

# 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.,  
ULLICO INFRASTRUCTURE  
HEARTHSTONE HOLDCO, LLC FOR  
APPROVAL OF THE SALE AND TRANSFER  
OF GEP BISON HOLDINGS, INC. AND  
REQUEST FOR EXPEDITED APPROVAL.

CASE NO. 21-93-GA-UNC

## FINDING AND ORDER

Entered in the Journal on August 25, 2021

### I. SUMMARY

{¶ 1} The Commission adopts the stipulation and recommendation submitted by Northeast Ohio Natural Gas Corp., Ullico Infrastructure Master Fund, L.P., Ullico Infrastructure Hearthstone Holdco, LLC, and Staff regarding the request for approval of the sale and transfer of GEP Bison Holdings, LLC.

### II. PROCEDURAL BACKGROUND

{¶ 2} Northeast Ohio Natural Gas Corp. (NEO) is a public utility and natural gas company as defined in R.C. 4905.02 and 4905.03(E), respectively, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} Pursuant to R.C. 4905.04, 4905.05, and 4905.06, the Commission is vested with the power and jurisdiction to supervise and regulate public utilities.

{¶ 4} On January 27, 2021, NEO (together with its parent company Hearthstone Utilities, Inc., (HUI)), Ullico Infrastructure Master Fund, L.P. (together with its general partner UIF GP, LLC, collectively referred to herein as "UIF"), and Ullico Infrastructure Hearthstone Holdco, LLC (UIHH) (collectively referred to herein as "Applicants") filed a joint application (Application) with the Commission seeking expedited approval 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.

{¶ 5} Along with the Application, Applicants also filed, on January 27, 2021, a motion for protective order in which Applicants sought confidential treatment of the Stock Purchase and Sale Agreement (Sale Agreement) between the parties that was attached to the Application as Exhibit B, as well as a motion to appear pro hac vice filed by counsel for Ullico Infrastructure Master Fund, L.P.

{¶ 6} On February 19, 2021, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene in this proceeding on behalf of the 28,000 residential utility customers of NEO who may be affected by the merger.

{¶ 7} On July 13, 2021, Staff filed its review and recommendation of the Application (Review and Recommendation).

{¶ 8} By Entry issued on July 29, 2021, the attorney examiner granted the motion to appear pro hac vice, granted OCC's motion to intervene, and directed Applicants to file on this docket a copy of the Sale Agreement that contains more tailored redactions for the purpose of shielding confidential business information and trade secrets.

{¶ 9} Applicants filed a redacted copy of the Sale Agreement on August 3, 2021, and by Entry issued on August 9, 2021, the attorney examiner granted the motion for protective order.

{¶ 10} On August 12, 2021, Applicants and Staff jointly filed an Unopposed Stipulation and Recommendation (Stipulation) which adopts the findings and recommendations of Staff's Review and Recommendation and which they believe resolves all issues in this proceeding. In the Stipulation, Applicants and Staff represent that OCC does not oppose the Stipulation.

{¶ 11} On August 13, 2021, NEO filed the direct testimony of Ken Oostman, the President of NEO, in support of the Stipulation (Testimony).

### III. REVIEW OF THE APPLICATION AND PROPOSED STIPULATION

{¶ 12} As explained in the Application, NEO is owned by its parent company, PHC Utilities, Inc. (PHC), a wholly owned subsidiary of HUI. HUI is, in turn, 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. An organizational chart outlining this ownership structure is attached to the Application as Exhibit A. (Application at ¶ 2-4, Ex. A.)

{¶ 13} Applicants further explain that 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 subsidiaries operate, and do not make operational, regulatory, or financial decisions for any of the operating utilities they hold. HUI, which Applicants state is not regulated by the Commission or subject to its jurisdiction, does have employees which are actively engaged in providing services and oversight for its subsidiary utilities, including NEO. (Application at ¶ 5.)

{¶ 14} Applicants seek Commission approval of a transaction in which UIHH, a wholly owned subsidiary of Ullico Infrastructure Master Fund, L.P., is acquiring HUI parent company GBH, such that HUI and its subsidiaries will become wholly owned subsidiaries of UIHH. While there may be some restructuring in the infrastructure fund that owns GBH, Applicants assert that GBH and HUI and all of its subsidiaries, including PHC and NEO, will remain as currently structured. A diagram of the proposed post-transaction entity structure, including the upstream ownership of UIHH and the proposed downstream ownership of GBH and its wholly owned subsidiaries, is attached to the Application as Exhibit C. (Application at ¶ 9-12, Exs. B and C.)

{¶ 15} Applicants highlight that UIF has extensive experience owning and financing

a mixture of energy-related firms and that its 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. Upon approval of the transaction, UIHH intends to retain the current group of experienced managers within HUI and NEO, along with Luvian Partners at GBH. 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 after approval of the 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, they currently expect no changes in leadership or management that would affect GBH or any of its subsidiaries, including HUI and NEO. (Application at ¶ 13-14.)

