

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

ORWELL NATURAL GAS COMPANY,	)	
	)	Case No. 16-2419-GA-CSS
Complainant,	)	
	)	
v.	)	
	)	
ORWELL-TRUMBELL PIPELINE	)	
COMPANY, LLC,	)	
	)	
Respondent.	)	

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**MOTION TO COMPEL ENFORCEMENT OF COMMISSION-APPROVED  
REASONABLE ARRANGEMENT**

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**I. INTRODUCTION**

Orwell Natural Gas Company (“Orwell”) moves the Commission to compel Orwell-Trumbull Pipeline Company, LLC (“OTPC”) to enforce the rates, terms, and conditions set forth in the Natural Gas Transportation Service Agreement (“Agreement”), which the Commission approved (and later amended) as a reasonable arrangement pursuant to R.C. 4905.31, by ordering OTPC to refrain from imposing a “reservation charge” (aka “capacity charge”) or any other unlawful charges on Orwell.<sup>1</sup> As set forth in greater detail below, OTPC is unlawfully seeking to charge Orwell a reservation charge for firm delivery of natural gas even though the Agreement approved (and later modified) by the Commission does not authorize the imposition of any such charge. Further, OTPC has not and cannot identify any Commission order, applicable OTPC tariff, or other authority to justify the imposition of a reservation charge under the Agreement. Instead, citing only conjecture and unsupported assumptions about what the Commission might

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<sup>1</sup> See Exhibit 1, Agreement.

have intended when it modified the Agreement, OTPC has simply constructed the reservation charge out of thin air.

The Commission is uniquely empowered to enforce the rate, terms, and conditions of Commission-approved reasonable arrangements like the Agreement, as modified by the Commission, at issue in this case. As such, the Commission should compel OTPC to comply with the Agreement by ordering OTPC to refrain from imposing a reservation charge or any other unlawful charges on Orwell.

## **II. BACKGROUND**

On or around July 8, 2008, Orwell and OTPC entered into the Agreement, which provided, among other things, that OTPC would transport natural gas to Orwell for a period of 15 years, until the year 2023. The Agreement set forth a transportation rate, as well as other terms and conditions. The Agreement further explained that the transportation rate could be adjusted every five years during the 15-year term by agreement of the parties to reflect the then-current market conditions. On November 20, 2008, OTPC filed an application for approval of the Agreement as a reasonable arrangement under R.C. 4905.31. On December 19, 2008, the Commission issued an Entry approving the Agreement per R.C. 4905.31 in Case No. 08-1244-PL-AEC.

OTPC unilaterally increased the rate charged to Orwell effective September 2014. After attempts by Orwell to negotiate a rate adjustment failed, on March 31, 2015, Orwell filed complaints in Case Nos. 15-475-GA-CSS and 15-637-GA-CSS against OTPC. In Case No. 15-475-GA-CSS, Orwell alleged that OTPC threatened to shut down the pipeline system that provides gas to Orwell due to the parties' dispute over payment of past service. In Case No. 15-637-GA-CSS, Orwell alleged that the rate set forth in the Agreement was unjustly discriminatory and detrimental to ratepayers within its system and that Orwell should be under a standard tariff

rate for transportation services. On June 15, 2016, the Commission issued an Opinion and Order addressing the contract dispute in Case No. 15-637-GA-CSS (“June 15, 2016 Order”). As explained in greater detail below, the June 15, 2016 Order modified the Agreement in four material ways, none of which authorized the imposition of a reservation or capacity charge.

Following the June 15, 2016 Order, OTPC started to charge Orwell at a rate that did not comply with the terms of the modified Agreement and the June 15, 2016 Order. Instead, OTPC invoiced Orwell for new capacity reservation charges (sometimes referred to as demand, capacity or reservation charges) even though the Agreement does not include a capacity reservation component nor does it authorize said charges. As a result, Orwell refused to tender payment for any reservation charges; however, Orwell paid for all other services and charges that were consistent with the terms of the Agreement and the June 15, 2016 Order.

