

STATE OF INDIANA

FILED

INDIANA UTILITY REGULATORY COMMISSION

August 7, 2017

JOINT PETITION OF OHIO VALLEY GAS)
CORPORATION AND OHIO VALLEY GAS,)
INC. FOR (1) AUTHORITY TO INCREASE)
THEIR RATES AND CHARGE FOR GAS)
UTILITY SERVICE; (2) APPROVAL OF NEW)
SCHEDULES OF RATES AND CHARGES;)
AND (3) APPROVAL OF CHANGES TO)
THEIR GENERAL RULES AND)
REGULATIONS APPLICABLE TO GAS)
UTILITY SERVICE)

INDIANA UTILITY
REGULATORY COMMISSION

CAUSE NO. 44891

PETITIONERS' POST-HEARING BRIEF

ON RECOVERY OF PENSION TERMINATION EXPENSES

The joint petitioners Ohio Valley Gas Corporation and Ohio Valley Gas, Inc. (collectively "OVG") reached a partial settlement with the only other party in this case, the Indiana Office of Utility Consumer Counselor ("OUCC"). The only disputed issue in this case concerns OVG's request to recover its costs to terminate the defined-benefit pension plan it had provided as a benefit to its employees between 1957 and June 2016. That issue was the focus of the evidentiary hearing held in this cause on July 7, 2017.

This brief explains why the Commission should include in its order approving new rates for OVG in this case the opportunity for OVG to recover over the next five years these documented expenses. OVG's uncontested evidence shows that during the test year and subsequent adjustment period in this rate case it contributed \$1,009,357 to its employees' pension fund and also spent \$172,958 for professional outside consultants and filing fees, for a total of \$1,182,315 attributable to the termination of its defined

benefit pension plan. What the OUCC has contested is the appropriateness of including any portion of these costs in OVG's revenue requirement used to set its new retail rates. OVG has proposed to amortizing that expense over five years, resulting in an annual operating expense of \$236,463. Comparing that amount to the unadjusted test year expenses of \$1,136,267 leads to a pro forma reduction of test year expenses of \$901,804.

Background

OVG first began offering a defined benefit plan as an employee benefit in 1957. Over the decades it regularly contributed cash funds to an irrevocable trust to cover these future obligations to its employees once they retired. By the early 1980s, the assets in OVG's pension fund had accumulated to the point that, at least for a time, no additional contributions were required. Kerney Direct Testimony at 9, lines 5-8. Accordingly, no rate cases with a test year beginning after 1982 would have included contributions to the pension plan as part of the revenue requirement until IURC Cause No. 44147 in 2011. In 2009, however, OVG's pension was no longer overfunded and OVG resumed making contributions in compliance with federal requirements.

For OVG's most recent rate case, IURC Cause No. 44147, the order approved on December 10, 2012 authorized OVG to charge rates that were based on a revenue requirement that included its renewed contributions to its employees' pension fund. Although OVG's pension payments had resumed in 2009, and the pro forma revenue requirement based on its adjusted test year expenses from July 2010 through June 2011 for Cause No. 44147 included pension expenses of \$797,304, it was not until the

last weeks of 2012 that OVG was allowed to increase its rates to begin recovering any of those costs.

Termination of the Defined-Benefit Pension Plan

Concern about the challenges of planning for and controlling its increasingly fluctuating operating expenses and cash outlays to keep its pension plan in compliance with regularly changing government regulations applicable to pension plan funding led OVG to consider more cost-effective alternative employee benefits. Kerney Direct at 9, lines 10-16. OVG also determined that younger employees were attracted to the increased mobility, flexibility and access to earned benefits available through a defined contribution retirement plan in the form of individual 401(k) accounts. *Id.* at lines 18-19.

In late 2013, OVG decided to freeze benefits earned under its defined benefit pension plan as of December 31, 2014, and replace that benefit with a defined contribution retirement plan funded by OVG's contributions to individual employees' 401(k) plan accounts beginning in 2015. Freezing the benefits in the pension plan did not freeze OVG's obligations to keep that plan fully funded. *See, e.g.*, Transcript at A-45, lines 18-21 (Cross-examination of Mark Kerney). In order to save the ongoing costs to administer and fund its frozen pension plan, OVG in 2015 initiated a standard termination of the plan pursuant to requirements of the federal Pension Benefit Guaranty Corporation. Testimony of Brad Jones at 3, line 4. Employees covered by the pension plan were given the option of selecting either a lump sum distribution of their accrued benefit or to receive the value of the benefit in the form of an annuity contract. Lump sum payments were made and annuity contracts were purchased in

2016, and OVG made a final contribution of \$1,009,357 in May 2016 to achieve 100% funding. Exhibit SMK-3 Schedule 13, line 3.

OVG has engaged the pension consulting firm McCready and Keene since 1986 to advise it on the administration of its pension plan. That firm's and other firms' extensive work advising OVG on the lawful termination of the plan resulted in OVG incurring \$172,958 in expenses for consulting as well as filing fees directly associated with the termination of the plan and between July 1, 2015 and June 30, 2017.¹

OUCC's Objection and Flawed Analysis

OVG witness Farheen Ahmed recommended that the Commission not allow OVG "to recover any costs related to termination of pension plan expense." Ahmed Testimony (Public's Exhibit No. 3) at 6, lines 19-21. Ms. Ahmed offered no evidence that OVG had not actually incurred all of the expenses it had documented during the test year and adjustment period, nor did she raise any objection based on whether these actual expenses were prudently incurred or based on sound management of the utility. Instead, the sole basis of the OUCC's objection is that "[t]he pension expense for termination costs that OVG is trying to include in rates has already been recovered." *Id.* at 7, lines 16-17. The evidence in this case, however, proves otherwise.

¹ During cross examination of Mr. Kerney, the OUCC noted that OVG had subtracted \$76,674 from its total \$1,086,031 termination funding contribution during the test year to reflect the portion of those total costs attributable to pension plan participants at OVG's parent company. OVG had not, however, shown any commensurate reduction in its consulting expenses. OVG agrees that it would be appropriate to apportion a share of the \$172,958 in consulting expenses to the parent company and remove that amount from OVG's revenue requirement. That adjustment is calculated by determining the percentage removed from the total termination obligation – 7.1% -- and applying that to the consulting fees, which results in a reduction of \$12,211. Since OVG is requesting to amortize its costs over five years, this would reduce its proposed annual revenue requirement by \$2,442.

In its rebuttal, OVG demonstrated the fallacy of the OUCC's position. In fact, following Ms. Ahmed's own flawed analysis looking back in time beyond the test year shows that if anything OVG has under-collected its costs for its employees' retirement benefits. Not only does Ms. Ahmed's calculation of the difference between what OVG supposedly recovered from ratepayers over the years and the amounts it contributed to its pension plan ignore \$1,179,415 of OVG's contributions to the plan between July, 2011 and December 2012, but she takes no account of the \$1,409,277 OVG also has contributed to its employees' 401(k) accounts between January, 2015 and June, 2017. Kerney Rebuttal at 6. She also ignores all payments made by OVG going back to 2009 when it resumed contributions to its pension plan but was not recovering any of those costs in its rates. And while Ms. Ahmed offered no specific objection to OVG's pension termination consulting expenses of \$172,958, her calculation of OVG's alleged over-collection ignores this material expense.

The OUCC's position cannot withstand critical scrutiny. Neither Ms. Ahmed nor any other OUCC witness offered any authority for looking back prior to the test year and then cherry-picking the data to compare all of the purported revenue to only some of the related expenses. Because her math is fatally flawed, the OUCC's objection cannot stand and OVG should be allowed the adjustment that it has proposed to its revenue requirement in this case.

Non-Recurring Expenses are Recoverable

Although it is impossible to discern from the OUCC's position as set forth in its responsive case, subsequent questions suggest that that office may view OVG's actual

pension termination expenses as excludable due to their non-recurring nature. And even though Ms. Ahmed conceded that certain non-recurring expenses, such as those incurred for preparing and prosecuting a rate case, are appropriately includable in rates, she attempted to draw a distinction between what she deemed usual non-recurring expenses and unusual non-recurring expenses. Hearing Transcript at B-33. She characterized OVG's pension termination expenses as unusual, and therefore ineligible for rate recovery, presumably based on the unlikelihood that OVG will incur such expenses again. And without getting into the merits of any particular cost, OVG further notes that Ms. Ahmed also ignores the regular inclusion of one-off, non-recurring costs in the revenue requirement relied upon in cases that the OUCC has settled with OVG and utilities.

Since at least as far back as 1992, this Commission has allowed utilities to recover through rates a variety of one-off, non-recurring expenses. In IURC Cause No. 39291, Switzerland County Natural Gas Company sought to include in its new rates recovery of its amortized costs for a one-time construction feasibility study that did not lead to any new construction. Over the OUCC's objection, the Commission approved the inclusion in new gas rates the amortized cost of that study. In its July 22, 1992 order approving new gas rates, the Commission noted (on page 8) that the OUCC had not objected to the amount of the cost nor the reasonableness of paying for the study. Such is also the case with OVG's pension termination expenses. There is no evidence that OVG's decision to terminate its defined benefit pension plan in favor of a defined

contribution 401(k) retirement benefit² was anything other than reasonable and prudent, or that there was anything questionable about the amount of expense it incurred.

Conclusion

OVG's documented pension termination expenses were prudent and appropriate. Denying their recovery is confiscatory, deprives OVG of its property and sends a dangerous and inefficient signal to OVG and other utilities. The OUCC's allegation that OVG has already recovered these expenses is demonstrably incorrect. Accordingly, OVG is entitled to include in its revenue requirement an amount based on its pension termination expenses amortized over five years.

Respectfully submitted,

OHIO VALLEY GAS CORPORATION and

OHIO VALLEY GAS, INC.



By their attorney

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² OVG witness Brad Jones noted that OVG's 401(k) plan is akin to a pension. Transcript at A-22, line 8.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the attached Post-Hearing Brief has been served upon the following counsel of record by electronic mail this 7th day of August, 2017.

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