

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Investigation of The :
East Ohio Gas Company d/b/a :
Dominion Energy Ohio, Relative to Its : Case No. 19-2140-GA-GPS
Compliance with the Natural Gas :
Pipeline Safety Standards and Related :
Matters. :

JOINT STIPULATION AND RECOMMENDATION

I. Introduction

Rule 4901-1-30, Ohio Administrative Code provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. This Joint Stipulation and Recommendation (“Stipulation”) sets forth the understanding and agreement of The East Ohio Gas Company d/b/a Dominion Energy Ohio (“Dominion”) and the Staff of the Public Utilities Commission of Ohio (“Staff”), each of whom is a “Signatory Party” and together constitute the “Signatory Parties.” The Signatory Parties recommend that the Public Utilities Commission of Ohio (“Commission”) approve and adopt this Stipulation, which resolves all of the issues identified by the Staff in the Staff Report of Investigation dated February 28, 2020 (“Staff Report”).

When considering proposed stipulations, the Commission reviews whether the agreement is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria¹:

- 1) Is the settlement a product of serious bargaining among capable, knowledgeable parties;
- 2) Does the settlement, as a package, benefit ratepayers and the public interest; and
- 3) Does the settlement package violate any important regulatory principle or practice?

For the first prong, the Signatory Parties, all of whom are represented by capable and knowledgeable counsel, have engaged in lengthy, serious, arm's length bargaining in an effort to reach a mutually acceptable resolution that would address the concerns raised in the Staff Report. The Signatory Parties used their expert knowledge of the situation and pipeline safety regulations to come to a mutually beneficial resolution of the Staff Report.

This Stipulation meets the second prong of the Commission's analysis because this Stipulation benefits customers and the public interest by resolving the violations noted in the Staff Report without the need for expensive and possibly lengthy litigation. In joining in this Stipulation, the Signatory Parties recognize that it is not in the public

¹The Commission's use of these three criteria to evaluate the reasonableness of a stipulation has been endorsed by the Supreme Court of Ohio. See, e.g., *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 126, 592 N.E.2d 1370, 1373; *AK Steel Corp. v. Pub. Util. Comm.*, 95 Ohio St.3d 81, 2002-Ohio-1735.

interest to subject the Signatory Parties and the Commission to the burdens and delays associated with litigating the issues raised in the Staff Report when a reasonable and acceptable outcome can be achieved through a settlement. The primary objective of this Stipulation is to resolve the issues alleged in the Staff Report, and to avoid, to the extent possible, the potential for future pipeline safety incidents. Further, as part of the Stipulation Dominion agrees to take numerous steps that address Staff's concerns and are intended to improve Dominion's pipeline operations. All of these measures benefit ratepayers and the public interest.

Finally, this Stipulation does not violate any important regulatory principle or practice; and it complies with and promotes the policies and requirements of Title 49 of the Ohio Revised Code.

II. History

- A. On November 15, 2019, a 30-inch steel distribution main installed and operated by Dominion in the vicinity of 28000 Shaker Boulevard, Pepper Pike, Ohio (Cuyahoga County) failed and released natural gas, which subsequently ignited. For purposes of this Stipulation, this incident is referred to as the "Pepper Pike Incident."
- B. Thereafter, Dominion and Staff sought to determine the root cause of the Pepper Pike Incident. During the course of Staff's investigation, Dominion responded to numerous data requests and routinely interacted with Staff to answer questions, follow-up on data requests, and otherwise kept Staff informed of the progress of Dominion's investigation.

- C. On February 28, 2020, Staff issued the Staff Report. The Staff Report outlines alleged violations of Ohio Revised Code and Title 49 of the Code of Federal Regulations (“C.F.R.”) regarding gas pipeline safety regulations.
- D. In the period between issuance of the Staff Report and the filing of this Stipulation, Dominion and Staff held numerous discussions concerning the findings, recommendations, and measures appropriate to address the issues raised in the Staff Report.
- E. On March 17, 2020, Dominion and Staff filed a joint motion to extend the due date of Dominion’s response to the Staff Report, which was granted on March 24, 2020. Further extensions were requested by joint motions filed on April 24, 2020 and May 28, 2020, which were granted on April 28, 2020 and May 29, 2020, respectively.
- F. Dominion and Staff have agreed to measures Dominion must implement to modify and enhance Dominion’s pipeline-safety program. These measures have been developed in consultation with Staff, are collectively referred to as “the Action Plan,” and are contained in the Action Plan document dated April 1, 2020, which was provided to Staff on that date.
- G. The Action Plan, together with the other terms and conditions of this Stipulation, resolve all of the issues raised in the Staff Report.

