

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 September 20, 2017

{¶ 1} 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.

{¶ 2} 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.

{¶ 3} 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.

{¶ 4} 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.

{¶ 5} On February 17, 2017, ORNG filed an application for rehearing as well as a motion to stay the Commission's order to discontinue service to customers on March 1, 2017. On February 23, 2017, the Commission issued an Entry granting customers on the ORNG system a limited extension of the suspension of service date, until April 17, 2017, and denying ORNG's motion to stay. Thereafter, on April 12, 2017, the Commission denied ORNG's application for rehearing of the January 18, 2017 Opinion and Order.

{¶ 6} On April 4, 2017, in Case No. 17-910-GA-ACE, Ludlow Natural Gas Company, LLC (Ludlow) filed an application to operate as a natural gas company and public utility in the state of Ohio.

{¶ 7} On April 14, 2017, a stipulation and recommendation (stipulation) was filed by ORNG, Ludlow, and Staff. The stipulation provided, among other things, that both ORNG and Ludlow are subject to the Commission's jurisdiction as a public utility as defined in R.C. 4905.02. The parties agreed that Ludlow will become ORNG's successor in interest when ORNG ceased its operations on April 17, 2017, and that, by May 15, 2017, ORNG would transfer all of its assets to Ludlow.

{¶ 8} In the stipulation, the parties also agreed that, by July 15, 2017, Ludlow would sell or transfer its assets and operations to a person or entity approved by the Commission. The parties agreed that such person or entity shall have no affiliation with Richard Osborne, ORNG, Ludlow, or any other entity affiliated with Richard Osborne. If Ludlow was unable to sell or transfer its assets and operations by such date, the parties agreed that Staff would

arrange for one or more third parties to purchase Ludlow's assets and operations at a value to be determined by a third party selected by Staff, with costs of the evaluation to be included in the sale price. Upon completion of the sale and the initiation of natural gas service by the third party to affected customers, the parties agreed that Ludlow will immediately cease all further operations, without any request for relief from the Commission. If Ludlow fails to comply with this provision, the parties further agreed that the Ohio Attorney General's office may immediately pursue enforcement and appropriate remedies, including injunctive relief, in state or federal court. ORNG and Ludlow agreed that they will not contest any enforcement actions initiated by the Ohio Attorney General's office. The parties agreed that Ludlow will include as an explicit condition of the sale of its assets and operations that the successor interest take possession and assume operation of those assets subject to the findings and orders of the Commission issued in this case. ORNG and Ludlow agreed that they will provide copies of all contracts or other agreements referenced in the stipulation to Staff within three days of the execution of each such contract or agreement.

{¶ 9} By Finding and Order on April 17, 2017, the Commission approved the stipulation.

{¶ 10} On July 14, 2017, ORNG and Ludlow (collectively, Ludlow) filed a motion seeking to extend the stipulation's July 15, 2017 deadline to sell or transfer all of Ludlow's assets to an unaffiliated third party. Ludlow asserted that Utility Pipeline Limited (UPL) has agreed to purchase all of Ludlow's assets and operations. Ludlow stated it anticipates that the final asset purchase agreement would satisfy all the requirements in the stipulation adopted by the Commission. However, according to Ludlow, UPL and Ludlow needed additional time in order to reduce the agreement into a final, written contract that can be submitted to the Commission for approval. Ludlow maintained that UPL and Ludlow have a written agreement where, until the final contract is completed, UPL will operate and maintain Ludlow's assets. Ludlow stated it provided a copy of the agreement to Staff and

that Staff did not oppose a brief extension of the deadline. Thus, Ludlow requested that the deadline be extended until August 31, 2017.

{¶ 11} On July 18, 2017, Staff filed a reply to Ludlow's motion. Staff confirmed that it received a copy of the signed agreement between Ludlow and UPL. Staff stated it did not oppose an extension of the deadline to allow Ludlow to complete the final purchase agreement with UPL, but requested that the deadline be extended no later than July 31, 2017. Additionally, Staff noted that, in the stipulation, it was agreed that Utility Technologies International (UTI) was designated to serve as the compliance manager and that, if for any reason UTI was not able to continue to serve that role, Staff would select a replacement. Upon review, Staff asserted that UPL had the necessary experience and capabilities to serve as a suitable replacement compliance manager. Further, Staff's expectation was that UPL would also operate and maintain all of the assets for emergency response, including responses to leak complaints and odor of gas complaints, and that Ludlow would compensate UPL for this work.

{¶ 12} On July 18, 2017, the attorney examiner granted Ludlow a limited extension of the deadline, until July 31, 2017, by which date the final asset purchase agreement and application for authority to complete the asset transfer were to be filed for the Commission's review and approval.

{¶ 13} Thereafter, on July 28, 2017, Ludlow filed a second motion to extend the deadline by which Ludlow is to transfer all of its assets and operations. Ludlow maintained that it would not be able to complete the necessary legal work and corporate review to formalize the final asset purchase agreement by the deadline.

{¶ 14} By Entry on August 2, 2017, the Commission granted Ludlow's request for an additional extension. In granting the extension, the Commission noted that if Ludlow is unable to reach an agreement, the Commission and Staff need sufficient time in order to make proper arrangements before the heating season begins. Additionally, the Commission stated that if Ludlow fails to meet the deadline to sell or transfer its assets and operations,

the Commission may consider all necessary enforcement remedies. Accordingly, the Commission extended the deadline by which Ludlow is to transfer all of its assets and operations until August 14, 2017.

{¶ 15} On August 15, 2017, in Case No. 17-1785-GA-ATR, Ludlow, UPL, and Knox Energy Cooperative Association (Knox) filed a joint application for transfer of assets and substitution of service (transfer application). In the transfer application, UPL, Knox, and Ludlow request to transfer Ludlow's assets and Ludlow's natural gas service customers to UPL and Knox (UPL/Knox). Absent from the application was a purchase agreement between the parties.

{¶ 16} A third request to extend the deadline was filed by Ludlow on September 6, 2017. Ludlow claims that UPL/Knox and Ludlow have agreed on the principal material terms of the deal, but are still negotiating additional details. Ludlow maintains that the negotiating parties are working in good faith to complete the transaction and that UPL is continuing to manage and operate Ludlow's natural gas distribution system. Ludlow requests to extend the deadline until October 2, 2017.

{¶ 17} On September 20, 2017, Staff filed a letter in the docket. In the letter, Staff asserts that it does not support Ludlow's request for an extension. Staff expresses concerns about the length of time it has taken for Ludlow to finalize negotiations. According to Staff, while Ludlow indicated on multiple occasions that the agreement would be finalized imminently or by a specific date, nothing has occurred. Staff additionally states that it has verified that UPL and its employees are qualified to operate and maintain a gas pipeline system and cites to the Commission's previous conclusions from the January 18, 2017 Opinion and Order in this case that "ORNG has not demonstrated that it has the requisite knowledge, training, organization, or procedures to safely operate a gas pipeline system." Staff also notes, however, that UPL's oversight is currently only temporary. Staff maintains it is necessary for the sale transaction to occur and UPL's oversight to become permanent so that UPL can begin remediating previously identified gas pipeline deficiencies.

{¶ 18} In granting Ludlow's first two requests to extend the deadline by which Ludlow is to transfer all of its assets and operations, the Commission additionally affirmed the importance of reaching a resolution with sufficient time to prepare for the impending heating season. Although Ludlow's previous two requests to extend the deadline indicated a deal was imminent, the attorney examiner is now confronted with Ludlow's third request to extend the deadline. Here, in a motion filed 23 days after the expiration of the previous date, Ludlow seeks to extend the deadline to October 2, 2017, directly adjacent to the heating season.

{¶ 19} While Ludlow asserts the parties are working in good faith to finalize the transaction, there is growing concern over whether a final written agreement will be consummated. At this point, it has been over two months since Ludlow indicated in its July 14, 2017 motion that the parties were in agreement. Additionally, in the transfer application, Ludlow asserted that a purchase agreement existed and only needed to be finalized. In its September 20, 2017 letter, Staff expressed frustration that the agreement has not been finalized, stating that Ludlow has not followed through on several assurances regarding a completion date. While understanding that negotiations can be lengthy and delicate, the Commission's foremost concern is assuring that customers have safe and reliable service. In the Commission's January 18, 2017 Opinion and Order, the Commission stated that ORNG (now Ludlow) lacked the managerial competence to safely operate a gas pipeline system. Ultimately, this resulted in numerous safety violations. While UPL's involvement provides the managerial and operational expertise that was previously lacking, and addresses the Commission's most pressing concern, until UPL's oversight becomes complete and permanent, many of the other safety concerns will remain unresolved. Because Ludlow has insinuated that the desired outcome – a sale of assets – was imminent, the Commission has been patient. However, as the heating season draws near, it is imperative for this deal to get completed in order for UPL to take complete control of the system and address remaining deficiencies. Therefore, good cause to grant the motion does not exist and Ludlow's request for an extension is denied.

{¶ 20} Consequently, Ludlow is now in violation of the Commission's orders. The deadline to transfer assets and operations was extended until August 14, 2017, and at this time, no final agreement or proposed closing date has been presented to the Commission. As part of the stipulation approved by the Commission, Ludlow was assessed a \$600,000 civil forfeiture, to be held in abeyance. Per the terms of the stipulation, the parties agreed that if Ludlow violates any part of the stipulation, the entirety of the civil forfeiture shall immediately become due and payable. Additionally, R.C. 4905.54 requires that every public utility and every officer of a public utility comply with every order, direction, and requirement of the Commission. The statute further states the Commission may assess a forfeiture of not more than \$10,000 for each violation of a Commission order. Each day's continuance of the violation is considered a separate offense. Accordingly, if Ludlow does not provide a final agreement demonstrating that it has sold and transferred its assets, the attorney examiner will recommend to the Commission that proceedings should be initiated as to whether a forfeiture should be assessed.

{¶ 21} It is, therefore,

{¶ 22} ORDERED, That Ludlow's motion for an additional extension be denied in accordance with paragraph 19. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Nicholas Walstra

By: Nicholas Walstra
Attorney Examiner

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Case No(s). 16-1578-GA-COI

Summary: Attorney Examiner Entry denying Ludlow's motion for an additional extension; electronically filed by Vesta R Miller on behalf of Nicholas Walstra, Attorney Examiner, Public Utilities Commission of Ohio