8

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 Oxford Natural Gas Company	))))	Case No. 07-210-GA-GCR

OPINION AND ORDER

The Commission, having considered the audit report and the stipulation and recommendation submitted by the company and staff, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Vorys, Sater, Seymour and Pease LLP, by M. Howard Petricoff and Stephen M. Howard, 52 East Gay Street, Ohio 43216-1008, on behalf of Oxford Natural Gas Company.

Marc Dann, Attorney General of the state of Ohio, by Duane W. Luckey, Chief, Public Utilities Section, and William L. Wright, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215-3793, on behalf of the staff of the Public Utilities Commission of Ohio.

OPINION:

A. Summary of the Proceedings

Oxford Natural Gas Company (ONG) is a "natural gas company" as defined in Section 4905.03(A)(6), Revised Code, and a public utility under Section 4905.02, Revised Code. Pursuant to Section 4905.302(C), Revised Code, the 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 these 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. Pursuant to such authority, Rule 4901:1-14-07, O.A.C., requires that periodic financial and management/performance (m/p) audits of each gas or

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician SM Date Processed 10/10/07

natural gas company be conducted. Rule 4901:1-14-08(A), O.A.C., requires the Commission to hold a public hearing at least 60 days after the filing of each required audit report, and Rule 4901:1-14-08(C), O.A.C., specifies that notice of the hearing be provided in one of three ways at least 15 days, but not more than 30 days, prior to the date of the scheduled hearing.

On March 30, 2006, ONG filed an application, in Case No. 06-521-GA-GCR, requesting that the Commission assert jurisdiction over ONG for GCR purposes. By Finding and Order dated April 10, 2006, the Commission approved ONG's application, approved an initial GCR rate and authorized Oxford to file quarterly GCR rates with the Commission.

On January 24, 2007, the Commission initiated this proceeding, established the financial audit review period, the date for filing the audit report by the Commission's staff (Staff), and the hearing date, and directed ONG to publish notice of the hearing. On May 17, 2007, Staff filed its audit of ONG's GCR mechanism for the period of April 1, 2006, to March 31, 2007 (Commission-ordered Ex. 1). On June 28, 2007, ONG filed proof that notice of the hearing was published in Butler County pursuant to Rule 4901:1-14-08, O.A.C. (Company Ex. 1). On July 17, 2007, the public hearing was conducted at the offices of the Commission. At the hearing, the Staff of the Commission submitted a stipulation and recommendation (stipulation) between ONG and Staff which, if adopted, will resolve all of the issues in this case (Joint. Ex. 1). No public witnesses appeared at the hearing to offer testimony.

B. Summary of Audit Report

During the audit period, ONG was a wholly-owned subsidiary of Utility Holdings, Inc., which also manages the daily operations of Verona Natural Gas, a municipally owned utility.[1] ONG serves approximately 4,100 customers in portions of the City of Oxford and Butler County (Commission-ordered Ex. 1 at 3).

In the certificate of accountability, Staff attested that it examined ONG's GCR rates for the three-month periods ended June 30, September 30, December 31, 2006, and March 31, 2007. Staff concluded that ONG has accurately calculated its GCR rates for those periods under investigation, in accordance with Chapter 4901:1-14, O.A.C., except for those instances set forth in the audit report (Commission-ordered Ex. 1 at ii).

Staff noted that it had conducted investigative interviews with appropriate ONG personnel and reviewed the appropriate invoices and documentation necessary to

---

[1] The Commission notes that, on September 18, 2007, in Case No. 07-1025-GA-ATR et al., Glenwood Energy of Oxford, Inc., filed an application to purchase certain assets of ONG, to operate as a natural gas company, and for approval of its tariff. We are issuing our decision in that proceeding concurrently with the decision in this case.

calculate ONG's GCR rates, along with certain tax filings. Staff noted that, during the audit period, Oxford employed two asset managers. During the first half of the audit period, Proliance Energy procured ONG's gas supply. Beginning in March 2006, ONG contracted with a new asset manager, Energy USA (an affiliate of NiSource). The asset managers effectuated the purchase and delivery of natural gas from its point of purchase to ONG's city gate. Staff concluded that it appeared that the purchase volumes recorded and billed by Proliance and Energy USA to ONG represent the volumes required to meet the needs of ONG's sales customers. In the audit report, Staff recommended that Oxford closely review the invoices that it receives from its asset manager to ensure that the volumes being purchased by ONG and included for recovery through its GCR represent the volumes purchased on behalf of its sales customers. Further, Staff recommended that ONG make a list of the customer accounts that are billed the GCR rate and any volumes sold to transportation customers to ensure that the monthly sales volumes represent all of the volumes to which its GCR rates were applied (Commission-ordered Ex. 1 at 4-5).

In its review of the Actual Adjustment (AA), Staff discovered three months where ONG incorrectly entered its purchased gas costs into its AA calculations. Staff also discovered that, during part of the audit period, ONG included in its AA calculations GCR rates plus taxes instead of the EGC component. Staff found that these errors totaled $654 in the company's favor and that the errors are not self-correcting. Staff recommended that a reconciliation adjustment of $654 be added to ONG's GCR rate. Further, Staff recommended that ONG calculate its AA calculation using the EGC rates contained in its quarterly GCR filings rather than the GCR rate plus taxes as it did during the audit period (Commission-ordered Ex. 1 at 7-8).

Further, under prior ownership, ONG incurred supplier costs which were placed into its GCR filings for recovery from ONG's sales customers; however, a portion of the costs billed by the supplier, Enron, were not paid. In a 2005 settlement between ONG and Enron, ONG agreed to repay Enron a portion of the unpaid balance. Staff believes that these costs were billed by Enron and included for recovery by ONG in prior GCR filings and that to include these costs in its current GCR filings would result in sales customers paying for the same costs twice. Therefore, Staff recommended that ONG continue to exclude from its purchased gas costs any of the monthly installment payments associated with the 2005 Enron settlement (Commission-ordered Ex. 1 at 7-8).

With respect to the Refund and Reconciliation Adjustment (RA), Staff notes that Proliance represented to Staff that it had remitted no refunds to ONG during the audit period. Staff recommended that ONG contact Texas Eastern, Columbia Gas Transmission and Energy USA to obtain documentation regarding any refunds remitted to ONG between October 2005 and September 2006 and provide such documentation to Staff so that Staff can revise and complete the Refund and Reconciliation Adjustment section of the audit report (Commission-ordered Ex. 1 at 11).

Staff examined ONG's BA mechanism for AA amounts that were calculated outside the audit period but were billed during the audit period. Staff found that the differences between the company's BA calculations and the Staff's BA calculations are not self-correcting and resulted in an adjustment of $89,256.15 in the customers' favor. According to Staff, the magnitude of the BA adjustment was caused by the difference between historical sales volumes used to calculate the AA rates and the actual sales volumes upon which the over/under collections were passed back to, or collected from, customers. The actual sales volumes were substantially lower than the historical volumes used to calculate the AA rates. Staff recommended a reconciliation adjustment of $89,286.15, to be subtracted from the GCR rate. Staff also recommended a meeting with the ONG to review the method for calculating the BA in future GCR filings (Commission-ordered Ex. 1 at 12).

Staff reviewed and verified the GCR, the customer service charges and base rate charges applied to sales customer bills during the audit period. Staff noted that ONG over-billed all residential customers by approximately $0.36 per bill. Staff believes that the $0.36 billed by ONG is associated with the collection of Public Utilities Excise Tax (PUET) revenue, and Staff recommended that, if ONG continues to bill customers for the excise tax adder, ONG should recognize that additional revenue collected as an offset to PUET payables (Commission-ordered Ex. 1 at 15-16).

C. Summary of Stipulation

The stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding. The stipulation includes, *inter alia*, the following provisions:

(1) All findings and recommendations contained in the Staff's audit report are reasonable and should be approved and adopted by the Commission, including, but not limited to, the following specific recommendations:

(a) ONG should closely review the invoices that it receives from its asset manager to ensure that the volumes being purchased by ONG, and included for recovery through its GCR, represent the volumes purchased on behalf of its sales customers.

(b) The differences between the Staff and ONG calculations in the Actual Adjustment are not self-correcting through the GCR mechanism. A reconciliation adjustment of $654 should be added to Oxford's GCR rate, representing the net difference Staff found in the Actual Adjustment calculations.

(c) ONG should calculate its Actual Adjustment calculation using the Expected Gas Cost rates contained in its quarterly GCR filings rather than the GCR rates plus taxes.

(d) ONG should continue to exclude from its purchased gas costs any of the monthly installment payments associated with the 2005 Enron settlement agreement signed by Oxford on February 9, 2005.

(e) ONG should contact Columbia Gas Transmission to obtain documentation regarding any refunds remitted to ONG between October 2005 and September 2006 and provide such documentation to Staff so that Staff can revise and complete the Refund and Reconciliation Adjustment section of the audit report.

(f) The differences between the Staff and ONG calculations in the Balance Adjustment are not self-correcting through the GCR mechanism. An adjustment of $89,286.15 should be subtracted from the GCR rate.

(g) ONG should meet with Staff to discuss methods for calculating the Balance Adjustment in future GCR filings.

(i) If ONG continues to bill customers for the excise tax adder, then ONG should recognize that additional revenue collected as an offset to Public Utility Excise Tax payables.

(2) ONG's GCR rates were accurately calculated during the audit period, in accordance with Chapter 4901:1-4, O.A.C., except for those instances noted in the audit report.

D. Discussion and Conclusion

Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into stipulations. Although not binding upon the Commission, the terms of such stipulations are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St. 3d 123, at 125, citing *Akron v. Pub. Util. Comm.* (1978), 55 Ohio St. 2d 155. This concept is particularly valid where, as in this case, there is no opposition to the Commission's adoption of the stipulation. In reviewing the stipulation, our primary concern, however, is that 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., 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 Cincinnati Gas & Electric Co.,* Case No. 92-1463-GA-AIR, et al. (August 26, 1993); *Ohio Edison Co.,* Case No. 89-1001-EL-AIR (August 19, 1993); *The Cleveland Electric Illuminating Co.,* Case No. 88-170-EL-AIR (January 31, 1989); *Restatement of Accounts and Records (Zimmer Plant),* Case No. 84-1187-EL-UNC (November 26, 1985). In these cases and others, the Commission has used the following criteria in considering the reasonableness of a settlement agreement:

(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 cases by a method economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St. 3d 559, citing *Consumers' Counsel, supra,* at 126.

Based on our three-pronged standard of review, we find that the process involved serious bargaining by knowledgeable, capable parties. The Commission believes that the stipulation in this case advances the public interest because, as a package, it resolves all of the issues related to the review of ONG's GCR and fuel-related policies and practices. Moreover, the stipulation does not violate any important regulatory principle. Rather, the stipulation includes terms designed to enhance ONG's ability to provide service to its customers. Accordingly, we find that the stipulation should be adopted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) ONG is a natural gas company within the meaning of Section 4905.03(A)(6), Revised Code, and, as such, is a public utility subject to the supervision and jurisdiction of the Commission.

(2) Pursuant to Section 4905.302, Revised Code, and Rule 4901:1-14, O.A.C., this proceeding was initiated by the Commission's entry of January 24, 2007, to review ONG's GCR rates.

(3) A financial audit of the three-month periods ended June 30, September 30, December 31, 2006 and March 31, 2007, was performed by the Staff in substantial compliance with Section 4905.302, Revised Code, and Rule 4901:1-14-07, O.A.C. A certificate of accountability and an audit report was filed by Staff on May 17, 2007.

(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 July 17, 2007, and ONG published notice of the hearing in compliance with Rule 4901:1-14-08(C), O.A.C.

(5) The stipulation represents a just and reasonable resolution of the issues in this proceeding and should be approved by this Commission.

(6) ONG's determination of its GCR rates for the audit period was substantially in accordance with the financial procedural aspects of Chapter 4901:1-14, O.A.C., subject to the adjustments discussed in this opinion and order. Such rates were properly applied to customer bills and the gas costs passed through ONG's GCR clause for the audit periods were fair, just, and reasonable, with those exceptions discussed in this opinion and order.

ORDER:

It is, therefore,

ORDERED, That the stipulation of the parties be adopted and approved. It is, further,

ORDERED, That ONG take all necessary steps to carry out the terms of the stipulation and that ONG be prepared to discuss its efforts with the next auditor. It is, further,

ORDERED, That the next auditor review ONG's actions in carrying out the terms of the stipulation. It is, further,

ORDERED, That a copy of this opinion and order be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Donald L. Mason

GAP:ct

Entered in the Journal
OCT 10 2007

Reneé J. Jenkins
Secretary