

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE JOINT APPLICATION OF UTILITY PIPELINE, LTD., COBRA PIPELINE COMPANY, LTD., AND KNOX ENERGY COOPERATIVE ASSOCIATION, INC. TO SUBSTITUTE NATURAL GAS SERVICE AND TRANSFER ASSETS AND CUSTOMERS.

CASE NO. 21-803-GA-ATR

IN THE MATTER OF THE APPLICATION OF NORTHERN INDUSTRIAL ENERGY DEVELOPMENT, INC., FOR AUTHORITY TO CONVERT TO A PIPELINE COMPANY AND FOR APPROVAL OF AMENDED TRANSPORTATION TARIFF.

CASE NO. 21-1186-PL-ATA

FINDING AND ORDER

Entered in the Journal on July 27, 2022

I. SUMMARY

{¶ 1} The Commission approves the joint application of Cobra Pipeline Company, Ltd., Utility Pipeline Ltd., Knox Energy Cooperative Association, Inc., and Northern Industrial Energy Development, Inc., as supplemented and amended, to substitute natural gas service and transfer assets and customers subject to the conditions set forth in the joint stipulation and recommendation and consistent with this Finding and Order. Furthermore, the Commission approves the application of Northern Industrial Energy Development, Inc. for an amended transportation tariff.

II. PROCEDURAL HISTORY

{¶ 2} Cobra Pipeline Company, Ltd. (Cobra) is a public utility as defined in R.C. 4905.02 and a pipeline company as defined in R.C. 4905.03, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4905.20 provides that no public utility furnishing services within this state shall abandon any gas line or any portion thereof, or the service rendered thereby that has

once been used for public business, except as provided in R.C. 4905.21. R.C. 4905.21 provides that any public utility wishing to abandon all or any part of its lines must file an application with the Commission and obtain authorization to abandon service prior to such abandonment.

{¶ 4} The Commission has previously found that transactions where customers move from service by a regulated utility to service by a nonregulated entity are not tantamount to an abandonment of service or facilities and are not subject to Commission review under R.C. 4905.20 and 4905.21. *In re Northern Industrial Energy Development, Inc. and Knox Energy Cooperative Association, Inc.*, Case No. 05-1267-GA-ATR, Finding and Order (Dec. 14, 2005); *In re Columbia Gas of Ohio, Inc.*, Case No. 04-1417-GA-ATR, Finding and Order (Feb. 2, 2005). Nevertheless in such cases, the Commission has found it appropriate to exercise its authority pursuant to R.C. 4905.05 and 4905.06 to ensure that the proposed transfer results in uninterrupted and adequate service to the utility's existing customers. *In re Ohio Edison Co.*, Case No. 99-955-EL-ATR, Finding and Order (Nov. 18, 1999).

{¶ 5} Northern Industrial Energy Development, Inc. (NIED) is a public utility as defined in R.C. 4905.02 and a natural gas company as defined in 4905.03, and, as such, is subject to the jurisdiction of this Commission.

{¶ 6} 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.

{¶ 7} On September 25, 2019, Cobra filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code as Case No. 19-15961 in the United States Bankruptcy Court, Northern District of Ohio.

{¶ 8} On July 16, 2021, Cobra, Utility Pipeline, Ltd. (UPL), and Knox Energy Cooperative Association, Inc. (Knox) (Joint Applicants) filed a joint application to substitute

natural gas service and transfer assets and customers. Contemporaneously, the Joint Applicants filed the direct testimonies of three individuals, each of whom is an officer with one of the above respective entities, to support the application.

{¶ 9} On July 20, 2021, Northeast Ohio Natural Gas Corp. (NEO) filed a motion to intervene in this proceeding. On July 28, 2021, Stand Energy Corporation (Stand) filed a motion to intervene in this proceeding. On August 5, 2021, Joint Applicants filed a memorandum contra the motions to intervene in this proceeding, specifically arguing that, while they do not oppose intervention, the scope of the intervention, if granted, should be expressly limited to matters relevant to the issues that are determinative and relevant to the questions presented in the proceeding. On August 11, 2021, NEO filed a reply in support of its motion to intervene. The Commission finds NEO's and Stand's motions to intervene reasonable and therefore grants intervention for them without limiting the scope for their intervention as Joint Applicants requested.

