

COMMONWEALTH OF KENTUCKY  
BEFORE THE ENERGY REGULATORY COMMISSION

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In the Matter of

THE ENERGY REGULATORY COMMISSION     )  
VS. THE UNION LIGHT, HEAT AND POWER    )  
COMPANY                                    )     CASE NO. 8133

ORDER

On October 9, 1980, the Commission was informed that two natural gas explosions and a fire had occurred at the Simon Kenton High School, Independence, Kentucky, and Commission Staff employees were dispatched immediately to the scene to investigate as to the causes of the occurrences and to determine if any Commission statutes and regulations might have been violated, and if so, what action, if any, the Commission should take as a consequence thereof.

Commission staff made an intensive investigation of the facts both on the scene of the accident as well as wherever potential witnesses could be found, during the period from October 9, through December 8, 1980. Moreover, the Commission participated as a party to hearings held by the National Transportation Safety Board, on December 1-4, 1980, where additional evidence was developed.

Based on this investigation, the Commission's staff rendered a report to the Commission on January 20, 1981, which summarized the facts surrounding the accidents and asserted six (6) probable violations of Commission regulations.

On January 28, 1981, the Commission issued a show cause order in this proceeding requiring the Union Light, Heat and Power Company to appear on February 17, 1981, at 10:00 A.M. and to show cause why Union should not be subjected to the penalties of KRS 278.990 and KRS 278.992 for violations of the Commission regulations noted on the staff report.

On February 17, 1981, Union appeared and filed its Answer to the Commission's Order of January 28, 1981. Union also moved to strike from the Commission's order that portion which required them to appear and show cause why they should not be subjected to the penalties prescribed under KRS 278.990, on the ground that the report did not disclose any willful violations of Commission regulations.

Union's Answer admitted the essential evidentiary facts contained in the nine numbered paragraphs of the "findings of fact" of the Commission's Report of Investigation, dated January 20, 1981, (which was attached as Appendix "A" to the Commission's Show Cause Order). Important points of difference as to the conclusions of the Staff Report and Union's Answer are noted hereafter, as they become pertinent, in the section of this Order titled "Findings of Fact and Conclusions of Law".

WHEREFORE, the Commission, having considered the Report of the Commission staff, Union's Answer, Union's Motion to Strike, the evidence offered at the hearing, and being advised, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That on October 9, 1980, and for more than 200 days prior thereto, Union's system maps and records (microfiche Service Lateral Records) did not show that Simon Kenton High School's gas service line was connected to the 4-inch transmission line.

The Commission therefore concludes that this constituted a violation of 807 KAR 50:015, Section 17 (1)(d).

2. That service lines to the high school, a church, and town residences on Don Street had no primary regulator for reducing gas pressure from the 4-inch transmission line.

The Commission concludes that this constituted violations of 807 KAR 50:035, Section 3 (1)(a) [Ref. 49 CFR 192.197 (6)(c) and USAS B 31.8-1968 845.32(d), as adopted by 1969 Kentucky PSC Regulations - Gas Rule III (1)(a)].

3. That on October 9, 1980, and for more than 200 days prior thereto, the service line into the high school included a compression coupling upstream of the meter set assembly which was not properly strapped or braced.

The Commission concludes that this constituted a violation of 1969 Kentucky PSC Regulations - Gas Rule III (1)(a) [Ref. "Gas Transmission Piping Systems, USAS B31.8 - 1968 834.4(b)].

4. That on October 9, 1980, and for more than 200 days prior thereto, the curb valve on Simon Kenton High School's gas service line was covered with earth and sod, which concealed its location.

The Commission concludes that this constituted a violation of 807 KAR 50:035, Section 3 (1)(a) [Ref. 49 CFR 192.365(c) and USAS B31.8 - 1968, USAS Gas Transmission and Distribution Piping Systems, 849.13(d), as adopted by 1969 Kentucky PSC Regulations - Gas Rule III (1)(a)].

5. That on October 9, 1980, and for more than 200 days prior thereto, Union's written emergency plan did not contain any provisions for emergency shutdown and pressure reduction.

The Commission concludes that this constituted a violation of 807 KAR 50:035, Section 3 (1)(a) [Ref. 49 CFR 192.615(a)(6)].

The Commission is not persuaded by the comments in Union's Answer that an emergency shutdown and pressure reduction procedure would not have been useful at the time of the Simon Kenton High School emergency. An adequate shutdown and pressure reduction procedure would have allowed rapid reduction of excess pressure in that segment of the line, thereby minimizing further hazards to life and property.

6. That the curb valve on the service line to Simon Kenton High School was not checked for accessibility on December 3, 1979, or within the period of a year before October 9, 1980.

The Commission concludes that this constituted a violation of 807 KAR 50:015, Section 22(4)(a)(3). [Ref. 1969 Kentucky PSC Regulations - General Rule XXII, (3)(f)].

The Commission would not be inclined to impose penalties for violation of this regulation or the violation cited in Paragraph 4, above, if there was persuasive evidence of periodic inspections to determine whether the curb valve was accessible and capable of ready operation. Evidence of a great number of witnesses supports the conclusion that the curb valve was so buried that this condition must have existed for a considerable period of time.

Kentucky Revised Statutes Section 278.992 provides for penalties not to exceed \$1,000 for each violation for each day that a violation persisted, and that a maximum of \$200,000 may be imposed for each related series of violations. If the violations in paragraphs (1) and (2) and the violations in paragraphs (4) and (6) are considered "related" within the meaning of KRS 278.992, but the violations in paragraphs (3) and (5) unrelated to any others, then the Commission may impose a fine of as much as \$800,000 under this statute.

Union's Motion to Strike has become moot, since there is no evidence of any willful violation of Commission regulations in the record, and the Commission has not asserted any violations of KRS 278.990 in this Order. Accordingly, in determining the appropriate disposition of this case, the Commission is guided by the language of KRS 278.992. Therein, the legislature expressed its intention that this Commission consider three (3) specific factors when making a determination as to whether civil penalties should be assessed against a company for violations of existing regulations. Those factors are: (1) the appropriateness of the penalty to the size of the business, (2) the gravity of the violation, and (3) the good faith of the company in attempting to achieve compliance with the regulation after notification of the violation.

In this case, the gravity of the violation (i.e., the death of one person and serious personal injuries to many others) must be weighed heavily against the other factors considered.

Under the record adduced herein, (where no evidence of willful violations is present, and where the utility has cooperated with the Commission in its investigation) the Commission

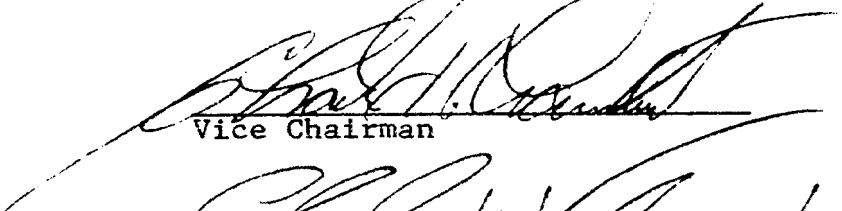
is of the opinion and finds that a penalty in the aggregate amount of \$100,000 is appropriate, for all violations cited herein. (Commission policy is opposed to inclusion of any penalties paid by a utility for violations of its regulations as an allowable expense or part of the rate base for the computation of rates of return or rates to that utility's customers.)

IT IS THEREFORE ORDERED that Union Light Heat and Power Company is assessed a civil penalty in the amount of One Hundred Thousand Dollars (\$100,000), and that it remit the same promptly to the Treasurer of the Commonwealth of Kentucky, Frankfort, Kentucky; and

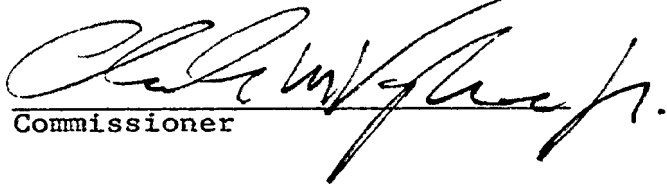
IT IS FURTHER ORDERED that Union Light Heat and Power Company immediately institute, perform, and report as indicated with respect to the actions outlined in the "Schedule of Compliance" attached as an Addendum to this Order.

Done at Frankfort, Kentucky this 20th day of February, 1981.

Energy Regulatory Commission



Vice Chairman



Commissioner

ATTEST:

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Secretary

SCHEDULE OF COMPLIANCE

A. That U.L.H. & P. provide to this Commission information to show that employees conducting public building inspections have been provided adequate training and reference material to effectively carry out this assignment, as required by 49 CFR 192.605(c), said information to be provided by July 1, 1981.

B. That U.L.H.&P. provide this Commission by May 1, 1981, a method to verify accuracy of records reflecting all facilities of the utility system, as required by 807 KAR 50:015(17)(1)(d) and verification completed by September 1, 1981.

C. That U.L.H.&P. completely research their piping system in Northern Kentucky to ascertain that no piping arrangements exist whereby the proximity of a low pressure system to a high pressure system might inadvertently omit a primary regulator from the high pressure system as required by 49 CFR 192.197(6)(c). Provide a schedule of compliance, subject to this Commission's approval by May 1, 1981.

D. That U.L.H.&P. conduct a complete survey of all systems, other than low pressure, to ascertain that no unrestrained compression couplings are left in service upstream of customer's meter. Provide a schedule of compliance, subject to this Commission's approval by May 1, 1981.

E. That U.L.H.&P. provide this Commission with a schedule of compliance, subject to Commission approval, of curb and/or valve box accessibility for all service by May 1, 1981.

F. That U.L.H.&P. submit a revised emergency plan that incorporates all provisions of CFR 192.615 and verify to this Commission by May 1, 1980, that all affected employees receive necessary training as required by CFR 192.615(b)(2) by September 1, 1981.