

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

Entered in the Journal on September 4, 2019

{¶ 1} R.C. 4905.04, 4905.05, and 4905.06 vest the Commission with the power and jurisdiction to supervise and regulate natural gas companies as defined in R.C. 4905.03 and public utilities as defined in R.C. 4905.02. R.C. 4905.03(E) defines a natural gas company as a company that is engaged in the business of supplying natural gas for lighting, power, or heating purposes to consumers within this state.

{¶ 2} R.C. 4905.22 provides that every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. The statute also requires that all charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the Commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the Commission.

{¶ 3} R.C. 4905.30 provides that a public utility shall print and file with the Commission schedules showing all rates, joint rates, rentals, tolls, classifications, and charges for service of every kind furnished by it, as well as all rules and regulations affecting them. The Commission may prescribe the form of every such schedule, and may prescribe, by order, changes in the form of such schedules. Additionally, R.C. 4905.32 specifies that no public utility shall charge or collect a different rate, rental, toll, or charge for any service rendered, or to be rendered, than that applicable to such service as specified in its schedule filed with the Commission and as is in effect at the time.

{¶ 4} R.C. 4905.37 authorizes the Commission to determine whether the rules, regulations, measurements, or practices of any public utility with respect to its public service are unjust or unreasonable, or that the equipment or service of such public utility is inadequate, inefficient, improper, insufficient, or cannot be obtained, and, if necessary, to fix and prescribe regulations, practices, and service to be installed, observed, used, and rendered by the public utility.

{¶ 5} Finally, R.C. 4905.54 provides that every public utility or railroad and every officer of a public utility or railroad shall comply with every order, direction, and requirement of the Commission made under authority of R.C. Chapters 4901, 4903, 4905, 4907, and 4909. The statute authorizes the Commission to assess a forfeiture of not more than \$10,000 for each violation or failure against a public utility or railroad that violates a provision of those chapters or that, after due notice, fails to comply with an order, direction, or requirement of the Commission that was officially promulgated. The statute also specifies that each day's continuance of the violation or failure is a separate offense.

{¶ 6} The Supreme Court of Ohio has found that the Commission has authority to determine whether an entity's activities constitute those of a public utility, whether it has complied with the applicable laws, and whether it should be subject to regulation. *Atwood Resources, Inc. v. Pub. Util. Comm.*, 43 Ohio St.3d 96, 538 N.E.2d 1049 (1989).

{¶ 7} Consistent with its statutory mandate and prior precedent, the Commission reviews applications for approval to operate as a natural gas company to determine if the applicant has the managerial, technical, and financial capability to provide natural gas service and whether there are reasonable financial assurances sufficient to protect customers. *See, e.g., In re Generation Pipeline LLC*, Case No. 15-1104-GA-ACE, Finding and Order (Sept. 23, 2015); *In re Power Energy Distribution, Inc.*, Case No. 97-746-GA-ATA, Opinion and Order (Sept. 24, 1998).

{¶ 8} This particular matter has been pending before the Commission since May 24, 2016, when One Source Energy, LLC (One Source or Company) filed an application, pursuant to R.C. 4905.02, 4905.03(E), and 4905.63, for authority to operate as an intrastate natural gas distribution company in the state of Ohio and for approval of a proposed tariff. Based on this application, Staff filed reviews and recommendations on September 28, 2017, and December 22, 2017. In these reports, Staff found that One Source was providing local distribution natural gas service to approximately 19 customers without Commission authority. According to Staff, One Source's application, amended application, and supplemental information were incomplete because One Source did not provide financial statements for review, despite Staff contacting the Company four separate times. Based on the lack of financial information, Staff recommended that the Commission issue an order directing One Source to file the financial information requested by Staff within 30 days. If One Source failed to do so, Staff recommended that the Commission order One Source to either relinquish or sell its distribution assets to another party possessing the capability to provide adequate service or direct its customers to find alternative service before a date certain and to cease and desist providing natural gas service to its customers.

{¶ 9} On April 11, 2018, the Commission issued a Finding and Order in this matter, directing One Source to file the financial information requested by Staff within 30 days of the date of the Order. Further, the Commission directed One Source to cease solicitation or enrollment of any new customers until it received authority from the Commission to operate as a natural gas company in Ohio.

{¶ 10} Since the April 11, 2018 Finding and Order, One Source, despite repeated communications from Staff, failed to file the requested financial records and demonstrate that it was in compliance with relevant statutes regulating natural gas companies, including gas pipeline safety standards and requirements, as set forth in R.C. 4905.90 to R.C. 4905.96. Importantly, the owner of the Company, David McElrath, and the manager, Sabrina Urick, failed to appear at a deposition on August 22, 2018, and a hearing on April 8, 2019, on the

matter at the Commission offices. One Source also failed to respond to a notice of probable noncompliance issued by Staff on October 10, 2018.

{¶ 11} On July 19, 2019, Staff filed additional information regarding the service agreement under which One Source receives natural gas transportation service from The East Ohio Gas Company d/b/a Dominion Energy Ohio (DEO). Noting that it obtained a copy of the agreement from DEO, Staff stated that the agreement is contingent upon One Source's receipt and continuation of all necessary governmental and regulatory approvals and authorizations and that it shall become void or expire, as appropriate, if any such approval or authorization is not received or continued. Staff notified the Commission of this provision so that the Commission could take any action necessary pursuant to its jurisdiction over the agreement under R.C. 4905.03(E).

{¶ 12} On July 31, 2019, the Commission issued a Second Finding and Order in this matter, finding that One Source is in violation of R.C. 4905.30 for failure to timely update its application with tariff corrections and R.C. 4905.93 for its failure to comply with gas pipeline safety standards and requirements, as set forth in R.C. 4905.90 to R.C. 4905.96. The Commission also found that One Source had not complied with the directives set forth in the April 11, 2018 Finding and Order by not providing information necessary for Staff to determine whether the Company has the managerial, technical, and financial capability to provide natural gas service to customers and continuing to solicit new customers through its website despite the Commission's directive otherwise. Pursuant to R.C. 4905.54, the Commission assessed a civil forfeiture in the amount of \$25,000 against One Source, with an additional amount of \$1,000 to be assessed for each day of continued noncompliance. The Commission reiterated that One Source must cease solicitation or enrollment of any new customers immediately. Furthermore, the Commission also denied One Source's application, finding that One Source, despite not having approval of its application from the Commission, is operating as a public utility and natural gas company, pursuant to R.C.

4905.02 and 4905.03, by engaging in the business of supplying natural gas for lighting, power, or heating purposes to at least 89 customers in Southington Township, Ohio.

{¶ 13} In the Second Finding and Order, the Commission also directed One Source to demonstrate, by August 9, 2019, that it has adequate managerial, technical, and financial capability to provide natural gas service and it has reasonable financial assurances sufficient to protect customers. The Commission also directed the Ohio Attorney General to seek appropriate remedies in state or federal court, pursuant to R.C. 4905.60, as soon as possible. Finally, the Commission ordered DEO to cease transportation service to One Source on September 6, 2019, unless otherwise ordered by the Commission, or show cause as to why service should not cease.

{¶ 14} On August 8, 2019, One Source filed a motion for reconsideration of the \$25,000 forfeiture. On the same day, One Source filed another motion to delay implementation of the same forfeiture. Between August 9, 2019, and August 12, 2019, One Source filed various documents related to its application in response to the Second Finding and Order.

{¶ 15} On August 15, 2019, DEO filed correspondence indicating that it intends to comply with the Commission's Second Finding and Order and cease transportation service to One Source on September 6, 2019.

{¶ 16} On August 19, 2019, Staff filed comments in the docket. Based on its review of information provided by One Source between August 6, 2019, and August 12, 2019, Staff recommended that the Commission uphold its July 31, 2019 Second Finding and Order, deny One Source's request for reconsideration of the forfeiture, and deny One Source's request to delay implementation of the forfeiture. Staff explained that, although One Source provided some additional information, it continued 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.

{¶ 17} On August 20, 2019, Staff filed a letter in the docket. In the letter, Staff noted that One Source's inconsistent responses to the Commission's directive in its Second Finding and Order indicated that One Source may have 118, 113, or 89 customers. As of the date of the filing of the letter, Staff reported that One Source had not addressed these inconsistencies and, consequently, Staff was not able to determine which of the three customer counts was accurate.

{¶ 18} Also on August 20, 2019, the attorney examiner issued an Entry directing One Source to file a plan, by August 23, 2019, explaining how it will safely retire and abandon its system on or before September 6, 2019, the date on which DEO will cease its transportation service to One Source.

{¶ 19} On August 21, 2019, One Source filed a document entitled "Notice of Plan to Retire and Abandon System." In the notice, One Source stated that it is planning to retire and abandon its system through the sale of its assets to a third party yet to be determined. One Source further stated that it will provide weekly updates to the Commission on the progress and status of the sale to ensure that customers receive uninterrupted service. The Company did not identify details regarding effectuating a sale of its system by September 6, 2019.

{¶ 20} On August 22, 2019, the Commission issued a Third Finding and Order. In the Third Finding and Order, the Commission found One Source noncompliant with regard to the July 31, 2019 Second Finding and Order. Despite providing various documents on August 9, 2019, and August 12, 2019, the Commission found that One Source remained unable to demonstrate that it is in compliance with various statutory requirements, including R.C. 4905.30, 4905.90 through 4905.96, and 4905.22, and rule requirements as identified in Staff's comments. Additionally, the Commission found that One Source had failed to demonstrate, by August 9, 2019, as directed in the Second Finding and Order, that it has the technical, managerial, and financial capability to reliably provide natural gas service to consumers in Ohio. The Commission also noted that One Source had continued

to solicit customers despite directives from the Commission to abstain from doing so in its April 11, 2018 Finding and Order and July 31, 2019 Second Finding and Order.

