

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Notice of Material)	
Default Served by The East Ohio Gas)	15-1894-GA-UNC
Company d/b/a Dominion East Ohio upon)	
Energy 95, LLC d/b/a Quake Energy, LLC)	

**ENERGY 95, LLC D/B/A QUAKE ENERGY LLC’S MEMORANDUM CONTRA THE
EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO’S
MOTION FOR WAIVER**

The East Ohio Gas Company, d/b/a Dominion East Ohio (“DEO”) requests a waiver from the requirements of Ohio Administrative Code (“OAC”), section 4901:1-29-13 (C), which requires:

(C) Natural gas companies shall make eligible-customer lists available to certified retail natural gas suppliers and governmental aggregators via electronic media. Such lists shall be updated quarterly and shall, at a minimum, contain customer name, service and mailing addresses, load profile reference category, meter read date or schedule, and historical consumption data for each of the most recent twelve months. (Emphasis added)

OAC section 4901:1-27-13(F), relied upon DEO’s request for waiver, provides the correct procedure for notifying a certified retail natural gas supplier of a claimed “material default” in conduct under the DEO Natural Gas Choice Program. The section states as follows:

(F) In the event of a material default, as defined by a natural gas company's tariff or by an agreement between the natural gas company and the retail natural gas supplier or governmental aggregator:

(1) The natural gas company shall serve a written notice of such default in reasonable detail and with a proposed remedy to the retail natural gas supplier or governmental aggregator and the commission.

(2) On or after the date the default notice has been served, the natural gas company may file with the commission a written request for authorization to terminate or suspend the retail natural gas supplier or governmental aggregator from participation with the natural gas company's supplier program.

(3) If the material default is due to reasons other than under-delivery or non-delivery, and if the commission, or an attorney examiner, does not issue an entry to suspend or reject the action proposed by the natural gas company within ten business days after receipt of the request, the natural gas company's request to terminate or suspend shall be deemed authorized on the eleventh business day.

(4) If the default is due to under-delivery or non-delivery and, if the commission, or an attorney examiner, does not act within five business days after receipt of the request, the natural gas company's request to terminate or suspend shall be deemed authorized on the sixth business day.

(5) Notwithstanding paragraphs (F)(3) and (F)(4) of this rule, terminations or suspensions from a natural gas company's supplier program shall require authorization from the commission.

(6) The natural gas company shall send notices pursuant to this section by electronic mail, fax, overnight mail or hand delivery to the commission and staff at the commission's offices. The natural gas company shall notify all commissioners, the chief of staff, the director of the service monitoring and enforcement services department, the director of the utilities department, the director of the legal department and the chief of the attorney general's public utilities section. The natural gas company shall send the notice to the address, electronic mail, and fax number provided by the retail natural gas supplier or governmental aggregator in its aggregation agreement. (emphasis added)

Until November 9, 2015, DEO had not filed any notice complying with this rule to Energy 95, LLC d/b/a Quake Energy LLC ("Quake"). Even after this date, DEO ignored the directions for appropriate service of a notice pursuant to OAC 4901:1-27-13(F).¹ However, despite repeated requests, DEO has consistently refused, since April 2015, to provide eligible customer lists to Quake. DEO is not authorized, without commission authorization as clearly

¹ As can be seen by the unambiguous wording of the provision, a Notice of Material Default provided for in Section 4901:1-27-13(F) is to be served upon various individuals pursuant to sub-section (F)(6) including, without limitation, the commissioners, the chief of the commission staff, the director of the legal department and the chief of the attorney general's public utilities section, and the natural gas supplier at the address provided by the natural gas supplier in its supplier agreement. The certificate of service attached to the purported "Notice of Material Default" lists the Quake's attorney, John Williams as director of SMED and Larry Sauer with the OCC. See, "CERTIFICATE OF SERVICE." The failure to follow basic service procedures clearly and unambiguously provided by the OAC should result in dismissal of the "Notice."

noted in OAC 4901:1-27-13(F)(5), to unilaterally refuse to comply with clear legal duties imposed by OAC 4901:1-29-13(C) and simply fail to provide eligible customer lists. Further, the commission also should not ratify or legitimize DEO's unilateral refusal to comply with clear legal duties by granting DEO's request for waiver, especially with regard to "pending requests" for eligible customer lists. Those requests should have already been granted by DEO and the eligible customer lists provided pursuant to OAC 4901:1-29-13 (C). DEO made no effort to seek prior commission authorization for refusing to provide those lists.

