

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's :
Investigation into Ohio Rural Natural Gas Co. : Case No. 16-1578-GA-COI
Op and Related Matters. :

STIPULATION AND RECOMMENDATION

I. INTRODUCTION

Ohio Administrative Code Rule 4901-1-30 provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in that proceeding. This Stipulation and Recommendation ("Stipulation") sets forth the understanding of Ohio Rural Natural Gas Co-Op ("ORNG"), Ludlow Natural Gas Company, LLC ("Ludlow"), and the Commission Staff ("Staff"), each of whom is a "Signatory Party" or "Party" and together constitute "Signatory Parties." The Signatory Parties recommend that the Public Utilities Commission of Ohio ("Commission") approve and adopt this Stipulation which will resolve all of the issues in the above-captioned proceeding.

This Stipulation is a product of lengthy, serious, arm's-length bargaining among the Signatory Parties (who are capable, knowledgeable, and represented by counsel) with the participation of the Commission's Staff. These negotiations were undertaken by the Signatory Parties to settle this proceeding. This Stipulation was negotiated among all parties to the proceedings and no party was excluded from negotiations. This Stipulation is supported by adequate data and information; as a package, the Stipulation benefits customers and the public interest; represents a just and reasonable resolution of all issues

in this proceeding; and violates no regulatory principle or practice. Although this Stipulation is not binding on the Commission, it is entitled to careful consideration by the Commission. The Signatory Parties agree that signing this Stipulation binds them to the Stipulation. The Commission's approval of the Stipulation indicates the Commission's acceptance of all the Signatory Parties' recommendations contained herein. The Signatory Parties also agree to urge the Commission to accept and approve the terms hereof as promptly as possible.

II. BACKGROUND

1. ORNG is a pipeline company as defined in R.C. 4905.03 and an operator as defined in R.C. 4905.90, and, pursuant to R.C. 4905.90 through 4905.96, is subject to the jurisdiction and supervision of the Commission.

2. On February 23, 2017, the Commission issued an Entry ordering that ORNG cease providing natural gas service to its customers by April 17, 2017.¹

3. On April 4, 2017, Ludlow filed an application in Case No. 17-910-GA-ACE, seeking authority to operate as a natural gas company and public utility in the state of Ohio. The application states that Ludlow was recently formed with the intention that it obtain authority from the Commission to provide natural gas distribution service to ORNG's customers, in order to ensure that such customers do not experience an interruption in their natural gas service, when ORNG ceases operations on April 17, 2017.

¹ *In the Matter of the Commission's Investigation into Ohio Rural Natural Gas Co-Op and Related Matters*, Case No. 16-1578-GA-COI (Entry) (Feb. 23, 2017) at ¶15.

4. Cognizant of the heating needs of ORNG's customers, and the need that such service be provided in a safe and reliable manner, the Signatory Parties hereby agree as follows.

III. AGREEMENT OF THE SIGNATORY PARTIES

1. ORNG agrees that from this point forward it is subject to the Commission's jurisdiction as a public utility as defined in R.C 4905.02, and that it has agreed, contractually through this Stipulation, to subject itself to the Commission's powers to supervise and regulate public utilities. The Signatory Parties further agree that ORNG shall not assert that R.C. 4905.02(A)(2) excludes ORNG from the definition of "public utility" set forth in R.C. 4905.02.

2. Regardless of the status of the application filed in Case No. 17-910-GA-ACE, the Signatory Parties agree that Ludlow is acting as a natural gas company as defined in R.C. 4905.03 and acting as a public utility as defined in R.C. 4905.02, and, as such, Ludlow agrees it is subject to the Commission's jurisdiction and power to supervise and regulate public utilities.

3. The Signatory Parties agree that Ludlow will become ORNG's successor in interest, when ORNG ceases its operations on or before April 17, 2017. The Signatory Parties agree that, by April 17, 2017, ORNG will transfer control of all of its assets and operations to Ludlow. The Signatory Parties further agree that, by May 15, 2017, ORNG will transfer all of its assets to Ludlow. The Signatory Parties further agree that Ludlow will, at that time, assume all of ORNG's agreements and obligations under this Stipulation. The Signatory Parties agree that ORNG will include as an explicit condition of the transfer that Ludlow take possession and assume operation of the assets subject to

the findings and orders of the Commission issued in this case, including, but not limited to, the civil forfeiture addressed below.

