

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
INVESTIGATION INTO OHIO RURAL
NATURAL GAS CO-OP AND RELATED
MATTERS.

CASE No. 16-1578-GA-COI

ENTRY

Entered in the Journal on February 23, 2017

I. SUMMARY

{¶ 1} The Commission grants customers on the Ohio Rural Natural Gas Co-op system a limited extension of the suspension of service date, until April 17, 2017, in order to afford those customers additional time to obtain alternative sources of energy. Because the Commission has granted an extension based on customer requests, Ohio Rural Natural Gas Co-op's motion to stay the Commission's order is denied.

II. PROCEDURAL HISTORY

{¶ 2} Ohio Rural Natural Gas Co-op (ORNG) is a pipeline company as defined in R.C. 4905.03 and an operator as defined in R.C. 4905.90, and, pursuant to R.C. 4905.90 through 4905.96, is subject to the jurisdiction and supervision of this Commission. Accordingly, ORNG is required to comply with Ohio Adm.Code Chapter 4901:1-16, which sets forth the safety standards and requirements for intrastate gas pipeline facilities subject to the jurisdiction of the Commission. Pursuant to Ohio Adm.Code 4901:1-16-03(A), these rules adopt the United States Department of Transportation's gas pipeline safety (GPS) regulations contained in 49 C.F.R. Parts 40, 191, 192, and 199.

{¶ 3} R.C. 4905.91 provides that the Commission may investigate any service, act, practice, policy, or omission by any operator to determine its compliance with R.C. 4905.90 to 4905.96 and the pipeline safety code.

{¶ 4} On July 15, 2016, Staff filed a report regarding the results of a series of investigations into ORNG's facilities, operations, and records (Staff Report). In the Staff Report, Staff asserted that there have been multiple, repeated instances of non-compliance

by ORNG from February 2015 to May 2016 and that ORNG's system is a potential threat to human life and property.

{¶ 5} Following an evidentiary hearing on September 6, 2016, the Commission issued an Opinion and Order on January 18, 2017, finding, pursuant to R.C. 4905.95(B), that ORNG is in violation of the Commission's rules for intrastate gas pipeline facilities and that ORNG's facilities are hazardous to human life and property. The Commission concluded that ORNG has not demonstrated that it has the requisite knowledge, training, organization, or procedures to safely operate a gas pipeline system. The Commission directed ORNG to cease all operations, including connecting new customers, until it has corrected all of the violations in the Staff Report and can demonstrate that it has the knowledge and organization to consistently follow the GPS regulations. Specifically, ORNG was ordered to immediately cease all operations at the Duck Creek Road and Ellsworth Road systems, and for all other parts of the system, to cease operations on March 1, 2017. In addition, ORNG was ordered to work with Staff to assist customers in obtaining an alternative source of energy.

III. DISCUSSION

{¶ 6} The Commission is in a position where it must balance competing safety concerns. On one hand, we must consider the safety of Ohioans and ORNG consumers in light of ORNG's continued violations of GPS regulations. January 18, 2017 Opinion and Order at ¶¶ 57-63. On the other hand, the Commission must also contemplate the need for ORNG customers to continue having energy to fuel their homes and stay warm during the heating season. Since our decision on January 18, 2017, the Commission received requests from ORNG and consumers to extend the March 1, 2017 directive to cease service. Additionally, Commission Staff filed a substantive update on safety concerns regarding ORNG's ongoing compliance violations and safety status.

{¶ 7} Since the January 18, 2017 Opinion and Order, the Commission received correspondence from multiple ORNG customers. Among other concerns, all of these ORNG

customers indicated that they would not be able to find an alternative energy source by the March 1, 2017 deadline and requested more time to do so.

{¶ 8} On February 17, 2017, ORNG filed a motion to stay the Commission's order to discontinue service to customers on March 1, 2017, and an application for rehearing. In its motion to stay, ORNG first asserts that by filing an application for rehearing before the March 1, 2017 shutoff date, the Commission's order is stayed by operation of law, pursuant to R.C. 4903.10(B). ORNG further seeks a formal order authorizing a stay of the Commission's instruction to suspend service. According to ORNG, its customers need more time to obtain an alternative energy source. ORNG argues that since the Commission issued the order on January 18, 2017, ORNG has been compliant and cooperative and intends to demonstrate to the Commission that it is a responsible operator. Therefore, ORNG requests the deadline be extended until July 1, 2017.

