

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Joint Application of)
Northeast Ohio Natural Gas Corp.,)
Ullico Infrastructure Master Fund, L.P., and)
Ullico Infrastructure Hearthstone Holdco,)
LLC for Approval of the Sale and Transfer)
of GEP Bison Holdings, Inc. and Request)
for Expedited Approval.)

Case No. 21-0093-GA-UNC

**JOINT APPLICATION OF NORTHEAST OHIO NATURAL GAS CORP., ULLICO
INFRASTRUCTURE MASTER FUND, L.P., AND ULLICO INFRASTRUCTURE
HEARTHSTONE HOLDCO, LLC FOR APPROVAL OF THE SALE AND TRANSFER
OF GEP BISON HOLDINGS, INC. AND REQUEST FOR EXPEDITED APPROVAL**

I. INTRODUCTION

Northeast Ohio Natural Gas Corp. (“NEO”) (together with its parent company, Hearthstone Utilities, Inc. (“HUI”)), as well as Ullico Infrastructure Master Fund, L.P. (together with its general partner UIF GP, LLC (collectively, “UIF”)) and Ullico Infrastructure Hearthstone Holdco, LLC (“UIHH”) (collectively referred to as the “Applicants”), respectfully request expedited approval by the Public Utilities Commission of Ohio (“PUCO” or “Commission”) of a transaction in which UIHH, a wholly-owned subsidiary of Ullico Infrastructure Master Fund, L.P., is acquiring HUI parent company GEP Bison Holdings, Inc. (“GBH”), such that HUI and its subsidiaries will become wholly owned subsidiaries of UIHH (the “Transaction”). The Applicants respectfully state the following:

II. BACKGROUND

1. NEO is a public utility and natural gas company as defined in R.C. § 4905.02 and R.C. § 4905.03(E), respectively, and is subject to the Commission’s jurisdiction.

2. NEO is owned by its parent company, PHC Utilities, Inc. (“PHC”), a wholly-owned subsidiary of HUI, f/k/a Gas Natural, Inc.¹

3. HUI is a privately held company that is not regulated by the Commission or subject to its jurisdiction. HUI’s organizational chart is attached hereto as **Exhibit A**.²

4. HUI is owned by GBH, and GBH is owned by GEPIF II ECHO AIV, L.P., an infrastructure fund managed by an investment management subsidiary of BlackRock, Inc.

5. PHC and GBH are intermediary holding companies that do not have employees, do not provide utility service in any of the states in which their utility subsidiaries operate, and do not make operational, regulatory, or financial decisions for any of the operating utilities they hold, including NEO. Instead, HUI has employees and is actively engaged in providing services and oversight for its subsidiary utilities, including NEO.

III. COMMISSION JURISDICTION

6. The Commission does not have express statutory authority to review mergers of gas utilities or gas pipeline companies.

7. Despite the lack of clear statutory authority, the Commission has previously asserted jurisdiction over mergers involving downstream operating utilities under its general supervisory authority pursuant to R.C. § 4905.04 through 4905.06.³

¹ Although HUI is not subject to the jurisdiction of the Commission, NEO recently sought and obtained approval from the Commission for a merger between HUI (then known as Gas Natural, Inc.), NEO’s parent company, and FR Bison Merger Sub, Inc. (“FR Merger Sub”). See *In the Matter of the Joint Application of Brainard Gas Corp., Northeast Ohio Natural Gas Corp., Orwell Natural Gas Company, and Spelman Pipeline Holdings, LLC for Approval of a Merger with FR Bison Holdings, Inc. and FR Bison Merger Sub, Inc.*, Case No. 16-2251-GA-UNC, Opinion and Order (June 21, 2017). After receiving Commission approval, HUI eventually merged into FR Merger Sub with HUI continuing as the surviving entity of such merger. *Id.* at ¶ 9.

² This Exhibit illustrates several portions of the overall corporate structure. All corporate structure of GBH and downstream to the regulated utilities, including NEO, is shown as it exists at the time of this filing and will continue to exist after the transition to UIHH ownership. No changes to the GBH corporate structure are proposed at this time.

³ See, e.g., *In the Matter of the Joint Application of Brainard Gas Corp., Northeast Ohio Natural Gas Corp., Orwell Natural Gas Company, and Spelman Pipeline Holdings, LLC for Approval of a Merger with FR Bison Holdings, Inc. and FR Bison Merger Sub, Inc.*, Case No. 16-2251-GA-UNC, Opinion and Order (June 21, 2017); *In the Matter of the Application of The East Ohio Gas Company and West Ohio Gas Company for Authority to Merge*, Case No. 96-

8. The Applicants do not concede that the Commission has jurisdiction over the Transaction. However, recognizing the Commission's past decisions in other merger cases, the Applicants are submitting this Application and Request for Expedited Approval ("Application") in good faith. As explained in greater detail below, approval of this Application is in the public interest because the customers of NEO will not be adversely affected. To the contrary, Ohio customers will benefit from the Transaction. Therefore, the Applicants respectfully request that the Commission enter an Order approving the Application.

IV. DESCRIPTION OF THE TRANSACTION

9. Under the terms of the confidential Stock Purchase and Sale Agreement, a copy of which will be separately filed under seal as **Confidential Exhibit B**, UIHH will acquire GBH such that GBH will become a wholly owned subsidiary of UIHH.

10. The proposed entity structure, including the upstream ownership of UIHH and proposed downstream ownership of GBH and its wholly-owned subsidiaries, is provided as **Exhibit C**.

11. GBH and HUI, including all of its subsidiaries, including PHC and NEO, will remain as currently structured as wholly-owned subsidiaries of UIHH, which is ultimately owned by Ullico Infrastructure Master Fund, L.P. and controlled by UIF GP, LLC. *See* **Exhibit C**.

12. Additionally, if the Transaction is approved, there may be a limited restructuring in the infrastructure fund that owns GBH, at a level above GBH, which will allow the fund to better match withholding of taxes to the ultimate assessed income tax to their investors. This upstream restructuring will only occur if the Transaction is approved to reduce the withholding tax resulting from the sale of GBH's stock and will have no impact on GBH or any of its subsidiaries, including

991-GA-UNC, Order (Dec. 19, 1996), ¶ 6 (claiming the Commission has jurisdiction under these statutes to ensure the merger is in the public interest).

NEO. As this restructuring will only occur if the Commission approves the Transaction, and because it will not affect GBH's subsidiaries, it should not require any action from the Commission.

V. DESCRIPTION OF UIHH AND ITS EXPERIENCE IN ENERGY AND UTILITY OPERATIONS

13. UIF has prominent experience owning and financing a mixture of energy-related firms. UIF's investment vehicle, of which UIHH is a wholly-owned subsidiary, is a long-term and open-ended investment fund that makes investments in infrastructure businesses that provide essential services to communities, governments, and businesses. UIF was formed in 2012. Since then, UIF has retained sufficient capital, which has allowed it to remain a stable investment fund and make multiple investments in infrastructure businesses. UIF has made 18 investments across the transportation, energy, and utilities sectors in the United States and Canada, providing geographic and sector diversification.

14. UIHH intends to retain the current group of experienced managers within HUI and NEO, along with Luvian Partners at GBH. Luvian Partners, which currently works with HUI management, has an extensive background in operating regulated utilities and is a team of former utility executives with significant experience in operations, finance, regulation, human resources, and M&A, as well as a track record of strong performance in multiple states. The current plan is for the existing HUI management team to continue to provide support services and custodial management of the operations of the regulated utility companies post-Transaction. NEO is expected to continue with the same management and corporate structure. While UIHH and UIF plan to transition over time from a third party executive management firm of HUI to a dedicated, full-time executive management team, no changes in leadership or management that would affect GBH or any of its subsidiaries, including HUI and NEO, are currently expected.

