

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

ORIGINAL
DO NOT REMOVE FROM OFFICE

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

ORDER NO. 8592

AND NOW, this 5th day of August, 2014, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, the Commission has qualified for federal certification to operate a state pipeline safety compliance program under 49 U.S.C. §60105(a) and has the authority under 26 Del. C. §821 to make and enforce rules required by the federal National Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. Chapter 601);¹ and

WHEREAS, the Commission is authorized by the Federal Pipeline Safety Regulations, 49 C.F.R., Parts 190-193 and 198-199, to order remedial actions and to impose civil penalties, where appropriate; and

¹ In addition, 26 Del. C. §821 provides, in pertinent part, that such rules shall incorporate the safety standards and penalty provisions (including injunctive and monetary sanctions) established under the federal Natural Gas Pipeline Safety Act of 1968, as amended [49 U.S.C. § 60101 et seq.], that are applicable to intrastate gas pipeline transportation and will apply to underground pipeline facility operators, as defined under 26 Del. C. §802(11).

WHEREAS, Chesapeake Utilities Corporation ("Chesapeake") is an "Operator" as set forth in 26 Del. C. §821² and 26 Del. Admin. C. §8001-1.0³ and 26 Del. C. §802(11) in that Chesapeake acts as an operator of a buried pipeline facility used in the transportation of natural gas within the State of Delaware and therefore falls within the Commission's intrastate gas pipeline transportation jurisdiction; and

WHEREAS, on December 6, 2012, a Staff Pipeline Safety Inspector ("Inspector"), who is also a member of the Commission Staff ("Staff"), inspected construction being performed by a contractor (F&T Underground) on behalf of Chesapeake; and

WHEREAS, the Inspector witnessed the F&T Underground contractor ("Mr. Barlow") constructing a joint (the "F&T Joint") by fusing a fitting onto a gas pipeline utilizing a pressure different from the pressure recommended on the fitting label, which is in conflict with Chesapeake's Construction Standards Manual; and

² 26 Del. C. §802(11) defines an "underground pipeline facility operator" as an operator of a buried pipeline facility used in the transportation of gas, such as propane and natural gas, subject to the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. §1671 et seq.) [repealed by Act July 5, 1994, P.L. 103-272], or used in the transportation of hazardous liquid subject to the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 et seq.) [repealed by Act July 5, 1994, P.L. 103-272]; underground pipeline facility operators include, without limitation, natural gas, propane gas, master meter, LP gas and interstate and intrastate gas and liquid distribution facility operators as defined by these acts. **NOTE:** P.L. 103-272 amended and transferred to a new section of the U.S. Code the "Natural Gas Pipeline Safety Act of 1968" and the "Hazardous Liquid Pipeline Safety Act of 1979." See P.L. 103-272; 108 Stat. 745; 49 U.S.C. §§60101 through 60128.

³ Under 26 Del. Admin. C. §8001-1.0, an "Operator" means an "underground pipeline facility operator" as defined in 26 Del. C. §802(11).

WHEREAS, Mr. Barlow told the Inspector that he had always used this same pressure in constructing this type of joint; and

WHEREAS, the Inspector noted two potential violations of the Code of Federal Regulations: One of 49 C.F.R. §192.303⁴ and one of 49 C.F.R. §192.805(b);⁵ and

WHEREAS, based on the Inspector's written report and findings dated December 6, 2012, the Program Manager of the Pipeline Safety Program for the State of Delaware sent a written letter by certified mail, return receipt requested, of the Notice of Potential Violations ("NOPV") to Chesapeake on January 3, 2013, along with a copy of Staff's written report. See the attached Exhibit "A"; and

WHEREAS, the NOPV recommended that Chesapeake take certain remedial actions,⁶ set certain due dates for such actions, and recommended civil penalties of \$6,000.00;⁷ and

⁴ 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."

⁵ 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 shall include provisions to ... Ensure through evaluation that individuals performing covered tasks are qualified"

⁶ First, Staff recommended that Chesapeake immediately take the following remedial actions: Remove the F&T Joint from service and have it tested in accordance with the procedures in 49 C.F.R. §192.283 for qualifying joining procedures. Provide the name of the testing laboratory and testing procedures to Staff for approval before proceeding with the testing. Provide the test results to Staff by January 31, 2013. The testing had to provide, at minimum, a Maximum Allowable Operating Procedure for the F&T Joint. Second, Staff recommended that Chesapeake immediately have Mr. Barlow undergo testing to be re-qualified for the covered task of saddle joint fusions and provide Staff with detailed proof of his re-qualification, including all tests and results, by January 31, 2013.

⁷ Staff proposed that Chesapeake pay civil penalties in the amount of \$3,000.00 for the potential violation of 49 C.F.R. §192.303 and

WHEREAS, the NOPV also stated that additional penalties could be imposed on Chesapeake for any additional violations found and if Chesapeake failed to act immediately regarding Staff's proposed remedial actions; and

WHEREAS, on January 22, 2013, the Commission approved Order No. 8280 which, among other things, granted Staff the authority to undertake an investigation into potential violations of federal and/or state regulations allegedly committed by Chesapeake regarding gas pipeline safety; and

WHEREAS, as part of the investigation, Staff required Chesapeake to remove from service the F&T Joint and have it tested according to certain procedures at an independent testing facility; and

WHEREAS, the results of this testing on the F&T Joint, according to Staff, showed a deficiency in the structural integrity of this joint; and

WHEREAS, because Mr. Barlow told the Inspector that he had always used this same pressure in constructing this type of joint, Staff believed this practice called into question all joints of this type (i.e., saddle fusion joints) constructed by Mr. Barlow; and

WHEREAS, Staff had additional concerns about Chesapeake's qualification program; and

\$3,000.00 for the potential violation of 49 C.F.R. §192.805(b). Thus, the total amount of recommended civil penalties made by Staff was \$6,000.00.

WHEREAS, consequently, Staff directed Chesapeake to take certain further actions to show the integrity of its gas distribution system. See Staff's Memorandum to the Commission dated March 28, 2013 (attached as Exhibit "B"); and

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

WHEREAS, Chesapeake, Staff, and the Division of the Public Advocate ("DPA")⁸ (each individually a "Party" and collectively the "Parties") entered into settlement negotiations and agreed to resolve certain potential violations and proposed civil penalties by entering into a consent agreement (the "Proposed Consent Agreement") which is attached as Exhibit "C"; and

WHEREAS, the Parties agreed that the Proposed Consent Agreement would be subject to the Commission's review and final approval; and

WHEREAS, pursuant to 26 *Del. Admin. C.* §8001-7.1.2, Chesapeake has agreed to pay a civil penalty in the amount of \$6,000.00 (\$3,000.00 for one potential violation of 49 C.F.R. §192.303 and \$3,000.00 for one potential violation of 49 C.F.R. §192.805(b)) within 20 days of the date of the final Commission Order on this matter; and

WHEREAS, Chesapeake has agreed that no portion of the civil penalties set forth in the Proposed Consent Agreement will be

⁸ The Attorney General intervened in this proceeding during the vacancy in the Public Advocate's position. After appointment and confirmation of a new Public Advocate, the DPA substituted its appearance for that of the Attorney General.

included in any way in any pending or future Delaware rate case or passed on in any way to Delaware ratepayers; and

WHEREAS, the Parties believe that resolving the issues discussed in this Order through a negotiated compromise, without the need for a formal evidentiary hearing, will serve the interests of the public; and

WHEREAS, the Parties assert that this settlement yields a reasonable result; and

WHEREAS, the Parties state that the civil penalties agreed to in the Proposed Consent Agreement are within the bounds of the allowable civil penalty amounts based on circumstances unique to Chesapeake and that this settlement will avoid further administrative and hearing costs for the specific matters that are being resolved by this settlement;

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

1. Pursuant to 26 Del. C. §512(c),⁹ the Commission finds that the Proposed Consent Agreement, which is attached as Exhibit "C", is in the public interest for the reasons set forth above and therefore approves such agreement in full.

2. For the reasons set forth above and pursuant to 26 Del. Admin. C. §8001-7.1.2, 49 U.S.C. 60122(a), and subpart B of Part 190 of the Federal Regulations, the Commission assesses a civil penalty against Chesapeake in the amount of \$6,000.00. Such

⁹ 26 Del. C. §512(c) provides that the Commission may upon hearing approve the resolution of matters brought before it by stipulations or settlements whether or not such stipulations or settlements are agreed to or approved by all parties where the Commission finds such resolutions to be in the public interest.

penalty is due and payable within twenty (20) days of the date of this Order.

3. Chesapeake 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).

4. 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:

/s/ Dallas Winslow
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Jeffrey J. Clark
Commissioner

Commissioner

ATTEST:

/s/ Alisa Carrow Bentley
Secretary

EXHIBIT "A"

Letter of the Notice of Potential Violations to Chesapeake
Dated January 3, 2013, and Attachment of Staff's Written Report



**STATE OF DELAWARE
PUBLIC SERVICE COMMISSION**

861 SILVER LAKE BOULEVARD
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904

TELEPHONE: (302) 736-7500
FAX: (302) 739-4849

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

January 3, 2013

Mr. Charles A. Russell
Chesapeake Utilities Corporation
32145 Beaver Run Drive
Salisbury, MD 21804-1774

RE: Written Notice of Potential Violation of 26 Del. Admin. C. §8001

Dear Mr. Russell:

This letter serves as notice to Chesapeake Utilities Corporation (the "Company") of potential violations of the State of Delaware's Rules to Establish an Intrastate Gas Pipeline Safety Compliance Program, **26 Del. Admin. C. §8001** (the "Regulations"). The Regulations, at a minimum, enforce the standards set forth in the Federal Pipeline Safety Regulations, Title 49, U.S. Code of Federal Regulations, Parts 190-193 and 198-199.

On December 6, 2012, Mr. Robert Schaeffgen, a member of the Commission Staff, inspected construction being performed by F&T Underground (the "Contractor") on behalf of the Company. Mr. Schaeffgen noted the following:

1. An employee of the Contractor was performing a saddle fusion using a Performance Pipe 8100 saddle fitting on a 2" HDPE main. In performing the "joining" act of the procedure, the employee used a pressure of 100 psig. However, the label of the fitting specifies that a joining pressure of 140 psig is required. The procedures for performing this saddle fusion are detailed in the Company's *Construction Standards Manual* (Rev. 01/2011). Specifically, step 10 of Section 362 of this *Manual* states that the joining force to be used is the number provided on the fitting label.

This is a potential violation of 49 C.F.R. §192.303 which requires the following: *"Each transmission line or main must be constructed in accordance with comprehensive written specifications or standards that are consistent with this part."*

2. When Mr. Schaeffgen questioned the employee about the inconsistency between the joining pressure being applied and the pressure stipulated on the fitting, the employee responded

that he had always joined saddle fittings at a pressure of 100 psig. Subsequent to the inspection, Mr. Schaeffgen obtained the Operator Qualification records from the Company with regards to this specific employee and this specific covered task. The records indicate that this employee had passed the written portion of the qualification process on 12/9/2010 and passed the performance portion of the qualification process on 6/4/2012. The expiration date for both is in 2013. The application of the incorrect joining pressure combined with the employee's statement about always using that joining pressure cause the Commission Staff to question the soundness of the Company's Qualification Program.

This is a potential violation of 49 C.F.R. §192.805(b) which requires the following: *"Each operator shall have and follow a written qualification program. The program shall include provisions to: ... (b) Ensure through evaluation that individuals performing covered tasks are qualified"*

The Commission Staff is referring this matter to the Commission for a formal hearing so that the Commission can rule on this matter. In the meantime, the Commission Staff proposes that the Company immediately take the following remedial actions:

1. The saddle fusion that was observed by Robert Schaeffgen was at 916 Sunset Terrace, Dover, DE. Remove this joint from service and have it tested in accordance with the procedures in 49 C.F.R. §192.283 for qualifying joining procedures. Provide the name of the testing laboratory and the testing procedures to Commission Staff for approval before proceeding with the testing. All test results must be provided to the Commission Staff by January 31, 2013. The testing must provide, at a minimum, a Maximum Allowable Operating Procedure (MAOP) for that joint. This MAOP will determine if any further remedial actions need to be taken by the Company.
2. The employee making the saddle fusion was Homer Barlow. Mr. Barlow must undergo immediate testing to be re-qualified for the covered task of saddle joint fusions. Detailed proof of his re-qualification, including all tests and results, must be provided to Commission Staff by January 31, 2013, if the Company intends to allow Mr. Barlow to continue performing this task. Until this re-qualification is completed, Mr. Barlow must not perform any further saddle fusions.

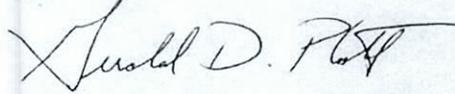
The Commission Staff is also recommending that the Commission impose a civil penalty of \$3,000 per potential violation for a total penalty of \$6,000. Additional penalties may also be imposed for any additional violations found and if the Company fails to act immediately regarding the Commission Staff's proposed remedial actions set forth above.

A docket will be opened for this matter, and a notice of a hearing date will be sent to the Company shortly.

Charles A. Russell, Chesapeake Utilities Corporation
January 3, 2013
Page 3

If you have questions regarding this matter, please don't hesitate to contact me at 302-736-7526.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald D. Platt". The signature is written in a cursive style with a large initial "G" and a long horizontal stroke at the end.

Gerald D. Platt, Program Manager

Enclosure: Copy of Violation Report for 12/6/12

cc: Kevin Neilson, DE PSC Acting Executive Director
Robert Schaeffgen, DE PSC Pipeline Safety Inspector

UNITED STATES DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
GAS PIPELINE SAFETY VIOLATION REPORT

| | | | | | | | |
|---|--|-----------------|--|---|---|--|--|
| 1. <u>Inspector Name</u> Robert Schaeffgen | 2. <u>Date of Inspection</u> 12/06/12 | 3. <u>CPF #</u> | | | | | |
| 4. <u>Pipeline Operator/Owner</u> Chesapeake Utilities, Inc | | | | | | | |
| 5a. <u>Headquarters Address</u> 909 Silver Lake Boulevard, Dover, DE 19904 | | | | | 5b. <u>Telephone No.</u> (302) 734-6797 | | |
| 6. <u>Inspection Location</u> 916 Sunset Terrace, Dover, DE | | | | | 7. <u>Inspection Unit</u> No. <u>1</u> of <u>2</u> | | |
| 8. <u>Portion of System Inspected</u> (Describe location & facility) 916 Sunset Terrace, Installation of 3/4-inch x 2-inch high density saddle tee | | | | | | | |
| 9. <u>Nature and Size of Operator</u> | | | | | | | |
| 9a. <u>Type of Operator</u> | | | | 9b. <u>Type of Pipe in System</u> | | | |
| <input type="checkbox"/> LNG (interstate) | | | | <input type="checkbox"/> Cast Iron | | | |
| <input type="checkbox"/> LNG (intrastate) | | | | <input type="checkbox"/> Steel | | | |
| <input type="checkbox"/> LPG | | | | <input checked="" type="checkbox"/> Plastic | | | |
| <input type="checkbox"/> Master Meter | | | | <input type="checkbox"/> Other - | | | |
| <input checked="" type="checkbox"/> Other Distribution | | | | 9c. <u>Size of Operator</u> (No. of Miles/Customers/Storage Capacity <u>848.807/93,662 residents, 12,887 business</u>) | | | |
| <input type="checkbox"/> Gathering | | | | | | | |
| <input type="checkbox"/> Transmission (interstate) | | | | | | | |
| <input type="checkbox"/> Transmission (intrastate) | | | | | | | |
| 10. <u>Nature of Probable Violations</u> (Check as many as applicable) | | | | | | | |
| <input type="checkbox"/> 1. Problem in Design/Materials | | | | | | | |
| <input type="checkbox"/> 2. Problem in Construction | | | | | | | |
| <input checked="" type="checkbox"/> 3. Welding or Joining | | | | | | | |
| <input type="checkbox"/> 4. Problem in LNG Equipment | | | | | | | |
| <input type="checkbox"/> 5. Test Requirements or MAOP Qualification | | | | | | | |
| <input type="checkbox"/> 6. Corrosion Control | | | | | | | |
| <input type="checkbox"/> 7. Pressure Control | | | | | | | |
| <input type="checkbox"/> 8. Other Maintenance/Monitoring | | | | | | | |
| <input checked="" type="checkbox"/> 9. Personnel Qualifications & Training | | | | | | | |
| <input type="checkbox"/> 10. Fire Protection | | | | | | | |
| <input type="checkbox"/> 11. Security | | | | | | | |
| <input type="checkbox"/> 12. Anti-Drug Program | | | | | | | |
| <input type="checkbox"/> 13. Other Operations | | | | | | | |
| <input type="checkbox"/> 14. Reporting Requirements | | | | | | | |
| <input type="checkbox"/> 15. Other _____ | | | | | | | |
| <input type="checkbox"/> 16. Inadequate/No Procedures | | | | | | | |
| <input type="checkbox"/> A. Construction | | | | <input type="checkbox"/> D. Training | | | |
| <input type="checkbox"/> B. Corrosion Control | | | | <input type="checkbox"/> E. Maintenance | | | |
| <input type="checkbox"/> C. Operations | | | | | | | |

Violation No. 1

Violated: 192.303 Compliance with specifications or standards

11b. Summarize what the regulation requires that operator did not do:

Operator's contractor did not construct the main/service in accordance with comprehensive written specifications or standards consistent with Part 192.

12. Provide detailed information about violation:

Operator's contractor (F & T Underground) employee had performed a the installation of a Performance Pipe high density service tee (3/4-inch) to a 2-inch high density main and used a joining force of 100PSIG instead of a joining force of 140PSIG per the operator's written services construction standard.

13. Public and/or environmental concerns in area of violation: Because the operator's contractor employee had used a reduced joining pressure in the installation of the high density saddle fitting on the 2-inch high density main, there was a concern that the integrity was compromised-the possibility of voids or discontinuities in the pipe sidewall fusion and subsequent leakage that could migrate into a house's basement resulting in a fire or explosion.

14a. Person Interviewed: Joe Rodriguez Title: Chesapeake Utilities Const. Inspector
also Homer Barlow & Greg Fowler of F & T Underground

14b. Comments of person interviewed: Joe Rodriguez had stated that the completed saddle fusion and 3/4-inch service line had held a pressure of 102PSIG for 20 minutes without any change in pressure, so the saddle fusion appeared to be acceptable though the joining pressure of the saddle fitting was 100PSIG instead of Chesapeake Utilities construction standard's 140PSIG (Performance Pipe's saddle fusion fitting label 280/0/140 for bead-up force/heating force/joining force). Homer Barlow stated that he had ben joining saddle fittings for the past 9 years using a joining force of 100PSIG.

Continuation Sheet

Violation No. 2

11a. CFR . Violated: 192.805(b)

11b. Summarize what the regulation requires that operator did not do:

Operator did not ensure that the contractor employee (Homer Barlow of F&T Underground) was adequately evaluated to perform the sidewall (saddle) fusion in accordance with the operator's construction standards (reference Performance Pipe's Saddle Fusion procedures and saddle fusion fitting label parameters)

12. Provide detailed information about the violation: Operator's contractor employee failed to follow the joining force requirement as indicated in the operator's Performance Pipe Sidewall Fusion standard when performing the sidewall fusion at 916 Sunset Terrace.

13. Public and/or environmental concerns in area of violation: Due to operator's contractor employee not being fully familiar with the operator's sidewall fusion procedures, contractor employee Homer Barlow had installed a saddle fitting using an incorrect joining pressure which could have caused voids or discontinuities in the pipe sidewall fusion and subsequent leakage that could migrate into a house's basement resulting in a fire or explosion.

14a. Person Interviewed: Joe Rodriguez Title: Chesapeake Utilities Const. Inspector

14b. Comments of person interviewed: Joe Rodriguez had stated that the completed saddle fusion and 3/4-inch service line had held a pressure of 102PSIG for 20 minutes without any change in pressure, so the saddle fusion appeared to be acceptable. After Joe Rodriguez had talked to Greg Madden and possibly Charlie Russell, Joe Rodriguez asked if he should have the contractor (F & T underground) abandon the saddle fusion and perform another sidewall fusion at a different location on the 2-inch high density main. It was noted by Chesapeake and the contractor that they would need to move the saddle down the pipe at least a foot from another sidewall fusion for another service.

Continuation Sheet

Violation No. ____

11a. CFR , Violated: _____

11b. Summarize what the regulation requires that operator did not do:

12. Provide detailed information about the violation:

13. Public and/or environmental concerns in area of violation:

14a. Person Interviewed:

Title:

14b. Comments of person interviewed:

15. Supporting Documents/Materials

| Item No. | Description (Include date) | Source of Documents | Remarks |
|----------|---|-------------------------|---------|
| 1 | Chesapeake Utilities Construction Standards Section 300, Fusion Procedure 362 titled Phillips/Plexco/Performance Pipe Sidewall Fusion | Chesapeake Utilities | None |

16. Inspector's Signature:

Date:

Robert Schaefer

01/03/13

17. Compliance History

| Date | Place | Describe Violation/ Noncompliance | CPF No. Date WL | Outcome |
|------|-------|--------------------------------------|--------------------|---------|
| | | | | |

18. Gravity of Offense

19. Degree of Culpability

High

20. Ability to Continue in Business

Excellent

21. Ability to Pay

Good

22. Good Faith in Attempting to Achieve Compliance

Yes

23a. Proposed Remedy

- Warning Letter
- Civil Penalty: Recommended Amount \$ To be determined
- Compliance Order
- Hazardous Facility Order
- Notice of Amendment of O&M Plan

23b. Analysis of Proposed Remedy

24. Regional Director's Signature: _____

Date: _____

EXHIBIT "B"

Staff's Memorandum to the Commission dated March 28, 2013



STATE OF DELAWARE
PUBLIC SERVICE COMMISSION

861 SILVER LAKE BOULEVARD
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904

TELEPHONE: (302) 736-7500
FAX: (302) 739-4849

MEMORANDUM

TO: The Chair and Commissioners

FROM: Jerry Platt, P.E., Engineer IV *GDP*

DATE: March 28, 2013

SUBJECT: 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

On January 22, 2013, the Commission approved Order No. 8280 which, among other things, granted Commission Staff ("Staff") the authority to undertake an investigation into potential violations of federal and/or state regulations committed by Chesapeake Utilities Corporation (the "Company") regarding gas pipeline safety. The event that initiated this Order was a Staff Pipeline Safety Inspector witnessing a Company representative constructing a joint by fusing a fitting onto a gas pipeline utilizing an incorrect pressure. As part of the investigation, Staff required the Company to remove this newly constructed joint from service and have it tested according to appropriate procedures at an independent testing facility. The results of this testing showed a deficiency in the structural integrity of this joint. In a previous interview, the Company representative who made the joint, Mr. Homer Barlow, indicated that he had always used this same pressure in constructing this type of joint.

Because Mr. Barlow admitted he had always used this pressure in constructing this type of joint, Staff feels that this admission calls into question all joints of this type (i.e., saddle fusion joints) constructed by Mr. Barlow. Staff acknowledges there was a time in the past where the Company's procedures did not stipulate a pressure to be used in constructing this type of joint, and this procedure was considered acceptable in the industry. However, these test results indicate that the former procedures may not have been adequate to provide a safe and reliable gas distribution system. In addition, Pipeline Safety Regulations, specifically 49 CFR §192.805, require that the Company have a qualification program to train and evaluate all personnel performing covered tasks that are established as part of the company's qualification program. Because of Mr. Barlow's admission of always constructing saddle fusion joints in this fashion, Staff has additional concerns about the Company's qualification program.

Consequently, Staff directs the Company to take the following actions to show the integrity of its gas distribution system:

- 1) The Company should immediately provide the test specimen, in its post-test condition, to Staff for further examination.
- 2) The Company should research its records to determine all joint fusions performed by Homer Barlow (not just saddle joint fusions) and provide copies of such records to Staff immediately.
- 3) The Company should immediately replace all saddle joint fusions made by Mr. Barlow in an agreed upon time period.
- 4) The Company should conduct testing on other types of joint fusions performed by Mr. Barlow in order to determine their adequacy. Further action may be required as a result of this testing.
- 5) The Company should test one random saddle joint fusion performed by each person who was performing saddle joint fusions during the same time period when Mr. Barlow was operator qualified for this task. This is an effort to determine the soundness of the Company's qualification program. Further action may be required as a result of this testing.
- 6) The Company, as the operator with more detailed knowledge of their system, should take any other actions that it deems necessary as a result of its own findings to ensure a safe and reliable system.
- 7) The Company should separately track all costs associated with these actions.

Compliance with the above actions does not relieve the Company of further possible violations findings, related civil penalties, and remedial actions.

Cc: Charles Russell, Engineering and Compliance Manager, Chesapeake Utilities Corporation

EXHIBIT "C"

Proposed Consent Agreement
Fully Executed by the Commission Staff,
Chesapeake Utilities Corporation,
and the Public Advocate

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

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

PROPOSED CONSENT AGREEMENT

THIS PROPOSED CONSENT AGREEMENT is made this 5th day of August, 2014, between Chesapeake Utilities Corporation (“Chesapeake”), the Delaware Public Service Commission Staff (“Staff”), and the Division of the Public Advocate (“DPA”).

WHEREAS, Chesapeake is a Delaware corporation with headquarters located at 909 Silver Lake Boulevard, Dover, Delaware 19904; and

WHEREAS, Chesapeake is an “Operator” as set forth in 26 *Del. C.* §802(11)¹ and 26 *Del. Admin. C.* §802(11)² in that it acts as an operator of a buried pipeline facility used in the transportation of gas, such as propane and natural gas, within the State of Delaware; and

WHEREAS, the Delaware Public Service Commission (the “Commission”) has qualified for federal certification of a state pipeline safety compliance program under 49 U.S.C. §60105(a), which relates to the regulation of intrastate gas pipeline transportation; and

WHEREAS, 26 *Del. C.* §821 provides, in pertinent part, that the Commission “shall have the authority to make and enforce rules required by the federal Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. Chapter 601), to qualify for federal certification of a state pipeline safety compliance program under 49 U.S.C. § 60105(a)...;”³ and

¹ 26 *Del. C.* §802(11) defines an “underground pipeline facility operator” as an operator of a buried pipeline facility used in the transportation of gas, such as propane and natural gas, subject to the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. §1671 et seq.) [repealed by Act July 5, 1994, P.L. 103-272], or used in the transportation of hazardous liquid subject to the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 et seq.) [repealed by Act July 5, 1994, P.L. 103-272]; underground pipeline facility operators include, without limitation, natural gas, propane gas, master meter, LP gas and interstate and intrastate gas and liquid distribution facility operators as defined by these acts. **NOTE:** P.L. 103-272 amended and transferred to a new section of the U.S. Code the “Natural Gas Pipeline Safety Act of 1968” and the “Hazardous Liquid Pipeline Safety Act of 1979.” See P.L. 103-272; 108 Stat. 745; 49 U.S.C. §§60101 through 60128.

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).

³ 26 *Del. C.* §821 further provides, in pertinent part, that such rules shall incorporate the safety standards and penalty provisions (including injunctive and monetary sanctions) established under the federal Natural Gas Pipeline Safety Act of 1968, as amended [49 U.S.C. § 60101 et seq.], that are applicable to intrastate gas pipeline transportation and will apply to underground pipeline facility operators, as defined under 26 *Del. C.* §802(11).

WHEREAS, as part of the requirements of a certified state pipeline safety compliance program, Mr. Robert Schaeffgen, a Staff Pipeline Safety Inspector (“Inspector”) and member of the Commission Staff (“Staff”), performed a standard inspection on December 6, 2012, of construction being performed by a contractor (“F&T Underground”) on behalf of Chesapeake; and

WHEREAS, the Inspector witnessed an F&T Underground contractor (“Mr. Barlow”) constructing a joint (the “F&T Joint”) by fusing a fitting onto a gas pipeline utilizing a pressure different from the pressure specified on the label of the fitting which is in conflict with Chesapeake’s Construction Standards Manual; and

WHEREAS, according to the Inspector, Mr. Barlow told the Inspector that he had always used this same pressure in constructing this type of joint; and

WHEREAS, based on the Inspector’s written report and findings dated December 6, 2012, the Program Manager of the Pipeline Safety Program for the State of Delaware sent a written letter by certified mail, return receipt requested, of the Notice of Potential Violations (“NOPV”) to Chesapeake on January 3, 2013, along with a copy of Staff’s written report; and

WHEREAS, a copy of the NOPV and written report that Staff sent to Chesapeake is attached as Exhibit “A”; and

WHEREAS, the NOPV recommended that Chesapeake take certain remedial actions,⁴ set certain due dates for such actions, recommended civil penalties of \$6,000.00,⁵ and stated that additional penalties could also be imposed on Chesapeake for any additional violations found and if Chesapeake failed to act immediately regarding Staff’s proposed remedial actions; and

WHEREAS, the DPA has intervened in this proceeding; and

WHEREAS, as part of its investigation, Staff required Chesapeake to remove from service the F&T Joint and have it tested according to certain procedures at an independent testing facility; and

WHEREAS, the results of this testing showed that no bonding occurred between the fitting and the exterior pipe surface over a portion of the interface; and

⁴ First, Staff recommended that Chesapeake immediately take the following remedial actions: (1) Remove the F&T Joint from service and have it tested in accordance with the procedures in 49 C.F.R. §192.283 for qualifying joining procedures; (2) Provide the name of the testing laboratory and testing procedures (which at a minimum were to include a Maximum Allowable Operating Procedure for the F&T Joint) to Staff for approval before proceeding with the testing; and (3) Provide the test results to Staff by January 31, 2013. The testing had to provide, at minimum, a Maximum Allowable Operating Procedure for the F&T Joint. Second, Staff recommended that Chesapeake immediately have Mr. Barlow undergo testing to be re-qualified for the covered task of saddle joint fusions and provide Staff with detailed proof of his re-qualification, including all tests and results, by January 31, 2013, if the Company intended to allow Mr. Barlow to continue performing saddle fusions.

⁵ Staff proposed that Chesapeake pay civil penalties in the amount of \$3,000.00 for the potential violation of 49 C.F.R. §192.303 and \$3,000.00 for the potential violation of 49 C.F.R. §192.805(b). Thus, the total amount of recommended civil penalties was \$6,000.00.

WHEREAS, because Mr. Barlow told the Inspector that he had always used this same pressure in constructing this type of joint, Staff was concerned about all joints of this type (i.e., saddle fusion joints) constructed by Mr. Barlow, and had additional concerns about Chesapeake's qualification program; and

WHEREAS, Staff directed Chesapeake to take certain further actions to show the integrity of its gas distribution system. See Staff's Memorandum to the Commission dated March 28, 2013, which is attached as **Exhibit "B"**; and

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

WHEREAS, Chesapeake, Staff, and the DPA entered into settlement negotiations and hereby propose to resolve all of the issues in this proceeding without recourse to a formal administrative hearing by entering into this Proposed Consent Agreement under the terms and conditions set forth herein; and

WHEREAS, Chesapeake has been informed that it is entitled to an administrative hearing and to be represented by counsel.

NOW, THEREFORE, upon the mutual consent and agreement of Chesapeake, Staff, and the DPA (each individually, a "Party," and collectively, the "Parties"), the Parties hereby propose a complete settlement of all issues in this proceeding as follows:

1. The Parties have conferred and have agreed to enter into this Proposed Consent Agreement on the terms and conditions contained herein because they believe that resolving the matter by stipulation will serve the interests of the public. The Parties also agree that the terms and conditions of this Proposed Consent Agreement will be presented to the Commission for the Commission's final approval.
2. Chesapeake freely and voluntarily waives its right to an administrative evidentiary hearing for the issues resolved by this Proposed Consent Agreement in this proceeding.
3. Chesapeake fully understands all of the violations alleged by Staff, the facts relating to the above-referenced potential violations, and all of the consequences of its consent to this Proposed Consent Agreement.
4. Chesapeake admits, solely for the purposes of this Consent Agreement, to all of the facts set forth herein relating to the above-referenced violations.
5. Pursuant to *26 Del. Admin. C. §8001-7.1.2*, Chesapeake agrees to pay a civil penalty in the amount of \$6,000.00 within 20 days of the date of a final Commission order approving this Proposed Consent Agreement. This sum is the total of a civil penalty in the amount of \$3,000.00 for one violation of 49 C.F.R. §192.303 and a civil penalty in the amount of \$3,000.00 for one violation of 49 C.F.R. §192.805(b).

6. If Chesapeake fails to pay the sum of \$6,000.00 in civil penalties within 20 days of the date of a final Commission order approving this Proposed Consent Agreement, Chesapeake agrees that it shall pay interest at the current annual rate in accordance with 31 U.S.C. §3717, 31 C.F.R. §901.9, and 49 C.F.R. §89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be assessed if payment is not made within 110 days of service of a Notice of Late Payment. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Delaware Attorney General for appropriate action.

7. Chesapeake shall modify its Distribution Integrity Management Plan ("DIMP") to require that leak surveys of the known 130 fusion joints performed by Mr. Barlow ("Barlow Joints") will be conducted every year for the next five years through the end of 2019. Chesapeake shall file reports with the Commission of these leak surveys of the Barlow Joints on an annual basis. In addition, if Chesapeake finds any leaks in any of these Barlow Joints, Chesapeake shall make repairs in accordance with Chesapeake's policy for repairing Grade 1 leaks.

8. Notwithstanding requirements to conduct annual leak surveys in business districts, for the next six years, starting from the date of a final order approving this Proposed Consent Agreement, Chesapeake shall perform main and service leak surveys (to encompass the entire distribution system) every three years. Any leaks on the electrofusion joints shall be repaired in accordance with Chesapeake's policy for repairing Grade 1 leaks. For the next six years Chesapeake shall file annual reports of any repairs made on electrofusion joints.

9. Chesapeake shall work with a qualified or knowledgeable training and/or testing company to provide training materials and content to Chesapeake's employees and contractors as part of its annual, in-class training for all fusers as part of its Operator Qualification program. Chesapeake shall also require in-class training before new fusers are allowed to work on its system and shall require in-class training whenever fusion procedures are changed. Chesapeake shall also modify its DIMP to require that for a period of one year, starting from the date of a final order approving this Proposed Consent Agreement, (i) its inspectors, rather than a contractor's evaluator, visually observe the complete performance of all electrofusion saddles performed in the field by contractors and (ii) visually inspect at least one saddle fusion, per contractor, per day (if any such fusions are being performed) prior to these being covered.

10. For the next year, starting from the date of a final order approving this Proposed Consent Agreement, Chesapeake shall file with the Commission, no later than ten days after the end of each month, a report that contains the following information:

- a. Number of electrofusion saddles performed by contractors during the month;
- b. Number of electrofusion saddles performed by Chesapeake employees during the month;

- c. Number of traditional heat saddle fusions performed by contractors during the month;
- d. Number of traditional heat saddle fusions performed by Chesapeake employees during the month; and
- e. Number of saddles in each category (a through d) that were initially rejected by Chesapeake and needed to be re-constructed. Also, identify the installing company name(s) with this information.

11. For the next five years, starting from the date of a final order approving this Proposed Consent Agreement, Chesapeake shall use its best efforts to employ and retain at least three Inspectors or Inspector Supervisors who will work primarily in the State of Delaware.

12. Upon receipt of an invoice from Staff, Chesapeake shall reimburse Staff for the costs incurred for Microbac Laboratories, Inc. testing the Barlow Joints and for the time spent by Staff on this docket (PSC Docket No. 387-13). The total costs for this docket are \$4,665.00.

13. Chesapeake agrees that no portion of the civil penalties set forth in Sections 5 and 6 or costs set forth in Section 12 in this Proposed Consent Agreement will be included in any way in any pending or future Delaware rate case or passed on in any way to Delaware ratepayers.

14. This Proposed Consent Agreement is the free and voluntary act of Chesapeake and its terms are binding upon Chesapeake and may be admitted into evidence in any judicial or administrative proceeding that may be required against Chesapeake in order to enforce its terms.

15. This finding of violations, in addition to the mitigating factors, will be considered a prior offense in any subsequent enforcement action against Chesapeake.

16. Nothing in this Proposed Consent Agreement affects or relieves Chesapeake of its responsibility to comply with all applicable requirements of the federal Pipeline Safety Laws, 49 U.S.C. §60101, et seq., and the regulations and administrative orders issued thereunder. Nothing in this Agreement alters Staff's right of access, entry, inspection, and information gathering or Staff's authority to bring enforcement actions against Chesapeake pursuant to the federal Pipeline Safety Laws, the regulations and administrative orders issued thereunder, Delaware's law or regulations, or any other provision of Federal or State law.

17. The Parties agree that nothing in this Proposed Consent Agreement shall prevent Staff from continuing to investigate other issues, including, but not limited to, Chesapeake's installation practices, training, and testing related to electrofusion joint assemblies.

18. No change, amendment, or modification to this Proposed Consent Agreement shall be effective or binding unless it is in writing and is dated and signed by the Parties.

19. If Staff or the Commission fails to act on any one or more defaults by Chesapeake, such failure to act shall not be a waiver of any rights hereunder on the part of the

Staff or the Commission to declare Chesapeake in default and to take such action as may be permitted by this Proposed Consent Agreement or by law.

20. This agreement shall survive Chesapeake and be enforceable against its successors or assigns.

21. The provisions of this Proposed Consent Agreement are not severable.

22. The Parties agree that this Proposed Consent Agreement shall be submitted to the Commission for its consideration and final decision and that no Party will oppose such a determination. Except as expressly set forth herein, neither of the Parties waives any rights it may have to take any position in future proceedings regarding the issues in this proceeding, including positions contrary to positions taken herein or in previous cases.

23. This Proposed Consent Agreement will become effective upon the Commission's issuance of a final order approving it and all of its terms and conditions without modification. After the issuance of such final order, the terms of this Proposed Consent Agreement shall be implemented and enforceable notwithstanding the pendency of any legal challenge to the Commission's approval of this Proposed Consent Agreement or to actions taken by another regulatory agency or Court, unless such implementation and enforcement is stayed or enjoined by the Commission, another regulatory agency, or a Court having jurisdiction over the matter.

24. The Parties may enforce this Proposed Consent Agreement through any appropriate action before the Commission or through any other available remedy. Any final Commission order related to the enforcement or interpretation of this Proposed Consent Agreement shall be appealable to the Superior Court of the State of Delaware, in addition to any other available remedy at law or in equity.

25. If a Court grants a legal challenge to the Commission's approval of this Proposed Consent Agreement and issues a final non-appealable order that prevents or precludes implementation of any material term of this Proposed Consent Agreement, or if some other legal bar has the same effect, then this Proposed Consent Agreement is voidable upon written notice by either Party to the other Party.

26. This Proposed Consent Agreement resolves all of the issues specifically addressed herein and precludes the Parties from asserting contrary positions during subsequent litigation in this proceeding or related appeals; provided, however, that this Proposed Consent Agreement is made without admission against or prejudice to any factual or legal positions which any of the Parties may assert: (a) if the Commission does not issue a final order approving this Proposed Consent Agreement without modifications; or (b) in other proceedings before the Commission or another governmental body, so long as such positions do not attempt to abrogate this Proposed Consent Agreement. This Proposed Consent Agreement is determinative and conclusive of all of the issues addressed herein and, upon approval by the Commission, shall constitute a final adjudication as to the Parties of all of the issues in this proceeding.

27. This Proposed Consent Agreement contains all of the terms and conditions agreed to by the Parties and constitutes the final agreement between the Parties regarding the issues specifically addressed herein.

28. This Proposed Consent Agreement is expressly conditioned upon the Commission's approval of all of the specific terms and conditions contained herein without modification. If the Commission fails to grant such approval, or modifies any of the terms and conditions herein, this Proposed Consent Agreement will terminate and be of no force and effect, unless the Parties agree in writing to waive the application of this provision. The Parties will make their best efforts to support this Proposed Consent Agreement and to secure its approval by the Commission.

29. It is expressly understood and agreed that this Proposed Consent Agreement constitutes a negotiated resolution of the issues specifically set forth herein in this proceeding.

30. Each of the undersigned representatives of the Parties certifies that he or she is fully authorized by the Party represented to enter into the terms and conditions hereof and to execute and legally bind that Party to it.

31. This Proposed Consent Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. If either Party sends the other Party a signature on this Proposed Consent Agreement by facsimile transmission or by e-mail as a ".PDF" format file, such signature shall create a valid and binding obligation of the Party executing it (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".PDF" signature page were an original thereof. Chesapeake agrees that an uncertified copy hereof shall be valid as evidence in any proceeding that may be required for purposes of enforcement.

[SIGNATURE PAGE TO FOLLOW]

The undersigned Parties, intending to bind themselves and their successors and assigns, have caused this Proposed Consent Agreement to be signed by their duly-authorized representatives and hereby agree to all of the conditions and terms set forth in this Proposed Consent Agreement.

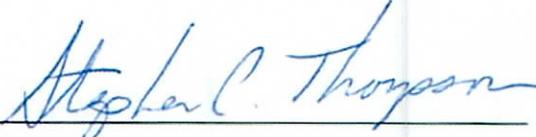
DELAWARE PUBLIC SERVICE COMMISSION STAFF

By:  Date: 7/31/14

Printed Name: GERALD D. PLATT

Title: Pipeline Safety Program Manager

CHESAPEAKE UTILITIES CORPORATION

By:  Date: 7-31-14

Printed Name: Stephen C. Thompson

Title: Sr. Vice President

DIVISION OF THE PUBLIC ADVOCATE

By: _____ Date: _____

Printed Name: _____

Title: Public Advocate

The undersigned Parties, intending to bind themselves and their successors and assigns, have caused this Proposed Consent Agreement to be signed by their duly-authorized representatives and hereby agree to all of the conditions and terms set forth in this Proposed Consent Agreement.

DELAWARE PUBLIC SERVICE COMMISSION STAFF

By: _____

Date: _____

Printed Name: _____

Title: Pipeline Safety Program Manager

CHESAPEAKE UTILITIES CORPORATION

By: _____

Date: _____

Printed Name: _____

Title: _____

DIVISION OF THE PUBLIC ADVOCATE

By: David L. Bonar by ABM

Date: 7/31/14

Printed Name: David L. Bonar

Title: Public Advocate