

McGuireWoods LLP
201 North Tryon Street
Suite 3000
Charlotte, NC 28202-2146
Phone: 704.343.2000
Fax: 704.343.2300
www.mcguirewoods.com

James H. Jeffries IV
Direct: 704.343.2348

McGUIREWOODS

jjeffries@mcguirewoods.com

November 29, 2021

VIA ELECTRONIC FILING

Ms. Antonia Dunston
Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street, Dobbs Building
Raleigh, North Carolina 27603

Re: Docket No. G-40, Sub 160

Dear Ms. Dunston:

Pursuant to Ordering Paragraph No. 7 of the Commission's Order Approving Merger Subject to Regulatory Conditions, issued in this docket on November 22, 2021, Frontier Natural Gas Company respectfully submits orders related to the Merger issued by the state commissions in Montana, Ohio, and Maine.

Thank you for your assistance with this matter. If you have any questions regarding this filing, you may reach me at the number shown above.

Sincerely,

/s/ James H. Jeffries IV
James H. Jeffries IV

JHJ/rkg

Enclosures

cc: All Parties of Record
Elizabeth Culpepper
Fred Steele
Amy Brown

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the attached is being served this date upon all of the parties to this docket electronically or by depositing a copy of the same in the United States Mail, First Class Postage Prepaid, at the addresses contained in the official service list in this proceeding.

This the 29th day of November, 2021.

/s/ Richard K. Goley
Richard K. Goley

Montana Public Service Commission

Service Date: November 5, 2021

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

| | | |
|---|---|------------------------|
| IN THE MATTER OF the Joint Application |) | REGULATORY DIVISION |
| by Energy West Montana, Inc. and Cut Bank |) | |
| Gas Company for Approval of the Sale and |) | DOCKET NO. 2021.01.015 |
| Transfer of Stock |) | ORDER NO. 7775d |

FINAL ORDER

PROCEDURAL HISTORY

1. On January 27, 2021, Energy West Montana, Inc. (“EWM”) and Cut Bank Gas Company (“CBGC”), together with their parent company Hearthstone Utilities, Inc. (“HUI”), and Ullico Infrastructure Master Fund, LP (“Ullico Master Fund”) and its general partner, UIF GP, LLC, (“UIF”) requested the Montana Public Service Commission (“Commission”), to approve the sale and transfer of HUI and its subsidiaries to wholly-owned subsidiaries of Ullico Master Fund (“Application” and “Joint Applicants”).

2. On February 9, 2021, the Commission issued a Notice of Application and Intervention Deadline, establishing March 4, 2021, as the date to intervene. The Commission subsequently granted the Montana Consumer Counsel petition for intervention on March 17, 2021.

3. On March 18, 2021, the Commission issued Procedural Order 7775, which established a variety of procedural and substantive deadlines for this docket, which was subsequently amended on July 8, 2021.

4. On July 26, 2021, the Commission received a Stipulation from the Joint Applicants and the MCC, resolving all contested issues of fact and law in this docket.

5. On August 6, 2021, the Commission rescinded the remaining procedural deadlines in the docket, and on September 21, 2021, the Commission held a question and answer session with counsel for the Joint Applicants and the Montana Consumer Counsel on the Stipulation.

6. During a regularly scheduled work session on October 26, 2021, the Commission approved the Application, as discussed below.

STANDARD OF REVIEW

7. The Commission employs three standards in evaluating public utility sales, mergers, and acquisitions: the public interest standard, the no-harm-to-consumers standard, or the net-benefit-to-consumers standard. *Joint Application of NorthWestern Corp. to Babcock & Brown Infrastructure Ltd.*, Docket D2006.6.82, Order No. 6754e, ¶ 35 (July 31, 2007). The Commission’s task includes assuring “generally that utility customers will receive adequate service and facilities, that utility rates will not increase as a result of the sale or transfer, and that the acquiring entity is fit, willing, and able to assume the service responsibilities of a public utility.” *In re Joint Application of Energy West Inc. and Cut Bank Gas Co.*, Docket No. D2008.3.27, Order No. 6907b, Conclusions of Law ¶ 6 (Nov. 2, 2009). The Commission has not enunciated a specific standard for approval, recognizing it “may be impossible to enunciate a general standard that is applicable in all cases.” *Id.* ¶ 17.

FINDINGS OF FACT

I. The Joint Application

8. EWM and CBGC are natural gas local distribution companies and public utilities which purchase, distribute, and sell natural gas for Montana customers. App. at 1. Their service territories include Great Falls, West Yellowstone, Cut Bank, and surrounding areas. In 2016 the Commission approved the acquisition of Gas Natural, Inc. (which owned EWM and CBGC at the time), by FR Bison Holdings, Inc. *In re EWM-CBGC Sale and Transfer*, Dkt. D2016.2.17, Order 7478a (Sept. 13, 2016). FR Bison Holdings is owned by an investment management subsidiary of BlackRock, Inc., and subsequently changed its name to GEP Bison Holdings, Inc. (“GBH”), and changed Gas Natural, Inc.’s name to Hearthstone Utilities, Inc. (“HUI”).

9. As a subsidiary of GBH, HUI is a holding company which owns several utilities that serve approximately 82,000 customers in several states, including Indiana, Montana, North Carolina, Ohio, and Maine. App. at 2. HUI also owns several lines of business which are not regulated by state utility commissions. *Id.* One of HUI’s intermediary holding companies includes PHC Utilities, Inc., which is the direct owner of EWM and CBGC. Both PHC and GBH are intermediary holding companies which do not have employees, do not provide utility service in any state, and do not make operational, regulatory, or financing decisions for the companies which are structured beneath them, including EWM and CBGC. *Id.* at 3. In previous cases, the

Commission required EWM and CBGC to request Commission approval prior to the sale-and-transfer of EWM and CBGC, including their upstream owners for future transactions. Order 7478a, ¶ 36.

10. In this case, GBH's controlling owner entered into a Stock Purchase and Sale Agreement with a UIF subsidiary, to sell GBH and its portfolio of natural gas local distribution companies and public utilities to UIF (which for Montana includes HUI, EWM, and CBGC). App. at 3.

11. UIF is a subsidiary of Ullico, a conglomerate insurance and investment fund, which as recently as 2012 began purchasing or investing in public utilities. Dir. Test. Axter, at 3 (Jan. 27, 2021). UIF is financed by both internal funds from Ullico operations, in addition to commitments from external sources. As of the date of the filing this Joint Application, UIF has \$3.26 billion in available investment capital, with \$2.34 billion invested in various projects, and \$918 in uncommitted capital. *Id.* at 10. UIF has completed 18 transactions, intends to remain invested for the long-term regarding its utility assets, and has only exited two of its transactions, which it represents "were the result of decisions that were driven by the majority partner in each case," and not a result of UIF's decisions. *Id.* at 4.

12. Post-closing, EWM and CBGC will continue to operate with substantially the same corporate structure, with UIF as the parent instead of BlackRock.

13. UIF notes that while it could finance the acquisition with equity, it plans to fund ownership of HUI with both equity (uncommitted available capital funds), debt (through the sale of investment grade private placement notes by HUI), and continuing HUI's current financial obligations (outstanding debt obligations with TIAA/Nuveen and Bank of America). *Id.* at 10–11. Axter notes that this combination of financing "creates better alignment among utility stakeholders such that it leaves UIF with more available capital to continue to invest in HUI and its subsidiaries as needed in the future, promotes a long-term investment horizon consistent with the term of the debt, and creates added focus for the investors with the need to continue to implement best practices and effectively manage the enterprise in order to maintain an investment grade rating." *Id.* at 11.

14. The Joint Applicants argue that this transaction satisfies the Commission's various sale and transfer standards. For example, the application that the transaction will not harm customers. The Transaction "creates no risk of increased rates to customers as a result of the change in ownership" because "none of the acquisition premium paid for GBH will be recovered from EWM's or CBGC's customers," and UIF "has no intention to modify the existing regulatory accounting and cost allocation methods" currently in place, and the Transaction "will not change HUI's ability to continue to loan to the utilities based on the terms of the Intercompany Agreements executed by EWM or CBGC, nor will it result in any increase in the debt of EWM, CBGC, or HUI's other operating regulated or unregulated subsidiaries." App. at 5.

15. The applicants also argue that the transaction is in the public interest. They note that UIF is a "committed and diversified holder of energy assets with a demonstrated focus on infrastructure investments" which will provide various benefits to EWM and CBGC. *Id.* at 6. For example, they note that because UIF is an open (as opposed to closed) investment fund, it has strong incentives to hold assets like EWM and CBGC "without concern for selling an investment within a prescribed time period." *Id.* This ensures that UIF "is a long-term infrastructure investor that will provide stability for the companies it acquires and owns for the foreseeable future." *Id.* They also argue that this transaction is in the public interest because EWM and CBGC "will obtain financial stability and other benefits of becoming subsidiaries of a broadly diversified equity investment vehicle," in addition to a variety of other benefits, including energy experience, financial stability, access to capital, and sound and proven utility experience. *Id.* at 6–7.

16. The applicants also argue that the transaction will provide net benefits to customers. For example, because UIF "is interested in pursuing growth in customer and volumes served, fixed costs of the utilities should be spread over a larger base over time," and EWM and CBGC "will also benefit from access to capital for the build out and upgraded maintenance of the distribution system." *Axter Test.* at 19. This is addition to a "more enhanced leadership group" which UIF asserts will "provide significant future benefits to customers and help create our identity as a leader in innovation." *Id.*

II. Status in Other Jurisdictions

17. Because the transaction involves multiple public utilities, the transaction is subject to approval in various jurisdictions, including Maine, North Carolina, and Ohio. App. at 8. To date, the transaction has been approved by the Maine and Ohio Commissions. The North Carolina Commission has yet to make a decision on the transaction.

18. On June 9, 2021, a Hearing Examiner from the Maine Commission issued an Examiner's Report, which recommended the Maine Commission deny the transaction. *In re Bangor Natural Gas Company*, Dkt. 2021-00019, Examiners' Report (Jun. 9, 2021). This recommendation was based on the failure to demonstrate that the transaction would "serve the interest" or provide "net benefits" to customers, nor would it "ensure that certain conditions are met with regard to the utility's financial capability and the Commission's ability to effectively regulate the utility." *Id.* at 24–37. After the Examiners' Report was issued, the parties filed a stipulation, which included a variety of additional commitments including a \$300,000 bill credit, a most-favored nations provision which permits the Maine Commission to adopt additional commitments made by UIF in other jurisdictions regarding this transaction (Montana, Ohio, and North Carolina), and an early exit fee of \$200,000 if UIF divests within 10 years of closing. The Maine Commission subsequently reviewed and approved this settlement on July 28, 2021. Order Approving Stipulation and Reorganization (Jul. 28, 2021).

19. On August 17, 2021, the parties submitted a proposed order to the North Carolina Commission, which has not yet been acted on by the Commission. *In re Frontier Natural Gas Co.*, Dkt. G-40, Sub 160, Proposed Order (Aug. 17, 2021). The proposed order included several provisions, including a bill credit of \$200,000 to customers, typical ring-fencing and dividend restriction requirements, and continued oversight and regulation of the utilities post-closing. *Id.*

20. On August 25, 2021, the Ohio Commission approved the transaction, after receiving an all-issue, all-party settlement which resolved all the contested issues in the docket. This approval included several provisions, including several upstream dividend restrictions; requirement for cost-savings to accrue to utility customers; that acquisition premiums, financing, and transaction costs will not be recovered from customers; and several retroactivity prohibitions. *In re. Ohio Natural Gas Corp.*, Case No. 21-93-GA-UNC, Finding and Order (Aug. 25, 2021).

III. The Stipulation and Settlement Agreement

21. The stipulation generally addresses seven issues, and discusses the modified ring-fencing provisions and relating conditions contained in Exhibit A of the Stipulation.

22. The parties stipulate that “the Regulatory Conditions approved in Order No. 7534e in Docket No. D2016.11.91 and the Modified Ring-Fencing provisions approved in Order No. 7478a in Docket No. D2016.2.17 shall be continued and shall remain in full force and effect, as updated and modified to reflect the ownership change following the Transaction. The Ring-Fencing Provisions and Regulatory Conditions to apply after the Transaction consideration and incorporation into the final order for this matter. Stip. at 1–2, (a).

23. The Commission notes that these Ring Fencing Provisions and Regulatory Conditions retain the Commission’s continued regulatory oversight and ability to monitor the financial health of EWM and CBGC, and the ability to monitor transactions between PHC, HUI, UIF, or other UIF subsidiaries.

24. For example, the agreed upon provisions retain the Commission’s ability to review EWM and CBGC’s operating and financial conditions, account procedures, and financial books. This extends to all transactions and affiliated interests beyond EWM and CBGC, and extends to PHC, UIF, or other UIF subsidiaries. This includes access to all stock, bond, or bond rating analyses of UIF, even if only indirectly pertaining to EWM and CBGC. The provisions also provide that EWM and CBGC will not be under pressure to provide dividend support to the parent Companies at the cost of Montana rate payers or harm to the financial health of EWM and CBGC. These provisions resulted from previous Commission dockets regarding EWM and CBGC, which involved more contested issues (Dockets D2016.2.17 and D2016.11.91).

25. On balance, the Commission concludes that these provisions are reasonable and represent a comprehensive set of protections which ensure that post-closing, EWM and CBGC are left in largely the similar regulatory position as currently exists, just with different upstream owners. This would support a finding that the transaction satisfies the public interest standard or the no-harm-to-customers standard.

26. The parties also stipulate that the Joint Applicants “agree to a one-time bill credit of \$125,000 for all customers of EWM and CBGC to be distributed through a mechanism negotiated with the MCC.” Stip. at 2, (b).

27. The Commission notes that this one-time bill credit is similar to the bill credit which other jurisdictions have considered and approved (Maine and Ohio). While the Commission does not have specific regulations regarding how to evaluate whether a transaction satisfies the Commission's sale-and-transfer standard of decision, but-for this transaction, customers would not benefit from a \$125,000 bill credit. This credit would support a finding that the transaction satisfies the net-benefit-to-customers standard.

28. To prevent misunderstanding and ensure transparency and effective Commission oversight, the Commission requires the parties to submit a compliance filing within 60 days from the issuance of the Final Order in this proceeding, which describes the mechanisms of the bill credit and how it will be credited to customers.

29. The parties also stipulate that the Joint Applicants "agree not to seek approval for an infrastructure investment recovery rider outside of a general rate case. Stip. at 2, (c).

30. The Commission is not obligated to approve any infrastructure investment recovery rider regardless of this provision. In addition, the agreement of the parties not to pursue a recovery rider provides ratepayers the cost savings of such a filing, and this provision aligns with the Commission's general policies of disfavoring single-issue ratemaking, and of attempting to establish rates based on the matching principle. This provision, while not relevant to this transaction per se, generally supports a Commission finding that the transaction satisfies the public interest, and the net benefit and no harm to customers standards.

31. The parties also stipulate that the Joint Applicants "agree not to file a general rate case prior to January 1, 2024." *Id.*

32. This provision provides ratepayers the cost savings of avoiding such a filing, in addition to avoiding a rate increase which could result from the reorganization. This allows the Joint Applicants a period of time to conclude the transaction, and potentially demonstrate the benefits of the sale prior to bringing a rate case before the Commission. This provision, again while not relevant to this transaction per se, generally supports a Commission finding that the transaction satisfies the public interest, and the net benefit and no harm to customers standards.

33. The parties also stipulate that the MCC "agrees not to oppose the filing of a stand-alone/single-issue proceeding (i.e., not a general rate case) to address federal income tax changes, if any, prior to 2024," however the MCC "reserves the right to review and dispute

specific calculations of any such changes and to address how any such changes may be reflected in rates if approved by the Commission.” Stip. at 2, (d).

34. This provision, again while not relevant to this transaction per se, generally supports a Commission finding that the transaction satisfies the public interest. Public utilities like EWM and CBGC are entitled to recover their federal corporate income tax from customers on a dollar-for-dollar basis. If the federal corporate income tax rate increases or decreases prior to 2024, the utilities should be permitted or required to adjust rates to reflect then-current corporate income tax rates. To prohibit the utilities from doing so would not be in the public interest, because it would either create liquidity concerns for the utility (in the event income tax rates go up, but not customer rates), or overearning concerns for the utility (in the event income tax rates go down, but not customer rates). Regardless this provision, the Commission would still retain the ability to initiate a docket on any changes to the federal corporate income tax rate, similar to what occurred in 2017 after the result of the passage of the Tax Cut and Jobs Act, (“TCJA”).

35. The parties also stipulate that the Joint Applicants “agree to an exit fee of \$200,000 in the form of a customer refund if UIF sells the majority of its interest in HUI or its subsidiaries within 10 years of approval of the Transaction.” Stip. at 2, (e).

36. Companies must seek Commission approval of all sales and transfers of regulated utilities. While this exit fee provides a certain incentive against UIF divestiture, given the financial resources available to UIF, \$200,000 is not monetarily constrictive enough that it would materially factor into a decision of whether UIF wanted to sell EWM and CBGC. However, the exit fee will benefit customers in the event that does occur, even if immaterially, and is a good-faith representation from UIF regarding its intention to remain committed to long-term investments, including ownership of EWM and CBGC. On balance, this condition marginally supports the Commission’s public interest standard.

37. On balance, the Commission concludes that the stipulation requires additional conditions for the Commission to conclusively determine that the proposed transaction satisfies the Commission’s sale-and-transfer standards. The Commission therefore approves this Joint Application based on the Joint Stipulation, and further conditions approval on the following terms.

38. The Commission requires a Most-Favored Nations provision, similar to what the Maine Commission required: The Commission may, after providing notice and an opportunity for the parties to be heard, incorporate any commitment made by the parties in other jurisdictions regarding this proposed transaction which the Commission determines would be in the public interest. *See In re Bangor Natural Gas Sale and Transfer*, Dkt. 2021-00019, Order Approving Stipulation and Reorganization, at 14 (Jul. 28, 2021). This ensures that, for example in the event the North Carolina Commission (which has yet to approve the transaction) adopts regulatory conditions which could impact Montana jurisdictional customers, the Montana Commission can, after notice and opportunity for a hearing, incorporate any commitment made by the relevant parties in other jurisdictions which could impact EWM and CBGC.

39. The Commission also conditions this approval upon final approval by the North Carolina Commission. If North Carolina rejects the application, the Commission will re-open this proceeding to receive additional evidence and argument from the parties on how to proceed.

CONCLUSIONS OF LAW

40. The Commission has provided sufficient notice of this proceeding and an opportunity for interested persons to be heard. Mont. Code Ann. §§ 69-3-104; Title 2, Ch. 4, Part 6. Because there are no remaining contested issues of fact or law in this docket, no evidentiary is required to resolve the issues presented. *Anaconda Pub. Schs. v. Whealon*, 2012 MT 13, ¶ 15, 363 Mont. 344, 268 P.3d 1258; *Citizens for Allegan County, Inc. v. FPC*, 414 F.2d 1125, 1128 (D.C. Cir. 1968) (“the right of opportunity for hearing does not require a procedure that will be empty sound and show, signifying nothing. The precedents establish, for example, that no evidentiary hearing is required when there is no dispute on the facts and the agency proceeding involves only a question of law.”).

41. The Commission properly exercises jurisdiction over the Joint Parties—as EWM and CBGC are public utilities serving Montana customers—and has the authority to approve the proposed transaction in this docket. Mont. Code Ann. §§ 69-3-101 through -103; *In re Babcock & Brown Infrastructure Ltd.*, ¶ 35; *In re Gas Natural, Inc.*, ¶ 17.

42. For the reasons discussed above, the Commission concludes that this transaction satisfies the Commission’s sale-and-transfer standards: the transaction is in the public interest, no

harm will result to customers, and in fact customers will reasonably benefit from the transaction.
In re Gas Natural, Inc., ¶ 17.

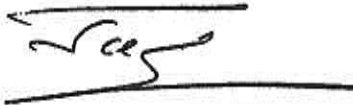
43. This Order is final for purposes of judicial review after parties have exhausted their administrative remedies before the Commission by requesting reconsideration on any disputed issues of fact or law, consistent with Mont. Admin. R. 38.2.4806. Mont. Code Ann. § 2-4-702(1)(a)–(b).

ORDER

44. The Joint Application is APPROVED, subject to the conditions discussed above. The parties must submit a compliance filing within 60 days from the date of this Order regarding how the \$125,000 one-time bill credit will be credited to EWM/CBGC customers.

DONE AND DATED this 26th day of October, 2021, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION



JAMES BROWN, Chairman



BRAD JOHNSON, Vice-Chairman



TONY O'DONNELL, Commissioner



RANDALL PINOCCI, Commissioner



JENNIFER FIELDER, Commissioner

ATTEST: *Patricia Trooien*

Patricia Trooien
Commission Secretary



CERTIFICATE OF SERVICE

I certify that on the 5th day of November, 2021, a true and accurate copy of the foregoing document was served by email to the following:

ENERGY WEST MONTANA & CUT BANK GAS COMPANY

jhenthorne@egas.net

For Energy West Montana & Cut Bank Gas Company

HEARTHSTONE UTILITIES

kdegenstein@egas.net

For Hearthstone Utilities

nsstoffel@hollandhart.com

darueschhoff@hollandhart.com

Attorneys for Energy West Montana, Cut Bank Gas Company, & Hearthstone Utilities

UIF GP, LLC AND ULLICO INFRASTRUCTURE MASTER FUND, LP

mgreen@crowleyfleck.com

kmeredith@crowleyfleck.com

Attorneys for UIF GP, LLC and ULLICO Infrastructure Master Fund, LP

MONTANA CONSUMER COUNSEL

jbrown4@mt.gov

ssnow@mt.gov

For Montana Consumer Counsel

For Electronic Service

aclee@hollandhart.com

GLGarganoAmari@hollandhart.com

aeharms48@gmail.com

snelson@crowleyfleck.com

saxter@ullico.com

EMAIL LIST:

eenergywestgen

euhearing

eorders

By: /s/ Amber Koop

Amber Koop

Administrative Support

Montana Public Service Commission

Public Utilities Commission of Ohio

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 I 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 financing¹ and merger² 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).

¹ 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).

² 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

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/25/2021 2:37:50 PM

in

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

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

Maine Public Utilities Commission

Nov 29 2021

OFFICIAL COPY

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2021-00019

July 28, 2021

BANGOR NATURAL GAS COMPANY
Application for Approval of Reorganization
Sale of GEP Bison Holdings to Ullico
Infrastructure Hearthstone Holdco & Request
for Limited Exemption for Incidental Creation
of Potential Affiliated Interest Pursuant to 35-A
M.R.S. 707, 708

ORDER APPROVING
STIPULATION AND
REORGANIZATION

BARTLETT, Chairman; DAVIS and SCULLY, Commissioners

I. SUMMARY

The Commission finds that the acquisition of Bangor Natural Gas Company (Bangor Gas) by Ullico Infrastructure Fund (UIF) under the terms of the Stipulation executed by Bangor Gas and the Office of the Public Advocate (OPA) meets the statutory net benefits standard and, therefore, approves the Stipulation and the proposed reorganization.

II. PROCEDURAL HISTORY

On January 25, 2021, Bangor Gas filed a petition requesting Commission approval of a proposed reorganization, pursuant to 35-A M.R.S. § 708, in which its managing owner, Hearthstone Utilities, Inc. (HUI),¹ would be acquired by the Ullico Infrastructure Fund (UIF).² In its petition, Bangor Gas requests approval of a transaction in which HUI and HUI's subsidiaries will become wholly-owned subsidiaries of Ullico Infrastructure Hearthstone Holdco, LLC (UIHH), a corporation created by UIF for the specific purpose of acquiring the intermediate holding company parent of Bangor Gas, GEP Bison Holdings, Inc. (GBH) and its subsidiaries. Bangor Gas also requests a limited exemption for the creation of a potential affiliated interest to address tax effects related to the transaction, the necessity of which is unknown at this time.

