

- (6) Under the terms of the amended stipulation, a \$600,000 civil forfeiture was assessed against CG&E, of which the parties agreed that CG&E had paid \$100,000 and of which \$500,000 was held in abeyance but would be payable by CG&E automatically and immediately if CG&E failed to comply with the terms of the amended stipulation. The parties further agreed that CG&E would submit a report of any failures involving service head adapter (SHA) style risers to the Commission's Pipeline Safety Section chief on a monthly basis until November 1, 2004, and that CG&E would submit a monthly report to update the pipeline safety staff on the status of the risers that had been targeted for replacement. In addition, CG&E agreed that its operating procedures would include visual inspection of riser sleeves on all flexible risers in its system and that it would indefinitely maintain documentation of those inspections as part of its normal leak survey program.
- (7) Under the terms of the amended CAP, CG&E planned to spend a minimum of \$700,000 to replace SHA risers, including a minimum of 2,112 such risers. In addition, CG&E is maintaining riser inspection checklist records during the time period that the risers covered by such records remain in service. CG&E also agreed to submit to Commission staff a monthly report on its progress toward completing the amended CAP. Finally CG&E planned to develop a comprehensive plan to address SHA riser failures in its service area.
- (8) On January 26, 2005, staff of the Commission filed a report regarding this case (January 2005 staff report). In the January 2005 staff report, staff recommends that the Commission: (a) require CG&E to continue to work with staff to add additional details, processes, and procedures to CG&E's riser optimization plan to address staff's concerns; (b) initiate a statewide investigation on the performance of risers in gas pipeline systems; and (c) take any other action that the Commission deems appropriate (January 2005 staff report at 6).
- (9) One of the outstanding issues in this case involves a pleading that followed the January 2005 staff report.
 - (a) On February 25, 2005, The Norton McMurray Manufacturing Company (Norton) filed a motion to supplement the record and amend the staff report of January 26, 2005 (motion to supplement and amend). Norton contends that both staff and Battelle Memorial Institute (Battelle), a consultant hired by CG&E, have failed to address certain

facts in their consideration of the possible cause of riser failures such as the McGuffey Lane event. Therefore, Norton requests that: (i) the record in this case be supplemented to reflect information concerning CG&E's installation process, (ii) CG&E be ordered to provide to Battelle and staff certain information regarding its installation procedures, and (iii) the Commission reject staff's suggestion of a statewide investigation of risers and direct staff to identify the cause of the failures in the CG&E service territory prior to issuing a recommended course of action.

- (b) On March 14, 2005, CG&E filed a motion to strike the Norton motion to supplement and amend or, in the alternative, to overrule it (motion to strike). CG&E makes three arguments. First, CG&E asserts that the motion to supplement and amend should be stricken because Norton has no standing to make such a motion. CG&E points out that Norton was granted intervention by the Commission on the basis of its stated need to enforce its "right to access the public records held by a State agency . . ." As noted by CG&E, the Commission granted Norton intervention "only for the purpose of opposing CG&E's October 20, 2003 motion for a protective order." Second, CG&E asserts that the motion to supplement should be stricken because Norton does not have the power to supplement or amend a staff report. According to CG&E, only staff can amend or supplement a staff report. Third, CG&E argues that the motion to supplement and amend should be denied because, substantively, the facts asserted in the motion are incorrect.
- (c) On March 28, 2005, Norton filed a memorandum contra the motion to strike. With regard to its standing to file the motion to supplement and amend, Norton suggests that, although its purpose for intervening was previously limited to obtaining copies of the August 2003 Battelle report, it now aims to "assist the Commission in determining the cause of the dangerous failures occurring in CG&E's service area." It states that CG&E's first issue is a "hyper-technical argument." Norton also points to the Commission's broad discretionary power as to

the conduct of hearings. With regard to the Norton's ability to supplement the staff report, Norton argues that the Rule 4901-1-28, O.A.C., applies only to rate cases. Finally, with regard to the substance of the information Norton presented in its motion to supplement and amend, Norton contradicts CG&E's position.

