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February 1, 2007

Deborah T. Eversole, Esq.
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2000 PNC Plaza
500 West Jefferson
Louisville, Kentucky 40202

Dear Ms. Eversole and Mr. Hatfield:

Commission Staff acknowledges receipt of your letter of January 18, 2007 requesting guidance on potential administrative enforcement actions against any purchaser of the Sigma Gas distribution system for that gas system's existing operational and maintenance deficiencies.

On October 18, 2006, Commission Staff inspected the facilities and management practices of Sigma Gas. In its Utility Inspection Report, Commission Staff found a significant number of conditions that were not consistent with federal and state gas pipeline safety regulations. A copy of the Commission Staff's Utility Inspection Report is enclosed. Commission Staff subsequently prepared a five-point outline of actions necessary to correct these deficiencies. A copy of this outline is also enclosed.

Commission Staff takes the position that any acquirer of the Sigma Gas distribution system should be afforded a reasonable period of time to correct the deficiencies listed in the Utility Inspection Report of October 18, 2006. It would not recommend to the Commission that enforcement proceedings be initiated immediately against an acquirer for these deficiencies. Commission Staff recommends that, when applying for Commission approval of its acquisition of the Sigma Gas distribution system, an acquirer provide the Commission with its expected schedule for correcting the noted deficiencies. Commission Staff further recommends that this schedule include all the actions set forth in its "Sigma Gas Deficiency Recovery Plan Outline."¹

¹ In the Outline, Commission Staff recommends that a safety survey of the entire system be conducted. Ascertaining the current depth of the cover of all gas mains and pipelines is not a requirement of this safety survey.

Commission Staff expects any acquirer to take immediate corrective action for any condition that represents an imminent threat to public safety. Should any of the deficiencies noted in the Utility Inspection Report of October 18, 2006 worsen and pose such a threat or should other serious deficiencies develop and the acquirer refuse to act immediately to correct those deficiencies, then Commission Staff would recommend to the Commission that immediate enforcement actions be commenced.

Commission Staff acknowledges that a recent survey of the Sigma Gas distribution system indicated portions of that system are not covered at a depth of 24 inches or more. 49 C.F.R. 192.327(b) requires that a buried main be installed with at least 24 inches of cover. Commission Staff interprets this provision as applicable only to the installation of mains and does not interpret it as requiring that a 24-inch layer of cover be permanently maintained. Therefore, if a portion of the Sigma Gas existing distribution system has less than 24 inches of cover, 49 C.F.R. 192.327(b) does not require the owner to increase the existing main's depth or expose him to possible administrative penalties.

Any person acquiring the Sigma Gas distribution system, however, must take actions necessary to protect the gas distribution main. 49 C.F.R. 192.317(a) provides:

The operator must take all practicable steps to protect each transmission line or main from washouts, floods, unstable soil, landslides, or other hazards that may cause the pipeline to move or to sustain abnormal loads. In addition, the operator must take all practicable steps to protect offshore pipelines from damage by mud slides, water currents, hurricanes, ship anchors, and fishing operations.

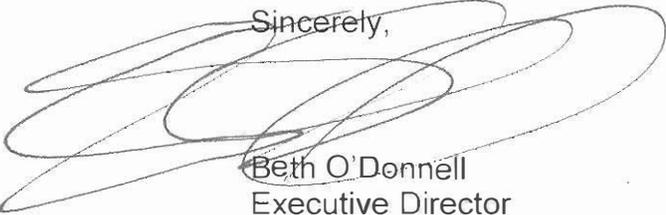
Commission Staff interprets this regulation as requiring the owner of a gas distribution system to maintain adequate cover over his gas distribution mains. "Adequate cover" is determined upon the totality of the circumstances, including the present depth of main, existing structures and human population in the vicinity, pedestrian and motor vehicular traffic in the vicinity, the likelihood of main failure, the consequences of main failure, and the cost of remedial measures.

Furthermore, KRS 278.030(2) requires a utility to "furnish adequate, efficient and reasonable service." Safe service is a component of "adequate and reasonable service." Pursuant to KRS 278.280, if the Commission determines that a utility's equipment, practices, facilities or methods of distribution are unsafe, improper, unreasonable or inadequate, it may direct a utility to employ different equipment, practices, facilities or methods that will result in safe and reasonable service. Should the level of cover over its gas distribution mains pose a potential safety risk, KRS 278.280 authorizes the Commission to direct remedial measures including

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increasing the depth of the existing mains. In determining whether remedial measures are required, the Commission will consider the totality of the circumstances.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Gerald Wuetcher, Deputy General Counsel, at (502) 564-3940, Extension 259.

Sincerely,

Beth O'Donnell
Executive Director

Enclosures