

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 COMPLIANCE WITH THE NATURAL
GAS PIPELINE SAFETY STANDARDS AND
RELATED MATTERS.

CASE NO. 19-2140-GA-GPS

FINDING AND ORDER

Entered in the Journal on July 1, 2020

I. SUMMARY

{¶ 1} The Commission finds that the joint stipulation and recommendation entered into by Staff and The East Ohio Gas Company d/b/a Dominion Energy Ohio is reasonable and should be approved.

II. DISCUSSION

{¶ 2} The East Ohio Gas Company d/b/a Dominion Energy Ohio (DEO) is a natural gas company as defined in R.C. 4905.03 and a public utility within the meaning of R.C. 4905.02. DEO is also an operator, as defined in R.C. 4905.90. As such, DEO is subject to the ongoing jurisdiction and supervision of the Commission, pursuant to R.C. 4905.04, 4905.05, 4905.06, and 4905.90 through 4905.96. Accordingly, DEO is required to comply with the minimum gas service standards found in Ohio Adm.Code Chapter 4901:1-13, as well as the gas pipeline safety (GPS) rules contained in Ohio Adm.Code Chapter 4901:1-16, which set forth the safety standards and requirements for intrastate gas pipeline facilities subject to the Commission's jurisdiction. Pursuant to Ohio Adm.Code 4901:1-16-03(A), the Commission has also adopted the GPS regulations of the United States Department of Transportation contained in 49 C.F.R. Parts 40, 191, 192, and 199.

{¶ 3} R.C. 4905.91 provides that the Commission may investigate any service, act, practice, policy, or omission by an operator to determine its compliance with R.C. 4905.90 through 4905.96 and the pipeline safety code.

{¶ 4} Ohio Adm.Code 4901:1-16-12 provides that the Commission may initiate a

GPS proceeding after, among other things, an incident has occurred and that, unless otherwise ordered, Staff shall file with the Commission and serve upon the operator a written report of investigation within 90 days after service of the entry that initiates the proceeding.

{¶ 5} On December 12, 2019, Staff filed a letter detailing its initial investigation into DEO's compliance with the GPS rules following an incident that occurred on November 15, 2019, at 28000 Shaker Boulevard, Pepper Pike, Ohio in Cuyahoga County. In its letter, Staff stated that a recently installed, 30-inch steel distribution main operating at approximately 193 pounds per square inch gauge failed and released natural gas into the atmosphere, which subsequently ignited. Staff indicated that the section that failed was bored under the roadway at a depth of 15-25 feet and had been in service for approximately two weeks. Upon notification, Staff responded to the scene to conduct an investigation and discovered that a girth weld failure caused the rupture. Staff represented that further investigation of the incident revealed that several potential violations of the GPS rules contributed to the incident. As a result of the pipeline failure and the severity of the potential GPS violations, Staff requested that the Commission open a formal investigation to determine the cause of the incident. Staff represented that it intended to file a report of its findings at the conclusion of its investigation.

{¶ 6} On December 18, 2019, the Commission issued an Entry directing the Commission's Service Monitoring and Enforcement Department to conduct a formal investigation into DEO's compliance with Ohio Adm.Code Chapter 4901:1-16 and to file a GPS investigative report within 90 days of the Entry, consistent with Ohio Adm.Code 4901:1-16-12. Additionally, the Commission directed DEO to respond in writing to the Staff's investigative report within 30 days of its filing.

{¶ 7} On February 28, 2020, Staff filed its investigative report (Staff Report or Report).

{¶ 8} On March 17, 2020, DEO and Staff filed a joint motion for extension of time for

DEO to file its response to the Staff Report. The parties requested that DEO be given a 30-day extension from the March 30, 2020 deadline to April 29, 2020. In support of the motion, the parties claimed that DEO would need more time to evaluate the Staff Report and that the rapidly developing responses by governments to the COVID-19 situation have required both parties to shift resources in order to protect public health and safety.

{¶ 9} By Entry issued on March 24, 2020, the attorney examiner granted the joint motion for extension of time for DEO to file its response to the Staff Report, directing DEO to file its written response by April 29, 2020. Two additional joint extension requests were filed by the parties on April 24, 2020, and May 28, 2020, each providing similar reasons to that above for the request. These requests were granted by the attorney examiner on April 28, 2020, and May 29, 2020, respectively.

{¶ 10} On June 11, 2020, Staff and DEO filed a joint stipulation and recommendation, which proposes to resolve all issues in this case.