{¶ 21} Based on One Source's continued noncompliance, the Commission adhered to the course of action outlined in its Second Finding and Order, and reiterated that DEO is to cease transportation service to One Source on September 6, 2019. The Commission also affirmed the attorney examiner's August 20, 2019 directive, and directed One Source's plan to include the following details: the timeline under which One Source intends to safely retire and abandon its system; a proposed communications strategy for informing its customers about the plan to safely retire and abandon the system, including a proposed communication to customers which should be provided to Staff for approval; and how One Source will coordinate the safe abandonment of its system with DEO. The plan was required to also address the specific steps that One Source will take to abandon and retire its system, showing that One Source will deactivate its pipelines in compliance with 49 C.F.R. 192.727 and that the abandoned pipelines will be disconnected from all sources and supplies of gas, purged of gas, and sealed at the ends. Further, if One Source chooses to send any communications to its customers, the Commission directed the Company to first seek approval from Staff.

{¶ 22} On August 23, 2019, One Source filed notice that it intends to secure a sale of its system as soon as possible and that it is in the process of meeting with potential buyers that are regulated by the Commission. Noting that a sale will take time, One Source requested that the Commission grant a deadline later than September 6, 2019, for the Company to complete the sale and transfer of its system. One Source also provided its proposed steps and timeline to abandon the system, in the event that the Company is unable to effectuate a sale in time to avoid an interruption in service.

{¶ 23} On August 30, 2019, One Source filed notice that it is continuing to actively secure a buyer for its system and has received an official offer from Northeast Ohio Natural Gas Corporation (NEO). Furthermore, One Source stated that it is in the process of securing

a temporary operations contract, under which an already regulated utility will assume the responsibility of operating its system. One Source provided a copy of NEO's offer letter and a draft copy of a temporary operations contract.

{¶ 24} On September 4, 2019, NEO filed a motion requesting a seven-day extension of the Commission's August 22, 2019 Third Finding and Order directing One Source to safely retire and abandon its natural gas pipeline system on or before September 6, 2019. NEO requests that the new date be September 13, 2019, because it has reached a tentative agreement with One Source to purchase the Company's assets. NEO states that it will aid and consult with the operation of One Source's system during the interim.

{¶ 25} NEO also attached a copy of its offer letter to One Source. The letter is signed by representatives from both the Company and NEO. The offer letter states that NEO would like to purchase the One Source system, including, but not limited to, the mains, services, records, customer data, billing records, and maps that make up the One Source system. Pursuant to the offer, One Source's system will continue to function and will not be shut in or depressurized prior to NEO taking ownership of the assets.

{¶ 26} Finally, also on September 4, 2019, One Source filed a notice requesting that the Commission retract its August 22, 2019 directive to the Company to safely retire and abandon its natural gas pipeline system on or before September 6, 2019, because it is moving towards a sale of its assets to NEO. One Source indicates that it will be safely switching its pipeline system and customers to NEO. One Source also attached a copy of the signed NEO offer letter with its notice.

{¶ 27} The attorney examiner has reviewed the documents filed by One Source on August 23, 2019, August 30, 2019, and September 4, 2019, as well as NEO's motion and the signed offer letter filed on September 4, 2019, which indicate that NEO, a natural gas company and public utility regulated by the Commission, has offered to purchase One Source's assets. The attorney examiner finds that, as a result of the offer letter from NEO,

which Mr. McElrath signed on behalf of One Source, as well as NEO's representation that it has reached a tentative agreement with One Source to purchase its assets, and that NEO will aid and consult with the operation of One Source's system during the interim, the Commission's prior directive to DEO to cease transportation service to One Source on September 6, 2019, should be temporarily halted. In order to provide the Commission time to consider NEO's motion, DEO should continue to provide service to One Source as it completes its transfer of assets to NEO, until further notice from the Commission. Such provision of service is necessary to ensure that customers receive uninterrupted service pending the Commission's ruling on NEO's motion.

{¶ 28} It is, therefore,

{¶ 29} ORDERED, That DEO continue providing transportation service to One Source until further direction from the Commission, pursuant to Paragraph 27. It is, further,

{¶ 30} ORDERED, That a copy of this Entry be served upon all parties of record, all of One Source's customers, NEO, and DEO. It is, further,

{¶ 31} ORDERED, That David McElrath be served by regular and certified mail, to David McElrath's home address, a copy of this Entry.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Anna Sanyal

By: Anna Sanyal
Attorney Examiner

JRJ/hac

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Case No(s). 16-1181-GA-ACE

Summary: Attorney Examiner Entry ordering DEO to continue providing transportation service to One Source and ordering that David McElrath be served via regular and certified mail electronically filed by Heather A Chilcote on behalf of Anna Sanyal, Attorney Examiner, Public Utilities Commission