THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF OHIO GAS COMPANY FOR A WAIVER OF ORDERS RELATED TO THE TAX CUTS AND JOBS ACT OF 2017.	**CASE NO. 18-1903-GA-WVR**

OPINION AND ORDER

Entered in the Journal on June 19, 2019

I. SUMMARY

{¶ 1} The Commission adopts the joint stipulation and recommendation filed by the parties, resolving the remaining issues related to Ohio Gas Company's implementation of the Tax Cuts and Jobs Act of 2017.

II. DISCUSSION

A. Procedural Background

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

{¶ 3} The Tax Cuts and Jobs Act of 2017 (TCJA), which was signed into law on December 22, 2017, provides for a number of changes in the federal tax system. Most notably, the federal corporate income tax rate was reduced from 35 percent to 21 percent, effective January 1, 2018.

{¶ 4} In Case No. 18-47-AU-COI, a Commission-ordered investigation (COI) was opened to study the impacts of the TCJA on the Commission's jurisdictional rate-regulated utilities and to determine the appropriate course of action to pass benefits on to ratepayers. *In re the Commission's Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies*, Case No. 18-47-AU-COI (*Tax COI Case*), Entry (Jan. 10, 2018), Second Entry on Rehearing (Apr. 25, 2018), Finding and Order (Oct. 24, 2018), Third Entry on Rehearing (Dec. 19, 2018). In the October 24, 2018 Finding and Order, the Commission directed rate-regulated utilities to file, pursuant to R.C. 4909.18, an application not for an increase in rates, in order to return to customers the tax savings resulting from the TCJA, unless otherwise exempted under the Finding and Order. *Tax COI Case*, Finding and Order (Oct. 24, 2018) at ¶ 29.

{¶ 5} In Case No. 17-1139-GA-AIR, et al., the Commission adopted a joint stipulation and recommendation that resolved all issues related to an application filed by Ohio Gas to increase its natural gas distribution rates. Among other provisions, the joint stipulation and recommendation noted that it was intended to address the recently enacted changes to federal corporate income taxes and that it represented a compromise of several issues raised by those changes. *In re Ohio Gas Co.*, Case No. 17-1139-GA-AIR, et al. (*Rate Case*), Opinion and Order (Feb. 21, 2018) at ¶ 33.

{¶ 6} On December 27, 2018, in the above-captioned case, Ohio Gas filed an application seeking a waiver of the requirement to file an application not for an increase in rates, as set forth in the October 24, 2018 Finding and Order in the *Tax COI Case*. Ohio Gas also seeks a determination that it has fully complied with the Commission's directive to return tax savings to customers, in light of the resolution of the *Rate Case*, which included a reduction of the revenue requirement to account for the reduced federal income tax rate under the TCJA. In the application, Ohio Gas notes that, although the Company collected revenue based on rates that included tax expense set at the prior tax rate from January to March 2018, it has determined that amortization of both Non-Normalized Excess Deferred Income Taxes and Normalized Excess Deferred Income Taxes would result in revenue increases that exceed the tax savings. Ohio Gas further notes that, based on that determination, any further changes to effect the reduction in the corporate tax rate would result in a revenue increase.

{¶ 7} On January 9, 2019, the Ohio Consumers' Counsel (OCC) filed a motion to intervene in this proceeding.

{¶ 8} On April 25, 2019, Ohio Gas, Staff, and OCC filed a joint stipulation and recommendation (Stipulation) for the Commission's consideration. The Stipulation notes that it would resolve all of the issues in this proceeding.

{¶ 9} By Entry dated April 25, 2019, the attorney examiner established a procedural schedule to assist the Commission in its review of the Stipulation. The attorney examiner also granted OCC's motion for intervention.

{¶ 10} On May 7, 2019, testimony in support of the Stipulation was filed on behalf of Ohio Gas by Joseph G. Bowser (Ohio Gas Ex. 1) and on behalf of OCC by Wm. Ross Willis (OCC Ex. 1).

{¶ 11} Consistent with the established procedural schedule, a hearing was held on May 9, 2019.

B. Summary of the Stipulation

{¶ 12} As previously stated, a Stipulation signed by Ohio Gas, Staff, and OCC (Signatory Parties) was filed on April 25, 2019. The following is a summary of the Stipulation and is not intended to supersede or replace the Stipulation:

(1) Ohio Gas previously agreed to reduce its revenue requirement in the *Rate Case*, in order to incorporate the effect of a reduction in the federal income tax rate under the TCJA. In the joint stipulation and recommendation in the *Rate Case*, Ohio Gas also agreed that it would not implement an increase in rates for any unaddressed changes resulting from the TCJA. The Commission approved the joint stipulation and recommendation in the *Rate Case* without modification.

(2) Ohio Gas filed an application in this matter on December 27, 2018, in response to the Commission's orders in the *Tax COI Case*.