{¶ 10} By Entry dated July 26, 2021, the attorney examiner directed Cobra to send a letter of notice with an attached copy of the July 26, 2021 Entry, by August 6, 2021, to all of its customers of the proposed transfer to UPL and Knox and to file confirmation of the mailing of the letter of notice and attached Entry to customers, along with a list of the customers to which the notice was provided. In addition, the attorney examiner also solicited comments from interested persons or entities regarding the joint application and instructed interested parties to file their comments by August 20, 2021.

{¶ 11} On July 30, 2021, Joint Applicants filed a joint motion for a supplemental procedural schedule and also requested expedited treatment.

{¶ 12} On August 6, 2021, NEO filed a memorandum in opposition to the joint motion for a supplemental procedural schedule. NEO requested that the Commission adopt a procedural schedule to allow intervenors to file their comments after Joint Applicants' proposal is complete, considering NEO believes Joint Applicants' application does not provide sufficient information on how NEO would be served under the proposal. NEO also

argued that it would be prejudicial to intervenors to adopt a procedural schedule that allows supplemental testimony to be filed without providing intervenors the opportunity to pursue appropriate discovery in response to such testimony.

{¶ 13} On August 10, 2021, the attorney examiner granted, in part, and denied, in part the Joint Applicants' motion for a supplemental procedural schedule. To help further develop the facts and issues surrounding this matter, the attorney examiner allowed reply comments regarding the joint application to be filed by August 27, 2021. Also, the attorney examiner acknowledged the Joint Applicants' request for urgency but emphasized that review and consideration of the filed comments is appropriate before possibly setting this matter for hearing; therefore, the attorney examiner denied Joint Applicants' request to set a deadline to file supplemental testimony and to set a date for hearing.

{¶ 14} On August 17, 2021, Cobra filed correspondence noting that it had complied with the directives in the July 26, 2021 Entry by mailing a letter of notice with an attached copy of the July 26, 2021 Entry to all of its customers of the proposed transfer to UPL and Knox, and it included the list of customers to whom the letter was sent.

{¶ 15} On August 20, 2021, NEO and Stand filed their respective comments.

{¶ 16} On August 27, 2021, Joint Applicants filed reply comments.

{¶ 17} On August 27, 2021, Joint Applicants filed a motion for protective order regarding portions of their reply comments. On September 13, 2021, NEO filed a memorandum contra the motion for protective order. Joint Applicants filed their reply on September 20, 2021.

{¶ 18} On November 18, 2021, Joint Applicants filed a supplement to the joint application to add Northern Industrial Energy Development, Inc. (NIED) as a Joint Applicant and to amend the joint application to substitute natural gas service and transfer assets and customers. On the same date, NIED filed testimony in support of the amended application.

{¶ 19} On the same date, in Case No. 21-1186-PL-ATA, NIED filed an application for authority to convert to a pipeline company and for approval of an amended transportation tariff. On December 28, 2021, and June 30, 2022, NIED proceeded to file first and second amended tariffs in that case. On January 5, 2022, NEO filed a motion to intervene and memorandum in support. No memorandum contra NEO's motion was filed in that case. The Commission finds NEO's motion to intervene in Case No. 21-1186-PL-ATA reasonable and, therefore, finds that the motion should be granted.

{¶ 20} On February 22, 2022, the attorney examiner directed the parties in Case No. 21-803-GA-ATR to participate in an on-the record status conference on March 9, 2022, to provide a status update regarding the case.

{¶ 21} The March 9, 2022 status conference was held, as scheduled, during which the parties provided the attorney examiner with a status update regarding settlement negotiations. The attorney examiner also directed the parties to file correspondence in the docket by March 17, 2022, that provided a status update regarding negotiations.

{¶ 22} On March 17, 2022, the parties filed their first status update and continued to file weekly updates until June 24, 2022.

{¶ 23} On June 30, 2022, a Joint Stipulation and Recommendation (Stipulation) was filed by NIED that purports to resolve all of the issues in Case Nos. 21-803-GA-ATR and 21-1186-PL-ATA and was signed by UPL, Knox, Cobra, NIED, NEO and Commission Staff (Staff).

III. DISCUSSION

A. *Summary of Joint Applicants' Application*

{¶ 24} As previously noted, on July 16, 2021, the Joint Applicants filed a joint application to substitute natural gas service and transfer assets and customers. According to the application, Cobra is currently in Chapter 11 bankruptcy, and the United States Bankruptcy Court for the Northern District of Ohio has approved Cobra's sale of the

Holmesville, North Trumbull, and Churchtown natural gas pipeline systems (collectively, Systems) and natural gas taps for certain rural farms and a nursery (collectively, Taps), along with substantially all of its other assets used in operation of its business, to UPL. In addition, the United States Bankruptcy Court has approved UPL's subsequent assignment of these Systems, Taps, other assets and customers to Knox, pending any required regulatory approval by the Commission. Consequently, the joint application requests that the Commission authorize the transfer of all of the assets and customers from Cobra to UPL; to approve UPL's subsequent assignment of the assets and customers to Knox; and to approve the substitution of natural gas service by UPL and Knox for Cobra. Joint Applicants explain that UPL is a limited liability corporation engaged in the business of providing natural gas distribution management and operations services to natural gas utilities and natural gas cooperatives providing services in several states, including Ohio. Knox is a member-owned, not-for-profit corporation that is operated exclusively for its members and is engaged in the business of supplying natural gas to its members within Ohio. Therefore, Joint Applicants assert that, in accordance with R.C. 4905.02 and 4905.04, the Commission does not have jurisdiction over UPL or Knox except for gas pipeline safety purposes. Generally, the Joint Applicants describe that Knox will own the Systems and Taps, while UPL will manage and operate the Systems and Taps on Knox's behalf, pursuant to a management agreement between the two entities. According to Joint Applicants, this situation is not an abandonment of service by Cobra under R.C. 4905.20 and 4905.21, because cessation of service by Cobra is synchronously accompanied with uninterrupted and adequate service by UPL and Knox.

B. *Summary of NEO's and Stand's Comments*

{¶ 25} On August 20, 2021, NEO and Stand filed comments,

{¶ 26} NEO and Stand contest the joint application. Stand requests that the Commission require Joint Applicants to provide specific evidence as to rates, terms of service, and how future changes to these may be decided. NEO requests that the

Commission reject the Application outright or impose specific conditions on the transaction to ensure it is reasonable and in the public interest.

{¶ 27} In reply, Joint Applicants provided additional information and copies of agreements related to the application. Joint Applicants further contend that they have provided sufficient information to ensure that the application is reasonable and in the public interest, as well as dispute other arguments presented by the intervenors.

C. *Summary of Joint Applicants' Supplement and Amendment to the Application*

{¶ 28} As previously noted, on November 18, 2021, Joint Applicants filed a supplement to the joint application to add NIED as a Joint Applicant and to amend the joint application to substitute natural gas service and transfer assets and customers. On the same date, NIED filed testimony in support of the amended application. According to the amended application, after the Systems and Taps are sold to UPL, UPL will assign the Taps to Knox, as initially planned; however, UPL will now assign the Systems to NIED instead of Knox. Joint Applicants assert that NIED is a public utility, as defined in R.C. 4905.02, and began sales service in 1987 in Ohio. In 2002, UPL purchased NIED and began operating it as a stand-alone natural gas utility when, in 2006, NIED sold all of its residential pipeline systems and customers to Knox in a transaction approved by the Commission in Case No. 05-1267-GA-ATR. After that transaction, NIED served approximately 10 commercial transportation customers, and 3 of those customers were eventually transferred to Dominion East Ohio in 2007 after approval of such transfer by the Commission in Case No. 07-633-GA-ATR. NIED continues to provide transportation services to commercial customers through pipelines in Wyandot, Stark, and Medina counties. Joint Applicants assert that NIED has operated its natural gas pipeline systems safely and reliably for over 35 years without any formal complaint to the Commission by any customer of NIED. Joint Applicants also note that, concurrently with this application supplement, and in support of the proposed transfer, NIED has filed an application for authority to convert to a pipeline company and for approval of an amended transportation tariff in Case No. 21-1186-PL-ATA.

D. *Summary of NIED Tariff Case Application*

{¶ 29} On November 18, 2021, in Case No. 21-1186-PL-ATA, NIED filed an application for authority to convert to a natural gas pipeline company and for approval of an amended transportation tariff. This application relates to the supplement and amendment to the joint application filed on November 18, 2021, in Case No. 21-803-GA-ATA. Within the application, NIED argues that it has the managerial, technical, and financial capabilities to operate as a pipeline company. On December 28, 2021, NIED filed an amended version of its amended transportation tariff. On June 30, 2022, NIED filed a second amended version of its proposed amended tariff. Through this second amended tariff, NIED seeks to provide services through the Churchtown, North Trumbull, and Holmesville Systems acquired from Cobra.

E. *Summary of the Stipulation*

{¶ 30} As previously noted, a Joint Stipulation signed by UPL, Knox, Cobra, NIED, NEO and Staff was filed on June 30, 2022.¹ In the recitals section, the parties explained that because the assets at issue in this case are being acquired through a bankruptcy sale, NIED would be unable to satisfy Staff audit requests for contemporaneous data showing the original installed cost for those assets as anticipated in R.C. 4909.05(C)(3). Further, within the recital section, the parties state that NIED will provide services through the Churchtown, North Trumbull, and Holmesville Systems acquired from Cobra as a natural gas company, and NIED is withdrawing its request to convert to a pipeline company. (Stipulation at 5.) The following is a summary of the Stipulation and is not intended to supersede or replace the Stipulation:

1. Staff and NEO have no objection to Cobra's sale to UPL of the Holmesville, North Trumbull, and Churchtown Systems, as defined

¹ Stand did not sign the Stipulation. The Commission notes that representatives from Stand did not participate in the required March 9, 2022 status conference with the attorney examiner, and there has been no indication that Stand opposes the Stipulation.

in the joint application, and the immediate assignment of those Systems from UPL to NIED, as described in the joint application, as amended.

2. Staff and NEO have no objection to Cobra's sale to UPL of the natural gas taps servicing the nine Grain Dryer Farm/Nursery Customers off of TC Energy's interstate pipeline, and the immediate assignment of those assets from UPL to Knox, as described in the joint application, as amended.
3. Staff and NEO have no objection to the terms and conditions, including the rates, set forth in NIED's amended tariff.
4. The signatory parties submit that the Commission should approve the transfer of assets as described in the joint application, as amended, including (1) Cobra's sale to UPL of the Holmesville, North Trumbull, and Churchtown Systems and the immediate assignment of those Systems from UPL to NIED, and (2) Cobra's sale to UPL of the natural gas taps servicing the nine Grain Dryer Farm/Nursery Customers off of TC Energy's interstate pipeline and the immediate assignment of those assets from UPL to Knox.
5. The signatory parties stipulate and recommend that the Commission approve and grant accounting authority to accept an initial rate base value of \$22,581,445.53 as the installed cost of Cobra's regulated assets being acquired by NIED, less accumulated depreciation of \$20,737,584.95, as of March 31, 2022, as listed more specifically in Exhibit 1 to the Stipulation, with any determinations as to whether such assets are used and useful to be addressed in a subsequent proceeding. The signatory parties understand and agree that the initial rate base value, less accumulated depreciation, specified in

this paragraph does not include other current or future assets of NIED, and that any recovery on and of such assets, including determinations as to whether such assets are used and useful, will be addressed in a subsequent proceeding.

6. The signatory parties submit that the Commission should simultaneously approve NIED's amended tariff, and the rates set forth in that amended tariff, in order to facilitate service by NIED upon its acquisition of the Holmesville, North Trumbull, and Churchtown Systems, and find that the amended tariff supersedes and cancels any other NIED tariffs including the Transportation Service tariff approved by the Commission on March 7, 1996, in Case No. 88-1930-GA-ATA and the Local Supply Gas Service tariff approved by the Commission on July 19, 1990, in Case No. 90-923-GA-ATA.
7. The signatory parties stipulate and submit that the Commission should order that NIED shall file a rate case application not later than two years after UPL closes on the transaction for the acquisition of Cobra's assets following the entry of a Commission order approving the Stipulation, and that the rates specified in the amended tariff will remain in effect until new rates are approved by the Commission in that rate case or other future proceeding or until further order of the Commission. At the time of that new rate case, the signatory parties will evaluate whether NIED's legal structure shall continue as a natural gas company or convert to a pipeline company, and how to address the supply of commodity for any gas service customers. Further, NIED agrees that until new rates are approved by the Commission in that rate case, NIED will not charge any entity for

which UPL provides management services (including Knox) a lower rate than it charges NEO for transportation services.

8. The signatory parties further agree that the proposed Stipulation should be approved by the Commission without a hearing since no issues remain contested in this proceeding, and in further support, the parties jointly stipulate to the admission into the evidentiary record in Case No. 21-803-GA-ATR and Case No. 21-1186-PL-ATA of the joint application and the supporting testimony filed on July 16, 2021, the Notice of Compliance filed on August 17, 2021, and the supplement to joint application and the supporting testimony filed on November 18, 2021, in Case No. 21-803-GA-ATR, and the Notices of Amended Tariff filed on December 28, 2021, and June 30, 2022, in Case No. 21-1186-PL-ATA.

