

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application )  
of The Cincinnati Gas & Electric )  
Company for an Increase in Elec- ) Case No. 91-410-EL-AIR  
tric Rates in its Service Area. )

ORDER ON REMAND

The Commission, coming now to consider the stipulation and recommendation submitted pursuant to the Supreme Court of Ohio's remand in Cincinnati Gas & Elec. Co. v. Pub. Util. Comm. (1993), 67 Ohio St.3d 517, hereby issues its order on remand.

History of the Proceeding:

On May 12, 1992, the Commission issued its opinion and order in this case, granting in part The Cincinnati Gas & Electric Company's (CG&E or company) request for an increase in rates. The Commission's entry on rehearing was signed July 2, 1992, and appeals were filed by the company, the City of Cincinnati, and the Citywide Coalition for Utility Reform. The Commission's decision was affirmed in each of these appeals, except for a single issue in the CG&E appeal. Cincinnati Gas & Elec. Co., supra; Cincinnati v. Pub. Util. Comm. (1993), 67 Ohio St.3d 523; Citywide Coalition for Util. Reform v. Pub. Util. Comm. (1993), 67 Ohio St.3d 531.

The issue remanded by the supreme court involved the Commission's decision to phase-in the rate increase over a three-year period, with deferrals and carrying charges for the first two years of the phase-in recovered over a ten-year period. Based on the authority of the companion case of Columbus S. Power Co. v. Pub. Util. Comm. (1993), 67 Ohio St.3d 535, the supreme court reversed the Commission's decision on this issue. Cincinnati Gas & Elec. Co. at 519. In Columbus Southern, the court found that the Commission lacked statutory authority to order phased-in rates, once it had determined the gross annual revenues to which the company is entitled. Accordingly, the court instructed the Commission to "fix rates which provide CG&E the gross annual revenues determined in accordance with R.C. 4909.15(B) and (D)(2)(b), and to provide a mechanism by which CG&E may recover those revenues deferred to the time the order on remand is issued". Id.

On March 4, 1994, a stipulation and recommendation was submitted by a number of parties to resolve the remanded phase-in issue (the full stipulation is attached to this order). The

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stipulation was signed by CG&E, the staff, the Office of Consumers' Counsel (OCC), Armco Steel Company and Air Products and Chemicals (Armco/Air Products), Industrial Energy Consumers (IEC), the Ohio Council of Retail Merchants (Retail Merchants), and the University of Cincinnati. In order to determine whether any other party opposed the stipulation, an attorney examiners' entry was issued on March 9, 1994, asking for comments regarding the agreement by March 21, 1994. Due to a clerical error, that entry was not served upon parties to the case. Therefore, an additional entry was issued on March 23, 1994, calling for comments by April 4, 1994. Only the City of Cincinnati (city) submitted comments opposing the stipulation. However, the city subsequently withdrew its objections and endorsed the stipulation, by letter filed April 11, 1994.

Summary of the Stipulation:

The stipulation provides that CG&E will not seek to implement the third part of the phase-in plan until the regularly scheduled May 1994 date. The company also agreed to forgo seeking accelerated recovery of deferrals resulting from the phase-in plan. CG&E will, instead, continue to recover deferrals over the remaining seven-year period dictated by the Commission's original opinion and order.

CG&E further agreed not to seek an electric base rate increase prior to January 1, 1999, if the company's proposed merger with PSI Resources, Inc. is consummated. Exceptions to this rate increase moratorium are provided in the event of tax increases, changes in environmental laws, or Commission actions which generically affect electric utilities.

In return for the company's forbearance in seeking expedited recovery of rates and deferrals pursuant to the supreme court's remand, CG&E will be entitled to retain all non-fuel savings resulting from the merger until 1999. Costs related to accomplishing the merger would be amortized on the company's books for accounting purposes only over a five-year period, but shall not continue past January 1, 1999. In the event the merger is not completed by April 30, 1995, the agreement provides that CG&E may raise rates \$21,175,000 for bills rendered after May 21, 1995, in order to recover phase-in deferrals.

