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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Commission's Review)
of the Gas Pipeline Safety Rules Contained) Case No. 09-829-GA-ORD
in Chapter 4901:1-16 of the Ohio)
Administrative Code.)

**INITIAL COMMENTS OF THE EAST OHIO GAS COMPANY D/B/A DOMINION
EAST OHIO AND VECTREN ENERGY DELIVERY OF OHIO, INC.**

Pursuant to the Commission's September 30, 2009 Entry in this proceeding, The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") and Vectren Energy Delivery of Ohio, Inc. ("VEDO") jointly submit the following Initial Comments. DEO and VEDO are members of the Ohio Gas Association ("OGA") and also support the OGA's Initial Comments.

I. INTRODUCTION

With one important exception, Staff's proposed revisions to the pipeline safety standards contained in Chapter 4901:1-16, Ohio Administrative Code ("O.A.C.") are relatively minor.¹ Most of the proposed changes simply clean up existing language. A new provision, Rule 4901:1-16-02(E), allows the Commission to waive any requirement in Chapter 4901:1-16 — except any requirement mandated by statute — for good cause shown. Additionally, Rule 4901:1-16-04(I) is revised to provide additional detail for the procedures required to respond to leaks. These are relatively minor changes indeed. A slight modification is needed in proposed Rule 4901:1-16-04(I)(2) for consistency with related provisions, but DEO and VEDO do not otherwise object to these proposals.

¹ All citations to Chapter 4901:1-16 are to the version of the revised rules proposed by Staff, unless otherwise noted.

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The same cannot be said for proposed Rule 4901:1-16-15. This proposed new rule would incorporate the pressure testing requirements already contained in the minimum gas service standards ("MGSS"), Chapter 4901:1-13, O.A.C., into the pipeline safety code. The Commission should reject this proposed rule. The inclusion (again) of a requirement to pressure test customer-owned house lines into a regulatory scheme concerning the gas pipeline safety code is inappropriate and improper for at least two reasons.

First, there is simply no reason to include in the pipeline safety rules house line pressure testing requirements that already exist in the MGSS. The grafting of preexisting MGSS provisions into a different and unrelated section of the Administrative Code does nothing but create an unnecessarily repetitive and confusing regulatory scheme, which contravenes the Commission's rulemaking obligation to ferret out duplicative and redundant regulations.

Second, the regulation of customer-owned house lines is not within the scope of the federal gas pipeline safety standards. In other words, pressure testing requirements for customer-owned house lines have nothing to do with the pipeline safety code. Certified State authorities cannot impose regulations on intrastate pipelines unless those regulations set forth "more stringent safety standards" that are "compatible with the Federal minimum standards." 49 U.S.C. § 60104(c). Staff's proposal, however, would expand the federal pipeline safety code well beyond its intended scope, resulting in unauthorized state regulations that are incompatible with federal statutes and regulations. Federal law expressly prohibits state agencies from imposing pipeline safety regulations that are incompatible with federal law.

Accordingly, the Commission should adopt final rules that are consistent with these Initial Comments.

II. COMMENTS

A. Rule 4901:1-16-04

This rule specifies certain requirements for records, maps, inspections and leak classifications. As noted by OGA, the last sentence of Rule 4901:1-16-04(I)(2) should be changed for consistency with the proposed changes to Rule 4901:1-16-04(I)(3). DEO and VEDO recommend that the final rules adopt OGA's proposed language.

B. Rule 4901:1-16-06

This rule requires operators to submit construction reports for certain additions to intrastate pipeline facilities. As pointed out by OGA, several of its member companies, including DEO and VEDO, are currently involved in ongoing construction projects under Commission-approved accelerated main replacement programs ("AMRP"). DEO and VEDO's approved AMRPs include various reporting requirements. The companies (and their ratepayers) should not be forced to bear the costs of preparing duplicative reports under both the pipeline safety code and their AMRP. In particular, the annual report of "important additions" required by Rule 4901:1-16-06(C) will duplicate information to be included in the companies' annual AMRP reports. DEO and VEDO therefore request a permanent waiver, pursuant to proposed Rule 4901:1-16-02(E), of the annual reporting requirement of Rule 4901:1-16-06(C).

C. Rule 4901:1-16-15

Rule 4901:1-13-05(A)(3) of the minimum gas service standards ("MGSS") requires pressure testing of all new house lines, as well as existing house lines when re-connecting service. The pressure test requirements in proposed Rule 4901:1-16-15 are copied nearly verbatim from Rule 4901:1-13-05(A)(3). Why Staff believes that the pipeline safety code should include identical regulations that already exist in the MGSS is inexplicable. Staff's proposed pressure

test requirements pertain to activities that are not subject to regulation under the Natural Gas Pipeline Safety Act or any corresponding federal regulations. The pressure test requirements in proposed Rule 4901:1-16 should not be included in the final rules.

1. The Proposed Rule Is Unnecessary and Unrelated to Pipeline Safety.

Congress enacted the Natural Gas Pipeline Safety Act ("NGPSA") in 1968. As amended in 2002, the purpose of the NGPSA is "to provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities by improving the regulatory and enforcement authority of the Secretary of Transportation." 49 U.S.C. § 60102(a)(1). To this end, the Secretary of Transportation is required to prescribe minimum safety standards that "may apply to the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement and maintenance of pipeline facilities." 49 USC § 60102(a)(2)(B). A properly certified "State authority" may adopt "additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation," but "only if those standards are compatible with the minimum standards prescribed under this chapter." 49 U.S.C. § 60104(c).²

In addition to the NGPSA, Ohio also has its own pipeline safety act, codified at R.C. 4905.90 - .96. Apart from certain reporting requirements and a general directive for pipeline operators to adhere to the pipeline safety code, Ohio statutes do not prescribe specific pipeline safety standards.³ The General Assembly delegated this task to the Commission. Under R.C. 4905.91, the Commission shall "Adopt, and may amend or rescind, rules to carry out sections

² A "State authority" must have submitted a current certification under section 60105 of the NGPSA to have authority to adopt additional or more stringent compatible safety standards for intrastate pipeline facilities. 49 USC § 60104(c).

³ Although the Revised Code does not mandate specific safety standards, it does define several provisions of the Ohio pipeline safety act by reference to the federal NGPSA. See, e.g., R.C. 4905.90.

4905.90 to 4905.96 of the Revised Code, including rules concerning pipe-line safety, drug testing, and enforcement procedures The rules adopted under this division and any orders issued under sections 4905.90 to 4905.96 constitute the pipe-line safety code. The commission shall administer and enforce that code."

The Commission has historically adopted the federal pipeline safety standards as the state standards. This remains true under the proposed rules. According to Rule 4901:1-16-03, "The Commission hereby adopts the gas pipeline safety regulations of the United States department of transportation contained in 49 CFR 40, 191, 192 and 199 as effective on the date referenced in paragraph (d) of rule 4901:1-16-02 of the Administrative Code." The purpose of the remainder of Chapter 4901:1-16 is to establish "Procedures for the staff to administer and enforce the pipeline safety code." Rule 4901:1-16-02(A)(2).

Thus, the Commission has historically recognized that pipeline safety regulation requires a cooperative effort between the federal government and the states. The federal government establishes uniform, minimum pipeline safety standards, while the states administer and enforce those standards. Given how pipeline safety has historically been regulated in Ohio, the DEO and VEDO are somewhat baffled by Staff's proposal to add pressure testing requirements to Chapter 4901:1-16 that are absent from 49 CFR 192 or any other federal regulations.

Proposed Rule 4901:1-16-15(A)(2) would require pressure testing of gas piping downstream of the meter for all new service installations, as well as all reconnections for existing service. These pressure tests are not required under 49 CFR 192. Indeed, the federal regulations do not encompass customer-owned house lines at all. Federal regulation ends with the customer service line, and under the federal definition: "A service line ends at the outlet of the customer meter or at the connection to a customer's piping, whichever is further downstream, or at the

connection to customer piping if there is no meter." 49 CFR 192.3. Additionally, the Revised Code refers to 49 CFR 192.3 to exclude an ultimate consumer from the definition of an "operator" under the Ohio pipeline safety act. R.C. 4905.90(G)(4)(c).

By including house line pressure test requirements as part of the State's gas pipeline safety code, Staff is attempting to extend 49 CFR 192 beyond its intended scope. There is no question that neither Congress nor the Department of Transportation intends to regulate customer-owned house lines. And there is good reason for drawing this line. LDCs are responsible for distribution mains and, to a lesser extent, service lines, but do not (and cannot) control or maintain customer-owned house lines. How customers maintain (or not) their house lines has no bearing on the safety or reliability of a LDC's distribution system. Thus, pressure testing customer-owned house lines has nothing to do with the pipeline safety code — at least insofar as the concept of "pipeline safety" has been commonly understood for the past 40 years as pertaining only to distribution pipelines and service lines.

The pipeline safety code should remain limited to regulations that pertain to transportation and distribution pipeline safety. Whether customer-owned house lines should be pressure tested is simply not a pipeline safety code issue. That much is clear from the fact that Staff's proposed pressure test requirements are already included in the MGSS. There is no need to include regulatory requirements that already exist in the MGSS as part of the pipeline safety code.

2. Staff's Proposal Is Contrary to Law and Would Impose Unnecessary and Unreasonable Costs.

The Commission, even if properly certified under the NGPSA, cannot impose "additional or more stringent" pipeline safety requirements that are not "compatible" with federal regulations. 49 U.S.C. § 60104(c). Imposing house line pressuring testing requirements as part of the

pipeline safety certainly would be incompatible with federal regulations that explicitly do not encompass house lines — with respect to pressure testing requirements or anything else. Staff's proposal is therefore not only unreasonable, it also is unauthorized.

Staff's proposal is unauthorized under state law as well. As noted in the September 30, 2009 Entry in this proceeding, the Commission's rulemaking authority is governed by R.C. 119.032(C), which requires the Commission to consider, among other factors, whether a proposed rule "duplicates, overlaps with, or conflicts with other rules." R.C. 119.032(C)(4). Surely proposed Rule 4901:1-16-15 duplicates and overlaps with the Rule 4901:1-13-05(A)(3) — they are the same rules. For the same reason Staff's proposal cannot be squared with R.C. 119.032(C), it also cannot be reconciled with the Governor's Executive Order 2008-04S, which directs state agencies to "amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient," as well as "reduce or eliminate areas of regulation where federal regulation now adequately regulates the subject matter." See September 30, 2009 Entry, ¶ 3.

Staff's proposal also does not consider additional incremental compliance costs that DEO and VEDO will incur if pressure test requirements are included in the pipeline safety code. Currently, the companies are able to look up service orders on an exception basis if there is a need to find out what houseline testing was done at a specific address. If houseline testing is something that the Commission's pipeline safety group intends to audit on a regular basis, it is conceivable that Staff will expect the companies to produce all test results that have been done at every address during the prior year. This is the approach Staff takes currently on other areas subject to audit, such as leak surveys, valve inspections, regulator inspections and so forth. Providing data on house line pressure testing would be extremely time consuming and require

costly IT upgrades. DEO and VEDO are not aware of any evidence or information that would justify these additional costs, which ultimately would be borne by ratepayers.

In short, the Commission must reject Staff's proposal. It is unnecessary, incompatible with existing federal regulations, contrary to state law, and would impose unnecessary costs with no corresponding benefit.

III. CONCLUSION

For the reasons discussed above, the Commission should adopt final rules that are consistent with these Initial Comments, as well as the Initial Comments filed by OGA.

Dated: October 30, 2009

Respectfully submitted,



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