

January 24, 2019

**SHOW CAUSE PROCEEDING AGAINST THE CITY
OF CLARKSVILLE, TENNESSEE FOR VIOLATIONS
OF THE TPUC GAS PIPELINE SAFETY RULES,
APPLICABLE FEDERAL LAW, AND FOR FAILURE
TO COMPLY WITH SETTLEMENT AGREEMENT**

DOCKET NO.
17-00139

This matter came before Chair Robin L. Morrison, Commissioner Herbert H. Hilliard and Commissioner John Hie of the Tennessee Public Utility Commission (“TPUC” or “Commission”), the voting panel assigned to this docket, during a regularly scheduled Commission Conference held on December 17, 2018, for consideration of the *Joint Petition to Approve Settlement Agreement* (“*Joint Petition*”) filed by the Gas Pipeline Safety Division (“GPSD” or “Party Staff”) of TPUC and the City of Clarksville, Tennessee (“Clarksville” or “City”) (collectively “Joint Petitioners”) on December 7, 2018, requesting approval of a Settlement Agreement resolving issues of dispute between the Parties.

GPSD is conferred with the authority “to enforce safety standards in the state including enforcement of federal safety standards as permitted in the Natural Gas Pipeline Safety Act (49 U.S.C § 60101 *et seq.*)...”.¹ In addition, the GPSD also exercises regulatory jurisdiction over the safety of pipeline systems under the permission granted in the Natural Gas Pipeline Safety Act.²

² *Id.*

GPSD carries out the enforcement of these safety standards by conducting safety inspections of the pipeline systems over which it has jurisdiction.

Clarksville is a municipality authorized to transport, distribute and sell natural gas within the Clarksville city limits pursuant to its city charter. Clarksville is an operator subject to the GPSD's enforcement jurisdiction. GPSD conducted a safety inspection of the City on December 1-3, 2015, after which it issued Inspection Report 15-168 (the "Inspection Report").³ In the Inspection Report, GPSD cited the City for violations of federal and state regulations relating to leakage surveys. Clarksville was cited for failure to comply with 49 CFR 192.747 concerning leakage surveys and assessed a civil penalty.⁴

The City availed itself of the opportunity to respond to the Inspection Report and to meet with the Director of GPSD to resolve violations in an informal meeting, as provided in Tenn. Rules & Regs. 1220-4-5-.47(6)(a)-(b). A settlement was reached at the informal conference held in April of 2016 to resolve the violations. However, GPSD advised Clarksville that an August 1, 2017 inspection indicated non-compliance with the settlement.⁵

GPSD and Clarksville engaged in some informal discussions subsequent to the notice of non-compliance, but were unable to come to a resolution. As no resolution was reached following the discussions, Party Staff requested the opening of a show cause docket. The Commission opened a docket and appointed a Hearing Officer to determine whether a Show Cause Order should be issued against the City upon the filing of a petition by Party Staff.⁶

Prior to the filing of a formal *Petition to Show Cause* by Party Staff, the Joint Petitioners filed an executed *Settlement Agreement* with the Commission on December 7, 2018.⁷ In addition,

³ *Memorandum*, p.1, (March 27, 2018).

⁴ *Id.* at 2.

⁵ *Id.*

⁶ *Order Appointing Hearing Officer*, (December 15, 2017).

⁷ *Settlement Agreement*, (November 20, 2018).

the Clarksville and GPSD filed the *Joint Petition to Approve Settlement Agreement* seeking the Commission's approval of the *Settlement Agreement*.⁸

THE PROPOSED SETTLEMENT AGREEMENT

The *Settlement Agreement* filed by the Joint Petitioners resolves all issues of dispute with regard to the Inspection Report, closing the matter except for enforcement of the *Settlement Agreement*. The terms of the *Settlement Agreement*, in summary, are that:

1. Clarksville will pay a civil penalty of \$11,863 to the Commission;
2. The *Settlement Agreement* has no precedential effect in any future proceeding and is not binding except to the limited extent necessary for the enforcement and implementation of the provisions of the *Settlement Agreement*; and,
3. The *Settlement Agreement* is not an admission or a waiver of a position held by either Party.

The *Settlement Agreement* also reserves certain rights in the event that the agreement is rejected in whole or in part by the Commission.⁹

HEARING ON THE MERITS

A Hearing in this matter was held before the voting panel of Commissioners during the regularly scheduled Commission Conference on December 17, 2018, as noticed by the Commission on December 7, 2018. Participating in the Hearing were:

Gas Pipeline Safety Division of the Tennessee Public Utility Commission - Ryan McGehee, Esq., Tennessee Public Utility Commission, 502 Deaderick Street, 4th Floor, Nashville, Tennessee 37243.

City of Clarksville, Tennessee - Melvin J. Malone, Esq., Butler Snow, 150 3rd Avenue South, Suite 1600, Nashville, Tennessee 37201.

During the Hearing, Mr. McGehee presented the *Settlement Agreement* to the Commission and was subject to questions before the panel.

⁸ *Joint Petition to Approve Settlement Agreement*, (December 7, 2018).

⁹ *Settlement Agreement*, (November 20, 2018).

COMMISSION AUTHORITY IN GAS PIPELINE SAFETY MATTERS

The Commission is granted authority to assess fines and penalties for violations of federal and state gas pipeline laws and regulations in Tenn. Code Ann. § 65-28-108, which provides:

(a) Any person who violates §§ 65-28-104 -- 65-28-111, or of any regulation issued under such sections, is subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each such violation for each day that such violation persists, except that the maximum civil penalty shall not exceed five hundred thousand dollars (\$500,000) for any continuing series of violations.

(b) Any civil penalty may be compromised by the commission. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, shall be paid within thirty (30) days after the determination to the commission, to be used for the purposes of §§ 65-28-104 -- 65-28-111; and, if not paid within such time, may be recovered in a civil action brought by the commission in the chancery court of any county in which a violation exists.

The Commission is given wide authority by the statute to compromise with regard to a civil penalty assessed. However, in the exercise of this authority, the Commission must consider the factors set out in subsection (b): the size of the business; gravity of the violation; and the good faith of the person charged in attempting to achieve compliance.¹⁰

FINDINGS AND CONCLUSIONS

Upon conclusion of the Hearing, the voting panel conducted deliberations in this matter. In considering the statutory factors concerning compromises in these matters, the panel found that total amount agreed upon in compromise to be paid by Clarksville is approximately 0.5% of

¹⁰ Tenn. Code Ann. § 65-28-108(b) (West Supp. 2018).

the total Operating Expenses of the Clarksville Gas Department for fiscal year 2018,¹¹ and that such amount is an appropriate amount of penalty based upon a compromise.

Second, with regard to the gravity of the violation, the panel found that conducting leakage surveys and maintaining records concerning leakage surveys are matters of distribution system maintenance. The panel found that issues such as these are generally found to be minor violations associated with maintenance routines and accordingly, the violation level is congruent with the amount to be paid in final satisfaction of this matter.

Finally, the panel found that the City's willingness to bring a dispute that was initiated in December 2015 to final resolution to be evidence of the City's good faith in achieving compliance with state and federal gas safety regulations and law. The panel found that this *Settlement Agreement* will allow for future inspection, monitoring and engagement between GPSD and the City to proceed without the cloud of an ongoing dispute between the parties, which could hinder interactions.

After review and consideration of the evidentiary record in this proceeding, the voting panel found that the *Settlement Agreement* was a reasonable compromise and in the public interest. Accordingly, the panel voted unanimously to approve the December 7, 2018 *Settlement Agreement* as filed jointly by GPSD and Clarksville.

IT IS THEREFORE ORDERED THAT:

1. The *Joint Petition* filed by the Gas Pipeline Safety Division of the Tennessee Public Utility Commission and the City of Clarksville, Tennessee on December 7, 2018 is approved. A copy of the *Settlement Agreement* is attached to this Order as Exhibit 1 and is incorporated in this Order as if fully rewritten herein.

2. Any person who is aggrieved by the Commission's decision in this matter may

¹¹ *The City of Clarksville Fiscal Year 2019 Budget*, p. 5, available at <http://www.cityofclarksville.com> (June 30, 2018).

file a Petition for Reconsideration with the Commission within fifteen days from the date of this Order.

3. Any person who is aggrieved by the Commission's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

Chair Robin L. Morrison, Commissioner Herbert H. Hilliard and Commissioner John Hie concur.

ATTEST:

A handwritten signature in cursive script, appearing to read "Earl Taylor", is written above a horizontal line.

Earl R. Taylor, Executive Director

EXHIBIT 1

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

IN RE:

**SHOW CAUSE PROCEEDING AGAINST CITY OF
CLARKSVILLE, TENNESSEE FOR VIOLATIONS
OF THE TPUC GAS PIPELINE SAFETY RULES,
APPLICABLE FEDERAL SAFETY REGULATIONS
AND LAW AND FOR FAILURE TO COMPLY
WITH SETTLEMENT AGREEMENT**

**DOCKET NO.
17-00139**

SETTLEMENT AGREEMENT

In order to bring this matter to a conclusion, the Director of the Gas Pipeline Safety Division ("GPSD", "Party Staff") of the Tennessee Public Utility Commission ("Commission" or "TPUC") and the City of Clarksville, Tennessee ("City") have agreed to certain terms and conditions to resolve this matter. The Party Staff and the City request Commission approval of this Settlement Agreement.

BACKGROUND

GPSD is responsible for enforcement of state and federal pipeline safety requirements pursuant to the Commission's jurisdiction under Tenn. Code Ann. § 65-28-106. The City is an operator within the Commission's pipeline safety jurisdiction. Following an inspection by GPSD personnel on December 1-3, 2015, GPSD issued Safety Inspection Evaluation # 15-168 on January 11, 2016, citing the Company for violations of state and federal pipeline safety standards, including a failure to comply with 49 CFR 192.747 concerning specific requirements for leakage surveys and documentation of leakage surveys. GPSD assessed a civil penalty against the Company for the violations.

Pursuant to Tenn. Rules & Regs 1220-4-5-.47(6)(a) and (b), the Company was provided an opportunity to respond to Safety Inspection Evaluation #15-168 and to meet with the Director of GPSD to resolve the violations in an informal meeting on April 7, 2016. A resolution was reached. As part of a settlement in lieu of a civil penalty, the City agreed to a series of actions, including the documentation and completion of a leakage survey of the City's complete system with a deadline of August 1, 2017.

Following an inspection on August 1, 2017, GPSD determined the City failed to complete the agreed upon survey and provide supporting documentation. The City disputed the survey the City performed breached the terms of the settlement agreement between GPSD and the City. The Party Staff requested the opening of a show-cause docket.¹ A docket was opened by the Commission and a Hearing Officer was appointed to determine whether a Show Cause proceeding should be initiated against the Company.² Subsequent discussions between the Director of GPSD and the City have resulted in an agreement to resolve the leakage survey violation stemming from Safety Inspection Evaluation # 15-168.

SETTLEMENT TERMS

In order to resolve this matter, the Director of GPSD and the City (collectively the "Parties") have agreed to the following:

1. The City will pay a civil penalty to the Commission in the amount of \$11,863.00;
2. The Parties agree this Settlement Agreement shall have no precedential effect in any future or pending proceeding or GPSD inspection or be binding on any of the Parties in this or any other jurisdiction except to the limited extent necessary to the enforcement and implementation of the provisions hereof.


¹ *Party Staff Memorandum* (December 1, 2017).

² *Order Appointing Hearing Officer* (December 15, 2017).

3. The terms of this Settlement Agreement have resulted from extensive negotiations between the signatories and terms herein are interdependent. The Parties jointly request the Commission adopt this Settlement Agreement in its entirety without modification.
4. If the Commission does not accept the settlement in whole, the Parties are not bound by any position or term set forth in this Settlement Agreement. By agreeing to this Settlement Agreement, the Parties reserve the right to continue litigation in this matter should the Commission reject in whole or part of the Settlement Agreement.
5. No provision of this Settlement Agreement shall be deemed an admission of a party or constitute a waiver of a position by any party.
6. Should the Director of GPSD determine the Company has breached the Settlement Agreement, the Party Staff reserves the right to renew or continue litigation and/or seek enforcement of the Settlement Agreement.

The foregoing is agreed and stipulated to this 7th day of December, 2018.

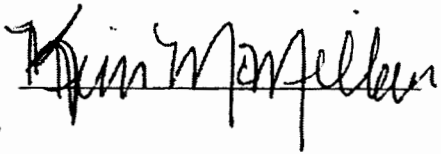
On behalf of the Party Staff:



Pete Hut, PE
Director, Gas Pipeline Safety Division
Tennessee Public Service Commission
502 Andrew Jackson Building
4th Floor
Nashville, TN 37243

Date: 12/7/18

On behalf of the City of Clarksville:


ATB 

Date: 12/6/18

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been served by electronic mail, postage pre-paid U.S. first-class mail, and/or delivering a copy by hand, upon the following person(s):

On this the 7th day of December, 2018



Ryan L. McGehee