision. Similarly, Mr. Slone's direct testimony does not address the Arbitration Provision specifically, and he was not asked questions concerning the Arbitration Provisions on cross examination.

Mr. Zappitello, at least, did specifically ask the Commission to void the Arbitration Provision.<sup>6</sup> The only rationale he gave to support this request, however, was his personal opinion that "disputes between Orwell and OTP regarding the Orwell-OTP Contract should be resolved by the Commission."

Then, at the conclusion of the hearing, ONG and OCC each orally moved the Attorney Examiner for the entry of an Order that would stay the arbitration proceeding.<sup>7</sup> During argument in support of their motions, both ONG and OCC were clear that the principal basis for their belief that this case may be heard by this Commission rather than an arbitrator is a misguided understanding that if they succeed in their efforts to set aside the 2008 Contract, the Arbitration Provision will also be set aside. *ABM Farms* and *Krafcik* both refute that belief.

The Attorney Examiner should have granted OTP's Motion to stay. OTP's Motion is entirely consistent with Ohio public policy, and with the unambiguous terms of a contract

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<sup>6</sup> See ONG Exhibit 1, Mr. Zappitello's Pre-filed Direct Testimony, P. 17, Lines 12 – 17 and P. 18, Lines 1 – 7.

<sup>7</sup> OTP opposed that motion on the basis that this Commission has no legal authority to enjoin another tribunal from proceeding however it might deem appropriate. The Attorney Examiner took that particular motion under advisement, and directed the question of whether the Commission could stay the arbitration be included in the parties merit briefs.

approved by this Commission. In opposing OTP's Motion, OCC and ONG failed to present the Attorney Examiner with a cognizable legal basis for their opposition to OTP's Motion to Stay, and then failed to introduce any evidence that could justify setting aside the arbitration provision. The Attorney Examiner's Ruling is error, and should be reversed by this Commission.

#### **IV. REQUEST FOR CERTIFICATION**

##### **a. The Ruling in Question Presents this Commission With Novel Questions of Law and Policy.**

This Commission has apparently never specifically been required to enforce an arbitration provision within a contract. It is nonetheless true that this Commission approved the inclusion of such a provision in the 2008 Contract, and that it acted in conformity with Ohio's strong public policy to encourage such clauses when it did so. It is equally true, that arbitration is favored, and that the opponents of OTP's motion failed to identify or support any basis upon which OTP's motion could be denied.

The Ruling, therefore, threatens to contravene the public policy of Ohio by: (a) failing to encourage the use of arbitration to settle disputes; (b) failing to enforce an arbitration provision contained within a contract, (c) failing to enforce the unambiguous terms of contract as written.

In addition, the ruling threatens to undermine public confidence in contracts approved by the Commission. Given the total lack of specific reasons or evidence to suggest why it should do so, this Commission should not agree to simply second guess its earlier decisions.

Under Ohio law, it was incumbent upon ONG and OCC to identify at least one reason to void the Arbitration Provision itself, and it was further their burden to introduce evidence to support whatever reason they might have identified. Mr. Zappitello's personal opinion notwithstanding, ONG and OCC failed to identify any reason that the Arbitration Provision is void, and they compounded that failure when they introduced no evidence sufficient to support a

decision to void the provision. Both appear to have instead relied upon the erroneous belief that the Arbitration Provision would cease to exist if they succeed in having the 2008 Contract declared void. Because the Arbitration Provision is severable from the other terms of the contract, they are simply incorrect.

**b. An Immediate Determination by the Commission is Necessary to Prevent Undue Prejudice to OTP and Expense to All Parties, Should the Commission Ultimately Reverse the Ruling in Question.**

OTP respectfully suggests that an immediate determination by the Commission that reverses the Ruling will likely prevent undue prejudice to OTP and prevent undue expense to all parties should the Commission ultimately reverse the Ruling. OTP would be unduly prejudiced because it will be denied its contractual right to arbitration, pursuant to the Arbitration Provision, should the Attorney Examiner's Ruling be upheld.

While the Ruling resulted in all parties already incurring the expense of an evidentiary hearing, each party now faces additional unnecessary expense. First, each party has been ordered to brief their arguments regarding the validity of the 2008 Contract to the Attorney Examiner. This will require each party's attorneys to spend countless hours researching case law; reviewing testimony and exhibits; and drafting complex legal arguments when by prior agreement of the parties this matter is properly before an American Arbitration Association arbitrator.

Respectfully submitted,

/s/ Michael D. Dortch

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Attorneys for Respondent

ORWELL TRUMBULL

PIPELINE COMPANY, LLC

## CERTIFICATE OF SERVICE

The PUCO's e-filing system will serve notice of this filing upon counsel for the for the Complainant, the Ohio Consumers' Council, and the Staff of the Public Utilities Commission of Ohio.

Further, I hereby certify that a true and accurate copy of the foregoing was served upon counsel for the Complainant, the Ohio Consumers' Council, and the Staff of the Public Utilities Commission this November 9, 2015, by electronic mail:

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/s/ Michael D. Dortch

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March 12, 2015

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

American Arbitration Association  
Case Filing Services  
1101 Laurel Oak Road, Suite 100  
Voorhees, NJ 08043

Re: Demand for Arbitration

To whom it may concern:

Enclosed please find four (4) copies of a Demand for Arbitration with attachments. In addition, I am enclosing a check in the amount of \$1,650.00 pursuant to the Flexible Fee Schedule. The original Demand for Arbitration has been forwarded to the Respondent via certified mail. Please process same accordingly to your procedures, and forward a copy to the undersigned in the self-addressed stamped envelope provided as soon as possible.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely yours,



WILLIAM T. WULIGER

MEK:Arbitration  
Encls.  
MEK:OrwellTrumbullArbitration



AMERICAN  
ARBITRATION  
ASSOCIATION

INTERNATIONAL CENTRE  
FOR DISPUTE RESOLUTION

COMMERCIAL ARBITRATION RULES  
DEMAND FOR ARBITRATION

For Consumer or Employment cases, please visit [www.adr.org](http://www.adr.org) for appropriate forms.

You are hereby notified that a copy of our arbitration agreement and this demand are being filed with the American Arbitration Association with a request that it commence administration of the arbitration. The AAA will provide notice of your opportunity to file an answering statement.					
Name of Respondent: Orwell Natural Gas			Name of Representative (if known):		
Address: 8470 Station Street			Name of Firm (if applicable): Kohrman, Jackson & Krantz		
			Representative's Address: 1375 E. Ninth Street, 20 <sup>th</sup> Floor		
City: Mentor	State: OH	Zip Code: 44076	City: Cleveland	State: OH	Zip Code: 44114
Phone No.: (440) 205-4600	Fax No.: (440) 974-0644		Phone No.: (216) 696-8700	Fax No.: (216) 621-6536	
Email Address:			Email Address:		
The named claimant, a party to an arbitration agreement, which provides for arbitration under the Commercial Arbitration Rules of the American Arbitration Association, hereby demands arbitration.					
Brief Description of the Dispute: Respondent is in breach of Natural Gas Transportation Service Agreement dated July 1, 2008. Pursuant to that Agreement ONG agreed to exclusively use OTPC's pipelines to transport gas to its customers. Past damages in the amount of \$100,000 are ongoing. Paragraph 7.6 provides for arbitration.					
Dollar Amount of Claim: \$150,000			Other Relief Sought: <input type="checkbox"/> Attorneys Fees <input type="checkbox"/> Interest <input checked="" type="checkbox"/> Arbitration Costs <input type="checkbox"/> Punitive/Exemplary <input type="checkbox"/> Other		
Amount enclosed: \$ 1,650			In accordance with Fee Schedule: <input checked="" type="checkbox"/> Flexible Fee Schedule <input type="checkbox"/> Standard Fee Schedule		
Please describe the qualifications you seek for arbitrator(s) to be appointed to hear this dispute: Expertise in the energy industry, with a particular emphasis on natural gas services.					
Hearing locale: Lake County, Ohio			(check one) <input type="checkbox"/> Requested by Claimant <input checked="" type="checkbox"/> Locale provision included in the contract		
Estimated time needed for hearings overall: hours or 5 days			Type of Business: Claimant: Natural Gas Supplier Respondent: Natural Gas Supplier		
Are any parties to this arbitration, or their controlling shareholder or parent company, from different countries than each other? No					
Signature (may be signed by a representative):			Date: 3/12/2015		
Name of Claimant: Orwell-Trumbull Pipeline Co., LLC			Name of Representative: William T. Wullger		
Address (to be used in connection with this case): 3511 Lost Nation Road Suite 213			Name of Firm (if applicable): Wullger, Fadel & Beyer, LLC		
			Representative's Address: 1340 Sumner Avenue		
City: Willoughby	State: OH	Zip Code: 44094	City: Cleveland	State: OH	Zip Code: 44115
Phone No.:	Fax No.:		Phone No.: (216) 781-7777	Fax No.: (216) 781-0621	
Email Address:			Email Address: <a href="mailto:wtwullger@wtwullgerlaw.com">wtwullger@wtwullgerlaw.com</a>		
To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with the filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043. At the same time, send the original Demand to the Respondent.					