15. The well-qualified management teams at UIF have the experience, human resources, and financial strength necessary to support NEO and the other HUI regulated utilities in their efforts to succeed in a utility environment with competitive market pressures. The Transaction will provide NEO and the other HUI regulated utilities with the stable financial support and managerial experience of a perpetual fund with experience across transportation, energy, and utilities sectors in the United States and in Canada. The Transaction will also support the continued provision of safe, reliable, and adequate utility service in order to ensure customer satisfaction at just and reasonable rates, and the potential for economically viable expansion of services throughout Ohio.

VI. IMPACT OF TRANSACTION ON OHIO CUSTOMERS

16. The Transaction will have no adverse impact on customers in Ohio, since the operation of NEO is not expected to materially change due to the Transaction. There will be no interruption of service to customers, and NEO will continue to provide safe and reliable service to all of its customers. To the extent there are any impacts from the Transaction, the potential impacts will be long-term and beneficial to customers.

17. The Transaction will provide benefits to customers in the following ways:
- a. **National Energy Experience.** UIF and its related entities represent an innovative and diversified holder and manager of energy assets with a demonstrated commitment to infrastructure investment. NEO and other HUI subsidiaries will benefit from UIF's broad energy expertise.
 - b. **Financial Stability.** UIF's investment vehicle is an open-ended investment fund, which means the fund has no termination date and can hold its assets without concern for selling. As a long-term infrastructure investor, UIF will provide stability for the companies it acquires and owns for the foreseeable future. NEO and other HUI subsidiaries will obtain financial stability and other benefits of becoming subsidiaries of a multi-national, broadly diversified equity investment vehicle.

- c. **Access to Capital.** With access to stable capital and additional financial backing from a perpetual investment fund, HUI utilities will be able to expand service to unserved customers and new service territories where economically feasible and appropriate, pursue necessary system upgrades, address any infrastructure replacement, as well as enhance customer service.
- d. **Sound and Proven Utility Expertise.** Through HUI and its management team, UIHH will provide leadership, guidance, and resources necessary to ensure innovation and continuity of best practices for NEO in order to provide safe and reliable service to all customers.

18. Consistent with these benefits, the Transaction will not have any adverse effect on any of NEO's customers or its ability to continue providing reliable service at just and reasonable rates in Ohio. In particular, Applicants make the following commitments:

- a. **No Recovery of Acquisition Premium or Transaction Costs.** NEO will not seek to recover any acquisition premium or transaction costs associated with the Transaction in rates.
- b. **No Immediate Change in Rates and Services to Customers.** NEO will not seek any changes in rates, terms, or conditions of service as a result of the Transaction.
- c. **No Change in Principal Place of Business or Corporate Office.** There will be no change to the principal place of business or corporate office of NEO as a result of the Transaction.
- d. **No Change of Financing Terms.** The Transaction will not change the terms of the Intercompany Agreements executed with HUI by NEO.⁴

19. The efficiencies that attend mergers and acquisitions, and the combined expertise available to NEO's customers after the Transaction, will actualize the full advantages of the increasingly competitive natural gas market to customers.

⁴ Continuation of HUI's current financing will require change of control consent from the current lenders. Such consent is anticipated to be received. In the event such consent is not received and HUI's current financings need to be replaced with new debt facilities, UIHH does not anticipate any changes to the existing, Commission-approved intercompany notes and will commit to maintaining (or reducing) the current quantum and interest rate of the intercompany notes at financial close.

20. Ohio customers will experience no immediate rate or service changes as a result of this Transaction. NEO does not anticipate any material, immediate changes to the rate base, operations, or customer service as a result of the Transaction.

21. NEO also does not anticipate any changes of employment status of utility employees in Ohio as a result of the Transaction.

22. NEO further expects continued compliance with all rules, regulations, and applicable Commission orders.

VII. APPLICANTS' REQUEST FOR EXPEDITED APPROVAL

23. The Applicants do not believe that the Transaction is within the jurisdiction of the Commission. However, out of an abundance of caution and in the interest of transparency, the Applicants are filing this Application to prevent disagreement over jurisdictional issues from delaying the Transaction.