(Stipulation at 6-9.)

F. Consideration of the Stipulation

{¶ 31} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are afforded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978).

{¶ 32} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of*

Accounts and Records, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

{¶ 33} The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

{¶ 34} Initially, we find that the first prong of the three-part test is met. The signatory parties regularly participate in proceedings before the Commission, are knowledgeable about regulatory matters, and were represented by experienced, competent counsel. Further, settlement negotiations occurred over many months, and the parties had the opportunity to raise their respective issues, the resolution of which produced the Stipulation. Accordingly, the Commission finds that the Stipulation is a product of serious bargaining among capable, knowledgeable parties.

{¶ 35} Regarding the second part of the test, Stephen Rigo's testimony, filed on behalf of the Joint Applicants on July 16, 2021, in Case No. 21-803-GA-ATR, asserts that Cobra's assets cannot be operated safely and with assurance of adequate and uninterrupted service to customers under the current manner in which Cobra operates them (Rigo at 6). It appears

that the agreed-to arrangement in the Stipulation regarding the transfer and assignment of the Systems and Taps in this matter would address the above concerns and would ensure that Cobra's assets would be operated safely, as well as maintained in such a way that service to customers would be adequate and uninterrupted. Further, as explained by the parties in the Stipulation, considering the complexity of these cases, which is magnified by the fact that they stem from Cobra's bankruptcy case, a compromise among the counterparties is in the public interest when compared to the time and expense it would require for the parties and Commission to litigate all of the issues at hand in these proceedings. Therefore, the Commission finds that the Stipulation, as a package, benefits customers and the public interest, thus satisfying the second part of the three-part test.

{¶ 36} Finally, as to the third prong, there is no indication from the Stipulation or from review from the Commission that the Stipulation violates any regulatory principle. Therefore, the Commission finds that the Stipulation does not violate any important regulatory law or principle.

{¶ 37} Accordingly, we conclude that the Stipulation is a product of serious bargaining among capable, knowledgeable parties; as a package, benefits rate payers and the public interest; and does not contravene any important regulatory principles. Thus, we find that the Stipulation meets the three-part test and should be approved and adopted in its entirety. Furthermore, we admit into the case record the items jointly stipulated to by the parties for admission into the record, as detailed in Paragraph 8 of the Stipulation. Also, considering the above, we find that a hearing is not necessary in this matter.

{¶ 38} The Commission also finds that the parties should notify the Commission within three days after the final closing of the transactions by filing notice in this docket. We will additionally require that the parties provide notification to all affected customers, within 30 days of the issuance of this Finding and Order, explaining the transaction and the terms under which service will be provided. A statement to that effect shall be filed in this docket within three days after the closing of the transactions. Additionally, the proposed

notice should be submitted to the Commission's Service Monitoring and Enforcement Department for prior review and approval.

IV. ORDER

{¶ 39} It is, therefore,

{¶ 40} ORDERED, That the motions to intervene filed by NEO and Stand in Case No. 21-803-GA-ATR should be granted. It is, further,

{¶ 41} ORDERED, that the motion to intervene from NEO in Case No. 21-1186-PL-ATA should be granted. It is, further,

{¶ 42} ORDERED, That the Stipulation filed by the parties be adopted and approved in its entirety. It is, further,

{¶ 43} ORDERED, That the parties adhere to the directives set forth in Paragraph 38. It is, further,

{¶ 44} ORDERED, That NIED's proposed tariff, as modified by the revisions filed on December 28, 2021, and June 30, 2022, be approved. It is, further,

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

{¶ 46} 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,

{¶ 47} 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,

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

COMMISSIONERS:

Approving:

Jenifer French, Chair
M. Beth Trombold
Daniel R. Conway
Dennis P. Deters

MJS/CAQ/hac

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Case No(s). 21-0803-GA-ATR, 21-1186-PL-ATA

Summary: Finding & Order approving the joint application of Cobra Pipeline Company, Ltd., Utility Pipeline Ltd., Knox Energy Cooperative Association, Inc., and Northern Industrial Energy Development, Inc., as supplemented and amended, to substitute natural gas service and transfer assets and customers subject to the conditions set forth in the joint stipulation and recommendation and consistent with this Finding and Order. Furthermore, the Commission approves the application of Northern Industrial Energy Development, Inc. for an amended transportation tariff. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio