**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held May 20, 2010

Commissioners Present:

 James H. Cawley, Chairman

 Tyrone J. Christy, Vice Chairman

 Wayne E. Gardner

 Robert F. Powelson

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| Pennsylvania Public Utility Commission v.The Peoples Natural Gas Company, d/b/a,Dominion Peoples |  |   C-2009-2027991 |

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# Opinion and Order

**BY THE COMMISSION:**

 Before the Commission for consideration and disposition is a Settlement Agreement (Settlement or Settlement Agreement) originally filed on December 11, 2009, by The Peoples Natural Gas Company, d/b/a Dominion Peoples (Dominion Peoples or the Company) and the Commission’s Law Bureau Prosecutory Staff (Prosecutory Staff) collectively, “the Parties,” with respect to an Informal Investigation conducted by the Prosecutory Staff. Along with the Settlement Agreement, the Parties submitted a Joint Statement in Support of the Settlement Agreement (Joint Statement). The Parties submit that the proposed Settlement Agreement is in the public interest and complies with the Commission’s Policy Statement at 52 Pa. Code § 69.1201 (Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations—statement of policy). Joint Statement of Support at 4, 7. Further, the proposed Settlement is submitted as contingent on Commission’s approval without any modification. Settlement at 15; ¶ 54. If the Commission does not approve the Settlement without modification, either party may elect to withdraw from the Settlement. Settlement at 15-16; ¶ 55.

**History of the Case**

 The proposed Settlement Agreement is attached to this Opinion and Order and has been brought before the Commission by the Parties in order to resolve allegations of multiple violations of the Code of Federal Regulations and the rules and regulations of the Commission relative to natural gas pipeline safety. The specific incident that is the subject of the proposed Settlement Agreement occurred on March 5, 2008.

 On March 5, 2008, a catastrophic explosion and fire occurred at 171 Mardi Gras Drive, Plum Borough, Pennsylvania. As a result of that explosion and fire, a single-family residence owned by the Pettinato family was destroyed. Settlement Agreement at 3, ¶ 12. As a result of the explosion and fire, Richard J. Leith was killed and his granddaughter was seriously injured. The house at 171 Mardi Gras Drive was destroyed, and two other houses were rendered a total loss. Eleven other house sustained damage as a result of the explosion. Settlement Agreement at 4, ¶ 14. Dominion Peoples owns and operates the gas distribution pipelines in the area. Settlement Agreement at 4, ¶ 15.

 On March 5, 2008, Dominion Peoples’ servicemen arrived at the site shortly after the explosion and closed the valves on the two inch natural gas main. Settlement Agreement at 5, ¶ 20. Dominion Peoples’ personnel initiated a leak survey. Settlement Agreement at 5, ¶ 21. Despite several valves being shut off, the ground remained on fire along the north side of the driveway at 171 Mardi Gras Drive. Settlement Agreement at 6, ¶ 25. After being asked to do so by a Commission Gas Safety Inspector, Dominion personnel attempted to identify other valves to shut off the flow of gas to Mardi Gras Drive. The valves were frozen and required lubrication to be moved into the “off” position. Settlement Agreement at 6, ¶ 26. Approximately three hours and fifteen minutes after the initial explosion, the ground fire along the north side of the driveway at 171 Mardi Gras Drive was extinguished. Settlement Agreement at 6, ¶ 26.

 On November 21, 2008, the National Transportation and Safety Board (NTSB) adopted a report in which the NTSB determined that the probable cause of explosion and fire was excavation damage to Dominion Peoples’ two inch distribution line that stripped the pipe’s protective coating and which made the pipe susceptible to corrosion and failure. Settlement Agreement at 4-5, ¶ 17.

 Had this matter been litigated, it would have been alleged that Dominion Peoples’ conduct would be in violation of 49 CFR § 192.13(c) – General Requirements 49 C.F.R. § 192.614 (Continuing Surveillance and Damage Prevention); 49 C.F.R. § 192.747) (Valve Maintenance: Distribution Systems) and 52 Pa. Code § 59.33(b) – Safety Code. Settlement Agreement at 7-9, ¶ 33A-C. We take note of the following:

COUNT 2 – Violation of 52 Pa. Code § 59.33(b) and 49 C.F.R. § 192.614 (Continuing Surveillance and Damage Prevention).

Title 49 C.F.R. § 192.614requires each operator of a gas distribution system to have in place a damage prevention program for pipelines that it reasonably believes could be damaged by excavation activities.

Dominion failed to follow specific procedures outlined in Dominion Standard Operating Procedure 090-Section III (F)(2) and (3) (SOP 090) with reference to inspection of the site of the original work performed by contractors Ley/Higgins at the time of the excavation and replacement work on the sewer lateral both before and after excavation. Had these procedures been followed, detection of the damaged Pipe M-2523 would have likely been detected and corrected. In failing to properly follow the provisions of its own SOP 090, Dominion additionally failed to comply with the record-keeping provisions of section (III) (F)(5) for documenting the inspection activities of Ley/Higgins at the 171 Mardi Gras site.

Settlement Agreement at 8-9, ¶ 33C.

 Had this matter been litigated, Dominion Peoples would have denied all of the allegations and defended against the same. Settlement Agreement at 9, ¶ 34.

**Terms of the Settlement Agreement**

 The proposed Settlement contains a series of material terms, but those terms do not constitute an admission, a finding of any fact, or a finding of culpability on the part of Dominion Peoples in this or any other proceeding.

 In order to settle the Informal Investigation, Dominion Peoples has agreed to the following:

* 1. Pay a civil penalty in the amount of eighty thousand dollars ($80,000) pursuant to 66 Pa. C.S. § 3301(c). Dominion Peoples agrees that it will not include any portion of the payment of the civil penalty in any future rate proceeding.
	2. Establish a combined Damage Prevention metric comprised of six individual metrics with equal weight given to each of the following: (1) Dominion’s performance related to “who is at fault for damages facilities;” (2) Dominion’s total facility damages; (3) Dominion’s ratio of damages per 1000 tickets marked; (4) Dominion’s total cost of damages, cost per damage, and number of facility damages incurred when Dominion’s outside locator company is used; (5) ensuring that Dominion sends damage prevention materials to and offers to meet with each emergency responder and county emergency management group in its service territory, each regulated municipal water and sewer entity, and municipal and PennDOT crews once a year prior to the beginning of the construction season; and (6) monitors the number of L&I reports by Dominion.

This metric shall be filed annually on March 15 with the Public Utility Commission’s Gas safety Office and the Office of Trial Staff.

* 1. Dominion will create a performance metric for the total number of corrosion-related leaks based on corrosion leaks repaired per mile of bare steel pipe and total corrosion leaks outstanding at the year end per mile of bare steel, which should be reviewed semi-annually by Gas Safety and compared to the industry average.
	2. Dominion will create a performance metric related to total distribution system pipeline replacement, which will target historical spending over the five prior years for such repairs and will prioritize replacements by looking at a combination of: (1) Dominion’s risk ranking for its distribution system, (2) sites of active corrosion, and (3) risk assessments made under Integrity Management procedures. Within two years, Dominion will accelerate the critical valve determination and review program from five years to three years, thereby diminishing safety issues related to emergency shutdowns. Dominion will establish critical valves based upon the criteria that if an emergency shutdown is necessary, Dominion would be able to restore service to all customers within 24 hours.
	3. Refrain from committing any violations of gas safety regulations.

Settlement Agreement at 10-11, ¶ 36A-E.

 The proposed Settlement Agreement and payment of the specified civil payment of $80,000 would result in Commission Prosecutory Staff forebearing from prosecuting any formal complaint relative to Dominion Peoples’ conduct as described in the Settlement Agreement. It would not, however, affect the Commission’s authority to receive and resolve any formal or informal complaints filed by any affected party with respect to the incident, except that no further civil penalties may be imposed by the Commission for any actions identified in the Settlement Agreement. Settlement Agreement at 11, ¶ 37.

 We note that the Settlement Agreement is silent with respect to the maximum civil penalty that could be imposed in this matter if the case proceeded to hearing and if the allegations were proved.

 We also note that, pursuant to the Settlement Agreement at Paragraph 52, that if the Settlement Agreement is not adopted by the Commission without modification, either Party may elect to withdraw from the Settlement Agreement. Settlement Agreement at 15-16, ¶ 55.

**Discussion**

 Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. The Parties provides their own analysis of the proposed Settlement Agreement in light of the Commission’s Policy Statement at 52 Pa. Code

§ 69.1201 (*Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations—statement of policy*) in their Joint Statement. However, the Commission must review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, M-00031768 (January 7, 2004); 52 Pa. Code § 69.1201.

 Before issuing a decision on the merits of the proposed Settlement Agreement, and consistent with the requirement of 52 Pa. Code § 3.113(b)(3), we are providing an opportunity for interested parties to file comments to the proposed Settlement and Application; **THEREFORE,**

 **IT IS ORDERED:**

 1. That this Opinion and Order together with the Settlement Agreement, as amended, shall hereby be entered for comments by any interested party.

 2. That a copy of this Opinion and Order together with the attached Settlement Agreement, as amended, shall be served on the Office of Consumer Advocate and the Office of Small Business Advocate.

 3. That comments to the Settlement Agreement, as amended, and this Opinion and Order will be considered timely if filed within twenty (20) days of the date of entry of this Opinion and Order.

 4. That, subsequent to the Commission’s review of the comments filed in this proceeding, an Opinion and Order will be issued.

 **BY THE COMMISSION,**

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: May 20, 2010

ORDER ENTERED: