

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

ENTRY

Entered in the Journal on August 2, 2017

I. SUMMARY

{¶ 1} The Commission grants the request of Ohio Rural Natural Gas Co-op and Ludlow Natural Gas Company, LLC to extend the deadline to transfer all assets and operations.

II. PROCEDURAL HISTORY

{¶ 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. On February 23, 2017, the Commission issued an Entry granting customers on the ORNG system 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.

{¶ 7} 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.

{¶ 8} On April 14, 2017, a stipulation and recommendation (stipulation) was filed by ORNG, Ludlow, and Staff. The stipulation provided, among other things, that both ORNG and Ludlow are subject to the Commission's jurisdiction as a public utility as defined in R.C. 4905.02. The parties agreed that Ludlow will become ORNG's successor in interest

when ORNG ceased its operations on April 17, 2017, and that, by May 15, 2017, ORNG would transfer all of its assets to Ludlow.

{¶ 9} In the stipulation, the parties also agreed that, by July 15, 2017, Ludlow would sell or transfer its assets and operations to a person or entity approved by the Commission. The parties agreed that such person or entity shall have no affiliation with Richard Osborne, ORNG, Ludlow, or any other entity affiliated with Richard Osborne. If Ludlow was unable to sell or transfer its assets and operations by such date, the parties agreed that Staff would 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 agreed 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 agreed 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 agreed that they will not contest any enforcement actions initiated by the Ohio Attorney General's office. The parties agreed 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. ORNG and Ludlow agreed that they will provide copies of all contracts or other agreements referenced in the stipulation to Staff within three days of the execution of each such contract or agreement.

{¶ 10} By Finding and Order on April 17, 2017, the Commission approved the stipulation.

{¶ 11} On July 14, 2017, ORNG and Ludlow (collectively, Ludlow) filed a motion seeking to extend the stipulation's July 15, 2017 deadline to sell or transfer all of Ludlow's assets to an unaffiliated third party. Ludlow asserted that Utility Pipeline Limited (UPL)

has agreed to purchase all of Ludlow's assets and operations. Ludlow stated it anticipates that the final asset purchase agreement would satisfy all the requirements in the stipulation adopted by the Commission. However, according to Ludlow, UPL and Ludlow needed additional time in order to reduce the agreement into a final, written contract that can be submitted to the Commission for approval. Ludlow maintained that UPL and Ludlow have a written agreement where, until the final contract is completed, UPL will operate and maintain Ludlow's assets. Ludlow stated it provided a copy of the agreement to Staff and that Staff did not oppose a brief extension of the deadline. Thus, Ludlow requested that the deadline be extended until August 31, 2017.

{¶ 12} On July 18, 2017, Staff filed a reply to Ludlow's motion. Staff confirmed that it received a copy of the signed agreement between Ludlow and UPL. Staff stated it did not oppose an extension of the deadline to allow Ludlow to complete the final purchase agreement with UPL, but requested that the deadline be extended no later than July 31, 2017. Additionally, Staff noted that, in the stipulation, it was agreed that Utility Technologies International (UTI) was designated to serve as the compliance manager and that, if for any reason UTI was not able to continue to serve that role, Staff would select a replacement. Upon review, Staff asserted that UPL has the necessary experience and capabilities to serve as a suitable replacement compliance manager. Further, Staff's expectation was that UPL will also operate and maintain all of the assets for emergency response, including responses to leak complaints and odor of gas complaints, and that Ludlow will compensate UPL for this work.

{¶ 13} On July 18, 2017, the attorney examiner granted Ludlow a limited extension of the deadline, until July 31, 2017, by which date the final asset purchase agreement and application for authority to complete the asset transfer are to be filed for the Commission's review and approval.

III. DISCUSSION

{¶ 14} On July 28, 2017, Ludlow filed a motion to extend the July 31, 2017 deadline by which Ludlow is to transfer all of its assets and operations. Ludlow asserts it has been working expeditiously and in good faith with UPL in order to complete the transaction by the July 31, 2017 deadline. However, Ludlow maintains that it will not be able to complete the necessary legal work and corporate review to formalize the final asset purchase agreement by that date. Additionally, Ludlow asserts that the main negotiators for both Ludlow and UPL have scheduled vacations for the first week of August. Thus, Ludlow requests the deadline be extended until August 14, 2017. According to Ludlow, it provided Staff with a confidential draft of the application to transfer assets. Further, Ludlow avers UPL will continue to manage and operate the natural gas distribution system. Finally, Ludlow states it was unable to make contact with Staff regarding its request before filing the motion.

{¶ 15} The Commission will grant Ludlow's request to extend the deadline to transfer assets and operations until August 14, 2017. It appears an agreement is imminent and that Ludlow and UPL are working in good faith to complete the transaction. However, we note our approval of the original July 15, 2017 deadline in the stipulation was purposeful. If Ludlow is unable to reach an agreement, the Commission and Staff need sufficient time in order to make proper arrangements before the heating season begins. Any delay inevitably jeopardizes that preparation time. Accordingly, we note that, as approved in the stipulation, if Ludlow fails to meet the deadline to sell or transfer its assets and operations, the Commission may consider all necessary enforcement remedies. This includes assessment of the civil forfeiture currently being held in abeyance, which the Commission orders shall not be passed on in any way to the potential purchaser.

{¶ 16} As with the prior extension, until such time as the asset transfer is approved by the Commission, it is expected, as represented by Ludlow, that UPL will carry out the day-to-day operations of Ludlow's assets. It is also expected that UPL will operate and

maintain all of the assets for emergency response, including responses to leak complaints and odor of gas complaints, and that Ludlow will compensate UPL for this work. Additionally, all other terms of the stipulation will remain in effect.

IV. ORDER

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That Ludlow's motion be granted in accordance with paragraphs 15 and 16. It is, further,

{¶ 19} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

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