

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Northeast Ohio Natural Gas Corp. for an) Case No. 18-1720-GA-AIR
Increase in Gas Distribution Rates.)

In the Matter of the Application of)
Northeast Ohio Natural Gas Corp. for) Case No. 18-1721-GA-ATA
Tariff Approval.)

In the Matter of the Application of)
Northeast Ohio Natural Gas Corp. for) Case No. 18-1722-GA-ALT
Approval of Alternative Regulation.)

**OBJECTIONS TO
THE PUCO STAFF'S REPORT OF INVESTIGATION
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

Northeast Ohio Natural Gas Corporation (“NEO” or the “Utility”)¹ proposes to charge its customers an additional \$3.5 million per year for natural gas distribution service.² Residential customers would be particularly burdened by this proposed rate increase, as their monthly customer charge—the fixed charge that they pay before using a single molecule of natural gas—would increase to \$20 a month, which is more than double the current charge (and more than triple the current charge for some customers).³

¹ NEO is the surviving utility resulting from the merger of Northeast Ohio Natural Gas Corp., Brainard Gas Corp., Orwell Natural Gas Company, and Spelman Pipeline Holdings, LLC.

² See Case No. 18-1720-GA-AIR, A Report by the Staff of the Public Utilities Commission of Ohio, Schedule A-1 (June 25, 2019) (the “Staff Report”).

³ Staff Report at 25 (current fixed charge is \$6.30 for Northeast customers, \$7.00 for Brainard customers, and \$9.00 for Orwell customers).

The Office of the Ohio Consumers' Counsel ("OCC") is the statutory representative of NEO's 26,000 residential customers, who pay these charges.⁴

The Public Utilities Commission of Ohio's ("PUCO") Staff filed its Staff Report in this case on June 25, 2019. Many of the Staff Report's recommendations, were the PUCO to adopt them, would benefit customers by lowering rates. OCC supports the following findings, conclusions, and recommendations in the Staff Report, among others:

- The PUCO Staff properly recommended that the PUCO deny NEO's request to establish and charge customers under an infrastructure replacement program ("IRP") rider.⁵
- The PUCO Staff properly recommended various adjustments to plant in service related to intangible plant, transmission plant, distribution plant, and general plant, all of which reduced test year rate base by \$2.840 million.⁶
- The PUCO Staff properly adjusted depreciation reserve to reflect the impact of the aforementioned adjustments to reduce plant in service, and the impact of the PUCO Staff's recommended depreciation rates⁷
- The PUCO Staff properly calculated a theoretical depreciation reserve and determined that there is a reserve imbalance (over accrual) by \$6.993 million that should be amortized over a 10-year period.⁸
- The PUCO Staff properly recommended that depreciation accrual rates should be reviewed every three to five years and therefore recommended that NEO's accrual rates be reviewed for all gas plant accounts within five years after the PUCO issues an order in this case.⁹

⁴ See R.C. Chapter 4911.

⁵ Staff Report at 20-21. The Staff Report notes that if the PUCO does approve an IRP rider, the PUCO Staff would recommend various adjustments. OCC reserves the right to oppose Rider IRP on any grounds, including but not limited to those stated in the Staff Report.

⁶ Staff Report at 8-9.

⁷ Staff Report at 10.

⁸ Staff Report at 10.

⁹ Staff Report at 10.

