

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CITY OF DRAKESBORO d/b/a)
DRAKESBORO NATURAL GAS)
COMPANY)

_____)

ELECTRONIC INVESTIGATION OF)
ALLEGED FAILURE TO COMPLY WITH)
KRS 278.495, 807 KAR 5:027, AND)
49 C.F.R. PART 192)

CASE NO.
2019-00065

NOTICE OF FILING

Notice is given to all parties that the Commission Division of Inspections' Reply
Brief has been filed into the record of this proceeding.



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P.O. Box 615
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DATED: FEB 28 2020

cc: Parties of Record

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COMMISSION STAFF'S POST-HEARING REPLY BRIEF

Pursuant to the post-hearing briefing schedule established by the Commission, as revised by Order entered on February 5, 2020, the Commission's Division of Inspections (DOI) submits this Reply Brief.

Discussion

The city of Drakesboro, Kentucky (Drakesboro), does not contest in its post-hearing brief the recitation of the record or the description of facts set forth in the post-hearing brief of the Commission's Division of Inspections (DOI). The city instead focuses on penalty assessment factors, and asserts that any "civil penalty should be in the form of a requirement that the city expend its funds to complete the . . . upgrades" necessary to ensure the safe operation of the city's gas distribution system.¹

Drakesboro first addresses the city's lack of prior offenses and degree of culpability. DOI notes that a violator's history of past offenses and culpability are not

¹ City of Drakesboro Post-Hearing Brief, at 1.

included in the penalty assessment factors set forth in KRS 278.992(1). Both factors, however, are considered by PHMSA in determining the amount of any civil penalty under federal law, and have been cited by the Commission as instructive and appropriate to consider.

Regarding the city's culpability, Drakesboro acknowledges its violations of minimum pipeline safety standards were "the result of bad acts of . . . 'former' employees."² But Drakesboro argues its status as a municipality and not a for-profit company should be considered because any penalty imposed ultimately will be borne by the city's residents and not, for example, a corporate violator's shareholders. The city argues against imposition of a monetary penalty because it would punish its citizens, not the individuals responsible for the violations.

Drakesboro's point is well taken. A civil penalty, however, is intended not only to punish the violator but also to deter future violations by both the violator and others similarly situated. DOI submits that this deterrent function warrants imposition of a civil penalty in this case.

Drakesboro's main argument for penalty mitigation is that it has expended substantial sums of money to bring its gas distribution system into compliance with pipeline safety standards and the Commission's orders in this case, and has hired an engineering firm to pursue funding for pipe replacement project. Drakesboro asks that in light of these compliance efforts, the Commission not assess a monetary penalty but instead require the city to expend funds to address long-term pipeline integrity concerns.

² *Id.*, at 2.

In support of its position, Drakesboro submitted with its brief a one-page preliminary cost estimate prepared by Abacus Engineering & Land Surveying, Inc. (Abacus) for what is referred to as Phase I of a project to rehabilitate Drakesboro's gas distribution system.³ The estimate states that Abacus conducted a review of Drakesboro's system and identified the segment of steel pipe along Highway 431 as presenting "the largest threat to the safety of the City of Drakesboro and its citizens." Abacus recommends replacing 4,700 lineal feet of this main plus 300 lineal feet of metal pipe running westward along Highway 176 from the intersection with Highway 431. In all, Phase 1 would entail replacement of 5,000 lineal feet of a steel gas main with four-inch polyethylene (PE) gas line at an estimated cost of \$509,527.52.

DOI supports replacement of this segment of line with PE. The existing pipe has been in the ground for an undetermined amount of time unprotected from external corrosion, and replacement is preferable to fixing the cathodic protection system because the extent to which the integrity of the line has been compromised by corrosion is unknown. It is appropriate to start with this segment of main because it is located in the area of the city's distribution system with the highest concentration of homes and businesses. DOI supports, with caveats, a partial suspension of any penalty contingent on Drakesboro commencing Phase I by a date certain.

DOI notes, however, that according to the 2019 annual report filed by Drakesboro pursuant to 49 CFR § 191.11 and 807 KAR 5:027, Section 3, the city's distribution system has 22 miles of steel mains. Phase I would entail replacement of less than one percent of the system's metal piping. Further, Drakesboro has not identified any source of funding

³ *Id.*, at Exhibit A.

to pay for Phase I. Finally, DOI notes that there is no proposed schedule or time-frame for completion of the pipeline replacement.

Phase I also does not include work to fix the system's cathodic protection. DOI acknowledges, however, that according to the Cathodic Protection Troubleshooting Report (CP Report)⁴ commissioned by the city, the scope of work required to rectify the ground bed and rectifier issues cannot be determined until the main is isolated and certain deficiencies corrected. Phase I should provide for the deficiencies to be corrected so that the measures needed to provide appropriate cathodic protection can be determined.

Drakesboro also requests a credit for expenses it contends it incurred to comply with the Commission's order, mainly the cost of employing a third-party operator. Drakesboro distinguishes the expenses it classifies compliance costs from operating expenses. DOI does not agree with this distinction. The Commission concluded that use of a qualified third-party operator was the only way the Drakesboro system could be operated with a minimum level of safety. Drakesboro has not had personnel qualified to perform covered task as required by 49 CFR 192.805, and the city could not operate its gas system in compliance with its legal operations without hiring a third-party operator. DOI does not support abatement of any penalty based on costs a violator incurs simply to comply with pipeline safety requirements.

Based on the foregoing, DOI recommends a suspension of 85% of the penalty proposed in DOI's post-hearing brief, for a penalty in the amount of \$30,150, payable

⁴ A copy of the report was introduced at the November 15, 2019 hearing as PSC Exhibit 3.

within one year of the date of the Commission's order, contingent upon the following conditions:

1. Drakesboro shall file monthly progress reports on implementation of the Phase I pipe replacement program. The reports shall include the status of the city's efforts to obtain financing as well as copies of engineering reports, construction plans and specifications, and requests for proposals. These monthly status can shall supplant the bi-weekly reports required by ordering paragraph 7 of the Commission's order dated March 12, 2019.
2. Drakesboro shall commence pipeline replacement in accordance with Phase I, enter into a contract to sell its gas distribution system to another operator, or cease operating the system on or before March 31, 2021.
3. Drakesboro shall include the recommendations set forth in the CP Report in Phase I of the rehabilitation project.
4. Drakesboro shall notify the Commission 30 days in advance of any transfer of its gas distribution system

Additionally, DOI continues to recommend that the Commission require Drakesboro to take the following remedial measures as set forth in DOI's post-hearing brief:

5. Perform a leakage survey of its entire gas distribution system at least once each calendar year.
6. Continue to use a third-party contractor approved by DOI to operate its gas system and perform all leak surveys, regulator inspections, cathodic protection system inspections, and major maintenance activities at least through calendar year 2020, at which time DOI will review the city's ability to operate its gas system safely with qualified and properly trained city employees.

DOI withdraws its recommendation that Drakesboro be required to conduct a weekly odorant test. Performance of a monthly test in accordance with 807 KAR 5:027, Section 5, is satisfactory provided all readings meet the requirements of 49 CFR § 192.625(a). If any readings are non-compliant, DOI recommends that Drakesboro be required to resume weekly tests.

Provided the city has made material progress toward implementation of Phase I in accordance with the conditions set forth herein, entered into a contract to transfer its distribution system, or ceased operating the system, DOI would support an application by Drakesboro to suspend an additional ten percent of the penalty.

Respectfully submitted,



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