

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of :
Oxford Natural Gas Company for :
Assignment of a GCR Case Number, : Case No. 06-521-GA-GCR
Submission to Jurisdiction of the :
Commission Over GCR Matters, and :
Submission of a First GCR Filing to :
the Commission. :

REPLY MEMORANDUM
OF
THE CITY OF OXFORD
TO
MEMORANDUM CONTRA OF OXFORD NATURAL GAS COMPANY

I. INTRODUCTION

On October 11, 2006, the city of Oxford, Ohio ("Oxford"), an intervenor in this proceeding, renewed its April 7, 2006 motion seeking an order from this Commission scheduling immediate financial and management/performance audits of Oxford Natural Gas Company ("ONG") pursuant to Rule 4901:1-14-07, Ohio Administrative Code ("OAC"). In the memorandum accompanying its renewed motion, Oxford noted that the concerns which prompted its original motion were still present, but argued that there were new considerations in play that provide additional support for scheduling the requested audits forthwith. ONG filed a memorandum contra Oxford's renewed motion on October 27, 2006. Oxford hereby files its reply pursuant to Rule 4901-1-12(B)(2), OAC. Although a review of ONG's memorandum contra suggests that the parties may not be as far apart as they once were with respect to certain issues, immediate Commission action is still required.

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II. ARGUMENT

A. THE STATUS OF ONG'S PENDING COMPLAINT AND APPEAL FROM OXFORD ORDINANCE NO. 2896 SHOULD BE CONSIDERED BY THE COMMISSION IN DETERMINING WHETHER TO GRANT OXFORD'S RENEWED MOTION FOR AN IMMEDIATE FINANCIAL AND MANAGEMENT/PERFORMANCE AUDIT OF ONG.

As Oxford explained in the memorandum accompanying its renewed motion, the base rates now being charged and collected by ONG are higher than the base rates set out in the Oxford rate ordinance challenged by ONG through its complaint and appeal in Case No. 06-350-GA-CMR. Thus, unlike the typical rate case, where delays in processing the case work to the benefit of the applicant utility's ratepayers by forestalling the rate increase ultimately authorized, the delay in processing ONG's complaint and appeal prejudices ONG's ratepayers by putting off the rate reduction to which they will be entitled if Ordinance No. 2896 is ultimately affirmed by the Commission. Although conceding that the delay in processing the complaint and appeal is attributable to its failure to submit the required information on a timely basis, ONG contends that this is an issue for Case No. 06-350-GA-CMR, not this proceeding, and that, because Oxford did not object to ONG's requests for additional time to submit the required information, Oxford is now estopped from raising the issue here (ONG Memorandum Contra, 4). Further, according to ONG, because the Commission has now accepted the complaint and appeal for filing, any issue regarding delay is now moot (*Id.*). This argument totally mistakes Oxford's point.

As a result of its own unsuccessful attempts to secure reliable current information from ONG for use in developing the new rates to be included in Ordinance No. 2896, Oxford was well aware that ONG's existing records were not adequate for ratemaking purposes. Thus, it came as no surprise that ONG required additional time to prepare the information necessary to permit the Commission staff to conduct its investigation in the complaint and appeal. What was somewhat

surprising was that the Commission, after admonishing ONG that failure to meet the June 30, 2006 deadline established in its May 31, 2006 entry in Case No. 06-350-GA-CMR could result in dismissal of the complaint and appeal, took no action when that deadline passed without ONG supplying all the necessary information or seeking an additional extension of time to permit it to do so. Oxford also found it somewhat surprising that the Commission, by its entry of October 4, 2006, found that sufficient information had been filed to permit the complaint and appeal to be accepted for filing, even though certain information specifically identified in the Commission's May 31, 2006 entry as prerequisites to acceptance had not yet been provided. However, Oxford did not challenge the Commission's failure to dismiss the complaint and appeal, and certainly is not attempting to do so through its renewed motion in this case. Rather, the delay in processing the complaint and appeal was raised by Oxford purely as an equitable consideration that the Commission should take into account in ruling on Oxford's renewed motion for immediate financial audits.

