

**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)

**REPLY IN SUPPORT OF THE NOTICE OF DEFAULT
OF THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO**

I. INTRODUCTION

On November 9, 2015, The East Ohio Gas Company d/b/a Dominion East Ohio (DEO) filed a Notice of Material Default (the Notice) concerning Energy 95, LLC d/b/a Quake Energy, LLC (Quake). On November 16, Quake filed a response to the Notice.

Quake appears to accept, without modification, the remedy requested by DEO. But although Quake accepts the remedy, its response contains a number of statements that either misstate the underlying facts or suggest an attitude towards compliance that is concerning. More remarkably, Quake repeatedly insinuates, and at times directly makes accusation, that DEO has acted with ill will or dishonesty.

DEO will correct Quake’s misstatements and show that Quake’s accusations are baseless. More than that, the tone and content of the response raise an additional concern—namely, that not only has Quake failed to establish or adhere to adequate compliance policies, but that it fails to appreciate the importance of doing so. For these reasons, as explained in detail below, Quake’s response only confirms that DEO’s proposed remedy should be approved.

II. REPLY COMMENTS

A. Quake accepts, and the Commission should approve, DEO’s proposed remedy.

First, DEO observes that Quake appears to fully accept DEO’s proposed remedy. “Quake has no objection to the relief requested by DEO, insofar as the commission [sic] staff shall also

participate in the requested collaborative process.” (Quake Response at 7.) Given that DEO specifically proposed that the process involve Staff, it follows that Quake accepts DEO’s proposed remedy. (See DEO Notice at 16 (“DEO accordingly proposes that Quake voluntarily participate in a collaborative process involving the Commission Staff and other interested parties”))

Accordingly, DEO requests that the Commission enter an order adopting the relief requested by DEO at pages 15–17 of its Notice, along with any other modifications or additions that the Commission sees fit to approve.

B. A number of statements contained in Quake’s response require correction or clarification.

Although Quake agrees to DEO’s proposed relief, its response cannot be characterized as amicable. Quake’s response burgeons with statements that dismiss the seriousness of the concerns, diminish Quake’s responsibility, misstate certain facts, and even question DEO’s motivation and honesty. Taken in total, Quake’s response paints a picture of an entity that may not understand the seriousness of its obligations to comply with the Commission’s rules.

To ensure both that DEO’s position is preserved and that the record is clear, DEO offers the following responses.

1. Quake’s dismissive attitude belies the fact that every complaint investigated by DEO turned up a problem.

The general tone of Quake’s response is dismissive. It begins by setting forth a process of elimination, whereby hundreds of thousands of calls, over several years,¹ resolve to only two or

¹ Quake states that the complaints at issue occurred both “in approximately the last year” and “over a roughly three (3) year period.” (Quake Response at 3 & 4.) The former statement is correct; the latter is inaccurate. The complaints occurred from November 2014 to October 2015. DEO did not, and does not, represent that the complaints described in the Notice are the only complaints that DEO has ever received regarding Quake in the last three years.

three meritorious complaints, all of which were resolved. (See Quake Response at 3–4.) Quake directly states that the number of issues identified by DEO is “relatively small” (*id.* at 3, 4) and that those issues are “relatively minor” (*id.* at 7). Quake goes so far as to state, “It is undisputed the overwhelming majority of the complaints received by Quake through DEO have already been successfully addressed or are meritless.” (*Id.* at 4.) Quake’s response also inexplicably and repeatedly brackets the word “investigation” with scare quotes. (See *id.* at 7 (describing “DEO’s ‘investigation’ into what amounts to relatively minor issues”); see also *id.* at 3; *id.* at 4.) What Quake intends by this is unclear: such usage is typically derisive.

In DEO’s view, Quake’s response is very troubling. Despite the dismissive tone, Quake does *not* address all of the issues raised by DEO, admits many of them, and generally fails to grapple with the larger import of the issues raised in DEO’s Notice. Had DEO’s review only disclosed two or three isolated issues that had been fully resolved, DEO would *not* have invested the time and resources in preparing and filing the Notice. But that is not what DEO’s review turned up.

a. The sparseness of Quake’s call records is a major cause of DEO’s concern.

First, as DEO explained, Quake was unable to provide sales-call records for a substantial portion of the complaints, approximately half.² (DEO Notice at 4–5.) Whether by the fact of an enrollment, Quake’s own admission, or DEO’s research of these complaints based on conversations with customers, DEO had reasonable grounds for tying all of these complaints to Quake. (*Id.* at 14–15.) Thus, Quake appears to have failed to provide sales-call records for roughly half of the complaints.

