

**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
MOTION FOR TEMPORARY WAIVER
OF THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO**

I. INTRODUCTION

In accordance with Ohio Adm. Code 4901-1-12(B)(2), The East Ohio Gas Company d/b/a Dominion East Ohio (DEO or the Company) files this reply in support of its Motion for Temporary Waiver of Ohio Adm. Code 4901:1-29-13(C).

The Commission’s rules permit waivers of rules upon a showing of good cause, and Quake’s responsive filings provide no reason to question whether good cause exists here. Indeed, Quake does not even address the question of good cause. It relies instead on the absolute position that if a supplier requests an eligible-customer list *before* a utility files a motion for waiver, then the list must be provided no matter what.

Contrary to Quake’s response, DEO is not acting unilaterally. DEO is concerned to protect its customers, and it has sought the Commission’s guidance. In whatever way the Commission decides to resolve this issue, DEO will abide by that decision.

II. ARGUMENT

Under Ohio Adm. Code 4901:1-29-02(C), “The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.” In its initial filing, DEO showed that both elements

of this rule were satisfied: good cause existed, and no statute required provision of the list.

Quake's response provides no reason to deny DEO's request.

A. Quake's response contains no argument that either element of Rule 4901:1-29-02 was not satisfied.

Most notable about Quake's response is what it does *not* contain: any argument that the provisions authorizing a waiver have not been satisfied. Quake does not argue that there is an absence of good cause. It does not argue that any statute requires provision of the customer list. This, if anything, tends to confirm that DEO's motion for waiver may be properly granted.

As explained in its motion, DEO has received a substantial number of complaints regarding Quake's sales and solicitation practices, and DEO's review of those complaints uncovered both instances of egregious conduct and (just as concerning) the possibility of systemic problems with Quake's compliance practices. DEO is concerned about providing the eligible-customer list in such circumstances.

Although Quake's responsive filings seem to question DEO's motives in filing its motion, no direct or pecuniary interest of DEO's is served by denying Quake the list. DEO's sole concern is to protect its customers and to protect the Energy Choice program that the Company has invested 15 years in creating, maintaining, and at times defending alongside other CRNG suppliers. (That program, Quake should bear in mind, is the sole reason it is doing business in DEO's service territory.) Participating suppliers, in addition to customers, benefit greatly from the Choice program and from DEO's support of that program. It is only fair that all participating suppliers adopt and abide by policies and procedures that will ensure compliance with the Commission's rules. And that is all that DEO seeks to ensure.

Here, DEO's investigations have, at a minimum, raised serious questions about Quake's compliance practices. This is why DEO believes that it may not be appropriate to provide an eligible-customer list at this time, and it is why DEO filed its motion for waiver.

B. Quake's arguments against the requested waiver lack merit.

Rather than show that the motion for waiver lacks merit, Quake's offers two basic responses: first, it accuses DEO of unilaterally disregarding the Commission's rules; second, it alleges a number of procedural flaws. Neither argument has merit.

1. DEO is not acting "unilaterally" with respect to Quake.

Quake's general response to DEO's waiver request is to accuse the Company of treating the Commission's rules with "unilateral[] refusal" or "obvious disregard." (Quake Memo. Contra at 4.) This is not true, as may be seen simply by reviewing what DEO filed in this case: a motion asking the Commission to resolve whether DEO should provide the eligible-customer list in these circumstances. Asking the regulator to settle a disputed or unclear issue is not unilaterally resolving that issue.

a. DEO had hoped to resolve this issue informally with Quake, to no avail.

The following events led to the filing of DEO's Motion. Contrary to Quake's assertions, DEO has not "consistently refused, since April 2015, to provide eligible customer lists to Quake." (Quake Memo. Contra at 2.) It is true that Quake requested the list in April, but DEO did not refuse it. DEO was in the process of drastically increasing the number of records available on the list, which had been requested by Commission Staff and required substantial programming changes. On April 14, DEO explained the situation to Quake and informed it that the new list was not yet available, but asked whether Quake might be interested in the available (albeit partial) records. On April 20, Quake's response was as follows: "I talked to [Quake's

head], and he'd like to wait until the new list becomes available. Thank you for getting back to me!" DEO did not understand this series of communications to constitute "refusal" on its part.

The next time Quake submitted a request for the list was July 27, 2015. In the intervening months, DEO had progressed in its investigation of the Quake complaints, which it was attempting to draw to a close, but which had already raised substantial concerns regarding Quake's business practices. DEO accordingly informed Quake that it was unable to provide the list while the investigation was still ongoing, and DEO renewed requests that Quake provide DEO with certain requested information that was still outstanding.¹

In doing so, DEO's hope was that Quake would both recognize the seriousness of resolving any and all compliance questions and fully cooperate with DEO in completing the investigation and resolving the issues raised. Unfortunately, in response, Quake took the position that it enjoyed an absolute entitlement to the list, and it threatened DEO with "further action." This threat made clear that DEO's hope of resolving the issue without formal Commission involvement was ill-founded. This also prompted DEO to file its motion for a requested waiver.