ONG's ratepayers are potentially disadvantaged by the delay in processing the complaint and appeal, and they should not be disadvantaged a second time by delaying the GCR adjustments that Oxford believes will result from the requested audits. To be sure, as ONG observes, it is possible that the delay in the complaint and appeal could ultimately work in favor of ONG's ratepayers, in that the rates authorized in that case could be higher than the rates they are currently being charged (*Id.*). By the same token, it is possible that the requested audits could produce an upward adjustment to the GCR rate. However, Oxford believes that these outcomes are extremely unlikely, and would rather take this risk than see ONG ratepayers continue to be whipsawed by the delay in processing the complaint and appeal on one hand, and the Commission's failure to order immediate audits on the other.

B. THE COMMISSION SHOULD DIRECT ITS STAFF TO CONDUCT BOTH A FINANCIAL AUDIT AND A MANAGEMENT/PERFORMANCE AUDIT.

1. Because ONG no longer opposes a financial audit of its GCR operations, the Commission should order that such an audit be conducted immediately.

In its memorandum contra Oxford's initial motion, ONG objected to Oxford's request that a Rule 4901:1-14-07, OAC, financial audit be conducted immediately, arguing, *inter alia*, that there was no compelling reason to conduct the audit outside of the normal cycle of annual GCR financial audits. In its memorandum contra Oxford's renewed motion, ONG now expressly states that it does not object to a financial audit (ONG Memorandum Contra, 5), which we take to mean that ONG no longer opposes Oxford's request that financial audit be conducted immediately. As Oxford has previously explained, the staff, in preparing its January 27, 2006 report for Oxford, has already performed much of the legwork required to issue a formal GCR financial audit report. Thus, the demands on the staff of performing the audit would not be nearly as great as if the staff were starting from scratch. Further, ONG now states that it has no objection to extending the time and scope of the staff's informal audit in accordance with Oxford's request (ONG Memorandum Contra, 6). Thus, the Commission should order its staff to proceed with the requested financial audit forthwith.

2. The circumstances cited by Oxford in support of its motion for an immediate management/performance audit of ONG constitute "good cause" within the meaning of the term as employed in Section 4905.302(C)(2)(b)(3), Revised Code.

Although withdrawing its objection to a financial audit, ONG continues to oppose a management/performance audit, again arguing that the legislature, in prohibiting management/performance audits for companies with fewer than fifteen thousand customers "absent extraordinary circumstances," has recognized that management/performance audits of small

companies are not warranted (ONG Memorandum Contra, 5-6).¹ Oxford addressed this argument in detail in its reply to ONG's earlier memorandum contra, and will not repeat that discussion here. However, this time around, ONG adds the comment that Oxford's principal concern appears to be that past GCR over-collections have not been refunded, which, as ONG notes, is a subject for a financial audit, not a management/performance audit. Oxford is, of course, concerned about past GCR over-recoveries, but it also vitally concerned about the impact the antics of ONG's previous management may have had on the company's ability to secure gas supply on reasonable terms. This is clearly a subject for a management/performance audit. In this vein, although Oxford is pleased to learn that, contrary to its earlier understanding, ONG has, in fact, been able to hedge gas prices for a significant portion of the coming heating season (see ONG Memorandum Contra, 5), this in no way eliminates the need for a review of ONG's past gas procurement practices. Indeed, if anything, this highlights the need for a management/performance audit. If ONG's present management has recognized the importance of hedging when gas prices are favorable, why did ONG's previous management fail to take similar efforts to protect ONG customers in the past? So, yes, Oxford is concerned about ONG's historical GCR accounting practices, but Oxford is also concerned that mismanagement may have contributed to ONG customers paying one of the highest, if not the highest, GCR rate in the state last winter. The Commission should direct its staff to conduct an immediate management/performance audit of ONG .

¹ Oxford would point out that the actual statutory test is not "extraordinary circumstances," but, rather "good cause shown." However, Oxford submits that the circumstances presented here meet either standard.

