THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF NORTHEAST OHIO NATURAL GAS CORPORATION FOR APPROVAL OF AN ALTERNATIVE FORM OF REGULATION.	CASE NO. 20-1427-GA-ALT

OPINION AND ORDER

Entered in the Journal on September 8, 2021

I. SUMMARY

{¶ 1} The Commission approves the alternative rate plan application of Northeast Ohio Natural Gas Corporation, pursuant to the Stipulation and Recommendation, as modified by and consistent with this Opinion and Order.

II. PROCEDURAL BACKGROUND

A. Applicable Law

{¶ 2} Northeast Ohio Natural Gas Corporation (NEO or Company) is a natural gas company, a pipeline company, and a public utility, as defined by R.C. 4905.03(E), R.C. 4905.03(F), and R.C. 4905.02, respectively. As such, NEO is subject to the jurisdiction of this Commission.

{¶ 3} Pursuant to R.C. 4929.05, a natural gas company may seek approval of an alternative rate plan by filing an application under R.C. 4909.18, regardless of whether the application is for an increase in rates. After an investigation, the Commission shall approve the plan if the natural gas company demonstrates, and the Commission finds, that the company is in compliance with R.C. 4905.35, is in substantial compliance with the policy of the state, as set forth in R.C. 4929.02, and is expected to continue to be in substantial compliance with that state policy after implementation of the alternative rate plan. The Commission must also find that the alternative rate plan is just and reasonable.

{¶ 4} R.C. 4905.35 prohibits discrimination on the part of a public utility. Additionally, R.C. 4929.02 sets forth the policy of the state as to natural gas services and goods. Pursuant to R.C. 4929.05(B), the burden of proof is with the public utility to demonstrate compliance with the applicable statutes.

B. Procedural History

{¶ 5} On October 18, 2019, NEO and Orwell-Trumbull Pipeline Co., LLC (OTP), by and through the receiver over the personal and real property of OTP, Zachary B. Burkons of Rent Due, LLC, filed a joint application in Case No. 19-1921-PL-ATR seeking Commission approval of a proposed transfer of certain pipeline assets, real property, books and records, and other non-cash items of OTP to NEO (Purchased Assets) pursuant to an asset purchase agreement dated October 15, 2019. Based on NEO's stated intent to pursue recovery on and of the Purchased Assets in a future proceeding, the Commission approved NEO's acquisition of the Purchased Assets from OTP, as well as NEO's request for accounting authority to record the value of the Purchased Assets as $13,310,881, with an associated accumulated depreciation reserve of $4,100,921 as of September 1, 2019, subject to Staff conducting a used and useful test as a part of the Company's next base rate case. *In re Northeast Ohio Natural Gas Corp. and Orwell-Trumbull Pipeline Co.*, Case No. 19-1921-PL-ATR (*Transfer Case*), Finding and Order (Dec. 4, 2019).

{¶ 6} On August 26, 2020, in the above-captioned case, NEO filed a notice of intent to file an application for an increase in rates and a notice for approval of an alternative rate plan, pursuant to R.C. 4929.05, to recover costs associated with the acquisition of OTP. On that same date, NEO also filed a motion for waiver of certain standard filing requirements and a request to establish a test year of the 12 months ending March 31, 2021, and a date certain of June 30, 2020, in compliance with R.C. 4909.15(C)(1) and (2).

{¶ 7} On September 23, 2020, Ohio Consumers' Counsel (OCC) filed a motion to intervene. OCC's motion was granted by Entry issued December 2, 2020.

{¶ 8} On September 29, 2020, NEO filed its alternative rate plan application, pursuant to R.C. 4909.18 and R.C. 4929.05, seeking recovery on and of the Purchased Assets until NEO's next rate case, at which point NEO states the Purchased Assets will be included in the Company's rate base. In the application, NEO proposes to establish rates under a new rider, the Infrastructure Acquisition Adjustment Rider, to collect the revenue needed to support the Purchased Assets until the Company's next rate case is filed. In support of its application, NEO also filed the testimony of Ken Oostman and Jed D. Henthorne.