- The PUCO Staff properly agreed with NEO's decision not to request an allowance for construction work in progress.¹⁰
- The PUCO Staff properly recommended adjusting cash working capital balance by one fourth of the adjusted operating taxes.¹¹
- The PUCO Staff, in concurrence with NEO, properly recommended an adjustment to remove customer deposits, accumulated deferred income taxes, and excess accumulated deferred income taxes from rate base. The PUCO Staff also properly removed the unamortized rate case costs and accrued removal costs resulting in a \$4.978 million reduction to rate base.¹²
- The PUCO Staff properly recommended adjustments to the fixed charge revenue to reflect actual and projected customer counts by rate schedule.¹³
- The PUCO Staff properly recommended that test year revenue be adjusted to reflect volumes for weather normalization.¹⁴
- The PUCO Staff properly recommended that test year operating revenue and expenses be adjusted to reflect the PUCO Staff's adjustment to test year gas sales.¹⁵
- The PUCO Staff properly recommended that with regard to rate case expense, the PUCO review the Utility's most recent updated information prior to issuing its final order.¹⁶
- The PUCO Staff properly adjusted property tax using the latest tax returns, valuation and invoices available at the time of the Staff Report. The PUCO Staff also properly used the most recent property tax rate and applied it to Staff's plant in service on schedule B-2.¹⁷
- The PUCO Staff properly (i) recommended that NEO's labor expense be adjusted to reflect annualizing direct labor expense

¹⁰ Staff Report at 10.

¹¹ Staff Report at 11.

¹² Staff Report at 11.

¹³ Staff Report at 12.

¹⁴ Staff Report at 12.

¹⁵ Staff Report at 12.

¹⁶ Staff Report at 13.

¹⁷ Staff Report at 14.

based on employee levels as of April 2019 and average hourly rates for the latest known 12-month period May 2018 through April 2019, and (ii) applied a three-year average to calculate percentage of O&M labor, overtime ratio, other pay and part-time employees.¹⁸

- The PUCO Staff properly recommended removing various expenses that occurred outside the test year.¹⁹
- The PUCO Staff appropriately recommended that NEO file an application not for an increase in rates in order to establish a credit mechanism to refund all tax savings associated with the Tax Cuts and Jobs Act of 2017.²⁰

At the same time, the Staff Report should have made additional recommendations for the benefit of NEO's customers. OCC asks the PUCO to adopt the following objections to the Staff Report when deciding how much NEO's customers should pay for natural gas distribution service.²¹

II. OBJECTIONS²²

A. Rate of Return

Objection 1: The Staff Report recommended an unreasonably high rate of return (which would increase charges to consumers) because it adopted an unreasonable capital structure of 35.53% debt, 64.47% equity.

The Staff Report's use of a 35.53% debt, 64.47% capital structure²³ is unreasonable because, among other things, it is inconsistent with the capital structure

¹⁸ Staff Report at 14.

¹⁹ Staff Report at 14.

²⁰ Staff Report at 20.

²¹ OCC reserves the right to amend and supplement its objections if the PUCO Staff reverses, modifies, or withdraws its position on any issue contained in the Staff Report.

²² See R.C. 4909.19; Ohio Adm. Code 4901-1-28(B).

²³ Staff Report at 16-17.

typically used in setting a reasonable rate of return. The PUCO should adopt a more reasonable capital structure of 45% long-term debt and 55% equity.

Objection 2: The Staff Report recommended an unreasonably high return on equity range of 9.50% to 10.50%, which would result in unjust and unreasonable rates for consumers.

The Staff Report's proposed 9.50% to 10.50% range for return on equity ("ROE")²⁴ is unreasonable for at least three reasons.

First, the Staff Report unreasonably concludes that traditional financial models (*e.g.*, CAPM and DCF) cannot be used in this case.

Second, the Staff Report unreasonably used the average of the last three years' actual earned returns on equity for the proxy group.²⁵

Third, the resulting 10% baseline ROE in the Staff Report is substantially higher than the average ROE authorized for gas utilities nationwide in both 2018 (9.59%) and 2019 (9.55%). The top of the Staff Report's range (10.5%) is much higher as well, and is also higher than ROEs approved in recent PUCO cases, which range from 9% to 9.999%.

The PUCO should adopt an ROE no higher than 9.50%.

Objection 3: The Staff Report unreasonably recommended a rate of return range of 7.80% to 8.45% to the detriment of NEO's customers.

