

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE AMENDMENT
OF OHIO ADM.CODE CHAPTER 4901:1-
16 REGARDING GAS PIPELINE SAFETY.

CASE NO. 16-1712-GA-ORD

FINDING AND ORDER

Entered in the Journal on September 14, 2016

I. SUMMARY

{¶ 1} The Commission adopts the proposed amendments to its gas pipeline safety rules in Ohio Adm.Code 4901:1-16-05(A) and Ohio Adm.Code 4901:1-16-02(D).

II. DISCUSSION

A. *Procedural Background*

{¶ 2} R.C. 4905.91 directs the Commission to adopt rules to carry out R.C. 4905.90 to 4905.96 regarding natural gas pipeline safety.

{¶ 3} The Commission adopted Ohio Adm.Code 4901:1-16-05(A) requiring operators to report natural gas pipeline service failures and incidents to the chief of the Commission's gas pipeline safety section within two hours of discovery. An incident is defined in Ohio Adm.Code 4901:1-16-01(K) as an event that involves a release of gas from an intrastate gas pipeline facility that results in death, personal injury requiring inpatient hospitalization, unintentional estimated gas loss of three million cubic feet or more, or estimated property damage of \$50,000 or more. As recently as March 21, 2015, an incident occurred in Upper Arlington, Ohio, in which eight homes were rendered uninhabitable and more than 20 homes were damaged.¹

{¶ 4} In addition to the reporting of such incidents to the Commission, oil and gas events under the jurisdiction of the Ohio Department of Natural Resources, the Ohio

¹ *In re Columbia Gas of Ohio, Inc.*, Case No. 15-1351-GA-GPS, Finding and Order (Jan. 20, 2016).

Department of Commerce, Division of State Fire Marshal, and the Ohio Environmental Protection Agency may also require notification or reporting. The state of Ohio has, therefore, determined that it is appropriate to develop a one-call emergency notification system to serve as a single point of contact to receive notice of incidents involving the oil and gas industry. On August 9, 2016, the Governor of Ohio issued Executive Order 2016-04K, which creates and implements the one-call emergency notification system for oil and gas related emergencies.

{¶ 5} By Entry dated August 12, 2016, the Commission determined that Ohio Adm.Code 4901:1-16-05(A) should be amended on an emergency basis pursuant to R.C. 111.15(B)(2), in order to effectuate the one-call emergency notification system and the more expeditious reporting under that system. In the Entry, the Commission found that the amendment of Ohio Adm.Code 4901:1-16-05(A) on an emergency basis was necessary for the immediate enhanced preservation of the health and safety of the citizens of Ohio. Noting that rules adopted on an emergency basis are effective for 120 days after filing with the Secretary of State, the Legislative Service Commission, and the Joint Committee on Agency Rule Review, the Commission also initiated this rulemaking proceeding to consider on an expedited basis whether the amendments to Ohio Adm.Code 4901:1-16-05(A) should be permanently adopted.

{¶ 6} Additionally, Ohio Adm.Code 4901:1-16-02(D) provides that each citation in Ohio Adm.Code Chapter 4901:1-16 that is made to a section of the United States Code or a regulation in the Code of Federal Regulations (C.F.R.) is intended, and shall serve, to incorporate by reference the particular version of the cited matter that was effective on July 30, 2014. In the August 12, 2016 Entry, the Commission determined that, along with the proposed permanent amendment of Ohio Adm.Code 4901:1-16-05(A), it was appropriate to consider an update to Ohio Adm.Code 4901:1-16-02(D), such that it incorporates recent changes to the C.F.R., by amending the date specified in the rule.

{¶ 7} On January 10, 2011, the Governor of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review its rules to determine the impact that a rule has on small businesses; attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative unintended consequences, or unnecessarily impede business growth.

{¶ 8} In addition, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must conduct a business impact analysis (BIA) regarding the rules. If there will be an adverse impact on business, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Further, the Commission is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative office the draft rules and the BIA.

{¶ 9} Pursuant to the Entry dated August 12, 2016, the Commission held a workshop in this proceeding on August 25, 2016, in order to elicit feedback on Ohio Adm.Code 4901:1-16-05(A), as amended, and proposed Ohio Adm.Code 4901:1-16-02(D) and to allow stakeholders to propose their own revisions to these rules for consideration. At the workshop, comments were offered by three interested stakeholders.

{¶ 10} Consistent with the August 12, 2016 Entry, written comments were filed in this proceeding on September 2, 2016, by The East Ohio Gas Company d/b/a Dominion East Ohio (DEO), Ohio Gas Association (OGA), and American Petroleum Institute Ohio (API Ohio).

B. *Consideration of the Comments*

{¶ 11} In their comments, DEO and OGA note that Ohio Adm.Code 4901:1-16-05(A), as amended on an emergency basis and proposed to be adopted on a permanent basis, reduces the time period for reporting incidents and service failures from two hours to 30 minutes of discovery, unless notification within that time is impracticable under the circumstances. According to DEO and OGA, the 30-minute period provides little time in which to investigate and determine whether a situation constitutes a reportable incident or will result in a service failure that will last two hours or more. DEO and OGA assert that, with less time to gather facts on situations that may constitute incidents or service failures, operators may have a significant incentive under the amended rule to over-report events that may not ultimately meet the criteria for reporting, which may result in a waste of agency resources, create an administrative burden for operators, and reduce the effectiveness of notices.

{¶ 12} DEO also contends that it is not clear that the 30-minute reporting period is necessary under state or federal law. Citing Section 9 of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, DEO notes that the 30-minute period exceeds the federal requirement that requires notice within one hour of confirmed discovery of an accident or incident. DEO adds that Executive Order 2016-04K does not specifically instruct the Commission to adopt a 30-minute notice requirement.

{¶ 13} In order to reduce the potential for over-reporting and wasted time and resources, DEO and OGA recommend that the Commission clarify what constitutes discovery of an incident by providing a definition of "discovery" or adopting the term "confirmed discovery" as contained in Section 9 of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011. Further, DEO and OGA request that the Commission retain the exception to the 30-minute reporting requirement where notification within that time is impracticable under the circumstances. DEO also recommends that the Commission clarify that the phrase "impracticable under the

circumstances” in the amended rule specifically includes “when the operator is not reasonably able to confirm within that time that an incident has occurred.”

{¶ 14} Initially, the Commission notes that, as acknowledged by DEO and OGA, an exception to the 30-minute reporting requirement was included in Ohio Adm.Code 4901:1-16-05(A), as amended on an emergency basis and as proposed to be adopted on a permanent basis. The rule provides that incidents and service failures should be reported within 30 minutes of discovery unless notification within that time is impracticable under the circumstances. The exception is intended to provide operators with flexibility in the timing of the notification. By affording this flexibility to operators, the Commission recognized that there may be circumstances in which notification within 30 minutes may prove impractical and, in those situations, we expect only that reporting will occur as soon as possible.

{¶ 15} Further, with respect to DEO’s and OGA’s concerns regarding the potential for over-reporting, we find that any waste of agency or operator resources that may occur will be outweighed by the benefits of an emergency notification system that utilizes a “better to be safe than sorry” approach. The Commission nevertheless finds that the requirement to report within 30 minutes “of discovery” should be clarified, such that operators are required to provide notification within 30 minutes of discovering the situation and confirming that the situation does, in fact, constitute an incident or service failure involving an interruption of service to 100 or more customers for a period of two hours or more. With this clarification, we find that Ohio Adm.Code 4901:1-16-05(A) should be adopted, on a permanent basis, as proposed in the August 12, 2016 Entry.

{¶ 16} In its comments, API Ohio notes that it proposes no substantive changes to Ohio Adm.Code 4901:1-16-05(A), as amended on an emergency basis and proposed to be adopted on a permanent basis. API Ohio asserts, however, that it is concerned with the Commission’s use of its emergency rulemaking authority under R.C. 111.15(B)(2) in this case, because, according to API Ohio, it is questionable as to whether an emergency truly

exists. API Ohio adds that the extraordinary exercise of the Commission's emergency rulemaking authority in this case departs from its past precedent, specifically instances in which an emergency rulemaking was deemed necessary in order to ensure consistency or comply with federal requirements. According to API Ohio, neither the incident in Upper Arlington, Ohio nor Executive Order 2016-04K establishes the need for an emergency rulemaking. API Ohio concludes that the Commission should consider its own internal policies and processes to incorporate opportunities for stakeholder input and collaboration, to the extent feasible, when rules are drafted or revised on an emergency basis.

{¶ 17} The Commission notes that R.C. 111.15(B)(2) provides that a rule of an emergency nature, which must be necessary for the immediate preservation of the public peace, health, or safety, shall be effective immediately upon its filing and remain valid for 120 days. We, therefore, agree with API Ohio that emergency rules should only be adopted in circumstances necessary for the immediate preservation of the public peace, health, or safety. We also agree that stakeholder input should be considered when rules are drafted or amended. However, as API Ohio acknowledges, that may not be feasible in circumstances necessitating an emergency rulemaking. As the Commission found in the Entry dated August 12, 2016, the emergency amendment of Ohio Adm.Code 4901:1-16-05(A) was required for the immediate enhanced preservation of the health and safety of Ohio citizens, consistent with the Commission's emergency rulemaking authority under R.C. 111.15(B)(2).

{¶ 18} Regarding the specific need for an emergency rulemaking in this case, the August 12, 2016 Entry referenced, in addition to the recent incident in Upper Arlington, Ohio, the fact that multiple state agencies may require reporting of incidents and other gas related events. The Entry also noted that Executive Order 2016-04K was issued in order to create and implement the state's one-call emergency notification system. As more fully explained in Executive Order 2016-04K, because oil and gas related

emergencies require multiple state agencies to respond and react to address public safety and environmental concerns, a single point of contact for coordination of state agency responses will make it possible for the agencies involved to respond appropriately to oil and gas related emergencies that affect the safety of the public and the environment. Although the Commission is cognizant of API Ohio's concern that emergency rules should only be adopted in limited circumstances, we find that the public safety and environmental concerns underlying the state's implementation of the one-call emergency notification system for oil and gas related emergencies necessitated the emergency rulemaking in this case, in order to preserve and enhance the health and safety of Ohio citizens.

{¶ 19} The Commission has also considered the matters set forth in Executive Order 2011-01K and R.C. 121.82. With these factors in mind, and upon consideration of all of the comments offered in this proceeding, the Commission concludes that Ohio Adm.Code 4901:1-16-02(D) should be amended and that Ohio Adm.Code 4901:1-16-05(A) should be amended on a permanent basis.

III. ORDER

{¶ 20} It is, therefore,

{¶ 21} ORDERED, That the proposed amendments to Ohio Adm.Code 4901:1-16-05(A) and Ohio Adm.Code 4901:1-16-02(D) be adopted. It is, further,

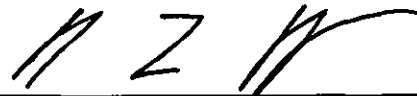
{¶ 22} ORDERED, That the adopted rules be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, in accordance with divisions (D) and (E) of R.C. 111.15. It is, further,

{¶ 23} ORDERED, That the final rules be effective on the earliest date permitted by law. It is, further,

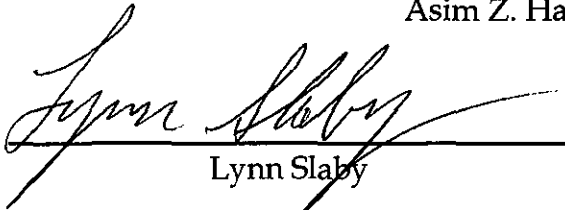
{¶ 24} ORDERED, That notice of this Finding and Order be sent to the gas-pipeline list serve. It is, further,

{¶ 25} ORDERED, That a copy of this Finding and Order and the attached rules be served upon all regulated natural gas companies, pipeline companies, certified retail natural gas service suppliers, Ohio Consumers' Counsel, Ohio Gas Association, Ohio Petroleum Council, Ohio Oil and Gas Association, American Petroleum Institute Ohio, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

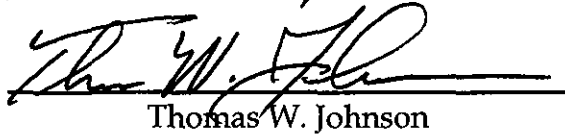


Asim Z. Haque, Chairman



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Barcy F. McNeal
Secretary

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4901:1-16-02 Purpose and scope.

(A) The rules contained in this chapter prescribe:

- (1) Gas pipeline safety and drug and alcohol testing requirements to protect the public safety.
- (2) Procedures for the staff to administer and enforce the pipeline safety code.

(B) This chapter also governs gas pipeline safety proceedings to:

- (1) Investigate and determine an operator's or a gas gathering/processing plant pipeline operator's compliance with applicable sections of the pipeline safety code.
- (2) Investigate and determine whether intrastate gas pipeline facilities are hazardous to human life or property, as provided in 49 U.S.C. 60112, as effective on the date referenced in paragraph (D) of this rule.
- (3) Review settlement agreements and stipulations by the staff and operators or by staff and gas gathering/processing plant pipeline operators.
- (4) Issue and enforce compliance orders.
- (5) Issue emergency orders without notice or prior hearing when immediate action is needed to protect the public safety.
- (6) Assess forfeitures.
- (7) Direct the attorney general to seek enforcement of commission orders, including orders assessing forfeitures, and to seek appropriate remedies in court to protect the public safety.

(C) All operators and gas gathering/processing plant pipeline operators shall comply with the applicable rules of this chapter.

(D) Each citation contained with this chapter that is made to a section of the United States code or a regulation in the code of federal regulations is intended, and shall serve, to incorporate by reference the particular version of the cited matter that was effective on ~~July 30, 2014~~August 1, 2016.

(E) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

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4901:1-16-05 Notice and reports of service failures and incidents; twenty-four hour contacts; one-call participation; post-incident testing; and cast iron pipeline program.

(A) Telephone notice of incidents and service failures.

- (1) Operators shall ~~provide telephone notice to the chief~~ notify the state of Ohio on all incidents, as defined in rule 4901:1-16-01 of the Administrative Code, by calling 1-844-OHCALL1 (1-844-642-2551) within two hoursthirty minutes of discovery unless notification within that time is impracticable under the circumstances. This includes any telephone notice which is required to be made to the United States department of transportation pursuant to 49 C.F.R. 40, 191, 192, and 199 as effective on the date referenced in paragraph (D) of rule 4901:1-16-02 of the Administrative Code. ~~Telephone notice requires personal contact with the chief or good faith efforts to make personal contact for all incidents. Operators unable to make personal contact with the chief shall leave a message on the commission's incident line, which is 1-614-466-7542.~~
- (2) Operators shall ~~provide telephone notice to the chief~~ notify the state of Ohio on all service failures, which involve an interruption of service to one hundred or more customers for a period of two hours or more, by calling 1-844-OHCALL1 (1-844-642-2551) within two hoursthirty minutes after discovery unless notification within that time is impracticable under the circumstances. ~~Telephone notice requires personal contact with the chief or good faith efforts to make personal contact for all qualifying service failures. Operators unable to make personal contact with the chief shall leave a message on the commission's incident line, which is 1-614-466-7542.~~

(B) Written reports regarding incidents and service failures.

- (1) All written reports required to be made to the United States department of transportation pursuant to the regulations in 49 C.F.R. 40, 191, 192, and 199 as effective on the date referenced in paragraph (D) of rule 4901:1-16-02 of the Administrative Code, shall be submitted concurrently to the chief.
- (2) Within thirty days after the service failure is discovered, each operator shall submit a written report to the chief on the service failure report form provided by the commission.
- (3) For each incident report and each service failure report required by the pipeline safety code, each operator shall also submit a final written report of the cause(s) of the incident or service failure, where ascertainable, and actions taken to minimize the possibility of a recurrence of such an incident or service failure, where appropriate. The final report shall be submitted to the chief within sixty days after discovery of the incident or service failure, unless the operator:
 - (a) For good cause, shows more time is needed.

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- (b) Submits interim reports at intervals of not more than sixty days until a final report is submitted.
- (4) Except for an operator of a master meter system, each operator shall submit an annual written report of incidents and service failures for the preceding calendar year or state that no incidents or service failures occurred during the preceding calendar year on the annual report form provided by the commission. This annual report shall be submitted to the chief not later than March fifteenth of each year.
- (C) Each natural gas company and pipeline company shall register the location of all of its underground utility facilities with a protection service that serves the area where the facilities are located, as provided in division (A) of section 3781.26 of the Revised Code. "Underground utility facilities" and "protection service" shall have the same meaning as in section 3781.25 of the Revised Code.
- (D) Twenty-four hour contact report.
 - (1) Each operator and gas gathering/processing plant pipeline operator shall submit a twenty-four hour contact report to the chief not later than March fifteenth of each year. This written report shall contain:
 - (a) The name(s), business address(es), business telephone and fax number(s), and e-mail addresses of its emergency contact personnel.
 - (b) Any available emergency hotline number.
 - (2) Each operator and gas gathering/processing plant pipeline operator shall, within a reasonable time, notify the chief in writing of any change in emergency contact personnel name(s), business address, business telephone, fax number, emergency hotline number, and/or e-mail address of its emergency contact personnel.
- (E) To the extent necessary to carry out its responsibilities under the pipeline safety code, the commission or its staff may require testing of any intrastate gas pipeline facility which is involved in an incident. After making a good faith effort to negotiate a mutually acceptable plan with the owner of the pipeline facility, the commission or its staff may require the operator or choose an independent laboratory to test such pipeline facility.
- (F) Each operator shall establish a program to identify, repair and replace, as necessary, its cast iron distribution pipeline system which is detrimental to the public safety. This program shall include, but not be limited to, disturbing cast iron pipe, maintenance history, leak history, major street or highway reconstruction or repaving, construction activity, depth of cover, soil type, traffic loading, operating conditions, year of manufacture, type of pipe, amount of graphitization, vibrations, impact forces, earth movement, backfilling after undermining, and water leaks or sewer failures in the area.

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- (G) The forms required by this rule shall be available at the commission's docketing division and electronically on the commission's website at <http://www.puco.ohio.gov>.