

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
NORTHEAST OHIO NATURAL GAS CORP.
FOR AN INCREASE IN GAS DISTRIBUTION
RATES.

CASE NO. 18-1720-GA-AIR

IN THE MATTER OF THE APPLICATION OF
NORTHEAST OHIO NATURAL GAS CORP.
FOR TARIFF APPROVAL.

CASE NO. 18-1721-GA-ATA

IN THE MATTER OF THE APPLICATION OF
NORTHEAST OHIO NATURAL GAS CORP.
FOR APPROVAL OF AN ALTERNATIVE
RATE PLAN.

CASE NO. 18-1722-GA-ALT

OPINION AND ORDER

Entered in the Journal on September 26, 2019

I. SUMMARY

{¶ 1} The Commission adopts the stipulation resolving all issues related to Northeast Ohio Natural Gas Corp.'s combined applications for an increase in rates and for an alternative rate plan.

II. APPLICABLE LAW

{¶ 2} Brainard Gas Corp. (Brainard), Orwell Natural Gas Company (Orwell), Spelman Pipeline Holdings, LLC (Spelman), and Northeast Ohio Natural Gas Corp. (NEO) (collectively, NEO)¹ are natural gas companies or pipeline companies as defined by R.C. 4905.03 and public utilities as defined by R.C. 4905.02, and, as such, are subject to the jurisdiction of this Commission.

{¶ 3} The fixation of rates for public utilities in the state of Ohio is governed by R.C. Chapter 4909. The statutory requirements for an application to increase a public utility's rates are enumerated in R.C. 4909.17, 4909.18, 4909.19, and 4909.42. Also, pursuant to R.C.

¹ On September 28, 2018, in Case No. 18-1484-GA-UNC, et al., Brainard, Orwell, Spelman, and NEO filed a joint application seeking approval of a proposed merger of Brainard, Orwell, and Spelman into NEO. The Commission approved the joint application on January 3, 2019.

4901.13, 4909.04(C), and 4909.18, the Commission adopted Ohio Adm.Code 4901-7-01 and its Appendix (Standard Filing Requirements). These Standard Filing Requirements specify the format for filing all information required in an application for an increase in rates and define the information that the Commission requires pursuant to R.C. 4909.18(E).

{¶ 4} Additionally, pursuant to R.C. 4929.05(A), a natural gas company may request approval of an alternative rate plan by filing an application to establish or change a rate under R.C. 4909.18.

III. HISTORY OF PROCEEDINGS

{¶ 5} On November 27, 2018, NEO filed separate notices of its intent to file both an application for an increase in rates and an application for approval of an alternative rate plan.

{¶ 6} Subsequently, on November 29, 2018, NEO filed a motion seeking to establish a test period and date certain, as well as requesting a waiver of a certain filing requirement. By Entry dated December 12, 2018, the Commission approved NEO's proposed test period of the 12 months ending June 30, 2019, and the proposed date certain of September 30, 2018. The Commission also granted NEO's waiver request of a certain filing requirement.

{¶ 7} On December 28, 2018, NEO filed a combined application for an increase in rates and application for approval of an alternative rate plan pursuant to R.C. 4909.18 and 4929.05, respectively.

{¶ 8} On February 19, 2019, Staff filed a letter, in Case No. 18-1722-GA-ALT, stating that NEO's application for approval of an alternative rate plan is in compliance with Ohio Adm.Code 4901:1-19-06.

{¶ 9} By Entry dated February 20, 2019, the Commission found that NEO's application for an increase in rates and for an alternative rate plan should be accepted for filing as of December 28, 2018.

{¶ 10} Staff conducted an investigation of the facts, exhibits, and matters relating to NEO's applications. On June 25, 2019, Staff filed a comprehensive written report of its investigation (Staff Report) in the above-captioned case dockets.

{¶ 11} By Entry dated June 28, 2019, the attorney examiner issued a procedural schedule, among other things, and set deadlines for motions to strike objections, pre-filed testimony, and motions to intervene.

{¶ 12} By Entry dated August 6, 2019, the attorney examiner granted intervention to the Ohio Consumers' Counsel (OCC) and the Ohio Partners for Affordable Energy (OPAE).

{¶ 13} The Commission held three local public hearings in order to elicit testimony from NEO's customers. The first hearing was held on August 12, 2019, in Lancaster, Ohio. The second hearing was held on August 13, 2019, in Canton, Ohio, and the third hearing was held on August 14, 2019, in Bucyrus, Ohio. No public testimony was presented at the public hearings.

