

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.

CASE NO. 15-1894-GA-UNC

OPINION AND ORDER

Entered in the Journal on September 7, 2016

I. SUMMARY

{¶ 1} The Commission adopts the stipulation entered into by The East Ohio Gas Company d/b/a Dominion East Ohio, Energy 95, LLC d/b/a Quake Energy, LLC, and Staff regarding the notice of material default.

II. PROCEDURAL HISTORY

{¶ 2} The East Ohio Gas Company d/b/a Dominion East Ohio (Dominion) is a natural gas company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} Energy 95, LLC d/b/a Quake Energy, LLC (Quake) is a retail natural gas supplier as defined in R.C. 4929.01, is certified to provide competitive retail natural gas service (CRNGS) under R.C. 4929.20, and is subject to the jurisdiction of this Commission pursuant to R.C. 4929.24.

{¶ 4} Pursuant to Ohio Adm.Code 4901:1-27-13(F), the Commission has the authority to consider whether a CRNGS supplier has committed a material default, as defined by a natural gas company's tariff or by an agreement between a natural gas company and a CRNGS supplier. If a natural gas company believes a material default has occurred, it is to serve a written notice of such default in reasonable detail and with a proposed remedy to the Commission and the CRNGS supplier.

{¶ 5} Pursuant to Ohio Adm.Code 4901:1-29-13(C), natural gas companies are required to make eligible customer lists available to certified CRNGS suppliers on a quarterly basis. For good cause shown, the Commission may waive this requirement, among others, in accordance with Ohio Adm.Code 4901:1-29-02(C).

{¶ 6} On November 9, 2015, Dominion filed a notice of material default upon Quake and a motion for a temporary waiver of Ohio Adm.Code 4901:1-29-13(C). Regarding possible acts of material default by Quake, Dominion alleges it has received numerous complaints regarding Quake's solicitation and enrollment of customers. Upon reviewing the complaints, Dominion addresses concern that, among other things, Quake may have failed to comply with minimum standards set by the Commission for CRNGS suppliers. Dominion's concerns regard possible violations of record-retention requirements; third-party verification requirements; and marketing, solicitation, and sales practices. To remedy the issues, Dominion proposes Quake participate in a collaborative process with Staff and other interested parties in order to identify and correct problems.

{¶ 7} Because of its concerns, Dominion requested a temporary waiver from the requirement to provide Quake a list of eligible customers, as necessitated by Ohio Adm.Code 4901:1-29-13(C).

{¶ 8} On November 16, 2015, Quake filed responses to both of Dominion's filings. Quake noted that it is willing to participate in a collaborative process with Staff and other parties.

{¶ 9} On January 22, 2016, Staff filed a report addressing Dominion's proposal for a collaborative process involving Dominion, Quake, and other interested parties. In its report, Staff asserted it has no objection to participating in the process and stated discussions have already started.

{¶ 10} By Entry issued on February 10, 2016, the Commission directed the parties to collaborate and identify specific, reasonable, and measurable steps to cure the alleged

violations and avoid the repetition of future complaints. Further, Dominion's motion for a temporary waiver from the requirements of Ohio Adm.Code 4901:1-29-13(C) was granted. The Entry also granted Ohio Consumers' Counsel's (OCC) November 25, 2015 motion to intervene.

{¶ 11} On June 2, 2016, a joint stipulation and recommendation (stipulation) was filed on behalf of Dominion, Quake, and Staff. On June 6, 2016, OCC filed a letter stating that, though not a signatory party, it does not oppose the stipulation.

{¶ 12} A hearing was held on July 14, 2016 at the offices of the Commission. At that time, Quake presented the testimony of Lisa Huston in support of the stipulation (Quake Ex. 1).

III. STIPULATION

{¶ 13} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

{¶ 14} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 30, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985). The ultimate issue for our consideration is whether the stipulation, which

embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

{¶ 15} The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

{¶ 16} As noted above, a stipulation was filed in this case on June 2, 2016. The signatory parties request that the Commission approve and adopt the stipulation, asserting that it resolves all of the issues in the case. The following is a summary of the terms of the stipulation:

- (1) Quake agrees to adhere to all standards applicable to CRNGS suppliers. Quake will continue implementing its internal sales and solicitation calls compliance measures, continue monitoring the results to the implementation of its compliance measures, and monitor the results of its

ongoing implementation of its sales calls compliance measures by using compliance metrics.

- (2) Staff will monitor Quake's implementation of its sales calls compliance measures (the monitoring program) and Quake will work collaboratively with Staff. The monitoring program begins immediately upon the filing of the stipulation.
- (3) Three months after the filing of the stipulation, Staff will request from Dominion the list of customers that Quake enrolled during that time period. Based on that list, Staff will request a sample of sales calls and solicitation calls from Quake. Quake will also provide Staff with its internal compliance metrics. After review, Staff may provide notice to Quake and Dominion that Quake has the right to obtain the eligible customer list pursuant to Ohio Adm.Code 4901:1-29-13(C). If Staff determines Quake should not be able to obtain the list, Staff agrees to meet with Quake to discuss its concerns.
- (4) Similarly, six months after the stipulation is approved, Staff will request from Dominion the list of customers that Quake enrolled since the previous review and, from that list, Staff will request a sample of solicitation calls and sales calls from Quake. Quake will again provide Staff with its internal compliance metrics. If Staff has not previously done so, it may provide notice to Quake and Dominion that Quake has the right to obtain the eligible customer list.