² In preparing this Reply, DEO determined that a 15th complaint, which DEO initially omitted from its Notice (believing it to be unrelated to Quake), did in fact pertain to Quake. Thus, this complaint should have been included in DEO’s Notice. To DEO’s knowledge, this also brings the number of sales-call records received to 7 records out of 15 complaints.

What happened on the other calls? What led those customers to complain? DEO does not know for sure, because there were no records. Although Quake concedes that at least one recording was missing, it views the lack of record for the other calls as a sign that they never occurred. (*See* Quake Response at 4 (describing lack of “evidence that a sales call had taken place”).) But DEO finds it doubtful that multiple customers would do all of the following: fabricate an unwanted call from an Energy Choice marketer; make up the fact that it was Quake or make up a phone number associated with Quake; and then waste their time complaining about it to their utility.

Again, DEO does not know with certainty what happened on the calls that were not provided. But discussions with those customers indicate that the calls involved potential rule violations. At a minimum, the known facts suggest a reasonable possibility that there are serious issues with Quake’s record-keeping and -retention practices. If that is the case, verifying Quake’s compliance with many other Commission rules will be rendered difficult, if not impossible.

b. The remaining complaints, for which records *were* provided, disclosed compliance issues.

Missing call records was not the only issue. The call records that Quake did produce raised their own concerns. To DEO’s knowledge, Quake produced seven sales calls and one verification call³ for which a sales call was not provided, and even it euphemistically admits that three of the sales calls “were problematic.” (Quake Response at 4.) DEO would agree that three of the sales calls disclosed egregiously misleading conduct. And those three calls constitute nearly *half* of the complaints for which Quake provided records. DEO is not suggesting that such a sample is statistically valid, but there is no way to view that as an encouraging ratio.

³ Quake’s filing suggests that it has produced nine sales-call records. (*See* Quake Response at 4.) Unless Quake has provided additional records of which DEO is currently unaware, this does not match DEO’s records.

Moreover, *all* of the complaints for which Quake provided sales-call records showed that the Quake agents failed to follow the provided script. (DEO Notice at 12–13.) As DEO explained, the specific omissions from the script could result in customers being reasonably confused over who was calling them about their gas service and why. (*Id.*) Even Quake acknowledges that agents “have not identified themselves as representatives of Quake as quickly or clearly as Quake would have preferred.” (Quake Response at 7.) DEO also observed that Quake’s verification system, even when not abused by the agent, may not be “independent” as required by rule. (DEO Notice at 11.)

This means that even the calls that Quake perceives as acceptable disclose potentially systemic problems with Quake’s customer-compliance practices.

c. All of the complaints investigated by DEO raised serious questions about Quake’s compliance.

To summarize, roughly half of the complaints raised the serious possibility that Quake is not recording many of its sales calls, and the remainder all raised compliance issues (whether about egregiously misleading conduct; the validity of the verification process; or the degree to which Quake is implementing on-paper policies). DEO finds it highly unlikely that the 14 complaints for which Quake had responded to DEO’s requests disclosed the only instances of rule or policy violations that occurred under Quake’s supervision. That is why DEO saw fit to bring this matter to the Commission’s attention.

DEO has nothing to gain by pursuing this; it simply seeks to protect its customers and the Energy Choice program. If the Commission agrees with Quake that the Notice is much ado about nothing, then DEO agrees that it is within the Commission’s power to deny DEO’s request. But for its part, DEO’s concerns over Quake’s compliance practices are only amplified by the attitude displayed in Quake’s written response.

2. Every accusation or apparent insinuation of dishonesty on DEO's part is baseless.

A dismissive attitude is not the only element of Quake's response that DEO finds disturbing. Quake's filing contains numerous statements that appear, directly or indirectly, to accuse DEO of dishonest or intentionally misleading conduct. Quake's statements are incorrect and improper, and DEO cannot allow them to stand.

a. DEO's statement that multiple customers complained regarding "Do Not Call" registries was not "sweeping and deceptive."

First is Quake's description of the issue concerning "Do Not Call" registries.

DEO had explained in its Notice that it "received numerous complaints concerning the number of calls received from Quake" and that "many of these customers informed DEO that they had enrolled in one or more 'Do Not Call' registries." (DEO Notice at 12.) But, Quake responds, only one customer "contacted Quake directly" concerning an admitted failure to adhere to "Do Not Call" requirements. (Quake Response at 5.) Having only been contacted by "one" customer, Quake concludes that DEO's claim that "many" customers called DEO and reported "numerous" complaints is "sweeping and deceptive." (*Id.*)

DEO is surprised that Quake would publish such a strong word as "deceptive" without having a clearer basis for it. And it is all the more surprising when another, much more likely explanation is not only available but provided in DEO's Notice: namely, that DEO is telling the truth when it stated that "*DEO received* numerous complaints" and that "these customers *informed DEO* that they had enrolled in one or more 'Do Not Call' registries." (DEO Notice at 12 (emphases added).) DEO engaged its own counsel and employees to investigate these complaints, they spoke to these customers, and a number of them complained about repeat calls from Quake and the "Do Not Call" issue. DEO did not claim that *Quake* had received multiple complaints.

Quake seems to reason that if it was not “contacted . . . directly” by the customer, the complaint did not occur. (Quake Response at 5.) As this instance proves, that is not the case. Quake’s written and public accusation that DEO issued “deceptive” statements is unfounded, and it should be withdrawn.

b. DEO did not “misleadingly suggest[]” that there were more than the actual number of complaints.

Quake also accuses DEO of “misleadingly suggesting that the issues involved more than [the actual number of complaints].” (Quake Response at 6.) Quake refers to the fact that DEO discussed certain complaints in separate sections of its Notice and treated sales calls and verification calls separately. (*Id.*) This is another strongly accusatory statement lacking any reasonable basis.

DEO’s Notice is organized by issue, not by customer. Some of the complaints, as Quake does not appear to contest, gave rise to multiple issues. Thus, it was necessary to discuss certain complaints in more than one section of the Notice. DEO did not hide this, but assigned a number to each complaint and each call segment so it would be clear which records were being discussed. DEO directly explained that some quoted “exchanges . . . are also addressed in [another section of the Notice].” (DEO Notice at 5 n.2.) This was not misleading.

Nor was the fact that DEO separately identified the sales and verification calls. Quake correctly understood the intent of DEO’s coding, namely, that “sales call 1 and TPV 1 related to the same customer complaint and sales calls 2 and TPV 2 related to the same customer complaint.” (Quake Response at 6 n.3.) DEO treated the sales-call segment and verification segment separately because Quake maintained the files separately—that is, for each complaint, there was a sales-call record and a verification record. DEO wanted to make clear which file should be reviewed to locate the transcribed conversations. With the benefit of hindsight, DEO

would acknowledge that a sentence explaining that a single number referred to a single customer would have made this clearer. But that is a far cry from an intentionally misleading statement, particularly when Quake was not misled but understood the intended meaning.

DEO was attempting to balance the goals of a clearly drafted Notice with the protection of the individual customers' identities. Given the explanations provided in the Notice, and given the fact that Quake understood them, Quake's direct accusation of improper conduct is inappropriate.

c. Who brought each complaint to DEO's attention is irrelevant: each complaint had merit.

Quake also asserts that "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 Response at 7.)

DEO fails to see Quake's point. Is Quake suggesting that DEO is conspiring with other CRNG suppliers to block Quake from the Energy Choice market? That would be fanciful, at best. (It bears noting that Quake does not claim that *any* of the complaints came from DEO's marketing affiliate, Dominion Retail; and to DEO's knowledge, none of them did.) Moreover, suppliers who lose business due to improper sales practices have every right to complain; even Quake recognizes the importance of providing a "fair" competitive environment. (*Id.*) Other suppliers would also rightly be concerned that the general reputation of the Energy Choice program, on which their livelihoods depend, not be sullied by a potential bad actor.

The issue is not the source of the complaint, but whether the complaint has merit. Every single complaint for which DEO has completed investigation disclosed major concerns regarding Quake's compliance with the Commission's rules or Quake's policies. Quake would be better served attending to these issues instead of imputing improper motives to other parties.

d. DEO did not conceal the number of complaints at issue.

Finally, Quake’s response includes a statement that could be read to imply that DEO attempted to obscure the number of complaints that are the subject of the Notice. Quake states, “DEO’s Notice states that they have received ‘a number’ of complaints. To the best of Quake’s knowledge, that number is 14.” (Quake Response at 3 n.1)

The sentence in which DEO used the phrase “a number of complaints” appears at page 2 of the Notice. But DEO did not hide the number of complaints. The next sentence states, “In response to these complaints, DEO requested Quake to provide [documentation] related to *fourteen complaints* regarding solicitations or enrollments.” (*Id.* (emphasis added).)⁴

In short, none of the statements in Quake’s response that cast doubt on DEO’s integrity has any merit.

3. DEO is concerned that Quake may not recognize its responsibility for its third-party contractors’ conduct.

Another aspect of Quake’s response that raises questions about its compliance practices has to do with its use of third-party vendors to provide customer service.

Quake repeatedly points out that the complaints pertain to activities for which its “third-party telephone solicitation provider” is responsible. (*See, e.g.*, Quake Response at 2 (“The third-party provider is charged with retaining all call records”); *id.* (“Quake enrolls customers using an outside third-party telephone solicitation provider”); *id.* at 3 (the complaints “related to sales calls made by Quake’s third-party telephone sales service provider”); *id.* at 4 n.2 (“Quake’s outside third party telephone solicitation provider was unable to locate the sales call”); *id.* at 5 (“Quake’s telephone solicitation vendor failed to monthly update its ‘Do Not Call’

⁴ As noted above, in preparing this Reply, DEO determined that a 15th complaint pertained to Quake.

registry”); *id.* (“the sales representative, and therefore the third party vendor, did not follow Quake’s expressed requirements and standards”).)

It is not clear to DEO what to make of these repeated mentions of the “third party” vendor’s role. If Quake wishes to delegate tasks to other entities, it generally bears the responsibility to select a responsible vendor and then effectively supervise it. If it will not do so, then its participation in the Energy Choice program is jeopardized.

DEO expects that Quake will take full responsibility for actions undertaken on its behalf, whether by employees, contractors, or any other third-party agent.

4. Quake’s reliance on an automated verification to cure issues on sales calls is concerning to DEO.

Quake also suggests that information contained in its automated (*e.g.*, computerized and recorded) verification procedure is sufficient to cure possible failings on its live sales calls. According to Quake, even though certain sales calls disclosed violations, “the recorded TPV verification was clear that Quake is a supplier and not the utility,” and “[t]he third-party verification procedure did clearly identify that the procedure was to switch gas supply to Quake.” (Quake Response at 6.)

In its Notice, DEO expressed its general concerns about whether an automated verification procedure managed (and in some cases manipulated) by the sales agent is truly “independent,” as required by the rules. (DEO Notice at 11.) And DEO expressed specific concerns about solely relying on the verification process to provide contract terms: “As DEO understands the rules, the verification process is intended to *confirm* terms and conditions that the customer has already agreed to, not to present the terms and conditions for the first time.” (DEO Notice at 8.) Quake’s response suggests that it has the opposite understanding: that the verification process *may* present important terms and conditions for the first time.

This may be another dispute that requires Commission resolution and guidance.

5. Quake is not being “singled out” for anything other than the compliance issues flagged in the Notice.

Finally, Quake asserts that it “should not be singled out for disparate treatment simply because it is a relatively new and relatively small supplier in Ohio.” (Quake Response at 8.) It also seems to question whether “DEO has acted fairly and in a non-discriminatory manner when compared to DEO’s treatment of customer complaints connected to other competing . . . suppliers.” (*Id.*) For these serious suggestions of impropriety, Quake once again provides no basis, other than the mere fact that DEO filed the Notice. (*Id.*)

The notion that DEO has any interest in filing this Notice, other than protecting its customers and the Energy Choice program, is implausible. DEO doubts that any other utility in the State of Ohio has done more than DEO to further the cause of competitive markets or to support the growth of programs that have benefited both customers and CRNG suppliers. DEO has frequently been aligned with CRNG suppliers in numerous cases and appeals defending the Energy Choice program and DEO’s incremental exit of the merchant function. DEO’s interests are in fully supporting the program it has worked so hard to develop and in doing so, to protect the interests of its customers.

Dealing with the complaints against Quake has consumed and will continue to consume time and resources that could be spent elsewhere, surely on more productive endeavors. DEO hopes that moving forward, Quake will invest more time in explaining and resolving the issues identified by DEO, and less in reckless statements.

III. CONCLUSION

For the foregoing reasons, DEO respectfully requests that the Commission consider the above evidence of Quake's Material Default, approve the proposed remedy, and grant any other necessary and proper relief.

Dated: November 23, 2015

Respectfully submitted,

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/23/2015 4:21:03 PM

in

Case No(s). 15-1894-GA-UNC

Summary: Reply in Support of the Notice of Default electronically filed by Ms. Rebekah J. Glover on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio