

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CITY OF OLIVE HILL and	)	
CITY OF OLIVE HILL UTILITY DEPARTMENT	)	
_____	)	
ALLEGED FAILURE TO COMPLY	)	CASE NO. 2017-00167
WITH KRS 278.495 AND 49 CFR § 192	)	

ORDER

On May 11, 2017, the Commission initiated this proceeding and directed the City of Olive Hill and City of Olive Hill Utility Department (hereafter called, collectively, "Olive Hill") to show cause why it should not be subject to the penalties prescribed in KRS 278.992(1) for alleged violations of 49 C.F.R. § 192.317 for failure to protect its distribution main from washouts, floods, unstable soil, landslides, or other hazards that may cause the pipeline to move or sustain abnormal loads. The Commission initiated this case based on evidence adduced during inspections of Olive Hill's natural gas distribution system conducted during June 2015 and November 2016.

In its May 11, 2017 Order, the Commission directed Olive Hill to file a response to the allegations set forth therein within 20 days, and scheduled a formal hearing for June 7, 2017. Olive Hill failed to file a response as required by the Order. At the June 7, 2017 evidentiary hearing, the Commission directed Olive Hill to file responses to Commission

Staff's Post-Hearing Data Requests by June 14, 2017. Olive Hill also failed to comply with this requirement, and did not file responses in a timely manner. The matter now stands submitted to the Commission for a decision.

### BACKGROUND

Olive Hill owns and operates natural gas facilities that are used for the distribution of natural gas at retail and is, as such, subject to the Commission's jurisdiction under KRS 278.495(2). KRS 278.495(2) authorizes the Commission to enforce the minimum safety standards adopted by the United States Department of Transportation ("USDOT") pursuant to federal pipeline safety laws. Any person who violates any minimum pipeline safety standard adopted by the USDOT or any regulation adopted by the Commission governing the safety of pipeline facilities is subject to a civil penalty as prescribed in 278.992.

### DISCUSSION

Pursuant to KRS 278.495, Commission Staff ("Staff") conducts periodic inspections of gas systems subject to the Commission's jurisdiction to ensure compliance with federal pipeline safety standards and requirements. On June 9, 2015, Commission Staff ("Staff") inspected Olive Hill's facilities and cited Olive Hill for ten deficiencies, including an exposed high-pressure pipeline in Tygarts Creek.<sup>1</sup> In its Inspection Report dated June 15, 2015, Staff determined that the exposed pipeline violates 49 C.F.R. § 192.317, which requires gas system operators to take all practicable steps to protect each transmission line or main from washouts, floods, unstable soil, landslides, or other

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<sup>1</sup> May 11, 2017 Order, Appendix A, Inspection Report, June 15, 2015.

hazards that may cause the pipeline to move or sustain abnormal loads.<sup>2</sup> In response to the June 2015 Inspection Report, Olive Hill's Mayor advised the Commission that the city was working on funding for this line to be bored and installed under the creek bed.<sup>3</sup>

Staff performed a follow-up inspection on Olive Hill's facilities on November 15, 2016. Staff determined that Olive Hill had corrected nine of the ten deficiencies identified in the 2015 inspection but that the coated steel high-pressure pipeline in Tygarts Creek remained exposed in violation of 49 C.F.R. § 192.317.<sup>4</sup>

Staff noted in its Inspection Report, dated November 28, 2016, that the pipeline in question is the main feeder for the entire Olive Hill gas system, and that should this pipeline wash out or become damaged and have to be shut off, all of Olive Hill's customers would lose gas service until repairs could be made.<sup>5</sup> This would create an especially severe hardship to Olive Hill's customers should a failure occur during a period of cold weather. Staff further noted that although the exposed pipeline is not located near any structures or inhabited building, there would be a risk of serious injury should anyone be near the location when a failure occurred.<sup>6</sup> Finally, Staff noted that should the pipeline

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<sup>2</sup> *Id.* at 5.

<sup>3</sup> May 11, 2017 Order, Appendix D, Letter from Kenny Fankell, Mayor of Olive Hill, to Public Service Commission, Sept. 28, 2016, at 2.

<sup>4</sup> May 11, 2017 Order, Appendix C, Inspection Report, November 28, 2016 at 3.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

fail, the cost of emergency operations would most certainly be several times higher than just replacing the line under normal operations.<sup>7</sup>

At the formal hearing held in this matter on June 7, 2017, Olive Hill Mayor Jerry Callihan acknowledged that Olive Hill is not in compliance with 49 C.F.R. § 192.317 and admitted there had been no improvement of the exposed pipeline in Tygarts Creek.<sup>8</sup> He cites the main reason for non-compliance as [lack of] funding.<sup>9</sup> Mayor Callihan explained that there had been a lack of communication between the prior mayor and the city council regarding the lack of action to remedy the exposed pipe in Tygarts Creek.<sup>10</sup> Due to the prior mayor falling ill, Mayor Callihan testified that starting in November 2016, there was no acting mayor with executive authority until Mayor Callihan was appointed to his position by the city council in March 2017.<sup>11</sup> Mayor Callihan does not believe the prior mayor had ever put this issue on the city council's agenda<sup>12</sup>, even though the issue of a small leak on this section of pipe had had been discussed in prior city council meetings.<sup>13</sup> Mayor Callihan testified that he was unaware of the violation of 49 C.F.R. § 192.317 prior to receiving the Commission's Order initiating this show cause action.<sup>14</sup> Mayor Callihan

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<sup>7</sup> *Id.*

<sup>8</sup> Video Transcript of Hearing ("H.V.T.") at 1:47:23 and 1:59:46

<sup>9</sup> H.V.T. at 1:47:45

<sup>10</sup> H.V.T. at 1:55:14

<sup>11</sup> H.V.T. at 1:51:20

<sup>12</sup> H.V.T. at 1:48:37

<sup>13</sup> H.V.T. at 2:02:16

<sup>14</sup> H.V.T. at 1:46:45

testified that he had placed this matter on the city council's agenda for a special meeting on June 12, 2017.<sup>15</sup> He further testified that Olive Hill was in the process of obtaining an estimate to repair the exposed pipeline in Tygarts Creek.<sup>16</sup> Mayor Callihan stressed that Olive Hill is committed to remedying the exposed pipeline, and would procure funding through the city's budget and/or obtain a loan, to complete the repairs.<sup>17</sup>

### FINDINGS

Based upon a review of the evidence of record and being otherwise sufficiently advised, the Commission finds that the pipeline exposed in Tygart's Creek is the main feeder for the entire Olive Hill gas system, and that failure of this pipeline could cause severe hardships for Olive Hill's customers and pose a risk of serious injury to anyone in the proximity at the time of failure. The Commission finds that Olive Hill violated the USDOT federal pipeline safety standard set forth in 49 C.F.R. § 192.317 by failing to take all practicable steps to protect its main from washouts, floods, unstable soil, landslides, or other hazards that may cause the pipeline to move or sustain abnormal loads. The Commission further finds that Olive Hill has been aware of this violation since at least the Commission Staff's June 2015 inspection and to date has not remedied the violation.

Based on Olive Hill's failure to comply with 49 C.F.R. § 192.317, we find that Olive Hill is subject to a civil penalty under KRS 278.992(1). KRS 278.992(1) provides that any person who violates any minimum pipeline safety standard adopted by the USDOT shall be subject to a civil penalty in an amount not to exceed the maximum civil penalty set

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<sup>15</sup> H.V.T. 1:49:38

<sup>16</sup> H.V.T. 1:50:35

<sup>17</sup> H.V.T. 1:49:21, 2:03:36

forth in 49 C.F.R § 190.223, as of December 31, 2011, for each violation for each day that the violation persists. As set forth in 49 C.F.R. § 190.223, as of December 31, 2011, the maximum civil penalty that can be assessed for the violation of a USDOT minimum safety standard is \$100,000 per violation per day, not to exceed \$1,000,000 for any related series of violations.<sup>18</sup> Because Olive Hill has been in violation of 49 C.F.R. § 192.317 for a period of at least two years, Olive Hill is subject to a maximum civil penalty of \$1,000,000.

In determining the amount of the penalty, KRS 278.992(1) directs the Commission to consider “the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of the violation.” The Commission also finds instructive and will consider, in assessing a penalty under KRS 278.992(1), the factors used by the Associate Administrator for Pipeline Safety, United States Pipeline and Hazardous Materials Safety Administration, to determine the amount of a civil penalty for a violation of a federal pipeline safety standard:

- (a) The Associate Administrator will consider:
  - (1) The nature, circumstances and gravity of the violation, including adverse impact on the environment;
  - (2) The degree of the respondent's culpability;
  - (3) The respondent's history of prior offenses;
  - (4) Any good faith by the respondent in attempting to achieve compliance;

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<sup>18</sup> The Commission notes that 49 C.F.R. § 190.223 has been amended since December 31, 2011. However, pursuant to KRS 278.992(1), the maximum civil penalty is the amount contained in 49 C.F.R. § 190.223 as of December 31, 2011, and not the amount set forth in subsequent amendments of the federal regulation.

- (5) The effect on the respondent's ability to continue in business; and
- (b) The Associate Administrator may consider:
- (1) The economic benefit gained from violation, if readily ascertainable, without any reduction because of subsequent damages; and
  - (2) Such other matters as justice may require.<sup>19</sup>

After considering the above factors, the Commission finds that a civil penalty should be assessed against Olive Hill in the amount of \$60,000 for violating 49 C.F.R. § 192.317. The Commission is deeply concerned about the serious nature of potential consequences should the exposed pipeline fail due to washouts, floods or other hazards, and there is no evidence in the record that Olive Hill attempted to achieve compliance after notification of the violation. The Commission, however, further finds that all but \$5,000 of the assessed penalty amount of \$60,000 should be suspended on the condition that Olive Hill remedy the violation within 30 days of the date of this Order by replacing the exposed pipeline and provide timely written notice to the Commission of the commencement and of the completion of construction to replace the exposed pipeline.

IT IS THEREFORE ORDERED that:

1. Olive Hill is assessed a penalty of \$60,000 for violation of 49 C.F.R. § 192.317 for failure to protect the section of pipeline exposed in Tygarts Creek from washouts, floods, unstable soil, landslides, or other hazards that may cause the pipeline to move or sustain abnormal loads.

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<sup>19</sup> 49 C.F.R. § 190.225.

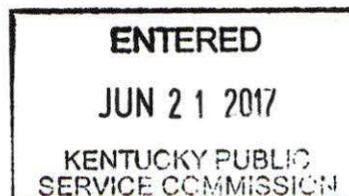
2. Olive Hill shall pay \$5,000 of the \$60,000 assessed civil penalty within 30 days of the date of this Order by cashier's check or money order payable to the Kentucky State Treasurer, and mailed or delivered to the Office of the General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602. The remaining \$55,000 of the civil penalty shall be suspended on the condition that Olive Hill complies with the ordering paragraphs 3, 4, and 5 of this Order within the timeframe allowed.

3. Within 30 days of the date of this Order, Olive Hill shall replace the main that is exposed in Tygart's Creek with a new main installed under the creek so that the pipeline is protected from washouts, floods, unstable soil, landslides, or other hazards that may cause the pipeline to move or sustain abnormal loads.

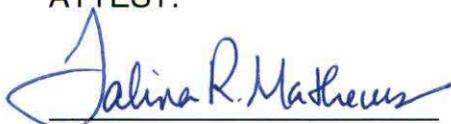
4. Olive Hill shall provide the Commission written notice within 5 days of the commencement of construction to replace the section of pipeline exposed in Tygarts Creek.

5. Olive Hill shall provide the Commission written notice within 5 days of the completion of construction to replace the section of pipeline exposed in Tygarts Creek.

By the Commission



ATTEST:

  
Executive Director

\*Angela Owens  
City Clerk  
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225 Roger Patton Drive  
Olive Hill, KENTUCKY 41164

\*Derrick Willis  
City Attorney  
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\*Jerry Callihan  
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