4. The Signatory Parties agree that ORNG and Ludlow will retain and fully pay Utility Technologies International (“UTI”) to oversee compliance with the Commission’s orders with respect to violations of the safety standards and requirements for intrastate gas pipeline facilities subject to the jurisdiction of the Commission as set forth in Ohio Admin. Code Chapter 4901:1-16 (“gas pipeline safety requirements”), as well as to oversee day-to-day operations and compliance with all other gas pipeline safety requirements. Furthermore, the Signatory Parties agree that UTI will continue to function as the compliance manager until such time as all assets and operations are transferred or conveyed to a person or entity approved by the Commission, as described below in this agreement. In the event that UTI does not continue to function as the compliance manager for any reason, the Signatory Parties agree that Staff will select a replacement compliance manager to be retained and paid by ORNG or Ludlow.

5. The Signatory Parties agree that ORNG and Ludlow will comply with all gas pipeline safety requirements.

6. The Signatory Parties agree that ORNG will abandon the Duck Creek and Ellsworth Road systems. ORNG and Ludlow agree that no service will be provided through those facilities unless and until Staff indicates its satisfaction that those facilities meet all relevant DOT safety standards. The Signatory Parties agree that ORNG and Ludlow will correct all other pipeline safety deficiencies identified by Staff in the Staff Report filed in this case on July 15, 2016, within thirty (30) days of the adoption of this Stipulation.

7. The Signatory Parties agree that ORNG and Ludlow will direct that UTI provide them with a weekly report regarding UTI's oversight of ORNG's and Ludlow's efforts to comply both with the Commission's orders in this case, and all other gas pipeline safety requirements. The Signatory Parties further agree that ORNG and Ludlow will direct UTI to provide a copy of each report to Staff. Such reports shall include, but are not limited to, the following information: 1) the detailed status of each compliance issue with both the Commission's orders in this case, and all other gas pipeline safety requirements, 2) due dates for individual activities to comply with all gas pipeline activities, and 3) name of the qualified individuals working on the compliance.

8. The Signatory Parties agree that ORNG and Ludlow will direct and pay UTI to complete any gas pipeline activity deemed necessary by UTI or Staff that cannot be completed by ORNG's or Ludlow's own workforce prior to the due date for completion of the activity, as established by UTI or Staff.

9. If ORNG or Ludlow violates any of the commitments set forth in Section III.4 through Section III.8 of this Stipulation, Staff agrees that it will notify ORNG or Ludlow, as the case may be, and ORNG or Ludlow shall have three (3) days in which to correct such violation. In the event ORNG or Ludlow fails to do so, Staff will file notice of the violation in the case docket. The Signatory Parties agree that, upon the filing of such notice, ORNG and Ludlow shall immediately cease all further operations. Upon the failure of ORNG or Ludlow to comply with this provision, the Signatory Parties further agree that, at that point, the Ohio Attorney General's office may immediately pursue enforcement and appropriate remedies, including injunctive relief, in state or federal

court. ORNG and Ludlow agree that they will not contest any enforcement actions initiated by the Ohio Attorney General's office.

10. The Signatory Parties agree that, by July 15, 2017, Ludlow will sell or transfer its assets and operations to a person or entity approved by the Commission. The Signatory Parties agree that such person or entity shall have no affiliation with Richard Osborne, ORNG, Ludlow, or any other entity affiliated with Richard Osborne. If Ludlow is unable to sell or transfer its assets and operations by such date, the Signatory Parties agree that Staff will arrange for one or more third parties to purchase Ludlow's assets and operations at a value to be determined by a third party selected by staff, with costs of the evaluation to be included in the sale price. Upon completion of the sale and the initiation of natural gas service by the third party to the affected customers, the Signatory Parties agree that Ludlow will immediately cease all further operations, without any request for relief from the Commission. If Ludlow fails to comply with this provision, the Signatory Parties further agree that, at that point, the Ohio Attorney General's office may immediately pursue enforcement and appropriate remedies, including injunctive relief, in state or federal court. ORNG and Ludlow agree that they will not contest any enforcement actions initiated by the Ohio Attorney General's office.

