

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Filing of Annual)
Reports for Calendar Year 2013 by all) Case No. 14-01-AU-RPT
Regulated Entities.)

ENTRY ON REHEARING

The Commission finds:

- (1) R.C. 4905.10 provides an annual assessment based upon the intrastate gross earnings of each railroad and public utility for the purpose of maintaining the operations of this Commission. In order to calculate such assessment, R.C. 4905.14 requires every public utility to file an annual report at the time and in the form prescribed by the Commission. R.C. 4905.03(A) defines public utility companies to include telephone companies, electric light companies (except regional transmission organizations), heating or cooling companies, natural gas distribution companies, pipeline companies, and water-works and sewage disposal system companies. Railroad, bridge and water transportation companies are included in the annual reporting requirement under R.C. 4907.02 and 4907.20. All certified retail electric and natural gas suppliers and aggregators are also subject to this reporting requirement under R.C. 4928.06 and 4929.23; while R.C. 4905.10(D) provides that, for the purpose of annual assessment, "public utility" includes electric and gas suppliers and aggregators subject to certification under R.C. 4928.08 and 4929.20, respectively. R.C. 4905.10(A) sets a minimum assessment of \$100 per company, regardless of intrastate gross revenues. R.C. 4905.54 empowers the Commission to assess a forfeiture of not more than \$10,000 per day for each violation or failure of a public utility or railroad, or an officer of a public utility or railroad, to comply with an order, direction, or requirement of the Commission made under authority of R.C. Chapter 4905.
- (2) On August 20, 2014, the Commission issued a Finding and Order, Finding 10 of which, revoked the certificate or operating authority of six companies for failure to pay their 2013 assessments. *See* August 20, 2014 Order, at 3-4.

- (3) R.C. 4903.10 provides that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days of the issuance of the order.
- (4) On August 25, 2014, Broadvox-CLEC, LLC (Broadvox) filed an application for rehearing, pursuant to R.C. 4903.10, requesting a stay of the revocation of Certificate No. 90-9302, and reconsideration of the August 20, 2014 Order. In support of its request, Broadvox states that as a competitive local exchange carrier based in Cleveland, Ohio, it has provided voice-over-internet protocol telecommunication services for the past five years under its certificate. Broadvox notes that it was assessed the statutory minimum \$100 assessment by both the Commission and the Ohio Consumers Counsel (OCC), and had paid the OCC, but mistakenly thought the Commission's assessment was a duplicate billing. Broadvox indicates that it will implement measures to assure this error does not occur in the future. Broadvox submits that it is unreasonable to revoke a certificate where the failure of the regulated entity to remit payment of its annual assessment was obviously an oversight and where the amount due was nominal. Further, Broadvox asserts that such an extraordinary sanction would result in irreparable harm to Broadvox and in a disruption to its customers, including other carriers that rely on service provided by Broadvox pursuant to interconnection agreements or tariffs.
- (5) On September 17, 2014, the Commission issued an entry granting the application for rehearing for further consideration of the matters specified therein. As Broadvox has now paid the assessed amount and has shown cause why its certificate should not be revoked, its application for rehearing will be granted, and Certificate No. 90-9302 will be reinstated.
- (6) Findings 7-9 of the August 20, 2014 Order, at 2-3, directed all companies listed on the attachment to the order to file their 2013 reports by September 1, 2014 or show cause why its certificate or authority should not be revoked. In addition, each listed company was assessed a \$1,000 civil forfeiture, pursuant to R.C. 4905.54, except for four companies that had filed requests for additional time or exemption, or had submitted an incomplete report. This \$1,000 civil forfeiture is

in addition to any amounts owed to this Commission or the OCC.

- (7) On August 28, 2014, correspondence was filed by Choice Energy, LLC, dba 4 Choice Energy, LLC (Choice Energy), requesting a waiver of the civil forfeiture. As grounds for its request, Choice Energy asserts that it did not begin operations in Ohio until 2014, and can not find any record of receiving notice of its annual report requirement prior to the August 20, 2014 Order. Upon receiving notice of that order, Choice Energy immediately filed its report. As Choice Energy did not begin operations until 2014 and may not have received notice of the Commission's earlier orders in this docket, its request for waiver of the civil forfeiture will be granted.
- (8) Attached to this Entry is a list of all certificates or operating authorities for which the Commission's records reflect that no annual report has been filed for the 2013 calendar year. Each listed certificate or operating authority is hereby revoked, and the company must now immediately cease providing regulated service in the state of Ohio under the listed certificate. Each listed company must immediately notify any Ohio jurisdictional customers still being served under the revoked certificate that the company is no longer permitted to operate in Ohio under such authority. Any company that continues to provide regulated service under a cancelled certificate or operating authority may be subject to a forfeiture up to \$10,000 per day under R.C. 4905.54. The Docketing Division should issue notice to each listed company of the revocation of its certificate via certified mail in addition to any other means of service, cancel all applicable tariffs, and remove each listed certificate or operating authority from the Commission's regulated company list.
- (9) As noted in prior orders, the Commission has begun publishing a list of all certificate numbers and entities for which the certificate or designated operating authority expired or was cancelled during the prior calendar year. For administrative convenience, the Docketing Division has established the practice of filing notice of any such terminations or cancellations in the current Annual Reports docket, as well as any appropriate cases. In addition, a list of all expired or cancelled certificates for the 2013 calendar year is now available

under the Annual Reports link at www.puc.ohio.gov. These certificates have expired by operation of law, or have been cancelled due to mergers, abandonment, termination of the authority holder, or revoked by prior Commission order. Each listed certificate or operating authority has been removed from the rolls of active certificates and authorities on the Commission's records, and will be excluded from the calculation of any future assessments.

- (10) Finally, the Commission will address two issues relating to certified retail electric suppliers and aggregators (CRES) under R.C. 4928.08. First, only suppliers who take title to the power need file an annual Alternative Energy Compliance (ACP) report. Brokers and aggregators who do not take title, should not file an ACP report. Further, such brokers and aggregators need only report total gross revenues from commissions and fees. They should not report any sales volumes where they are only acting as a pass-through, and need not group their revenues by customer class. Second, the Commission notes that Land O'Lakes, Inc. (Land O'Lakes) provides retail electric service, as defined by R.C. 4928.01(A)(27), to the company's own Ohio facilities under Certificate No. 13-619E. Land O'Lakes does not, however, resell generation to any other persons. The company should, therefore, report its purchased power volume as sales, but with zero intrastate gross revenues, on its 2013 annual fiscal assessment report. The company will still be liable for the statutory minimum assessment for both the Commission and OCC; and Land O'Lakes must comply with any ACP reporting requirements.

It is, therefore,

ORDERED, That each certificate or operating authority listed on the attachment to this Entry be revoked. It is, further,

ORDERED, That each holder of a certificate or operating authority listed on the attachment to this Entry immediately cease providing regulated service in the state of Ohio under the listed certificate or operating authority, and notify any Ohio jurisdictional customers still being served under the revoked certificate that it is no longer permitted to operate in Ohio under the listed certificate or operating authority. It is, further,

ORDERED, That each certificate or operating authority listed on the attachment to this Entry be removed from the rolls of active certificates and authorities on the Commission's records, and excluded from the calculation of any future assessments. It is, further,

ORDERED, That the application for rehearing of Broadvox be granted, and Certificate No. 90-9302 be reinstated. It is, further,

ORDERED, That the request for waiver of the civil forfeiture against Choice Energy be granted. It is, further,

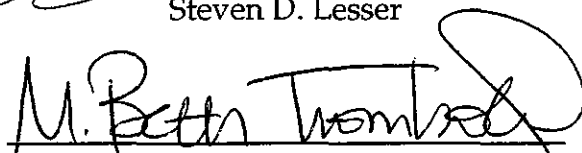
ORDERED, That notice of this Entry be served via the Electric-Energy, Gas-Pipeline, Railroad, Telephone, and Water industry listserves. It is, further,

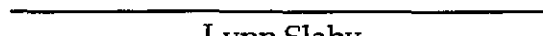
ORDERED, That the Docketing Division serve a copy of this Entry with the attachment to each company listed thereon, via certified and regular mail, in addition to any electronic service.

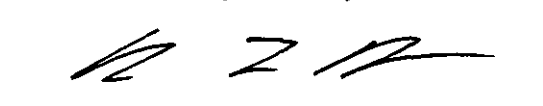
THE PUBLIC UTILITIES COMMISSION OF OHIO


Thomas W. Johnson, Chairman


Steven D. Lesser


M. Beth Trombold

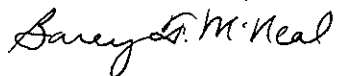

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RMB/dah

Entered in the Journal

DEC 10 2014



Barcy F. McNeal
Secretary

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