{¶ 9} On November 19, 2020, Staff filed a letter indicating that NEO's application was in substantial compliance with Ohio Adm.Code 4901:1-19-06 and provided sufficient information to permit Staff to continue its investigation. Staff also noted that, if NEO's request for waiver was not granted, NEO would need to provide certain non-OTP information, as required pursuant to R.C. 4909.18(A) through (D) and the standard filing requirements in Ohio Adm.Code 4901-7-01, to be in technical compliance with the rules.

{¶ 10} By Entry issued on December 2, 2020, NEO's application was determined to be in technical compliance with Ohio Adm.Code 4901:1-19-06(C) and the Company's motion for waiver of certain standard filing requirements as to non-OTP information was granted. Further, the December 2, 2020 Entry deemed the application to have been filed as of September 29, 2020. In addition, the Commission approved the Company's test year of the 12 months ending March 31, 2021, and the date certain of June 30, 2020.

{¶ 11} On March 30, 2021, Staff filed its report of investigation (Staff Report), pursuant to Ohio Adm.Code 4901:1-19-07(C).

{¶ 12} By Entry issued April 8, 2021, the procedural schedule was established in this case such that the deadline to file motions to intervene and to file objections to the application or Staff Report was April 29, 2021. Further, the Entry indicated that an evidentiary hearing, if necessary, would be scheduled by subsequent entry.

{¶ 13} On April 29, 2021, NEO and OCC, respectively, filed objections to the Staff Report.

{¶ 14} On July 13, 2021, NEO filed a Stipulation and Recommendation (Stipulation), executed by NEO and Staff (Signatory Parties), to resolve all of the issues raised in the case. Further, the Signatory Parties represent that, although OCC, the only other party to the case, is not a signatory to the Stipulation, OCC agrees not to oppose the Stipulation.

{¶ 15} By Entry issued July 14, 2021, the procedural schedule was supplemented such that written testimony in support of or in opposition to the Stipulation was due by July 27, 2021, and an evidentiary hearing was scheduled to commence on August 10, 2021, at the offices of the Commission.

{¶ 16} On July 27, 2021, NEO filed the testimony of Ken Oostman in support of the Stipulation.

{¶ 17} The hearing was held, as scheduled, on August 10, 2021. Admitted into evidence at the hearing were the Stipulation (Joint Ex. 1), the testimony of Mr. Oostman in support of the Stipulation (NEO Ex. 1), and the Staff Report (Staff Ex. 1).

C. Summary of NEO's Application

{¶ 18} After receiving approval in the *Transfer Case*, NEO integrated the Purchased Assets into its distribution system operations and receives the revenue collected from applying OTP's previously existing rates.

{¶ 19} As previously noted, on September 29, 2020, NEO filed an application for approval of an alternative rate plan that is for an increase in rates, in accordance with R.C. 4929.05, to recover costs associated with the acquisition of the Purchased Assets. In its next rate case, NEO will include the Purchased Assets as part of the Company's rate base. However, NEO declares that its current revenues are not sufficient for NEO to recover the operating expenses related to the Purchased Assets and a return of and on the Purchased Assets in rate base. NEO proposes to establish a new rider, the Infrastructure Acquisition Adjustment Rider (OTP Rider), not subject to reconciliation, to collect the revenue needed to support the Purchased Assets until NEO files its next base distribution rate case.

Specifically, NEO requests recovery of and on the recorded value of the Purchased Assets, including operation and maintenance expenses. NEO avers that recovery on the Purchased Assets using the alternative rate plan process, as opposed to a new distribution rate case, benefits customers since NEO recently completed a fully litigated distribution rate case in 2019. *In re Northeast Ohio Natural Gas Corp*., Case No. 18-1720-GA-AIR, et al., Opinion and Order (Sept. 26, 2019). Further, the Company offers that recovery on the Purchased Assets is just and reasonable because it continues to assure the delivery of safe and reliable service, without interruption, to more than 10,000 customers connected to the distribution system via the Purchased Assets. NEO proposes the following customer charge and volumetric rates, based on a revenue requirement of $1,558,041, to continue until the Company's next rate case proceeding:

Rate Schedule	Customer Charge per Month	Volumetric Charge per Mcf[1]
Small General Service	$1.88	$0.1696
General Service – GS-1	$4.70	$0.1751
General Service - GS-2 and General Transportation Service	$9.39	$0.1751
Large General Service and Large General Transportation Service	$28.18	$0.0719

{¶ 20} Further, NEO states that it is in compliance with R.C. 4905.35, is in substantial compliance with the state's policies set forth in R.C. 4929.02, and will continue to remain in substantial compliance with the policy after this application is approved. NEO states that its public utility services are available on a comparable and nondiscriminatory basis and the Company does not offer any bundled regulated and unregulated services. NEO declares that it does not condition or limit service based on the identity of the supplier or the

[1] Mcf is equivalent to one thousand cubic feet.

purchase of unregulated services or goods. NEO further states that it offers regulated services or goods to all similarly situated customers, including any person with which it is affiliated or which it controls, under comparable terms and conditions.

