

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Amendment of)	
Provisions of Chapter 4901:1-16, Ohio)	Case No. 00-2043-GA-ORD
Administrative Code.)	

ENTRY ON REHEARING

The Commission finds:

- (1) On January 24, 2002, the Commission adopted a number of modifications to the administrative rules contained in Chapter 4901:1-16, Ohio Administrative Code (O.A.C.). This chapter contains rules for delineating the gas pipeline safety (GPS) requirements in Ohio, as well as the means for administering and enforcing those requirements. The Commission conducted this rule review in accordance with Section 119.032, Revised Code.
- (2) On March 27, 2002, the Commission made further modifications to the adopted revised rules. Also on March 27, 2002, the Commission deferred a ruling upon an application for rehearing filed by the Ohio Oil & Gas Association (OOGA) in this proceeding.
- (3) On April 5, 2002, the Commission filed its proposed revisions to the rules in Chapter 4901:1-16, O.A.C.,¹ with the Joint Committee on Agency Rule Review (JCARR). On May 29, 2002, the Commission withdrew its April 5, 2002 filing at JCARR. As a result, the rules in Chapter 16 have not been revised since October 1994.
- (4) By entry dated August 18, 2004, the Commission noted its intention to move forward with OOGA's application for rehearing and also recognized that the federal statute and regulations appended to rules 16-02 and 16-03 by the March 27, 2002 decision are not current.² Given the changes in the law

¹ For ease of reference in this decision, we will simply refer to the individual rules in Chapter 4901:1-16 as "rule 16-__" and the chapter as "Chapter 16".

² Our intention in 2002 in adopting certain federal requirements, appending them to rules 16-02 and 16-03 and referring to them in other parts of Chapter 16 was to comply with Section 111.15, Revised Code, as had been interpreted by the 10th District Court of Appeals in an unrelated lawsuit. See, *B&T Express Inc. v. Pub. Util. Comm.* (2001), 145 Ohio App. 3d 656. Moreover, we intended to mirror federal GPS regulations, as appropriate. After making the filing with JCARR, however, Section 111.15, Revised Code,

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since March 2002, the staff developed further proposed revisions to several rules in Chapter 16 and, in our August 18, 2004 entry, we sought comments upon those additional changes.

- (5) Additional comments were filed by OOGA and Oleska and Associates (Oleska) on September 2 and 7, 2004, respectively. We now address OOGA's application for rehearing and September 2004 comments, the staff's recent suggested revisions and Oleska's September 2004 comments.
- (6) OOGA argues in its application for rehearing that the Commission's January 2002 decision is unreasonable because it fails to include a definition for "production facility". OOGA contends that the term "production facility" is used when defining "gathering lines" and, without further delineation, there is not sufficient distinction between a "gathering facility potentially regulated by the Commission and a production facility potentially regulated by the Ohio Division of Mineral Resources Management." OOGA indicates that the point where a production facility ends and a gathering facility begins has been the subject of debate. OOGA suggests that Rule 16-01 separately include a definition of "production facility" as it is defined in the American Petroleum Institute's Recommended Practice 80 (API RP80).³ API RP80 is a published industry standard that was developed while the Office of Pipeline Safety of the U.S. Department of Transportation (USDOT) was conducting a rulemaking to define "gathering line".

OOGA lists in its September 2004 comments the federal activities related to developing a definition of "gathering line" that have taken place since early 2002. OOGA notes its belief that the USDOT hopes to publish proposed changes to the federal GPS regulations by the end of this year. Since the Ohio GPS requirements are intended to conform with the federal

was modified. See, Substitute Senate Bill 265 of the 124 General Assembly. Now, if an administrative rule incorporates a text or other material by reference, the administrative agency must comply with Sections 121.71 to 121.76, Revised Code.

³ API RP80 defines "production facility" as: piping and equipment used for production and preparation for transportation or delivery of hydrocarbon gas and/or liquids and includes the following processes: (a) extraction and recovery, lifting, stabilization, treatment, separation, production processing, storage, and measurement of hydrocarbon gas and/or liquids; and (b) associated production compression, gas lift, gas injection, or fuel gas supply (API RP 80, at 6). It also sets forth definitions for various associated concepts and applications.

GPS requirements and changes are expected to the federal GPS requirements, OOGA urges the Commission to refrain from taking further action now.

