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December 14, 2012

Mr. Jeff Derouen
Executive Director
Public Service Commission
P.O. Box 615
Frankfort, KY 40602

Re: Tompkinsville Natural Gas System
Case No. 2012-00362

Dear Mr. Derouen:

Attached hereto is the Stipulation of Facts and Settlement Agreement entered into by Tompkinsville Natural Gas System and Staff. Please bring this document to the Commission's attention for its review and consideration.

Sincerely,

A handwritten signature in black ink that reads "L. Allyson Honaker".

L. Allyson Honaker
Staff Attorney III

Enclosure

cc: Reed N. Moore Jr.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TOMPKINSVILLE NATURAL GAS SYSTEM)
)
_____) CASE NO. 2012-00362
)
ALLEGED FAILURE TO COMPLY)
WITH KRS 278.495)

STIPULATION OF FACTS AND SETTLEMENT AGREEMENT

This agreement is formally known as a Stipulation of Facts and Settlement Agreement ("Settlement Agreement"). The parties to this Settlement Agreement are Tompkinsville Natural Gas System ("Tompkinsville") and Staff of the Kentucky Public Service Commission ("Commission Staff"). It is the intent and purpose of the parties hereto to express their agreement on a mutually satisfactory resolution of all of the issues in the proceeding.

It is understood by the parties that this Settlement Agreement is not binding upon the Public Service Commission ("Commission"). The Commission must independently approve and adopt this Settlement Agreement before this matter can be deemed concluded and removed from the Commission's docket. The parties have expended considerable efforts to reach a stipulation as to the facts of this matter, as well as in developing a proposal for settlement. Tompkinsville and Commission Staff agree that this Settlement Agreement, viewed in its entirety, constitutes a reasonable resolution of all issues in this proceeding.

In addition, the adoption of this Settlement Agreement will eliminate the need for the Commission, Commission Staff, and Tompkinsville to expend significant resources in litigating this proceeding and will eliminate the possibility of, and any need for, rehearing or appeals of the Commission's final Order.

FACTS

Tompkinsville and the Commission Staff submit this stipulation of facts for the Commission's consideration. Commission Staff submitted to the Commission a Utility Inspection Report ("Report") regarding a periodic regulatory compliance inspection which took place on February 28, 2012. The report alleges that Tompkinsville is in violation of 14 sections of the Code of Federal Regulations, 49 CFR Parts 191 and 192.

On June 14, 2012, a cover letter and copy of the inspection report were sent to Tompkinsville in which it was requested that Tompkinsville file a response no later than July 20, 2012. Tompkinsville filed its response on July 19, 2012 and stated that it had hired both a consultant and a contractor to aid in curing the deficiencies. Tompkinsville also stated it had obtained the manuals and plans it lacked during the inspection.

Tompkinsville and Commission Staff agree that the Report fairly and accurately describes the facts and findings of the February 28, 2012 inspection.

SHOW CAUSE ORDER

By a Show Cause Order dated August 10, 2012, the Commission initiated this proceeding to determine whether Tompkinsville should be subject to the penalties prescribed in KRS 278.992, which establishes the penalties for violations of any minimum safety standard adopted by the United States Department of Transportation pursuant to the federal pipeline safety laws, for probable violations of KRS 278.495,

which grants the Commission authority to regulate the safety of natural gas facilities owned or operated by any public utility, county, or city and used to distribute natural gas at retail. Specifically, the sections alleged to be violated are as follows:

1. 49 CFR Part 192.605(a) Procedural manual for operations, maintenance, and emergencies.

(a) General. *Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.*

2. 49 CFR Part 192.616 Public awareness.

(a) *Except for an operator of 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 (incorporated by reference, see §192.7).*

3. 49 CFR Part 192.465 External corrosion control: Monitoring.

(a) Each pipeline that is under cathodic protection must be tested at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of §192.463. However, if tests at those intervals are impractical for separately protected short sections of mains or transmission lines, not in excess of 100 feet (30 meters), or separately protected service lines, these pipelines may be surveyed on a sampling basis. At least 10 percent of these protected structures, distributed over the entire system must be surveyed each calendar year, with a different 10 percent checked each subsequent year, so that the entire system is tested in each 10–year period.

4. 49 CFR Part 192.721 Distribution systems: Patrolling.

(a) The frequency of patrolling mains must be determined by the severity of the conditions which could cause failure or leakage, and the consequent hazards to public safety.

(b) Mains in places or on structures where anticipated physical movement or external loading could cause failure or leakage must be patrolled—

(1) In business districts, at intervals not exceeding 4 1/2 months, but at least four times each calendar year; and

(2) *Outside business districts, at intervals not exceeding 7 1/2 months, but at least twice each calendar year.*

5. 49 CFR Part 192.723(b)(1) Distribution systems: Leakage surveys.

(a) Each operator of a distribution system shall conduct periodic leakage surveys in accordance with this section.

(b) The type and scope of the leakage control program must be determined by the nature of the operations and the local conditions, but it must meet the following minimum requirements:

(1) *A leakage survey with leak detector equipment must be conducted in business districts, including tests of the atmosphere in gas, electric, telephone, sewer, and water system manholes, at cracks in pavement and sidewalks, and at other locations providing an opportunity for finding gas leaks, at intervals not exceeding 15 months, but at least once each calendar year.*

6. 49 CFR Part 192.747 Valve maintenance: Distribution systems.

(a) Each valve, the use of which may be necessary for the safe operation of a distribution system, must be checked and serviced at intervals not exceeding 15 months, but at least once each calendar year.

(b) *Each operator must take prompt remedial action to correct any valve found inoperable, unless the operator designates an alternative valve.*

7. 49 CFR Part 192.741(a) Pressure limiting and regulating stations: Telemetry or recording gauges.

(a) Each distribution system supplied by more than one district pressure regulating station must be equipped with telemetry or recording pressure gauges to indicate the gas pressure in the district.

8. 49 CFR Part 192.1005 What must a gas distribution operator (other than a master meter or small LPG operator) do to implement this subpart?

No later than August 2, 2011 a gas distribution operator must develop and implement an integrity management program that includes a written integrity management plan as specified in §192.1007.

9. 49 CFR Part 191.11(a) Distribution system: Annual report.

(a) General. *Except as provided in paragraph (b) of this section, each operator of a distribution pipeline system must submit an annual report for that system on DOT Form PHMSA F 7100.1-1. This report must be submitted each year, not later than March 15, for the preceding calendar year.*

10.49 CFR Part 192.383(b) Excess flow valve installation.

(a) Definitions. As used in this section:

Replaced service line means a gas service line where the fitting that connects the service line to the main is replaced or the piping connected to this fitting is replaced.

Service line serving single-family residence means a gas service line that begins at the fitting that connects the service line to the main and serves only one single-family residence.

(b) *Installation required.* An excess flow valve (EFV) installation must comply with the performance standards in §192.381. The operator must install an EFV on any new or replaced service line serving a single-family residence after February 12, 2010, unless one or more of the following conditions is present:

(1) The service line does not operate at a pressure of 10 psig or greater throughout the year;

(2) The operator has prior experience with contaminants in the gas stream that could interfere with the EFV's operation or cause loss of service to a residence;

(3) An EFV could interfere with necessary operation or maintenance activities, such as blowing liquids from the line; or

(4) *An EFV meeting performance standards in §192.381 is not commercially available to the operator.*

11.49 CFR Part 192.805 Qualification program.

Each operator shall have and follow a written qualification program.

12.49 CFR Part 192.805(h) Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

(h) After December 16, 2004, provide training, as appropriate, to ensure that individuals performing covered tasks have the necessary knowledge and skills to perform the tasks in a manner that ensures the safe operation of pipeline facilities;

13.49 CFR Part 192.625(f) Odorization of gas.

(f) To assure the proper concentration of odorant in accordance with this section, each operator must conduct periodic sampling of combustible gases using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable.

14.49 CFR Part 192.625(a) Odorization of gas.

(a) A combustible gas in a distribution line must contain a natural odorant or be odorized so that at a concentration in air of one-fifth of the lower explosive limit, the gas is readily detectable by a person with a normal sense of smell.

On August 27, 2012, Tompkinsville filed a response to the Commission's August 10, 2012 Order and requested an informal conference be held in this matter. Pursuant to that request, an informal conference was scheduled in this matter for November 2, 2012, at the Commission's Frankfort offices. Representatives of Tompkinsville were in attendance, as were Commission Staff.

During the informal conference, representatives of Tompkinsville confirmed that proactive steps have been taken to improve its gas system. Tompkinsville provided information as to the progress that had been made in correcting the deficiencies cited in the August 10, 2012 Order. During that informal conference, Tompkinsville stated that several more of the deficiencies could be corrected in the upcoming weeks. Commission Staff also loaned Tompkinsville an odorant machine so that it may perform the necessary testing. Tompkinsville had sent its machine to be repaired and had not received it back. It was also decided that it would be helpful for Tompkinsville to file an updated response to each of the fourteen cited deficiencies by November 30, 2012.

Tompkinsville filed the updated response on November 30, 2012 and a follow-up informal conference was scheduled for December 7, 2012 to further discuss this matter. The follow-up informal conference was held as scheduled. Tompkinsville had made additional progress on correcting the deficiencies cited. Tompkinsville stated they have obtained the required plans and manuals, tested and corrected both rectifiers to ensure proper cathodic protection on the system, patrolled the required sites, and provided training for gas personnel. Tompkinsville has also conducted a leakage survey of its business district and most of the surrounding area. The leakage survey resulted in the finding and repairing of approximately 148 leaks, including all of the Grade 1 and Grade 2 leaks that were identified, and the replacement of approximately 2000' of pipe. Tompkinsville has also identified an individual that will be responsible for maintaining the appropriate reports and documentation for its gas system. To date Tompkinsville estimates that they have incurred costs of approximately \$165,000 in an effort to correct the cited deficiencies.

