

**MEMORANDUM**

TO: Angela Hawkins, Public Utilities Commission of Ohio

FROM: Tess Eckstein, Regulatory Policy Advocate

DATE: September 16, 2016

RE: **CSI Review – Gas Pipeline Safety (OAC 4901:1-16-02, 4901:1-16-05)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of two amended rules being proposed by the Public Utilities Commission of Ohio (PUCO). On August 12, 2016, PUCO filed emergency rules with the Joint Committee on Agency Rule Review (JCARR) to establish requirements for notification to a one-call emergency system when incidents, as defined in rule 4901:1-16-01, occur. This rule package represents the non-emergency, permanent version of those rules. It was submitted to the CSI Office on August 15, 2016, and PUCO's comment period remained open until September 2, 2016.

Rule 4901:1-16-02 details the purpose and scope of Chapter 4901:1-16, which prescribes gas pipeline safety requirements and procedures for administering and enforcing the gas pipeline safety code. An amendment is being proposed to incorporate recent changes to the Code of Federal Regulations, by updating an effective date specified in the rule language. Rule 4901:1-16-05 requires notice and reports of service failures and incidents, post-incident testing, a 24-hour contact report, and establishment of a cast iron distribution pipeline system program. Proposed amendments pertain only to the section of the rule requiring telephone notice of incidents and service failures. Specifically, amendments to this rule incorporate a one-call emergency notification system, which serves as a single point of contact for several agencies to receive notice of specified incidents and service failures involving the oil and gas industry. Notification calls must be made within 30 minutes of discovery.

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The rules impact all natural gas pipeline operators who are regulated by PUCO. Potential adverse impacts from the rules include making the required phone call and writing and sending reports regarding incidents and service failures. In addition, while PUCO is not focused on seeking penalties when an entity fails to file the required, post-incident, written report, there could be consequences for an entity that violates 4901:1-16-05. Before any consequence would be imposed, however, the regulated entity would have an opportunity to offer explanation as to why there should be no consequences for failure to file the report. The rules prescribe gas pipeline safety requirements with the intention of protecting public health and safety, as well as ensuring the operational safety of natural gas infrastructure in Ohio. The proposed revisions to the rules identify a single point of contact for notification in the event of an emergency, which will increase efficiency and streamline the reporting process for the affected utilities, thereby saving them time and money.

During PUCO's workshop on August 25, which was open to interested stakeholders and the general public, three stakeholders offered comments on 4901:1-16-05, each of which was filed in writing with PUCO on September 2, during its formal comment period. In addition to these comments, two other stakeholders at the workshop expressed support for the proposed changes to the rules. PUCO provided notice of the workshop to all regulated natural gas companies, pipeline companies, certified retail natural gas service suppliers, the Ohio Consumers' Counsel, the Ohio Gas Association (OGA), the Ohio Oil and Gas Association, the American Petroleum Institute-Ohio (API-Ohio), and the Commission's gas pipeline listserv.

PUCO received three comments during its public comment period. Dominion East Ohio (DEO) and OGA expressed concern that the reduced notice time might create an incentive to over-report, which could result in a waste of agency resources, create an administrative burden for operators, and reduce the effectiveness of notices. DEO also contended that the 30-minute requirement might not be necessary under state and federal law, and that the requirement actually exceeds the federal requirement for notice within one hour of confirmed discovery. Therefore, DEO and OGA recommended that the rule clarify what constitutes "discovery" of an incident. Specifically, both stakeholders recommended adopting the term "confirmed discovery," which reflects language used in federal law and could also help reduce over-reporting. Furthermore, while API-Ohio did not propose substantive changes to the rules, it questioned the existence of an immediate need that justified the use of emergency rulemaking authority for these rule revisions. It also encouraged PUCO to consider its own internal policies and processes to incorporate opportunities for stakeholder input and collaboration, to the extent feasible, when rules are drafted or revised on an emergency basis.

In response to these comments, PUCO did not make any changes to the rules. It did, however, provide responses to comments by way of its Finding and Order, which was filed on September 14. In response to the recommendation from DEO and OGA, PUCO agreed that the requirement to report within 30 minutes of discovery should be clarified, and thus stated in its Finding and Order that "operators are required to provide notification within 30 minutes of discovering the situation

and confirming that the situation does, in fact, constitute an incident or service failure involving an interruption of service to 100 or more customers for a period of two hours or more.” Finally, it addressed API-Ohio by stating that it determined that “the public safety and environmental concerns underlying the State’s implementation of the one-call emergency notification system for oil- and gas-related emergencies necessitated the emergency rulemaking in this case, in order to preserve and enhance the health and safety of Ohio citizens.” The CSI Office felt that all concerns were satisfactorily addressed, and no further comments were submitted indicating that the rules are overly burdensome. Therefore, the CSI Office has determined the purpose of the rules to be justified.

Recommendations

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Public Utilities Commission of Ohio should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor’s Office