

FILE

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

2010 MAY 14 PM 3:17

PUCO

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

Case No. 09-829-GA-ORD

APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

The Office of the Ohio Consumers' Counsel ("OCC") applies for rehearing of the April 14, 2010, Finding and Order ("F&O") of the Public Utilities Commission of Ohio ("Commission" or "PUCO"). OCC appreciates the opportunity to advocate for enhancements in the gas pipeline safety standards on behalf of the approximately 3.3 million natural gas residential consumers in the state of Ohio. However, the Commission's Order is unlawful and unreasonable in the following respects, and should be modified.

Pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35, the Finding and Order was unjust, unreasonable and unlawful and the Commission abused its discretion because:

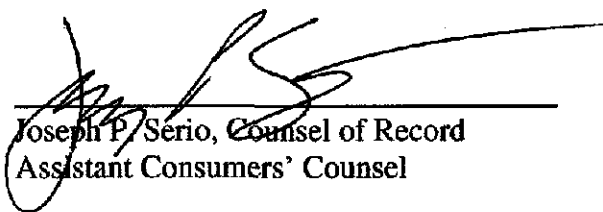
- A. The Commission's Order erred by unreasonably and unlawfully failing to require notices and reports of service failures to be publicly filed at the PUCO.

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- B. The Commission's Order erred by unreasonably and unlawfully failing to require notices of probable noncompliance to be publicly filed at the PUCO.

The specific basis for each objection is more fully explained in the attached Memorandum in Support.

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MEMORANDUM IN SUPPORT

**A. The Commission's Order Erred By Unreasonably And Unlawfully
Failing To Require Notices And Reports Of Service Failures To Be
Publicly Filed At The PUCO.**

Currently, Ohio Adm. Code 4901:1-16-05(B) does not require Local Distribution companies ("LDCs") to publicly file documents that concern incidents and service failures of their gas pipeline system. Through its Initial Comments, OCC recommended that the Commission amend this rule to require LDCs to publicly file such documents.¹ OCC contends that a report of an LDC's incidents and service failures directly impacts the public health safety and welfare and therefore the public would have interest in such documents. The F&O did not dispute the safety concerns raised by OCC; rather the F&O simply concluded that the OCC request -- to make the reports publicly available by filing them -- "could be overly burdensome."² However, the F&O did not support this speculative conclusion. Moreover, to the extent that the reports are already submitted to the PUCO Staff, then the additional step of taking the report and docketing it cannot under any circumstances be seen to be overly burdensome.

¹ OCC Initial Comments at 2

² Finding & Order at 5.

The Ohio Gas Company ("OGC") in its reply comments opposed OCC's recommendation on the basis of additional costs and the potential for additional litigation.³ OGC provided no support for the assertion of the additional costs, nor did OGC substantiate their claim of the additional potential litigation that would occur if the reports were filed. To the extent that the public health, safety and welfare are directly impacted by reports of incidents or system failures, then any action that might arise from the public documentation of such events are actions that would further protect the public and should not be the basis for not making the information available to the public.

The F&O denied OCC's recommendation for LDCs to publicly file incident and service failure reports by relying upon the general supervision powers of the PUCO as enumerated in R.C. 4905.06.⁴ The PUCO's holding apparently is that it has the authority to require the utilities to provide information to it. But that holding does not in any way preclude the ruling that OCC seeks, which is to require the utilities to file the information. In fact, the general supervisory powers that the PUCO relies upon would allow it to require the filings that OCC seeks in the interest of public disclosure and transparency of regulation.

Moreover, there is nothing about the PUCO's general supervisory and oversight responsibilities involving the public utilities, R.C. 4905.06, that exempts the PUCO from ensuring that the public has full and open access to information that affects every aspect of the provision of public utilities' services including safety and reliability. In fact, R.C. 4905.07 makes all reports and records of the PUCO public documents:

³ OGC Reply Comments at 2

⁴ Finding and Order at 5

Except as provided in section 149.43 of the Revised Code and as consistent with the purposes of Title XLIX [49] of the Revised Code, **all facts and information in the possession of the public utilities commission shall be public, and all reports, records, files, books, accounts, papers, and memorandums of every nature in its possession shall be open to inspection by interested parties or their attorneys.** (Emphasis added.)

Thus the PUCO has a legal obligation under the public records requirements to ensure that the public be kept aware of utility incidents and service failures. Failure to require LDCs to publicly file such reports is not consistent with the public records obligation. Otherwise, the public has no information and notice to know when such reports might be available at the PUCO, or how to go about obtaining access to such reports. Under the public record requirements and as a public agency, it is unreasonable and unlawful for the Commission to deny residential customers, or their duly authorized representative, easy access to readily available reports at the PUCO involving issues that potentially impact public safety. In addition, it is unlawful for the Commission to deny customers easy access to reports and other information in which they have a clear statutory right. The Commission should grant rehearing and amend Ohio Adm. Code 4901:1-16-05 to require gas operators to publicly file incident and service failure reports.

While OCC recognizes that the Ohio utility regulatory scheme is different from other states, there are multiple examples of other state Public Utility Commissions (“PUCs”) that require public filing of incident and service failure reports. For example, OCC found that Colorado requires public filing of incident reports,⁵ while New Hampshire has a “Right to Know” law and specific guidelines for public filing of incident

⁵ Colorado Department of Regulatory Agencies, Public Utilities Commission, (CCR) 724-4, Part 4, Rules Regulating Gas Utilities and Pipeline Operators, at 101

and other pipeline safety reports.⁶ Illinois also requires the filing of reports regarding gas pipeline incidents with the Commission not later than 30 days after the incident.⁷ These examples demonstrate the value of having such reports publicly filed with the PUC.

The F&O decision to deny the public easy access and notice to incident and service failure reports, as a result of not requiring them to be filed at the PUCO, is also unreasonable in light of the fact that residential customers are being required to pay the cost of rebuilding the distribution infrastructure of Columbia Gas of Ohio, Inc.

("Columbia"), Dominion East Ohio Gas company ("Dominion"), Vectren Energy Delivery of Ohio ("Vectren") and Duke Energy of Ohio ("Duke") through various Accelerated Mains Replacement Programs or Infrastructure Replacement Programs.⁸ These programs were based on a need to replace aging bare steel, cast iron and wrought iron distribution mains, service lines and natural gas risers because of safety concerns.

It is unreasonable to force residential customers to pay for safety-related programs and yet to simultaneously deny the same public the opportunity and means of having notice of safety-related concerns documented by incidents or system failure reports. The OCC requests that the PUCO correct this error by requiring LDCs to publicly document and file all incident and system failure reports.

⁶ New Hampshire, Right to Know Law, (RSA 91-A)

⁷ Illinois Administrative Code, Title 83, Public Utilities, Chapter 1, Illinois Commerce Commission, Gas Utilities, Part 595 Reports of Accidents or Incidents by Persons Engaged in the Transportation of Gas, Section 595.120

⁸ For example see, *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates*, Case No. 07-589-GA-AIR, Opinion and Order (May 28, 2008); *In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Services*, Case No. 07-829-GA-AIR, Opinion and Order (October 15, 2008); *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Services and Related Matters*, Case No. 07-1080-GA-AIR, Opinion and Order (January 7, 2009); and *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Distribution Service*, Case No. 08-0072-GA-AIR, Opinion and Order (December 3, 2008).

B. The Commission's Order Erred By Unreasonably And Unlawfully Failing To Require Notices Of Probable Noncompliance To Be Publicly Filed At The PUCO.

Currently, Ohio Adm. Code 4901:1-16-09 enables the PUCO Staff to issue notices of probable non-compliance directly to LDCs, without publicly filing the notices. OCC recommended that any notices of probable non-compliance be publicly filed rather than private communications between the PUCO Staff and the company.⁹ Again, the F&O rejected the OCC recommendation on the grounds that requiring the filing of all notices under this rule would prove to be unnecessary and overly burdensome.¹⁰ Despite this conclusion, the F&O provided no substantiation for this conclusion. Moreover, because matters of probable non-compliance often involve potentially serious safety-related matters, the general public has a right to know about possible LDC violations that could result in the public safety being put at risk.

Failure to publicly document and file all matters of probable non-compliance is unlawful because it maintains a shroud of secrecy over those matters and prevents the public or the OCC from having access to those materials unless constant and on-going public records requests are made. Such a requirement is unreasonable and would have a chilling effect on open and transparent government. In its Initial Comments, the OCC indicated that if the notices of probable non-compliance are not publicly filed, then the general public (residential customers), the OCC and any other interested stakeholders might not have awareness of the issue.¹¹ Contrary to the conclusion in the F&O, there is

⁹ OCC Initial Comments at 4

¹⁰ Finding and Order at 8.

¹¹ OCC Initial Comments at 4

a deficiency in the current process when information is being controlled and limited between the PUCO Staff and LDCs.

The current rule relies on the discretion of the PUCO Staff when a matter rises to the level of opening a formal case. While OCC appreciates the work of the Staff in helping ensure public safety, this process prevents the residential customers who may be at risk from safety-related non-compliance from having notice of those risks. It is unreasonable for such information to be kept in secrecy against the general provisions of an open and transparent governmental regulatory process.¹² Parties other than the Staff and LDCs are directly impacted by matters of probable non-compliance and thus have an interest and right to know about impending issues.

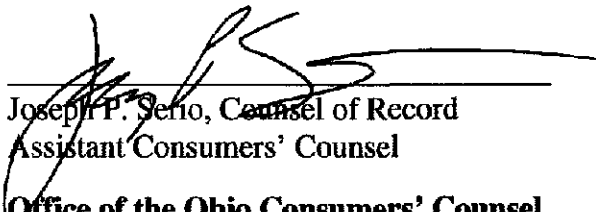
C Conclusion

For all the arguments stated above, the Commission should grant OCC's Application for Rehearing. The F&O is unreasonable because it denies residential customers, or their duly authorized representatives, knowledge about notices of probable non-compliance that can potentially affect the safety of their gas service. In addition, the F&O is unlawful because it denies customers and OCC direct easy access to readily available reports and other information in which they have a clear statutory right. The Commission should grant rehearing and amend Ohio Adm. Code 4901:1-16-09 to require the PUCO staff to publicly file notices of probable non-compliance by a utility company.

¹² See R.C. 149.43 and R.C. 4905.07.

Respectfully submitted

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CONSUMERS' COUNSEL

A handwritten signature in black ink, appearing to read "Joe Serio", is written over a horizontal line.

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Application for Rehearing*, was served by Regular U.S. Mail Service, postage prepaid, to all parties this 14th day of May, 2010.


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