

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**PETITION OF OHIO VALLEY GAS)
CORPORATION AND OHIO VALLEY GAS, INC.,)
FOR MODIFICATION OF THE INDIANA UTILITY)
REGULATORY COMMISSION'S JULY 28, 2021)
ORDER IN CAUSE NO. 45538 AUTHORIZING THE)
ISSUANCE OF LONG-TERM DEBT TO INCREASE)
THE AUTHORIZED INTEREST RATE.)**

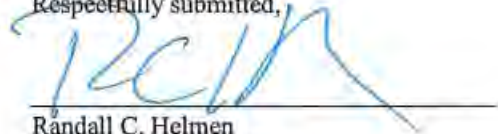
CAUSE NO. 45932

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR'S

**PUBLIC'S EXHIBIT NO. 1 – TESTIMONY OF OUCC WITNESS
LEJA D. COURTER**

September 29, 2023

Respectfully submitted,



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**OHIO VALLEY GAS CORPORATION AND
OHIO VALLEY GAS, INC.
CAUSE NO. 45932
TESTIMONY OF OUCC WITNESS LEJA D. COURTER**

I. INTRODUCTION

1 **Q: Please state your name and business address.**

2 A: My name is Leja D. Courter. My business address is 115 West Washington Street, Suite
3 1500 South, Indianapolis, IN 46204.

4 **Q: By whom are you employed and in what capacity?**

5 A: I am employed by the Indiana Office of Utility Consumer Counselor ("OUCC") as a
6 Chief Technical Advisor. For a summary of my educational and professional
7 experience, as well as my preparation for presenting testimony in this case, please see
8 Appendix LDC-1 attached to my testimony.

9 **Q: What is the purpose of your testimony?**

10 A: The purpose of my testimony is to address Ohio Valley Gas Corporation's ("OVGC")
11 and Ohio Valley Gas, Inc.'s ("OVGI") (together, ("Joint Petitioners") or ("OVG"))
12 request for approval to increase the authorized long-term debt interest rate authorized
13 in Cause No. 45538 ("45538 Order"). *In re Ohio Valley Gas Corporation and Ohio*
14 *Valley Gas, Inc.*, Cause No. 45538, Final Order (Ind. Util. Regulatory Comm'n Jul. 28,
15 2021.)

16 As my testimony will explain, OVG violated the terms of the 45538 Order when
17 it entered into a financially detrimental transaction that was contrary to the Order's
18 expressed purpose. In this Cause, Joint Petitioners are asking the Indiana Utility
19 Regulatory Commission ("Commission") to force customers to pay for a financial

1 calamity of OVG's own making. The Commission has the legal authority to hold Joint
2 Petitioners accountable and protect OVG's customers, and should do so in this Cause.

3 **Q: What are your recommendations in this Cause?**

4 A: I recommend the Commission exercise its legal authority to protect OVG's customers
5 by doing the following:

- 6 • Grant OVG's request to increase the authorized long-term debt interest rate to
7 4.50%, but only require OVG's customers to be responsible for paying a 3.25%
8 interest rate in OVG's capital structure.
- 9 • Approve the capital structure depicted in Table 1, below, with a 3.25% long-
10 term debt interest rate and the current long-term debt amount.
- 11 • Deny OVG's request for new financing authority.

12 **Q: Are you sponsoring any attachments in this proceeding?**

13 A: Yes. I am sponsoring the following attachments.

- 14 • Attachment LDC-1: OVG's responses to OUCC Data Requests ("DR") 3-1, 1-
15 7, 3-2, 1-4, 1-5 and 1-2.
- 16 • Attachment LDC-2: Unaudited Balance Sheet and Income Statement from
17 Cause No. 45538.
- 18 • Attachment LDC-3: OUCC Testimony of Cinthia Galvez in Cause No. 45538.
- 19 • Attachment LDC-4: OVG's response to DR 1-1.b - Credit Agreement dated
20 July 13, 2021.
- 21 • Attachment LDC-5: OVG's responses to OUCC DRs 2-1.a. and 2-2, and
22 supplemental response to OUCC DR 2-3.
- 23 • Attachment LDC-6: Comparison of Revenue Requirements.

24 **Q: To the extent you do not address a specific item or adjustment, should that be**
25 **construed to mean you agree with Petitioner's proposal?**

26 A: No. Not addressing a specific item or adjustment OVG proposes does not indicate my
27 agreement or approval. Rather, the scope of my testimony is limited to the specific
28 items addressed herein.

II. OVG'S REQUESTED RELIEF

1 **Q: What relief is OVG requesting in this Cause?**

2 A: OVG requests an increase to the authorized long-term debt interest rate authorized
3 in Cause No. 45538. (Joint Petitioner's Exhibit No. 1, Attachment GPR-1, page 1.)
4 The authorized not to exceed interest rate in Cause No. 45538 was 3.75%. (*Id.*,
5 page 3.) OVG secured the financing at 3.25%. (*Id.*, footnote 1.) Alternatively, if
6 the Commission does not amend the authorized interest rate to 4.50%, then OVG
7 requests approval of a new financing program with the same terms proposed in
8 Cause No. 45538, with the exception that the Excess Cash Flow ("ECF") recapture
9 payment term shall be eliminated and the interest rate for the long-term debt shall
10 not exceed 4.50%. (*Id.*, page 3.) I will explain the ECF term, as well as the
11 Mandatory Prepayment term, later in my testimony.

III. BACKGROUND – CAUSE NO. 45538

12 **Q: What relief did OVG request in Cause No. 45538?**

13 A; OVG requested authority to issue long-term debt for purposes of supporting a buy-back
14 of OVGC stock from its parent company, Beynon Farm Products ("Beynon"). (*Id.*,
15 Attachment GPR-2, page 2.) OVGC requested financing authority to borrow up to \$6
16 million at an interest rate of up to 3.75%. (*Id.*)

17 **Q: Did OVG provide testimony in support of its requested relief in Cause No. 45538?**

18 A: Yes. OVG provided the testimony of its Vice President, Chief Financial Officer, and
19 Chief Information Officer, Ronald P. Salkie. (*Id.*, pages 6-10.)

20 **Q: Did OVG hold any long-term debt when it filed Cause No. 45538?**

21 A: No. (*Id.*, page 6.)

1 **Q: Why did OVG seek to incur long-term debt when it filed Cause No. 45538?**

2 A; Mr. Salkie stated two primary reasons. The first reason was that interest rates were at
3 particularly low levels at that time. (*Id.*, page 7.) The second reason was to buy-back
4 stock from its corporate parent, Beynon. (*Id.*)

5 **Q; Did OVG go into further detail regarding the second reason.**

6 A; Yes. OVG had acquired a small utility holding company, which owned Fountaintown
7 Natural Gas Company and South Eastern Indiana Natural Gas. (*Id.*) OVG also was
8 contemplating acquiring the Town Of Grandview, Indiana's municipal gas utility. (*Id.*)
9 OVG decided to initially finance these acquisitions by selling just under 50,000
10 treasury shares to Beynon. (*Id.*) The proceeds from the stock sale to Beynon increased
11 OVG's outstanding equity. (*Id.*) Mr. Salkie testified OVG wanted to borrow the money
12 to buy back the shares that were sold to Beynon.

13 OVG would like to borrow money *to buy back* these recently transferred
14 shares in order to reduce its outstanding common equity over the course
15 of the proposed 5-year loan term *so the parent company's equity stake*
16 *is reduced to the same number of shares it held before the recent stock*
17 *sale* described above. (*Id.*, *emphasis added.*)

18 **Q: How many OVG shares were sold to Beynon?**

19 A: OVG sold 49,700 shares to Beynon on December 18, 2020 at \$153.66 per share for a
20 gross amount of equity added of \$7,636,902. (Attachment LDC-1, page 1; OVG's
21 response to OUCC DR 3-1.)

22 **Q: Were all of the loan proceeds going to be used to buy back stock?**

23 A: No. Mr. Salkie testified the stock buyback comprised the bulk of the uses of the loan
24 proceeds, and OVG also would use the remaining loan proceeds for various capital
25 improvement projects. (Joint Petitioners' Exhibit No. 1, Attachment GPR-2, page 7.)

1 **Q: Were *any* of the loan proceeds used to buy back the stock that was sold to Beynon?**

2 A: No. (Attachment LDC-1, pages 2-3; OVG's responses to OUCC DRs 1-7 and 3-2.)

3 **Q: Did OVG provide any evidence in Cause No. 45538 regarding its financial**
4 **condition?**

5 A: Yes. OVG's testimony references "OVG's 2020 calendar year-end unaudited Balance
6 Sheet and Income Statement to this Cause." (Petitioner's Exhibit No. 1, Attachment
7 GPR-2, page 8.)

8 **Q: Were the referenced 2020 calendar year-end unaudited Balance Sheet and Income**
9 **Statement included as part of Attachment GPR-2 in this Cause?**

10 A: No. But those financial statements were included in OVG's testimony in Cause No.
11 45538. Those were the financial statements the Commission and OUCC would have
12 reviewed in Cause No. 45538. The balance sheet was filed on April 30, 2021. The
13 income statement was filed on May 5, 2021. I have attached those financial statements
14 to my testimony as Attachment LDC-2, pages 1-7.

15 **Q: You previously mentioned Excess Cash Flow and Mandatory Prepayment terms**
16 **contained in OVG's loan agreement. Were these terms discussed in OVG's**
17 **testimony in Cause No. 45538?**

18 A: No. (Attachment LDC-1, page 4; OVG's response to OUCC DR 1-4.)

19 **Q: Did the OUCC present testimony in Cause No. 45538?**

20 A: Yes. OUCC Utility Analyst Cinthia J. Galvez presented testimony regarding the
21 purpose of OVG's financing request. (Attachment LDC-3, pages 1-9.) Ms. Galvez
22 quoted Mr. Salkie's testimony, which stated: "OVG would like to borrow money to
23 buy back these recently transferred shares in order to reduce its outstanding common
24 equity over the course of the proposed 5-year loan term." (*Id.*, page 3, lines 18-20.)

1 **Q: Did the OUCC review whether OVG had sufficient net income to repay the**
2 **borrowing and associated interest expense?**

3 A: Yes. Ms. Galvez testified: "Exhibit No. 2 to Mr. Salkie's testimony, which is the 2020
4 Calendar Year-End Unaudited Income Statement, shows OVG's net income was
5 \$3,911,107 in 2020. I conclude OVG is generating enough funds to cover its debt
6 obligations." (Attachment LDC-3, page 5, lines 18-20.)

7 **Q: Did Ms. Galvez provide an opinion whether OVG would have sufficient net**
8 **income to repay the principal and associated interest expense if the loan contained**
9 **Excess Cash Flow or Mandatory Prepayment terms?**

10 A: No. The Excess Cash Flow and Mandatory Prepayment terms were not presented in
11 OVG's petition or testimony in Cause No. 45538. Therefore, Ms. Galvez's
12 recommended approval of the financing request was *not* based on those terms being
13 included in the financing terms.

14 **Q: Did the OUCC ask OVG what its capital structure would be if the financing**
15 **request was approved in Cause No. 45538?**

16 A: Yes. OVG indicated in a data response that if the financing request was approved, its
17 common equity would decrease by \$6 million to about \$64 million, and its long-term
18 debt would increase to \$6 million. (Attachment LDC-3, page 4, lines 6-10, and page
19 8.)

20 **Q: Did Ms. Galvez recommend approval of OVG's financing request in Cause No.**
21 **45538?**

22 A: Yes. Ms. Galvez stated the OUCC recommends Commission approval of the following:
23 "1. OVG's financing request to issue long-term debt in the amount of \$6,000,000 with
24 a term of five (5) years, with principal payments based on a ten (10) year amortization
25 schedule, and an interest rate capped at 3.75%." (Attachment LDC-3, page 5, lines 24-
26 26.)

1 **Q: What statutory authority does the Commission have to approve long-term debt**
2 **financing?**

3 A: The Commission specified its statutory authority in the 45538 Order.

4 Pursuant to Ind. Code §§ 8-1-2-76 through 81, the Commission has
5 the authority, *after consideration of all information that may be*
6 *relevant* or required, to investigate and approve or disapprove a
7 proposal by a public utility to issue bonds, notes, or other evidence of
8 indebtedness, payable more than one year from the execution thereof
9 of preferred or common stock. (45538 Order, page 3, *emphasis*
10 added.)

11 **Q: Is information regarding Excess Cash Flow and Mandatory Prepayment terms**
12 ***relevant* information the Commission should have considered *before* it issued the**
13 **45538 Order?**

14 A: Yes. It is also relevant information the OUCC should have considered prior to making
15 its recommendation in Cause No. 45538. We now see the financially detrimental
16 consequences of the Excess Cash Flow and Mandatory Prepayment terms being
17 presented *after* the Commission issued the 45538 Order. OVG provided an example *in*
18 *this Cause* of the Excess Cash Flow amount based on the December 31, 2022 fiscal
19 year. (ECF-EBITDA Workpaper filed on August 9, 2023.) In the ECF-EBITDA
20 workpaper example, the excess cash flow amount is \$1,193,553.

21 **Q: Did the Commission and the OUCC consider the Excess Cash Flow and**
22 **Mandatory Prepayment terms before the Commission issued the 45538 Order?**

23 A: No. The Commission issued the 45538 Order on July 28, 2021. The Excess Cash Flow
24 and Mandatory Prepayment terms first appeared on September 1, 2021 when OVG
25 filed its Joint Petitioners' Post-Closing Report On Financing Terms ("Post-Closing
26 Report"). (Joint Petitioner's Exhibit No. 1, Attachment GPR-3, pages 1-11.) I discuss
27 the Post-Closing Report later in my testimony.

1 **Q: Are you aware of any long-term debt financing plans approved by the**
2 **Commission, which contain Excess Cash Flow and Mandatory Prepayment**
3 **terms?**

4 A: No.

5 **Q: Did the Commission grant OVG's request to issue long-term debt?**

6 A: Yes. The Commission stated: "The evidence demonstrates the purpose of OVG's
7 proposed long-term debt is to buy back stock in OVGC and potentially fund capital
8 improvement projects within OVGC and OVGI." (45538 Order, page 3.) The
9 Commission also stated:

10 *Based on our review of the evidence, we find that it is in the public*
11 *interest for Joint Petitioners to buy back up to 50,000 shares of its*
12 *capital stock from its parent company and to pay for such purchase as*
13 *well as future capital improvement projects with newly borrowed funds*
14 *having a payback period of more than one year. Accordingly, we grant*
15 *Joint Petitioners' requested relief. (Id., emphasis added.)*

16 **Q: Did OVG use the long-term debt proceeds to buy back stock in OVGC?**

17 A: No. (Attachment LDC-1, pages 2-3; OVG response to DRs 1-7 and 3-2.)

18 **Q: What else did the Commission authorize in the 45538 Order?**

19 A: The Commission authorized Joint Petitioners to issue long-term debt in an amount not
20 to exceed \$6 million, to be paid off within five years at an interest rate of up to 3.75%.
21 (45538 Order, page 4.)

22 **Q: Did OVG secure long-term debt financing pursuant to the Commission's**
23 **authorization?**

24 A: OVG signed a Term Loan Note to borrow up to \$6 million, to be paid off within five
25 years, at an interest rate of 3.25%. (Joint Petitioner's Exhibit No. 1, Attachment GPR-
26 3, pages 4, 7.) However, for the reasons stated above, the Commission's Order did not
27 authorize the Excess Cash Flow and Mandatory Prepayment terms. (Attachment LDC-
28 1, pages 4-5; OVG's responses to OUCC DRs 1-4 and 1-5.)

1 **Q: In Cause No. 45538, was OVG ordered to file a post-closing report?**

2 A: Yes. Ordering paragraph 3 states: "Within 30 days of closing of the loan, Joint
3 Petitioners shall make a filing under this Cause describing the final terms of the long-
4 term debt, including the amount, maturity period, interest rate, any premiums or
5 discounts paid, issuance expenses, a description of the collateral, and repayment
6 terms." (45538 Order, page 4.)

7 **Q: What information is contained in the Post-Closing Report?**

8 A: The Post-Closing Report contains a 1 1/2 page summary of the financing terms. (Joint
9 Petitioner's Exhibit No. 1, Attachment GPR-3, pages 1-2.) The summary *does not*
10 *mention* the Excess Cash Flow and Mandatory Prepayment terms. The Term Loan Note
11 dated August 3, 2021 is on pages 4 and 5 of the Post-Closing Report. The First
12 Amendment to Credit Agreement, also dated August 3, 2021, is contained on pages 6-
13 11 of the Post-Closing Report. The Excess Cash Flow term is on page 6 of the Post-
14 Closing Report. The Mandatory Prepayment term is on page 8 of the Post-Closing
15 Report.

16 **Q: What is the Excess Cash Flow term?**

17 A: The Excess Cash Flow term is essentially a formula for the lender, First Merchants
18 Bank, to determine OVG's financial stability and provide additional security for the
19 bank. (*Id.*, page 6.)

20 **Q: What is the Mandatory Prepayment term?**

21 A: The Mandatory Prepayment term is used in conjunction with the Excess Cash Flow
22 term. The Excess Cash Flow is determined, and then OVG is required to make a
23 mandatory prepayment equal to 50% of the Excess Cash Flow for the applicable fiscal
24 year. (*Id.*, page 8.)

1 **Q: The First Amendment to Credit Agreement was filed with the Post-Closing**
2 **Report. Was the Credit Agreement filed with the Post-Closing Report in Cause**
3 **No. 45538?**

4 A: No. The OUCC had to request a copy of the Credit Agreement in discovery in this
5 Cause. (Attachment LDC-4, pages 1-50; OVG response to DR 1-1.b.)

6 **Q: What is the date of the Credit Agreement?**

7 A: July 13, 2021. (*Id.*, page 2.)

8 **Q: Is the Credit Agreement signed?**

9 A: Yes. The Credit Agreement is signed by Ronald P. Salkie on behalf of OVG, and Kevin
10 Eckerty on behalf of First Merchants Bank. (*Id.*, pages 46-47.)

11 **Q: Did the Credit Agreement, dated July 13, 2021, contain Excess Cash Flow and**
12 **Mandatory Prepayment terms?**

13 A: No.

14 **Q: What happened during the three weeks between the signing of the July 13, 2021**
15 **Credit Agreement, which did not contain Excess Cash Flow and Mandatory**
16 **Prepayment terms, and the August 3, 2021 signing of the First Amendment to**
17 **Credit Agreement, which did contain those terms?**

18 A: The OUCC attempted to find out what caused those two terms to be added. The OUCC
19 requested all correspondence between Joint Petitioners and the Bank, which discusses
20 the Term Loan, Credit Agreement, or Amendments, from January 1, 2021 to August 7,
21 2023. (Attachment LDC-1, pages 6-16; OVG's response to OUCC DR 1-2.) OVG
22 responded with correspondence dated April 25-26, 2023 pertaining to OVG's proposed
23 4.50% loan in this Cause. (*Id.*, pages 7-16.) OVG's response to OUCC DR 1-2 did not
24 address the OUCC's question about what happened between July 13, 2021 and August
25 3, 2021, which caused the Excess Cash Flow and Mandatory Prepayment terms to be
26 added. Therefore, the OUCC asked another question about those specific dates. Again,
27 OVG provided a response that did not include any communication between July 13,

1 2021 and August 3, 2021. (Attachment LDC-5, pages 1, 4-10; OVG's response to
2 OUCC DR 2.1.a.)

3 **Q: Did any of the bank documents indicate what the long-term debt, i.e., Term Loan,
4 was to be used for?**

5 A: Yes. The First Amendment to Credit Agreement, Section 2.5(b) states: "Term Loan.
6 Subject to the provisions of this Agreement, the proceeds of the Term Loan *shall be*
7 *used to finance the repurchase of certain of Borrower's capital stock* that was sold
8 during the 2020 calendar year." (Joint Petitioners' Exhibit No. 1, Attachment GPR-3,
9 page 8, *emphasis added*.)

10 **Q: Did OVG's Board of Directors approve a Resolution authorizing the borrowing
11 of \$6 million in long-term debt?**

12 A: I reviewed the Commission's record in Cause No. 45538, and I could not find an OVG
13 Resolution authorizing the borrowing of \$6 million in long-term debt in 2021. OVG
14 provided the Resolution in discovery in this Cause. (Attachment LDC-5, pages 3, 11;
15 OVG response to OUCC DR 2-2.)

16 **Q: Other than the Excess Cash Flow and Mandatory Prepayment terms, were there
17 any other terms in the Post-Closing filing that appeared financially detrimental to
18 OVG?**

19 A: Yes. The Term Note contains the following language:

20 In the event that any principal amount of this Note is *prepaid*, a fee of
21 *three percent (3%)* of the principal amount prepaid shall be due and
22 payable if *prepaid* in the 1st Loan Year, *two percent (2%)* of the
23 principal amount prepaid shall be due and payable if *prepaid* in the 2nd
24 Loan Year, and *one percent (1%)* of the principal amount prepaid shall
25 be due and payable if *prepaid* in the 3rd Loan Year. (Joint Petitioner's
26 Exhibit No. 1, Attachment GPR-3, page 4, *emphasis added*.)

27 Based on the above language and the Mandatory Prepayment language, it
28 appears OVG can be forced to comply with the Mandatory Prepayment term, and then
29 be assessed a fee, or penalty, for making mandatory prepayments in the first three years.

1 **Q: Could OVG have notified the Commission when the terms and purpose of the loan**
2 **changed?**

3 A: Yes. When OVG knew the Excess Cash Flow and Mandatory Prepayment terms would
4 be added to the loan agreement, then OVG could – and should – have immediately
5 sought an amendment to the approved authority from the Commission. When OVG
6 knew it was not going to use the loan proceeds to buy back its common stock from
7 Beynon, then OVG could – and should – have immediately sought an amendment to
8 the approved authority from the Commission.

IV. CURRENT CAUSE NO. 45932

9 **Q: According to OVG's testimony, the Bank will implement the Excess Cash Flow**
10 **and Mandatory Prepayment terms. What action did OVG take?**

11 A: On August 7, 2023, OVG filed Cause No. 45932.

12 **Q: What relief is OVG requesting in Cause No. 45932.**

13 A: OVG is asking the Commission to increase the authorized not to exceed 3.75% interest
14 rate on its long-term debt authorized in Cause No. 45538 to 4.50%. (Joint Petitioner's
15 Exhibit No. 1, Attachment GPR-1, page 2.) Mr. Roach indicates the increased interest
16 rate (to 4.50%) was a product of negotiations with the Bank in order to eliminate the
17 mandatory prepayment of excess cash flow requirement. (*Id.*, page 3, lines 11-13.)
18 Alternatively, OVG requests approval of a new financing authority. (*Id.*, lines 15-16.)

19 **Q: When did Mr. Roach become aware of the Excess Cash Flow and Mandatory**
20 **Prepayment terms?**

21 A: Mr. Roach testifies: "After the Silicon Valley Bank and Signature Bank collapses in
22 early March of this year, I directed the OVG finance group to review all of the OVG's
23 financial agreements to identify early call provisions to which OVG was a party." (*Id.*,
24 page 7, lines 14-17.)

1 **Q: Based on Mr. Roach's testimony referenced above, is it your understanding Mr.**
2 **Roach first became aware of the Excess Cash Flow and Mandatory Prepayment**
3 **terms in early March of 2023?**

4 A: Yes.

5 **Q: When did Mr. Roach become OVGC's Chief Financial and Regulatory Officer?**

6 A: April 4, 2022. (*Id.*, page 1, line 6.)

7 **Q: Have any Amendments to the Credit Agreement been signed after April 4, 2022,**
8 **but before March 2023?**

9 A: Yes. Two Amendments were signed after April 4, 2022, but before March 2023. The

10 Second Amendment to Credit Agreement was signed on August 17, 2022. (Attachment

11 LDC-4, pages 51-58.) The Third Amendment to Credit Agreement was signed on

12 September 6, 2022. (*Id.*, pages 59-67; OVG's response to OUCC DR 1-1, Attachment

13 2.)

14 **Q: Who signed the Second Amendment to Credit Agreement on behalf of OVG?**

15 A: Mr. Roach. (*Id.*, page 58.)

16 **Q: Who signed the Third Amendment to Credit Agreement on behalf of OVG?**

17 A: Mr. Roach. (*Id.*, page 66.)

18 **Q: Should Mr. Roach have been aware of the First Amendment to Credit Agreement**
19 **before he signed the Second and Third Amendments?**

20 A: On September 25, 2023, OVG provided a supplemental response to OUCC DR 2-3.

21 (Attachment LDC-5, pages 12-13.) OVG's supplemental response states in part: "OVG

22 would note that as shown in the amendment documents, the Second and Third

23 Amendments pertain only to the line of credit within OVG credit facilities and do not

24 pertain to the term loan at issue in this cause." (*Id.*, page 13.)

25 OVG's supplemental response implies that Mr. Roach, OVG's Chief Financial

26 and Regulatory Officer, signed a Second, and then a Third Amendment to the Credit

1 Agreement - *without* reviewing the contractual language of the First Amendment to
2 that same Credit Agreement.

3 **Q: What is the current interest rate on the long-term debt?**

4 A: The current interest rate is 3.25%. (Joint Petitioner's Exhibit No. 1, page 5, lines 11-
5 12.) Therefore, OVG is essentially seeking authorization to increase the interest rate on
6 the long-term debt from 3.25% to 4.50%.

7 **Q: Has OVG borrowed the entire \$6 million long-term debt authorized in Cause No.**
8 **45538?**

9 A: No. Mr. Roach testified approximately \$1.2 million of the authorization remains
10 unissued. (*Id.*, page 6, lines 8-9.) OVG's petition in this Cause indicates OVG has long-
11 term debt in the principal amount of \$5,010,766 on May 31, 2023. (*Id.*, Attachment
12 GPR-1, page 2.)

13 **Q: Did OVG discuss the financial impact of the Excess Cash Flow and Mandatory**
14 **Prepayment terms?**

15 A: Yes. Mr. Roach testified: "Having to make such a payment would put a strain on cash
16 flow for OVG, and it is a real possibility that a short-term line of credit would be needed
17 to make such a payment." (*Id.*, page 7, lines 25-27.)

18 **Q: Does OVG currently have a short-term line of credit?**

19 A: Yes. OVG has a revolving credit loan with a maximum principal amount of \$4 million.
20 (*Id.*, Attachment GPR-3, page 7.)

21 **Q: What is OVG proposing in order to eliminate the Excess Cash Flow and**
22 **Mandatory Prepayment terms?**

23 A: OVG is proposing to increase the interest rate to 4.50% and include the long-term debt
24 in its capital structure at 4.50%. "OVG negotiated the increased interest rate with the
25 Bank in return for the Bank eliminating the ECF Recapture term included in the original
26 financing terms (the "Modification")." (*Id.*, page 5, lines 14-16.) On May 31, 2023,

1 OVG had \$5,010,766 of long-term debt included in the capital structure at 3.25% with
2 a weighted average cost of capital (“WACC”) of 8.657%. (*Id.*, Attachment GPR-7,
3 page 1.) OVG estimates a pro forma capital structure with long-term debt of \$4,832,182
4 at 4.50% with a WACC of 8.74090%. (*Id.*, page 2.)

5 **Q: Why is the long-term debt amount reduced from \$5,010,766 to \$4,832,182?**

6 A: According to Mr. Roach’s testimony, the lower long-term debt amount presumes
7 execution of the Modification in September of 2023. (*Id.*, page 12, lines 16-17.)

8 **Q: At pages 13-14 of his testimony, Mr. Roach states the Modification is in the best**
9 **interests of OVG’s customers. Do you agree?**

10 A: No. As proposed by OVG, I do not agree the Modification is in the best interests of
11 OVG’s customers. The Modification is in the best interests of OVG and its
12 shareholders. OVG is requesting the Commission relieve OVG of the financial burden
13 it got itself into two years ago when it signed the Term Loan, Credit Agreement, and
14 in particular, the First Amendment to the Credit Agreement. OVG is characterizing the
15 requested relief in this Cause as a benefit to OVG’s customers. But that characterization
16 is not accurate.

17 OVG is requesting its long-term debt rate be increased from 3.25% to 4.50%.
18 This 1.25% increase in OVG’s long-term debt rate is not a benefit to OVG’s customers.
19 OVG’s management entered into a transaction two years ago with financially
20 detrimental terms – contrary to its own testimony, the OUCC’s testimony, and without
21 Commission authorization. OVG’s management failed to use the loan proceeds to buy
22 back its stock from its parent company - in contravention of the Commission’s 45538
23 Order, and the terms of the Term Loan Note.

1 OVG's customers are not responsible for the financially detrimental Excess
2 Cash Flow and Mandatory Prepayment terms of the long-term debt agreement signed
3 by OVG's management on August 3, 2021. OVG's management is responsible for
4 those financially detrimental terms. OVG's management is responsible to its Board of
5 Directors and its shareholders for the financial stability of the utility. OVG's
6 shareholders should be responsible for any long-term debt interest over 3.25% in
7 OVG's capital structure.

8 **Q: Does OVG's testimony indicate the difference in the WACC if the Modification is**
9 **approved?**

10 A: Yes. Mr. Roach states: "Conversely, by execution of the Modification, OVG's WACC
11 would increase from a current 8.66% to 8.74%, holding all non-LTD WACC
12 components steady, an increase of 0.08%." (Joint Petitioner's Exhibit No. 1, page 12,
13 line 22 – page 13, line 1.) Mr. Roach goes on to state: "Thus, executing the Modification
14 results in real financing cost savings to the customer as opposed to moving forward
15 without the Modification." (*Id.*, page 13, lines 1-3.)

16 **Q: Do you agree with Mr. Roach's statements?**

17 A: I agree with Mr. Roach's calculation of the difference in the WACC between using a
18 3.25% interest rate for the long-term cost of debt and using a 4.50% interest rate. I do
19 not agree that the Modification results in *real financing cost savings to the customer* -
20 because OVG's customers should not have to pay for OVG's management's financially
21 detrimental mistake of signing a credit agreement with Excess Cash Flow and
22 Mandatory Prepayment terms.

1 **Q: Did OVG file an exhibit which indicates the increased revenue requirement with**
2 **a 4.50% long-term interest rate in the WACC?**

3 A: Yes. Mr. Roach sponsored Attachment GPR-8, which calculates the difference between
4 a revenue requirement using a WACC with a long-term interest of 3.25% and a WACC
5 with a long-term interest rate of 4.50%. Attachment GPR-8 indicates a total authorized
6 rate base of \$57,599,961. This is OVG's rate base from Cause No. 44891, plus the
7 additional rate base from OVG's Transmission Distribution Storage System
8 Improvement Charge ("TDSIC") tracker in Cause No. 45400 TDSIC-4. The 4.50%
9 interest rate WACC results in a \$64,638 increase in the revenue requirement, which
10 OVG proposes to be paid by OVG's customers. Mr. Roach indicates the impact of this
11 increase is \$0.0061 per dekatherm.

12 **Q: Do you agree with the calculations on Attachment GPR-8?**

13 A: I agree with the calculations. However, the calculations do not indicate the full financial
14 impact to OVG's customers of increasing the long-term debt interest rate from 3.25%
15 to 4.50%.

16 **Q: Please explain.**

17 A: Attachment GPR-8 indicates OVG's rate base after TDSIC-4. OVG files a new TDSIC
18 tracker every six months and filed its most recent TDSIC-5 case on August 30, 2023.
19 OVG's rate base continues to increase with each TDSIC tracker filing, and therefore,
20 OVG's revenue requirement—i.e., the cost OVG's customers must pay—also increases.
21 Also, Attachment GPR-8 indicates the *annual* increase in the revenue requirement of
22 \$64,638. Even "assuming" OVG's rate base did not increase in the next year, OVG's
23 customers would pay an additional \$64,638 in the second year, and another \$64,638 in
24 the third year. Under OVG's proposal - and assuming no increase in OVG's rate base

1 - after three years, OVG's customers will pay \$193,194 (\$64,638 x 3) of additional
2 revenue requirement in a three-year period. Each year, OVG's customers will pay the
3 additional revenue requirement until OVG files its next base rate case.

4 **Q: What happens when OVG files its next base rate case?**

5 A: Assuming OVG's increase in the long-term debt interest rate of 4.50% is approved, and
6 the long-term debt is included in OVG's next base rate case, then OVG's customers'
7 base rates will include the additional *annual* revenue requirement (difference between
8 3.25% and 4.50% interest rate) until the subsequent rate case order. For example, if
9 OVG filed a rate case in 2024, and new base rates went into effect at the beginning of
10 2025, then OVG's customers would continue to pay the additional *annual* revenue
11 requirement (between 3.25% and 4.50%) until OVG's subsequent base rate case order.

12 **Q: Besides OVG's proposed change in the long-term debt interest rate, are there any**
13 **other components in the capital structure that should be discussed?**

14 A: Yes. When OVG requested the financing authority in Cause No. 45538, as discussed
15 above, OVG testified it was going to use the majority of the \$6 million to buy back the
16 stock it sold to Beynon. I also discussed that OVG admitted it didn't buy back any of
17 the stock it sold to Beynon. (Attachment LDC-1, pages 2-3; OVG's responses to OUCC
18 DRs 1-7 and 3-2.) The OUCC based its recommended approval of the \$6 million loan
19 in Cause No. 45538 on OVG's testimony that it was going to use most of the loan
20 proceeds to buy back the stock.

21 The 45538 Order indicates OVG was going to use the loan proceeds to buy back
22 the stock. The Commission stated:

23 Based on our review of the evidence, we find that *it is in the public*
24 *interest for Joint Petitioners to buy back up to 50,000 shares of its*
25 *capital stock from its parent company and to pay for such purchase as*
26 *well as future capital improvement projects with newly borrowed*

1 funds having a payback period of more than one year. (45538 Order,
2 page 3, *emphasis added*.)

3 The Term Loan Note indicates the loan proceeds were going to be used to buy
4 back the stock. OVG even prepared a data response in Cause No. 45538 indicating what
5 its capital structure would look like after the buy back of the stock. (Attachment LDC-
6 3, page 8.)

7 **Q: What is the effect on OVG's capital structure of OVG's management not buying**
8 **back the stock from Beynon?**

9 A: The effect of *not* buying the stock is OVG's common equity comprises a larger portion
10 of its capital structure, at a 10% cost rate, and therefore, increases the overall WACC.
11 OVG's Attachment GPR-7, page 1, indicates the following:

Table 1

**OVGC and OVGI Capital Structure
May 31, 2023**

<u>Source of Capital</u>	<u>Amount</u>	<u>% of Total</u>	<u>Cost</u>	<u>Rate of Return</u>
Common Equity	\$70,341,205	84%	10%	8.4053%
Customer Deposits	797,182	1%	6%	0.0572%
Long Term Debt	5,010,766	6%	3.25%	0.1946%
<u>Def. Inc. Tax Res.</u>	<u>7,538,035</u>	<u>9%</u>	<u>0%</u>	<u>0.0000%</u>
Totals	\$83,687,187	100%		8.6570%

12 Table 1 reflects the fact OVG did not buy back any stock from Beynon, has
13 approximately \$5 million of long-term debt at 3.25% interest, and a WACC of 8.657%.

14 Conversely, Table 2 below indicates OVG's capital structure, assuming OVG
15 had fulfilled its testimonial commitment, and used the long-term debt loan proceeds
16 (\$5,010,766) to buy back the Beynon stock.

Table 2**OVGC and OVGI Capital Structure
May 31, 2023**

<u>Source of Capital</u>	<u>Amount</u>	<u>% of Total</u>	<u>Cost</u>	<u>Rate of Return</u>
Common Equity	\$65,330,439	83%	10%	8.3037%
Customer Deposits	797,182	1%	6%	0.0608%
Long Term Debt	5,010,766	6%	3.25%	0.2070%
<u>Def. Inc. Tax Res.</u>	<u>7,538,035</u>	<u>9%</u>	<u>0%</u>	<u>0.0000%</u>
Totals	\$78,676,422	100%		8.5714%

1 With the reduction in common equity, the WACC *would* have been reduced
2 from 8.657% to 8.5714%. OVG's Attachment GPR-8 indicates that using its proposed
3 WACC of 8.7409% increases the return on rate base to \$48,326 and increases the
4 revenue requirement to \$64,638.

5 **Q: Have you prepared an attachment similar to OVG's Attachment GPR-8?**

6 A: Yes. Attachment LDC-6 depicts the same information as OVG's Attachment GPR-8 in
7 the rows through the Increase in Revenue Requirement and in columns 1 through 3.
8 However, columns 4 through 6 compares OVG's proposed WACC of 8.7409% to the
9 WACC of 8.5714% from Table 2, above.

10 **Q: What do columns 4 through 6 on Attachment LDC-6 indicate?**

11 A: Columns 4 through 6 indicate that if OVG had bought back approximately \$5 million
12 of its stock from Beynon, and reduced its common equity amount, then OVG's
13 customers would have a \$130,586 *decrease* in the revenue requirement. Instead, OVG
14 is requesting a \$64,638 *increase* in the revenue requirement.

1 **Q: Are you proposing OVG's capital structure reflect approximately a \$5 million**
2 **reduction in common equity?**

3 A: No. I'm providing an example of what OVG's capital structure would look like, and
4 the beneficial impact it would have had to OVG's customers, if OVG had bought back
5 the stock it sold to Beynon as it said it was going to do in its testimony, and was
6 approved by the Commission, in Cause No. 45538.

V. THE NEXT 3+ YEARS OF LONG-TERM DEBT

7 **Q: What are your recommendations to resolve this financial calamity, and ensure**
8 **OVG's customers are not required to pay for OVG's mistake?**

9 A: OVG's customers should not be penalized, and OVG's shareholders should not be held
10 harmless, for OVG's financially detrimental decision to sign the Term Loan and First
11 Credit Agreement on August 3, 2021. OVG's customers should only be responsible for
12 a 3.25% interest rate on long-term debt in OVG's capital structure.

13 **Q: If the long-term interest rate of 4.50% is authorized by the Commission, who**
14 **should be responsible for the 1.25% difference in the interest rate?**

15 A: OVG's shareholders should be responsible for the 1.25% difference in the interest rate.
16 For example, the annual simple interest on a \$5,000,000 loan at 4.50% would equal
17 \$225,000 (\$5,000,000 x 4.50%). OVG's customers would pay rates sufficient to
18 recover 3.25% interest, or \$162,500 (\$5,000,000 x 3.25%). OVG's shareholders would
19 be responsible for paying the remaining 1.25%, or \$62,500 in this example (\$5,000,000
20 x 1.25%). This is the amount OVG's shareholders would not have available to payout
21 as dividends, and OVG will not have as retained earnings, as it will have to pay the
22 amount without receiving reimbursement from OVG's innocent customers.

1 **Q: What capital structure are you recommending?**

2 A: With one exception, I am recommending the same capital structure as depicted on
3 Petitioner's Exhibit No. 1, Attachment GPR-7, page 1, which is the same capital
4 structure as Table 1, above. The exception being the long-term debt amount should be
5 updated to reflect the current balance. However, the interest rate remains at 3.25%. This
6 capital structure reflects OVG's actual common equity amount, and not the reduced
7 amount that should have occurred - since OVG did not buy back any of the stock it sold
8 to Beynon.

9 **Q: If you only recommend a 3.25% long-term debt interest rate in the capital**
10 **structure, even though the interest rate may be 4.50%, then aren't you**
11 **recommending a hypothetical capital structure?**

12 A: No. The 3.25% long-term debt interest rate complies with the not to exceed interest rate
13 of 3.75% authorized in the 45538 Order. The Commission did not authorize the Excess
14 Cash Flow and Mandatory Prepayment terms. Those unauthorized terms are causing
15 OVG to propose an increase in the long-term debt interest rate to 4.50% in this Cause.
16 OVG's customers should only be responsible for OVG's 3.25% long-term debt interest
17 rate authorized by the 45538 Order.

18 **Q: Does Indiana have a State policy on protecting the utility service affordability?**

19 A: Yes. Ind. Code § 8-1-2-0.5 states:

20 The general assembly declares that it is the continuing policy of the
21 state, in cooperation with local governments and other concerned public
22 and private organizations, to use all practicable means and measures,
23 including financial and technical assistance, in a manner calculated to
24 create and maintain conditions under which utilities plan for and invest
25 in infrastructure necessary for operation and maintenance *while*
26 *protecting the affordability of utility services for present and future*
27 *generations of Indiana citizens. (Emphasis added.)*

1 **Q: Would OVG's proposal in this case make its rates more, or less affordable ?**

2 A: Less affordable. OVG's proposal will *increase* the annual revenue requirement to
3 OVG's customers by at least \$64,638. (Joint Petitioners' Exhibit No. 1, OVG
4 Attachment GPR-8.)

5 Conversely, if OVG had complied with the 45538 Order and bought back the
6 common stock from Beynon, and reduced OVG's equity amount, then the annual
7 revenue requirement paid by OVG's customers would have *decreased* by \$130,586.
8 (Attachment LDC-6, page 1.)

VI. SUMMARY AND RECOMMENDATIONS

9 **Q: Please summarize your testimony.**

10 A: OVG's management entered into a transaction two years ago with the financially
11 detrimental Excess Cash Flow and Mandatory Prepayment terms – contrary to its own
12 testimony, the OUCC's testimony, and without Commission authorization. OVG's
13 management failed to use the loan proceeds to buy back its stock from its parent
14 company - in contravention of the Commission's 45538 Order, and the terms of the
15 Term Loan Note.

16 OVG's customers are not responsible for the financially detrimental Excess
17 Cash Flow and Mandatory Prepayment terms of the long-term debt agreement signed
18 by OVG's management on August 3, 2021. OVG's management is responsible for
19 those financially detrimental terms. OVG's shareholders should be held responsible for
20 paying 1.25% of the interest on the long-term debt.

21 **Q: Please summarize your recommendations.**

22 A: I recommend the Commission:

- 1 • Grant OVG's request to increase the authorized long-term debt interest rate to
2 4.50%, but only require OVG's customers to be responsible for paying a 3.25%
3 long-term debt interest rate in OVG's capital structure.
- 4 • Approve the capital structure depicted in Table 1, above, which includes OVG's
5 current equity amount, with a 3.25% long-term debt interest rate and the current
6 long-term debt amount.
- 7 • Deny OVG's request for new financing authority.

8 **Q: Does this conclude your testimony?**

9 **A: Yes.**

APPENDIX LDC-1 TO TESTIMONY OF
OUCW WITNESS LEJA D. COURTER

1 **Q: Please describe your educational background and experience.**

2 A: I graduated from Ball State University in Muncie, Indiana with Bachelor of Science
3 degrees in Finance and Economics. I received my Juris Doctorate from the University
4 of Dayton. In previous years, I have been engaged in the private practice of law, and I
5 also served as an in-house counsel at Indiana Gas Company. I have been an attorney at
6 the OUCW for over twenty years. I was the Director of the OUCW's Natural Gas
7 Division for twelve years. I became a Chief Technical Advisor at the OUCW in
8 December 2021. I am a Certified Rate of Return Analyst ("CRRR").

9 **Q: Have you previously testified before the Indiana Utility Regulatory Commission?**

10 A: Yes.

11 **Q: Please describe the review and analysis you conducted to prepare your testimony.**

12 A: I reviewed OVG's petition, testimony, exhibits, and supporting documentation
13 submitted in this Cause. I prepared discovery requests, and reviewed OVG's responses.
14 I reviewed OVG's petition, testimony, and exhibits from OVG's previous financing
15 case, Cause No. 45538. I reviewed the OUCW's testimony and exhibits from Cause No.
16 45538, and the Commission's Final Order in Cause No. 45538.

OUCG DR 3-1

DATA INFORMATION REQUEST
Ohio Valley Gas Corporation and Ohio Valley Gas, Inc.

Cause No. 45932

Information Requested:

Reference Joint Petitioner's Exhibit No. 1, Attachment GPR-2, page 7, which states:

Rather than deplete its cash reserves for these acquisitions, OVG was able to sell to its corporate parent, Beynon Farm Products, just under 50,000 previously issued shares which had been held in OVG's treasury. The proceeds from this stock sale are carried on OVG's books as an increase in its outstanding equity.

- a. Please indicate the date(s), price(s), and number of shares sold to Beynon Farm Products pursuant to the referenced sale.
- b. Please indicate the total amount of equity that was added to OVG's equity as a result of the referenced sale.
- c. Please indicate OVG's total amount of equity after the referenced sale.

Information Provided:

49,700 shares were sold to Beynon Farm Products on 12/18/20 at \$153.66 per share, for a gross amount of equity added of \$7,636,902. OVG's total equity at 12/31/2020 was \$66,324,376.

OUCG DR 1-7

DATA INFORMATION REQUEST
Ohio Valley Gas Corporation and Ohio Valley Gas, Inc.

Cause No. 45932

Information Requested:

Reference Joint Petitioners' Exhibit No. 1, Attachment GPR-2, page 2, paragraph 4 regarding the buy-back of OVGC stock from its parent company.

- a. Please provide the dates, costs, and amount of OVGC stock bought from its parent company from April 30, 2021 to August 7, 2023.
- b. Please explain any other changes in OVGC's common equity amounts between April 30, 2021 to August 7, 2023, which are not the result of OVGC buying back stock from its parent company.

Information Provided:

- a. OVG did not engage in any transaction with its parent company to buy-back stock bought from April 30, 2021 to August 7, 2023.
- b. OVG engaged in the acquisition of property, material, working capital, and the construction, extension, and improvement of facilities, and plant of the distribution system for safety improvements which changed common equity amounts and caused changes in retained earnings.

OUCG DR 3-2

DATA INFORMATION REQUEST
Ohio Valley Gas Corporation and Ohio Valley Gas, Inc.

Cause No. 45932

Information Requested:

Reference Joint Petitioner's Exhibit No. 1, Attachment GPR-2, page 7, which states:
OVG would like to borrow money to buy back these recently transferred shares in order to reduce its outstanding common equity over the course of the proposed 5-year loan term so that the parent company's equity stake is reduced to the same number of shares it held before the recent stock sale described above.

- a. Please indicate the price(s) and number of shares OVG intended to buy back from its parent company with the borrowed money.
- b. Please indicate Beynon Farm Products' equity share in OVG after the sale referenced in DR 3.1 referenced above.
- c. Please indicate the price(s) and number of shares that were bought back from Beynon Farms as a result of the borrowed money.
- d. Please indicate Beynon Farm Products' current equity share in OVG.

Information Provided:

OVG has not bought back the 49,700 shares sold to Beynon Farm Products on 12/18/20. A price per share would not be determinable until the time of a buyback. Beynon Farm Products equity share at 12/31/20 was 95.4419%. Beynon Farm Products equity share at 6/30/2023 was 95.4544%.

OUCG DR 1-4

DATA INFORMATION REQUEST
Ohio Valley Gas Corporation and Ohio Valley Gas, Inc.

Cause No. 45932

Information Requested:

Please explain where in Joint Petitioners' Verified Petition or testimony in Cause No. 45538 that Joint Petitioners discuss Excess Cash Flow or Mandatory Prepayment provisions.

Information Provided:

Excess Cash Flow and Mandatory Prepayments were not discussed in Joint Petitioners' Verified Petition or testimony in Cause No. 45538 because final terms of the loan were not established when Joint Petitioners' Verified Petition or testimony was filed or when the Commission approved the financing program and provided the guardrails including the amount allowed to be financed and the not to exceed interest rate. Joint Petitioners advised the Commission and the OUCG of the final terms of the term loan promptly following the closing of the loan in Cause No. 45538. Please review Joint Petitioners' Post-Closing Report on Financing Terms filed in Cause No. 45538, which was also provided as Joint Petitioners' Exhibit No. 1, Attachment GPR-3, where Excess Cash Flow and Mandatory Prepayments are discussed in the final terms of the loan.

OUCG DR 1-5

DATA INFORMATION REQUEST
Ohio Valley Gas Corporation and Ohio Valley Gas, Inc.

Cause No. 45932

Information Requested:

Please explain where in the Commission's Order in Cause No. 45538, dated July 28, 2021, the Commission approved Excess Cash Flow or Mandatory Prepayment provisions.

Information Provided:

See response to OUCG DR 1-4.

OUCG DR 1-2

DATA INFORMATION REQUEST
Ohio Valley Gas Corporation and Ohio Valley Gas, Inc.

Cause No. 45932

Information Requested:

Please provide all correspondence, between Joint Petitioners and the Bank, which discusses the Term Loan, Credit Agreement, or Amendments, from January 1, 2021 to August 7, 2023.

Objection:

Joint Petitioners object to the request on the grounds and to the extent it is overly broad and unduly burdensome, particularly to the extent the request solicits “all correspondence” The abbreviated time frame from discovery in Commission proceedings does not allow for e-discovery. Subject to and without waiver of the foregoing objections, Joint Petitioners provide the following response.

Information Provided:

See OUCG DR 1-2.

Attachment:

OUCG DR 1-2.pdf

From: [Kevin Eckerty](#)
To: [Greg Roach](#); [JD Owens](#)
Subject: ECF Modification Request - Approval
Date: Tuesday, April 25, 2023 12:07:49 PM
Attachments: [image002.png](#)
Sensitivity: Confidential

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Good Morning Gentlemen,

I have approval as follows;

1. Complete elimination of the annual ECF requirement.
2. Increase to the fixed rate on the loan from 3.25% to 4.50%.
3. Reduction in the remaining amortization from 100 months (+/-) to 84 months.

Please let me know your thoughts and if I should move forward with our counsel to amend the documents as such.

Thank You,

KEVIN ECKERTY
Relationship Manager III



200 E Jackson St }Muncie, IN }47305
OFFICE 765.751.1815
keckerty@FirstMerchants.com

Daun Lowman, Commercial Administrator
OFFICE 765.287.4029 }dlowman@firstmerchants.com



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From: [Kevin Eckerty](#)
To: [Greg Roach](#); [JD Owens](#)
Subject: RE: ECF Modification Request - Approval
Date: Wednesday, April 26, 2023 3:51:50 PM
Attachments: [image002.png](#)
[image004.png](#)
[\[Untitled\].pdf](#)
[OVG AM schedule 3.25.pdf](#)
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Greg (and JD),

Please see attached for the updated amortization schedule in relation to the current amortization schedule as requested. We are not contemplating extending the term at this time, so the original in place maturity date would remain under the proposal. I just wanted to clarify that. Only the remaining amortization and rate would change, so the balloon will be different.

Thank You,

KEVIN ECKERTY
Relationship Manager III



200 E Jackson St }Muncie, IN }47305
OFFICE 765.751.1815
keckerty@FirstMerchants.com

Daun Lowman, Commercial Administrator
OFFICE 765.287.4029 }dlowman@firstmerchants.com



From: Greg Roach <greg.roach@ovgas.com>
Sent: Wednesday, April 26, 2023 3:08 PM
To: Kevin Eckerty <Keckerty@firstmerchants.com>; JD Owens <jd.owens@ovgas.com>
Subject: RE: ECF Modification Request - Approval

Sensitivity: Confidential

CAUTION: This email originated from outside of First Merchants Bank. Please *do not click links or open attachments* from an *unknown* or *suspicious* sender.

Hi Kevin-

Thank you for the revised proposal.

Would you be able to send us a revised amortization schedule for the new loan terms illustrating the revised rate and length of term. I need that information to evaluate the proposal and communicate recommendations to our ownership.

Thank you!

Greg

Gregory Roach
Chief Financial Officer



Ohio Valley Gas Corporation
111 Energy Park Drive
Winchester, IN 47394
765-595-8049 (direct)
317-694-6801 (cell)
Greg.Roach@ovgas.com

“The only person you’re truly competing against is yourself.”

From: Kevin Eckerty <Keckerty@firstmerchants.com>
Sent: Tuesday, April 25, 2023 12:06 PM
To: Greg Roach <greg.roach@ovgas.com>; JD Owens <jd.owens@ovgas.com>
Subject: ECF Modification Request - Approval
Sensitivity: Confidential

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2. Increase to the fixed rate on the loan from 3.25% to 4.50%.
3. Reduction in the remaining amortization from 100 months (+/-) to 84 months.

Please let me know your thoughts and if I should move forward with our counsel to amend the documents as such.

Thank You,

KEVIN ECKERTY
Relationship Manager III



200 E Jackson St | Muncie, IN | 47305
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AMORTIZATION SCHEDULE

Amount Financed	Loan Date	Maturity	Loan Term
\$5,057,082.00	5/1/2023	5/1/2030	40 Months
Disbursement date: 5/1/2023		Repayment schedule: Installment Monthly payments	
Interest rate:	4.5%	Calculation method:	365/360 U.S. Rule

Month	Date	Payment Amount	Interest Accrued	Principal Paid	Ending Balance
1	6/1/2023	\$70,459.24	\$19,596.19	\$50,863.05	\$5,006,218.95
2	7/1/2023	\$70,459.24	\$18,773.32	\$51,685.92	\$4,954,533.03
3	8/1/2023	\$70,459.24	\$19,198.82	\$51,260.42	\$4,903,272.61
4	9/1/2023	\$70,459.24	\$19,000.18	\$51,459.06	\$4,851,813.55
5	10/1/2023	\$70,459.24	\$18,194.30	\$52,264.94	\$4,799,548.61
6	11/1/2023	\$70,459.24	\$18,598.25	\$51,860.99	\$4,747,687.62
7	12/1/2023	\$70,459.24	\$17,803.83	\$52,655.41	\$4,695,032.21
2023 Totals:		\$493,214.68	\$131,164.89	\$362,049.79	
8	1/1/2024	\$70,459.24	\$18,193.25	\$52,265.99	\$4,642,766.22
9	2/1/2024	\$70,459.24	\$17,990.72	\$52,468.52	\$4,590,297.70
10	3/1/2024	\$70,459.24	\$16,639.83	\$53,819.41	\$4,536,478.29
Totals:		\$5,668,104.36	\$611,022.36	\$5,057,082.00	

Month	Date	Payment Amount	Interest Accrued	Principal Paid	Ending Balance
11	4/1/2024	\$70,459.24	\$17,578.85	\$52,880.39	\$4,483,597.90
12	5/1/2024	\$70,459.24	\$16,813.49	\$53,645.75	\$4,429,952.15
13	6/1/2024	\$70,459.24	\$17,166.06	\$53,293.18	\$4,376,658.97
14	7/1/2024	\$70,459.24	\$16,412.47	\$54,046.77	\$4,322,612.20
15	8/1/2024	\$70,459.24	\$16,750.12	\$53,709.12	\$4,268,903.08
16	9/1/2024	\$70,459.24	\$16,542.00	\$53,917.24	\$4,214,985.84
17	10/1/2024	\$70,459.24	\$15,806.20	\$54,653.04	\$4,160,332.80
18	11/1/2024	\$70,459.24	\$16,121.29	\$54,337.95	\$4,105,994.85
19	12/1/2024	\$70,459.24	\$15,397.48	\$55,061.76	\$4,050,933.09
2024 Totals:		\$845,510.88	\$201,411.76	\$644,099.12	
20	1/1/2025	\$70,459.24	\$15,697.37	\$54,761.87	\$3,996,171.22
21	2/1/2025	\$70,459.24	\$15,485.16	\$54,974.08	\$3,941,197.14
22	3/1/2025	\$70,459.24	\$13,794.19	\$56,665.05	\$3,884,532.09
23	4/1/2025	\$70,459.24	\$15,052.56	\$55,406.68	\$3,829,125.41
24	5/1/2025	\$70,459.24	\$14,359.22	\$56,100.02	\$3,773,025.39
25	6/1/2025	\$70,459.24	\$14,620.47	\$55,838.77	\$3,717,186.62
26	7/1/2025	\$70,459.24	\$13,939.45	\$56,519.79	\$3,660,666.83
27	8/1/2025	\$70,459.24	\$14,185.08	\$56,274.16	\$3,604,392.67
28	9/1/2025	\$70,459.24	\$13,967.02	\$56,492.22	\$3,547,900.45
29	10/1/2025	\$70,459.24	\$13,304.63	\$57,154.61	\$3,490,745.84
30	11/1/2025	\$70,459.24	\$13,526.64	\$56,932.60	\$3,433,813.24
31	12/1/2025	\$70,459.24	\$12,876.80	\$57,582.44	\$3,376,230.80
Totals:		\$5,668,104.36	\$611,022.36	\$5,057,082.00	

Month	Date	Payment Amount	Interest Accrued	Principal Paid	Ending Balance
2025 Totals:		\$845,510.88	\$170,808.59	\$674,702.29	
32	1/1/2026	\$70,459.24	\$13,082.89	\$57,376.35	\$3,318,854.45
33	2/1/2026	\$70,459.24	\$12,860.56	\$57,598.68	\$3,261,255.77
34	3/1/2026	\$70,459.24	\$11,414.40	\$59,044.84	\$3,202,210.93
35	4/1/2026	\$70,459.24	\$12,408.57	\$58,050.67	\$3,144,160.26
36	5/1/2026	\$70,459.24	\$11,790.60	\$58,668.64	\$3,085,491.62
37	6/1/2026	\$70,459.24	\$11,956.28	\$58,502.96	\$3,026,988.66
38	7/1/2026	\$70,459.24	\$11,351.21	\$59,108.03	\$2,967,880.63
39	8/1/2026	\$70,459.24	\$11,500.54	\$58,958.70	\$2,908,921.93
40	9/1/2026	\$2,920,194.00	\$11,272.07	\$2,908,921.93	\$0.00
2026 Totals:		\$3,483,867.92	\$107,637.12	\$3,376,230.80	
Totals:		\$5,668,104.36	\$611,022.36	\$5,057,082.00	

NOTICE: This is an estimated loan amortization schedule. Actual amounts may vary if payments are made on different dates or in different amounts.

Account Number 5448514
Loan Amount 5,102,805.43
Interest Rate 3.25000 %
Year Base 365/360

OHIO VALLEY GAS CORPORATION
111 ENERGY PARK DR
WINCHESTER IN 47394-0469

Pmt Date	Payment Amount	Principal	Interest	Ending Balance
001	04/28/23	58,919.02	14,280.76	5,058,167.17
002	05/28/23	58,919.02	13,699.21	5,012,947.36
003	06/28/23	58,919.02	14,029.29	4,968,057.63
004	07/28/23	58,919.02	13,455.15	4,922,593.76
005	08/28/23	58,919.02	13,776.43	4,877,451.17
006	09/28/23	58,919.02	13,650.09	4,832,182.24
007	10/28/23	58,919.02	13,087.16	4,786,350.38
008	11/28/23	58,919.02	13,395.13	4,740,826.49
009	12/28/23	58,919.02	12,839.74	4,694,747.21
Annual Total		530,271.18	122,212.96	
010	01/28/24	58,919.02	13,138.77	4,648,966.96
011	02/28/24	58,919.02	13,010.65	4,603,058.59
012	03/28/24	58,919.02	12,051.06	4,556,190.63
013	04/28/24	58,919.02	12,751.01	4,510,022.62
014	05/28/24	58,919.02	12,214.64	4,463,318.24
015	06/28/24	58,919.02	12,491.10	4,416,890.32
016	07/28/24	58,919.02	11,962.41	4,369,933.71
017	08/28/24	58,919.02	12,229.74	4,323,244.43
018	09/28/24	58,919.02	12,099.08	4,276,424.49
019	10/28/24	58,919.02	11,581.99	4,229,087.46
020	11/28/24	58,919.02	11,835.57	4,182,004.01
021	12/28/24	58,919.02	11,326.26	4,134,411.25
Annual Total		707,028.24	146,692.28	
022	01/28/25	58,919.02	11,570.61	4,087,062.84
023	02/28/25	58,919.02	11,438.10	4,039,581.92
024	03/28/25	58,919.02	10,211.16	3,990,874.06
025	04/28/25	58,919.02	11,168.91	3,943,123.95
026	05/28/25	58,919.02	10,679.29	3,894,884.22
027	06/28/25	58,919.02	10,900.27	3,846,865.47
028	07/28/25	58,919.02	10,418.59	3,798,365.04
029	08/28/25	58,919.02	10,630.15	3,750,076.17
030	09/28/25	58,919.02	10,495.00	3,701,652.15
031	10/28/25	58,919.02	10,025.31	3,652,758.44
032	11/28/25	58,919.02	10,222.65	3,604,062.07
033	12/28/25	58,919.02	9,761.00	3,554,904.05
Annual Total		707,028.24	127,521.04	
034	01/28/26	58,919.02	9,948.80	3,505,933.83
035	02/28/26	58,919.02	9,811.74	3,456,826.55
036	03/28/26	58,919.02	8,738.09	3,406,645.62

Account Number 5448514
Loan Amount 5,102,805.43
Interest Rate 3.25000 %
Year Base 365/360

OHIO VALLEY GAS CORPORATION
111 ENERGY PARK DR
WINCHESTER IN 47394-0469

Pmt Date	Payment Amount	Principal	Interest	Ending Balance
037 04/28/26	58,919.02	49,385.14	9,533.88	3,357,260.48
038 05/28/26	58,919.02	49,826.44	9,092.58	3,307,434.04
039 06/28/26	58,919.02	49,662.80	9,256.22	3,257,771.24
040 07/28/26	58,919.02	50,095.89	8,823.13	3,207,675.35
041 08/28/26	3,216,652.39	3,207,675.35	8,977.04	.00
Annual Total	3,629,085.53	3,554,904.05	74,181.48	
Grand Total	5,573,413.19	5,102,805.43	470,607.76	

End of Report

FILED
April 30, 2021
INDIANA UTILITY
REGULATORY COMMISSION

**EXHIBITS TO DIRECT TESTIMONY OF
RONALD P. SALKIE
ON BEHALF OF OHIO VALLEY GAS CORPORATION
AND OHIO VALLEY GAS, INC.
IURC CAUSE NO 45538
April 30, 2021**

Exhibit 1
2020 Calendar Year-End Unaudited Balance Sheet
Page 1 of 2

ASSETS	2020	2019	Change	% Change
Utility Plant in Service	114,174,753.32	105,838,404.05	8,336,349.27	7.9%
Less - Depreciation Reserve	(61,351,317.79)	(58,502,937.82)	(2,848,379.97)	4.9%
Net Utility Plant in Service	52,823,435.53	47,335,466.23	5,487,969.30	11.6%
Construction Work In Progress	1,104,265.88	2,887,124.18	(1,782,858.30)	-61.8%
Total Plant	53,927,701.41	50,222,590.41	3,705,111.00	7.4%
Non Utility Property	-	-	-	-
Investments in Associated Companies	16,632,508.00	-	16,632,508.00	-
Cash	3,958,469.07	15,642,010.63	(11,683,541.56)	-74.7%
Special Deposits	134.00	134.00	-	-
Working Funds	40,442.27	26,702.08	13,740.19	51.5%
Temporary Cash Investments	-	-	-	-
Accounts Receivable Gas	2,441,477.52	1,712,258.99	729,218.53	42.6%
Other Accounts Receivable	685,316.70	231,193.59	454,123.11	196.4%
Reserve for Uncollectible Accounts	(116,060.15)	(101,122.51)	45,062.36	-28.0%
Accts Rec from Associated Co	-	-	-	-
Fuel Stock	3,177.40	4,225.31	(1,047.91)	-24.8%
Materials and Supplies (M&S)	2,302,250.85	2,339,157.81	(36,906.96)	-1.6%
Stores Expense	451,984.17	404,850.51	47,134.66	11.6%
Stored Gas	762,078.04	861,612.79	(99,536.75)	-11.6%
Prepayments	194,864.13	154,577.29	40,286.84	26.1%
Interest and Dividends Receivable	-	-	-	-
Accrued Utility Revenue	1,472,109.00	1,422,708.00	49,401.00	3.5%
Total Current Assets	12,196,241.00	22,638,317.49	(10,442,076.49)	-46.1%
DEFERRED DEBITS				
Deferred Debits	58,412.22	78,611.61	(20,199.39)	-25.7%
Total Deferred Debits	58,412.22	78,611.61	(20,199.39)	-25.7%
Total Assets	82,814,862.63	72,939,519.51	9,875,343.12	13.5%

Exhibit 1
2020 Calendar Year-End Unaudited Balance Sheet
Page 2 of 2

SHAREHOLDERS EQUITY AND LIABILITIES	2020	2019	Change	% Change
Common Stock	30,625,481.06	22,975,319.95	7,650,161.11	33.3%
Treasury Stock	(2,030,284.07)	(2,034,940.42)	4,656.35	-0.2%
Additional Paid-In Capital	24,438.05	24,438.05	-	-
Beginning of Period	35,213,865.92	32,275,434.43	2,938,431.49	9.1%
Shareholders' Equity & Liabilities	3,911,106.97	4,298,861.61	(387,554.64)	-9.0%
Dividends	(1,419,932.18)	(1,360,230.12)	(59,702.04)	4.4%
End of Period	37,705,040.73	35,213,865.92	2,491,174.81	7.1%
Total Shareholders' Equity	66,324,675.77	56,178,683.50	10,145,992.27	18.1%
CURRENT LIABILITIES				
Accounts Payable	2,158,780.53	1,909,383.02	249,397.51	13.1%
Accounts Payable to Associated Companies	-	-	-	-
Customer Deposits	882,164.85	937,966.66	(55,801.81)	-6.0%
Accrued Taxes	711,260.48	718,510.93	(7,250.45)	-1.0%
Interest Accrued	-	-	-	-
Dividends Declared	-	-	-	-
Taxes Payable	237,948.68	244,032.64	(6,183.96)	-2.5%
Miscellaneous Current and Accrued Liabilities	913,281.15	1,186,809.90	(273,328.75)	-23.0%
Total Current Liabilities	4,903,335.69	4,996,503.15	(93,167.46)	-1.9%
DEFERRED CREDITS				
Customer Advances for Construction	15,000.00	15,000.00	-	-
Refundable Gas Costs	301,243.61	337,897.94	(36,454.33)	-10.8%
Total Deferred Credits	316,243.61	352,697.94	(36,454.33)	-10.3%
Balance of Deferred Income Taxes	-	6,703,743.22	(6,703,743.22)	-100.0%
Liberalized Depreciation (Federal)	6,168,307.29	(443,639.35)	6,611,946.64	-1490.4%
Liberalized Depreciation (State)	1,324,997.38	1,277,177.15	47,820.23	3.7%
Bad Debts (Federal)	(24,585.17)	(33,539.49)	8,954.32	-26.7%
Bad Debts (State)	(9,358.24)	(11,780.35)	2,422.11	-20.6%
Accrued Vacation (Federal)	(112,102.50)	(93,238.34)	(18,868.16)	20.2%
Accrued Vacation (State)	(44,928.70)	(39,825.57)	(5,103.13)	12.8%
NCB Stock Sales (Federal)	-	(4,407.81)	4,407.81	-100.0%
NCB Stock Sales (State)	-	4,407.81	(4,407.81)	-100.0%
Prepayments (Federal)	(20,887.60)	29,492.36	(50,379.96)	-170.8%
Prepayments (State)	789.46	14,107.52	(13,318.06)	-94.4%
Reserve for Deferred Income Tax	7,282,231.92	7,402,499.15	(120,267.23)	-1.6%
Deferred Regulatory Liability	3,988,375.64	4,009,135.77	(20,760.13)	-0.5%
Total Shareholder's Equity and Liabilities	82,814,862.63	72,939,519.51	9,875,343.12	13.5%

Exhibit 2
2020 Calendar Year-End Unaudited Income Statement

FILED
May 5, 2021
INDIANA UTILITY
REGULATORY COMMISSION

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

PETITION OF OHIO VALLEY GAS CORPORATION)
AND OHIO VALLEY GAS, INC. FOR AUTHORITY) CAUSE NO. 45538
TO ISSUE LONG-TERM DEBT)

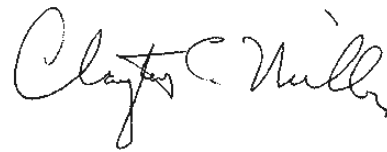
EXHIBIT 2
to the
DIRECT TESTIMONY OF
RONALD P. SALKIE
ON BEHALF OF OHIO VALLEY GAS CORPORATION
and
OHIO VALLEY GAS, INC.
(“OVG”)

Exhibit 2
2020 Calendar Year-End Unaudited Income Statement

	12 Months	12 Months		
Operating Revenues	2020	2019	Change	% Change
Gas Sales	27,745,888.66	29,715,559.89	(1,969,661.23)	-6.6%
Forfeited Discounts	112,348.44	137,577.95	(25,229.51)	-18.3%
Miscellaneous Operating Revenue	20,316.23	79,426.34	(59,110.11)	-74.4%
Transportation Revenue	3,267,869.13	3,510,969.02	(243,099.89)	-6.9%
Total Operating Revenues	31,146,432.46	33,443,533.20	(2,297,100.74)	-6.9%
Purchased Gas	9,691,960.92	11,173,477.94	(1,481,517.02)	-13.3%
Total Revenue Margin	21,454,471.54	22,270,055.26	(815,583.72)	-3.7%
Non-Gas Operating Expense				
Transmission Expense	93,429.96	45,457.90	47,972.06	105.5%
Distribution Expense	4,480,973.00	4,811,874.77	(150,701.77)	-3.3%
Customer Expense	1,482,244.51	1,434,422.81	47,821.70	3.3%
Sales Expense	(5,412.51)	(5,193.18)	(219.33)	4.2%
Administrative & General Expense	5,893,060.37	5,811,876.99	81,183.38	1.4%
Total Non-Gas Operating Exp	11,924,295.33	11,898,239.29	26,056.04	0.2%
Net Operating Income	9,530,176.21	10,371,815.97	(841,639.76)	-8.1%
Depreciation and Taxes				
Depreciation	3,150,712.88	2,955,533.38	195,179.50	6.6%
Taxes - General	1,378,037.67	1,801,594.27	(423,556.60)	-23.5%
Taxes - State Income	237,405.91	286,576.91	(49,171.00)	-17.2%
Taxes - Federal Income	1,126,266.81	1,184,321.88	(58,052.87)	-4.9%
Taxes - Deferred Income	(120,267.23)	(84,780.12)	(35,487.11)	41.9%
Total Depreciation and Taxes	5,772,158.02	6,143,246.10	(371,088.08)	-6.0%
Utility Operating Income	3,758,018.19	4,228,569.87	(470,551.68)	-11.1%
Other Income				
Other Income	(72,081.58)	(198,962.49)	126,880.91	-63.8%
Interest Paid to Cust Dep/Emp Stock	53,006.16	88,840.24	(35,834.08)	-40.3%
Miscellaneous Income Deductions	41,801.82	52,755.74	(11,153.92)	-21.1%
AFUDC - Equity	(175,615.18)	(12,725.23)	(162,889.95)	1280.1%
Net Income	3,911,106.97	4,298,661.61	(387,554.64)	-9.0%

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served a copy of the foregoing Exhibit 2 to the Direct Testimony of Ronald P. Salkie upon the Indiana Office of Utility Consumer Counselor by electronic mail to infomgt@oucc.IN.gov and to sfranson@oucc.IN.gov.

A handwritten signature in black ink that reads "Clayton C. Miller". The signature is written in a cursive style with a large initial 'C'.

Dated this 5th day of May 2021

FILED
June 10, 2021
INDIANA UTILITY
REGULATORY COMMISSION

PETITION OF OHIO VALLEY GAS)
CORPORATION AND OHIO VALLEY GAS, INC.) **CAUSE NO. 45538**
FOR AUTHORITY TO ISSUE LONG-TERM DEBT)

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR'S

**PUBLIC'S EXHIBIT NO. 1 – TESTIMONY OF OUCC WITNESS
CINTHIA J. GALVEZ**

With the current requirement that all staff work from home, signatures for affirmations are not available at this time.

June 10, 2021

Respectfully submitted,



Scott C. Franson
Attorney No. 27839-49
Deputy Consumer Counselor

**OHIO VALLEY GAS CORPORATION AND OHIO VALLEY GAS, INC.
CAUSE NO. 45538
TESTIMONY OF OUCC WITNESS CINTHIA J. GALVEZ**

I. INTRODUCTION

1 **Q: Please state your name and business address.**

2 A: My name is Cinthia J. Galvez, and my business address is 115 West Washington
3 Street, Suite 1500 South, Indianapolis, IN 46204.

4 **Q: By whom are you employed and in what capacity?**

5 A: I am a Utility Analyst in the Natural Gas Division of the Indiana Office of Utility
6 Consumer Counselor (“OUCC”). For a summary of my educational and
7 professional experience, as well as my preparation for this case, please see the
8 Appendix attached to my testimony (Appendix CJG-1).

9 **Q: What is the purpose of your testimony?**

10 A: My testimony provides my analysis of Ohio Valley Gas Corporation and Ohio
11 Valley Gas, Inc. (collectively “Petitioners” or “OVG”) request for authority to issue
12 \$6,000,000 of long-term debt.

13 **Q: What are your recommendations?**

14 A: I recommend the Indiana Utility Regulatory Commission (“Commission”) approve
15 OVG’s request to issue \$6,000,000 in long term debt.

II. RELIEF SOUGHT BY PETITIONER

16 **Q: What relief is OVG requesting in this Cause?**

17 A: Page 2 of the Verified Petition filed on April 30, 2021 states:

18 OVGC requests authority to issue long-term debt for purposes of
19 supporting a buy-back of OVGC stock from its parent company,

1 **Beynon Farm Products.** OVGC had used the proceeds of its stock
2 sale to acquire the Hanover Group 4 holding company, which owns
3 and operates Fountaintown Natural Gas and South Eastern Indiana
4 Natural Gas Utilities. OVGC believes that such financing will
5 include borrowing an amount up to \$6,000,000 for a period of five
6 (5) to ten (10) years at an interest rate of up to 3.75%.

7 **Q: Does OVG specify the terms of the proposed \$6,000,000 long-term debt**
8 **borrowing?**

9 A: Yes. Mr. Salkie testified “OVG anticipates that it will be able to borrow money at
10 a fixed interest rate of not more than 3.75%. This loan would have a term of five
11 (5) years, with principal payments based on a ten (10) year amortization schedule
12 and no prepayment penalty after the third year.” (Direct Testimony of Salkie, page
13 2.)

14 **Q: Does OVG currently hold long-term debt?**

15 A: **No. OVG currently does not hold any long-term debt.** (Direct Testimony of Salkie,
16 page 1.)

17 **Q: Why is OVG seeking to borrow \$6,000,000 in long-term debt?**

18 A: Mr. Salkie testified “OVG would like to borrow money to buy back these recently
19 transferred shares in order to reduce its outstanding common equity over the course
20 of the proposed 5-year loan term...” (Direct Testimony of Salkie, page 2.)

21 **Q: Will the entire \$6,000,000 loan amount be used to repurchase the stock?**

22 A: Mr. Salkie testified “While the stock buyback comprises the bulk of the uses
23 contemplated for the proceeds of the proposed \$6 million loan, OVG also
24 anticipates directing the remaining loan proceeds to various capital improvement
25 projects at OVG’s operating utilities.” (Direct Testimony of Salkie, page 2.)

26 **Q: Does OVG seek approval of specific construction projects in this proceeding?**

27 A: No. The scope of this financing case is limited to the requested financing authority.

1 The OUCC reserves its right to review and challenge the details of specific
2 construction projects and their costs in appropriate proceedings.

3 **Q: Does the OUCC agree with OVG’s proposed use of the financing funds?**

4 A: Yes. The OUCC agrees with the use of the financing funds.

5 **Q: How will the issuance of long-term debt impact OVG’s capital structure?**

6 A: In response to OUCC Data Request 1.4, Petitioner provided the current capital
7 structure before external financing, and the capital structure after external
8 financing. The addition of the \$6,000,000 in long-term debt will lower Petitioner’s
9 percentage of common equity in the capital structure, and lower the weighted
10 average cost of capital. (Attachment CJG-1.)

11 **Q: When does OVG expect to incur the \$6,000,000 in long-term debt?**

12 A: Mr. Salkie testified, “If approved, I expect to close on the loan within 60 days of
13 the Final Order in this Cause.” (Direct Testimony of Salkie, page 4.)

14 **Q: When will OVG’s requested financing authority expire?**

15 A: OVG did not request or state when the requested financing authority would expire.
16 The OUCC typically recommends a 24-month timeframe and is not in favor of an
17 open-ended financing authority. The OUCC recommends any unused financing
18 authority expire December 31, 2023.

19 **Q: Will OVG provide the final terms of the loan to the Commission after the**
20 **issuance of the loan?**

21 A: Yes. OVG will advise the Commission of the final terms of the loan promptly
22 following the closing on the loan. (Direct Testimony of Salkie, page 4.) The OUCC
23 recommends OVG provide a written report to both the OUCC and the Commission
24 within 30 days of incurring the debt with the final terms of the loan. The report
25 should include all the terms of the debt, which includes: the amount and use of debt,

1 maturity period, interest rate, premiums/discounts, issuance expenses, collateral
2 details, repayment terms, and any other terms.

3 **Q: Is there a cap on the interest rate on the loan?**

4 A: Yes. Mr. Salkie testified, "...for purposes of this proceeding, OVG is seeking
5 authority to borrow \$6 million at an interest rate of up to 3.75%, to be repaid in full
6 within 5 years." (Direct Testimony of Salkie, page 4.)

7 **Q: What collateral will OVG pledge to secure the amounts borrowed?**

8 A: Mr. Salkie testified:

9 The proposed loan contemplates the bank perfecting a first-priority
10 lien on all of OVG's domestic personal property, including but not
11 limited to accounts receivable, inventory, equipment, and
12 intangibles. The terms of the contemplated loan also include various
13 negative covenants intended to preserve the viability of the
14 collateral, including limitations on asset divestitures and additional
15 indebtedness. (Direct Testimony of Salkie, page 4.)

16 **Q: Did your review show whether OVG has sufficient net income to repay the**
17 **borrowing and associated interest expense?**

18 A: Yes. Exhibit No. 2 to Mr. Salkie's testimony, which is the 2020 Calendar Year-End
19 Unaudited Income Statement, shows OVG's net income was \$3,911,107 in 2020. I
20 conclude OVG is generating enough funds to cover its debt obligations.

21 **III. OUCC RECOMMENDATION**

22 **Q: What does the OUCC recommend in this proceeding?**

23 A: The OUCC recommends Commission approval of the following:

- 24 1. OVG's financing request to issue long-term debt in the amount of \$6,000,000
25 with a term of five (5) years, with principal payments based on a ten (10) year
26 amortization schedule, and an interest rate capped at 3.75%;
- 27 2. An expiration date of December 31, 2023; and

1 3. OVG shall provide a written report to both the OUCC and the Commission
2 within 30 days of incurring the debt. The report should include all the terms of
3 the debt, which includes: the amount and use of debt, maturity period, interest
4 rate, premiums/discounts, issuance expenses, collateral details, repayment
5 terms, and any other terms.

6 **Q: Does this conclude your testimony?**

7 **A: Yes.**

APPENDIX TO TESTIMONY OF
OUCW WITNESS CINTHIA J. GALVEZ

1 **Q: Describe your educational background and experience.**

2 A: I graduated from the Kelley School of Business at Indiana University in
3 Indianapolis, Indiana with a Bachelor of Science Degree in Finance, and a minor in
4 Economics in August 2019. While attending the Business School, I worked for
5 AT&T, in multiple locations in Indiana as a Retail Sales Consultant. I assisted
6 customers with sales of AT&T cellular, internet, and TV services.

7 In October 2019, I began my employment with the OUCW as a Utility
8 Analyst. My current responsibilities include reviewing, analyzing, and preparing
9 testimony for Gas Cost Adjustment (“GCA”) cases, Certificate of Public
10 Convenience and Necessity (“CPCN”) cases, financing cases, Gas Demand Side
11 Management (“GDSM”) cases, Targeted Economic Development (“TED”) Project
12 cases, special contract cases, and base rate cases for natural gas utilities.

13 **Q: Have you previously testified before the Commission?**

14 A: Yes, I have filed testimony in a variety of cases before the Commission, including
15 GCA, CPCN, GDSM, TED project, financing, special contract, and base rate cases.

16 **Q: Please describe the review you conducted to prepare this testimony.**

17 A: I reviewed the Verified Petition, Petitioners’ witness Ronald P. Salkie’s Direct
18 Testimony, OVG’s responses to OUCW Discovery Requests, and supporting
19 documentation submitted in this Cause by Petitioner.

Q 1.4: *What will Petitioner’s capital structure be after issuing the requested \$6 million in long term debt if Petitioner’s request in this Cause is approved?*

Response 1.4:

Here is OVG’s capital structure at 3/31/2021 prior to adding Long-Term Debt and what it would have been if OVG had undertaken the proposed Long-Term Debt as of that date:

Ohio Valley Gas Corporation and Ohio Valley Gas, Inc. Calculations of Cost of Capital at March 31, 2021				
BEFORE EXTERNAL FINANCING				
Sources of Capital	Amount	% of Total	Cost	Rate of Return
	\$	%	%	%
Common Equity	69,985,224	90%	10.0%	8.9632%
Customer Deposits	865,612	1%	6.0%	0.0665%
Deferred Income Tax Reserve	7,230,116	9%	0.0%	0.0000%
Total	78,080,951	100%		9.0297%
WITH EXTERNAL FINANCING				
Sources of Capital	Amount	% of Total	Cost	Rate of Return
	\$	%	%	%
Common Equity *	63,985,224	82%	10.0%	8.1947%
Long-Term Debt *	6,000,000	8%	3.3%	0.2536%
Customer Deposits	865,612	1%	6.0%	0.0665%
Deferred Income Tax Reserve	7,230,116	9%	0.0%	0.0000%
Total	78,080,951	100%		8.5148%
* Assumes full Long-Term Debt amount used for Common Stock Repurchase Program				

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing *OUCC'S TESTIMONY OF CINTHIA J. GALVEZ* has been served upon the following counsel of record in the captioned proceeding by electronic service on June 10, 2021.

Ronald P. Salkie
Ohio Valley Gas Corporation
Ohio Valley Gas, Inc.
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OUCG DR 1-1

DATA INFORMATION REQUEST
Ohio Valley Gas Corporation and Ohio Valley Gas, Inc.

Cause No. 45932

Information Requested:

Reference Joint Petitioner's Exhibit No. 1, Attachment GPR-3 ("Term Note"), page 4.

- a. Please provide the name of the Bank, which name has been redacted in the first paragraph of the Term Note.
- b. Please provide a copy of the Credit Agreement dated July 13, 2021 referenced in paragraph 3 of the Term Note.
- c. Please provide copies of all Amendments to the Credit Agreement.

Information Provided:

- a. OVG's lender is First Merchants Bank. See also Joint Petitioners' Exhibit No. 1, Attachment GPR-4, page 2, paragraph 1, line 3.
- b. The Credit Agreement dated July 13, 2021, is being provided as OUCG DR 1-1 Attachment 1.
- c. Please refer to Joint Petitioners' Post-Closing report in Cause No. 45538, which was also provided as Joint Petitioners' Exhibit No. 1, Attachment GPR-3. Redlines of the Fourth Amendment's to the Credit Agreement was provided as Joint Petitioners' Exhibit No. 1, Attachment GPR-4. The Second and Third Amendment to Credit Agreement and the clean Fourth Amendment to Credit Agreement are being provided as OUCG DR 1-1 Attachment 2.

Attachments:

OUCG DR 1-1 Attachment 1.pdf
OUCG DR 1-1 Attachment 2.pdf

CREDIT AGREEMENT

BY AND BETWEEN

OHIO VALLEY GAS CORPORATION

AND

FIRST MERCHANTS BANK

DATED AS OF JULY 13, 2021

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CREDIT AGREEMENT

THIS CREDIT AGREEMENT, dated as of July 13, 2021, is by and between OHIO VALLEY GAS CORPORATION, an Indiana corporation ("**Borrower**") and FIRST MERCHANTS BANK, an Indiana chartered bank ("**Bank**"). The parties agree as follows:

ARTICLE 1. DEFINITIONS.

Section 1.1 Defined Terms. As used herein:

"**Accounts**", "**Chattel Paper**", "**Deposit Accounts**", "**Documents**", "**Equipment**", "**Fixtures**", "**General Intangibles**", "**Instruments**", "**Inventory**", "**Investment Property**" and "**Proceeds**" shall have the meanings ascribed in the Security Agreement.

"**Advance**" means a disbursement of the proceeds of the Revolving Credit Loan.

"**Affiliate**" means, with respect to any Person, any other Person (a) directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with, such Person, or (b) that directly or indirectly owns more than ten percent (10%) of any class of the voting securities or capital stock of or equity interests in such Person. A Person shall be deemed to control another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise.

"**Agreement**" means this Credit Agreement, as amended from time to time.

"**Anti-Corruption Laws**" means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or any of its Affiliates from time to time concerning or relating to bribery or corruption.

"**Bank**" means First Merchants Bank, its successors and assigns.

"**Bank Product Agreements**" means an agreement entered into from time to time by Borrower with Bank or any Affiliate of Bank concerning Bank Products.

"**Bank Product Obligations**" means all obligations, liabilities, contingent reimbursement obligations, fees, and expenses owing by Borrower to Bank or an Affiliate of Bank pursuant to or evidenced by Bank Product Agreements, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising.

"**Bank Products**" means shall mean any service or facility extended to Borrower by Bank or an Affiliate of Bank, including: (a) credit cards, (b) credit card processing services, (c) debit cards, (d) purchase cards, (e) ACH Transactions, and (f) cash and treasury management, including controlled disbursement, accounts or services.

"**Banking Day**" means a day on which the principal domestic office of Bank is open for the purpose of conducting substantially all of its business activities, and, if the applicable day relates to a LIBOR Rate Loan, or notice with respect to a LIBOR Rate Loan, a day on which dealings in U.S. dollar deposits are carried on in the London interbank market and banks are open for business in London.

“Base Rate” shall be defined as the highest rate identified as the “Prime Rate” in the Wall Street Journal “Money Rates” column on the date the interest rate is to be determined, or if that date is not a publication date, on the publication date immediately preceding. The Base Rate is not necessarily the lowest rate charged by Bank on its loans. If the Base Rate becomes unavailable, Bank may designate a substitute index after notifying Borrower. Bank will inform Borrower of the current Base Rate upon Borrower’s request. Any changes or adjustments to the interest rate will not occur more often than each day. Borrower understands that Bank may make loans based on rates other than the Base Rate.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Borrower” means Ohio Valley Gas Corporation, an Indiana corporation.

“Capitalized Expenditures” means, without duplication, any expenditures for any purchase or other acquisition of any asset which would be classified as a fixed or capital asset on a balance sheet of Borrower prepared in accordance with GAAP.

“Capitalized Lease” means any lease of property which would be capitalized on a financial statement of a Person prepared in accordance with GAAP.

“Capitalized Lease Obligations” means the amount of the obligations of a Person under Capitalized Leases which are shown as liabilities on a balance sheet of such Person prepared in accordance with GAAP.

“Cash Capitalized Expenditures” means, for any period, expenditures made directly or indirectly for the purpose of acquiring or constructing fixed assets, real property, or equipment which, in accordance with GAAP, would be classified as a fixed or capital asset on a balance sheet of Borrower for such period prepared in accordance with GAAP and which were not financed with new debt, including the Facilities.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

“CERCLIS” means the Comprehensive Environmental Response Compensation Liability Information System List under CERCLA.

“Change in Control” shall be deemed to have occurred if the Borrower’s existing corporate owner ceases to own a controlling interest in the outstanding voting shares of Borrower.

“Change in Law” means the occurrence after the date of this Agreement of: (a) the adoption or effectiveness of any law, rule, regulation, judicial ruling, judgment or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application by any Governmental Authority of any law, rule, regulation or treaty, or (c) the making or issuance by any Governmental Authority of any request, rule, guideline or directive, whether or not having the force of law; *provided* that notwithstanding anything herein to the contrary, (x) all requests, rules, guidelines or directives under or issued in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, all interpretations and applications thereof and any compliance by a Bank with any request or directive relating thereto and (y) all requests, rules, guidelines or directives concerning capital adequacy promulgated under or in connection with, all interpretations and applications of, and any compliance by a Bank with

any request or directive by Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities shall, in each case, be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Code" means the Internal Revenue Code of 1986, as amended, reformed or otherwise modified from time to time.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1, et seq.), as amended from time to time, and any successor statute.

"Compliance Certificate" means a Compliance Certificate, in the form prescribed by Bank, duly executed by the chief executive or chief financial officer of Borrower.

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Debt" means the Borrower's (a) obligations for borrowed money, (b) obligations representing the deferred purchase price of property or services (other than accounts payable arising in the ordinary course of the Borrower's business payable on terms customary in the trade), (c) obligations, whether or not assumed, secured by liens or security interest or payable out of the proceeds or production from property now or hereafter owned or acquired by the Borrower, (d) obligations which are evidenced by notes, acceptances, or other negotiable instruments, (e) obligations to purchase securities or other property arising out of or in connection with the sale of the same or substantially similar securities or property, (f) obligations which would be shown as a liability on a balance sheet of the Borrower prepared in accordance with GAAP and which arise under leases of property by the Borrower as lessee which would be capitalized on a balance sheet the Borrower prepared in accordance with GAAP, (g) any other obligation for borrowed money or other financial accommodation which in accordance with GAAP would be shown as a liability on the balance sheet of the Borrower, and (h) any agreement, undertaking or arrangement by which the Borrower assumes, guarantees, endorses, contingently agrees to purchase or provide funds for the payment of, or otherwise becomes or is contingently liable upon, the obligation or liability of any other person or entity, or agrees to maintain the net worth or working capital or other financial condition of any other person or entity, or otherwise assures any creditor of such other person or entity against loss, including, without limitation, any comfort letter, operating agreement, take-or-pay contract or the obligations of the Borrower as general partner of a partnership with respect to the liabilities of the partnership.

"Debt Service" means with respect to any period, the sum of the Borrower's interest expense for such period, *plus* the sum of all scheduled payments of principal Debt due during such period.

"Default" means any of the events specified in Article 7 hereof.

"Dodd-Frank Act" means the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as enacted by the United States Congress, and signed into law on July 21, 2010, and all statutes, rules, guidelines or directives promulgated thereunder.

"EBITDA" means, for any period, net income for such period, plus (a) without duplication and to the extent deducted in determining net income for such period, the sum of (i) interest expense for such period, (ii) income tax expense for such period, (iii) all amounts attributable to

depreciation, depletion and amortization expense for such period, (iv) any extraordinary charges for such period, and (v) any other non-cash charges for such period (but, excluding any non-cash charge in respect of an item that was included in net income in a prior period), minus (b) without duplication and to the extent included in net income, any extraordinary gains and any non-cash items of income for such period, all calculated in accordance with GAAP.

“Environmental Laws” means all provisions of laws, statutes, ordinances, rules, regulations, permits, licenses, judgments, writs, injunctions, decrees, orders, awards and standards promulgated by any Governmental Authority concerning the protection of, or regulation of the discharge of substances into, the environment or concerning the health or safety of persons with respect to environmental hazards, and includes, without limitation, the Hazardous Materials Transportation Act, 42 U.S.C. §1801 et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§9601 et seq., the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Solid and Hazardous Waste Amendments of 1984, 42 U.S.C. §§6901 et seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §§1251 et seq., the Clean Air Act of 1966, as amended, 42 U.S.C. §§7401 et seq., the Toxic Substances Control Act of 1976, 15 U.S.C. §§2601 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §7401 et seq., the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§651 et seq., the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§11001 et seq., the National Environmental Policy Act of 1975, 42 U.S.C. §§4321 et seq., the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§300(f) et seq., and any similar or implementing state law, and all amendments, rules, and regulations promulgated thereunder.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time-to-time.

“ERISA Affiliate” means any trade or business, whether or not incorporated, which together with the subject Person would be treated as a single employer under ERISA.

“Excluded Swap Obligation” means, with respect to any guarantor of a Swap Obligation, including the grant of a security interest to secure the guaranty of such Swap Obligation, any Swap Obligation if, and to the extent that, such Swap Obligation is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the guaranty or grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Swap Obligation or security interest is or becomes illegal.

“Excluded Taxes” means any of the following Taxes, imposed on or with respect to Bank (a) Taxes imposed on or measured by net income (however denominated), and franchise Taxes, and (b) any branch profits Taxes imposed by the United States or any similar Tax imposed by any other jurisdiction.

“Facilities” means the Revolving Credit Loan and any other credit facility provided by Bank from time to time pursuant to this Agreement.

“**FERC**” shall mean the Federal Energy Regulatory Commission and any successor agency thereto.

“**Financial Contract**” of a Person means (a) any exchange-traded or over-the-counter futures, forward, swap or option contract or other financial instrument with similar characteristics, (b) any agreements, devices or arrangements providing for payments related to fluctuations of interest rates, exchange rates or forward rates, including, but not limited to, interest rate exchange agreements, forward currency exchange agreements, interest rate cap or collar protection agreements, forward rate currency or interest rate options, or (c) to the extent not otherwise included in the foregoing, any Rate Hedging Agreement.

“**Financial Statements**” means, as the context may require, (a) the financial statements of Borrower as of December 31, 2019, and/or (b) the financial statements of Borrower furnished from time to time pursuant to Section 5.2(a) hereof; in all cases together with any accompanying notes or other disclosures to such financial statements, and any other documents or data furnished to Bank in connection therewith.

“**GAAP**” means generally accepted accounting principles in the United States of America in effect from time to time as promulgated by the Financial Accounting Standards Board and recognized and interpreted by the American Institute of Certified Public Accountants.

“**Governmental Authority**” means the government of any nation or any political subdivision thereof, whether at the national, state, territorial, provincial, municipal or any other level, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of, or pertaining to, government.

“**Governmental Agency**” means the government of the United States of America or any nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of, or pertaining to, government (including any supra-national bodies such as the European Union or the European Central Bank) and any group or body charged with setting financial accounting or regulatory capital rules or standards (including the Financial Accounting Standards Board, the Bank for International Settlements or Basel or any successor or similar authority to any of the foregoing).

“**Guarantor**” shall mean OVG.

“**Guaranty**” means the OVG Guaranty.

“**Hazardous Materials**” mean (a) any “**hazardous substance**,” as defined by CERCLA, (b) any “**hazardous waste**,” as defined by the Resource Conservation and Recovery Act, as amended, (c) any petroleum product, or (d) any pollutant or contaminant or hazardous, dangerous or toxic chemical, material or substance within the meaning of any other federal, state or local law, regulation, ordinance or requirement (including consent decrees and administrative orders) relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, all as amended or hereafter amended.

“**Indebtedness**” of a Person means such Person’s (a) obligations for borrowed money, (b) obligations representing the deferred purchase price of Property or services (other than payable arising in the ordinary course of such Person’s business payable on terms customary in the trade), (c) obligations, whether or not assumed, secured by any Lien upon or in Property owned by the

subject Person or payable out of the proceeds or production from Property now or hereafter owned or acquired by such Person, (d) obligations which are evidenced by notes, acceptances, or other instruments, (e) Capitalized Lease Obligations, (f) indebtedness or other obligations of any other Person for borrowed money or for the deferred purchase price of property or services, the payment or collection of which the subject Person has guaranteed (except by reason of endorsement for collection in the ordinary course of business) or in respect of which the subject Person is liable, contingently or otherwise, including, without limitation, liability by way of agreement to purchase, to provide funds for payment, to supply funds to or otherwise to invest in such other Person, or otherwise to assure a creditor against loss, (g) reimbursement or other obligations in connection with letters of credit, (h) obligations in connection with Sale and Leaseback Transactions, (i) any Net Mark-To-Market Exposure of Rate Hedging Agreements or other Financial Contracts, and (j) any other transaction which is the functional equivalent of, or takes the place of borrowing, but which would not constitute a liability on a balance sheet of such Person prepared in accordance with GAAP.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by Borrower under any Loan Document, and (b) to the extent not otherwise described in (a), Other Taxes (other than Excluded Taxes).

"Investment" of a Person means any loan, advance (other than commission, travel and similar advances to officers and employees made in the ordinary course of business), extension of credit (other than accounts receivable arising in the ordinary course of business on terms customary in trade) or contribution of capital by such Person; stocks, bonds, mutual funds, partnership interests, limited liability company ownership interests, notes, debentures or other securities owned by such Person; any deposit accounts and certificate of deposit owned by such Person; and structured notes, derivative financial instruments and other similar instruments or contracts owned by such Person.

The phrase **"to the Knowledge of"** Borrower, or words of similar input, shall mean the information actually known to the Chief Executive Officer of the Borrower or Mr. Ronald Salkie, or which would have been known to either of them if he had made a reasonable investigation of the subject matter of the applicable representation.

"IURC" shall mean the Indiana Utility Regulatory Commission and any successor agency thereto.

"LIBOR Index" shall be defined as an independent index which is the One Month London Interbank Offered Rate or LIBOR, identified in the Wall Street Journal "Money Rates" column on the date the interest rate is to be determined, or if that date is not a publication date, on the publication date immediately preceding. The LIBOR Index is not necessarily the lowest rate charged by Bank on its loans. If the LIBOR Index becomes unavailable, Bank may designate a substitute index in accordance with the terms of Section 2.2(c) of this Agreement. Bank will inform Borrower of the current LIBOR Index upon Borrower's request. Any changes or adjustments to the interest rate will not occur more often than each month. In the event that the LIBOR Index or LIBOR at any time is a negative number, LIBOR shall be deemed to be zero. Borrower understands that Bank may make loans based on rates other than the LIBOR Index.

"LIBOR Rate Loan" means any Loan or Advance when and to the extent that the interest rate is determined by reference to the LIBOR Index.

“Lien” means any lien (statutory or other), security interest, mortgage, pledge, hypothecation, assignment for the purpose of security, deposit arrangement for the purpose of security, encumbrance or preference, priority or other security agreement of any kind or nature whatsoever (including, without limitation, the interest of a vendor or lessor under any conditional sale, Capitalized Lease or other title retention agreement).

“Loan Documents” means this Agreement, the Notes, the Security Agreements, the Guaranty, any UCC Financing Statements, any Bank Product Agreement, any Rate Hedging Agreement with Bank or Bank’s affiliate, and all other documents executed and delivered by Borrower or any of the Guarantors to govern, evidence or secure the Facilities.

“Material Adverse Effect” means any event, circumstance or condition that could reasonably be expected to have a material adverse effect on (a) the business, operations, financial condition, Property, or prospects of Borrower or the Guarantor, (b) the ability of Borrower to perform the Obligations, (c) the validity or enforceability of any of the Loan Documents, or any material provision thereof or any material transaction contemplated thereby, or (d) the rights and remedies of Bank under any of the Loan Documents.

“Moody’s” means Moody’s Investors Service, Inc.

“Net Income” means, for any referenced period, the net income (or loss) for Borrower calculated for such period in accordance with GAAP.

“Net Mark-to-Market Exposure” of a Person means, as of any date of determination, the excess (if any) of all unrealized losses over all unrealized profits of such Person arising from Rate Hedging Agreements, where **“unrealized losses”** means the fair market value of the cost to such Person of replacing such Rate Hedging Agreement as of the date of determination (assuming the Rate Hedging Agreement were to be terminated as of that date), and **“unrealized profits”** means the fair market value of the gain to such Person of replacing such Rate Hedging Agreement as of the date of determination (assuming such Rate Hedging Agreement were to be terminated as of that date).

“Notes” means the Revolving Credit Note and any subsequent notes issued by Borrower in favor of Bank under this Agreement.

“Obligations” means all unpaid principal and accrued and unpaid interest hereunder and on the Notes (including, without limitation, interest accruing after the filing of any petition in bankruptcy), actual and contingent reimbursement obligations under any letters of credit issued by Bank for the account of Borrower, all accrued and unpaid fees hereunder, any Bank Product Obligations, obligations of Borrower to Bank or an affiliate of Bank in respect of any Rate Hedging Obligations (excluding, however, all Excluded Swap Obligations), and all other obligations, indemnities and liabilities of Borrower to Bank of every type and description, direct or indirect, joint, several or joint and several, absolute or contingent, whether or not arising in connection with the Facilities, due or to become due, now existing or hereafter arising and whether or not contemplated by Borrower or Bank as of the date hereof, including, without limitation, any Advances pursuant to any amendment of this Agreement, all reasonable costs of collection and enforcement of any and all thereof, including reasonable attorney fees.

“Other Connection Taxes” with respect to Bank, means Taxes imposed as a result of a present or former connection between Bank and the jurisdiction imposing the Tax (other than a connection arising from the execution, delivery or enforcement of, or performance under, or

receipt of payments under any Loan Document, or from the sale or assignment of an interest in any loan or Loan Document).

"Other Taxes" means any and all present or future stamp, court, recording, filing, intangible, documentary or similar Taxes or any other excise or property Taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement or registration of, or performance under, or from the receipt or perfection of a security interest under or otherwise with respect to this Agreement or any other Loan Document (other than Excluded Taxes imposed with respect to an assignment).

"OVG" means Ohio Valley Gas Inc., an Indiana corporation.

"OVG Guaranty" means the Guaranty, in the form prescribed by Bank, duly executed by OVG to Bank in connection with the Obligations, including any amendment or replacement thereof.

"PBGC" means the Pension Benefit Guaranty Corporation established pursuant to ERISA, or any successor entity.

"Permitted Encumbrances" means (a) Liens for taxes or assessments which are not yet due, Liens for taxes or assessments or Liens of judgments which are being contested, appealed or reviewed in good faith by appropriate proceedings which prevent foreclosure of any such Lien or levy of execution thereunder and against which Liens, if any, adequate insurance or reserves have been provided; (b) pledges or deposits to secure payment of workers' compensation obligations and deposits or indemnities to secure public or statutory obligations or for similar purposes; (c) those minor defects which in the reasonable opinion of Bank's counsel do not materially affect title to the collateral for the Obligations; (d) Liens in favor of Bank; (e) Liens imposed by law, such as carrier's, warehousemen's and mechanic's liens and other similar Liens arising in the ordinary course of business which secure payment of obligations not more than sixty (60) days past due; (f) utility easements, building restrictions, zoning ordinances and such other encumbrances or charges against real Property as are of a nature generally existing with respect to real Properties of a similar character and which do not in any material way affect the marketability of the same or interfere with the use thereof in the business of Borrower; and (g) those further encumbrances (if any) shown on **Schedule 1** attached hereto.

"Person" means and includes an individual, a partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated association and a Governmental Authority.

"Plan" means an employee pension benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code as to which Borrower may have any liability.

"Property" of a Person means any and all property, whether real, personal, tangible, intangible, or mixed, of such Person, or other assets owned, leased or operated by such Person.

"PUCO" shall mean the Public Utilities Commission of Ohio and any successor agency thereto.

"Qualified Investments" means (a) short term obligations of, or fully guaranteed by, the United States of America, (b) commercial paper rated A-1 or better by Standard & Poor's Corporation or P-1 or better by Moody's Investor's Service, Inc., (c) demand deposit accounts

maintained in the ordinary course of business, and (d) certificates of deposit issued by commercial banks having capital and surplus in excess of One Hundred Million Dollars (\$100,000,000).

“Quarterly Rolling Fixed Charge Coverage Ratio” means with respect to a fiscal quarter, a ratio, the numerator of which is Borrower’s EBITDA minus Cash Capitalized Expenditures (to the extent not deducted in determining EBITDA) for the period of four (4) consecutive fiscal quarters ending on the last day of such fiscal quarter (the **“Measurement Period”**), and the denominator of which is the sum of (i) Borrower’s scheduled Debt Service for the Measurement Period, (ii) without duplication and to the extent not deducted in determining net income for the most recently preceding four (4) consecutive fiscal quarters ending, income tax expense for such Measurement Period, determined in accordance with GAAP, and (iii) all dividends and distributions paid during the Measurement Period.

“Rate Hedging Agreement” means an agreement, device or arrangement providing for payments which are related to fluctuations of interest rates, exchange rates, forward rates, or commodity prices, including, but not limited to, dollar-denominated or cross-currency interest rate exchange agreements, forward currency exchange agreements, interest rate cap or collar protection agreements, forward rate currency or interest rate options, puts and warrants.

“Rate Hedging Obligations” of a Person means any and all obligations of such Person, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any and all Rate Hedging Agreements, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any Rate Hedging Agreement.

“Revolving Credit Loan” means the secured revolving line of credit in the maximum principal amount of Four Million and No/100 Dollars (\$4,000,000.00), including any renewal or extension thereof.

“Revolving Credit Maturity Date” means July 12, 2022.

“Revolving Credit Note” means the Revolving Credit Note, in substantially the form of Exhibit A hereto, duly executed by Borrower to Bank to evidence Advances under the Revolving Credit Loan, including any amendment, modification, renewal, extension or replacement thereof.

“Sale and Leaseback Transaction” means any sale or other transfer of any Property by any Person with the intent to lease such Property as lessee.

“Sanctioned Country” means, at any time, a country or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Burma, Burundi, Central African Republic, Cote D’Ivoire, Cuba, Democratic Republic of Congo, Iran, Libya, North Korea, Somalia, Sudan, Syria, and Zimbabwe).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or by the United Nations Security Council, the European Union or any European Union member state, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

“Sanctions” economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the

Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state or Her Majesty's Treasury of the United Kingdom.

"Security Agreement" means the General Security and Pledge Agreement, in the form prescribed by Bank, duly executed by Borrower in favor of Bank to secure the Obligations, including any amendment or modification thereof.

"Subordinated Debt" means Debt of Borrower which has been subordinated in right of payment and priority to the Facilities, in a signed writing and on terms and conditions satisfactory to Bank.

"Subsidiaries" means, as to any Person, (a) a corporation of which shares of stock or other ownership interests having ordinary voting power (other than stock or other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors or other managers of such corporation are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person, and (b) any partnership, association, joint venture or other entity in which such Person and/or one or more Subsidiaries of such Person has more than a fifty percent (50%) equity interest.

"Swap Obligation" means any Rate Hedging Obligation that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act, as amended from time to time.

"Tangible Net Worth" means the stockholders' equity of the Borrower *minus* the net book value of all assets that are treated as intangibles, all as determined in accordance with GAAP.

"Taxes" means any and all present or future income, stamp or other taxes, levies, imposts, duties, deductions, charges, fees or withholdings imposed, levied, withheld or assessed by any Governmental Authority, together with any interest, additions to tax or penalties imposed thereon and with respect thereto.

"Unfunded Capitalized Expenditures" means Capitalized Expenditures not funded by long-term Indebtedness, as shown on the balance sheet furnished to Bank from time to time pursuant to Section 5.2(a) hereof.

"Unmatured Default" means any event which with notice, or lapse of time, or both, would constitute a Default.

"Working Capital" means, at any date, Borrower's total current assets less Borrower's total current liabilities, each determined in accordance with GAAP as of such date.

Section 1.2 Rules of Construction. The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms. Use of the terms "herein" "hereof", and "hereunder" shall be deemed references to this Agreement in its entirety and not to the Section clause in which such term appears.

Section 1.3 Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP consistent with those applied in the preparation of the Financial Statements. In the event of any change after the date hereof in GAAP, and if such change would affect the computation of any of the financial covenants set forth in Section 5.3 hereof, then the parties hereto agree to endeavor, in good faith, to agree upon an amendment to this Agreement that would adjust such financial covenants in a manner that would preserve the

original intent thereof, but would allow compliance therewith to be determined in accordance with the Financial Statements at that time, provided that, until so amended such financial covenants shall continue to be computed in accordance with GAAP prior to such change therein.

ARTICLE 2. CREDIT.

Section 2.1 Commitments. Subject to the terms and conditions of this Agreement, Bank shall make Advances under the Revolving Credit Loan available to Borrower in a maximum principal amount equal to Four Million and No/100 Dollars (\$4,000,000.00). Advances under the Revolving Credit Loan shall be evidenced by the Revolving Credit Note.

Section 2.2 Interest.

(a) Revolving Credit Loan. Prior to the Revolving Credit Maturity Date, the outstanding principal balance of Advances under the Revolving Credit Loan shall bear interest at a per annum rate equal to the greater of (i) the LIBOR Index, plus one and seventy-five hundredths percent (1.75%), and (ii) two and twenty-five hundredths percent (2.25%).

(b) Determination of LIBOR Index; General. The LIBOR Index will be initially determined as of the date hereof and shall be adjusted each month thereafter. Bank shall not be required to notify Borrower of any adjustment in the LIBOR Index; however, Borrower may request a quote of the prevailing LIBOR Index on any Banking Day. Interest shall be due and payable for the exact number of days principal is outstanding and shall be calculated for the actual number of days elapsed on the basis of a three hundred sixty (360) day year. Upon the occurrence of a Default and during the continuation thereof, and after maturity, including maturity upon acceleration, Bank, at its option, may, if permitted under applicable law, do one or both of the following: (i) increase the interest rate under the Notes to the rate that is five percent (5%) above the rate that would otherwise be payable hereunder, and (ii) add any unpaid accrued interest to principal and such sum will bear interest therefrom until paid at the rate provided in the Notes (including any increased rate). The interest rate under the Notes will not exceed the maximum rate permitted by applicable law under any circumstances.

(c) Benchmark Replacement Setting. The applicable LIBOR Index for each interest period shall be determined by Bank. Each determination of the applicable LIBOR Index by Bank shall be conclusive and binding upon the parties hereto, absent manifest error. Bank shall, upon request of Borrower, deliver to Borrower a statement showing the computations utilized by Bank in determining any applicable LIBOR Index thereunder. Notwithstanding anything to the contrary herein or in any other Loan Document (and any Swap Agreement shall be deemed not to be a "Loan Document" for purposes of this Section):

(i) Replacing USD LIBOR. On March 5, 2021, the Financial Conduct Authority (the "FCA"), the regulatory supervisor of USD LIBOR's administrator (the "IBA"), announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-month, 3-month, 6-month and 12-month USD LIBOR tenor settings. On the earlier of (i) the date that all Available Tenors of USD LIBOR have either permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative and (ii) the Early Opt-in Effective Date, if the then-current Benchmark is

USD LIBOR, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(ii) **Benchmark Replacement Conforming Changes.** In connection with the implementation and administration of a Benchmark Replacement, the Bank will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(iii) **Notices; Standards for Decisions and Determinations.** The Bank will promptly notify the Borrower of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Bank pursuant to this Section, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section. The Bank does not warrant, nor accept responsibility, nor shall the Bank have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "USD LIBOR" or with respect to any rate that is an alternative or replacement for or successor to any of such rates (including, without limitation, any Benchmark Replacement) or the effect of any of the foregoing, or of any Benchmark Replacement Conforming Changes.

(iv) **Unavailability of Tenor Benchmark.** At any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including SOFR Average or USD LIBOR), then the Bank may remove any tenor of such Benchmark that is unavailable or non-representative for Benchmark (including Benchmark Replacement) settings and (ii) the Bank may reinstate any such previously removed tenor for Benchmark (including Benchmark Replacement) settings.

(v) **Replacing Future Benchmarks.** Upon the occurrence of a Benchmark Transition Event, the Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Borrower without any amendment to this Agreement or any other Loan Document, or further action or consent of the Borrower. At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying

market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, the Borrower may revoke any request for a borrowing of, conversion to or continuation of Loans to be made, converted or continued that would bear interest by reference to such Benchmark until the Borrower's receipt, and, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or a conversion to Base Rate loans.

For purposes of this clause (v), the sum of (a) the alternate benchmark rate and (b) an adjustment (which may be a positive or negative zero), in each case, that has been selected by the Bank as the replacement for such Available Tenor of such Benchmark giving due consideration to any evolving or then-prevailing market conventions, including any applicable recommendations made by the Relevant Governmental Body, for U.S. dollar-denominated syndicated or bilateral credit facilities at such time; provided that, if the Benchmark Replacement as determined above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

(vi) Definitions.

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.

"Benchmark" means, initially, USD LIBOR; provided that if a replacement of the Benchmark has occurred pursuant to this Subsection titled "Benchmark Replacement Setting", then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to "Benchmark" shall include, as applicable, the published component used in the calculation thereof.

"Benchmark Replacement" means, for any Available Tenor:

For purposes of Section 2.2(c)(i), the first alternative set forth below that can be determined by the Bank:

(a) the sum of (i) the alternate rate of interest that has been selected by the Bank as the replacement of the tenor of USD LIBOR, giving due consideration to any evolving or then-prevailing market conventions for determining a rate of interest as a rate of replacement of the then current tenor of USD LIBOR for U.S. dollar-denominated syndication or bilateral credit facilities at such time and (ii) the spread adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Bank as the replacement of the tenor of USD LIBOR, giving due consideration to any evolving or then-prevailing market conventions, including any applicable recommendations made by the Relevant Government Body, for determining the spread adjustment for U.S. dollar-denominated syndicated or

bilateral credit facilities at such time, having approximately the same length as the interest payment period specified in Section 2.2(c)(i); or

(b) the sum of: (i) SOFR Average and (ii) the spread adjustment selected or recommended by the Relevant Governmental Body for the replacement of the tenor of USD LIBOR with a SOFR-based rate having approximately the same length as the interest payment period specified in Section 2.2(c)(i); or

(c) the sum of: (i) Daily Simple SOFR and (ii) the spread adjustment selected or recommended by the Relevant Governmental Body for the replacement of the tenor of USD LIBOR with a SOFR-based rate having approximately the same length as the interest period specified in Section 2.2(c)(i);

Provided that, if the Benchmark Replacement as determined above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents; provided further that, such Benchmark Replacement is subject to a determination by the Bank that such Benchmark Replacement is consistent with any evolving or then prevailing market conventions for determining a Benchmark Replacement for U.S. dollar-denominated syndicated or bilateral credit facilities at such time.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Bank decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Bank in a manner substantially consistent with market practice (or, if the Bank decides that adoption of any portion of such market practice is not administratively feasible or if the Bank determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Bank decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Benchmark Transition Event” means, with respect to any then-current Benchmark other than USD LIBOR, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark, the regulatory supervisor for the administrator of such Benchmark, the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark, a resolution authority with jurisdiction over the administrator for such Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark, announcing or stating that (a) such administrator has ceased or will cease on a specified date to provide all Available

Tenors of such Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark or (b) all Available Tenors of such Benchmark are or will no longer be representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored.

“**Daily Simple SOFR**” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Bank in accordance with the conventions for this rate recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for bilateral business loans; provided, that if the Bank decides that any such convention is not administratively feasible for the Bank, then the Bank may establish another convention in its reasonable discretion.

“**Early Opt-In Election**” means the occurrence of:

(1) a determination by the Bank that at least two outstanding U.S. dollar-denominated syndicated or bilateral credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate, and

(2) the election by the Bank to trigger a fallback from USD LIBOR and the provision by the Bank of written notice of such election to the Borrower.

“**Floor**” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to USD LIBOR; provided that if no benchmark rate floor is specified, it shall be deemed to be zero.

“**Relevant Governmental Body**” means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

“**SOFR**” means a rate per annum equal to the secured overnight financing rate for the such Business Day published by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate) on the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org> (or any successor source for the secured overnight financing rate identified as such by the administrator of the secured overnight financing rate from time to time).

“**SOFR Average**” means, for the applicable corresponding tenor, the compounded average of SOFR published by the Federal Reserve Bank of New York (or a successor administrator of the SOFR Average).

“**USD LIBOR**” means the London interbank offered rate for U.S. dollars.

Section 2.3 Payments of Principal and Interest.

(a) **Revolving Credit Loan.** Interest only on the outstanding balance of Advances under the Revolving Credit Loan from time to time throughout the term of the Revolving Credit Loan

shall be due and payable on the twenty-eighth (28th) day of each calendar month. The entire principal balance of Advances under the Revolving Credit Loan, together with all accrued and unpaid interest thereon, and all fees and charges payable in connection therewith, shall be due and payable on the Revolving Credit Maturity Date.

(b) Method of Payment. All payments of principal and interest hereunder shall be made by Noon (Indianapolis time) on the date when due in immediately available funds to Bank at Bank's address set forth on the signature page hereof or at any other place specified in writing by Bank to Borrower so long as notice of such new address is delivered to Borrower at least five days prior to the date when any such payment is due.

(c) Banking Day. If any installment of principal or interest provided herein becomes due and payable on a date other than a Banking Day, the maturity of the installment of principal or interest shall be extended to the next succeeding Banking Day, and interest shall be payable during such extension of maturity.

(d) Late Payment Fees. If Borrower fails to pay any amount due hereunder, or any fee in connection herewith, in full within seven (7) days after its due date, Borrower, in each case, shall incur and shall pay a late charge equal to the greater of Twenty-Five and No/100 Dollars (\$25.00) or five percent (5%) of the unpaid amount and an additional late charge for purposes of defraying the expense incidental to handling on the first day of each successive calendar month equal to the greater of Twenty-Five and No/100 Dollars (\$25.00) or five percent (5%) of the unpaid amount until such amount has been paid in full. After acceleration of repayment of the Notes by Bank, the payment of a late charge will not cure or constitute a waiver of any Default.

(e) Application of Payments. All amounts which shall be paid with respect to the Notes shall be applied first to the payment of interest due on the balance of the principal sum or so much thereof as shall from time to time remain unpaid, second to any costs of collection and expenses reimbursable by Borrower to Bank, third to escrow amounts due, fourth to the principal amount of the Notes which may then be currently due and payable, and last to any late charges then due and payable under the Notes.

Section 2.4 Prepayment.

(a) Revolving Credit Loan. Subject to the provisions of this Agreement, Borrower may borrow, pay, reborrow and repay the available principal amount of the Revolving Credit Loan at any time, and from time to time, without premium or penalty.

(b) General. Unless otherwise specifically designated by Borrower or otherwise provided in the Loan Documents, all partial principal prepayments shall be applied, at Bank's discretion, to any outstanding principal balance of the Facilities.

Section 2.5 Use of Proceeds. Subject to the provisions of this Agreement, the proceeds of Advances under the Revolving Credit Loan shall be used to provide working capital for seasonal cash flow for Borrower.

Section 2.6 Fees.

(a) **Loan Origination Fee.** Borrower shall have paid Bank a non-refundable commitment fee in the amount of Ten Thousand Dollars (\$10,000.00).

(b) **General.** The compensation provided in this Section 2.6 shall be in consideration of the services of Bank in connection with the Facilities and shall be in addition to any other fee, charge, payment or expense required to be borne by Borrower under the Loan Documents.

Section 2.7 Method of Advance.

(a) **Advances.** As Borrower desires to obtain Advances under the Revolving Credit Loan, Borrower shall give Bank irrevocable notice of Borrower's intention to borrow by not later than 2:00 p.m. (Indianapolis time), on the proposed Banking Day of borrowing. Borrower hereby authorizes Bank to make Advances under the Revolving Credit Loan made by any Person who is authorized by Borrower. Bank may rely, without further inquiry, on all such requests which shall have been received by it in good faith by anyone reasonably believed to be an authorized officer. Each borrowing request shall be presented in writing and shall in and of itself constitute a representation and warranty that the conditions precedent to such Advance as set forth in Section 6.2 hereof have been satisfied and that no Default or Unmatured Default has occurred and is continuing or would result from the making of the requested Advance. Borrower hereby authorizes the disbursement of each Advance under the Revolving Credit Loan by deposit to the operating account of Borrower with Bank.

(b) **General.** All Advances by Bank under the Facilities and payments by Borrower on the Facilities shall be recorded by Bank on its books and records, and the principal amount outstanding from time to time, plus interest payable thereon, shall be determined from the books and records of Bank. The books and records of Bank shall be presumed prima facie correct as to such matters.

Section 2.8 Taxes.

(a) Any and all payments by or on account of any obligation of Borrower hereunder or under any other Loan Document shall be made free and clear of and without deduction or withholding for any Taxes except as required by applicable law. If Borrower is required by applicable law to deduct or withhold any Taxes from such payments, then:

(i) If such Tax is an Indemnified Tax, the amount payable by Borrower shall be increased so that after all such required deductions or withholdings are made (including deductions or withholdings applicable to additional amounts payable under this Section), Bank receives an amount equal to the amount it would have received had no such deduction or withholding been made, and

(ii) Borrower shall make such deductions or withholdings and timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law.

(b) Without limiting the provisions of Subsection 2.8(a) above, Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Borrower shall indemnify Bank, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed on or attributable to amounts payable under this Section) paid or payable by Bank, on or with respect to an amount payable by Borrower under or in respect of this Agreement or under any other Loan Document, together with any reasonable expenses arising in connection therewith and with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate from Bank as to the amount of such payment or liability delivered to Borrower shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to this Section 2.8, Borrower shall deliver to Bank the original or certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the relevant return reporting such payment or other evidence of such payment reasonably satisfactory to Bank.

(e) If Bank determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by Borrower or with respect to which Borrower has paid additional amounts pursuant to this Section, it shall pay over such refund (or the amount of any credit in lieu of refund) to Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by Borrower under this Section with respect to the Taxes giving rise to such refund or credit in lieu of refund), net of all out-of-pocket expenses of Bank and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund or credit in lieu of refund); *provided that*, Borrower, upon the request of Bank, agrees to repay the amount paid over to Borrower (plus any interest, penalties or other charges imposed by the relevant Governmental Authority) to Bank in the event Bank is required to repay such refund or credit in lieu of refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will Bank be required to pay any amount to Borrower pursuant to this paragraph if the payment of such amount would place Bank in a less favorable net after-Tax position than it would have been in if the Tax subject to indemnification had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. Nothing in this paragraph (e) shall be construed to require Bank to make available its tax returns or any other information relating to its taxes that it deems confidential to Borrower or any other Person.

Section 2.9 Yield Protection. If, on or after the date of this Agreement, the adoption of any law or any governmental or quasi-governmental rule, regulation, policy, guideline or directive (whether or not having the force of law), or any change in the interpretation or administration thereof by any governmental or quasi-governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance Bank with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency:

(a) Subjects Bank to any Taxes (other than Excluded Taxes), or changes the basis of taxation of payments to Bank in respect of its LIBOR Rate Loans, or

(b) Imposes or increases or deems applicable any reserve, assessment, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account

of, or credit extended by, Bank (other than reserves and assessments taken into account in determining the interest rate applicable to LIBOR Rate Loans), or

(c) Imposes any other condition the result of which is to increase the cost to Bank of making, funding or maintaining its LIBOR Rate Loans or reduces any amount receivable by Bank in connection with its LIBOR Rate Loans, or requires Bank to make any payment calculated by reference to the amount of LIBOR Rate Loans held or interest received by it, by an amount deemed material by Bank, and the result of any of the foregoing is to increase the cost to Bank of making or maintaining its LIBOR Rate Loans or commitment or to reduce the return received by Bank in connection with such LIBOR Rate Loans or commitment, then, within thirty (30) days of demand by Bank, Borrower shall pay Bank such additional amount or amounts as will compensate Bank for such increased cost or reduction in amount received.

Section 2.10 Illegality. If Bank determines that as a result of any Change in Law, it becomes unlawful, or that any Governmental Authority asserts that it is unlawful, for Bank to make, maintain or fund LIBOR Rate Loans, or to determine or charge interest rates based upon the LIBOR Index, or any Governmental Authority has imposed material restrictions on the authority of Bank to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by Bank to Borrower, any obligation of Bank to make or continue LIBOR Rate Loans or to convert Base Rate loans to LIBOR Rate Loans, shall be suspended until Bank notifies Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, Borrower shall, upon demand from Bank, prepay or, if applicable, convert all such LIBOR Rate Loans of Bank to Base Rate loans, either on the last day of the interest period thereof, if Bank may lawfully continue to maintain such LIBOR Rate Loans to such day, or immediately, if Bank may not lawfully continue to maintain such LIBOR Rate Loans. Upon any such prepayment or conversion, Borrower shall also pay accrued interest on the amount so prepaid or converted.

Section 2.11 Increased Costs; Capital Adequacy Requirements.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Bank (except any reserve requirement reflected in the LIBOR Index);

(ii) subject Bank to any Taxes (other than (A) Indemnified Taxes, (B) Excluded Taxes, (C) Taxes described in clauses (c) through (e) of the definition of Excluded Taxes and (D) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on Bank or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or LIBOR Rate Loan made by Bank or participation therein; and the result of any of the foregoing shall be to increase the cost to Bank of making, converting to, continuing or maintaining any LIBOR Rate Loan or of maintaining its obligation to make any such loan, or to reduce the amount of any sum received or receivable by Bank (whether of principal, interest or any other amount) then, upon request of Bank, the Borrower

will pay to Bank such additional amount or amounts as will compensate Bank for such additional costs incurred or reduction suffered.

(b) If Bank determines that any Change in Law affecting Bank or any lending office of Bank or Bank's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on Bank's capital or on the capital of Bank's holding company, if any, as a consequence of this Agreement, or the loans made by Bank to a level below that which Bank or Bank's holding company could have achieved but for such Change in Law (taking into consideration Bank's policies and the policies of Bank's holding company with respect to capital adequacy), then from time to time the Borrower will pay to Bank such additional amount or amounts as will compensate Bank or Bank's holding company for any such reduction suffered.

(c) A certificate of Bank setting forth the amount or amounts necessary to compensate Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay Bank the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Failure or delay on the part of Bank to demand compensation pursuant to this Section shall not constitute a waiver of Bank's right to demand such compensation; *provided* that the Borrower shall not be required to compensate Bank pursuant to this Section for any increased costs incurred or reductions suffered more than two hundred seventy (270) days prior to the date that Bank notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of Bank's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the two hundred seventy (270) day period referred to above shall be extended to include the period of retroactive effect thereof).

Section 2.12 Indemnity. The Borrower shall indemnify and hold Bank harmless from, any loss, cost or expense which Bank may sustain or incur as a result of, or in connection with, (i) the failure of the Borrower to borrow, convert, continue or prepay a LIBOR Rate Loan on the date specified in any notice delivered pursuant hereto, (ii) the payment of any principal of any LIBOR Rate Loan other than on the last day of an interest period applicable thereto (including as a result of an Event of Default), or (iii) the conversion of any LIBOR Rate Loan other than on the last day of the interest period applicable thereto. Such indemnification may include an amount reasonably determined by Bank to be equal to the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such LIBOR Rate Loan if none of the events specified in clause (i) through (iii) had occurred at the LIBOR Index that would have been applicable to such for such loan, for the period from the date of such event to the last day of the then current interest period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the interest period for such loan) over (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate which Bank would bid were it to bid at the commencement of the interest period, for dollar deposits of a comparable amount and period from other banks in the interbank Eurodollar market.

A certificate as to any amounts payable pursuant to this Section 2.12 submitted to the Borrower by Bank shall be conclusive in the absence of manifest error. This covenant shall survive the termination of this Agreement and the payment of the Loans and all amounts payable hereunder.

ARTICLE 3. SECURITY.

Section 3.1 Security-Obligations. The Obligations shall be secured by the following:

(a) the Security Agreement constituting a first (1st) priority security interest in all Accounts, Inventory, Investment Property, Equipment, General Intangibles, Chattel Paper, Fixtures, Goods, Intellectual Property, Deposit Accounts, Instruments, Documents and all other personal property of Borrower now owned or hereafter acquired and all Proceeds thereof; provided that Borrower may continue to maintain Deposit Accounts with banking institutions other than Bank so long as funds in such Deposit Accounts are swept into an account held with the Bank at least once per month, and the balance in such Deposit Account immediately following such sweep is not greater than \$250,000;

(b) the OVG Guaranty; and

(c) such other security interests as may be described in the Loan Documents.

For the avoidance of doubt, the security referenced in this Section 3.1 is security for all of the Obligations under the Facilities, and, without express written approval by the Bank, all such security shall remain as liens against and security interests on Borrower's assets until any and all payments due under the Facilities are satisfied in full.

Section 3.2 Additional Collateral/Setoff. In addition to all liens upon and rights of setoff against Borrower's money, securities or other property given to Bank by law, Bank shall have, with respect to Borrower's obligations to Bank under the Notes and to the extent permitted by law, a contractual possessory security interest in and a contractual right of setoff against, and the Borrower hereby grants Bank a security interest in, and hereby assigns, conveys, delivers, pledges and transfers to Bank, all of Borrower's right, title and interest in and to, all of Borrower's deposits, moneys, securities and other property now or hereafter in the possession of or on deposit with, or in transit to, Bank or any other direct or indirect subsidiary of First Merchants Corporation, whether held in a general or special account or deposit, whether held jointly with someone else, or whether held for safekeeping or otherwise, excluding, however, all IRA, Keogh, ERISA, and trust accounts. Every such security interest and right of setoff may be exercised without demand upon or notice to Borrower. Every such right of setoff shall be deemed to have been exercised immediately upon the occurrence of a Default hereunder without any action of Bank, although Bank may enter such setoff on its books and records at a later time.

Section 3.3 Guaranty. The Obligations shall be unconditionally guaranteed by the Guarantor pursuant to the Guaranty.

ARTICLE 4. REPRESENTATIONS AND WARRANTIES.

Borrower represents, covenants and warrants to Bank as follows:

Section 4.1 Due Organization. Borrower and Guarantor are corporations duly organized, validly existing and, if applicable, in good standing under and by virtue of the laws of its state of organization.

Section 4.2 Due Qualification. Borrower and Guarantor are qualified, in good standing and authorized to do business as a foreign corporation in such other states wherein the failure to so qualify would have a Material Adverse Effect.

Section 4.3 Corporate Power. Borrower and Guarantor possess the requisite power to enter into the Loan Documents, as applicable, to borrow thereunder, to execute and deliver the Loan Documents and to perform its obligations thereunder.

Section 4.4 Corporate Authority. Borrower and Guarantor have taken the necessary corporate action to authorize the execution and delivery of the Loan Documents, and the borrowings thereunder and the granting of the security interests therein, and none of the provisions of the Loan Documents violate, breach, contravene, conflict with, or cause a default under any provision of the articles of incorporation or by-laws of Borrower or Guarantor or any provision of any existing note, bond, mortgage, debenture, indenture, trust, license, lease, instrument, decree, order, judgment, or agreement to which Borrower or Guarantor is a party or by which it or its assets may be bound or affected.

Section 4.5 Financial Statements. As of the first delivery of Financial Statements and thereafter, the Financial Statements were prepared in accordance with GAAP consistent with prior years, unless specifically otherwise noted thereon, and fairly present the financial condition of Borrower as of the date thereof and the results of its operations for the period then ended in all material respects, and no change in the financial condition of Borrower has occurred since the date of the Financial Statements which could reasonably be expected to have a Material Adverse Effect.

Section 4.6 No Material Adverse Change. The information submitted by Borrower to Bank discloses all known or anticipated material liabilities, direct or contingent, of Borrower and, to the Knowledge of Borrower, since such dates, there has been no change in Borrower's financial condition which could reasonably be expected to have a Material Adverse Effect.

Section 4.7 Subsidiaries. Except as disclosed on any Schedule 4.7 hereto, Borrower has no Subsidiaries. None of the issued and outstanding ownership interests in Borrower or any of its Subsidiaries is subject to any vesting, redemption, or repurchase agreement, and there are no warrants or options outstanding with respect to such ownership interests.

Section 4.8 Binding Obligations. Each of the Loan Documents, when issued for value, will constitute a legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as the same may be limited by reorganization, bankruptcy, insolvency, moratorium or other laws affecting generally the enforcement of creditors' rights.

Section 4.9 Marketable Title. Borrower has good and marketable title to all of its real Property and good title to all of its other Properties shown on the Financial Statements, except such Properties as have been disposed of since the date of the Financial Statements in the ordinary course of business. Except for Permitted Encumbrances, (a) the assets of Borrower are not subject to any Lien, and the security interests in favor of Bank under the Loan Documents will constitute first, senior and prior perfected security interests in the collateral therein described, and (b) no financing statement or similar instrument which names Borrower as debtor or relates to any of its Property, has been filed in any state or other jurisdiction and remains unreleased, and Borrower has not signed any financing statement or similar instrument or security agreement authorizing the secured party thereunder to file any such financing statement or similar instrument.

Section 4.10 Indebtedness. Except for the Indebtedness to Bank and/or as shown on the Financial Statements or on any Schedule 4.10 hereto, and except for trade debt incurred in the ordinary course of business since the date of the Financial Statements, Borrower has no outstanding Indebtedness.

Section 4.11 Default. Neither Borrower nor Guarantor has committed or suffered to exist any default or any circumstance which with notice, lapse of time, or both, would constitute a material default under the terms and conditions of any trust, debenture, indenture, note, bond, instrument, mortgage, lease, agreement, order, decree, or judgment to which Borrower and Guarantor is a party or by which it or its assets may be bound or affected.

Section 4.12 Tax Returns. All tax returns or reports of Borrower and Guarantor required by law have been filed, and all taxes, assessments, contributions, fees and other governmental charges (other than those presently payable without penalty or interest and those currently being contested in good faith and against which adequate reserves have been established) upon Borrower, its Subsidiaries or their assets, properties or income, which are payable, have been paid.

Section 4.13 Litigation. Except as set forth on any Schedule 4.13 hereto, to the Knowledge of Borrower, no litigation or proceeding of any Governmental Authority or other Person is presently pending or threatened, nor has any claim been asserted, against Borrower or its Subsidiaries which, if adversely determined, could have a Material Adverse Effect or which seeks to prevent, enjoin or delay the making of the Facilities.

Section 4.14 ERISA. Borrower and each ERISA Affiliate is in compliance in all material respects with all applicable provisions of ERISA, and neither Borrower nor any ERISA Affiliate has incurred any liability to the PBGC. Neither a "reportable event", nor a "prohibited transaction", has occurred under, nor has there occurred any complete or partial withdrawal from, nor has there occurred any other event which would constitute grounds for termination of or the appointment of a trustee to administer any "employee benefit plan" (including any "multi-employer plan") maintained for employees of Borrower or any ERISA Affiliate, all within the meanings ascribed by ERISA.

Section 4.15 Full Disclosure. No information, exhibit, memorandum, or report (excluding estimated future operating results) furnished by Borrower to Bank in connection with the negotiation of the Facilities contains any material misstatement of fact, or omits to state any fact necessary to make the statements contained therein not materially misleading in light of the circumstances when made, and all estimated future operating results, if furnished, were prepared on the basis of assumptions, data, information, tests or other conditions believed to be valid or accurate or to exist at the time such estimates were prepared and furnished. To the Knowledge of Borrower, there presently exists no fact or circumstance relative to Borrower, whether or not disclosed, which is presently anticipated to have a Material Adverse Effect. As of date hereof, to the Knowledge of Borrower, the information included in the Beneficial Ownership Certification provided on or prior to the date hereof to Bank in connection with this Agreement is true and correct in all material respects.

Section 4.16 Contracts of Surety. Except for the endorsements of Borrower of negotiable instruments for deposit or collection in the ordinary course of business, Borrower is not a party to any contract of guaranty or surety.

Section 4.17 Licenses. Borrower and Guarantor possess such franchises, licenses, permits, patents, copyrights, trademarks, and consents of appropriate Governmental Authorities (including but not limited to, the FERC, the IURC, and the PUCO) to own its property and as are necessary to carry on its business, except where the failure to obtain any of the foregoing, singularly or in aggregate, could not have a Material Adverse Effect.

Section 4.18 Compliance with Law. Borrower and Guarantor are in compliance with all applicable requirements of law and of all Governmental Authorities noncompliance with which could have a Material Adverse Effect.

Section 4.19 Force Majeure. Neither the business nor the properties of Borrower or Guarantor are presently affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, pandemic, embargo, governmental act, act of God or of the public enemy or other casualty that could reasonably be expected to have a Material Adverse Effect.

Section 4.20 Margin Stock. Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System), and no part of the proceeds of the Facilities will be used, either directly or indirectly, for the purpose, whether immediate, incidental or remote, of purchasing or carrying any margin stock or of extending credit to others for the purpose of purchasing or carrying any margin stock, and Borrower shall furnish to Bank, upon its request, a statement in conformity with the requirements of Federal Reserve Board Form U-1 referred to in Regulation U. Further, no part of the proceeds of the Facilities will be used for any purpose that violates, or which is inconsistent with, the provisions of Regulations T, U or X of the Board of Governors.

Section 4.21 Approvals. No authorization, consent, approval or any form of exemption of any Governmental Authority (including without limitation any authorization, consent, approval, license or exemption of, or filing with, the FERC, the IURC, the PUCO and any other regulatory authority having jurisdiction) is required in connection with the execution and delivery by Borrower of the Loan Documents, the borrowings and performance by Borrower thereunder or the issuance of the Notes which the failure to acquire could reasonably be expected to cause a Material Adverse Effect.

Section 4.22 Insolvency. Borrower and Guarantor are not "insolvent" within the meaning of that term as defined in the Federal Bankruptcy Code and are able to pay their respective debts as they mature.

Section 4.23 Regulation. Borrower is not an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

Section 4.24 Environmental Matters. In the ordinary course of its business, Borrower conducts an ongoing review of the effect of Environmental Laws on the business, operations and Properties of Borrower, in the course of which it identifies and evaluates associated liabilities and costs (including any capital or operating expenditures required for clean-up or closure of Properties presently owned or operated, any capital or operating expenditures required to achieve or maintain compliance with environmental protection standards imposed by Environmental Laws or as a condition of any license, permit or contract any related constraints on operating activities, including any periodic or permanent shutdown of any facility or reduction in the level of or change

in the nature of operations conducted thereat and any actual or potential liabilities to third parties, including employees, and any related costs and expenses). On the basis of this review, Borrower has reasonably concluded that Environmental Laws cannot reasonably be expected to have a Material Adverse Effect. Except as set forth on any Schedule 4.24 hereto, Borrower has not received any notice to the effect that its operations are not in compliance with any of the requirements of applicable Environmental Laws or are the subject of any federal or state investigation evaluating whether any remedial action is needed to respond to a release of any Hazardous Materials. Except as set forth on Schedule 4.24, or as otherwise disclosed in writing to Bank as of the date of this Agreement, to the Knowledge of Borrower (provided that clause (e) below is not subject to any such Knowledge qualification except as specifically provided in clause (e)):

(a) All facilities and Property (including underlying groundwater) owned, leased or operated by Borrower have been, and continue to be, owned, leased or operated by Borrower in compliance with all applicable Environmental Laws, noncompliance with which does not, singly or, in the aggregate, have, or could not reasonably be expected to have, a Material Adverse Effect;

(b) There have been no past unresolved, and there are no pending or threatened,

(i) claims, complaints, notices or inquiries, to, or requests for information received by, Borrower and Guarantor with respect to any alleged violation of any Environmental Law, that, singly or in the aggregate, have, or may reasonably be expected to have, a Material Adverse Effect, or

(ii) claims, complaints, notices or inquiries to, or requests for information received by, Borrower and Guarantor regarding potential liability under any Environmental Law or under any common law theories relating to operations or the condition of any facilities or Property by Borrower or Guarantor that, singly or in the aggregate, have, or may reasonably be expected to have, a Material Adverse Effect.

(c) There have been no releases of Hazardous Materials, at, on or under any Property now or previously owned or leased by Borrower or Guarantor that, singly or in the aggregate, have, or may reasonably be expected to have, a Material Adverse Effect;

(d) Borrower and Guarantor have been issued and are in compliance with all permits, certificates, approvals, licenses and other authorizations relating to environmental matters and necessary for its business, the noncompliance with which could not, singly or in the aggregate, have, or reasonably be expected to have, a Material Adverse Effect;

(e) No Property now or previously owned, leased or operated by Borrower or Guarantor is listed or, to the Knowledge of Borrower, proposed for listing on the National Priorities List pursuant to CERCLA (or any similar Environmental Law) or on the CERCLIS or on any other federal or state list of sites requiring investigation or clean-up, to the extent that any such listing, singly or in the aggregate, has, or may reasonably be expected to have, a Material Adverse Effect;

(f) There are no underground storage tanks, active or abandoned, including petroleum storage tanks, on or under any Property now or previously owned, leased or operated by Borrower

or Guarantor that, singly or in the aggregate, have, or may reasonably be expected to have, a Material Adverse Effect;

(g) Neither Borrower nor Guarantor has directly transported or directly arranged for the transportation of any Hazardous Material to any location (i) which is listed or proposed for listing on the National Priorities List pursuant to CERCLA (or any similar Environmental Law) or on the CERCLIS or on any federal or state list, to the extent that any such listing, singly or in the aggregate, has, or may reasonably be expected to have, a Material Adverse Effect, or (ii) which is the subject of federal, state or local enforcement actions or other investigations which may lead to claims against Borrower or Guarantor for any remedial work, damage to natural resources or personal injury, including claims under any Environmental Law, to the extent that such claims, singly or in the aggregate, have, or may reasonably be expected to have, a Material Adverse Effect;

(h) There are no polychlorinated biphenyl, radioactive materials or friable asbestos present at any Property now or previously owned or leased by Borrower or Guarantor that, singly or in the aggregate, have, or may reasonably be expected to have, a Material Adverse Effect; and

(i) No condition exists at, on or under any Property now or previously owned or leased by Borrower or Guarantor which, with the passage of time, or the giving of notice or both, would give rise to material liability under any Environmental Law that, singly or in the aggregate have, or may reasonably be expected to have, a Material Adverse Effect.

Section 4.25 Material Agreements. Neither Borrower nor Guarantor is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in (a) any agreement to which it is a party, which default could reasonably be expected to have a Material Adverse Effect or (b) any agreement or instrument evidencing or governing Indebtedness.

Section 4.26 Conditions Precedent. Each item furnished to Bank pursuant to Section 6.1 hereof is a true and correct copy thereof, has not been modified or amended since the date furnished to the Bank (except as expressly set forth in such items) and is in full force and effect on the date hereof.

Section 4.27 Compliance. Borrower and Guarantor are not in Default as of the date hereof and shall fully and completely comply, in all respects, with the terms of the Loan Documents until the Notes, and all Obligations, are satisfied in full.

Section 4.28 Use of Proceeds. The proceeds of Advances under the Revolving Credit Loan shall be used to provide working capital for seasonal cash flow for Borrower.

Section 4.29 General. All statements contained in any certificate or financial statement delivered by or on behalf of Borrower to Bank under any Loan Document shall constitute representations and warranties made by Borrower hereunder, and such statements are true and accurate in all material respects as of the date of such certificate or statement.

ARTICLE 5. COVENANTS.

Section 5.1 Negative Covenants. Until the Obligations shall have been fully and finally paid and performed, and so long as any commitment of Bank is outstanding, without the prior written consent of Bank, Borrower shall not:

(a) **Dispose of Property.** Sell, transfer, lease or otherwise dispose of its Properties, or discount, with or without recourse, any of its Accounts, except for (i) sales from Inventory or other Property of Borrower in the ordinary course of business, provided, that sales of such other Property of Borrower shall not gross in excess of One Million Dollars (\$1,000,000.00) on an annual basis, (ii) sales of Accounts of Borrower that are over one hundred twenty (120) days past the respective invoice date and such sales are in the ordinary course of business of Borrower for the purpose of collection only, (iii) as approved by the IURC and/or the PUCO, as the case may be, (iv) dispositions of immaterial portions of its Properties upon a casualty or material obsolescence, and (v) except as otherwise provided in the Security Agreement. Notwithstanding anything to the contrary in this Section 5.1(a), Borrower shall not be prevented or prohibited from selling, moving, and/or transferring natural gas in the ordinary course of Borrower's business.

(b) **Further Encumber.** Except for Permitted Encumbrances, create or suffer to exist any Lien upon any of its Properties, whether now owned or hereafter acquired.

(c) **Merge, Etc.** Enter into any consolidation or merger with, or acquisition of, any Person or any substantial portion of its assets.

(d) **Purchase Stock.** Purchase, redeem, retire or otherwise acquire any outstanding shares of its capital stock which would result in a Change in Control.

(e) **Reserved.**

(f) **Sell and Leaseback.** Enter into any Sale and Leaseback Transaction.

(g) **Borrowings.** Except for (i) trade debt and purchase money debt incurred in the normal course of business of Borrower (which debts have been mutually agreed to by Borrower and Bank), (ii) indebtedness approved by the IURC, the PUCO, or the FERC if the Bank has consented to the incurrence thereof, and (iii) indebtedness to Bank contemplated by this Agreement, (1) create, incur or assume additional indebtedness for borrowed money, including capital leases, in excess of the aggregate amount of Five Hundred Thousand Dollars (\$500,000.00), without the prior written approval of the Bank, in the Bank's sole and exclusive discretion, (2) sell, transfer, mortgage, assign, pledge, lease, grant a security interest in, or encumber any of Borrower's assets (except as allowed as Permitted Liens), or (3) sell with recourse any of Borrower's accounts, except to Bank.

(h) **Investment.** Make any Investment, except (i) advances to trade debtors in the ordinary course of business, (ii) other Investments not exceeding Five Hundred Thousand Dollars (\$500,000.00) in the aggregate per annum, and (iii) Qualified Investments; or make any disbursement to any Person except in the ordinary course of business, provided that such is approved by the IURC, the PUCO, and/or the FERC and consented to by the Bank, as the case may be.

(i) **Guarantees.** Assume, guarantee or otherwise become liable as a guarantor or surety for the obligations of any Person, except (i) the endorsements by Borrower of negotiable instruments for deposit or collection in the ordinary course of business, and (ii) those in favor of Bank.

(j) **Change Name or Place of Business.** Change its name or principal place of business, except on not less than thirty (30) days' prior written notice to Bank.

(k) **Special Corporate Transactions.** Engage in any transaction with any Person other than in the ordinary course of business that could reasonably be anticipated to have a Material Adverse Effect.

(l) **Accounting Policies.** Change its fiscal year or any of its significant accounting policies, except to the extent necessary to comply with GAAP.

(m) **Change of Business.** Make any material change in the nature of its business as carried on as of the date of this Agreement.

(n) **Benefit Plans.** Permit any condition to exist in connection with any employee benefit plan which might constitute grounds for the PBGC to institute proceedings to have the employee benefit plan terminated or a trustee appointed to administer the employee benefit plan; or engage in, or permit to exist or occur any other condition, event or transaction with respect to any employee benefit plan which could result in Borrower incurring any material liability, fine or penalty.

(o) **Adversity.** Permit any event to occur or condition to exist which has a Material Adverse Effect.

(p) **Transactions with Shareholder and Affiliates.** Directly or indirectly enter into or permit to exist any transaction (including, without limitation, the purchase, sale, lease or exchange of any property or the rendering of any service) with any holder or holders of any of the ownership interest in Borrower, or with any Affiliate of Borrower, on terms that are less favorable to Borrower, than those that might be obtained in an arm's length transaction at the time from Persons who are not such a holder or Affiliate.

(q) **Corporate Documents.** Amend, modify or otherwise change in any material respect any of the terms or provisions in any of their respective articles of organization or operating agreement as in effect on the date hereof in any manner adverse to the interests of Bank, without the prior written consent of Bank.

(r) **Restrictive Agreements.** Enter into any agreement (excluding any restrictions existing under the Loan Documents) prohibiting (i) the creation or assumption of any Lien on any of its Properties, (ii) the ability of Borrower to amend or otherwise modify this Agreement or any other Loan Document, or (iii) the ability of Guarantor to make any payments, directly or indirectly, to Borrower by way of dividends, advances, repayments of loans or advances, reimbursements of management and other intercompany charges, expenses and accruals or other returns on investments, or any other agreement or arrangement which restricts the ability of any Guarantor to make any payment, directly or indirectly, to Borrower.

(s) Government Regulation. Be or become subject at any time to any law, regulation, or list of any Governmental Authority (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits Bank from making any advance or extension of credit to Borrower or from otherwise conducting business with Borrower, or (ii) fail to provide documentary and other evidence of Borrower's identity as may be requested by Bank at any time to enable Bank to verify Borrower's identity or to comply with any applicable law or regulation, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318.

(t) Prepayment of Other Obligations. Prepay any obligations of Borrower, including, but not limited to, the Subordinated Debt, other than prepayment of the Facilities until the Facilities have been paid and satisfied in full.

(u) Change of Control. Permit the occurrence of a Change of Control.

Section 5.2 Affirmative Covenants. Until the Obligations shall have been fully and finally paid and performed, and so long as any commitment of Bank is outstanding, unless expressly waived in writing by Bank, Borrower shall:

(a) Financial Reporting. Furnish or caused to be furnished to Bank:

(i) as soon as practicable, but in any event within one hundred fifty (150) days after the end of each fiscal year, audited financial statements of Borrower prepared by independent certified public accountant(s) reasonably satisfactory to Bank, including a balance sheet, statement of income and retained earnings and a statement of cash flows, with accompanying notes to financial statements, all prepared in accordance with GAAP on a basis consistent with prior years unless specifically noted thereon, accompanied by the review report of such accountants, and further accompanied by the certificate of the chief financial officer of Borrower that there exists no Default or Unmatured Default under the Loan Documents, or if any Default or Unmatured Default exists, stating the nature and status thereof;

(ii) within forty-five (45) days after the end of each fiscal quarter, a Compliance Certificate, in form and substance acceptable to Bank, showing Borrower's compliance with the covenants set forth in Section 5.3 hereof;

(iii) within forty-five (45) days after the end of each fiscal quarter, financial statements of Borrower and the results of its operations for the prior fiscal quarter then elapsed, prepared and signed by the chief financial officer of Borrower, all prepared in accordance with GAAP on a basis consistent with prior periods, unless specifically otherwise noted thereon, and accompanied by the certificate of the chief financial officer of Borrower that there exists no Default or Unmatured Default under the Loan Documents or if any Default or Unmatured Default exists, stating the nature and status thereof;

(iv) as soon as possible, but in any event within thirty (30) days after the commencement thereof, a written statement describing any litigation instituted by or against Borrower or any Affiliate which, if adversely determined, may have a Material Adverse Effect;

(v) as soon as possible, but in any event within thirty (30) days after Borrower becomes aware thereof, a written statement describing any reportable event or prohibited

transaction which has occurred with respect to any employee benefit plan and the action which Borrower proposes to take with respect thereto;

(vi) promptly upon the filing thereof, copies of all registration statements and annual, quarterly, monthly, or other regular reports which Borrower files with any securities commission or other Governmental Authority;

(vii) as soon as practicable, but any event within thirty (30) days after receipt by Borrower, a copy of any notice, complaint, Lien, inquiry or claim (A) to the effect that Borrower is or may be liable to any Person as a result of the release by Borrower, or any other Person of any Hazardous Substance into the environment, or (B) alleging any violation of any Environmental Law by Borrower, which, in either case, could reasonably be expect to have a Material Adverse Effect; and

(viii) such other information as Bank may from time to time reasonably request.

(b) Good Standing. Maintain, and cause Guarantor to maintain, its legal existence and right to do business in its state of organization and in such other states wherein non-qualification could have a Material Adverse Effect.

(c) Taxes, Etc. Pay and discharge, and cause Guarantor to pay and discharge, all taxes, assessments, judgments, orders, and governmental charges or levies imposed upon it or on its income or profits or upon its property prior to the date on which penalties attach thereto and all lawful claims which, if unpaid, may become a Lien or charge upon the Property of Borrower or such Subsidiary, provided that Borrower or Guarantor shall not be required to pay any tax, assessment, charge, judgment, order, levy or claim, if such payment is being contested diligently, in good faith, and by appropriate proceedings which will prevent foreclosure or levy upon its Property and adequate reserves against such liability have been established.

(d) Maintain Properties. Maintain, and cause Guarantor to maintain, all Properties and assets used by, or useful to, it in the ordinary course of its business in good working order and condition and suitable for the purpose for which it is intended, and from time to time, make any necessary repairs and replacements.

(e) Insurance. Maintain, and cause Guarantor to maintain, in full force and effect public liability insurance, business interruption insurance, worker's compensation insurance, casualty insurance policies, and/or self-insurance with coverages and with such companies as are reasonably acceptable to Bank. Each such policy covering Properties of Borrower or Guarantor pledged as collateral to Bank shall have a lender's loss payable clause in favor of Bank, and a copy of each policy, accompanied by a certificate of coverage issued by the insurance carrier, shall be delivered to Bank. To the extent commercially available, such policy shall stipulate that the insurance cannot be canceled or materially modified without thirty (30) days' prior written notice to Bank and shall insure Bank notwithstanding the act or neglect of Borrower or Guarantor.

(f) Books and Records. Keep proper books of account in which full, true and correct entries will be made of all dealings and transactions of and in relation to the business and affairs of Borrower, and, at all reasonable times upon reasonable notice, and as often as Bank may request, except as set forth below, permit authorized representatives of Bank to (i) have access to the

premises and Properties of Borrower and Guarantor and to the records relating to the operations of Borrower and Guarantor; (ii) make copies of or excerpts from such records; (iii) discuss the affairs, finances and accounts of Borrower with and be advised as to the same by the chief executive and financial officers of Borrower; and (iv) up to once per year, provided, that after a Default, as often as Bank may request, audit and inspect such books, records, accounts, memoranda and correspondence at all reasonable times, to make such abstracts and copies thereof as Bank may deem necessary, and to furnish copies of all such information to any proposed purchaser of or participant in the Facilities on a confidential basis.

(g) Reports. File, and cause Guarantor to file, as appropriate, on a timely basis, annual reports, operating records and any other reports or filings required to be made with any Governmental Authority.

(h) Licenses. Maintain, and cause Guarantor to maintain, in full force and effect all operating permits, licenses, franchises, and rights used by it in the ordinary course of business where failure to do so could reasonably be expected to have a Material Adverse Effect.

(i) Notice of Material Adverse Change. Give prompt notice in writing to Bank of the occurrence of any development, financial or otherwise, including pending or threatened litigation which could reasonably be anticipated to have a Material Adverse Effect.

(j) Compliance with Law. Comply, and cause Guarantor to comply, with all material laws, ordinances, rules, regulations and other legal requirements applicable to it, including, without limitation, all Environmental Laws and ERISA.

(k) Trade Accounts. Pay all trade accounts in accordance with standard industry practices, where any delay in doing so could reasonably be expected to have a Material Adverse Effect.

(l) Use of Proceeds. Use the proceeds of the Facilities solely for the purposes herein described. Borrower shall not use, and shall ensure that Guarantor and its or their respective directors, officers, employees and agents shall not use, the proceeds of any of the Facilities (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

(m) Loan Payments. Duly and punctually pay or cause to be paid principal and interest on the Facilities in lawful money of the United States at the time and places and in the manner specified herein according to the stated terms and the true intent and meaning hereof.

(n) Environmental Matters. (i) Use, operate and maintain all of its Properties in material compliance with all applicable Environmental Laws, keep or acquire all necessary permits, approvals, certificates, licenses and other authorizations relating to environmental matters in effect and remain in material compliance therewith, and handle all Hazardous Substances in material compliance with all applicable Environmental Laws, (ii) within ninety (90) days after filing thereof, have dismissed with prejudice any actions or proceedings against Borrower relating

to compliance with Environmental Laws which could in the reasonable opinion of Bank have a Material Adverse Effect, and (iii) diligently pursue cure of any material underlying environmental problem which forms the basis of any claim, complaint, notice, Lien, inquiry, proceeding or action referred to in Section 5.2(a)(vii) hereof. If Borrower is notified of any event described in Section 5.2(a)(vii) hereof, Borrower shall, upon the request of Bank, establish appropriate reserves against such potential liabilities and engage a firm or firms of engineers or environmental consultants appropriately qualified to determine as quickly as practical the extent of contamination and the potential financial liability of Borrower with respect thereto, and Bank shall be provided with a copy of any report prepared by such firm or by any Governmental Authority as to such matters as soon as any such report becomes available to Borrower. The selection of any engineers or environmental consultants engaged pursuant to the requirements of this Section shall be subject to the approval of Bank, which approval shall not be unreasonably withheld or delayed.

(o) **Banking Relationship.** Establish and maintain its primary deposit accounts and operating bank accounts with Bank; provided that Borrower may continue to maintain Deposit Accounts with banking institutions other than Bank so long as funds in such Deposit Accounts are swept into an account held with the Bank at least once per month, and the balance in each such Deposit Account immediately following such sweep is not greater than \$250,000.

(p) **Preferred Stock Filing.** Promptly send written notice to Bank of any filing with the IURC or the PUCO to seek authority to issue any preferred stock.

(q) **Subordinated Debt.** At all times, cause the Subordinated Debt to be subordinated to the full, final and irrevocable payment of the Obligations, in form and substance acceptable to Bank.

Section 5.3 Financial Covenants. Until the Obligations shall have been fully and finally paid and performed, and so long as any commitment of Bank is outstanding, unless expressly waived in writing by Bank, Borrower shall:

(a) **Quarterly Rolling Fixed Charge Coverage Ratio.** Maintain a Quarterly Rolling Fixed Charge Coverage Ratio in excess of 1.30 to 1.00, at the end of each fiscal quarter beginning June 30, 2021.

(b) **Minimum Working Capital.** Maintain at all times Working Capital of at least Five Million Dollars (\$5,000,000) as of the end of each fiscal quarter beginning June 30, 2021.

(c) **Revolving Credit Loan Clean-Up Requirement.** During each fiscal year of Borrower, commencing with the fiscal year ending December 31, 2021, the balance of the Revolving Credit Loan shall be Zero Dollars (\$0) for a minimum period of thirty (30) consecutive calendar days.

ARTICLE 6. CONDITIONS PRECEDENT.

Section 6.1 Conditions to Initial Advance. The obligation of the Bank to make the initial Advance under the Facilities is subject to satisfaction of each of the following conditions precedent:

(a) **Regulatory Forms.** Bank shall have received, in form and substance acceptable to Bank, an executed Certification of Beneficial Ownership and such other documentation and other information requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act.

(b) **Authorization.** Bank shall have received and approved, certified copies of Borrower's and Guarantor's articles of incorporation or articles of organization and by-laws or operating agreements, as applicable, both as amended, accompanied by a recent certificate of existence issued by the appropriate official of its place of organization and certificates of good standing from those states in which Borrower owns property or maintains an office and certified copies of resolutions adopted by Borrower's and Guarantor's boards of directors, managers, or members, as applicable, authorizing the Facilities and Loan Documents and specifying the names and capacities of those persons authorized to execute and deliver the Loan Documents.

(c) **Insurance.** Borrower shall have furnished to Bank evidence of the insurance required by this Agreement and the Loan Documents.

(d) **Loan Documents.** Each of the Loan Documents, in the form prescribed by Bank, shall have been executed and delivered by the parties thereto to Bank, and the other loan documents and guaranties required by this Agreement, in the form prescribed by Bank, shall have been executed and delivered by the appropriate parties thereto.

(e) **Incumbency.** Bank shall have received Incumbency Certificates, one for each of the Borrower and the Guarantor, executed by the secretary of Borrower and Guarantor, respectively, which shall identify the name and title and bear the signature of the officers of Borrower or Guarantor, as applicable, authorized to sign the Loan Documents, and Bank shall be entitled to rely upon such certificate until informed of any change in writing by Borrower.

(f) **Legal Matters.** All legal matters incident to the Loan Documents and the making of Advances shall be reasonably satisfactory to Bank and its counsel.

(g) **UCC Searches.** Bank shall have received satisfactory return after search in accordance with the Uniform Commercial Code in such governmental offices as Bank shall have deemed appropriate.

(h) **Solvency, Etc.** Satisfactory certificates as to Solvency, compliance with the covenants set forth in the Loan Documents, and such other certificates as Bank may reasonably require, shall have been executed by the appropriate officers of Borrower and delivered to Bank.

(i) **Fees.** Borrower shall have paid Bank the commitment fee due under Section 2.6(a) hereof, and, pursuant to Section 9.8 hereof, Borrower shall have reimbursed Bank for all reasonable legal fees, and other reasonable out-of-pocket expenses of Bank in connection with the Facilities.

(j) **Regulation U.** Bank shall have received such certificates and other documents as it shall have deemed reasonably appropriate as to compliance with Regulations G, U and X of the Board of Governors of the Federal Reserve System.

(k) **No Default.** As of the date hereof, and after giving effect to the initial funding of the Facilities, there shall not exist a Default or Unmatured Default, and Bank shall have received evidence satisfactory to Bank that the transactions contemplated by this Agreement do not create a default under any agreement to which Borrower is a party.

(l) **Opinions of Counsel.** Bank shall have received satisfactory opinions of Borrower's counsel as to such matters as required by Bank.

(m) **Closing Certificates.** Bank shall have received a closing certificate executed by Borrower evidencing: (i) the accuracy of the representations and warranties in the Loan Documents; (ii) compliance with the covenants in the Loan Documents; (iii) that Borrower has obtained any and all regulatory approvals and licenses authorizing Borrower to conduct its business and operations; (iv) that there are no legal or regulatory prohibitions or restrictions on Borrower's ability to conduct its business and operations; (v) the absence of a Default, potential or otherwise; (vi) that no Material Adverse Effect has occurred affecting the business, operations, property condition (financial or otherwise), or prospects of Borrowers and Guarantor; and (vii) that, except as set forth on Schedule 4.13, there is no threatened or pending litigation against Borrower or the Guarantor which, if adversely determined, could have a Material Adverse Effect or which seeks to prevent, enjoin or delay the making of the Facilities.

(n) **Deposit Accounts.** Borrower shall have established one or more Deposit Accounts with Bank.

(o) **Insurance.** Bank shall have received evidence sufficient and satisfactory to Bank, in Bank's sole and exclusive discretion, that Borrower has obtained insurance to cover any and all perils and risks that affect, or may affect, the assets of Borrower that are granted as security for the Obligations, and Bank shall have a received a copy of such insurance policy, which insurer is acceptable to Bank, in Bank's reasonable discretion, that shall be kept in force during the term of the Facilities, or such replacement policies as may be acceptable to Bank in its reasonable discretion.

(p) **Additional Documentation.** Bank shall have received such other documents, instruments, financing statements, waivers, certificates, reaffirmations, consents and opinions as it may reasonably request.

Section 6.2 Conditions to Subsequent Advances. Prior to each subsequent Advance under the Revolving Credit Loan:

(a) **No Default.** No Default or Unmatured Default shall have occurred and be continuing.

(b) **Representations and Warranties.** Each representation and warranty contained in Article 4 shall be true and correct as of the date of such Advance, except to the extent any such representation or warranty relates solely to an earlier date and except changes reflecting transactions permitted by this Agreement.

(a) **Legal Matters.** All legal matters incident to the making of such Advance shall be reasonably satisfactory to Bank and its counsel.

(b) **Expenses.** Borrower shall have reimbursed Bank for all reasonable legal fees and other reasonable expenses incurred by Bank in connection with the Facilities in accordance with Section 9.8 hereof.

Section 6.3 General. Each request for an Advance shall constitute a representation and warranty by Borrower that the applicable conditions contained in this Article 6 have been satisfied.

ARTICLE 7. DEFAULT.

The occurrence of any of the following events (beyond any applicable cure or grace period) shall be deemed a Default hereunder:

(a) any representation or warranty made by or on behalf of Borrower or any Affiliate to Bank under or in connection with any Loan Document or any subordination agreement shall be false in any material respect as of the date on which made which could reasonably be expected to have a Material Adverse Effect;

(b) Borrower fails to make any payment of principal of or interest on the Facilities or any fee or other payment obligation in connection with the Facilities within fifteen (15) days of when due, which failure continues for more than ten (10) days after notice thereof by Bank to Borrower (provided that Borrower hereby agrees that, in addition to other notice methods, notice by electronic mail shall constitute an acceptable form of notice);

(c) the breach by Borrower of any other terms or provisions of the Loan Documents (other than a breach which constitutes a Default under Article 7(a), (b) or (c) above) not cured within thirty (30) days after written notice from Bank to Borrower specifying such breach (provided that Borrower hereby agrees that, in addition to other written notice methods, notice by electronic mail shall constitute an acceptable form of written notice), provided that if such breach is of a nature that it cannot reasonably be cured within such thirty (30) day period, then such additional time as may be reasonably necessary to effect such cure, up to sixty (60) days, so long as Borrower commences such cure within such thirty (30) day period and thereafter diligently pursues the same to be completion;

(d) [reserved];

(e) the failure of Borrower or Guarantor to pay any other Indebtedness when due or within any applicable grace or cure period, or the breach by Borrower or Guarantor of any term, provision or condition contained in any agreement under which any such Indebtedness was created or is governed, which constitutes a default thereunder, or any other event shall occur or condition exist, the effect of which is to cause, or to permit the holder or holders of such Indebtedness to cause such Indebtedness to become due prior to its stated maturity, or any Indebtedness shall be declared to be due and payable or required to be prepaid or repurchased (other than by a regularly scheduled payment) prior to the stated maturity thereof;

(f) Borrower or Guarantor shall (i) have an order for relief entered with respect to it under the Federal Bankruptcy Code, (ii) admit in writing its inability to pay its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar

official for it or any substantial part of its property, (v) institute any proceeding seeking an order for relief under the Federal Bankruptcy Code or seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, or (vi) suspend operations as presently conducted or discontinue doing business as an ongoing concern;

(g) without the application, approval or consent of Borrower or Guarantor, a receiver, trustee, examiner, liquidator or similar official shall be appointed for Borrower or Guarantor or any substantial part of its Property, or a proceeding described in item (f) above shall be instituted against Borrower or Guarantor and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of sixty (60) consecutive days;

(h) any Governmental Authority shall condemn, seize or otherwise appropriate, or take custody or control of all or a substantial portion of the Property of Borrower or Guarantor;

(i) Borrower or Guarantor shall fail within sixty (60) days to pay, bond or otherwise discharge any judgment or order for the payment of money of more than \$100,000 which is not stayed on appeal or otherwise appropriately contested in good faith, or any attachment, levy or garnishment is issued against any Property of Borrower or Guarantor;

(j) if there occurs a Change in Control;

(k) there occurs a “**reportable event**” or a “**prohibited transaction**” under, or any complete or partial withdrawal from, or any other event which would constitute grounds for termination of or the appointment of a trustee to administer, any “**plan**” maintained by Borrower or any ERISA Affiliate for the benefit of its “**employees**” (as such terms are defined in ERISA) which will have a Material Adverse Effect;

(l) Guaranty shall fail to remain in full force and effect or any action shall be taken by Borrower or Guarantor to discontinue or to assert the invalidity or unenforceability of the Guaranty, or Guarantor shall fail to comply in any material respect with any of the provisions of its Guaranty, or Guarantor shall deny that it has any further liability under its Guaranty, or shall give notice to such effect;

(m) any Loan Document shall for any reason fail to create a valid and perfected first (1st) priority security interest in any collateral purported to be covered thereby (except as permitted by the terms of any Loan Document), or any Loan Document shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of, or the security interest created under, any Loan Document; or

(n) if there occurs any default by Borrower with respect to any Rate Hedging Agreement.

ARTICLE 8. REMEDY.

Section 8.1 Acceleration. If any Default described in Article 7 item (f) or (g) occurs, the Facilities and the commitment of Bank to make Advances under the Facilities shall automatically terminate and the Obligations shall immediately become due and payable without any election or action on the part of Bank. If any other Default occurs, Bank may terminate its commitments hereunder and declare the Obligations to be due and payable, whereupon the Obligations shall become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which Borrower hereby expressly waives.

Section 8.2 Remedy. Upon the occurrence of a Default, Bank may immediately proceed to exercise all remedies available to it under the Loan Documents, or otherwise under applicable law. No right or remedy conferred upon or reserved to Bank under the Loan Documents, is intended to be exclusive of any other available remedy or right, but each and every remedy shall be cumulative and concurrent and shall be in addition to every other remedy now or hereafter existing at law or in equity. No single or partial exercise of any power or right shall preclude any further or other exercise of any power or right.

Section 8.3 Preservation of Rights. No delay or omission of Bank to exercise any power or right under the Loan Documents shall impair such power or right or be construed to be a waiver of any Default or an acquiescence therein, and any single or partial exercise of any power or right shall not preclude other or further exercise thereof or the exercise of any other power or right. No Advance hereunder shall constitute a waiver of any of the conditions of Bank's obligation to make further Advances, nor, in the event Borrower is unable to satisfy any such condition, shall a waiver of such condition in any one instance have the effect of precluding Bank from thereafter declaring such inability to be a Default hereunder. No course of dealing shall be binding upon Bank.

ARTICLE 9. GENERAL PROVISIONS.

Section 9.1 Benefit of Agreement. Bank will accept the Notes as evidence of loans made in the ordinary course of its commercial banking business. The terms and provisions of this Agreement, the Notes and the other Loan Documents shall be binding upon and inure to the benefit of Borrower and Bank and their respective successors and assigns of their entire interests, except that Borrower shall not have the right to assign this Agreement.

Section 9.2 Survival of Representations. All representations, warranties and agreements of Borrower contained in the Loan Documents shall survive delivery of the Notes and the making of the Facilities.

Section 9.3 Governmental Regulation. Anything contained in this Agreement to the contrary notwithstanding, Bank shall not be obligated to extend credit to Borrower in violation of any limitation or prohibition provided by any applicable statute or regulation.

Section 9.4 Conflict. This Agreement and the other Loan Documents shall be interpreted, wherever possible, in a manner consistent with one another, but in the event of any irreconcilable inconsistency, this Agreement shall control.

Section 9.5 Choice of Law. THE LOAN DOCUMENTS SHALL BE CONTRACTS MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF INDIANA APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

Borrower hereby irrevocably consents to the exclusive jurisdiction of any state or federal court in Marion County, Indiana; provided that nothing contained in this Agreement will prevent Bank from bringing any action, enforcing any award or judgment or exercising any rights against Borrower individually, against any security or against any property of Borrower within any other county, state or other foreign or domestic jurisdiction. Borrower acknowledges and agrees that the venue provided above is the most convenient forum for both Bank and Borrower. Borrower waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Agreement or the Loan Documents.

Section 9.6 Headings. Section headings in the Loan Documents are for convenience of reference only and shall not govern the interpretation of any of the provisions of the Loan Documents.

Section 9.7 Entire Agreement. The Loan Documents embody the entire agreement and understanding between Borrower and Bank and supersede all prior agreements and understandings between Borrower and Bank relating to the subject matter thereof.

Section 9.8 Expenses. Borrower shall reimburse Bank for any and all reasonable costs, charges and out-of-pocket expenses (including reasonable attorneys' fees and time charges of attorneys for Bank), paid or incurred by Bank in connection with the preparation, review, execution, delivery, amendment, modification, administration, collection and enforcement of the Facilities and/or the Loan Documents and in connection with the conduct by Bank's internal auditors of periodic field and servicing audits of Borrower, subject to the limitations set forth in Section 5.2(f) hereof. Bank may pay or deduct from the loan proceeds any of such expenses, and any proceeds so applied shall be deemed to be Advances under this Agreement evidenced by the Revolving Credit Note and secured by the Loan Documents, and shall bear interest at the rate of interest provided in the Revolving Credit Note.

Section 9.9 Confidentiality. Bank agrees to treat all information received by it in connection with the Loan Documents (except such information which is generally available or has been made available to the public) as confidential, provided, however, that nothing in this Section 9.9 shall prohibit Bank from, or subject Bank to liability for, disclosing any such information to any Governmental Authority to whose jurisdiction Bank is subject, and provided further that Bank may provide such information to proposed purchasers of or participants in the Facilities from time to time on a confidential basis.

Section 9.10 Giving Notice.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, addressed to Borrower or Bank at the addresses indicated aside their signatures to this Agreement.

(b) Notices and other communications to Bank hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by Bank; provided that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by Bank. Bank or Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(c) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

Section 9.11 Maximum Interest. It is the intent of Borrower and Bank that the rate of interest and the other charges of Borrower under this Agreement shall be lawful; therefore, if for any reason, the interest or other charges payable under this Agreement are found by a court of competent jurisdiction to exceed the limit which Bank may lawfully charge Borrower, then the obligation to pay interest and other charges shall automatically be reduced to such limits. If Borrower has paid an amount in excess of such limit, then such amount shall be applied to reduce the principal portion of the Obligations.

Section 9.12 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. This Agreement shall be effective when it has been executed by Borrower and Bank. Delivery of an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall have the same force and delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall also deliver an original executed counterpart of this Agreement, but the failure to do so shall not affect the validity, enforceability, and binding effect of this Agreement.

