

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

CITY OF LIBERTY GAS COMPANY)
_____)

ALLEGED FAILURE TO COMPLY WITH)
KRS 278.492 AND 49 C.F.R. PART 192)

CASE NO. 2017-00053

**CITY OF LIBERTY'S RESPONSE
TO ORDER DATED MARCH 9, 2017**

The City of Liberty, by counsel, hereby provides the following response to the Public Service Commission's Order dated March 9, 2017.

The Commission established this matter to consider whether the City of Liberty ("City" or "Liberty") failed to perform periodic leakage surveys, as required by 49 C.F.R. § 192.723(b) and the City's operations manual. The underlying facts show that a Commission inspector specifically found that the City complied with periodic-leak-survey requirements in March 2012. See Standard Inspection Report of a Gas Distribution Operator for Liberty's March 2012 Inspection at 10, 22. In 2015, a Commission inspector noted that the City had not conducted a leakage survey since 2009. The City admits that it does not have records of a leakage survey performed during this time period. In an attempt to provide one possible explanation for the discrepancy between the two Commission-inspection reports and the lack of documentation or knowledge of a leakage survey by the City, the City mentioned that it was possible that the City's former lead operator, Ronnie Wesley, performed leakage surveys on the City's system prior to his death in 2014.

As previously stated by the City, it has not located any records to demonstrate that Wesley or any other person performed leakage surveys. In its Response, the City merely wanted to offer one possible explanation as to why a Commission inspector would find that there were no deficiencies related to the City's gas system in 2012. In light of the City's statement that it did not have any records related to leakage surveys if they were conducted, the Commission ordered the City to respond to whether it may have violated 49 C.F.R. § 192.603(b) and 807 KAR 5:022 for failing to keep records related to leakage surveys.

Before addressing the specific language of these regulations, the City notes that it believes that Wesley would have kept records if he had performed leakage surveys. If there was more conclusive evidence—direct or circumstantial—that Wesley conducted the surveys, the City would have provided this information and not relegated it to a mere possible explanation to a discrepancy. Because there are no records or document trail, the City has skepticism that Wesley performed the surveys. At the same time, the City recognizes that the unexplained discrepancy could be explained if Wesley had performed the leakage surveys himself and informed the Commission inspector of such inspections.

With respect to 807 KAR 5:022 and 49 C.F.R. § 192.603(b), it is not clear that these regulations require retention of records of leakage surveys by Liberty. Section 14(6) of 807 KAR 5:022 requires a utility to keep records of leakage surveys conducted of transmission lines. Section 14(13)(c) requires a utility to keep records of leaks within a distribution system discovered by a leakage survey, but it does not require a utility to maintain records of distribution-system leakage surveys that are independent of any leaks found during those surveys.

There are two reasons why these provisions of Section 14 of 807 KAR 5:022 do not or may not apply to the City. First, the City does not have transmission lines; it only has distribution lines. Therefore, if the City were a utility, it would only be required pursuant to that regulation to keep records of leaks discovered by a leakage survey. If no leaks were detected, no records needed to be kept. Thus, this provision may not have applied to the City.

Second, the provisions do not apply to the City because they only apply to “utilities” and the City is not a “utility” as defined by relevant statutes. Although there is no specific definition of “utility” in 807 KAR 5:022, it is undoubtedly a term of art within Public-Service-Commission regulation. It is specifically defined in KRS 278.010(3) such that it excludes cities. In addition, the statute on which the Commission bases jurisdiction over this matter—KRS 278.495—distinguishes between a utility and city. Thus, the term “utility” does not include cities, such as Liberty. As such, the requirements in Section 14 of 807 KAR 5:022 that only apply to utilities do not apply to the City.

One might also attempt to argue that Section 13(2)(b) of 807 KAR 5:022 places a requirement on some operators to maintain certain records. It specifically states: “Each operator shall establish a written operating and maintenance plan meeting the requirements of this administrative regulation and keep records necessary to administer the plan.” There are two reasons why Section 13(2)(b) would not apply to the City. First, it only applies to an “operator,” which is defined in that regulation as “a utility as defined in KRS 278.010.” As discussed above, the definition of “utility” in KRS 278.010 specifically exempts cities within the classification.

Second, Section 13(2)(b) requires an operator to keep records necessary to administer an operation and maintenance plan. By using the phrase “to administer,” the regulation contemplates how the plan will be managed. See Black's Law Dictionary (10th ed.

2014)(defining administer as “[t]o manage (work or money) for a business or organization”). It encompasses records that describe how work will be performed in the present and future, as opposed to results of past occurrences. Thus, Section 13(2)(b) would not apply to maintaining results of past leakage surveys. This interpretation is emphasized by subsequent references in the regulation as to when utilities would be required to maintain reports of leakage surveys. See 807 KAR 5:022, Sections 14(6) and 14(13)(c). These subsequent provisions would be superfluous if Section 13(2)(b) was also interpreted so as to require utilities to maintain reports of leakage surveys. Statutes and regulations should not be interpreted in a way to render them superfluous or meaningless. See MPM Fin. Grp., Inc. v. Morton, 289 S.W.3d 193, 198-99 (Ky. 2009)(interpreting a statute such that it would not be duplicative, and therefore superfluous, of another statutory provision). Accordingly, the requirement of an operator to keep records necessary to administer an operations and maintenance plan does not require the operator to maintain past results of leakage surveys.

The provision in 49 C.F.R. § 192.603(b) is similar to the requirement contained in of 807 KAR 5:022. Specifically, it states: “Each operator shall keep records necessary to administer the procedures established under § 192.605.” Because this federal regulation also uses the phrase “to administer,” it should also be interpreted not to be so broad as to require an operator¹ to maintain past results of leakage surveys.

Based on the analysis above, it does not appear that the City violated 49 C.F.R. § 192.603(b) or 807 KAR 5:022. The City nevertheless recognizes that it should have kept records related to leakage surveys. The City’s operations and maintenance plan requires maintenance of leakage surveys. This is one of the reasons why the City believes that its former lead operator, Ronnie Wesley, would have kept a record of the leakage surveys if he performed them.

¹ The definition of “operator” in the relevant federal regulations includes cities. See 49 C.F.R. § 192.3.

The City cannot change what has occurred in the past. Regardless of whether the surveys were conducted, whether records were retained, or whether there were specific regulatory requirements to maintain certain records, the City is focused on ensuring that requirements are met and its operations and maintenance plan is followed in the future. Each operator has a copy of the plan and is expected to be familiar with its contents. Likewise, the City Clerk is familiar with the operations and maintenance plan and will maintain a record of leakage surveys conducted on its system. The City is committed to operating its gas system consistent with regulatory requirements and its operations and maintenance plan in the future.

Respectfully submitted,



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