

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

March 23, 2009

MAINE PUBLIC UTILITIES COMMISSION
Gas Safety Investigation into Champagne
Energy Safety Violations of Chapter 420

Docket No. 2008-277

MAINE PUBLIC UTILITIES COMMISSION
Gas Safety Investigation into Dead River
Safety Violations of Chapter 420

Docket No. 2008-278

MAINE PUBLIC UTILITIES COMMISSION
Gas Safety Investigation into Eastern
Propane Safety Violations of Chapter 420

Docket No. 2008-280

MAINE PUBLIC UTILITIES COMMISSION
Gas Safety Investigation into Liberty Propane –
Mid State Gas Safety Violations of Chapter 420

Docket No. 2008-285

MAINE PUBLIC UTILITIES COMMISSION
Gas Safety Investigation into Thibeault
Safety Violations of Chapter 420

Docket No. 2008-292

MAINE PUBLIC UTILITIES COMMISSION
Gas Safety Investigation into Webber
Safety Violations of Chapter 420

Docket No. 2008-293

AMENDED STIPULATION

This Stipulation is an agreement entered into among the Marketer-Respondent in each of the above-captioned proceedings, the Maine Oil Dealers Association, Propane Gas Association of Maine and Propane Gas Association of New England (the "Associations"), which have petitioned to intervene in these proceedings, and the Prosecutorial Staff of the Commission, all of whom shall hereinafter be referred to as "the Parties."

I. PURPOSE

The purpose of this Stipulation is to terminate these formal proceedings and to establish an informal process to address and endeavor to resolve the issues which have arisen in these proceedings, with the objective of reducing issues and disagreement over enforcement proceedings in the future. By filing this Stipulation, the Parties are

proposing that the Commission approve a plan under which these formal proceedings may be dismissed, the Parties and other Marketers who are not Parties will enter into constructive discussions for the purpose of reducing disagreement on various issues in these proceedings (and related issues that may not be presently at issue in these proceedings), and inspections will continue subject to the "Correction Protocol," while the discussions remain in effect. The Parties are hopeful that the results of their discussions will contribute to the Commission's inspection process and the anticipated amendment of Chapter 420 of the Commission's Rules. By this Stipulation, the Parties further seek to avoid the expenditure of time and resources on further litigation in these proceedings, and provide for an informal process to address issues in an informal, collaborative and efficient manner.

II. PROCEDURAL HISTORY

By Orders Opening Investigations and Notices of Show Cause Hearings, issued on July 15, 2008, the propane gas marketers whose names appear in the above captions ("Marketer-Respondents") were ordered to show cause why they should not be found in violation of certain provisions of 49 Code of Federal Regulation, Part 192 and/or the National Fire Protection Association Standard 58. A hearing was set for August 28, 2008, if the Marketer-Respondents contested the probable violations. Marketer-Respondents who appeared on August 28, 2008, were afforded an opportunity to reach settlements with the Gas Safety Inspector prior to participating in any hearing. The Marketer-Respondents in these proceedings did not reach agreement with Staff on their outstanding alleged violations, primarily related to corrosion and vegetation management. An information session was held on September 5, 2008 to discuss interpretation and enforcement of code and rules related to corrosion and vegetation. No resolution was reached at that session. The Commission then assigned a Hearing Examiner to establish a schedule for litigation of these six cases.

On December 9, 2008, counsel for the Maine Oil Dealers Association (MODA) filed a letter on behalf of its members that are parties to these cases "as well as other members with interests that are at stake in these proceedings." The letter informed the Commission that MODA and the Propane Gas Association of Maine (PGAM) request an opportunity to meet with the Commissioners "regarding the subject matters of these

proceedings” in an effort to reach a resolution of these matters “based on consideration of the law and practicalities” and avoiding litigation. In addition, the letter indicates that MODA and PGAM request that formal proceedings in these dockets be temporarily suspended until after a meeting has occurred. The Commission’s Administrative Director issued a responsive letter on January 5, 2009 advising all stakeholders that these matters must be resolved in accordance with the procedural schedule.

By Procedural Order dated January 5, 2009, a Procedural Conference was scheduled for January 14, 2009, to address scheduling, intervention requests, consolidation of presentations, witness order, and the use of hearings. On January 9, 2009, a Petition to Intervene was filed on behalf of the Maine Oil Dealers Association, the Propane Gas Association of Maine and the Propane Gas Association of New England. At the Procedural Conference the Parties discussed the schedule, the nature and substance of some of the issues to be litigated in the proceedings, and other matters. On January 28, 2009, a Procedural Order was issued which noted that the Prosecutorial Staff agreed to provide information on the precise charges against the Marketer-Respondents and granted the Marketer-Respondents’ request to suspend the schedule to allow the Parties to share information and clarify the matters at issue. The Hearing Examiner further directed the Parties and proposed intervenors to develop the following for submission prior to the next conference: a list and description of issues raised in these cases, categorized into “generic” or “case specific” as appropriate with justification; any support for or objections to the intervention of MODA and PGAM, in light of the issues for the litigation or the manner in which those issues are proposed to be heard; positions on the consolidation of Respondent propane operators for purposes of efficiency of the litigation of these cases; and a proposed schedule for litigation of all matters.

Pursuant to Procedural Orders issued on February 3, February 13, and March 3, the Hearing Examiner extended the deadline for these filings and the date of the next procedural conference, in order to allow additional time for preparation of the statements and for discussions which were occurring between the Prosecutorial Staff and the Marketer-Respondents and Associations. The March 3 Procedural Order directed the Parties to report on their progress by March 13, 2009. The Parties respectfully submit the Stipulation in compliance with this requirement.

III. STIPULATION PROVISIONS

A. Commission Staff, the Marketer-Respondents, and the Associations agree to enter into good faith discussions for the purpose of resolving the jurisdictional, interpretational, and procedural issues which have arisen in the ongoing formal proceedings. The objective would be to reach a consensus with respect to issues, which may be reflected in changes in inspection and enforcement practices and in suggestions for consideration by the Commission in its anticipated rulemaking proceedings to establish procedural and substantive guidelines for the Commission's administration of its propane gas safety jurisdiction. To the extent a consensus on all issues is not reached, the results of these discussions may nevertheless limit the need for future litigation with regard to alleged propane gas safety violations. The discussions may be terminated by either side at any time.

B. Within 90 days of this Stipulation having been approved by the Commission, to the extent they have not already done so, the Marketer-Respondents will make physical modifications to the facilities which are the subject of the NOPVs in these investigations, so that, assuming Prosecutorial Staff's view with respect to whether the facilities are jurisdictional and the standards that would apply to said facilities, the alleged violations would no longer continue to exist. Such actions may include painting of facilities and removal of vegetation. The taking of any such actions shall not be construed or interpreted to be an acknowledgment on the Marketer-Respondent's behalf that a violation did in fact exist. The parties agree that the taking of these actions will render the affected NOPVs moot, that said NOPVs will be dismissed by the Commission and will not be formally pursued in the future, and that the dismissal of the NOPVs will close the Commission's investigation in the dockets captioned above. This process shall be referred to as the "Correction Protocol," and will also include the following steps:

1. NOPVs will be accompanied by a photo showing the alleged violation and a form to be submitted by the Marketer if the situation is corrected.
2. The Marketer will provide the Commission's Staff with the completed form and a photo of the corrected situation.
3. Upon receipt of the form and the photo, the alleged violation will be deemed corrected without the need to re-inspect. In the event that the Commission

determines that it is unclear from the photo that the situation has been corrected, the Commission's Propane Safety Inspector will request further verification from the Marketer or conduct an additional inspection.

4. If the alleged violation pertains to a location which is not a current account of the Marketer to whom the NOPV is addressed, the Marketer may so notify the Commission and identify the current Marketer, if known, upon which the NOPV will be withdrawn.

C. The Associations, Marketer-Respondents, and the Commission's Staff also agree that any other NOPVs (which are not the subject of the investigations) which have been issued to the Marketer-Respondents or to any other Marketer not a party to these proceedings and are currently pending as of the date of the Commission's approval of this Stipulation can be resolved by using the Correction Protocol within 90 days of this Stipulation having been approved by the Commission. Unless otherwise agreed, any uncorrected violations will be subject to possible further Commission action at the conclusion of discussions.

D. During the pendency of discussions, the Commission's Propane Safety Inspector will continue to inspect propane gas facilities. Violations that are found by the Commission's Propane Safety Inspector will be referred in a timely fashion to Marketer-Respondents, and other Marketers which are not parties to these proceedings, to be corrected using the Correction Protocol discussed above. However, Commission Staff will not issue any new NOPVs during the pendency of discussions, except that an NOPV may be issued if there is an immediate and proximate hazard to life or property which requires immediate action. The parties recognize that the Commission also retains its other regulatory processes and options under Title 35-A M.R.S.A. and Chapter 420 of its rules. Unless otherwise agreed, any uncorrected violations will be subject to possible further Commission action at the conclusion of discussions.

E. The Associations, the Marketers and the Commission's Staff will discuss potential alternative methods to be utilized for such inspections. Such alternatives to be discussed will include the inspection process of the NHPUC. The parties agree to cooperate to implement alternatives on either a permanent basis, or on a trial basis, in order to provide background information for further discussions regarding the inspection process. The Associations, the Marketers and the Commission's Staff will seek to

schedule inspections at which representatives of the Commission's Staff, the Commission's Propane Safety Inspector, the Associations and Marketers will be present to observe and discuss the inspection process and types of issues which arise

IV. STANDARD STIPULATION PROVISIONS

A. **Record.** The provisions of this Stipulation have been reached on the basis of discussions among the Parties. The Parties agree that the Commission may rely on the record in these proceedings in its consideration of this Stipulation.

B. **Rejection of Portion Constitutes Rejection of Whole.** The Parties are entering into this Stipulation as an integrated approach to addressing and resolving the issues in these proceedings. If the Commission does not accept the entire Stipulation without material modification, then the Stipulation shall be null and void.

C. **No Precedent:** The making of this Stipulation by the Parties shall not constitute precedent as to any matter of fact or law, nor foreclose any Party from making any contention or exercising any right, including the right of appeal, in any other Commission proceeding or investigation, or in any other matter or action.

D. **Examiner's Report:** In order to expedite the Commission's consideration of this Stipulation, the Parties agree to waive the provisions of §752 (b) of the Commission's Rules of Practice and Procedure, requiring that any Examiner's Report be in writing and that the parties be afforded an opportunity to file exceptions or comments thereon. The parties consent to the Advisor Staff providing an oral or written Examiner's Report to the Commission at or before the deliberative session to be held in this Docket, with the Parties waiving the right to file exceptions or comments thereto.

SIGNATURE PAGE – AMENDED STIPULATION

MAINE OIL DEALERS ASSOCIATION,
PROPANE GAS ASSOCIATION OF
MAINE, PROPANE GAS ASSOCIATION
OF NEW ENGLAND

Dated: March 23, 2009

By: Joseph S. Donahue
Title: Their Attorney

MARKETER-RESPONDENTS

Champagne Energy (2008-277)

Dated: _____

By: _____
Title: _____

Dead River Co. (2008-278)

Dated: _____

By: _____
Title: _____

Eastern Propane (2008-280)

Dated: _____

By: _____
Title: _____

Liberty Propane (2008-285)

Dated: _____

By: _____
Title: _____

Thibeault Energy (2008-291)

Dated: _____

By: _____
Title: _____

Webber Energy Fuels (2008-293)

Dated: _____

By: _____
Title: _____

PROSECUTORIAL STAFF

Dated: _____

By: _____
Title: _____