

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Regulation of the)
Purchased Gas Adjustment Clause) Case No. 08-220-GA-GCR
Contained Within the Rate Schedules of)
Vectren Energy Delivery of Ohio, Inc. and)
Related Matters.)

OPINION AND ORDER

The Public Utilities Commission of Ohio (Commission), having considered the testimony and other exhibits presented in this matter and relevant provisions of the Revised Code and Chapter 4901:1-14 of the Ohio Administrative Code (O.A.C.), hereby issues its Opinion and Order.

APPEARANCES:

McNees, Wallace & Nurick LLC, by Gretchen J. Hummel, 21 East State Street, Suite 1700, Columbus, Ohio 43215-4228 and Lawrence K. Friedman, Vice President and Deputy General Counsel, P.O. Box 209, Evansville, Indiana 47709, on behalf of Vectren Energy Delivery of Ohio, Inc.

Janine Migden-Ostrander, Ohio Consumers' Counsel, by Michael E. Idzkowski, Joseph P. Serio, and Larry S. Sauers, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215-3485, on behalf of the residential customers of Vectren Energy Delivery of Ohio, Inc.

Chester, Wilcox & Saxbe, LLP, by John W. Bentine, Mark S. Yurick, and Matthew S. White, 65 East State Street, Suite 1000, Columbus, Ohio 43215-4213, on behalf of Interstate Gas Supply, Inc.

Richard Cordray, Attorney General, by Duane W. Luckey, Section Chief, and Thomas Lindgren, Assistant Attorney General, Public Utilities Section, 180 East Broad Street, 9th Floor, Columbus, Ohio 43215-3793, on behalf of the Commission Staff.

OPINION:

I. Introduction:

Pursuant to Section 4905.302, Revised Code, the Commission was directed to promulgate a purchased gas adjustment clause to be included in the schedules of gas or natural gas companies subject to the jurisdiction of the Commission. As a result, the

Commission established Chapter 4901:1-14, O.A.C., which is designed to separate the cost of gas from all other costs incurred by a gas or natural gas company subject to the jurisdiction of this Commission, and to provide for each company's recovery of such costs. Section 4905.302, Revised Code, further 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 Section 4905.302, Revised Code, the Commission adopted Rule 4901:1-14-07, O.A.C., which identifies how periodic financial and management/performance audits shall be conducted. Rule 4901:14-08(A), O.A.C., requires the Commission to hold a public hearing at least 60 days after the filing of the required audit reports. Rule 4901:1-14-08(C), O.A.C., specifies that notice of the hearing be published in one of three ways, at least 15 days, but not more than 30 days, prior to the date of the scheduled hearing.

Vectren Energy Delivery of Ohio, Inc. (Vectren) is a natural gas company as defined by Section 4905.03(A)(6), Revised Code. Accordingly, Vectren is a public utility as set forth in Section 4905.02, Revised Code, and is, therefore, subject to Commission jurisdiction under Section 4905.302, Revised Code, and rules adopted pursuant thereto.

By entry issued March 12, 2008, the Commission initiated the financial audit process and selected Deloitte & Touche (D&T or financial auditor) as the financial auditor. By entries issued February 27, 2008 and April 16, 2008, the Commission established the management/performance (m/p) audit review period, selected the m/p auditor, and set the due date for the m/p audit report. Exeter Associates, Inc. (Exeter or m/p auditor) performed the m/p audit of Vectren.

Pursuant to Rule 4901:1-14-08(A), O.A.C., and by entry issued February 27, 2008, this matter was scheduled for a hearing to commence on November 18, 2008. On June 12, 2008, Vectren and Staff filed a joint motion for an extension of the m/p and financial audit periods to coincide with Vectren's implementation of standard sales offer service. By entry issued July 16, 2008, as clarified by entries issued October 1, 2008 and October 8, 2008, the Commission granted the request to extend the m/p and financial audit review periods and revised the procedural schedule accordingly, contingent on the start of its standard sales offer service. Subsequently, on October 1, 2008, the Commission established March 12, 2009, as the date for commencement of the hearing.

The Office of the Ohio Consumers' Counsel (OCC) and Interstate Gas Supply, Inc. (IGS) filed motions to intervene in this case. By entry issued February 6, 2009, OCC's and IGS's motions to intervene were granted.

Vectren and Staff subsequently filed a motion to extend the time to file the m/p audit report until March 27, 2009, and to reschedule the hearing until May 27, 2009. By entry issued February 6, 2009, the request to extend the due date for the m/p audit was granted and the hearing was rescheduled to commence May 27, 2009.

On May 11, 2009, Vectren filed the direct testimony of Scott E. Albertson (Vectren Ex. 1) and Perry M. Pergola (Vectren Ex. 2). The hearing was held as rescheduled. At the hearing, Vectren, IGS and the Staff offered into evidence a Stipulation and Recommendation (Stipulation) resolving all the issues raised in this proceeding (Joint Ex. 1). Counsel for OCC stated that, while OCC did not sign the Stipulation in this case, OCC does not oppose the Stipulation (Tr. at 10). Vectren filed its proofs of publication for this proceeding, as required by Rule 4901:1-14-08(C), O.A.C., on July 9, 2009 (Late-filed Vectren Ex. 3).

II. Reports:

A. Financial Audit

Pursuant to the entries issued March 12, 2008, October 1, 2008, and October 8, 2008, and Rule 4901:1-14-07(C), O.A.C., D&T filed the Certificate of Accountability and financial audit report on January 13, 2009 (Commission-Ordered Ex. 2). The Certificate of Accountability affirms that, in accordance with attestation standards established by the American Institute of Certified Public Accountants, D&T examined Vectren's GCR reports which support the GCR rates for the months November 2007 through September 2008 (Commission-Ordered Ex. 2, at 1). As part of the financial audit D&T concluded that, based on its examination, Vectren fairly determined, in all material respects, the GCR rates for the monthly periods November 2007 through September 2008, in accordance with the financial procedural aspects of Chapter 4901:1-14 and related appendices of the O.A.C., and properly applied the GCR rates to customer bills. Further, D&T concludes that Vectren's unaccounted-for gas (UFG) for the 11 months ended September 30, 2008 is below the five percent ceiling imposed by the Commission in accordance with Rule 4901:1-14-08(F)(3), O.A.C. (Commission-Ordered Ex. 2 at 3).

B. Uncollectible Expense Rider Report

D&T filed a report relating to Vectren's uncollectible expense rider for the period of January 1, 2007 through December 31, 2007. The report details the procedures, agreed to by Vectren, that were performed by D&T to assist with evaluation of that rider. D&T did not report any discrepancy relating to the uncollectible expense rider for the period (Commission-Ordered Ex. 1).

C. Management/performance Audit

On March 27, 2009, the m/p audit report was filed. As part of the m/p audit, Exeter reviewed Vectren's organizational structure, gas supply management and planning, gas transportation, operational policies and procedures, gas procurement strategies and gas purchasing policies to determine their associated impact on Vectren's GCR rates for the period November 1, 2005 through September 30, 2008. Further, Exeter had no concerns with the m/p of Vectren. Exeter concluded that, during the m/p audit period, Vectren's gas purchasing policies and practices were reasonable, conducted in a manner consistent with least cost acquisition principles and provided reliable service. (Commission-Ordered Ex. 3 at iv). As a part of the m/p audit, Exeter also reviewed Vectren's compliance with prior audit recommendations and approved Stipulation and Recommendations. Pursuant to the Stipulation approved in the 04-220-GA-GCR/05-220-GA-GCR proceedings:

- (1) Vectren agreed to include, as a part of its internal audits, a review of its gas supply process profiles and procedures with a focus on document control. The 2005 auditor verified that Vectren had taken corrective action to address procedure documentation deficiencies cited in the 2004 internal audit. However, due to the timing of the 2005 audit, the 2005 auditor stated that there had been insufficient opportunity to follow up on the procedure documentation deficiency cited in the 2004 internal audit. Exeter examined Vectren's gas supply process profiles and procedures with a focus on document control. Exeter concluded that Vectren had implemented the procedure documentation deficiency recommendations identified in the 2004 internal audit and the 2005 review of the internal audit. (Commission-ordered Ex. 3 at 3-10).
- (2) Vectren agreed to examine its peak day design criteria to determine the appropriateness of the criteria's applicability and values for use in modeling Vectren's peak day send out for gas supply planning purposes. Exeter found that Vectren examined its design peak day criteria and modified them slightly for the winter of 2007-2008, increasing the value of the prior day's temperature variable and reducing the value of the wind speed variable. The changes implemented by Vectren increased the probability of occurrence of Vectren's design peak day criteria to a joint probability of the occurrence of its design peak day criteria to three percent. Exeter concluded that, given the small increase in Vectren's projected design peak day requirements and the uncertainty associated with

design peak day forecasting, Vectren's design peak day criteria were not unreasonable. (Commission-ordered Ex. 3 at 4-29 to 4-30).

- (3) Vectren agreed to perform a statistical analysis of its late winter peaking criterion to evaluate the appropriate date for retention of storage ratchets. The prior m/p auditor recommended that Vectren revise its late winter peaking date from February 15 to January 21. Vectren examined the actual gas prices during the 2006-2007 and 2007-2008 winter seasons and the examination revealed that gas prices were not always lower toward the end of the winter season than at the beginning of the winter season. Further, according to Vectren's analysis, if the date were revised to January 21 and a severe winter season were experienced, Vectren would have insufficient gas in storage inventory and firm pipeline transportation capacity to meet its GCR customers' requirements. Based on Vectren's analysis, Exeter concluded that the storage ratchet retention date should not be moved to January 21. (Commission-ordered Ex. 3 at 5-17 to 5-18).
- (4) Vectren agreed to conduct further analysis of the expansion of propane vaporization capacity to displace pipeline or storage capacity. Vectren secured the services of Standby Systems, Inc. to estimate the costs of expanding its propane facilities' vaporization capacity. Based on the estimated costs and the unit rate per dekatherm produced from the propane facilities, Vectren concluded that the costs associated with an expansion of the propane vaporization capacity would significantly exceed the current costs of acquiring winter season pipeline capacity and supply. Accordingly, Vectren concluded that the project would be uneconomical. Exeter concurs with Vectren's analysis and conclusion. (Commission-ordered Ex. 3 at 4-30 to 4-31).

III. Stipulation and Recommendation:

As previously noted, on May 27, 2009, most of the parties to this case filed a Stipulation. In the Stipulation, the signatory parties agree and recommend that the Commission adopt the following findings of the auditors:

- (1) Vectren fairly determined the GCR rates for the audit period, in all material respects, in accordance with the financial

procedural aspects of the uniform purchased gas adjustment as set forth in Chapter 4901:1-14, O.A.C., and properly applied the GCR rate to customer bills.

- (2) Vectren's annual UFG percentage level for the 11 months ended September 30, 2008, is below the five percent ceiling established in Rule 4901:1-14-08(F)(3), O.A.C.
- (3) That Vectren appropriately accounted for and billed its Uncollectible Expense Rider rates for the period January 1, 2007 through December 31, 2007.
- (4) Vectren complied with the terms of the approved Stipulation in the 05-220-GA-GCR case. Further, as Exeter concluded, Vectren's gas purchasing policies and practices were reasonable, conducted in a manner consistent with least cost acquisition principles, and provided reliable service in accordance with Rule 4901:1-14-07(D), O.A.C., and Vectren's procurement practices and policies during the audit period were prudent and reasonable.
- (5) The proofs of publication filed in this case demonstrate that reasonable and adequate notice of this proceeding was published in compliance with the Commission's rules. The proofs of publication will be filed as a late-filed exhibit.
- (6) The financial audit and the uncollectible expense rider reports filed by D&T on January 13, 2009, the m/p audit filed by Exeter on March 27, 2009, and the late-filed proofs of publication should be admitted as evidence in this proceeding and said evidence supports the reasonableness of the Stipulation, taken as a whole, consistent with the criteria that the Commission has adopted for purposes of evaluating settlements.

