

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of)
 Chapter 4901:1-14 of the Ohio Administrative) Case No. 08-178-GA-ORD
 Code.)

FINDING AND ORDER

The Commission finds:

- (1) Section 119.032, Revised Code, requires all state agencies, every five years, to conduct a review of each of its rules and to determine whether to continue its rules without change, amend its rules or rescind its rules. The current review date for the rules contained in Chapter 4901:1-14, Ohio Administrative Code (O.A.C.), is November 30, 2008. In general, the rules address the uniform purchased gas adjustment clause.
- (2) Section 119.032(C), Revised Code, requires that the Commission determine each of the following:
 - (a) Whether the rule should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rule was adopted.
 - (b) Whether the rule needs amendment or rescission to give more flexibility at the local level.
 - (c) Whether the rule needs amendment to eliminate unnecessary paperwork.
 - (d) Whether the rule duplicates, overlaps with, or conflicts with other rules.
- (3) In addition, on February 12, 2008, the governor of the state of Ohio issued Executive Order 2008-04S (executive order), entitled "Implementing Common Sense Business Regulation," which sets forth several factors to be considered in the promulgation of rules and requires the Commission to review its existing body of promulgated rules. Specifically, among other things, the Commission must review its rules to ensure that each of its rules is needed in order to implement the underlying statute; must amend or rescind rules that are unnecessary, ineffective,

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contradictory, redundant, inefficient, or needlessly burdensome, or that unnecessarily impede economic growth, or that have had unintended negative consequences; and must reduce or eliminate areas of regulation where federal regulation now adequately regulates the subject matter.

- (4) In making the determinations required by Section 119.032(C), Revised Code, the Commission is required to consider those matters set forth in the executive order and in Section 119.032(C), Revised Code, as well as the continued need for the rules; the nature of any complaints or comments received concerning these rules; and any relevant factors that have changed in the subject matter area affected by the rules.
- (5) By entry dated March 12, 2008, the Commission issued an entry indicating that staff proposed no changes to the rules contained in Chapter 4901:1-14, O.A.C. Initial comments were filed by the office of the Ohio Consumers' Counsel (OCC).
- (6) Following an examiner entry allowing for the filing of reply comments, reply comments were filed by Ohio Gas Company (Ohio Gas) and the Ohio Gas Association (OGA).

Rule 4901:1-14-5(A)(2)(a), O.A.C.

- (7) Current Rule 4901:1-14-5(A)(2)(a), O.A.C., provides that a company's gas cost recovery (GCR) rate will reflect refunds received from the company's interstate pipeline suppliers or other suppliers or service providers, plus ten percent annual interest. OCC notes that, rather than requiring refunds and reconciliation adjustments received from upstream pipelines to flow through to customers immediately, the rule provides for the accrual of interest on these amounts. OCC notes that "at least some" of the companies do not begin the calculation of interest until the date the refund actually begins to flow back to customers. OCC disagrees with this practice, believing that, if money that is due to customers is not returned to them immediately, they should at least be given the time value of their money in interest for the full period of time that it is held by the utility. According to OCC, this approach is analogous to the prohibition against utilities' earning a profit on the sale of gas. OCC recommends adding language to this rule to ensure that interest on refunds and reconciliation adjustments will be

accrued starting immediately upon receipt by the company and that such accrued interest will be refunded to the GCR customers. (OCC comments at 5-7.)

- (8) OGA responds to OCC's first comment, asserting that the current rule sufficiently compensates GCR customers. It opines that the automatic adjustment to the refund and reconciliation amount is more than adequate to compensate customers for any lag between receipt and the inclusion of the refund in the GCR rate. In addition, OGA believes, the current rule has the benefit of simplicity. OCC's proposal would multiply responsibilities for tracking and record-keeping, with no demonstrated benefit, according to OGA. Further, it suggests that the OCC approach would not take into account the difference between the interest rates actually paid by a company and the ten percent rate reflected in the rule. Finally, OGA points out that OCC's suggestion would destroy the symmetry with the one-quarter lag in recognition of the *flow-through of unrecovered gas costs*. (OGA reply at 1-2.)
- (9) The Commission agrees with OGA. The symmetric treatment of over-recoveries and under-recoveries ensures that customers are not unduly harmed. The difference between the actual interest rate and the required ten percent rate further works to the customers' benefit. Therefore, the Commission will not make the modifications to this rule that were proposed by OCC.

Rule 4901:1-14-08(B), O.A.C.

- (10) OCC's second comment proposes the addition of a new provision under Rule 4901:1-14-08(B), O.A.C. OCC begins by noting that Section 4905.302(E), Revised Code, provides that costs are not collectible from GCR customers if the utility has followed imprudent or unreasonable practices, made certain errors, or employed other inappropriate policies. Rule 4901:1-14-08(B), O.A.C., as OCC points out, requires a gas or natural gas company to demonstrate the reasonableness of its rates and that its practices and policies promote minimum prices consistent with an adequate supply of gas, going on to set forth five factors to be considered by the Commission in making this determination. OCC notes that the Commission has never codified the practices that it would deem imprudent. OCC asks for a uniform rule that protects customers against payment of

such imprudently incurred costs, claiming that such codification would avoid inconsistent, case-by-case approaches. OCC believes that the Commission's failure to codify its reasoning may lead to manipulation by companies and unequal treatment of customers. (OCC comments at 7-10.)

- (11) OGA points out that, for codification to eliminate the need for case-by-case determinations, the applicable standards would have to be easily understandable and applied. OGA opines that OCC's proposed standards are patently ambiguous and difficult to comprehend, thereby demonstrating that the prudence determination does not lend itself to rigid classifications. OGA declares that prudence cannot and should not be prejudged. Finally, OGA also asserts that the OCC recommendation would shift the burden of proof to the utility, in contravention of the terms of Section 4905.302, Revised Code, which allows recovery unless the Commission has reason to believe the company has followed imprudent or unreasonable procurement policies or practices. (OGA comments at 2-4.)
- (12) The Commission agrees with OGA that OCC's proposal would not eliminate the need for decisions to be made on a case-by-case basis. In addition, the Commission also agrees that the revision advocated by OCC would shift the burden of proof on this issue to the utility and that such shift would violate the clear language of Section 4905.302, Revised Code.

Appendices to Rules 4901:1-14-06 and 4901:1-14-07, O.A.C.

- (13) OCC suggests, in its third comment, that the GCR formula and sample certificate of accountability be moved from their current position as appendices to being a part of the rule text. OCC suggests that these items are not extensive or burdensome to reproduce and would be more easily accessible if they appear in the text itself. (OCC comments at 10-11.)
- (14) The Commission agrees with this suggestion and has modified Rules 4901:1-14-06 and 4901:1-14-07, O.A.C., accordingly. In addition, the Commission has revised the language of the certificate of accountability that will now be codified as paragraph (E) of Rule 4901:1-14-07, O.A.C., to modify or delete references to quarterly GCR filings, in order to more accurately reflect current practices.

Rule 4901:1-14-06(B), O.A.C.

- (15) The fourth comment made by OCC relates to GCR rate changes during a billing cycle. Rule 4901:1-14-06(B), O.A.C., currently allows companies to apply a weighted average GCR rate to customer bills when it is billing on a services-rendered basis and the GCR rate changes mid-cycle. OCC notes that, when a company is estimating bills, Rule 4901:1-13-04(G)(1), O.A.C., requires the company to calculate the amount due using applicable rates in effect during each period of estimated usage. Similarly, OCC says, companies changing the GCR rate during a cycle should apply those rates to estimated usage rather than to a weighted average. The estimated usage should, according to OCC, include historical usage and weather components, if feasible. (OCC comments at 11-12.)
- (16) Ohio Gas and OGA both disagree with this suggestion. Ohio Gas specifically opposes the proposal to incorporate temperature data as it would impose burdensome costs, which would ultimately be shouldered by customers. Ohio Gas suggests that the changes proposed by OCC would require expensive changes to billing software. Especially in the case of a small local distribution company (LDC), the costs would outweigh the benefits, it asserts. It asks that small companies be exempted if the proposal is adopted. (Ohio Gas reply at 3-4.)
- (17) OGA opposes this suggestion on similar grounds. It points out that the change would potentially require a complete overhaul of some companies' billing systems. It also notes that both the weighted-average methodology and the estimated-usage system equally distribute risk of over- or under-recovery between the company and customer. (OGA reply at 4-5.)
- (18) The Commission agrees with both Ohio Gas and OGA that this would be an expensive rule change, especially for small companies. Therefore, if we were to change the rule as suggested by OCC, the small LDCs would likely be exempted from compliance. The Commission also notes that Vectren Energy Delivery of Ohio, Inc., is the only large LDC that bills on a services-rendered basis and that the Commission has recently approved the first phase of its exit from the merchant function, thereby exempting it from these rules. Thus, the Commission sees no reason to modify the rule as proposed.

Rule 4901:1-14-06(D), O.A.C.

- (19) OCC's fifth comment also relates to weather data, asking that bills with GCR components include weather data, to assist customers in their understanding of how both consumption and cold weather can affect a bill. OCC asserts that the Commission should require all natural gas utilities to inform the Commission how much it would cost to include such data on bills. (OCC comments at 12-13.)
- (20) Ohio Gas, once again, notes that this proposal would impose burdensome costs on LDCs, especially those with few customers. It opposes the request by OCC and points out that the executive order requires a reasonable balance between regulatory objectives and burdens imposed. (Ohio Gas reply at 3-4.)
- (21) OGA also opposes this change, pointing out that OCC does not specify what weather data it thinks should be included. In addition, OGA finds the proposal to be impracticable for some LDCs and of little benefit. It notes that some LDCs already provide some weather information but that space on bills is limited. OGA disputes the assumption that more information will resolve any customer confusion. (OGA reply at 5-6.)
- (22) The Commission agrees with Ohio Gas that this could be burdensome on small LDCs and might require their exemption. With larger LDCs moving toward an exit from the merchant function, the Commission sees little benefit to be provided by such a change. The balance of cost versus benefit clearly requires us to maintain the status quo in this situation.

Rule 4901:1-14-02(B), O.A.C.

- (23) Finally, OCC, asks that this chapter be amended to state specifically that these rules supersede any inconsistent tariffs, as is currently the case in Chapter 4901:1-13, O.A.C. (OCC comments at 13-14.) Neither Ohio Gas nor OGA disagrees with this proposal. The Commission finds it to be meritorious and will amend Rule 4901:1-14-02, O.A.C., accordingly.

It is, therefore,

ORDERED, That attached amended rules 4901:1-14-02, 4901:1-14-06, and 4901:1-14-07, O.A.C., be adopted and should be filed with the Joint Committee on Agency Rule

Review, the Secretary of State, and the Legislative Service Commission in accordance with divisions (D) and (E) of Section 111.15, Revised Code. It is, further,

ORDERED, That existing rules 4901:1-14-01, 4901:1-14-03 through 4901:1-14-05, 4901:1-14-08, and 4901:1-14-09, O.A.C., should be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission in accordance with divisions (D) and (E) of Section 111.15, Revised Code. It is, further,

ORDERED, That existing appendices to Rule 4901:1-14-06 and 4901:1-14-07, O.A.C., be rescinded. It is, further,

ORDERED, That the final rules be effective on the earliest day permitted by law. Unless otherwise ordered by the Commission, the review date for Chapter 4901:1-14, O.A.C., shall be November 30, 2013. It is, further,

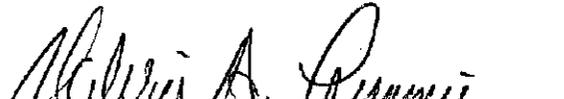
ORDERED, That a copy of this entry and the attached rules be served upon regulated natural gas companies, the Ohio Consumers' Counsel, the Ohio Gas Association, and the Ohio Oil and Gas Association.

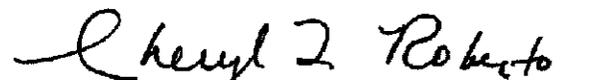
THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman


Paul A. Centolella

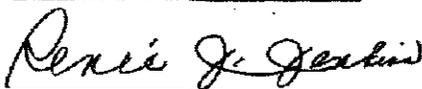

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4901:1-14-02 **Purpose and scope.**

The purpose of this chapter is to establish a uniform purchased gas adjustment clause to be included in the schedules of gas and natural gas companies subject to the jurisdiction of the commission. The provisions of this chapter establish a gas cost recovery process, which is designed to separate the cost of gas from all other costs incurred by gas or natural gas companies, to provide for each company's recovery of the cost of its includable gas supplies from its customers by means of the quarterly update (or other periodic update as approved by the commission) of the gas cost recovery rate and other provisions of this chapter and to balance the interest of retail sales customers with those of transportation customers. The provisions of this chapter also establish investigative procedures and proceedings, including periodic reports, audits, and hearings, to examine the arithmetic and accounting accuracy of the gas costs reflected in each company's gas cost recovery rate, and to review each company's gas production and purchasing policies to the extent that those policies affect the gas cost recovery rate.

