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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Amendment of Rules)
4901:1-16-01 and 4901:1-16-02, Ohio) Case No. 11-5391-GA-ORD
Administrative Code, to Incorporate Recent)
changes in Federal Regulations Regarding)
Gas Pipeline Safety.)

OBJECTIONS OF THE OHIO GAS ASSOCIATION

Pursuant to the October 18, 2011 Entry in this proceeding, the Ohio Gas Association ("OGA"), on behalf of its members, *excluding* Duke Energy-Ohio, Inc. ("Duke Energy Ohio"), submits this Objection to the Commission's adoption, without comments, of proposed changes to Rules 4901:1-16-01 and 4901:1-16-02 of the Ohio Gas Pipeline Safety ("GPS") regulations.

OBJECTIONS

The October 18 Entry states that the Commission intends to revise the definition of "incident," as presently defined in the GPS regulations, to mirror the definition adopted in the August 15, 2011 revision to 49 C.F.R. Part 191.3. Describing this change as "straight forward," the Entry states that the Commission will adopt it, without receiving comments, unless objections are received by November 9, 2011. (Entry, ¶4.) OGA hereby objects.

When the Commission adopts rules based on federal regulations and the federal regulations change, it makes sense for the Commission to amend its rules to match the federal regulations. Comments usually are not necessary in these circumstances. Here, however, there are exceptional circumstances that warrant a full comment cycle before the Commission updates the GPS regulations to match federal law. Based on a current pipeline safety investigation pending before the Commission, it appears that pipeline safety Staff are applying a definition of "incident" that is contrary to state and federal law. Any future controversy about what

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constitutes an "incident" (and what doesn't) can and should be resolved through comments in this proceeding.

Case No. 11-3636-GA-GPS involves a Staff investigation of an explosion and fire at the Steeple Chase Townhomes complex. Duke Energy Ohio provides gas service to the complex. An Ohio State Fire Marshal's investigation concluded that the source of the explosion and subsequent fire was "a half inch natural gas supply pipe in the laundry room of Apartment #33, which did not have an inline valve or cap." (Staff Report at 1.) According to the Staff Report, "Seven injuries and an estimated property damage of \$1,000,000 occurred, meeting the definition of a reportable 'incident' under Gas Pipeline Safety rule 4901:1-16-01(G) and 49 C.F.R. Part 191.3." (*Id.*) Deeming the event reportable, the Staff Report recommends enforcement action for, among other things, not timely notifying or reporting the event to Staff. (*Id.* at 6.)

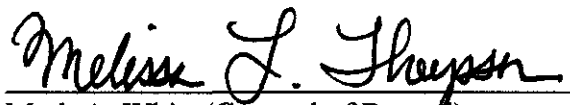
Based on the Staff Report, OGA members are concerned that Staff interprets a reportable "incident" more broadly than provided by state and federal regulations. Rule 4901:1-16-05 requires pipeline operators to notify staff of, and file written reports concerning, any "incident." Both the current Ohio regulations and revised federal regulations state that "'Incident' means an event that involves a release of gas from an intrastate gas pipeline facility **and** results in any of the following," and goes on to list additional factors, such as death, injury requiring hospitalization and property damage exceeding \$50,000. O.A.C. 4901:1-16-01(G); 49 C.F.R. 191.3 (emphasis added.) Thus, in order to constitute an "incident," the release of gas must be from an "intrastate gas pipeline facility." A release of gas from any facility that is not an "intrastate gas pipeline facility" is not a reportable "incident," regardless of the level of damage or injury that results.

Ohio regulations define an "intrastate gas pipeline facility" as "any new and existing pipelines, rights-of-way, and any other equipment, facility or building used in the transportation of gas either wholly or partly within this state or from an interstate gas pipeline in Ohio to a direct sales customer in Ohio buying gas for its own consumption." O.A.C. 4901-1-16-01(H) (emphasis added). Piping on the customer side of the meter is not "used in the transportation of gas . . . to a direct sales customer," and therefore cannot constitute an "intrastate gas pipeline facility." Interpreting the GPS regulations otherwise would mean that every owner of every home and gas-consuming facility would be an "operator" subject to state and federal pipeline safety regulations. *See* O.A.C. 4901:1-16-01(J)(5). Ultimate consumers, however, are expressly excluded from the definition of "operator." *Id.*

In Case No. 11-3636-GA-GPS, Staff is asserting pipeline safety jurisdiction over an event involving the release of gas from customer-owned piping located between the meter and the customer's laundry room. This piping is not an "intrastate pipeline facility." The fire at the Steeple Chase complex is therefore not an "incident" as defined by state or federal regulations. Given the apparent discrepancy between Staff's interpretation of "incident" and the definition provided in state and federal GPS regulations, the Commission should allow comments before adopting the revised federal definition. If the Commission declines to accept comments, the Order adopting the new definition should at least clarify that events involving non-jurisdictional pipelines or facilities are not reportable "incidents" under the GPS regulations.

Dated: November 9, 2011

Respectfully submitted,

A handwritten signature in black ink that reads "Melissa L. Thompson". The signature is written in a cursive style with a horizontal line underneath it.

Mark A. Whitt (Counsel of Record)

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