

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. 13-206-GA-GCR  
Brainard Gas Corporation and Related )  
Matters. )

OPINION AND ORDER

The Commission, having considered the evidence and the stipulation and recommendation (Stipulation) presented by the parties, and being otherwise fully advised, hereby issues its Opinion and Order.

APPEARANCES:

Taft, Stettinius & Hollister, LLP, by Mark S. Yurick and Zachary D. Kravitz, 65 East State Street, Suite 1000, Columbus, Ohio 43215, on behalf of Brainard Gas Corporation.

Mike DeWine, Ohio Attorney General, by Werner L. Margard III and Devin D. Parram, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215-3793, on behalf of Staff.

SUMMARY OF THE PROCEEDINGS:

Brainard Gas Corporation (Brainard) is a gas company and a natural gas company as defined in R.C. 4905.03(A)(4) and (5), and a public utility under R.C. 4905.02. Pursuant to R.C. 4905.302, 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 Ohio Adm.Code Chapter 4901:1-14, 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.

R.C. 4905.302 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 each 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, the Commission adopted Ohio Adm.Code 4901:1-14-07, which identifies how periodic audits of gas or natural gas companies shall be conducted. Ohio Adm.Code 4901:1-14-08(A) requires the Commission to hold a public hearing at least

60 days after the filing of the required audit reports. Ohio Adm.Code 4901:1-14-08(C) specifies that notice of the hearing be published at least 15 days, but not more than 30 days, prior to the date of the scheduled hearing.

By Entry issued January 30, 2013, the Commission initiated this case in order to review the operation of the purchased gas adjustment clause and the gas purchasing practices and policies of Brainard. The January 30, 2013 Entry also established the audit period from July 1, 2011, through July 30, 2013, instructed Staff to perform the GCR financial audit, set the deadline for filing the GCR financial audit report, scheduled a hearing date of January 21, 2014, and directed Brainard to publish notice of the hearing. By Entry of November 25, 2013, the attorney examiner, inter alia, continued the hearing to February 18, 2014. On December 20, 2013, Staff filed its GCR financial audit report.

Ohio Adm.Code 4901:1-14-08(C) specifies that notice of the hearing be published in a newspaper(s) of general circulation throughout the company's service area, by bill insert, bill message, or direct mail to customers. On February 7, 2014, Brainard filed proof of publication that it provided the required notice on January 29, 2014, in *The News-Herald*, a newspaper of general circulation in Lake County.

At the February 18, 2014 hearing, no members of the public appeared to testify. Staff represented at the hearing that the parties had filed the Stipulation on February 14, 2014, resolving all the issues in this case (Tr. at 5; Joint Ex. 1). In the Stipulation, the parties agree that all of the findings and recommendations in the GCR financial audit report are reasonable and should be adopted. Staff also offered the testimony of Patrick Donlon in support of the Stipulation (Tr. at 6).

#### AUDIT REPORT:

Staff conducted a GCR financial audit, in accordance with the objectives outlined in Ohio Adm.Code Chapter 4901:1-14. In the audit, Staff examined the periodic filings of Brainard that support the GCR rates for the period from July 1, 2011, through June 30, 2013. With regard to the issues identified in its GCR financial audit, Staff found the following:

- (1) Brainard's GCR rates were accurately calculated for those periods under investigation in accordance with the uniform purchase gas adjustment as set forth in Ohio Adm.Code Chapter 4901:1-14 and related appendices, except for those instances noted in the GCR financial audit report.

- (2) Brainard initiated the refund of the reconciliation adjustment (RA) ordered by the Commission in Case No. 11-206-GA-GCR of (\$103,871)<sup>1</sup> in its November 2012 filing. Brainard will complete such refund in October 2013.
- (3) Staff found two minor differences in its review of the Brainard's balance adjustment (BA) calculations. The first occurred for the BA calculation ending March 2011, where free gas errors noted in the prior audit carried over in this audit inflating the 12-month sales volumes used by Brainard. The second difference occurred in the BA calculation ending June 2012, where Brainard failed to incorporate how its actual adjustment rate of \$0.0891 per thousand cubic feet (Mcf) changed in months two and three to \$0.0951 and \$0.0917 per Mcf, respectively.
- (4) Brainard has a slight negative unaccounted-for gas level, which is consistent with prior audits.
- (5) Brainard made no customer billing errors based on the sampling for the audit period.

(Comm.-ordered Ex. 1 at 2, 23-24, 29-30.)

STIPULATION:

The Stipulation is intended by the signatory parties to resolve all outstanding issues in this proceeding. The following is a summary of the provisions agreed to by the parties and does not replace or supersede the Stipulation. The Stipulation includes, *inter alia*, the following provisions:

- (1) Brainard will make an RA, related to the actual adjustment, of \$7,988 in the customers' favor and applied in the first GCR filing following the Opinion and Order in this case.
- (2) Brainard will implement an RA, related to the BA, of \$363 in the customers' favor and applied in the first GCR filing following the Opinion and Order in this case.

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<sup>1</sup> Throughout this Order, numbers in parenthesis refer to negative numbers.

- (3) Brainard will work with Staff and the Ohio Consumer's Counsel to restructure its gas procurement and asset management policies and procedures in conjunction with the Commission directives in *In re Northeast Ohio Natural Gas Corporation and Orwell Natural Gas Company*, Case Nos. 12-209-GA-GCR et al., Opinion and Order (Nov. 13, 2013) (2012 GCR Audit Cases). Staff will have final approval over this process.
- (4) Pursuant to the November 13, 2013 Opinion and Order in the 2012 GCR Audit Cases, Brainard will cancel all contracts with John D. Oil and Gas Marketing and use in-house personnel to purchase gas supplies until Brainard's gas procurement and asset management policies and procedures have been approved by Staff.
- (5) On the first day of each month, Brainard will conduct the visual meter reading of its transportation customers with one hour of the electronic meter reading of the Bridge Road meter on the Cobra Pipeline Co. LTD system.
- (6) Within 60 days of the issuance of an Opinion and Order in this case, Brainard will file all transportation agreements that deviate from its tariff with the Commission for approval.
- (7) Within 90 days of the issuance of an Opinion and Order in this case, Brainard will implement a system for Brainard to maintain imbalance accounts of its transportation customers as required by its tariff. Within 30 days of the issuance of the Opinion and Order in this case, Brainard will begin working with Staff to develop this system.

(Joint Ex. 1 at 3-5.)

CONCLUSION:

Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such agreements are afforded substantial weight. See *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where, as here, 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 (Apr. 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (Mar. 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR *et al.* (Dec. 30, 1993); *Cleveland Elect. Illum. Co.*, Case No. 88-170-EL-AIR (Jan. 30, 1989); *Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC (Nov. 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, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992). 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 (*Consumers' Counsel* at 126).

At the February 18, 2014 hearing, Staff witness Patrick Donlon, a utilities administrator, testified that the Stipulation is the product of serious bargaining between knowledgeable, capable parties, and benefits the customers and public interest. Mr. Donlon additionally testified that the Stipulation does not violate any regulatory practice or principal. He also testified that the Stipulation resolves all of the issued in this case. (Tr. at 6-7.) Based on our review of the three-pronged test, the Commission finds the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is met. In addition, the Stipulation 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. Accordingly, the Commission finds that the Stipulation is reasonable and should be adopted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Brainard is a gas and natural gas company as defined in R.C. 4905.03(A)(4) and (5), and, as such, is a public utility subject to the jurisdiction and supervision of the Commission.
- (2) R.C. 4905.302, together with Ohio Adm.Code 4901:1-14-07, require the 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) On January 30, 2013, the Commission initiated this proceeding, established the audit period, established the date for filing the audit report, scheduled a hearing date, and directed Brainard to publish notice of the hearing. By Entry of November 25, 2013, the attorney examiner, inter alia, continued the hearing to February 18, 2014.
- (4) On December 20, 2013, Staff filed the GCR financial audit report.
- (5) On February 14, 2014, the parties filed the Stipulation.
- (6) No public witnesses appeared to testify at the February 18, 2014 hearing.
- (7) Brainard published notice of the hearing within the period from 15 to 30 days prior to the date set for the hearing, in compliance with Commission requirements and R.C. 4905.302.
- (8) The Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and the parties recommend the Commission adopt the Stipulation.
- (9) Brainard accurately calculated its GCR rates for the period of July 1, 2011, through June 30, 2013, in accordance with the uniform purchased gas adjustment as set forth in Ohio Adm.Code Chapter 4901:1-14, and related appendices, except for those instances noted in the GCR financial audit report.

ORDER:

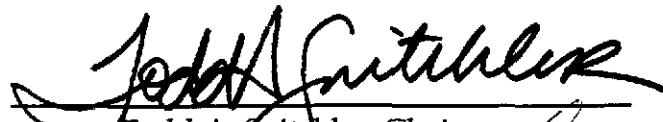
It is, therefore,


ORDERED, That the Stipulation be adopted and approved. It is, further,

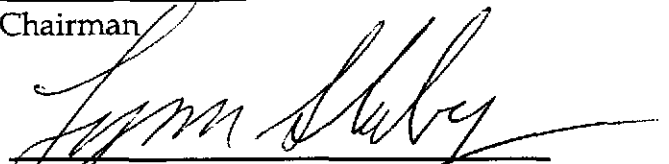
ORDERED, That nothing in this Opinion and Order shall be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

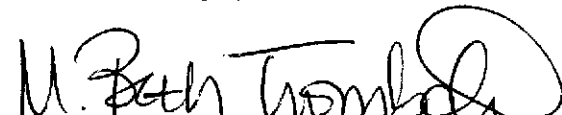
ORDERED, That a copy of this Opinion and Order be served upon each party of record.


THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Steven D. Lesser

  
Lynn Slaby

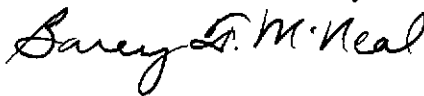
  
M. Beth Trombold

  
Asim Z. Haque

SEF/sc

Entered in the Journal

**MAR 26 2014**



Barcy F. McNeal  
Secretary