- (7) As OOGA correctly points out, the definitions in Chapter 16 that we adopted in 2002 do not include a definition for "production facility". We defined "gathering line" as "a pipeline that transports gas from a current production facility to a transmission line or main." This definition of gathering line still corresponds with the current USDOT's gathering line definition (see, 49 C.F.R. 192.3), as explicitly required by Section 4905.90(C), Revised Code. Currently, there is no definition for "production facility" in the federal GPS definitions. We have no intention of establishing definitions that might alter the meaning of gathering lines in Ohio such that the meaning is not the same as that in the Natural Gas Pipeline Safety Act and the rules adopted by the USDOT. After all, we are prohibited by Section 4905.90(C), Revised Code, from doing such. Thus, the question before us is whether adoption of OOGA's proposed definition of "production facility" would make our GPS rules clearer and also enable our definition of "gathering line" to have the same meaning as set forth on the federal level. We are not convinced that Ohio would still have the same definition for gathering line as its federal counterpart, if we adopted the production facility definition advocated by OOGA. After all, the definition of gathering line is directly affected by the term production facility.⁴

Moreover, we have practical concerns related to OOGA's suggestion. OOGA points out, in its 2002 application for rehearing, that the USDOT is in the process of a rulemaking to consider the definitions of gathering lines and production facility. That rulemaking proceeding has still not been completed. Thus, it is possible that the USDOT might not alter the current federal regulations on this point. Moreover, it is also possible that the USDOT might alter the current regulations on this point, but not in the manner suggested by the industry in APRI RP80. Therefore, to accept OOGA's

⁴ This conclusion is further bolstered by the fact that API RP80 is actually an industry document that attempts to define gathering lines for the purpose of "providing users with a practical guide for determining the application of the definition of gas gathering in the federal Gas Pipeline Safety Standards, 49 C.F.R. Part 192, and state programs implementing these standards" (API RP80, at 1). This document also defines production operations in order to "describe where the gathering function begins" or to "enhance the implementation of the gathering line definition" (API RP80, at 2, 6).

definition could cause us to later change our production facility definition to mirror federal regulations.⁵

Finally, OOGA argues that the API RP80 serves as the federal "governing standard absent a final rulemaking on the issue". If OOGA is correct on this point, API RP80 would apply under the rules that we adopt today because we are mirroring the federal GPS requirements. In such case, we see no need to specifically adopt the standard as Ohio's definition of production facility prior to the federal rulemaking. If OOGA is not correct on this point, then adoption of API RP80's definition of production facility would cause Ohio's GPS rules to not conform with Section 4905.90, Revised Code. For these reasons, we conclude that, from a legal and practical standpoint, we should not adopt OOGA's suggested definition of production facility. Therefore, we deny OOGA's application for rehearing.

Furthermore, OOGA has most recently suggested that we not proceed with the issue of defining "gathering line" because it believes that the USDOT hopes to publish proposed changes by the end of the year. We have held off on this issue for nearly three years and nothing has occurred. As OOGA acknowledges, the Ohio GPS requirements are intended to conform with the federal GPS requirements. We believe it is important that those subject to the GPS rules are on notice of the most current federal GPS regulations. We do not believe that it is wise to continually defer a ruling on this issue or to hold up the other revisions for Chapter 16. At this point, we prefer to finish our review of Chapter 16 and make the statutorily required filing with JCARR, which includes appropriate rule changes that correspond with the current federal GPS requirements. We note, however, that should the USDOT make changes to the federal GPS regulations in the near future, as OOGA expects, we are compelled to follow and enforce the federal GPS regulations. Thus, if the federal rules change to include a workable definition for production operation, we would be bound by the new federal definition.

⁵ There certainly is the possibility that we may, nevertheless, have to modify our definitions if we choose not to accept OOGA's definition and if the USDOT does make changes. However, we make this point to explain that adoption of OOGA's suggestion for the definition of production facility could nevertheless require us to undergo another rule change for a definition that has been proposed by the industry for quite a while and has still not been adopted by the USDOT.

