

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the investigation of)
the Foraker Gas Company relative to)
compliance with the Natural Gas)
Pipeline Safety standards) Case No. 21-0205-GA-GPS

March 8, 2021

To the Honorable Commission,

Staff proposes the following Stipulation and Recommendation for the Commission’s consideration. This Stipulation and Recommendation was negotiated between Commission Staff and the Foraker Gas Company to resolve Staff findings related to Staff’s investigation of the Foraker Gas Company’s compliance with the Pipeline Safety Regulations.

The proposed Stipulation and Recommendation does not purport to reflect the views of the Commission, nor should any party consider the Commission as bound in any manner by the negotiated Stipulation and Recommendation set forth herein.

Respectfully submitted,

/s/ Chelsea Fletcher

Jodi J. Bair

Chelsea Fletcher

Assistant Attorneys General

Public Utilities Section

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**On Behalf of the Staff of the
Public Utilities Commission of Ohio**

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Investigation of the :
Foraker Gas Company, Relative to its : Case No. 21-0205-GA-GPS
Compliance with the Natural Gas :
Pipeline Safety Standards and Related :
Matters.

STIPULATION AND RECOMMENDATION

The Ohio Administrative Code (Ohio Adm.Code) 4901-1-30 provides that any two or more parties may enter into a written stipulation covering the issues presented in this proceeding. The purpose of this document is to set forth the understanding and agreement of the Foraker Gas Company (Foraker) and the Staff of the Public Utilities Commission of Ohio (Staff). Foraker and Staff¹, each of whom is a "Party" and together constitute the "Parties" to this Stipulation and Recommendation (Stipulation), recommend that the Public Utilities Commission of Ohio (Commission) approve and adopt this Stipulation, which resolves all of the issues in this case.

This Stipulation is supported by adequate data and information; represents a just and reasonable resolution of the issues raised in these proceedings; violates no regulatory principle or precedent; and is the product of lengthy, serious bargaining among knowledgeable and capable Parties to resolve the issues raised in this case. While the

¹ According to Ohio Adm.Code 4901-1-10(C), for purposes of entering into a stipulation, Staff is a party.

Stipulation is not binding on the Commission, it is entitled to careful consideration by the Commission. For purposes of resolving certain issues raised by these proceedings, the Parties stipulate, agree, and recommend as set forth below. This Stipulation is a reasonable compromise involving a balancing of competing positions and it does not necessarily reflect the position that either Party would have taken if these issues had been fully litigated.

The Parties fully support this Stipulation and request that the Commission accept and approve the terms.

WHEREAS, all of the related issues and concerns raised by the Parties have been addressed in the substantive provisions of this Stipulation and reflect, as a result of such discussions and compromises by the Parties, an overall reasonable resolution of all such issues. This Stipulation is the product of the discussions and negotiations of the Parties and is not intended to reflect the views or proposals that either Party may have advanced acting unilaterally. Accordingly, this Stipulation represents an accommodation of diverse interests represented by the Parties and is entitled careful consideration by the Commission.

WHEREAS, this Stipulation represents a serious compromise of complex issues and involves substantial benefits that would not otherwise have been achievable; and

WHEREAS, the Parties believe that the terms and conditions agreed to herein represent a fair and reasonable solution to the issues raised in this case:

NOW, THEREFORE, the Parties stipulate, agree and recommend that the Commission make the following findings and issue its Opinion and Order in this case approving this Stipulation in accordance with the following:

1. Foraker meets the definition of a regulated gas pipeline system found in the Pipeline Safety Regulations 49 C.F.R. 192.3 and, as such, must design, construct, operate and maintain the system in accordance with the Pipeline Safety Regulations. Foraker must comply with the gas pipeline safety (GPS) rules in Ohio Adm.Code Chapter 4901:1-16, which sets forth the safety standards and requirements for intrastate gas pipeline facilities subject to the Commission's jurisdiction. The GPS rules incorporate by reference the United States Department of Transportation's GPS standards and requirements contained in 49 C.F.R. Parts 40, 191, 192, and 199 (the Pipeline Safety Regulations) as enabled through R.C. 4905.91 and Ohio Adm.Code 4901:1-16-03.
2. Staff issued a Notice of Probable Noncompliance ("Notice") on January 19, 2021, in accordance with Ohio Adm.Code 4901-1-16-09.² The Notice, among other things, noted that the gas distribution system represented a potential hazard to human life and/or property, as set forth in 49 U.S.C. 60112 and the Ohio Adm.Code 4901:1-16-02(B)(2).

² See Notice of Probable Noncompliance, January 19, 2021, attached as Exhibit 1.

3. Staff issued a proposed Compliance Order (“Order”) to Foraker on January 19, 2021 concurrently with the Notice, also in accordance with the Ohio Adm.Code 4901:1-16-09.³ The Order required Foraker to take certain corrective actions to return to compliance with the Pipeline Safety Regulations. The Order also proposed a forfeiture amount of \$50,000 which would be waived if the corrective actions specified in the Order were completed within 180 days.
4. Foraker stipulates that it shall complete the following actions within 180 days of Staff’s January 19, 2021 Order:
 - a. Foraker shall hire Utility Solutions of Ohio to perform a leakage survey of all piping regulated under 49 C.F.R. Part 192.
 - b. Foraker shall clear all rights-of-way to an extent that will allow leakage surveyors access to the pipeline.
 - c. Foraker shall classify all leaks found as described in Ohio Adm.Code 4901:1-14-04(H) and immediately rectify all hazardous leaks or other hazardous conditions identified by the leakage survey.
 - d. Foraker shall install pipeline markers at all crossings of a public road, railroad, and other sites accessible by the public that are identified in the leakage survey.

³ See Proposed Compliance Order, January 19, 2021, attached as Exhibit 2.

- e. Foraker shall inform Staff of the time when the leakage survey will take place, so Staff may observe the leakage survey. Notification must take place at least one week, but not more than two weeks before commencement of the survey.
 - f. The Foraker Gas Company shall make the results of the leakage survey available to Staff.
 - g. Foraker shall develop a priority list to clean and coat any exposed metallic piping, protect any plastic piping that may be exposed to sunlight and the elements, and protect any exposed above ground piping that is vulnerable to vehicular or other natural force or other outside force damage. Foraker shall develop this list after consulting with Staff to ensure the identified tasks can be completed by the time of the next scheduled leakage survey. If Foraker cannot complete the identified tasks before the time of the next scheduled leakage survey, Foraker shall make Staff aware of the delay, and the Parties shall agree on an alternative date of completion.
5. To further secure performance of the obligations undertaken in this Stipulation, Foraker stipulates to a future forfeiture of fifty thousand dollars (\$50,000) payable if any of the following occur, subject to the process described in Paragraph 6 below:
- a. Foraker breaches any provision of this Stipulation and fails to remedy such breach after notice and opportunity to cure,

- b. Foraker fails to implement the corrective actions outlined in paragraph 4 of this Stipulation.
6. If Staff believes that an event set forth in Paragraph 5 has occurred, and wishes to recommend imposition of the Stipulated Forfeiture, in whole or in part, the following process shall be observed:
 - a. Staff shall make an appropriate filing with the Commission, recommending ~~the Stipulated Forfeiture be imposed and the reasons for such~~ recommendation, to which Foraker shall be provided a reasonable opportunity to respond.
 - b. The Parties acknowledge that the Commission, in accordance with generally applicable legal requirements, shall be responsible to determine the procedures that shall be applied thereafter.
7. This Stipulation shall be designated as Exhibit 1 and admitted into evidence in this proceeding.
8. Except for purposes of enforcement of the terms of this Stipulation, neither this Stipulation, nor the information and data contained therein or attached, shall be cited as precedent in any future proceeding for or against any Party or the Commission itself. This Stipulation is a reasonable compromise involving a balancing of competing positions and it does not necessarily reflect the position that one or more of the Parties would have taken if these issues had been fully litigated.

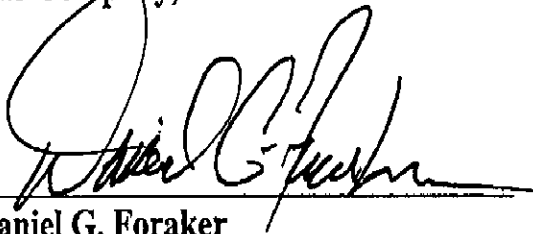
9. This Stipulation is expressly conditioned upon its adoption by the Commission in its entirety and without material modification. Should the Commission reject or materially modify all or any part of this Stipulation, the Parties shall have the right, within thirty days of issuance of the Commission's Order, to file an application for rehearing. Should the Commission, in issuing an entry on rehearing, not adopt the Stipulation in its entirety and without material modification, either Party may withdraw from the Stipulation. Such withdrawal shall be accomplished by filing a notice with the Commission, including service to the other Party, in the docket within thirty days of the Commission's entry on rehearing. Prior to the filing of such a notice, the Party wishing to withdraw agrees to work in good faith with the other Party to achieve an outcome that substantially satisfies the intent of the Stipulation and, if a new agreement is reached, then the new agreement shall be filed for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful in reaching a new agreement, and a Party files a notice to withdraw from the Stipulation, then the Commission will convene an evidentiary hearing such that the withdrawing Party will be afforded the opportunity to contest the Stipulation by presenting evidence through witnesses and cross-examination, presenting rebuttal testimony, and briefing all issues that the Commission shall decide based upon the record and briefs.
10. The Parties will support the Stipulation if the Stipulation is contested, and no Party will oppose an application for rehearing designed to defend the terms of this