(3) Ohio Gas collected revenue based on rates that included tax expense set at the prior tax rate from January to March 2018 (2018 Tax Savings) of $463,257.

(4) Unlike many utilities, which, as a result of the TCJA, owe a credit to customers for Excess Deferred Income Taxes (EDIT), Ohio Gas has Non-Normalized EDIT of ($478,722), which would result in a rate increase of $478,722.

(5) Offsetting the 2018 Tax Savings against the Non-Normalized EDIT would result in an increase in the revenue requirement (i.e., a benefit for Ohio Gas) for the first year.

(6) Ohio Gas has Normalized EDIT of $2,630,467.

(7) Amortization of the Normalized EDIT in accordance with federal income tax law requirements would result in a decrease in the revenue requirement (i.e., a benefit for consumers) approved in the *Rate Case* for approximately the first 11 years of the amortization period (2019 through 2029), but would result in an increase in the revenue requirement (i.e., a benefit for Ohio Gas) for the remaining 16 years (2030 through 2045). Over the entire 27-year amortization period, there would be a revenue increase of approximately $983,712, as set forth in Schedule D of the application.

(8) Any further changes to implement the effects of the TCJA in rates, beyond what was implemented through the joint

stipulation and recommendation in the *Rate Case*, would result in a revenue increase.

(9) The Signatory Parties recommend that the Commission approve a waiver of the requirement from the October 14, 2018 Finding and Order in the *Tax COI Case* that Ohio Gas file an application to address the remaining effects of the TCJA on the Company, as such an application would result in an increase in rates, contrary to the requirement in that Finding and Order and the joint stipulation and recommendation in the *Rate Case*.

(10) The Signatory Parties agree and recommend that customers shall be protected such that the Normalized EDIT resulting from the TCJA, including the subsequent amortization thereof, shall not be used as the basis to increase the revenue requirement calculation in this proceeding or any future proceeding under R.C. 4909.15, R.C. 4909.18, R.C. 4905.26, or any provision of Chapter 4929 of the Ohio Revised Code, or any successor to the foregoing statutory provisions. Exhibit 1 to the Stipulation provides examples of the Signatory Parties' understanding of the operation of this paragraph in any future rate case.

(11) For purposes of the next base rate case, Ohio Gas will maintain records of the actual annual amortization and accumulated amortization of the balance of the Normalized EDIT of $2,630,467.

(Ohio Gas Ex. 1 at Ex. B at 4-6.)

C. Consideration of the Stipulation

{¶ 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:

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

(b) Does the settlement, as a package, benefit ratepayers and the public interest?

(c) 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. Ohio Gas witness Bowser testified that the Stipulation is the result of a process of negotiation involving experienced counsel representing members of several stakeholder groups and that the parties that took part in the negotiations were capable and knowledgeable about the issues raised in this case. Mr. Bowser added that the settlement process was open to all intervening parties. (Ohio Gas Ex. 1 at 7.) Similarly, OCC witness Willis testified that the unopposed Stipulation is the product of a process where all parties were represented by experienced counsel that have participated in numerous regulatory proceedings before the Commission. Mr. Willis noted that there were extensive negotiations among the parties and, consequently, the Stipulation represents a compromise of all of the issues raised in this case. (OCC Ex. 1 at 5.)

{¶ 17} The Stipulation also meets the second criterion. Mr. Bowser testified that the Stipulation in this case completes the process of addressing the effects of the TCJA, as initiated in the *Rate Case*. Further, Mr. Bowser explained that, taken together, the tax effects would result in a net revenue increase, all else being equal over the life of the expected amortization periods. According to Mr. Bowser, Ohio Gas has agreed, however, to forego the revenue enhancements that may result from the TCJA and will maintain records of the actual amortization and accumulated amortization of the balance of the Normalized EDIT. Mr. Bowser concluded that the Stipulation continues the rate certainty and predictability that the customers of Ohio Gas have experienced for the past three decades, dating back to the Company's base rate increase in 1985. (Ohio Gas Ex. 1 at 7-8.)

For his part, Mr. Willis testified that the Stipulation provides benefits to the customers of Ohio Gas by ensuring that the Normalized EDIT resulting from the TCJA cannot be used as a basis to increase revenues collected from consumers, while also guaranteeing that customers will receive all applicable reductions to their bills (OCC Ex. 1 at 6). Additionally, Mr. Bowser and Mr. Willis agreed that the Stipulation meets the third criterion, as it does not violate any important regulatory principle or practice (Ohio Gas Ex. 1 at 8; OCC Ex. 1 at 7).

{¶ 18} 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 the Stipulation satisfies all three parts of the standard of review employed by the Commission (Ohio Gas Ex. 1 at 7-8; OCC Ex. 1 at 5-7). Accordingly, the Stipulation should be adopted in its entirety.

III. ORDER

{¶ 19} It is, therefore,

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

{¶ 21} ORDERED, That nothing in this Opinion and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

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

COMMISSIONERS:
Approving:
Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

SJP/sc