

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

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

**ORDER**

By the Commission:

**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.

Pursuant to due notice, a prehearing conference was held in the matter on June 7, 2012 before a duly authorized Administrative Law Judge (“ALJ”). Appearances were entered by Mr. Sam Davis, Superintendent of the Village of Tamms (“Tamms”) on behalf of Tamms and counsel on behalf of the Staff of the Commission (“Staff”) (collectively referred to as the “Parties”). A status hearing was held on July 11, 2012, during which the Parties reported they had reached a settlement regarding compliance and penalties in this Docket. On August 21, 2012, the Parties filed a Joint Motion for Entry of Order (“Joint Motion”) setting forth the terms of the settlement agreement reached by the Parties, a stipulation signed by the respective authorized representatives for each of the Parties, and an Agreed Draft Order. On September 14, the ALJ issued a ruling requesting that the Parties provide a verified explanation of the appropriateness of the penalty. On October 4, 2012, the Parties filed a Verified Explanation of the Appropriateness of the Penalty.

**II. APPLICABLE LEGAL STANDARDS**

The Gas Pipeline Safety Act (220 ILCS 20/1 et seq.) requires the Commission 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. 220 ILCS 20/3.

At 83 Ill. Adm. Code 590, "Minimum Safety Standards for Transportation of Gas and for Gas Pipeline Facilities" ("Part 590") the Commission incorporated by reference the applicable federal rules in 1977. Part 590 has been updated biennially since then to adopt any amendments.

One of the federal rules promulgated by the United States Department of Transportation and adopted by the Commission requires operators of gas systems to develop and implement a continuing public education program. That rule reads in relevant 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))

Penalties are provided for in Section 7 which provides in relevant part:

(a) Any person violating paragraph (a) of Section 6 of this Act or any rule or order issued under this Act is subject to a civil penalty not to exceed the maximum penalties established by Section 60122(a)(1) of Title 49 of the United States Code for each day the violation persists . . . .

The maximum penalty established by 49 USC §60122(a)(1) is \$100,000 for each violation. This section also provides that a separate violation occurs for each day the violation continues and that the maximum civil penalty for a related series of violations is \$1,000,000.

The Illinois Pipeline Safety Act provides guidance for the Commission in determining the amount of the penalty. Section 7(b) provides inter alia:

. . . 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 . . . .

### **III. AGREEMENT OF THE PARTIES**

The Stipulation filed by the Staff and Tamms enumerates their agreement as to the facts and penalties in this matter. The Parties agree that Tamms was required to complete a written Public Awareness Program, required pursuant to 49 CFR § 192.616, for the Tamms Municipal System by no later than June 20, 2006. They state that, pursuant to 49 CFR § 192.616 and API RP 1162, Tamms should have conducted an evaluation of its Public Awareness Program on or before June 20, 2010. The Parties assert that Staff conducted a compliance record audit of Tamms' 2010 compliance records for the Tamms Municipal System on October 5, 2011. They assert that Staff found that Tamms did not perform the required evaluation of its Public Awareness Program. They indicate that Staff sent a Notice of Probable Violation ("NOPV") on October 11, 2011, requesting that Tamms submit by November 11, 2011, either written evidence refuting the probable violations referenced in the NOPV or a written plan outlining actions to be taken to correct the violation.

The Parties state that on December 7, 2011, Tamms requested an extension until March 2, 2012 to complete the evaluation of its Public Awareness Program. The Parties concur that Staff informed Tamms that February 1, 2012 was a more reasonable time for completion of the required evaluation of the Public Awareness Program. The Parties assert that on February 8, 2012, Staff received a one page document entitled "Village of Tamms Awareness Evaluation" ("Evaluation"). Staff and Tamms concur that Staff reviewed the Evaluation and determined it did not comply with 49 CFR § 192.616 and API RP 1162. The Parties state that on February 28, 2012, Staff advised Tamms of the inadequacy of its Evaluation and requested documentation by March 31, 2012 confirming corrective actions were taken to comply with 49 CFR § 192.616 and API RP 1162. The Parties agree that Staff did not receive any documentation in response to that request.

The Parties agree that a Staff Report dated April 12, 2012 stated that Staff had found a serious violation related to the Tamms Municipal System Public Awareness Program evaluation. The Parties recount that Staff's record review determined that Tamms disregarded the requirements of 49 CFR § 192.616 and API RP 1162 and failed to meet the deadline imposed for compliance. The Parties state that, in the Staff Report, Staff recommended that a Citation Order be issued to initiate a proceeding to determine whether Tamms failed to comply with 49 CFR § 192.616 and API RP 1162, and whether civil penalties should be assessed pursuant Section 7 of the Pipeline Safety Act.

The Parties assert that on June 21, 2012, Tamms provided additional information to Staff concerning corrective action taken regarding the NOPV and, specifically, information related to the completion of a Public Awareness Program Evaluation for the Tamms Municipal System. The Stipulation indicates that Tamms concedes that prior to June 21, 2012, it had failed to comply with the Public Awareness Program evaluation requirements under 49 C.F.R. §192.616 and as required by API RP 1162.

The Parties agree that, pursuant to Section 7 of the Pipeline Safety Act for its violation of 49 C.F.R. §192.616, Tamms will pay a penalty of \$4,000 within 20 days after the entry of the Final Order in this docket. In support of the proposed penalty amount, the Parties aver that Tamms operates 38 miles of mains and has 389 service lines and is a small operator under the Pipeline Safety Act. The Parties concur that although the gravity of the violation is relatively low, it is critical that a natural gas system operator ensure that customers and the general public are aware of the potential hazards associated with the transportation of natural gas. The Parties assert that failing to keep potentially affected persons aware of possible natural gas accidents could result in the potential for serious injuries. The Parties are in agreement that Tamms did not make an initial good faith effort to correct the violation. They assert that Tamms did not take prompt action to correct the violation after the NOPV was issued and did not take corrective action within the timeline requested by Staff.

The Parties assert that the facts of the citation and the circumstances of Tamms were considered when calculating the penalty. They state the recommended penalty would have been \$40,000, for an operator with 100,000 or more customers. They explain that the penalty was reduced because Tamms serves less than 10,000 customers. The Parties agree that \$4,000 is an appropriate penalty.

#### **IV. 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). The Parties are in agreement that Tamms has completed a Public Awareness Program Evaluation and the Commission finds Tamms has come into compliance with 49 CFR 192.616. The Parties describe the basis for the penalty and assert that the proposed \$4,000 penalty is appropriate. The Commission concludes that the terms of the settlement are adequately supported by the Stipulation and supporting documentation filed by the Parties. Accordingly, the Commission approves and adopts the terms of the Stipulation, which are 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 is a municipal corporation and is the operator of Tamms Municipal Gas System, 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 and the subject matter herein;
- (3) the terms of the Stipulation agreed to by the parties are reasonable and should be adopted;
- (4) 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;
- (5) the Village of Tamms has now come into compliance with 49 CFR 192.616 and the Pipeline Safety Act; and
- (6) in light of all of the circumstances, a penalty of \$4,000 is warranted under 220 ILCS 20/7.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Village of Tamms shall pay a penalty of \$4,000 payable to the Illinois Commerce Commission and directed to the Financial Information Section.

IT IS FURTHER ORDERED that the Village of Tamms shall keep the Tamms Municipal System in compliance with the Pipeline Safety Act.

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 5th day of December, 2012.

(SIGNED) DOUGLAS P. SCOTT

Chairman