In support of its application, Bangor Gas pre-filed the Direct Testimonies of:

¹ Hearthstone Utilities, Inc. wholly-owns PHC Utilities Inc., a holding company, which wholly owns Bangor Gas, but which has no employees and makes no operational decisions.

² See Section III for a detailed description of the proposed reorganization. The current HUI organizational chart and proposed post-transaction organizational chart are reflected in Attachment A to this Order.

- Jerry Livengood, General Manager and President of Bangor Natural Gas Company;
- Kevin Degenstein, Chief Operating Officer and Chief Compliance Officer for Hearthstone Utilities, Inc.; and
- Sonia Axter, Vice President of Ullico Infrastructure Hearthstone Holdco, LLC and Vice President of UIF GP, LLC. (Ullico)

A Notice of Proceeding and Opportunity to Intervene was issued on February 3, 2021. Also, on that date, Bangor Gas filed a proposed litigation schedule for resolution of the Commission's investigation by July 26, 2021. A case conference was held on February 12, 2021, at which the Staff discussed with the parties the schedule to be adopted in the case, granted the intervention of the Office of the Public Advocate (OPA), and reviewed other preliminary matters.

On February 19, 2021, Bangor Gas filed the Supplemental Direct Testimony of Sonia Axter in response to concerns raised by Staff at the Case Conference that Bangor Gas's initial filing did not appear to meet the legal standard.

The proposed acquiring company, UIF (or its owner Ullico), is not a party to this proceeding. However, through Ms. Axter, in her capacity as a senior partner on the UIF investment team, Ullico offered testimony on behalf of Bangor Gas and submitted responses to data requests. Similarly, BlackRock, Inc. (BlackRock), the current ultimate parent company of Bangor Gas, is not a party to this proceeding but has provided responses to data requests. Bangor Gas, Ullico, and BlackRock responded to a total of approximately 100 data requests.

Four protective orders are in effect governing access to proprietary business information, as follows: Protective Order No. 1 – portions of the Stock Purchase and Sale Agreement for the proposed reorganization; Protective Order No. 2 – Ullico's internal analysis of the proposed acquisition of HUI; Protective Order No. 3 – highly confidential solicitation and bid evaluation materials of BlackRock; and Protective Order No. 4 – a management agreement between HUI and Luvian Associates.

A Technical Conference on Bangor Gas's proposal was held on March 22, 2021. Responses to oral data requests were submitted on March 29, 2021.

The OPA declined to submit testimony but did conduct discovery and cross-examination on the Company's proposal. Because Bangor Gas was the only party to file testimony, no rebuttal or surrebuttal was needed. Staff did not issue a bench analysis.

The Commission held a hearing on May 4, 2021. Following the hearing, Bangor Gas and the OPA each submitted briefs and reply briefs. An Examiner's Report was issued on June 9, 2021, recommending that the Commission not approve the reorganization because it did not meet the net benefits test. The OPA and Bangor Gas

filed comments and/or exceptions on June 16, 2021, and engaged in settlement discussions.

At the suggestion of the parties, a settlement conference that included Staff was held on July 1, 2021, to explore possible terms of a settlement. Staff and the parties had further exchanges held via email communications in which Staff indicated that it would not oppose the final version of the Stipulation.

Bangor Gas filed the final proposed Stipulation on behalf of itself and the OPA on July 14, 2021, along with a memorandum in support of the Stipulation, as required by Chapter 110 of the Commission's rules, for the Commission's consideration. The Parties waived their rights to an examiners' report on the Stipulation and the opportunity to file exceptions under 5 M.R.S. § 9062(4) and Chapter 110, Section 8(F)(4) of the Commission's Rules of Practice and Procedure to permit Staff to discuss the Stipulation and the resolution of the issues addressed in this Stipulation with the Commissioners, either before or at the Commission's deliberations.

The Commission deliberated this matter on July 27, 2021.

III. DESCRIPTION OF THE PROPOSED REORGANIZATION

A. The Transacting Corporations

1. Selling Corporate Entities

Bangor Gas is a Maine regulated natural gas distribution utility engaged in the business of purchasing, distributing, and selling natural gas for the benefit of nearly 7,500 customers in Bangor, Brewer, Orono, Old Town, Veazie, Hampden, Hermon, Milford, Bradley, Eddington, Orrington, Bucksport, Lincoln, and Searsport, Maine. Through a series of intermediate holding companies, Bangor Gas is wholly owned by Hearthstone Utilities Inc. (HUI), which also owns and manages five additional natural gas utilities that, combined, serve approximately 82,000 customers in Indiana (Sycamore Gas Company Inc.), Montana (Energy West Montana Inc. and Cut Bank Gas Company), North Carolina (Frontier Natural Gas Company), Ohio (Northeast Ohio Natural Gas Corporation), and Maine (Bangor Gas).³

HUI is currently indirectly owned by GEP Bison Holdings, Inc. (GBH), which is owned by an infrastructure fund managed by an investment management subsidiary of

³ HUI is a holding company for three unregulated subsidiaries – Gas Natural Resources L.L.C. in Ohio, and Energy West Resources Inc. and Energy West Propane in Montana – and two holding companies, Sycamore Gas Inc. (SGI) which wholly owns Sycamore Gas Company Inc., and PHC Utilities Inc. (PHC) which wholly owns the other five natural gas distribution utilities, including Bangor Gas.

BlackRock.⁴ In a series of transactions completed in 2017, the holding company predecessor to HUI, Gas Natural, Inc., which was publicly traded at the time, was acquired by a fund managed by First Reserve, a private equity and infrastructure investment firm, for a total enterprise value of approximately \$196 million. *Bangor Natural Gas Co., Inc., Request for Approval of Reorganization Between Gas Natural Inc. and FR Bison Merger Sub Inc., an Indirect Subsidiary of the First Reserve Energy Infrastructure Fund GP II LP*, Docket No. 2016-00282; Application dated Nov. 23, 2016 at 3. The First Reserve Funds were then acquired by BlackRock. *Bangor Natural Gas Co., Inc., Request for Approval of Reorganization Involving Acquisition by BlackRock, Inc.*, No. 2017-00096, Order Approving Stipulation (Jun. 26, 2017).⁵

In addition to the on-site General Manager & President of Bangor Gas, Jerry Livengood, Bangor Gas has received management services from Luvian Partners (Luvian). Luvian is a third-party executive management firm that has overseen HUI's and its subsidiary gas utilities' management since 2017. Luvian is a team of former utility executives with significant experience in multiple states in utility management, including operations, finance, regulation, human resources, and merger and acquisitions.

2. Acquiring Corporate Entities

Formed in 2012, Ullico Infrastructure Master Fund, L.P. is an infrastructure investment vehicle, structured as an open-ended fund and managed by UIF GP, LLC (collectively UIF or Ullico). UIF raises capital primarily from U.S. pension funds and invests in U.S. and Canada-based infrastructure businesses that provide essential services. As of mid-March 2021, UIF had secured \$3.31 billion in financial commitments from more than 200 different third-party investors and is continuously raising new capital that will be available to its existing and new portfolio investments. UIF reports \$918 million of un-invested committed capital and \$2.34 billion of invested capital across the transportation, energy, and utilities sectors in the U.S. and Canada, including

⁴ GBH, SGI, and PHC 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 natural gas distribution utilities they hold, including Bangor Gas.

⁵ BlackRock was described as a publicly traded investment management firm with more than \$5 trillion of assets that provides a broad range of investment and risk management services in over 100 countries across the globe to tax-exempt institutions, such as defined benefit and defined contribution pension plans, charities, foundations and endowments; official institutions, such as central banks, sovereign wealth funds, and other government entities; taxable institutions, including insurance companies, financial institutions, corporations and third-party fund sponsors, and retail investors. institutional and retail clients. Docket No. 2016-00282, Amended Application, Supp. Test. of Ryan Shockley at 6:15 – 7:14 (Feb. 10, 2017).

- a 30-year concession to manage and operate a water and wastewater utility in California;
- a FERC-regulated natural gas transmission line operating in central United States;
- the 65-mile high voltage submarine Neptune Regional Transmission System cable connecting New Jersey and Long Island;
- three natural gas electric generating facilities with 2,236 MW of capacity in Ohio, Connecticut and New Jersey;
- six solar and wind energy facilities in the U.S. and Canada totaling over 3.3 GW;
- a 1.4 GW portfolio of two combined-cycle gas generation assets and two battery energy storage assets contracted under long-term power purchase agreements with investment grade utilities;
- two bus and ferry transportation systems operating in northwest U.S. and Canada;
- a highway toll concession in Puerto Rico; and
- a national provider of data center colocation and managed services throughout hub cities.

B. Description of Proposed Reorganization Transaction

1. Stock Purchase and Sales Agreement

On December 22, 2020, GBH's controlling owner, GEPIF II ECHO AIV, L.P. (GEPIF II) entered into a Stock Purchase and Sales Agreement (SPSA) with UIHH, under which HUI and its subsidiaries would become wholly owned subsidiaries of UIHH following completion of the transaction. The SPSA establishes a Purchase Price equal to a Base Purchase Price, with adjustments for working capital, indebtedness at the time of closing and capital expenditures. The Base Purchase Price is **BEGIN**
CONFIDENTIAL PO 1 [REDACTED] **END CONFIDENTIAL PO 1.**

Ullico proposes to finance the acquisition, in part, by incurring acquisition debt of \$110-\$125 million at the HUI level. The complete method of financing the transaction will include a combination of equity from the Fund's available capital, incremental acquisition debt from the placement of investment grade private placement notes at HUI, and the continuation of HUI's current financings, following an expected receipt of a change-of-control consent from the current lenders - TIAA/Nuveen and Bank of America. In the event consent is not received and HUI's current financings need to be

replaced with new debt facilities, UIF 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. *Id.* UIF has obtained a private investment grade indicative rating for the contemplated incremental acquisition debt and will pursue a formal rating prior to closing the acquisition.

a. Post-Acquisition Changes⁶

i. Utility Management

UIF states that if the acquisition of GBH is approved, changes to utility management or operations will occur when the existing contract with Luvian Partners will terminate on December 31, 2022. As part of the transaction, UIF will inherit the Luvian contract maintaining the current executive management service team temporarily. UIF plans to transition from a third-party executive management firm to a full-time executive management team for the long-term. UIF engaged Morgan O'Brien, a utility executive with more than 30 years of experience leading rate-regulated electric and local gas distribution company operations in the U.S. who has served as the Chief Executive Officer of Peoples Natural Gas Company LLC and Peoples Gas Company LLC, and Duquesne Light Company, which are regulated by the Pennsylvania Public Utility Commission. UIF states that Mr. O'Brien's role will be to assure that the utilities will continue to be run safely and efficiently and to develop a new management team to replace Luvian.

ii. Board of Directors

For governance, UIF stated it would establish a board of directors comprised of independent directors and UIF managers, effective with the closing of the reorganization. UIF plans that "the independent directors will complement the board's experience and skill sets, including direct utility experience."

2. Potential Creation of New Affiliate

As part of the transaction, Bangor Gas seeks approval of the potential creation of a new affiliate, which may be necessary to avoid negative tax consequences. More specifically, if the transaction is approved, there may be a limited restructuring in the BlackRock-managed infrastructure fund that owns GBH — GEPIF II Echo AIV, LP — to allow the fund to better match withholding of taxes to the ultimate assessed income tax to their investors. A Delaware Limited Partnership would directly hold 100% of the stock of GBH, and GEPIF II Echo AIV, LP will indirectly hold, through the Delaware Limited Partnership, 100% of GBH's stock. GEPIF II Echo AIV, LP has applied for a FIRPTA withholding certificate from the IRS to reduce its withholding obligations resulting from the transaction and hopes to obtain the certificate in advance of closing. If the FIRPTA

⁶ This section deals principally with structural and transactional terms. For additional discussion of benefits of the reorganization, see Section V below.

withholding certificate is not received prior to the closing, Ullico will move forward with the proposed upstream restructuring to reduce tax withholding resulting from the sale of GBH's stock. Bangor Gas states that the conditional upstream restructuring will not affect GBH or any of its subsidiaries, including Bangor Gas.

3. Necessary Approvals and Expected Closing Date

State regulatory approvals for UIF's proposed acquisitions of natural gas utilities are pending in Montana, Ohio, and North Carolina. The approval of the Indiana Utility Regulatory Commission is not required. The transaction is subject to the expiration or termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act. The parties to the transaction expect it to close on September 22, 2021, or shortly after pre-closing conditions identified in the SPSA are satisfied.

V. LEGAL STANDARDS

A. Statutory Standard Applicable to Reorganizations

To approve a reorganization, the Commission must find that the proposed reorganization meets the statutory standard of 35-A M.R.S. § 708. Section 708 requires that: (1) the result of a transfer of ownership of a public utility must serve "the interest of the utility's ratepayers"; (2) the Commission must ensure that the reorganization "provides net benefits to the utility's ratepayers"; and (3) the Commission shall ensure that certain conditions are met with regard to the utility's financial capability and the Commission's ability to effectively regulate the utility. 35-A M.R.S. § 708(1-A), (2).

Further, in a reorganization involving a change of control of the utility, which is the case here, the Commission must examine at a minimum:

1. Whether the reorganization will result in a rate increase for the utility's ratepayers; and
2. Whether the reorganization will result in a loss of local control of the utility's management and operations in a manner that limits the ability of local management to protect the interests of the utility's ratepayers in this State.

Id. § 708(2)(C). Section 708(2)(A) directs the Commission, when approving a reorganization, to impose conditions on the reorganization, which in its judgement are necessary to protect ratepayers from financial harm to the utility or impairment to its ability to provide safe, reasonable, and adequate service.⁷

⁷ More specifically, according to Section 708(2)(A):

In granting its approval, the commission shall impose such terms, conditions or requirements as, in its judgment, are necessary to protect the interests of ratepayers. These conditions must include provisions that ensure the following:

1. That the commission has reasonable access to books, records, documents and other information relating to the utility or any of its affiliates, except that the Public Utilities Commission may not have access to trade secrets unless it is essential to the protection of the interests of ratepayers or investors. The commission shall afford trade secrets and other information such protection from public disclosure as is provided in the Maine Rules of Civil Procedure;
2. That the commission has all reasonable powers to detect, identify, review and approve or disapprove all transactions between affiliated interests;
3. That the utility's ability to attract capital on reasonable terms, including the maintenance of a reasonable capital structure, is not impaired;
4. That the ability of the utility to provide safe, reasonable and adequate service is not impaired;
5. That the utility continues to be subject to applicable laws, principles and rules governing the regulation of public utilities;
6. That the utility's credit is not impaired or adversely affected;
7. That reasonable limitations be imposed upon the total level of investment in nonutility business, except that the commission may not approve or disapprove of the nature of the nonutility business;
8. That the commission has reasonable remedial power including, but not limited to, the power, after notice to the utility and all affiliated entities of the issues to be determined and the opportunity for an adjudicatory proceeding, to order divestiture of or by the utility in the event that divestiture is necessary to protect the interest of the utility, ratepayers or investors. A divestiture order must provide a reasonable period within which the divestiture must be completed; and

The net benefits test contained in Section 708(1-A), (2) involves a weighing of the benefits and costs of the proposed reorganization and, to approve the reorganization, a finding that the benefits are greater than the costs. As the net benefits test requires a fact-specific, independent analysis of the benefits and costs of each proposed transaction, reorganizations require review on a case-by-case basis. The utility carries the burden of proving that the net benefits test has been satisfied. *Id.* § 708(2) (no reorganization may be approved “unless it is established by the applicant that the reorganization is consistent with the interests of ratepayers and investors”).

In addition, as determined by the Commission in prior cases, a finding of “net benefits” does not contemplate a comparative review of other proposals to purchase the utility or its holding company to ensure that the accepted proposal reflects the “best” offer. *Emera Maine, MEPCO, Chester SVC Partnership, Request for Reorganization Approval*, Docket No. 2019-00097, Order Part II at 4 (April 21, 2020). Instead, the focus is on the reorganization submitted for approval compared to the status quo. *Id.* at 3.

Finally, the statute does not specify that “net benefits” must be specifically or precisely quantified in terms of monetary or otherwise measurable items. Rather, the Commission should weigh all the effects of the proposed transaction on the utility’s ratepayers, positive and negative, quantitative, and qualitative. *See Id.* at 3-4.

B. Prior Net Benefits Analyses

The Commission has discussed the application of the net benefits standard for reorganizations that would result in the transfer of ownership and control of a public utility or the parent company in three recent cases: *The Maine Water Company Request for Approval of Reorganization*, Docket No. 2019-00096, Order Approving Stipulation (Oct. 4, 2019) (*Maine Water Order*); *Emera Maine, MEPCO, Chester SVC Partnership, Request for Reorganization Approval*, Docket No. 2019-00097, Order Part II (April 21, 2020) (*ENMAX Order*); and *Consolidated Communications of Northern New England Company, LLC, et al., Request for Approval of Reorganization*, Docket No. 2020-00301 (May 18, 2021) (*Consolidated Order*).⁸ Although each of those cases was resolved by

-
9. That neither ratepayers nor investors are adversely affected by the reorganization, and if the reorganization would result in the transfer of ownership and control of a public utility or the parent company of a public utility, that the reorganization provides net benefits to the utility’s ratepayers.

⁸ In a fourth reorganization approved since the net benefits test was enacted, the Commission did not explicitly address the net benefits standard. *Request for Approval of Reorganization Pertaining to Mid Maine Telecom, LLC et al.*, No. 2020-00268, Order Approving Stipulation (Mar. 16, 2021).

stipulation and none bind the Commission's future determinations, the Commission's orders approving those stipulations shed light on the net benefits test.

As noted above, the Commission recognized in these prior cases that application of the net benefits test is not simply an objective, quantitative exercise. *ENMAX* Order at 3. Although some benefits and costs can be reasonably quantified, many cannot and must be weighed on a qualitative basis. *Id.* In addition, the Commission explained that the analysis requires the weighing of factors that cannot be measured or even known with reasonable certainty, given that future conditions that would exist under the status quo ownership and under the proposed reorganization are simply not knowable. *Id.* at 3.

In the *Maine Water* case, the Commission found that three benefits in the stipulation outweighed any potential negative impacts of the merger – customer bill credits to capture savings accruing prior to the next rate case; a commitment not to increase Maine Water's revenue requirements as a result of cost allocation from Maine Water's new owners and affiliates; board of director and Maine-based management requirements to preserve local control. *Maine Water* Order at 8-9. The Stipulation also included commitments related to a minimum equity ratio; ring-fencing provisions; to not seek recovery of an acquisition premium and other transaction costs; and consistency of employee levels. *Id.*

In the *ENMAX* Order, consistent with Section 708(2)(C)(1), the Commission found that the reorganization would not directly result in a rate increase for Emera Maine's⁹ ratepayers, and that the transaction would provide both quantitative and qualitative "net benefits" that on-balance outweighed potential negative impacts including:

- \$13.1 million shareholder-funded rate relief;
- Distribution rate case stay-out;
- Potential benefits for transmission customers related to a delay in recovery of lost revenue upon the departure of Houlton Water Company;
- Incentives for reliability and customer-service improvements through the Service Quality Indices metrics and associated penalty mechanisms;
- Commitment to maintain and increase Emera Maine's community investments; and
- Numerous proposed financial, managerial, operational, and structural commitments, including the governance and financial ring-fencing provisions and commitments to maintain local control of the utility's management and operations.

⁹ Emera Maine is now Versant Power.

Id. at 11-15.

In the *Consolidated* Order, although Consolidated and the OPA disagreed about whether the “no net harm” or the net benefits standard applied to the reorganization, the Commission approved the Stipulation presented because it satisfied both legal tests. *Consolidated* Order at 5. In particular, the Commission found that a two-year rate freeze and a broadband offer commitment provided net benefits to Consolidated’s customers. *Id.* at 5-6.

C. Standards for Commission Approval of Stipulations

Chapter 110 of the Commission’s Rules of Practice and Procedure provides that, in deciding whether to approve a stipulation, the Commission will consider the following:

- a. Whether the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;
- b. Whether the process that led to the stipulation was fair to all parties;
- c. Whether the stipulated result is reasonable and is not contrary to legislative mandate; and
- d. Whether the overall stipulated result is in the public interest.

MPUC Rules, ch. 110, § 8(D)(7). The application of these standards to the proposed Stipulation is addressed in Section VII of this Order.

VI. DESCRIPTION OF PROPOSED STIPULATION

Bangor Gas and the OPA, the only parties to this proceeding and to the Stipulation, agree and recommend that the Commission conclude this proceeding by issuing an order that approves a transaction in which Hearthstone Utilities, Inc. (HUI) and its subsidiaries will become wholly-owned subsidiaries of Ullico Infrastructure Hearthstone Holdco, LLC, (UIHH) and grant a limited exemption - or alternatively, approval - for the creation of a potential affiliated interest to address tax effects related to the Transaction, which exemption or approval will have no impact on the financial or operational characteristics of Bangor Gas.

The Parties provided Staff their proposed Stipulation for comment prior to filing it with the Commission. Staff does not object to approval of the proposed Stipulation.

The memorandum supporting the Stipulation states that the Stipulation will provide immediate and long term qualitative and quantitative benefits to ratepayers. Qualitative benefits would include:

- Ownership by UIF, an entity having a buy and hold strategy with regard to long term investments;
- Management at the HUI level, supported by Mr. O'Brien, to "help provide leadership, guidance, and resources to help ensure that the operating utilities of HUI, including Bangor Gas, will continue to be run safely, reliably, and efficiently;"
- UIF's commitment to pay an exit fee if it divests a majority of its interests in HUI within a 10-year period;
- Protection against adverse effect on the cost of capital for ratemaking purposes for a period of eight years following the closing, in which the Commission may impute a replacement cost of debt commensurate with a BBB rated regulated gas local distribution company, and Bangor Gas will hold customers harmless for any additional costs of equity capital caused by the reorganization, unless Bangor Gas demonstrates that the proposed increase in the cost of capital is not a result of the reorganization, or the post-transaction operations of Bangor Gas, HUI or their affiliates, or a result of changes in business, market, economic or other conditions, including changes to risk profile of Bangor Gas or HUI, caused by the reorganization or the post-reorganization operations of Bangor Gas, HUI or their affiliates.
- Bangor Gas will not seek recovery from customers, either directly or indirectly, in any ratemaking proceeding of the acquisition premium, goodwill, or transaction costs associated with the reorganization, including any incremental increase in the existing intercompany note interest rate charges incurred as a result of the acquisition financing, investment bank fees, legal fees, transfer or other taxes, and any other costs incurred by the Companies to complete or to secure approvals for the reorganization.
- No fees and costs associated with UIF's investment in, and ownership of, HUI or HUI's subsidiaries, including Bangor Gas, shall be charged, or recovered, directly or indirectly, from Bangor Gas's customers.
- No negative rate impact on Bangor Gas from any Internal Revenue Code Section 338(h)(10) election and any costs allocated to it from the Company's post-transaction affiliates will not increase Bangor Gas's revenue requirement.
- No changes to Bangor Gas's day-to-day managerial and operational responsibilities to establish priorities and respond to local conditions.

