

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Regulation of the)
Purchased Gas Adjustment Clause)
Contained Within the Rate Schedules of) Case No. 06-212-GA-GCR
Ohio Gas Company and Related Matters.)

OPINION AND ORDER

The Commission, having considered the exhibits, the stipulation and recommendations presented by the parties and being otherwise fully advised, hereby issues its Opinion and Order.

APPEARANCES:

McNees, Wallace & Nurick, by Gretchen J. Hummel, Fifth Third Center, 21 East State Street, 17th Floor, Columbus, Ohio 43215-4228, on behalf of the Ohio Gas Company.


Marc Dann, Attorney General of the State of Ohio, Duane W. Luckey, Senior Deputy Attorney General, by Steven Beeler, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215-0573, on behalf of the Staff of the Commission.

OPINION:

I. Background

Ohio Gas Company (Ohio Gas) is both a gas company and a natural gas company as defined in Sections 4905.03(A)(5) and (6), Revised Code. Ohio Gas is a public utility under Section 4905.02, Revised Code, and a gas company within the meaning of Section 4905.302(C), Revised Code. Pursuant to Section 4905.302(C), Revised Code, this Commission promulgated rules for a uniform purchased gas adjustment clause to be included in the schedules of gas or natural gas companies subject to the Commission's jurisdiction. These rules, which are contained in Chapter 4901:1-14, Ohio Administrative Code (O.A.C.), separate the jurisdictional cost of gas from all other costs incurred by a gas or natural gas company and provide for each company's recovery of gas costs.

Section 4905.302, Revised Code, 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 these rates. Rule 4901:1-14-07, O.A.C., requires that periodic

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financial and management/performance audits of each gas or natural gas company be conducted. Section 4905.302(C), Revised Code, and Rule 4901:1-14-08(A), O.A.C., require the Commission to hold a public hearing at least 60 days after the filing of an audit report. Rule 4901:1-14-08(C), O.A.C., specifies that notice of the hearing be provided by publication in a newspaper of general circulation within the company's service area, by direct mailing to customers or by bill message or bill insert, at least 15 days, but not more than 30 days, prior to the date of the scheduled hearing. By entry issued February 22, 2006, the Commission initiated this proceeding and established the audit review period, the date of the hearing, and the due date for the filing of the audit report.

On October 20, 2006, Staff filed the audit report of Ohio Gas (Commission-Ordered Ex. 1). The public hearing in this matter was held, as scheduled, on December 19, 2006. No public witnesses appeared at the hearing. On December 19, 2006, Ohio Gas and the Staff filed a Stipulation and Recommendation (Stipulation) resolving all issues in this matter (Joint Ex. 1). At the hearing, the parties also moved into evidence the audit report (Commission-Ordered Ex. 1) (Tr. at 7); the Stipulation (Tr. at 6); and the proofs of publication, filed December 14, 2006 (Company Ex. 1) (Tr. at 6).¹

II. Audit Report

The review period for the GCR audit was July 1, 2004 through June 30, 2006. During the audit period, Ohio Gas filed rates for the quarter ended September 30, 2004 and monthly updates each month thereafter. The Staff stated that the company accurately calculated its GCR rates for the periods involved with this audit (Commission-Ordered Ex. 1 at 1). The Staff found no errors in the posted purchase volumes or sales volumes (*Id.* at 4). The Staff also reviewed the company's actual adjustment, refund and reconciliation adjustment, and the balance adjustment. The Staff found no errors, omissions or miscalculations as to the adjustments and there were no adjustments recommended in the company's previous audit. However, with regard to the actual adjustment, Staff recommends that the next audit include a review of the allocation of a credit amount for January 2006, as between the company's Community Energy Partnership Program (CEPP)/GCR customers and the company's industrial pool customers (*Id.* at 5-7). The Staff evaluated the company's unaccounted-for gas level, which was calculated at (.72) percent for the 12 months ended August 2004 and (.40) percent for the 12 months ended August 2005. Pursuant to Rule 4901:1-14-08(F)(3), O.A.C., a reasonable level of unaccounted-for gas (UFG) shall not exceed five percent. Given that the company's UFG level is well below the reasonable level, Staff had no recommendations regarding the company's UFG level and noted that the appropriate level of UFG to use in the calculation of the GCR is zero percent (*Id.* at 8). Additionally, the Staff reviewed a random sample of

¹ As a part of the Stipulation the parties also agree to the admission of the audit report and the proof of publication into the record of evidence (Joint Ex. 1, p. 4).

customer bills, sufficient to verify billing accuracy for each month, and concluded that the company had not erred in applying the GCR rates during the audit period (*Id.* at 9).