{¶ 14} The evidentiary hearing was called as scheduled on August 20, 2019. At that time, NEO moved to continue the hearing in order for the parties to carry on their settlement discussions. The attorney examiner granted the uncontested motion and issued a subsequent Entry on August 27, 2019, that continued the hearing to September 11, 2019.

{¶ 15} On September 5, 2019, NEO filed on behalf of itself and Staff (Signatory Parties) a stipulation and recommendation (Stipulation), which purports to resolve all of the issues in these proceedings (NEO Ex. A).² On that same date, NEO filed testimony in support of the Stipulation by Ken Oostman (NEO Ex. L).

{¶ 16} The hearing reconvened as scheduled on September 11, 2019. OCC and OPAE do not oppose the Stipulation presented by the Signatory Parties during the hearing.

² On September 10, 2019, the Signatory Parties filed Schedule A-1 to the Stipulation (NEO Ex. B).

IV. DISCUSSION

A. *Summary of the Proposed Stipulation*

{¶ 17} The Stipulation filed September 5, 2019, was intended by the Signatory Parties to reflect a complete settlement of all proposals, issues, comments, and objections in these proceedings (NEO Ex. A at 9). The following is a summary of the terms of the Stipulation agreed to by the Signatory Parties.³

(A) Staff Report

(1) The Signatory Parties recommend that the Commission adopt the findings and recommendations of the Staff Report, except as otherwise agreed to in the Stipulation (NEO Ex. A at 3).

(B) Rate of Return

(1) The Signatory Parties recommend that the Commission determine NEO's capital structure to be 64.47 percent equity and 35.53 percent long-term debt and approve a return on equity (ROE) of 10.0 percent until such time as new rates are effective with a new ROE as authorized by the Commission in NEO's next base rate case.

(2) The Signatory Parties recommend, based on the ROE of 10.0 percent, that NEO's overall rate of return shall be 8.12 percent and that such overall rate of return on rate base be established as fair and reasonable.

(NEO Ex. A at 3.)

(C) Rates

(1) In lieu of the Staff Report's recommendation to reclassify General Service (GS) customers that use less than 200 thousand cubic feet (Mcf) to Small General Service (SGS) customers, NEO shall create two subclasses for GS customers: GS-2 and GS-1. Subclass GS-2 shall include all customers currently taking service under the GS rate who had an annual usage

³ This summary is not intended to replace or supersede the Stipulation.

of 200 Mcf or more during the test period. The second subclass, GS-1, shall include those customers currently taking service under the GS rate with an annual usage less than 200 Mcf during the test period, and their overall rate increase will be mitigated through a lower customer charge than the GS-2. Specifically, the monthly customer charge for GS-1 customers will be reduced from \$100/month to \$50/month. NEO shall recover the difference in revenue from GS-1 customers associated with this change through a higher volumetric charge across all GS volumes. In addition, GS-1 shall become available to all new nonresidential customers anticipated to use less than 200 Mcf annually, and SGS shall continue to serve existing SGS customers and any new residential customers.

(NEO Ex. A at 4.)

(D) Tariffs

(1) The Signatory Parties agree to the tariff updates replacing references to “Ohio law” with the specific Ohio Administrative Code sections, as set forth in the Staff Report, except as modified in the Stipulation:

- a. Original Sheet No. 17, Section IV, No. 12, 2nd paragraph, replaces “Ohio law” with “O.A.C. 4901:1-18-06.”
- b. Original Sheet No. 21, Section V, No. 20, 2nd sentence, replaces “Ohio law” with “O.A.C. 4901:1-18-05.”

(2) The Signatory Parties accept NEO’s updates to Original Sheet No. 15, Section IV, No. 10, which now requires both a 14-day and 10-day notice requirement in accordance with Ohio Adm.Code 4901:1-18-08(A).

(3) The Signatory Parties accept NEO’s updates to Original Sheet Nos. 25 and 26, Section VI, No. 31, which removes NEO’s ability to collect attorneys’ fees relating to a customer, landlord, property manager, or owner’s failure to grant access to premises, without a judicial award of such attorneys’ fees.

(NEO Ex. A at 4-5.)

(E) Rate Base

(1) The Signatory Parties agree with the calculations regarding rate base, as set forth in the Staff Report, except as modified in the Stipulation.

(2) **Plant In Service.**

a. \$426,710 shall be added back to the plant in service balance, which represents certain assets from the purchase of Orwell and Brainard, and consists of the following adjustments to the Staff Report:

- i. Addition of \$9,097 to Account 374 Land & Land Rights;
- ii. Addition of \$353,617 to Account 376 Mains-Distribution;
- iii. Addition of \$5,695 to Account 378 Measuring & Regulating Equipment - General;
- iv. Addition of \$16,703 to Account 380 Services;
- v. Addition of \$32,988 to Account 381 Meters; and
- vi. Addition of \$8,610 to Account 383 House Regulators.

b. \$36,002 shall be added back to the plant in service balance, which represents assets that were not available during the time of inspection, but are now fully operational and able to be inspected, and consists of the following adjustments:

- i. Addition of \$31,307 to Account 392 Transportation Equipment; and
- ii. Addition of \$4,695 to Account 394 Tools, Shop & Garage Equipment.

c. \$71,828 shall be added back to the plant in service balance, which represents the cost of two vehicles that were assets used and useful as of the date certain for this rate application, and consists of the following adjustments:

- i. Addition of \$36,250 to Account 392 Transportation Equipment; and
- ii. Addition of \$35,578 to Account 392 Transportation Equipment.

(3) **Reserve for Accumulated Depreciation.**

- a. \$333,995 shall be added back to the reserve for accumulated depreciation balance, which represents certain assets from the purchase of Orwell and Brainard, and consists of the following adjustments to the Staff Report:
 - i. Addition of \$8,753 to Account 374 Land & Land Rights;
 - ii. Addition of \$269,761 to Account 376 Mains-Distribution;
 - iii. Addition of \$5,695 to Account 378 Measuring & Regulating Equipment - General;
 - iv. Addition of \$16,424 to Account 380 Services;
 - v. Addition of \$27,693 to Account 381 Meters; and
 - vi. Addition of \$5,669 to Account 383 House Regulators.
- b. \$33,110 shall be added back to the reserve for accumulated depreciation balance, which represents assets that were not available during the time of inspection, but are now fully operational and able to be inspected, and consists of the following adjustments:
 - i. Addition of \$26,611 to Account 392 Transportation Equipment; and
 - ii. Addition of \$1,804 to Account 394 Tools, Shop & Garage Equipment.
- c. \$71,828 shall be added back to the reserve for accumulated depreciation balance, which represents the cost of two vehicles that were assets used and useful as of the date certain for this rate application, and consists of the following adjustments:
 - i. Addition of \$36,250 to Account 392 Transportation Equipment; and
 - ii. Addition of \$35,578 to Account 392 Transportation Equipment.

(4) The Signatory Parties agree that Staff's adjustments on Schedule B-3 did not agree with those on Schedule B-3.1. Schedule B-3.1 is correct and, therefore, the accumulated depreciation should be reduced by \$232,344, as follows:

- a. Reduction of \$205,335 to account 379 Measuring & Regulating Station Equipment - City Gas Check Stations;
- b. Reduction of \$1,299 to account 382 Meter Installations; and
- c. Reduction of \$25,710 to account 387 Other Equipment.

(5) **Working Capital.** The Signatory Parties agree to an adjustment to increase the working capital allowance component of rate base by \$100,116, which represents the corresponding adjustment required due to NEO's adjustments to operating and maintenance expense, income taxes, and rate base, bringing the working capital component of rate base to \$2,030,261.

(NEO Ex. A at 5-8.)

(F) Revenue Requirement

(1) The Signatory Parties agree to a revenue increase in the amount of \$159,378 to depreciation expense, which causes the total adjustment for depreciation expense to be (\$321,085).

(2) The Signatory Parties agree to a revenue increase in the amount of \$699,386 to reflect the elimination of the amortization of theoretical reserve imbalance.

(3) The Signatory Parties agree to an increase of \$308,797 to Staff's recommended adjustment of (\$429,856) to the test year for labor expenses, which causes the adjustment to the test year to be (\$121,059).

(4) The Signatory Parties agree to an increase of \$48,042 to Staff's recommended adjustment to Hearthstone Services expenses, which causes the shared service expense of \$2,031 in the Staff Report to increase to \$50,073.

(5) The Signatory Parties agree that the property tax expense needs an additional \$8,295, to reflect updates to Staff's property tax schedules for NEO's recommended adjustments to plant in service.

(6) The Signatory Parties agree to a reduction in the amount of \$258,576 to Staff's recommended adjustments to income taxes.

(7) Summarizing all of the above, the Signatory Parties agree to a rate base of \$46,320,957 and a total revenue requirement including gas costs of \$37,904,664. Gas costs are agreed to be \$20,270,207 for a base revenue requirement of \$17,634,457.

