

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
CONSIDERATION OF A SETTLEMENT
AGREEMENT BETWEEN COMMERCE
ENERGY, INC. D/B/A JUST ENERGY AND
THE COMMISSION'S STAFF.

CASE NO. 16-2006-GE-UNC

SECOND ENTRY ON REHEARING

Entered in the Journal on March 1, 2017

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing of the November 3, 2016 Finding and Order filed by Commerce Energy, Inc. d/b/a Just Energy.

II. DISCUSSION

{¶ 2} Commerce Energy, Inc. d/b/a Just Energy (Just Energy) is an electric services company as defined in R.C. 4928.01 and a retail natural gas supplier as defined in R.C. 4929.01; is certified to provide competitive retail electric service (CRES) under R.C. 4928.08 and to supply competitive retail natural gas service (CRNGS) under R.C. 4929.20; and is subject to the jurisdiction of this Commission pursuant to R.C. 4928.16 and R.C. 4929.24. Accordingly, Just Energy is required to comply with the Commission's minimum CRES standards set forth in Ohio Adm.Code Chapter 4901:1-21, as well as the minimum CRNGS standards set forth in Ohio Adm.Code Chapter 4901:1-29.

{¶ 3} Ohio Adm.Code 4901:1-23-04(A) provides that, if Staff and a CRES provider reach agreement regarding the violation of a rule within Ohio Adm.Code Chapter 4901:1-21, the violation of a Commission order, a proposed corrective action or remedy, or the amount of a forfeiture or other payment, the agreement must be reduced to writing in a settlement agreement and filed with the Commission for approval. Similarly, Ohio Adm.Code 4901:1-34-05(A) provides that, if Staff and a retail natural gas supplier reach agreement regarding the violation of a rule within Ohio Adm.Code Chapter 4901:1-27 through 4901:1-29, the violation of any provision of R.C. Chapter 4929, the violation of a

Commission order, a proposed corrective action or remedy, or the amount of a forfeiture or other payment, the agreement must be reduced to writing and filed with the Commission for approval.

A. *Procedural Background*

{¶ 4} On October 11, 2016, Just Energy and Staff filed a joint stipulation and recommendation (stipulation) that proposed to resolve all of the issues identified by Staff in a notice of probable noncompliance issued to Just Energy on November 16, 2015, 2015, citing alleged violations of Ohio Adm.Code 4901:1-21-05(C), 4901:1-21-06(B)(1), 4901:1-21-06(D)(2)(a)(iii), and 4901:1-21-06(D)(2)(a)(x). The stipulation noted that, in January 2016, Just Energy provided Staff with a compliance plan that attempted to resolve all of the issues identified by Staff in the notice of probable noncompliance and that, subsequently, Staff and Just Energy met on numerous occasions to further address the issues, which culminated in the stipulation. According to the signatory parties, the stipulation's primary objective is to avoid, to the extent reasonably possible, the potential for future consumer or customer complaints resulting from Just Energy's marketing, solicitation, and customer enrollment practices. The signatory parties also noted that the stipulation is not an admission or finding of liability, and was entered into without prejudice to the positions that the parties may have taken in the absence of the stipulation.

{¶ 5} On November 2, 2016, the Ohio Consumers' Counsel (OCC) filed a motion to intervene in this proceeding.

{¶ 6} On November 3, 2016, the Commission issued a Finding and Order that adopted and approved the stipulation filed by Just Energy and Staff. The Commission also granted OCC's motion for intervention.

{¶ 7} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

{¶ 8} On December 2, 2016, Just Energy filed an application for rehearing of the Commission's November 3, 2016 Finding and Order. OCC filed a memorandum contra Just Energy's application for rehearing on December 12, 2016.

{¶ 9} By Entry on Rehearing dated December 21, 2016, the Commission granted rehearing for further consideration of the matters specified in the application for rehearing filed by Just Energy.

{¶ 10} The Commission has reviewed and considered all of the arguments raised in Just Energy's application for rehearing. Any argument raised on rehearing that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

B. *Consideration of the Application for Rehearing*

{¶ 11} As its first ground for rehearing, Just Energy argues that, in the November 3, 2016 Finding and Order, the Commission unreasonably and unlawfully granted OCC's motion to intervene, before Just Energy had an opportunity to respond to the motion. Just Energy notes that, under Ohio Adm.Code 4901-1-12(B)(1), parties are entitled to respond to motions within 15 days of service. Just Energy contends that, although there are two exceptions to the rule, neither exception applies under the circumstances. With respect to the first exception, Just Energy points out that OCC did not request, pursuant to Ohio Adm.Code 4901-1-12(C), an expedited ruling on its motion to intervene. Addressing the second exception, Just Energy notes that Ohio Adm.Code 4901-1-12(F) enables the Commission to issue an expedited ruling on its own motion where the issuance of the ruling will not adversely affect a substantial right of any party. According to Just Energy, the grant or denial of intervention necessarily affects substantial rights of both the entity seeking intervention and any parties in opposition. Just Energy notes that, by granting OCC's motion for intervention, the Commission afforded OCC the right to seek rehearing of the November 3, 2016 Finding and Order. Just Energy further notes that the Commission has provided OCC with the opportunity to seek to monitor compliance with the stipulation,

which is an issue that Just Energy believes the Commission will need to resolve as a consequence of granting OCC's motion for intervention. Just Energy concludes that the grant of intervention to OCC was not inconsequential or harmless and that rehearing should be granted on this issue.

{¶ 12} OCC responds, in its memorandum contra Just Energy's application for rehearing, that Just Energy's interpretation of "substantial right" under Ohio Adm.Code 4901-1-12(F) goes too far. According to OCC, the only substantial right at issue is OCC's right to intervene in this case. OCC asserts that no substantial right of Just Energy has been affected and that Just Energy retains the right to advance its position at any future point during this proceeding.

{¶ 13} As its second ground for rehearing, Just Energy asserts that the Commission erroneously granted OCC's motion to intervene, because OCC does not meet the standard for intervention under R.C. 4903.221. Addressing the statute's criteria, Just Energy first asserts that OCC failed to explain how any residential customers will be adversely affected if intervention is denied. With respect to whether OCC's interest in this case is different than that of any other party, Just Energy argues that OCC's assertion that no other party represents the interest of residential customers is untrue, given Staff's role in this proceeding. Just Energy claims that OCC's participation in this case would duplicate the efforts already undertaken by Staff. Just Energy adds that there is no need for OCC's advocacy in this case, because Staff has completed its review and Just Energy has agreed to modify its practices in accordance with Staff's recommendations. Finally, Just Energy contends that, by seeking to intervene on the day before the Finding and Order was scheduled to be issued, OCC falsely claimed that it will not unduly prolong or delay the proceeding. In conclusion, Just Energy asserts that OCC's intervention is unnecessary and inappropriate in this compliance enforcement proceeding solely involving a settlement agreement between Just Energy and Staff.

{¶ 14} In its memorandum contra, OCC replies that it has a right to intervene in this case, in addition to its statutory mandate, under R.C. 4911.02, to protect the interests of residential customers. With respect to Staff's role, OCC asserts that Staff must strike a balance between the interests of regulated entities and all customers, whereas OCC is the direct representative of residential consumers in Ohio. OCC adds that the interests of residential customers merit OCC's representation in a case involving allegations of unfair, misleading, deceptive, or unconscionable marketing practices by an entity like Just Energy. According to OCC, Just Energy takes a narrow view of the intervention standard that is contrary to R.C. 4903.221 and Ohio Supreme Court precedent. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.2d 940.

{¶ 15} In the November 3, 2016 Finding and Order, the Commission found that OCC's motion to intervene was reasonable and should be granted. The Commission specifically noted that, in support of the motion, OCC asserted that it has authority under R.C. Chapter 4911 to represent the interests of residential utility customers in Ohio. OCC also asserted that the interests of such customers may be adversely affected by the marketing practices at issue in this proceeding, particularly if gas or electric service is marketed to customers in a manner that is unfair or misleading. Finally, OCC alleged that its participation would not unduly prolong or delay the proceeding and that its advocacy would significantly contribute to the full development and equitable resolution of the issues. The Commission, therefore, reasonably concluded that OCC's motion to intervene should be granted. Given that OCC satisfied the intervention criteria set forth in R.C. 4903.221 and Ohio Adm.Code 4901-1-11, we find no error in having granted the motion. Further, as the Supreme Court of Ohio has found, intervention should be liberally allowed in Commission proceedings. *Ohio Consumers' Counsel* at ¶ 20. We therefore, find that Just Energy's second ground for rehearing lacks merit and should be denied.

{¶ 16} Just Energy's first ground for rehearing also is without merit. As Just Energy acknowledges, Ohio Adm.Code 4901-1-12(F) provides that the Commission, upon its own motion, may issue an expedited ruling on any motion, without the filing of memoranda,

where the issuance of the expedited ruling will not adversely affect a substantial right of any party. Although Just Energy claims that the expedited ruling in this case infringed upon its substantial rights, Just Energy fails to identify any such substantial right that has been adversely affected. Rather, Just Energy voices its general opposition to OCC's participation in this proceeding. Further, Just Energy offers no legal support for its claim that the grant or denial of a motion for intervention necessarily affects the substantial rights of a party opposing the motion. We find that our issuance of the expedited ruling on OCC's motion for intervention did not affect any substantial right of Just Energy and, therefore, the ruling was properly issued. For these reasons, the Commission finds that the application for rehearing filed by Just Energy should be denied in its entirety.

{¶ 17} As a final matter, although we find that OCC has satisfied the intervention criteria, as a whole, and that it was appropriate to grant OCC's motion in this case, the Commission acknowledges Just Energy's concern regarding the timing of OCC's motion. OCC did not move to intervene until the day before the Finding and Order was issued, despite the fact that the Commission's publication of the agenda for November 3, 2016, which included notice of this case, occurred during the prior week. The stipulation itself was filed several weeks before the publication of the agenda. We note that, under these circumstances, filing for intervention on the day before the Commission plans to consider a case pursuant to a published Commission agenda has the potential to unduly delay the proceeding, and the Commission may place greater weight on this criterion in considering future motions for intervention.

III. ORDER

{¶ 18} It is, therefore,

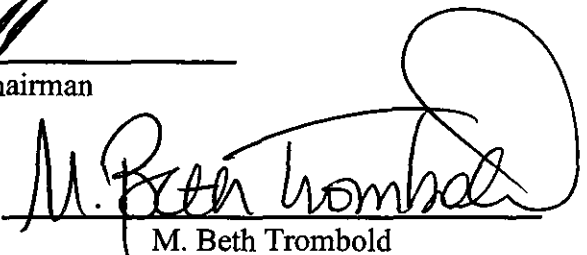
{¶ 19} ORDERED, That the application for rehearing filed by Just Energy be denied.
It is, further,

{¶ 20} ORDERED, That a copy of this Second Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Asim Z. Haque, Chairman


Lynn Slaby


M. Beth Trombold

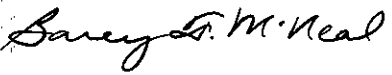

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Barcy F. McNeal
Secretary