

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
on its own Motion	:	
	:	
vs.	:	10-0668
	:	
Bushnell, Illinois, a municipal corporation.	:	
	:	
Citations for alleged violations of	:	
Federal Rules incorporated by the	:	
Illinois Commerce Commission	:	

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into on this ____ day of February, 2012, by and between the Illinois Commerce Commission (“Commission”) and the City of Bushnell, Illinois, a municipal corporation (“Bushnell”) (collectively the “parties”) and in consideration of the mutual agreements and promises contained herein, the sufficiency of which is hereby acknowledged, the parties hereto mutually agree as follows:

1. Bushnell and Commission Staff have entered into this Agreement for the sole purpose of settling and resolving all issues in this proceeding without the need for further litigation. Once the approvals set forth herein occur, then this Agreement shall become effective and this Agreement shall resolve all issues that were raised or could have been raised in this proceeding as set forth herein. Bushnell and the Commission hereby mutually release and forever discharge each other and each of their respective agents, present and former commissioners, council persons, officers, executives, trustees, predecessors and/or successors in interest, in both their individual and official capacities from any and all claims or other causes of action each may have against the other, including, but not limited to, any and all claims arising out of, relating to, or in connection with this proceeding, and Bushnell’s transportation of gas and its owning and operating pipeline facilities accruing up to the date of this Agreement.

2. The Commission has adopted, in 83 Ill. Adm. Code 590, federal safety standards in 49 C.F.R. Sections 191.23, 192, 193, and 199 as minimum standards for the transportation of gas and for gas pipeline facilities. In addition, Bushnell is a “person” as defined by Section 2.01 of the Illinois Gas Pipeline Safety Act (the “Act”), 220 ILCS 20/1 *et seq.*

3. Section 6(a)(1) of the Act requires that every such person shall “at all times after the date any applicable safety standard established under this Act takes effect comply with the requirements of such standard” 220 ILCS 20/6(a)(1).

4. On November 23, 2010, the Commission entered an order initiating this proceeding to determine whether Bushnell, named as respondent in the Commission’s order, had

failed to comply with 49 C.F.R. Sections 192.605(a), 192.615(b)(3), 192.615(c), 192.616(a)-(d), 192.625(a), 192.741(c), 192.747(a), 199.105(b), and 199.225(a) as adopted by reference by the Commission in 83 Ill. Adm. Code 590 and, if so, whether the Commission should impose civil penalties. The Commission's Order incorporated a Commission Staff Report, dated November 1, 2010, about this incident, as part of the record.

As set forth in the Commission Staff Report, Staff alleges that on November 25, 2009, Bushnell emergency response personnel failed to follow the emergency response procedures included in the Operation and Maintenance Plan as they relate to conducting an effective evaluation upon receipt of a notification of a potentially hazardous situation. Post incident investigation is required by the Code of Federal Regulations ("C.F.R.") that is intended to determine if actions taken by the employee were appropriate and according to the written procedures. Staff further alleges that failure to conduct the post incident investigation resulted in the failure to conduct the post incident anti-drug and alcohol testing required by the C.F.R. when the actions of an employee cannot be discounted as a contributing factor. Staff further alleges that Bushnell also failed to conduct several of the required operations and maintenance activities prior the incident including proper verification of odorant concentration in the gas stream, system pressure monitoring, emergency valve maintenance, maintaining liaison with emergency response personnel such as the fire department and police, and conducting continuing education of the public regarding the natural gas system operation.

5. On November 23, 2010, the Commission entered an order making the operator of the Bushnell Natural Gas System a respondent in this proceeding. A hearing was set for June 21, 2011 and at that time the case was continued to August 31, 2011. At the August 31, 2011 hearing, the case was continued to December 1, 2011. On November 30, 2011 the Staff of the Commission filed testimony outlining the alleged violations. The case was continued on December 1, 2011 and January 4, 2012 to allow Staff and the respondent to reach a proposed settlement. The Commission Staff and Bushnell resolved this matter prior to an evidentiary hearing and, therefore, none of the filed testimony was offered or admitted into evidence.

6. Commission Staff and Bushnell have been involved in several settlement discussions regarding this docket, and Bushnell agrees to pay to the State of Illinois a total lump sum of forty thousand dollars (\$40,000) within thirty (30) days of the dismissal of the proceeding.

7. Neither this Agreement nor any of its terms or conditions shall be construed as an acknowledgement or admission of wrongdoing or liability on Bushnell's part. Bushnell specifically denies the same.

8. This Agreement contains the entire agreement between Commission Staff and Bushnell related to the subject matter hereof and, except as stated in this Agreement, there are no oral or written promises, agreements, warranties, obligations, assurances or conditions precedent affecting this Agreement.

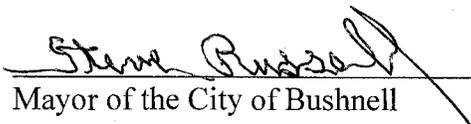
9. This Agreement is contingent upon it being approved and accepted by the Bushnell City Council and by the entry of an order of dismissal with prejudice by the Illinois

Commerce Commission. In the event that either the Commission or the Bushnell City Council does not approve this Agreement in its entirety, then this Agreement shall be null and void and the litigation of this Docket 10-0668 shall resume under such schedule as the parties and the Administrative Law Judge shall establish and the parties shall be free to take positions inconsistent with the provisions of this Agreement. Negotiations leading up to this Agreement have been and shall remain confidential and privileged communications and material and may not be used by either party for any purpose in any other proceeding by the parties to this Agreement. This Agreement shall become a public document at such time as it is filed in this docket.

IN WITNESS THEREOF, each of the parties has caused a duly authorized representative to execute this Agreement.

ACCEPT:
By: 
Illinois Commerce Commission

3.27.12
Date

ACCEPT:
By: 
Mayor of the City of Bushnell

4-16-12
Date