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PUBLIC SERVICE  
COMMISSION

September 22, 2010

*Via Hand-Delivery*

Mr. Jeff Derouen, Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40602

RE: *Case No. 2010-00146; An Investigation of Natural Gas Retail Competition Programs*

Dear Mr. Derouen:

Please find enclosed the original and ten (10) copies of Interstate Gas Supply Inc.'s, SouthStar Energy Services, LLC's and Vectren Source's rebuttal testimony of M. Howard Petricoff and Ellen Williams.

Please place the documents of file.

Regards,



Matthew Malone

C: File; Parties

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF NATURAL GAS )  
RETAIL COMPETITION PROGRAMS ) CASE NO. 2010-00146

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**INTERSTATE GAS SUPPLY, INC.'S, SOUTHSTAR ENERGY SERVICES, LLC'S AND  
VECTREN SOURCE'S CERTIFICATE OF SERVICE REGARDING REBUTTAL  
TESTIMONY OF M. HOWARD PETRICOFF**

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Comes Interstate Gas Supply, Inc. ("IGS"), SouthStar Energy Services, LLC ("SouthStar") and Vectren Retail, LLC d/b/a Vectren Source ("Vectren"), individually, and hereinafter, collectively, by counsel, and hereby certifies that an original and ten (10) copies of the attached Rebuttal Testimony of M. Howard Petricoff, Esq. was served via hand-delivery upon Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40602-0615; furthermore, it was served by mailing a copy by first class U.S. Mail, postage prepaid, on the following, on this 22 day of September, 2010.

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**INTERSTATE GAS SUPPLY, INC.**  
**SOUTHSTAR ENERGY SERVICES, LLC**  
**and**  
**VECTREN RETAIL, LLC D/B/A**  
**VECTREN SOURCE**

COMMONWEALTH OF KENTUCKY  
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF NATURAL GAS                    )  
RETAIL COMPETITION PROGRAMS                    )    CASE NO.2010-00146

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**REBUTTAL TESTIMONY OF  
M. HOWARD PETRICOFF**

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On Behalf of Interstate Gas Supply, Inc.  
SouthStar Energy Services LLC, and  
Vectren Retail, LLC

**Filed:** September 22, 2010

1 **Q. Please state your name and business address, and tell us on whose behalf you are**  
2 **testifying?**

3 A. My name is M. Howard Petricoff and I am a partner in the law firm of Vorys, Sater,  
4 Seymour & Pease LLP. My business address is 52 East Gay Street Columbus, Ohio 43215. I  
5 testify today on behalf of Interstate Gas Supply, Inc., SouthStar Energy Services LLC, and  
6 Vectren Retail, LLC doing business as Vectren Source (collectively “Retail Suppliers”).

7 **Q. Please address your appearance as a rebuttal witness in this docket?**

8  
9 A. Mr. Gregory F. Collins has obtained a different position within the Vectren Corporation  
10 and he is unavailable for attendance purposes at the final hearing in this matter. I have reviewed  
11 Mr. Collins’ direct testimony, along with his initial data request responses, and the second data  
12 request responses prepared by Vincent Parisi, Esq. and I fully adopt, reincorporate and reassert  
13 the Retail Suppliers’ testimony and data request responses as my own testimony and data request  
14 responses and as if fully set forth herein. I will be prepared to testify and avail myself for cross-  
15 examination purposes in the hearing in this docket in regards to the matters addressed therein.

16 **Q. Please state your credentials, both academic and work related experience, which**  
17 **qualifies you as an expert in the regulation of natural gas production and sales.**

18 A. I received a Master Degree in Public Administration (Economics) from Harvard  
19 University and a Juris Doctorate from the University of Cincinnati. For the past seven years I  
20 have taught the Energy Law course at Capital University Law School and have had a few natural  
21 gas related articles published in the Energy and Mineral Law Foundation Reporter<sup>1</sup>. My practice  
22 of law has been focused on the representation of natural gas producers, utilities, independent and  
23 affiliated natural gas marketing companies, large industrial energy users and state institutions in  
24 matters concerning governmental regulation and energy business transactions. During the first

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<sup>1</sup> The Energy & Mineral Law Foundation is headquartered at the University of Kentucky on the campus in

1 six years of my thirty years of practice, I served as a full time Ohio Assistant Attorney General.  
2 In private practice, I have litigated energy law matters in cases before the United States Supreme  
3 Court, the Federal Energy Regulatory Commission, the Sixth and District of Columbia Federal  
4 Court of Appeals, the Ohio Supreme Court, and the Public Utilities Commission of Ohio.

