

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REGULATION
OF THE PURCHASED GAS ADJUSTMENT
CLAUSE CONTAINED WITHIN THE
RATE SCHEDULES OF FORAKER GAS
COMPANY AND RELATED MATTERS.

CASE No. 17-204-GA-GCR

OPINION AND ORDER

Entered in the Journal on November 29, 2017

I. SUMMARY

{¶ 1} The Commission adopts the stipulation and recommendation filed by the parties on October 13, 2017, resolving all issues relating to the gas cost recovery audit of Foraker Gas Company.

II. DISCUSSION

A. *Procedural History*

{¶ 2} Foraker Gas Company (Foraker or the Company) is a natural gas company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of the Commission.

{¶ 3} Further, Foraker is a natural gas company within the meaning of R.C. 4905.302 and, as such, the Company implements a purchased gas adjustment mechanism. Pursuant to R.C. 4905.302(A)(1), the uniform purchased gas adjustment mechanism allows a natural gas company to adjust the rates that it charges customers in accordance with any fluctuation in the cost that the company incurs for the gas that it sells to customers. To facilitate the purchased gas adjustment mechanism and the audit of the mechanism, the rules contained in Ohio Adm.Code Chapter 4901:1-14 direct that the jurisdictional cost of gas be separated from all other costs incurred by a natural gas company and provide for each company's recovery of the gas costs.

{¶ 4} R.C. 4905.302 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 the company's gas cost recovery (GCR) rates and to review each company's production and purchasing policies and their effect upon the rates. Pursuant to such authority, Ohio Adm.Code 4901:1-14-07 requires that the gas costs for each natural gas company be audited annually, unless otherwise ordered by the Commission. Ohio Adm.Code 4901:1-14-08(A) requires the Commission to hold a public hearing at least 60 days after the filing of an audit report and Ohio Adm.Code 4901:1-14-08(C) specifies that notice of the hearing be provided at least 15 days and not more than 30 days prior to the date of the scheduled hearing.

{¶ 5} On February 13, 2014, in Case No. 13-1910-GA-AEC, et al., the Commission approved Foraker's application for authority to implement a purchased gas adjustment clause and to establish a GCR rate, in accordance with Ohio Adm.Code Chapter 4901:1-14. The Commission noted that, with the implementation of the GCR mechanism, Foraker's gas costs and procurement practices would be subject to periodic Commission review to ensure that the Company's GCR rate is reasonable and calculated in accordance with the requirements of Ohio Adm.Code Chapter 4901:1-14. *In re Foraker Gas Co.*, Case No. 13-1910-GA-AEC, et al., Finding and Order (Feb. 13, 2014).

{¶ 6} On February 1, 2017, the Commission initiated the above-captioned case for an audit of Foraker's GCR mechanism and established the audit review period, the date of the public hearing, and deadlines for various filings. The Commission also directed Foraker to publish notice of the hearing. On August 18, 2017, Staff filed its audit report for the period of February 1, 2015, through January 31, 2017.

{¶ 7} On October 13, 2017, Foraker and Staff filed a stipulation and recommendation (stipulation), which, if adopted by the Commission, would resolve all of the issues in this proceeding. The public hearing was held, as scheduled, on

October 17, 2017, at the offices of the Commission. During the hearing, Staff offered the testimony of Roger Sarver in support of the stipulation. Staff also offered into evidence the audit report (Commission-ordered Ex. 1) and the stipulation (Joint Ex. 1). Finally, Foraker offered the proof of publication of notice of the hearing (Foraker Ex. 1). No members of the general public testified at the hearing.

B. *Summary of the Audit Report*

{¶ 8} In the audit report, Staff notes that Foraker is a small local distribution company that serves customers located in southeastern Ohio. Staff further notes that Foraker was formed in October 1960 to gather local production, which was then transported to several large industrial customers engaged in the manufacturing of ceramic and tile products. Staff explains that, over time, the gathering lines were extended to connect to other producers and to serve additional customers. According to Staff, Foraker now provides natural gas utility service to approximately 323 residential and 30 commercial customers and transportation service to two industrial customers. (Commission-ordered Ex. 1 at 3.)

{¶ 9} Staff states that it reviewed Foraker's purchased gas costs, purchased volumes, customer billings, sales volumes, customer data, and transportation throughput, as well as conducted investigative interviews with the Company's employees and examined supplier invoices and spreadsheets at the Company's office in New Lexington, Ohio. Staff further states that, except as otherwise noted in the audit report, Foraker accurately calculated its GCR rates for the audit period of February 1, 2015, through January 31, 2017. Following its review, Staff offers two recommendations: an actual adjustment (AA) of \$802 for an under-collection and a balance adjustment (BA) of \$2,326 for an over-collection. (Commission-ordered Ex. 1 at 2.)

