

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CITY OF DRAKESBORO D/B/A DRAKESBORO)	
NATURAL GAS COMPANY - ELECTRONIC)	CASE NO.
INVESTIGATION OF ALLEGED FAILURE TO)	2019-00065
COMPLY WITH KRS 278.495, 807 KAR 5:027,)	
AND 49 C.F.R. PART 192)	

ORDER

This matter arises on the Commission’s Division of Inspection’s (DOI) motion to reopen this case to address a motion filed by the city of Drakesboro d/b/a Drakesboro Gas Company (Drakesboro). For the reasons discussed below, the Commission finds that DOI established good cause to reopen this case, and therefore DOI’s motion should be granted.

BACKGROUND

On February 25, 2021, the Commission entered an Order that, among other things, suspended a significant portion of a civil penalty assessed against Drakesboro for violations of pipeline safety standards, with the suspension conditioned upon Drakesboro meeting deadlines and taking prescribed actions to remedy the pipeline violations. The February 25, 2021 Order also closed the case, and provided for post-case monitoring by Commission Staff to ensure that the deadlines and actions were timely satisfied.

On January 12, 2022, Drakesboro filed a motion requesting a one-year extension of time to complete the first phase of a gas pipeline remediation project (Phase 1), which was required to be completed by March 1, 2022, in compliance with the February 25,

2021 Order. In the motion, Drakesboro asserted that it was unable to meet the March 1, 2022 deadline due to a lack of financing. Drakesboro further asserted that it had made significant improvements to its gas pipeline system, and the improvements enable Drakesboro to safely operate the system until the Phase 1 project can be completed. Drakesboro maintained that it is in the process of obtaining financing and expects to complete the Phase 1 project on time if the deadline is extended until March 1, 2023.

DOI'S MOTION

In its February 3, 2022 motion, DOI requested that this case be reopened, that DOI be afforded the opportunity to conduct discovery upon Drakesboro pertaining to the request for an extension, and that the Commission schedule a hearing on Drakesboro's motion.¹ DOI stated that it is not opposed to a temporary suspension of the March 1, 2022 deadline so that the Commission can address Drakesboro's motion.

Based upon the pending motions and case record, and being otherwise sufficiently advised, the Commission finds that this case should be reopened to permit DOI to conduct discovery on Drakesboro's request to extend the March 1, 2022 deadline to March 1, 2023. This is because further investigation is required to determine the reasonableness of Drakesboro's request. Drakesboro has been on notice since at least November 15, 2019, that it needed to obtain grants and loans to finance the phased improvement projects necessary to remedy Drakesboro's violations of gas pipeline safety standards.²

¹ In the motion, DOI also requested that Drakesboro's motion be filed in the case record once the case was reopened. Because Drakesboro's motion will be filed into the case in accordance with administrative procedures once the case is reopened, the Commission finds this request is moot.

² Order (Ky. PSC Feb. 25, 2021) at 19. At the November 15, 2019 hearing in this matter, Drakesboro Mayor Mike Jones testified that Drakesboro was working with Abacus Engineering and Land Surveying, Inc. (Abacus) to obtain grants and loans to finance work on Drakesboro's gas pipeline infrastructure.

By letter dated February 18, 2020, Abacus notified Drakesboro of the scope and estimated cost of the Phase 1 pipeline improvements. Yet, Drakesboro did not obtain even partial funding for Phase 1 until two years after it proffered sworn testimony that it was pursuing financing. Nor did Drakesboro explain the two-year delay. In its motion, Drakesboro stated that it was notified on October 20, 2021, that it was awarded a provisional grant to pay a portion of the Phase 1 project. Drakesboro further stated that it intends to obtain a loan for the remaining funds needed to finance Phase 1 from either U.S. Department of Agriculture Rural Development (RD) or from a private lender, but that certain audits necessary to comply with the terms of the grant and to support Drakesboro's request for a loan were only recently completed. For these reasons, the Commission concludes that DOI must conduct further investigation regarding the reasonableness of Drakesboro's motion.

The Commission further finds that, in addition to affording DOI the opportunity to conduct discovery, a hearing is necessary and in the public interest to determine the reasonableness of Drakesboro's motion. The Commission will schedule the hearing by separate Order after affording DOI the opportunity to conduct robust and thorough discovery.

Because a thorough investigation and hearing cannot be completed by March 1, 2022, the Commission agrees with DOI that the March 1, 2022 deadline to complete Phase 1 should be temporarily suspended. The Commission emphasizes to Drakesboro that only ordering paragraph 3(a) of the February 25, 2021 Order is temporarily suspended. All remaining provisions of and deadlines in the February 25, 2021 Order remain in full force and effect.

Finally, the Commission finds that Drakesboro's January 12, 2022 motion for an extension of time should be held in abeyance until further order of this Commission to allow for sufficient time to develop a thorough and robust record upon which the Commission will render its decision on Drakesboro's motion.

The Commission reminds Drakesboro that, in the February 25, 2021 Order, the Commission stated that, if

[a]fter a hearing, that Drakesboro has failed or refused to comply with the conditions identified [in the Order], then the finding of such a failure or refusal, which the Commission would consider to be a rejection of the compromise set forth [in the Order], shall result in the suspended portion of the assessed penalties becoming due within 180 days of Drakesboro's failure or refusal to comply.³

The Commission also reminds Drakesboro that, of the \$864,000 civil penalty assessed in the February 25, 2021 Order, \$834,000 was suspended pending compliance with the conditions set forth in the February 25, 2021 Order.

IT IS THEREFORE ORDERED that:

1. This case is be reopened and returned to the Commission's docket.
2. DOI's motion to reopen the case, conduct discovery, and schedule a hearing is granted.
3. DOI shall serve at least one round, and may service supplemental rounds, of information requests upon Drakesboro.
4. Drakesboro shall timely respond to DOI information requests.
5. A formal hearing shall be scheduled by separate Order.

³ Order (Ky. PSC Feb. 25, 2021) at 70–71.

6. Drakesboro's January 12, 2021 motion for an extension of time is held in abeyance until further Order of the Commission.

7. Ordering paragraph 3(a) of the February 25, 2021 Order is temporarily suspended until further Order of the Commission.

8. All other provisions of and deadlines in the February 25, 2021 Order that are not in conflict with this Order remain in full force and effect.

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By the Commission

ENTERED
FEB 09 2022 ^{rCS}
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2019-00065

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