III. Recitals

- A. WHEREAS, all of the related issues and concerns raised by the Signatory Parties have been addressed in the substantive provisions of this

Stipulation, and reflect, as a result of such discussions and compromises by the Signatory Parties, an overall reasonable resolution of all such issues;

- B. WHEREAS, this Stipulation is the product of the discussions and negotiations of the Signatory Parties and is not intended to reflect the views or proposals that any individual Party may have advanced acting unilaterally;
- C. WHEREAS, this Stipulation represents an accommodation of the diverse interests represented by the Signatory Parties and is entitled to careful consideration by the Commission;
- D. WHEREAS, this Stipulation represents a serious compromise of complex issues and involves substantial benefits that would not otherwise have been achievable; and
- E. WHEREAS, the Signatory Parties believe that the agreements herein represent a fair and reasonable solution to the issues raised in this matter;
- F. NOW, THEREFORE, the Signatory Parties stipulate, agree and recommend that the Commission make the following findings and issue its Opinion and Order in these proceedings approving this Stipulation in accordance with the following:

IV. Joint Recommendation of Signatory Parties

The Signatory Parties agree that, for purposes of settlement and in consideration of the terms and mutual promises set forth herein, and subject to Commission approval, Dominion will perform the following actions:

- A. Dominion shall implement all items contained in the Action Plan. Staff may continue to review the Action Plan and submit any comments, concerns, and suggested revisions to Dominion for Dominion's consideration. To the extent Dominion and Staff mutually agree in writing to clarify or modify the requirements of the Action Plan, Dominion's obligations under this paragraph shall apply to such clarifications and modifications.
- B. Dominion has selected and commissioned, with Staff's approval, the third-party consulting firm Conger & Elsea, Inc. ("Conger & Elsea") to investigate and provide a root-cause-analysis report regarding the incident ("the RCA Report").
- C. The RCA Report shall include an assessment of the effectiveness of Dominion's pipeline safety management systems related to the incident and surrounding circumstances, including an evaluation of the items listed on page 16 of the Staff Report and Dominion's processes associated with new construction. To further ensure mutual agreement on the scope of the RCA, Dominion shall provide the scope to the Staff when completed. If Staff requests modifications to the scope of the RCA report, Dominion, Staff and Conger & Elsea will endeavor to address Staff's request to all parties' satisfaction.
- D. Any draft RCA Report(s), the final RCA Report, and any modification thereto shall be provided to Staff at the same time that any such report or modification is issued to Dominion. Staff shall be included in any

conferences or communications between Dominion and Conger & Elsea associated with any issued draft RCA Report, final RCA Report, or any modification thereto, including any written correspondence.

- E. The RCA Report will be completed within 90 days of the approval of the Stipulation. The Signatory Parties acknowledge that additional time may be needed to complete the RCA Report due to circumstances beyond the Signatory Parties' control, including but not limited to circumstances associated with the ongoing pandemic. If it appears likely that the RCA Report will not be completed within 90 days of the approval of the Stipulation, Dominion shall promptly notify Staff and consult with Staff to identify a mutually agreeable timeframe to complete the RCA Report.
- F. Following completion of the RCA Report, Dominion shall meet with Staff on request and resolve any additions, enhancements, or other modifications recommended by the RCA Report or by Staff that will be compiled into an implementation plan document ("Implementation Plan"). For the avoidance of doubt, the Implementation Plan may include items contained in the original Action Plan, as well as any recommended additions, enhancements, or modifications to such items.
- G. Dominion shall commission an additional report from Conger & Elsea (or an alternative third party if mutually agreed upon by the Signatory Parties) with the goal of evaluating and validating the efficacy of Dominion's implementation of the Implementation Plan ("the Validation Report").

After completion of the RCA Report and prior to commissioning the Validation Report, Dominion shall consult with Staff regarding the intended scope and methodology of the Validation Report and to determine a mutually agreeable timeframe for its completion. Beginning the month following the completion of the RCA Report, Dominion shall participate in quarterly conferences with Staff to provide updates on the Validation Report that will continue until the Validation Report is received by Staff.