{¶ 16} Applicants assert that the transaction will have no adverse impact on Ohio customers because the operation of NEO is not expected to materially change. Applicants state that there will be no interruption of service and that NEO will continue to provide safe and reliable service to customers. Applicants believe that the transaction will result in long-term benefits to customers, such as: the addition of UIF's national energy expertise; the financial stability of UIF's investment vehicle; access to stable capital and additional financial backing from a perpetual investment fund; and the proven leadership and guidance of UIHH. (Application at ¶ 16-17.)

{¶ 17} Further, Applicants state that the transaction will have no adverse impact on any of NEO's customers or its ability to provide reliable service at just and reasonable rates. In support of this, Applicants made the following commitments: no recovery of acquisition premium or transaction costs; no immediate change in rates and services to customers; no change in the principal place of business or corporate office of NEO; and no change in financing terms between HUI and NEO, except for change of control consents necessary from current lenders. (Application at ¶ 18.)

{¶ 18} In Staff's Review and Recommendation, filed on July 13, 2021, Staff found that the proposed transaction does not appear to be harmful to the public interest, given the affirmative commitments made by Applicants. Staff stated, however, that it was unable to quantify the full economic impact of the benefits alleged in the Application and, therefore, did have a concern about a potential increase in financial pressure that may be placed on NEO and its utility affiliates to provide dividend support for incremental debt servicing requirements associated with the transaction in addition to equity return requirements. Based upon this concern, Staff provided four conditions which it recommends be adopted as part of any Commission approval in order to protect NEO and its customers. Subject to the adoption of these conditions, Staff concluded that the proposed transaction does not appear harmful to the public interest and should not adversely impact Ohio customers. (Staff Review and Recommendation at 3-4.)

{¶ 19} The Stipulation, filed on August 12, 2021, fully adopts the conditions recommended by Staff and, in the opinions of Applicants and Staff, resolves all issues raised in this case. Further, while OCC is not a signatory to the agreement, Applicants and Staff represent that OCC indicated that it is not opposed to the Stipulation. The following is a summary of the conditions agreed to by Applicants and Staff; it is not intended to replace or supersede the Stipulation:

- A. Recommendation 1: NEO shall not make dividend distributions that exceed net income within any given calendar year. Furthermore, NEO shall not exceed a dividend payout ratio above 80 percent of annual net income unless NEO's retained earnings balance is positive, unless otherwise permitted by the Commission.
- B. Recommendation 2: Any cost saving efficiencies resulting from the transaction shall flow back to NEO customers on a proportionate basis when compared to other HUI utility affiliates. These cost saving

efficiencies should be identified, quantified, and recognized for the benefit of consumers during NEO's next base rate case.

- C. Recommendation 3: NEO will not seek to collect any acquisition premium, incremental debt, or transaction costs associated with the transaction, in rates charged to customers. All transaction costs, incremental debt, and any acquisition premium will be the financial burden of UIF and/or HUI, and Ullico Infrastructure Master Fund, L.P. together with its general partner UIF and/or HUI. The balance sheet and financial metrics of NEO shall not decline as a result of the transaction.
- D. Recommendation 4: The decision in this case shall have no impact on past financing<sup>1</sup> and merger<sup>2</sup> cases relating to NEO. Applicants, as well as any successor entities, agree to maintain adherence to and be bound by those conditions unless otherwise modified by the Commission.

(Stipulation at 1-3.)

#### IV. CONSIDERATION OF THE STIPULATION

{¶ 20} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are afforded substantial weight, particularly where the stipulation is unopposed by any party and resolves all issues in the proceeding. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978).

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<sup>1</sup> See *In re Joint Application of Brainard Gas Corp., Northeast Ohio Gas Corp., Orwell Natural Gas Company, and Spelman Pipeline Holdings, LLC for Approval of Long-Term Debt Financing Arrangements and Approval of Corporate Reorganization and Potential Merger*, Case No. 16-354-GA-AIS, et al., Opinion and Order (Aug. 31, 2016).

<sup>2</sup> See *In re 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, Finding and Order (June 21, 2017).

{¶ 21} The Commission has established a three-part test in considering whether a stipulation is reasonable and should be adopted:

- a. Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- b. Does the settlement, as a package, benefit ratepayers and the public interest?
- c. Does the settlement package violate any important regulatory principle or practice?

{¶ 22} The Supreme Court of Ohio has endorsed the Commission's use of these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. In determining the reasonableness of a stipulation, the Commission should consider the agreement as a package. *In re Ohio Edison Co., et al.*, Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (Oct. 12, 2016) at 99-100.