5 On the subject of restructuring of state natural gas regulations, I represented the Ohio Gas  
6 Marketers Group during the ten year period in which the State of Ohio restructured its regulatory  
7 oversight of the natural gas industry. Currently, I serve as the Chairman of the Ohio Oil and Gas  
8 Commission (a part time position). The Ohio Oil and Gas Commission hears appeals from orders  
9 concerning oil and gas production from the Ohio Department of Natural Resources. I have  
10 attached a copy of my resume Exhibit I which lists additional information as to my educational  
11 and other industry related experience.

12 **Q. What is the purpose of your testimony?**

13 A. In the 2010 legislative session, the Kentucky Legislature unanimously passed a resolution  
14 directing the Public Service Commission to initiate a study to determine whether natural gas  
15 retail marketing would benefit the Commonwealth's small volume consumers. The purpose of  
16 my testimony is to respond to several basic questions about permitting small volume consumers  
17 to shop for the natural gas commodity they choose.

18 **Q. What if anything has changed in the Natural Gas Industry which makes it possible  
19 for small consumers to efficiently buy natural gas in the open market?**

20 A. Kentucky receives the majority of the natural gas it consumes from the interstate pipeline  
21 system (U.S. Energy Information Administration Independent Statistical and Analysis State  
22 Energy Profiles September 16, 2010). The interstate pipeline system is regulated by the Federal

1 Energy Regulatory Commission. Originally, the interstate system was operated on the premise  
2 that gas service was a natural monopoly. In a natural monopoly, the economies of scale are such  
3 that a single supplier can provide all of the expected demand at a cost that effectively excludes  
4 other competitive suppliers.

5 On the federal level, the belief that natural gas production is a natural monopoly service  
6 came to an end with partial collapse of the interstate gas system in the late 1970's, including a  
7 crippling shortage and the institution of broad curtailments during the winter of 1977-78. In  
8 response, the Congress passed Natural Gas Policy Act of 1978 (NGPA). Under the NGPA, the  
9 Federal Energy Regulatory Commission issued a series of orders which established a policy of  
10 open access. Under the open access policy (Order 888) utilities, end users, producers and  
11 marketers were given the opportunity to transport and store gas on the interstate system. In the  
12 years that followed open access, a robust national gas market developed in which natural gas is  
13 bought, sold, swapped, hedged, and transported on a national basis more or less in real time.

14 At first, open access was used primarily by large industrial customers. Open access  
15 allowed industrial customers to centrally plan gas use among many locations. Further, it  
16 permitted the fixing of natural gas prices into the future. Natural gas is an extremely volatile  
17 commodity from a pricing perspective. Using hedging and firm price contracts, an industrial  
18 customer could achieve price certainty which eliminated a significant business risk, especially  
19 for manufacturers of products where natural gas is a significant component of the cost of the  
20 finished goods.

21 In the past several years the natural gas market has matured to the point that current  
22 information systems, the development of hub pricing, and financial hedges as a practical matter  
23 permit offering small commercial and residential customers the same type services large



1 industrial customers enjoy via open access transportation programs.

2 Many states, particularly those which permit industrial customers to shop have opted to  
3 permit small commercial and residential customers to shop for natural gas. Those states with  
4 which I am familiar include: Georgia, Illinois, Michigan, New Jersey, New York, Ohio, and  
5 Pennsylvania. Given this background it is not surprising that the Kentucky legislature has asked  
6 the question of whether Kentuckians would benefit if open access to the natural gas commodity  
7 market was extended to all consumers.

8 **Q. You have explained why an industrial customer would benefit from the ability to**  
9 **move gas among multiple locations and the need for price certainty, but do small**  
10 **commercial and residential customers have the same needs?**

11 A. Clearly some do. The threshold now for transportation is fairly high so that small  
12 commercial customers with multiple locations such as chain restaurants and schools cannot take  
13 advantage of their aggregate use when purchasing natural gas. Similarly, price certainty is a  
14 concern for small businesses as well as large industry.

15 **Q. A number of commentators in this proceeding question whether home owners and**  
16 **small businesses have the sophistication to enter the natural gas market and purchase gas.**  
17 **Will small commercial and residential customers be able to purchase gas prudently?**

18 A. In the seven states that permit small commercial and residential customers to shop for  
19 natural gas that I am familiar with, excluding Georgia, no one has required small commercial or  
20 residential customers to buy natural gas on the open market, they have simply removed the  
21 regulatory barrier from doing so. Purchasing natural gas is relatively easy. First, natural gas is a  
22 true commodity, that is, there is a uniform unit (Dekatherm “Dth” or cubic foot) and the quality  
23 of the gas is standardized by the interstate pipelines. A Dth of natural gas purchased from a  
24 marketer will have the same heat value, moisture content, and Nox value as one purchased from

1 the utility. In fact, because natural gas from the interstate pipeline is a fungible, network  
2 product, it may well be the same Dth delivered to a home owner's meter whether he/she buys it  
3 from a marketer or the utility.

4 One does not have to know how the internal combustion engine works, let alone be able  
5 to repair one, in order to drive a car. Likewise, a home owner does not need to know how his/her  
6 furnace or water heater operates in order to efficiently buy natural gas. All that is necessary is  
7 knowledge about the amount of gas that is consumed and when it is consumed. Such  
8 information is usually available on their utility bill.

9 **Q. Several commentators have questioned the benefits of letting small commercial and**  
10 **residential customers shop versus requiring them to purchase from the utility. Can you**  
11 **describe the potential benefits?**

12 A. As in most competitive businesses, marketers devote time and effort to finding out what  
13 customers want and then do their best to deliver those products. Most small commercial and  
14 residential customers want price certainty, a low price per dekatherm, and help with  
15 conservation. But the importance of these benefits differs widely. For example, I represented a  
16 consortium of 146 public school districts who wanted to aggregate their load and take it out for  
17 bid. Schools have very tight budgets these days, and five years ago when gas prices spiked, they  
18 had a difficult time paying the higher price. So in their request for proposal, the schools sought  
19 fixed prices. On the other hand, I represented a restaurant chain in which the cost of gas was a  
20 very small percentage of their business costs. The restaurant chain wanted the lowest possible  
21 price and they contracted for a variable price pegged to the New York Mercantile Exchange  
22 monthly closing price with a small basis for transportation. Finally, I had a customer whose only  
23 interest was having a price that was lower than the utility. That customer ended up with a  
24 contract for a percentage discount off the utility price per Dth. In sum, the major benefit of  
25 allowing customers to shop for natural gas is the ability to get a specialized product that best  
26 meets the customer's needs. That is not available if every customer must purchase gas on a flow

1 through price based on what the utility paid based on a one size fits all paradigm.

2 **Q. Is there any evidence that you can offer that show that small commercial and**  
3 **residential customers want specialized services?**

4 A. In 2008, Columbia Gas of Kentucky initiated a research study (Matrix Study) to  
5 determine customer perceptions of its CHOICE program. On pages 7 and 18 of the Matrix  
6 Study, Columbia found that customers wanted the option of shopping. In Ohio where  
7 commercial and residential customers have the right to either buy from the utility or a marketer,  
8 a significant number of customers elected to purchase in the open market. A Public Utilities  
9 Commission of Ohio study done in June of this year looked at the number of eligible customers  
10 per utility who elected to shop. Two of the Ohio utilities are affiliated with Kentucky utilities.  
11 Columbia Gas of Ohio in June listed 37.4% of its residential customers and 46.9% of its small  
12 commercial customers as purchasing gas in the open market. Duke Energy Ohio listed 26.2% of  
13 its residential customers and 27.3% of its commercial customers purchasing gas in the open  
14 market. The shopping statistics for Ohio's other two major utilities were even higher. So, when  
15 given the chance, many customers want the flexibility of purchasing their own gas.

16 **Q. A few commentators have questioned whether the fact that the utilities charge only**  
17 **what they pay for natural gas to the customers means that the utility will always have the**  
18 **lowest price.**

19 A. Natural gas is one of the most volatile priced commodities. The most watched index for  
20 gas prices is the New York Mercantile Exchange. I have attached as Exhibit 2 to my testimony a  
21 chart which shows the monthly closing price for the past several years. Within that time frame  
22 you will note that gas has sold for an average annual cost of \$6.8060 per Dth in 2007, rose 32%  
23 to \$9.035 per Dth in 2008, only to drop some threefold to \$3.986 in 2009. Since gas prices can  
24 be quite volatile over time, it is not meaningful to compare gas that is purchased on a fixed price  
25 basis for one or more years with gas purchased based on variable pricing. The New York  
26 Mercantile Exchange does present a market where a producer can sell and a consumer can fix a

1 price out several years. If one had fixed a price by buying futures on the New York Mercantile  
2 Exchange for the three years starting in 2002 for the calendar years 2002-2004, they would have  
3 amassed a considerable savings, for the price of natural gas generally went up during that period  
4 vis a vis the price that futures could have been purchased for. The same dynamic worked in  
5 reverse in 2008 for the years 2008, 2009 and thus far for 2010.

6 In sum, looking at the spikes and valleys that make up gas pricing it is fair to say that a  
7 comparison of fixed prices to variable prices over a short time period is not indicative of whether  
8 buying fixed price or buying variable price is better. It only indicates the short term trend of the  
9 market. Thus, any reference to Columbia's annual savings chart for the last three year as  
10 dispositive proof that the Choice contracts in which the predominant form of contract sold by the  
11 marketers is on a fixed price is inherently more costly is misplaced. Similarly, the same is true in  
12 the early years of the Columbia Choice Annual Report in which the primarily fixed price Choice  
13 contracts were generally less expensive than the variable priced utility gas.

14 In terms of efficiency, marketers and the utilities theoretically should be able to project  
15 their load, and manage the inevitable difference between what was scheduled and what was  
16 burned equally well. An argument can be raised that because marketers are not on a "cost plus  
17 basis" they may be under more economic pressure to manage more efficiently. Ultimately, the  
18 key to efficiency in buying and scheduling is having excellent personnel and giving them the  
19 time and resources to manage the load.

20 **Q. Will interstate gas prices go up or down next year?**

21 A. Over the years I have reviewed many forecasts ranging from the product of expensive  
22 econometrician models to the Farmers' Almanac. All I can tell you is that no one has yet  
23 established a credible long term price forecasting model. On the demand side, weather, economic  
24 conditions and the need for gas fired electric generation are the main drivers affecting demand.  
25 On the supply side, it's a combination of the availability of shale gas production, the decline  
26 curve of existing wells and LNG imports.

1 **Q. A number of commentators have raised concerns that deregulation will result in**  
2 **abusive sales tactics, slamming, and a loss of reliability to the system if anyone is allowed to**  
3 **make retail sales in Kentucky.**

4 A. At this time the Retail Suppliers do not advocate deregulation. The proposal we offer the  
5 Public Service Commission is restructuring the regulations so as to remove the barriers that now  
6 prohibit small commercial and residential customers from buying natural gas from reputable  
7 suppliers. The Retail Suppliers favor a certification process so that only marketers with the  
8 expertise and financial wherewithal are licensed to make retail sales. Further, a Code of Conduct  
9 for both suppliers and utilities will be needed to establish criteria the Commission can use to  
10 evaluate complaints. Deceptive, inequitable, and unconscionable marketing must be banned.

11 As for reliability, the same technique used for the transport program can be modified to  
12 permit small commercial and residential customers to participate. Whether it is utility gas or  
13 supplier gas, the receipt point will be the interstate / utility city gate. Marketers will need to  
14 administratively establish pools, schedule in the gas that is necessary and assist the utility in  
15 balancing the difference. Bonding and certification as to the skills necessary to perform must be  
16 part of the certification process.

17 **Q. Delta has questioned whether small utilities should be required to have small**  
18 **commercial and residential programs, do you have an opinion?**

19 A. Large utilities generally have the necessary electronic information systems and personnel  
20 to extend the right to transport to small volume customers. That may not be the case for very  
21 small utilities. That should be decided on a case by case basis.

22 **Q. In LG&E's data request response to IGS/SouthStar/Vectren Source's first data**  
23 **request question number 8 wherein, Witness Murphy referred to KRS 160.613 as authority**  
24 **for the possibility that school tax revenues may be negatively impacted by expanded Choice**  
25 **programs, do you have any suggestions regarding this implication?**

26 A. Yes. First, I would like to state that like Mr. Murphy I am not a Kentucky tax expert, and

1 that this is a topic that should be researched and opinions obtained from a tax expert. When the  
2 tax experts do review this issue, however, there is important information in this docket they  
3 should consider. According to Columbia's response to IGS/SouthStar/Vectren Source's second  
4 data request question no. 2, Witness Cooper clearly indicated that the existing Columbia  
5 Customer Choice program was designed to avoid any negative impact on school or franchise tax  
6 revenues and it has succeeded in maintaining school and franchise tax revenues. Witness Cooper  
7 further states: "[t]his is accomplished by the requirements of Columbia's tariff for billing and  
8 collection of marketer rates and remittance of net revenues to marketers." The Columbia Choice  
9 Program is in place today, so Witness Cooper's comments are not observations on a proposed  
10 program but one that is being taxed today.

11 **Q. What advice would you offer the Kentucky Public Service Commission as to**  
12 **whether small commercial and residential customers should be permitted to purchase**  
13 **natural gas from other than the utility?**

14 A. Small business is where the majority of jobs are created. The Commission should seek to  
15 put the tools in the hands of small business to let them best compete and grow their business.  
16 Giving small business the same natural gas contracting options that large industrial customers  
17 enjoy now is important. Similarly, in these tough economic times, we should let residential  
18 customers have choice over how they buy gas.

19 **Q. Does this conclude your testimony?**

20 A. Yes

COMMONWEALTH OF KENTUCKY

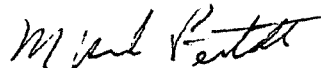
BEFORE THE PUBLIC SERVICE COMMISSION

In re the Matter of:

AN INVESTIGATION OF NATURAL GAS )  
RETAIL COMPETITION PROGRAMS ) CASE NO. 2010-00146  
)  
)

AFFIDAVIT OF M. HOWARD PETRICOFF, ESQ.

Now comes the undersigned, M. Howard Petricoff, Esq., being duly sworn, deposes and states that he is a witness on behalf of Interstate Gas Supply, Inc., SouthStar Energy Services, LLC and Vectren Retail, LLC doing business as Vectren Source, that he has personal knowledge of the matters set forth in the foregoing testimony and exhibits, said testimony was prepared by him and under his direction and supervision, if inquiries were made as to the facts in said testimony he would respond as therein set forth and the answers contained therein are true and correct to the best of his knowledge. Likewise, he has reviewed Mr. Collins' direct testimony, along with his initial data request responses, and the second data request responses prepared by Vincent Parisi, Esq. and he fully adopts, reincorporates and reasserts the Retail Suppliers' testimony and data request responses as his own testimony and data request responses and as if fully set forth in the foregoing rebuttal testimony.



M. Howard Petricoff, Esq.

STATE OF OHIO )  
 )  
FRANKLIN COUNTY )

Subscribed and sworn to me this 22<sup>nd</sup> day of September 2010, by M.

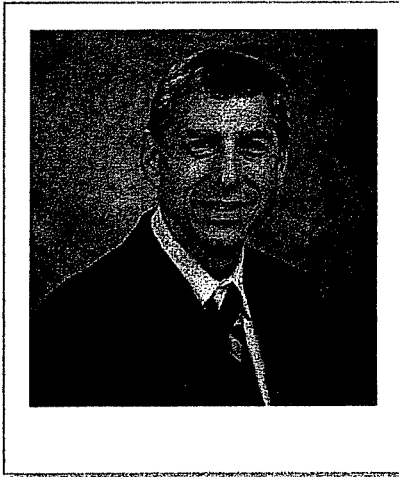
Howard Petricoff, Esq.

Stephen M. Howard  
Notary Public

My Commission Expires: **STEPHEN M. HOWARD**  
**NOTARY PUBLIC - STATE OF OHIO**  
~~MY COMMISSION HAS NO EXPIRATION DATE~~  
**SECTION 147.03 R. C.**







## M. Howard Petricoff

Partner | Columbus Office

**Columbus** 614.464.5414 | Fax 614.719.4904

**Email** mhpetricoff@vorys.com

Mr. Petricoff is a partner in the Vorys Columbus office and a member of the energy and environmental group. He advises and represents clients on energy, utility and environmental matters, including litigation in federal and state court as well as state public service commissions, the Federal Energy Regulatory Commission and various permitting boards and commissions.

### Career highlights include:

- Currently serving as a Commissioner on the Ohio Oil and Gas Commission
- Currently serving as Adjunct Professor at the Capital University Law School since 1997
- Served as Assistant Ohio Attorney General from 1977 to 1982 and currently serving as a special counsel on energy/environmental cases
- Argued the Elyria Foundry v. Public Utilities Commission case before the Ohio Supreme Court which disallowed utility fuel charges to customers who buy power in the open market

Mr. Petricoff is a member of the Ohio State Bar Association, the Ohio Bar Foundation, and the Energy & Mineral Law Foundation.

Mr. Petricoff has presented seminars on topics involving electric deregulation, utility pricing, cogeneration, alternative energy and contracting for power and fossil fuels.

Mr. Petricoff received his M.P.A. from Harvard University, his J.D. from the University of Cincinnati College of Law and his B.S. from American University.

Before joining Vorys, Mr. Petricoff was an Assistant Ohio Attorney General.

Practice Areas  
Energy and Utilities  
Government Relations  
Litigation

Industries  
Energy and Utilities  
Oil and Gas  
Retail and Wholesale Trade

Education  
Harvard University, Cambridge, Massachusetts, 1981, M.P.A.,  
Master of Public Administration  
University of Cincinnati College of Law, Cincinnati, Ohio, 1974, J.D.  
American University, Washington, District of Columbia, 1971, B.S.

## M. Howard Petricoff

(Continued)

### Publications

"Underground Gas Storage: Condemnation Problems Under the Natural Gas Act," *Eastern Mineral Law Institute*, 1988 (Vol. 9 Pg. 16-1)

"The Effect of Price on the Ohio Gas Market," *Energy Review*, 1982 (Vol. 1 Pg. 12).

"Safe Drinking Water Act & Disposal of Wastes in Gas & Oil Wells," *Eastern Mineral Law Institute*, 1982 (Vol. 3 Pg. 20-1)

*Client Alert*: New Advanced Energy Property Tax Exemptions

*Client Alert*: New, Low-Interest Options for Financing Alternative Energy Projects

*Client Alert*: American Renewable Energy Jobs Act Would Restrict Renewable Energy Grants

### Professional and Community Activities

Leukemia and Lymphoma Society, Board of Trustees, 2006-present

Energy Industries of Ohio, Board of Trustees, 2005-present

National Gas & Oil Corporation, Board of Trustees, 1992-1999

### Honors and Awards

*Columbus CEO*, Top Lawyers in Columbus, 2010

*The Best Lawyers in American*, Energy Law, 2009-2011

*Ohio Super Lawyers*, Energy and Natural Resources, 2004-2008

### Events

25th Annual Ohio Environment, Energy and Resources Law Seminar

34th Mineral Law Conference

### Bar and Court Admissions

Ohio

U.S. Supreme Court

U.S. Court of Appeals for the District of Columbia Circuit



**Vorys, Sater, Seymour and Pease LLP**  
Legal Counsel

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**M. Howard Petricoff**  
(Continued)

U.S. Court of Appeals for the Sixth Circuit

U.S. Court of Appeals for the Tenth Circuit



**NYMEX - NATURAL GAS CONTRACT SETTLEMENT PRICE HISTORY**

YEAR	Monthly Settlement Price												YR AVG
	IAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
2005	6.213	6.288	6.304	7.323	6.748	6.123	6.976	7.647	10.847	13.907	13.832	11.180	8.616
2006	11.431	8.400	7.112	7.233	7.198	5.925	5.887	7.042	6.816	4.201	7.153	8.318	7.226
2007	5.838	6.917	7.547	7.558	7.508	7.591	6.929	6.110	5.430	6.423	7.269	7.203	6.860
2008	7.172	7.996	8.930	9.578	11.280	11.916	13.105	9.217	8.394	7.472	6.469	6.888	9.035
2009	6.136	4.476	4.056	3.631	3.321	3.538	3.949	3.379	2.843	3.730	4.289	4.486	3.986
2010	5.814	5.274	4.816	3.842	4.271	4.155	4.717	4.774	3.651				4.590

