

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
On Its Own Motion)	
)	
vs.)	12-0322
)	
Village of Tamms, Illinois)	
a municipal corporation)	
)	
Citation for alleged violation of federal)	
rules incorporated by the Illinois)	
Commerce Commission.)	

AGREED DRAFT ORDER

I. PROCEDURAL HISTORY

On May 2, 2012, the Illinois Commerce Commission (“Commission”) entered an Order commencing Docket No. 12-0322 under Section 7 of the Illinois Gas Pipeline Safety Act (the “Pipeline Safety Act”), 220 ILCS 20/7, to determine whether the Village of Tamms Municipal Gas System had failed to comply with the Public Awareness Program evaluation requirements under 49 C.F.R. § 192.616 and whether civil penalties should be imposed pursuant to Section 7 of the Pipeline Safety Act.

Appearances were entered by Mr. Sam Davis, Superintendent of the Village of Tamms (“Tamms” or the “Village”) on behalf of Tamms and counsel on behalf of the Staff of the Commission (“Staff”) (collectively referred to as the “Parties”).

On June 21, 2012, the Village provided supplemental information to Staff demonstrating that it had performed the necessary duties to comply with the Public Awareness Program required under 49 C.F.R. § 192.616.

On July 11, 2012, a duly authorized Administrative Law Judge of the Commission held a status hearing, during which the Parties reported they had reached a settlement regarding compliance and penalties in this Docket.

On August 14, 2012, the Parties to this proceeding filed a Joint Motion for Entry of Order (“Joint Motion”) setting forth the terms of the settlement agreement unanimously reached by the Parties, a stipulation signed by the respective authorized representatives for each of the Parties, and this Agreed Draft Order. Staff played an integral role in developing the terms of the settlement set forth in the Joint Motion and attached documents. Staff recommends that the Commission consider the Stipulation and that the Commission enter a Final Order in substantially the form of the Agreed Draft Order proposed by the Parties.

II. APPLICABLE LEGAL STANDARDS

The United States Department of Transportation has promulgated a rule, which the Commission has adopted by reference (83 Ill. Adm. Code Part 590). That rule reads in part:

Sec. 192.616 Public awareness.

- (a) Except for an operator or a master meter or petroleum gas system covered under paragraph (j) of this section, each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute’s (API) Recommended Practice (RP) 1162.

...

- (h) Operators in existence on June 20, 2005, must have completed their written programs no later than June 20, 2006. The operator of a master meter or petroleum gas system covered under paragraph (j) of this section must complete development of its written procedure by June 13, 2008. Upon request, operators must submit their completed programs to PHMSA or, in the case of an intrastate pipeline facility operator, the appropriate State agency.

Under API RP 1162, an operator of a natural gas distribution system is required to evaluate, revise, and update its Public Awareness Program every four years. (See, American Petroleum Institute Recommended Practice 1162 at 28-29 (First Edition, December 2003))

Under Section 3 of the Pipeline Safety Act (220 ILCS 20/3), the Commission is required to:

adopt rules establishing minimum safety standards for the transportation of gas and for pipeline facilities. Such rules shall be at least as inclusive, as stringent, and compatible with, the minimum safety standards adopted by the Secretary of Transportation under the Federal Act.

The Commission incorporated by reference the applicable federal rules at 83 Ill. Adm. Code 590, "Minimum Safety Standards for Transportation of Gas and for Gas Pipeline Facilities" ("Part 590").

Section 7(a) of the Pipeline Safety Act makes local gas distribution companies subject to a civil penalty for violations of §6(a) of the Pipeline Safety Act. Section 6(a)(1) requires compliance with safety standards. The amount of the civil penalty is \$200,000 per violation capped at \$2,000,000 for a related series of violations. 49 U.S.C. 60122(a)(1); 220 ILCS 20/7(a).

Section 7(b) of the Pipeline Safety Act describes the criteria that the Commission must consider in determining whether to assess a civil penalty for a violation of the Pipeline Safety Act. This section, in relevant part, states:

the Commission shall consider the appropriateness of the 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.

220 ILC 20/7(b)

III. EVIDENCE

On May 2, 2012, Staff filed the April 12, 2012 Staff Report of Darin Burk, Pipeline Safety Program Manager in the Pipeline Safety Program of the Energy Division.

The Commission Order on May 2, 2012 made the Staff Report part of the record. The Village stated that it does not contest that the Staff Report prepared by Mr. Burk is sufficient to support the Stipulation.

According to the Staff Report, Tamms Municipal System should have conducted an evaluation of its Public Awareness Program on or before June 20, 2010, in accordance with API RP 1162. (Staff Report, p. 1) On October 5, 2011, Staff conducted a compliance record audit of Tamms Municipal System's 2010 compliance records. (*Id.*) Staff's review revealed that the evaluation was not performed as required under 49 C.F.R 192.616 and API RP 1162. (*Id.*) Staff issued a Notice of Probable Violation on October 11, 2011. (*Id.*, p. 2) Following this notice, Staff and Tamms exchanged written correspondence through the winter of 2011-2012. (*Id.*) On February 8, 2012, Tamms sent a document titled "Village of Tamms Awareness Evaluation," which Staff determined was not compliant with 49 C.F.R. 192.616 and API RP 1162.

(*Id.*) Staff notified Tamms of the inadequacy of this evaluation on February 28, 2012, and thereafter received no response. (*Id.*) Therefore, this Docket was initiated on May 2, 2012. An initial status hearing was set for June 7, 2012, at which time Mr. Davis indicated that he believed the Village of Tamms to be in compliance with the regulations. (Transcript, June 7, 2012, p. 5) On June 21, 2012, Tamms provided Staff with paperwork documenting the completion of a sufficient evaluation.

IV. SETTLEMENT TERMS

As disclosed by the Parties' Joint Motion, the Parties engaged in negotiations to reach a settlement in this proceeding. As a result of these negotiations, the Parties reached terms of a settlement to which they unanimously agree. Staff played an integral role in developing the terms of this settlement.

Staff recommends that the Commission consider the Stipulation and enter a final order approving the terms of the settlement set forth in the Stipulation. The terms of settlement are set forth in the Stipulation, which is signed by each party. A copy of the Stipulation is attached as Exhibit 1 to this Agreed Draft Order. Pursuant to the Stipulation, the terms of the settlement are as follows:

- Tamms Municipal System admits that it failed to comply with the Public Awareness Program evaluation requirements and failed to meet the deadline imposed for compliance under C.F.R. § 192.616
- Tamms Municipal System agrees to pay a penalty under § 7 of the Pipeline Safety Act, 220 ILCS 20/7, of Four Thousand Dollars (\$4,000.00).
- This amount represents the penalty for the violation in question.

COMMISSION'S CONCLUSION

The Commission finds that the terms of the settlement reached by the Parties and recommended by Staff are reasonable and provide for an appropriate resolution of this docket. The Commission has the legal authority to adopt a settlement that, as in the present case, has the unanimous support of all the parties. *Business and Professional People for the Public Interest v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 216-217 (1989) Moreover, the Commission concludes that the terms of the settlement are adequately supported by the Staff Report prepared by Darin Burk. Accordingly, the Commission approves and adopts the terms of the Stipulation set forth above in Section IV of this Order as a final settlement of this docket.

V. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

1. The Village of Tamms Municipal Gas System is an operator of a natural gas distribution system within the provisions of the Illinois gas Pipeline Safety Act, 220 ILCS 20/3 ("the Act");
2. the Commission has jurisdiction over the Village of Tamms Municipal Gas System and the subject matter herein;
3. the findings of fact and conclusions of law set forth in the prefatory portion of this Order are supported by the record herein and are hereby adopted as findings of fact and conclusions of law;

4. the terms of the Stipulation agreed to by the parties are reasonable and should be adopted;
5. in light of all of the circumstances, a penalty of Four Thousand Dollars (\$4,000.00) is warranted under 220 ILCS 20/7; and
6. the Village of Tamms Municipal Gas System shall take the actions set forth in the attached Stipulation.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the attached Stipulation is adopted by the Commission.

IT IS FURTHER ORDERED that Village of Tamms Municipal Gas System shall pay a penalty of Four Thousand Dollars (\$4,000.00) and shall comply with the terms of the attached Stipulation.

IT IS FURTHER ORDERED that if further additional and accelerated actions are necessary, Staff shall file a Motion with the Commission identifying its concerns and asking the Commission to reopen this docket to determine what additional actions are necessary and to order their implementation.

IT IS FURTHER ORDERED that, subject to the provisions of 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.800, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this _____ day of August, 2012.

(SIGNED)

Chairman Douglas P. Scott