On October 20, 2016, OTPC filed a complaint against Orwell in the Lake County Common Pleas Court seeking payment for disputed charges (“Civil Action”). Orwell has sought the dismissal of the Civil Action on jurisdictional grounds given that the Commission retains exclusive jurisdiction over the supervision, regulation, and enforcement of reasonable arrangements like the Agreement in this case. As an alternative, Orwell has also moved the Common Pleas Court for a stay of the Civil Action until a final order is issued by the Commission in this proceeding. The Court has not yet issued a ruling on the pending motions, and the Civil Action remains pending in the Lake County Court of Common Pleas.

On December 20, 2016, Orwell filed this proceeding, asking the Commission to clarify its decision in the June 15, 2016 Order in light of OTPC’s obviously mistaken interpretation of that Order. The Commission has not yet ruled in this proceeding, necessitating the filing of this motion.

### III. LEGAL STANDARD

It is axiomatic that the Commission retains the authority to regulate and enforce compliance with its orders and directives, including orders approving or modifying reasonable arrangements under R.C. 4905.31. As a general matter, Section 4905.54, titled “Compliance with Orders,” requires all public utilities in Ohio “to comply with every order, direction, and requirement of the public utilities commission made under the authority of this chapter and Chapters 4901., 4903., 4907., and 4909. of the Revised Code, so long as they remain in force.”

More specifically, the Commission is empowered to enforce the terms and conditions of Commission-approved reasonable arrangements like the Agreement at issue in this case. Section 4905.31(E) provides that every reasonable arrangement “shall be under the supervision and regulation of the commission, and is subject to change, alteration, or modification by the commission.” Importantly, the Commission retains its authority to regulate, modify, and enforce the terms and conditions of a Commission-approved reasonable arrangement even after it is approved by the Commission.<sup>2</sup>

The Ohio Administrative Code provides specific enforcement mechanisms available to the Commission in the event a natural gas company like OTPC fails to comply with or violates a Commission order. For instance, O.A.C. 4901:1-34-06(D) provides that “[i]f the commission finds a natural gas company, retail natural gas supplier, or government aggregator has violated or is violating . . . any order of the commission, the commission may, after an opportunity for hearing, impose the necessary remedies as set forth in rule 4901:1-34-08 of the Administrative

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<sup>2</sup> See *In the Matter of the Complaint of Walter Albrecht and Donald and Glenna Hobbs v. Columbia Gas of Ohio, Inc. and Columbia Gas Transmission Corp.*, Case No. 85-826-GA-CSS, 1986 Ohio PUC LEXIS 1366 (February 19, 1986), ¶ 7 (“We note that it is a common practice for utilities to enter into contracts to provide service to certain customers subject to approval by the Commission pursuant to Section 4905.31, Ohio Revised Code. However, we do not believe the Commission loses jurisdiction over such utilities’ service, once the Commission has approved those contracts.”).

Code.” Under O.A.C. 4901:1-34-08, the Commission is authorized, among other things, to order forfeiture, rescind customer contracts, award restitution, and subject a natural gas company like OTPC “to any other corrective action necessary to protect the public safety, reliability, and customer service.”

In sum, the Commission has the authority to regulate and enforce its orders, including enforcing the terms and conditions of Commission-approved reasonable arrangements like the Agreement at issue in this case. Accordingly, the Commission can award the relief requested herein, namely to compel OTPC to comply with the Agreement and to refrain from imposing a reservation charge or any other unlawful charge on Orwell that is inconsistent with Commission-approved terms and conditions in the modified Agreement.

#### **IV. ANALYSIS**

It is undisputed that the Agreement, as written before the Commission modified it in the June 15, 2016 Order, never authorized OTPC to assess any capacity or reservation charges on Orwell. It was only after the June 15, 2016 Order that OTPC invented and sought to impose a capacity or reservation charge. Accordingly, the instant dispute concerns whether the Commission’s modifications of the Agreement, as pronounced in the June 15, 2016 Order, enabled OTPC to charge Orwell for reservation or capacity. The answer is simple: the June 15, 2016 Order did **not** authorize OTPC to impose reservation or capacity charges on Orwell.

The July 15, 2016 Order made four amendments to the Agreement. First, the Commission found that it retained exclusive jurisdiction over the Agreement as it was a reasonable arrangement under R.C. 4905.31; accordingly, the Commission amended the Agreement by suspending the arbitration provision until further order of the Commission.<sup>3</sup>

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<sup>3</sup> June 15, 2016 Order, ¶ 17.

Second, the Commission amended Section 1.1 of the Agreement so that natural gas service would be provided on a firm, rather than an interruptible, basis.<sup>4</sup> Third, the Commission eliminated the sole-source provision in Section 1.2 of the Agreement that required Orwell to use only OTPC to transport gas to its customers.<sup>5</sup> The Commission found that eliminating this provision was necessary and in the public interest to allow Orwell access to alternative suppliers and to ensure OTPC provided transportation services at a more competitive level.<sup>6</sup> Fourth, the June 15, 2016 Order modified the Agreement to include a rate for shrinkage to provide transparency with respect to the amounts OTPC charges for shrinkage.<sup>7</sup>

Importantly, **none** of the modifications to the Agreement authorized a reservation or capacity charge. To the contrary, the Agreement, even as modified, requires that Orwell pay only a Commodity Charge plus Shrinkage for each Mcf *delivered*.<sup>8</sup> And OTPC may only bill for the total volume of gas *delivered*.<sup>9</sup> The Agreement approved by the Commission, as modified by the June 15, 2016 Order, does not include any additional charge for any amount of gas nominated or reserved. As such, OTPC is not abiding by the Commission's June 15, 2016 Order.

OTPC has never clearly explained why it believes that the modified Agreement authorizes the reservation charge in this case. However, in the Civil Action OTPC claims that firm transport and interruptible transport differ in significant ways. OTPC then claims that due

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<sup>4</sup> *Id.* at ¶ 46. OTPC has also incorrectly interpreted the Agreement (as modified by the July 15, 2016 Order) to say that OTPC is only required to provide firm service up to 2,000 Mcf per day. Again, OTPC is wrong. The Agreement (as modified by the July 15, 2016 Order) does not impose any maximum threshold – 2,000 Mcf or otherwise – on the delivery of firm service. Instead, the Agreement requires OTPC to provide firm service for *all* volumes transported.

<sup>5</sup> *Id.* at ¶ 57.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at ¶ 77.

<sup>8</sup> *See* Ex. 1, § 2.1.

<sup>9</sup> *Id.* at § 5.1

to that difference “industry standard” states that firm service requires a capacity charge to reserve the space upon the pipeline. OTPC is incorrect. The relationship between Orwell and OTPC is governed entirely by the modified Agreement, not OTPC’s unsupported claims about the “industry standard.” The Agreement specifically states that it constitutes the entire agreement between the parties.<sup>10</sup> The Agreement does not reference a capacity charge, nor does it reference any general “industry standard” which would apply to create a reservation charge. As such, OTPC’s position lacks support in the only relevant document—the Agreement.

OTPC’s position is also refuted by the June 15, 2016 Order. In that proceeding the Commission heard extensive evidence about the four changes it made to the Agreement, as well as additional changes requested by Orwell. Among other things, the Commission heard testimony from Staff and Orwell that interruptible service was not appropriate for service to residential customers,<sup>11</sup> and that the rate being charged for interruptible service was well in excess of the market price. Specifically, Orwell testified that the proposed OTPC price of \$1.01/Mcf was inappropriate because similar utilities charged approximately \$0.50/Mcf for similar service, and Orwell was charged more than similar customers on OTPC’s system.<sup>12</sup> The Commission ordered OTPC to file a rate case, but did not adjust the \$1.01/Mcf rate being charged by OTPC.<sup>13</sup> Based on these facts, the Commission’s analysis becomes clear. The Commission recognized that the rates being charged for interruptible service were inappropriately high, and so the Commission ordered that firm service be supplied. In light of the increased quality of service to be provided, the Commission chose not to change the price

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<sup>10</sup> Agreement § 7.4

<sup>11</sup> June 15, 2016 Order, ¶¶ 44-46.

