

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

January 24, 2019

IN RE:

SHOW CAUSE PROCEEDING AGAINST
CHATTANOOGA GAS COMPANY FOR VIOLATIONS
OF THE TPUC GAS PIPELINE SAFETY RULES,
APPLICABLE FEDERAL LAW

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DOCKET NO.
18-00032

ORDER APPROVING SETTLEMENT AGREEMENT

This matter came before Chair Robin L. Morrison, Commissioner Herbert H. Hilliard and Commissioner David F. Jones 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 Chattanooga Gas Company (“CGC” or “Company”) (collectively “Joint Petitioners”) on November 26, 2018, requesting approval of a Settlement Agreement resolving issues of dispute between the Parties with regard to a gas safety inspection.

BACKGROUND AND PETITION

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

¹ Tenn. Code Ann. § 65-28-106(a) (West Supp. 2018).

² *Id.*

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

CGC is a public utility authorized to transport, distribute and sell natural gas in the Chattanooga area, Cleveland, Tennessee, and other areas within Hamilton and Bradley counties.³ CGC is an operator subject to the GPSD's enforcement jurisdiction. GPSD conducted a safety inspection of CGC on September 18-22, 2017, after which it issued Safety Inspection Evaluation #17-130 on November 2, 2017 (the "Inspection Evaluation").⁴ In the Inspection Evaluation, GPSD cited the Company for violations of federal and state regulations related to operator qualification of personnel performing fusion couplings and tap tees on the natural gas pipeline. CGC was cited a total of eighteen (18) violations. Violations include failure to comply with 49 CFR 192.285 concerning the qualification and requalification of personnel conducting fusion of couplings and tap tees on natural gas pipelines through destructive testing.⁵ GPSD assessed civil penalties for fourteen (14) of the eighteen (18) violations, for a total civil penalty assessed to CGC of \$2,017,083.⁶

The Company availed itself of the opportunity to respond to the Inspection Evaluation 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). The Parties were not able to reach a resolution during the informal meeting, so 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 Company upon the filing of a petition by Party Staff.⁷

³ *In Re: Chattanooga Gas Company Petition for Approval of an Adjustment in Rates and Tariff; The Termination of the AUA Mechanism and the Related Tariff Changes and Revenue Deficiency Recovery; and an Annual Rate Review Mechanism*, Docket No. 18-00017, *Chattanooga Gas Company Petition for Approval of an Adjustment in Rates and Tariff; The Termination of the AUA Mechanism and the Related Tariff Changes and Revenue Deficiency Recovery; and an Annual Rate Review Mechanism*, p.2 (February 15, 2018).

⁴ A copy of Safety Inspection Evaluation #17-130 is attached to the Party Staff *Memorandum*, (March 27, 2018).

⁵ *Memorandum*, pp. 1-2, (March 27, 2018).

⁶ *Id.* at Attachment, p. 2.

⁷ *Order Appointing Hearing Officer*, (April 13, 2018).

Continued discussions subsequent to the appointment of a Hearing Officer resulted in the Parties executing a *Settlement Agreement* that they filed with the Commission on November 20, 2018.⁸ The Parties subsequently filed a *Joint Petition to Approve Settlement Agreement* requesting Commission approval of the *Settlement Agreement*.⁹

THE PROPOSED SETTLEMENT AGREEMENT

The *Settlement Agreement* filed by the Joint Petitioners resolves all issues of dispute with regard to the Inspection Evaluation, while reserving the ability to enforce the *Settlement Agreement*. The terms of the *Settlement Agreement*, in summary, are that:

1. CGC will pay a civil penalty of \$50,000 to the Commission;
2. CGC will contribute \$50,000 to the Tennessee Gas Association (“TGA”) pursuant to a Memorandum of Understanding to be used to fund attendance of small operators at the 2019 TGA Summit, subject to certain conditions set out in the *Settlement Agreement*;
3. CGC will work with GPSD to excavate 6 sample electrofusion joints for inspection and if samples indicate deficiency, additional samples may be required;
4. CGC will revise its Operations Procedures Manual to include Tennessee operations in destruction testing of electrofusion fittings;
5. CGC will identify instances of leaks associated with failed electrofusion in its DIMP program, and will report data and results of destructive testing associated with electrofusion qualifications annually to GPSD for 5 years beginning April 1, 2019;

⁸ *Settlement Agreement*, (November 20, 2018).

⁹ *Joint Petition to Approve Settlement Agreement*, (November 26, 2018).

6. Expenses incurred by CGC for payment of the civil penalty or to TGA or the legal costs incurred by CGC associated with the Inspection Evaluation are not recoverable from Tennessee ratepayers; and,
7. 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*.

The *Settlement Agreement* also reserves certain rights in the event that the agreement is rejected in whole or in part by the Commission. Further, the *Settlement Agreement* contains language indicating that the terms of the agreement are the result of extensive negotiations and are interdependent, urging Commission adoption of the agreement without modification.¹⁰

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.

Chattanooga Gas Company – J.W. Luna, Esq., Luna Law Group, 333 Union Street, Suite 300, Nashville, Tennessee 37201.

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

¹⁰ *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.¹¹

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 observed that the total amount agreed upon in compromise to be paid by CGC is approximately 1% of the total Operating and Maintenance Expenses adopted by the Commission in CGC's most recent

¹¹ Tenn. Code Ann. § 65-28-108(b) (West Supp. 2018).

rate case.¹² The panel found that this is an appropriate amount of penalty based upon a compromise.

Second, GPSD classified 2 of the 14 violations as Priority 3 violations and the remaining 12 violations as Priority 2 violations on a scale of 1 to 3. Priority 3 violations indicate, “needs attention because the operator has failed to complete or schedule maintenance activities[,]” while Priority 2 violations indicate, “needs prompt attention because the failure to correct could result in a potential hazardous condition to life, property or both.”¹³ The panel found these violations to be moderate violations, and that the amount to be paid and the actions to be required by CGC to satisfy the *Settlement Agreement* are congruent to the level of violations.

Finally, the panel noted that the terms of the *Settlement Agreement* require CGC to engage in corrective conduct, as well as engagement and monitoring by GPSD, to rectify issues identified in the Inspection Evaluation and that such conduct evidences the Company’s good faith in its attempts to achieve compliance with gas safety requirements. Further, the panel found that the provision of education funding for small operators by CGC in the terms of the *Settlement Agreement* indicates CGC’s willingness to ensure smaller operators are properly informed so as to avoid compliance problems. The panel found that both of these terms are indications of CGC’s good faith to achieve not only its own compliance with federal and state gas pipeline law and regulations, but also to assist smaller operators in achieving compliance.

The panel also observed that provisions of the *Settlement Agreement* concerning the civil penalty paid to the Commission and the scholarship funding paid to TGA, as well as all legal costs associated with the Inspection Evaluation and this docket, are specifically agreed to be not

¹² *In Re: Chattanooga Gas Company Petition for Approval of an Adjustment in Rates and Tariff; The Termination of the AUA Mechanism and the Related Tariff Changes and Revenue Deficiency Recovery; and an Annual Rate Review Mechanism*, Docket No. 18-00017, Order (January 11, 2019).

¹³ *Memorandum*, Attachment, p.6, (March 27, 2018).

recoverable from Tennessee ratepayers. Commission Staff will monitor and track these expenditures through the review of annual reports.

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 November 26, 2018 *Settlement Agreement* as filed jointly by GPSD and CGC.

IT IS THEREFORE ORDERED THAT:

1. The *Joint Petition* filed by the Gas Pipeline Safety Division of the Tennessee Public Utility Commission and Chattanooga Gas Company on November 29, 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 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 David F. Jones concur.

ATTEST:



Earl R. Taylor, Executive Director

EXHIBIT 1

November 20, 2018

through destructive testing.¹ GPSD assessed a civil penalty against the Company for the violations. The Company contested both the violations and the amount of the civil penalty imposed.

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 #17-130 and to meet with the Director of GPSD to resolve the violations in an informal meeting. No resolution was reached. The Party Staff requested the opening of a show-cause docket. 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 Chattanooga Gas Company have resulted in an agreement to resolve the violations stemming from Safety Inspection Evaluation # 17-130.

SETTLEMENT TERMS

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

1. The Company will pay a civil penalty to the Commission in the amount of \$50,000.00;
2. The Company will make a \$50,000.00 contribution to the Tennessee Gas Association ("TGA") prior to December 31, 2018. Pursuant to the memorandum of understanding between the Company and TGA³, the contribution shall be utilized to fund the cost for the attendance, conference lodging, meals and training of small operators, at the 2019 Tennessee Gas Association Safety Summit ("Summit") subject to the following conditions:

¹ A copy of Safety Inspection Evaluation # 17-130 is attached to the Party Staff's *Memorandum*, (March 27, 2018).

² *Order Appointing Hearing Officer* (April 13, 2018).

³ See Exhibit A.

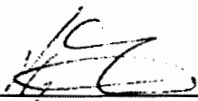
- (a) Unless otherwise used to fund programs pursuant to subsection (e) of this section, any funds not expended for the 2019 Summit will roll over to the next Summit the following year(s) until a total of \$50,000.00 has been fully expended to assist small operators in attending and receiving training at the annual Summit.
 - (b) Operators that qualify shall have less than five thousand (5,000) meters or otherwise be deemed eligible by the Director of GPSD.
 - (c) Per agreement between the TGA and the Company, the Company will be provided by TGA with an accounting of the \$50,000.00 contribution within sixty (60) days of the Summit indicating how the funds were spent. The Company will provide a copy of the accounting to the Director of GPSD a post-summit report indicating how the funds were spent under this section for each Summit(s) until a total of \$50,000.00 in funds has been reached.
 - (d) The Company and GPSD agree the intent of this provision is to enhance the training of as many operators as possible from smaller systems that would not otherwise attend the Summit for lack of funding.
 - (e) The contribution may also be utilized to provide additional integrity management training specifically targeted for small operators with the approval of the Director of GPSD.
3. The Company will work in conjunction with Commission Inspection Staff to excavate six (6) samples of electrofusion joints in order to verify the quality and completeness of the Company's work. In the event any of the samples prove deficient, more samples may be required by the Director of GPSD;

4. The Company will revise its Operations Procedures Manual to specifically include destructive testing of electrofusion fittings for operations in Tennessee;
5. Going forward, the Company will identify any instances of leaks associated with failed electrofusion as part of Chattanooga Gas Company's annual DIMP Program. In addition, the Company will report that data as well as the results of destructive testing associated with electrofusion qualifications annually to the Director of GPSD for the next five years, beginning April 1, 2019;
6. Any expense incurred or investment made by the Company in complying with Paragraphs 1 and 2 of this Settlement or the legal costs incurred by the Company with respect to Safety Inspection Evaluation # 17-130, including this docket, will not be recoverable from the Company's Tennessee rate-payers.
7. The Parties agree this Settlement Agreement shall have no precedential effect in any future proceeding 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.
8. 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.
9. 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.

10. No provision of this Settlement Agreement shall be deemed an admission of a party or constitute a waiver of a position by any party.
11. 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 20th day of November, 2018.

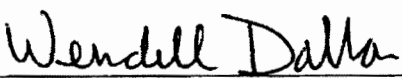
On behalf of the Party Staff:



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

Date: 11/20/18

On behalf of Chattanooga Gas Company:



Wendell Dallas
Vice President of Operations
Chattanooga Gas Company
Ten Peachtree Place NE
Atlanta, GA 30309

Date: 11/14/2018

CERTIFICATE OF SERVICE

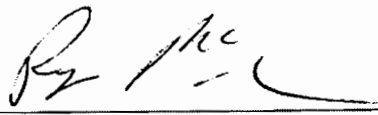
I hereby certify that a true and exact copy of the foregoing document has been served by electronic mail, postage pre-paid U.S. first-class mail, and/or delivering a copy by hand, upon the following person(s):

J.W. Luna, Esq.
Luna Law Group
333 Union Street
Suite 300
Nashville, TN 37201

Wendell Dallas
Chattanooga Gas Company
Vice President of Operations
Ten Peachtree Place
Atlanta, GA 30309

Richard Lonn
Chattanooga Gas Company
Director of Compliance & Pipeline Risk Management
Ten Peachtree Place
Atlanta, GA 30309

On this the 20th day of November, 2018.



Ryan L. McGehee

Exhibit A

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into by and between Chattanooga Gas Company ("CGC") and the Tennessee Gas Association ("TGA"). CGC is a local natural gas distribution company serving customers in Hamilton and Bradley Counties in Tennessee. TGA is a non-profit trade association dedicated to supporting the growth of the natural gas industry in Tennessee by enhancing the overall performance, safety, competitiveness and public awareness of its members and their products and services.

The purpose of this MOU is to set forth the terms and conditions for CGC to contribute funds to TGA in order for TGA to provide financial support for safety related training.

WITNESSETH:

WHEREAS, CGC has safety of its operations as its number one goal, and

WHEREAS, TGA and CGC share a mutual goal of safety in the distribution of natural gas in the State of Tennessee, and

WHEREAS, various entities in the State of Tennessee sometimes do not have the financial resources to participate in various safety related training, and

WHEREAS, CGC entered into a Settlement Agreement with the Gas Pipeline Safety Division ("GPSD") for the Tennessee Public Utility Commission on November 2, 2018, resolving all matters related to Safety Inspection Evaluation #17-130 issued on November 2, 2017, and as a condition of the Settlement Agreement, CGC agreed to contribute to TGA the sum of \$50,000 to fund the aforementioned financial support;

NOW, Therefore:

1. CGC will contribute \$50,000 to TGA for the purpose of providing funding for the safety related training, said contribution to be conditioned upon final approval by

the Tennessee Public Utility Commission of the Settlement Agreement that is expected to occur on December 17, 2018.

2. TGA will expend the \$50,000 contribution for the training or facilitation of training of eligible small operators per the terms of Paragraph 2 of the Settlement Agreement or otherwise consult with the Director of the GPSD for the Tennessee Public Utility Commission regarding the utilization of this contribution.
3. TGA will report to CGC periodically, but at least annually, as to the expenditures of the \$50,000, and CGC will periodically, but at least annually, update the Director of the GPSD.

The effective date of this Memorandum of Understanding will be the date of the final approval of the Settlement Agreement by the Tennessee Public Utility Commission.

Chattanooga Gas Company
2207 Olan Mills Drive
Chattanooga, TN 37421

Tennessee Gas Association
83 Century Boulevard
Nashville, TN 37214

By: Paul C. Leath
Paul Leath

By: Lynette D. DiMeola
Lynette DiMeola

Its: Regional Director

Its: Executive Director

Date: Nov 1, 2018

Date: November 2, 2018