

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**ENERGY 95, LLC D/B/A QUAKE ENERGY LLC’S RESPONSE TO
NOTICE OF MATERIAL DEFAULT**

I. Introduction.

On November 9, 2015 at The East Ohio Gas Company, d/b/a Dominion East Ohio (“DEO”) filed a “Notice of Material Default” (hereinafter, “Notice”) with the Commission pursuant to Ohio Administrative Code (“OAC”) section 4901:1-27-13(F) alleging that Energy 95, LLC d/b/a Quake Energy LLC (hereinafter, “Quake”) materially violated commission rules in the following manner: failure to retain adequate records; marketing, improper solicitation and sales acts and practices; third party verification failures; failure to observe “do not call” registries; and, failure to comply with internal policies and practices. The Notice was served on Quake’s attorneys, attorney Larry Sauer of the Ohio Office of Consumer’s Counsel (hereinafter “OCC”) and John Williams as director of the department of service monitoring and enforcement department (“SMED”). As noted below, this service is not adequate to institute a formal notice pursuant to the clear directions set forth in the OAC.

II. Quake, a competitive retail natural gas supplier in good standing with the Commission, uses an outside third-party telephone solicitation provider.

Quake is a competitive retail natural gas supplier currently in good standing with the commission, and a public utility under Ohio Revised Code (“RC”) section 4905.02 and subject to the commission’s jurisdiction RC section 4905.05. Quake operates only in Ohio, and has enrolled and currently provides natural gas retail supply at competitive prices to tens of thousands of natural gas customers as part of DEO’s “Energy Choice” program since receiving its supplier license in April of 2012. Quake enrolls customers using an outside third-party telephone solicitation provider, which provider utilizes approximately twenty five (25) customer sales representatives per day, five days per week, who average approximately fifteen (15) sales calls per day. Quake’s third- party telephone solicitation service therefore attempts approximately one hundred thousand (100,000) calls each year to prospective customers on Quake’s behalf.

The third-party provider is charged with retaining all call records, and making such call records available to Quake in the event of any issue or concern. Depending on the level of information provided to Quake in connection with a concern, if the provider is unable to locate information pertaining to a questioned call, Quake may not be able, without further information, to identify all calls made. Since the beginning of Quake’s operations, Quake has endeavored to quickly address and correct any and all customer issues, including those relating to telephone solicitation practices.

III. DEO has unilaterally refused to provide eligible customer lists to Quake while DEO “investigates” a relatively small number of customer complaints.

In approximately the last year, DEO has requested information from Quake regarding approximately fourteen¹ customer complaints related to sales calls made by Quake’s third-party telephone sales service provider. Since Quake is a certified supplier, DEO is clearly required under the rules to provide eligible customer lists during the pendency of any “investigation” into customer complaints undertaken by DEO. Despite this clear legal duty, DEO has unilaterally refused to provide eligible customer lists to Quake for several months, apparently while DEO investigates these fourteen customer complaints. This refusal interferes with Quake’s ability to contact potential customers, is anti-competitive and irreparably harms Quake’s business.

It is not disputed that overwhelming majority of the complaints received by Quake through DEO have already been successfully addressed or are meritless. In fact, DEO has simply requested additional information on a relatively small number of customer complaints, to which requests Quake has fully and timely responded. Despite Quake’s full and timely responses to a majority of the complaints, DEO has unilaterally and without prior commission authority, denied Quake fair and non-discriminatory access to important eligible customer lists which Quake has a clear legal right to obtain. Instead, DEO has continuously failed to follow clear and unambiguous commission rules regarding DEO’s duty to provide these eligible customer lists, irreparably harming Quake’s ability to operate and inform potential customers of its services. While Quake shall continue to assist DEO and cooperate fully in resolving all customer complaints of any nature, DEO should not be permitted to continue to refuse to provide information which DEO has a clear and unambiguous legal duty to provide. While all customer

¹ DEO’s Notice states that they have received “a number” of complaints. To the best of Quake’s knowledge, that number is 14.

issues are taken very seriously by Quake, the relatively small number of customer issues identified by DEO do not justify DEO's unilateral and unauthorized refusal to provide eligible customer lists to Quake. This is especially true with regards to "pending" requests from Quake to DEO. DEO simply refused without support or justification to provide eligible customer lists during its "investigation." The commission should not legitimize DEO's clear disregard of obligations imposed by law by granting the waiver with respect to "pending" information requests.

As noted, DEO's concerns relate to a relatively small number of customer complaints, in which Quake provided additional information and call records of sales and verification calls. Of the fourteen (14) complaints over a roughly three (3) year period representing a myriad of calls, Quake was unable to identify any evidence that a sales call had taken place in four (4) instances. With the exception of one unavailable sales call², all other call records, both sales calls and Independent Third-Party Verification ("TPV") calls requested by DEO were promptly produced to DEO. Of those ten (10) remaining complaints, two (2) customers indicated in the recordings that they were currently under energy sales contracts, and those calls were terminated quickly by the sales representative in a seemingly amicable manner. The customers were not switched, and no apparent violation of any rule or procedure was noted. Of the remaining eight (8) calls, Quake agrees that three (3) complaints were problematic.

² Quake was immediately able to locate the TPV for this sale; however, Quake's outside third party telephone solicitation provider was unable to locate the sales call. Quake advised DEO of this on September 9th, 2015, both via email and in a summary sheet provided to DEO via Dropbox. Quake requested additional information to locate this sales call via Dropbox, but DEO failed to provide any additional information.

A. Do not call registry complaints.

In one instance, Quake's telephone solicitation vendor failed to monthly update its "Do Not Call" registry, which resulted in a customer being contacted incorrectly. That customer contacted Quake directly, received an apology, and was promptly added to Quake's internal "Do Not Call" registry, so that the error would not be repeated. Upon investigation, Quake determined that the telephone sales vendor had failed to update its monthly "Do Not Call" registry, resulting in the incorrect call being placed to the complaining prospective customer. The customer was treated with patience and respect by Quake representatives, despite being very agitated. In this instance, the third-party provider was warned that any future failures to update its do not call registry would not be tolerated, and to date Quake is unaware of any repetition of this unacceptable behavior.

This is the sole complaint relating to DEO's sweeping and deceptive assertion that DEO has received "numerous complaints" from "many" customers that informed DEO that they had enrolled in one or more "Do Not Call" registries. While "one" is undoubtedly a number, and the word "many" is somewhat subjective, common parlance and a general understanding of the English language suggest that an isolated incident, which was addressed as quickly and completely as possible by Quake, does not constitute "numerous" complaints by "many" customers.

B. Two remaining customer complaints.

There remain two (2) customer complaint situations, over a span of over three (3) years in which Quake agrees that there were problems, and those problems were quickly and completely addressed by Quake. In these two (2) instances the sales representative, and therefore the third party vendor, did not follow Quake's expressed requirements and standards for telephone sales

solicitations. DEO refers to these two (2) customers complaints several times in its supporting papers, and apparently separates the sales and TPV calls misleadingly suggesting that the issues involved more than two (2) customer complaints.³ The sales representative, in both situations, identified in the calls by the name “Angelique” is no longer authorized to act on Quake’s behalf. The representative did in fact fail to follow the prescribed script and was not clear that she represented Quake, although the recorded TPV verification was clear that Quake is a supplier and not the utility. The third party verification procedure did clearly identify that the procedure was to switch gas supply to Quake. In both instances the sales representative did appear to forge ahead with a switch in service despite apparent confusion on the part of the prospective customer’s representative. Quake agrees that these two (2) prospective customers were treated incorrectly, and as noted, the sales representative is no longer authorized to act on Quake’s behalf.

C. Recordkeeping.

DEO’s assertions that Quake could not provide records pertaining to six of the complaints is wrong. Quake has no record of the third party provider making calls to four of the fourteen customer complaints. As far as Quake is able to determine, those customers were simply not contacted by a representative acting on behalf of Quake. DEO does not indicate which complaint was received October 8, 2014, but Quake has responded to requests for information regarding a complaint by Riverside Schools, originally requested by DEO on October 20, 2015. Further, Quake is willing to discuss recordkeeping and retention requirements, and improve those requirements if required by the commission.

³ As far as may be determined based on the quoted sections from much longer conversations, sales call 1 and TPV 1 related to the same customer complaint and sales call 2 and TPV 2 relate to the same customer complaint. It is difficult to determine which situation is referred to by sales call 3.

Quake representatives did not suggest that they were acting on behalf of DEO or the State of Ohio. All customers contacted by Quake representatives were part of the Energy Choice program, so that statement is factually correct. In some instances, telephone sales representatives have not identified themselves as representatives of Quake as quickly or clearly as Quake would have preferred. However, on no occasion related to these 14 complaints did sales representatives identify themselves as acting on behalf of DEO or the state of Ohio. Quake agrees and has addressed the conduct of representatives who indicate they are calling potential customers “as a courtesy.” Quake agrees that such a statement is inaccurate and inappropriate.

The violation of third party verification protocols is noted and shall be addressed by Quake. However, these violations appeared to be relatively minor technical problems. No prospective customer was “coached” to say “yes” when that customer desired to indicate a negative response.

IV. Quake does not object to participating in a collaborative process if DEO is prepared to treat Quake in a fair and non-discriminatory manner.

Quake has no objection to the relief requested by DEO, insofar as the commission staff shall also participate in the requested collaborative process. Quake merely seeks a quick resolution to these customer related concerns, so that Quake may continue to provide competitive service in a fair and non-discriminatory environment, as required by applicable law. DEO fails to note in its supporting papers that most if not all of the complaints were forwarded and pursued by Quake’s competitors, not the customers themselves. Quake believes that DEO’s “investigation” into what amounts to relatively minor issues has resulted in negative publicity which has irreparably harmed Quake’s reputation with customers, the industry, and the Commission. Other than the two customer situations noted above, Quake is unaware of any

additional complaints regarding Quake's solicitation practices. Additionally, Quake has already noted that it will agree to participate in a collaborative process. However, during this process, DEO should be required to prove to the commission that DEO has acted fairly and in a non-discriminatory manner when compared to DEO's treatment of customer complaints connected to other competing certified retail natural gas suppliers. Quake should not be singled out for disparate treatment simply because it is a relatively new and relatively small supplier in Ohio.

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

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

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

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

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: Response Response to Notice of Material Default electronically filed by Mr. Devin D. Parram on behalf of Energy 95 dba Quake Energy