CONCLUSION:

Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. *See, Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, at 125 (1992), *citing Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (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.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR *et al.* (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our 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:

- (a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (b) Does the settlement, as a package, benefit ratepayers and the public interest?
- (c) 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.*).

As a part of the Stipulation the parties agree and believe that the Stipulation is supported by adequate data and information; represents a just and reasonable resolution of all issues in this proceeding; violates no regulatory principle; and is the product of serious bargaining among knowledgeable and capable parties in a cooperative process undertaken by the parties to settle this case. The parties further acknowledge that, while this Stipulation is not binding on the Commission, it is entitled to careful consideration by the Commission, where, as here, the Stipulation is sponsored by a wide range of interests, including the Commission Staff.

The Commission finds that the Stipulation filed in this case appears to be the product of serious bargaining among capable, knowledgeable parties. The signatory parties represent diverse interests including the utility, a competitive supplier, and the Staff. OCC, an intervenor in this matter, does not oppose the Stipulation. Further, we note that the signatory parties and OCC routinely participate in complex Commission proceedings and that counsel for the signatory parties have extensive experience practicing before the Commission in utility matters.

The Stipulation also meets the second criterion. As a package, the Stipulation advances the public interest by resolving all the issues raised in this matter without resulting in extensive litigation.

Finally, the Stipulation meets the third criterion because it does not violate any important regulatory principle or practice. *See, Consumers' Counsel*. Accordingly, we find that the Stipulation is reasonable and should be adopted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Vectren is a natural gas company as defined by Section 4905.03(A)(6), Revised Code, and has rate schedules which contain a purchased gas adjustment clause.
- (2) Section 4905.302, Revised Code, together with Rule 4901:1-14-08, O.A.C., requires this Commission to review the purchased gas adjustment clause contained within the tariffs of each gas and natural gas company on an annual basis unless otherwise ordered by the Commission.
- (3) By entry issued March 12, 2008, the Commission initiated the financial audit, including a review of Vectren's purchased gas adjustment clause, as defined by Section 4905.302(A)(1)(a), Revised Code, and uncollectible expense rider. By entries issued February 27, 2008 and April 16, 2008, the Commission initiated the review of Vectren's management procedures and policies.
- (4) Vectren published notice of the hearing in this matter pursuant to Rule 4901:1-14-08(C), O.A.C., and on July 9, 2009, Vectren filed proof of publication with the Commission.
- (5) D&T conducted the financial audit of Vectren's GCR as required by Section 4905.302(C), Revised Code, and Rule 4901:1-14-07, O.A.C., and reviewed Vectren's uncollectible expense rider. D&T filed its reports on January 13, 2009.
- (6) The m/p audit was conducted by Exeter. Exeter concluded that Vectren's purchasing policies satisfy the requirements of Rule 4901:1-14-07(D), O.A.C., and Vectren's procurement practices and policies during the m/p audit period were prudent and reasonable.

- (7) OCC and IGS were granted intervention in this matter.
- (8) Vectren accurately computed its GCR rates in accordance with the provisions of Chapter 4901-1-14, O.A.C., during the audit period.
- (9) Vectren's GCR rates were accurately applied to customer bills during the audit period.
- (10) Vectren accurately accounted for and billed its uncollectible expense rider during the period of January 1, 2007 through December 31, 2007.
- (11) The hearing in this case was held on May 27, 2009, at the offices of the Commission. No public witnesses appeared to offer testimony at the hearing.
- (12) Vectren, IGS and the Staff filed a Stipulation on May 27, 2009, addressing all the issues in this case. OCC did not sign the Stipulation and does not oppose the Stipulation. The Stipulation is reasonable and should be adopted.

ORDER:

It is, therefore,

ORDERED, That the Stipulation filed on May 27, 2009, is adopted in its entirety. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

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