{¶ 21} Regarding state policy on natural gas services and goods, NEO states that it is committed to fulfilling the policy goals of R.C. 4929.02. NEO states that it intends to continue to provide adequate, reliable, and reasonably priced natural gas services and goods. For transportation customers, NEO states that it intends to continue providing those customers with an effective choice of supplier. NEO asserts that it provides customers with essential information in their bills and on the Company's website. NEO represents that the Company ensures that no subsidies flow to or from its regulated services and that non-jurisdictional activities do not harm its ability to comply with state policy. NEO states that its proposed alternative rate plan is just and reasonable.

D. Summary of the Staff Report

{¶ 22} Staff investigated NEO's application, exhibits, schedules, and testimony supporting the creation of the OTP Rider. As part of the alternative rate plan application, NEO proposes to remove the gas supply costs from its gas cost recovery (GCR) rates and incorporate the supply costs into the proposed OTP Rider. In the Company's next GCR filing, Staff will confirm that the Company has removed the gas supply costs from the GCR rates and incorporated the supply costs into the proposed OTP Rider rates exclusively. (Staff Ex. 1 at 6.)

{¶ 23} Staff notes that, as part of its recommendation in the *Transfer Case*, Staff advised the Commission that Staff would evaluate whether the Purchased Assets are used and useful before any recovery on and of the Purchased Assets is included in NEO's future base rates. As a part of this proceeding, Staff conducted an audit of the Purchased Assets via virtual and onsite evaluations. Staff physically verified that the Purchased Assets are used and useful, except for $191,089 of assets which Staff determined were no longer used or useful or were abandoned or unable to be located. In association with the reduction in plant-in-service, Staff adjusted the depreciation reserve by $59,192. Considering that the pending case includes only the acquired assets, Staff reasons that a full theoretical reserve analysis is not necessary or proper, at this time, but a full depreciation study will be required in the Company's next base rate case and the accumulated depreciation reserve evaluated in the aggregate. (Staff Ex. 1 at 6-7.)

{¶ 24} Based on Staff's review, Staff found additional adjustments to NEO's test year expenses were required. First, during the investigation, NEO advised Staff that the communications and cell phone expense was overstated and advised that such expenses were closer to $1,800. Based on its review, Staff determined that NEO's adjusted communications expense forecast was reasonable and, therefore, reduced incremental communications and cell phone expenses by ($4,200) to a total of $1,800 annually. Next, Staff notes that the Company proposed an adjustment to normalize expenses to include $6,000 for professional certifications and continuing education courses for three new employees. As a result of the pandemic, the professional certification courses have been delayed and will occur after the end of the test year. Given that the certification course did not occur during the test year, Staff recommends an adjustment to remove the expense for professional certifications and continuing education. (Staff Ex. 1 at 7.)

{¶ 25} In its application, NEO proposes distribution maintenance expenses of $60,000. Staff determined, and understands, that the Company incurred a total of $6,111 in distribution maintenance expenses during the test year as a result of the pandemic. NEO explains that the pandemic and the requirement that maintenance employees be certified by the National Association of Corrosion Engineers impacted the actual test year distribution maintenance expenses to the extent that they are not indicative of a normal year. While Staff understands the situation, Staff concluded, nonetheless, that, because of the lack of actual expenses, Staff could not determine the reasonableness of the Company's projected distribution maintenance expense. Therefore, Staff recommends a reduction in distribution maintenance expense of $53,889 to reflect only the actual expenses incurred for the test year. (Staff Ex. 1 at 7.)

