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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE COMMISSION'S INVESTIGATION INTO THE COMPLIANCE OF ROACHDALE MUNICIPAL GAS UTILITY WITH PIPELINE SAFETY STANDARDS AND MATTERS RELATING TO THE SAFETY OF ITS GAS DISTRIBTUION SYSTEM PURSUANT TO INDIANA CODE CHAPTER 8-1-22.5	)	CAUSE NO. 44014 APPROVED: JUL 31 2012

ORDER OF THE COMMISSION

Presiding Officers:
Kari A.E. Bennett, Commissioner
Loraine L. Seyfried, Administrative Law Judge

On April 12, 2012, the Town of Roachdale ("Roachdale") filed with the Indiana Utility Regulatory Commission ("Commission") a Request for Change in Completion Date seeking approval of an extension to the October 1, 2012 completion and in-service date for its new gas system.

Pursuant to notice as provided by law, proof of which was incorporated into the record, an evidentiary hearing in this Cause was held on June 4, 2012, at 1:30 p.m. in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, Roachdale offered the testimony of Josh Balay, Anthony Everette, Martha Louk, and John Magee. The witnesses were made available for cross-examination by the Commission's Pipeline Safety Division ("Pipeline Safety") and the Indiana Office of Utility Consumer Counselor ("OUCC"). No member of the general public appeared or sought to participate in these proceedings.

Based upon the applicable law and the evidence herein, the Commission now finds as follows:

1. **Notice and Jurisdiction.** Due, legal and timely notice of the public hearings in this Cause was given and published as required by law. Roachdale is a municipally owned utility as defined in Ind. Code § 8-1-2-1 and is subject to, among other requirements, the gas pipeline safety standards and requirements set forth in Ind. Code ch. 8-1-22.5 and 170 IAC 5-3. Accordingly, the Commission has jurisdiction over Roachdale and the subject matter of this proceeding.

2. **Roachdale's Characteristics.** Roachdale operates a municipal gas utility consisting of a natural gas distribution system. Roachdale is engaged in the distribution and provision of natural gas to the public within the State of Indiana, including the Town of Roachdale, and serves approximately 400 customers.

3. **Background and Requested Relief.** After an investigation at the request of Pipeline Safety, the Commission issued an Order on December 7, 2011 in this Cause requiring Roachdale to, among other things, "undertake all necessary steps to complete the replacement of its gas system, including all testing, and place the new system into service no later than October 1, 2012." *Id.* at 8. The Commission's Order was issued in response to evidence presented by Pipeline Safety concerning the significant deterioration of Roachdale's gas system and numerous violations of pipeline safety standards and requirements.

Roachdale's April 12, 2012 filing requested the completion and in-service date for the new gas system be extended to November 1, 2012. In support of its request, Roachdale indicated that changes in plans and specifications by the United States Department of Agriculture ("USDA") resulted in Roachdale having to make changes to the Request for Bids and to seek additional funding. Additional time was also necessary for the Indiana Department of Environmental Management ("IDEM") to complete its environmental review before additional funding could be approved.

At the June 4, 2012 evidentiary hearing, Roachdale requested the completion and in-service date for the new gas system be extended to December 1, 2012.

4. **Evidence Presented.**

A. **Josh Balay.** Mr. Josh Balay, an employee of Miller Pipeline, the successful bidder for construction of the new gas system, testified that Miller Pipeline's bid originally contemplated a May 1, 2012 construction start date. However, due to recent circumstances, Miller Pipeline is hoping for an early July start date. Because of the two-month delay in construction, Roachdale is now seeking a change in the completion date (i.e., the new system constructed and all customers on the new system) to December 1, 2012.

Mr. Balay stated that Miller Pipeline had not yet secured any materials for the project because it was waiting to receive a Notice to Proceed from Roachdale, which Miller Pipeline was anticipating would be issued on June 20, 2012. While he expressed concern with securing materials this late in the season, he stated Miller Pipeline would reach out to multiple suppliers. He also stated that if the Notice to Proceed was received on June 20, 2012, then Miller Pipeline expected to be able to secure materials and begin construction the next day.

Mr. Balay stated that Miller Pipeline has three crews to start construction. He expressed his belief that December 1, 2012 was a reasonable completion date, but indicated there may be clean-up issues into next spring. He also stated that due to the anticipated inclement weather in October and November, it would be difficult to maintain an aggressive work schedule or complete the project by November 1, 2012.

B. **Anthony Everette.** Mr. Anthony Everette, an employee of Utility Safety and Design, Inc. ("USDI"), which is an engineering contractor for Roachdale, testified that Roachdale will issue a Notice to Proceed after it closes on the USDA loan, which is expected to occur on June 20, 2012.

Mr. Everette stated Roachdale experienced three major delays that have caused it to seek an extension of the completion date. First, the original project plan and loan approval did not include replacement of the gas service lines located outside of Roachdale. Because the Commission's December 7, 2011 Order required replacement of all service lines, additional engineering and environmental approval was required for the loan, resulting in an approximate one month delay. Second, the bids received by Roachdale were all higher than expected, causing Roachdale to seek an additional loan from USDA. He said this resulted in an additional five week delay. And third, he said, Roachdale could do nothing until it received approval for the additional loan. Since Roachdale has now received approval for the additional funds, it must revise its rate ordinance to collect the money necessary to repay the loan. He stated the approval process for the ordinance has added another four weeks of delay.

Mr. Everette testified that he believes the new system can be reasonably completed by December 1, 2012. He stated he did not anticipate weather being a significant factor in delaying completion of the project. Finally, he noted that the contract between Roachdale and Miller Pipeline, which contained penalties for failure to complete the project within a required timeframe, would not be signed until Roachdale issued the Notice to Proceed.

C. Martha Louk. Ms. Martha Louk, fiscal officer for Roachdale, testified that she expects to receive information from Roachdale's rate consultant and bond counsel by June 5, 2012, which will allow her to advertise the rate ordinance in the paper for ten days prior to June 20, 2012, which is the proposed date for issuance of the Notice to Proceed. She stated the Town Council must approve the ordinance in order to obtain the USDA loan, but she wasn't aware of any reason the ordinance would not be approved. She indicated she did not know the amount of the projected rate increase.

D. John Magee. Mr. John Magee, an employee of USDA Rural Development, testified that Roachdale has been approved for two loan amounts, one for $1,102,000 and another for $524,000. He stated USDA would not be able to close on the loans if the ordinance is not approved. He also indicated that he was not aware of any other impediments to being able to close on the loans on June 20, 2012.

5. <u>Commission Discussion and Findings</u>. The Commission's December 7, 2011 Order in this Cause ("December 2011 Order") found that Roachdale's gas distribution system presented "a hazard to human life or property" so as to warrant its issuance. *Id.* at 8. The evidence established that Roachdale had been aware of the significant deterioration in its gas system and the need for complete replacement since 2008. *Id.* at 7. Yet for various reasons, Roachdale failed to accomplish the steps necessary to secure financing and begin replacement of the gas system. Based on the parties' assurances that a reasonable timeframe for commencing construction was April 1, 2012 with completion four months later, the Commission ordered Roachdale to "undertake all necessary steps to complete the replacement of its gas system, including all testing, and place the new system into service no later than October 1, 2012." *Id.* at 8. Although the parties agreed that four months was a reasonable amount of time to complete

construction, the December 2011 Order provided an additional two months to complete construction prior to the winter heating season and to account for possible delays.

Roachdale now seeks an additional two month extension to the October 1, 2012 deadline to complete construction of the new gas system. Roachdale indicated there were three primary reasons for needing to extend the completion deadline. First, because the December 2011 Order required replacement of lines outside of Roachdale, USDA required additional engineering and environmental approvals. Roachdale received USDA approval for its proposed construction of a new gas system on August 17, 2010. Based on the evidence presented at the October 24, 2011 evidentiary hearing, Roachdale was, or should have been, aware that Pipeline Safety was seeking an order requiring replacement of the "entire system." December 2011 Order at 4. The OUCC also advocated "total replacement of the gas system." *Id.* at 5. In fact, throughout the initial proceeding, it is clear that discussion among the parties related to replacement of Roachdale's entire gas system. We fail to understand why Roachdale did not inform USDA earlier of the change in the scope of construction to include portions of lines outside the town limits of Roachdale, and instead waited until the issue was raised by USDA more than two months after the December 2011 Order.[1]

The second reason for the extension request (i.e., higher than expected bids and the need for additional financing) appears to have been unanticipated. The evidence also indicates that Roachdale was ultimately able to justify and receive additional funding within five weeks. While we understand the need to obtain additional USDA funding due to unforeseen increased costs, we disagree with Mr. Everette's assumption that there was nothing Roachdale could do until approval of that funding was obtained. Roachdale's third reason for the extension request was that it could not revise its ordinance to increase rates to cover the loan payments until the loan was approved. While we recognize an increase in rates could not be justified until the loan had been approved, we do not understand the reason Roachdale was still waiting to receive the information necessary to determine the amount of the increase needed at the time of the June 4, 2012 evidentiary hearing, when the loan had been approved a month earlier, on May 7, 2012. This delay clearly could have been prevented by Roachdale through proper planning.

Furthermore, based on the evidence presented, it now appears that construction of the gas system will not be completed until well into the upcoming heating season. This raises serious concerns. One of the reasons advocated by the parties in the initial proceeding for an April 1, 2012 start of construction was that if construction occurred during the heating season, Roachdale's customers would not have a reliable supply of gas while the system is being replaced. December 2011 Order at 5. While none of the witnesses at the evidentiary hearing expressed concern with Roachdale's ability to safely transition its customers to the new system, we presume that Roachdale and Miller Pipeline have considered potential issues and actions required in the request for a December 1, 2012 deadline. As we are left with little choice, the Commission finds that Roachdale's request to extend the deadline for completion of the new system to December 1, 2012 is granted. Absent acts of God or other similar catastrophic circumstance, no further extensions of the deadline to complete construction will be granted.

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[1] *See* Roachdale's May 9, 2012 Report to the Commission.

We are uncertain whether Roachdale's inability to anticipate and take reasonably necessary steps through proper planning to ensure completion of established deadlines, as demonstrated by the evidence in this Cause, stems from a lack of ability to appreciate the seriousness or urgency of this matter, or from a lack of managerial capability. In either event, we remain seriously concerned with Roachdale's continued operation of the utility and will continue to closely scrutinize Roachdale's monthly reports required by our December 2011 Order.

Finally, in the initial proceeding, we declined to assess any civil penalties at the recommendation of Pipeline Safety and the OUCC. However, we specifically noted that failure to comply with any provision of this Order would result in the Commission's reopening of this proceeding for the purpose of addressing the noncompliance and assessing an appropriate civil penalty. December 2011 Order at 10. Consequently, should Roachdale fail to comply with the December 1, 2012 completion deadline, a civil penalty will be assessed under Ind. Code § 8-1-22.5-7.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. Roachdale's request to extend the deadline for placing its new gas distribution system into service to December 1, 2012 is granted.

2. In accordance with Indiana Code § 8-1-2-70, Petitioner shall pay the following itemized charges within twenty days from the date of the Order into the Treasury of the State of Indiana, through the Secretary of this Commission, as well as any additional costs that were incurred in connection with this Cause:

Commission Charges:	$493.63
Legal Advertising Charges:	$ 45.33
Total:	$538.96

3. This Order shall be effective on and after the date of its approval.

ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: JUL 31 2012

I hereby certify that the above is a true and correct copy of the Order as approved.

Brenda A. Howe

Brenda A. Howe
Secretary to the Commission