

essential terms of the transaction. NEO has already issued discovery requests seeking answers to these basic questions.

In light of this truly unique application, which seeks to allow a cooperative to unilaterally set transmission rates outside of the jurisdiction of the Commission in a manner which will impact thousands of non-cooperative customers, whose rates will still be ultimately regulated by this Commission, this case should not be rushed through the deliberative process without the opportunity for meaningful development of the facts for the Commission's consideration.

The schedule proposed by the Joint Movants would prejudice NEO and make a complete record impossible to achieve. The Joint Movants request that intervenor comments be filed by August 20, 2021, and then Joint Movants be provided the opportunity to file "reply comments or supplemental testimony" by August 27, 2021. Joint Movants have proposed no limitation on what this testimony could entail, and thus it is likely that Joint Movants could significantly clarify or modify their position through that supplemental testimony in a way which would impact NEO. It would be inappropriate to allow Joint Movants to supplement or revise their testimony after the intervenor comments have been filed because the intervenor comments would no longer be addressing the proposal before the Commission. This would deprive the Commission of the ability to hear from actual customers regarding any final proposal from Joint Movants. As such, NEO requests that the Commission adopt a procedural schedule which allows intervenors to file their comments after Joint Movants' proposal is complete so that intervenor comments can accurately respond to that proposal prior to hearing.

It is also important to also recognize that discovery may be needed based on what Joint Movants propose in their supplemental testimony. For example, if Joint Movants were to provide supplemental testimony which explains how Knox plans to set the rates which will compensate

UPL for the price UPL paid for Cobra's assets, discovery may be needed to help the Commission understand how that rate setting mechanism would operate. It would be prejudicial to intervenors to adopt a procedural schedule which allows new supplemental testimony to be filed without providing intervenors the opportunity to pursue any appropriate discovery which may be necessitated by that supplemental testimony. NEO therefore respectfully requests that if the Commission allows Joint Movants to supplement their testimony that the Commission order expedited discovery and a reasonable period in which NEO could conduct discovery before intervenor comments are filed and hearing.

Finally, Joint Movants' Motion makes extensive reference to the schedule anticipated in the Application in requesting a hearing by no later than September 3, 2021. That schedule is not binding on the Commission. The actions of the Joint Movants also call into question the need to issue a decision as quickly as suggested by Joint Movants. Specifically, the bankruptcy proceeding was filed on September 25, 2019.² The motion to sell Cobra was not filed until March 5, 2021, and the Auction Procedures Order was approved on April 8, 2021. The auction took place on June 15, 2021 and resulted in a bid of \$3,550,000.00, well above the approximately \$1.9 million owed to Cobra's primary creditor.³ The Asset Purchase Agreement anticipates closing after receipt of Commission approval or after Cobra or UPL terminates the transaction if Commission approval has not been received by January 31, 2022.⁴ Thus, the process designed to maximize value to creditors took just under two years to complete and authorizes termination in early 2022.

The Application was filed less than a month ago on July 16, 2021. The Application does not merely seek approval of the purchase of Cobra's assets, but also seeks approval of the transfer

² Northern District of Ohio Bankruptcy Court, Bankruptcy Petition# 19-15961; *see also*, Application pp. 6-7.

³ Application pp. 6-8.

⁴ Application p.7.

of Cobra from UPL to Knox, which Joint Movants claim would forever take those assets beyond the jurisdiction of the Commission.

There is no reason the Commission must issue an order in this case on that accelerated timeline. Joint Movants made the strategic choice to combine the purchase of Cobra's assets and the transfer of those assets from a for-profit entity like UPL to a cooperative into one case. This transaction could easily have been split into two proceedings by UPL, who is an experienced owner and operator of regulated and unregulated natural gas utilities in Ohio with extensive experience transferring formerly regulated utilities to cooperative utilities managed by UPL.⁵

Joint Movants' choice to pursue two simultaneous approvals impacting thousands of customers does not alleviate the need for the Commission's review of each transaction. NEO respectfully requests that the impact of this transaction on thousands of NEO customers deserves at least as much consideration as was spent in maximizing the value of Cobra's assets for creditors. Therefore any argument that the Commission must proceed to hearing as quickly as requested by Joint Movants is belied by the time taken by Joint Movants in maximizing the value at sale through adequate time and in requesting the transfer to Knox as part of this proceeding.

Therefore, NEO respectfully requests that the Joint Movants' motion be denied. Any schedule adopted in this proceeding should: (1) allow intervenors to file their comments after Joint Movants' proposal is complete so that the comments respond to Joint Movant's final position; (2) reject the request for a hearing by no later than September 3, 2021 and instead order expedited discovery and a reasonable period for discovery prior to hearing; and (3) establish a procedural

⁵ See *In the Matter of the Joint Application of Eastern Natural Gas Company and Village Energy Cooperative Association, Inc. to Substitute Natural Gas Service and Transfer Assets and Customers*, Case No. 18-369-GA-ATR, Finding & Order dated September 23, 2020 (denying application by UPL to transfer a regulated utility owned by UPL to a cooperative utility managed by UPL).

schedule for this proceeding which allows for adequate Commission review as was conducted in *Eastern Natural Gas Co.*, Case No. 18-369-GA-ATR.

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 6th day of August, 2021. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

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Summary: Memorandum in Opposition to Joint Motion for a Supplemental Procedural Schedule electronically filed by Sarah Siewe on behalf of Northeast Ohio Natural Gas Corp.