- H. The Signatory Parties acknowledge that the RCA Report, the Implementation Plan, and Validation Report required under paragraphs B through G shall be deemed in satisfaction of the Staff Report's recommendation for a third-party audit of the Dominion gas safety program.
- I. Dominion shall pay a civil forfeiture in the amount of one million dollars (\$1,000,000.00) within 30 days of the date of Commission approval of this Stipulation. The Signatory Parties acknowledge that the forfeiture shall be deemed in satisfaction of all pipeline safety incidents or violations, alleged or otherwise, known to Staff at the time the Stipulation is executed, including for the avoidance of doubt those incidents described at pages 14 and 15 of the Staff Report and those alleged or identified in the Notices of Probable Non-Compliance issued on May 20, 2020 (regarding the pipeline safety inspection of Dominion's pipeline facilities and records at St. Clairsville, Ohio) and on June 3, 2020 (regarding the pipeline safety

headquarters and construction inspections). The Signatory Parties acknowledge that this paragraph does not prohibit Staff from recommending future forfeitures in response to alleged future pipeline safety incidents or violations.

- J. To further secure performance of the obligations undertaken in this Stipulation, Dominion stipulates to a future forfeiture of five-hundred thousand dollars (\$500,000.00) (“the Stipulated Forfeiture”), notwithstanding any provision of R.C. 4905.95 to the contrary, and payable if any of the following occur, subject to the process described in Paragraph K below:

1. Dominion materially breaches any provision of this Stipulation and fails to remedy such breach after notice and opportunity to cure, unless such breach or failure to cure is the result of events or factors beyond Dominion’s reasonable control.
2. The Validation Report concludes that Dominion materially failed to implement the Implementation Plan and that such failure was not substantially affected by events or factors beyond Dominion’s reasonable control.

- K. If Staff believes that an event set forth in paragraph J has occurred, and wishes to recommend imposition of the Stipulated Forfeiture, in whole or in part, the following process shall be observed:

1. Staff shall make an appropriate filing with the Commission, recommending the Stipulated Forfeiture be imposed and the reasons for such recommendation, to which Dominion shall be provided a reasonable opportunity to respond.
2. The Parties acknowledge that the Commission, in accordance with generally applicable legal requirements, shall be responsible to determine the procedures that shall be applied thereafter.

V. Procedural Matters

- A. Except for purposes of enforcement of the terms of this Stipulation, neither this Stipulation, nor the information and data contained therein or attached, shall be cited as precedent in any future proceeding for or against any Signatory Party or the Commission itself. This Stipulation is a reasonable compromise involving a balancing of competing positions and it does not necessarily reflect the position that one or more of the Signatory Parties would have taken if these issues had been fully litigated.
- B. This Stipulation is expressly conditioned upon its adoption by the Commission in its entirety and without material modification. Should the Commission reject or materially modify all or any part of this Stipulation, the Signatory Parties shall have the right, within thirty days of issuance of the Commission's Order, to file an application for rehearing. Should the Commission, in issuing an entry on rehearing, not adopt the Stipulation in its entirety and without material modification, any Signatory Party may

withdraw from the Stipulation. Such withdrawal shall be accomplished by filing a notice with the Commission, including service to all Parties, in the docket within thirty days of the Commission's entry on rehearing. Prior to the filing of such a notice, the Signatory Party wishing to withdraw agrees to work in good faith with the other Signatory Parties to achieve an outcome that substantially satisfies the intent of the Stipulation and, if a new agreement is reached that includes the Signatory Party wishing to withdraw, then the new agreement shall be filed for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful in reaching a new agreement that includes all Signatory Parties to the present Stipulation, and a Signatory Party files a notice to withdraw from the Stipulation, then the Commission will convene an evidentiary hearing such that the withdrawing party will be afforded the opportunity to contest the Stipulation by presenting evidence through witnesses and cross-examination, presenting rebuttal testimony, and briefing all issues that the Commission shall decide based upon the record and briefs.

- C. The Signatory Parties will support the Stipulation if the Stipulation is contested, and no Signatory Party will oppose an application for rehearing designed to defend the terms of this Stipulation. If the Stipulation is adopted by the Commission, the Signatory Parties will support the Stipulation in any appeal of the decision.

VI. Conclusion

The undersigned hereby stipulate and agree and each represents that he or she is authorized to enter into this Stipulation and Recommendation this 11th day of June, 2020.

STAFF OF THE PUBLIC UTILITIES
COMMISSION OF OHIO

By: /s/ Werner Margard, per email authorization 6.11.2020

Werner Margard, Assistant Attorney General

THE EAST OHIO GAS COMPANY D/B/A DOMINION ENERGY OHIO

By: /s/ Andrew J. Campbell

Andrew J. Campbell, Counsel for Dominion

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Summary: Stipulation electronically filed by Mr. Andrew J Campbell on behalf of The East Ohio Gas Company d/b/a Dominion Energy Ohio