(NEO Ex. A at 8.)

B. Consideration of the Stipulation

{¶ 18} 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 an agreement are accorded substantial weight. *See Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This deference is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

{¶ 19} 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 W. Res. Tel. 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 The Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 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 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). Additionally, the Court stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

{¶ 20} In regard to the first prong, the Signatory Parties, as well as NEO witness Ken Oostman, opined that the Stipulation is the product of lengthy, serious bargaining among knowledgeable and capable parties representing a wide range of interests to resolve the aforementioned issues. Furthermore, the Signatory Parties aver that the Stipulation is the product of an open process in which all parties were represented by able counsel and technical experts and represents a comprehensive compromise of issues raised by parties with diverse interests. NEO witness Oostman testified that the Signatory Parties: have a history of participation and experience in rate cases; are very knowledgeable of all relevant issues in these particular cases; and used their knowledge to reach the Stipulation. Lastly, the Signatory Parties state that the Stipulation reflects a compromise and balancing of competing interests and does not reflect the position that any one of the Signatory Parties would have taken on any individual issue. (NEO Ex. A at 9, 11; NEO Ex. L at 4.) Upon review, we find that the first prong is met.

{¶ 21} With respect to the second prong, the Signatory Parties represent that the Stipulation is supported by adequate data and information, and as a package, benefits customers and the public interest. Specifically, the Signatory Parties aver that the Stipulation addresses a variety of complex issues that, absent the agreement, would have been resolved through complex, protracted, and expensive litigation. (NEO Ex. A at 2, 9.) Additionally, NEO witness Oostman testified that the Stipulation provides for an unopposed agreement between concerned parties regarding all aspects of NEO's rates and tariffs and, beyond the actual parties to these proceedings, not a single member of the public contested NEO's proposal. Lastly, Mr. Oostman represented that, among other things, the parties agreed to reduce the requested return on equity from 10.83 percent to 10.0 percent, created a new GS-1 class to avoid undue rate increases on certain customers, revised depreciation policies which will benefit customers, and agreed on the items which should be included in the rate base. (NEO Ex. L at 5.) Upon review, we find that the second prong is met.

{¶ 22} Lastly, with respect to the third prong, the Signatory Parties represent that the Stipulation violates no regulatory principle or precedent (NEO Ex. A at 1, 11). NEO witness Oostman testified that no party opposes the Stipulation because there is no provision of the Stipulation which violates any important regulatory practice or principle. Further, Mr. Oostman states that the Stipulation actually furthers several important Commission principles such as an appropriate allocation of costs between customers, appropriate rate design, fair and reasonable tariff provisions, and providing a reasonable return on equity for Ohio utilities. (NEO Ex. L at 4.) The Commission finds that there is no evidence that the Stipulation violates any important regulatory principle or practice, and, therefore, the Stipulation meets the third criterion. Accordingly, the Commission finds that the Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

C. *Rate of Return and Authorized Increase*

{¶ 23} The Signatory Parties stipulated to a net operating income of \$2,218,223 for the test year ending on June 30, 2019. Application of this dollar return to the stipulated rate base of \$46,320,957 results in a rate of return of 4.79 percent. Such a return is insufficient to provide NEO with reasonable compensation for the natural gas service it renders to its customers. (NEO Ex. A; NEO Ex. B, Schedule A-1.)

{¶ 24} The Signatory Parties have agreed to recommend a rate of return of 8.12 percent on a stipulated rate base of \$46,320,957, requiring a net operating income of \$3,761,262. Adding the stipulated revenue increase of \$1,953,216 to the stipulated test year revenues of \$35,951,448 produces a new revenue requirement of \$37,904,664, an increase of 5.43 percent. (NEO Ex. A; NEO Ex. B, Schedule A-1.)

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 25} NEO is a natural gas company as defined by R.C. 4905.03 and public utility as defined by R.C. 4905.02, respectively, and, as such, is subject to the jurisdiction of this Commission.

{¶ 26} On November 27, 2018, NEO filed its notice of intent to file an application for an increase in rates and a notice of intent to file an application for an alternative rate plan.

{¶ 27} On November 29, 2018, NEO filed a motion to establish a date certain of September 30, 2018, and a test year spanning the 12-month period ending on June 30, 2019. By Commission Entry dated December 12, 2018, the proposed test period and date certain were approved and a requested waiver of Ohio Adm.Code 4901:1-19-06(B)(1) was granted.

{¶ 28} On December 28, 2018, NEO filed a combined application to increase rates and application for an alternative rate plan.

{¶ 29} On February 19, 2019, Staff filed a letter, in Case No. 18-1722-GA-ALT, stating that NEO's application for approval of an alternative rate plan is in compliance with Ohio Adm.Code 4901:1-19-06.

{¶ 30} On February 20, 2019, the Commission issued an Entry accepting NEO's combined application as of its filing date.

{¶ 31} On June 25, 2019, Staff filed its written report of investigation.

{¶ 32} OCC and OPAAE were granted intervention in these proceedings on August 6, 2019.

{¶ 33} On August 8, 2019, a prehearing conference was held.

{¶ 34} The Commission conducted three local public hearings in accordance with R.C. 4903.083—one in Lancaster, Ohio on August 12, 2019; one in Canton, Ohio on August 13, 2019; and one in Bucyrus, Ohio on August 14, 2019.

{¶ 35} Notice of the local public hearings was published in accordance with R.C. 4903.083.

{¶ 36} On August 20, 2019, the evidentiary hearing was called to order as scheduled, but upon granting an unopposed motion for continuance requested by NEO, was immediately continued to September 11, 2019.

{¶ 37} On September 5, 2019, a Stipulation was filed on behalf of NEO and Staff.

{¶ 38} The evidentiary hearing took place on September 11, 2019.

{¶ 39} The Signatory Parties stipulated to a net operating income of \$2,218,223 for the test year ending on June 30, 2019.

{¶ 40} Income of \$2,218,223 represents a 4.79 percent rate of return on the stipulated rate base of \$46,320,957.

{¶ 41} The stipulated gross annual revenue to which NEO is entitled for purposes of these proceedings is \$37,904,664. The Signatory Parties stipulated to a gross revenue increase of \$1,953,216, which should produce a net operating income of \$3,761,262. A net operating income of \$3,761,262 represents a rate of return of 8.12 percent on a rate base of \$46,320,957.

{¶ 42} A rate of return of 4.79 percent does not provide NEO with reasonable compensation and return on its property used and useful in the rendition of natural gas services.

{¶ 43} A rate of return of 8.12 percent is fair and reasonable under the circumstances presented by these cases and is sufficient to provide the Company with just and reasonable compensation and return on the value of its property used and useful in furnishing the service described in the applications.

{¶ 44} The Stipulation was the product of bargaining among knowledgeable parties, benefits ratepayers and the public interest, and does not violate any important regulatory principles or practices. The Stipulation is reasonable and should be adopted.

{¶ 45} NEO's applications were filed pursuant to, and this Commission has jurisdiction over the applications under, the provisions of R.C. 4909.17, 4909.18, 4909.19, 4929.05, and 4929.11. The applications comply with the requirements of those statutes.

{¶ 46} A staff investigation was conducted and a report duly filed and mailed, and public hearings held herein, the written notice of which complied with the requirements of R.C. 4909.19 and 4903.083.

{¶ 47} The Stipulation meets the three criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

{¶ 48} NEO is authorized to withdraw its current tariffs and to file, in final form, revised tariffs as approved by the Commission herein.

VI. ORDER

{¶ 49} It is, therefore,

{¶ 50} ORDERED, That the Stipulation filed on September 5, 2019, in these proceedings be approved and adopted by the Commission. It is, further,

{¶ 51} ORDERED, That NEO's applications for an increase in rates, approval of an alternative rate plan, and approval for tariff approval are granted to the extent provided in this Opinion and Order. It is, further,

{¶ 52} ORDERED, That NEO is authorized to file, in final form, two complete copies of tariffs consistent with this Opinion and Order and to cancel and withdraw its superseded tariffs upon the effective date of the final tariffs. One copy shall be filed in these case dockets, and one copy shall be filed in the Company's TRF docket. The Company shall also update its tariffs previously filed with the Commission's docketing division. It is, further,

{¶ 53} ORDERED, That NEO shall notify all affected customers of the tariffs via bill message or bill insert within 30 days of the effective date of the revised tariffs. A copy of this customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least ten days prior to its distribution to customers. It is, further,

{¶ 54} ORDERED, That the effective date of the revised tariffs shall be a date not earlier than the date of this Opinion and Order and the date upon which two complete copies of the final tariffs are filed with the Commission. It is, further,

{¶ 55} ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation. It is, further,

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

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

GAP/LLA/mef

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Case No(s). 18-1720-GA-AIR, 18-1721-GA-ATA, 18-1722-GA-ALT

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