

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE JOINT
APPLICATION OF NORTHEAST OHIO
NATURAL GAS CORP. AND ORWELL-
TRUMBULL PIPELINE COMPANY, LLC FOR
APPROVAL OF AN ASSET TRANSFER AND
RELATED AUTHORITY.

CASE NO. 19-1921-PL-ATR

FINDING AND ORDER

Entered in the Journal on December 4, 2019

I. SUMMARY

{¶ 1} The Commission approves the joint application filed by Northeast Ohio Natural Gas Corp. and Orwell-Trumbull Pipeline Company, LLC for a proposed transfer of assets, subject to Staff's clarifications.

II. DISCUSSION

{¶ 2} Pursuant to R.C. 4905.04, 4905.05, and 4905.06, the Commission is vested with the power and jurisdiction to supervise and regulate public utilities.

{¶ 3} Under R.C. 4905.48, a public utility may purchase or sell its property to another public utility, with the consent and approval of the Commission.

{¶ 4} R.C. 4905.13 authorizes the Commission to establish systems of accounts to be kept by public utilities and to prescribe the manner in which these accounts will be kept. Pursuant to Ohio Adm.Code 4901:1-13-13, the Commission adopted the uniform system of accounts (USOA), as prescribed by the Federal Energy Regulatory Commission, for gas and natural gas companies in Ohio, except to the extent that the provisions of the USOA are inconsistent with any outstanding orders of the Commission. Additionally, the Commission may require the creation and maintenance of such additional accounts as may be prescribed to cover the accounting procedures of gas or natural gas companies operating within the state.

{¶ 5} Northeast Ohio Natural Gas Corp. (NEO) is a natural gas company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 6} Orwell-Trumbull Pipeline Company, LLC (OTP) is a pipeline company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of the Commission.

{¶ 7} On November 21, 2017, in Case No. CV 14 822810, the Cuyahoga County Court of Common Pleas (Court) granted a motion filed by Park View Federal Savings Bank n/k/a First National Bank of Pennsylvania to appoint a receiver, effective October 30, 2017, over all property, both real and personal, owned by Richard M. Osborne, the Richard M. Osborne Trust, OTP, and certain other affiliated entities. Under the terms of the Court's order, the appointed receiver is authorized, among other things, to take and have complete and exclusive possession, control, and custody of the receivership property, as well as to sell the receivership property free and clear of all liens and encumbrances by private sale, private auction, public auction, or by any other method deemed appropriate by the receiver, subject to Court approval, after notice and opportunity for a hearing.

{¶ 8} On October 18, 2019, NEO and OTP, by and through the receiver over the personal and real property of OTP, Zachary B. Burkons of Rent Due, LLC (Receiver) (collectively, Joint Applicants), filed a joint application seeking expedited approval of a proposed transfer of certain pipeline assets and other non-cash items of OTP to NEO, consistent with the terms of an asset purchase agreement attached to the joint application. Joint Applicants state that, on October 16, 2019, the Court granted the Receiver's motion for approval to sell the assets to NEO. Noting that the sale will not proceed until all necessary regulatory approvals have been obtained, Joint Applicants request, pursuant to R.C. 4905.48, the Commission's approval of the asset purchase agreement by December 1, 2019. Further, Joint Applicants represent that there will be no interruption of service to customers and that NEO will continue to provide safe and reliable service to its customers and to OTP's

customers. Joint Applicants note that all of OTP's customers, including NEO, are currently served via contract with OTP. According to the joint application, NEO will honor the terms of each of those contracts upon owning the purchased assets, with NEO's customers continuing to pay the same gas cost charges related to NEO's current contract with OTP until the purchased assets are included in a Commission-approved revenue requirement. NEO also requests accounting authority to accept OTP's initial rate base value of \$13,310,881 as the installed cost of the purchased assets, less accumulated depreciation of \$4,100,921 as of September 1, 2019, with any recovery on and of the purchased assets, including determinations as to whether such assets are currently used and useful, to be addressed in a subsequent proceeding.

{¶ 9} By Entry dated October 24, 2019, the attorney examiner established a procedural schedule to assist the Commission in its review of the joint application. All interested persons were directed to file motions to intervene in this proceeding by November 8, 2019, with intervenor comments and reply comments due on November 8, 2019, and November 22, 2019, respectively.

{¶ 10} On November 26, 2019, Staff filed its review and recommendation. No other comments were filed in this proceeding.

