

**Comments by the staff of the
Public Utilities Commission of Ohio**

One Source Energy, LLC
Case Number 16-1181-GA-ACE

August 19, 2019

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of One)
Source Energy, LLC for Authority to) Case No. 16-1181-GA-ACE
Operate as an Ohio Natural Gas Company)

**COMMENTS SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

BACKGROUND

On July 31, 2019, the Public Utilities Commission of Ohio (Commission or PUCO) denied the application of One Source Energy, LLC (One Source or Company) for certification as a natural gas company and ordered it to comply with several directives, including orders to: cease solicitation or enrollment of new customers, pay a \$25,000 civil forfeiture, respond to the Commission's directives in paragraphs 35 and 36 of the order, and provide an updated customer list (Denial Order).¹

On August 6, 2019, One Source met with Commission Staff (Staff) to provide documentation and communicate the financial and managerial inner workings of the Company. On August 9, 2019, One Source filed seven Amended Application Responses, which included the documents it provided to Staff at the in-person meeting plus several new records. On August 12, 2019, One Source provided additional financial information via U.S. mail, which was subsequently filed on the docket.

Following Staff's review of the information provided by One Source between August 6, 2019 and August 12, 2019 (2019 Supplemental Information), Staff recommends the Commission uphold its July 31, 2019 Denial Order, deny the Company's request for reconsideration of the forfeiture, and deny the Company's request to delay implementation of the forfeiture. As detailed below, although One Source provided some additional information, it continues to be in a state of noncompliance with statutory requirements and has not demonstrated the requisite technical, managerial, and financial capability to reliably provide natural gas service to consumers in Ohio.

¹ *In the Matter of the Application of One Source Energy, LLC for Authority to Operate as an Ohio Natural Gas Company*, Case No. 16-1181-GA-ACE, Second Finding and Order at 14 (July 31, 2019).

REVIEW AND ANALYSIS

Public utilities are required to comply with applicable sections of Title 49 of the Ohio Revised Code. For instance:

- Under R.C. 4905.54 and 4905.56, every public utility and every officer of a public utility shall comply with every order, direction, and requirement of the Commission made under authority of R.C. Chapters 4901, 4903, 4905, 4907, and 4909.
- Under R.C. 4905.22, a public utility is required to furnish adequate service.
- Under R.C. 4905.30, a public utility must file “schedules showing all rates, joint rates, rentals, tolls, classifications, and charges for service of every kind furnished by it, and rules and regulations affecting them.”
- Under R.C. 4905.93, a natural gas company must comply with gas pipeline safety standards and requirements, as set forth in R.C. 4905.90 to R.C. 4905.96.
- Under R.C. 4905.32, “[n]o public utility shall charge, demand, exact, receive, or collect a different rate * * * than that applicable to such service as specified in its schedule filed with the public utilities commission which is in effect at the time.”
- Under R.C. 4905.04 and 4905.06, the Commission has the ability to supervise and regulate all public utilities, including the ability to prescribe rules and orders which public utilities must follow.

Additionally, pursuant to its statutory mandate under R.C. 4905.04, 4905.05, and 4905.06, the Commission reviews applications for certification to determine if the applicant has the technical, financial, and managerial capability to provide natural gas service and whether there are reasonable financial assurances sufficient to protect customers.²

Staff therefore reviewed One Source for its statutory compliance as well as its capability to provide natural gas service as follows.

I. Statutory Compliance Review

A. R.C. 4905.54 and R.C. 4905.56

Pursuant to R.C. 4905.54, every public utility and every officer of a public utility shall comply with every order, direction, and requirement of the Commission made under authority of R.C. Chapters 4901, 4903, 4905, 4907, and 4909. “No officer, agent, or employee in an official capacity of a public utility ... shall ... *willfully fail to comply with any lawful order or direction of the public*

² See *In the Matter of the Application of Generation Pipeline LLC for Authority to Operate as an Ohio Natural Gas Company*, Case No. 15-1104-GA-ACE, Finding and Order at ¶3 (Sept. 23, 2015).

utilities commission made with respect to any public utility or railroad. Each day's continuance of such failure is a separate offense." (Emphasis added, R.C. 4905.56).

Though One Source has been ordered by the Commission several times to cease soliciting and enrolling new customers, there is still an online form available on One Source's website where new customers can request new service. This demonstrates One Source's continued failure to comply with Commission orders, in violation of R.C. 4905.54.