Stipulation. If the Stipulation is adopted by the Commission, the Parties will support the Stipulation in any appeal of the decision.

11. The Parties understand and agree that this Stipulation is not binding on the Commission; however, the Stipulation is entitled to the Commission's careful consideration, the Parties agree that the Stipulation is in their best interest, and the public interest, and urge the Commission to adopt the same.

The undersigned hereby stipulate and agree and each represent that it is authorized to enter into this Stipulation and Recommendation on this 8 day of March, 2021.

**On behalf of the Foraker
Gas Company, Inc.**



Daniel G. Foraker
Foraker Gas Company, Inc.
P.O. Box 537
New Lexington, OH 43764-0537

**On behalf of the Staff of the
Public Utilities Commission
of Ohio**

/s/ Chelsea R. Fletcher

Chelsea R. Fletcher
Jodi J. Bair
Assistant Attorney General
Public Utilities Section
30 E. Broad St., 26th Fl.
Columbus, OH 43215



**Public Utilities
Commission**

Mike DeWine, Governor
M. Beth Trombold, Acting Chair

Commissioners

Lawrence K. Friedeman
Dennis P. Deters
Daniel R. Conway

January 19, 2021

Daniel Foraker, President
Foraker Gas Company
420 South State Street, P.O. Box 537
New Lexington, Ohio 43764

Dear Mr. Foraker:

On 12/14/2020 – 12/23/2020, a representative of the Public Utilities Commission of Ohio (PUCO) conducted a pipeline safety inspection of your pipeline facilities and records at Foraker Gas Company, pursuant to Section 4905.91(B) of the Ohio Revised Code.

As a result of the inspection, the PUCO Staff (Staff) has issued the following Notice of Probable Noncompliance to Foraker Gas Company in accordance with Section 4901:1-16-09 of the Ohio Administrative Code, for review and written response within 30 days. The response is your opportunity to provide additional information for consideration by the Staff and/or to provide a proposed corrective action plan.

If you need more information, please call me at 614-466-8205.

Sincerely,

Joe Dragovich, P.E.
Program Manager
Gas Pipeline Safety Section
Facility and Operations Field Division
Public Utilities Commission of Ohio

JD:ts
Enclosure

THE PUBLIC UTILITIES COMMISSION OF OHIO
GAS PIPELINE SAFETY SECTION

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

NOTICE OF PROBABLE NONCOMPLIANCE

Sent to Daniel Foraker Title President
Operator Foraker Gas Company
Address 420 South State Street, P.O. Box 537
City New Lexington State Ohio Zip Code 43764
Date of Inspection 12/14/2020 – 12/21/2020
GPS Inspector Michael F. Purcell II

DESCRIPTION

ALL PROBABLE NONCOMPLIANCES LISTED BELOW SHOULD BE CORRECTED OR ACTION TAKEN TO CORRECT WITHIN 30 DAYS OF RECEIPT OF CERTIFIED LETTER.

- (1) Section 192.479 (49 C.F.R.); Title: Atmospheric corrosion control: General.
- (2) Section 192.707 (49 C.F.R.); Title: Line markers for mains and transmission lines.
- (3) Section 192.721 (49 C.F.R.); Title: Distribution systems: Patrolling.
- (4) Section 192.723 (49 C.F.R.); Title: Distribution systems: Leakage surveys.

Describe Probable Noncompliance

49 C.F.R. 192.479 *Atmospheric corrosion control: General.*

- (a) *Each operator must clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere, except pipelines under paragraph (c) of this section. Coating material must be suitable for the prevention of atmospheric corrosion.*
- (b) *Coating material must be suitable for the prevention of atmospheric corrosion.*
- (c) *Except portions of pipelines in offshore splash zones or soil-to-air interfaces, the operator need not protect from atmospheric corrosion any pipeline for which the operator demonstrates by test, investigation, or experience appropriate to the environment of the pipeline that corrosion will-*
 - (1) *Only be a light surface oxide; or*
 - (2) *Not affect the safe operation of the pipeline before the next scheduled inspection.*

Staff performed field observations of a section of pipeline known as the Mohler pipeline segment and noted approximately 500 feet of exposed steel piping with ineffective and degraded coating showing evidence of active atmospheric corrosion. Staff also noted a creek crossing known as the Clayton Twp. 154 – APV Creek Crossing that shows ineffective and degraded coating, and evidence of active atmospheric corrosion.

49 C.F.R. 192.707 *Line markers for mains and transmission lines.*

- (a) *Buried pipelines. Except as provided in paragraph (b) of this section, a line marker must be placed and maintained as close as practical over each buried main and transmission line:*
 - (1) *At each crossing of a public road and railroad; and*
 - (2) *Wherever necessary to identify the location of the transmission line or main to reduce the possibility of damage or interference.*
- (b) *Exceptions for buried pipelines. Line markers are not required for the following pipelines:*

- (1) Mains and transmission lines located offshore, or at crossings of or under waterways and other bodies of water.
- (2) Mains in Class 3 or Class 4 locations where a damage prevention program is in effect under §192.614.
- (3) Transmission lines in Class 3 or 4 locations until March 20, 1996.
- (4) Transmission lines in Class 3 or 4 locations where placement of a line marker is impractical.
- (c) Pipelines above ground. Line markers must be placed and maintained along each section of a main and transmission line that is located above ground in an area accessible to the public.
- (d) Marker warning. The following must be written legibly on a background of sharply contrasting color on each line marker:
 - (1) The word "Warning", "Caution" or "Danger" followed by the words "Gas (or name of gas transported) Pipeline" all of which, except for markers in heavily developed urban areas, must be in letters at least 1 inch (25 millimeters) high with ¼ inch (6.4 millimeter) stroke.
 - (2) The name of the operator and the telephone number (including area code) where the operator can be reached at all times.

Staff observed no pipeline markers present along exposures that exist on the Mohler pipeline, at a railroad crossing on Twp. Rd. 122 (Jackson Twp.), and at road crossings at State Rt. 93 and Twp. Rd. 122.

49 C.F.R. 192.721 *Distribution systems: Patrolling.*

- (a) The frequency of patrolling mains must be determined by the severity of the conditions which could cause failure or leakage, and the consequent hazards to public safety.
- (b) Mains in places or on structures where anticipated physical movement or external loading could cause failure or leakage must be patrolled –
 - (1) In business districts, at intervals not exceeding 4 1/2 months, but at least four times each calendar year; and
 - (2) Outside business districts, at intervals not exceeding 7 1/2 months, but at least twice each calendar year.

The Foraker Gas Company could not produce acceptable documentation demonstrating that patrolling was performed. Patrolling is supposed to be performed monthly according to Foraker Gas Company procedures, however, patrolling records shown to Staff appeared to have all entries written in at the same time in the same handwriting, showed patrols completed on weekends and holidays, and showed conclusions that do not accurately reflect conditions on the line. Additionally, an exposed segment of 3" plastic pipe was observed at a railroad crossing at Twp. Rd. 122 (Jackson Township), the Clayton Twp. 154 – APV Creek Crossing had a broken rock guard and degraded coating and advanced corrosion, and there is approximately 500 feet of exposed steel pipeline along the Mohler line showing degraded coating and active atmospheric corrosion, with no line markers present near an ATV trail. None of these conditions were noted on patrolling documentation.

49 C.F.R. 192.723 *Distribution systems: Leakage surveys.*

- (a) Each operator of a distribution system shall conduct periodic leakage surveys in accordance with this section.
- (b) The type and scope of the leakage control program must be determined by the nature of the operations and the local conditions, but it must meet the following minimum requirements:
 - (1) A leakage survey with leak detector equipment must be conducted in business districts, including tests of the atmosphere in gas, electric, telephone, sewer, and water system manholes, at cracks in

pavement and sidewalks, and at other locations providing an opportunity for finding gas leaks, at intervals not exceeding 15 months, but at least once each calendar year.

- (2) A leakage survey with leak detector equipment must be conducted outside business districts as frequently as necessary, but at least once every 5 calendar years at intervals not to exceed 63 months. However, for cathodically unprotected distribution lines subject to 192.465(e) on which electrical surveys for corrosion are impractical, a leakage survey must be conducted at least once every 3 calendar years at intervals not exceeding 39 months.*

Staff discovered a gas leak at Twp. Rd. 154 – APV Creek Crossing that was not identified as part of a leakage survey. Foraker personnel gave answers when asked about how they performed leakage surveys that implied they believed isolating a segment of main and measuring main pressure with a gauge to see if it falls or not was an acceptable method of performing a leakage survey. A review of leak grading and repair documentation shows no leaks in the Foraker Gas system that were discovered through a leakage survey. All documented leaks were a result of either customer complaints or excavation damage. Finally, observed conditions along the pipeline right-of-way do not allow someone to survey the pipeline due to overgrown vegetation. These facts lead Staff to believe that a leakage survey using leakage detection equipment has not actually been performed on the Foraker Gas system for an extensive period.



**Public Utilities
Commission**

Mike DeWine, Governor
M. Beth Trombold, Acting Chair

Commissioners

Lawrence K. Friedeman
Dennis P. Deters
Daniel R. Conway

January 19, 2021

Mr. Daniel G. Foraker, President
Foraker Gas Company
420 S. State Street, P.O. Box 537
New Lexington, OH 43764

Mr. Foraker:

On December 14 through 23, 2020, a representative of the Public Utilities Commission of Ohio (PUCO) conducted a safety inspection of pipeline facilities located at the Foraker Gas Company. This inspection identified several violations of the Pipeline Safety Regulations (49 C.F.R. 192) which are described in the attached Notice of Probable Noncompliance.

Staff has identified similar violations at the Foraker Gas Company during inspections performed in 2013, 2014, and 2018. Foraker Gas Company appears to be correcting only violations identified by Staff without performing corrective action on the system as a whole.

Due to the history of violations identified at the Foraker Gas Company, Foraker Gas Company is required to perform the actions listed in the attached Proposed Compliance Order to ensure Foraker Gas Company can continue to provide safe and reliable gas service to its customers. A proposed forfeiture amount of **\$50,000** is assessed for the violations described in this letter, which will be waived if all the items in the attached Proposed Compliance Order are completed.

Please provide a written response within 30 days of the date of this letter stating your acceptance of the Proposed Compliance Order. You may contact me at (614) 561-6880 or by e-mail at peter.chace@puco.ohio.gov with any questions.

Sincerely,

Peter A. Chace
Chief, Facility Operations & Field Division
Public Utilities Commission of Ohio



Public Utilities Commission

Mike DeWine, Governor
M. Beth Trombold, Acting Chair

Commissioners

Lawrence K. Friedeman
Dennis P. Deters
Daniel R. Conway

PROPOSED COMPLIANCE ORDER

Pursuant to the Ohio Administrative Code section 4901:1-16-09, the Public Utilities Commission of Ohio, Gas Pipeline Safety Staff ("Staff") issues the Foraker Gas Company the following Proposed Compliance Order requiring corrective action in order to return to compliance with the Pipeline Safety Regulations.

The following must be completed within one hundred and eighty (180) days from the date of this Proposed Compliance Order:

1. The Foraker Gas Company must perform a complete leakage survey of all piping regulated under 49 C.F.R. Part 192 using an independent third party. This third party may be chosen by the Foraker Gas Company, but the choice must be approved by Staff. Rights-of-way must be cleared to an extent that will allow leak surveyors access to the pipeline.
2. The leakage survey must be completed by a person or persons who are qualified to perform a leakage survey under the Pipeline Safety Regulations, 49 C.F.R. 192 Subpart N "Qualification of Pipeline Personnel" and the Foraker Gas Company's Operator Qualification program.
3. The Foraker Gas Company must immediately make safe any hazardous conditions that may be identified by the third party during the performance of the leakage survey.
4. The Foraker Gas Company must provide pipeline markers at each crossing of a public road or railroad, and at each above ground pipeline segment in an area accessible to the public, where these sites are identified during the leakage survey.
5. The Foraker Gas Company must inform Staff of the time when the leakage survey will take place, so Staff may observe the leakage survey. Notification must take place at least one week, but not more than two weeks before commencement of the survey.
6. The Foraker Gas Company must make the results of the leakage survey available to Staff.
7. The Foraker Gas Company must develop a priority list to clean and coat any exposed metallic piping, protect any plastic piping that may be exposed to sunlight and the elements, and protect any exposed above ground piping that is vulnerable to vehicular or other natural force or other outside force damage. The Foraker Gas Company must develop this list after consulting with Staff to ensure the identified tasks can be completed in a reasonable time frame.

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/8/2021 3:41:07 PM

in

Case No(s). 21-0205-GA-GPS

Summary: Stipulation and Recommendation electronically filed by Mrs. Kimberly M Naeder on behalf of PUCO