

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Adoption of Ohio       )  
Admin. Code Chapter 4901:1-2               )  
Concerning Rules Involving the               )     Case No. 15-282-AU-ORD  
Underground Technical Committee and       )  
Protection of Underground Utility            )  
Facilities.

**REPLY COMMENTS OF JOINT COMMENTERS**

**I.    Introduction**

By Entry dated May 6, 2015, the Public Utilities Commission of Ohio (“Commission”) proposed comprehensive rules to implement Substitute Senate Bill 378 (“SB 378”). Duke Energy Ohio, Columbia Gas of Ohio, Inc., Vectren Energy Delivery of Ohio, Inc., Ohio Power Company, Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, The Dayton Power and Light Company, Ohio Cable Telecommunications Association, Ohio Telecom Association and Ohio Oil and Gas Association (together “Joint Commenters”) filed their initial comments on June 1, 2015, generally supporting Staff’s proposed rules and offering several proposed clarifications to the new language.

Also on June 1, 2015, the Ohio Utilities Protection Service (“OUPS”) and the East Ohio Gas Company d/b/a Dominion East Ohio (“DEO”) filed comments in the above captioned matter. Additionally, on June 2, 2015, the American Petroleum Institute (“API”) filed its comments to the proposed rules.<sup>1</sup> Joint Commenters now file this response to the other initial comments filed in this proceeding.<sup>2</sup>

**II.   Comments**

**a.   Rule 4901:1-2-02 (L) – Definitions**

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<sup>1</sup> While API’s cover letter is dated June 1, 2015, the filing was not docketed until June 2, 2015 and therefore, is untimely. API did not file leave to file the comments on June 2, and as such, the comments should be stricken from the record.

<sup>2</sup> Joint Commenters decision not to reply to all comments filed in this proceeding may not be interpreted as Joint Commenters agreement with or acquiescence to other parties’ comments.

In its initial comments, API questions including the definition of “respondent” in the rule, arguing that it is unnecessary to define the word since it isn’t used in the rest of the rule.<sup>3</sup> This concern can be easily addressed by incorporating the word “respondent” throughout Chapter 4901:1-2 as recommended by both the Joint Commenters and DEO in its initial comments.<sup>4</sup>

Further, as argued by Joint Commenters in the initial comments, the word “respondent” should be clarified to state that a “person” who is a “respondent” is the same “person” as defined in R.C. 3781.25 and should also include the word “alleged” because no determination of culpability has been made at the time the term is defined.

The definition of “respondent,” with clarifications suggested by the Joint Commenters, is paramount to the intent of SB 378, as it clearly includes municipalities and political subdivisions. Without this definition, it would remain unclear as to whether municipalities and political subdivisions are subject to the enforcement provisions of SB 378. Therefore, the Joint Commenters request that API’s suggestion of eliminating the definition of “respondent” be rejected and instead be used throughout Chapter 4901:1-2 as recommended by Joint Commenters in the initial comments.

#### **b. Rule 4901:1-2-11(A), (D) and (G) – “Inquiry Procedures”**

In its initial comments, OUPS seeks to add the following language to subsection A of this Rule:

If, as a result of the Staff’s investigation under 4901:1-2-11(D), an inquiry is found not to be initiated in “good faith” or intentionally fraudulent, the aggrieved person responsible for that inquiry may be subject to fines and/or penalties as determined by the commission.<sup>5</sup>

While the Joint Commenters agree that requests for inquiries should not be initiated in bad faith nor should be made with fraudulent intent, we do not believe there is any statutory authority for the Commission to subject such “aggrieved persons” to fines and/or penalties as determined by the Commission.

OUPS also seeks to add language to subsection (D) to indicate that the Staff’s investigation shall be limited to whether there was a compliance failure and to determine the illegitimacy of the inquiry<sup>6</sup>. The Utility Joint Commenters believe that the Staff’s role at this point should be limited to whether or not there was a compliance failure. The

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<sup>3</sup> API did not supply formal, written comments to the rule, but rather made notes directly on the rule itself. As such, see *API* p.2, comment 2.

<sup>4</sup> See *Initial Comments of Joint Commenters*, p.1-2. See also, *Comments of East Ohio Gas Company d/b/a Dominion East Ohio*, p.5.

<sup>5</sup> See *Ohio Utilities Protection Service Response to Propose Rule Making*, p.1.

<sup>6</sup> *Id.* at 2.

legitimacy of the inquiry is best left to the determination of the underground technical committee (UTC). We urge the Commission not to accept the additional language proposed for subsection (D).

### **III. Conclusion**

For the reasons stated above, the Joint Commenters respectfully request that the Commission adopt rules consistent with the Initial Comments of Joint Commenters filed on June 1, 2015 and the instant Reply Comments.

Respectfully submitted,  
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### CERTIFICATE OF SERVICE

I hereby certify that on this 30<sup>th</sup> day of June, 2015, a true and accurate copy of the foregoing *Reply Comments of Joint Commenters* was served by ordinary U.S. mail, postage prepaid, upon the following:

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