

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S  
INVESTIGATION INTO OHIO RURAL  
NATURAL GAS CO-OP AND RELATED  
MATTERS.

CASE NO. 16-1578-GA-COI

## FINDING AND ORDER

Entered in the Journal on April 17, 2017

### I. SUMMARY

{¶ 1} The Commission approves the stipulation and recommendation filed by Ohio Rural Natural Gas Co-op, Ludlow Natural Gas Company, LLC, and Staff.

### II. DISCUSSION

{¶ 2} Ohio Rural Natural Gas Co-op (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 this Commission. Accordingly, ORNG is required to comply with Ohio Adm.Code Chapter 4901:1-16, which sets forth the safety standards and requirements for intrastate gas pipeline facilities subject to the jurisdiction of the Commission. Pursuant to Ohio Adm.Code 4901:1-16-03(A), these rules adopt the United States Department of Transportation's gas pipeline safety (GPS) regulations contained in 49 C.F.R. Parts 40, 191, 192, and 199.

{¶ 3} R.C. 4905.91 provides that the Commission may investigate any service, act, practice, policy, or omission by any operator to determine its compliance with R.C. 4905.90 to 4905.96 and the pipeline safety code.

{¶ 4} On July 15, 2016, Staff filed a report regarding the results of a series of investigations into ORNG's facilities, operations, and records (Staff Report). In the Staff Report, Staff asserted that there have been multiple, repeated instances of non-compliance by ORNG from February 2015 to May 2016 and that ORNG's system is a potential threat to human life and property.

{¶ 5} Following an evidentiary hearing on September 6, 2016, the Commission issued an Opinion and Order on January 18, 2017, finding, pursuant to R.C. 4905.95(B), that ORNG is in violation of the Commission's rules for intrastate gas pipeline facilities and that ORNG's facilities are hazardous to human life and property. The Commission concluded that ORNG has not demonstrated that it has the requisite knowledge, training, organization, or procedures to safely operate a gas pipeline system. The Commission directed ORNG to cease all operations, including connecting new customers, until it has corrected all of the violations in the Staff Report and can demonstrate that it has the knowledge and organization to consistently follow the GPS regulations. Specifically, ORNG was ordered to immediately cease all operations at the Duck Creek Road and Ellsworth Road systems, and for all other parts of the system, to cease operations on March 1, 2017. In addition, ORNG was ordered to work with Staff to assist customers in obtaining an alternative source of energy.

{¶ 6} On February 17, 2017, ORNG filed an application for rehearing as well as a motion to stay the Commission's order to discontinue service to customers on March 1, 2017.

{¶ 7} On February 23, 2017, the Commission issued an Entry granting the requests of customers on the ORNG system for a limited extension of the suspension of service date, until April 17, 2017, and denying ORNG's motion to stay. Thereafter, on April 12, 2017, the Commission denied ORNG's application for rehearing of the January 18, 2017 Opinion and Order.

{¶ 8} On April 4, 2017, in Case No. 17-910-GA-ACE, Ludlow Natural Gas Company, LLC (Ludlow) filed an application to operate as a natural gas company and public utility in the state of Ohio.

{¶ 9} On April 14, 2017, a stipulation and recommendation (stipulation) was filed by ORNG, Ludlow, and Staff. The stipulation provides, among other things, that, after discussions between ORNG, Ludlow, and Staff regarding the findings in the January 18,

2017 Opinion and Order, ORNG and Ludlow agree to complete the following actions summarized below. The Commission notes that this summary is not inclusive of the entire stipulation and is not intended to replace or supplement the text of the stipulation.

- (a) 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 agrees to subject itself to the Commission's powers to supervise and regulate public utilities. The parties further agree that ORNG shall not assert that R.C. 4905.02(A)(2) excludes ORNG from the definition of "public utility" as set forth in R.C. 4905.02.
- (b) Regardless of the status of the application filed in Case No. 17-910-GA-ACE, the 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 is subject to the Commission's jurisdiction and power to supervise and regulate public utilities.
- (c) The parties agree that Ludlow will become ORNG's successor in interest, when ORNG ceases its operations on or before April 17, 2017. The parties agree that, by April 17, 2017, ORNG will transfer control of all its assets and operations to Ludlow. The parties further agree that, by May 15, 2017, ORNG will transfer all of its assets to Ludlow. The parties agree that Ludlow will, at that time, assume all of ORNG's agreements and obligations under this stipulation. Additionally, the 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.

- (d) Accordingly, the parties agree that Ludlow should be deemed a party to this case.
- (e) The 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 Adm.Code Chapter 4901:1-16, as well as to oversee day-to-day operations and compliance with all other gas pipeline safety requirements. Furthermore, the 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. In the event that UTI does not continue to function as the compliance manager for any reason, the parties agree that Staff will select a replacement compliance manager to be retained and paid by ORNG or Ludlow.
- (f) The parties agree that ORNG and Ludlow will comply with all GPS requirements.
- (g) The 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 Department of Transportation safety standards. The 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 30 days of the adoption of this stipulation.

- (h) The parties agree that ORNG and Ludlow will direct that UTI provide 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 GPS requirements. The 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 GPS requirements; 2) due dates for individual activities to comply with all gas pipeline activities; and 3) names of the qualified individuals working on the compliance.
- (i) The 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.
- (j) If ORNG or Ludlow violates any of the commitments set forth in Section III.4 through Section III.8 of the stipulation, Staff agrees it will notify ORNG or Ludlow and ORNG or Ludlow shall have three days in which to correct such violation. In the event that ORNG or Ludlow fails to do so, Staff will file notice of the violation. The parties agree that, upon 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 parties further agree that 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.

- (k) The 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 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 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 affected customers, the 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 parties further agree that 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.
- (l) The 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.

- (m) ORNG and Ludlow agree that they will provide copies of all contracts or other agreements referenced in this stipulation to Staff within three days of the execution of each such contract or agreement.
- (n) The parties agree for purposes of settlement that a civil forfeiture in the amount of \$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 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 shall immediately become due and payable. Further, the parties agree that the amount of the civil forfeiture shall increase by \$50,000 for each violation of the stipulation that is not remedied as set forth above 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 10 days after Staff's discovery of the violation and will file a copy of the notice in the case docket. The parties agree that ORNG and Ludlow will not recover the civil forfeiture from their customers.
- (o) The parties agree that ORNG and Ludlow will comply with the Commission's orders as set forth in this case, and will not seek to stay or further delay the implementation of any such orders. The 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 the stipulation.

(Stipulation at 3-8.)

{¶ 10} Ohio Adm.Code 4901:1-16-11 permits parties to enter into a stipulation in order to resolve any alleged violations of the GPS requirements. Upon review, we find the stipulation addresses our concerns from the January 18, 2017 Opinion and Order and prevents customers from having an interruption in their service. Accordingly, the Commission finds that the stipulation, as proposed, is reasonable and should be adopted.

### III. ORDER

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That the stipulation be approved and adopted in its entirety. It is, further,

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

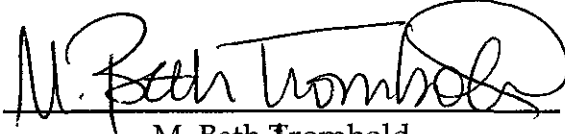


{¶ 14} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

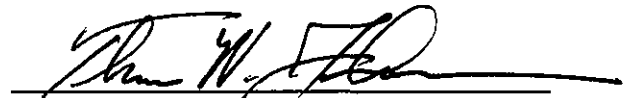
THE PUBLIC UTILITIES COMMISSION OF OHIO



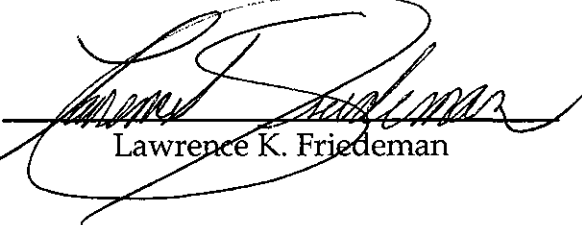
Asim Z. Haque, Chairman



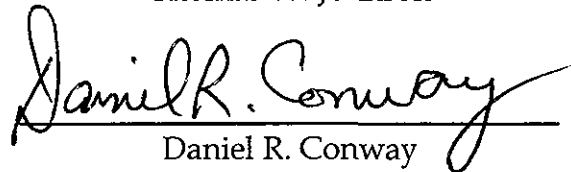
M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman



Daniel R. Conway

NW/vrm

Entered in the Journal

**APR 17 2017**



Barcy F. McNeal  
Secretary