Please visit our website at [www.adr.org](http://www.adr.org) if you would like to file this case online. AAA Case Filing Services can be reached at 877-495-4185.

7.6 The parties agree that any dispute arising hereunder or related to this Agreement shall be resolved by binding arbitration under the auspices of the American Arbitration Association. Preheating discovery shall be permitted in accordance with the procedures of the Ohio Rules of Civil Procedure. The arbitrator or arbitrators shall have authority to impose any remedy at law or in equity, including injunctive relief. The parties agree that any hearing will be conducted in Lake County, Ohio.

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NATURAL GAS TRANSPORTATION SERVICE AGREEMENT

BY THIS AGREEMENT, executed this 1st day of July, 2008 Orwell-Trumbull Pipeline Co., LLC ("OTPC"), Orwell Natural Gas Company ("ONG") and Brainerd Gas Corp. ("BGC") (hereinafter ONG and BGC shall collectively be referred to as "Shipper"), OTPC and Shipper are hereinafter sometimes referred to collectively as the Parties and individually as a Party) for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby recite and agree as follows:

RECITALS

WHEREAS, OTPC owns a natural gas transmission pipeline system described on Exhibit A to this Agreement (Pipeline); and

WHEREAS, OTPC is an Ohio intrastate pipeline operating natural gas pipelines and related facilities located within the State of Ohio under authority of the Public Utility Commission of Ohio; and

WHEREAS, Shipper desires to utilize OTPC's Pipeline for the transportation of natural gas within the State of Ohio; and

WHEREAS, OTPC has agreed to provide such transportation to Shipper subject to the terms and conditions hereof,

WITNESSETH: In consideration of the mutual covenants herein contained, the Parties hereto agree that OTPC will transport for Shipper, on an interruptible basis, and Shipper will furnish, or cause to be furnished, to OTPC natural gas for such transportation during the term hereof, at prices and on the terms and conditions hereinafter provided:

AGREEMENTS

DEFINITIONS

Except where the context otherwise indicates another or different meaning or intent, the following terms are intended and used herein and shall be construed to have the meaning as follows:

- A. "Btu" shall mean the British thermal unit as defined by International standards.
- B. "Business Day" shall mean any weekday, excluding federal banking holidays.

- C. "Central Clock Time" (C.T.) shall mean Central Standard Time adjusted for Daylight Savings Time.
- D. "Company" means OTPC, its successors and assigns.
- E. "Customer" means any individual, governmental, or corporate entity taking transportation service hereunder.
- F. "Dekatherm" or "Dth" means the Company's billing unit measured by its thermal value. A dekatherm is 1,000,000 Btus. Dekatherm shall be the standard unit for purposes of nominations, scheduling, invoicing, and balancing.
- G. "Delivery Point(s)" shall mean the specific measurement location(s) listed on Exhibit B at which OTPC delivers Shipper-owned Gas to Shipper and Shipper receives such Gas from OTPC. Exhibit B is hereby incorporated into this Agreement.
- H. "Delivery Volume" shall mean the volume of Gas actually taken at the Delivery Point(s) by or on behalf of Shipper.
- I. "Firm" shall mean that each Dth Shipper tenders at the Receipt Point will be delivered to Shipper's Delivery Point(s) minus OTPC's Shrinkage without interruption except under Force Majeure conditions or an energy emergency declared by the Commission.
- J. "Gas" shall mean natural gas of interstate pipeline quality.
- K. "Gas Day" or "Day" shall mean a period of 24 consecutive hours, beginning at 9:00 a.m. Central Clock Time, as adjusted for Daylight Savings Time, and the date of the Day shall be that of its beginning.
- L. "Heating Value" shall mean the gross heating value on a dry basis, which is the number of British thermal units produced by the complete combustion at constant pressure of the amount of dry gas (gas containing no water vapor) that would occupy a volume of one Cubic Foot at 14.73 psia and 60° F with combustion air at the same temperature and pressure as the gas, the products of combustion being cooled to the initial temperature of the gas and air, and the water formed by combustion condensed to the liquid state.
- M. "Imbalance" shall mean the daily difference between the Dths tendered by or for Customer's account at the Receipt Point minus OTPC's Shrinkage and the metered volumes allocated to Shipper at the Delivery Point(s).

- N. "Interruptible" shall mean that each Dth Shipper tenders at the Receipt Point will be delivered to Shipper's Delivery Point(s) less OTPC's Shrinkage if OTPC, using reasonable judgment, determines that capacity exists after all the Firm transport needs are accounted for to permit redelivery of tendered gas.
- O. "Maximum Daily Quantity" or "(MDQ)" shall mean the maximum daily firm natural gas quantity which Shipper shall be entitled to nominate during any 24-hour period. Shipper's MDQ shall be negotiated between Shipper and OTPC and incorporated into Shipper's Service Agreement with OTPC.
- P. "Month" shall mean a calendar month beginning at 8:00 a.m. Central clock time on the first day of the calendar month and ending at 8:00 a.m. Central clock time the first day of the following calendar month.
- Q. "OTPC System" shall mean the intrastate pipeline system owned by OTPC.
- R. "Nomination" shall mean the confirmed Quantity of Gas which Shipper shall arrange to have delivered to the Receipt Point(s) for redelivery by OTPC to the Delivery Point(s). The Nomination shall include sufficient gas to account for OTPC's Shrinkage.
- S. "Operational Flow Order" or "OFO" shall mean a declaration made by OTPC that conditions are such that OTPC can only safely transport an amount of Gas during a calendar day equal to the amount of Gas which Shipper will actually receive at the Receipt Point on that calendar day. OTPC shall only declare an Operational Flow Order if an upstream pipeline declares an operational flow order or otherwise restricts the flow of Gas which normally would be delivered to OTPC at the Receipt Point.
- T. "Overrun" shall mean any volume of Gas actually transported which, as measured on a daily basis, exceeds the maximum daily quantity (MDQ) established by this Agreement.
- U. "PUCO" or "Commission" means the Public Utilities Commission of Ohio or any successor governmental authority.
- V. "Quantity of Gas" shall mean the number of units of gas expressed in Dth or MMBtu unless otherwise specified.
- W. "Receipt Point(s)" shall mean those measurement locations where Shipper-owned gas enters OTPC's system.
- X. "Service Agreement" Each Customer shall sign an Individual Agreement with OTPC prior to commencement of service that identifies the Receipt Point and Delivery Point(s), the MDQ, declares whether the transportation is Firm or Interruptible and establishes the cost

for the transportation. The Service Agreements shall be filed with the Commission pursuant to Section 4905.31, Revised Code for approval.

