

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6938

Investigation into DPS Notice of Probable )  
Violation Under PSB Rule 6.100 re: Dead River )  
Company, d/b/a Leonard's Gas & Electric )  
Service

Order entered: 6/4/2004

**I. INTRODUCTION**

In this proposal for decision, I conclude that the May 14, 2004, Stipulation and Agreement ("Stipulation") submitted by the Vermont Department of Public Service ("Department") and the Dead River Company, d/b/a Leonard's Gas & Electric Service ("Leonard's"), sets out a reasonable resolution to this docket. I, therefore, recommend to the Vermont Public Service Board ("Board") that it issue an order approving the Stipulation in its entirety.

**II. BACKGROUND**

On October 23, 2003, the Department filed a Notice of Probable Violation ("NOPV") under Board Rule 6.100.<sup>1</sup> The Notice alleged that Leonard's was in violation of various provisions of Board Rules related to gas safety. The Notice further sought remedial action, including Leonard's immediate enrollment as a member of Dig Safe System, Inc. ("Dig Safe"), submission of a written damage prevention program plan, Leonard's attendance at a Department-approved Damage Prevention Seminar, and the imposition of a civil penalty in the amount of Ten Thousand Dollars (\$10,000.00).

I convened a prehearing conference in this matter on April 14, 2004. Leonard's was represented by Leslie Anderson, Esq. John Cotter, Esq., appeared on behalf of the Department. No other group or organization attended the prehearing conference. After discussion, the parties agreed that this case could be resolved expeditiously through "paper filings" of relevant and material facts, and subsequent briefing of the applicable law.

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1. "Enforcement of Safety Regulations Pertaining to Intrastate Gas Pipeline and Transportation Facilities." Notice of Probable Violation, October 23, 2003.

I set a schedule for interventions, responses to interventions, and for the parties to jointly file a statement of material facts upon which to base a decision in this matter. On May 12, 2004, the Department indicated that the parties had reached a settlement in principle and asked that the schedule be modified to allow them to submit a settlement proposal. I agreed and modified the schedule accordingly. On May 14, the parties submitted a Stipulation and Agreement for consideration in this matter.

Pursuant to 30 V.S.A. § 8, I hereby report the following findings of fact and conclusions of law.

### **III. FINDINGS**

1. By application and letter dated October 24, 2003, Leonard's initiated the process for membership in Dig Safe and is now a member. Stipulation at 1-2.
2. On April 7, 2004, representatives and employees of Leonard's attended a Department-approved damage prevention seminar. *Id.* at 2.
3. The Department and Leonard's determined that it would be reasonable to resolve the remaining issues in this Docket by settlement, rather than litigation, in order to minimize the expenditure of resources and to foster a constructive relationship between them going forward. *Id.*
4. The parties stipulate to the following terms and conditions:
  - a. Within thirty (30) days of the date of a Board Order approving this Stipulation, Leonard's shall create and implement a written program to prevent damage to its jurisdictional pipelines from excavation activities consistent with the requirements of 47 C.F.R. § 192.614(a), (b) & (c). A copy of the plan shall be filed with the Department no later than the date thirty (30) days from the date of a Board Order approving this Stipulation.
  - b. Leonard's shall pay a civil penalty in the amount of \$2,500, said amount due and payable within seven (7) days of the date of a Board Order approving this Stipulation. The civil penalty shall be made payable to the State of

Vermont and tendered to the offices of the Vermont Public Service Board, 112 State Street - Drawer 20, Montpelier, VT 05620-2701.

c. An additional penalty amount of \$7,500 shall be suspended, and shall become due and payable immediately only if Leonard's fail to comply with the requirements of Paragraph 1 of the Stipulation (*i.e.*, ¶ a, above). Should Leonard's fail to comply with the requirements of Paragraph 1 of this Stipulation, the \$7,500 shall become immediately due and payable as an additional civil penalty to be made payable to the State of Vermont and tendered to the offices of the Vermont Public Service Board, 112 State Street - Drawer 20, Montpelier, VT 05620-2701. Should Leonard's comply with the requirements of Paragraph 1 of the Stipulation, then the \$2,500 civil penalty required by Paragraph 2 of the Stipulation (*i.e.*, ¶ b, above) shall constitute full satisfaction of any financial liability for the violations alleged in the NOPV.

d. Leonard's will maintain its membership and participation in Dig Safe, or any successor one-call system in Vermont designated by the Board pursuant to PSB Rule 3.802, until such time as Leonard's no longer operates any jurisdictional pipelines in the State of Vermont.

e. The Parties agree that should the Board fail to approve the Stipulation in its entirety, the Parties' agreements set forth herein shall terminate, and the Parties shall be placed in the position that each enjoyed in this proceeding before entering into the Stipulation. In such event, the Parties' agreements in the Stipulation shall not be construed by any Party, tribunal, or other entity as having precedential impact on any testimony or positions which may be advanced in this proceeding, shall not constitute any part of the record in this proceeding and shall not be used for any other purpose. In the event the Board conditionally approves the Stipulation and neither party objects, within ten (10) business days, to any conditions imposed by the Board, then the Stipulation as modified by the Board shall be deemed approved.

f. The Parties agree that this Stipulation shall have no precedential value nor shall it be used in any future proceeding, except a future proceeding to enforce the terms and conditions herein or in any Board Order approving this Stipulation. *Id.* at 2-4.

#### **IV. DISCUSSION**

In its Order opening this Docket, the Board stated that "[d]ue to the seriousness of the allegations raised by the Department, we conclude that this [NOPV] needs to be investigated."<sup>2</sup> The allegations outlined in the NOPV included Leonard's failure to:

- (1) participate in a one-call system (such as the Dig Safe System, Inc.);
- (2) submit a written damage prevention program plan; and
- (3) attend a Department-approved Damage Prevention Seminar.<sup>3</sup>

In response, the Stipulation submitted by the Department and Leonard's fully addresses each of the Department's concerns with respect to these alleged failures.<sup>4</sup> Leonard's is now a member of Dig Safe, its representatives and employees have attended a Department-approved damage prevention seminar, and it has agreed to prepare and submit, in a timely manner, a written program to prevent damage to its jurisdictional pipelines from excavation activities consistent with the requirements of 47 C.F.R. § 192.614(a), (b) & (c).<sup>5</sup>

The stipulation also recognizes the need to promote a "constructive relationship . . . going forward" between the Department and Leonard's.<sup>6</sup> Given the fundamental importance of such a relationship to ensuring the safe provision of gas service by Leonard's, I conclude that the recommendation to suspend \$7,500 of the originally requested fine of \$10,000, and to ask that the Board impose a fine of only \$2,500, is a reasonable and far-sighted proposal. The Parties further agree that the stipulation constitutes a full and final resolution of the claims presented in

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2. Order of 4/1/04 at 2.

3. *See id.* at 1-2.

4. *See* Findings 1, 2 and 4, above.

5. *Id.*

6. Stipulation at 2.

this proceeding.<sup>7</sup> For these reasons, I conclude that the Stipulation submitted by the Department and Leonard's sets out a reasonable resolution to this docket, and should be accepted by the Board.

The Parties have waived their rights under 3 V.S.A. § 811 to file written comments or present oral argument with respect to this proposal for decision in this matter, provided that it is consistent in all respects with the Stipulation. I, therefore, recommend to the Board that it issue an order approving the attached Stipulation in its entirety.

DATED at Montpelier, Vermont, this 4<sup>th</sup> day of June, 2004.

s/David Farnsworth  
David Farnsworth, Esq.  
Hearing Officer

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7. *Id.* at 4.

**V. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Findings and conclusions of the Hearing Officer are adopted.
2. The attached Stipulation and Agreement submitted by the Vermont Department of Public Service and the Dead River Company, d/b/a Leonard's Gas & Electric Service, is approved.

Dated at Montpelier, Vermont, this 4<sup>th</sup> day of June, 2004.

s/Michael H. Dworkin	)	PUBLIC SERVICE
	)	
	)	
s/David C. Coen	)	BOARD
	)	
	)	
s/John D. Burke	)	OF VERMONT

OFFICE OF THE CLERK

FILED: June 4, 2004

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*