III. Stipulation of the Parties

In the Stipulation, the parties agree that Ohio Gas accurately determined and billed the GCR rates applicable during the audit period, in accordance with Chapter 4901:1-14, O.A.C., and related appendices. Further, Ohio Gas agrees that the next financial auditor shall examine the allocation of the credit amount in the actual adjustment for January 2006 to determine if it is properly allocated between CEPP/GCR customers and the company's industrial pool customers, as recommended by Staff in the audit report.

IV. Conclusion

Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such agreements are accorded substantial weight. *See Consumers Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (1978). This concept is particularly valid where the stipulation is supported or unopposed by the vast majority of parties in the proceeding in which it is offered. In reviewing the stipulation, the Commission's primary concern is whether the stipulation is in the public interest.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., Ohio-American Water Co.*, Case No. 99-1038-WW-AIR (June 29, 2000); *The Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR *et al.* (December 30, 1993). The ultimate issue for the Commission's consideration is whether the stipulation, 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 utilizes 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?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues 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 (1994) (citing

Consumers' Counsel, supra, at 126). The court 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. (*Id.*).

Based on our three-prong standard of review, we find that the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is met. The parties to these negotiations have been involved in many cases before the Commission, including a number of GCR proceedings. The Stipulation filed in this case also meets the second criterion. As a package, the Stipulation advances the public interest by resolving the issues raised by the audit of the company's gas costs.

Finally, the Stipulation does not violate any important regulatory principle or practice. In the Commission's consideration of this matter, we believe that Ohio Gas accurately determined and billed the GCR rates during the audit period and accurately applied those base rates to customers' bills during the audited periods. Upon review of the Stipulation filed in this proceeding, we conclude that the terms and conditions contained therein represent a reasonable resolution of the issues in this case. Accordingly, the Stipulation should be adopted in its entirety.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Ohio Gas is a gas company and a natural gas company within the meaning of Sections 4905.03(A)(5) and (6), Revised Code, and, as such, is a public utility subject to the jurisdiction of this Commission.
- (2) Pursuant to Section 4905.302, Revised Code, and Rule 4901:1-14-08, O.A.C., this proceeding to review Ohio Gas's GCR rates was initiated by the Commission entry issued February 22, 2006.
- (3) The Staff of the Commission conducted a financial audit of Ohio Gas. Results of the audit and a certificate of accountability were filed with the Commission on October 20, 2006.
- (4) Pursuant to Section 4905.302(C), Revised Code, and Rule 4901:1-14-08(A), O.A.C., a public hearing was held on December 19, 2006.
- (5) Ohio Gas published notice of the hearing in compliance with Rule 4901:1-14-08(C), O.A.C., and filed the requisite proof of publication on December 14, 2006.

- (6) The Stipulation filed by the parties represents a just and reasonable resolution of the issues in this proceeding and should be approved by this Commission.
- (7) The next financial auditor shall examine the allocation of the credit amount in the actual adjustment for January 2006 to determine if it is properly allocated between CEPP/GCR customers and the company's industrial pool customers

ORDER:

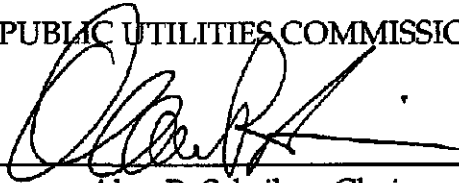
It is, therefore,

ORDERED, That the Stipulation filed by the parties on December 19, 2006, be adopted. It is, further,

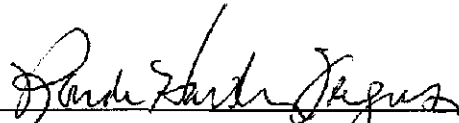
ORDERED, That the next auditor review the allocation of the credit amount in the actual adjustment for January 2006 to determine if it is properly allocated. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon Ohio Gas and its counsel and all other interested persons of record.

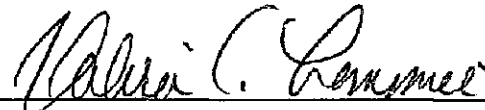
THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman

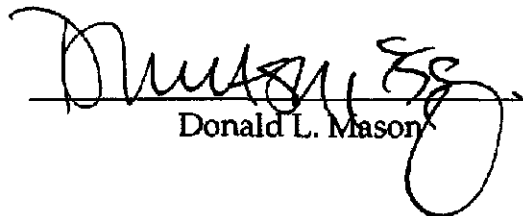


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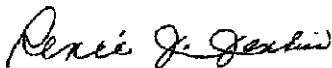


Donald L. Mason

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Entered in the Journal

JAN 17 2007



Renee J. Jenkins
Secretary