As noted above, Quake's filing seems to vilify DEO, referring to the Company as having "obvious disregard" for the rules, "unilaterally refus[ing]" to comply, and acting as a "private regulatory agency." (Quake Memo. Contra at 4.) These characterizations strike the Company as unjustifiable. DEO's motion for waiver informed the Commission that requests were "pending." (DEO Mot. for Waiver at 1.) And DEO's position is not extreme. The Company does not believe that it may continuously or permanently deny a supplier's request for an eligible-customer list

¹ In its Response to DEO's Notice of Material Default, Quake asserts that it has provided "full and timely response to *a majority* of the complaints." (Quake Response at 3 (Nov. 16, 2015) (emphasis added).) As this statement indirectly implies, Quake had *not* fully and timely responded to certain requests for information when DEO filed its notice on November 9. DEO is confirming whether any additional information has been provided since then.

without appropriate permission. If that were DEO's position, it would not have asked the Commission to waive the applicable rule.

b. Quake's position is overbroad and would leave little room for *bona fide* waiver requests.

Quake's position, in contrast, is much more extreme. It seems to believe that if a CRNG supplier requests a list, the utility *absolutely must* provide it—no matter how serious the allegations that are being investigated; no matter whether the supplier has fully cooperated in the investigation thus far; and no matter if the investigation so far has turned up a heavy proportion of apparent rule and policy violations. In Quake's apparent view, if the request comes before the utility seeks the Commission's resolution, the utility must provide it, without exception.

Quake cites no authority for this position, and DEO does not believe it fairly reflects the letter or spirit of the Commission's rules. By their terms, the rules permit waivers on showing of good cause, which directly contradicts Quake's absolute position. The rules certainly do not speak expressly to the situation at hand: requests received while a lengthy investigation is underway and formal proceedings are being considered and prepared.

Moreover, Quake's apparent sense of entitlement to gain access to customers and participate in the Energy Choice program is mistaken. Any CRNG supplier that wishes to participate in and profit from that market *must* play by the rules. And if an investigation of a supplier raises numerous questions regarding compliance, as did DEO's, the supplier must resolve those concerns to move forward.

In short, Quake has given no reason to question whether good cause exists to grant the requested waiver.

2. Quake’s procedural arguments either lack merit or are irrelevant.

This leaves Quake’s procedural arguments, all of which pertain to either non-existent or irrelevant procedural requirements.

a. The CRNG complaint statute is irrelevant here.

First, Quake asserts that “DEO cites R.C. 4929.24 in support for its requested waiver” and that “R.C. 4924.24 does not support a waiver request in the absence of a complaint filed pursuant to R.C. 4905.26.” (Quake Memo Contra. at 3.) The premise of Quake’s argument is incorrect: DEO did not cite R.C. 4929.24 in support of its motion for waiver, and that statute appears nowhere in DEO’s motion or memorandum in support. Nor is R.C. 4929.24, which authorizes formal complaint proceedings, otherwise relevant to a request for waiver. The text of the provision that authorizes waiver requests—Rule 4901:1-29-02—makes no mention of R.C. 4929.24, and vice versa. This statute has nothing to do with DEO’s waiver request.

b. Rule 4901:1-27-13 does not require a hearing to grant a waiver.

Quake also argues, “OAC 4901:1-27-13 does not authorize the commission [sic] to grant a waiver of a clear legal obligation prior to: 1. reasonable notice; and, 2. the opportunity for a hearing.” (*Id.* at 4.) Again, this rule is not relevant here.

Rule 4901:1-27-13(A) does not apply to waiver requests, and DEO’s motion for waiver did not invoke that rule. As the quoted provision makes clear, the rule applies to the Commission’s decision to “suspend, rescind, or conditionally rescind a retail natural gas supplier’s . . . certificate.” (*Id.*) At this time, DEO has not filed a complaint for suspension, rescission, or conditional rescission, so the notice and hearing requirements cited by Quake do not apply.

This rule is the only source of the hearing requirement alleged by Quake, and it is inapplicable. And nothing in the applicable section, Rule 4901:1-29-02, requires a hearing as a

condition of granting a waiver. In short, Quake is incorrect to the extent it claims that a hearing is a “necessary prerequisite” to grant DEO’s waiver request. (*Id.*)

c. Division (F)(6) is not relevant to the waiver request.

Finally, Quake points out that Ohio Adm. Code 4901:1-27-13(F)(6) requires the service of a notice of material default on certain named members of the Commission. (Quake Memo. Contra at 2.) It is not clear to DEO how this requirement has any relevance to its motion for waiver. In any event, DEO has served the members of the Commission named in division (F)(6). (*See* DEO Notice of Service (Nov. 17, 2015).) This rule provision is no obstacle to approving DEO’s request for waiver.

III. CONCLUSION

For the foregoing reasons, DEO respectfully requests that the Commission grant its motion for waiver.

Dated: November 23, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply was served by electronic mail this

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Summary: Reply in Support of Motion for Temporary Waiver electronically filed by Ms. Rebekah J. Glover on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio