

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Amendment of)
Chapter 4901:1-16, Ohio Administrative)
Code, Regarding Gas Pipeline Safety, to)
Implement Am. Sub. S.B. 315.) Case No. 12-2040-GA-UNC

COMMENTS OF DUKE ENERGY OHIO, INC.

I. INTRODUCTION

Now comes Duke Energy Ohio, Inc., (Duke Energy Ohio) and submits comments in response to the Public Utilities Commission of Ohio (Commission) Entry, issued on October 31, 2012, wherein the Commission requested comments from interested persons regarding the proposed changes to Chapter 4901:1-16, Ohio Administrative Code. Appreciative of the opportunity to provide comments and reserving the right to submit reply comments, Duke Energy Ohio offers the following.

II. COMMENTS

Rule 4901:1-16-01(G) defines a “gas pipeline safety” proceeding as including, *inter alia*, a Commission-ordered investigation of a violation. However, this rule also refers to an investigation of **possible** noncompliance with the pipeline safety code. By virtue of the existing language, it must be inferred that a gas pipeline safety proceeding may be instituted for purposes of a known or admitted violation and not an alleged or suspected violation. But this language – and the resulting conclusion – are not consistent with the rules or the general purpose for which an investigation would ordinarily be undertaken. Indeed, the process codified in Rule 4901:1-16-12 contemplates an evidentiary showing, by Commission Staff in the context of a gas pipeline safety proceeding, that is sufficient to prove a violation. To remove any confusion as to the

intended purpose of a gas pipeline safety proceeding and to properly retain the burden of proof borne by Commission Staff in connection therewith, Duke Energy Ohio proposes that the word, “alleged” be inserted immediately prior to the word, “violation,” in Rule 4901:1-16-01(G).

Additionally, the word, “possible,” which modifies “noncompliance” in this same rule should be replaced with the word, “probable” to ensure consistency between this definition and Rule 4901:10-16-12.

In Rule 4901:1-16-04, the introductory text “each operator shall:” is duplicative of the newly proposed language in subsections (A) through (I) and should be deleted.

In Rule 4901:1-16-05, subsections (A)(1) and (A)(2), the existing language is potentially vague as to the required timing for notification to the chief of the gas pipeline safety section of the commission. Specifically, subsection (A)(1) requires notification within two hours of “discovery.” Duke Energy Ohio presumes that this is intended to refer to discovery of an incident. Similarly, subsection (A)(2) requires notification within two hours after “discovery,” presumably of an interruption of service. Each of these provisions should be amended to clarify that the obligation to notify the chief arises upon discovery of an incident or interruption of service, respectively.

In subsection (B)(3) of Rule 4901:1-16-05, the word “possibility” should be changed to “probability.” Utilities are required to function as reasonable, prudent operators of pipelines. Reasonableness is measured with regard to the probability of an occurrence, not mere possibility. The current language thus could be inappropriately construed to create an obligation to avoid any and all possibilities, thereby imposing upon utility a duty greater than that contemplated by law.

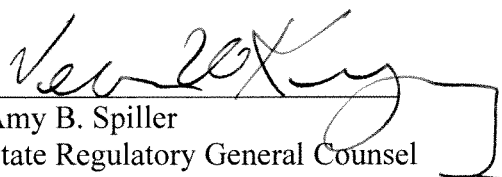
Finally, in Rule 4901:1-16-11, the import of subsection (E) is very unclear. This subsection states that, when an operator pays a fine of more than one thousand dollars, without

executing a written settlement agreement or stipulation, the payment shall be fully binding on the Commission and the operator. This begs the question of what is meant by “binding.” Is it the Commission’s intent to bind itself such that it cannot come back and request an additional forfeiture relating to the same issue? Is it binding on the operator such that the operator cannot somehow disclaim the forfeiture? Does the payment of the forfeiture, without an accompanying settlement agreement, indicate an admission of wrongdoing? If so, how could the Commission reach such a conclusion without the benefit of a Staff Report and a hearing on the merits? Duke Energy Ohio respectfully suggests that the concept covered by this provision should be more fully explained.

III. CONCLUSION

Duke Energy Ohio appreciates this opportunity to provide comments and looks forward to working with the Commission Staff and other stakeholders to finalize appropriate rules for submission to the General Assembly’s Joint Committee on Agency Rule Review.

Respectfully submitted,



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