Additional terms of the stipulation include: CG&E's obligation to make available to the Commission and OCC all books, records, employees, and officers of CINergy, CG&E, and affiliated companies; the Commission's commitment upon approval of the stipulation to file a pleading to support CG&E in the merger proceeding before the Securities and Exchange Commission (SEC);

and the requirement that contracts between CG&E and affiliate companies, which must be filed with the SEC, will first be filed with the Commission and provided to OCC (and, upon request, to appropriate parties).

Conclusion:

The stipulation and recommendation submitted by the signatory parties on March 4, 1994 resolves the sole issue remanded by the Supreme Court of Ohio. Rule 4901-1-30, Ohio Administrative Code, authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of a stipulation 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). This concept is particularly valid where the stipulation resolves the single remanded issue and the party raising the issue (CG&E) is a signatory to the stipulation. In a number of cases, the Commission has commended the parties to a negotiated agreement for simplifying the consideration of contested issues and for reducing the hearing time required. See, e.g., Ohio Edison Co., Case No. 82-1025-EL-AIR (September 14, 1983); Cincinnati Gas & Electric Co., Case No. 83-1528-EL-AIR, et al. (November 20, 1984). In reviewing a settlement agreement, however, our primary concern is that the stipulation is in the public interest.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, Ohio Edison Co., Case No. 91-698-EL-FOR, et al. (December 30, 1993); 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); Cleveland Electric Illuminating Co., Case No. 88-170-EL-AIR (January 31, 1989); Restatement of Accounts and Records (Zimmer Plant), Case No. 84-1187-EL-UNC (November 26, 1985). In reviewing the stipulation, the ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a settlement, the Commission has used the following criteria:

- 1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

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- 1. We would expect that such contracts, and transactions undertaken pursuant to those contracts, would incorporate a least-cost standard for the acquisition of goods and services from the new CINergy service company.

- 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 in a method economical to ratepayers and public utilities. Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm. (1994), 68 Ohio St.3d 547, citing Consumers' Counsel, supra, at 126. The court in that case stated 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-prong standard of review, we find that the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is clearly met. Counsel for the signatory parties have been involved in many cases before the Commission, including a number of prior rate cases. Moreover, the level of detail contained in the stipulation leaves little doubt that the parties engaged in serious negotiations prior to signing the agreement.

The settlement also meets the second criterion. As a package, it advances the public interest by resolving the sole issue remanded by the supreme court without the incurrence of the time and expense of additional litigation. The agreement represents an unopposed resolution of the phase-in issue based on compromise by many diverse interests. Approval of the agreement will benefit ratepayers by avoiding immediate additional rate increases. Ratepayers will also avoid the rate effects of accelerated recovery of the deferrals associated with the phase-in plan, since CG&E has agreed to recover the deferrals over the previously established ten-year period. In addition, after the third part of the phase-in occurs in May of this year, CG&E customers will not be faced with additional base rate increases for nearly five years. All of these factors support the reasonableness of the agreement due to the benefits which will accrue to ratepayers and the public interest by avoiding additional accelerated rate increases.

Finally, the stipulation meets the third criterion because it does not violate any important regulatory principle. Indeed, approval of the agreement enhances rate stability for the near future while providing CG&E with incentives to continue to reduce costs as a result of the proposed merger with PSI. Both of these results further important regulatory principles and should benefit both ratepayers and shareholders. The stipulation also assures

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that the Commission will have ongoing oversight of the merger by requiring CG&E to provide continuing access to information regarding CINergy and its affiliated companies, and by requiring CG&E to file contracts with affiliated companies for Commission review.

Our review of the stipulation and recommendation indicates that it is in the public interest and represents a reasonable disposition of the issue remanded by the supreme court. We will, therefore, adopt the stipulation to the extent and for the reasons set forth above.

As a final matter, we note that paragraph 5A of the stipulation calls for the Commission to file a pleading at the SEC regarding CG&E's efforts to retain, after the PSI Affiliation, its natural gas distribution system. In reviewing this recommendation of the parties, we observe that there are competing concerns and issues concerning the potential divestiture of the gas operations. On the one hand, CG&E certainly has achieved economies of scale as a result of operating a combined utility, particularly in areas such as billing and meter reading. Although the extent of these economies have not been quantified by the parties for purposes of the Commission's adoption of a particular dollar amount, there is little doubt that certain economies are achieved as a result of the operation of a combination utility. In addition, some may argue that further economies of a combined utility which serves dual use (natural gas and electric) customers may be achieved by developing and offering conservation and efficiency programs that optimize overall energy use and costs. We also have noted in the past the excellent quality of service provided by CG&E's gas utility. See, Cincinnati Gas & Electric, Case No. 90-390-GA-AIR (January 3, 1991), at 35. On the other hand, others may argue that, in a time of increasing competition, the continued operation of a combined utility deprives CG&E customers of the benefits of competitive choices for their energy supplies, as well as the natural impetus toward efficiency, cost savings, and the benefits that having diversity in suppliers in the Cincinnati area might bring if two competing utilities were in operation in this area (as is the case in many other cities in Ohio).

Based on a long line of Commission precedent, however, we view the overall reasonableness of stipulations as a package. As a result, we must weigh the recommendation in this area as only one part of a multi-faceted package. As a package, when considered with all of the other benefits of the stipulation previously enumerated, we find the stipulation's disposition of the natural gas issue to be reasonable. Consistent with the terms of the agreement, and for the reasons outlined in this order, the

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Commission will file a pleading at the SEC which will indicate our support for CG&E's retention of the gas operations. A copy of this order on remand will accompany the pleading filed with the SEC.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- 1) On May 12, 1992, the Commission issued its opinion and order in this case, granting in part CG&E's request for an increase in rates. An entry on rehearing was signed on July 2, 1992.
- 2) On November 3, 1993, the Supreme Court of Ohio remanded a single issue to the Commission regarding the Commission's order that CG&E phase-in the rate increase over three years.
- 3) On March 4, 1994, a stipulation and recommendation was submitted by CG&E, the staff, OCC, IEC, Armco/Air Products, the Retail Merchants, and the University of Cincinnati. The stipulation provides that CG&E will not seek early implementation of the third part of the phase-in or of deferrals associated with the phase-in plan. CG&E will also forgo further base rate increases until 1999, in return for being permitted to retain non-fuel savings from the merger until 1999.
- 4) By entry issued March 9, 1994, comments from non-signatory parties were requested regarding the stipulation. Due to a clerical error, that entry was not served upon parties in this case and, accordingly, a further entry was issued on March 23, 1994. Although the city submitted comments in opposition to the stipulation, it subsequently withdrew its objections and endorsed the stipulation, by letter filed April 11, 1994.

ORDER:

It is, therefore,

ORDERED, That the stipulation and recommendation filed March 4, 1994 be adopted as a reasonable resolution of the issue remanded in this case by the Supreme Court of Ohio, for the reasons and to the extent set forth herein. It is, further,

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ORDERED, That this case be closed as a matter of record. It is, further,

ORDERED, That a copy of this order on remand be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSIONER OHIO

*Craig A. Glazer*

Craig A. Glazer, Chairman

*J. Michael Biddison*

J. Michael Biddison

*Jolynn Barry Butler*

Jolynn Barry Butler

*Richard M. Fanelly*

Richard M. Fanelly

*David W. Johnson*

David W. Johnson

DDN/gm

*[Signature]*

Entered in the Journal

APR 14 1994

A True Copy

*[Signature]*

Gary E. Vigorito  
Secretary