

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Regulation of the)
Purchased Gas Adjustment Clause)
Contained within the Rate Schedules of) Case No. 07-207-GA-GCR
Eastern Natural Gas Company and Related)
Matters.)

In the Matter of the Regulation of the)
Purchased Gas Adjustment Clause)
Contained within the Rate Schedules of) Case No. 07-214-GA-GCR
Pike Natural Gas Company and Related)
Matters.)

In the Matter of the Regulation of the)
Purchased Gas Adjustment Clause)
Contained within the Rate Schedules of) Case No. 07-215-GA-GCR
Southeastern Natural Gas Company and)
Related Matters.)

OPINION AND ORDER

The Commission, having considered the exhibits and stipulation filed by the staff of the Commission (Staff) and parties, the relevant provisions of the Revised Code and the Ohio Administrative Code, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Vorys, Sater, Seymour and Pease LLP, by Stephen M. Howard, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43216-1008, on behalf of Eastern Natural Gas Company, Pike Natural Gas Company, and Southeastern Natural Gas Company.

Marc Dann, Attorney General of the State of Ohio, Duane W. Luckey, Section Chief, by Thomas G. Lindgren and Thomas McNamee, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission of Ohio.

OPINION:

A. Summary of the Proceedings

Each of Eastern Natural Gas Company (Eastern), Pike Natural Gas Company (Pike),¹ and Southeastern Natural Gas Company (Southeastern) (collectively, the companies) is a "gas company" and a "natural gas company" as defined in Section 4905.03(A)(5) and (6), Revised Code, and each is a public utility under Section 4905.02, Revised Code. Each company is also a gas company within the meaning of Section 4905.302(C), Revised Code, pursuant to which this Commission promulgated rules for a uniform purchased gas adjustment clause to be included in the schedules of gas or natural gas companies subject to the Commission's jurisdiction. These rules, which are contained in Chapter 4901:1-14, Ohio Administrative Code (O.A.C.), separate the jurisdictional cost of gas from all other costs incurred by a gas or natural gas company, and provide for each company's recovery of these costs.

Section 4905.302, Revised Code, also directs the Commission to establish investigative procedures, including periodic reports, audits, and hearings to examine the arithmetic and accounting accuracy of the gas costs reflected in a company's gas cost recovery (GCR) rates and to review each company's production and purchasing policies and their effect upon these rates. Pursuant to such authority, Rule 4901:1-14-07, O.A.C., identifies how periodic financial audits of gas or natural gas companies shall be conducted. Section 4905.302(C), Revised Code, and Rule 4901:1-14-08(A), O.A.C., require the Commission to hold a public hearing at least 60 days after the filing of each required audit report and Rule 4901:1-14-08(C), O.A.C., specifies that notice of hearing be published in one of three ways, at least 15 days, but not more than 30 days, prior to the date of the scheduled hearing.

On January 24, 2007, the Commission initiated these proceedings by the issuance of an entry that directed the companies to publish notice of the hearing and established the financial audit review periods, the date for various filings, and the hearing date. On September 14, 2007, the Staff submitted a report of its audits of the companies (Audit Report). The audits cover the periods July 1, 2005 through June 30, 2007.

¹ Staff noted that Pike's system is separated into two service areas, Waverly and Hillsboro. Different interstate pipelines serve each service area and their systems are not interconnected. Therefore, the Company files separate GCR rates. But, during this audit, the Waverly and Hillsboro divisions billed GCR rates that were within cents of each other for most of the audit period. Staff stated that, with its GCR rates being approximately the same, Pike should consider combining the Hillsboro and Waverly GCR rates into a single rate. Staff stated that this would reduce some of the administrative work associated with the separate calculations, filing, and billing of these two rates (Audit Report Section II, at 4).

On November 13, 2007, a public hearing was conducted at the offices of the Commission. No public witnesses appeared to offer testimony. The Staff and counsel for the companies indicated that they had reached a settlement to resolve all of the issues in these three cases. A stipulation and recommendation (stipulation) was filed on November 30, 2007. Counsel for the companies stated that he would also be filing proofs of publication as required. Thereafter, on December 27, 2007, the companies filed proof that notice of the hearing was duly published in newspapers of general circulation throughout its service area (Company Late-filed Exhibits Nos. 1-3).

B. Summary of Audit Report

The companies are headquartered in Frazeytsburg, Ohio, and are wholly-owned subsidiaries of Clearfield Ohio Holding, Inc. (COHI). COHI provides administrative and management services to its subsidiaries.

In its review, staff initially reviewed and evaluated relevant documents from within the Commission in preparation for the audit, conducted interviews with appropriate company personnel at the companies' offices in Frazeytsburg, Ohio, and reviewed and evaluated relevant company documents. For these audits, Staff focused its review of purchase gas costs invoices from the companies' marketing affiliate (M&B Marketing) and agent Atmos Energy. Staff noted that, for the first three months of the audit period, the companies billed customers the last of the stabilized commodity rates (SCRs) approved by the Commission in Case No. 01-1523-GA-UNC. Staff verified that the companies properly applied the SCRs to customers' bills.

With regard to the actual adjustment (AA), staff found the following: that Eastern filed an incorrect purchase gas cost resulting in a \$12 error; that Pike-Hillsboro Division (Pike-Hillsboro) used the expected gas cost (EGC) rate of Pike-Waverly Division (Pike-Waverly) in its AA calculation resulting in errors totaling \$1,975; that Pike-Waverly used Pike-Hillsboro's EGC rate in its AA calculation, along with a transposition error in October 2005, resulting in errors totaling \$(1,730), and that Southeastern incorrectly input purchase gas costs, sales volumes, and EGC rates into the AA calculation resulting in errors totaling \$14,079. Staff noted that these errors are not self-correcting through the GCR mechanism. Staff recommended that Eastern, Pike-Hillsboro, and Southeastern should include their \$12, \$1,975, and \$14,079 errors, respectively, in GCR rates. Staff recommended that a reconciliation adjustment of \$(1,730) be included in Pike-Waverly's GCR rates. Staff further recommended that the companies' adjustments be applied in the first GCR filing following the opinion and order in these cases (Audit Report Section IV, at 7-9).

With regard to the refund and reconciliation adjustment (RA), Staff stated that it did not find any refunds of interstate pipelines in its examination of Eastern, Pike-Waverly, and Southeastern and that there were no Commission-ordered reconciliations for

the companies from the 2005 audit. For Pike-Hillsboro, however, Staff stated that, in its verification of interstate pipelines, it found a refund from Columbia Gas Transmission (TCO) for \$350.48 in February 2006. Staff recommended that Pike-Hillsboro refund to its customers \$350.48 that the company received from TCO (Audit Report Section V, at 25).

With regard to the companies' balance adjustment (BA), Staff stated that, due to the fact that all three companies reinstituted their GCR filings in October 2005, there are no BA calculations contained in this audit period. Staff stated that it will examine the companies' BA calculations starting in the next audit (Audit Report Section IV, at 26).

Staff also reviewed the companies' EGC, customer billing, and unaccounted-for gas (UFG). Staff had no recommendations concerning the companies' EGC or customer billing. With regard to the UFG, however, Staff stated that it is concerned with the high UFG levels for Eastern (9.57%) and Pike-Waverly (5.22%). Staff recommended that Eastern and Pike meet with Staff to address these high UFG levels. Staff believes if these high levels of UFG cannot be accounted for by the companies, there must be a financial adjustment to Eastern's and Pike's GCR rates (Audit Report Section III, at 5-6, Section VIII, at 27, and Section IX, at 29-30).

To complete its audit, staff reviewed the companies' prior audit directive concerning SCRs. With regard to this prior directive, Staff noted that the Commission approved the companies' application to establish SCRs for an 18-month period in place of their GCR rates on September 25, 2001, in Case No. 01-1523-GA-UNC. The Commission subsequently approved the companies' request for extensions of their SCRs. Thereafter, in Case No. 03-211-GA-GCR, Staff completed its first audit of the companies' SCRs. In the opinion and order in that case, the Commission ordered the Staff in its next audit (2005) to determine and report on the GCR prices that would have been in place under the traditional GCR calculation methodology through the periods as compared to the prices that were actually charged under this stabilized price alternative, as well as the amount of fluctuation in prices that was or was not avoided by using the stabilized price alternative. Staff stated that it inadvertently omitted this audit requirement in its 2005 GCR financial audit and has determined, and is now reporting on, the GCR prices that would have been in place under a traditional GCR, and on the amount of fluctuation in prices.

Staff found in its calculation of the traditional GCR prices that, if the companies locked in (triggered) New York Merchantile Exchange (NYMEX) strip prices during periods of rising natural gas prices, as was the case with the initial 18-month SCRs, the companies' customers saved several thousands of dollars, even as sales volumes for the 18-month period declined. Staff stated that, in one winter month alone, the NYMEX strip price used to calculate the 18-month SCRs was approximately \$6.00 per thousand cubic feet (MCF) below the NYMEX closing price for that month and that this resulted in a substantial saving to the companies' customers. Staff also found that, during periods of

declining natural gas prices (mid 2003 through mid 2005), the companies locked in prices that were slightly above what eventually were the NYMEX closing prices. Staff stated that the customers overpaid what they would have paid under the traditional GCR prices in about 40 percent of the months in which their SCRs were in effect, with the largest difference between the NYMEX closing prices and NYMEX strip prices used in these SCRs being \$1.17 per MCF.

Staff concluded that, during the period October 2001 through September 2005, customers of the companies saved money overall on their commodity costs under the SCRs, except for Eastern's customers, who paid, as a group, slightly over a thousand dollars more for the four-year period than they would have been charged under a GCR rate. Staff, however, noted that its calculations of the traditional GCR rates are approximations of what costs could have been and are not precise over- or under-payment of commodity costs. Further, Staff noted that its determination of the fluctuations between NYMEX strip prices used by the companies in SCRs calculations and the NYMEX closing prices ranged from a high of nearly \$6.00 per MCF in savings for customers to over-payment as high as \$1.17 per MCF, with the majority of the differences in the plus or minus 50 cents to \$1.00 range (Audit Report Section X, at 31-32).

STIPULATION:

In order to resolve the issues in this proceeding, Staff and the companies (collectively, the Signatory Parties) submitted a stipulation for the Commission's consideration. In the stipulation, the Signatory Parties agree and recommend, in pertinent part, that:

- (1) The Commission adopt the findings and audit recommendations contained in the Financial Audits filed in Case Nos. 07-207-GA-GCR, 07-214-GA-GCR, and 07-215-GA-GCR on September 14, 2007, which include:
 - (a) Eastern will implement a reconciliation adjustment of \$12 to be included in the GCR rates. This represents the net difference the Staff found in the Actual Adjustment calculations. This adjustment should be applied in the first GCR filing following the opinion and order in these cases.
 - (b) Pike will implement a reconciliation adjustment of \$1,975 in its Hillsboro Division to be included in GCR rates. This represents the net difference the Staff found in the Actual Adjustment

calculations. This adjustment should be applied in the first GCR filing following the opinion and order in these cases.

- (c) Pike will implement a reconciliation adjustment of \$(1,730) in its Waverly Division to be included in GCR rates. This represents the net difference the staff found in the Actual Adjustment calculations. This adjustment should be applied in the first GCR filing following the opinion and order in these cases.
- (d) Southeastern will implement a reconciliation adjustment of \$14,079 to be included in the GCR rates. This represents the net difference the Staff found in the Actual Adjustment calculations. This adjustment should be applied in the first GCR filing following the opinion and order in these cases.
- (e) Pike shall refund to its Hillsboro Division customers \$350.48 that it received from Columbia Gas Transmission.
- (f) Eastern and the Staff agree that the UFG percentage for Eastern for the 24 months ending September 2007 is 1.91 percent.
- (g) In lieu of making a specific finding regarding the UFG percentage in the Waverly Division during the audit period, Pike and the Staff agree that Pike will implement a reconciliation adjustment in its Waverly Division of \$84,797.00 in favor of customers to be included in GCR rates. This adjustment should be applied in the first GCR filing following the opinion and order in these cases.
- (h) Pike will conduct a study of the UFG percentage in its Waverly Division and will submit a report containing its findings and recommendations to the Staff prior to, or coincident with, its 2008 filing referenced in item 2 below.

- (2) Pike seeks to file an application which would combine its separate monthly GCR filings for its Hillsboro Division and for its Waverly Division into a single monthly GCR filing which would become effective on July 1, 2008. Pike alleges that administrative ease and more efficient use of computer capacity support the move toward a single GCR filing. Based on these statements, the Staff does not oppose such a filing in 2008 and the Signatory Parties agree to work with each other in advance of Pike making such a filing.
- (3) Consistent with the finding in the financial audit, the Commission explicitly finds that the companies properly applied the fixed commodity rates and base rates to their respective customers' bills during the period ending June 30, 2007, for which they were audited.

(Stipulation, at 3-5)

DISCUSSION AND CONCLUSION:

Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into stipulations. Although not binding upon the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St. 3d 123, at 125, citing *Akron v. Pub. Util. Comm.* (1978), 55 Ohio St. 2d 155. In this case, OCC is not a signatory to the stipulation.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *The Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al. (December 30, 1993); *The Cincinnati Gas & Electric Co.*, Case No. 92-1463-GA-AIR, et al. (August 26, 1993); *Ohio Edison Co.*, Case No. 89-1001-EL-AIR (August 19, 1993); *The Cleveland Electric Illuminating Co.*, Case No. 88-170-EL-AIR (January 31, 1989); and *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). In these cases and others, the Commission has used the following criteria in considering the reasonableness of a settlement agreement:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?

- (3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve cases by a method economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St. 3d 559, citing *Consumers' Counsel, supra*, at 126. The court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission (*Id.*).

Based on our three-pronged standard of review, we find the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is clearly met. The companies and staff have been involved in many cases before the Commission, including a number of GCR cases. Moreover, these parties have consistently provided helpful information to the Commission in cases regarding GCR and fuel-related policies and practices, as well as in other Commission proceedings. The settlement agreement also meets the second criterion. As a package, the stipulation advances the public interest by attempting to resolve all of the issues related to the review of the companies' GCR and fuel-related policies and practices during the audit period. Moreover, the stipulation meets the third criterion because it does not violate any important regulatory principle or practice. Rather, the stipulation includes terms designed to enhance the companies' ability to provide service to its customers and encourages off-system sales and the efficient use of capacity, thereby reducing gas costs and GCR rates. Accordingly, we find that the stipulation should be adopted and approved.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Eastern, Pike, and Southeastern are gas companies and natural gas companies within the meaning of Section 4905.03(A)(6), Revised Code, and, as such, are public utilities subject to the supervision and jurisdiction of this Commission.
- (2) Pursuant to Section 4905.302, Revised Code, and Rule 4901:1-14-08, O.A.C., this proceeding was initiated by the Commission's entry of January 24, 2007, to review the companies' GCR rates.
- (3) The Staff of the Commission conducted an audit as required by Section 4905.302(C), Revised Code, and Rule 4901:1-14, O.A.C., and filed its report on September 14, 2007.
- (4) Pursuant to Section 4905.302(C), Revised Code, and Rule 4901:1-14-08(A), O.A.C., a public hearing was held on

November 13, 2007, and the companies published notice of such hearing in compliance with Rule 4901:1-14-08(C), O.A.C.

- (5) The stipulation, filed by the parties on November 30, 2007, represents a just and reasonable resolution of the issues in this proceeding, and should be approved by this Commission.
- (6) Except as discussed in the stipulation, and to be corrected in subsequent GCR proceedings, and as found by Staff during the audit period, the companies fairly determined their GCR rates in accordance with Rule 4901:1-14, O.A.C., and related appendices. Further, the companies' gas costs, which were passed through the companies' GCR clauses for the audit period, were fair, just, and reasonable.

It is, therefore,

ORDERED, That the stipulation and recommendation of the parties be adopted. It is, further,

ORDERED, That the auditor selected to conduct the companies' next GCR audit shall evaluate how the companies implemented the agreements set forth in the stipulation. It is, further,

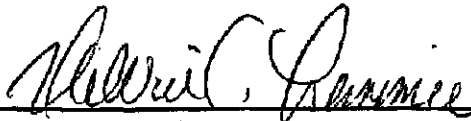
ORDERED, That a copy of this opinion and order be served upon each party of record.

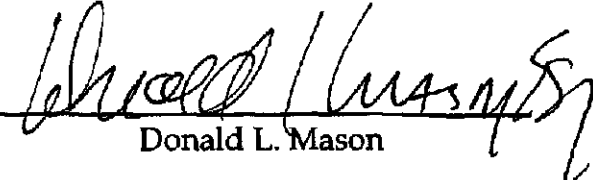
THE PUBLIC UTILITIES COMMISSION OF OHIO

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Secretary