- Current employee level of twenty-eight (28) individual professionals will remain the same; no employee layoffs are contemplated from the reorganization.
- Bangor Gas's Board of Directors will continue to consist of three to five members, one of which shall be held by the President/Chief Executive Officer of Bangor Gas, and a majority of the Board positions shall be held by Maine residents.
- Delegation of Authority and Corporate Governance Principles. Delineation of authority and responsibility delegated to local management, among other things, will be defined in formal written documents as categories of decisions that can be authorized exclusively by the management of Bangor Gas.
- Violations of Financial Covenants. Bangor Gas will notify the Commission of any determination of a violation of a financial covenant in a Bangor Gas, UIF, or HUI debt instrument within three (3) business days from the date the determination is made, after becoming aware of such violation.
- Notice of UIF Investment. Bangor Gas shall notify the Commission, subject to any UIF Board approval, and as soon as practicable, of any new investment by UIF in a regulated utility or a non-regulated business that represents ten-percent (10%) or more of UIF's or HUI's book capitalization.
- Bangor Gas shall maintain separate books, records, bank accounts, and financial statements reflecting its separate assets and liabilities.
- Access to Books and Records. Upon written request, within ten (10) business days after received, Bangor Gas shall provide the Commission or the OPA access to the original books and records of Bangor Gas, as maintained in the ordinary course of business. Bangor Gas will provide the Commission access, upon thirty (30) days advance notice and subject to resolution of confidentiality and privilege matters, to the books and records of (i) UIF and any UIF affiliate that has a direct or indirect controlling interest in Bangor Gas, and (ii) any other UIF affiliates where such books and records are relevant to the Commission's exercise of authority and necessary to audit and monitor any transactions between Bangor Gas and such an affiliate.
- Continued Adherence to Ring-Fencing provisions approved in *Bangor Gas Company, LLC, Application for Approvals Relating to Long-Term Financing, Affiliated Transactions and Reorganization Relating to Bangor Gas Company, LLC*, Docket No. 2016-00030, Order (Aug. 19, 2016); and *Bangor Natural Gas Company, Request for Approval of Merger Between Gas Natural Inc. and First Reserve Merger Sub, Inc. a Wholly Owned Subsidiary of First Reserve Energy Infrastructure Fund GP II LP, 35-A M.R.S. §708*, Docket No. 2016-00282, *Bangor Natural Gas Company, Request for Approval of*

Reorganization Involving Acquisition by BlackRock, Inc., 35-A M.R.S. §708, Docket No. 2017-00096, Order (June 26, 2017).

- Bangor Gas will not loan funds to UIF or any of Bangor Gas's other affiliates without Commission approval, except as provided in previously approved affiliated transaction agreements.
- Additional Dividend Restrictions. Except as otherwise allowed by the Commission, Bangor Gas will not authorize a payment of dividends that results in a payout ratio that exceeds 80% of Bangor Gas's net income calculated on a two-year rolling average basis.
- Bangor Gas will report to the Commission any bankruptcy filing by UIF or an affiliate of Bangor Gas, in advance if possible, or no more than ten (10) business days after such event transpires.
- Separate Corporate Existence. UIF, UIHH, HUI, and Bangor Gas will maintain separate existences, conduct arm's-length business relationships with their affiliates, and observe all necessary formalities in their affiliate dealings. Bangor Gas will conduct business in its own name through its duly authorized directors and officers and remains subject to affiliate transaction approval for arrangements with any affiliated interest pursuant to 35-A M.R.S. § 707 and applicable Commission rules and precedent.
- Continued applicability of the reorganization exemptions granted to Bangor Gas and its affiliates relating to a reorganization of Energy West, Inc. into a holding company in the Commission's Order in *Bangor Gas Company, LLC, Request for Exemption from Reorganization Approval Requirements Request for Exemption from Reorganization Approval Requirements of 35-A M.R.S.A. § 708, Docket No. 2008-00271, Order (July 14, 2009).*
- Bangor Gas will provide the Commission with copies of any final regulatory orders in any proceedings regarding the reorganization within ten (10) business days of their issuance.
- Most Favored Nations. The Commission may, upon notice and opportunity for hearing, incorporate any commitment made by UIF relating to quantitative benefits, dividend restrictions, or ring-fencing provisions and memorialized in a final order issued in any state regulatory or similar proceedings regarding the reorganization, including:
 - Montana Public Service Commission, Docket No. 2021.01.015;
 - Public Utilities Commission of Ohio, Case No. 21-0093-GA-UNC; and
 - North Carolina Utilities Commission, Docket No. G-40, Sub. 160.

- Maintain Existing Service Quality Standards and Penalties for three years for service quality standards for new customers and leak odor detection, as required under its current tariff, and approved by the Commission in *Bangor Gas Company, LLC, Request for Approval of Renewal of Multi-Year Rate Plan (35-A M.R.S. § 4706)*, Docket No. 2012-00598, Order (September 23, 2015).

In addition to these qualitative benefits, the Stipulation offers quantitative ratepayer benefits:

1. One-time Customer Bill Credit of \$300,000 via a mechanism to be negotiated with the OPA.
2. Main Line Extension for Good Shepard Food Bank's Penobscot Meadow Drive facility in Hampden, Maine. UIF commits to shareholder funds totaling approximately \$91,600 to cover Good Shepard's contribution in aid of the construction and conversion costs related to the extension.
3. Early Exit Fee of \$200,000 if UIF divests or otherwise relinquishes its majority ownership interest in HUI and/or Bangor Gas within 10 years of the closing.
4. Low-Income Assistance. UIF will contribute \$10,000 in shareholder funds to increase Bangor Gas's 29% discount to its low-income customers that will not be recoverable in rates.
5. Three-year General Rate Case Stay-Out following the issuance of a final order in Bangor Gas's currently pending rate case (Docket No. 2021-00024) except that, if the federal corporate income rate applicable to Bangor Gas increases during the three-year stay-out period, Bangor Gas may either:
 - (a) record a regulatory asset to capture the amount of the tax increase not already in rates with carrying costs and seek recovery of that regulatory asset in its next future rate case; or
 - (b) file for Commission approval of a rate adjustment that flows the tax increase through to ratepayers in a manner consistent with the principles applied by the Commission to reflect the decrease in the federal corporate tax rate associated with the 2017 Tax Cuts and Jobs Act.

VII. DISCUSSION AND DECISION

A. Application of Criteria for Commission Approval of Stipulations¹⁰

1. Broad Spectrum of Interests

Regarding the first criteria of Chapter 110 § 8(D)(7) and whether the Stipulation represents a broad spectrum of interests, Bangor Gas notes that the OPA represents Maine's consuming public. In this capacity, Bangor Gas explains that the involvement and agreement of the OPA supports a finding that the terms of the Stipulation are not contrary to the public interest.

The parties to the Stipulation, Bangor Gas and the OPA, are the only parties in the proceeding. In the past, the Commission has held that a utility and the OPA, with differing views and interests, represent a broad spectrum of ratemaking interests. See *Cent. Me. Power Co., Annual Price Change Pursuant to Alternative Rate Plan (ARP 2000)*, Docket No. 2012-00063, Order Approving Stipulation (June 21, 2012). Accordingly, the Commission finds that the parties joining in the Stipulation represent a sufficiently broad spectrum of interests. The Commission further finds that there is nothing in the record to indicate that there is any appearance or reality of disenfranchisement.

2. Fair Process

Regarding the second criteria of Chapter 110 § 8(D)(7), and the fairness of the process that led to the Stipulation, the process included initial litigation with Bangor Gas's pre-filed testimony, discovery, technical conferences, the opportunity for the OPA to file testimony, and opportunities for the parties and Staff to evaluate and comment on the merits of Bangor Gas's and the OPA's positions during litigation. All parties to the case were involved in the settlement discussions and invited the participation of Staff in the final resolution. Accordingly, the Commission finds that this process was fair to all parties and that the second criterion for the Commission's approval of a stipulation has been satisfied.

3. Reasonableness of Result and Public Interest

The third and fourth stipulation evaluation criteria under Section 8(D)(7) of Chapter 110, subsections (c) and (d) respectively, are that the stipulation is reasonable, and not contrary to legislative mandate, and that it is in the public interest. Because of the interrelationship of these criteria in this case, the Commission discusses them together in this section.

Regarding the third criteria's requirement that the stipulation must be reasonable and not contrary to legislative mandate, the Commission concludes that the legislative

¹⁰ See Section V(C) above for the Chapter 110 § 8(D)(7) standard.

mandate that is most directly applicable to this proposed Stipulation is found in the criteria for approval of reorganizations in 35-A M.R.S. § 708. As discussed in Section V, Section 708 requires that the Commission find that the reorganization is consistent with the interests of the utility's ratepayers and investors, and that, if it would result in the transfer of ownership and control of a public utility or the parent company of a public utility, the Commission must find that the reorganization provides net benefits to the utility's ratepayers. 35-A M.R.S. § 708(2)(A). In determining whether a utility reorganization provides a "net benefit" to the utility's ratepayers, the Commission at a minimum must examine:

- (1) Whether the reorganization will result in a rate increase for the utility's ratepayers; and
- (2) Whether the reorganization will result in a loss of local control of the utility's management and operations in a manner that limits the ability of local management to protect the interests of the utility's ratepayers in this State.

Id. § 708(2)(C).

Apart from these minimum considerations, there are no bright-line criteria for what constitutes a "net benefit." Under the limited case law established by the Commission in the context of stipulated outcomes, the Commission has found that "[a] net benefit test involves a weighing of the benefits and costs of the proposed reorganization and a finding that the benefits are greater than the costs." *Emera Maine, et al., Request for Approval of Reorganization*, No. 2019-00097, Order Approving Stipulation (Part II) at 3 (Me. P.U.C. Apr. 21, 2020). The Commission has found the net benefits standard "requires a fact-specific, independent analysis of each proposed transaction and, thus, reorganizations require review on a case-by-case basis." *Id.* This case-specific inquiry is necessary because the net benefit test is not simply an objective, quantitative exercise. Rather, it requires the weighing of factors that cannot be measured with reasonable certainty, as well as factors that are qualitative in nature. Moreover, the net benefit test requires a comparison with what conditions would exist under the status quo ownership, which also cannot be known with certainty. *Id.*

a. Issues

Throughout this case, the parties and Staff put forward widely divergent views regarding whether the reorganization was reasonable, in the public interest, or met the net benefits test and other requirements of Section 708. While Bangor Gas maintained that its direct testimony established a sufficient basis to find that the reorganization did meet the requirements, both the OPA and Staff recommended that the Commission reject the reorganization due to its failure to provide net benefits to utility ratepayers, or meet the minimum requirements of Section 708.

i. Bangor Gas and UIF

Bangor Gas argued that the proposed reorganization would provide net benefits to its customers. UIF represented that there will be no changes to service quality, tariffs, rates, or terms and conditions and no risk of increased rates as a result of the reorganization.

UIF identified several qualities it would bring to ownership of GBH and its utility subsidiaries, which it contended are sufficient to meet the statutory net benefits standard, including:

- Energy Experience, as a diversified holder of energy infrastructure assets;
- Financial Stability for Bangor Gas by becoming a subsidiary of a diversified equity investment vehicle with a long-term hold strategy;
- Access to Capital – with financial backing from a large energy infrastructure investment vehicle, HUI utilities will be able to pursue necessary system upgrades, infrastructure replacement or expansion if economic, and enhance customer service;
- Utility Expertise – management, leadership, guidance, resources for innovation and continuity of best practices to provide safe and reliable service to customers; and
- Community and Low-Income Support – UIF's promise of \$10,000 in shareholder funds to enhance existing Bangor Gas low-income programs without recovery in future rates.