{¶ 9} On February 23, 2017, Staff filed a letter updating the Commission on the status of this case. Staff avers ORNG has not demonstrated that it is in compliance with GPS regulations, and Staff continues to have concerns about ORNG's ability to safely operate the system on a long-term basis. Specifically, Staff asserts that, since the hearing, ORNG has reduced its workforce and that former ORNG president Darryl Knight is no longer employed with the company. Staff notes that his position has not been filled. Staff also observed that no one is currently overseeing compliance activities at ORNG, and states ORNG reported it is in search of a general manager and a compliance officer. Additionally, according to Staff, it attempted to contact the emergency contacts on file for ORNG and received an insufficient response. Thereafter, Staff suggested ORNG provide documentation demonstrating ORNG's compliance with federal regulations, specifically, that it has personnel qualified to respond to emergency calls by customers. As suggested by Staff, ORNG completed a leak survey of the pipeline system, which was audited by Staff, and did not find any active leaks. Staff concludes that ORNG's addition of qualified personnel to respond to emergencies was an important step and the results of the leak

survey show the system is currently intact, but ORNG remains in violation of GPS standards and lacks a compliance manager.

{¶ 10} The Commission denies ORNG's motion to stay the Commission order, as ORNG's argument is without merit; however, after balancing the competing safety concerns, we grant a limited extension of the deadline based on the customer requests.

{¶ 11} With regard to ORNG's motion, R.C. 4903.10(B) reads, in pertinent part, "(w)here such application for rehearing has been filed before the effective date of the order as to which a rehearing is sought, the effective date of such order, unless otherwise ordered by the commission, shall be postponed or stayed pending disposition of the matter by the commission or by operation of law." Further, pursuant to R.C. 4903.15, "(u)nless a different time is specified therein or by law, every order made by the public utilities commission shall become effective immediately upon entry thereof upon the journal of the public utilities commission." Thus, the effective date of the order, as referenced in the statute, is the date the order was issued and journalized, unless stated otherwise. Here, ORNG incorrectly ascribes the March 1, 2017 shut down date as the effective date of the order. The Commission's directives, and associated deadlines, became effective when the Opinion and Order was issued on January 18, 2017. This is in line with Commission precedent. See *In re the Amendment of Rules 4901:1-11-09, 4901:1-11-10, 4901:1-14-01, and 4901:1-14-07 of the Ohio Admin. Code*, Case No. 84-91-GE-ORD, Entry on Rehearing (Apr. 3, 1984) at 1-2 ("Section 4903.10, Revised Code, speaks in terms of the effective date of a Commission order, not in terms of some other result of a Commission order. The Commission's order which was effective on the date of its journalization, February 7, 1984, directed that CEI file tariffs on February 21, 1984. The fact that the rules adopted by the Commission order did not become effective until a later date has no impact on the order directing CEI to file tariffs."); *In re Toledo Edison Co.*, Case No. 86-2026-EL-AIR, Entry (Dec. 23, 1987) at 2. In its orders, the Commission routinely establishes deadlines, procedural calendars, and other scheduled directives; unless ordered otherwise, however, these orders become effective on the date they are journalized. ORNG's interpretation of R.C. 4903.10 is based solely on *Kanally v.*

Ameritech Ohio Co., 2008-Ohio-4446 (8th Dist. Sept. 4, 2008) (holding that one-year statute of limitations was not tolled by appeal to Ohio Supreme Court of underlying Commission decision), where the court of appeals noted, at ¶ 16, that “(t)he PUCO’s order becomes effective immediately after entry, unless a different effective date is specified in the order or upon a timely application for rehearing.” Here, the court makes clear that a Commission order is effective immediately after its entry. Regarding the effect of an application for rehearing, we find that the court’s statement, which is arguably dicta, would authorize the shut down of the ORNG system on March 1, 2017, because of the effective order from January 18, 2017. Accordingly, ORNG’s argument is denied.

{¶ 12} Although ORNG’s motion is denied, upon review of the letters, it is evident that many customers need additional time in order to secure a new heat source. We find an extension of the March 1, 2017 deadline provides sufficient time for customers to find an alternative service provider and continue through the heating season while limiting additional unnecessary risks.

{¶ 13} The Commission remains concerned about the condition of the ORNG system, and the competency of ORNG’s staff, but is also cognizant of the winter heating needs of ORNG’s customers. Consequently, because Staff confirmed that a leak survey was successfully completed and verified that ORNG has qualified emergency personnel, it has mitigated our concerns about the short-term viability of the system such that the Commission will grant a limited extension of the deadline for suspension of service. Thus, ORNG should not cease operations until April 17, 2017.

{¶ 14} In granting this extension, however, we remain concerned about the long-term viability of ORNG’s operations. Specifically, we note Staff’s recent finding that ORNG is currently in search of a general manager and a compliance officer and no longer employs former president Darryl Knight. As noted in Mr. Knight’s testimony, he was the General Manager, overseeing the day-to-day operations of ORNG, including compliance with pipeline safety regulations. Mr. Knight was also the President of the Board of Directors,

being ultimately responsible for all aspects of ORNG's operations, including its corporate governance, record keeping, strategic planning, and all legal matters. ORNG Ex. 1 at 1. At the hearing, Mr. Knight served as ORNG's sole witness and emphasized that "I want the Commission to know that so long as I am in charge of ORNG Co-op, every possible effort will be made to ensure that ORNG Co-op is in compliance with PUCO pipeline safety regulations and that ORNG Co-op will fully cooperate with Staff in all matters." ORNG Ex. 1 at 24. Despite Mr. Knight's qualifications and assurances, Staff expressed concern that ORNG's operations, and its management, were ineffective. Staff Ex. 3 at 24. Thus, in our January 18, 2017 Opinion and Order, we found that ORNG "has not demonstrated that it has the requisite knowledge, training, organization, or procedures to safely operate a gas pipeline system." Order at ¶ 63. While the leak survey and re-establishing qualified emergency responders, both remedies having been suggested by Staff, alleviates some of our concerns regarding the short-term viability of the pipeline system, progress with ORNG's operations and management appears to be going backwards, not forward with the departure of Mr. Knight. We emphasize our directive from the January 18, 2017 Opinion and Order that ORNG must demonstrate that its operations and management have the requisite knowledge, experience, and organization in order to safely operate a gas pipeline system in compliance with all regulations. Clearly, operation of the system by ORNG is still amiss, presenting long-term viability concerns that the Commission simply cannot ignore.

{¶ 15} On April 17, 2017, ORNG is instructed to cease providing service, under the supervision of Staff. While ORNG's motion states it has been cooperative and intends to demonstrate it is a responsible operator, ORNG's actions following the Commission's decision have done little to garner our trust. Similar to past incidents, and as demonstrated in the record of this case, while ORNG claims to be in compliance, it is not actually in compliance. Tr. at 61-62; Order at ¶ 40. That ORNG was operating its system without any emergency responders on call, and that Staff had to request ORNG to come into compliance on emergency responders, is particularly concerning, as this is a critical and essential part of properly managing and operating a pipeline system. Although the Commission will rule on ORNG's rehearing in a later decision, as ORNG has yet to provide evidence that it is

coming into compliance, and in fact, appears to have taken a step backwards in its management and operations, customers are urged to take all necessary action to ensure that alternative energy arrangements are in place by that date.¹ Additionally, the Commission reiterates its directive from the January 18, 2017 Opinion and Order that ORNG work with Staff to assist customers in obtaining an alternative source of energy. Specifically, ORNG is directed to provide Staff with any necessary customer or pipeline information. Further, ORNG is not to interfere with customers obtaining another service provider and should not prevent other service providers from accessing necessary facilities.

{¶ 16} In the event that ORNG fails to fully comply with these directives, the Ohio Attorney General's office is directed, pursuant to R.C. 4905.96, to seek enforcement and appropriate remedies in state or federal court. These remedies may include, but are not limited to, actions in common pleas court for injunctive relief. The Ohio Attorney General's office is directed to proceed without further authorizations, in the event that ORNG does not fully satisfy the directives set forth above.

IV. ORDER

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That customers on the ORNG system be granted a limited extension of the suspension of service date, until April 17, 2017. It is, further,

{¶ 19} ORDERED, That, in the event that ORNG fails to fully comply with these directives, the Ohio Attorney General's office be directed to seek enforcement and appropriate remedies in state or federal court, including, but not limited to, injunctive relief. It is, further,

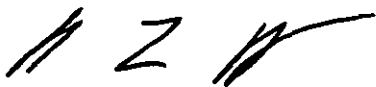
¹ Here, we note that ORNG holds itself as a co-operative, making its customers also member-owners. As ORNG stated in its reply brief, "As a cooperative, ORNG Co-op is ultimately controlled by its members, not Mr. Osborne. If at the next annual meeting the cooperative's members find that Mr. Osborne's role in the company is not useful, they can vote him off the board and take action to ensure he is not involved in the cooperative at any level." ORNG Reply Br. at 1.

{¶ 20} ORDERED, That ORNG's motion to stay the Commission's order be denied.
It is, further,

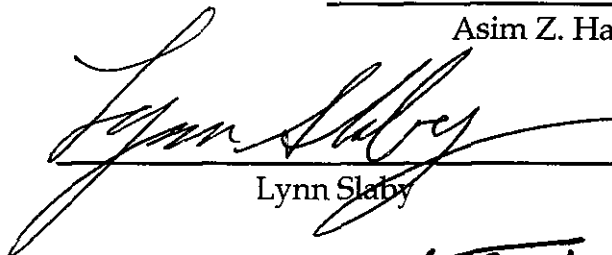
{¶ 21} ORDERED, That Staff mail a copy of this Entry and send a letter of notice to
all of ORNG's customers. It is, further,

{¶ 22} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Asim Z. Haque, Chairman



Lynn Slaby



M. Beth Trombold

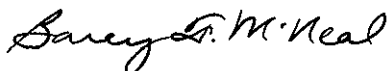


Thomas W. Johnson

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Barcy F. McNeal
Secretary