The Staff Report's proposed range of rate of return is unreasonable because, as discussed above, (i) the range of 7.80% to 8.45%²⁶ is derived from an unreasonable capital structure, and (ii) the range of 7.80% to 8.45% is derived from an unreasonable return on equity range of 9.50% to 10.50%.

²⁴ Staff Report at 16-17.

²⁵ Staff Report at 16-17.

²⁶ Staff Report at 16-17.

This unreasonably high rate of return would result in unjust and unreasonable rates for NEO's customers. Instead, the PUCO should adopt a rate of return no higher than 7.35%.

Objection 4: The Staff Report should have recommended a lower rate of return for NEO's proposed infrastructure replacement program rider, if that rider is approved.

The PUCO Staff properly recommended that the PUCO deny NEO's request to implement and charge customers under an IRP rider.²⁷ The Staff Report notes, however, that if the PUCO does approve such a rider, the Staff would recommend adjustments, including, for example, "limiting the scope of the program, lengthening the audit review timeframe, limiting the term and requiring re-authorization of the program, implementing caps for each year of the program, adjusting the revenue requirement formula."²⁸ The Staff Report should have included an additional adjustment lowering NEO's proposed rate of return for the IRP to a maximum of 8.74%.²⁹

B. Rates and Tariffs

Objection 5: The Staff Report unreasonably recommends a rate decrease for the nonresidential large general service class while recommending a rate increase for residential and small commercial classes.

The Staff Report recommends a 15% increase in distribution charges to residential and small business customers in the small general service ("SGS") class, a 2% increase in distribution charges to nonresidential customers in the general service ("GS") class, but a 14% *decrease* in the distribution charges to large nonresidential customers in

²⁷ Staff Report at 21.

²⁸ Staff Report at 21, footnote 8.

²⁹ NEO proposes a 10.54% rate of return in its application and a 10.52% rate of return in the testimony of Charles E. Loy, both of which are unreasonably high.

the large general service (“LGS”) class.³⁰ As a result, SGS and GS customers would pay for the entirety of NEO’s rate increase, but on top of that, they would pay for the LGS customers’ rate decrease. This would result in unjust and unreasonable rates for non-LGS customers.

If the PUCO grants a rate increase for NEO in this case, then no class should receive a rate decrease.

Objection 6: The Staff Report unreasonably recommended an increase in the residential fixed monthly customer charge to \$20.00.

The Staff Report unreasonably recommends that the fixed monthly charge for residential NEO customers increase from \$6.30 to \$20.00, a 217% increase.³¹ The Staff Report unreasonably recommends that the fixed monthly charge for residential Brainard customers increase from \$7.00 to \$20.00, a 185% increase.³² The Staff Report unreasonably recommends that the fixed monthly charge for residential Orwell customers increase from \$9.00 to \$20.00, a 122% increase.³³

The Staff Report’s recommended fixed charge is especially unreasonable given the report’s recommended rate increase. NEO proposed a \$20 fixed charge based on a \$3.5 million annual rate increase.³⁴ The Staff Report recommends a much smaller increase in the range of \$500,000 to \$877,000.³⁵ Yet the Staff Report recommends the same \$20 fixed charge. Given the Staff Report’s much smaller recommended rate

³⁰ Staff Report at 24, Table 3.

³¹ Staff Report at 25.

³² Staff Report at 25.

³³ Staff Report at 25.

³⁴ Staff Report, Schedule A-1.

³⁵ Staff Report, Schedule A-1.

increase, it would be reasonable to expect a much small increase to the fixed customer charge.

To the extent the PUCO approves any rate increase in this case, the fixed charge for residential customers should increase to no more than \$12.50, and any other increases should be included in a volumetric (*i.e.*, per Ccf) distribution charge, rather than further increasing the fixed customer charge.

Objection 7: The Staff Report unreasonably recommends that GS customers using less than 200 mcf per year be reclassified as SGS customers.