UIF concluded that the reorganization satisfies the requirements of Section 708(2)(C) because (a) Bangor Gas's customers will not see a rate increase as a result of the reorganization, and UIF will not seek to recover from Bangor Gas customers any transaction costs or acquisition premiums resulting from the transaction; and (b) local management will continue to make decisions needed to provide high quality service to its customers and to control day-to-day operations. Additionally, UIF asserted that the benefits of this reorganization would include:

- No risk of increased rates due to transaction costs, acquisition premiums, or goodwill assets from the reorganization;¹¹

¹¹ Although Bangor Gas also filed a request for a rate increase (Docket No. 2021-00024) shortly after requesting reorganization approval, Bangor Gas alleges that nothing in the requested rate increase is a result of the proposed transaction.

- No changes to services levels for call center performance, billing performance, meter reading performance, and emergency response performance for at least five years;
- Compliance with all existing regulatory commitments including previously imposed ring-fencing conditions, accounting and cost allocation methods, dividend and minimum equity requirements, Commission orders, rules, and the laws of the State of Maine;
- No changes to services or operations, regulatory policies, place of business in Maine, or local employment levels, or assets;
- No changes to Bangor Gas management through December 31, 2022.

ii. OPA

In contrast to Bangor Gas's position, the OPA argued that there had been no demonstration that there would be no adverse impact on ratepayers from this reorganization. Specifically, OPA stated that there were no commitments to invest capital in Bangor Gas, that a shareholder contribution of \$10,000 for low-income assistance – representing less than 0.05% of Bangor Gas's annual operating revenues of \$21,941,520 in 2020 and benefitting approximately 30 of Bangor Gas's customers – was insufficient to outweigh the unknowns and risks of this reorganization, and that the asserted benefits from the reorganization are largely uncertain, vague, lack a timeline and specificity and, in most cases are no tangible improvement over current circumstances. The OPA disagreed that the proposed reorganization would provide net benefits to Bangor Gas's customers and urged the Commission to reject the proposed reorganization or, alternatively, to only approve the reorganization subject to the condition that Bangor Gas provide a package of ratepayer benefits worth no less than \$500,000 in tangible benefits (i.e. cash contributions) to Bangor Gas' ratepayers.¹²

¹² The OPA's determination that Ullico should be required to provide tangible financial benefits of no less than \$500,000 results from a review of recently approved reorganization settlements for *Maine Water Company* (2019-0096), *Emera Maine, Mid Maine Telecom et al.* (2020-00268), and *Consolidated Communications of Maine* (2020-00301). The OPA observed that each settlement in which the net benefits standards has been considered by the Commission has included either a rate case stay-out, a substantial financial credit to customer rates, or both. *Id.* at 4. The OPA considered the enumerated value of agreed-upon benefits in those cases – including bill credits, rate or low-income rate relief, rate case stay-outs, etc. – and determined that the stipulated benefits were substantially greater as a percentage of the utility's revenue than that offered by Ullico in this proposed reorganization. The OPA stated that, in addition to other "tangible financial benefits," stipulated direct rate credits alone provided to Emera Maine's customers equaled almost 10% of test year revenues for Versant Power's

Bangor Gas forcefully objected to the OPA's premise that cash contributions should be the determining factor in meeting the net benefits standard and maintained that the reorganization met the standard as it was proposed.

iii. Examiners' Report

In its Examiners' Report, like the OPA, Staff recommended that the Commission reject the reorganization on the basis that the Company had failed to demonstrate net benefits. Staff noted that the structure of the acquisition, under which Hearthstone Utilities would incur \$110-\$125 million of additional debt, poses potential risks and costs to Bangor Gas and its ratepayers that could affect its future operations and financial condition, and could place upward pressure on rates. This is because, under the borrowing arrangements in place, the availability and cost of borrowed funds, both short-term debt and long-term debt, for Bangor Gas depends entirely on the availability and cost of borrowed funds for HUI.¹³

Staff noted that in UIF's modeling of HUI and its subsidiaries through 2041, certain key credit metrics will be substantially affected by the additional debt. In particular, because of the additional acquisition debt, the debt-to-capitalization ratio for HUI Consolidated is projected to increase substantially immediately after the proposed close of the transaction in late 2021 and remain at that increased level throughout the projection period. Under the terms of the existing credit agreement between HUI and Bank of America, increasing the debt-to capitalization ratio of HUI from below 40% to greater than 40% would result in an increase of 25 basis points to the base rate, which would result in significant increases in annual cost of debt for Bangor Gas. *Request for Approval Related to Long-Term Financing, Affiliated Interest Transactions and Reorganization Pertaining to Bangor Gas*, Docket No. 2016-00030, October 31, 2016 Compliance Filing Attachment F. Staff noted that, because any increased cost of debt

recent distribution rate case (2020-00316). In the case of *Maine Water Company*, the stipulation noted that bill credits totaling \$467,000 represented 2.224% of the utility's total annual allowed revenues of \$20,812,000. In comparison, the OPA argued that a level of tangible financial ratepayer benefits (i.e. cash contributions) totaling \$500,000 would be reasonable to establish sufficient net benefits to outweigh the risks of this transaction.

¹³ HUI serves as the financing vehicle for Bangor Gas and its sister companies, with all borrowed debt occurring at the HUI level and being further down-streamed as internal loans to the operating companies. Each of the operating companies has an internal credit sub-limit tied to the amount of the overall credit facility. The HUI loans are made to Bangor Gas on a pass-through basis; interest and fees incurred by HUI are passed through to the operating subsidiaries. *Bangor Natural Gas Co., Inc., Request for Approval Relating to Long-Term Financing, Affiliated Interest Transactions and Reorganization Pursuant to 35-A M.R.S. §§ 707, 708, 901 and 902*, Docket No. 2016-00030, Order Approving Stipulation (Aug 19, 2016). Bangor Gas does not intend to seek or establish credit facilities separate from HUI.

would be reflected in the calculation of the Company's weighted average cost of capital used to determine the allowed return on rate base for the life of any debt issued, ratepayers could be impacted by the increased cost of debt for many years, until that debt was repaid.

Although Bangor Gas and UIF indicated that the additional acquisition debt will carry an investment grade rating, Staff concluded that incurring up to \$125 million of additional term debt would limit HUI's capacity to access additional borrowed funds in the future. Because Bangor Gas looks to its parent for borrowed funds, to the extent HUI's access to future borrowed capital is constrained, Bangor Gas's access to future borrowed funds may also be constrained.

Furthermore, Staff observed that, in UIF's modeling of dividends from Bangor Gas to its parent HUI, the sum of cash dividends to its parent and the Company's gross investment in utility plant is projected to exceed the Company's cash generated from operations in every year but one of the forecast periods. Although these projections reflect actions by Bangor Gas that are in compliance with existing ring-fencing constraints, Staff noted that UIF's projections showed increasing leverage ratios at Bangor Gas, increased borrowings, and additional pressure on the Company's cash flow relative to the status quo.

Moreover, Staff found that overall, the benefits alleged by Bangor Gas largely reflected no change to the status quo, and therefore did not represent an incremental benefit, and/or the alleged benefits were qualitative in nature and not reasonably capable of quantification. Staff pointed out that, in comparison to the prior reorganizations that the Commission approved under the net benefits test, Bangor Gas had not proposed verifiable benefits such as a rate case stay out; had only proposed \$10,000 in rate relief; had not proposed any enhancements to local control; had not proposed to enhance any aspects of its service quality; and had not proposed any enhanced financial protections for ratepayers such as stricter ring-fencing conditions.

And, despite the statutorily required component of the net benefits test to address local control, which requires the Commission to consider "whether the reorganization will result in a loss of local control of the utility's management and operations in a manner that limits the ability of local management to protect the interests of the utility's ratepayers in this State" (§ 708(2)(C)), Ullico and Bangor Gas had not offered anything to prevent the erosion of local control or improve the status quo and represent a benefit to local control.¹⁴ Staff determined that, taken as a whole and

¹⁴ For example, in the *ENMAX Order*, among other conditions, three addressed "local control" directly:

- Emera Maine's Board would continue to consist of nine members, with four independent board members. At least four of the nine board members will be residents of New England. Independent directors will be prohibited from

considering both the qualitative and quantitative benefits and harms on both a short-term and long-term basis, Bangor Gas had not demonstrated that the reorganization would produce net benefits for its customers. Accordingly, Staff concluded that, given the potential magnitude of the long-term financial and governance risks, Bangor Gas had not demonstrated that the reorganization will not result in a rate increase and failure to address concerns regarding potential loss of local control, the minimum criteria of Section 708(2)(C) had not been met.

b. Analysis of Proposed Stipulation

The Commission must determine whether the ratepayer benefits presented in the Stipulation and the proposed reorganization outweigh the risks to ratepayers and meet the statutory requirements. To do so, the Commission must consider whether the Stipulation adequately addresses the risks and concerns of the reorganization raised by Staff and the OPA during litigation and outlined in the discussion of the applicable filings.

In its memorandum accompanying the proposed Stipulation, Bangor Gas maintains that “the host of benefits offered by the Company and UIF as part of the Stipulation will provide immediate and long term qualitative and quantitative benefits to ratepayers.” Bangor Gas contends that this reorganization is in the public interest because UIF has the requisite financial, technical, and managerial expertise to own and manage HUI, which will own and assist in the management of Bangor Gas. Bangor Gas notes that UIF has experience owning and financing a mixture of energy related firms, including 18 investments across the transportation, energy, and utilities sectors. Bangor Gas points out that UIF’s investment vehicle is structured as an open-ended investment fund that makes investments in infrastructure businesses that provide essential services to communities, governments, and businesses. Furthermore, Bangor Gas states that UIF has engaged Morgan O’Brien, a seasoned utility executive with extensive experience leading and managing rate-regulated electric and gas LDC operations in the United States to support its acquisition of HUI and its subsidiaries, and provide ongoing guidance and support to management of HUI and Bangor Gas. Bangor Gas contends that Mr. O’Brien will help provide leadership, guidance, and resources to help ensure that the HUI utilities will continue to be run safely, reliably, and efficiently – first with the current group of managers within Luvian Partners, HUI, and the utilities and, in 2023,

serving on the board of directors of ENMAX Corporation or any subsidiary, and from having any material relationship with the City of Calgary;

- ENMAX committed to maintaining current employment levels, the location of Emera Maine’s headquarters and operating centers in Emera Maine’s service area, honoring obligations under its collective bargaining agreements, and retention of the existing management team; and
- Emera Maine’s immediate parent company—BHE Holdings—would have at least one independent director.

with a full-time HUI executive management team that Mr. O'Brien will anchor. Any additional costs that may occur as a result of the managerial transition will be borne by UIF, and UIF has committed that there will not be an increase in the costs assigned to the operating utilities related to Mr. O'Brien and the new executive management team.

Bangor Gas also asserts that the record in this case supports findings that all statutory criteria of 35-A M.R.S. § 708 have been met, including the requirements that the reorganization be consistent with the interests of ratepayers and the transaction results in a "net benefit." 35-A M.R.S. § 708(2)(A).

A. Cost of Debt Effects

As Staff noted in its Examiners' Report, the cost of debt effects are of significant concern in this reorganization due to the large burden the debt places on HUI and its subsidiaries as well as the fact that the adverse implications will persist over the long-term. The Stipulation offers a degree of protection against potential adverse effects on the cost of capital for ratemaking purposes for a period of eight years following the closing, in which the Commission may impute a replacement cost of debt commensurate with a BBB-rated regulated gas local distribution company.¹⁵ The provision also ensures that Bangor Gas will hold customers harmless for any additional costs of equity capital caused by the reorganization, unless Bangor Gas demonstrates that the proposed increase in the cost of capital is not a result of the reorganization, or the post-transaction operations of Bangor Gas, HUI or their affiliates, or a result of changes in business, market, economic or other conditions, including changes to risk profile of Bangor Gas or HUI, caused by the reorganization or the post-reorganization operations of Bangor Gas, HUI or their affiliates.

