

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:	July 15, 2008)	
)	
PETITION OF ATMOS ENERGY CORPORATION)	DOCKET NO.
FOR A WAIVER TO PERMIT THE LIMITED USE)	07-00251
OF POLYETHYLENE PIPING)	

ORDER

This matter came before Chairman Eddie Roberson, Director Tre Hargett, and Director Sara Kyle, of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on June 23, 2008 for consideration of the *Petition* of Atmos Energy Corporation (“Atmos” or “Company”) for a waiver to permit the limited use of polyethylene (“PE”) piping in natural gas distribution systems.

PROCEDURAL BACKGROUND

On November 13, 2007, Atmos filed a *Petition* for a waiver from certain Minimum Federal Safety Standards (MFSS) to permit the limited use of PE piping in its natural gas distribution systems. On March 25, 2008, Atmos filed an *Amended Petition* which corrected a paragraph numbering error in the original *Petition* but which made no substantive change in the relief sought from the Authority.

On April 30, 2008, a *Notice of Public Hearing* was filed which provided that a public hearing would be conducted in this matter during the Authority Conference scheduled for May 19, 2008. On May 9, 2008, the testimony of Earnest B. Napier (“Mr. Napier”), the Company’s Vice President of Technical Services for the KY/Mid-States Division, was pre-filed. On May 12, 2008, the affidavit of Larry K. Borum (“Mr.

Borum”), TRA Chief of the Gas Pipeline Safety Division, was filed.

On May 15, 2008, Mr. Napier filed an affidavit stating that proper notice of the May 19, 2008 hearing had been given to the public by publication of the public hearing notice in the newspapers of general circulation in the Company’s service territories in Tennessee. On June 13, 2008, a *Notice of Resumption of Public Hearing* (“Notice”) was filed. The *Notice* stated that the public hearing held on May 19, 2008 had been continued for the Authority to gather information about a complaint that had been made about gas leaks in the Morristown area and that the public hearing was set to resume at the Authority Conference scheduled for June 23, 2008.

On June 13, 2008, Mr. Borum filed a memorandum outlining his findings regarding the complaint. On June 17, 2008, Mr. Napier filed an affidavit stating that that proper notice of the June 23, 2008 hearing had been given to the public by publication of the public hearing notice in the newspapers of general circulation in the Company’s service territories in Tennessee.

THE AMENDED PETITION AND TESTIMONY OF MR. NAPIER

Atmos’ *Petition* requests that the use of a 0.40 design factor be allowed in order for the Company to make more effective design and safety decisions. Through this waiver Atmos seeks to increase the minimum wall thickness from 0.0625 inches, which is in accordance with present code, to 0.09 inches.

Mr. Napier is a Registered Professional Engineer in Tennessee and has been employed with Atmos over twenty-five years in various capacities. In his current role, Mr. Napier has decision-making responsibility for technical operations, including engineering

and system design, safety and compliance.¹

Mr. Napier's testimony in support of the waiver request states the reason for the request by Atmos; describes recent regulatory changes regarding the use of PE piping materials, and explains the testing of the 0.40 design factor and how Atmos intends to implement that design factor. Mr. Napier states the Company needs to explore ways in which to safely optimize the operation of natural gas facilities as demands continue to increase on Atmos as a natural gas distribution system. According to Mr. Napier, the 0.40 design factor has been successfully tested at pressures twice that of maximum operating pressures under the supervision of the Joint Industry Increase in Design Factor Committee. Atmos intends to install no more than five miles of PE pipe in various locations utilizing PE 2708, PE 3710 and PE 4710 on a trial basis. Atmos will maintain records to monitor the performance of the PE pipe installations.²

PUBLIC COMMENT

The public hearing in this matter was convened by the panel at the regularly scheduled May 19, 2008 Authority Conference. After hearing testimony regarding the *Amended Petition*, the panel invited the public to comment. Mr. Paul Whetstone, of Morristown, Tennessee, sought recognition. Mr. Whetstone, an Atmos customer, testified about his concerns regarding gas leaks near his home in Morristown. After receiving Mr. Whetstone's comments, the panel decided to continue the hearing and directed Mr. Borum to undertake investigation of Mr. Whetstone's complaint. Mr. Borum filed a memorandum on June 13, 2008 outlining his findings.

¹ Prefiled Direct Testimony of Earnest B. Napier, P.E. pp. 1-2 (May 9, 2008).

² *Id.*, pp. 2-6.

The panel re-convened the public hearing at the regularly scheduled Authority Conference held on June 23, 2008. The panel first addressed the issue of the status of Mr. Whetstone's complaint. Mr. Whetstone was not present at the hearing. The TRA General Counsel confirmed that Mr. Whetstone had been notified of the hearing. The Authority requested that Mr. Borum update the panel on the situation. Mr. Borum provided an overview of the investigation undertaken by the TRA Staff of the Gas Pipeline Safety Division. He outlined the problems discovered and the Company's successful efforts to rectify the problems. Mr. Borum stated that based upon his conversation with Mr. Whetstone he believed that Mr. Whetstone was satisfied that his request for assistance had been answered. Counsel for Atmos stated that it was his understanding that the Company had already planned to replace the pipe in the area in question even before Mr. Whetstone expressed his concerns to the Authority. Counsel further explained that the pipe replacement has now been completed, and it is his understanding that Mr. Whetstone was completely satisfied.

After the update on Mr. Whetstone's complaint, the panel resumed the public hearing and asked if there were any other members of the public that wished to comment on the docket. No one from the public sought recognition, and the panel proceeded to deliberate the merits of the *Amended Petition*.

FINDINGS AND CONCLUSIONS

The TRA derives its jurisdiction and authority to consider this request from specific state and federal statutes. State authority is provided through Tenn. Code Ann. § 65-4-117 and § 65-28-106. Under Section 65-4-117(a)(4), the TRA has the power to:

After hearing, by order in writing, ascertain and fix adequate and serviceable standards for the measurement of quantity, quality, pressure, voltage, or other condition, pertaining to the supply of the product or service rendered by any public utility, and to prescribe reasonable regulations of examination, test and measurement of such product or

service;

Tenn. Code Ann. § 65-28-106 extends jurisdiction and power to the TRA to implement and enforce certain federal safety standards set forth in Title 49 of the United States Code. Section 65-28-106(a) specifically provides:

(a) The authority has the right, power and authority to provide and make certifications, reports and information to the secretary of the United States department of transportation; to enter into agreements with the secretary to carry out the purposes of §§ 65-28-104 – 65-28-111; to enforce safety standards in the state of Tennessee including enforcement of federal safety standards and permitted in the Natural Gas Pipeline Safety Act, 49 U.S.C. § 60101 et seq.; and to exercise regulatory jurisdiction over the safety of pipeline systems and transportation of gas in accordance with permission granted by the Natural Gas Pipeline Safety Act, 49 U.S.C. § 60101 et seq.

Tenn. Code Ann. § 65-28-105 mandates compliance by natural gas pipeline systems in the state with safety standards as follows:

All pipeline systems used in this state shall be constructed, operated and maintained in such a manner as to at all times be in compliance with the defined minimum safety standards and amendments thereto, as well as such additions and amendments as may be ordered by the authority from time to time.

In considering a request for waiver of the requirements in 49 C.F.R. §§ 192.121 and 192.123 (a), the Authority must comply with certain requirements as set forth in 49 U.S.C. §60118. The pertinent sub-sections (c) and (d) of Section 60018 are set forth below:

Sec. 60118. Compliance and Waivers

(c) Waivers by Secretary.

On application of a person owning or operating a pipeline facility, the Secretary by order may waive compliance with any part of an applicable standard prescribed under this chapter on terms the Secretary considers appropriate, if the waiver is not inconsistent with pipeline safety. The Secretary shall state the reasons for granting a waiver under this subsection. The Secretary may act on a waiver only after notice and an opportunity for a hearing.

(d) Waivers by State Authorities.

If a certification under section 60105 of this title or an agreement under section 60106 of this title is in effect, the State authority may waive compliance with a safety standard to which the certification or agreement applies in the same way and to the same extent the Secretary may waive compliance under subsection (c) of this section. However, the authority must give the Secretary written notice of the waiver at least 60 days before its effective date. If the Secretary makes a written objection before the effective date of the waiver, the waiver is stayed. After notifying the authority of the objection, the Secretary shall provide a prompt opportunity for a hearing. The Secretary shall make the final decision on granting the waiver.

Subsections (c) and (d) of 49 U.S.C. § 60118 have been interpreted through the United States Department of Transportation's *Guidelines for States Participating in the Pipeline Safety Program* (Revised December 2007). This publication by PHMSA provides specific criteria for state agencies to follow in considering a request for a waiver of federal regulations involving intrastate pipelines. The PHMSA's criteria are found in Chapter 3 as follows:

3.2.2 Intrastate Pipelines

Upon application by an operator, a State agency may consider a waiver of pipeline safety requirements subject to PHMSA concurrence. A waiver may be granted when it is not practical for an operator to comply with a regulation of general applicability. The State agency is encouraged to consult with PHMSA on the appropriateness of granting a waiver before formal action is taken.

A State agency must notify PHMSA in writing by registered or certified mail of each waiver granted by the state. The written notice and hearing requirements may be omitted if the State agency finds that notice is impracticable, unnecessary, or not in the public interest. A notice may be published by any method authorized by State law.

If a State agency finds that a waiver request is consistent with pipeline safety and is justified, it may issue written approval under such terms and conditions as are appropriate. Written approval should include a statement of reasons for granting the waiver.

If a State agency finds that a waiver request is not consistent with pipeline safety or is not otherwise justified, it must issue written denial of the request. Written denial should include a statement of reasons.

A State agency must notify PHMSA in writing by registered or certified mail of each waiver granted by the State. Each notice must provide the following information:

1. The name, address, and telephone number of the applicant

2. The safety regulation involved
 3. A description of the pipeline facilities involved
 4. The justification for approving the waiver, including the reasons why the regulations are not appropriate and why the waiver is consistent with pipeline safety
 5. A copy of the State agency's order or letter to the applicant
- PHMSA will acknowledge receipt of each notice and consider each in the order it was received. PHMSA may provide further opportunity for public comment.

If PHMSA does not object to the waiver, it will so notify the State agency. The waiver is effective upon approval by PHMSA or no action by PHMSA 60 days after the receipt of waiver from State agency. If, before a waiver is to become effective, PHMSA notifies the State agency that it objects to the waiver, the action granting the waiver will be stayed. PHMSA will then allow the State agency an opportunity to present its arguments with opportunity for a hearing. Thereafter, PHMSA will make the final determination whether the waiver may be granted and will notify the State agency of its decision.³

Based upon the record as a whole, the panel found that the requested waiver will not endanger public safety or the integrity of the pipeline and that the waiver should be approved subject to the conditions⁴ set forth in Mr. Borum's affidavit and review by the U.S. Department of Transportation. In light of these findings, the panel voted unanimously

³ *Guidelines for States Participating in the Pipeline Safety Program*, pp. 10-11 (Revised December 2007).

⁴ The conditions are:


- (1) Operation at the installed pressure of any distribution pipe installed under this waiver would be allowed to continue, unless the joint industry steering committee of the Increase in Design Factor (IDF) program determines that in-service operating experience does not warrant continued efforts relating to future rule-making initiatives by the DOT in the area of an increased design factor. At that time, future operating conditions of the subject distribution pipe would be based on direction from the IDF joint industry steering committee and the TRA.
- (2) Atmos will perform testing of samples (pipe and fittings) removed from two (2) of the sites of installation after two (2) years and after seven (7) years of service life. The testing will include various industry accepted tests including, but not limited to, material property characterization tests and long term performance tests as agreed upon by the joint industry steering committee and the TRA. All test data shall be made available to the TRA.
- (3) Atmos will monitor and record the internal pressure on the pipe on a continuous basis at the two locations where samples will be removed for testing under Item 2. *Affidavit of Larry K. Borum*, p. 2 (May 12, 2008).

to grant the waiver of 49 C.F.R. §§ 192.121 and 192.123(a) of the MFSS to permit the use of a 0.40 design factor for a polyethylene pipe system within the area specified subject to the three conditions as set forth in Mr. Borum's affidavit and review by the U.S. Department of Transportation. The panel further voted that the waiver would become effective sixty days after the receipt of the order by the U.S. Department of Transportation.

IT IS THEREFORE ORDERED THAT:

1. The request by Atmos Energy Corporation for waiver of 49 C.F.R. 192.121 and 192.123(a) of the Minimum Federal Safety Standards is approved, subject to the conditions set forth herein.

2. This Order will become effective sixty days from the date it is received by the U.S. Department of Transportation.

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Eddie Roberson, Chairman

A handwritten signature in black ink, appearing to read "Tre Hargett", written over a horizontal line.

Tre Hargett, Director

A handwritten signature in black ink, appearing to read "Sara Kyle", written over a horizontal line.

Sara Kyle, Director