

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio for Approval of the Sale of) Case No. 12-468-EL-ATR
Certain Electric Facilities to Butler Rural)
Electric.)

FINDING AND ORDER

The Commission finds:

- (1) On January 27, 2012, Applicant, Duke Energy Ohio, Inc. (Duke Ohio) filed an application with exhibits (Application) for authority to enter into a Purchase and Sale Agreement (the Agreement) with Butler Rural Electric (Butler) for the transfer of ownership of certain assets used in Applicant's distribution of electricity.
- (2) Applicant is a public utility and an electric light company, as defined in Sections 4905.02, and 4905.03(A)(3), Revised Code, and, as such, is subject to the jurisdiction of this Commission. Butler is a not for profit electric light company and, as such, is not a jurisdictional public utility, pursuant to Section 4905.02, Revised Code.
- (3) Applicant has agreed to sell and Butler has agreed to purchase certain assets owned by Applicant for an aggregate purchase price of \$19,725.38, pursuant to the terms of the Agreement. The assets Duke Ohio proposes to sell include poles, neutral conductor, down guys and anchors (collectively, the "Equipment"). The Equipment are solely used in the delivery of power to a substation owned and operated by Butler, and which is used by Butler for the delivery of power to its end-use customers, as described in the Application.
- (4) Applicant states that Butler is constructing its own line to serve its substation replacing that currently being provided by Applicant. On completion, Butler's line will be the only facility using the Equipment. After the transfer of the Equipment, Butler will be responsible for continued maintenance of the Equipment. Duke Ohio will have no further use for the Equipment, and the assets

will be included in Butler's replacement line, as described in the Application.

- (5) Duke Ohio and Butler agree to the transfer of the Equipment and service to Butler. Butler will operate the Equipment after the transfer. Sections 4905.20 and 4905.21, Revised Code, provide that public utilities may not abandon service, except with the approval of the Commission, following an application for abandonment. From our consideration of the application, we conclude that there will be no abandonment of service or facilities in the transaction between Applicant and Butler because no service to end-use customers is being abandoned and the facilities themselves are simply being moved from a regulated utility to a non-regulated utility. Thus, we do not believe that Sections 4905.20 and 4905.21, Revised Code, are triggered by the proposed transfer.

However in such cases, the Commission has also found it appropriate to exercise its authority pursuant to Sections 4905.05 and 4905.06, Revised Code, to ensure that the proposed transfer results in uninterrupted and adequate service to the utility's existing customers. See *In the Matter of the Joint Application of East Ohio Gas Company d/b/a Dominion East Ohio, Constitution Gas Transport Co., Inc., and Knox Energy Cooperative Association, Inc., for Approval of the Transfer of Assets and Substitution of Service*, Case No. 11-4324-GA-ATR, Finding and Order (August 17, 2011). Accordingly, in order to protect the public interest, the Commission will exert jurisdiction to this extent over the proposed transaction between Applicant and Butler in this case.

- (6) Duke Ohio makes the following representation regarding the continuation of the adequate service to its customers: (a) the only customer that will be affected by this transaction is Butler; (b) after the transaction is consummated Butler will no longer be purchasing any service from Duke Ohio; and (c) all of the customers of Duke Ohio will continue to be provided with uninterrupted and adequate electric service, with no consequent impact on just and reasonable rate, as described in the Application.
- (7) The Commission has reviewed the Application and is satisfied that the transfer of the Equipment to Butler will not impair the quality of service presently provided or result in interrupted or unsatisfactory service to Duke Ohio's customers. The

Commission is satisfied that the public will continue to be furnished adequate service finds that the Application should be approved.

- (8) As a not for profit electric light company, we do not assert general regulatory jurisdiction over Butler. We will, however, require that within 30 days after the closing date of the transfer of the Equipment to Butler, Duke Ohio should file a letter in this docket informing the Commission that the transaction has been completed.

It is, therefore,

ORDERED, That the request for approval of the proposed transfer of the Equipment of Duke Energy Ohio, Inc. to Butler Rural Electric, pursuant to the terms and conditions of the Purchase and Sale Agreement, be granted, subject to the conditions set forth in finding (8). It is, further,

ORDERED, That Duke Ohio shall file a revised tariff and service territory map within 30 days that reflect the transfer of the Equipment approved herein. It is, further,

ORDERED, That the proposed transaction be recorded by Duke Ohio in accordance with the Uniform System of Accounts for Electric Companies which the Commission has prescribed for use by electric companies in Ohio. It is, further,

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

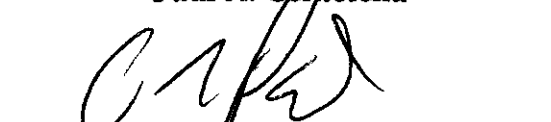
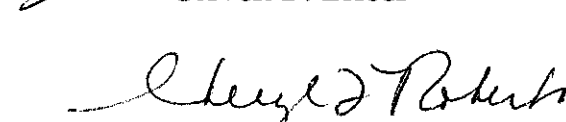
ORDERED, That approval of the application in this case does not constitute state action for the purposes of antitrust law. It is not our intent to insulate Duke Ohio or Butler from the provision of any state or federal laws which prohibit the restraint of free trade. It is, further,

ORDERED, That a copy of this Finding and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman

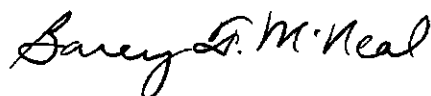
 
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Entered in the Journal

MAR 28 2012


Barcy F. McNeal
Secretary