The effects of increased debt costs due to less favorable capital to debt ratios, and greater borrowing risk would normally be carried into utility rates if a reorganization such as this were approved without additional conditions. While the identification of factors that may have influenced debt expense at any given time are complex, this stipulated provision provides assurance that there will be a requirement that Bangor Gas demonstrate whether or to what extent the effects of this reorganization may have contributed to such an increase, to assist the Commission in evaluating an appropriate level to include in rates. In that regard, the provision provides a reasonable safeguard to counter concerns raised by Staff regarding the long-term effects of the structure of the reorganization, which places a large amount of acquisition debt at the HUI level. A provision such as this could be viewed as essential to ensuring no harm, and/or contributing to net benefits, for ratepayers in a reorganization based on high levels of debt at the utility parent level.¹⁶

¹⁵ Bangor Gas's existing debt facilities will expire within eight years, so this protection includes the period when HUI will need to replace its existing debt.

¹⁶ The Stipulation also reiterates some existing notification requirements, such as those related to violations of financial covenants and bankruptcy.

B. Dividend Levels

Dividend restrictions address the degree to which Bangor Gas may be required to flow available revenue to its owners. Bangor Gas's currently approved dividend restrictions require it to seek Commission authorization for a dividend level that exceeds 100% of Bangor Gas's net income calculated on a two-year rolling average basis. The Stipulation further restricts dividends that Bangor Gas will flow to its upstream owners by establishing that Bangor Gas will not authorize a payment of dividends that results in a payout ratio that exceeds 80% of Bangor Gas's net income calculated on a two-year rolling average basis, unless otherwise allowed by the Commission.

Because this provides an enhanced level of protection to help ensure that dividends are not paid out of operating revenue or other funds that are important to the continued safe and effective operation of a utility, it provides an additional level of financial protection and is an additional qualitative benefit to Bangor Gas and its ratepayers of the proposed reorganization.

The Stipulation also commits Bangor Gas to continue to the Commission-approved ring-fencing provisions and limited inter-affiliate lending established in its terms and conditions in *Bangor Gas Company, LLC, Application for Approvals Relating to Long-Term Financing, Affiliated Transactions and Reorganization Relating to Bangor Gas Company, LLC*, Docket No. 2016-00030, Order (Aug. 19, 2016) and *Bangor Natural Gas Company, Request for Approval of Merger Between Gas Natural Inc. and First Reserve Merger Sub, Inc. a Wholly Owned Subsidiary of First Reserve Energy Infrastructure Fund GP II LP*, 35-A M.R.S. § 708, Docket No. 2016-00282, *Bangor Natural Gas Company, Request for Approval of Reorganization Involving Acquisition by BlackRock, Inc.*, 35-A M.R.S. § 708, Docket No. 2017-00096, Order (June 26, 2017).

C. Rate Increases

The Stipulation includes protections originally proposed in litigation and expands on them. For example, Bangor Gas's and UIF's original proposal that Bangor Gas would not seek recovery from customers of any reorganization-related costs, either directly or indirectly, in any ratemaking proceeding, including the acquisition premium, goodwill, or transaction costs associated with the reorganization is strengthened in the Stipulation because "transaction costs" are more clearly defined to include any incremental increase in the existing intercompany note interest rate charges incurred as a result of the acquisition financing, investment bank fees, legal fees, transfer or other taxes, and any other costs incurred by the Companies to complete or to secure approvals for the reorganization." Furthermore, Bangor Gas and UIF commit that any costs allocated to Bangor Gas from the Company's post-transaction affiliates will not increase Bangor Gas's revenue requirement in comparison to its pre-reorganization level.

Additionally, Bangor Gas commits to a three-year general rate case stay-out, meaning that Bangor Gas may not submit a filing to the Commission requesting an

increase in rates for three years following the issuance of a final order in Bangor Gas's currently pending rate case (Docket No. 2021-00024),¹⁷ except that, if the federal corporate income rate applicable to Bangor Gas increases during the three-year stay-out period, Bangor Gas may either: (a) record a regulatory asset to capture the amount of the tax increase not already in rates with carrying costs and seek recovery of that regulatory asset in its next future rate case; or (b) file for Commission approval of a rate adjustment that flows the tax increase through to ratepayers in a manner consistent with the principles applied by the Commission to reflect the decrease in the federal corporate tax rate associated with the 2017 Tax Cuts and Jobs Act.

All these commitments protect Bangor Gas's ratepayers from the costs that will result from the decisions of the respective investment funds that own or propose to own Bangor Gas. This assignment of cost responsibility for the ultimate owners' investment choices in this lucrative arrangement constitutes an important condition for this transaction. The rate case stay-out provision in particular addresses one of the minimum considerations posed by Section 708(2)(C) and, in conjunction with other protections of the Stipulation, allows the Commission to find in its consideration of the net benefits test that the reorganization will not result in a rate increase.

D. Local Managerial Control

Section 708(2)(C)(2) requires the Commission to consider in its "net benefits" determination whether the reorganization will result in a loss of local control of the utility's management and operations in a manner that limits the ability of local management to protect the interests of ratepayers in this State.

The proposed Stipulation contains a variety of provisions that address this. First, the Stipulation states that the day-to-day managerial and operational responsibilities of Bangor Gas will not change as a result of the reorganization and that Bangor Gas's management will continue to establish priorities and respond to local conditions.

The proposed Stipulation also contains a provision entitled "Corporate Governance Principles and a Delegation of Authority," which states that the authority and responsibility delegated to local management, to include, among other things, defined categories of decisions that can be authorized exclusively by the management of Bangor Gas, will be clearly delineated in formal written documents along with corporate governance principles. While this provision may have been added to ensure that Bangor Gas's local authority to protect ratepayers' interests would be documented in corporate structure, the content of those documents is not yet available to confirm that this will be the effect, as opposed to a less specialized or "rote" version of normal top-down corporate authority. Consequently, whether there is a benefit to the interests of ratepayers from this provision is unclear.

¹⁷ The rate case stay-out is identified in the proposed Stipulation as a quantitative benefit but quantification is difficult at this time.

Next, the Stipulation establishes that certain aspects of Bangor Gas's Board of Directors will not change. Specifically, consistent with its current By-Laws, the Board will continue to consist of between three and five members, one of which shall be held by the President/Chief Executive Officer of Bangor Gas, as it is now. However, the Stipulation also provides that a majority of the Board positions will be held by Maine residents, which suggests the potential for more weight to be given to local managerial concerns.

Also, other provisions of the proposed Stipulation address matters of continuity of service levels and standards in its operations, which help protect customers from erosion of these elements, at least in the short term. For instance, Bangor Gas and UIF commit to retaining the current level of professional employees and state that no employee layoffs (presumably Company-wide) are expected. Similarly, under the terms of the Stipulation, for a period of three years Bangor Gas will maintain the service quality standards for new customers and leak odor detection, including related penalties, as currently required under its Commission-approved Terms and Conditions of Service, including the penalties stated therein. *Bangor Gas Company, LLC, Request for Approval of Renewal of Multi-Year Rate Plan (35-A M.R.S. § 4706)*, Docket No. 2012-00598, Order (September 23, 2015).¹⁸

The Commission finds that the Stipulation's provision committing that a majority of Board members will be Maine residents is an enhancement to the current governance structure, which currently contains no Maine residency requirement. The Commission also finds the Stipulation's commitment that Bangor Gas's local management will retain authority to establish local priorities and respond to local conditions helps address the statutory requirement. Finally, Bangor Gas's commitments to maintain service quality levels as well as the number of professional and other employees that currently support its utility operations, provides stability that is in ratepayers' interest.

E. Incorporation of Conditions Related to Orders in Other Jurisdictions

The Stipulation states that Bangor Gas will provide the Commission with copies of any final regulatory orders in any proceedings regarding the reorganization within 10 business days of the issuance of such orders. In addition, the Stipulation acknowledges the Commission's authority to modify its Order in this proceeding "to incorporate any commitment made by UIF relating to quantitative benefits, dividend restrictions, or ring-fencing provisions" in a final order issued in any of the following regulatory proceedings, or in any similar proceeding concerning the reorganization:

- Montana Public Service Commission, Docket No. 2021.01.015;

¹⁸ With this agreement, any question as to whether these service standards would otherwise expire with the expiration of Bangor Gas's existing alternative rate plan on December 31, 2021, is moot for the three-year period.

- Public Utilities Commission of Ohio, Case No. 21-0093-GA-UNC; and
- North Carolina Utilities Commission, Docket No. G-40, Sub. 160

While this provision could appear to limit the Commission to only those items specified, the Stipulation also acknowledges the Commission's broader authority to modify its Orders for any reason, after notice and opportunity for a hearing, if it determines such modification is warranted. The Commission has used this authority to protect Maine ratepayers in previous Bangor Gas reorganizations.

Because this reorganization is subject to regulatory approvals in other states, which have not yet been issued, the details of those nascent approvals (or disapprovals) are, yet, unknown. Therefore, the approval by this Commission of this Stipulation is conditioned on allowing review of any conditions imposed by other state commissions and the possible incorporation into this approval of measures to ensure Bangor Gas is not adversely affected. The Stipulation, with this condition acknowledging the Commission statutory authority to address all areas for modification, explicitly allows this.

F. Quantified Benefits

The Stipulation lists five quantitative ratepayer benefits offered by Bangor Gas and UIF. First, UIF offers a one-time bill credit to Bangor Gas's customers totaling \$300,000. The OPA and Bangor Gas will negotiate and finalize the mechanism for delivery of this credit. The Commission has approved reorganization settlements that include bill credits as a ratepayer benefit. Under this precedent, the Commission will do the same in this instance.

Next, UIF commits shareholder funds totaling approximately \$91,600 to cover the contribution in aid of the construction and conversion costs for a local non-profit organization and community service provider, Good Shepard Food Bank, related to a mainline extension sought by Good Shepard for its Penobscot facility in Hampden, Maine. The Stipulation states that this contribution fits within Ullico's goal to be an active community partner on important issues facing the community served by Bangor Gas, and notes that 13.6% of Maine households are food insecure, which is higher than the national average. While this is perhaps an indirect benefit to some of Bangor Gas's low-income customers, it is not a direct benefit to Bangor Gas's customers more broadly.

In addition, the Stipulation provides that UIF will contribute \$10,000 in shareholder funds to reduce bills to Bangor Gas's low-income customers, beyond Bangor Gas's low-income assistance program's 29% discount to qualifying residential sales customers. UIF commits that rate recovery will not be sought for this contribution.

Moreover, to lend weight to UIF's representation that it holds its investments, such as its investment in Bangor Gas, over the long-term, the Stipulation provides an early exit fee of \$200,000 if UIF divests or otherwise relinquishes its majority ownership interest in HUI and/or Bangor Gas within 10 years of the closing. The Commission notes

that this commitment constitutes a potential ratepayer benefit that may never vest, and this modest exit fee provides little incentive to Ullico not to divest. Nonetheless, the Commission accepts this potential ratepayer benefit as a measure that supports the representations Ullico has made in this proceeding.

As noted in Section VII(A)(3)(b)(C) above, the Stipulation's provision for a three-year general rate case stay-out general rate case stay-out is listed as a quantitative benefit but is not currently susceptible to easy quantification. The commitment to a stay-out following the resolution of the current rate proceeding has been viewed in past approved settlements as a direct benefit to ratepayers. A stay-out helps ensure that a rate increase will not result from the reorganization, thereby assisting a Commission finding of net benefits, per Section 708(2)(C). However, the Stipulation includes an exception to the stay-out for increases in the federal corporate tax rate applicable to Bangor Gas to allow it to either account for the increase as a regulatory asset or obtain recovery of the increase during the 3-year period. This exception could somewhat erode the benefit to ratepayers but does not completely eliminate the benefit of the stay-out as the exception is narrowly cast.

VII. CONCLUSION

The Commission concludes that the Stipulation provides a number of qualitative benefits that contribute to a finding that the reorganization is in the interest of ratepayers and to a finding of net benefits. In particular, the enhanced protections and commitments regarding the effects of the large amount of acquisition debt, limitations on dividends, costs associated with the reorganization, and local control, directly address the financial, rate increase, and governance risks of the proposed reorganization and thereby address the statutory requirements that the Commission find net benefits. The commitments to maintain compliance with previously-approved service quality standards (with penalties), prior ring-fencing and regulatory commitments, new financial and affiliate reporting, as well as acknowledgement of the Commission's authority to modify its approval in this proceeding based on the final orders issued in other jurisdictions if warranted, also contribute to regulatory and service continuity that is in the interest of ratepayers.¹⁹

¹⁹ The Stipulation contains a number of provisions that maintain or extend the status quo under previous orders or that acknowledge the Commission's authority for oversight of Bangor Gas in various ways. These acknowledgements include the Commission's authority to take various actions under its statutory authority, such as to obtain access to books and records, to regulate affiliate transactions, to modify its orders after notice and hearing, and other matters. These stipulated acknowledgements do not modify, limit, or expand the Commission's obligations and authorities under Title 35-A. They may play a very modest, useful role to solidify and indicate the stipulating parties' awareness and acceptance of areas in which the Commission can or may be required to act, but do not otherwise provide a material benefit over the status quo.

The Commission also concludes that the Stipulation provides quantitative benefits that contribute positively to the calculation of net benefits. In particular, the one-time bill credit, UIF's contribution to low income customers, and the rate case stay-out directly address statutory considerations in Section 708(2)(C) and contribute to a finding of net benefits.

Accordingly, the Commission finds that the criteria for approval of stipulations and the requirements of Section 708 are met under the terms of this Stipulation. In particular, the Stipulation satisfies the "net benefits" test, and, therefore, is reasonable, is not contrary to legislative mandate, and is in the public interest. Consequently, the Commission approves the Stipulation as well as the proposed reorganization, including the possible creation of an affiliate to address tax effects related to the reorganization transaction without harming Bangor Gas ratepayers.

Accordingly, the Commission

ORDERS

1. That, under the terms of the Stipulation executed by Bangor Natural Gas Company and the Office of the Public Advocate, dated July 14, 2021, and with the conditions stated herein, the proposed reorganization satisfies the requirements of 35-A M.R.S. § 708(2)(A) and (C) that the reorganization provide net benefits to ratepayers, and is approved pursuant to 35-A M.R.S. §§ 103(2)(A), 104, and 708 and MPUC Rules, ch. 110;

2. That the Stipulation executed by Bangor Natural Gas Company and the Office of the Public Advocate, dated July 14, 2021, represents diverse interests, is the result of a fair process, is reasonable, not contrary to legislative mandate, and is in the public interest, and therefore is approved;

3. That Bangor Natural Gas Company's request for approval of the creation of an affiliate (as described in its January 27, 2021 petition) to facilitate the completion of the reorganization transaction is approved;

4. That Bangor Natural Gas Company shall notify the Commission within 15 days of the closing of the reorganization transaction (including notification of the creation of the new affiliate referenced in ordering paragraph 3); and

5. That, in addition to the filings and reports required by the Stipulation to be filed with the Commission, if any changes to Bangor Natural Gas Company's Terms and Conditions of Service are required as result of this approval, Bangor Gas shall file revised Terms and Conditions of Service within 90 days of the date of this order and shall provide for the Commission's review to determine compliance with the representations in this Stipulation, the Document of Authority and other corporate documents delineating Bangor Natural Gas Company responsibilities and the terms of corporate governance under the approved reorganization, when they become available.

Dated at Hallowell, Maine, this 28th day of July 2021.

/s/ Harry Lanphear

Harry Lanphear
Administrative Director

COMMISSIONERS VOTING FOR: Bartlett
 Davis
 Scully

NOTICE OF RIGHTS TO REVIEW OR APPEAL

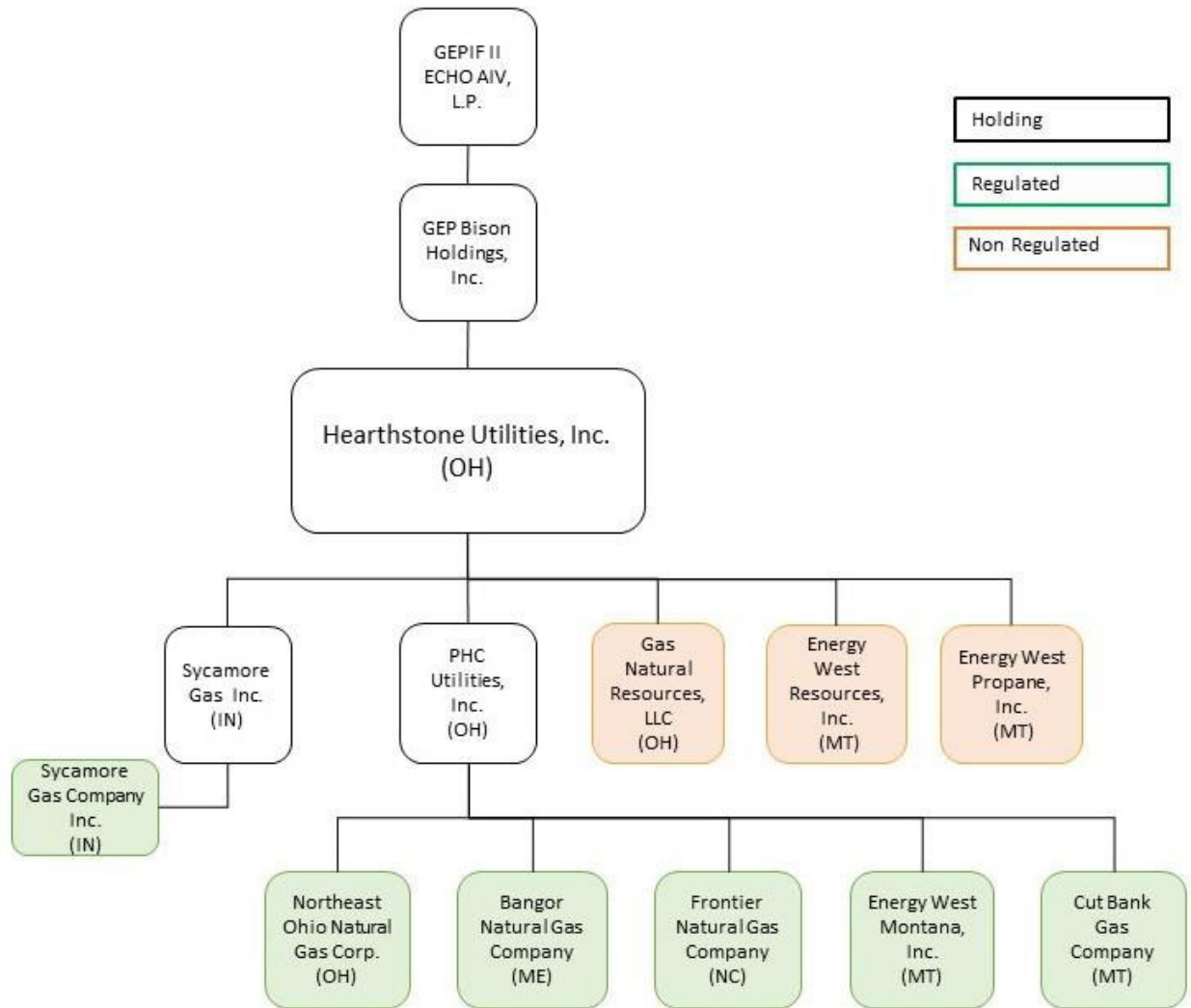
5 M.R.S. § 9061 requires the Public Utilities Commission to give each party at the conclusion of an adjudicatory proceeding written notice of the party's rights to seek review of or to appeal the Commission's decision. The methods of review or appeal of Commission decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R. ch. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Pursuant to 5 M.R.S. § 8058 and 35-A M.R.S. § 1320(6), review of Commission Rules is subject to the jurisdiction of the Superior Court.

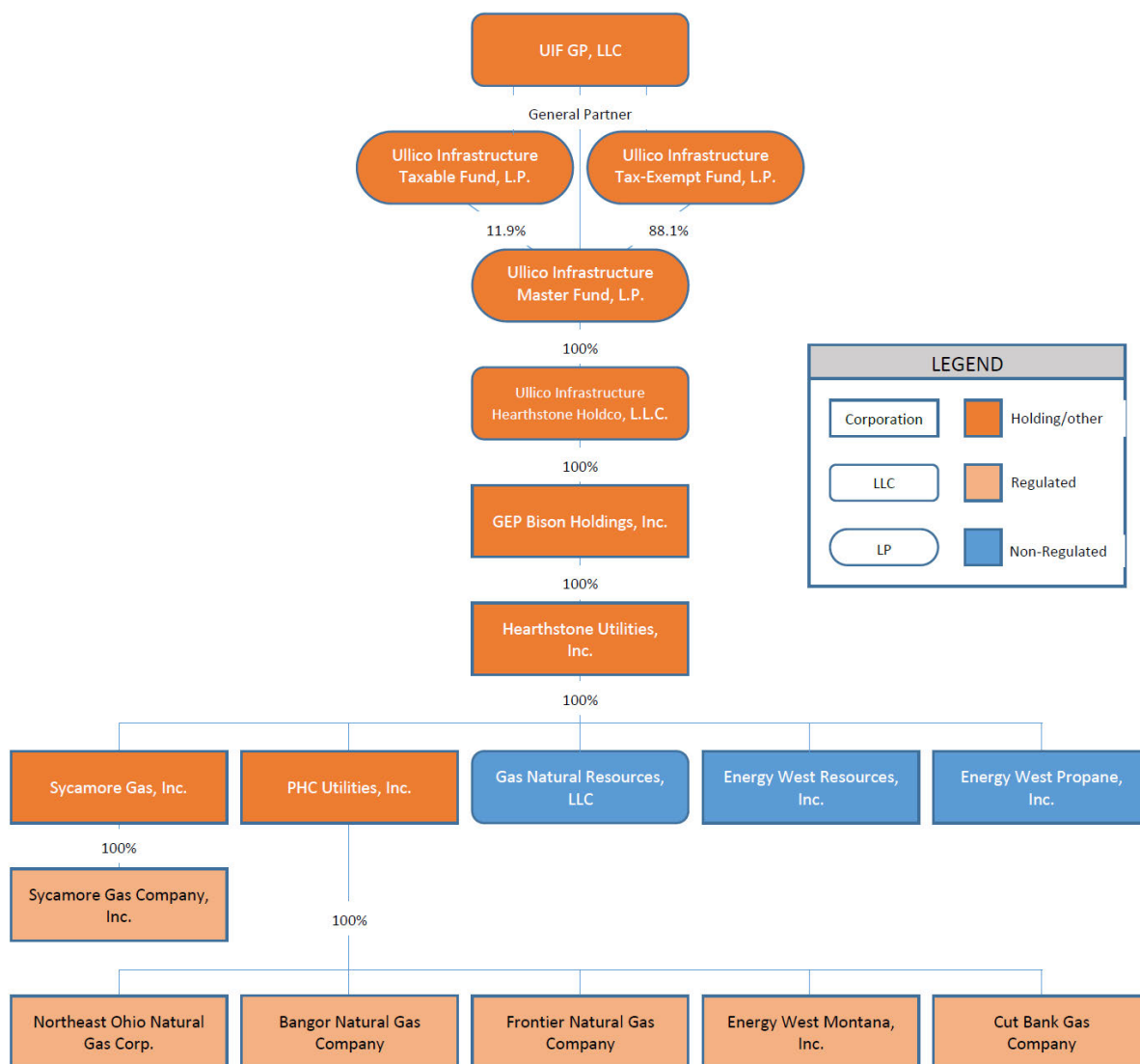
Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

Current HUI Organizational Chart



Direct Testimony of Kevin Degenstein, Figure KJD-1, page KJD-4

UIF PORTFOLIO INVESTMENT – HEARTHSTONE – PROPOSED ENTITY DIAGRAM



2021-01

Exhibit SMA-2
MPUC Docket No. 2021-00019