

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Investigation of Duke )  
Energy Ohio, Inc., Relative to Its ) Case No. 11-3636-GA-GPS  
Compliance with the Natural Gas Pipeline )  
Safety Standards and Related Matters. )

FINDING AND ORDER

The Commission finds:

- (1) Duke Energy Ohio, Inc. (Duke), is a public utility and a natural gas company within the meaning of Sections 4905.02, 4905.03(A)(5), and 4905.90(G)(1), Revised Code, and is, therefore, a public utility and an operator subject to the ongoing jurisdiction and supervision of the Commission pursuant to Sections 4905.02, 4905.04, 4905.05, 4905.06, and 4905.90 through 4905.96, Revised Code. Accordingly, Duke is required to comply with the minimum gas service standards found in Chapter 4901:1-13, Ohio Administrative Code (O.A.C.), as well as the gas pipeline safety (GPS) rules contained in Chapter 4901:1-16, O.A.C., which set forth the safety standards and requirements for intrastate gas pipeline facilities subject to the Commission's jurisdiction. Pursuant to Rule 4901:1-16-03(A), O.A.C., the GPS rules incorporate the United States Department of Transportation's GPS regulations, as contained in 49 Code of Federal Regulations (C.F.R.) Parts 40, 191, 192, and 199.
- (2) On June 17, 2011, as supplemented on June 30, 2011, Staff filed a report detailing the results of its investigation into Duke's compliance with the GPS rules following an explosion and subsequent fire at an apartment located at 800 Franklin Avenue, Lebanon, Ohio, on November 2, 2010. According to the report, the explosion and subsequent fire resulted in seven injuries and an estimated property damage of \$1,000,000, meeting the definition of an incident, pursuant to Rule 4901:1-16-01(G), O.A.C., and 49 C.F.R. 191.3.
- (3) Staff reports that Duke's contractor, Scope Services, Inc. (Scope), reestablished gas service to the apartment on November 2, 2010, after it had been unoccupied since

May 11, 2010. According to the report, a resident at the apartment attempted to light a cigarette a few hours after service was reestablished, and the apartment exploded. Staff states that the Ohio State Fire Marshal determined that the source of the explosion and subsequent fire was a half-inch natural gas supply pipe in the laundry room that did not have an inline valve or cap.

- (4) Following its investigation, Staff concludes in the report that the explosion and subsequent fire resulted from Duke's failure to have adequate procedures to reestablish household service and to provide adequate oversight of individuals performing covered tasks in violation of GPS rules and regulations. Staff notes that Duke's procedures at the time were inadequate, as they did not require a pressure test before reestablishing service on a house line that has been off for 30 days or more. Staff adds that this deficiency was compounded by Scope's apparent failure to follow Duke's procedures for reconnecting a house line, which required a visual inspection and meter test before service was reconnected. Staff indicates that Scope also failed to recognize an abnormal operating condition associated with reestablishing service. Further, according to Staff, Scope failed to take steps to minimize the danger of accidental ignition of gas by failing to investigate when the resident at the apartment reported the smell of gas.
- (5) Staff further reports that, on February 17, 2011, Staff issued Duke a notice of probable noncompliance concerning the violations below, as supplemented by violations related to incident reporting:
  - (a) Duke did not minimize the danger of accidental ignition by inspecting the gas-powered appliances in the apartment or ensuring the piping from the meter to the appliances was pressure tight prior to reestablishing service, in violation of 49 C.F.R. 192.751.
  - (b) Duke failed to perform a pressure test before reestablishing service on a house line, where gas service had been shut off for 30 days or more, in violation of Rule 4901:1-13-05(A)(3)(c), O.A.C.

- (c) Scope did not follow Duke's procedures in effect for reestablishment of service, which required a visual house line inspection and meter test of the house line before reconnecting service, in violation of 49 C.F.R. 192.603.
- (d) Duke did not periodically review and incorporate the requirements of Rule 4901:1-13-05(A)(3)(c), O.A.C., into its procedures, in violation of 49 C.F.R. 192.605.
- (e) Scope was inadequately trained in the requirements for pressure testing when reestablishing service to a house line after service had been disconnected for 30 days or more. Scope also failed to recognize or respond to abnormal operating conditions by failing to identify from the meter dial that a leak existed and failing to respond to the resident's reporting the smell of gas after reestablishment of service, in violation of 49 C.F.R. 192.803.
- (f) Duke failed to submit a timely incident report that accurately identified incorrect operation as the incident cause, in violation of 49 C.F.R. 191.9.
- (g) Duke failed to provide notice of the incident to Staff within two hours of discovery, in violation of Rule 4901:1-16-05(A), O.A.C.
- (h) Duke submitted a final incident report that failed to correctly identify incorrect operation as the cause of the incident and did not report any actions taken to minimize the possibility of a recurrence, in violation of Rule 4901:1-16-05(B)(3), O.A.C.
- (i) Although it was not a contributing factor to the incident, Duke failed to perform regular inspections on the regulator station providing gas to all buildings located at 800 Franklin Avenue, Lebanon, Ohio, in violation of 49 C.F.R. 192.739.

- (6) According to Staff, Duke responded to the notice of probable noncompliance on March 23, 2011, but did not provide any additional documentation or evidence to dispute Staff's conclusions about the cause of the incident. Staff also notes that Duke failed to provide any documentation that proper procedures for reestablishing service, where gas service has been off for 30 days or more, were in place on November 2, 2010. Further, Staff states that Duke did not provide any written documentation to substantiate its claim that contractors were instructed in August 2009 to perform pressure tests on house lines off for more than 30 days or any written documentation that its employees or contractors were ever trained at any time on the pressure testing requirements. Staff disputes Duke's assertion that Scope's employees were qualified, given that they failed to recognize an abnormal operating condition when performing the meter test, and failed to investigate after the resident at the apartment reported the smell of gas.
- (7) In its report, Staff concludes that Duke violated 49 C.F.R. 191.9, 192.603, 192.605, 192.739, 192.751, and 192.803, as well as Rules 4901:1-13-05(A)(3)(c) and 4901:1-16-05(A) and (B)(3), O.A.C., and, accordingly, makes a number of recommendations:
  - (a) Duke should modify its operations and maintenance plan and applicable procedures to specifically require that a pressure test be conducted when reestablishing service, consistent with Rule 4901:1-13-05, O.A.C.
  - (b) Duke should requalify all company and contractor personnel on all applicable procedures for reestablishment of gas service, including visual inspection, pressure testing requirements, and recognition of abnormal operating conditions. Additionally, Duke should review its qualifications for evaluating pipeline personnel.
  - (c) Duke should submit a revised incident report to correctly identify incorrect operation as a contributing factor to the incident and to identify

steps taken to minimize the possibility of a recurrence.

- (d) Duke should submit to Staff a plan to provide assurance that no safety concerns exist as a result of Duke's procedures failing to require a pressure test when reestablishing service for existing house lines off for more than 30 days.
  - (e) Given the number and severity of the violations contributing to the release of gas and subsequent fire, a forfeiture of \$500,000 should be assessed against Duke for failure to comply with the requirements for reestablishing service.
- (8) On November 14, 2011, Duke and Staff filed a stipulation and recommendation (stipulation), which would resolve all of the issues in this case. The stipulation provides, *inter alia*, that, although Duke does not admit to the accuracy of Staff's allegations, Duke has nonetheless responded to the allegations and remedied the cited violations by complying with the following Staff recommendations:
- (a) Duke agreed to modify and has modified its operations and maintenance plan and applicable procedures to specifically require that a pressure test be conducted when reestablishing service when gas service has been off for 30 days or more, consistent with Rule 4901:1-13-05, O.A.C.
  - (b) Duke agreed to requalify and has requalified all company and contractor personnel on all applicable procedures for reestablishment of gas service, including visual inspection, pressure testing requirements, and recognition of abnormal operating conditions. Further, Duke reviewed its qualifications for evaluating pipeline personnel.
  - (c) Duke agreed to provide and has provided to Staff a plan to provide assurance that no safety concerns exist as a result of Duke's procedures failing to include a pressure test when

reestablishing service for existing house lines off for more than 30 days. A copy of the plan is attached to the stipulation as Attachment 1. According to the attachment, Duke conducted an analysis of its data regarding gas reconnections performed from July 1, 2010 to June 30, 2011. Based on the results of its analysis, Duke identified no safety concerns associated with the reconnections performed during that time period. The attachment further explains that Duke performed pressure tests on all gas reconnections that occurred after the date of the incident until October 31, 2011. As of that date, Duke's field employees and contractors are able to determine whether gas service has been off for 30 days or more, and, if so, are instructed to perform a pressure test.

- (d) Duke agreed to submit and has submitted a revised incident report to correctly identify incorrect operation as a contributing factor to the incident and to identify steps taken to minimize the possibility of a recurrence.
- (e) Duke agrees to pay a forfeiture of \$500,000, within ten business days of the Commission order adopting the stipulation, which shall be payable by certified check to "Treasurer State of Ohio," to be deposited in the state treasury to the credit of the general revenue fund. Duke may not recover this forfeiture in any pending or future proceeding before the Commission, as set forth in Rule 4901:1-16-14(C), O.A.C.

(Stipulation at 6-7, Attachment 1.)

- (9) Pursuant to Rule 4901:1-16-11, O.A.C., Duke and Staff are permitted to enter into a stipulation in order to resolve any alleged violations of the GPS standards. While the stipulating parties cited Rule 4901-1-30, O.A.C., as the authority under which they filed the stipulation, the Commission finds it appropriate to consider the stipulation in accordance with our

enforcement powers under Section 4905.91, Revised Code, and Chapter 4901:1-16, O.A.C. The issue before us for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. Ultimately, however, our goal is to ensure the safety of consumers, particularly where gas pipelines are involved, and warrant that sufficient processes and consequences are in place to prevent future incidents.

In considering the stipulation presented by the parties, the Commission initially notes that Section 4905.95, Revised Code, authorizes the assessment upon an operator of forfeitures of not more than \$100,000 for each day of each violation or noncompliance found by the Commission, provided that the aggregate of such forfeitures does not exceed \$500,000 for any related series of violations or noncompliances. In the present case, the Commission finds that, given the number and severity of the violations reported by Staff, \$500,000 is a substantial amount that would serve to deter Duke from future violations; however, we wish to make clear that we will not hesitate to impose total forfeitures of a much greater magnitude in future cases involving any operator, where the circumstances of the case warrant such action. Therefore, the Commission finds that the stipulation in this case is reasonable, as it represents a fair and equitable resolution of all issues presented by Staff when Staff initiated this proceeding in accordance with Rule 4901:1-16-12, O.A.C., and emphasizes the importance of compliance with the GPS rules through the assessment of a significant monetary forfeiture. Accordingly, the stipulation should be approved and adopted in its entirety.

- (10) As a final matter, the Commission emphasizes our commitment to ensuring that consumers are protected and that the gas companies take all necessary measures to provide such safeguards. With our decision herein, it is the Commission's expectation that Duke will review its management and training practices pertaining to gas pipeline safety and immediately correct any issues. Staff should also continue its diligent efforts of working with Duke and the other gas companies regarding each company's compliance with all GPS requirements. The Commission notes that, should Staff's review discover any

concerns or issues that are not immediately resolved by an affected company, we will take whatever action is necessary to investigate and determine an appropriate resolution, including the initiation of a formal docket auditing the GPS practices of any affected company.

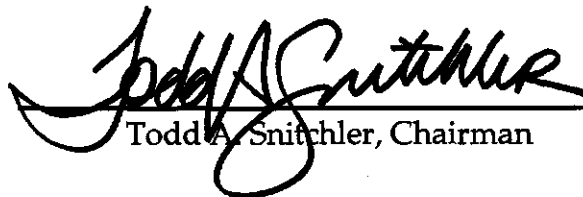
It is, therefore,

ORDERED, That the stipulation and recommendation filed in this proceeding be approved and adopted in its entirety. It is, further,


ORDERED, That nothing in this finding and order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

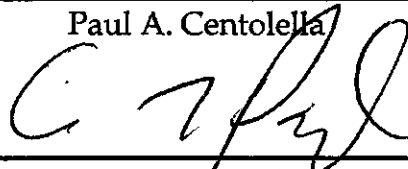
ORDERED, That a copy of this finding and order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Paul A. Centolella

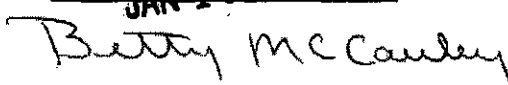
  
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Entered in the Journal

JAN 18 2012  
  
Betty McCauley  
Secretary