<sup>12</sup> June 15, 2016 Order, ¶ 66.

<sup>13</sup> June 15, 2016 Order, ¶ 77.

which would be provided for fixed service going forward, in essence recognizing that a higher price was justified since OTPC would be providing firm service instead of interruptible service.

During the relevant period, OTPC has provided service to Orwell pursuant to the Agreement rather than under tariff rates. Therefore, the OTPC tariff is irrelevant to this dispute. Even if the tariff did apply, it does not authorize a demand or reservation charge. In fact, the OTPC tariff does not contain any rate for firm service.<sup>14</sup> Instead, the OTPC tariff says that “rates and charges for transportation services will be established pursuant to contracts submitted to the Commission for approval under Section 4905.21, Revised Code.”<sup>15</sup> As discussed above, the Agreement contains no rate establishing a “reservation charge.” Accordingly, the tariff does not provide any support for OTPC’s position.

As shown by the foregoing, the reservation charge is not authorized by the Agreement or by tariff. The Commission’s modifications to the Agreement in the June 15, 2016 Order do not adopt new language imposing a reservation charge. Despite not having any possible justification for asserting a reservation charge, OTPC has been persistent in violating the Commission’s orders and improperly billing Orwell. This has led Orwell to incur significant attorneys’ fees and damages refuting these improper claims, to the detriment of the company and its ratepayers.

The Commission is empowered to enforce the terms and conditions of Commission-approved reasonable arrangements like the Agreement.<sup>16</sup> OTPC is currently violating the Commission orders by billing Orwell for reservation charges which do not appear in the Agreement, the June 15, 2016 Order, or in OTPC’s tariffs. Nevertheless, OTPC has continued litigation against Orwell in Lake County. Accordingly, the Commission should compel OTPC to

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<sup>14</sup> OTPC Tariff, Case No. 09-259-PL-ATA, Sheet 7.

<sup>15</sup> *Id.*

<sup>16</sup> R.C. § 4905.31(E); R.C. § 4905.54.



comply with the Agreement by ordering OTPC to refrain from imposing a reservation charge or any other unlawful charges on Orwell.

## **V. CONCLUSION**

For the foregoing reasons, the Commission should compel OTPC to enforce the Agreement, as modified by this Commission, by ordering OTPC to refrain from imposing a reservation/capacity charge or any other unlawful charges on Orwell that are unsupported by and inconsistent with the terms of the Agreement.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 13th day of September, 2017. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ N. Trevor Alexander  
One of Attorneys for Orwell Natural Gas  
Company

## 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.

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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 Brainerd 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:** [sriga@orwellgas.com](mailto:sriga@orwellgas.com)  
**PHONE:** (440) 974-3770  
**FAX:** (440) 205-8680  
**ATTN:** Stephen G. Riga

## 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 (i) 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 4905.31, 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. 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.

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:   
Stephen G. Rigo,  
Executive Vice President

Date: July 1, 2008

Brainard Gas Corp.

By:   
Thomas J. Smith, President

Date: July 1, 2008

Orwell Natural Gas Company

By:   
Thomas J. Smith, President

Date: July 1, 2008

**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 \$ per Thousand Cubic Feet (Mcf)

April-October \$ 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**

**9/13/2017 11:17:43 AM**

**in**

**Case No(s). 16-2419-GA-CSS**

Summary: Motion Motion to Compel Enforcement of Commission-Approved Reasonable Arrangement electronically filed by Mr. Trevor Alexander on behalf of Orwell Natural Gas Company