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 Foraker Gas Company and Related Matters. | ) ) ) ) ) | Case No. 15-204-GA-GCR |

OPINION AND ORDER

The Commission, having considered the above-entitled matter, including the Stipulation and Recommendation, and the record in this proceeding, and being otherwise fully advised, hereby issues its Opinion and Order.

APPEARANCES:

Barth E. Royer, LLC, by Barth E. Royer, 2740 East Main Street, Bexley, Ohio 43209, on behalf of Foraker Gas Company.

Mike DeWine, Ohio Attorney General, by Thomas W. McNamee and Natalia V. Messenger, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the Public Utilities Commission of Ohio.

OPINION:

I. HISTORY OF THE PROCEEDING

Foraker Gas Company (Foraker or the Company) is a natural gas company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of the Commission.

Further, Foraker is a natural gas company within the meaning of R.C. 4905.302 and, as such, the Company implements a purchased gas adjustment mechanism. Pursuant to R.C. 4905.302(A)(1), the uniform purchased gas adjustment mechanism allows a natural gas company to adjust the rates that it charges customers in accordance with any fluctuation in the cost that the company incurs for the gas that it sells to customers. To facilitate the purchased gas adjustment mechanism and the audit of the mechanism, the rules contained in Ohio Adm.Code Chapter 4901:1-14 direct that the jurisdictional cost of gas be separated from all other costs incurred by a natural gas company and provide for each company's recovery of the gas 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 the company's gas cost recovery (GCR) rates and to review each company's production and purchasing policies and their effect upon the rates. Pursuant to such authority, Ohio Adm.Code 4901:1-14-07 requires that the gas costs for each natural gas company be audited annually, unless otherwise ordered by the Commission. Ohio Adm.Code 4901:1-14-08(A) requires the Commission to hold a public hearing at least 60 days after the filing of an audit report and Ohio Adm.Code 4901:1-14-08(C) specifies that notice of the hearing be provided at least 15 days and not more than 30 days prior to the date of the scheduled hearing.

On February 13, 2014, in Case No. 13-1910-GA-AEC, et al., the Commission approved Foraker's application for authority to implement a purchased gas adjustment clause and to establish a GCR rate, in accordance with Ohio Adm.Code Chapter 4901:1-14. The Commission noted that, with the implementation of the GCR mechanism, Foraker's gas costs and procurement practices would be subject to periodic Commission review to ensure that the Company's GCR rate is reasonable and calculated in accordance with the requirements of Ohio Adm.Code Chapter 4901:1-14. *In re Foraker Gas Co.*, Case No. 13-1910-GA-AEC, et al., Finding and Order (Feb. 13, 2014).

On February 19, 2015, the Commission initiated the above-captioned case for the audit of Foraker's GCR mechanism and established the audit review period, the date of the public hearing, and deadlines for various filings. The Commission also directed Foraker to publish notice of the hearing. By Entry dated August 26, 2015, the attorney examiner granted Foraker's motion for a continuance of the hearing and an extension of the deadline for Staff to file its audit report. On October 21, 2015, Staff filed its audit report for the period of February 1, 2014, through January 31, 2015.

On December 16, 2015, Foraker and Staff filed a stipulation and recommendation (stipulation), which, if adopted by the Commission, would resolve all of the issues in this proceeding. The public hearing was held, as rescheduled, on December 21, 2015, at the offices of the Commission. During the hearing, Staff offered the testimony of Roger Sarver in support of the stipulation. Staff also offered into evidence the audit report (Commission-ordered Ex. 1) and the stipulation (Joint Ex. 1). Finally, Foraker offered the proof of publication of notice of the hearing (Foraker Ex. 1). No public witnesses testified at the hearing.

## II. SUMMARY OF AUDIT REPORT

### A. General

Foraker provides natural gas sales service to approximately 313 residential and 30 commercial customers and transportation service to 32 commercial and 2 industrial customers in southeastern Ohio. For the 12 months ending December 2014, sales customers accounted for approximately 23 percent of annual throughput, with transportation customers accounting for the remaining 77 percent, which is a significant difference from most small gas companies. Foraker, however, was formed to transport local production to industrial end users, which accounts for the fact that the vast majority of its throughput is transportation. Foraker did not add any customers during the audit period. (Commission-ordered Ex. 1 at 5-6.)

### B. Summary of Staff's Audit Report

#### 1. Expected Gas Cost - Matches Future Gas Revenues with Anticipated Cost to Procure Gas

The audit period reviewed in this proceeding was February 1, 2014, through January 31, 2015. In its audit report, Staff reviewed Foraker's calculations of its expected gas cost (EGC) for the audit period. The EGC mechanism attempts to match future gas revenues for the upcoming quarter with the anticipated cost to procure gas supplies. It is calculated by extending 12-month historical purchase volumes from each supplier by the rate that is expected to be in effect during the upcoming period. The cost for each supplier is summed and the total is divided by 12-month historical sales to develop an EGC rate to be applied to customer bills. (Commission-ordered Ex. 1 at 7.)

In Staff's review of Foraker's EGC calculations, Staff considered supply sources, purchase volumes, and sales volumes. During the course of its review, Staff found a significant difference between purchase and sales volumes during the period covered by the audit, which Foraker reported was primarily attributable to one industrial customer meter that was reading fast (i.e., registering more gas as going through the meter than was actually being delivered) and, thus, sales/special contract volumes were overstated for the audit period. According to Staff, Foraker replaced the meter in question and indicated that, for purposes of this case, the Company will not seek any adjustment to the GCR rate to reflect the fact that the GCR rates in effect during the audit period were understated. (Commission-ordered Ex. 1 at 7.)

Staff notes that, if it were to adjust sales volumes to account for the overstatement, Foraker would collect additional revenue from its sales customers, which would then be credited to the special contract customer's bill. Staff explains, however, that Foraker has reached an agreement with the customer as to a credit amount. Staff further explains that, because the credit does not recognize volumes from the audit period, Staff used the volumes reported during the audit period in its calculation. As a result of its review of this issue, Staff recommends that Foraker closely monitor the meter of its largest sales/special contract customer to ensure that the newly installed meter is registering accurately. (Commission-ordered Ex. 1 at 8.)

2. Actual Adjustment - Reconciles Cost of Purchased Gas with EGC

The actual adjustment (AA) reconciles the monthly cost of purchased gas with the EGC billing rate. The AA is calculated by dividing the total cost of gas purchases for each month of the quarter by total sales for the quarter. Staff found errors in the AA calculation resulting from incorrectly reported purchased gas costs and the use of the wrong EGC rates in April and June 2014. Because the differences between Staff's and Foraker's calculations in the AA are not self-correcting through the GCR mechanism, Staff recommends a reconciliation adjustment in the customers' favor in the amount of $431 to be included in the next GCR filing following the Commission's order in this case. (Commission-ordered Ex. 1 at 9.)

3. Refund and Reconciliation Adjustment - Returns Supplier Refunds and Commission-Ordered Adjustments

The refund and reconciliation adjustment (RA) is used to return the jurisdictional portion of refunds received from gas suppliers and adjustments ordered by the Commission. Staff notes that, during the audit period, Foraker had no supplier refunds or Commission-ordered reconciliations. Accordingly, Staff has no recommendations as to the RA. (Commission-ordered Ex. 1 at 12.)

4. Balance Adjustment - Corrects Under- or Over-Recoveries in Previous AAs and RAs

The balance adjustment (BA) mechanism corrects for under- or over-recoveries of previously calculated AAs, RAs, and BAs. The BA is calculated by subtracting the product of the respective AA, RA, or BA rate and the sales to which those rates were applied from the dollar amounts of the respective AA, RA, or BA previously included in the GCR and used to generate those adjustment rates. Staff notes that, because Foraker's first GCR filing occurred in January 2014, the Company has yet to calculate its first BA. Staff, therefore, has no recommendations in this area. (Commission-ordered Ex. 1 at 13.)

5. Unaccounted-for Gas - Difference Between Gas Purchase Volumes and Sales Volumes

Unaccounted-for gas (UFG) is the difference between gas purchase volumes and sale volumes. It is calculated on a 12-month basis, ending in one of the low usage summer months to minimize the effects of unbilled volumes on the calculation. Pursuant to R.C. 4905.302 and Ohio Adm.Code 4901:1-14-08, the Commission is vested with the authority to adjust any gas company's future GCR rates for a UFG above a reasonable level, which is presumed to be no more than five percent during the audit period. As discussed above, Staff found differences between Foraker's purchase and sales volumes associated with a metering error. Staff notes that it has no further recommendations in this area. (Commission-ordered Ex. 1 at 14.)

6. Customer Bills

Staff evaluated whether Foraker properly applied the GCR and base rates to customer bills during the audit period. Using a random sample of customer billing records that excluded special contract customers, Staff recalculated the customer bills for several months and then compared the recalculated bills to the customer billing register. Staff also requested copies of bills that were sent to customers to verify that the billed amount per the customer register matched the bills provided to the customers. Staff reports that it found only minor rounding differences when comparing its recalculated bills to Foraker's billing register and found no discrepancies between the register and the bills provided to the customers. Accordingly, Staff has no recommendations in this area. (Commission-ordered Ex. 1 at 15.)

7. Management Issues

Staff notes that, because this was Foraker's initial GCR financial audit, the Company was confronted with new types of requests from Staff, such as the identification of purchase costs and volumes for specific customer groups. According to Staff, the new requirements brought Foraker's attention to deficiencies in its documentation for tracking gas costs and the associated revenues from various customers. Staff, therefore, recommends that Foraker continue to examine its documentation to ensure that the Company is capable of providing the necessary support for its GCR calculations. (Commission-ordered Ex. 1 at 16.)

## III. SUMMARY OF THE STIPULATION

On December 16, 2015, Foraker and Staff filed a stipulation that, if adopted, would resolve all of the issues in this proceeding. The stipulation has been submitted subject to the condition that it be adopted by the Commission without material modification and, if it is not, Foraker may withdraw from the agreement. The following is a summary of the stipulation and is not intended to supersede or replace the stipulation:

(1) As noted in the audit report, Staff determined that there was a significant difference between monthly purchase volumes and monthly sales volumes during the period covered by the audit. After investigating the matter, Foraker reported that these differences were primarily attributable to one industrial customer meter that was reading fast (i.e., registering more gas as going through the meter than was actually being delivered), and immediately replaced the malfunctioning meter in August 2015. The effect of this meter malfunction was to overstate sales/special contract volumes for the audit period, which, in turn, resulted in billed GCR rates that were understated. As explained in the audit report, if Staff were to adjust the GCR customer sales volumes to account for the impact of the malfunctioning meter on the monthly GCR rates charged during the audit period, there would be a significant AA in Foraker's favor. However, Foraker has agreed not to seek any adjustment to the GCR rate to reflect the overstatement of GCR volumes during the period covered by the audit and supports Staff's use of the reported volumes for purposes of calculating the AA in this case.

(2) Foraker and the industrial customer in question have agreed upon a mutually acceptable refund amount to reflect the overpayment by the customer due to the meter malfunction. The agreed refund credit to the customer will be determined based on an estimate of the amount of the overpayment for the months of May, June, and July 2015. Foraker shall incorporate in its AA calculations the understatement of GCR volumes created by the meter malfunction for those months; provided, however, that, in no event, shall the resulting reconciliation adjustment to the GCR rate exceed the amount credited to the industrial customer as a result of the agreed refund.[1]

(3) Foraker agrees to comply with the audit report recommendation that it closely monitor the new meter

---

[1] Consistent with this limitation, Foraker agrees that there should be no adjustment to the August 2015 GCR to reflect that the meter was not replaced until the middle of that month.

installed for the industrial customer in question to ensure that it is registering accurately. Consistent with that recommendation, Foraker and the industrial customer have agreed that the new meter will be tested annually.

(4) Foraker accurately calculated the monthly GCR rates for the period covered by the audit, except for the AA calculation resulting from incorrectly reported purchased gas costs and the use of the wrong EGC rates in April and June of 2014 identified in the audit report. Foraker agrees with and accepts the Staff's recommended reconciliation adjustment in the customers' favor in the amount of $431 to correct these errors, and will include this adjustment in its first quarterly GCR filing following the Commission's order in this case.

(5) Foraker shall comply with Staff's recommendation in the audit report that the Company continue to examine its documentation to ensure that it is capable of providing the necessary support for its GCR calculations.

(6) The parties agree and recommend that the Commission adopt the stipulation as its resolution of the issues presented by this case and find that, subject to the exception noted in paragraph (4) above, Foraker's GCR rates during the audit period were fair, just, and reasonable.

(Joint Ex. 1 at 4-6.)

## IV. CONCLUSION

Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding upon the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (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., In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 30, 1989); *In* *re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (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:

(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 Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve cases 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, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Supreme Court of Ohio 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.

Based on the three-pronged standard of review, we find that the first criterion, which requires that the process involve serious bargaining by knowledgeable, capable parties, is met. The individuals that participated in this proceeding and negotiated the stipulation on behalf of Foraker and Staff have been involved in numerous cases before the Commission, including many GCR cases. In addition, the parties have provided helpful information to the Commission in cases regarding fuel-related policies and practices. The stipulation also meets the second criterion. As a package, the stipulation benefits ratepayers and advances the public interest by attempting to resolve all of the issues related to the review of Foraker's GCR and fuel-related policies and practices for the audit period, without the need to engage in litigation. Moreover, the stipulation meets the third criterion because it does not violate any important regulatory principle or practice. Rather, the stipulation incorporates the recommendations of Staff to continue to improve the service that Foraker provides to its customers, as well as to reduce gas costs and GCR rates. Staff witness Sarver testified that the stipulation satisfies all three prongs of the standard of review employed by the Commission in considering stipulations. (Tr. at 8-10.)

Upon review of the stipulation, the Commission concludes that the terms and conditions contained therein represent a reasonable resolution of the issues in this case and that, as a package, the stipulation benefits ratepayers and advances the public interest. Further, the Commission finds that there is no evidence that the stipulation violates any important regulatory principle or practice. Accordingly, the stipulation should be adopted in its entirety.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) Foraker is a natural gas company, as defined in R.C. 4905.03, and a public utility, as defined in R.C. 4905.02. As such, Foraker is subject to the jurisdiction of this Commission.

(2) Pursuant to R.C. 4905.302 and Ohio Adm.Code 4901:1-14-08, this case was initiated by the Commission on February 19, 2015, to review Foraker's GCR rates.

(3) Staff conducted an audit of Foraker's GCR mechanism for the period of February 1, 2014, through January 31, 2015, in compliance with R.C. 4905.302 and Ohio Adm.Code 4901:1-14-07. Staff filed the audit report on October 21, 2015.

(4) Pursuant to R.C. 4905.302 and Ohio Adm.Code 4901:1-14-08(A), a public hearing was held on December 21, 2015. No public witnesses appeared to testify at the hearing.

(5) Foraker published notice of the hearing in compliance with Ohio Adm.Code 4901:1-14-08(C).

(6) The parties submitted a stipulation intended to resolve all outstanding issues in this matter.

(7) The stipulation submitted by the parties in this case meets the criteria used by the Commission to evaluate stipulations, represents a just and reasonable resolution of the issues in this proceeding, and should be adopted.

(8) To the extent noted in the audit report and the stipulation, Foraker's determination of its GCR rates for the audit period was in accordance with the financial and procedural aspects of Ohio Adm.Code Chapter 4901:1-14, and such rates were properly applied to customer bills. Accordingly, the gas costs passed through Foraker's GCR mechanism for the audit period were fair, just, and reasonable, except as otherwise noted in the audit report and the stipulation.

ORDER:

It is, therefore,

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

ORDERED, That the auditor of Foraker's next GCR audit review the Company'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 all interested persons and parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Andre T. Porter, Chairman

Lynn Slaby

M. Beth Trombold

Asim Z. Haque

Thomas W. Johnson

SJP/sc

Entered in the Journal

JAN 06 2016

Barcy F. McNeal

Barcy F. McNeal
Secretary