A. *Summary of the Application*

{¶ 11} In the joint application, NEO and OTP indicate that they executed an asset purchase agreement (Agreement) on October 15, 2019, enabling NEO to acquire certain pipeline assets (Purchased Assets) of OTP. These include, among other things, pipeline assets, real property, rights of action, books and records, certain positive unbilled accounts, and other non-cash items. In exchange for the sale of the Purchased Assets to NEO, OTP will receive \$3,000,000.

{¶ 12} The Joint Applicants explain that the Agreement is in the public interest and will not adversely affect the customers of OTP or NEO. The Joint Applicants state that there

will be no interruption of service to customers and that NEO will continue to provide safe and reliable service to its customers, including to OTP's customers. The Joint Applicants assert that any customer impacts from the Agreement will be beneficial due to the efficiencies and economies that can be achieved through the consolidation of separate intrastate pipeline systems into one system that is owned and operated by NEO, with NEO's collective gas supply management, delivery, and transportation experience and expertise. Further, the Joint Applicants state that NEO possesses the requisite financial, managerial, and technical abilities and experience to manage and operate the Purchased Assets as a regulated public utility in Ohio. Moreover, the Joint Applicants state that permitting the sale of the Purchased Assets to an established, financially responsible utility like NEO that has successfully operated and reliably served customers in Ohio will ensure that OTP's current customers are insulated from the current financial hardship of OTP and its majority owner, Richard M. Osborne. The Joint Applicants indicate that all of OTP's customers, including NEO, are currently served through contracts with OTP, which NEO will honor upon owning the Purchased Assets. According to the joint application, NEO's customers will continue to pay the same gas cost charges related to NEO's current contract with OTP until the Purchased Assets are reviewed and included in a Commission-approved revenue requirement. The Joint Applicants also note that the Commission's jurisdiction and authority over the rates, services, and operations of the owner of the Purchased Assets will not change due to the proposed transaction.

{¶ 13} Additionally, the Joint Applicants also request direction from the Commission regarding the starting original cost rate base balance that should be utilized for the Purchased Assets. The Joint Applicants explain that, because the Purchased Assets are being acquired through a receivership sale, NEO and the Receiver have limited access to historic books and records establishing the original installed cost of the Purchased Assets. As a result, NEO would be unable to satisfy Staff audit requests for contemporaneous data showing the original installed cost for the Purchased Assets as anticipated in R.C. 4909.05(C)(3). According to the Joint Applicants, prior to the Receiver's appointment, OTP

provided rate base information to the Commission in prior proceedings, which showed a total original cost rate base of \$15,352,215 before accumulated depreciation for the Purchased Assets. NEO requests accounting authority to accept OTP's initial rate base value of \$13,310,881 as the installed cost of the Purchased Assets, less accumulated depreciation of \$4,100,921 as of September 1, 2019. NEO states that any recovery on and of the Purchased Assets, including determinations as to whether such assets are currently used and useful, will be addressed in a subsequent proceeding.

{¶ 14} Finally, the Joint Applicants request expedited approval of the joint application. The Joint Applicants state that there is no reason for a hearing in this matter because there will be no material changes to the services provided to customers. Accordingly, the Joint Applicants urge the Commission to approve the joint application on an expedited basis because it is in the public interest, will provide NEO with more efficient use of existing financial resources, improve existing services to the benefit of customers, facilitate additional management focus on operational improvements and customer service, and maintain competitive and affordable gas rates for Ohio customers.

B. Summary of the Staff Review and Recommendation

{¶ 15} In its review and recommendation, Staff states that it has reviewed the joint application, along with supporting documentation and the extensive records established in recent cases involving OTP. Staff notes that, as a result of the proposed transfer, OTP's customers will benefit from continued access to natural gas service by an established natural gas company that has demonstrated the technical, managerial, and financial capabilities to safely and properly operate a natural gas distribution system in the state of Ohio, while customers will also benefit by being insulated from the current financial hardship of OTP and Mr. Osborne, its majority owner. Staff adds that, as the Purchased Assets will represent a significant source of natural gas supply to NEO's distribution system, including to 10,000 or more customers with no apparent viable alternative, NEO's ownership of the Purchased Assets appears prudent in maintaining safe and reliable service to its customers. Finally,

Staff states that NEO will continue to honor the terms of OTP's customer contracts, which will limit the potential for rate shock for these customers.

{¶ 16} Staff also addresses NEO's request for accounting authority to record the value of the Purchased Assets as \$13,310,881, with an associated accumulated depreciation reserve of \$4,100,921 as of September 1, 2019. Initially, Staff notes that, because NEO is acquiring the Purchased Assets through a receivership sale, NEO is limited to the books and records available to the Receiver. Staff adds that it is unclear what historic books and records were kept by OTP. Staff explains that NEO is, therefore, relying on the plant value information provided in OTP's most recent rate case application, although the rate case was subsequently suspended by the attorney examiner at the Receiver's request. *In re Orwell-Trumbull Pipeline Co., LLC*, Case No. 16-1726-PL-AIR, Entry (May 10, 2018) at ¶ 8. Under these circumstances, Staff states that NEO's request to use the rate case filing as a starting point is not unreasonable to determine a value for the Purchased Assets for the purpose of this transfer. Staff further states that, while it does not believe that the proposed value of the Purchased Assets is unreasonable, Staff will conduct a used and useful review before any recovery on and of the Purchased Assets is included in future base rates of NEO.

{¶ 17} For these reasons, and based on the overall reasonableness of the joint application, Staff recommends that the joint application be approved, with the following clarifications:

- (1) NEO shall take any measures necessary, at its own expense, to accurately capture and record all expenses and all revenues associated with the acquisition and operation of the Purchased Assets for future review by Staff.
- (2) In light of Staff's understanding that the Purchased Assets will be classified as distribution plant assets once they are owned by NEO, NEO should apply the accrual rates approved in its most recent rate

case when it begins to depreciate the Purchased Assets upon acquisition.

C. Commission Conclusion

{¶ 18} The Commission finds that it has an interest in the transfer of the Purchased Assets from OTP to NEO, as proposed in the joint application. As noted above, under R.C. 4905.48, the Commission has authority to review the purchase or sale of property among public utilities. Further, R.C. 4905.04 through 4905.06 provide that the Commission has general supervision over public utilities within its jurisdiction and the responsibility to be apprised of the manner in which their properties are operated, managed, and conducted with respect to the adequacy of service or security of the public. Moreover, the Commission has found that the cessation of service by one public utility, accompanied by uninterrupted and satisfactory service by another public utility, is not tantamount to an abandonment of service under R.C. 4905.20 and 4905.21. Here, NEO will continue to honor the terms of OTP's customer contracts, with no interruption of service. In similar cases, the Commission has found it appropriate to exercise its authority pursuant to R.C. 4905.05 and 4905.06 to ensure that the proposed transfer results in uninterrupted and adequate service to the existing customers. *In re Public Utility Service Corp.*, Case No. 87-1320-ST-UNC, Finding and Order (Sept. 9, 1987); *In re Lake Erie Utilities Co.*, Case No. 86-1561-WS-COI, Finding and Order (Oct. 18, 1988); *In re Ohio Edison Co.*, Case No. 99-955-EL-ATR, Finding and Order (Nov. 18, 1999); *In re Aqua Ohio, Inc.*, Case No. 04-1685-WW-UNC, Finding and Order (Dec. 8, 2004). Further, the Commission has found that it has the authority to review a proposed transfer of service pursuant to R.C. 4905.48. *In re The East Ohio Gas Co. d/b/a Dominion East Ohio and Ohio Intrastate Gas Transmission Co.*, Case No. 05-554-GA-ATR, et al., Finding and Order (Aug. 24, 2005). Consequently, the Commission will assert jurisdiction over the joint application seeking expedited approval of the transfer of the Purchased Assets from OTP to NEO.

{¶ 19} Upon review of the joint application and Staff's review and recommendation, the Commission finds that the joint application should be approved, subject to Staff's clarifications. We find that the proposed transfer of the Purchased Assets from OTP to NEO is reasonable and in the public interest. As the joint application indicates, NEO's and OTP's current customers will continue to receive safe and reliable service and any customer impacts are expected to be beneficial, due to the resulting efficiencies and economies achieved through the consolidation of separate systems into one system that is owned and operated by NEO, which has the expertise required to manage and maintain the system. The Joint Applicants indicate that OTP's customers will continue to receive service under their current contracts and the Commission's jurisdiction and authority over rates, services, and operations of the owner of the Purchased Assets will not change due to the proposed transaction. We direct NEO to send notice to the affected customers informing them of the proposed transfer as soon as possible but no later than 30 days from the date of this Finding and Order. Finally, consistent with R.C. 4905.48, the Commission finds that no hearing is required in this case.

III. ORDER

{¶ 20} It is, therefore,

{¶ 21} ORDERED, That the joint application for a transfer of the Purchased Assets from OTP to NEO be approved, subject to Staff's clarifications. It is, further,

{¶ 22} ORDERED, That NEO provide notice to all of the affected customers as soon as possible but no later than 30 days from the date of this Finding and Order. It is, further,

{¶ 23} ORDERED, That nothing in this Finding and Order 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,

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

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

SJP/mef

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