Additionally, in the Denial Order, the Commission denied the Company's application for authority to operate as a public utility in the state and directed Dominion East Ohio (DEO) to cease transportation of natural gas to the Company on September 6, 2019. However, One Source continues to insinuate to its customers that One Source will provide future natural gas service. In fact, on August 15, 2019, One Source sent a letter to its customers which states that "continuing to be your natural gas service provider is of utmost priority" to One Source and inaccurately further states that "come 8/16/19 the Commission has intentions on providing a more concise answer to One Source as to when we can expect a public statement as to that we are within compliance of all requested by the PUCO." (See August 15, 2019 Company Letter, attached hereto as Attachment A.) Staff views this letter as inaccurate, a contradiction of the Commission's directives from the Denial Order, and misleading as to Staff's position on this matter.

On August 9, 2019, One Source filed information stating "Per Paragraph 36 balance sheets, income statements, cost-break even analysis, statements of cash flow, and proforma financial statements have all been personally submitted and/or mailed directly to PUCO under a motion for protection deeming that they are private documents." When reviewing the information One Source filed under seal, Staff determined that this information did not include a statement of cash flows or cost-break-even analysis as One Source claimed. While One Source later filed, on August 12, 2019, a "suggestion for the docket" document which stated that the cost-break-even analysis remains in progress and would be filed within a week and that all the cash flow information is contained in the filed income statements so no separate filing is necessary, Staff maintains this information is still missing and that One Source failed to make the filing as directed by the Commission by August 9, 2019. Staff believes that One Source's claim that the information was filed demonstrates its awareness of the Commission's direction, but its actions indicate its willful failure to comply with such order by August 9, 2019, as directed.

B. R.C. 4905.22

Under R.C. 4905.22, public utilities are required to furnish adequate services and facilities. The Commission has previously determined that a public utility's financial instability demonstrated

its failure to provide adequate services.³ A similar factual situation is present here, based on the financial information provided in the 2019 Supplemental Information.

Revenues Don't Offset Expenses

- One Source's current revenues are insufficient to cover its expenses, and the Company does not project to achieve positive earnings in the near-term. Specifically, One Source's income statements show revenues were lower in 2017 and 2018 than they were in 2016. In addition, revenues forecasted for 2019 and 2020 anticipate growth, but not enough to generate positive cash flow due to anticipated escalation of expenses. Indeed each year's income statement, whether actual or forecasted, shows significant net losses for One Source—this is not a sustainable trend. In fact, the only reduction in the amount of net losses year over year is forecasted for 2020. In 2020, the Company anticipates growing its revenues by 92 percent, but it only forecasts a reduction in net losses year over year of 3.89 percent. Staff expects a financially capable company with efficient management to see continued growth in earnings as the company grows and executes its business plan. While One Source forecasts that it will see revenue growth in the near term, it forecasts that its expenses are growing at a faster rate, which is not a financially sustainable trend. Further, there is no guarantee that One Source's forecasted revenue growth will be realized—indeed it could fall short of its revenue projections.
- Years of continued net losses realized by One Source, which are forecasted to continue through the pro forma time period, are unsustainable long-term. The Company provided documentation of investment accounts that may be accessible to fund the working capital needs of One Source, but Staff was unable to verify the liquidity of said funds. The current plan of using the investment funds or funds from other non-regulated business ventures to subsidize the operational losses of One Source is not a sustainable plan from a going concern basis. Reliance on non-regulated sources of funds to meet the daily working capital needs of the Company may also introduce an undesirable contagion risk to One Source.

Accounting Record Errors Lead to Inadequate Revenue Requirement

- Current bookkeeping methods may not follow regulatory accounting standards. For instance, upon review of the income statements it appears that expenses associated with revenues generated from the installation of customer service lines may not be recorded and paid by One Source. This matching principle omission, along with the lack of utility plant-in-service accounts on its balance sheets, raises concerns about current financial management controls in place at One Source. A public utility's earning potential, or what it is authorized to charge consumers, is restricted so that it only receives a certain

³ *In the Matter of the Review of Youngstown Thermal, LLC, and Youngstown Cooling, LLC*, Case No. 17-1534-HC-UNC, Finding and Order at 7-8 (June 30, 2017). *In the Matter of the Investigation of the Rutland Fuel Col.*, Case No. 86-2013-GA-COI, Opinion and Order at 11 (April 7, 1987).

return on its investments. This fundamental public utility regulatory concept is addressed through the traditional rate formula, which can be expressed as follows: revenue requirement = return on rate base + expenses. Return on rate base is determined by multiplying the company's rate base (original value, less accumulated depreciation, of the property used by the utility to provide services to its customers) by the rate of return the Commission has authorized it to earn on its investments. This approach to public utility regulation encourages capital investment because it provides a rate of return on the rate base. Consequently, a utility is eligible to earn additional revenue as it invests more money in its system to grow its rate base. Thus, it is paramount that a public utility track and keep meticulous accounting records of its revenues and expenses, especially its investments in its utility plant. Upon analyzing One Source's balance sheets, Staff discovered that One Source may not be properly tracking its plant investments. Without these records, One Source, and its investors, will have insufficient rate base to earn the return to which they are entitled. This fundamental failure to keep proper accounting records demonstrates to Staff that One Source does not have the financial capability to operate a public utility in the state.

