

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

B.T.U. PIPELINE, INC. AND  
RICHARD WILLIAMS

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) CASE NO. 95-377  
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ALLEGED VIOLATION OF 807 KAR 5:022

O R D E R

On August 30, 1995, the Commission initiated this show cause proceeding against B.T.U. Pipeline and Richard Williams, its operator, pursuant to KRS 278.992, citing the potential for damage to persons and property from exposed polyethylene ("PE") pipeline in the immediate vicinity of the Mountain Parkway.

This situation came to the attention of the Commission's Gas Safety Investigators through the State Fire Marshal's Office. Commission Safety Investigators conducted an investigation in conjunction with the State Fire Marshal's Office on August 1, 1995 and confirmed that a three-inch PE pipe was exposed in violation of 807 KAR 5:022, Section 7(12). The Investigators also observed other violations: numerous nicks and cuts on the pipe; evidence of significant exposure to sunlight, a violation of 807 KAR 5:022, Section 7(5); and, poorly fused joints, a violation of 807 KAR 5:022, Section 6(9)(a-b). The exposed pipeline ran through a pasture where cattle were present, a violation of 807 KAR 5:022, Section 7(10)(a). Richard Williams and B.T.U. were directed at that time to replace immediately the defective pipeline and, after

replacement, bury the pipeline to the depth prescribed by Commission regulations. Mr. Williams requested an additional 10 days within which to complete the work in order to repair equipment which was necessary to bury the pipeline. Commission Safety Investigators and the State Fire Marshal's Office agreed to the additional 10 days.<sup>1</sup>

On August 11, 1995 after the 10 day period had expired, Commission Safety Investigators once again inspected the area and found no changes from the conditions initially observed on August 1, 1995.<sup>2</sup> The condition of this pipeline as found during the two inspections violates numerous sections of Commission Regulation 807 KAR 5:022, the Commission's gas safety regulation requiring protection of pipe from direct exposure to sunlight; requiring protection from hazards which may cause movement of the pipe; and requiring installation of plastic pipeline at least 24 inches below ground.

The Commission initiated this show cause proceeding by Order entered August 30, 1995 directing Richard Williams and B.T.U. to show cause why civil penalties should not be assessed pursuant to KRS 278.992 for the violations described above. However, on September 5, 1995, Commission Safety Investigators again inspected

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<sup>1</sup> See report attached as Appendix A to an Order of the Public Service Commission in Case No. 95-377 dated August 30, 1995. Transcript of Evidence ("T.E.") at 12.

<sup>2</sup> Id. at 12-13.

the area to determine whether B.T.U. and Mr. Williams had complied with the regulations. No change was observed.

On September 8, 1995, the Commission sought a Permanent Injunction and Temporary Restraining Order from the Franklin Circuit Court, after notice to Mr. Williams. Although notified, Mr. Williams did not appear at the hearing. Finding that the conditions noted herein represented an imminent threat to persons, property, and livestock in the area, the Court issued a Temporary Restraining Order preventing Mr. Williams and B.T.U. from using the line until the safety violations were corrected. The Restraining Order remains in effect.

A public hearing was held at the Commission Offices on October 20, 1995 in this proceeding to determine whether penalties for the violations should be assessed against Mr. Williams and B.T.U. Mr. Williams appeared represented by counsel. After testimony was presented by Larry Amburgey, Commission Safety Investigator, Mr. Williams took the stand and was cross examined. The record reflects that the three-inch plastic pipeline located on the property of Will Conley, immediately adjacent to the Mountain Parkway, was aboveground and in violation of 807 KAR 5:022, Section 7(12).<sup>3</sup> Mr. Williams severed the line on September 8, 1995 after being notified that the Commission was seeking an injunction to prevent the line from being used.<sup>4</sup> The record reflects that the

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<sup>3</sup> T.E. at 89-90.

<sup>4</sup> T.E. at 86-87.

line remained aboveground, exposed to sunlight and to trampling by livestock in an area immediately adjacent to both the Mountain Parkway and a private residence from August 11, 1995 until September 8, 1995.<sup>5</sup>

Although Mr. Williams did not agree with the Commission Safety Investigator's characterization of the three-inch pipeline joints as poorly fused, photographic evidence introduced at the hearing clearly supports the Investigator's testimony that the joints are not properly aligned.<sup>6</sup> According to the testimony, the plastic pipe has been fused in a "haphazard" manner.<sup>7</sup> The plastic melt is bunched in places and does not appear secure.<sup>8</sup> Such poorly fused joints could lead to rupture or significant leaks due to normal increases in operating pressures, movement from cattle trampling the line, damage from vehicular traffic, or any other similar events.

B.T.U. and Mr. Williams exhibited an extremely cavalier attitude at the hearing. B.T.U. argued that mitigating circumstances "caused" them to install the pipeline aboveground: the three-inch pipe was originally installed by and purchased from a third party;<sup>9</sup> special equipment was needed to work in the soil

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<sup>5</sup> T.E. at 12-13, 87.

<sup>6</sup> T.E. at 20. Commission Staff Exhibit Nos. 2, 3, and 5.

<sup>7</sup> T.E. at 15.

<sup>8</sup> Id.

<sup>9</sup> Id. at 59-61.

conditions;<sup>10</sup> a permit was needed from the Department of Transportation to move the guardrail and bury the line;<sup>11</sup> and, some future Army Corps of Engineers project "may" require relocation of the line.<sup>12</sup>

Noncompliance with existing safety regulations created an imminent threat to the public safety that is inexcusable. KRS 278.992 provides that "[a]ny person who violates any regulation . . . governing the safety of pipeline facilities or the transportation of gas . . . shall be subject to a civil penalty . . . not to exceed \$10,000 for each violation for each day the violation exists." In this case the violations are admitted.

KRS 278.992 requires the Commission in determining the amount of the penalty to 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 the violation." B.T.U. has no annual reports on file, itself a violation of 807 KAR 5:006, Section 3. Thus the Commission has no basis for comparison of the penalty assessed to the size of B.T.U.

The record reflects that B.T.U. was to correct the violations by August 11, 1995. However the record further reflects that the

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<sup>10</sup> Id. at 85.

<sup>11</sup> Id. at 86, 94-96.

<sup>12</sup> Id. at 52-53.

line was not severed and taken out of operation until September 8, 1995, the day the Commission obtained a Restraining Order preventing Richard Williams and B.T.U. from using the line until the violations were corrected. The threat to the public traveling on the Mountain Parkway and to the property owner over whose property the line runs continued unabated for a period of 28 days. No good faith on the part of B.T.U. or its operator Richard Williams was exhibited with which to consider in compromise of any penalty. Since the violations were of the most serious nature and no good faith has been demonstrated, the Commission finds that a civil penalty of \$14,000 should be assessed.

IT IS THEREFORE ORDERED that:

1. A penalty in the amount of \$14,000 is assessed against B.T.U. pursuant to KRS 278.992(1) for the pipeline safety violations noted herein.

2. B.T.U. shall pay the assessed penalty within 20 days of the date of this Order by certified or cashier's check made payable to "Treasurer, Commonwealth of Kentucky" and delivered to the Office of General Counsel, Public Service Commission of Kentucky, 730 Schenkel Lane, P. O. Box 615, Frankfort, Kentucky 40602.

Done at Frankfort, Kentucky, this 3rd day of November, 1995.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director