

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Application	:	
of Eastern Natural Gas Company	:	Case No. 08-940-GA-UNC
for Approval of an Alternative Rate Plan	:	
Proposing a Revenue Decoupling Mechanism	:	
	:	
In the Matter of the Application	:	
of Pike Natural Gas Company	:	Case No. 08-941-GA-UNC
for Approval of an Alternative Rate Plan	:	
Proposing a Revenue Decoupling Mechanism	:	

**MOTION FOR RECONSIDERATION OF DEFICIENCY LETTER
OR, IN THE ALTERNATIVE, MOTION FOR WAIVERS**

Eastern Natural Gas Company ("Eastern") and Pike Natural Gas Company ("Pike")(collectively, "the Applicants" or "the Companies") respectfully move for reconsideration of the August 29, 2008 letter ("Deficiency Letter") or, in the alternative, move for waivers of Rule 4901:1-19-05(A)(1) and (2); (C)(1); and (C)(2)(b) through (f) and (h)-(i) and (C)(3) of the Ohio Administrative Code. The Applicants respectfully request that the Commission, the Attorney Examiner, or the Staff find that the August 1, 2008 applications are in substantial compliance with Section 4929.051, Revised Code and the Ohio Administrative Code.

I. Background

Section 4929.05, Revised Code "Approval of Alternate Rate Plan" became effective on September 17, 1996. Subsection (A) provides:

(A) As part of an application filed pursuant to section 4909.18 of the Revised Code, a natural gas company may request approval of an alternative rate plan. After notice, investigation, and hearing, and

after determining just and reasonable rates and charges for the natural gas company pursuant to section 4909.15 of the Revised Code, the Public Utilities Commission shall authorize the Applicant to implement an alternative rate plan if the natural gas company has made a showing and the Commission finds that both of the following conditions are met:

(1) The natural gas company is in compliance with section 4905.35 of the Revised Code and is in substantial compliance with the policy of this state specified in section 4929.02 of the Revised Code;

(2) The natural gas company is expected to continue to be in substantial compliance with the policy of this state specified in section 4929.02 of the Revised Code after implementation of the alternative rate plan.

Rule 4901:1-19-05 of the Ohio Administrative Code (“Filing Requirements for Applications filed Pursuant to Section 4929.05 of the Revised Code”) and Rule 4901:1-19-06 (“Acceptability of Exemption Cases and Alternative Rate Plan Applications”) were promulgated by the Commission pursuant to Section 4929.05, Revised Code and both became effective in their current form on November 10, 2006.

Thus, up until recently, an Alternative Rate Plan Application filed under Section 4929.05, Revised Code had to be a part of a rate increase application filed under Section 4909.18, Revised Code. However, that has now changed.

Senate Bill 221, signed by the Governor on May 1, 2008, became effective on July 31, 2008 and established Section 4929.051, Revised Code.

Section 4929.051, Revised Code provides:

An alternative rate plan filed by a natural gas company under section 4929.05 of the Revised Code and proposing a revenue decoupling mechanism may be an application not for an increase in rates if the rates, joint rates, tolls, classifications, charges, or rentals

are based upon the billing determinates and revenue requirements authorized by the Public Utilities Commission in the company's most recent case proceeding and the plan also establishes, continues, or expands an energy efficiency or energy conservation program.

Under the above quoted provision, natural gas companies may now apply to decouple their rates as an alternative rate plan without filing an Application for an Increase in Rates so long as the natural gas company 1) uses the billing determinants from the most recent rate case proceeding; 2) does not exceed the revenue requirement authorized by the Commission in the most recent rate case; and 3) establishes, continues or expands an energy efficiency or energy conservation program.

Based upon newly enacted section 4929.051, Revised Code, Eastern Natural Gas Company ("Eastern") and Pike Natural Gas Company ("Pike") (collectively "the Applicants" or "the Companies") filed Applications for approval of an alternative rate plan for the limited purpose of proposing a revenue decoupling mechanism. In their Applications, the Companies used billing determinants from their most recent rate increase cases, proposed changes that would not produce revenue in excess of the revenue requirement authorized in the most recent rate increase case, and proposed energy conservation programs. These Applications were filed on August 1, 2008 and were assigned Case Nos. 08-940-GA-ALT and 08-941-GA-ALT.

On August 29, 2008, counsel for the Applicants received a letter ("Deficiency Letter") via e-mail from the Assistant Director, Utilities Department. The Deficiency Letter acknowledged the filing of the Applications but stated that:

...an alternative rate plan must be filed as part of an application filed pursuant to Section 4909.18, Revised Code. Further, in order to meet the requirement set forth in Chapter 4901:1-19, O. A.C., applications for alternative rate plans must be preceded by a written notice of intent, served as set forth in paragraph a of Rule 4901:1-19-05, O.A.C. Such applications must also follow the requirements and provide the specific information in paragraphs

(B) and (C) of Rule 4901:1-19-05, O.A.C. The Pike and Eastern applications were not filed as part of an application pursuant to Section 4909.18, Revised Code and failed to comply or request any waivers from compliance with Rule 4901:19-05, O.A.C.

The letter stated that the Staff found that the Companies' Applications are not in substantial compliance with the Ohio Administrative Code. No mention was made of Section 4929.051, Revised Code.

II. Motion for Reconsideration

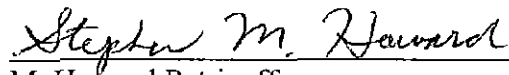
Eastern and Pike respectfully request that the Staff or the Attorney Examiner reconsider the letter of August 29, 2008. The basis for this Motion is contained in the accompanying Memorandum in Support.

III. Motion for Waivers

In the alternative, if the Commission or the Attorney Examiner decide that waivers are needed, Eastern and Pike respectfully request that the Commission waive the requirements of Rule 4901:1-19-05(A)(1) and (2) and (C)(1) and (C)(2), (b), (c), (d), (e), (f), (h) and (i) and (C)(3). The reasons in support of the requested waivers are also set forth in the accompanying Memorandum in Support.

WHEREFORE, Eastern Natural Gas Company and Pike Natural Gas Company respectfully request that the Commission, the Attorney Examiner, or its Staff reconsider the deficiency letter of August 29, 2008 and find that given the enactment of Section 4929.051, Revised Code, that the Applications are in fact in compliance with Rule 4901:1-19-05 of the Ohio Administrative Code. In the alternative, Eastern Natural Gas Company and Pike Natural Gas Company respectfully request that the Commission grant waivers from Rule 4901:1-19-05 (A)(1) and (2) and (C)(1) and (C)(2)(b), (c),(d),(e), (f), (h), and (i) and (C)(3) and accept the Applications for filing as of August 1, 2008.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

Section 4929.05, Revised Code provides that “as part of an application filed pursuant to Section 4909.18 of the Revised Code, a natural gas company may request approval of an alternative rate plan.” The statute goes on to indicate that after notice, investigation and hearing, and after determining just and reasonable rates and charges for the natural gas company pursuant to Section 4909.15 of the Revised Code, the Commission shall authorize the applicant to implement an alternative rate plan if the natural gas company is in compliance with Section 4905.35, Revised Code, is in substantial compliance with the policy of the State as set forth in Section 4929.02, Revised Code, and if the natural gas company is expected to continue to be in substantial compliance with the policy of Section 4929.02, Revised Code after implementation of the alternative rate plan.

The Commission promulgated Chapter 4901:1-19 of the Ohio Administrative Code pursuant to Sections 4929.04 and 4929.05, Revised Code.

In Rule 4901:1-19-05 of the Ohio Administrative Code, the Commission set forth the filing requirements for applications filed pursuant to Section 4929.05, Revised Code (alternative rate plan applications). Because Section 4929.05, Revised Code contemplates a rate increase case filing pursuant to Section 4909.18, Revised Code, the Commission set forth several filing requirements, most of which are related to the filing requirements for an application for an increase in rates pursuant to Section 4909.18, Revised Code and 4909.15, Revised Code. These filing requirements related to rate increase cases include the following:

(A)(1) and (2) – Notice of intent, PFN Exhibit 1 and PFN Exhibit 2, proposed rates, a brief summary of the applicant’s proposed alternative rate plan, a typical bill comparison, and any waiver requests;

(C)(1) – The exhibits described in divisions (a) to (e) of section 4909.18 of the Revised Code and the standard filing requirements pursuant to Rule 4901-7-01 of the OAC;

(C)(2)(b) – Justification for any proposal to deviate from traditional rate of return regulation including rationale for its proposed alternative rate plan, including how it better matches actual experience or performance of the company in terms of costs and quality of service to its regulated customers;

(C)(2)(c) – A comparison of how the proposed alternative rate plan would have impacted actual performance measures (operating and financial) during the most recent five calendar years including comparisons of the results during the previous five years if the alternative rate plan had been in effect with the rate or provision that otherwise was in effect;

(C)(2)(d) – A listing of the services which have been exempted, the case number authorizing such exemption, a copy of the approved separation plans, and a copy of the approved code of conduct;

(C)(2)(e) – A complete matrix showing each rate, service, or regulation that is included in the plan and an explanation of how it may be affected during the term of the plan;

(C)(2)(f) – A detailed discussion of how potential issues concerning cross-subsidization of services have been addressed in the plan;

(C)(2)(h) – The projected financial data required in section F of Chapter II of Appendix A to Rule 4901-7-01 of the Administrative Code, through the term of the proposed plan and which reflects the effects of the proposed plan including the effects of any and all assumptions regarding changes in proposed indices;

(C)(2)(i) – Projected financial data through the term of the proposed plan under the assumption that the proposed plan is not adopted;

(C)(3) – To the extent the applicant is seeking alternative forms of rate setting other than found in Section 4909.15, Revised Code, the detail of those commitments to customers is willing to promote the policy of the State specified in section 4929.02 of the Revised Code and the extent of commitments specified that are dependent upon the degree of freedom from Section 4909.15 of the Revised Code requested by the applicant.

Thus, up until recently, an Alternative Rate Plan Application filed under Section 4929.05, Revised Code, had to be part of a rate increase application filed under Section 4909.18, Revised Code. However, that has now changed.

The Ohio General Assembly recently recognized the need to decouple local distribution company revenue from volumetric sales. Senate Bill 221, signed by the Governor on May 1, 2008, effective July 31, 2008 established Section 4929.051, Revised Code. Section 4929.051, Revised Code provides:

An alternative rate plan filed by a natural gas company under section 4929.05 of the Revised Code and proposing a revenue decoupling mechanism may be an application not for an increase in rates if the rates, joint rates, tolls, classifications, charges, or rentals are based upon the billing determinates and revenue requirements authorized by the Public Utilities Commission in the company's most recent case proceeding and the plan also establishes, continues, or expands an energy efficiency or energy conservation program.

Under this statute, natural gas companies may apply to decouple their rates without filing an application for an increase in rates so long as the distribution company 1) uses the billing determinants from the most recent rate case proceeding; 2) does not exceed the revenue requirement authorized by the Commission in the most recent rate case; and 3) establishes, continues or expands an energy efficiency or energy conservation program.

Section 4929.051, Revised Code, became effective on July 31, 2008. Eastern and Pike filed their applications pursuant to Sections 4929.05 and 4929.051, Revised Code, on August 1, 2008. These applications sought to decouple local distribution company revenue from volumetric sales. Eastern and Pike used the billing determinants from their most recent rate case proceedings. Neither Eastern nor Pike exceeded the revenue requirement authorized by the Commission in their most recent rate cases. Finally, Eastern and Pike established energy conservation programs in their respective applications. The Commission has not promulgated or proposed any rules which would implement Section 4929.051, Revised Code.

In order to avail themselves of the newly enacted statute and to attempt to get decoupled rates into effect prior to the heating season, Eastern and Pike approached the Staff during the second quarter of 2008 to discuss different vehicles by which this decoupling mechanism could take effect. Eastern and Pike do not wish to file a rate increase case. Eastern and Pike do not wish to deviate from traditional rate of return regulation. Eastern and Pike are not seeking to propose a severing of costs and rates. Eastern and Pike are not seeking to exempt any services from regulation.

Eastern and Pike are seeking to decouple their rates without filing an application for an increase in rates by using the billing determinants from the most recent rate case proceedings, by not exceeding the revenue requirement authorized by the Commission in those most recent rate cases, and by establishing an energy efficiency or energy conservation program. Eastern and Pike are filing applications for alternative rate plans for the very limited purpose of proposing a revenue decoupling mechanism as set forth in Section 4929.051, Revised Code.

Without having a specific rule promulgated under Section 4929.051, Revised Code, Eastern and Pike explored various options with the Staff. It was suggested to Eastern and Pike that instead of filing self-complaints, they should file applications for alternative rate plans as soon as the law took effect. Eastern and Pike reviewed the requirements of Rule 4901:1-19-05 of the Ohio Administrative Code and proceeded to develop an application that would meet the requirements of Section 4929.051, Revised Code, and those requirements of Rule 4901:1-19-05 which did not relate to a rate increase case. Because Section 4929.051, Revised Code, permits the filing of an alternative rate plan for the very limited purpose of establishing a revenue decoupling mechanism without the filing of a rate increase case, Eastern and Pike submit that their applications are in substantial compliance with Rule 4901:1-19-05 of the Ohio

Administrative Code. The Applications contain the details of the proposed revenue decoupling mechanism, the application form language, the filing and service requirements, the verification requirements, the listing of potential witnesses, and an indication that each Applicant is in compliance with Section 4905.35, Revised Code, and is in and will continue to be in substantial compliance with Section 4929.02, Revised Code.

Given the chronology of events and the fact that Section 4929.051, Revised Code is the law of Ohio, Eastern and Pike respectfully request that the Commission, the Attorney Examiner, or the Staff reconsider the August 29 Deficiency Letter and make a finding that the Applications are in substantial compliance with Rule 4901:1-19-05, OAC. In the alternative, if it is determined that despite the enactment of Section 4929.051, Revised Code, all of the requirements of Rule 4901:1-19-05 of the OAC apply to Eastern and Pike, then Eastern and Pike respectfully request waivers from subsections (A)(1) and (2) and (C)(1) and (C)(2)(b) through (f), (h) and (i) and (C)(3).

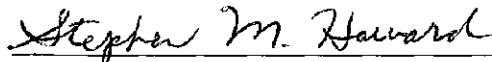
Eastern and Pike submit that the information contained in the Applications as filed on August 1, 2008, is sufficient for the Commission Staff to effectively and efficiently review the Application. Because neither Eastern nor Pike are seeking a rate increase, the requirements of Rule 4901:1-19-05 of the OAC which are the subject of this waiver request are not relevant to the Commission's consideration of whether the Application is reasonable and in the public interest. The information which is the subject of the waiver request is not reasonably available to the Applicant which it maintains or is reasonably obtainable by the Applicant because it is not proposing to file a rate increase case. There would be considerable expense to the Applicants in providing the information which is the subject of a waiver request. Most important, there is no practical use for the information which would be produced since the subsection of the statute that

this case is filed under requires that the billing determinates and revenue requirement from the prior rate case be used. The granting of the waiver is in the public interest given that the Commission has not yet issued a rule regarding the type of alternative rate application contemplated by Section 4929.051, Revised Code.

Good cause exists for granting the waiver request.

WHEREFORE, Eastern Natural Gas Company and Pike Natural Gas Company respectfully request that the Commission, its Attorney Examiner, or the Staff reconsider the August 29, 2008 deficiency letter and find that the Applications of Eastern and Pike are in substantial compliance with Rule 4901:1-19-05 of the Ohio Administrative Code. Alternatively, Eastern and Pike respectfully request that the Commission waive those requirements set forth above as contained in Section 4901:1-19-05 of the Ohio Administrative Code.

Respectfully submitted,



On behalf of Eastern Natural Gas Company and
Pike Natural Gas Company

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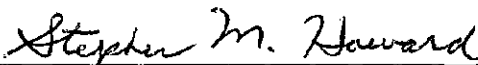
Attorneys for Eastern Natural Gas Company

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served upon the following persons by hand delivery and by electronic mail this 15th day of September, 2008:

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