

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Waterville Gas & Oil Company to Amend) Case No. 09-105-GA-ATA
Gross Receipts Tax Rider.)

In the Matter of the Application of)
Waterville Gas & Oil Company for)
Authority to Amend its Filed Tariffs to) Case No. 07-194-GA-AIR
Increase the Rates and Charges for Gas)
Services and Related Matters.)

ENTRY

The Commission finds:

- (1) On February 26, 2007, Waterville Gas & Oil Company (Waterville) filed a prefiling notice in Case No. 07-194-GA-AIR, captioned above (the rate case). The proposed tariffs attached to that notice included language of a gross receipts tax rider "applicable to all gas cost recovery charges billed by the Company under its current Rate BS rate schedule. . . . All bills shall be adjusted for the Ohio Gross Receipts Tax on gas cost recovery revenues at a rate of 4.8899%."
- (2) The application in the rate case, filed on March 30, 2007, included identical language in the proposed tariffs covering the gross receipts tax rider.
- (3) On August 15, 2007, staff of the Commission filed its report of investigation (staff report) into the application in the rate case. In the staff report, staff erroneously stated that Waterville had "proposed all Ohio excise taxes and MCF taxes be recovered through two riders. Therefore, the Staff excluded Ohio excise taxes and MCF taxes from test year operating taxes and included the impact of both taxes on the Staff's working capital and federal income tax calculations." (Staff report at 10.) Consistent with the text of the staff report, staff's schedules, reflecting the details of its calculations, exclude gas cost recovery revenues from the calculation of total operating revenues (on which gross receipts taxes are calculated) and exclude the gross receipts taxes on other revenues from the calculation of the expense item that is identified as "taxes, other than income." Thus, even though the

applicant had only proposed a rider for gross receipts taxes on gas cost recovery charges, the total expense sum that was used by staff, in its report, to determine net operating income did not include the payment of any gross receipts taxes.

- (4) Waterville and staff reached a stipulation in the rate case, agreeing on all issues, including tariff language. Although the agreed-upon revenue increase reflected the exclusion of all gross receipts taxes, the tariffs that were agreed to by the parties were, with regard to the gross receipts tax rider, identical to the language in the prefiling notice and the application.
- (5) Section 4909.15(A), Revised Code, requires the Commission, when fixing and determining just and reasonable rates, to determine the valuation, as of the date certain, of the property that is used and useful in rendering service; a fair and reasonable rate of return on that valuation; the dollar annual return to which the utility is entitled; and the cost of the utility rendering service during the test period. On November 20, 2007, the Commission issued its opinion and order in the rate case, adopting the stipulation in its entirety. The Commission also specifically adopted the rate base valuation that was included in the stipulation and agreed with staff's determination of Waterville's operating revenue, operating expenses, and net operating income, as modified in the stipulation. Further, noting that the staff report had recommended a rate of return in the range of 9.5 to 10.5 percent, the Commission found that the stipulated rate of return of 10 percent was fair, reasonable, and supported by the record. Thus, the Commission adopted that rate of return.

In order to reach a rate of return of ten percent, the Commission allowed Waterville to increase its rates to a level that would give it the opportunity to earn net operating income of \$306,851, or approximately ten percent of the rate base.

- (6) The Commission also approved the stipulated tariffs, noting that they were intended to produce the revenue authorized by the Commission and finding that they were reasonable. The stipulated tariff language in the gross receipts tax rider, approved by the Commission, is identical to that proposed in the prefiling notice and the application. However, the Commission now concludes that the approved rider language did not result in the outcome portrayed by the rate determinants and calculations to

which the stipulating parties agreed and which the Commission adopted.

- (7) The approved rider language results in collection of an amount equal to gross receipts taxes only on gas cost recovery revenues. It does not recover the amount of the gross receipts taxes on other revenues. However, all gross receipts taxes were removed from the calculation of Waterville's total operating expenses. If the gross receipts taxes on revenues other than gas cost recovery are included in the total operating expenses, as is effectively the situation under the currently approved rider language, the rate of return that Waterville has the opportunity to earn, using all other calculations from the rate case, is reduced from the approved 10 percent to 8.66 percent.
- (8) On February 13, 2009, Waterville filed an application in Case No. 09-105-GA-ATA, captioned above, asking for approval to amend the gross receipts tax rider such that it would recover the cost of the gross receipts taxes on both gas cost recovery revenues and other revenues.
- (9) The amendment of the gross receipts tax rider proposed by Waterville would result in the rider recovering the expenses that the Commission had expected would be recovered through the rider when we approved the rate increase in the rate case and on the basis of which the calculations in that case resulted in the authorized rate of return. In light of the specific circumstances involved in this proceeding and the history in the rate case in which incorrect rider language was included in the stipulation signed by Waterville and staff, as well as the increased level of reliance that is often placed on staff by small gas companies, we find that Waterville's proposed amendment is reasonable and should be approved. In approving this application, however, we stress that, by doing so, we are merely implementing the opinion and order in the rate case and are not making any new decisions with regard to the rate case. In addition, we note that, because our conclusion is specific to the facts and circumstances in this case, our resolution of the issue would not be controlling in any other situation and, so, should not be cited as precedent.

It is, therefore,

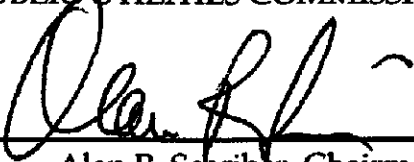
ORDERED, That the application to amend the gross receipts tax rider in Case No. 09-105-GA-ATA be approved. It is, further,

ORDERED, That Waterville be authorized to file complete copies of tariffs in final form, consistent with this entry. Waterville shall file one copy in this case docket and one copy in its TRF docket (or may file electronically as directed in Case No 06-900-AU-WVR). The amended tariff language shall be effective no earlier than the date of this entry and the date on which copies of final tariffs are filed. It is, further,

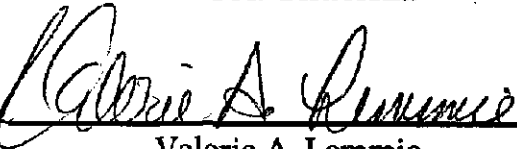
ORDERED, That nothing in this entry shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, or regulation of Waterville. It is, further

ORDERED, That a copy of this entry be served upon all interested persons of record.

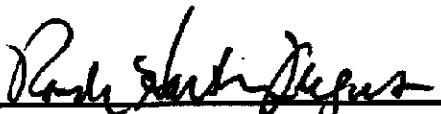
THE PUBLIC UTILITIES COMMISSION OF OHIO




Alan R. Schriber, Chairman

Paul A. Centolella


Valerie A. Lemmie

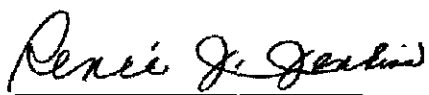


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Entered in the Journal
MAY 21 2009



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Secretary