

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission :
On Its Own Motion :
-vs- :
Bushnell, Illinois, a municipal : **13-0459**
corporation :
: :
Citation for alleged violations of :
federal rules incorporated by the :
Illinois Commerce Commission. :

ORDER

By the Commission:

I. PROCEDURAL HISTORY

On July 31, 2013, the Illinois Commerce Commission (“Commission”) entered an Order commencing Docket No. 13-0459 under Section 7 of the Illinois Gas Pipeline Safety Act (the “Pipeline Safety Act”), 220 ILCS 20/-101 et seq., to determine whether the Bushnell 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.

Appearances were entered by counsel on behalf of Bushnell, Illinois, a municipal corporation (“Bushnell” or “Respondent”) and the Staff of the Commission (“Staff”) (collectively referred to as the “Parties”).

On February 21, 2014, 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 an Agreed Draft Order. At a hearing on March 11, 2014, Staff presented the direct testimony, a verified statement, and an affidavit of Mr. Charles Gribbins, a Pipeline Safety Analyst II in the Pipeline Safety Program of the Safety and Reliability Division at the Commission. Bushnell presented the direct testimony and an affidavit of Justin Griffith, Superintendent of Utilities for Bushnell. The record was marked Heard and Taken.

II. APPLICABLE LEGAL STANDARDS

The Gas Pipeline Safety Act 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.

The Federal Act refers to 49 U.S.C.A. §60101 et seq. 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.

Penalties are provided for in Section 7 of the Gas Pipeline Safety Act 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.

Section 7 of the 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

The United States Department of Transportation ("DOT") 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.

- (c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety

- (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.
- (i) The operator's program documentation and evaluation results must be available for periodic review by appropriate regulatory agencies.

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))

III. EVIDENCE

Staff witness Gribbins asserts that he performed inspections and created, or participated in creating reports, regarding Bushnell's operation of the Bushnell Municipal Gas System. He states that during an inspection over the period from May 22 through 24, 2012, he requested that Bushnell provide documentation demonstrating compliance with 49 CFR Section 192.616 paragraph (i), which requires a gas system operator's program documentation and evaluation results to be available for periodic review by appropriate regulatory agencies. Mr. Gribbins states that Respondent could not provide documentation confirming that it conducted the required annual audit and internal assessment.

Mr. Gribbins states that the Code of Federal Regulations, at 49 CFR § 192.616 (c), requires Bushnell, as the operator of the Bushnell Municipal Gas System to follow general program recommendations, including baseline and supplemental requirements of the American Petroleum Institute Recommended Practice ("API RP") 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety. The Staff witness asserts that Section 8.3 of the API RP requires the operator to complete an annual audit or review of whether a Public Awareness Program has been developed and implemented according to the guidelines. Mr. Gribbins explains a Public Awareness Program is required to address the objectives, elements and baseline schedule as described in Section 2 and the remainder of the RP. He states the purpose of the Staff audit was to determine whether the Public Awareness Program has been implemented and documented according to the written program.

Mr. Gribbins asserts that the operator could not provide documentation confirming that it conducted the required annual audit and internal assessment of the Public Awareness Program. In addition, he states that Bushnell could not provide documentation demonstrating compliance with APR RP 1162, Section 8.4.2 requiring the quadrennial effectiveness review. He describes the quadrennial review, stating it requires the operator to develop and implement changes to address deficiencies identified by the review. Mr. Gribbins asserts the review must measure the percentage of the intended stakeholder audience that understood and retained the key information in the messages received via the Public Awareness Program implementation.

According to the Staff Report, Respondent should have conducted an evaluation of its Public Awareness Program on or before June 20, 2010. Staff's compliance audit, conducted May 22 through 24, 2012, revealed that the evaluation was not performed as required pursuant to 49 C.F.R 192.616 and API RP 1162. Mr. Gribbins testifies Staff issued a Notice of Probable Violation ("NOPV") on May 24, 2012. He says on June 21, 2012, in reply Bushnell indicated in writing that the required actions would be completed. He testifies that he conducted a follow-up compliance record review on February 19 through 21, 2013, and found that no documentation existed demonstrating that the activities required by the NOPV had been performed.

Mr. Gribbins filed a Verified Statement recommending that the Commission adopt the terms of the Stipulation entered into by the parties to resolve all issues in this proceeding. Mr. Gribbins states that he recommends a penalty of \$10,000 be imposed against Bushnell rather than the \$28,800 penalty he had recommended in direct testimony. Mr. Gribbins states that the testimony of Justin Griffith, demonstrates that the Public Awareness Program evaluation and quadrennial review requirements were satisfied on November 1, 2013. In addition, he states he received a summary of the required annual review which established that no Public Awareness Program revisions were required. He states that at the time he filed his direct testimony he had no way to determine if an immediate hazard existed and made his recommendation under a worst case scenario assumption. Mr. Gribbins asserts that upon review of the information provided by Bushnell, he determined that even though Bushnell failed to meet the requirement of CFR Part 192.616 and API RP 1162, no immediate hazard to life or property existed due to the compliance failure. Consequently, he states, he reduced the penalty assessment to \$10,000 which was accepted by Bushnell in the Stipulation.

On behalf of Bushnell, Mr. Justin Griffith testifies regarding the steps Bushnell took after meetings on February 19, 20, and 21, 2013 to correct the violations. He states he was unable to find documents corresponding to the May 2012 audit and realized the former Superintendent for the Bushnell Municipal Gas System had ignored Staff's previous requests to complete the Public Awareness Program requirements. Mr. Griffith states he immediately took steps to complete the requirements. Mr. Griffith states he directed Kevin McCleery to contact Utility Safety and Design ("USDI") to update Bushnell's Public Awareness Program. He states on March 4, 2013, he received permission from the Bushnell Utility Board for USDI to proceed with the work.

Mr. Griffith states USDI was contacted on March 4 to commence updating the Public Awareness Plan. Mr. Griffith states that on March 13, 2013, Bushnell received the NOPD and immediately responded with a letter received at the Commission on March 21, 2013. He states on April 1, 2013, Bushnell followed up with USDI to check the progress of the Public Awareness Program update. Mr. Griffith states he received an outline of the Collaborative Program on or about May 20, 2013, and signed and returned the approval to proceed on May 21, 2013. He recounts that on or about August 5, 2013, he received a copy of the Initiating Order in this proceeding. He states that on August 7, 2013, he attempted to contact Mr. Gribbins and Darin Burke. Mr. Griffith states that when Mr. Burke returned his telephone call on August 13, 2013, Mr. Burke stated he did not receive the Respondent's March 19, 2013 letter. Mr. Griffith states he emailed copies of the letter, the Public Awareness Program, and correspondence with USDI to Mr. Burke. He says approximately 30 minutes later he received a call from Mr. Gribbins and a meeting with Mr. Gribbins was scheduled for August 15, 2013.

Mr. Griffiths testifies that the Public Awareness Program and the quadrennial effectiveness review have now been completed and attaches a copy as an exhibit to his testimony. Mr. Griffith asserts that Bushnell made a good faith effort in trying to achieve compliance.

IV. STIPULATION

On February 21, 2014, the parties filed a Joint Motion for Entry of Order with a Stipulation and a Draft Order attached. The Stipulation states that the parties agree and stipulate that pursuant to 49 CFR § 192.616 and API RP 1162, Bushnell Municipal Gas System was required to complete its written Public Awareness Program and conduct an evaluation of it no later than June 20, 2010. They agree that a Staff compliance record audit was performed May 22 through 24, 2012, finding that Bushnell Municipal Gas System did not perform an evaluation of its Public Awareness Program as required. The Stipulation states that Staff issued a NOPV on May 24, 2012, and requested that Bushnell submit 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 Stipulation states that on June 21, 2012, Bushnell replied to the NOPV and indicated that the corrective actions would be completed. It says on February 19 through 21, 2013, Staff conducted a compliance follow-up record review of the outstanding NOPV, and requested documentation demonstrating that the activities required by the NOPV had been performed as stated in the June 21, 2012, correspondence. The Stipulation states that Bushnell could not provide documentation indicating that the annual audit, internal assessment, and effectiveness review had been performed and that the operator stated that the required activities had not been conducted.

The parties agree in the Stipulation that the Public Awareness Program evaluation requirements were satisfied on November 1, 2013. The Stipulation states

the parties are in agreement that Bushnell will pay a penalty under Section 7 of the Pipeline Safety Act of \$10,000 within 20 days after the entry of a Final Order in this docket accepting the terms of the settlement.

V. COMMISSION CONCLUSION

The Commission finds that the terms of the Stipulation are reasonable and provide for an appropriate resolution of this docket. The Commission has the legal authority to adopt a settlement proposal that, as in the present case, has the unanimous support of all the Parties and is otherwise appropriate. See *Business and Professional People for the Public Interest v. Illinois Commerce Commission*, 136 Ill. 2d 192, 216-217 (1989). Accordingly, the Commission approves and adopts the terms of the Stipulation as a final settlement of this docket.

As noted, Section 7(b) of the Gas Pipeline Safety Act provides that:

Any civil penalty [under this Act] may be compromised by the Commission. In determining the amount of the penalty, or the amount agreed upon in compromise, 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.

The Commission finds that the penalty of Ten Thousand dollars (\$10,000), agreed to in the Stipulation, rather than the Twenty Eight Thousand dollars (\$28,800) penalty initially proposed by Staff is appropriate to Bushnell Municipal Gas System's size, and the gravity of the violations alleged. Bushnell is a small municipal gas system. The violations alleged are grave; however, the parties are in agreement that the violations have been corrected and Staff avers that there was no immediate hazard to life or property due to the compliance failure. Accordingly, the Commission approves and adopts the terms of the Stipulation as set forth above as a final settlement of this docket.

VI. 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) Bushnell, Illinois, a municipal corporation, is the operator of Bushnell Municipal Gas System a natural gas distribution system within the provisions of the Illinois gas Pipeline Safety Act, 220 ILCS 20/3;
- (2) the Commission has jurisdiction over Bushnell 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 Bushnell and Staff is consistent with Section 7(b) of the Gas Pipeline Safety Act, and the Stipulation should be adopted as full and complete resolution to this docket and the allegations contained in the Staff Report;
- (5) in light of all of the circumstances, a penalty of Ten Thousand Dollars (\$10,000) is warranted under 220 ILCS 20/7.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the terms of the Stipulation agreed to by the parties is adopted by the Commission.

IT IS FURTHER ORDERED that Bushnell, Illinois, a municipal corporation, shall pay a penalty of Ten Thousand Dollars (\$10,000) by check, with a notation of this docket number, made out to the Illinois Commerce Commission and delivered to the Financial Information Section of the Commission's Administrative Services Division, 527 E. Capitol Avenue, Springfield, Illinois 62701, within thirty (30) days of the entry of this order.

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 16th day of April, 2014.

(SIGNED) DOUGLAS P. SCOTT

Chairman