- (5) After Staff's six-month review, it will meet with Quake to discuss its findings regarding Quake's implementation of its compliance measures. After the meeting, Staff will determine whether further monitoring is necessary, whether additional actions are needed, or whether it is satisfied with Quake's implementation of compliance measures.
- (6) The monitoring program may terminate if, after Staff's six-month review, Staff determines it is satisfied with Quake's implementation of compliance measures. Once Staff provides notification, Quake will have no further obligations with respect to the monitoring program. However, after the program ends, Quake is expected to continue to maintain the quality control measures it implemented.
- (7) Quake agrees to timely address customer complaints, consistent with Ohio Adm.Code 4901:1-29-08(B). Additionally, Quake will provide complaint information to Dominion upon request.
- (8) The Commission's temporary waiver of Ohio Adm.Code 4901:1-29-13(C) will end if/when the Commission approves the stipulation.

{¶ 17} The Commission notes that these summaries are not inclusive of the entire stipulation and are in no way intended to replace or supplement the text of the stipulation.

{¶ 18} Quake submitted the testimony of Lisa Huston in support of the stipulation. Ms. Huston asserts the stipulation was the result of a collaborative process that included

all parties. Further, she states the parties were represented by counsel that are knowledgeable and regularly participate in Commission proceedings. According to Ms. Huston, the stipulation does not violate any regulatory principles or practices. Finally, Ms. Huston contends the stipulation benefits consumers and the public interest as it ensures Quake is in compliance with the rules of the Commission. Thus, Ms. Huston avers that the stipulation satisfies the Commission's criteria. (Quake Ex. 1 at 3.)

IV. DISCUSSION

{¶ 19} Upon review of the terms of the stipulation, we find that the stipulation satisfies the three necessary criteria. The settlement process involved serious bargaining by knowledgeable, capable parties. Further, the Commission finds that, as a package, the stipulation benefits ratepayers and is in the public interest as it is intended to ensure Quake is complying with rules designed to protect consumers. Specifically, the stipulation establishes a process where Quake will work with Staff to ensure that Quake is in compliance with the Commission's rules. Finally, the Commission finds that there is no evidence that the stipulation violates any important regulatory principle or practice. (Quake Ex. 1 at 3.) Accordingly, the Commission finds that the stipulation entered into by the parties is reasonable and should be adopted.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 20} Dominion is a natural gas company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 21} Quake is a retail natural gas supplier as defined in R.C. 4929.01, is certified to provide CRNGS under R.C. 4929.20, and is subject to the jurisdiction of this Commission pursuant to R.C. 4929.24.

{¶ 22} On November 9, 2015, Dominion filed a notice of material default upon Quake and a motion for a temporary waiver of Ohio Adm.Code 4901:1-29-13(C).

{¶ 23} By Entry issued on February 10, 2016, the Commission directed the parties to collaborate and identify specific, reasonable, and measurable steps to cure the alleged violations and avoid the repetition of future complaints. Further, Dominion's motion for a temporary waiver from the requirements of Ohio Adm.Code 4901:1-29-13(C) was granted.

{¶ 24} On June 2, 2016, a stipulation was filed on behalf of Dominion, Quake, and Staff. On June 6, 2016, OCC filed a letter stating that, though not a signatory party, it does not oppose the stipulation.

{¶ 25} A hearing in this matter was held on July 14, 2016.

{¶ 26} The stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

VI. ORDER

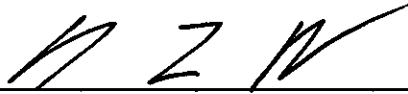
{¶ 27} It is, therefore,

{¶ 28} ORDERED, That the stipulation of the parties be adopted and approved. It is, further,

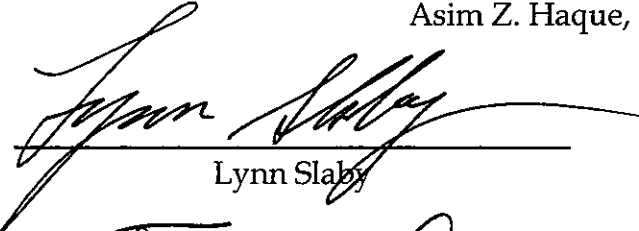
{¶ 29} ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 30} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



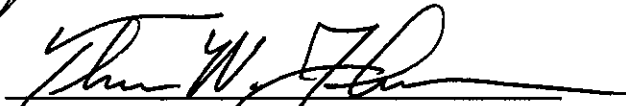
Asim Z. Haque, Chairman



Lynn Slaby



M. Beth Trombold



Thomas W. Johnson

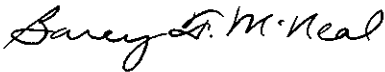


M. Howard Petricoff

NW/vrm

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Barcy F. McNeal
Secretary