BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained within the Rate Schedule of the Brainard Gas Corporation	)))))	Case no. 11-206-GA-GCR

INITIAL BRIEF OF BRAINARD GAS CORPORATION

Andrew J. Sonderman (0008610)
Kegler Brown Hill & Ritter LPA
Capitol Square, Suite 1800
65 East State Street
Columbus, Ohio 4321504294
(614) 462-5496
(614) 464 2634
asonderman@keglerbrown.com

Counsel for
Brainard Gas Corporation

Table of Contents

I. PRELIMINARY STATEMENT

On August 26, 2011, the Staff of the Public Utilities Commission of Ohio ("Staff") submitted its report of Brainard Gas Corporation's (hereinafter, "BGC" or "Company") Financial Audit of the Gas Cost Recovery mechanism. In the report, Staff recommended a reconciliation adjustment in the amount of $68,476 as a refund to customers as reflected on Table II (Commission-Ordered Exhibit 1).

In the direct testimony of Thomas J. Smith (Company Exh. TJS) on behalf of BGC, Mr. Smith acknowledged that BGC would adopt the same stipulations and recommendations adopted by the Commission in Case Nos. 10-209-GA-GCR and 10-212-GA-GCR pertaining to its affiliates, Orwell Natural Gas Company and Northeast Ohio Natural Gas Corporation. Although Mr. Smith agrees to the stipulations and recommendations of the two cases, the Company does not agree with the reconciliation adjustment of $68,476 (or the revised actual adjustment of $104,331 set forth in Staff's Direct Testimony.)

BGC witness Anita Noce in her prepared direct testimony (Company Exh. AMN) acknowledges a reconciliation adjustment to the GCR mechanism in the amount of $47,603 (Company Exh. AMN p.8). BGC made adjustments to the original monthly GCR filings for imbalances, sales volumes, and gas cost to arrive at the $47,603 to be refunded to their customers over a two year period.

Staff Witness Roger L. Sarver's prepared direct testimony submitted a recommendation which contends that Brainard "used other customers' gas and should go into the market and buy sufficient quantities...to off-set its shortfall between sales and purchase volumes." He testified that this would result in an offset to Staff's proposed actual adjustment in the "$35,000 range," against Staff's revised recommended actual adjustment of $104,331 to be refunded to customers over two years, with interest (Staff Exh. 4, p. 14).

The Company submits that Staff's recommendation is based on its unwarranted conclusion that there was a hypothetical shortfall between sales and purchase volumes based on the following disallowances:

1. By disallowing the negative allocated deliveries on Cobra Pipeline as a result of timing issues, Staff is misstating the imbalance. Cobra Pipeline's practice is consistent with the practice of other pipelines, such as Dominion East Ohio Gas, for allocating deliveries between transportation and sales customers on BGC's distribution system. Inadvertent, but good faith, timing differences between meter readings at Cobra's Bridge Road town border station and the reading of BGC customer delivery meters resulted in an erroneous conclusion that BGC sold more gas to GCR customers than it purchased and transported through Cobra. By disallowing negative allocated deliveries, Staff created an artificial imbalance to the detriment of the BGC's GCR customers.

2. Measurement issues with meters owned and operated by Excalibur on their production wells directly connected to BGC's distribution system caused the under-measurement of gas delivered to and consumed by BGC's GCR customers. The Company contacted this producer several times to address this issue to no avail resulting in sales volumes exceeding purchased volumes.

3. Finally, due to the defective meters on two of BGC's transportation customers, deliveries to these two customers were under-billed. Staff disregarded billing adjustments that were made during the previous audit period and this audit period to

correct this malfunction which resulted in an erroneous conclusion by Staff that GCR customers received more sales volumes than they actually did.

As Company Witness Anita Noce testified:

> I respectfully submit that there is no rational basis to conclude, as Mr. Sarver does, that the failure to make a pressure factor adjustment to the raw meter readings at the two Excalibur production meters was not an important factor in the overall negative imbalance Mr. Sarver calculates on Brainard's system. Compounding the error in this conclusion in the amount of (3,507 Mcf), Mr. Sarver disregards the portion of the meter error adjustment for Dillen products attributable to the audit period in the amount of (5,319 Mcf), and he disregards (by treating as zero) any negative allocated deliveries in the months when they occurred in the amount of (3,100 Mcf) for a total receipt volume disregard of (11,926 Mcf). We believe the Commission should recognize that each of these adjustments which Staff has disregarded is necessary and proper to evaluate the Company's purchases and sales during the audit period and to avoid a hypothetical liability for our GCR customers.

(Company Exh. AMN-R, P. 4)

It was the combination of these unsupported conclusions that furnish the sole basis for Staff's contention that BGC sold more gas to its GCR customers than was delivered by Cobra Pipeline for these customers, and that BGC had confiscated gas from transportation customers or upstream pipelines or marketers to make up for these "negative deliveries". Bear in mind that if BGC accepts Staff's primary recommendation to go into the spot market and buy gas to offset the alleged shortfalls between sales and purchases, it is unclear to which entity or entities Staff suggests these volumes be delivered.

As a corollary, when the adjustments Staff has ignored as described above are properly accounted for, Staff's proposed imbalance would agree with Company, and the Actual Adjustment proposed by the Company is clearly appropriate.

II. Argument

A. BGC's Compelling Evidence Supports Its Claim That BGC Should Not Go Out On the Open Market to Purchase Gas or Refund Over $104,000 To Its Customers.

1. Consistent with the practices of Dominion East Ohio Gas, Cobra Pipeline Company nets metered deliveries of BGC's transport customers against the total delivery through Cobra Pipeline's Bridge Road town border station. Because BGC's large transport customers were not read at the same time as this town border station through no fault of BGC, it caused artificial variances between purchases and sales.

In the "Errata to Prepared Testimony of Roger L. Sarver", Staff Exh. 4A appears the following contention at page 2:

> A second item that I noted was instances in which Brainard's sales customers' imbalance account increased by more than the volume that was delivered on their behalf for the month. This goes back to the definition of an imbalance. A simple example would be 500 Dth delivered on behalf of Brainard sales customers. If 500 Dth is all that is delivered for this customer, the maximum increase to their imbalance account would be 500 Dth, less shrink. In months where Brainard's sales customers' imbalance accounts increase by more than their deliveries, I noted these months in yellow [on Staff Exh. 4B, Amended Exhibit RS-4] and did not include those amounts in my Delivery Allocation in Column 6. The differences between Column 5 and 6 are shown in Column 7 and an explanation is giving [sic] for each difference.

For every month Cobra's imbalance statement showed a negative allocated delivery to BGC, Mr. Sarver simply adjusted the delivery volume to zero. [1] Staff's adjustment for this disallowance amounts to 3,100 Dth. (Staff Exh. 4B, Column 7).

The Company completely disagrees that it sold more gas to GCR customers than Cobra delivered on their behalf. The primary reason for nearly all of these negative delivery allocations was timing differences between the date when BGC reads its delivery meters at the service addresses of its transportation and sales customers, and the date

[1] This affected the following months as shown on Staff Exhibit 4B: October 2008, June-August 2009, June 2010 and August 2010.

when Cobra Pipeline recorded its meter reading at its Bridge Road delivery meter into BGC's distribution system.[2]

Company witness Noce explained why Cobra's imbalance statements reflected a negative allocation of deliveries in the identified months. Like Dominion Energy Ohio, Cobra Pipeline allocates its monthly deliveries to its public utility customers for GCR customers by summing up the reported deliveries by BGC through the meters of its transportation customers and then subtracting that value from total volumes delivered into the Company's distribution system through the Cobra Bridge Road:

> Q. (By Mr. Margard) Is this a negative burn?
>
> A. I may have been using the wrong terminology. It is a negative delivery out of the Bridge Road meter to the Brainard system. It is a way that Cobra calculates the burns such as the same way Dominion East Ohio Gas calculates it for other utilities. They take the meter read, they back out the transportation volumes, and the remaining balance is the delivery from that meter for the utility.

(Tr., Vol. III p. 158).

Ms. Noce explained how variations in transport customer's recorded volumes can affect BGC's deliveries and imbalances. She stated "any time that volume changes, whether it's a misread or the wrong volume was reported or whatever, that is ultimately going to affect the allocated deliveries for Brainard *and is also going to affect the imbalance reported on Cobra with Brainard."* (Tr., Vol. III, p. 178; emphasis added).

This timing difference is a critical point that Staff chooses to ignore. Specifically, to the extent the volumes reported as having beendelivered to transportation customers are not

[2] The potential for negative allocations caused by such timing differences was significantly greater for BGC than for most natural gas utilities because of the dramatic disparity in throughput for transportation customers and for sales customers. As reflected on Company Exh. AMN-1B, in the non-heating month of October 2008, deliveries to GCR customers constituted only 3.34 percent of total deliveries to all customers; in the heating month of December 2010, deliveries to GCR customers only constituted 16.56 percent of total deliveries to all customers.

reflective of actual deliveries to them either because the meter reading dates are not aligned, or because the meters themselves are not registering flow accurately, then the volume Cobra allocates to BGC as deliveries for its sales customers *cannot reflect actual deliveries to GCR customers.*

2. BGC diligently attempted in good faith to synchronize the reading of delivery meters to Cobra Pipeline's reading of its Bridge Road meter.

Company witness Noce testified that despite the good faith efforts of employees of BGC, the Company's attempt to synchronize the reading of the delivery meters of their three largest transportation accounts (two with Hans Rothenbuehler Cheese, one with Dillen Products) was frustrated by miscommunication from Cobra Pipeline misstating the date and time each month when Cobra read its Bridge Road meter. See Company Exhibit AMN, p. 3 and Company Exhibit AMN 1-B. Ms. Noce used the months of October 2008 and December 2010 as examples. A difference in meter reading period of one day resulted in a mismatch of 569.79 Dth deliveries in October 2008, of which more than 96 percent was attributable to transportation customer deliveries; and 969.26 Dth in December 2010, of which more than 83 percent was attributable to deliveries to transportation customers.

BGC rejects Staff's contention that BGC employees ignored the Commission's Order in Case No. 09-206-GA-GCR to synchronize the meter readings of its largest transport customers to Cobra Pipeline readings at its Bridge Road town border station. Ms. Noce testified that after the last audit was completed, she and her supervisor, Becky Howell, discussed the need to change the meter reading schedule for the identified transportation customers to ensure they were read on the last day of the month (Tr., Vol. III, p. 166). In Ms. Noce's testimony, she confirmed through a conversation with Cobra employee, Brian Wollet, that Cobra Pipeline was reading its meters on the last day of the month. She independently confirmed this to be the case by finding the same information on Cobra's website (Id., p. 167). Ms. Noce had multiple conversations with Ms. Danielle Hale, who scheduled the meter readers for the transportation delivery meters to communicate that the meters are to be read on the last day of the month. It was not until after this audit period that Ms. Noce discovered that Cobra's understanding of "last day of the month" was actually the first day of the next calendar month. This miscommunication resulted in a one day timing difference. The difference was caused by a clear miscommunication that was not attributable to lack of diligence on Ms. Noce's part. (Tr., Vol. III, Pages 168-169).

Once Ms. Noce discovered this new information, she initiated a changc to synchronize the readings, which commenced in September 2011. BGC now uses Cobra Pipeline's website to obtain the electronic reads of their two largest transport customers on the first day of the month at 10:00 am. (Tr., Vol. III, P- 168, L. 12 - P. 170, L.24). In addition,, the Company has implemented a policy that all customers, not just the largest two transportation customers, will have meters read on the first day of the month without regard to whether that day is a weekend or holiday. (Tr., Vol. III, P. 172 – 173).

Ms. Noce summarized the Company's position regarding its compliance with the Order in Case No. 09-209-GA-GCR:

> Q. Did you make a good faith effort to comply with the Commission's order adopting the stipulation in the last audit to synchronize your meter reads with the Cobra Bridge Road meter?
>
> A. Yes. I feel that I did, to the best of my abilities, make the changes to comply with Staff's recommendations. And when we found out that the Cobra was not actually on the last day of the month, we also implemented another change.

> Q. And what change is that?
>
> A. To bill Cheese 1 and 2, those telemeters, based on Cobra's telemetering reports.

(Tr., Vol. III, P. 170).

Clearly, Brainard's employees took timely steps to comply with the Order, but those efforts were unsuccessful through no lack of diligence or good faith on the Company's part. For these reasons, to disregard the impact of timing differences, and disallow negative allocated deliveries would be punitive and unfair.

3. The Company has submitted competent and persuasive evidence that there is no rational basis for Staff to exclude consideration of the measurement problems that Excalibur Production experienced on two production wells delivering directly into BGC's system during the audit period.

In Exhibit 4 attached to Company Exh. AMN, Company witness Noce provided a calculation of the 3,507 Mcf or 3,577 Dth of gas that was delivered directly into BGC's system but not billed by Excalibur to BGC. The failure to apply a proper pressure factor adjustment to the volumes measured caused this under-billing by Excalibur. (Also see Tr., Vol. 3, p. 112). Ms. Noce explained that this type of meter is pressure sensitive and a pressure factor multiplier must be applied to the volumes to accurately reflect true volumes burned. By omitting the pressure factor multiplier the volumes purchased are understated. She noted how the Company questioned the volumes delivered and the accuracy of the measurement "many times before and during the audit period." (Company Exh. AMN, P. 8). She also explained that the wells had at times during the audit period been shut in.

On cross examination, Ms. Noce further testified about Exh. 4 attached to Company Exh. AMN:

> Q. (by Mr. Margard) These are volumes that the Company actually received from the Excalibur wells; is that correct?
>
> A. Based on the meter reads that come in from the meter readers out in the field and applying the correct pressure factor, yes, these are the volumes that should have been invoiced by Excalibur but were not.
>
> * * *
>
> Q. So the Company incurred no cost for those volumes, correct?
>
> A. That is correct; but these are volumes that were burned by our customers.

(Tr., Vol. IV, p. 239-240).

The Company never contended that it paid for this local production not invoiced by Excalibur. However, the gas that was not measured or invoiced was nonetheless delivered, and utilized by BGC's GCR customers. When Staff disregards these volumes it artificially inflates the negative allocated deliveries to Brainard through Cobra's Bridge Road meter because Staff presumes these unmeasured volumes were delivered through that town border. Mr. Sarver testified that "Excalibur is no longer delivering to Brainard and no adjusted invoices were issued by Excalibur. That leaves suppliers delivering through Cobra." (Staff Exh. 4, P. 10).

And without explaining the basis for his "belief", he testified that he did not believe that the shortfall he alleges to exist between purchases and sales for GCR customers is attributable to measurement and billing inaccuracies from the Excalibur wells (Id., P. 12). On cross examination, Mr. Sarver stated that "the only thing I can assume that it is, since you are not getting an invoice from anybody else, that it's coming in off of Cobra". (Tr., Vol. III, P. 67). And further:

> Q. (By Mr. Sonderman): But of course, during the audit period it was connected to the system and it was delivering.

A. It was connected to the system, yes, I agree with that, but I don't agree that it produced twice the volume it was actually billed.

Q. So your position is that Excalibur's imbalance could not account for the difference in the volumes flowing?

A. Not in its entirety.

Q. Not in its entirety. And you identify Cobra as the only other likely source of the differential?

A. That would be the majority of the contribution.

(Tr., Vol. III, P. 67 – 68.)

First, note that Mr. Sarver implies that *some* undefined component of the shortfall is attributable to the delivered but not invoiced Excalibur volumes. Note as well that Mr. Sarver never controverted the testimony of Company witness Noce regarding the omitted pressure factor adjustment. He simply states that the differential between the invoiced and pressure-adjusted volumes that should have been invoiced could not account for the negative imbalance "in its entirety".

That is not the Company's position either, and never has been. Instead, the Company's contention, amply supported in the testimony of Ms. Noce, is that the disregard for the throughput that clearly was delivered directly into Brainard's system from the Excalibur wells but not invoiced due to the omission of the pressure factor adjustment has to be *recognized in conjunction with* the meter reading timing differences previously discussed. By properly including these adjustments omitted by Staff the alleged shortfall between purchases and sales is eradicated.

4. The Company's evidence demonstrates that it is inappropriate to disregard billing adjustments it requested, and which were granted by Cobra Pipeline, to correct for under-billings to a large transportation customer during the audit period.

Staff's witness unjustifiably ignores the billing adjustments made for Brainard's two transport customers due to malfunction of the meters. Staff's disallowance of the negative allocated deliveries coupled and its total disregard for Excalibur's pressure factor adjustment along with its rejection of BGC's adjustment for malfunctioning meters, results in a recommended reconciliation adjustment that is inflated and inaccurate.

In Company Exh. AMN, Ms. Noce explained why Staff's disallowance of the Dillen Products billing adjustment is unreasonable and properly must be included in calculating the imbalance on Cobra Pipeline during the audit period. She noted that the adjustment was made in May 2009, during the audit period, to correct for a malfunctioning meter at the Dillen Products delivery meter from March 2008 through March 2009 (including the months of October 2008 through March 2009 within the audit period). Of this amount, the months from March 2008 through September 2008 were accounted for by Staff in the prior audit. By requesting and receiving this adjustment from Cobra Pipeline, the over-allocation of delivery volumes by Cobra in the amount of 5,319 Dth to GCR customers was rectified. (Company Exh. AMN, P. 5, 7).

Staff witness Sarver chose to disregard this adjustment in his audit calculation contained in Staff Exhibit 4B, Column 5 through 7, the row captioned "April 09". He testified that this was proper because "it recognizes total gas available to sales customers if you do not recognize the Dillen adjustment". (Tr., Vol. III, P. 75-76). The Company disagrees with Staff's disregard of the Dillen adjustment in the current audit due to the fact that this measurement correction adjustment was in fact made by Cobra Pipeline, and the allocated deliveries in fact were reduced to account for the proper volumes delivered for and charged to Brainard sales customers. . Hence to pretend it didn't happen does *not* result in an accurate reflection of gas delivered by Cobra Pipeline.

III. CONCLUSION

Brainard Gas Corporation submits that staff has unjustifiably disregarded:

1. Timing differences, which BGC had taken diligent steps in good faith to avoid, between Cobra Pipeline meter readings at the Bridge Road town border and BGC transportation customers' meter reads, which caused negative allocated deliveries to occur during the audit period;

2. The omission of pressure factor adjustments to metered volumes, and resulting significant under-invoicing for gas which a local producer, Excalibur, delivered into BGC's distribution system, even though BGC's customers burned this gas; and

3. Defective meter adjustments by BGC to correct malfunctions on transport meters.

Because of its positions on these three issues, Staff arrives at a reconciliation adjustment that is inflated and unwarranted. Staff has recommended that the Company should either purchase spot market gas volumes beyond those required to serve its GCR customers and make a gift of those volumes to unidentified transportation customers, or to upstream pipelines, or alternatively to refund in excess of $104,000 with interest over two years to GCR customers. Clearly, Staff is confused on how to handle these three adjustments as evidenced in its recommendation of three alternative solutions.

Brainard Gas Corporation has demonstrated through competent evidence that Staff clearly misunderstands BGC's negative allocated deliveries, its justified meter corrections, and the omission of local production pressure factor adjustments resulting in delivered gas not being invoiced by the local producer. The reduction in purchased gas expense reflected in Staff's alternative recommendations are based solely on hypothetical theories that Brainard confiscated gas belonging to transportation customers or upstream pipelines and delivered it to GCR customers. Brainard's evidence has shown that the only means by which the Staff can support such theories was to hypothesize a negative imbalance on Cobra through the combined effect of its: (a) unreasonable disregard for timing differences between the reading of BGC's large transportation customers' meters, and Cobra Pipeline's Bridge Road meter which creates negative allocated deliveries; (b) its unsupportable disregard for the measurement correction on Excalibur' two production wells; and (c) its refusal to recognize a completely justified adjustment to Dillen Products transportation billing to correct for a faulty meter

For all of the above reasons, the Company respectfully requests that the Commission find that an Actual Adjustment consisting of a refund in the amount of $47,603 be ordered over a two year period.

Respectfully submitted,

Andrew J. Sonderman (0008610)
Kegler Brown Hill & Ritter LPA
Capitol Square, Suite 1800
65 East State Street
Columbus, Ohio 4321504294
(614) 462-5496
(614) 464 2634
asonderman@keglerbrown.com

Counsel for
Brainard Gas Corporation

CERTIFICATE OF SERVICE

The undersigned counsel for Brainard Gas Corporation hereby certifies that the foregoing Initial Brief has been served on the following counsel electronically on this 18th day of April, 2012:

Devin Parram
Werner Margard
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
Devin.parram@puc.state.oh.us
Werner.margard@puc.state.oh.us

Andrew J. Sonderman