Y. "Shrinkage" shall mean the quantity of Gas required by OTPC to replace the estimated quantity of Gas which is required for compressor fuel, and lost-or-unaccounted-for Gas when transporting the tendered quantities. This percentage is set forth in Exhibit B.

Z. "Written Notice" shall mean a legible communication received by the intended recipient of the communication by United States mail, express courier, or confirmed facsimile. Written Notice may also be provided by Email, but shall not be effective until such time as (a) the Email is acknowledged by the intended recipient; (b) or a copy of such Email is received by the intended recipient by US mail, express courier, or facsimile.

#### I. DELIVERY AND TRANSPORTATION

1.1 Shipper shall arrange with suppliers of Shipper's selection to have Gas in an amount not to exceed Shipper's MDQ adjusted for OTPC's Shrinkage as specified on Exhibit B, tendered to the Receipt Point(s) as specified on Exhibit B, for delivery into the OTPC Pipeline on Shipper's behalf. OTPC shall then redeliver, on an interruptible basis, such quantities, less OTPC's Shrinkage, to Shipper, or on behalf of Shipper, at the Delivery Point(s) as specified on Exhibit B. All transportation by OTPC for Shipper shall be governed by OTPC's then current transportation tariff on file with the PUCO, except as expressly modified hereby.

1.2 OTC agrees that during the term of this Transportation Service Agreement it will use only OTPC's pipelines to transport gas for any of its customers; provided, however, that this exclusive use of the OTPC pipelines shall remain in effect as long as OTPC has available capacity within its pipelines. Should available capacity not exist, then during that period only OTC may use other pipelines to transport its gas requirements. This Transportation Service Agreement will only be utilized by BGC for back up purposes only and on an as needed basis.

1.3 For planning purposes, Shipper shall provide Written Notice, at least three (3) business days prior to the start of each calendar Month, to OTPC of the amount of Gas it intends to transport each day of the upcoming Month. Shipper shall submit its Nomination to OTPC by no later than 10:00 a.m. Central Clock Time for Gas flow the following day. This nomination should correspond to scheduled deliveries Shipper makes on the upstream interstate pipeline and downstream local distribution company operating the applicable Delivery Point(s). Should the Shipper desire to modify its Nomination either on the current Day or after the Nomination deadline for Gas flow the following day, OTPC shall make every attempt to accommodate Shipper's request provided OTPC can confirm such quantities with the upstream pipeline at the Receipt Point(s) and downstream entity at the Delivery Point(s).

1.4 Shipper shall be permitted to have delivered into and removed from OTPC's Pipeline its nominated Gas volume, adjusted for OTPC's Shrinkage, up to the MDQ previously agreed to and found on Exhibit B.

1.5 If any of the interstate pipelines interconnected with OTPC issues an operational flow order then OTPC may issue its own matching OFO on its Pipeline that will apply to Shippers. The OFO may restrict Shippers to nominate into the OTPC Pipeline only that volume of Gas which Shipper will have redelivered the same day adjusted for Shrinkage. OTPC will use its best efforts to limit such OFO to just the time necessary to comply with applicable upstream interstate OFOs. OTPC will only assess OFO penalties on a pro-rata basis if OTPC is actually assessed penalties by an applicable upstream pipeline.

1.6 Imbalances caused by Shipper at the Delivery Point(s) shall be resolved by OTPC and Shipper within thirty (30) days. Imbalances at the Receipt Point are governed by the terms and conditions of the upstream pipeline(s) delivering into OTPC. Any imbalance charges or penalties or costs of any kind incurred by OTPC as a result of Shipper's over or under delivery of natural gas into OTPC's system, either on a daily or monthly basis, will be reimbursed by Shipper within ten (10) days of receipt thereof. If Shipper fails to make any payments under this Agreement when due, OTPC has the right to terminate this Agreement upon two (2) days notice, unless such payment is made by the date specified in the termination notice.

1.7 Shipper warrants that it has title to all Gas delivered to OTPC, free and clear of all claims, liens, and other encumbrances, and further covenants and agrees to indemnify and hold harmless from all claims, demands, obligations, suits, actions, debts, accounts, damages, costs, losses, liens, judgments, orders, attorneys fees, expenses and liabilities of any kind or nature arising from or attributable to the adverse claims of any and all other persons or parties relating to such Gas tendered by Shipper at the Receipt Point.

## II. QUANTITY AND PRICE

2.1 Shipper shall pay OTPC a Commodity Rate plus Shrinkage, as stated on Exhibit B, for each volume of Gas delivered to the Delivery Point(s).

## III. TERM

3.1 The Agreement shall be effective as of 1st day of July, 2008 and shall continue in full force and effect, terminating 15 years thereafter and shall continue from year to year thereafter, unless cancelled by either party upon 30 days written notice.

#### IV. MEASUREMENT AND QUALITY OF GAS

4.1 Measurement of the Gas delivered and billed to Shipper shall be based upon an allocation conducted by the operator of the Delivery Point(s). Disputes regarding allocated throughput shall be handled in accordance with the tariff of the Delivery Point(s) operator. Billings for all receipts and deliveries hereunder shall be made on a thermal basis in Dth. OTPC shall provide to Shipper at Shipper's request, pertinent tariff information pertaining to method of allocating deliveries at Delivery Point(s).

4.2 All Gas delivered under this Agreement shall be commercially free from solid and liquid impurities and shall satisfy all pipeline quality standards reasonably established from time to time by OTPC and upstream or downstream pipelines.

#### V. BILLING AND PAYMENT

5.1 On or about the tenth (10th) day of each calendar month, OTPC will render to Shipper a statement setting forth the total volume of Gas delivered hereunder for Shipper during the immediately preceding month. In the event OTPC was not able to take actual meter readings at any meter, or if OTPC has not received the necessary meter statements from the owner or operator of any applicable meter in time for preparation of the monthly statement, OTPC may use an estimated Gas delivery volume based upon confirmed nominations. Any such estimated delivery volume shall be corrected in the first statement after the actual meter readings become available.

5.2 In the event of a meter failure a reconstructed bill using the best information available shall be used.

5.3 Shipper agrees to pay OTPC the amount payable according to such statement on or before the twenty-fifth (25th) day of the month or within ten (10) days of receipt of the invoice whichever is later.

5.4 Failure to tender payment within the above specified time limit shall result in a monthly interest charge of one and one half percent (1-1/2%) per month on the unpaid balance. In addition, should Shipper's payment be delinquent by more than thirty (30) days, OTPC shall have the right, at its sole discretion, to terminate this Agreement and to terminate Gas transportation in addition to its seeking other legal redress. OTPC will first contact Shipper about any payment issues and try to resolve those issues in a reasonable manner.

5.5 Any notice, request, demand, statement, or other correspondence shall be given by Written Notice to the Parties hereto, as set forth below:

Shipper:       Orwell Natural Gas Company or Breinard Gas Company, as applicable  
                  8500 Station Street, Suite 100  
                  Mentor, Ohio 44080  
EMAIL:        tsmith13@spryne.com  
PHONE:        (440) 874-3770  
FAX:           (440) 874-0844  
ATTN:         Thomas J. Smith

OTPC:         OTPC Gas Transmission Company, LLC  
                  8500 Station Street  
                  Suite 100  
                  Mentor, OH 44080  
EMAIL:        srigo@orwellgas.com  
PHONE         (440) 874-3770  
FAX:          (440) 205-8680  
ATTN:         Stephen G. Rigo

## VI. FORCE MAJEURE

6.1 Except with regards to a party's obligation to make payment due under Section 5 and Imbalance Charges under Section 2, neither party shall be liable to the other for failure to perform a firm obligation; to the extent such failure was caused by Force Majeure, The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 6.2.

6.2 Force Majeure shall include but not be limited to the following (1) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii); (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, terrorism, insurrections or wars; and (v) governmental actions such as necessity for compliance with any court order, law statute, ordinance, or regulations promulgated by a governmental authority having jurisdiction. The Parties shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event of occurrence once it has occurred in order to resume performance.