SETTLEMENT AGREEMENT

As a result of discussions held during the informal conference, Tompkinsville and the Commission Staff submit the following Settlement Agreement for the Commission's consideration in this proceeding:

1. Tompkinsville agrees that the Commission Staff's Utility Inspection Report, Appendix to the Commission's August 10, 2012 Order in this matter, accurately describes and sets forth material facts and findings surrounding the February 28, 2012 inspection.

2. In settlement of this proceeding, Tompkinsville agrees for a civil penalty of \$9,000.00 to be assessed. Tompkinsville agrees to pay \$1,500.00 of the civil penalty within 30 days of the date of the Commission's Order approving this Settlement Agreement. The remaining \$7,500.00 of the civil penalty shall be suspended on the condition Tompkinsville abides by the terms of this Settlement Agreement and provides all documentation within the timeframe allowed. The \$7,500.00 suspended penalty shall be suspended until January 1, 2016 unless otherwise ordered by the Commission. The scope of this proceeding is limited by the Commission's August 10, 2012 Order on whether Tompkinsville should be assessed a penalty under KRS 278.992 for violations of KRS 278.495 and the adequacy, safety, and reasonableness of its practices related to the operations, maintenance, construction, installation, and repair of natural gas facilities and whether such practices require revision. Neither the payment of the \$1,500.00 nor any other agreement contained in this Stipulation, shall be construed as an admission by Tompkinsville of any liability in this matter, or in any legal proceeding or lawsuit arising out of the facts set forth in the Report, nor shall the Commission's acceptance of this Settlement Agreement be construed as a finding of a violation of any Commission regulation or federal rule.

3. Tompkinsville shall hire a competent person as a full time gas superintendent or have a contract in place with a qualified contractor to run its gas system no later than April 30, 2013.

4. Tompkinsville shall complete the initial leakage survey of the entire system within 30 days of the date of the Order approving this Settlement Agreement.

5. Tompkinsville shall have all outstanding deficiencies addressed and corrected within 90 days of the date of the Order approving this Settlement Agreement.

6. Tompkinsville shall submit all forms, reports, and documentation generated in an effort to cure an outstanding deficiency to the Commission within 10 days of its completion. Any such forms, reports, and documentation that have already been completed and not yet tendered shall be submitted within 10 days of the date of the Order approving this Settlement Agreement.

7. Tompkinsville shall conduct subsequent leakage surveys at least once every six months within its business district, for the next three years (2013-2015). Pending review and evaluation of the leakage survey report(s), the Commission may allow Tompkinsville to return to performing leakage surveys according to regulations. The leakage survey report shall include, at a minimum, the following information: Location (address) of each leak; grade of each leak discovered; repair schedule for each leak discovered. These leakage survey reports are to be filed with the Commission within 10 days of the survey completion.

8. Beginning in 2013 and continuing through 2015, the following reports and documentation shall be submitted as indicated:

- Operator Qualification Records – annually by June 30 of each year
- Leakage survey report – within 15 days of survey completion
- Valve inspections – within 15 days of the inspection completion
- Regulator inspections – within 15 days of the inspection completion
- Corrosion records – within 15 days of the inspection completion
- Odorant tests – quarterly, within 15 days of the end of the quarter.

9. Tompkinsville shall be inspected for compliance with Pipeline Safety regulations at least once each calendar year for the period of 2013-2015.

10. Tompkinsville shall file with the Commission within 30 days of the date of the Order approving this Settlement Agreement, the cost of compliance it has incurred to date as well as an estimate of the future costs of compliance.

11. In the event that the Commission does not accept this Settlement Agreement in its entirety, Tompkinsville and Commission Staff reserve their rights to withdraw from it and require that a hearing be held on any and all issues involved and that none of the provisions contained within this Settlement Agreement shall be binding upon the parties; used as an admission by Tompkinsville of any liability in any legal proceeding, administrative proceeding or lawsuit arising out of the facts set forth in the Utility Inspection Report; or otherwise used as an admission by either party.

12. This Settlement Agreement is for use in Commission Case No. 2012-00362, and no party to this matter shall be bound by any part of this Settlement Agreement in any other proceeding, except that this Settlement Agreement may be used in any proceedings by the Commission to enforce the terms of this Settlement Agreement or to conduct a further investigation of Tompkinsville's system. Tompkinsville shall not be precluded or estopped from raising any issue, claim or defense therein by reason of the execution of this Settlement Agreement.

13. Tompkinsville and Commission Staff agree that this Settlement Agreement is reasonable, is in the public interest, and should be adopted in its entirety by the Commission. If adopted by the Commission, Tompkinsville agrees to waive its right to a hearing and will not file any petition for rehearing or seek judicial appeal.

TOMPKINSVILLE NATURAL GAS SYSTEM

By: (print name) Jeff Proffitt
By: (sign name) *Jeff Proffitt*
Title: Mayor
Date: 12-10-12

Attested By:

By: (print name) Jennifer Arms
By: (sign name) *Jennifer Arms*
Title: City Clerk
Date: 12-10-12

STAFF OF THE KENTUCKY PUBLIC SERVICE COMMISSION

By: (print name) L. Allyson Honaker
By: (sign name) *L. Allyson Honaker*
Title: Staff Attorney
Date: 12-14-12