



STATE OF MAINE
PUBLIC UTILITIES COMMISSION

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February 12, 2024

Ms. Jennifer Brooks
Garthwaite Energy
1810 Post Road
Wells, ME 04090

(Via E-Mail and U.S. Mail)

RE: NOTICE OF PROBABLE VIOLATION (NOPV) – FAILURE TO REGISTER FACILITIES, OPERATIONS AND MAINTENANCE EMERGENCY MANUAL (OM&E) OPERATOR QUALIFICATIONS PROGRAM (OQ), AND QA/QC PROGRAM

Dear Ms. Brooks:

After a records review and site visits at Garthwaite Energy (Garthwaite or the Company) facilities, the Maine Public Utilities Commission (MPUC or the Commission) Gas Safety Staff (Staff) has determined that Garthwaite has likely committed multiple violations of the minimum pipeline safety standards contained in 49 C.F.R. Part 192 and Chapter 421 of the Commission's Rules. Staff's review of these issues has also raised several related concerns about a lack of Company procedures and practices that may have contributed to the events and activities comprising the probable violations.

BACKGROUND

THE OCTOBER 2021 NOPV

On March 5, 2020, MPUC Gas Pipeline Safety Inspectors Nathan Dore and Sean Watson, at the request of the Company, met to provide training on the Federal and State requirements to be an Operator of Jurisdictional Liquefied Petroleum Gas (JLP) systems.¹ On July 29 and August 30, 2021, Mr. Watson performed inspections of Garthwaite's JLP systems and reviewed associated records for the following locations:

- Four Oakes Professional Building, Wells (MPUC JLP ID# 742);
- Meadowmere Resort, in Ogunquit (MPUC JLP ID# 830); and
- Nellie Littlefield, in Ogunquit (MPUC JLP ID# 1806).

Mr. Watson determined during these site inspections that the Company did not have a functional Operations, Maintenance, and Emergency (OM&E) Manual in place prior to

¹ A Jurisdictional Liquefied Petroleum Gas system is a propane distribution system that falls within the Scope of 49 C.F.R. Part 192.

beginning operations. Mr. Watson also determined, after discussions with Mr. Ray Lucier, a Garthwaite Technician, that the online Operator Qualification (OQ) program the Company was using did not meet the minimum code requirements because there were no evaluations verifying employees' ability to perform covered tasks.

During the inspections above, Mr. Watson also identified violations of 49 C.F.R. § 192.11, which requires compliance with NFPA 58.

Following completion of the inspections, Staff issued a Request for Information to the Company regarding the date that the Company began operating the facilities above. The Company provided the requested records on August 25 and 31, 2021. Staff's review of these records and the site-specific records, as well as the Company's failure to register jurisdictional facilities with the Commission, resulted in an NOPV issued on October 28, 2021. In the March 18, 2022, signed Consent Agreement, the Company acknowledged that it had been operating jurisdictional propane facilities without adequate OM&E procedures in place, and failing to register the facilities.

2023 INSPECTION FINDINGS

On July 26, 2023, MPUC Gas Pipeline Safety Inspectors Sean Watson and Brandon Plourde performed a site visit to The Lightship at the Anchorage (MPUC JLP ID# 750) and Anchorage by the Sea (MPUC JLP ID# 1126), both in Ogunquit. During the visits, Staff observed Garthwaite labels on the containers. The inspectors proceeded to the Company office and confirmed that the systems were being operated by Garthwaite.

Staff issued a Request for Information to the Company on July 28, 2023. The Company provided a response on August 8, 2023. A review of that response and multiple phone conversations in July and August 2023, revealed the following:

JLP ID# 750 – The Lightship at the Anchorage

The Company indicated that the first delivery of propane occurred on May 26, 2023. The first delivery of propane constituted operation of the system.

JLP ID# 1126 – Anchorage by the Sea

The Company indicated that the first delivery of propane occurred on May 26, 2023. The first delivery of propane constituted operation of the system.

REGULATORY STANDARDS

Title 49 C.F.R. § 192.605(a) requires operators to have and follow a manual of written procedures for conducting operations and maintenance activities and emergency response (an OM&E Manual). This manual must be prepared before the operations of a pipeline system commence and appropriate parts of the manual must be kept at locations where O&M activities are conducted.

Title 49 C.F.R. § 192.616(j) requires operators develop public awareness procedures for petroleum gas systems and that operators deliver such messages twice annually.

Title 49 C.F.R. § 192.805 requires operators to have and follow a written Operator Qualification (OQ) program that ensures through evaluation that individuals performing covered tasks are qualified and provides training as appropriate to ensure that individuals performing covered task have the necessary knowledge and skills to perform the task in a manner that ensures the safe operation of the pipeline facilities.

Title 49 C.F.R. § 192.1015(a) requires small LPG operators to develop and implement an integrity management program Distribution Integrity Management Program (DIMP).

Chapter 421 § 1(C)(1) of the Commission's rules requires that operators register jurisdictional propane facilities they operate within 30 days of beginning operation of the facility.

PROBABLE VIOLATIONS

- 1. Failure to have and follow a Company OM&E Manual
(49 C.F.R. § 192.605(a))**
- 2. Failure to have and follow a Company OQ Program including procedures.
(49 C.F.R. § 192.805)**
- 3. Failure to have and follow a Company DIMP.
(49 C.F.R. 192.1015(a))**
- 4. Failure to register jurisdictional facilities with the Maine Public Utilities
Commission.
(MPUC Chapter 421 § 1(C)(1))**

Recommended Penalty: \$20,000

Penalties are assessed for failure to adhere to state and federal rules or for employing unsafe practices and are also intended to serve as a deterrent. In determining the amount of penalties to assess, the Gas Safety Staff takes into account: (1) the nature, circumstances, and gravity of the violation, including adverse impact on the environment; (2) the degree of the Company's culpability; (3) the Company's history of prior offenses; (4) the Company's ability to pay; (5) any good faith by the Company in attempting to achieve compliance; (6) the effect of the Company's ability to continue in business; and (7) any such other matters as justice may require. 35-A M.R.S. § 4705-A; 49 C.F.R. § 190.225(a).

In determining the penalty amount in this matter, the Gas Safety Staff has considered all the above factors and determined that a penalty of \$20,000 is appropriate. Pursuant to 49 C.F.R. § 190.223 and 35-A M.R.S. § 4705-A, the Commission has authority to impose civil penalties not to exceed \$223,000 for each violation on entities that violate federal or state pipeline safety regulations. Each day of violation constitutes a separate offense. The maximum administrative penalty may not exceed \$2,227,000 for any related series of violations. In

addition, pursuant to 49 U.S.C. § 60123, knowing and willful violations of federal pipeline safety regulations may be subject to a fine, imprisonment for up to five years, or both.

Relevant Factors

- The Company failed to register the facilities with the MPUC within 30 days of the first delivery of propane, repeating a prior violation of the same requirement. The Company also failed to implement an OM&E manual prior to beginning operation of the systems, similarly repeating prior violations from the October 28, 2021 NOPV. The Company also failed to properly implement OQ procedures, or a DIMP.
- The Company indicated in its August 8, 2023 response to Staff's request for information that it had engaged with a contractor to assist in the development of the required procedures. This effort remained incomplete as of Mr. Watson's August 2023, phone conversations with Company personnel.
- Garthwaite personnel attended a training session in Augusta, Maine hosted by Staff on May 4, 2023. The training included information concerning OM&E, DIMP, and OQ program requirements for jurisdictional systems.
- Company personnel responded in a timely manner to MPUC Inspection Staff Requests for Information and were forthright in the provision of requested information during the investigation.

In any resolution of this matter pursuant to Chapter 421 § 6(C)(1) of the Commission's Rules, the Gas Safety Staff requires that Garthwaite take the following remedial measures:

1. Develop and implement a Quality Assurance Program throughout the Maine operations of the Company. This program must be incorporated into the Company's Operations, Maintenance, and Emergency manual and must include:
 - a. Procedures for evaluating, through regular inspections, sampling, and/or audits, the work performed by Company personnel to ensure that tasks related to jurisdictional propane facilities are performed in accordance with written company policies, practices, procedures, and specifications, and with applicable codes. The Company must conduct these evaluations on completed work as well as during the actual time that the work is being performed and must be of sufficient scope and number to adequately encompass all Company market districts as well as a random selection of employees;
 - b. Procedures for evaluating Company recordkeeping accuracy and completeness for all documentation required for JLP facilities;

- c. Accountability measures for Company market districts where deficient or noncompliant workmanship is observed that are the result of workmanship or administrative issues;
 - d. Procedures for providing personnel training when deficient or noncompliant work practices are observed that could be addressed by training;
 - e. Procedures for modifying Company procedures, practices, and specifications when program activity finds that they are determined to be inadequate or ineffective, or when modifications should be made to incorporate best practices; and
 - f. Procedures requiring participation in the Quality Assurance program by Company management personnel during review of program results, approval of procedure and practice modifications, and implementation of other action items arising from the evaluations conducted through the program, as well as in the actual execution of program inspections, sampling, and/or audits;
2. Obtain and provide instruments capable of detecting and quantifying the concentration of combustible gas in air, and provide these instruments, as well as training in their use, to Company personnel who respond to emergencies and reports of gas odor;
 3. Pay the full recommended penalty amount.

In accordance with Chapter 421, § 6 of the Commission's Rules, Garthwaite must file a written response within 14 days of receiving this NOPV. In responding, Garthwaite may:

Submit a written plan specifying actions that the Company will take to correct the violation, a schedule for completion of each action step, and a final date of compliance. If the Commission accepts the corrective plan submitted by the Company and the Company implements the corrective actions, the violation is resolved. In addition to the submission of a written correction plan, or alternatively, the Company may request an informal conference. Upon request for an informal conference, a staff member designated by the Commission will establish a date, time, and location for the conference. During the conference, Staff will review the violation report with the Company to identify corrective actions and reach a mutually acceptable resolution of the violation and proposed administrative penalty, if any. If this effort fails, the designated staff member may refer the violation to the Commission for formal action. If the designated staff member declines to refer the matter to the Commission for formal action, the Company will be notified by letter.

February 12, 2024

If you have any questions or concerns about the issues raised in this letter, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nathan Dore', with a long horizontal flourish extending to the right.

Nathan Dore
Gas Safety Program Manager