6.3 Neither party shall be entitled to the benefit of the provision of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary firm transportation unless primary, in-path, firm transportation is also curtailed; (ii) the party claiming Force Majeure failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship. The claiming of Force Majeure shall not relieve either party from meeting all payment obligations.

6.4 Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be entirely within the sole discretion of the party experiencing such disturbances.

6.5 The party whose performance is prevented by Force Majeure must provide notice to the other party. Initial notice may be given orally; however, written notification with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written notification of Force Majeure to the other party, the affected party will be relieved of its obligation to make or accept delivery of Gas as applicable to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligation to the other during such occurrences or event.

#### VII. ADDITIONAL TERMS

7.1 Shipper shall join with OTPC in support of the application to the PUCO for approval of this Agreement pursuant to Section 4906.31, Revised Code.

7.2 In the event of an energy emergency declared by the Governor or any other lawful official or body, it is understood that OTPC shall and will follow the dictates of any energy emergency rule, or order. OTPC shall not be liable for any loss or damage suffered by Shipper as a result thereof.

7.3 This Agreement shall be construed under the laws of the State of Ohio.

7.4 This Agreement, together with all schedules and exhibits hereto, constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (regardless of whether similar), nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.

7.5 This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns. Neither this Agreement nor any of the rights, benefits or obligations hereunder shall be assigned, by operation of law or otherwise, by any Party hereto without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Except as expressly provided herein, nothing in this Agreement is intended to confer upon any person other than the Parties and their respective permitted successors and assigns, any rights, benefits or obligations hereunder.

7.6 The parties agree that any dispute arising hereunder or related to this Agreement shall be resolved by binding arbitration under the auspices of the American Arbitration Association. Preheating discovery shall be permitted in accordance with the procedures of the Ohio Rules of Civil Procedure. The arbitrator or arbitrators shall have authority to impose any remedy at law or in equity, including injunctive relief. The parties agree that any hearing will be conducted in Lake County, Ohio.

7.7 Recovery by either Party of damages, if any, for breach of any provision hereof shall be limited to direct, actual damages. Both Parties waive the right, if any, to recover consequential, indirect, punitive and exemplary damages.

7.8 Both parties shall have the right to demand credit assurances from the other party. If the financial responsibility of any Party is at any time unsatisfactory to the other Party for any reason, then the defaulting Party will provide the requesting Party with satisfactory security for the defaulting Party's performance hereunder upon requesting Party's demand. Defaulting Party's failure to abide by the provisions of this Section shall be considered a breach hereof, and the requesting Party may terminate this Agreement, provided the defaulting Party is afforded an opportunity to cure any default within three (3) business days notice of any breach. Both Parties have the right, in addition to all other rights and remedies, to set-off any such unpaid balance due the other Party, or by the parent or any subsidiary of the other Party, under any separate agreement or transaction.

7.9 No presumption shall operate in favor of or against either party regarding the construction or interpretation of this Agreement as a result of either party's responsibility for drafting this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed as of the date set forth above.

Orwell-Trumbull Pipeline Co., LLC

By: [Signature]  
Stephen G. Rigo,  
Executive Vice President

Date: July 1, 2008

Brainard Gas Corp.

By: [Signature]  
Thomas J. Smith, President

Date: July 1, 2008

Orwell Natural Gas Company

By: [Signature]  
Thomas J. Smith, President

Date: July 1, 2008

p:\omaszawski\11\osborne misc\08\theas\ohio\sole of new\OrwellNaturalGasTransp.Agr.Brainard Orwell 08-06-08

Exhibit A

OTPC Gas Transmission, LLC

ALL PIPELINES OWNED BY OTPC LOCATED IN NORTHEASTERN OHIO.

Exhibit B

OTPC Gas Transmission, LLC

Primary Receipt Point

Interconnection between QTPC and North Coast Gas Transmission, LLC's Pipeline in Mantua, Ohio

Primary Delivery Point(s)

For BGC: Various interconnections between OTPC and BGC, as required for back-up services only.

For ONG: Various interconnections between OTPC and ONG.

Shrinkage

TBD

2000 Dth/day

\*RATES

Commodity Charge (paid only on quantity transported)

November-March \$0.95 per Thousand Cubic Feet (Mcf)

April-October \$0.85 per Thousand Cubic Feet (Mcf)

\*Rates will adjust every five (5) years commencing on July 1, 2013 and continuing on each fifth (5<sup>th</sup>) anniversary date for the remaining term of this Agreement to reflect the higher of \$0.85 per Thousand Cubic Feet (Mcf) or a negotiated rate to reflect the then current market conditions existing on each such rate adjustment date. If the parties cannot agree on a rate adjustment amount, OTPC shall have the option to increase the Rate by the increase in the consumer price index all items (Cleveland, Ohio) ("CPI") as calculated from July 1, 2008 to each applicable rate adjustment date.

FOR SECURITY PURPOSES, THE BORDER OF THIS DOCUMENT CONTAINS MICROPRINTING

**WILLIAM T. WILLIGER ATTORNEY AT LAW**  
1340 Summit Avenue  
Cleveland, OH 44115-2851

56-12/410

13919

**PAY TO THE ORDER OF** American Arbitration Association

DATE 3-12-15

\$ 1,650.00

DOLLARS



SECURITY FEATURES INCLUDED

One thousand six hundred fifty and no/100

PNC BANK  
PNC BANK N.A.  
CLEVELAND, OH 44115

MEMO: Orwell Proumbull Arbitration

AUTHORIZED SIGNATURE

⑆023919⑆ ⑆041000124⑆ ⑆224287969⑆

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88 E. Broad St., Suite 1560  
Columbus, OH 43215  
www.wp-lawgroup.com



THE WELDELE & PIACENTINO  
LAW GROUP CO., LPA

Eric D. Weldele  
eweldele@wp-lawgroup.com  
Gina M. Piacentino  
gpiacentino@wp-lawgroup.com

August 21, 2015

*Via Email, AAA Webfile and US Mail*

Arbitrator Spencer Neth  
2542 Stratford Road  
Cleveland Heights, Ohio 44118

Re: *Orwell-Trumbull Pipeline Company, LLC v. Orwell Natural Gas Company*  
Case No: 01-15-0002-9137

Arbitrator Neth:

This letter constitutes a **Counterclaim** to the Demand for Arbitration filed against Orwell Natural Gas Company.

Claimant, Orwell Trumbull Pipeline Co., LLC (hereinafter "OTPC") claims Respondent, Orwell Natural Gas Company (hereinafter "ONG"), is in breach of a Natural Gas Transportation Service Agreement (hereinafter "Agreement") between OTPC and ONG. Specifically, OTPC alleges that ONG breached the exclusivity provisions of the Agreement.

### **COUNTERCLAIMS**

**Count One Breach of Contract:** Under the terms of the Agreement, a fundamental requirement of OTPC is that it operate a natural gas transmission pipeline system. OTPC is asserting that the Agreement requires ONG and its customers to rely exclusively on OTPC as its sole source of natural gas transportation services. Operation of a transmission pipeline system requires OTPC to maintain at a minimum a level of pressure to meet the threshold obligation of a transmission system. OTPC, on numerous occasions, failed to operate the transmission pipeline in a commercially reasonable manner, failed to maintain minimum pressure, and as a result failed to meet its minimum obligations under the Agreement to operate as a transmission pipeline system. As a direct cause of OTPC's breach of the Agreement, ONG was compelled to purchase, nominate, and deliver significantly greater quantities of natural gas than it would



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LAW GROUP CO., LPA

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eweldele@wp-lawgroup.com

Gina M. Piacentino  
gpiacentino@wp-lawgroup.com

otherwise had to purchase, nominate, and deliver had OTPC not breached the Agreement and failed to operate the transmission pipeline in a commercially reasonable manner. ONG has suffered actual damages as a result of OTPC's breach in an amount in excess of \$15,000.

**Count Two Breach of Contract:** OTPC failed to file its shrinkage with, and seek approval from, the Public Utilities Commission of Ohio for its shrinkage percentage. Pursuant to the Agreement, shrinkage was an item that was not negotiated by the parties at the time of the Agreement but rather left pursuant to Exhibit B as "TBD" by the parties to the Agreement. ONG did not agree with OTPC regarding shrink percentage and under protest paid the shrinkage invoices. OTPC has failed to substantiate its shrinkage although demands have been made for such substantiation. OTPC failed to file its shrinkage with the Public Utilities Commission of Ohio or seek approval for its shrinkage with the Public Utilities Commission of Ohio. As a direct result of OTPC's breach of the Agreement, ONG suffered actual damages in the amount in excess of \$120,280.18 and continues to suffer damage resulting from the unsubstantiated shrinkage OTPC continues to invoice ONG regarding.

**Count Three Fraud.** OTPC filed an Application with the PUCO November 20, 2009, Case No. 08-1244-PL-AEC. In the Application at Paragraph 6, OTPC stated as follows: "No party to the agreement holds any interest in any other party to the agreement. Applicant and each of its Shippers currently are affiliates under common ownership." OTPC filed this Application knowing that Paragraph 6 was false and misrepresented. OTPC knew, or acted recklessly in not knowing, that said Application was false. The PUCO approved the Application based on the misrepresentation in Paragraph 6. The representation referenced above was material to the Agreement and the PUCO's approval of the Application. OTPC made the representation falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred. OTPC intended to mislead ONG and the PUCO. As a direct and proximate result of the fraud perpetrated by OTPC, ONG has suffered damages, in an amount to be determined.

**In the Alternative to its Counts One and Two Breach of Contract Claims, ONG Pleads Unjust Enrichment.** In the event the Arbitrator fails to find in favor of ONG on its Breach of Contract Counts One, Two, and/or Three, ONG pleads in the alternative that OTPC has been unjustly enriched.

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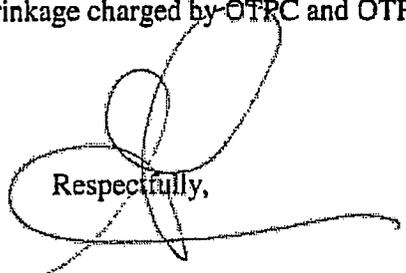
### Background

At the time the Agreement was entered, Richard M. Osborne was in control of both OTPC and ONG, and the parties that executed the Agreement, Stephen G. Rigo, Executive Vice President for OTPC and Thomas J. Smith, President of both Brainard Gas Corp. and ONG, reported directly or were obligated to Richard M. Osborne as the controlling member of ONG and OTPC. Both Messrs. Rigo and Smith worked out of the 8500 Station Street, Suite 100 Mentor, Ohio offices, which is the same office where Richard M. Osborne worked and directed the activities for both OTPC and ONG. Neither Thomas J. Smith nor Stephen G. Rigo operated independently of Richard M. Osborne, and neither negotiated the Agreement independently of Richard M. Osborne. As a result, ONG did not have independent representation, the Agreement was not an arms-length Agreement, and therefore, ONG could not have had a meeting of the minds on the Agreement with OTPC in its formation. Only OTPC and Richard M. Osborne benefited, unjustly, from the Agreement regarding multiple material terms including but not limited to exclusivity, sole source, fifteen (15) year term, shrinkage "TBD", and failure to define system parameters.

**Count Four Unjust Enrichment Regarding Failure of Adequate Operation.** In the alternative to Count One, OTPC was unjustly enriched through obligating ONG to a sole source agreement without any obligation on the part of OTPC to operate its transmission pipeline system in a commercially reasonable manner with minimum pressure standards. Each time ONG had to source, nominate, and deliver natural gas in quantities in excess of its actual need to service ONG's customers, ONG suffered actual damages and OTPC was unjustly enriched by compelling through its failure ONG to create pressure in its system to get natural gas to ONG's customers. ONG suffered actual damages and OTPC in an amount to be determined at trial in excess of \$15,000.00, plus interest and fees.

**Count Five Unjust Enrichment Regarding Shrinkage.** Regarding Count Two, OTPC was unjustly enriched by the total amount ONG has paid OTPC since the inception of the Agreement to date since OTPC has failed to substantiate its shrinkage. ONG has suffered actual damages in excess of \$120,280.18 for shrinkage charged by OTPC and OTPC is unjustly enriched by the same amount.

Respectfully,

  
Gina M. Piacentino

BEFORE THE AMERICAN  
ARBITRATION ASSOCIATION

ORWELL TRUMBULL PIPELINE CO., LLC ) CASE NO. 01-15-0002-9137  
 )  
 Claimant, )  
 ) ARBITRATOR SPENCER NETH  
 v. )  
 )  
 ORWELL NATURAL GAS CO., )  
 ) CLAIMANT'S ANSWER TO  
 Respondent, ) RESPONDENT'S COUNTERCLAIM  
 )  
 )

Now comes the Claimant, Orwell Trumbull Pipeline Company ("OTPC"), by and through counsel, and for its Answer to the Respondent's Counterclaim, state and aver as follows:

**COUNT ONE – BREACH OF CONTRACT**

1. OTPC admits that it operates a natural gas transmission system.
2. OTPC admits that the parties' Agreement requires ONG to exclusively use OTPC's pipelines for the transportation of natural gas if OTPC has available capacity.
3. OTPC denies that it failed to operate its pipeline in a commercially reasonable manner.
4. OTPC denies that it failed to maintain pressure as required.
5. To the extent that there was ever a problem with pressures, it was the direct result of ONG's acts and/omissions and/or conditions beyond OTPC's control.

6. OTPC denies that it failed to satisfy its obligations under the parties' Agreement and/or otherwise breached the contract.

7. OTPC denies that ONG sustained any damages due to the acts and/or omissions of OTPC.

**COUNT TWO – BREACH OF CONTRACT**

8. OTPC admits that Exhibit B to the parties' Agreement indicated that the shrinkage rate would be determined.

9. OTPC could not and did not charge more than a commercially reasonable shrinkage rate.

10. On an annual basis, OTPC reported its line loss to the PUCO.

11. The line loss reported to the PUCO would, in turn, be used to calculate the shrinkage rate that was charged to ONG.

12. Shrinkage rates greater than 5% are presumptively unreasonable.

13. OTPC's shrinkage rates are below 5% and are presumptively reasonable.

14. OTPC denies that the parties failed to reach agreement with regard to the shrinkage rate.

15. ONG paid shrinkage rates as agreed.

16. ONG reported the shrinkage rates to the PUCO.

17. The shrinkage rates paid by ONG to other shippers such as Dominion East Ohio are greater than 5% and are presumptively unreasonable.

18. OTPC denies that it failed to satisfy its obligations under the parties' Agreement and/or otherwise breached the contract regarding shrinkage.

19. OTPC denies that ONG sustained any damages due to the acts and/or omissions of OTPC regarding charges for shrinkage.

**COUNT THREE -- FRAUD**

20. OTPC denies that it filed an Application on November 20, 2009 in Case No. 08-1244-PL-AEC as alleged.

21. OTPC denies that it held any interest in ONG; or that ONG held any interest in OTPC.

22. OTPC denies that the Application filed on November 20, 2008 contains information that is false.

23. OTPC admits that the PUCO approved the Application filed on November 20, 2008, but denies that the approval was obtained through any fraud or misrepresentation.

24. The Application filed by OTPC in Case No. 08-1244 specifically disclosed that the parties were affiliates under common ownership.

25. OTPC denies that the PUCO and ONG was unaware that the parties were affiliates under common ownership.

26. OTPC denies that ONG justifiably relied upon any representation made in the Application, or that any representation therein was false.

27. OTPC denies that ONG sustained any damages due to the representations made by OTPC to the PUCO.

**COUNT FOUR -- UNJUST ENRICHMENT**

28. A contract does exist between the parties, which was approved by the PUCO, and performed for half of its stated term.

29. The Agreement between the parties was an arms-length transaction negotiated by representatives of OTPC and ONG.

30. OTPC denies that Richard M. Osborne improperly interfered with and/or influenced the negotiations and/or terms of the parties' Agreement.

31. Both OTPC and ONG benefitted from the Agreement.

32. OTPC fulfilled its obligations under the Agreement, and operated its pipeline in a commercially reasonable manner.

33. To the extent that there was ever a problem with pressures, it was the direct result of ONG's acts and/omissions and/or conditions outside of OTPC's control.

34. The fact that ONG is no longer satisfied with the terms of the Agreement does not constitute unjust enrichment.

35. OTPC denies that ONG is entitled to damages for unjust enrichment.

#### **COUNT FIVE – UNJUST ENRICHMENT**

36. A contract does exist between the parties, which was approved by the PUCO, and performed for half of its stated term.

37. The Agreement between the parties was an arms-length transaction negotiated by representatives of OTPC and ONG.

38. The Agreement provides that the shrinkage rate would be determined.

39. OTPC did not charge more than a commercially reasonable shrinkage rate.

40. The shrinkage rate was calculated based upon line losses reported to the PUCO.

41. ONG agreed to pay the shrinkage rate charged by OTPC.

42. ONG reported the shrinkage rates to the PUCO.

43. The shrinkage rates paid by ONG to Dominion East Ohio were higher than that charged by OTPC.

44. The fact that ONG is no longer satisfied with the shrinkage rates it agreed to and did pay does not constitute unjust enrichment.

45. OTPC denies that ONG is entitled to damages for unjust enrichment for shrinkage charges.

#### AFFIRMATIVE DEFENSES

1. Failure to state a claim upon which relief can be granted.
2. This forum lacks jurisdiction over any claim involving any fraud alleged to have been perpetrated upon the PUCO.
3. This forum lacks jurisdiction over any claim seeking to invalidate and/or rescind the parties' Agreement.
4. This forum lacks jurisdiction over any claim seeking to modify the terms of the parties' Agreement.
5. This forum lacks jurisdiction over any claim regarding services and operations, including those involving pressure maintenance.
6. This forum lacks jurisdiction over any claim regarding rates and charges, including charges for shrinkage.
7. The fact that ONG is no longer satisfied with the terms of the Agreement does not provide a claim for damages.
8. The Counterclaim fails to allege fraud with requisite particularity.
9. The Counterclaim fails to allege fraud regarding the Agreement which governs the parties' rights and obligations.
10. Custom and usage.
11. Estoppel.
12. Laches.
13. Waiver.

14. Unclean hands.
15. Failure to mitigate damages.
16. Mistake.
17. Novation.
18. Unjust enrichment.
19. Bad faith.
20. Substantial compliance.
21. The contract does not provide for attorney fees.

WHEREFORE, Claimant Orwell Trumbull Pipeline Company prays that Respondent's Counterclaim be dismissed at Respondent's costs, and for whatever other relief this Court finds fair, just and equitable.

Respectfully submitted,

/s/ Mark E. Kremser

WILLIAM T. WULIGER, ESQ. (0022271)

MARK E. KREMSER, ESQ. (0066642)

WULIGER, FADEL & BEYER, LLC

1340 Sumner Avenue

Cleveland, Ohio 44115

(PH) 216-781-7777

(FX) 216-781-0621

[wtwuliger@wtwuligerlaw.com](mailto:wtwuliger@wtwuligerlaw.com)

[mkremser@wuliger@wuligerlaw.com](mailto:mkremser@wuliger@wuligerlaw.com)

Counsel for Claimant

**CERTIFICATE OF SERVICE**

This is to certify that a true copy of the foregoing was sent this \_\_\_\_ day of September 2015 via **electronic mail** to Gina M. Piacentino, The Weldele & Piacentino Law Group Co., L.P.A., 88 East Broad Street, Suite 1560, Columbus, OH 43215, [gpiacentino@wp-lawgroup.com](mailto:gpiacentino@wp-lawgroup.com).

/s/ Mark E. Kremser  
WILLIAM T. WULIGER, ESQ. (0022271)  
MARK E. KREMSEK, ESQ. (0066642)  
WULIGER, FADEL & BEYER, LLC  
1340 Sumner Avenue  
Cleveland, Ohio 44115  
(PH) 216-781-7777  
(FX) 216-781-0621  
[wtwuliger@wtwuligerlaw.com](mailto:wtwuliger@wtwuligerlaw.com)  
[mkremser@wuliger@wuligerlaw.com](mailto:mkremser@wuliger@wuligerlaw.com)

Counsel for Claimant

1001  
1003

NATURAL GAS TRANSPORTATION SERVICE AGREEMENT

BY THIS AGREEMENT, executed this 1st day of July, 2008 Orwell-Trumbull Pipeline Co., LLC ("OTPC"), Orwell Natural Gas Company ("ONG") and Brainard Gas Corp. ("BGC") (hereinafter ONG and BGC shall collectively be referred to as "Shipper"), OTPC and Shipper are hereinafter sometimes referred to collectively as the Parties and individually as a Party) for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby recite and agree as follows:

RECITALS

WHEREAS, OTPC owns a natural gas transmission pipeline system described on Exhibit A to this Agreement (Pipeline); and

WHEREAS, OTPC is an Ohio intrastate pipeline operating natural gas pipelines and related facilities located within the State of Ohio under authority of the Public Utility Commission of Ohio; and

WHEREAS, Shipper desires to utilize OTPC's Pipeline for the transportation of natural gas within the State of Ohio; and

WHEREAS, OTPC has agreed to provide such transportation to Shipper subject to the terms and conditions hereof,

WITNESSETH: In consideration of the mutual covenants herein contained, the Parties hereto agree that OTPC will transport for Shipper, on an interruptible basis, and Shipper will furnish, or cause to be furnished, to OTPC natural gas for such transportation during the term hereof, at prices and on the terms and conditions hereinafter provided:

AGREEMENTS

DEFINITIONS

Except where the context otherwise indicates another or different meaning or intent, the following terms are intended and used herein and shall be construed to have the meaning as follows:

- A. "Btu" shall mean the British thermal unit as defined by international standards.
- B. "Business Day" shall mean any weekday, excluding federal banking holidays.

- C. "Central Clock Time" (C.T.) shall mean Central Standard Time adjusted for Daylight Savings Time.
- D. "Company" means OTPC, its successors and assigns.
- E. "Customer" means any individual, governmental, or corporate entity taking transportation service hereunder.
- F. "Dekatherm" or "Dth" means the Company's billing unit measured by its thermal value. A dekatherm is 1,000,000 Btus. Dekatherm shall be the standard unit for purposes of nominations, scheduling, invoicing, and balancing.
- G. "Delivery Point(s)" shall mean the specific measurement location(s) listed on Exhibit B at which OTPC delivers Shipper-owned Gas to Shipper and Shipper receives such Gas from OTPC. Exhibit B is hereby incorporated into this Agreement.
- H. "Delivery Volume" shall mean the volume of Gas actually taken at the Delivery Point(s) by or on behalf of Shipper.
- I. "Firm" shall mean that each Dth Shipper tenders at the Receipt Point will be delivered to Shipper's Delivery Point(s) minus OTPC's Shrinkage without interruption except under Force Majeure conditions or an energy emergency declared by the Commission.
- J. "Gas" shall mean natural gas of interstate pipeline quality.
- K. "Gas Day" or "Day" shall mean a period of 24 consecutive hours, beginning at 9:00 a.m. Central Clock Time, as adjusted for Daylight Savings Time, and the date of the Day shall be that of its beginning.
- L. "Heating Value" shall mean the gross heating value on a dry basis, which is the number of British thermal units produced by the complete combustion at constant pressure of the amount of dry gas (gas containing no water vapor) that would occupy a volume of one Cubic Foot at 14.73 psia and 60° F with combustion air at the same temperature and pressure as the gas, the products of combustion being cooled to the initial temperature of the gas and air, and the water formed by combustion condensed to the liquid state.
- M. "Imbalance" shall mean the daily difference between the Dths tendered by or for Customer's account at the Receipt Point minus OTPC's Shrinkage and the metered volumes allocated to Shipper at the Delivery Point(s).

- N. "Interruptible" shall mean that each Dth Shipper tenders at the Receipt Point Will be delivered to Shipper's Delivery Point(s) less OTPC's Shrinkage If OTPC, using reasonable judgment, determines that capacity exists after all the Firm transport needs are accounted for to permit redelivery of tendered gas.
- O. "Maximum Daily Quantity" or "(MDQ)" shall mean the maximum daily firm natural gas quantity which Shipper shall be entitled to nominate during any 24-hour period. Shipper's MDQ shall be negotiated between Shipper and OTPC and incorporated into Shipper's Service Agreement with OTPC.
- P. "Month" shall mean a calendar month beginning at 9:00 a.m. Central clock time on the first day of the calendar month and ending at 9:00 a.m. Central clock time the first day of the following calendar month.
- Q. "OTPC System" shall mean the intrastate pipeline system owned by OTPC.
- R. "Nomination" shall mean the confirmed Quantity of Gas which Shipper shall arrange to have delivered to the Receipt Point(s) for redelivery by OTPC to the Delivery Point(s). The Nomination shall include sufficient gas to account for OTPC's Shrinkage.
- S. "Operational Flow Order" or "OFO" shall mean a declaration made by OTPC that conditions are such that OTPC can only safely transport an amount of Gas during a calendar day equal to the amount of Gas which Shipper will actually receive at the Receipt Point on that calendar day. OTPC shall only declare an Operational Flow Order if an upstream pipeline declares an operational flow order or otherwise restricts the flow of Gas which normally would be delivered to OTPC at the Receipt Point.
- T. "Overrun" shall mean any volume of Gas actually transported which, as measured on a daily basis, exceeds the maximum daily quantity (MDQ) established by this Agreement.
- U. "PUCO" or "Commission" means the Public Utilities Commission of Ohio or any successor governmental authority.
- V. "Quantity of Gas" shall mean the number of units of gas expressed in Dth or MMBtu unless otherwise specified.
- W. "Receipt Point(s)" shall mean those measurement locations where Shipper-owned gas enters OTPC's system.
- X. "Service Agreement" Each Customer shall sign an individual Agreement with OTPC prior to commencement of service that identifies the Receipt Point and Delivery Point(s), the MDQ, declares whether the transportation is Firm or Interruptible and establishes the cost

for the transportation, The Service Agreements shall be filed with the Commission pursuant to Section 4905.31, Revised Code for approval.

Y. "Shrinkage" shall mean the quantity of Gas required by OTPC to replace the estimated quantity of Gas which is required for compressor fuel, and lost-or-unaccounted-for Gas when transporting the tendered quantities- This percentage is set forth in Exhibit B.

Z. "Written Notice" shall mean a legible communication received by the intended recipient of the communication by United States mail, express courier, or confirmed facsimile. Written Notice may also be provided by Email, but shall not be effective until such time as (a) the Email is acknowledged by the intended recipient; (b) or a copy of such Email is received by the intended recipient by US mail, express courier, or facsimile.

#### I. DELIVERY AND TRANSPORTATION

1.1 Shipper shall arrange with suppliers of Shipper's selection to have Gas in an amount not to exceed Shipper's MDQ adjusted for OTPC's Shrinkage as specified on Exhibit B, tendered to the Receipt Point(s) as specified on Exhibit B, for delivery into the OTPC Pipeline on Shipper's behalf. OTPC shall then redeliver, on an interruptible basis, such quantities, less OTPC's Shrinkage, to Shipper, or on behalf of Shipper, at the Delivery Point(s) as specified on Exhibit B. All transportation by OTPC for Shipper shall be governed by OTPC's then current transportation tariff on file with the PUCO, except as expressly modified hereby.

1.2 ONG agrees that during the term of this Transportation Service Agreement it will use only OTPC's pipelines to transport gas for any of its customers; provided, however, that this exclusive use of the OTPC pipelines shall remain in effect as long as OTPC has available capacity within its pipelines. Should available capacity not exist, then during that period only ONG may use other pipelines to transport its gas requirements. This Transportation Service Agreement will only be utilized by BGC for back up purposes only and on an as needed basis.

1.3 For planning purposes, Shipper shall provide Written Notice, at least three (3) business days prior to the start of each calendar Month, to OTPC of the amount of Gas it intends to transport each day of the upcoming Month. Shipper shall submit its Nomination to OTPC by no later than 10:00 a.m. Central Clock Time for Gas flow the following day. This nomination should correspond to scheduled deliveries Shipper makes on the upstream Interstate pipeline and downstream local distribution company operating the applicable Delivery Point(s). Should the Shipper desire to modify its Nomination either on the current Day or after the Nomination deadline for Gas flow the following day, OTPC shall make every attempt to accommodate Shipper's request provided OTPC can confirm such quantities with the upstream pipeline at the Receipt Point(s) and downstream entity at the Delivery Point(s).

1.4 Shipper shall be permitted to have delivered into and removed from OTPC's Pipeline its nominated Gas volume, adjusted for OTPC's Shrinkage, up to the MDQ previously agreed to and found on Exhibit B.

1.5 If any of the interstate pipelines interconnected with OTPC issues an operational flow order then OTPC may issue its own matching OFO on its Pipeline that will apply to Shippers. The OFO may restrict Shippers to nominate into the OTPC Pipeline only that volume of Gas which Shipper will have redelivered the same day adjusted for Shrinkage. OTPC will use its best efforts to limit such OFO to just the time necessary to comply with applicable upstream interstate OFOs. OTPC will only assess OFO penalties on a pro-rata basis if OTPC is actually assessed penalties by an applicable upstream pipeline.

1.6 Imbalances caused by Shipper at the Delivery Point(s) shall be resolved by OTPC and Shipper within thirty (30) days. Imbalances at the Receipt Point are governed by the terms and conditions of the upstream pipeline(s) delivering into OTPC. Any imbalance charges or penalties or costs of any kind incurred by OTPC as a result of Shipper's over or under delivery of natural gas into OTPC's system, either on a daily or monthly basis, will be reimbursed by Shipper within ten (10) days of receipt thereof. If Shipper fails to make any payments under this Agreement when due, OTPC has the right to terminate this Agreement upon two (2) days notice, unless such payment is made by the date specified in the termination notice.

1.7 Shipper warrants that it has title to all Gas delivered to OTPC, free and clear of all claims, liens, and other encumbrances, and further covenants and agrees to indemnify and hold harmless from all claims, demands, obligations, suits, actions, debts, accounts, damages, costs, losses, liens, judgments, orders, attorneys fees, expenses and liabilities of any kind or nature arising from or attributable to the adverse claims of any and all other persons or parties relating to such Gas tendered by Shipper at the Receipt Point.

## II. QUANTITY AND PRICE

2.1 Shipper shall pay OTPC a Commodity Rate plus Shrinkage, as stated on Exhibit B, for each volume of Gas delivered to the Delivery Point(s).

## III. TERM

3.1 The Agreement shall be effective as of 1st day of July, 2008 and shall continue in full force and effect, terminating 15 years thereafter and shall continue from year to year thereafter, unless cancelled by either party upon 30 days written notice.

#### IV. MEASUREMENT AND QUALITY OF GAS

4.1 Measurement of the Gas delivered and billed to Shipper shall be based upon an allocation conducted by the operator of the Delivery Point(s). Disputes regarding allocated throughput shall be handled in accordance with the tariff of the Delivery Point(s) operator. Billings for all receipts and deliveries hereunder shall be made on a thermal basis in Dth. OTPC shall provide to Shipper at Shipper's request, pertinent tariff information pertaining to method of allocating deliveries at Delivery Point(s).

4.2 All Gas delivered under this Agreement shall be commercially free from solid and liquid impurities and shall satisfy all pipeline quality standards reasonably established from time to time by OTPC and upstream or downstream pipelines.

#### V. BILLING AND PAYMENT

5.1 On or about the tenth (10th) day of each calendar month, OTPC will render to Shipper a statement setting forth the total volume of Gas delivered hereunder for Shipper during the immediately preceding month. In the event OTPC was not able to take actual meter readings at any meter, or if OTPC has not received the necessary meter statements from the owner or operator of any applicable meter in time for preparation of the monthly statement, OTPC may use an estimated Gas delivery volume based upon confirmed nominations. Any such estimated delivery volume shall be corrected in the first statement after the actual meter readings become available.

5.2 In the event of a meter failure a reconstructed bill using the best information available shall be used.

5.3 Shipper agrees to pay OTPC the amount payable according to such statement on or before the twenty-fifth (25th) day of the month or within ten (10) days of receipt of the invoice whichever is later.

5.4 Failure to tender payment within the above specified time limit shall result in a monthly interest charge of one and one half percent (1-1/2%) per month on the unpaid balance. In addition, should Shipper's payment be delinquent by more than thirty (30) days, OTPC shall have the right, at its sole discretion, to terminate this Agreement and to terminate Gas transportation in addition to its seeking other legal redress. OTPC will first contact Shipper about any payment issues and try to resolve those issues in a reasonable manner.

5.5 Any notice, request, demand, statement, or other correspondence shall be given by Written Notice to the Parties hereto, as set forth below:

Shipper: Orwell Natural Gas Company or Breinhard Gas Company, as applicable  
8500 Station Street, Suite 100  
Mentor, Ohio 44060

EMAIL: [tsmith13@sprynet.com](mailto:tsmith13@sprynet.com)  
PHONE: (440) 974-3770  
FAX: (440) 974-0844  
ATTN: Thomas J. Smith

OTPC: OTPC Gas Transmission Company, LLC  
8500 Station Street  
Suite 100  
Mentor, OH 44060

EMAIL: [srigo@orwellgas.com](mailto:srigo@orwellgas.com)  
PHONE: (440) 974-3770  
FAX: (440) 205-8680  
ATTN: Stephen G. Riggo

## VI. FORCE MAJEURE

6.1 Except with regards to a party's obligation to make payment due under Section 5 and Imbalance Charges under Section 2, neither party shall be liable to the other for failure to perform a firm obligation; to the extent such failure was caused by Force Majeure, The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 6.2.

6.2 Force Majeure shall include but not be limited to the following (1) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii); (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, terrorism, insurrections or wars; and (v) governmental actions such as necessity for compliance with any court order, law statute, ordinance, or regulations promulgated by a governmental authority having jurisdiction. The Parties shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event of occurrence once it has occurred in order to resume performance.

6.3 Neither party shall be entitled to the benefit of the provision of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary firm transportation unless primary, in-path, firm transportation is also curtailed; (ii) the party claiming Force Majeure failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship. The claiming of Force Majeure shall not relieve either party from meeting all payment obligations.

6.4 Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be entirely within the sole discretion of the party experiencing such disturbances.

6.5 The party whose performance is prevented by Force Majeure must provide notice to the other party. Initial notice may be given orally; however, written notification with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written notification of Force Majeure to the other party, the affected party will be relieved of its obligation to make or accept delivery of Gas as applicable to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligation to the other during such occurrences or event.

#### VII. ADDITIONAL TERMS

7.1 Shipper shall join with OTPC in support of the application to the PUCO for approval of this Agreement pursuant to Section 4805.31, Revised Code.

7.2 In the event of an energy emergency declared by the Governor or any other lawful official or body, it is understood that OTPC shall and will follow the dictates of any energy emergency rule, or order. OTPC shall not be liable for any loss or damage suffered by Shipper as a result thereof.

7.3 This Agreement shall be construed under the laws of the State of Ohio.

7.4 This Agreement, together with all schedules and exhibits hereto, constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (regardless of whether similar), nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.

7.5 This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns. Neither this Agreement nor any of the rights, benefits or obligations hereunder shall be assigned, by operation of law or otherwise, by any Party hereto without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Except as expressly provided herein, nothing in this Agreement is intended to confer upon any person other than the Parties and their respective permitted successors and assigns, any rights, benefits or obligations hereunder.

7.6 The parties agree that any dispute arising hereunder or related to this Agreement shall be resolved by binding arbitration under the auspices of the American Arbitration Association. Preheating discovery shall be permitted in accordance with the procedures of the Ohio Rules of Civil Procedure. The arbitrator or arbitrators shall have authority to impose any remedy at law or in equity, including injunctive relief. The parties agree that any hearing will be conducted in Lake County, Ohio.

7.7 Recovery by either Party of damages, if any, for breach of any provision hereof shall be limited to direct, actual damages. Both Parties waive the right, if any, to recover consequential, indirect, punitive and exemplary damages.

7.8 Both parties shall have the right to demand credit assurances from the other party. If the financial responsibility of any Party is at any time unsatisfactory to the other Party for any reason, then the defaulting Party will provide the requesting Party with satisfactory security for the defaulting Party's performance hereunder upon requesting Party's demand. Defaulting Party's failure to abide by the provisions of this Section shall be considered a breach hereof, and the requesting Party may terminate this Agreement, provided the defaulting Party is afforded an opportunity to cure any default within three (3) business days notice of any breach. Both Parties have the right, in addition to all other rights and remedies, to set-off any such unpaid balance due the other Party, or by the parent or any subsidiary of the other Party, under any separate agreement or transaction.

7.9 No presumption shall operate in favor of or against either party regarding the construction or interpretation of this Agreement as a result of either party's responsibility for drafting this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed as of the date set forth above.

Orwell-Trumbull Pipeline Co., LLC

By: [Signature]  
Stephen G. Rigo,  
Executive Vice President

Date: July 1, 2008

Brainard Gas Corp.

By: [Signature]  
Thomas J. Smith, President

Date: July 1, 2008

Orwell Natural Gas Company

By: [Signature]  
Thomas J. Smith, President

Date: July 1, 2008

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Exhibit A

OTPC Gas Transmission, LLC

ALL PIPELINES OWNED BY OTPC LOCATED IN NORTHEASTERN OHIO.

Exhibit B

OTPC Gas Transmission, LLC

Primary Receipt Point

Interconnection between QTPC and North Coast Gas Transmission, LLC's Pipeline in Mantua, Ohio

Primary Delivery Point(s)

For BGC: Various interconnections between OTPC and BGC, as required for back-up services only.

For ONG: Various interconnections between OTPC and ONG.

Shrinkage

TBD

2000 Dth/day

\*RATES

Commodity Charge (paid only on quantity transported)

November-March \$0.95 per Thousand Cubic Feet (Mcf)

April-October \$0.95 per Thousand Cubic Feet (Mcf)

\*Rates will adjust every five (5) years commencing on July 1, 2013 and continuing on each fifth (5<sup>th</sup>) anniversary date for the remaining term of this Agreement to reflect the higher of \$0.95 per Thousand Cubic Feet (Mcf) or a negotiated rate to reflect the then current market conditions existing on each such rate adjustment date. If the parties cannot agree on a rate adjustment amount, OTPC shall have the option to increase the Rate by the increase in the consumer price index all items (Cleveland, Ohio) ("CPI") as calculated from July 1, 2008 to each applicable rate adjustment date.

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

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**in**

**Case No(s). 14-1654-GA-CSS, 15-0637-GA-CSS**

Summary: Motion Orwell-Trumbull Pipeline Company, LLC's Request for Certification and Application for Review of an Interlocutory Appeal of the Attorney Examiner's Oral Ruling. electronically filed by Mr. Justin M Dortch on behalf of Orwell-Trumbull Pipeline Company, LLC