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Proposed Final Order for GUD No. 8983 – Enforcement action against Westco Gas, Inc. for violations of the Texas Administrative Code, Utilities Code, and Pipeline Safety Regulations; Collingsworth County, Texas.

SECTION 1
NEW APPEALS AND APPLICATIONS FILED

DOCKET NO. -- 9348
CAPTION -- Application of WFS-Pipeline Company for review of the sale of interests in Webb/Duval Gatherer to Hurd Investments, Ltd.
DATE FILED -- 11/21/2002
FILED BY -- Thomas G. Daly
EXAMINER -- Mark Brock

CASES REFERRED TO SOAH

DOCKET NO. -- 9291
CAPTION -- Request of Texas General Land Office for immediate action to stay abandonment and for establishment of transportation rate on Panther Pipeline, LTD.
DATE REFERRED TO SOAH -- 06/28/2002
SOAH DOCKET NO. -- 455-02-3446
SOAH ALJ -- Wendy Harvel

DOCKET NO. -- 9313
CAPTION -- Petition for review of TXU Gas Distribution from the actions of the City of Arlington, et al.
DATE REFERRED TO SOAH -- 08/21/2002
SOAH DOCKET NO. -- 455-02-4058
SOAH ALJ -- Kerry Sullivan

SECTION 2
APPEALS AND APPLICATIONS SET FOR HEARING OR PREHEARING CONFERENCE

None at this time.

SECTION 3
STATUS OF PENDING CASES

DOCKET NO. -- 9312
CAPTION -- Application of Kinder Morgan Texas Pipeline, LP for review of the sale of natural gas pipeline systems to Copano Field Services/Live Oak, LP
DATE COMPLETED -- September 25, 2002
STATUS -- Administratively Closed
EXAMINER -- Bill Geise

SECTION 4
NOTICES OF DISMISSAL

None at this time.

SECTION 5
ORDERS OF THE COMMISSION

**ENFORCEMENT ACTION AGAINST WESTCO
GAS, INC. FOR VIOLATIONS OF THE TEXAS
ADMINISTRATIVE CODE, UTILITIES CODE,
AND PIPELINE SAFETY REGULATIONS;
COLLINGSWORTH COUNTY, TEXAS**

**GAS UTILITIES DOCKET
NO. 8983**

PROPOSED FINAL ORDER

Notice of Open Meeting to consider this order was duly posted with the Secretary of State within the time period provided by law pursuant to TEX. GOV'T CODE ANN. Chapter 551 (Vernon 1999 & Supp. 2003).

This Enforcement Action was considered following notice and hearing by a hearings examiner. The Examiner's Proposal for Decision contained proposed findings of fact and conclusions of law in accordance with 16 TEX. ADMIN. CODE § 1.141 (West 2002). The Proposal for Decision and Order were properly served on all parties, who were given an opportunity to file exceptions and replies as part of the record under 16 TEX. ADMIN. CODE § 1.142 (West 2002).

The Railroad Commission of Texas (Commission), after review and due consideration of the Proposal for Decision and the exceptions and replies as filed by the parties, adopts the following Findings of Fact and Conclusions of Law, and orders as follows:

FINDINGS OF FACT

1. Westco Gas, Inc., (Westco) operated two small natural gas distribution systems, the Dozier Rural system and the Lutie Tap system, in Collingsworth County and Grey County, Texas, from 1996 through 2001.
2. David Owens is the owner and operator of Westco.
3. Westco acquired the systems on October 1, 1996.
4. Inspections of the physical facilities were conducted on April 25, 1996, December 17, 1997, and June 30, 1999, by the Pipeline Safety Section of the Gas Services Division.
5. An audit was conducted by the Audit Section of the Gas Services Division on May 22, 1997.
6. On November 28, 2000, the Staff of the Railroad Commission filed its Enforcement Action against Westco Gas, Inc.
7. Westco sold the system to GreenLight Gas, Inc., effective August 7, 2001.
8. A hearing was conducted on November 28, 2001, to consider whether administrative penalties should be assessed and, if so, the amount of the penalty
9. At the hearing, David Owens did not deny any of the alleged violations.
10. From the time the system was acquired through at least November 28, 2000, the owner/operator did not maintain or follow a written anti-drug plan.
11. From the time the system was acquired through at least November 28, 2000, the owner/operator did not implement an alcohol misuse prevention program.
12. From the time the system was acquired through at least November 28, 2000, plastic pipes were not installed below ground level at six locations.

13. From the time the system was acquired through at least November 28, 2000, plastic pipeline segments were not tested at a test pressure of at least 150 percent of the maximum operating pressure or 50 p.s.i.g, whichever is greater.
14. From the time the system was acquired through at least November 28, 2000, annual system reports were not filed with the Commission.
15. From the time the system was acquired through at least November 28, 2000, the owner/operator did not maintain a written damage prevention program.
16. From the time the system was acquired through at least November 28, 2000, the owner/operator did not maintain records necessary to administer an operation and maintenance plan.
17. From the time the system was acquired through at least November 28, 2000, leak pinpointing equipment for company personnel was improper and/or unavailable.
18. Several violations identified on April 25, 1996, had not been not corrected by the time that Staff filed its enforcement action.
19. Mr. Owens was aware of the principal safety violations that made up the complaint since as early as April of 1996.
20. The alleged violations did not pose a significant threat to the public because the locations of exposed pipe were all in rural areas.
21. An inspection conducted on December 17, 1997, confirmed that Mr. Owens had made several corrections related to leaks in the system and reduced the amount of lost and unaccounted for gas from 40.5 percent to 10 percent.

CONCLUSIONS OF LAW

1. Westco is a gas utility as that term is defined in TEX. UTIL CODE ANN. §101.003(7) (Vernon Supp. 2003).
2. The Commission has jurisdiction and authority over this matter pursuant to TEX. UTIL CODE ANN. § 102.001 (Vernon Supp. 2003), § 104.001 (Vernon 1998).
3. Notice of this proceeding was provided in accordance with 16 TEX. ADMIN. CODE §1.43 (West 2002).
4. The Commission by rule may adopt safety standards for the transportation of gas and for gas pipeline facilities. TEX. UTIL. CODE ANN. § 121.201 (Vernon Supp. 2003).
5. The Commission adopted by specific reference the provisions established by the United States Secretary of Transportation under the Pipeline Safety Act, 49 U.S.C.A. § 60101 *et. seq.*, and set forth in 49 C.F.R. Part 192, Minimum Safety Standards for Natural Gas, and 49 C.F.R. Part 199, Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations. 16 TEX. ADMIN. CODE § 7.70 (West 2002).
6. A gas utility is required to maintain or follow a written anti-drug plan conforming with the requirements of 49 C.F.R. § 199.101 (2001).
7. A gas utility is required to implement an alcohol misuse prevention program. 49 C.F.R. § 199.202 (2001).
8. All plastic pipe must be installed below ground level. 49 C.F.R. §192.321(a) (2001).
9. Plastic pipe segments must be tested at a test pressure of at least 150 percent of maximum operating pressure or 50 p.s.i.g., whichever is greater. 49 C.F.R. § 192.513(c) (2001).

10. An annual system report is required to be filed in duplicate with the Commission. 16 TEX. ADMIN. CODE § 7.70(g)(2)(A) (West 2002).
11. A gas utility is required to maintain a damage prevention program. 49 C.F.R. § 192.614(a) (2001).
12. A gas utility must maintain records necessary to administer its operation and maintenance plan. 49 C.F.R. § 192.603(b) (2001).
13. A gas utility must provide training and equipment for personnel to be used in the investigation of leak complaints and reports. 16 TEX. ADMIN. CODE § 7.72(4) (West 2002).
14. The Commission has authority to assess an administrative penalty for violations of the pipeline safety regulations of the Commission. TEX. UTIL. CODE ANN. § 121.206 (Vernon Supp. 2003).
15. The penalty for each violation may not exceed \$10,000. Each day a violation continues may be considered a separate violation for the purpose of penalty assessment. TEX. UTIL. CODE ANN. § 121.206 (Vernon Supp. 2003).
16. At the time of the violations found herein, the Commission was required to consider the following factors in determining the amount of a penalty: (1) the person's history of previous violations; (2) the seriousness of the violation and any pollution resulting from the violation; and (3) any hazard to the health or safety of the public. Effective September 1, 2001, the legislature added the following factors: (4) the degree of culpability; (5) the demonstrated good faith of the person; and (6) any other factor the commission considers relevant. TEX. UTIL. CODE ANN. § 121.206 (Vernon Supp. 2003).

IT IS THEREFORE ORDERED THAT Westco be assessed a penalty of \$4,000 for violations of the pipeline safety regulations of the Commission..

SIGNED this the 3rd day of December, 2002, at Austin, Texas.

RAILROAD COMMISSION OF TEXAS

/s/ _____
MICHAEL L. WILLIAMS
CHAIRMAN

/s/ _____
CHARLES R. MATTHEWS
COMMISSIONER

ATTEST:

Kim Williamson _____
SECRETARY

SECTION 6
MISCELLANEOUS

STEVE PITNER, GAS SERVICES DIVISION DIRECTOR

1. OFFICE OF THE DIRECTOR

A. Publications

1. Texas Utilities Code Titles 3 and 4. Special Rules of Practice and Procedure and Substantive Rules - \$15.00
2. a. Annual Report for Fiscal Year 2001 – Now available via the Commission’s website at:
<http://www.rrc.state.tx.us/divisions/gs/tablecontents01.html>
 - a. Annual Report for Fiscal Year 2000 - \$17.00 (includes statistical data for 1999)
 - b. Annual Report for Fiscal Year 1999 - \$9.00 (includes statistical data for 1998)
 - c. Annual Report for Fiscal Year 1998 - \$7.00 (includes statistical data for 1997)
3. **2002 Pipeline Safety Rules - \$13.00, includes: 49 CFR 191 & 192 and 16 TAC Sections 7.70-7.74 (gas) 49 CFR 193 (LNG); 49 CFR 195 and 16 TAC Sections 7.80-7.87 (hazardous liquids); 49 CFR 40 and 199 (drug testing).**
4. Distribution and/or Gas Transmission Review forms for Adequacy of Operation, Maintenance and Emergency Manual - To obtain a copy of review forms at no charge, send a request with a self addressed envelope (10" x 13" preferably) with \$0.98 postage.
5. Six MCF Monthly Residential Gas Bill Analysis for Twenty-five Texas Cities - \$2.00 – Now available via the Commission’s website at: <http://www.rrc.state.tx.us/divisions/gs/rap/sixmcf.html>

Anyone who wishes to obtain a copy of any of the publications or maps listed in Section A should contact the Gas Services Division, P. O. Box 12967, Austin, Texas 78711-2967, (512) 463-7167.

B. Interest Rate on Customer Deposits

We have been advised by the Public Utility Commission that the interest rate to be applied to customer deposits in calendar year 2002 is 6.00%. All gas utilities should use this rate.

2. PIPELINE SAFETY SECTION

- A. Austin Headquarters - William B. Travis Building
1701 North Congress, (78701)
PO Box 12967
Austin, Texas 78711-2967 Telephone (512) 463-7058

Mary L. McDaniel, P.E., Assistant Director
William (Bill) Dase, Jr., P.E., Engineer
Terry Pardo, P.E., Engineer
K. David Born, Field Operations Manager
Lee Thying, P.E., Engineer
Maurice Curd, Program Administrator

Amarillo Region 1 - 7102 IH-40 West, Bldg. C., Amarillo, Texas 79106 Telephone (806) 468-7486

Alan Mann, Engineering Specialist

Midland Region 2 - Petroleum Building, 214 West Texas, Suite 803, Midland, Texas 79701 Telephone (915) 570-5884

Glenn Taylor, Area Supervisor (Midland/Amarillo)
Larry Felio, P.E., Engineer
Keith Smith, Engineering Specialist
Tim Murray, Engineering Specialist (Abilene)

Kilgore Region 3 - 619 Henderson Boulevard, Kilgore, Texas 75662 Telephone (903) 984-8581

Bob Oldham, Engineering Specialist
James Alexander, Engineering Specialist
Jerry Hill, Engineering Specialist

Austin Region 4 - 1701 North Congress, P. O. Box 12967, Austin, Texas 78711 Telephone (512) 463-7050

Kendall Smith, Area Supervisor
Johnny Burgess, Engineering Specialist
Mark Arguelles, Program Administrator

Houston Region 5 -1706 Seamist Drive, Ste 501, Houston, Texas 77008-3135 Telephone (713) 869-8425

Danny Nichols, Area Supervisor
Jerry Hoff, Engineering Specialist
Jim Arnold, Engineering Specialist
Randy Vaughn, Engineering Specialist
Gregory Johnson, Engineering Specialist
Frank Henderson, Engineering Specialist
John Jewett, Engineering Assistant

Dallas Region 6 -1546 Rowlett Rd., Suite 107, Garland, Texas 75043 Telephone (972) 240-5757

Jody Kerl, P.E., Area Supervisor (Dallas/Kilgore)
M. Kathryn Williams-Guzman, Engineering Specialist
San Sein, Engineering Specialist
Terry Sullivan, Engineering Assistant

Corpus Christi Region 7 -10320 IH-37, P.O. Box 10307, Corpus Christi, Texas 78460-0307 Telephone (361) 242-3117

Don Gault, Area Supervisor
Steven Rios, Engineering Specialist
Jesse Cantu, Jr., Engineering Specialist
Ronda Lauderman, Engineering Assistant

B. Monthly Summary (September)

No. of distribution safety evaluations – 75
No. of transmission safety evaluations - 38
No. of liquid safety evaluations - 19
No. of leak/calls - 49
No. of accident investigations - 2
No. of special investigations - 32

C. Reporting of Pipeline Accidents1) NATURAL GAS

Accidents on intrastate gas systems involving \$5,000 property damage, a fatality or injuries, gas ignition, or that are judged significant must be reported by telephone within two hours, and the written report filed within thirty (30) days. Call the 24-hour emergency phone number (512)463-6788 to report an accident. For your convenience this priority phone line is used only to report emergencies.

2) HAZARDOUS LIQUIDS

Accidents on intrastate hazardous liquid pipelines reportable under 49 CFR Sections 195.50 and 195.52 and 16 TAC Section 7.84(a) must be reported by telephone within two hours and the required written report filed within thirty (30) days. Call the 24-hour emergency phone number (512)463-6788 to report an accident. For your convenience this priority phone line is used only to report emergencies.

Rules and Regulations:

[Federal Register: December 3, 2002 (Volume 67, Number 232)]

[Notices]

[Page 72027]

From the Federal Register Online via GPO Access [wais.access.gpo.gov]

[DOCID:fr03de02-148]

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Notification of the Susceptibility to Premature Brittle-Like Cracking of Older Plastic Pipe

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; correction.

SUMMARY: In the Federal Register of November 26, 2002, (67 FR 70806) the Research and Special Programs Administration (RSPA) published a notice document issuing an advisory bulletin on the susceptibility to premature brittle-like cracking of older plastic pipe (ADB-02-7). RSPA is submitting this correction notice to reflect minor wording changes and include a website address.

EFFECTIVE DATE: This correction takes effect November 26, 2002.

FOR FURTHER INFORMATION CONTACT: Gopala K. Vinjamuri, (202) 366-4503, or by email at
gopala.vinjamuri@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

Correction

The last sentence in the first paragraph of the Supplementary Information heading under I. Background, reads:

Copies of this report may be obtained by calling NTSB's Public Inquiry Office at 202-314-6551.

We are revising this sentence to add NTSB's website address. The sentence is revised to read as follows:

Copies of this report may be obtained by calling NTSB's Public Inquiry Office at 202-314-6551, or on the NTSB website at
www.nts.gov.

In the fourth paragraph under SUPPLEMENTARY INFORMATION, the first sentence reads:

The NTSB report suggests that Remove the word "suggests" and replace with the word "states".

In the fourth paragraph under Supplementary Information, the third sentence reads:

NTSB alleges that Remove the word "alleges" and replace with the word "concluded".

Under II. Advisory Bulletin (ADB-02-7) of the SUPPLEMENTARY INFORMATION heading, in the second paragraph under
Advisory. The fourth sentence reads:

These older polyethylene pipe materials include the following:

The sentence is revised to read as follows:

These older polyethylene pipe materials include, but are not limited to:

Issued in Washington, DC on November 27, 2002.

James K. O'Steen, Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 02-30615 Filed 12-2-02; 8:45 am]

BILLING CODE 4910-60-P

3. AUDIT SECTION

- A. Maintains headquarters and three district offices as follows:
Headquarters - William B. Travis Building
1701 North Congress, P. O. Box 12967, Austin, Texas 78701
Ed Abrahamson, Assistant Director

Telephone (512) 463-7022

Dallas District- 1546 Rowlett Rd., Suite 107, Garland, Texas 75043

Telephone (972) 240-5757;
Fax (972)303-1897Stephen Cooper, Auditor
Josh Settle, Auditor

Austin District- P. O. Box 12967, Austin, Texas 78711-2967

Telephone (512) 463-7022

Houston District- 1706 Seamist Drive. Suite 501, Houston, Texas 77008-3135

Telephone (713) 869-8425;
Fax (713)869-3219Mark Brock, Supervising Auditor
Dale Francis, Auditor
Margie Stoney, Auditor
Konata Uzoma, Auditor
Lekisha Churchwell, Auditor
Larry Alcorn, Auditor**B. Gas Utility Tax, Annual Reports and Audit Reports**

Questions relating to gas utility tax, annual reports and audit reports, call Shannon L. Miller at (512) 463-7022.

C. Available Information

Copies of company annual reports (1994 to present), as well as information relating to any of the above, A through C, are available for review at the William B. Travis Building, Gas Services Division, 9th Floor, 1701 North Congress. All requests for copies must be made in writing and should be addressed to the Audit Section. Copies will be provided for a fee, depending on the volume of copy work desired, allow a minimum of five days for completion of requests. Inquiries regarding copies should be directed to the Audit Section at (512) 463-7022, or Fax your request to (512) 475-3180.

4. REGULATORY ANALYSIS AND POLICY

- A. Maintains the following office to assist you:

Headquarters - William B. Travis Building
1701 North Congress, P.O. Box 12967, Austin, Texas 78711
Karl Nalepa, Assistant Director

Telephone (512) 463-7164

B. Gas Utilities Information BulletinPublished on the Commission's web site at: <http://www.rrc.state.tx.us/divisions/gs/rap/rapbls.html>.**C. Proposals For Decision**Published on the Commission's web site at: <http://www.rrc.state.tx.us/divisions/gs/rap/pfds.html>.**D. Tariff Filings**

Questions pertaining to the filing of tariffs and/or quality of service rules should be directed to Kathy Arroyo, Yolanda Lovelace or Sandra Soto at (512) 463-7164.

E. Curtailments

Curtailment questions should be referred to Sandra Soto at (512) 463-7164. Curtailment reports made Monday through Friday, 8:00 a.m. to 5:00 p.m., should be made to (512) 463-7164. Curtailment reports made during hours other than those specified above and holidays, should be made to (512) 463-6788, (512) 896-3863 (digital pager), (512) 892-1772 or (512) 280-5949.

F. Compliance Filings

Questions regarding gas utilities docket compliance filing requirements should be referred to Jackie Standard at (512) 463-7164.

G. Complaints and Inquiries

All complaints and inquiries relating to the gas utility industry should be directed to the Regulatory Analysis and Policy section at (512) 463-7164.

H. Rules and Regulations:

GUD No. 9221 Amendments to Quality of Service Rules

GUD No. 9253 New Rule for Relocation Cost Recovery Factor

GUD No. 9257 Amendments to §7.450 Gas Distribution in Mobile Home Parks, Apartment Houses and Apartment Units.

GUD No. 9275 Amendments to §7.512 NGPA Section 311 Rate Review

GUD No. 9276 Amendments to §7.511 TUC Section 102.054 Sale, Transfer, Merger Reviews

GUD No. 9277 Amendments to §7.305 Curtailment Rule

GUD No. 9303 Amendments to §7.465 Abandonment Rule

GUD No. 9334 Amendments to §7.310 System of Accounts

5. HEARINGS AND LEGAL ANALYSIS**A. Miscellaneous**

Anyone wishing to obtain copies of appendices to Orders appearing in Section 5 of this Bulletin should contact the Legal Division at (512) 463-7017.

B. Status of Pending Cases

The status of all pending cases listed in Section 3 of this Bulletin is for informational purposes only and is complete up to the time of printing of this Bulletin. For a more accurate status of pending cases, please call the Legal Division at (512) 463-7017.