{¶ 23} Mr. Oostman offered his Testimony in support of the Stipulation and to explain how the Stipulation meets the criteria used by the Commission when considering stipulated agreements. Mr. Oostman is the President of NEO and is responsible for all aspects of NEO's strategies, operations, personnel, compliance, and financial health. (Testimony at 2-3.) Mr. Oostman testified that, after Staff's Review and Recommendation was filed, Applicants, Staff, and OCC engaged in settlement discussions to address the conditions proposed by Staff (Testimony at 3). Mr. Oostman further testified that the Stipulation is a comprehensive resolution that settles all of the issues raised in the proceeding and reiterates that OCC indicated that it does not oppose the Stipulation. Mr. Oostman points out that Applicants, Staff, and OCC have experience in participating in

proceedings before the Commission and were represented by counsel and technical experts during their discussions. In the opinion of Mr. Oostman, the Stipulation is, therefore, the product of an open negotiating process between knowledgeable and experienced entities and represents a fair and reasonable compromise among the parties. Mr. Oostman testified that the Stipulation violates no important regulatory principle or practice, but instead furthers Commission principles such as financial stability and ensuring that utilities recover only appropriate costs from customers. (Testimony at 3, 5.) Finally, Mr. Oostman testified that the Stipulation benefits customers by memorializing an unopposed agreement that incorporates conditions intended to protect ratepayers, including, among other things, restricting NEO's ability to pass costs of the transaction on to customers and leaving past Commission-approved financing and merger commitments in place. According to Mr. Oostman's testimony, no members of the public filed opposition to Applicants' original proposal and he believes that the conditions of the Stipulation are even more advantageous to customers than the original proposal. (Testimony at 5-6.)

*A. Is the settlement a product of serious bargaining among capable, knowledgeable parties?*

{¶ 24} Mr. Oostman testified that the Stipulation is the product of serious negotiations among Applicants, Staff, and OCC, all of which have extensive history and experience in Commission matters (Testimony at 5). The Commission agrees with this assessment and acknowledges that all parties to this case are experienced in these particular matters and are represented by knowledgeable counsel and experts. Further, while OCC is not a signatory to the Stipulation, the Commission notes the representation made in both the Stipulation and Mr. Oostman's Testimony that OCC has indicated that it does not oppose the Stipulation. Upon review of the record, the Commission finds that the first prong of the three-part test for reasonableness of a stipulation is met.

*B. Does the settlement, as a package, benefit ratepayers and the public interest?*



{¶ 25} In its Review and Recommendation, Staff noted that it had concerns that the transaction might create a potential increase in financial pressure on NEO and its utility affiliates to provide dividend support for incremental debt servicing requirements associated with the transaction in addition to equity return requirements. Due to these concerns, Staff provided four conditions which it recommended be adopted as part of any Commission approval of the proposed transaction. (Review and Recommendation at 3-4.) The Stipulation fully adopts Staff's recommendations, which places appropriate limits on NEO and should ultimately result in customers receiving the benefit of any cost savings from the transaction. Additional conditions in the Stipulation that restrict NEO from passing any transaction costs on to customers, limit dividend issuance by NEO, and contain a pledge by NEO to leave in place previously approved financing and mergers, will further protect customers. (Stipulation at 3.) With these conditions in place, the Commission believes that NEO and, in turn, its customers, can then benefit from the national energy expertise and financial resources of NEO's new parent companies. Further, as Mr. Oostman testified, the Stipulation advances the public interest by efficiently resolving all of the issues related to the Application in an unopposed agreement (Testimony at 5). Accordingly, upon review of the record, the Commission finds that the second prong of the three-part test for stipulations has been met.

*C. Does the settlement violate any important regulatory principle or practice?*

{¶ 26} Mr. Oostman testified that the Stipulation does not violate any important regulatory principle or practice. According to his Testimony, the Stipulation actually furthers important Commission principles such as financial stability and ensuring that only appropriate costs are recovered from customers. (Testimony at 5.) No party has offered evidence to refute these statements or to allege that the Stipulation violates any important regulatory principles. Accordingly, the Commission finds that the third prong of the three-part test for the reasonableness of a stipulation has been met and, thus, the Stipulation should be approved.

**V. ORDER**

{¶ 27} It is, therefore,

{¶ 28} ORDERED, That the Stipulation submitted in this case be approved and adopted in its entirety. It is, further,

{¶ 29} ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any future investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 30} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

COMMISSIONERS:

*Approving:*

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

DMH /kck

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Summary: Finding & Order adopting the stipulation and recommendation submitted by Northeast Ohio Natural Gas Corp., Ullico Infrastructure Master Fund, L.P., Ullico Infrastructure Hearthstone Holdco, LLC, and Staff regarding the request for approval of the sale and transfer of GEP Bison Holdings, LLC. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio