BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of its Rules in Chapter 4901:1-16 of the Ohio Administrative Code, Regarding Pipeline Safety.	))))	Case No. 13-2237-GA-ORD

JOINT INITIAL COMMENTS OF
DOMINION EAST OHIO AND VECTREN ENERGY DELIVERY OF OHIO, INC.

I. INTRODUCTION

In accordance with the Commission's March 2, 2014 and March 26, 2014 Entries in this case, The East Ohio Gas Company d/b/a Dominion East Ohio (DEO) and Vectren Energy Delivery of Ohio, Inc. (VEDO) file these initial comments to Staff's proposed revisions of Ohio Adm. Code Chapter 4901:1-16.

These comments are limited to three issues: leak reclassifications and abandonment of service lines. Staff's proposal to change leak reclassification requirements needs to be clarified, but otherwise seems acceptable. The proposed new rule for abandonment of service lines, however, should be reconsidered. DEO and VEDO appreciate and share Staff's desire to improve pipeline safety. Staff's proposal, however, is problematic in numerous respects and will not solve the potential hazards associated with vacant properties that Staff seeks to address. For this reason, DEO and VEDO respectfully suggest that the Commission convene additional workshops before writing new rules requiring abandonment of inactive service lines. The Commission has used workshops to jointly resolve difficult issues in the past, resulting in targeted and positive outcomes. It should do so again in this case.

The third issue pertains to a proposal by DEO and VEDO to streamline the reporting requirements of Rule 4901:1-16-06(B). Instead of filing reports for "important additions" before, during and after construction, the companies propose to file two reports: one prior to

construction, and the other on March 15 each year to report all completed projects for the prior year. Proposed language is included in the comments below.

II. COMMENTS

A. Rule 4901:1-16-04 – Inspections and leak classifications.

Paragraph (I)(1): Existing Paragraph (H) requires operators to classify all leaks by one of three grades: grade-one refers to the most serious leaks, which present an "existing" or "probable" hazard that requires "immediate repair" or "continuous action"; grade-two refers to leaks that are presently "nonhazardous" but that should be scheduled for repair; and grade-three presents no hazard at all. Once a leak is classified, the operator must take follow-up action as directed by subsection (I). According to subsection (I)(1), if follow-up action to a grade-one leak results in a change in the grade, the operator may reclassify the leak according to subsection (H).

Staff has proposed a new sentence to be added to the end of subsection (I)(1), which states, "All leaks reclassified after performing a physical action must be evaluated after 30 days to verify the reclassification." The intent of the new sentence is unclear, however, in two respects.

First, the sentence appears in paragraph (I)(1), which applies only to grade-one leaks. But the proposed addition requires that "all leaks" that are reclassified must be evaluated after 30 days, and "all" leaks may include both grade-one *and* -two leaks or even grade-three leaks. Given this ambiguity, it is not clear to DEO and to VEDO whether the verification requirement applies solely to reclassified grade-one leaks. DEO and VEDO respectfully request clarification of this point.

The requirement to evaluate reclassified leaks "after 30 days" introduces a second ambiguity. If the intent of the rule is to require evaluation within a reasonable time after performing a physical action, but not earlier than 30 days, then the rule should say so explicitly.

Otherwise, any evaluation that occurs any time "after 30 days" (which would include 31 days or more) would satisfy the rule. Changing "after 30 days" to "within 30 to 60 calendar days" would provide operators with clarity and flexibility while remaining consistent with Staff's apparent intent.

B. Rule 4901:1-16-05 – Abandonment of service lines.

Paragraph (G): Staff has proposed new subsection (G) to address "inactive" service lines. This section would require operators to annually assess all service lines that have been "inactive" for more than one year; determine if any of these service lines are "unsafe"; and "retire and physically abandon" these service lines within three months. Where a service line has been inactive for more than two years and there are "no definite plans for future use or the reasonable possibility for future use," the operator is directed to retire and physically abandon the service line, regardless of whether an unsafe condition exists. The stated intent of this new rule is to address "public safety" and prevent "property damage" caused by "fire and explosions at vacant and abandoned properties."

DEO and VEDO wholeheartedly share Staff's concern to address these issues. But the proposed rule does not address the problem. For example, since the beginning of 2010, DEO has responded to 18 incidents where theft or vandalism of piping resulted in a gas leak and subsequent fire or explosion. In every instance, service to the property was being rendered through an active account. Consequently, had Staff's proposed rule been in place, the rule would not have prevented any of these incidents. The problems presented by incidents at vacant properties are far more complex than simply adding inspection and abandonment requirements.

