



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

JUN 23 2004

Mr. Gregory C. Ficke
President
Cincinnati Gas & Electric Company
139 East Fourth Street
Cincinnati, OH 45202

Re: CPF No. 3-2000-0002

Dear Mr. Ficke:

Enclosed is a decision on the Petition for Reconsideration filed in the above-referenced case. The Associate Administrator for Pipeline Safety has denied the petition and, therefore, payment of the \$5,000 civil penalty is due immediately. The penalty payment terms are set forth in the enclosed decision. Your receipt of this decision constitutes proper service under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Office of Pipeline Safety
Compliance Registry

Enclosure

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

In the Matter of)
)
)

Cincinnati Gas & Electric Company,)

CPF No. 3-2000-0002

Respondent)
_____)

DECISION ON PETITION FOR RECONSIDERATION

This enforcement action began with a Notice of Probable Violation and Proposed Civil Penalty (Notice) issued by the Director, Central Region, Office of Pipeline Safety (OPS) on June 30, 2000. The Notice proposed finding that Respondent had violated 49 C.F.R. § 191.5 by failing to provide telephonic notice to the National Response Center (NRC) at the earliest practicable moment following discovery of an explosion that occurred on Respondent's natural gas system. The Notice proposed to assess a \$5,000 civil penalty for the alleged violation.

Respondent responded to the Notice by letter dated July 27, 2000 (Response). Respondent did not contest the allegation of violation but explained that it was in the process of revising its internal procedures for notification of reportable incidents to ensure future compliance with reporting regulations. Respondent requested that its revised procedures be considered in support of its request to eliminate the proposed penalty. However, Respondent never submitted the procedures to OPS. On May 10, 2001, pursuant to 49 U.S.C. § 60112, I issued a Final Order finding that Respondent had violated 49 C.F.R. § 191.5. The Final Order assessed Respondent a civil penalty of \$5,000 for the violation.

Respondent filed a Petition for Reconsideration by letter dated May 29, 2001 (Petition), formally requesting reconsideration of the civil penalty in light of Respondent's effort to ensure future compliance. Respondent noted that it had completed the procedural revisions referred to in its Response and had been following the procedures since August 2000 without additional violations. Respondent explained that while the procedures were completed in August 2000, it had "inadvertently failed" to deliver the revisions to OPS as planned. Respondent submitted copies of the revised procedures and requested that the civil penalty be reduced to \$500 based on its good faith effort to ensure future compliance.

The revisions Respondent pointed to include: creation of a wallet-sized laminated card for field personnel with incident reporting requirements and telephone numbers; creation of a flow chart

outlining internal notification responsibilities; updating mandatory training guidelines; inserting reporting criteria and guidelines into portions of its operating procedures; and disseminating necessary information to appropriate personnel. I find that Respondent's efforts to ensure future incidents will be reported properly, while commendable, do not warrant a reduction in the civil penalty in this case.

The natural gas release in this case was serious, and prompt notification to OPS was essential to allow OPS to determine an appropriate response. The explosion and fire that occurred on Respondent's system caused approximately \$300,000 in damage to a house, its furnishings and a vehicle. Respondent admitted that it failed to timely report the incident at the earliest practicable moment, even though the incident clearly met the threshold for reportable incidents involving the release of gas and estimated property damage of \$50,000 or more. Although, Respondent first arrived at the scene two hours after the incident occurred, Respondent did not report the incident to NRC until approximately five days later.

I find this failure to be even more inexplicable due to the fact that Respondent reported the incident to the Ohio Public Utilities Commission (PUCO) nine hours after the incident occurred, and PUCO specifically recommended that Respondent notify NRC. Respondent's failure to promptly notify NRC could have jeopardized the safety of the public by denying OPS the opportunity to assess the situation and determine an appropriate response in the interest of safety.

I have considered Respondent's request for reconsideration and do not find Respondent's assertions warrant reduction of the civil penalty. Accordingly, Respondent's request to have this penalty reduced is **denied**.

Payment of the full civil penalty in the amount of \$5,000 must be made within 20 days of service of this Decision on Petition for Reconsideration. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-120), P.O. Box 25082, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this payment to be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 4 C.F.R. § 102.13 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a United States District Court.

Please be advised that this decision is the final administrative action in this proceeding.

William H. Gerard

Stacey Gerard
Associate Administrator
for Pipeline Safety

JUN 23 2004

Date Issued