- (8) In OOGA's September 2004 comments, it also raised concerns with several other aspects of the Commission's 2002 adopted revisions. More specifically, OOGA's made suggestions for rules 16-01(J), 16-01 (L), 16-01(T), 16-03, 16-05(D) and 16-06. OOGA did not raise these arguments in its February 2002 rehearing. Moreover, OOGA's September 2004 comments are unrelated to the staff's proposed edits in August 2004. For these reasons, we could conclude that the suggestions are untimely rehearing requests and may not be addressed by the Commission. However, we are also aware that this rule review proceeding has taken an unusual course and we wish to finalize revisions to Chapter 16 that are fully consistent with state and federal requirements, as appropriate. Therefore, we have looked at each of these suggestions.

Nothing that OOGA stated about the adopted definitions in rules 16-01(J), 16-01(L), and 16-01(T) convinces us that we should make further changes. Those adopted definitions make sense for Chapter 16, follow Ohio GPS statutory requirements, and are consistent with current federal GPS requirements. Furthermore, we do not agree with OOGA's suggestions for rules 16-03, 16-05(D) and 16-06. Our adopted changes do not impact the import of the requirements in those rules; the basic requirements remain as they have since 1991. However, our shifting in 2002 of the telephone notice and reports requirements in 16-03 (moved to 16-05(A)) and our re-lettering of the provisions in 16-05 admittedly creates potential confusion when one compares Section 4905.91(C), Revised Code, the 1991 rules, and the 2002 adopted version of rules 16-03 and 16-05(D). To eliminate that confusion, we have added a clarifying sentence to 16-03 (to acknowledge the telephone notice and report requirement and note that it is now in rule 16-05) and we re-lettered rule 16-05 to keep the 24-hour contact requirement as provision (D).

- (9) In its September 2004 comments, Oleska states that the definition of "incident" (which was not changed substantively in 2002 but was re-lettered as 16-01(I)(3)) does not take into account the fact that property damage can involve damage to the environment or to property other than the pipeline facility. As a result, Oleska notes that the definition of "incident" is not consistent with the federal counterpart (see, 49 C.F.R. 191.3).

We agree with Oleska. The federal definition's concept of property damage is not limited to the pipeline facility (in fact, it specifically references property damage of the operator or others or both). We want our definition of "incident" to correspond with the corresponding aspects of the federal definition of "incident" (and it largely does), but not sufficiently. We are, therefore, appropriately revising rule 16-01(I).

- (10) We hereby adopt the staff's August 2004 proposed revisions to rules 16-02 and 16-04, and the other proposed revisions in rules 16-01, 16-03, and 16-05 that were not otherwise discussed in this decision. We have also added the phrase "whichever is sooner" to rule 16-04(I)(3) to provide better direction as to when reevaluations shall be completed for grade three leaks. For clarity, we affirm our January 2002 adoption of revisions to rules 16-06 through 16-13 and our March 2002 adoption of revisions to rule 16-14.

It is therefore,

ORDERED, That the application for rehearing filed by OOGA is denied. It is, further,

ORDERED, That the attached proposed rules 4901:1-16-01, 4901:1-16-03, 4901:1-16-04 and 4901:1-16-05, O.A.C., as we have further modified them today, be adopted. It is, further,

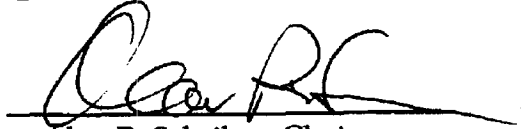
ORDERED, That rule 4901:1-16-02, as proposed by the staff in August 2004, be adopted. It is, further,

ORDERED, That copies of the further amendments to rules 4901:1-16-01, 4901:1-16-02, 4901:1-16-03, 4901:1-16-04 and 4901:1-16-05, O.A.C., as set forth in this entry on rehearing (along with the other amendments to the rules in this chapter that were amended by the January 24 and March 27, 2002 decisions) be filed with the Joint Committee on Agency Rule Review, the Legislative Service Commission, and the Secretary of State pursuant to Section 111.15, Revised Code. It is, further,

ORDERED, That the five-year review date for the proposed amendments to the rules in Chapter 4901:1-16, O.A.C., be September 30, 2009. It is, further,

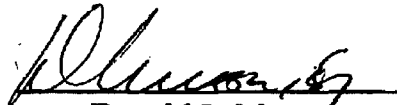
ORDERED, That a copy of this Entry on Rehearing be served upon all commenters, all natural gas companies in Ohio, all operators in Ohio, and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman


Ronda Hartman Fergus

Judith A. Jones


Donald L. Mason

Clarence D. Rogers, Jr.

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Renee J. Jenkins
Secretary