24. The Applicants request that the Commission approve the Transaction without a hearing. Nothing in Title 49 requires the Commission to conduct a hearing in this circumstance, and there is no reason for a hearing in this case. The Transaction will not result in any material changes to the services provided to customers. Accordingly, there is no reason to delay this Transaction with an unnecessary hearing. In fact, the Commission has previously determined that hearings are unnecessary when such transactions will not affect customers' service rates and will not adversely affect the utilities' service or reliability for customers.⁵ The Applicants request

⁵ See, e.g., *In the Matter of the Joint Application of Brainard Gas Corp., Northeast Ohio Natural Gas Corp., Orwell Natural Gas Company, and Spelman Pipeline Holdings, LLC for Approval of a Merger with FR Bison Holdings, Inc. and FR Bison Merger Sub, Inc.*, Case No. 16-2251-GA-UNC, Opinion and Order (June 21, 2017), ¶ 19; *In the Matter of the Application of Ohio Power Co. & Columbus Southern Power Co. for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC, Entry (May 7, 2012), ¶ 37; *In the Matter of the Application of The East Ohio Gas Company and West Ohio Gas Company for Authority to Merge*, Case No. 96-991-GA-UNC, Order (Dec. 19, 1996), ¶ 19 (finding that hearing was not required since Staff and interested parties had been given the opportunity to file written comments).

similar treatment of this Application, and respectfully request that the Commission set this Application for comments and reply comments in lieu of a hearing.

25. The Applicants also respectfully request that the Commission establish a procedural schedule for filing comments so that the Transaction can be completed in a timely manner.

26. Approval of the Transaction on an expedited basis is in the public interest, as it will provide the Applicants with more efficient use of existing financial resources, improve their existing services, facilitate additional focus by management on operational improvements and customer service, and maintain competitive and affordable gas rates for their Ohio customers.

VIII. CONCLUSION

27. Pursuant to R.C. § 4905.04, § 4905.05, and § 4905.06, the Commission has the power to regulate and generally supervise public utilities and to approve on an expedited basis the Transaction in which NEO will become a wholly-owned subsidiary of UIHH.

28. Although the Applicants do not need express approval from the Commission to approve the Transaction, the Applicants, out of an abundance of caution and in the interest of transparency, submit this Application in good faith.

29. The Stock Purchase and Sale Agreement is not projected to have a material impact on customers.

30. The Applicants respectfully request that the Commission waive hearing and instead establish a comment period that would enable the Commission to issue a decision approving the Transaction in the near future, permitting the implementation of the Transaction within 60 days of the date of the order, and grant any and all authority it deems necessary to consummate and fully implement the Transaction as set forth in this Application.

Respectfully submitted,

/s/ N. Trevor Alexander

N. Trevor Alexander (0080713)
Steven D. Lesser (0020242)
Mark T. Keaney (0095318)
Kari D. Hehmeyer (0096284)
BENESCH FRIEDLANDER COPLAN & ARONOFF LLP
41 South High Street, Suite 2600
Columbus, Ohio 43215
Tel: (614) 223-9300
Fax: (614) 223-9330
talexander@beneschlaw.com
slesser@beneschlaw.com
mkeaney@beneschlaw.com
khehmeyer@beneschlaw.com

Attorneys for Northeast Ohio Natural Gas Corp.

/s/ Kodi Jean Verhalen

Kodi Jean Verhalen (#0099831) Counsel of Record*
Elizabeth M. Brama (OH PHV 22090-2021**)*
Taft Stettinius & Hollister LLP
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2157
P: 612.977.8400
F: 612.977.8650
kverhalen@taftlaw.com
ebrama@taftlaw.com

Ina Avalon (#0093575)*
Taft Stettinius & Hollister LLP
200 Public Square, Suite 3500
Cleveland, OH 44114-2302
P: 216.706.3882
F: 216.241.3707
iavalon@taftlaw.com

*Attorneys for Ullico Infrastructure Master Fund, LP
and Ullico Infrastructure Hearthstone Holdco, LLC*

**Counsel willing to accept service via electronic
mail*

***Pro Hac Vice Motion Pending before the Public
Utilities Commission of Ohio*

**Exhibit A
(HUI Current Organizational Chart)**

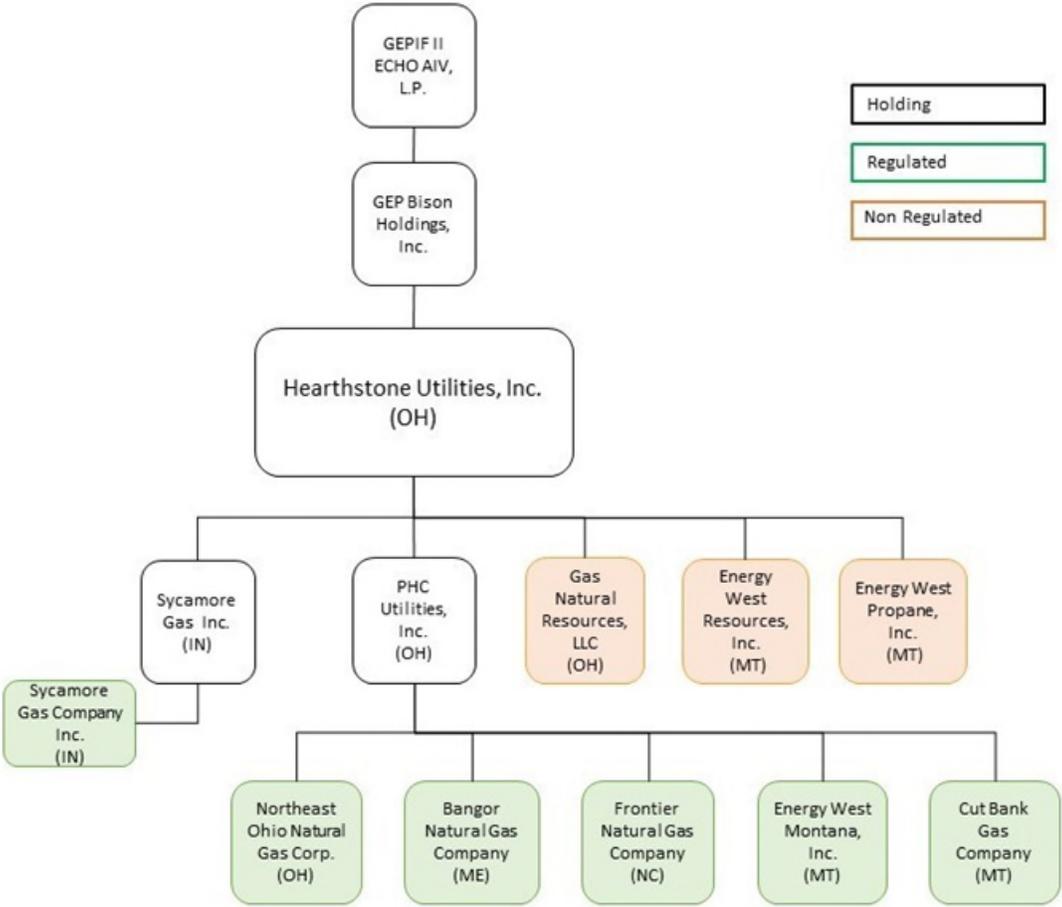
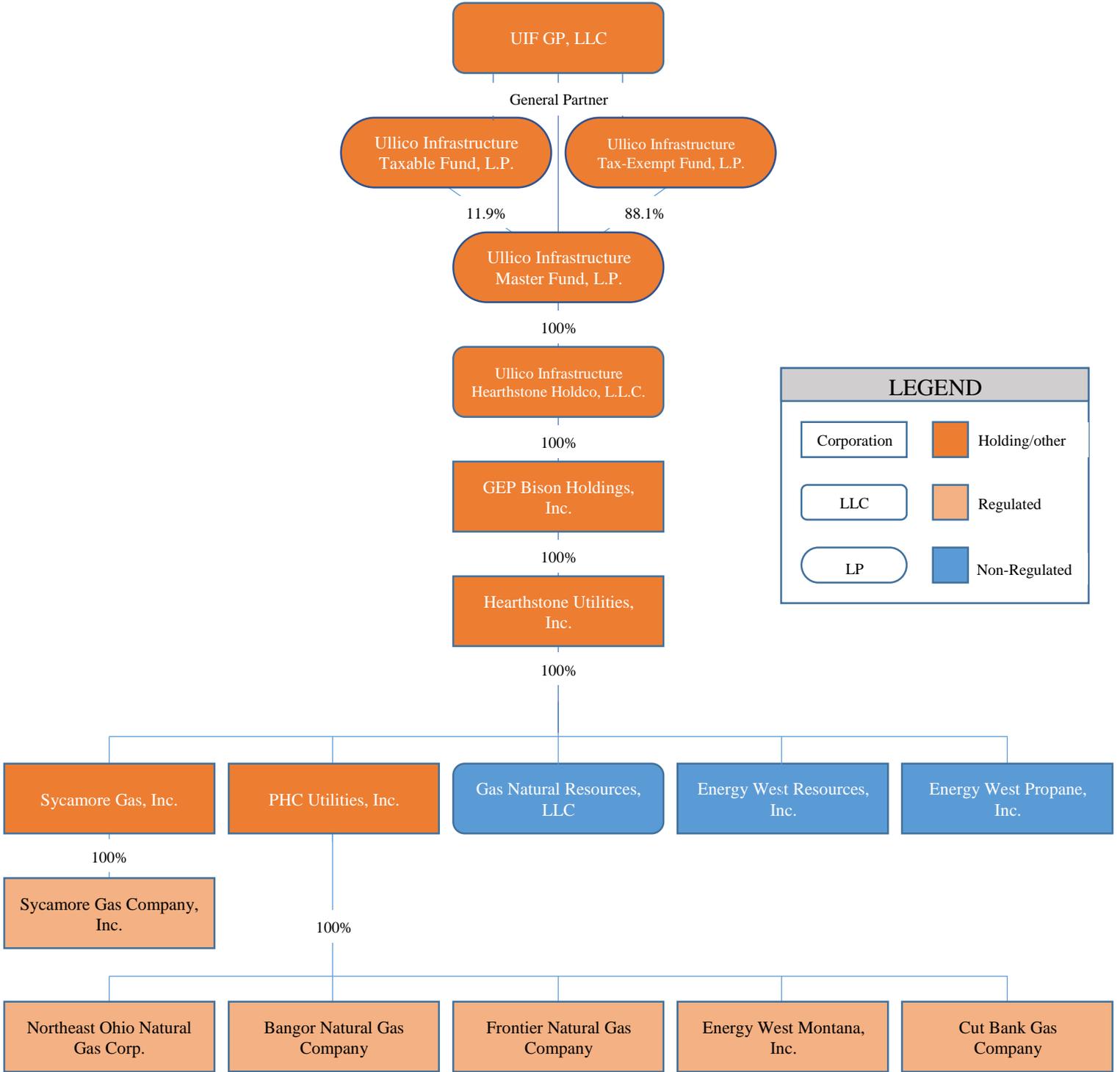


Exhibit B
(Stock Purchase and Sale Agreement)

Filed Separately Under Seal

**Exhibit C
(UIF Portfolio Investment- Hearthstone - Proposed Entity Diagram)**



This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/27/2021 3:12:07 PM

in

Case No(s). 21-0093-GA-UNC

Summary: Application Joint Application of Northeast Ohio Natural Gas Corp., Ullico Infrastructure Master Fund, L.P., and Ullico Infrastructure Hearthstone Holdco, LLC for Approval of the Sale and Transfer of GEP Bison Holdings, Inc. and Request for Expedited Approval electronically filed by Ina Avalon on behalf of Ullico Infrastructure Master Fund, L.P. and Ullico Infrastructure Hearthstone Holdco, LLC