

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CARROLLTON UTILITIES)	
_____)	
ALLEGED FAILURE TO COMPLY WITH)	CASE NO. 2015-00178
49 CFR § 191.9(a))	

ORDER

Carrollton Utilities (“Carrollton”) is a municipal gas operator in the city of Carrollton, Kentucky. Pursuant to KRS 278.495 and 49 U.S.C. § 60105, the Commission has jurisdiction to regulate safety standards of natural gas facilities operated by a public utility, county or municipal entity, such as those operated by Carrollton.

On May 27, 2014, a house to which Carrollton provided gas service exploded in Carrollton, Kentucky, and the residence was destroyed. Carrollton notified the Commission by phone call of the explosion. The Commission subsequently opened this proceeding by Order entered June 15, 2015, to require Carrollton to respond to the allegation that it violated 49 CFR § 191.9(a) through failing to submit a report of the explosion within the 30-day time period required by 49 CFR § 191.9(a). In that Order, the Commission alleged that Carrollton did not submit the report until over 60 days following the explosion.

On August 4, 2015, Carrollton tendered a combined response and motion to dismiss (“Motion to Dismiss”) the Commission’s June 15, 2015 Order. In its combined response and Motion to Dismiss, Carrollton argued that it did not violate 49 CFR §

191.9(a) because the explosion was not a reportable incident as defined in 49 CFR § 191.3.¹ Therefore, Carrollton contended that a report was not required to be filed.

On November 2, 2015, the Commission issued an Order wherein it denied Carrollton's Motion to Dismiss, finding that "the existing record is insufficient to resolve all outstanding material questions of fact."² Thereafter, on December 17, 2015, Carrollton submitted its combined second motion to dismiss ("Second Motion to Dismiss"), or in the alternative, to schedule depositions ("Motion to Schedule Depositions").

In support of its Second Motion to Dismiss, Carrollton reiterates that the May 27, 2014 house explosion was not a reportable incident as defined in 49 CFR § 191.3. Carrollton further contends that it determined that the incident was not reportable shortly after its occurrence and filed the incident report with the Pipeline and Hazardous

¹ 49 CFR § 191.3 defines an incident as any of the following events:

- (1) An event that involves a release of gas from a pipeline, or of liquefied natural gas, liquefied petroleum gas, refrigerant gas, or gas from an LNG facility, and that results in one or more of the following consequences:
 - (i) A death, or personal injury necessitating in-patient hospitalization;
 - (ii) Estimated property damage of \$50,000 or more, including loss to the operator and others, or both, but excluding cost of gas lost;
 - (iii) Unintentional estimated gas loss of three million cubic feet or more;
- (2) An event that results in an emergency shutdown of an LNG facility. Activation of an emergency shutdown system for reasons other than an actual emergency does not constitute an incident.
- (3) An event that is significant in the judgment of the operator, even though it did not meet the criteria of paragraphs (1) or (2) of this definition.

² Order (Ky. PSC Nov. 2, 2015) at 2.

Materials Safety Administration ("PHMSA") only as a courtesy in response to a phone call from a Commission Staff member.

Carrollton argues that PHMSA's instructions to the incident report form F7100.1 state that, when the release and ignition of gas is secondary to the initial cause of a fire or explosion, the incident is not reportable unless it meets certain criteria in 49 CFR § 191.3(1). Carrollton contends that these criteria were not met in the instant case, and further that 49 CFR § 191.3(2) and 49 CFR § 191.3(3) are inapplicable to secondary ignition events, such as the instant event. It asserts that it was not required to provide any direct notice to the Commission and made an informational phone call solely as a courtesy. Carrollton further asserts that, after making the determination that the event was not reportable, it was not required to notify the Commission unless it voluntarily opted to do so as a courtesy.

As it believes that the explosion was purportedly not the result of the release or ignition of gas from its facilities, and because none of the elements of 49 CFR § 191.3(1) were met with regard to its facilities, Carrollton argues that the event was not reportable and it was not required to provide notice at any stage of the event, or to provide its assessment of the event to the Commission.

Based on the motion and being otherwise sufficiently advised, the Commission finds that Carrollton's Second Motion to Dismiss should be granted. The Commission adjudicated the previous Motion to Dismiss by Order entered November 2, 2015. In that Order the Commission found:

[t]hat the existing record is insufficient to resolve all outstanding material questions of fact. The Commission further finds that to address the unresolved issues, an

evidentiary hearing is required for the purpose of taking evidence regarding the alleged violation.

Subsequent to the issuance of that Order, an informal conference with Commission Staff was held wherein the issues were further discussed and developed. The Commission also takes notice that Carrollton's Second Motion to Dismiss is replete with persuasive evidence and compelling argument demonstrating that PHMSA does not intend reports to be filed for "secondary" ignition events where the genesis of the incident is not on the gas operator's facilities.

The Commission finds that although the exact cause of the explosion was not determined, the courtesy report that Carrollton did file provides sufficient documentation that the event did not begin on its pipeline facilities. Accepting the explosion as having occurred on the customer's facilities the Commission finds that the instant incident would be classed as reportable only if it met the criteria set forth in 49 CFR § 191.3(1). The Commission further finds that Carrollton has adequately demonstrated that 49 § 191.3(2) and 49 CFR § 191.3(3) are inapplicable to the instant case due to the incident not having occurred on Carrollton's facilities. Therefore, the Commission need not delve into assessing whether the explosion should have been considered "significant in the judgment of the operator" as contemplated by 49 CFR § 191.3(3).

While the customer homeowner experienced estimated losses in excess of \$200,000,³ Carrollton has established that 49 CFR § 191.3(1)(ii) is not triggered unless the damages result from an incident originating on a pipeline facility or in the event of a secondary explosion, damages and losses inflicted upon the pipeline facilities

³ Order (Ky. PSC June 15, 2015), Appendix, Attachment A at 1.

themselves.⁴ Discounting the customer homeowner losses, it is undisputed that 49 CFR § 191.3(1)(i)-(iii) was not triggered by the incident. The Commission thus finds that the May 27, 2014 incident was not a reportable incident and the filed report was therefore not in violation of 49 CFR § 191.9(a).

Finally, although here the Commission finds that because the explosion was not a reportable incident and PHMSA form F7100.1 was not required to be filed, absent notification to the Commission of such a determination in future events the Commission may be unable to determine the rationale for why a report is not filed. The Commission is thus left uncertain in such instances whether no report has been made because the operator has determined that the incident is not reportable, and thus no report will be forthcoming, or is because of an oversight or negligence on the part of the operator. Notably, evidence Carrollton tendered in support of its Second Motion to Dismiss supports the reasonableness of notifying the Commission when a 30-day report will not be filed:

If you realize the event is not reportable after calling the NRC, advise the regulatory authority (PSC) that a 30-day report would not be forthcoming because they will be expecting one — especially if there is no ongoing communication . . . regarding the investigation and release cause.⁵

Although existing regulations do not explicitly require such a notice, the Commission strongly encourages Carrollton to keep the Commission informed of any

⁴ "A gas distribution system incident attributed to secondary ignition is NOT to be reported to PHMSA unless the damage to facilities subject to Pars 191 or 192 equals or exceeds \$50,000." Combined Second Motion to Dismiss and Motion to Schedule Depositions at 5 (*citing* General Instructions for Form PHMSA F7100.1) (emphasis in original).

⁵ Combined Second Motion to Dismiss and Motion to Schedule Depositions, Exhibit 3 at 1.

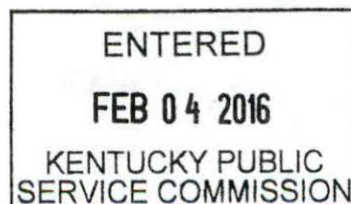
future incidents and to promptly notify the Commission of its determination that an incident is not reportable, and the reasons why, after initially reporting such incident to the National Response Center ("NRC"). Absent such notification, the Commission will be left in the position of expecting a 30-day report. Upon the passage of 30 days, absent notification, the Commission may be forced to investigate the failure or declination to file a report. Therefore, to obviate the risk of future investigations being opened, the Commission cautions and recommends in the interest of administrative efficiency that Carrollton notify the Commission of its determination that an incident is not reportable and the reasons why.

For the foregoing reasons Commission finds that Carrollton's Second Motion to Dismiss should be granted and its Motion to Schedule Depositions should be denied as moot.

IT IS THEREFORE ORDERED:

1. Carrollton's Second Motion to Dismiss is granted.
2. Carrollton's Motion to Schedule Depositions is denied as moot.
3. This matter shall be closed and removed from the Commission's docket.

By the Commission



ATTEST:


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