Section 9.13 Incorporation by Reference. All Exhibits and Schedules hereto are incorporated herein by this reference. Each of the other Loan Documents shall be made subject to all of the terms, covenants, conditions, obligations, stipulations and agreements contained in this Agreement to the same extent and effect as if fully set forth therein, and this Agreement is made subject to all of the terms, covenants, conditions, obligations, stipulations and agreements contained in the other Loan Documents to the same extent and effect as if fully set forth therein. The provisions of this Agreement, including, without limitation, provisions relating to maintenance of insurance, are in addition to, and not a limitation upon, the requirements of any other Loan Document or any subordination agreement.

Section 9.14 Time of Essence. Time is of the essence under the Loan Documents.

Section 9.15 No Joint Venture. Notwithstanding anything to the contrary herein contained or implied, Bank, by this Agreement, or by any action pursuant hereto, shall not be deemed to be a partner of, or a joint venturer with, Borrower, and Borrower hereby indemnifies and agrees to defend and hold Bank harmless, including the payment of reasonable attorneys' fees, from any loss resulting from any judicial construction of the parties' relationship as such.

Section 9.16 Relationship of Parties; Release of Consequential Damages. The relationship between Borrower and Bank shall be solely that of borrower and lender. Bank shall not have any fiduciary responsibilities to Borrower. Bank undertakes no responsibility to Borrower to review or inform Borrower of any matter in connection with any phase of Borrower's business or operations. Bank shall not have any liability with respect to, and Borrower hereby waives, releases and agrees not to sue for, any special or consequential damages suffered by it in connection with, arising out of, or in any way related to the Loan Documents or the transactions contemplated thereby.

Section 9.17 Severability. In the event any provision of this Agreement or any of the Loan Documents shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not affect the validity, enforceability or legality of the remaining provisions hereof or thereof, all of which shall continue unaffected and unimpaired thereby.

Section 9.18 Gender. As used herein, the masculine gender shall be deemed to include the feminine and the neuter and the singular number shall also include the plural.

Section 9.19 Waiver and Amendment. Borrower and Bank may enter into agreements supplemental hereto for the purpose of adding or modifying provisions of this Agreement or changing the respective rights, powers, privileges, duties, liabilities, covenants or obligations of Bank or Borrower or waiving any Default hereunder, provided, however, that no such agreements supplemental shall be binding unless in writing and duly signed by the parties hereto, and then only to the extent specifically set forth therein.

Section 9.20 Bank Not in Control. None of the covenants or other provisions contained in the Loan Documents shall, or shall be deemed to, give Bank the right or power to exercise control over the affairs and/or management of Borrower, the power of Bank being limited to the right to exercise the remedies provided in the Loan Documents, provided, however, that if Bank becomes the owner of any stock or other equity interest in any Person, whether through foreclosure or otherwise, Bank shall be entitled (subject to requirements of law) to exercise such legal rights as it may have by virtue of being the owner of such stock or other equity interest in such Person.

Section 9.21 Waiver Of Jury Trial. EACH OF BORROWER AND BANK HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT, ANY OTHER LOAN DOCUMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH OR ARISING FROM ANY LENDING RELATIONSHIP EXISTING IN CONNECTION WITH ANY OF THE FOREGOING, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

ARTICLE 10. USA PATRIOT ACT NOTIFICATION. Bank hereby notifies borrower that, pursuant to the requirements of the USA patriot act (title iii of pub. l. 107-56) (the "patriot act"), Bank is required to obtain, verify and record information that identifies Borrower and the other credit parties. Borrower agrees to provide to Bank promptly upon Bank's request, such information as Bank shall require for purposes of complying with the requirements of the patriot act, the federal regulations issued pursuant to the patriot act and any customer identification program established by Bank in accordance therewith.

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IN WITNESS WHEREOF, Borrower and Bank have caused this Agreement to be executed by their respective officers duly authorized as of the date first above written.

"BORROWER"

OHIO VALLEY GAS CORPORATION,
an Indiana corporation

By: 

Printed Name: Ronald P. Salkie

Title: Vice President, Chief Financial
Officer and Chief Information
Officer

Address:
111 Energy Park Drive
Winchester, Indiana 47394-0469
Attention: Ronald P. Salkie
e-mail address: ronald.salkie@ovgas.com

"BANK"

FIRST MERCHANTS BANK,
an Indiana chartered bank

By: _____
Kevin Eckerty, Vice President

Address:
10333 North Meridian Street
Suite 350
Indianapolis, Indiana 46290
Attention: Kevin Eckerty
Facsimile: (317) 844-2985

IN WITNESS WHEREOF, Borrower and Bank have caused this Agreement to be executed by their respective officers duly authorized as of the date first above written.

"BORROWER"

OHIO VALLEY GAS CORPORATION,
an Indiana corporation

By: _____

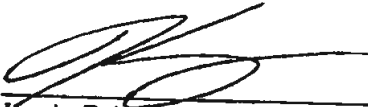
Printed Name: Ronald P. Salkie

Title: Vice President, Chief Financial
Officer and Chief Information
Officer

Address:
111 Energy Park Drive
Winchester, Indiana 47394-0469
Attention: Ronald P. Salkie
e-mail address: ronald.salkie@ovgas.com

"BANK"

FIRST MERCHANTS BANK,
an Indiana chartered bank

By: 
Kevin Eckerty, Vice President

Address:
10333 North Meridian Street
Suite 350
Indianapolis, Indiana 46290
Attention: Kevin Eckerty
Facsimile: (317) 844-2985

SCHEDULE 1

Permitted Encumbrances

None.

SCHEDULE 4.7

Subsidiaries

Ohio Valley Gas, Inc.
Dome Gas Company

SCHEDULE 4.13

Material Pending or Threatened Litigation

Site investigation described in letter from the Indiana Department of Environmental Management attached hereto.

SECOND AMENDMENT TO CREDIT AGREEMENT

THIS SECOND AMENDMENT TO CREDIT AGREEMENT (this “**Second Amendment**”) is effective as of August 17, 2022, by and between OHIO VALLEY GAS CORPORATION, an Indiana corporation (“**Borrower**”), and FIRST MERCHANTS BANK (“**Bank**”). The parties agree as follows:

WHEREAS, as of July 13, 2021, the parties hereto entered into a certain Credit Agreement (as amended, the “**Agreement**”);

WHEREAS, the parties desire to further amend the Agreement to, among other things, modify certain definitions, all subject to the terms contained herein; and

NOW, THEREFORE, in consideration of the premises, and the mutual promises herein contained, the parties agree that the Agreement shall be, and it hereby is, amended as provided herein and the parties further agree as follows:

PART I. AMENDATORY PROVISIONS

ARTICLE 1. DEFINITIONS.

Section 1.1 **Defined Terms.** Section 1.1 of the Agreement is hereby amended by substituting the following definitions in lieu of the like existing definitions:

“**Banking Day**” means (i) a day on which the principal domestic office of Bank is open for the purpose of conducting substantially all of its business activities, and (ii) if the applicable day relates to a Term SOFR Rate Advance or notice with respect to a Term SOFR Rate Advance, any day that commercial banks in New York, New York are required by law to be open for business and that is a U.S. Government Securities Business Day.

“**Revolving Credit Maturity Date**” means July 11, 2023.

Section 1.1 **Defined Terms.** Section 1.1 of the Agreement is hereby further amended by adding the following new definitions:

“**Adjusted Term SOFR Rate**” means the Term SOFR Rate *plus* 0.11% (11 basis points); *provided*, that if the Adjusted Term SOFR Rate as so determined would be less than the Rate Floor, such rate shall be deemed to be equal to the Rate Floor for purposes of calculating such rate.

“**Interest Rate**” means a variable per annum rate of interest equal to the sum of the Adjusted Term SOFR Rate *plus* 1.75%; *provided*, that (i) the Interest Rate is subject to adjustment from time to time based on changes in the Term SOFR Rate, and (ii) such adjustments shall be made only on each Reset Date (as hereinafter defined).

“**Rate Floor**” means 0% or the maximum rate allowed under applicable law, whichever is less.

“**Regulatory Change**” shall mean a change after the Second Amendment Effective Date in any applicable law, treaty, rule, regulation or guideline, or the interpretation or administration thereof, by the administrator of the relevant benchmark or its regulatory supervisor, any governmental authority, central bank or other fiscal, monetary or other authority having jurisdiction over Bank or its lending office.

“**Reset Date**” has the meaning ascribed to it in Section 2.2(e) of the Agreement.

“**Second Amendment Effective Date**” means August 17, 2022.

“**SOFR Index**” means, for any Banking Day, a rate per annum equal to the secured overnight financing rate for such Banking Day published by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate) on the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org> (or any successor source for the secured overnight financing rate identified as such by the administrator of the secured overnight financing rate from time to time).

“**Term SOFR Rate**” means, as of any Reset Date, the forward-looking SOFR Index for a tenor of one (1) month published by CME Group Benchmark Administration Limited (or a successor administrator designated by the relevant authority) for the date that is two (2) U.S. Government Securities Business Days prior to such Reset Date.

“**U.S. Government Securities Business Day**” means that any day except (i) a Saturday, (ii) a Sunday, or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

Section 1.1 **Defined Terms.** Section 1.1 of the Agreement is hereby further amended by deleting the following definitions and all references made thereto: “**LIBOR Index**” and “**LIBOR Rate Loan**”.

ARTICLE 2. CREDIT.

Section 2.2 **Interest.** Section 2.2 of the Agreement is hereby amended by substituting the following new clauses (a), (b), and (c) in lieu of the like existing clauses (a), (b), and (c), respectively:

(a) Revolving Credit Loan. Prior to maturity, the outstanding principal balance of Advances under the Revolving Credit Loan shall bear interest at a per annum rate equal to the Interest Rate.

(b) Determination of SOFR Index; General; Rates Applicable After Default. The Term SOFR Rate will be initially determined as of the Second Amendment Effective Date and shall be adjusted monthly on the corresponding day (or if there is not

corresponding day, on the last day) of each month thereafter (each, a “**Reset Date**”). Bank shall not be required to notify Borrower of any adjustment in the Adjusted Term SOFR Rate; however, Borrower may request a quote of the Adjusted Term SOFR Rate on any Banking Day. Interest shall be due and payable for the exact number of days principal is outstanding and shall be calculated on the basis of a 360 day year to the extent permitted by law. After the maturity of any Facility, whether by acceleration or otherwise, and while and so long as there shall exist any Default, at the option of Bank and to the extent permitted by law, (i) the Facilities shall bear interest at a per annum rate equal to 5% above the otherwise applicable rates, and (ii) any unpaid accrued interest may be added to principal and such amount shall bear interest therefrom until paid at the rates provided in this Agreement (including any increased rate).

(c) [Reserved].

Section 2.9 Yield Protection. Section 2.9 of the Agreement is hereby amended and restated in its entirety as follows:

Section 2.9 Yield Protection. If, after the date of the Second Amendment Effective Date, the adoption of any law or any governmental or quasi-governmental rule, regulation, policy, guideline or directive (whether or not having the force of law), or any change in the interpretation or administration thereof by any governmental or quasi-governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by Bank with any request or directive (whether or not having the force of law) (each a “**Change in Law**”) of any such authority, central bank or comparable agency:

(a) subjects Bank to any Taxes, or changes the basis of taxation of payments (other than with respect to Taxes specified in the last sentence of Section 2.8(a) hereof) to Bank in respect of its Term SOFR Rate Advances, or

(b) imposes or increases or deems applicable any reserve, assessment, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, Bank (other than reserves and assessments taken into account in determining the interest rate applicable to Term SOFR Rate Advances), or

(c) imposes any other condition the result of which is to increase the cost to Bank of making, funding or maintaining its Term SOFR Rate Advances or reduces any amount receivable by Bank in connection with its Term SOFR Rate Advances, or requires Bank to make any payment calculated by reference to the amount of Term SOFR Rate Advances held or interest received by it, by an amount deemed material by Bank, and the result of any of the foregoing is to increase the cost to Bank of making or maintaining its Term SOFR Rate Advances or commitment or to reduce the return received by Bank in connection with such Term SOFR Rate Advances or commitment, then, within fifteen (15) days of demand by Bank, Borrower shall pay Bank such additional amount or amounts as will compensate Bank for such increased cost or reduction in amount received.

Notwithstanding the foregoing, for purposes of this Agreement (a) all requests, rules, guidelines or directives in connection with the Dodd-Frank Act shall be deemed to be a Change in Law, regardless of the date enacted, adopted or issued, shall be deemed a Change in Law regardless of the date enacted, adopted or issued, and (b) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) or any Governmental Authority shall be deemed a Change in Law regardless of the date enacted, adopted or issued.

Section 2.10 Illegality. Section 2.10 of the Agreement is hereby amended and restated in its entirety as follows:

Section 2.10 Availability of Types of Advances. If Bank determines in good faith (which determination shall be conclusive, absent manifest error) that: (A) adequate and fair means do not exist for ascertaining the Term SOFR Rate; (B) the Term SOFR Rate does not accurately reflect the cost to Bank of the Facilities; or (C) a Regulatory Change shall, in the reasonable determination of Bank, make it unlawful or commercially unreasonable for Bank to use the Term SOFR Rate as the index for purposes of determining the Interest Rate, then: (i) the Term SOFR Rate shall be replaced with an alternative or successor rate or index chosen by Bank in its reasonable discretion, and (ii) the Applicable Margin may also be adjusted by Bank in its reasonable discretion, in each case giving due consideration to market convention for determining rates of interest on comparable loans.

Section 2.11 Increased Costs; Capital Adequacy Requirements. Section 2.11 of the Agreement is hereby amended and restated in its entirety as follows:

Section 2.11 Changes in Capital Adequacy Regulations. If Bank reasonably determines that the amount of capital required or expected to be maintained by Bank or any corporation controlling Bank is increased as a result of a Change, then, within thirty (30) days of demand by Bank, Borrower shall pay Bank the amount necessary to compensate for any shortfall in the rate of return on the portion of such increased capital that Bank reasonably determines is attributable to this Agreement, the Facilities or its commitment to make Advances hereunder (after taking into account Bank's policies as to capital adequacy). "**Change**" means (a) any change after the date of this Agreement in the Risk-Based Capital Guidelines, or (b) any adoption of or change in any other law, governmental or quasi-governmental rule, regulation, policy, guideline, interpretation, or directive (whether or not having the force of law) after the Second Amendment Effective Date that affects the amount of capital required or expected to be maintained by Bank or any corporation controlling Bank. "**Risk-Based Capital Guidelines**" means (i) the risk-based capital guidelines in effect in the United States on the date of this Agreement, including transition rules, and (ii) the corresponding capital regulations promulgated by regulatory authorities outside the United States implementing the July 1988 report of the Basel Committee on Banking Regulation and Supervisory Practices Entitled "International Convergence of Capital Measurements and Capital Standards," including transition rules, and any amendments to such regulations adopted prior to the Second Amendment Effective Date.

Notwithstanding the foregoing, for purposes of this Agreement (a) all requests, rules, guidelines or directives in connection with the Dodd-Frank Act shall be deemed to be a Change, regardless of the date enacted, adopted or issued, and (b) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) or any Governmental Authority shall be deemed a Change regardless of the date enacted, adopted or issued.

Section 2.12 **Indemnity.** Section 2.12 of the Agreement is hereby amended and restated in its entirety as follows:

Section 2.12 **Lender Statement; Survival of Indemnity.** To the extent reasonably possible, Bank shall designate an alternate lending installation with respect to its Term SOFR Rate Advances to reduce any liability of Borrower to Bank under Section 2.8, Section 2.9, and Section 2.10, or to avoid the unavailability of Term SOFR Rate Advances under Section 2.11, so long as such designation is not, in the judgment of Bank, disadvantageous to Bank in any material respect. Bank shall deliver a written statement to Borrower as to the amount due, if any, under Section 2.8, Section 2.9, or Section 2.10. Such written statement shall set forth in reasonable detail the calculations upon which Bank determined such amount and shall be presumed correct in the absence of demonstrable error. Determination of amounts payable under such Sections in connection with a Term SOFR Rate Advance shall be calculated as though Bank funded its Term SOFR Rate Advance through the purchase of funds at the corresponding Term SOFR Rate for such Term SOFR Rate Advance, regardless of whether that is the case as Bank may fund each of its Term SOFR Rate Advances in any manner it sees fit, and the foregoing assumption shall be utilized only for the calculation of amounts payable under this Section. Unless otherwise provided herein, the amount specified in the written statement of Bank shall be payable on demand after receipt by Borrower of such written statement. The obligations of Borrower under Section 2.8, Section 2.9, and Section 2.10 shall survive payment of the Obligations and termination of this Agreement.

PART II. CONTINUING EFFECT

Except as expressly modified herein:

(a) All terms, conditions, representations, warranties and covenants contained in the Agreement shall remain the same and shall continue in full force and effect, interpreted, wherever possible, in a manner consistent with this Second Amendment; *provided, however*, in the event of any irreconcilable inconsistency, this Second Amendment shall control;

(b) The representations and warranties contained in the Agreement shall survive this Second Amendment in their original form as continuing representations and warranties of Borrower; and

(c) Capitalized terms used in this Second Amendment, and not specifically herein defined, shall have the meanings ascribed to them in the Agreement.

In consideration hereof, Borrower represents, warrants, covenants and agrees that:

(aa) Each representation and warranty set forth in the Agreement, as hereby amended, remains true and correct as of the date hereof in all material respects, except to the extent that such representation and warranty is expressly intended to apply solely to an earlier date and except changes reflecting transactions permitted and/or contemplated by the Agreement and/or this Second Amendment;

(bb) There currently exist no offsets, counterclaims or defenses to the performance of the Obligations (such offsets, counterclaims or defenses, if any, being hereby expressly waived);

(cc) Except as expressly waived in writing by Bank, there has not occurred any Default or Unmatured Default; and

(dd) After giving effect to this Second Amendment and any transactions contemplated hereby, no Default or Unmatured Default is or will be occasioned hereby or thereby.

PART III. CONDITIONS PRECEDENT

Notwithstanding anything contained in this Second Amendment to the contrary, Bank shall have no obligation under this Second Amendment until each of the following conditions precedent have been fulfilled to the satisfaction of Bank:

(a) Each of the conditions set forth in Section 6.2 of the Agreement shall have been satisfied;

(b) Bank shall have received each of the following, in form and substance satisfactory to Bank:

(i) this Second Amendment, duly executed in the form prescribed by Bank;

(ii) a Reaffirmation of Guaranty, duly executed in the form prescribed by Bank;

(iii) a certificate of the Secretary or any Assistant Secretary of each of the Borrower and Guarantor (i) certifying as to the Resolutions of the Board of Directors of such Borrower and Guarantor authorizing the execution, delivery and performance of the Loan Documents, as amended, and (ii) certifying as complete and correct as to attached copies of its Articles of Incorporation and Bylaws, or certifying that such organizational documents have not been amended (except as shown) since the previous delivery thereof to Bank;

(c) Bank shall have received a non-refundable upfront fee in the amount of \$2,500;

(d) Bank shall have received, in form and substance acceptable to Bank, an executed Certification of Beneficial Ownership and such other documentation and other

information requested in connection with applicable “know your customer” and anti-money laundering rules and regulations, including the USA Patriot Act; and

(e) All legal matters incident to this Second Amendment shall be reasonably satisfactory to Bank and its counsel.

PART IV. EXPENSES AND FEES

Borrower shall reimburse Bank for all legal fees and other expenses. Bank is hereby authorized to debit a Borrower’s deposit account maintained at Bank for such legal fees and other fees and expenses.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Borrower and Bank has caused this Second Amendment to be executed by their respective officers duly authorized as of the date first above written.

“BORROWER”

OHIO VALLEY GAS CORPORATION,
an Indiana corporation

By: Gregory P. Roach

Name: GREGORY P. ROACH

Title: CHIEF FINANCIAL OFFICER

“BANK”

FIRST MERCHANTS BANK

By: [Signature] Vice President
Kevin Eckerty, Vice President

THIRD AMENDMENT TO CREDIT AGREEMENT

THIS THIRD AMENDMENT TO CREDIT AGREEMENT (this “**Third Amendment**”) is effective as of Sept. 6th, 2022, by and between OHIO VALLEY GAS CORPORATION, an Indiana corporation (“**Borrower**”), and FIRST MERCHANTS BANK (“**Bank**”). The parties agree as follows:

WHEREAS, as of July 13, 2021, the parties hereto entered into a certain Credit Agreement (as amended, the “**Agreement**”);

WHEREAS, the parties desire to further amend the Agreement to, among other things, add a revolving line of credit facility and modify certain definitions, all subject to the terms contained herein; and

NOW, THEREFORE, in consideration of the premises, and the mutual promises herein contained, the parties agree that the Agreement shall be, and it hereby is, amended as provided herein and the parties further agree as follows:

PART I. AMENDATORY PROVISIONS

ARTICLE 1. DEFINITIONS.

Section 1.1 **Defined Terms.** Section 1.1 of the Agreement is hereby amended by substituting the following definitions in lieu of the like existing definitions:

“**Advance**” means a disbursement of the proceeds of the Revolving Credit Loan and/or the Revolving Credit Loan 2, as the context may require.

“**Facilities**” means the Revolving Credit Loan, the Revolving Credit Loan 2, the Term Loan, and any other credit facility provided by Bank from time to time pursuant to this Agreement.

“**Notes**” means the Revolving Credit Note, the Revolving Credit Note 2, the Term Loan Note, and any subsequent notes issued by Borrower in favor of Bank under this Agreement.

Section 1.1 **Defined Terms.** Section 1.1 of the Agreement is hereby further amended by adding the following new definitions:

“**Borrowing Base**” means, on any date of determination, an amount equal to (a) eighty percent (80%) of the aggregate value of the Borrower’s Eligible Accounts, **plus** (b) seventy-five percent (75%) of the aggregate value of the Borrower’s Eligible Natural Gas Inventory, **plus** (c) fifty percent (50%) of the aggregate value of the Borrower’s Eligible Inventory, **plus** (d) eighty percent (80%) of the aggregate value of the Borrower’s recoverable natural gas costs.

“Eligible Accounts” means, on any date of determination, all Accounts then owned by the Borrower, which conform with the representations and warranties set forth in the Security Agreement and which are not subject to any prior Lien, except (a) only that portion of Accounts consisting of the Borrower’s natural gas customers outstanding more than ninety (90) days from the date of invoice; (b) all Accounts of any account debtor if twenty percent (20%) or more of the amount owing by such account debtor is outstanding more than ninety (90) days from the date of invoice; (c) Accounts of account debtors who are also creditors of the Borrower to the extent of the amount owed by the Borrower to such account debtors; (d) Accounts owned by account debtors who are Affiliates of the Borrower; (e) Accounts for uncompleted sales, including pre-billings, consignment sales, and guaranteed sales; (f) progress billings other than a portion of a sale pursuant to a purchase order which has been shipped and has been recorded as an Account; (g) Accounts of account debtors who are Governmental Authorities, unless proper assignments to Bank have been completed; (h) Accounts of account debtors who are non-residents of the United States; (i) Accounts not denominated in U.S. Dollars; (j) Accounts with respect to which the account debtor is located in a jurisdiction which has adopted a statute or other requirement with respect to which any Person that obtains business from within such jurisdiction or is otherwise subject to such jurisdiction’s tax law requiring such Person to file a business activity report or make any other required filings in a timely manner in order to enforce its claims in such jurisdiction’s courts or arising under such jurisdiction’s laws; *provided, however*, such receivables shall nonetheless be eligible if the applicable loan party has filed a business activity report (or other applicable report or filing) with the applicable state office by the time required or is qualified to do business in such jurisdiction and, at the time the receivable was created, was qualified to do business in such jurisdiction or had on file with the applicable state office a current business activity report (or other applicable report or filing); (k) Accounts to such extent such Accounts are subject to known payments, adjustments or credits; and (l) Accounts, or any portion thereof, which are uncollectible due to Inventory returned, rejected, repossessed, lost or damaged.

“Eligible Inventory” means, on any date of determination, that portion of Inventory owned by the Borrower consisting of raw materials and supplies (a) on which Bank has a first (1st) and prior lien, (b) which conforms with the representations and warranties set forth in the Security Agreement, (c) which is not obsolete or slow moving, (d) which is not in transit, (e) which is not placed on consignment (f) which is not stored with any bailee, warehouseman or other party unless subject to a satisfactory lien waiver in favor of Bank, and (g) which does not constitute labor, overhead, freight, packaging or miscellaneous charges.

“Eligible Natural Gas Inventory” means, on any date of determination, only that portion of inventory owned by the Borrower consisting of physical natural gas, including physical natural gas for which the Borrower has prepaid, (a) on which Bank has a first (1st) and prior lien, (b) which conforms with the representations and warranties set forth in the Security Agreement, (c) which is not in transit, (d) which is not placed on consignment, and (e) which is not stored with any bailee, warehouseman or other party unless subject to a satisfactory lien waiver in favor of Bank.

“**Revolving Credit Loan 2**” means the secured revolving line of credit in the maximum principal amount of Four Million and No/100 Dollars (\$4,000,000.00), including any renewal or extension thereof.

“**Revolving Credit Loan 2 Maturity Date**” means September 5, 2023.

“**Revolving Credit Note 2**” means the Revolving Credit Note 2, in the form prescribed by Bank, duly executed by Borrower to Bank to evidence Advances under the Revolving Credit Loan 2, including any amendment, modification, renewal, extension or replacement thereof.

“**Third Amendment Effective Date**” means September 6, 2022.

ARTICLE 2. CREDIT.

Section 2.1 **Commitments.** Section 2.1 of the Agreement is hereby amended by adding the following new clause (c) thereto:

(c) **Revolving Credit Loan 2.** Subject to the terms and conditions of this Agreement, Bank shall make Advances under the Revolving Credit Loan 2 available to Borrower in a maximum principal amount equal to the lesser of (i) \$4,000,000 and (ii) the Borrowing Base, **minus** \$2,000,000; *provided, however*, that Advances under the Revolving Credit Loan 2 shall not be available to Borrower until the availability under the Revolving Credit Loan is less than zero. Advances under the Revolving Credit Loan 2 shall be evidenced by the Revolving Credit Note 2.

Section 2.2 **Interest.** Section 2.2 of the Agreement is hereby amended by substituting the following new clause (c) in lieu of the like existing clause (c):

(c) **Revolving Credit Loan 2.** Prior to maturity, the outstanding principal balance of Advances under the Revolving Credit Loan 2 shall bear interest at a per annum rate equal to the Interest Rate.

Section 2.3 **Payments of Principal and Interest.** Section 2.3 of the Agreement is hereby amended by adding the following new clause (g) thereto:

(g) **Revolving Credit Loan 2.** Interest only on the outstanding balance of Advances under the Revolving Credit Loan 2 from time to time throughout the term of the Revolving Credit Loan 2 shall be due and payable on the twenty-eighth (28th) day of each calendar month, commencing September 28, 2022. The entire principal balance of Advances under the Revolving Credit Loan 2, together with all accrued and unpaid interest thereon, and all fees and charges payable in connection therewith, shall be due and payable on the Revolving Credit Loan 2 Maturity Date.

Section 2.4 **Prepayment.** Section 2.4 of the Agreement is hereby amended by adding the following new clause (e) thereto:

(e) **Revolving Credit Loan 2.** Subject to the provisions of this Agreement, Borrower may borrow, pay, reborrow and repay the available principal amount of the Revolving Credit Loan 2 at any time, and from time to time, without premium or penalty.

Section 2.5 Use of Proceeds. Section 2.5 of the Agreement is hereby amended by adding the following new clause (c) thereto:

(c) **Revolving Credit Loan 2.** Subject to the provisions of this Agreement, the proceeds of Advances under the Revolving Credit Loan 2 shall be used to provide working capital for seasonal cash flow for Borrower.

Section 2.7 Method of Advance. Section 2.7 of the Agreement is hereby amended by substituting the following new clause (a) in lieu of the like existing clause (a):

(a) **Advances.** As Borrower desires to obtain Advances under the Revolving Credit Loan or the Revolving Credit Loan 2, as applicable, Borrower shall give Bank irrevocable notice of Borrower's intention to borrow by not later than 2:00 p.m. (Indianapolis time), on the proposed Banking Day of borrowing. Borrower hereby authorizes Bank to make Advances under the Revolving Credit Loan or the Revolving Credit Loan 2, as applicable, made by any Person who is authorized by Borrower. Bank may rely, without further inquiry, on all such requests which shall have been received by it in good faith by anyone reasonably believed to be an authorized officer. Each borrowing request shall be presented in writing and shall in and of itself constitute a representation and warranty that the conditions precedent to such Advance as set forth in Section 6.2 hereof have been satisfied and that no Default or Unmatured Default has occurred and is continuing or would result from the making of the requested Advance. Borrower hereby authorizes the disbursement of each Advance under the Revolving Credit Loan or the Revolving Credit Loan 2, as applicable, by deposit to the operating account of Borrower with Bank.

ARTICLE 4. REPRESENTATIONS AND WARRANTIES.

Section 4.28 Use of Proceeds. Section 4.28 of the Agreement is hereby amended and restated as follows:

Section 4.28 Use of Proceeds. The proceeds of Advances under each of the Revolving Credit Loan and the Revolving Credit Loan 2 shall only be used to provide working capital for seasonal cash flow for Borrower. The proceeds of the Term Loan shall only be used to finance the repurchase of certain of Borrower's capital stock that was sold during the 2020 calendar year.

ARTICLE 5. COVENANTS.

Section 5.2 **Affirmative Covenants.** Section 5.2(a) of the Agreement is hereby amended by adding the following new subsection (ix) thereto:

(ix) commencing with the initial Advance under the Revolving Credit Loan 2, within thirty (30) days after the end of each fiscal month, a borrowing base certificate, an accounts receivable aging report, and an inventory report for Borrower in form and substance acceptable to Bank;

Section 5.3 **Financial Covenants.** Section 5.3 of the Agreement is hereby amended by substituting the following new clause (c) in lieu of the like existing clause (c):

(c) **Clean-Up Requirement.** During each fiscal year of Borrower, the balance of each of the Revolving Credit Loan and the Revolving Credit Loan 2 shall be Zero Dollars (\$0) for a minimum period of thirty (30) consecutive calendar days.

ARTICLE 6. CONDITIONS PRECEDENT.

Section 6.2 **Conditions to Subsequent Advances.** The first sentence of Section 6.2 of the Agreement is hereby amended and restated as follows:

“Prior to each subsequent Advance under the Revolving Credit Loan and the Revolving Credit Loan 2, as applicable:”

PART II. CONTINUING EFFECT

Except as expressly modified herein:

(a) All terms, conditions, representations, warranties and covenants contained in the Agreement shall remain the same and shall continue in full force and effect, interpreted, wherever possible, in a manner consistent with this Third Amendment; *provided, however*, in the event of any irreconcilable inconsistency, this Third Amendment shall control;

(b) The representations and warranties contained in the Agreement shall survive this Third Amendment in their original form as continuing representations and warranties of Borrower; and

(c) Capitalized terms used in this Third Amendment, and not specifically herein defined, shall have the meanings ascribed to them in the Agreement.

In consideration hereof, Borrower represents, warrants, covenants and agrees that:

(aa) Each representation and warranty set forth in the Agreement, as hereby amended, remains true and correct as of the date hereof in all material respects, except to the extent that such representation and warranty is expressly intended to apply solely to an

earlier date and except changes reflecting transactions permitted and/or contemplated by the Agreement and/or this Third Amendment;

(bb) There currently exist no offsets, counterclaims or defenses to the performance of the Obligations (such offsets, counterclaims or defenses, if any, being hereby expressly waived);

(cc) Except as expressly waived in writing by Bank, there has not occurred any Default or Unmatured Default; and

(dd) After giving effect to this Third Amendment and any transactions contemplated hereby, no Default or Unmatured Default is or will be occasioned hereby or thereby.

PART III. CONDITIONS PRECEDENT

Notwithstanding anything contained in this Third Amendment to the contrary, Bank shall have no obligation under this Third Amendment until each of the following conditions precedent have been fulfilled to the satisfaction of Bank:

(a) Each of the conditions set forth in Section 6.2 of the Agreement shall have been satisfied;

(b) Bank shall have received each of the following, duly executed and in form and substance satisfactory to Bank:

(i) this Third Amendment;

(ii) a Revolving Credit Note 2;

(iii) a Reaffirmation of Guaranty; and

(iv) a certificate of the Secretary or any Assistant Secretary of each of the Borrower and Guarantor (i) certifying as to the Resolutions of the Board of Directors of such Borrower and Guarantor authorizing the execution, delivery and performance of the Loan Documents, as amended, and (ii) certifying as complete and correct as to attached copies of its Articles of Incorporation and Bylaws, or certifying that such organizational documents have not been amended (except as shown) since the previous delivery thereof to Bank;

(c) Bank shall have received a non-refundable upfront fee in the amount of \$2,500;

(d) Bank shall have received, in form and substance acceptable to Bank, an executed Certification of Beneficial Ownership and such other documentation and other information requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act; and

(e) All legal matters incident to this Third Amendment shall be reasonably satisfactory to Bank and its counsel.

PART IV. EXPENSES AND FEES

Borrower shall reimburse Bank for all legal fees and other expenses. Bank is hereby authorized to debit a Borrower's deposit account maintained at Bank for such legal fees and other fees and expenses.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Borrower and Bank has caused this Third Amendment to be executed by their respective officers duly authorized as of the date first above written.

“BORROWER”

OHIO VALLEY GAS CORPORATION,
an Indiana corporation

By: Gregory P. Roach

Name: GREGORY P. ROACH

Title: Chief Financial Officer

“BANK”

FIRST MERCHANTS BANK

By: _____
Kevin Eckerty, Vice President

IN WITNESS WHEREOF, Borrower and Bank has caused this Third Amendment to be executed by their respective officers duly authorized as of the date first above written.

“BORROWER”

OHIO VALLEY GAS CORPORATION,
an Indiana corporation


By: _____

Name: _____

Title: _____

“BANK”

FIRST MERCHANTS BANK

By:  _____
~~Kevin Eckerty, Vice President~~
Garrett C Doan First Vice President

FOURTH AMENDMENT TO CREDIT AGREEMENT

THIS FOURTH AMENDMENT TO CREDIT AGREEMENT (this “**Fourth Amendment**”) is dated as of August 7th, 2023, but effective for all purposes as of July 11, 2023, by and between OHIO VALLEY GAS CORPORATION, an Indiana corporation (“**Borrower**”), and FIRST MERCHANTS BANK (“**Bank**”). The parties agree as follows:

WHEREAS, as of July 13, 2021, the parties hereto entered into a certain Credit Agreement (as amended, the “**Agreement**”);

WHEREAS, the parties desire to further amend the Agreement to, among other things, modify certain definitions, terms, and covenants, all subject to the terms contained herein; and

NOW, THEREFORE, in consideration of the premises, and the mutual promises herein contained, the parties agree that the Agreement shall be, and it hereby is, amended as provided herein and the parties further agree as follows:

PART I. AMENDATORY PROVISIONS

ARTICLE 1. DEFINITIONS.

Section 1.1 **Defined Terms.** Section 1.1 of the Agreement is hereby amended by substituting the following definitions in lieu of the like existing definitions:

“**Revolving Credit Maturity Date**” means July 10, 2024.

“**Revolving Credit Loan 2 Maturity Date**” means September 4, 2024.

ARTICLE 2. CREDIT.

Section 2.2 **Interest.** Section 2.2 of the Agreement is hereby amended by substituting the following new clause (d) in lieu of the like existing clause (d):

(d) **Term Loan.** Prior to maturity, the outstanding principal balance of the Term Loan shall bear interest at a fixed per annum rate equal to four and one-half percent (4.50%).

Section 2.3 **Payments of Principal and Interest.** Section 2.3 of the Agreement is hereby amended by substituting the following new clause (f) in lieu of the like existing clause (f):

(f) **Term Loan.** Commencing on August 28, 2023, and continuing on the twenty-eighth (28th) day of each calendar month thereafter, Borrower shall pay to Bank the amount of principal and interest determined by Bank to be necessary to fully amortize the Term Loan in level monthly installations of principal and interest over an eighty-four (84)-month period. A final installment representing the entire unpaid principal balance of the

Term Loan, and all accrued and unpaid interest thereon and all fees and charges in connection therewith, shall be due and payable on the Term Loan Maturity Date.

Section 2.4 **Prepayment.** Section 2.4 of the Agreement is hereby amended by substituting the following new clause (d) in lieu of the like existing clause (d):

(d) **Mandatory Prepayments.** In addition to the principal payments required pursuant to this Agreement, and without limiting the other provisions of the Loan Documents, commencing with the fiscal year ending July 31, 2023 and for each fiscal year thereafter until the Term Loan is paid in full, Borrower shall make additional principal payments to be applied as mandatory prepayments of the Term Loan on or before the following July 31st (*provided, however*, that for the fiscal year ending July 31, 2023, any mandatory prepayment for such fiscal year shall not be due until December 31, 2023), shall be in an amount equal to fifty percent (50%) of Excess Cash Flow for such applicable fiscal year and applied to installments in inverse order of maturity. Each Excess Cash Flow prepayment shall be accompanied by a certificate signed by the chief financial officer certifying the manner in which Excess Cash Flow and the resulting prepayment were calculated, which certificate shall be in form and substance satisfactory to Bank. Notwithstanding the foregoing, subject to approval by the IURC of the new interest rate in Section 2.2(d), this Section 2.4(d) shall be null and void and no such mandatory prepayments shall be owed by Borrower.

PART II. CONTINUING EFFECT

Except as expressly modified herein:

(a) All terms, conditions, representations, warranties and covenants contained in the Agreement shall remain the same and shall continue in full force and effect, interpreted, wherever possible, in a manner consistent with this Fourth Amendment; *provided, however*, in the event of any irreconcilable inconsistency, this Fourth Amendment shall control;

(b) The representations and warranties contained in the Agreement shall survive this Fourth Amendment in their original form as continuing representations and warranties of Borrower; and

(c) Capitalized terms used in this Fourth Amendment, and not specifically herein defined, shall have the meanings ascribed to them in the Agreement.

In consideration hereof, Borrower represents, warrants, covenants and agrees that:

(aa) Each representation and warranty set forth in the Agreement, as hereby amended, remains true and correct as of the date hereof in all material respects, except to the extent that such representation and warranty is expressly intended to apply solely to an earlier date and except changes reflecting transactions permitted and/or contemplated by the Agreement and/or this Fourth Amendment;

(bb) There currently exist no offsets, counterclaims or defenses to the performance of the Obligations (such offsets, counterclaims or defenses, if any, being hereby expressly waived);

(cc) Except as expressly waived in writing by Bank, there has not occurred any Default or Unmatured Default; and

(dd) After giving effect to this Fourth Amendment and any transactions contemplated hereby, no Default or Unmatured Default is or will be occasioned hereby or thereby.

PART III. CONDITIONS PRECEDENT

Notwithstanding anything contained in this Fourth Amendment to the contrary, Bank shall have no obligation under this Fourth Amendment until each of the following conditions precedent have been fulfilled to the satisfaction of Bank:

(a) Each of the conditions set forth in Section 6.2 of the Agreement shall have been satisfied;

(b) Bank shall have received each of the following, duly executed and in form and substance satisfactory to Bank:

(i) this Fourth Amendment;

(ii) a Reaffirmation of Guaranty; and

(iii) a certificate of the Secretary or any Assistant Secretary of each of the Borrower and Guarantor (i) certifying as to the Resolutions of the Board of Directors of such Borrower and Guarantor authorizing the execution, delivery and performance of the Loan Documents, as amended, and (ii) certifying as complete and correct as to attached copies of its Articles of Incorporation and Bylaws, or certifying that such organizational documents have not been amended (except as shown) since the previous delivery thereof to Bank;

(c) Bank shall have received (i) a non-refundable commitment fee in the amount of \$2,500 for the Revolving Credit Loan, (ii) a non-refundable commitment fee in the amount of \$2,500 for the Revolving Credit Loan 2, and (iii) a non-refundable commitment fee in the amount of \$1,000 for the Term Loan.

(d) Bank shall have received, in form and substance acceptable to Bank, an executed Certification of Beneficial Ownership and such other documentation and other information requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act; and

(e) All legal matters incident to this Fourth Amendment shall be reasonably satisfactory to Bank and its counsel.

PART IV. EXPENSES AND FEES

Borrower shall reimburse Bank for all legal fees and other expenses. Bank is hereby authorized to debit a Borrower's deposit account maintained at Bank for such legal fees and other fees and expenses.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Borrower and Bank has caused this Fourth Amendment to be executed by their respective officers duly authorized as of the date first above written.

“BORROWER”

OHIO VALLEY GAS CORPORATION,
an Indiana corporation

By: Gregory P. Roach

Name: GREGORY P. ROACH

Title: Chief Financial Officer

“BANK”

FIRST MERCHANTS BANK

By: _____
Kevin Eckerty, Vice President

OUCG DR 2-1

DATA INFORMATION REQUEST
Ohio Valley Gas Corporation and Ohio Valley Gas, Inc.

Cause No. 45932

Information Requested:

Reference OUCG DR 1-2 requesting all correspondence between Joint Petitioners and the Bank, which discusses the Term Loan, Credit Agreement, or Amendments, from January 1, 2021 to August 7, 2021. The response (OUCG DR 1-2, pages 1-10) only included correspondence dated April 25-26, 2023.

- a. Please provide all correspondence (including letters, emails, and memoranda of verbal communication) between Joint Petitioners and the Bank, which discussed the Term Loan, Credit Agreement, and Amendments from July 13, 2021 to August 3, 2021.
- b. Please provide the names and titles of all of Joint Petitioner's officers and Board of Directors' members who reviewed the Credit Agreement (Joint Petitioners' response to OUCG DR 1-1, Attachment 1, pages 1-49) prior to the Credit Agreement being signed by Ronald P. Salkie on July 13, 2021.
- c. Please provide the names and titles of all of Joint Petitioner's officers and Board of Directors' members who approved the Credit Agreement (Joint Petitioners' response to OUCG DR 1-1, Attachment 1, pages 1-49) prior to the Credit Agreement being signed by Ronald P. Salkie on July 13, 2021.
- d. Please provide the names and titles of all of Joint Petitioner's officers and Board of Directors' members who reviewed the Term Loan Note (Attachment GPR-3, pages 4-5) and the First Amendment to Credit Agreement (Attachment GPR-3, pages 6-11) prior to the referenced documents being signed by Ronald P. Salkie on August 3, 2021.
- e. Please provide the names and titles of all of Joint Petitioner's officers and Board of Directors' members who approved the Term Loan Note (Attachment GPR-3, pages 4-5) and the First Amendment to Credit Agreement (Attachment GPR-3, pages 6-11) prior to the referenced documents being signed by Ronald P. Salkie on August 3, 2021.

Objection:

Joint Petitioners object to the request on the grounds and to the extent it is overly broad and unduly burdensome, particularly to the extent the request solicits "all correspondence." The abbreviated time frame from discovery in Commission proceedings does not allow for e-discovery. Subject to and without waiver of the foregoing objections, Joint Petitioners provide the following response.

Information Provided:

- a. OVG lacks capabilities to make deep electronic dives into files of all employees, especially those who are no longer employed with OVG. OVG was able to locate additional correspondence; please see OUCG DR 2-1 Attachment.

- b. The financial operations of OVG, including discretionary disbursement of the credit agreement, term loan note, and first amendment of the credit agreement, were under the responsibility of Ronald P. Salkie at the time identified in OUCC DR 2-1(b). Joint Petitioners are unable to determine which parties were provided that level of detailed information, given the current responsible parties for the financial operations of OVG were not employed by the company at that time.
- c. Please see Joint Petitioners' response to DR 2-1b).
- d. Please see Joint Petitioners' response to DR 2-1(b).
- e. Please see Joint Petitioners' response to DR 2-1(b).

Attachment:

OUCC DR 2-1.pdf

OUCC DR 2-2

DATA INFORMATION REQUEST
Ohio Valley Gas Corporation and Ohio Valley Gas, Inc.

Cause No. 45932

Information Requested:

Reference Attachment GPR-5, which is the Resolution of the Board of Directors dated May 22, 2023.

- a. Please explain whether a similar Resolution was approved by the Board of Directors prior to the Term Loan and First Amendment to the Credit Agreement being signed by Ronald P. Salkie on August 3, 2021.
- b. If the response to subpart a. is affirmative, please provide a copy of the Resolution.

Information Provided:

Please see OUCC DR 2-2 Attachment.

Attachment:

OUCC DR 2-2.pdf

From: [Kevin Eckerty](#)
To: [Greg Roach](#); [JD Owens](#)
Subject: RE: Items covered in our meeting last week
Date: Thursday, April 13, 2023 11:35:16 AM
Attachments: [image001.png](#)
[image003.png](#)
Sensitivity: Confidential

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Hi Greg,

Thanks for your response.

I will get you the amortization schedules requested ASAP.

I am proposing that 3% be the return on all funds at this time. I will let you know if there is pushback on that number. I would assume the Fountaintown and South East Indiana Gas Company would also be getting that 3% interest rate.

Again, I will move this forward and let you know if there are any changes as I take it up the latter or approval.

KEVIN ECKERTY
Relationship Manager III



200 E Jackson St } Muncie, IN } 47305
OFFICE 765.751.1815
keckerty@FirstMerchants.com

Daun Lowman, Commercial Administrator
OFFICE 765.287.4029 } dlowman@firstmerchants.com



From: Greg Roach <greg.roach@ovgas.com>

“The only person you’re truly competing against is yourself.”

From: Kevin Eckerty <Keckerty@firstmerchants.com>
Sent: Tuesday, April 11, 2023 1:16 PM
To: Greg Roach <greg.roach@ovgas.com>; JD Owens <jd.owens@ovgas.com>
Subject: RE: Items covered in our meeting last week
Sensitivity: Confidential

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OK, thank you.

From: Greg Roach <greg.roach@ovgas.com>
Sent: Tuesday, April 11, 2023 1:15 PM
To: Kevin Eckerty <Keckerty@firstmerchants.com>; JD Owens <jd.owens@ovgas.com>
Subject: RE: Items covered in our meeting last week
Sensitivity: Confidential

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Hi Kevin-

Thank you for the follow-up.

Let me inform and discuss with our CEO and I will have you an answer by Weds AM.

Thanks again,

Greg

Gregory Roach
Chief Financial Officer



111 Energy Park Drive
Winchester, IN 47394
765-595-8049 (direct)
317-694-6801 (cell)
Greg.Roach@ovgas.com

“The only person you’re truly competing against is yourself.”

From: Kevin Eckerty <Keckerty@firstmerchants.com>
Sent: Tuesday, April 11, 2023 9:38 AM
To: Greg Roach <greg.roach@ovgas.com>; JD Owens <jd.owens@ovgas.com>
Subject: Items covered in our meeting last week
Sensitivity: Confidential

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Hello Gentlemen,

I do not have this approved, but this is the recommendation that I would like to take to the approver after discussions with my local management.

1. Remove the excess cash recapture requirement from our Loan Agreement.
2. Increase your earning rate on deposits to 3.00% APY.
3. Increase your loan interest rate from 3.25% to 4.00% for the remainder of the term.

Let me know your thoughts around these changes and if they are agreeable. I will then take them to our approver to see if I can get this accomplished.

KEVIN ECKERTY
Relationship Manager III

 **First Merchants Bank**

200 E Jackson St Muncie, IN 47305
OFFICE 765.751.1815
keckerty@FirstMerchants.com

Daun Lowman, Commercial Administrator
OFFICE 765.287.4029 dlowman@firstmerchants.com



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Greg Roach

From: Kevin Eckerty <Keckerty@firstmerchants.com>
Sent: Friday, May 12, 2023 12:18 AM
To: Greg Roach
Cc: Scott Williams; JD Owens; Emily Harlow
Subject: Re: First Merchants Fixed Term Loan Modification

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Hi Greg,

From our perspective, the proposal would not be a new loan, but simply a modification of existing debt.

Let me know if you need more detail.

Thank You,
Kevin

Get [Outlook for iOS](#)

From: Greg Roach <greg.roach@ovgas.com>
Sent: Thursday, May 11, 2023 8:01:18 PM
To: Kevin Eckerty <Keckerty@firstmerchants.com>
Cc: Scott Williams <scott.williams@ovgas.com>; JD Owens <jd.owens@ovgas.com>; Emily Harlow <Emily.Harlow@ovgas.com>
Subject: First Merchants Fixed Term Loan Modification

CAUTION: This email originated from outside of First Merchants Bank. Please do not click links or open attachments from an unknown or suspicious sender.

Hi Kevin-

Good evening. I have a technical question related to the proposed Fixed Term loan modification that is extremely important as to how OVG approaches a modification of the Term Loan from a regulatory perspective.

Our regulator, the Indiana Utility Regulatory Commission (IURC), requires every regulated entity (such as OVG) to come before the IURC and have LONG TERM debt financing arrangements approved. Such a filing and approval occurred in 2021 when OVG entered into the original loan agreement with First Merchants.

From the perspective of First Merchants, does the modification of the terms of our existing Fixed Term Loan constitute a "new loan" to the bank, or simply the existing loan with revised terms. If the former, we will have to go before the IURC to have the loan modification approved. If the later, we may be saved the delay of IURC approval pending our regulatory counsel's review.

Should we need to seek IURC approval, we are looking at a 30-day minimum delay before we can execute the revised agreement.

Sent: Wednesday, April 12, 2023 2:46 PM

To: Kevin Eckerty <Keckerty@firstmerchants.com>; JD Owens <jd.owens@ovgas.com>

Subject: RE: Items covered in our meeting last week

Sensitivity: Confidential

CAUTION: This email originated from outside of First Merchants Bank. Please *do not click links or open attachments* from an *unknown* or *suspicious* sender.

Hi Kevin-

I have discussed your proposal with our CEO.

Please proceed with discussing the revised terms outlined below with your underwriting group.

When you have the opportunity, will you please send the existing amortization schedule and a revised amortization schedule reflecting the proposed increase in the note rate to 4%?

Further, our internal high-level analysis indicates an average funds balance for OVG (only) at First Merchants of ~\$3.4M at 1.89%. I want to confirm that you are proposing that return be increased to 3% on all funds.

Lastly, as we consolidate operations of our Fountaintown and South East Indiana gas companies into OVG, I want to confirm that those operating entity accounts will also reflect that new level of return, 3%.

Please let me know if you have any question or concerns.

Thanks,

Greg

Gregory Roach
Chief Financial Officer



Ohio Valley Gas Corporation

111 Energy Park Drive

Winchester, IN 47394

765-595-8049 (direct)

317-694-6801 (cell)

Greg.Roach@ovgas.com

I will look forward to your reply.

Thanks,

Greg

Gregory Roach
Chief Financial Officer



Ohio Valley Gas Corporation
111 Energy Park Drive
Winchester, IN 47394
765-595-8049 (direct)
317-694-6801 (cell)
Greg.Roach@ovgas.com

“The only person you’re truly competing against is yourself.”

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**MINUTES OF OHIO VALLEY GAS CORPORATION
SPECIAL BOARD OF DIRECTORS' MEETING**

July 7, 2021

The Board of Directors of Ohio Valley Gas, Corp. met on Wednesday July 7, 2021, via Zoom. Notice of time and place of the meeting was provided via email on Wednesday, July 7, 2021.

Directors Present: Thomas D. Williams, John D. Beynon, Mark T. Maassel, Beverly J. Gard, Michael V. Crouch, J. Robert Wortman

Guest: Ronald P. Salkie, Carey D. Todd

Absent: Scott A. Williams

Chairman Williams called the meeting to order at 1:06pm and confirmed a quorum. Mr. Ronald P. Salkie read the resolution regarding approval of the line of credit and term loan for OVG. Chairman Williams asked for a motion. Mr. J. Robert Wortman motioned, and Mr. Michael V. Crouch seconded. The motion was passed by the Board.

Board Approval of Credit Facilities

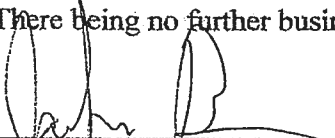
WHEREAS, an overview of Line of Credit in the original principal amount of approximately \$4,000,000 and Term Loan in the original principal amount of approximately \$6,000,000 that Ohio Valley Gas Corp. ("OVG") is obtaining from First Merchants Bank (collectively, the "Credit Facilities") was provided to the Board of Directors. Chairman Williams requested a motion for the Board to consider approval for Ohio Valley Gas Corp. ("OVG") to obtain the Credit Facilities.

BE IT RESOLVED, the Board of Directors hereby approves OVG obtaining the Credit Facilities.


BE IT FURTHER RESOLVED, the Board of Directors hereby approves OVG executing and delivering all agreements, instruments, and other documents necessary or desirable in connection with the Credit Facilities (the "OVG Documents").

BE IT FURTHER RESOLVED, the Board of Directors hereby approves the execution and delivery of all OVG Documents by Ronald P. Salkie, in his capacity as VP, CFO, and CIO (or any one of them) of OVG.

There being no further business to come before the Board, the meeting was adjourned at 1:10pm.



John D. Beynon, Secretary



Thomas D. Williams, Chairman

OUCG DR 2-3 (Supplemental)

DATA INFORMATION REQUEST
Ohio Valley Gas Corporation and Ohio Valley Gas, Inc.

Cause No. 45932

Information Requested:

Reference Joint Petitioner's Exhibit No. 1, page 1, lines 5-6, where Mr. Roach states: "I am employed by Ohio Valley Gas Corporation ("OVGC") as Chief Financial and Regulatory Officer. I began this position on April 4, 2022." Also reference Joint Petitioner's response to OUCG DR 1-8, which indicates Mr. Roach began his employment with Ohio Valley Gas Corporation on April 4, 2023.

- a. Please provide the date Mr. Roach began his employment with Ohio Valley Gas Corporation.
- b. Please confirm the Second Amendment to Credit Agreement (Joint Petitioner's Response to OUCG DR 1-1, Attachment 2, pages 1-8) was signed by Mr. Roach on August 17, 2022. If not confirmed, please provide the date the Second Amendment was signed.
- c. Please provide the names and titles of all of Joint Petitioner's officers and Board of Directors' members who reviewed the Second Amendment to Credit Agreement prior to the Second Amendment to Credit Agreement being signed by Mr. Roach on August 17, 2022.
- d. Please provide the names and titles of all of Joint Petitioner's officers and Board of Directors' members who approved the Second Amendment to Credit Agreement prior to the Second Amendment to Credit Agreement being signed by Mr. Roach on August 17, 2022.
- e. Please confirm the Third Amendment to Credit Agreement (Joint Petitioner's Response to OUCG DR 1-1, Attachment 2, pages 9-17) was signed by Mr. Roach on September 6, 2022. If not confirmed, please provide the date the Third Amendment was signed.
- f. Please provide the names and titles of all of Joint Petitioner's officers and Board of Directors' members who reviewed the Third Amendment to Credit Agreement prior to the Third Amendment to Credit Agreement being signed by Mr. Roach on September 6, 2022.
- g. Please provide the names and titles of all of Joint Petitioner's officers and Board of Directors' members who approved the Third Amendment to Credit Agreement prior to the Third Amendment to Credit Agreement being signed by Mr. Roach on September 6, 2022.

Information Provided:

Joint Petitioner's response to OUCG DR 1-8 has a typo related to the commencement of Mr. Roach's employment with the Ohio Valley Gas Company. The correct date is reported in Exhibit No. 1, page 1, lines 5-6. As corroboration, please see Mr. Roach's direct or rebuttal testimony for the Ohio Valley Gas Company in Cause No. 45400, TDISC-2 on page 1 of 18, TDISC-3 on page 1 of 8, TDISC-4 on page 1 of 9 and TDISC-5 on page 1 of 8. The documents referenced in the request were signed by Mr. Roach as indicated by the signatures on the documents.

Supplemental Response:

OVG would note that as shown in the amendment documents, the Second and Third Amendments pertain only to the line of credit within OVG credit facilities and do not pertain to the term loan at issue in this cause. As explained in Mr. Roach's direct testimony p. 7-8, the Silicon Valley Bank and Signature Bank collapses in early March of this year necessitated a review of all of OVG's financial agreements to identify early call provisions. After the ECF recapture term was brought to Mr. Roach's attention he negotiated a modification to the fixed term loan which is the Fourth Amendment.

There are no business records or notes regarding the names and titles of any of Joint Petitioner's officers or Board of Directors' members who reviewed and approved the amendments prior to Mr. Roach signing. Mr. Roach cannot recall any specific conversations with any one specific officer or Board of Directors' member, nor does he personally have any notes of such conversations.

AFFIRMATION

I affirm, under the penalties for perjury, that the foregoing representations are true.

Leja D. Courter

Leja D. Courter
Chief Technical Advisor
Indiana Office of Utility Consumer
Counselor
Cause No.45932
Ohio Valley Gas Corp., Inc.

09-29-2023
Date

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served upon the following parties of record in the captioned proceeding by electronic service on September 29, 2023.

Nicholas K. Kile
Hillary J. Close
Lauren M. Box
Lauren Aguilar
Barnes & Thornburg LLP
Email: Nicholas.kile@btlaw.com
hillary.close@btlaw.com
lauren.box@btlaw.com
lauren.aguiLar@btlaw.com



Randall C. Helmen
Chief Deputy Consumer Counselor

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

115 West Washington Street
Suite 1500 South
Indianapolis, IN 46204
infomgt@oucc.in.gov
317/232-2494 – Telephone
317/232-5923 – Facsimile