

**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

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**OHIO GAS ASSOCIATION'S MEMORANDUM CONTRA  
THE OFFICE OF OHIO CONSUMERS' COUNSEL'S  
APPLICATION FOR REHEARING**

Pursuant to Rule 4901-1-35(B), Ohio Administrative Code ("O.A.C."), The Ohio Gas Association ("OGA"), on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO"), Vectren Energy Delivery of Ohio, Inc. ("VEDO"), Duke Energy Ohio, Inc. ("Duke Energy Ohio") and Columbia Gas of Ohio, Inc. ("COH") hereby respond to the Application for Rehearing filed by the Office of the Ohio Consumers' Counsel ("OCC").

**I. INTRODUCTION**

In its Finding and Order issued on April 14, 2010, following a thorough and complete review process, the Commission expressly denied OCC's requests that Rules 4901:1-16-05(B) and 4901:1-16-09 be amended to require public filing of notices and reports of service failures and notices of probable noncompliance. OCC's Application for Rehearing provides no basis for the Commission to reconsider its well-reasoned rejection of OCC's meritless proposed changes. OCC's Application for Rehearing must be denied.

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## **II. ARGUMENT**

### **A. The Commission Properly Denied OCC's Proposed Amendment To Rule 4901:1-16-05(B).**

The bulk of OCC's Application for Rehearing is spent attacking, in scattershot fashion, the Commission's decision not to amend Rule 4901:1-16-05(B) to require that service failure and incident reports be publicly filed, i.e., docketed through the Commission's DIS system. The overriding OCC theme, however, is that the Commission's decision somehow denies the public access to these documents.

As pointed out by DEO and VEDO in their previous reply comments, OCC's continued attempt to portray documents that are not publicly filed as being wholly unavailable to the public is disingenuous and wrong. Service failure and incident reports on file with the Commission are "public records" that may be disclosed to "any person" upon public records request. R.C. § 149.43(A)(1) and (B)(1). In fact, OCC concedes that, pursuant to R.C. § 4905.07, the reports at issue are public records "open to inspection by interested parties and their attorneys." The public, including OCC, has access to these reports already, whether they are "filed" or not. The very foundation of OCC's Application for Rehearing is fundamentally flawed. The Commission correctly determined OCC's "public filing" amendment is pointless and unnecessary.

In addition, OCC's attempt to downplay the Commission's findings that publicly docketing the reports will unduly burden operators with additional costs and litigation exposure are belied by the motivations underpinning OCC's proposed amendments. OCC seeks nothing short of making each failure and incident report a separate litigated proceeding in which it could intervene. As such, OCC's public filing request naturally invites additional and unnecessary litigation. Importantly, OCC presents no affirmative evidence to the contrary. In addition, public filing does nothing to enhance consumers' ability to report service failures and incidents or bring

individual service and safety complaints. Public filing also does nothing to enhance Staff's ability to address service and safety issues, either informally or through formal complaint filing. The Commission rightfully rejected OCC's proposed amendment and there is no basis to grant rehearing.

OCC's arguments regarding laws in other states and various Ohio operator PIR riders are irrelevant. The fact that OCC found only three U.S. states adopting its position on public report filings proves that the Commission is among the majority of states that do not require public filing. Moreover, OCC's reference to various PIR programs completely misses the mark. If anything, the pipeline infrastructure projects financed through the various PIR riders are improving pipeline safety. PIR certainly does nothing to hamper the ability of Staff or individual consumers to initiate safety and service complaints. And, the PIR riders are themselves already subject to publicly filed proceedings to which interested parties, such as OCC, can and almost always do intervene.

OCC provides nothing justifying departure from the Commission's Finding and Order. OCC's Application for Rehearing must be denied.

**B. The Commission Correctly Rejected OCC's Proposed Amendment To Rule 4901:1-16-09.**

OCC claims the Commission's decision not to require notices of probable noncompliance be publicly filed creates a "shroud of secrecy" preventing the public from obtaining access to information about such notices. As with its argument regarding service and incident reports, OCC once again fails to explain how a "shroud of secrecy" could exist when the notices at issue are subject to disclosure pursuant to public records requests.

OCC also fails to explain what purpose public filing of notices of probable noncompliance would serve. Staff, not OCC or individual consumers, possess the expertise to

administer and enforce the pipeline safety code. Moreover, it is Staff, not OCC, which is charged with administration and enforcement under Ohio law. OCC further points to no facts suggesting the rules as currently constructed are not efficiently and effectively ensuring pipeline safety code compliance. To the contrary, the current system encourages swift pipeline safety issue resolution between operators and Staff, while preserving the right of Staff to pursue formal action should Staff and the operator be unable to resolve a particular issue.

The current notice of noncompliance system under 4901:1-16-09 is ensuring pipeline safety compliance by giving Staff and operators the ability to efficiently address and resolve issues as they arise and protect consumers. OCC cites no facts to suggest the current system is flawed or that that the highly experienced, trained and competent representatives of operators and Staff require OCC assistance to resolve noncompliance issues. OCC's Application for Rehearing should be denied.

### III. CONCLUSION

For the foregoing reasons, OCC's Application for Rehearing should be denied and the gas pipeline safety rules amended pursuant to the Commission's April 14, 2010 Finding and Order.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

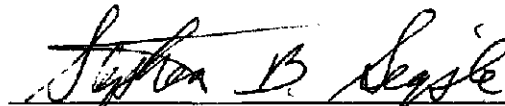
I hereby certify that a copy of the foregoing Memorandum Contra The Office Of Ohio Consumers' Counsel's Application For Rehearing was served by electronic mail to the following persons on this 24th day of May, 2010:

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