

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review)
of the Gas Pipeline Safety Rules Contained)
in Chapter 4901:1-16 of the Ohio)
Administrative Code.)

Case No. 09-829-GA-ORD

PUCO

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**REPLY COMMENTS OF THE OHIO GAS ASSOCIATION,
THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO AND
VECTREN ENERGY DELIVERY OF OHIO, INC.**

Pursuant to the Commission's September 30, 2009 Entry in this proceeding, The Ohio Gas Association ("OSA"), The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") and Vectren Energy Delivery of Ohio, Inc. ("VEDO") jointly submit the following Reply Comments.

I. INTRODUCTION

The Ohio gas local distribution companies ("LDCs") that filed initial comments in this proceeding more or less address the same issues. There are slight differences in the details, but the industry shares common objectives. The gas industries' comments can be easily harmonized into sensible revisions to the pipeline safety code.

A revised pipeline safety code should not contain any of the proposals recommended by the Ohio Consumers' Counsel ("OCC"). First, gas pipeline operators should not be required to publicly file every written report concerning service failures and other incidents. Nor should the Staff of the Public Utilities Commission of Ohio ("PUCO") be required to publicly file all notices of probable non-compliance. The public already has the opportunity to request access to these materials. Mandating the filing and docketing of these materials would be an unnecessary and costly burden on operators and Staff and would ultimately diminish the Commission's

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pipeline safety Staff's ability to address pipeline safety matters, where appropriate, in an efficient and expedited fashion.

Second, OCC proposes that annual reports of important pipeline additions include information about project costs. Cost information is already included in annual accelerated main replacement program ("AMRP") filings. It would be far more efficient to waive the requirement to file reports under Rule 4901:1-16-06(C) than it would to require DEO and VEDO to file two annual reports containing the same information.

Third, as discussed in OGA, DEO and VEDO's Initial Comments, Rule 901:1-16-15 should not be included in a revised pipeline safety code. The proposed rule duplicates the house-line pressure test requirements contained in the minimum gas service standards ("MGSS"). Even more troublesome is the fact that OCC proposes changes to Rule 4901:1-16-15(A) that would create an express conflict between this rule and the corresponding rule in the MGSS. This conflict is easily avoided by keeping the pressure test requirements in the MGSS and deleting them from the pipeline safety code.

The Commission should reject OCC's proposed changes to the pipeline safety code and adopt rules consistent with OGA, DEO and VEDO's Initial and Reply Comments.

II. REPLY COMMENTS

A. Rule 4901:1-16-05(B)

This rule requires operators to file reports of service failures and other incidents with the Chief of the Pipeline Safety Division. OCC contends that these reports should be "publicly filed" because "the public has the right to know about issues that can directly affect public safety." (OCC Initial Comments, p. 2.)

OCC's proposal is unnecessary. The fact that service failure and incident reports are not publicly filed does not mean that they are secret. To the contrary, when documents are provided to and maintained by the Commission, they become a "public record" under Ohio's open records laws. See R.C. 149.43(A)(1) (defining "public records," with certain exceptions, to include "records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units . . .").¹ Public records may be disclosed upon request by "any person." R.C. 149.43(B)(1). Thus, any member of the public has the right to request incident reports from the Commission.

Additionally, by requesting service failure and other incident reports to be "publicly filed," OCC appears to suggest that these reports should be filed at the docketing division, a case number assigned and the matter subject to the procedural requirements of Chapter 4901-1. In other words, OCC apparently seeks to treat every reportable incident as a litigated proceeding. Inviting litigation over every service failure and incident report will not enhance pipeline safety. Customers already have the right to file service and safety complaints, regardless of whether their complaint relates to a reportable incident. Commission Staff, as well, have the right to initiate formal or informal pipeline safety proceedings. See Rule 4901:1-16-08, -09 and -12. Public filing of service failure and other incident reports is not needed to ensure pipeline safety or to protect the rights of the public or Commission Staff to bring complaints against operators.

B. Rule 4901:1-16-06(C)

This rule requires operators to submit construction reports for certain additions to intrastate pipeline facilities. OCC proposes to change this rule to require that these reports also include information relating to project costs: "OCC believes that the public would benefit from

¹ All facts and information in the PUCO's possession are considered public records, except as provided in R.C. 149.43. See R.C. 4901.12 & 4905.07.

knowing the investment that is being made in gas pipeline facilities if the information were provided periodically in an aggregate basis." (OCC Initial Comments, p. 3.) The LDCs that have Commission-approved AMRPs — including DEO and VEDO — already provide annual AMRP reports to the Commission that include project costs. OCC has the opportunity to participate in the proceedings in which these AMRP reports are filed. Contrary to providing any benefit to ratepayers or the Commission, OCC's proposed change to Rule 4901:1-16-06(C) would only lead to unnecessary (and costly) duplication of the efforts already undertaken by Staff and already monitored by OCC.

Given that the four largest LDCs in Ohio are operating under Commission-approved AMRPs that require an annual filing of information pertaining to pipeline additions and costs, there is no reason to publicly file *any* construction reports under Rule 4901:1-13-06(C). The Commission should therefore grant DEO and VEDO a waiver of Rule 4901:1-13-06(C), as requested in their Initial Comments. The companies will continue to provide the Commission with information about important additions and project costs in their respective annual AMRP filings.

C. Rule 4901:1-16-09(A)-(C); Rule 4901:1-16-10(A)

These rules spell out the procedure for the issuance of staff notices of probable noncompliance. OCC's proposal to modify these rules to require the public filing of notices of probable non-compliance is unnecessary and should be rejected.

OCC claims that because notices of probable non-compliance are not formally docketed, "OCC and other interested stakeholders might not have awareness of the issue." (OCC Initial Comments, p. 4.) But nowhere does OCC explain why it or other "interested stakeholders" should be made aware of every notice of probable non-compliance. The Commission's pipeline

safety Staff has proven itself highly competent in administering and enforcing the pipeline safety code. OCC does not explain how it could contribute to the enforcement process. Indeed, historically, it has *not* contributed to that process. Of the eight pipeline safety proceedings docketed since 2000,² all were resolved by a stipulation between the operator and Commission Staff. OCC did not seek intervention in any of these proceedings.

Staff should continue to have the discretion to determine when it is appropriate to formally docket a GPS proceeding. The current process encourages the timely resolution of pipeline safety issues through settlement. For example, there may be certain instances where the operator's response to a notice of probable non-compliance resolves the issue. Where Staff and the operator cannot agree on a resolution, Staff may pursue formal action in a docketed proceeding. Once an action is formally docketed, the procedural rules in Chapter 4901-1 apply (see Rule 4901:1-16-12(B)) and interested stakeholders may seek to intervene.

The process for resolving pipeline safety matters is not unlike the process for resolving consumer complaints. Some consumer issues never get past the informal complaint stage; others become formal complaints and are subject to an evidentiary hearing in which Staff and OCC may participate. Just as each consumer complaint case is unique, so is each pipeline safety proceeding. Not every pipeline safety issue that results in a notice of probable non-compliance needs to be elevated to a formal, docketed proceeding. Doing so would result in a more time consuming, costly and inefficient process for resolving pipeline safety issues.

²See Case Nos. 08-0133-GA-GPS, 06-1205-GA-GPS, 06-0640-GA-GPS, 06-0476-GA-GPS, 04-1543-GA-GPS, 03-1990-GA-GPS, 01-0032-GA-GPS and 00-0681-GA-GPS.

D. Rule 4901:1-16-15(A)(5) and (A)(7)

As OGA, DEO and VEDO explained in their Initial Comments, the Commission should strike Rule 4901:1-16-15 from the pipeline safety code in its entirety. Staff's proposed rule would unnecessarily incorporate unrelated MGSS pressure test requirements into the pipeline safety code. Staff's proposal would result in unwarranted and unlawful state rules that are incompatible with federal pipeline safety regulations, which explicitly do not encompass customer-owned house lines. Imposing these new requirements (again) would also conflict with the Governor's Executive Order 2008-04S, which directs state agencies to "amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient," as well as "reduce or eliminate areas of regulation where federal regulation now adequately regulates the subject matter." See September 30, 2009 Entry, ¶ 3.

OCC's proposed revisions to Rules 4901:1-16-15(A)(5) and (A)(7) would make a bad situation worse. Staff's proposed Rule 4901:1-16-15(A)(5) is copied nearly verbatim from Rule 4901:1-13-05(A)(4) of the MGSS. OCC proposes to add a few sentences to Rule 4901:1-16-15(A)(5) to include an additional requirement not contained in the MGSS; namely, a mandated waiver of customer charges for the month in which there is a delay in a new service installation. OCC's proposed change to Rule 4901:1-16-15(A)(7) would require an operator to provide a written summary of onsite pressure test results to a customer upon request — a requirement that also is not contained the MGSS.

Adopting OCC's changes would thus lead to conflicting requirements in the pipeline safety code and the MGSS. If OCC's proposed changes are to be addressed at all, they should be addressed in the context of an MGSS rulemaking. On that score, OGA, DEO and VEDO would note that the MGSS are currently under review in Case No. 09-326-GA-ORD. OCC's comments

in the MGSS rulemaking advocate various changes to Rule 4901:1-13-05(A)(4) that differ from the changes OCC proposes here to Rule 4901:1-16-15(A)(5). (See OCC Initial Comments, Case No, 09-326-GA-ORD, pp. 17-18.) Specifically, in the MGSS rulemaking, OCC proposed a change to require that customers be notified "in person or via telephone" of a delay in a service installation. OCC does not request that this language also be included in Rule 4901:1-16-15(A)(5). And neither of the two sentences that OCC proposes in this proceeding to include in Rule 4901:1-16-05(A)(5) (both of which pertain to waiver of monthly service charges for delayed service installations) were proposed in the MGSS rulemaking for Rule 4901:1-13-05(A)(4).

Having proposed one set of changes to the pressure test requirements in the MGSS rulemaking but a different set of changes here, OCC's positions in this proceeding and in the MGSS rulemaking proceeding are at cross purposes.. This confirms the point that DEO and VEDO made in their Initial Comments: the pipeline safety code should address pipeline safety issues, and the MGSS should address customer service and safety issues. Houseline pressure test requirements for customer-owned house lines do not pertain to transmission or distribution pipeline safety and should therefore remain part of the MGSS.

III. CONCLUSION

For the reasons discussed above, the Commission should adopt final rules that are consistent with OGA, DEO and VEDO's Initial and Reply Comments.

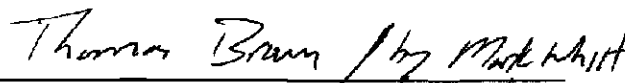
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Respectfully submitted,



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ON BEHALF OF THE OHIO GAS
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reply Comments of The Ohio Gas Association, The East Ohio Gas Company d/b/a Dominion East Ohio and Vectren Energy Delivery of Ohio, Inc. was sent by e-mail or regular U.S. mail to the parties listed below on this 20th day of November, 2009.



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