

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE INVESTIGATION
OF FORAKER GAS COMPANY RELATIVE
TO ITS COMPLIANCE WITH THE NATURAL
GAS PIPELINE SAFETY STANDARDS AND
RELATED MATTERS.

CASE NO. 21-205-GA-GPS

FINDING AND ORDER

Entered in the Journal on March 24, 2021

I. SUMMARY

{¶ 1} The Commission finds that the joint stipulation and recommendation entered into by Staff and Foraker Gas Company is reasonable and should be approved.

II. DISCUSSION

{¶ 2} Foraker Gas Company (Foraker) is a natural gas company as defined in R.C. 4905.03 and a public utility within the meaning of R.C. 4905.02. Foraker is also an operator, as defined in R.C. 4905.90. As such, Foraker is subject to the ongoing jurisdiction and supervision of the Commission, pursuant to R.C. 4905.04, 4905.05, 4905.06, and 4905.90 through 4905.96. Accordingly, Foraker is required to comply with the minimum gas service standards found in Ohio Adm.Code Chapter 4901:1-13, as well as the gas pipeline safety (GPS) rules contained in Ohio Adm.Code Chapter 4901:1-16, which set forth the safety standards and requirements for intrastate gas pipeline facilities subject to the Commission's jurisdiction. Pursuant to Ohio Adm.Code 4901:1-16-03(A), the Commission has also adopted the GPS regulations of the United States Department of Transportation contained in 49 C.F.R. Parts 40, 191, 192, and 199.

{¶ 3} R.C. 4905.91 provides that the Commission may investigate any service, act, practice, policy, or omission by an operator to determine its compliance with R.C. 4905.90 through 4905.96 and the pipeline safety code.

{¶ 4} Ohio Adm.Code 4901:1-16-12 provides that the Commission may initiate a GPS proceeding after, among other things, a notice of probable noncompliance is served.

{¶ 5} On January 19, 2021, Staff issued a notice of probable noncompliance and proposed compliance order to Foraker, following a pipeline safety inspection of its facilities and records that was conducted in December 2020. Among other issues, Staff noted that it observed sections of piping with ineffective and degraded coating showing evidence of active atmospheric corrosion (49 C.F.R. 192.479), a lack of pipeline markers (49 C.F.R. 192.707), a lack of acceptable documentation demonstrating that patrolling is performed and a lack of substantive information in what documentation was provided (49 C.F.R. 192.721), and a lack of acceptable documentation indicating that a leakage survey using leakage detection equipment has been performed (49 C.F.R. 192.723).

{¶ 6} On March 8, 2021, Staff and Foraker filed a joint stipulation and recommendation, which proposes to resolve all issues in this case.

A. *Stipulation*

{¶ 7} On March 8, 2021, Staff and Foraker (jointly, Signatory Parties) filed a joint stipulation and recommendation (Joint Stipulation), which proposes to resolve all issues in this case. The following is a summary of the provisions agreed to by the Signatory Parties and is not intended to replace or supersede the Joint Stipulation:

1. Foraker meets the definition of a regulated gas pipeline system found in the pipeline safety regulations in 49 C.F.R. 192.3 and, therefore, must abide by the standards found in those regulations. Foraker must also comply with the GPS rules in Ohio Adm.Code Chapter 4901:1-16. The GPS rules incorporate by reference the GPS standards and requirements contained in 49 C.F.R. Parts 40, 191, 192, and 199, 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. The Notice, among other things, stated 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 Ohio Adm.Code 4901:1-16-02(B)(2).

3. Staff issued a proposed compliance order (Compliance Order) to Foraker on January 19, 2021, concurrently with the Notice, also in accordance with Ohio Adm.Code 4901:1-16-09. The Compliance Order required Foraker to take certain corrective actions to return to compliance with the pipeline safety regulations. The Compliance Order also proposed a forfeiture amount of \$50,000 which would be waived if the corrective actions specified in the Compliance 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 Compliance 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 4901:1-16-04(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.
 - 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. Foraker 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 Signatory Parties shall agree on an alternative date of completion.
5. To further secure performance of its obligations under the Joint Stipulation, Foraker stipulates to a future forfeiture of \$50,000 payable if any of the following occur, subject to the process described in paragraph 6 of the Joint Stipulation:
- a. Foraker breaches any provision of the Joint 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 the Joint 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 Signatory 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. The Stipulation shall be designated as Exhibit 1 and admitted into evidence in this proceeding.
 8. Except for purposes of enforcement of the terms of the Joint Stipulation, neither the Joint 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. The Joint Stipulation is a reasonable compromise involving a balancing of competing positions and does not reflect the position that one or more of the Signatory Parties would have taken if the matter had been fully litigated.
 9. The Joint 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 the Joint Stipulation, the Signatory Parties shall have the right, within 30 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 Joint Stipulation in its entirety and without material modification, either party may withdraw from the Joint Stipulation by filing notice with the Commission in the docket within 30 days of the issuance of the

Entry. Prior to withdrawing, the party wishing to withdraw must work in good faith with the other party to achieve an outcome that satisfies the intent of the Joint Stipulation and, if a new agreement is reached, it shall be filed with the Commission for review and approval. If the discussion between the Signatory Parties is unsuccessful in reaching a new agreement, and a party files a notice to withdraw from the Joint Stipulation, then the Commission will convene an evidentiary hearing such that the withdrawing party will be afforded the opportunity to contest the Joint 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 Signatory Parties will support the Joint Stipulation if it is contested, and no party will oppose an application for rehearing designed to defend the terms of the Joint Stipulation. If the Joint Stipulation is adopted by the Commission, the Signatory Parties will support the Joint Stipulation in any appeal of the decision.
11. The Signatory Parties understand and agree that the Joint Stipulation is not binding on the Commission; however, the Joint Stipulation is entitled to the Commission's careful consideration, the Signatory Parties agree that the Joint Stipulation is in their best interest, and the public interest, and urge the Commission to adopt the same.

(Joint Stipulation at 3-8.)

B. Commission Conclusion

{¶ 8} Ohio Adm.Code 4901:1-16-11 permits Foraker and Staff to enter into a stipulation in order to resolve any alleged violations of the GPS requirements. Although

the Signatory Parties refer to Ohio Adm.Code 4901-1-30 as their underlying authority for the Joint Stipulation, the Commission will consider the Joint Stipulation pursuant to our enforcement powers under R.C. 4905.91 and Ohio Adm.Code Chapter 4901:1-16.

{¶ 9} The immediate issue to be decided by the Commission is whether the Joint Stipulation, which embodies considerable time and effort by the Signatory Parties, is reasonable and should be adopted. However, as gas pipelines are concerned, the Commission's ultimate goal is to safeguard consumer safety by ensuring that sufficient plans and procedures are in place to prevent future incidents. In this case, we find that the Joint Stipulation, including the recommended terms and conditions, and potential forfeiture of \$50,000, is reasonable, given that Foraker will also be required to carry out a number of actions in response to Staff's recommendations. Foraker committed to conducting leakage surveys and reporting those to Staff, along with developing a priority list to clean and coat exposed piping. Accordingly, the Commission finds that the Joint Stipulation should be approved and adopted in its entirety.

{¶ 10} In closing, the Commission emphasizes our commitment to ensuring consumer safety and requiring operators of gas pipelines to take all reasonable steps to provide necessary safeguards. The Commission expects that Foraker, in addition to undertaking the actions required by the Joint Stipulation, will continually review its management and operating practices related to GPS requirements and immediately correct any issues of concern. Further, the Commission expects Foraker to notify Staff of any issues that are identified and regularly report to Staff until the issues are resolved. In addition, the Commission directs Staff to continue its diligent efforts to work with Foraker and other operators on compliance with the GPS requirements. If Staff identifies any issues of concern that are not immediately resolved by the operator at issue, the Commission will undertake any action necessary to investigate the situation and reach an appropriate resolution, including the initiation of a formal docket to audit the GPS practices and procedures of any such operator.

III. ORDER

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That the Joint Stipulation filed in this proceeding be approved and adopted in its entirety. It is, further,

{¶ 13} ORDERED, That Foraker take all necessary steps to carry out the terms of the Joint Stipulation and this Finding and Order. It is, further,

{¶ 14} ORDERED, That nothing in this Finding and Order shall be binding upon the Commission in any future proceeding or investigation. It is, further,

{¶ 15} ORDERED, That a copy of this Finding and Order be served upon each party of record.

COMMISSIONERS:

Approving:

M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

JMD/mef

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

Summary: Finding & Order finding that the joint stipulation and recommendation entered into by Staff and Foraker Gas Company is reasonable and should be approved. electronically filed by Ms. Mary E Fischer on behalf of Public Utilities Commission of Ohio