

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Adoption of Ohio Adm. Code Chapter 4901:1-2 Concerning Rules Involving the Underground Technical Committee and the Protection of Underground Utility Facilities. |)))))) | | |
| | | | Case No. 15-0282-AU-ORD |

**COMMENTS OF
THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO**

I. INTRODUCTION

In accordance with the Commission’s May 6, 2015 Entry in this case, The East Ohio Gas Company d/b/a Dominion East Ohio (DEO) files its reply to the comments filed in this proceeding on June 1, 2015, concerning Staff’s proposed rules of Ohio Adm. Code Chapter 4901:1-2, concerning the Underground Technical Committee (UTC).

II. REPLY COMMENTS

DEO will address comments filed by the Ohio Utilities Protection Service (OUPS) and the American Petroleum Institute-Ohio (API). DEO would note that it does not address every comment filed; any silence should not be taken as support for any unaddressed comments.

A. Reply to OUPS Comments

1. Ohio Adm. Code 4901:1-2-04

OUPS recommends “the addition of a Vice Chairperson position to the UTC hierarchy.” (OUPS Comments at 1.) DEO does not necessarily oppose the creation of a new officer position, but DEO would reiterate its concern that the authorizing statute requires these rules to be adopted in “consultation” with the UTC. R.C. 4913.45(A). This concern is only amplified with respect to matters of organization and internal governance, such as the creation of new officers. DEO continues to recommend that the Commission build into the rulemaking process an opportunity

for public review and comment by the UTC prior to the adoption of the rules and the rehearing process.

2. Ohio Adm. Code 4901:1-2-11

OUPS recommends including language authorizing the imposition of fines or penalties if a party requests an inquiry without good faith or with fraudulent intent. (OUPS Comments at 1–2.) DEO does not have a position on whether such provision should be included, but if it is included, DEO recommends that the rule require the concurrence of the UTC that the request for inquiry was either fraudulent or without good faith before any aggrieved person may be fined or penalized.

3. Ohio Adm. Code 4901:1-2-19

OUPS also includes a number of recommendations regarding “damage prevention grant program procedures.” (OUPS Comments 2–4.) DEO is not necessarily opposed to these recommendations (save one mentioned below). But by law, the Commission is the entity designated to administer the grant program, and specific guidelines for the program are not specified by statute. Thus, generally speaking, DEO believes that whether and to what extent the Commission chooses to adopt given procedures by rule is a matter for its discretion.

DEO’s sole specific comment pertains to OUPS’s proposed revision to division (A)(1)(c), which follows:

~~Programs providing incentives for excavators, operators, persons who locate underground utility facilities, or other persons that serve~~ to reduce the number and severity of compliance failures.

(*Id.* at 2.) DEO is concerned that this revision changes the emphasis from programs that “provide incentives” to reduce compliance failures, to those that actually “serve” to reduce them. This, in turn, could be read to favor the funding of programs that already exist (those that have reduced failures) instead of new programs that will provide proper incentives. In DEO’s view, the point

of the grant program is to encourage the development of new programs and thus it should be open to *all* comers. The language of the existing rule is more consistent with that purpose, and thus DEO does not recommend adoption of the proposed revision.

B. Response to API Comments

1. General comment

Some of API's comments recommend certain revisions or clarifications but do not explain with particularity either the revision itself or the rationale. Without this understanding, DEO is unable to support the adoption of the following comments and recommendations:

- Comment CP1, p.2
- Comment CP4, p.5
- Comment CP5, p.8
- Revision to Ohio Adm. Code 4901:1-2-11(E), p.10
- Comment CP7, p.13
- Revision to Ohio Adm. Code 4901:1-2-15(B), p.13
- Revisions to Ohio Adm. Code 4901:1-2-18(B), p.14
- Comment CP8, p.15

2. Ohio Adm. Code 4901:1-2-02

API comments that proposed paragraph (D), concerning the Commission's ability to waive its rules, is vague and requires additional detail. (API Comments at 3.) This paragraph is a common provision in many Commission rules, and DEO does not believe that it lacks any necessary detail. The waiver rule must potentially be applied in many different circumstances, and it is appropriate that the rule should be phrased in more general terms.

3. Ohio Adm. Code 4901:1-2-08

API proposes revising paragraph (A) so it reads as follows: “Any person may ~~determine~~ access the schedule of the time, place, and purpose of all regularly scheduled, special, and emergency meetings of the underground technical committee” (API Comments at 6.)

The proposed revision assumes that there will be a schedule of *all* meetings, which DEO believes is incorrect. At a minimum, special and emergency meetings, by definition, are not scheduled in advance. Moreover, the revision would suggest that any “schedule” will also list the “place” and “purpose” of any meeting, which may not be the case. For these reasons, DEO believes that the existing language is preferable.

4. Ohio Adm. Code 4901:1-2-09

API asserts that paragraph (B) “[e]xceeds statutory intent and therefore should be removed.” (API Comments at 8.) The paragraph in question discusses discounted registration fees. DEO is not certain of the basis for API’s statement. R.C. 4913.03(A) states “the commission may lower [the \$50.00 registration fee] if the commission determines lowering the registration to be necessary.” This expressly gives the Commission discretion to lower registration fees, as paragraph (B) does. While DEO is not opposed to revising this rule (such as for the reasons proposed by the Joint Commenters), it also does not believe that the proposed rule exceeds statutory authority.

III. CONCLUSION

DEO appreciates the opportunity to comment on the proposed rules. For the foregoing reasons, DEO respectfully requests that the Commission act in accordance with its comments.

Dated: June 30, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of DEO's Reply Comments was served by electronic mail this
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Summary: Reply Comments electronically filed by Ms. Rebekah J. Glover on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio