

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Investigation of The East)
Ohio Gas Company d/b/a Dominion East)
Ohio Relative to Its Compliance with the) Case No. 12-380-GA-GPS
Natural Gas Pipeline Safety Standards and)
Related Matters.)

ENTRY

The attorney examiner finds:

- (1) The East Ohio Gas Company d/b/a Dominion East Ohio (DEO) is a public utility and a natural gas company within the meaning of Sections 4905.02, 4905.03(A)(5), and 4905.90(G)(1), Revised Code, and is, therefore, a public utility and an operator subject to the ongoing jurisdiction and supervision of the Commission pursuant to Sections 4905.02, 4905.04, 4905.05, 4905.06, and 4905.90 through 4905.96, Revised Code. Accordingly, DEO is required to comply with the minimum gas service standards found in Chapter 4901:1-13, Ohio Administrative Code (O.A.C.), as well as the gas pipeline safety (GPS) rules contained in Chapter 4901:1-16, O.A.C., which set forth the safety standards and requirements for intrastate gas pipeline facilities subject to the Commission's jurisdiction. Pursuant to Rule 4901:1-16-03(A), O.A.C., the GPS rules incorporate the United States Department of Transportation's GPS regulations, as contained in 49 Code of Federal Regulations (C.F.R.) Parts 40, 191, 192, and 199.
- (2) On January 23, 2012, Staff filed a report detailing the results of its investigation into DEO's compliance with the GPS rules following a series of fires that occurred in the village of Fairport Harbor, Ohio, on January 24, 2011. According to the report, 11 homes were severely damaged and 150 homes required appliance repair or replacement from what was identified as a major gas leak, causing an estimated property damage of nearly \$1,300,000, and thus meeting the definition of an incident, pursuant to Rule 4901:1-16-01(G), O.A.C., and 49 C.F.R. 191.3.

- (3) In its report, Staff concludes that DEO violated 49 C.F.R. 192.13(c), 192.603(b), 192.619(a)(1), 192.739(a), and 192.739(a)(4), and, accordingly, makes a number of recommendations, including a recommendation that a forfeiture of \$500,000 be assessed against DEO for failure to comply with the requirements of the GPS regulations regarding the design and operation of regulator stations.
- (4) On February 14, 2012, the Ohio Consumers' Counsel (OCC) filed comments and a motion to intervene in this case. In support of its motion, OCC states that it represents the residential utility customers of DEO and that this case may adversely affect these customers' interests. OCC further submits that its participation will not unduly prolong or delay the proceedings and that its advocacy will significantly contribute to the full development and equitable resolution of the issues. OCC concludes that it meets the intervention criteria set forth in Section 4903.221, Revised Code, as well as Rule 4901-1-11, O.A.C., and that granting its motion would be consistent with precedent of the Supreme Court of Ohio.
- (5) On February 29, 2012, DEO filed a memorandum contra OCC's motion to intervene in this proceeding. DEO asserts that OCC, in seeking intervention, improperly attempts to expand its standing to represent the interests of residential customers beyond the authority granted to it by the General Assembly. DEO argues that no provision in Chapter 4911, Revised Code, which addresses the powers and duties of OCC, authorizes OCC's participation in a GPS proceeding. DEO emphasizes that the present proceeding is a GPS enforcement action initiated by Staff for the limited purpose of determining whether DEO has failed to comply with the GPS regulations. DEO contends that no analysis of whether OCC meets the intervention criteria of Section 4903.221, Revised Code, is necessary, because OCC does not have standing or authority to intervene in a GPS case. In any event, DEO concludes that OCC has not satisfied the statutory criteria for intervention. DEO argues that OCC does not explain how any residential customer or OCC itself could be adversely affected if intervention is denied. DEO adds that OCC's interests are adequately represented by Staff, and that OCC inappropriately seeks to expand this case beyond its proper scope.

- (6) OCC filed a reply to DEO's memorandum contra on March 7, 2012. OCC asserts that Section 4911.02(B)(2), Revised Code, authorizes its participation in this case. OCC adds that Ohio Supreme Court precedent requires intervention to be liberally allowed by the Commission. Additionally, OCC contends that it has satisfied the intervention criteria found in Section 4903.221, Revised Code. OCC further notes that its interests in this proceeding are not the same as Staff's, and that the Commission's rules specifically contemplate participation in GPS cases by other parties than the public utility and Staff. OCC concludes that DEO's attempt to exclude OCC from this case is untenable under the law and common sense.
- (7) On March 23, 2012, DEO filed a motion to stay discovery until such time as the Commission issues an entry ruling on OCC's motion to intervene and establishing the procedures that will govern this case, including the nature and scope of OCC's role in this case and whether and to what extent OCC may seek discovery, if intervention is granted to OCC.
- (8) On April 9, 2012, OCC filed a memorandum contra DEO's motion to stay discovery. OCC asserts that DEO seeks to unreasonably limit OCC's right to participate in this proceeding by impeding discovery, contrary to the Commission's discovery rules. OCC notes that there is no requirement in the rules that precludes discovery until such time as a procedural schedule is established, and that DEO's motion would act to delay resolution of this matter. OCC concludes that, pursuant to Section 4903.082, Revised Code, the Commission should recognize OCC's right to discovery and order DEO to provide an immediate response to OCC's pending discovery requests.
- (9) DEO filed a reply to OCC's memorandum contra on April 16, 2012. DEO reiterates that it does not know whether OCC will be allowed to participate in this case and, if so, what its role will be and whether that role will involve discovery. DEO maintains that a stay of discovery would protect DEO from possible waste and prejudice, while preserving for OCC any opportunity for discovery that the Commission should ultimately decide to allow.

- (10) Upon review of OCC's motion to intervene and the responsive filings, the attorney examiner finds that the motion should be denied. The attorney examiner is unable to find any statutory basis in Chapter 4911, Revised Code, which governs OCC's authority to participate in Commission proceedings, that would authorize OCC's participation in a GPS enforcement action initiated by Staff on behalf of the Commission pursuant to Section 4905.95, Revised Code. OCC relies on Section 4911.02(B)(2), Revised Code, as a basis for its authorization to participate in a GPS enforcement proceeding. OCC notes that, although that section enumerates specific powers and duties of OCC, it also states that such powers and duties are not limited because of enumeration. OCC further notes that Section 4911.02(B)(2)(a), Revised Code, provides that OCC shall have all the rights and powers of any party in interest appearing before the Commission regarding examination and cross-examination of witnesses, presentation of evidence, and other matters. Neither provision cited by OCC grants authority to OCC to participate in a GPS enforcement case. OCC, like the Commission, is a creature of statute and has only the powers and jurisdiction authorized by the General Assembly.¹ Although there are provisions within Chapter 4911, Revised Code, that establish OCC's authority to participate in certain Commission proceedings pertaining to rates and service quality, there is no specific statutory provision authorizing OCC's participation in a GPS enforcement proceeding. The attorney examiner notes that, if OCC believes that there are issues relating to DEO's service quality that should be addressed before the Commission, OCC's proper course of action is to file a complaint case pursuant to Section 4905.26, Revised Code.
- (11) In light of the denial of OCC's motion to intervene, the attorney examiner finds that DEO's motion to stay discovery should be denied as moot.

It is, therefore,

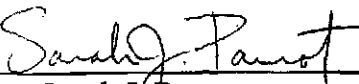
ORDERED, That OCC's motion for intervention be denied. It is, further,

¹ See, e.g., *Discount Cellular, Inc. v. Pub. Util. Comm.*, 112 Ohio St.3d 360, 373 (2007); *D.A.B.E., Inc. v. Toledo-Lucas Cty. Bd. of Health*, 96 Ohio St.3d 250, 259 (2002); *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 234 (1996); *Tongren v. D&L Gas Marketing, Ltd.*, 149 Ohio App.3d 508, 510 (2002).

ORDERED, That DEO's motion to stay discovery be denied as moot. It is, further,

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

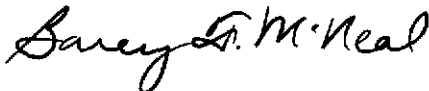
THE PUBLIC UTILITIES COMMISSION OF OHIO


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JPF/vrm

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Barcy F. McNeal
Secretary