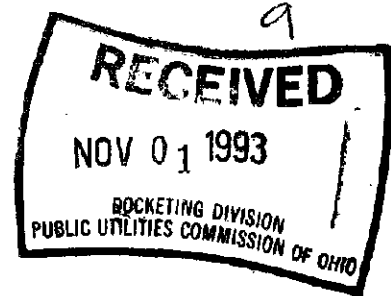


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THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Commission )  
Implementation of FERC Order 636 ) Case No. 93-1636-GA-UNC  
and Related Matters. )

COMMENTS OF THE OHIO OIL AND GAS ASSOCIATION

Now comes the Ohio Oil and Gas Association ("OOGA") which pursuant to the Commission's October 24, 1993 Entry submits these comments addressing the Staff's recommended amendments to the Natural Gas Transportation Guidelines (docket 85-800-GA-COI) and the "Gas Emergency Rules" proposed as Rules 4901:5-25-01 et. seq. of the Ohio Administrative Code.

I. INTRODUCTION

With these comments and the oral presentations next Thursday, the Commission will complete its initial experiment of holding an industry-wide "roundtable" as part of its regulatory process. The concept of collecting information and view points on critical issues of utility practice by establishing a dialogue between spokespersons representing all readily identifiable interest groups is an innovative approach to regulation. Thus, before the OOGA presents its positions on the Staff's post Order 636 recommendations, it would like to commend the Commission for its novel approach.

While the OOGA believes that the roundtable process could have been conducted just as successfully with a few less meetings, in general the roundtable created a forum to listen and to be heard. Perhaps the first part, a forum to listen, is the more

significant of the two, for the general goals of utility companies, the Consumer Counsel, Commercial/Industrial end users and the Staff are often assumed, but rarely publicly articulated. Upon hearing the general policy and goals of these groups announced, it became evident that many generally held assumptions may be inaccurate.

In sum, the roundtable process itself was a useful exercise with value to public beyond the rules and guideline amendments which may flow from the meetings.

## **II. CURTAILMENT, 85-800 GUIDELINES, AND GAS EMERGENCY RULES**

### **A. Self-Help Gas Curtailment Priorities and Obligations**

OOGA strongly opposed the Staff's original proposed amendments to the Gas Transportation Guidelines covering curtailment priorities and curtailment obligations. As detailed in its September 22, 1993 comments, OOGA feared that any reduction in the security or availability of self-help gas in times of emergency would retard the investment in peak day deliverable gas supplies. It is axiomatic that unless new local wells are drilled and connected to local distribution companies, or firm capacity and supplies purchased on the interstate pipelines system during normal times, supplies will not be available in times of emergency. Transporters cannot be expected to make the investment in dependable supplies unless there is a realistic expectation that they will enjoy those supplies.

The existing guidelines on curtailment balance the right to obtain gas supplies delivered to the local distribution company

with the need to protect human life. The Staff's October 21, 1993 proposal maintains the original balance between commercial rights and concern for human suffering by permitting all self-help gas received at the city gate to be redelivered unless "Human Needs and Public Welfare" requires confiscation. The Staff also continues the original obligation of Section 2(C) which requires that self-help transporters if curtailed continue to deliver half the previous months volume.

Unlike the previous proposal, the October 21, 1993 Staff proposal does not deprive those who take gas supply initiatives of the fruits of their efforts, while still protecting public health and safety. Thus, the OOGA supports the Staff's position on Guidelines 2(B) and 2(C).

#### **B. Responsibility For Imbalanced Gas Deliveries**

The Staff has proposed a new guideline, Section 1(E) which makes local distribution companies responsible for developing procedures or mechanisms for compensating tariff sales customers or other transporters who are damaged by transporters who deliver less or more gas than they are permitted.

OOGA's objection is not with the concept of the proposed guideline Section 1(E), but with its wording. The proposed Section 1(E) fails to list the local distribution company itself as a party who may over or under deliver gas. It ought to be clear that if the local distribution company fails to balance its deliveries and that imbalance creates interstate pipeline penalties or causes the

confiscation of another transporters' supplies, both the system supply customers and the other transporters who are adversely affected need to be made whole.

Other provisions of the guidelines and common sense require that all parties who hold title to gas in a distribution system must take responsibility for such gas. Thus, the proposed language that follows is not designed to close a loop hole, but to state the basic rule of individual liability for all parties including the LDCs.

(E) THE PUBLIC UTILITY IS RESPONSIBLE FOR SAFEGUARDING THE INTERESTS OF ALL SYSTEM CUSTOMERS BY ESTABLISHING REASONABLE PROCEDURES AND MECHANISMS FOR MAKING TRANSPORTATION CUSTOMERS RESPONSIBLE FOR BALANCING, ON A TIMELY BASIS, TRANSPORTATION GAS DELIVERIES WITH THE TRANSPORTATION CUSTOMER'S CONSUMPTION. TRANSPORTATION CUSTOMERS, LDCS, AND OR ANY OTHER PERSON WHO ARRANGES DELIVERY OF GAS TO A CITY GATE SHALL BE RESPONSIBLE TO FULLY COMPENSATE THE LDC, THE LDC'S SALES CUSTOMERS OR OTHER TRANSPORTERS FOR ANY COSTS INCURRED AS A RESULT OF SUCH PERSON CREATING AN IMBALANCE BETWEEN GAS DELIVERED TO THE CITY GATE AND GAS CONSUMED BEHIND THE CITY GATE. THE REASONABLENESS OF SUCH LDC ISSUED PROCEDURES AND MECHANISMS FOR ADDRESSING IMBALANCES ARE SUBJECT TO EVALUATION BY THE COMMISSION.

The suggested amended language to the Staff's proposed Section 1(E) is underlined. All words are in capital letters since these terms would be additions to the existing Guidelines.

**III. THE STAFF'S PROPOSED GAS EMERGENCY RULES DO NOT COMPORT WITH SECTION 4935.03, REVISED CODE**

Each of the proposed Gas Emergency Rules is promulgated pursuant to the authority of Section 4935.03, Revised Code. That

statute deals with the procedures involved when an energy emergency exists; i.e., when the Governor, after consultation with the Chairman of the Commission, finds that the health, safety or welfare of the residents of this state or one or more counties of this state is so imminently and substantially threatened by an energy shortage that immediate action of state government is necessary to prevent loss of life, protect the public health or safety and prevent unnecessary or avoidable damage to property. See Section 4935.03(B), Revised Code.

Such a process begins when the Governor declares an energy emergency by filing with the Secretary of State a written declaration. This declaration is to be very specific; it is to specify the geographic areas affected or indicate that it has a statewide effect and is to indicate what fuels or forms of energy are in critically short supply. The energy emergency cannot initially be in effect for more than thirty (30) days; but the Governor may extend it. Only a concurrent resolution of the General Assembly can terminate it.

When the energy emergency is declared and in effect, the Governor may issue energy emergency orders which direct certain persons to initiate compliance measures. See Section 4935.03(C), Revised Code. During a declared energy emergency, the Governor may use the services, equipment, supplies, and facilities of existing departments and agencies of the state; the officers and personnel of all such departments are to cooperate with and extend such

services and facilities to the Governor upon request. See Section 4935.03(D), Revised Code.

The point to be emphasized is that in an energy emergency, there is a need for swift immediate action which must be coordinated through a single voice--the Governor of Ohio. With all due respect to the Commission, it is the Governor, not the Commission, which should be making these life and death decisions. The Governor can direct or order the Commission to implement certain rules, but it is the Governor who must be responsible for such emergency decision-making.

The proposed Gas Emergency Rules do not make it clear that it is the Governor, and not the Commission, which must initiate action. For example, under proposed Rule 4901:5-15-05(B) of the O.A.C., it is the Commission which may require gas suppliers to re-allocate and/or curtail gas supplies, fulfill gas priority uses, or transfer gas supplies to other gas suppliers. If the proposed rule were amended to read "Upon the order or directive of the Governor, the Commission may, by order . . .", this would comport with the statute and be in keeping with sound public policy. Further, proposed Rule 4901:5-25-02 should be revised to indicate that the purpose and scope of the rules are to provide a framework for the Commission to implement the Governor's emergency orders and direction during a declared energy emergency.

This does not mean the Commission cannot advise the Governor. Indeed, the proposed "Fuel Source Advisory Council" is to advise the Chairman of the Commission and to make

recommendations including the need for the Governor to declare an emergency and for implementing the Emergency Gas Rules. But the executive power of Ohio is vested in the Governor, not the Commission. The OOGA members are concerned about being told to take conflicting actions in an energy emergency situation where there is no hearing, no right of appeal or no reconsideration. The Commission should revise its rules to make clear that it is the Governor's orders which trigger Commission action.

IV. PROPOSED RULE 4901:5-25-03 OF THE OHIO ADMINISTRATIVE CODE  
"PRE-EMERGENCY ACTIONS" IS NOT AUTHORIZED BY SECTION 4935.03,  
REVISED CODE

The Commission Staff has proposed a "Pre-Emergency Action" rule which is also purportedly authorized by Section 4935.03, Revised Code. However, there is nothing in that statute which authorizes the Commission to do anything until an energy emergency is declared. In other words, until the Governor files a written declaration of the existence of an energy emergency, there is no energy emergency to which Section 4935.03, Revised Code can apply. Thus, a "pre-emergency action" rule is not sanctioned under this statute.

This does not mean that the Commission cannot take pre-emergency actions or issue a rule governing pre-emergency actions. It does mean, however, that the Commission must issue rules for pre-emergency actions, if at all, under its general supervisory powers (Sections 4905.04, .05, and .06, Revised Code). Under the exercise of those general powers, persons are given the rights to

participate in hearings, file applications for rehearing, and appeal. Such procedural rights would appropriately be extended in pre-emergency situations because the time constraints of an energy emergency would not yet exist. Thus, proposed Rule 4901:5-25-04 should be removed from the Gas Emergency Rules and promulgated, if at all, under the Commission's general supervisory powers.

V. CONCLUSION

In conclusion, the OOGA respectfully requests: 1) that the Staff's proposals for Section 1(E) be modified as noted above; 2) that the proposed Gas Emergency Rules be revised to state that only the Governor can issue orders and confiscate property in times of a declared energy emergency; and 3) the "Pre-Emergency Actions" be deleted from these rules.

Respectfully submitted,



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M. Howard Petricoff  
W. Jonathan Airey

Vorys, Sater, Seymour and Pease  
52 E. Gay Street  
P.O. Box 1008  
Columbus, OH 43216-1008  
(614) 464-5414

Attorneys for the Ohio Oil and Gas  
Association



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Comments of the Ohio Oil and Gas Association has been served on parties listed below, by regular U.S. mail, postage prepaid, this first day of November, 1993.

*M. W. P. Allen*