{¶ 26} In the Staff Report, Staff also notes that the Commission prescribed the Company's depreciation accrual rates in its last base rate case, Case No. 18-1720-GA-AIR. Staff states that NEO's accrual rate for Power Operated Equipment, Account 396, was incorrect in the application and Staff recommends that the rate be corrected to reflect the authorized rate of 6.15 percent. Further, Staff advises that the Company continue to use the authorized accrual rates, for book depreciation purposes, effective concurrently with the customer rates adopted in this proceeding. (Staff Ex. 1 at 7.)

{¶ 27} As part of the application, NEO adjusted property tax expense for the Purchased Assets to normalize and increase the test year property tax expense by $3,411. However, Staff was unable to verify the documentation for the property tax expense on the Purchased Assets. Therefore, Staff recommends an adjustment to remove the requested property tax expense increase. (Staff Ex. 1 at 8.)

{¶ 28} To reflect Staff's adjustments to test year operating income, including the flow-through effects on deductible interest expense associated with Staff's adjustments to rate base, Staff recommends an adjusted test year federal income tax expense of $34,804 (Staff Ex. 1 at 8).

{¶ 29} Staff accepts, as presented in NEO's application, the follow expenses:

a. Actual test year revenues for the three months ended June 30, 2020, normalized for weather, and eliminating telemetering fees and expenses (Staff Ex. 1 at 7).

b. The adjustments for annualized payroll, benefits, and payroll taxes for the test year (Staff Ex. 1 at 7).

c. An annualized expense of $100,000 for professional services, primarily legal fees, to defend and resolve disputes over rights of way related to the Purchased Assets (Staff Ex. 1 at 8).

d. The adjustment of $146 to eliminate expenses attributable to the gross receipts tax (Staff Ex. 1 at 8).

{¶ 30} Further, Staff recommends that the OTP Rider be trued up on an annual basis, primarily to account for a lack of spending during the test year and adjustments recommended thereto for professional services, professional certifications, and distribution maintenance expenses. Staff reasons that professional services expenses will not be incurred in perpetuity at the annualized amount of $100,000, which NEO estimates will continue for the next five to six years or until the Company's next base rate case. Further, Staff argues that an annual true up of the OTP Rider will allow the Company to recover actual expenses incurred and help to mitigate large variances in over- or under-recovery of the Company's cost of providing utility service. (Staff Ex. 1 at 8.)

{¶ 31} With the adoption of Staff's recommendations, Staff finds that NEO's alternative rate plan meets the requirements of R.C. 4929.05, and, therefore, Staff recommends that the Commission approve NEO's application. Based on Staff's adjustments and recommendations, NEO's proposed customer charge and volumetric rates would be as follows:

Rate Schedule	Customer Charge per Month	Volumetric Charge per Mcf
Small General Service	$1.77	$0.1601
General Service – GS-1	$4.43	$0.1652
General Service - GS-2 and General Transportation Service	$8.87	$0.1652
Large General Service and Large General Transportation Service	$26.60	$0.0678

(Staff Report at 8-9.)

E. Summary of Objections to the Staff Report and the Application

{¶ 32} In its objections, NEO argues that the Staff Report fails to reasonably identify how Staff's proposed true-up mechanism would work, to identify which expenses would be included in the true-up mechanism, and to specify the manner by which those expenses would be converted into rates. Further, NEO recommends that the OTP Rider go into effect on the first day of the month following Commission approval of the adjusted rider rates. NEO proposes to file, by March 31 of each year, a letter in this docket, which would include its updated annual expense calculation and the resulting proposed rider rates. As proposed by the Company, unless Staff requests an extension of time, the rates proposed by NEO would go into effect 60 days after NEO files its letter to adjust the OTP Rider rates.

{¶ 33} In its objections, OCC recognizes, as presented in the Staff Report, that Staff confirmed the used and usefulness of the Purchased Assets and determined that other assets were not used and useful and, therefore, should be removed from NEO's proposed rate base, including the related adjustments recommended by Staff. OCC acknowledges and endorses the adjustments recommended by Staff, resulting in a reduced revenue requirement of $1,471,211, with a proposed monthly fixed charge of $1.77 plus a volumetric charge of $0.1601 per Mcf for residential customers. Nonetheless, OCC registers three objections to NEO's application and the Staff Report. Generally, OCC opposes the use of the single-issue, alternative rate plan process to create a new rider. Accordingly, in its first objection, OCC argues that Staff should have recommended that NEO not be permitted to earn a return on the Purchased Assets until such assets are added to NEO's rate base in its next rate case consistent with traditional ratemaking.