C. THE COMMISSION SHOULD REQUIRE ONG TO FILE REVISIONS TO THE EGC COMPONENT OF ITS GCR RATE ON A MONTHLY BASIS.

In the memorandum accompanying its renewed motion, Oxford requested that, as provided in Section 1.3.c of Ordinance No. 2896, the Commission direct ONG to revise the EGC component of its GCR rate on a monthly basis. In its memorandum contra, ONG indicates that it is open to revising its EGC rate on a monthly basis, and suggests that an informal conference be held to permit ONG, Oxford, and the staff to explore the costs and benefits of monthly EGC revisions and to discuss how and when such a change should be implemented (ONG Memorandum Contra, 6). Although Oxford is pleased that ONG is willing to consider revising its EGC rate on a monthly basis and is certainly willing to work with ONG and the staff with respect to the specifics involved, ONG did not respond to Oxford's argument that the company may, as a matter of law, be required to adjust its EGC rate on a monthly basis.

Although Oxford fully supports the Commission's acceptance of jurisdiction over ONG's GCR as requested in the application in this case, the only basis for that jurisdiction would appear to be the provision of Ordinance No. 2896 whereby Oxford expressly ceded its jurisdiction over ONG's GCR to the Commission. Notwithstanding ONG's representation in Case No. 06-350-GA-CMR that it has rejected Ordinance No. 2896 in its entirety, its application in this case expressly states that "the criteria for the GCR calculation . . . shall be the method set forth in Ordinance No. 2896" (Application, 2), which certainly suggests that ONG, has, in fact, accepted the GCR-related provisions of the ordinance. If that is the case, Section 1.3.c of the ordinance, which requires monthly EGC revisions, applies.²

² If this is not the case, then ONG would be subject to the GCR provisions of the prior ordinance until its complaint and appeal is resolved, and its GCR rate would be subject to Oxford's jurisdiction.

Oxford has continued to pursue clarification of this jurisdictional question, not because it is preoccupied with legal niceties, but because it appears that ONG may have been trying to have it both ways. Although the monthly EGC provision was included in Ordinance No. 2896 at ONG's insistence, these discussions occurred in late 2005, when gas prices were soaring to unprecedented highs. However, notwithstanding its insistence on a monthly EGC during its negotiations with Oxford, ONG has continued to revise its EGC rate quarterly, which, due to the subsequent sharp decline in gas prices, has resulted in significant GCR over-collections in each successive three-month period. Although customers will, presumably, ultimately be made whole through the required GCR adjustments, ONG, in the meantime, has had the use of these customer-supplied revenues. Oxford, of course, understands that, in periods where commodity costs are on the rise, monthly EGC revisions work to the customer's disadvantage, but its overriding concern is that this issue be put to rest so that there will be no question in the future of ONG's motives. In so stating, Oxford is in no way suggesting that ONG's current management has manipulated the system, but its unhappy experience with ONG's former management dictates an abundance of caution when it comes to matters of this type.

III. WITHDRAWAL OF REQUEST FOR THE CREATION OF AN ESCROW ACCOUNT

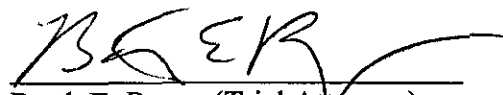
The second branch of Oxford's original motion for immediate audits requested that the Commission direct ONG to establish an escrow account into which all GCR revenues earmarked for return to ONG's customers over subsequent periods would be paid. Although Oxford continues to believe that the Commission has ample authority to order such a measure, Oxford's concerns in this regard have been diminished by virtue of the subsequent change in ONG management. In addition, because the Commission has assumed jurisdiction over ONG's GCR, it will now fall to the Commission to enforce ONG's obligation to refund GCR over-

collections to customer, rather than placing this burden on Oxford, which would have had to pursue this issue in the courts. Accordingly, Oxford hereby withdraws its request that an escrow account be established.

III. CONCLUSION

For those reasons set forth above, and those reasons set out in Oxford's previous filings in this docket, Oxford respectfully requests that the Commission grant its renewed motion of October 11, 2006, and immediately schedule financial and management/performance audits of ONG.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. E. Royer', with a long horizontal stroke extending to the right.

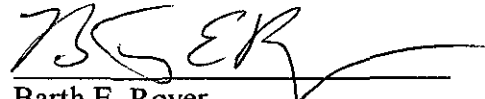
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the parties listed below by first-class U.S. mail, postage prepaid, and by electronic mail this 6th day of November 2006.


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