Further, while DEO cites RC 4929.24 in support for its requested waiver from the obligation to provide eligible customer lists, RC 4924.24 does not support a waiver request in the absence of a complaint filed pursuant to RC 4905.26. While DEO may have filed and attempted to serve a "Notice of Material Default" pursuant to OAC 49091:1-1-27-13(F), clearly no complaint under RC 4905.26 has been instituted against Quake, which might provide support for a waiver. RC 4929.24(A)(1) states in part:

The commission also has jurisdiction **under section 4905.26 of the Revised Code, upon complaint of any person or complaint or initiative of the commission** to determine whether a retail natural gas supplier subject to certification under section 4929.20 of the Revised Code has violated or failed to comply with any provision of sections 4929.20 to 4929.23 of the Revised Code regarding a competitive retail natural gas service for which it is subject to certification or any rule or order adopted or issued by the commission for purposes of those sections." (emphasis added).

This is not insignificant or mere word parsing. A complaint under RC 4905.26 grants the commission rather broad authority to act in protecting regulated customers and other persons in the context of a complaint case filed under RC 4905.26. By contrast, OAC 4901:1-27-13(F) is quite specific in defining commission powers when a "Notice of Material Default" as opposed to a complaint is filed. OAC 4901:1-27-13(A) states:

“(A) **After** reasonable notice and the opportunity for a hearing, the commission may, upon its own motion or upon complaint, suspend, rescind, or conditionally rescind a retail natural gas supplier's or governmental aggregator's certificate, in whole or in part, for good cause shown.”(emphasis added)

OAC 4901:1-27-13 does not authorize the commission to grant a waiver of a clear legal obligation prior to: 1. reasonable notice; and, 2. the opportunity for a hearing. As previously noted, the purported Notice of Material Default sent by DEO to an attorney at the Ohio Consumer's Counsel, the Director of SMED and Quake's attorney did not conform to the service requirements for sending a Notice of Material Default. Ignoring the obvious flaws in the Notice of Material Default, and assuming the Notice constitutes “reasonable notice,” there still has not been any opportunity for a hearing. Since the necessary pre-requisites for any commission action pursuant to OAC 4901:1-27-13(F) are conspicuously absent, the commission should not grant the requested waiver. As noted earlier, this is particularly true with regard to “pending” requests. DEO should have already provided those eligible customer lists requested prior to the filing of the attempted “Notice.” The commission should not legitimize or encourage DEO to continue acting as a private regulatory agency, nor should the commission legitimize or encourage DEO's unilaterally refusal to act in accordance with its clear legal obligations. If the commission grants DEO's request, the Commission is ratifying DEO's obvious disregard for commission rules and procedures.

In order to refuse to provide eligible customer lists, DEO should have to at least request commission permission and assent. Therefore, the Commission should deny DEO's belated motion for temporary waiver.

Respectfully submitted,

/s/ Mark S. Yurick

Mark S. Yurick (0039176)

(Counsel of Record)

Email: myurick@taftlaw.com

Direct: (614) 334-7197

Devin D. Parram (0082507)

Email: dparram@taftlaw.com

Direct: (614) 334-6117

Taft, Stettinius & Hollister, LLP

65 East State Street, Suite 1000

Columbus, Ohio 43215

Telephone: (614) 221-2838

Facsimile: (614) 221-2007

***Counsel for Energy 95, LLC d/b/a Quake
Energy LLC***

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following via electronic mail this 16th day of November, 2015:

Mark A. Whitt
Andrew J. Campbell
Rebekah J. Glover
Whitt Sturtevant LLP
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com
glover@whitt-sturtevant.com

***Counsel for The East Ohio Gas
Company d/b/a Dominion East Ohio***

Larry Sauer
Deputy Consumers' Counsel
Office of Ohio Consumers' Counsel
larry.sauer@occ.ohio.gov

***Counsel for the Office of Ohio Consumers'
Counsel***

John Williams
Service Monitoring Enforcement Division
Public Utilities Commission of Ohio
john.williams@puc.state.oh.us

Director of Service Monitoring Enforcement Division

/s/ Mark S. Yurick
Mark S. Yurick

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Summary: Memorandum Memo Contra East Ohio Gas Company dba Dominion East Ohio's Motion for Waiver electronically filed by Mr. Devin D. Parram on behalf of Energy 95 dba Quake Energy