Accordingly, a better approach to addressing vacant or abandoned properties is to hold the proceeding in abeyance and schedule workshops for Staff, operators, and other interested

parties to explore targeted, company-specific solutions. As such, new paragraph (G) should not be adopted.

1. The proposed rule would not have prevented the safety incidents that motivated it.

The rule is expressly designed to prevent explosions that occur at "vacant and abandoned properties." To this end, the rule assumes that all "vacant and abandoned properties" involve "inactive" services. This assumption is incorrect.

It is not uncommon for owners of "vacant" properties to maintain active gas accounts, often because the property is being renovated, sold, or waiting for new renters. Whatever their reasons, these owners dutifully pay their gas bill month after month. That a property is "vacant" does not mean that the service to the property is (or should be) "inactive."

It is also important to understand that as far as DEO and VEDO are concerned, there is no such thing as an "inactive service line." *All* service lines are leak surveyed every five years, or even more frequently, per applicable DOT inspection requirements. To the extent Staff's proposal may imply that certain "inactive" service lines are described as such because these lines are no longer being inspected, this is not the case. Every service line connected to a main has been, and will continue to be, inspected for safety at regular intervals.

Understanding that "vacant" does not mean "inactive" is key to understanding how nuanced the situation with abandoned or vacant properties can be. There is no practical way for an LDC to know that an account in good standing involves a "vacant" property. If an account is being timely paid, there is no basis for questioning whether the property is occupied. Even if an LDC learns that a property is *not* occupied, occupancy status is *not* a basis for disconnection under the minimum gas service standards. Service may be disconnected for safety reasons, but

there is no reliable way to predict which vacant properties will be targeted by thieves, contain a leaking appliance, or otherwise present safety risks downstream of the service line.

Thus, even had the proposed rule been in place since 2010, it would not have prevented any of the 18 incidents that occurred in DEO's service territory since that time. In every instance, the account serving the property was active. In every instance, the service line to the property had been included in prior inspections. These incidents were not the consequence of inadequate regulation; they were the consequence of criminal activity—specifically, stealing interior pipe or appliances. The identification and disconnection of "inactive" services would not have prevented any of these incidents because service was, in fact, active. Indeed, had service to these properties been "inactive," no gas would have been flowing and no additional hazards created by ripping out the interior piping. Paradoxically, a rule that emphasizes the inspection of "inactive" services (which do not present hazards) would shift resources from *active* service lines (which do).

To be clear, DEO and VEDO are not diminishing the underlying issue, and the proposed rule is based on a legitimate concern. The rules, however, must be targeted to solve the underlying problem. Otherwise, they not only impose unjustified absolute costs, but opportunity costs as well. They drain resources that would otherwise be devoted to more effective ends. That is true of this proposed rule, which will only make it more difficult to comply with existing monitoring and remediation requirements. Proposed paragraph (G) should not be adopted.

2. The Commission should hold this proceeding in abeyance and permit interested parties an opportunity to find proper solutions.

DEO and VEDO recommend that the proper approach to the problem identified by Staff is to gather the operators and other interested parties to determine the most appropriate way to address the issues presented by vacant and unoccupied properties. These are not new issues,

although they have been exacerbated in recent years by the financial crisis and corresponding spike in foreclosures. The rulemaking process should take account of these realities.

For example, the existing rules already require regular leak survey of pipeline systems, including inactive service lines, and already address the proper responses to various kinds of leaks. Issuing a new rule that sets forth independent monitoring, response, and timing requirements for one subset of lines creates a risk of confusion and will require compliance costs well out of proportion with any incremental gain in safety. Given that LDCs are already regularly inspecting these lines, additional and conflicting inspection requirements is not the solution.

At a more fundamental level, it is not clear that a one-size-fits-all approach is the best solution. DEO and VEDO, for example, have very different service territories. Experience indicates that home explosions are more likely to occur in some areas than in others, making a targeted approach the most efficient. All can agree that hazardous properties should be identified and that service to these properties abandoned. Even when gas is shut off, periodic inspections are needed to ensure that it remains shut off. But achieving these goals might require different companies to employ different resources and establish different procedures. The Commission has previously recognized the benefits of regulatory flexibility in meeting other important service or safety goals, such as the inspection and replacement of "prone to fail risers" and the implementation of mandatory meter reading requirements. *Investigation Into the Installation, Use, and Performance of Natural Gas Service Risers,* Case No. 05-463-GA-COI (March 12, 2008 Final Order); *Application of Dominion East Ohio for Certain Waivers of Chapter 4901:1-13,* Case No. 06-1452-GA-WVR (May 24, 2007 Entry). Regulatory flexibility is also warranted here.

The point is that to the extent new rules are needed, they must accurately account for both the problem itself and the means available to solve it. The issues presented here go much deeper than the economic regulation of utilities or the proper timeframes for a line inspection. They touch on the larger condition of the economy, the local conditions of Ohio communities, crime and poverty, and the practical and logistical interplay between utilities, municipalities, and local agencies and citizens.

Given the depth and breadth of these issues, the undersigned parties believe that what is needed is a deliberative process allowing the Commission to hear from those who deal with these issues on the ground and to determine whether and how a rulemaking could support these issues. Thus, DEO and VEDO recommend that the Commission either reject the proposed rule at this time or hold this proceeding (or this part of it) in abeyance, and schedule a workshop to allow discussion and better understanding of the underlying issues. Such understanding should precede and inform any proposals to address these issues through quasi-legislative regulatory requirements.

3. If the rule is considered as proposed, several issues must be addressed.

For the foregoing reasons, DEO and VEDO do not believe that the proposed rule should be considered for adoption at this time. But if the Commission intends to consider it, it must address several ambiguities. Key terms are susceptible to various interpretations but are not defined in the rule. For example, the new rule centers on "inactive" service lines, but there is no definition of "inactive." Without such a definition, it is not possible to know whether the LDCs and Staff even have a common understanding of what an "inactive" service line is. As discussed above, the vacant properties where incidents occurred in DEO's territory actually involved *active* accounts.

Similarly, the new rule would require operators to take "immediate action" to protect persons or property when an inactive service line is found to be "unsafe." The rule suggests that "immediate" in certain contexts means three months, but this is directly in conflict with the "immediate" actions a utility is expected to undertake when a "hazardous" gas leak is identified. This lack of clarity is problematic because anyone can argue with hindsight that any action short of "instantaneous" was not "immediate."

Additionally, the last sentence of subsection (G)(1) says that an inactive service line is considered unsafe when it "presents a threat of serious harm" to persons or property. But defining a vague term ("unsafe") with other vague terms ("threat of serious harm") does little to aid in understanding what regulatory requirements this rule imposes.

The proposed rule is also problematic in that it assumes a level of knowledge about an owner's future plans for property that gas companies simply do not possess. How is an LDC supposed to know what plans an owner has for a property? When the company or customer requests termination of service, an account becomes inactive—meaning there is no longer a "customer" associated with the account.[1] It is not obvious who an operator would need to contact to determine whether there are "definite plans" to resume gas service. Even when the responsible party may be located, the rule also presents issues regarding what constitutes "definite plans for future use." Is it enough that the responsible party expresses an intent to make use of the property, or does the modifier "definite" mean that the LDC must demand evidence of a binding commitment to use it?

[1] For purposes of the minimum service standards, "Customer" means "any person who has an agreement, by contract and/or tariff, with a gas or natural gas company to receive service or any person who requests or makes application for service from a gas or natural gas company."

Monitoring property ownership and the future, anticipated uses of gas-consuming properties would require a level of resources far in excess of what is currently available. While the benefits of the proposed rule are illusory, the costs of compliance will be very real.

C. Rule 4901:1-16-06(B) – Construction reports

Rule 4901:1-16-06 requires operators to file certain construction reports. Staff's proposal to change the monetary threshold defining an "important addition" from $200,000 to $500,000 is a welcome change. The Commission should also consider streamlining the reporting requirements in subsection (B). This subsection currently requires three reports: the first due 21 days before starting construction, the second due seven days after construction has started, and the final report due seven days after construction has been completed. The reporting requirements in subsection (B) overlap with the requirement in subsection (C) to file an annual report of all construction completed the prior year. This redundancy can be eliminated by requiring one report under subsection (B) and maintaining the annual reporting requirement under subsection (C). The new subsection (B) could read as follows:

> (B) Each operator shall submit <u>a</u> ~~three~~ report~~s~~ for each important addition on the form provided by the commission. Each report shall be submitted ~~to the chief as follows:~~
>
> ~~(1) The first report~~ not later than twenty-one days before construction work will start.
>
> ~~(2) The second report not later than seven days after construction work has started.~~
>
> ~~(3) The third report not later than seven days after construction work has been completed.~~

Under the rule as revised above, companies would continue to file reports 21 days before construction starts. This gives Commission staff notice of the project and the opportunity to inspect, if it so desires, at any time. The annual report required under subsection (c) would list all completed projects. These revisions would increase efficiency without compromising safety, and therefore should be adopted

III. CONCLUSION

DEO and VEDO appreciate the opportunity to comment on the proposed rules. For the foregoing reasons, DEO and VEDO respectfully request that the Commission act in accordance with these comments.

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Respectfully submitted,

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Summary: Comments Initial Comments electronically filed by Mr. Gregory L. Williams on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio and Vectren Energy Delivery of Ohio, Inc.