Incorrect Allocation of Costs

- Staff has concerns that One Source's customer billing rate design may not be sufficient to provide financial stability, which could impair the Company's ability to provide adequate and reliable service to its customers. Specifically, the rates being charged to One Source customers may not reflect the true cost of providing natural gas service and may not result in just and reasonable rates. Staff is unaware of whether One Source has considered other bill format options that would provide more adequate revenues while maintaining customer affordability to attract additional customers to join its natural gas system. A fundamental issue of public utility rate design is allocating costs between the utility and the customer as well as among the different customer rate classes in a just and reasonable manner. There are a number of ways that a utility can ensure that neither it nor the customer is being burdened with an unfair amount of the costs. One tool that an Ohio natural gas utility can utilize is the Gas Cost Recovery (GCR) rate. The GCR is the actual cost of natural gas that a utility pays to purchase natural gas for customer use. That cost is then passed through to the customer on a dollar-for-dollar basis with no mark-up or profit to the utility. Upon reviewing One Source's 2019 Supplemental Information, Staff discovered that One Source is not charging a GCR rate. One Source's failure to understand basic rate design methods is a limiting constraint on the Company's financial performance and its capability of operating a financially healthy public utility in Ohio.

Cost-Break-Even Analysis

- As stated above, the evidence shows that One Source is not cash flow positive nor is it projected to be in the near future. Staff requested a cost-break-even analysis from One Source to determine how many customers would be required to join the Company's

natural gas system to enable One Source to become cash flow positive from internally generated funds. One Source failed to produce this analysis, which severely impaired Staff's ability to determine if and when One Source will become cash flow positive and thus, capable of providing stable finances to support a public utility service.

Equity Funds Cover Losses, Not Growth

- The balance sheets show escalating year over year equity contributions, but both the assets and equity balances show minimal growth each year. This is an unsustainable trend as equity funds should typically be used to fund capital growth and expansion of the system instead of covering operational losses.

Unable to Confirm Insurance Coverage

- The income statement shows an expense item for insurance. However, details of the type of insurance coverage were not provided. Therefore, Staff cannot confirm whether One Source has adequate insurance coverage to operate as a natural gas company.

C. R.C. 4905.93

Under R.C. 4905.93, a natural gas company must comply with gas pipeline safety standards and requirements. Under R.C. 4905.91, the Commission adopted rules to carry out R.C. 4905.90 to R.C. 4905.96. These rules, among other things, incorporate by reference the federal pipeline safety standards contained in Title 49, Part 192 of the Code of Federal Regulations via Ohio Adm.Code 4901:1-16-03.

On October 10, 2018, Gas Pipeline Safety Section Staff issued a notice of probable noncompliance finding that One Source had failed to comply with certain pipeline safety standards, including its failure to submit required annual reports for 2016 and 2017, failure to implement a public awareness program, and failure to provide documentation showing that it conducted periodic sampling of odorant levels. Even after the Denial Order required One Source to come into compliance with these outstanding notices of probable noncompliance, One Sources is still in a state of noncompliance.

While One Source has submitted the annual reports for 2016 and 2017 and its public awareness program, the public awareness program contains issues regarding the 24-hour contact number. Additionally, to date, One Source has not submitted documentation to Staff demonstrating that it has conducted periodic sampling of odorant levels.

In terms of the public awareness program, One Source listed an employee's personal cell phone number as the 24-hour contact number. Staff has serious concerns that this employee may not be qualified to respond in an emergency. There is also no explanation of what would happen if the 24-hour contact was unreachable on this personal cell phone – for example, if their cell phone battery dies or they fail to answer. Listing an individual's private cell phone as the 24-hour contact for a public utility gives Staff further concern that One Source does not have an

understanding of the importance of this requirement. Finally, Staff notes that the employee whose cell phone number is listed as the 24-hour contact is the same employee upon whom Staff served a subpoena via certified mail and who failed to appear at the deposition. Listing the same employee as the emergency contact who has not responded to regulatory correspondence for three years is concerning to Staff, as this person may continue to be unresponsive in an emergency situation.

In terms of its failure to provide odorization records, One Source instead submitted odorization testing records from DEO attempting to illustrate that gas provided to One Source from DEO had been tested by DEO for the presence of odorant. This testing, however, first, fails to show that the testing location is in proximity to One Source's distribution lines; and second, does not comply with federal pipeline safety regulations. Specifically, the federal pipeline safety regulations contained at 49 C.F.R. 192.625(f) require that operators "conduct periodic sampling of combustible gases" and there is not an allowance for an operator to rely on gas sampling performed by an upstream supplier. This is a critical pipeline safety requirement provided in order to ensure customers at the end of a pipeline are able to detect natural gas leakage and respond accordingly. One Source's failure to understand the import of this requirement further demonstrates its lack of technical wherewithal to operate a natural gas pipeline.

D. R.C. 4905.32

Under R.C. 4905.32, "[n]o public utility shall charge, demand, exact, receive, or collect a different rate ... than that applicable to such service as specified in its schedule filed with the public utilities commission which is in effect at the time."

At the time One Source began operating as a natural company in 2016, it did not have a schedule or tariff on file with the Commission. Therefore, One Source was charging and collecting rates from its natural gas customers that were not pursuant to any schedule of rates on file with the Commission, in violation of R.C. 4905.32.

Additionally, the 2019 Supplemental Filing includes a copy of One Source's bill format. Included in this bill format is a category for the gas rate of "\$3.95/MCF" while the proposed tariff shows a gas rate of "\$3.90/MCF." The misalignment of the gas rate on the bill format compared to the proposed tariff schedule evidences One Source's charging of customers a higher rate than that specified in its schedule filed for approval with the Commission.

E. R.C. 4905.30

Pursuant to R.C. 4905.30(A), "[a] public utility shall print and file with the public utilities commission schedules showing all rates, joint rates, rentals, tolls, classifications, and charges for service of every kind furnished by it, and all rules and regulations affecting them. The schedules shall be plainly printed and kept open to public inspection." Therefore, One Source should have filed its schedules on its own and had them available to the public since the inception of its natural gas operations.

Additionally, One Source's proposed tariff schedule contains references to "Original Sheet No. 9." One Source does not have an "Original Sheet No. 9." Instead, when a company lists this type of reference, it indicates the public utility's reference to its internal tariff labeling schema, which One Source seemingly mistakenly carried over into its present matter. This evidences to Staff that this reference was copied verbatim from another natural gas company's tariff, without the Company understanding the tariff information it was filing. Staff is concerned that One Source does not understand references it included in its own tariff filing, which indicates these tariff filings are public utility practices beyond its awareness and capabilities.

Finally, the tariff states that "a gas cost recovery (GCR) rate of "\$xx.xx" will apply to all sales." (Amended Tariff at 9). This is clearly incomplete, and does not comply with the requirements of Ohio Adm.Code 4901:1-14.

F. R.C. 4905.04 and R.C. 4905.06

Under R.C. 4905.04 and 4905.06, the Commission has the ability to supervise and regulate all public utilities, including the ability to prescribe rules and orders with which public utilities must comply. The Commission has implemented rules to carry out Title 49 of the Ohio Revised Code, including, Ohio Adm.Code 4901:1-13 which contains requirements for natural gas companies in order to promote reliable service and provide minimum standards for uniform and reasonable practices. Included in these requirements are those applicable to tariff schedules, bill format requirements, and customer rights and responsibilities.

Proposed Tariff Schedules

Within the 2019 Supplemental Filing, One Source provided proposed tariff schedules, but these schedules did not comply with Commission rules. Specifically, the proposed schedules do not contain adequate tampering or fraud provisions for compliance with Ohio Adm.Code 4901:1-13-09 nor adequate provisions for compliance with the landlord tenant provisions included in Ohio Adm.Code 4901:1-18-08.

Bill Format

Furthermore, One Source filed a proposed bill format that does not comply with the requirements contained in Ohio Adm.Code 4901:1-13-11, which are promulgated in order to promote reliable service to consumers and the public, and to provide minimum standards for uniform and reasonable practices. One Source's bill does not display "[a] statement that customers with bill questions or complaints should call or write the gas or natural gas company first," as required by Ohio Adm.Code 4901:1-13-11(B)(4). One Source's bill format does not contain the language required under Ohio Adm.Code 4901:1-13-11(B)(5), does not identify the applicable rate schedule as required under Ohio Adm.Code 4901:1-13-11(B)(6), does not provide an explanation of codes and abbreviations as required under Ohio Adm.Code 4901:1-13-11(B)(24), does not provide 12 months of historic usage data as required under Ohio Adm.Code 4901:1-13-11(B)(26), and does not contain the statement regarding billing arrangements required under Ohio Adm.Code 4901:1-13-11(B)(28). Also, if One Source offers a budget billing plan, the

bill format fails to provide the current balance of the account as required by Ohio Adm.Code 4901:1-13-11(B)(18).

Customer Rights and Responsibilities

Ohio Adm.Code 4901:1-13-06 requires each natural gas company to maintain and make available a handbook of customer rights and obligations. Staff reviewed One Source's customer rights and responsibilities (CRR) and found several issues. First, One Source should have included language explaining that company employees seeking access to the customer's premises shall, upon request, provide company photo identification as required under Ohio Adm.Code 4901:1-13-07. Second, One Source's CRR should have referred customers to its tariff for information on rates, which can be found on the PUCO website. Third, Staff found inconsistencies between One Source's CRR and its proposed tariff. Specifically, the provisions for main line extensions and service line obligations were not consistent with its proposed tariff. Fourth, One Source should have included its company mailing address for customers to request additional information and/or complaints. Fifth, Staff believes the CRR should have included information regarding billing adjustments under Ohio Adm.Code 4901:1-13-05(G) as well as additional corrections in the Meter Reading Section. Some of these issues cannot be fully resolved until the deficiencies in One Source's tariffs are remedied and the Company's tariffs are ultimately approved in order to ensure the CRR is consistent with the tariff as well as Commission rules. However, Ohio Adm.Code 4901:1-13-06(B) requires each natural gas company to prominently post its CRR on its website, which One Source has failed to do.

Additionally, One Source has still not provided Staff with basic notices, such as a disconnection notice, as specified by Ohio Adm.Code 4901:1-13-09 and Ohio Adm.Code 4901:1-18-06.

II. Technical, Managerial, and Financial Review

During Staff's consideration of One Source's aforementioned failure to adhere to statutory requirements, it also considered One Source's technical, managerial, and financial capabilities necessary to operate a natural gas company.

One Source has still failed to demonstrate that it understands what it means to be a public utility: One Source does not understand the regulatory requirements of a public utility, does not understand the ratemaking process, has failed to demonstrate its understanding of the importance of regulatory compliance, and has failed to show Staff that One Source can be trusted to supply reliable natural gas service to customers on a long-term basis.

Based upon Staff's review of the 2019 Supplemental Information, Staff determined that One Source continues to lack the technical, managerial, and financial capabilities necessary to operate a natural gas company.

STAFF RECOMMENDATION

At this time, Staff cannot recommend that One Source be granted authority to operate as a natural gas company in the state of Ohio. One Source's lack of adherence to statutory requirements in combination with its insufficient technical, financial, and managerial ability demonstrate its inability to appropriately provide a regulated public utility service to Ohioans. Therefore, Staff recommends the Commission uphold its July 31, 2019 Denial Order, deny the Company's request for reconsideration of the forfeiture, and deny the Company's request to delay implementation of the forfeiture.

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AUGUST 15, 2019

To our valued customers,

One Source Energy and I would like to apologize for the panic, concern, and conflicting information of which has come fourth in the past few weeks. We value each and every customer and would like to ensure that you all know that your safety, continuation of gas service, and continuing to be your natural gas service provider is of the upmost priority to us. We thank you all for your support and your patience as we work through rectifying the situation at hand. Since the initial news release on 7/31/2019 we have actively been meeting and working with the PUCO to do everything on our end to ensure that your gas service will continue uninterrupted.

First and foremost, in regards to the safety of the natural gas mainline, as well as service lines; the actual integrity of all pipeline's safety has never been in question, they are installed and tested according to code by trained and qualified individuals. All infrastructure has passed all audits performed by the PUCO. The PUCO was missing standard documentation reports of which fall under their "safety" category, which is why the missing documentation was deemed to be a safety issue. All said documents have been turned into the PUCO.

In regards to the rest of the information, all of which has been turned into them and they are actively reviewing. I (Sabrina Urick) was advised on 8/15/19 that come 8/16/19 the Commission has intentions on providing a more concise answer to One Source Energy as to when we can expect a public statement as to that we are within compliance of all requested by the PUCO. As more information becomes available and/or One Source Energy obtains a final clearance from the PUCO we will continue to update you all accordingly and promptly.

Again, we would like to apologize for all of the confusion, as well as the situation and also thank you for your patience with One Source Energy as we diligently rectify the matter at hand. Please contact the office or myself at any time should you have any questions, comments, or concerns.

Thank you,

Sabrina Urick

Manager

One Source Energy

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Summary: Comments by the Staff of the Public Utilities Commission of Ohio electronically filed by Docketing Staff on behalf of Docketing