The Staff Report recommends that current nonresidential GS customers using less than 200 mcf per year be reclassified as SGS customers.³⁶ The Staff Report provides no explanation of the reasoning for this reclassification.

If nonresidential GS customers are reclassified as SGS customers, the billing determinants for all SGS customers—including residential customers—would change. This reclassification could result in costs shifting from current nonresidential GS customers to residential SGS customers, thus increasing residential customers' rates. The PUCO should not adopt this recommendation.

Objection 8: The Staff Report unreasonably fails to explain why the proposed revenue increases including gas costs are greater than the proposed revenue increases excluding gas costs.

The Staff Report proposes a \$1,393,620 revenue increase excluding gas costs, but a \$2,309,795 revenue increase when including gas costs, miscellaneous revenue, and contract customers.³⁷ The Staff Report does not explain why the increase is substantially

³⁶ Staff Report at 25.

³⁷ Staff Report at 24, Table 3, Table 4.

higher when including gas costs, miscellaneous revenue, and contract customers. Typically, in a base rate case, the increase with and without gas costs should be the same because gas costs do not increase as a result of an increase to base rates. The PUCO should not adopt the Staff Report's proposed revenue increases without further transparency regarding the justification for such increases.

Objection 9: The Staff Report should have recommended that NEO comply with Ohio Adm. Code 4901:1-18-08(A), which requires both a 14-day and a separate 10-day notice of disconnection for residential tenants.

The Staff Report recommends that unless otherwise noted, all of NEO's proposed changes to its tariff sheets be approved.³⁸ NEO tariff, Sheet 15, paragraph 10, states that NEO shall provide a 14-day notice of disconnection to residential tenants. Ohio Adm. Code 4901:1-18-08(A), however, requires both an initial 14-day notice, followed by a 10-day notice. The Staff Report should have recommended that this tariff be amended to provide both the 14-day and 10-day notice required by Ohio Adm. Code 4901:1-18-08(A).

Objection 10: The Staff Report should have recommended that customers not be charged for NEO's attorneys' fees related to gaining access to customer premises.

The Staff Report recommends that unless otherwise noted, all of NEO's proposed changes to its tariff sheets be approved.³⁹ NEO tariff, Sheet 25, paragraph 31 states, "If a customer, landlord, property manager or owner fails to grant access for reasons described above, and judicial and legal redress is necessary to secure such access, the Company may collect from the customer, landlord, property manager or owner any and all costs

³⁸ Staff Report at 18.

³⁹ Staff Report at 18.

incurred to secure such access, including without limitation, attorney's fees associated with maintaining access and all damages the Company incurs as a result of this refusal to provide access."

This language is unreasonable and could lead to unjust and unreasonable charges to consumers. The costs of obtaining access to customer premises are a cost of doing business and should be included in base rates.

Further, the tariff language is overbroad. For example, and without limitation, under the language as written, if a landlord denies access to property, the tenant customer could be charged attorneys' fees by their utility.

The tariff language also does not provide any process for customers. Under the language as written, it appears that NEO could incur attorneys' fees and then simply include them as a surcharge on a customer's bill. If NEO is to receive an award of attorneys' fees, that award should come from a court with jurisdiction over such an award. NEO should not have automatic authority to charge customers' for its attorneys' fees in the absence of such an award.

C. Revenue Requirement

Objection 11: The Staff Report unreasonably recommended a revenue increase of \$500,052 to \$877,542.⁴⁰

Based on OCC's objections and recommendations, NEO's revenue requirement should increase by no more than \$238,716.

⁴⁰ Staff Report, Schedule A-1.

III. CONCLUSION

To protect consumers from paying unjust and unreasonable rates, OCC respectfully requests that the PUCO adopt OCC's recommendations as set forth in these objections and in OCC's supporting testimony.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Objections* was served by electronic transmission upon the parties below this 25th day of July 2019.

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Summary: Objection Objections to the PUCO Staff's Report of Investigation by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.