(A) The purpose of this chapter is to establish a uniform purchased gas adjustment clause to be included in the schedules of gas and natural gas companies subject to the jurisdiction of the commission. The provisions of this chapter establish a gas cost recovery process, which is designed to separate the cost of gas from all other costs incurred by gas or natural gas companies, to provide for each company's recovery of the cost of its includable gas supplies from its customers by means of the quarterly update (or other periodic update as approved by the commission) of the gas cost recovery rate and other provisions of this chapter and to balance the interest of retail sales customers with those of transportation customers. The provisions of this chapter also establish investigative procedures and proceedings, including periodic reports, audits, and hearings, to examine the arithmetic and accounting accuracy of the gas costs reflected in each company's gas cost recovery rate, and to review each company's gas production and purchasing policies to the extent that those policies affect the gas cost recovery rate.

(B) The rules of this chapter supersede any inconsistent provisions, terms, and conditions of the gas or natural gas company's tariffs.

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4901:1-14-06 **Customer billing.**

- (A) Unless otherwise ordered by the commission, the quarterly updated gas cost recovery rate filed in accordance with rule 4901:1-14-04 of the Administrative Code shall become effective on or after the thirtieth day following the filing date or as otherwise established by the commission. Revisions to the expected gas cost component must be filed no later than fourteen days prior to the gas cost recovery rate effective date and such revisions do not affect the effective date of the gas cost recovery rate. The new gas cost recovery rates may be applied to customer accounts on a service-rendered or bills-rendered basis, at the option of the gas or natural gas company. The commission may at any time order a reconciliation adjustment as a result of errors or erroneous reporting.
- (B) Except as provided in paragraph (C) of this rule, if the gas cost recovery rate changes during a customer's billing cycle and the gas or natural gas company elects to bill on a service-rendered basis, the gas or natural gas company shall apply a weighted average gas cost recovery (WGCR) rate to its customer bills. The ~~weighted average gas cost recovery~~ WGCR rate shall be determined in accordance with ~~the appendix to this rule.~~ following:
- (1) GCR1 equals the gas cost recovery rate in effect during the first part of the billing cycle.
 - (2) GCR2 equals the gas cost recovery rate in effect during the latter part of the billing cycle.
 - (3) V34 equals a variable representing the total number of days in the billing cycle.
 - (4) V34.1 equals a variable representing the total number of days in the billing cycle when GCR1 was in effect.
 - (5) V34.2 equals a variable representing the total number of days in the billing cycle when GCR2 was in effect.
 - (6) $WGCR = [GCR1 \times (V34.1 \div V34)] + [GCR2 \times (V34.2 \div V34)]$.
- (C) If the gas cost recovery rate changes during a customer's billing cycle, and the gas or natural gas company elects to bill on a service-rendered basis, and if the customer's actual daily consumption is known by the gas or natural gas company, the company may, instead of applying a weighted average gas cost recovery rate, apply each gas cost recovery rate which was effective during the billing cycle to the volumes actually consumed when that rate was in effect.
- (D) Each gas or natural gas company shall indicate on each customer bill:

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- (1) The gas cost recovery rate expressed in dollars and cents per Mcf or Ccf; and
- (2) The total charge attributable to the gas cost recovery rate expressed in dollars and cents.

TO BE RESCINDED

4901:1-14-06

Appendix
Weighted Average Gas Cost Recovery Rate

If the Gas Cost Recovery Rate (GCR) changes during a billing cycle, the Weighted Average Gas Cost Recovery Rate (WGCR) shall be determined as follows ("V" denotes variable):

- (1) GCR1 = The Gas Cost Recovery Rate in effect during the first part of the billing cycle
- (2) GCR2 = The Gas Cost Recovery Rate in effect during the latter part of the billing cycle
- (3) V34 = The total number of days in the billing cycle
- (4) V34.1 = The total number of days in the billing cycle when GCR1 was in effect
- (5) V34.2 = The total number of days in the billing cycle when GCR2 was in effect
- (6) $WGCR = [GCR1 \times (V34.1 \div V34)] + [GCR2 \times (V34.2 \div V34)]$

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4901:1-14-07 **Audits.**

- (A) The commission shall conduct, or cause to be conducted, periodic financial and management/performance audits of each gas or natural gas company subject to the provisions of this chapter and division (C)(3) of section 4905.302 of the Revised Code. Unless otherwise ordered by the commission, the audits shall be conducted annually. Except as provided in paragraph (B) of this rule and division (C) of section 4905.302 of the Revised Code, and unless otherwise ordered by the commission, each audit shall be conducted by a qualified independent auditing firm selected according to paragraphs (C) and (D) of this rule. The cost of each such audit shall be paid by the gas or natural gas company.
- (B) The commission may, upon the request of any party or upon its own initiative, conduct the audits required under this rule. In determining whether to do so, the commission shall consider:
- (1) The number of customers served by the company;
 - (2) The cost of employing an independent auditor;
 - (3) The availability of the commission staff to conduct the required audits; and
 - (4) Such other factors as the commission considers appropriate.
- (C) Each independent auditor shall file, with the commission a certificate of accountability as described in ~~the appendix to~~ paragraph (E) of this rule. The certificate of accountability shall attest to the accuracy of financial data pertaining to the period of the gas cost recovery rate activity designated by the commission and reference any errors or deviations from the calculations prescribed within Chapter 4901:1-14 of the Administrative Code. Pursuant to this rule, the independent auditor shall assure the commission that:
- (1) The costs reflected in the gas or natural gas company's gas cost recovery rates were properly incurred by the company;
 - (2) The gas cost recovery rates were accurately computed by the gas or natural gas company;
 - (3) The gas cost recovery rates were accurately applied to customer bills; and
 - (4) If the company utilized weather-normalized historic and/or forecasted volumes, the auditor shall verify that the company has reasonably applied such approach throughout the audit period.

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(D) Each gas or natural gas company, so designated by the commission, shall engage an independent auditor and/or consulting firm to conduct a management/performance audit of the company's compliance with the provisions of Chapter 4901:1-14 of the Administrative Code. The commission shall develop a request for proposal (RFP) designed to solicit responses for conducting a management/performance audit. The commission shall have the sole responsibility for sending out and accepting all responses to the RFP and shall select the company's management/performance auditor for the designated audit period. The management/performance audit report shall identify and evaluate the specific organizational structure, management policies, procedures, and reasoning of the company's existing or proposed procurement strategy. The report shall also contain management recommendations based on an evaluation of the company's performance during the audit period pertaining to those areas designated by the commission. The management/performance audit shall review any specific areas of investigation as designated by the commission and selected aspects of the company's gas production and purchasing policies to ascertain whether:

- (1) Company purchasing policies were designed to meet objectives of the company's service requirements;
- (2) Procurement planning is sufficient to ensure reliable service at optimal prices and is consistent with the company's long-term strategic supply plan submitted pursuant to paragraph (H) of rule 4901:5-7-02 or paragraph (H) of rule 4901:5-7-05 of the Administrative Code; and
- (3) The company has reviewed existing and potential supply sources.

(E) The certificate of accountability required by paragraph (C) of this rule shall read as follows:

We have examined the periodic filings of (insert gas or natural gas company name) which support the gas cost recovery (GCR) rates for the periods ended (insert effective ending dates of GCR periods being audited) for conformity in all material respects with the financial procedural aspects of the uniform purchased gas adjustment as set forth in Chapter 4901:1-14 and related appendices of the Administrative Code. Our examination for this purpose was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. We did/did not make a detailed examination such as would be required to determine that each transaction has been recorded in accordance with the financial procedural aspects of Chapter 4901:1-14 and related appendices of the Administrative Code.

In our opinion, (insert gas or natural gas company name) has/has not fairly determined the GCR rates for the periods ended (insert effective ending dates of GCR periods being audited) in accordance with the financial procedural aspects of

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the uniform purchased gas adjustment as set forth in Chapter 4901:1-14 and related appendices of the Administrative Code and properly applied the GCR rates to customer bills.

(If applicable) specific findings presented for the attention of the commission are attached in a separate "memorandum of findings."

TO BE RESCINDED

4901:1-14-07

Appendix

Sample Certificate of Accountability

We have examined the quarterly filings of (insert gas or natural gas company name) which support the gas cost recovery (GCR) rates for the three-month periods ended (insert effective ending dates of GCR quarters being audited) for conformity in all material respects with the financial procedural aspects of the uniform purchased gas adjustment as set forth in Chapter 4901:1-14 and related appendices of the Administrative Code. Our examination for this purpose was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. We *did/did not* make a detailed examination such as would be required to determine that each transaction has been recorded in accordance with the financial procedural aspects of Chapter 4901:1-14 and related appendices of the Administrative Code.

In our opinion, (insert gas or natural gas company name) has/has not fairly determined the GCR rates for the three-month periods ended (insert effective ending dates of GCR quarters being audited) in accordance with the financial procedural aspects of the uniform purchased gas adjustment as set forth in Chapter 4901:1-14 and related appendices of the Administrative Code and properly applied the GCR rates to customer bills.

(If applicable) specific findings presented for the attention of the commission are attached in a separate "Memorandum of Findings."