A. Staff Report

{¶ 11} On February 28, 2020, Staff filed its Report detailing the results of its investigation into DEO's compliance with the GPS rules following an incident that occurred on November 15, 2019, when an explosion erupted at 28000 Shaker Boulevard, Pepper Pike, Ohio in Cuyahoga County (property). According to the Report, a 30-inch steel distribution main operating at approximately 193 pounds per square inch gauge failed and released natural gas into the atmosphere, which subsequently ignited. Staff indicated that the section that failed was bored under the roadway at a depth of 15-25 feet and had been in service for approximately two weeks. Staff concluded that, in addition to the girth weld failure, DEO's poor construction practices, failure to follow established procedures, and its lack of oversight contributed to the pipeline failure. (Report at 3.)

{¶ 12} The pipe segment where the failure occurred was installed as part of the DEO Pipeline Infrastructure Replacement (PIR) project, PIR 019 – P400008321, which consisted of replacing 3,070 feet of bare steel pipe with coated steel pipe and replacing additional bare

steel pipe with approximately 3,100 feet of plastic pipe. This replacement began on June 10, 2019, and ended on November 7, 2019. To install the 30-inch steel pipe, the construction crew used an auger bore to drill a horizontal hole beneath the roadway for the purpose of installing the pipe in a flat, straight path. The DEO contractor started boring on September 5, 2019, using an American Augers 36/42-600D Boring Machine, consisting of a 32-inch diameter auger bore and a 30-inch case pipe. (Report at 3-4.)

{¶ 13} According to the Staff Report, a construction report provided by a third-party inspection company hired by the city of Pepper Pike stated that, on September 7, 2019, the construction crew stopped boring because one of the pins holding the auger blade to the drive shaft broke. While trying to recover the auger blade, the crew discovered that a weld on the bottom of the casing had failed and had done so in such a way that should have indicated to the crew that the auger head and bore path were drifting upwards toward the surface. This non-level boring path caused strain on the bottom of the casing being pushed through the bore, which created a bend that placed excessive strain on the pipe once it was installed, ultimately resulting in the failure. According to the Staff Report, neither DEO nor the contractor took mitigating actions, such as widening the boring, to minimize strain on the casing or the 30-inch pipe that was eventually installed in the bore. Staff states that, in contrast to the above construction report, DEO reported that no issues or problems existed during the boring operation. (Report at 4.)

{¶ 14} On September 24, 2019, the construction crew began installing the 30-inch high pressure distribution main in the bore by welding 20-foot segments of pipe and hydraulically pushing the pipe through the bore, expelling the casing on the opposite end of the bore. Installation was completed on September 20, 2019, and the pipeline was pressurized and placed into service on November 7, 2019, with a maximum allowable operating pressure of 249 per square inch gauge. As indicated above, DEO did not recognize or address the strain on the casing, and the pipe was installed on the non-level bore path. On November 15, 2019, at 1:01 a.m., the Pepper Pike fire department contacted DEO about a fire or explosion at the property. Gas, which was leaking from the pipeline rupture,

ignited, burning the roadway, nearby construction equipment, trees, and telephone poles surrounding the leak site. DEO personnel first arrived at the scene at 1:28 a.m. and acted to isolate the line and perform safety checks of the surrounding area, and Commission Staff was notified of the incident at 2:38 a.m. Gas was isolated from the area at 4:39 a.m., and the area was made safe; DEO had replaced emergency valves as part of the construction project but had not updated its records and mapping systems regarding this change, which, in Staff's opinion, hindered a quicker response from emergency personnel. (Report at 4-5.)

{¶ 15} In its Report, Staff states that DEO did not have procedures in its Design and Construction Manual for installation of pipe by boring and that DEO did not provide training on auger boring for its employees or contractors or have criteria to determine whether individuals engaged in boring are qualified. Staff claims that the lack of procedures and training may have contributed to DEO's failure to recognize and address the abnormal conditions during auger boring at the property. Tests conducted on welds throughout the PIR project indicated that a significant number of the tested welds failed nondestructive testing, approximately 20 percent, further indicating that welders were not properly trained and producing acceptable welds. Also, DEO was unable to provide documentation showing welds were subject to visual inspection. Staff notes that its questioning of DEO employees and contractors revealed that they did not follow procedures DEO had in place or were unaware of such procedures. For example, these individuals demonstrated a lack of knowledge concerning proper pre-heating of the pipe or allowing for proper cooling. Staff also avers that DEO does not generate or maintain reliable records and does not maintain document integrity, evidenced by instances encountered by Staff where documents provided by DEO contradicted each other and instances where forms were completed without a date, signature, or other information indicating the specific individual who completed the forms. Following its investigation, Staff concluded that DEO violated 49 C.F.R. 192.13(c), 49 C.F.R. 192.225(a), 49 C.F.R. 192.241(a), 49 C.F.R. 192.305, 49 C.F.R. 192.317(a), and 49 C.F.R. 192.805. (Report at 5-13.)

{¶ 16} Staff states that a pattern exists of DEO not following or enforcing its

procedures. According to the Report, Staff has previously identified deficiencies in DEO's welding inspection procedures and documentation. Furthermore, Staff notes that DEO's failure to maintain adequate documentation has made it difficult or impossible for Staff, on several occasions, to determine whether DEO has complied with the GPS rules. Additionally, on 15 separate occasions in the past five years, Staff has issued violations to DEO for not following its own procedures. And, Staff has issued 14 separate violation letters to DEO since 2012 regarding its Operator Qualification program, though Staff notes that DEO has made efforts to improve its administration of this program and respond to Staff's concerns. (Report at 14-15.)

{¶ 17} In the Report, Staff concluded that DEO showed a lack of institutional control at the construction project located at the property. Staff believes that the weld failure and pipeline rupture occurred as a result of poor construction practices, failure to follow established procedures, and a lack of oversight. Staff also concluded that the number of bad welds found at the site, DEO's previous enforcement history related to not following or enforcing procedures in the field, and poor documentation practices show that failures similar to this incident may recur in the future unless properly addressed. (Report at 15.)

{¶ 18} After consideration of the information in its Report, Staff offered the following recommendations:

DEO should develop and implement a third-party audit of the DEO gas safety program. The purpose of the audit is to determine whether:

- a. DEO has adequate programs, structures, and incentives in place to maintain a culture of safety and regulatory compliance for DEO's employees and its contractors and whether DEO is responsive to safety issues raised by these individuals.
- b. DEO's training provided to or required of its employees and contractors regarding compliance with standards and procedures is appropriate and effective.

- c. DEO's contracts with its contractors are structured to ensure that gas facilities are installed, repaired, or replaced properly, safely, and cost-effectively.
- d. The methods employed by DEO to track and document work enable DEO and the Commission to adequately audit such work for compliance.
- e. The methods employed by DEO to provide oversight of new construction activities so that they comply with DEO's standards and procedures in the field are adequate and effective.
- f. DEO has provided sufficient resources to its gas safety compliance program to adequately and effectively monitor its mandated safety activities and programs for compliance.

(Report at 15-16.)

B. Stipulation

{¶ 19} On June 11, 2020, Staff and DEO (jointly, Signatory Parties) filed a joint stipulation and recommendation (Stipulation), which proposes to resolve all issues in this case. The following is a summary of the provisions agreed to by the Signatory Parties and is not intended to replace or supersede the Stipulation:

- (1) DEO, in consultation with Staff, agreed to measures that it must implement to modify and enhance DEO's pipeline safety program, with such measures being contained in a document provided to Staff on April 1, 2020 (Action Plan). DEO 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 DEO for DEO's consideration. To the extent DEO and Staff mutually agree in writing to clarify or modify the requirements of the Action

Plan, DEO's obligations under this paragraph shall apply to such clarifications and modifications.

- (2) DEO 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 (RCA Report).
- (3) The RCA Report shall include an assessment of the effectiveness of DEO'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 DEO's processes associated with new construction. To further ensure mutual agreement on the scope of the RCA Report, DEO shall provide the scope to Staff when completed. If Staff requests modifications to the scope of the RCA Report, DEO, Staff, and Conger & Elsea will endeavor to address Staff's request so that all parties are satisfied.
- (4) 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 DEO. Staff shall be included in any conferences or communications between DEO and Conger & Elsea associated with any issued draft RCA Report, final RCA Report, or any modification thereto, including any written correspondence.
- (5) The RCA Report will be completed within 90 days of the Commission's 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 Commission's approval of the Stipulation, DEO shall promptly notify Staff and consult with Staff to identify a mutually agreeable timeframe to complete the RCA Report.

- (6) Following completion of the RCA Report, DEO 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). The Implementation Plan may include items contained in the original Action Plan, as well as any recommended additions, enhancements, or modifications to such items.
- (7) DEO 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 DEO's fulfillment of the Implementation Plan (Validation Report). After completion of the RCA Report and prior to commissioning the Validation Report, DEO 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, DEO shall participate in quarterly conferences with Staff to provide updates on the Validation Report. These conferences will continue until the Validation Report is received by Staff.
- (8) The Signatory Parties acknowledge that the RCA Report, the Implementation Plan, and the Validation Report shall be deemed in satisfaction of the Staff Report's recommendation for a third-party audit of the DEO gas safety program.

- (9) DEO shall pay a civil forfeiture in the amount of \$1,000,000 within 30 days of the date the Commission approves 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 DEO'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.
- (10) To further secure performance of the obligations undertaken in this Stipulation, DEO stipulates to a future forfeiture of \$500,000 (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 11 below.
- a. DEO 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 DEO's reasonable control.
 - b. The Validation Report concludes that DEO materially failed to implement the Implementation Plan and that such failure was not substantially affected by events or factors beyond DEO's reasonable control.

- (11) If Staff believes that an event set forth in Paragraph 10 has occurred, and wishes to recommend imposition of the Stipulated Forfeiture, in whole or in part, the following process shall be observed:
 - a. Staff shall make an appropriate filing with the Commission, recommending the Stipulated Forfeiture be imposed and the reasons for such recommendation, to which DEO shall be provided a reasonable opportunity to respond.
 - b. The Signatory Parties acknowledge that the Commission, in accordance with generally applicable legal requirements, shall be responsible to determine the procedures that shall be applied thereafter.
- (12) The Signatory Parties, all of whom are represented by capable and knowledgeable counsel, have engaged in lengthy, serious, and arm's length bargaining to reach a mutually acceptable resolution of the concerns raised in the Staff Report. Further, the Signatory Parties used their expert knowledge of the situation and GPS regulations to reach a mutually beneficial resolution of the matters raised in the Staff Report.
- (13) The 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 executing the Stipulation, the Signatory Parties recognize that it is not in the public interest to subject the Signatory Parties and the Commission to the burdens 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 the Stipulation is to resolve the violations and service issues identified in the Staff Report and to avoid, to the extent possible, the potential for future pipeline safety incidents. Further, as

part of the Stipulation, DEO agrees to take numerous steps that address Staff's concerns and are intended to improve DEO's pipeline operations. All of the above measures benefit ratepayers and the public interest.

- (14) The 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.

(Stipulation at 2-10.)

C. Commission Conclusion

{¶ 20} Ohio Adm.Code 4901:1-16-11 permits DEO and Staff to enter into a stipulation in order to resolve any alleged violations of the GPS requirements. Although the Signatory Parties refer to Ohio Adm.Code 4901-1-30 as their underlying authority for the Stipulation, the Commission will consider the Stipulation pursuant to our enforcement powers under R.C. 4905.91 and Ohio Adm.Code Chapter 4901:1-16.

{¶ 21} The immediate issue to be decided by the Commission is whether the Stipulation, which embodies considerable time and effort by the Signatory Parties, is reasonable and should be adopted. However, as gas pipelines are concerned, the Commission's ultimate goal is to safeguard consumer safety by ensuring that sufficient plans and procedures are in place to prevent future incidents. In this case, we find that the Stipulation, including the recommended forfeiture of \$1,000,000, is reasonable, given that DEO will also be required to carry out a number of actions in response to Staff's recommendations. DEO committed to an Action Plan, consisting of measures DEO must implement to modify and enhance DEO's pipeline safety program, and has agreed to commission a thorough third-party audit that will require review of this program, implementation of recommended changes to the program, and validation that those changes have been implemented, all of which is underpinned by a potential future forfeiture of \$500,000 that can be imposed by the Commission if it finds that DEO does not fulfill the

terms of the Stipulation or Implementation Report. Furthermore, the \$1,000,000 forfeiture, along with the additional \$500,000 held in abeyance, are considerable amounts that can be expected to deter DEO from future violations. Accordingly, the Commission finds that the Stipulation should be approved and adopted in its entirety.

{¶ 22} In closing, the Commission emphasizes our commitment to ensuring consumer safety and requiring operators of gas pipelines to take all reasonable steps to provide necessary safeguards. The Commission expects that DEO, in addition to undertaking the actions required by the Stipulation, will continually review its management and training practices related to GPS requirements and immediately correct any issues of concern. Further, the Commission expects DEO to notify Staff of any issues that are identified and regularly report to Staff until the issues are resolved. In addition, the Commission directs Staff to continue its diligent efforts to work with DEO and other operators on compliance with the GPS requirements. If Staff identifies any issues of concern that are not immediately resolved by the operator at issue, the Commission will undertake any action necessary to investigate the situation and reach an appropriate resolution, including the initiation of a formal docket to audit the GPS practices and procedures of any such operator.

III. ORDER

{¶ 23} It is, therefore,

{¶ 24} ORDERED, That the Stipulation filed in this proceeding be approved and adopted in its entirety. It is, further,

{¶ 25} ORDERED, That DEO take all necessary steps to carry out the terms of the Stipulation and this Finding and Order. It is, further,

{¶ 26} ORDERED, That nothing in this Finding and Order shall be binding upon the Commission in any future proceeding or investigation. It is, further,

{¶ 27} ORDERED, That a copy of this Finding and Order be served upon each party of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

MJS/kck

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7/1/2020 2:22:09 PM

in

Case No(s). 19-2140-GA-GPS

Summary: Finding & Order finding that the joint stipulation and recommendation entered into by Staff and The East Ohio Gas Company d/b/a Dominion Energy Ohio is reasonable and should be approved. electronically filed by Ms. Mary E Fischer on behalf of Public Utilities Commission of Ohio