- (d) On April 4, 2005, CG&E filed a reply memorandum, restating its prior arguments and disagreeing with Norton's arguments.
- (10) On April 13, 2005, the Commission opened a statewide investigation in *In the Matter of the Investigation of the Installation, Use, and Performance of Natural Gas Service Risers throughout the State of Ohio and Relate Matters*, Case No. 05-463-GA-COI. By entry issued this same day, we are directing our staff and the local distribution companies in Ohio to provide us with statewide information from which we will delve further into the installation, use, and performance of gas service risers and the failure situation. Therefore, there is no further need to consider that staff recommendation in the context of this proceeding.
- (11) The Commission will consider each of the arguments in CG&E's motion to strike.
 - (a) The Revised Code and the Commission's rules are very specific with regard to intervention in ongoing proceedings. Under Rule 4901-1-11, O.A.C., the Commission allows intervention only upon a showing by the prospective intervenor that it meets the criteria set forth in that rule. Moreover, Section 4903.221, Revised Code, outlines specific parameters under which a prospective intervenor may be granted intervention. When Norton filed a motion to intervene in this case, it very clearly set forth its interest as one entailing the right to gain custody of a specified document. The subsequent debate between Norton and CG&E revolved around that specific issue. Ultimately, the Commission did allow intervention by Norton, but only for the specific purpose detailed in its motion.

Although Norton describes this as a "hyper-technical argument," it is not. Norton requested intervention for a limited purpose. The Commission granted intervention for that limited

purpose. Norton's motion to supplement and amend goes far beyond the purpose for which Norton was allowed to participate in this proceeding. Therefore, it has no standing to file the motion to supplement and amend.

- (b) Although the Commission's rules do not specifically bar the supplementing or amending of staff reports by other parties, the Commission finds that this is not an appropriate procedure to be allowed. Any document that is filed in a proceeding is created by the party that files it, and is not subject to amendment or supplementation by any other party. Clearly, Norton would not expect the Commission to allow, for example, CG&E to amend a brief filed by Norton. Why should Norton, then, be allowed to supplement or amend a document prepared by staff? Therefore, even if Norton did have standing to file the motion to supplement and amend, the Commission would deny it.
 - (c) The parties also dispute whether Norton's motion to supplement and amend should be granted, on the ground of the substantive content of the information which Norton wishes to add to the record of the proceeding. Inasmuch as we have determined that the motion should be stricken and would be denied on other grounds even if not stricken, this issue is moot.
- (12) In light of our determination to conduct a statewide gas service riser investigation and our conclusion on the other pending pleadings in this proceeding, we find that no further Commission action is needed with respect to CG&E's compliance with Chapter 4901:1-16, O.A.C., as a result of the McGuffey Lane event.

It is, therefore,


ORDERED, That the motion by Norton McMurray Manufacturing Company to Supplement the Record and Amend the Staff Update of January 26, 2005, be denied. It is, further,

ORDERED, That the motion by The Cincinnati Gas & Electric Company to Strike the Motion of The Norton McMurray Manufacturing Company to Supplement the Record and Amend the Staff Update of January 26, 2005, be granted. It is, further,

ORDERED, That Case No. 00-681-GA-GPS be closed of record. It is, further,

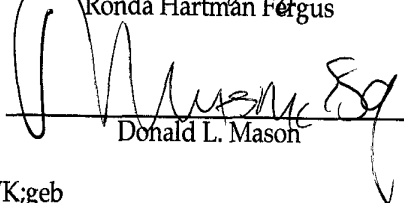
ORDERED, That a copy of this entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman


Ronda Hartman Fergus

Judith A. Jones


Donald L. Mason

Clarence D. Rogers, Jr.

JWK;geb

Entered in the Journal

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Renee J. Jenkins
Secretary