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BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE NOTICE OF PROBABLE VIOLATION OF 26 DEL. ADMIN. C. §8001 AND ASSOCIATED CIVIL PENALTIES ASSESSED TO CHESAPEAKE UTILITIES CORPORATION (OPENED JANUARY 8, 2013)	)	PSC DOCKET NO. 387-13

ORDER NO. 8280

AND NOW, this 7th day of February, 2013:

WHEREAS, violations of the federal pipeline safety laws and regulations are enforceable by the State of Delaware, Public Service Commission ("Commission") as a certified state pipeline safety program;[1] and

WHEREAS, under 26 *Del. Admin. C.* §8001-3.0, the Commission and the Commission Staff ("Staff") have the authority to investigate the methods and practices of any Operators;[2] to require that Operators maintain and file reports, records and other information; to enter upon and to inspect the property, buildings, plants and offices of Operators; to inspect books, records, papers and documents of Operators; and to enforce the Commission's Regulations as well as the applicable sections of Chapter 601 of Title 49 of the United States

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[1] See 49 U.S.C. §60105(a) which provides, in pertinent part, that "the Secretary of Transportation may not prescribe or enforce safety standards and practices for an intrastate pipeline facility or intrastate pipeline transportation to the extent that the safety standards and practices are regulated by a State authority … that submits to the Secretary annually a certification for the facilities and transportation that complies with subsections (b) and (c) of this section." The Commission has received certification by the U.S. Secretary of Transportation under this Code section.

[2] Under 26 *Del. Admin. C.* §8001-1.0, an "Operator" means an "underground pipeline facility operator," as defined in 26 *Del. C.* §802(11).

Code and the Code of Federal Regulations, Title 49, Parts 190, 191, 192, 193, 198 and 199, as may be amended and revised (collectively, the "Federal Regulations"); and

WHEREAS, under 26 *Del. Admin. C.* §§8001-7.1, 7.1.2, and 7.1.3, the Commission may take action under applicable law, including, but not limited to, issuing civil penalties and ordering Operators to take corrective actions; and

WHEREAS, under 26 *Del. Admin. C.* §8001-5.0, after evidence of a potential violation is collected and a violation report written, notice and opportunity to respond will be afforded the Operator by a letter from Staff providing the Operator with copies of all relevant documentation, including the written violation reports, notifying the Operator of the results of the on-site evaluation and specifically citing the provision of the applicable Regulation(s) the Operator is alleged to be violating. Moreover, the Operator must respond in writing within thirty (30) days from receipt of such violation notice, unless the Operator and Staff otherwise agree; and

WHEREAS, on December 6, 2012, a member of the Staff inspected construction being performed by a contractor (F&T Underground) on behalf of Chesapeake Utilities Corporation ("CUC"). Staff noted two potential violations of the Code of Federal Regulations: One of 49 C.F.R. §192.303[3] and one of 49 C.F.R. §192.805(b);[4] and

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[3] 49 C.F.R. §192.303 provides, in pertinent part, the following: "Each transmission line or main must be constructed in accordance with comprehensive written specifications or standards that are consistent with this part."

[4] 49 C.F.R. §192.805(b) provides, in pertinent part, the following: "Each operator shall have and follow a written qualification program. The program

WHEREAS, on January 3, 2013, Staff sent to CUC by certified mail, return receipt requested, a letter that notified CUC of the potential violations of the Federal Regulations and 26 *Del. Admin. C.* §8001, set forth requested remedial actions and due dates, stated Staff's recommended civil penalties of $6,000.00, and included a copy of Staff's written violation report. The letter from Staff to CUC also stated that additional penalties could also be imposed on CUC for any additional violations found and if CUC failed to act immediately regarding Staff's proposed remedial actions; and

WHEREAS, the remedial actions requested by Staff included a deadline of January 31, 2013; and

WHEREAS, CUC has been cooperating with Staff and has been working towards complying with all of the remedial actions proposed by Staff; and

WHEREAS, both Staff and CUC need additional time to investigate and to ensure that the remedial actions requested by Staff can be accomplished in accordance with the Federal Regulations. Therefore, both parties have agreed to extend the previously-set deadline of January 31, 2013;

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NOT FEWER THAN THREE COMMISSIONERS:

1. That pursuant to 26 *Del. C.* §501(a), Staff is authorized to undertake an investigation into the potential violations of the Federal Regulations and any Delaware laws and/or Delaware Regulations.

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shall include provisions to … Ensure through evaluation that individuals performing covered tasks are qualified …."

2. That pursuant to 26 *Del. Admin. C.* §8001-5.0, Staff is authorized to agree to an extended deadline by which CUC must respond in writing to the letter sent by Staff dated January 3, 2013.

3. That no Hearing Examiner is designated for this matter at this time, but the Commission may later designate such person to hold evidentiary hearings as may be necessary to have a full and complete record concerning the alleged potential violations of the Federal Regulations.

4. Chesapeake Utilities Corporation ("CUC") is hereby placed on notice that the costs of the proceedings will be charged to it under the provisions of 26 Del. C. §114(b)(1).

5. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Chair

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Alisa Carrow Bentley

Secretary