{¶ 34} In its second objection, OCC notes that the Staff Report recommends approval of NEO's OTP Rider without any limitation on how long the new charge will be in effect, which OCC reasons may contribute to a protracted period until NEO files its next rate case. OCC proposes that, if NEO's application is approved, the Commission impose a termination date that is no more than five years after the effective date of the rider. OCC reasons that a firm termination date for the rider will help to prevent an excessive delay until NEO's next base rate case and help to protect consumers.

{¶ 35} In its third objection, OCC avers that, if new charges are approved in this proceeding, NEO should not be permitted to impose such charges on customers until a reasonable time after the pandemic ends, without carrying costs.

F. Summary of the Stipulation

{¶ 36} The Signatory Parties state that the Stipulation is supported by adequate data and information and is the result of the Signatory Parties' desire to arrive at a reasoned and reasonable result that fairly incorporates the law, facts, and circumstances raised by this proceeding. In order to resolve all of the issues raised in this matter, the Signatory Parties stipulate, agree, and recommend that the Commission issue an Opinion and Order accepting and adopting the Stipulation without material modification. The Stipulation may be summarized as follows:[2]

(a) The Signatory Parties agree that the Commission should adopt the findings and recommendations of the Staff Report, except as otherwise agreed in the Stipulation (Joint Ex. 1 at 3).

(b) The Signatory Parties agree to adopt Staff's proposal that the OTP Rider be trued up on an annual basis (Joint Ex. 1 at 3).

(c) The Signatory Parties agree and recommend that the following additional clarifications regarding the true-up process be adopted by the Commission:

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[2] This is a summary of the terms agreed to by the Signatory Parties and presented to the Commission for approval; this summary is not intended to replace or supersede the Stipulation.

(1) In order to reflect the lingering effects of the pandemic, the OTP Rider will not go into effect before September 1, 2021 (Joint Ex. 1 at 3).

(2) The OTP Rider will be trued up annually. NEO will track revenues and expenses on a calendar year basis (True-Up Period). NEO will then propose a true up to Staff by April 30th of the following year which adjusts volumetric rates as appropriate to reflect any under- or over-recovery in the True-Up Period. (Joint Ex. 1 at 3.)

(3) NEO's proposed true up will be based on the True-Up Period reflecting actual revenues from the OTP Rider and actual OTP expenses as formatted in schedule C-2 and C-2.1. OTP expenses include income tax expense, calculated at statutory rates, and incorporating the effect of synchronized interest. This is compared to the revenue and expenses, including any necessary adjustments for taxes, approved and allowed in the OTP Rider approval order for the True-Up Period. Any over/under-collections will be amortized over a 12-month period without carrying charges. (Joint Ex. 1 at 3-4.)

(4) The true-up filing will be submitted to the Commission via a letter submission in this docket. That letter will include the updated annual expense calculation and actual revenue collections provided in schedule C-2 and C-2.1 format, as well as the proposed rates which will be designed to recover or credit, as applicable, any under-

or over-recovery over the following 12 months. Unless Staff requests an extension of time, the revised rates proposed by NEO in that filing will go into effect 90 days after NEO's letter has been filed in this docket. In light of the expedited review time, NEO agrees to respond to Staff data requests, as well as any party's discovery requests, within ten days of receipt of such data request or discovery. (Joint Ex. 1 at 4.)

(d) The Signatory Parties agree that the OTP Rider shall remain in effect until the earlier of: (1) a Commission order requiring the OTP Rider to be modified or removed; (2) NEO's next base distribution rate case has been approved by the Commission and the Commission orders termination of the OTP Rider; or (3) June 30, 2026, if NEO has not filed an application for an increase in base distribution rates on or before that date. If NEO has filed an application for an increase in base distribution rates on or before June 30, 2026, then the OTP Rider shall remain in effect until the earlier of (1) or (2) of this provision occurs. (Joint Ex. 1 at 4-5.)

G. Consideration of the Stipulation

{¶ 37} 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.

{¶ 38} The standard of review for considering the reasonableness of a stipulation has been discussed in several 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 the Commission's 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?

{¶ 39} 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.

1. IS THE SETTLEMENT A PRODUCT OF SERIOUS BARGAINING AMONG CAPABLE, KNOWLEDGEABLE PARTIES?

{¶ 40} NEO offered the testimony of Ken Oostman, President of NEO, in support of the Stipulation. Mr. Oostman declared that, after a thorough investigation by Staff and upon the filing of the Staff Report, NEO, Staff, and OCC engaged in settlement negotiations to address Staff's recommendations. The Stipulation, according to Mr. Oostman, is the product of an open process in which all parties were represented by counsel and technical experts and have a history of participation and experience in Commission cases. According to NEO witness Oostman, the Stipulation was filed in an effort to meet Staff's conditions to the satisfaction of all interested parties. Further, NEO witness Oostman stated that the Signatory Parties are very knowledgeable regarding the relevant issues in this case and used that knowledge to reach an agreement which represents a comprehensive compromise of the issues raised by parties with diverse interests. Accordingly, NEO witness Oostman reasons that the Stipulation meets part one of the Commission's three-part test used to approve a stipulation. (NEO Ex. 1 at 4-5.)

2. DOES THE SETTLEMENT, AS A PACKAGE, BENEFIT RATEPAYERS AND THE PUBLIC INTEREST?

{¶ 41} NEO witness Oostman confirmed that the Stipulation meets the second part of the three-part test used by the Commission to evaluate stipulations. Mr. Oostman reiterates that the agreement is unopposed and emphasizes that the Stipulation includes, among other things: (a) a delay in the effective date of the OTP Rider, in consideration of the pandemic's financial impact on customers; (b) a predetermined end date for the OTP Rider; (c) an annual true-up process, as recommended by Staff, to ensure proper Commission oversight; and (d) NEO's commitment to file a base distribution rate case by no later than June 30, 2026. In addition to the lack of opposition to the Stipulation by any party to the proceeding, Mr. Oostman notes that not a single member of the public contested NEO's application. Mr. Oostman also emphasizes that the Stipulation is even more advantageous to customers than NEO's proposal in its application and, as such, benefits NEO's customers. For these reasons, Mr. Oostman declares that the Stipulation should be given substantial consideration by the Commission and approved without modification. (NEO Ex. 1 at 6.)

3. DOES THE SETTLEMENT PACKAGE VIOLATE ANY IMPORTANT REGULATORY PRINCIPLE OR PRACTICE?

{¶ 42} NEO witness Oostman notes that the Stipulation is not opposed by any party and reasons that the lack of opposition is because no provision of the Stipulation violates any important regulatory practice or principle. Indeed, Mr. Oostman submits that the Stipulation furthers several important Commission principles, including implementing an appropriate cost recovery mechanism for assets currently being used to serve NEO customers and an appropriate rate design, incorporating a process for the fair and reasonable review of the OTP Rider, and providing a reasonable return on equity for Ohio utilities. (NEO Ex. 1 at 5.)

III. COMMISSION'S DISCUSSION AND CONCLUSIONS

{¶ 43} Based on a review of the record in this matter, the Commission finds that the Stipulation meets the requirements of the three-part test. As discussed above, the Stipulation is the product of serious bargaining among capable, knowledgeable parties. All parties participated in negotiations and were represented by experienced counsel familiar with the issues in this matter. The record also supports a finding that the Stipulation, as a package, benefits ratepayers and the public interest. In consideration of the financial impact of the pandemic on some customers, the OTP Rider will not become effective before September 1, 2021. Further, the Stipulation facilitates NEO's continuation of service, without interruption, to more than 10,000 customers connected to the distribution system via the Purchased Assets, without extensive litigation. We note that, as Mr. Oostman testified, the Stipulation furthers certain regulatory principles and does not violate any important regulatory principle or practice. Finally, the Commission notes that the Stipulation is unopposed. (Joint Ex. 1 at 1, 3; NEO Ex. 1 at 4-6.)

{¶ 44} However, the Commission finds one minor aspect of the Stipulation should be modified. In the Stipulation, the Signatory Parties agreed that NEO will submit its true-up filing in this docket (Joint Ex. 1 at 4). The Commission finds it unnecessary to keep this docket open over the years to facilitate the filing of NEO's annual application to true up the OTP Rider. Accordingly, we direct NEO to file its annual true-up application in a new docket, each year, and specifically reference this case in its filings. In all remaining respects, the annual true-up process of the OTP Rider shall be as the Signatory Parties agreed in the Stipulation. Accordingly, with that revision, the Commission finds that the Stipulation is reasonable and should be adopted. (Joint Ex. 1 at 1, 3, 4; NEO Ex. 1 at 4-6.)

{¶ 45} NEO's application, as modified pursuant to Staff's recommendations and consistent with the Stipulation, complies with the requirements for approval of an alternative rate plan in accordance with R.C. 4929.05. The OTP Rider rates, as adjusted by Staff, are based on the revenue requirement approved by the Commission for the Purchased Assets in the *Transfer Case*. *Transfer Case*, Finding and Order (Dec. 4, 2019).

{¶ 46} NEO's application sets forth NEO's policies and procedures regarding its regulated and unregulated services and goods, which are offered to all similarly situated consumers under comparable terms and conditions, including NEO affiliates or entities which NEO controls. NEO has set forth sufficient evidence of non-discriminatory practices pursuant to its present operations and in regard to the proposed alternative rate plan. Accordingly, the Commission finds that NEO's application is in compliance with R.C. 4905.35, is substantially in compliance with R.C. 4929.02, and is expected to remain in substantial compliance with R.C. 4929.02 with the implementation of the alternative rate plan.

{¶ 47} The Commission notes that the continued availability of the OTP facilities ensures the continuation of service to more than 10,000 consumers, without interruption, and maintains consumers' option to pursue other available suppliers. Accordingly, the Commission finds that the institution of the proposed OTP Rider promotes the state policies, as set forth in R.C. 4929.02(A)(1), (2), (3), and (11), to promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods; to promote the availability of unbundled and comparable natural gas services and goods; to promote diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers; and to facilitate additional choices for the supply of natural gas for residential consumers.

{¶ 48} Based on the information provided in the application, as modified consistent with Staff's recommendations and pursuant to the Stipulation, as modified in this Opinion and Order, the Commission finds NEO's alternative rate plan to be just and reasonable in accordance with R.C. 4929.05(A)(3). Therefore, NEO's alternative rate plan application, as modified by the Stipulation and this Opinion and Order, should be approved.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 49} NEO is a natural gas company, as defined by R.C. 4905.03, and a public utility, as defined by R.C. 4905.02.

{¶ 50} On September 29, 2020, NEO filed its alternative rate plan application, pursuant to R.C. 4909.18 and R.C. 4929.05, seeking recovery on and of the Purchased Assets until NEO's next rate case.

{¶ 51} By Entry issued on April 8, 2021, as supplemented by Entry issued on July 14, 2021, the attorney examiner established a procedural schedule for the consideration of NEO's application.

{¶ 52} OCC filed a motion to intervene and was granted intervention in this case by Entry issued on December 2, 2020.

{¶ 53} The Staff Report was filed on March 30, 2021. NEO and OCC, respectively, filed objections to the Staff Report on April 29, 2021.

{¶ 54} On July 13, 2021, NEO and Staff filed the Stipulation, which is not opposed by OCC.

{¶ 55} A hearing in this matter was held on August 10, 2021.

{¶ 56} The Stipulation 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.

{¶ 57} The Commission finds that NEO's alternative rate plan application, as modified consistent with the Stipulation and this Opinion and Order, meets the requirements of R.C. 4929.05 and should be approved.

V. ORDER

{¶ 58} It is, therefore,

{¶ 59} ORDERED, That the Stipulation filed by NEO and Staff be adopted and approved, as modified in this Opinion and Order. It is, further,

{¶ 60} ORDERED, That NEO's application to institute an alternative rate plan, as modified in the Stipulation and this Opinion and Order, be approved. It is, further,

{¶ 61} ORDERED, That NEO be authorized to file tariffs, in final form, consistent with this Opinion and Order. NEO shall file one copy in this case docket and one copy in its TRF docket. It is, further,

{¶ 62} ORDERED, That the effective date of the new tariff shall be a date not earlier than the date upon which the final tariff page is filed with the Commission. It is, further,

{¶ 63} ORDERED, That NEO shall notify all affected customers via a bill message or bill insert within 30 days of the effective date of the tariffs. A copy of the customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least ten days prior to its distribution to customers. It is, further,

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

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

COMMISSIONERS:
Approving:
Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Dennis P. Deters

GNS/hac