

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Investigation of)
Dominion East Ohio Gas Company)
Relative to its Compliance with the) Case No.12-380-GA-GPS
Natural Gas Pipeline Safety Standards and)
Related Matters.)

**MOTION TO INTERVENE,
MEMORANDUM IN SUPPORT
AND
COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where the Public Utilities Commission of Ohio ("PUCO" or "the Commission") will consider safety-related matters.¹ OCC is filing on behalf of all the approximately 1.1 million residential utility customers of the East Ohio Gas Company d/b/a Dominion East Ohio ("Dominion" or "the Utility"). The reasons the PUCO should grant OCC's Motion are further set forth in the attached Memorandum in Support.

¹ See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On January 24, 2011, a series of natural gas-related explosions and fires occurred in the Village of Fairport Harbor that resulted in significant property damage estimated at \$1.3 million, including 11 homes being severely damaged, 150 homes requiring appliance repair or replacement, and 13 local fire departments responding to emergency calls.² As a result of the incident, the PUCO Staff conducted an investigation into the cause of the natural gas leak that led to the explosions and fires.

On January 24, 2012, the Staff filed its Report of Investigation (“Staff Report”) on the incident. The Staff concluded that Dominion failed to comply with the pipeline safety code and Title 49 Code of Federal Regulations (“C.F.R.”) sections 192.13(c), 192.619(a)(1), 192.739(a)(1), 192.739.(a)(4) and 192.603(b).³

² Staff Report at 1.

³ *In the Matter of the Investigation of the Dominion East Ohio Gas Company Relative to its Compliance with the Natural Gas Pipeline Safety Standards and Related Matters*, Case No. 12-380-GA-GPS, Staff Report (January 24, 2012) at 1.

As a result of this non-compliance, the Staff made a number of recommendations:

1. Dominion should conduct a complete inventory of all regulator stations which provide gas to its distribution systems to determine whether the regulator stations are properly designed and provide protection from pipeline fluids. Improperly designed or protected regulator stations should be redesigned and replaced. Dominion must submit a summary report describing the identified regulator stations and provide a proposed schedule for redesign and replacement by December 31, 2012.⁴
2. Dominion should modify its Standard operating Procedures (“SOP”) to specifically require that an annual internal regulator inspection (including disassembly) be performed when fluids are suspected in the upstream pipeline. The Company should provide a copy of the modified SOP to Staff within 60 days of the Finding and Order in this case.⁵
3. Dominion develop a written fluid mitigation program designed to detect and remove fluids from its pipeline system. A copy of this written fluid mitigation plan should be submitted for review by Staff within 60 days of the Finding and Order into this case.⁶
4. Dominion should compare the regulator stations identified in their Strategic Asset Management System (“SAMS”) database with the Regulator Station Inspection Database (“RSID”) utilized by Dominion to track maintenance requirements for regulator stations, and investigate and correct any discrepancies. The Company should provide a report on this comparison within 60 days of the Finding and Order in this case.⁷
5. Dominion should devise and implement a written plan to provide additional overpressure protection for all low pressure distribution systems from any similar overpressure occurrence where production fluid may interfere with the workings of both the control and monitor regulators. The Company should provide Staff a copy of this plan within 60 days of the Finding and Order in this case.⁸

⁴ Staff Report at 8.

⁵ Staff Report at 8.

⁶ Staff Report at 8.

⁷ Staff Report at 8.

⁸ Staff Report at 8-9.

6. Dominion should pay a forfeiture of \$500,000 given the number and severity of the violations, pursuant to R.C. 4905.95(B)(1)(b) for failure to comply with Pipeline Safety Regulations requirements for the design and operation of regulator stations.⁹

This case represents the second major pipeline safety case with Dominion in the past two years, where the issue of Dominion's non-compliance with pipeline safety regulations regarding leak surveys and records of such surveys was found to exist by the Staff. In Case No. 10-105-GA-GPS,¹⁰ the PUCO Staff concluded that:

Dominion East Ohio is in probable non-compliance with the pipeline safety code, and Title 49 Code of Federal Regulations (C.F.R.) sections 192.13(c) and 192.723(b)(2).¹¹

The Staff also noted that:

Staff performed a pipeline safety inspection of Dominion East Ohio's Lake Shore Area facility from August 7, 2009 through September 23, 2009. As a result of this inspection, **GPS Staff concluded that Dominion East Ohio could not provide documentation that leakage surveys were performed on eight (8) segments of regulated piping within the time interval required by the gas pipeline safety regulations.** A Notice of Probable Noncompliance was issued to Dominion East Ohio on September 24, 2009. The Notice indicated Staff's assessment that Sections 192.13(c) and 192.723(b)(2) of Title 49 C.F.R. were violated by Dominion East Ohio.¹²

II. MOTION TO INTERVENE

On January 23, 2012, the PUCO Staff filed a Staff Report regarding its investigation into a series of natural gas explosions and fires that occurred in Fairport Harbor on January 24, 2011.

⁹ Staff Report at 9.

¹⁰ *In the Matter of the Investigation of Dominion East Ohio Gas Company Relative to its Compliance with the Natural Gas Pipeline Safety Standards and Related Matters*, Case No. 10-105-GA-GPS, Opinion and Order (May 26, 2010).

¹¹ Case No. 10-105-GA-GPS, Staff Report (February 5, 2010) at 1.

¹² Case No. 10-105-GA-GPS, Staff Report (February 5, 2010) at 2-3. (Emphasis added).

As a result of the investigation, the Staff determined that the Company failed to comply with the pipeline safety code.¹³

R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio’s residential customers may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding to investigate if the utility is in compliance with basic pipeline safety requirements for residential customers. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission to consider the following criteria in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor’s interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC’s interest is representing the residential customers of Dominion in this case involving investigation and review of Dominion’s compliance or non-compliance with pipeline safety requirements. This interest is different than that of any other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

¹³ *In the Matter of the Investigation of the Dominion East Ohio Gas Company Relative to its Compliance with the Natural Gas Pipeline Safety Standards and Related Matters*, Case No. 12-380-GA-GPS, Staff Report (January 24, 2012) at 1.

Second, OCC's advocacy for residential customers will include advancing the position that Dominion's residential customers should receive service that is safe and reliable as required by, among other things, the Pipeline Safety Regulations Part 192. OCC's position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio.

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2). As the advocate for residential utility customers, OCC has a very real and substantial interest in this case where the issue of Dominion's non-compliance with pipeline safety regulations will be investigated and reviewed.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the "extent to which the person's interest is represented by existing parties." While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been

designated as the state representative of the interests of Ohio's residential utility customers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed OCC's right to intervene in PUCO proceedings, in deciding two appeals in which OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying OCC's interventions and that OCC should have been granted intervention in both proceedings.¹⁴

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. The Commission should grant OCC's Motion to Intervene, on behalf of Ohio residential customers.

III. COMMENTS

The current Fairport Harbor Case represents the second major pipeline safety case with Dominion in the past two years, where the issue of Dominion's non-compliance with pipeline safety regulations regarding leak surveys and records of such surveys was found to exist. To the extent that the two cases both involve pipeline safety leak surveys and records of leak surveys, there needs to be a determination if this represents a more general systemic problem.

In Case No. 10-105-GA-GPS¹⁵ Staff identified the leak survey issue by concluding:

Staff performed a pipeline safety inspection of Dominion East Ohio's Lake Shore Area facility from August 7, 2009 through September 23, 2009. As a result of this inspection, **GPS Staff concluded that Dominion East Ohio could not provide documentation that leakage surveys were performed on eight (8) segments of regulated piping within the time interval required by the gas pipeline safety regulations.** A Notice of Probable Noncompliance was issued to Dominion East Ohio on

¹⁴ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

¹⁵ *In the Matter of the Investigation of Dominion East Ohio Gas Company Relative to its Compliance with the Natural Gas Pipeline Safety Standards and Related Matters*, Case No. 10-105-GA-GPS, Opinion and Order (May 26, 2010).

September 24, 2009. The Notice indicated Staffs assessment that Sections 192.13(c) and 192.723(b)(2) of Title 49 C.F.R. were violated by Dominion East Ohio.¹⁶

In the Fairport Harbor Case Staff recommendation number 4 stated:

Staff recommends that DEO compare the regulator stations identified in their Strategic Asset Management System (SAMS) database with the Regulator Station Inspection Database (RSID) utilized by DEO to track maintenance requirements for regulator stations. Any discrepancies between the two databases should be investigated and corrected.¹⁷

This recommendation indicates there is concern that the Utility's records may not be complete and that the Company may not be able to currently track safety-related leak surveys for regulator stations. In fact, the Fairport Harbor Staff Report noted that even though the regulator stations at issue in the Fairport Harbor incident were installed in 1999 and should have been inspected every 15 months, those regulator stations were not inspected until October 26, 2009, almost 10 years later.¹⁸ Inasmuch as regulator stations play such an important role in maintaining system safety, this discrepancy needs to be addressed.

There is no question that an "incident" has occurred and that a notice of probable noncompliance has been issued. Thus, pursuant to Ohio Admin. Code 4901:1-16-12(F), the PUCO may consider all the factors set forth in R.C. 4905.95 in the course of reviewing pipeline safety. In turn, R.C. 4905.95 (B)(1) identifies (ii) the operators history of prior violations or

¹⁶ Case No. 10-105-GA-GPS, Staff Report (February 5, 2010) at 2-3. (Emphasis added).

¹⁷ Fairport Harbor Staff Report at 8.

¹⁸ Fairport Harbor Staff Report at 5.

noncompliance, and (vi) such other matters as justice may require as factors that may be considered in a pipeline safety case. Thus, the record and the probable non-compliance finding in Case No 10-105-GA-GPS -- which is part of Dominion's history of probable noncompliance with pipeline safety issues -- is an appropriate factor for the Commission to consider in this case. The 10-105-GA-GPS case becomes even more important to this case because of the possibility of these cases pointing to a more wide-spread systemic problem in the Dominion system.

In consideration of "such other matters as justice may require," the PUCO should also investigate the possibility that Dominion has recently cut (or been cutting over a period of time), or limiting its spending on pipeline safety compliance. The PUCO should investigate the possible connection between the two Dominion pipeline safety cases. R.C. 4905.95(B)(2) permits the PUCO to require the pipeline operator to comply with and to undertake corrective action necessary to protect the public interest.

Ohio Admin. Code 4901:1-16-12 (D) states:

The commission shall hold an evidentiary hearing to consider the alleged incident(s), noncompliance, hazardous conditions and violations of a commission order. The hearing may include evidence on the issues of corrective action and compliance orders, forfeitures, enforcement of a commission order, and other remedies.

Thus, it is appropriate for the PUCO to establish a procedural schedule including an evidentiary hearing so that these and other safety-related issues may be fully reviewed in the interest of the Ohio public.

IV. CONCLUSION

For all the above-stated reasons, OCC moves the PUCO to grant OCC's Motion to Intervene in this case where it is important to ensure that the Dominion pipeline distribution system provides residential customers with safe and reliable service. The Commission should

also establish a procedural schedule including an evidentiary hearing as set forth in Ohio Admin.
Code 4901:1-16-12 (D).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene, Memorandum in Support and Comments* was served on the persons stated below *via* electronic service this 14th day of February 2012.

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