{¶ 10} With respect to the AA, which reconciles the monthly cost of purchased gas with the expected gas cost billing rate, Staff notes that, during Foraker's prior GCR audit,

Staff found significant differences in purchased and sales volumes. Staff explains that, due to a meter malfunction, sales/special contract volumes were overstated for the prior audit period. Staff further explains that Foraker replaced the meter in August 2015 and determined that total sales volumes for May, June, and July 2015 should be adjusted. Staff reports that, although Foraker documented the adjustments in its records, the adjustments were not included in the Company's quarterly filing for those months. Staff included the adjustments in its AA calculations, resulting in a difference of \$802 from the Company's AA calculations. Staff, therefore, recommends a reconciliation adjustment of \$802 to account for the under-collection. (Commission-ordered Ex. 1 at 4, 5.)

{¶ 11} Regarding the BA, which corrects for under- or over-recoveries of previously calculated AAs and refund and reconciliation adjustments, Staff found that Foraker incorrectly identified the sales volumes for certain months during the audit period, resulting in an over-collection. Staff, therefore, recommends a reconciliation adjustment of \$2,326. (Commission-ordered Ex. 1 at 11-15.)

C. *Summary of the Stipulation*

{¶ 12} On October 13, 2017, Foraker and Staff filed a stipulation that, if adopted, would resolve all of the issues in this proceeding. The following is a summary of the stipulation and is not intended to supersede or replace the stipulation:

- (1) As discussed in Staff's audit report, Foraker accurately calculated the monthly GCR rate for the period covered by the audit, subject to two exceptions.
- (2) First, as explained in Section III of Staff's audit report, Staff determined, in Case No. 15-204-GA-GCR, which was Foraker's previous GCR audit proceeding, that there were significant differences between purchased and sales volumes during the

period covered by the audit. After conducting an investigation, Foraker determined that these differences were primarily caused by the malfunction of the meter of one of its industrial customers, which resulted in the meter reading fast (i.e., registering more gas going through the meter than was actually delivered). Due to this meter malfunction, sales/special contract volumes were overstated for the audit period in the prior case. Foraker replaced the malfunctioning meter in August 2015 and determined that total sales volumes for May, June, and July 2015 should be restated to account for the impact of the meter malfunction on sales/special contract volumes for those months. However, although Foraker documented these adjustments in its records, Foraker failed to include the adjustments in its quarterly filing for the months in question. As noted in Section IV of Staff's audit report, Staff accounted for the May, June, and July 2015 adjustments as a part of its audit, resulting in an \$802 difference between Staff's AA calculations and the AA calculations previously submitted by Foraker. Accordingly, Staff recommends a reconciliation adjustment of \$802 in Foraker's favor as shown on Table I of Staff's audit report.

- (3) Second, as detailed on Table II in Section VI of Staff's audit report, Staff determined that Foraker incorrectly identified the sales volumes for certain months during the audit period. Substituting the corrected volumes resulted in a Staff-recommended BA for over-recovery in the customers' favor of \$2,326.

- (4) Foraker accepts and agrees with the Staff-recommended reconciling AA and BA adjustments described above. Foraker will reflect the net amount of these adjustments in its first quarterly GCR filing following the Commission's order in this case.
- (5) The parties agree and recommend that the Commission adopt the stipulation as its resolution of the issues presented in this case and find that, subject to the exceptions noted above, Foraker's GCR rates during the audit period were fair, just, and reasonable.

(Joint Ex. 1 at 4-5.)

D. Conclusion

{¶ 13} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding upon the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

{¶ 14} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and

Order (Nov. 26, 1985). 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 stipulation, the Commission has used the following criteria:

- (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?

{¶ 15} The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve cases in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Supreme Court of Ohio 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.

{¶ 16} Based on the three-part standard of review, we find that the first criterion, which requires that the process involve serious bargaining by knowledgeable, capable parties, is met. The individuals that participated in this proceeding and negotiated the stipulation on behalf of Foraker and Staff have been involved in numerous cases before the Commission, including many GCR cases. In addition, the parties have provided helpful information to the Commission in cases regarding fuel-related policies and practices. The stipulation also meets the second criterion. As a package, the stipulation benefits ratepayers and advances the public interest by attempting to resolve all of the issues related to the review of Foraker's GCR and fuel-related policies and practices for

the audit period, without the need to engage in litigation. As Staff witness Sarver testified, the purpose of the GCR audit was to verify the costs incurred by Foraker and to ensure that only those costs were recovered from customers. Mr. Sarver noted that, consistent with this purpose, Staff proposed two adjustments to the GCR mechanism, which were adopted by the parties in the stipulation as a reasonable resolution of this proceeding. Moreover, the stipulation meets the third criterion because it does not violate any important regulatory principle or practice. Rather, the stipulation incorporates the recommendations of Staff to ensure that Foraker appropriately recovers its gas costs from customers. Mr. Sarver concluded that the stipulation satisfies all three parts of the standard of review employed by the Commission in considering stipulations. (Tr. at 8-10.)

{¶ 17} Upon review of the stipulation, the Commission concludes that the terms and conditions contained therein represent a reasonable resolution of the issues in this case and that, as a package, the stipulation benefits ratepayers and advances the public interest. Further, the Commission finds that there is no evidence that the stipulation violates any important regulatory principle or practice. (Tr. at 8-10.) Accordingly, the stipulation should be adopted in its entirety.

E. Findings of Fact and Conclusions of Law

{¶ 18} Foraker is a natural gas company, as defined in R.C. 4905.03, and a public utility, as defined in R.C. 4905.02. As such, Foraker is subject to the jurisdiction of this Commission.

{¶ 19} Pursuant to R.C. 4905.302 and Ohio Adm.Code 4901:1-14-08, this case was initiated by the Commission on February 1, 2017, to review Foraker's GCR rates.

{¶ 20} Staff conducted an audit of Foraker's GCR mechanism for the period of February 1, 2015, through January 31, 2017, in compliance with R.C. 4905.302 and Ohio Adm.Code 4901:1-14-07. Staff filed the audit report on August 18, 2017.

{¶ 21} Pursuant to R.C. 4905.302 and Ohio Adm.Code 4901:1-14-08(A), a public hearing was held on October 17, 2017. No public witnesses appeared to testify at the hearing.

{¶ 22} Foraker published notice of the hearing in compliance with Ohio Adm.Code 4901:1-14-08(C).

{¶ 23} The parties submitted a stipulation intended to resolve all outstanding issues in this matter.

{¶ 24} The stipulation submitted by the parties in this case meets the criteria used by the Commission to evaluate stipulations, represents a just and reasonable resolution of the issues in this proceeding, and should be adopted.

{¶ 25} To the extent noted in the audit report and the stipulation, Foraker's determination of its GCR rates for the audit period was in accordance with the financial and procedural aspects of Ohio Adm.Code Chapter 4901:1-14, and such rates were properly applied to customer bills. Accordingly, the gas costs passed through Foraker's GCR mechanism for the audit period were fair, just, and reasonable, except as otherwise noted in the audit report and the stipulation.

III. ORDER

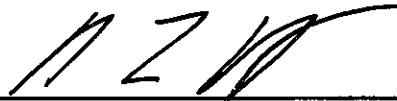
{¶ 26} It is, therefore,

{¶ 27} ORDERED, That the stipulation filed by the parties be adopted and approved. It is, further,

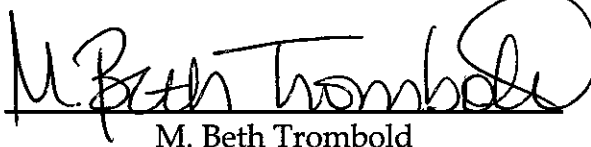
{¶ 28} ORDERED, That the auditor in Foraker's next GCR audit proceeding review the Company's actions in carrying out the terms of the stipulation. It is, further,

{¶ 29} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



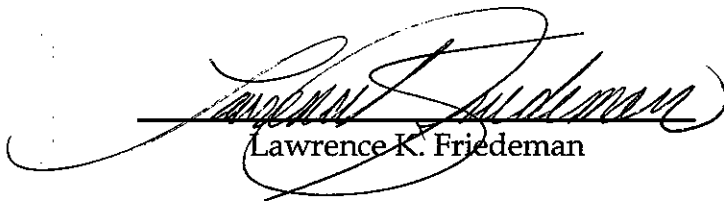
Asim Z. Haque, Chairman



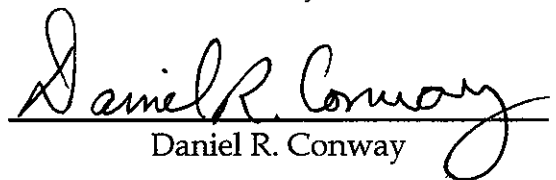
M. Beth Trombold



Thomas W. Johnson



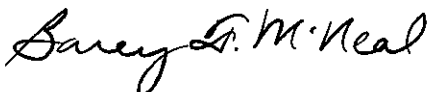
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Entered in the Journal
NOV 29 2017



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