

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
ASPIRE ENERGY EXPRESS, LLC FOR
AUTHORITY TO OPERATE AS AN OHIO
PIPELINE COMPANY.

CASE NO. 19-2021-PL-ACE

IN THE MATTER OF THE APPLICATION OF
ASPIRE ENERGY EXPRESS, LLC FOR
TARIFF APPROVAL.

CASE NO. 19-2022-PL-ATA

FINDING AND ORDER

Entered in the Journal on October 21, 2020

I. SUMMARY

{¶ 1} The Commission approves the request of Aspire Energy Express, LLC for authority to operate as an intrastate pipeline company in the state of Ohio and approves the tariff proposed by the company.

II. DISCUSSION

A. *Procedural History*

{¶ 2} Pursuant to R.C. 4905.04, 4905.05, and 4905.06, the Commission has the authority to supervise and regulate pipeline companies as defined in R.C. 4905.03 and public utilities as defined in R.C. 4905.02.

{¶ 3} A pipeline company, as defined in R.C. 4905.03(F), is a company that is engaged in the business of transporting natural gas, oil, or coal or its derivatives through pipes or tubing, either wholly or partly within this state, but not when engaged in the business of the transport associated with gathering lines, raw natural gas liquids, or finished product natural gas liquids.

{¶ 4} R.C. 4909.18 provides, in part, that a public utility may file an application to establish any rate, charge, regulation, or practice. If the Commission determines that the application is not for an increase in any rate and does not appear to be unjust or unreasonable, the Commission may approve the application without the need for a hearing.

{¶ 5} Aspire Energy Express, LLC (Aspire or Company) is a Delaware limited liability company that is registered to do business in Ohio and is a wholly owned subsidiary of Chesapeake Utilities Corporation (Chesapeake), a publicly traded corporation on the New York Stock Exchange.

{¶ 6} On November 8, 2019, Aspire filed an application (Application), pursuant to R.C. 4905.02, 4905.03(F), and 4905.63, for authority to operate as an intrastate pipeline company in the state of Ohio. In addition, the Application also seeks approval of a proposed tariff that Aspire attached as Exhibit D to the Application.

{¶ 7} On June 9, 2020, Staff filed its review and recommendation in response to the Application.

{¶ 8} On July 8, 2020, Aspire filed correspondence regarding tariff modifications in response to Staff's review and recommendation.

B. Summary of the Application

{¶ 9} In the Application, Aspire seeks Commission approval to operate as an intrastate pipeline company. Aspire states that it plans to provide natural gas transportation service in Ohio, including delivery to the Guernsey Power Station, a 1,650 megawatt gas-fired, combined cycle power facility that is currently under construction. The Ohio Power Siting Board issued a certificate to Guernsey Power Station LLC for the construction, operation, and maintenance of that facility in 2017 in Case No. 16-2443-EL-BGN, which certificate was amended in 2018 in Case No. 18-90-EL-BGA. Aspire states that it has entered into the requisite agreements with the Guernsey Power Station owner to construct the pipeline and provide natural gas transportation service to that facility pending approval of the Application. In addition, Aspire states that it is also in discussions with other potential customers to provide natural gas transportation to projects elsewhere in Ohio. Any such additional projects within Ohio would involve other pipelines that would become part of the Aspire system.

{¶ 10} Aspire intends to own and operate the proposed intrastate pipeline facilities that will interconnect with the Rockies Express Pipeline and other potential points of receipt. The proposed pipeline facilities will have a maximum allowable operating pressure of approximately 1,480 pounds per square inch and be approximately 16 to 20 inches in diameter. The pipeline facilities that will be initially constructed are near the Guernsey Power Station. As the initial pipeline system will be under 500 feet in length, Aspire asserts that an Ohio Power Siting Board certificate is not required.

{¶ 11} Aspire believes that it has the requisite technical and managerial experience to operate natural gas pipelines. Aspire intends to utilize a team of professionals experienced in the natural gas transportation industry and, as part of the Application, the Company provides overviews of the qualifications of individuals that will be involved in operation of the proposed pipeline facilities (Application, Exhibit B). In addition, Aspire states that it will hire qualified subcontractors to conduct specialized pipeline operation and maintenance that may include compliance programs, operator qualifications, public awareness, damage prevention, specialized testing, and emergency response.

{¶ 12} Aspire believes that it also has the requisite financial capability to own and operate the proposed pipeline facilities. The financial information of Chesapeake, Aspire's parent company, is attached to the Application as Exhibit C. Aspire further notes that Chesapeake is a publicly traded corporation on the New York Stock Exchange with affiliates that already provide natural gas transportation service and local distribution service.

{¶ 13} As part of the Application, Aspire also seeks Commission approval of the proposed tariff it attached to the Application as Exhibit D. The Application states that Aspire will provide all service under the tariff through transportation service agreements and that the Company will submit applications with the Commission for approval of all such reasonable arrangements, including the agreement with Guernsey Power Station LLC, under R.C. 4905.31.

C. Summary of Staff's Review and Recommendation

{¶ 14} In its comments, Staff represents that it conducted a technical, managerial, and financial review of Aspire, and reviewed the proposed tariff that Aspire attached to the Application. With respect to the technical review, Staff acknowledges that Aspire is a newly formed entity that has not previously operated a gas pipeline. Staff, however, believes that Aspire has access to sufficient resources to allow it to operate the proposed intrastate pipeline facilities. Staff points out that Chesapeake, Aspire's parent company, has extensive experience in both intrastate and interstate gas transportation. Chesapeake's wholly owned subsidiary, Eastern Shore Natural Gas (Eastern Shore), has been engaged in the interstate natural gas transportation business since 1958, and another wholly owned subsidiary, Peninsula Pipeline Company, has been engaged in intrastate natural gas transportation since 2009. Additionally, Aspire has an affiliate, Aspire Energy of Ohio, LLC (AEO), which has operated in Ohio as a natural gas gathering, processing, marketing, and supply company and has been under the review of the Commission's Gas Pipeline Safety Division. Staff understands that Aspire will make use of the resources and personnel available from Chesapeake and its affiliates. J. Solomon McCloskey of Eastern Shore will oversee field operation, safety, pipeline integrity, engineering, construction, and control room operations in the Eastern Shore control room. Kyle Moore of AEO will be responsible for daily operations and maintenance of Aspire facilities, except for gas control and scheduling activities. Benjamin C. Harvey of AEO will assist in the engineering and construction of the pipeline and has prior experience in pipeline installation. Staff conducted a favorable review of the resumes and business references of these three key employees that will be responsible for the technical operations of the proposed facilities. In addition, Staff points out that Jeffrey R. Tietbohl of Eastern Shore will have overall responsibility for Aspire's operational activities, and that Mr. Tietbohl has 30 years of experience in the natural gas industry. While Aspire does not currently serve any power stations, Mr. Tietbohl supervises other business units within Chesapeake that serve electric power generation operators with varying levels of service throughout various transmission pipeline systems. Based upon the

prior experience of these key employees, Staff is satisfied that Aspire has the technical expertise to operate the proposed intrastate pipeline.

{¶ 15} Staff reviewed the proposed managerial experience of Aspire through data requests, referrals, and an informal interview, and is satisfied that Aspire has the managerial experience required to operate the proposed pipeline. Similar to its technical operations, Aspire's management of the pipeline will be relying on the sharing of facilities and personnel with Chesapeake and its affiliates. Aspire will utilize Chesapeake's Pipeline Transmission Group's Control Room in Dover, Delaware, and is also developing its own manuals and procedures based upon those already used by Eastern Shore. Staff also notes that Mr. McCloskey, Mr. Moore, Mr. Harvey, and Mr. Tietbohl will have managerial responsibilities similar to their technical roles, and Staff is satisfied with both the technical and managerial capacities of each individual.

{¶ 16} Regarding the financial review, Staff reviewed the financial framework in place to fund the construction and future ongoing operations of Aspire. Staff states that Aspire appears to have secured and executed the proper documents to reasonably assure its financial viability as an Ohio intrastate pipeline company capable of serving the pipeline needs of the Guernsey Power Station. Staff further notes that anticipated revenues associated with serving the Guernsey Power Station appear to be sufficient to offset expected ongoing operating expenses while also providing a reasonable return on a pro forma basis.

{¶ 17} Staff reviewed the proposed tariff included as Exhibit D to the Application and found it to be acceptable except for the following three items:

- Proposed Original Sheet No. 7, item number 13 – Discontinuance of Supply on Notice of Defect in Customer's Property;
- Proposed Original Sheet No. 7, item number 14 – Responsibility for Material or Workmanship; and

- Proposed Original Sheet No. 8, item number 15 – Right to Shut Off Gas.

{¶ 18} Staff notes that the above-listed provisions relate to conditions on customer-owned facilities and the Company's ability to shut off service, and that they are typically associated with a natural gas local distribution company. While these items are thus unusual for intrastate pipelines, Staff acknowledges that, since the Aspire pipeline will be connected directly to a large customer, these provisions could be applicable under limited circumstances. Staff does not oppose the three highlighted provisions but recommends limiting their application to only the Guernsey Power Station.

{¶ 19} Ultimately, Staff recommends that Aspire be granted authority to operate as an Ohio intrastate pipeline company. Staff also recommends approval of Aspire's proposed tariff, but advises that item numbers 13, 14, and 15 in the proposed tariff should only apply to Aspire's service to the Guernsey Power Station.

D. Aspire's Response to Staff's Review and Recommendation

{¶ 20} On July 8, 2020, Aspire filed correspondence containing proposed revisions to item numbers 13, 14, and 15 in the tariff attached to the Application. Aspire believes that the revisions address Staff's comments in its review and recommendation and are consistent with subsequent discussions that Aspire had with Staff to limit the applicability of item numbers 13, 14, and 15 to a particular type of customer rather than naming a specific customer within the tariff.

{¶ 21} The proposed revisions to item numbers 13, 14, and 15 are marked in redline and add language to clarify that each section applies only to service "to a Customer operating a natural gas-fired electric generating facility on its property." Aspire believes that this language will result in these sections applying to Guernsey Power Station and other similarly situated customers, but not to all future customers of the pipeline, and is consistent with the recommendation from Staff.

E. Commission Conclusion

{¶ 22} Upon consideration of the Application and Staff’s review and recommendation, the Commission finds that the Application is reasonable and should be approved to the extent outlined below.

{¶ 23} With respect to Aspire’s request for authority to operate as an intrastate pipeline company in the state of Ohio, the Commission finds that the request should be granted. Aspire has provided sufficient information in support of the Application, including several exhibits intended to document that Aspire and its affiliates have the necessary technical and managerial expertise and financial resources to construct and operate the proposed pipeline. Accordingly, we find that Aspire is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission’s jurisdiction. We further find that, pursuant to 4905.63, Aspire is subject to R.C. Chapters 4901, 4903, 4905, 4909, and any other applicable chapter set forth therein. We also emphasize that Aspire is subject to the ongoing jurisdiction and supervision of the Commission with respect to the gas pipeline safety standards and requirements, as set forth in R.C. 4905.90 through 4905.96 and Ohio Adm.Code Chapter 4901:1-16.

{¶ 24} With respect to Aspire’s request for approval of its proposed tariff, the Commission finds that Aspire’s proposed tariff, as modified by the revisions to item numbers 13, 14, and 15 filed by Aspire on July 8, 2020, does not appear to be unjust or unreasonable and that it should be approved. Additionally, the Commission finds that Aspire’s proposed tariff constitutes a “first filing” for a new service and, thus, the Company’s Application is not an application for an increase in rates. *City of Cleveland v. Pub. Util. Comm.*, 67 Ohio St.2d 446, 424 N.E.2d 561 (1981); *Cookson Pottery v. Pub. Util. Comm.*, 161 Ohio St. 498, 120 N.E.2d 98 (1954). Therefore, consistent with R.C. 4909.18, the Commission finds that no hearing is required.

III. ORDER

{¶ 25} It is, therefore,

{¶ 26} ORDERED, That Aspire's Application requesting authority to operate as an intrastate pipeline company in the state of Ohio be approved. It is, further,

{¶ 27} ORDERED, That Aspire Energy Express, LLC, be added to the roll of public utilities regulated by this Commission. It is, further,

{¶ 28} ORDERED, That Aspire's proposed tariff, as modified by the revisions filed by Aspire on July 8, 2020, be approved. It is, further,

{¶ 29} ORDERED, That Aspire is authorized to file its tariff, in final form, consistent with this Finding and Order. Aspire shall file a copy of the final tariff in these case dockets and its TRF docket. It is, further,

{¶ 30} ORDERED, That the effective date of the new tariff shall be a date not earlier than the date upon which the final tariff pages are filed with the Commission. It is, further,

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

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

DMH/kck

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Case No(s). 19-2021-PL-ACE, 19-2022-PL-ATA

Summary: Finding & Order approving the request of Aspire Energy Express, LLC for authority to operate as an intrastate pipeline company in the state of Ohio and approving the tariff proposed by the company. electronically filed by Ms. Mary E Fischer on behalf of Public Utilities Commission of Ohio