11. The Signatory Parties agree that Ludlow will include as an explicit condition of the sale of its assets and operations that the successor interest take possession and assume operation of those assets subject to the findings and orders of the Commission issued in this case.

12. ORNG and Ludlow agree that they will provide copies of all contracts or other agreements referenced in this Stipulation to Staff within three (3) days of the execution of each such contract or agreement.

13. The Signatory Parties agree for purposes of settlement that a civil forfeiture in the amount of six hundred thousand dollars (\$600,000) shall be assessed against ORNG, or Ludlow as ORNG's successor in interest. Said forfeiture shall be held in abeyance pending completion of the sale or transfer of Ludlow's assets and operations pursuant to Section III.10 of this Stipulation, at which point the forfeiture shall be waived in its entirety. In the event that ORNG or Ludlow violates any provision of this Stipulation, the entirety of the civil forfeiture of six hundred thousand dollars (\$600,000) shall immediately become due and payable. Further, the Signatory Parties agree that the amount of the civil forfeiture shall increase by fifty thousand dollars (\$50,000) for each violation of this Stipulation that is not remedied as set forth in paragraph 9 hereof, and will immediately become due and payable upon notice by Staff to ORNG or Ludlow. Staff agrees that it will notify ORNG or Ludlow of the violation in writing within ten (10) days after Staff's discovery of the violation and will file a copy of the notice in the case docket. The Signatory Parties agree that ORNG and Ludlow will not recover the civil forfeiture from their customers.

14. The Signatory Parties agree that ORNG and Ludlow will comply with the Commission's orders as set forth in its Orders and Entries issued in this case, and will not seek to stay or further delay the implementation of any such orders. The Signatory Parties further agree that ORNG and Ludlow will not seek judicial review of any such

orders or otherwise contest any such orders, except as expressly permitted under the terms of this Stipulation.

IV. ADDITIONAL STIPULATION TERMS

1. As the successor in interest to ORNG's assets and operations, Ludlow requests that it be made a party to this case. The Signatory Parties agree that Ludlow should be deemed a party to this case.
2. The Signatory Parties agree that this Stipulation establishes no precedent to be relied upon in any manner in any other proceeding except any proceeding which may be necessary to enforce the provisions of this Stipulation or as provided in this Stipulation.
3. This Stipulation constitutes a compromise resolution by the Signatory Parties of all issues raised by the Signatory Parties in this case. The Signatory Parties agree that if the Commission rejects all or any part of this Stipulation, or otherwise materially modifies its terms, any Party shall have the right, within thirty (30) days after the date of the Commission Order, either to file an application for rehearing or to terminate and withdraw from the Stipulation by filing a notice with the Commission. If the Commission accepts the Stipulation with any material modification, any Party may terminate and withdraw from the Stipulation by filing a notice with the Commission within ten (10) business days after the date of the Commission Order. Upon notice of termination or withdrawal of any Party, pursuant to the above provisions, the Stipulation shall immediately become null and void. In such event, the Commission's February 23, 2017 Entry shall become immediately enforceable by the Ohio Attorney General's office.

4. It is understood that this Stipulation is not binding upon the Commission. However, the agreement is entitled to careful consideration by the Commission.

5. The Signatory Parties have negotiated terms and conditions that are embodied in this Stipulation. This Stipulation contains the entire agreement among the Signatory Parties, and embodies a complete settlement of all claims, defenses, issues and objections in this proceeding. The Signatory Parties agree that this Stipulation is in the best interests of the Signatory Parties, the present customers of ORNG, and the public, and urge the Commission to adopt it.

IN WITNESS THEREOF, the undersigned Signatory Parties agree to this Stipulation and Recommendation as of this 14th day of April, 2017. The undersigned Signatory Parties request the Commission to issue an Entry approving and adopting this Stipulation.

OHIO RURAL NATURAL GAS CO-OP

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Summary: Stipulation and Recommendation electronically filed by Ms. Tonneta Scott on behalf of PUC