

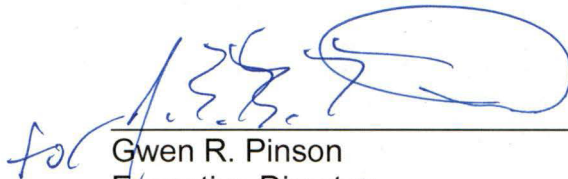
COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CITY OF AUGUSTA – ALLEGED FAILURE TO)	
COMPLY WITH KRS 278.495 AND 49 C.F.R.)	CASE NO.
PARTS 191 AND 192)	2019-00188

NOTICE OF FILING

Notice is given to all parties that Commission Staff's Division of inspections Brief has been filed into the record of this proceeding.



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DATED SEP 20 2019

cc: Parties of Record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CITY OF AUGUSTA)	
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ALLEGED FAILURE TO COMPLY WITH)	CASE NO. 2019-00188
KRS 278.495, 807 KAR 5:027, AND)	
49 C.F.R. PART 192)	

COMMISSION STAFF'S POST-HEARING BRIEF

The city of Augusta, Kentucky owns and operates facilities used to distribute natural gas at retail and is subject to the Commission's jurisdiction under KRS 278.495(2) to enforce federal minimum pipeline safety standards. Pursuant to this authority, the Commission's Division of Inspections (DOI) conducted a standard periodic inspection of the city's natural gas distribution system and prepared an inspection report (Staff Report) dated September 17, 2018, in which it cited Augusta for eleven violations of pipeline safety standards. Based on the findings in the Staff Report, the Commission initiated this case to conduct a formal investigation into Augusta's natural gas facilities and to determine whether Augusta should be assessed a civil penalty pursuant to KRS 278.992.

On August 20, 2019, the Commission held a formal hearing in this matter at which it received evidence regarding the findings of violation set forth in the Staff Report and the measures the city took to cure the cited deficiencies. On August 21, 2019, the Commission entered a post-hearing scheduling order providing for post-hearing staff data requests and the submission of briefs by DOI and the city. DOI submits this Brief in compliance therewith.

VIOLATIONS

The city of Augusta did not contest Staff's findings of violations of pipeline safety standards in response to the Staff Report. Nor has the city disputed that at the time of DOI's September 2018 inspection, it was not in compliance with the regulatory requirements cited therein. The findings of violation and the city's response to them are summarized below in the order in which the violations appear in the Staff Report.

1. **49 C.F.R. § 192.603(b)** requires each operator to keep records necessary to administer operating and maintenance procedures established under 49 C.F.R. § 192.605. Augusta failed to maintain adequate records of the following procedures:

- a. Installation and pressure test of new service lines;
- b. Installation of excess flow valve;
- c. All leaks and repairs of pipe; and
- d. Corrosion inspection.

City's Response: Augusta admits that at the time of the September 2018 inspection, it did not have detailed records regarding the installation and pressure test of new service lines, the installation of excess flow valves; all repairs of pipe; and corrosion inspection.¹

2. **49 C.F.R. § 192.615(b)(2)** requires each operator to train appropriate operating personnel to assure that they are familiar with emergency operating procedures. Augusta failed to conduct employee training on emergency procedures.

City's Response: Augusta acknowledges that it did not conduct required staff training on emergency operating procedures until after it was cited in the Staff Report for this violation.²

3. **49 CFR §192.723(b)(1)** requires each operator to conduct a leakage survey in business districts, at intervals not exceeding 15 months, but at least once

¹ City of Augusta Response to Commission Order (filed July 15, 2019).

² *Id* at 2 and at Exhibit 2. Exhibit 2 indicates the training was provided on March 4, 2019.

each calendar year. Augusta failed to conduct a leakage survey in its business district in 2017.

City's Response: Augusta admits it failed to conduct the required leakage survey in its business district 2017.³

4. **49 CFR §192.747(a)** requires each operator to inspect and service each valve, the use of which may be necessary for the safe operation of the City's gas distribution system, at intervals not exceeding 15 months, but at least once each calendar year. Augusta did not conduct an inspection of all critical valves in 2016.

City's Response: Augusta admits it did not conduct an inspection of all critical valves in 2016.⁴

5. **49 CFR §192.311** requires each operator to repair or remove any imperfection or damage to plastic pipe that could impair the pipe's serviceability. On March 27, 2014, Augusta used an improper method (clamp) to repair 3rd party damage to a 2-inch plastic main on Wagel Road.

City's Response: Augusta admits it did not timely address the temporary clamp repair. A permanent repair was not made until October 24, 2018.⁵

6. **49 CFR §192.805(b)** requires each operator to ensure through evaluation that individuals performing covered tasks are qualified. Augusta did not have an individual who is qualified to conduct the critical task of pipe-to-soil readings.

City's Response: Augusta admits that at the time of the September 2018 inspection, it did not have an individual qualified to conduct the critical test of pipe-to-soil readings.⁶

7. **49 CFR §199.113(c)** requires an operator to provide training on indicators of probable drug use to supervisory personnel responsible for determining whether an employee must be drug tested based on reasonable cause. Augusta failed to provide this training.

City's Response: Augusta acknowledges that it did not conduct required training on indicators of probable drug use to supervisory personnel

³ *Id.* at 2.

⁴ *Id.* at 3.

⁵ *Id.* at 3.

⁶ *Id.* at 3.

responsible for determining whether an employee must be drug tested based on a reasonable suspicion until after it was cited in the Staff Report for this violation.⁷

8. **49 CFR §191.11** requires each operator of a distribution pipeline system to submit an annual report on DOT Form PHMSA F-7100.1-1 not later than March 15 for the preceding calendar year. Augusta did not timely submit its report for 2017.

City's Response: Augusta admits it did not timely submit its 2017 annual report on DOT Form PHMSA F-7100.1.1.⁸

9. **49 CFR §192.605** requires each operator to prepare and follow for each pipeline a manual of written procedures for conducting operations and maintenance activities and for emergency response. Augusta's operation and maintenance plan does not meet all the requirements of 49 CFR §192.605.

City's Response: Augusta admits that it did not update its operation and maintenance plan to include all elements required by 49 CFR §192.605 until after it was cited in the Staff Report for this violation.⁹

10. **49 CFR §192.615** requires each operator to establish written procedures to minimize the hazard resulting from a gas pipeline emergency. Augusta's emergency plan does not meet all the requirements of 49 CFR §192.615.

City's Response: Augusta admits that it did not update its emergency procedures plan to include all elements required by 49 CFR §192.615 until after it was cited in the Staff Report for this violation.¹⁰

11. **49 CFR §192.739** requires each operator to inspect and test each pressure regulator station at intervals not exceeding 15 months, but at least once every calendar year, to determine each pressure regulating station is in good mechanical condition and properly installed. The current configurations of three of Augusta's four regulator stations do not allow for proper testing of each regulator's lock-up mechanism.

⁷ *Id.* at 3 and Exhibit 7. Exhibit 7 indicates this training was provided on March 1, 2019.

⁸ *Id.* at 3.

⁹ *Id.*, at 4 and Exhibit 9. February 20, 2019, is the date on the revised operations and maintenance plan provided as Exhibit 9.

¹⁰ *Id.* at 4 and Exhibit 10. Exhibit 10 indicates that the city's Gas System Emergency Procedures manual was revised on February 21, 2019.

City's Response: Augusta acknowledges that it did not reconfigure its regulator stations to allow inspection of each regulator's lock-up mechanism until after it was cited in the Staff Report for this violation.¹¹

As there is no dispute as to the violations cited in the Staff Report, remaining at issue is whether the Commission should assess Augusta a civil penalty under KRS 278.992(1) for the violations and, if so, the amount of the penalty.

CIVIL PENALTY ASSESSMENT

KRS 278.992(1) provides that any person who violates any minimum pipeline safety standard adopted by the United States Department of Transportation or any regulation adopted by the Commission governing the safety of pipeline facilities shall be subject to a civil penalty. At the time of DOI's September 2018 inspection of Augusta's gas system, the maximum civil penalty under KRS 278.992(1) was \$100,000 per violation per day, not to exceed \$1,000,000 for any related series of violations.¹²

In determining the amount of the proposed 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

¹¹ *Id.* at 4 and Exhibit 11. Exhibit 11 indicates the regulators were reconfigured in December 2018. Exhibit 11 was inadvertently not filed with Augusta's response to the initiating Order and was subsequently provided at the hearing of this matter.

¹² The Kentucky General Assembly amended the statute in 2018 to change the maximum civil penalty that may be assessed for violation of minimum pipeline safety standards. Prior to the July 14, 2018 effective date of the amendment, the civil penalty could not exceed the maximum civil penalty contained in 49 CFR Section 190.223, as of December 31, 2011, for each violation for each day that the violation persists. The statute as amended now caps penalties at the maximums set forth in 49 CFR Section 190.223, as amended. Because the initial inspection occurred prior to the effective date of the amendment, the penalty amounts in effect prior to the amendments should be applied in this case.

compliance, after notification of the violation.” The Commission considers the gravity of the violation to be the most important mandatory penalty assessment consideration.¹³

Additionally, the Commission has referenced the assessment considerations applied under federal law by Pipeline and Hazardous Material Safety Administration (PHMSA) to determine the amount of the civil penalty for violation of a federal pipeline safety standard.¹⁴

Application of Assessment Factors

1. Gravity

Violation 1 is a record-keeping violation. In general, DOI does not consider record-keeping violations as serious as operational or equipment/infrastructure deficiencies. An operator’s failure to maintain required records prevents the Commission from determining whether the operator is conducting its pipeline operations in compliance with minimum federal pipeline safety standards. Additionally, in this case Augusta’s failure to maintain records necessary to carry out procedures that are required to provide a reasonable level of safety was pervasive and, in DOI’s assessment, indicative of an overall laxness of attitude toward natural gas pipeline safety. Augusta was cited for failure to maintain four categories of required records, including records of leak repairs. The failure to maintain any one of these records would support assessment of a penalty under KRS 278.992(1).

¹³ See Case No. 2017-00119, *Louisville Gas & Electric Company – Alleged Failure to Comply with KRS 278.495, 807 KAR 5:022, and 49 CFR. PART 192* (Ky. PSC March 16, 2018), at 26.

¹⁴ See *id.*, at 25. Federal law provides that PHMSA shall 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; and (5) the effect on the respondent’s ability to continue in business. The Associate Administrator also may consider: (1) the economic benefit gained from the violation, if readily ascertainable, without any reduction because of subsequent damages; and (2) such other matters as justice may require. See 49 CFR Section 190.225.

Although DOI considers the gravity of Violation 1 to be low, it is DOI's position that the circumstances warrant assessment of a penalty.

DOI considers the gravity of Violation 2 to be moderate. Augusta's failure to train appropriate operating personnel in emergency operating procedures created an unacceptable risk to public safety in the event of a gas pipeline emergency.

DOI considers the gravity of Violation 3 to be serious. A natural gas leak in a business district poses a heightened threat to public safety because of the density of people and because the presence of pavement can trap escaping natural gas and allow gas to migrate and accumulate.¹⁵ A natural gas leak thus poses a heightened risk of property damage and loss of life in the event of ignition. Performance of a leakage survey in each business district is critical to maintaining a reasonable level of safety. Augusta's failure to conduct a leakage survey in its business district in 2017 posed an unacceptable risk to public safety.

DOI considers the gravity of Violation 4 to be moderate. Augusta failed to inspect in 2016 and in some cases could not locate valves the use of which could be necessary for the safe operation of its distribution system. DOI notes that the city designated which valves it considered to be critical for the safe operation of its system.

DOI considers the gravity of Violation 5 to be moderately high. Augusta's use of an improper method to repair a 2-inch plastic main impaired the serviceability and integrity of the pipe. The repair did not occur in an area of high population density.

DOI considers the gravity of Violation 6 and 7 each to be moderate. Having properly qualified and trained personnel to perform safety-related duties, including

¹⁵ Video Transcript of Hearing ("H.V.T.") at 11:17:28 AM.

conducting pipe-to-soil readings (Violation 6) and detecting drug-use indicators (Violation 7), is important to the safe and reliable operation of the gas system.

DOI considers the gravity of Violation 8 to be low. Although Augusta failed to timely submit its distribution system annual report for 2017, the city did submit the report less than one month after the deadline.

DOI considers the gravity of Violation 9 and 10 each to be low. Augusta had a manual(s) with written procedures for conducting operations, maintenance and emergency-response activities and for minimizing the hazard resulting from a gas pipeline emergency. The city's procedures, however, did not meet all the requirements of federal pipeline safety standards.

DOI considers the gravity of Violation 11 to be high. The violation involves installation defects in relief regulator stations, which are critical safety components of Augusta's gas distribution system, that preclude a complete inspection to assure they are in good mechanical condition.

Regulator stations serve to protect the pipeline system and ensure it operates safely by reducing the pressure as the gas flows further into the system, similar to the way an electric transformer steps down voltage to a level suitable for residential use. Generally speaking, the closer natural gas gets to a customer, the smaller the pipe diameter is, and the lower the pressure. Every regulator station contains safety devices to ensure that the mains downstream, which will ultimately deliver gas to customers' residences, cannot be over-pressured. If a lockup mechanism on a regulator were to fail leading to a surge of pressure on downstream pipe, the maximum allowable operating

pressure of the downstream facilities could be exceeded, leading to potentially catastrophic consequences.¹⁶

At the time of DOI's September 2018 inspection, a total of four regulators at three of Augusta's four regulator stations were configured in such a manner as to preclude an inspection of the regulator's lock-up mechanism.¹⁷ The inability to conduct a complete inspection of each regulator station posed an unacceptable and grave risk involving critical facilities and that compromised the integrity of the city's gas system.

2. Good Faith

DOI acknowledges that Augusta has taken the steps necessary to remedy the pipeline safety violations cited in the September 2018 Staff Report, and that as of DOI's July 30, 2019 follow-up inspection, the city was in compliance with minimum federal pipeline safety standards. The Commission has previously held, however, that necessary measures any reasonable and prudent operator would take to comply with its legal obligations do not warrant an abatement or suspension of a civil penalty.

In response to a post-hearing data from DOI, Augusta submitted an itemization of expenses it contends it incurred to achieve compliance with pipeline safety standards and in response to this enforcement proceeding. The expenses total \$21,148.27, and break down as follows:

- Regulator station inspection - \$2,634.08;
- Purchase of a new odorometer - \$4,832.55;
- Operator Qualification (OQ) training - \$3,598.00;
- Regulator station rebuild - \$5,170.76;
- 2019 leak survey - \$3,567.80; and

¹⁶ H.V.T., at 11:23:40 AM.

¹⁷ *Id.*, at 1:30:05 PM and Exhibit 9. Exhibit 9 are the Regulator Station Inspection records for the tests conducted on July 25, 2018.

- Employee costs - \$1,345.08.

It is DOI's position that the money Augusta paid to a third-party contractor to inspect regulator stations, provide OQ training and conduct a leak survey do not warrant a reduction or suspension of any penalty assessed. These are procedures that every operator necessarily must perform to comply with pipeline safety standards. Similarly, the cost of city employees assigned to work on the gas system or in response to this enforcement proceeding is an ordinary and necessary expense of operating the gas system.

DOI also opposes reduction of the penalty based on the amount spent to reconfigure relief regulators. Augusta in the past has twice been cited for failing to perform inspections of its regulator stations, once following a periodic inspection conducted on April 20, 2009,¹⁸ and again following a periodic inspection on July 19, 2012.¹⁹ Moreover, since 2015, the third-party contractor that has performed Augusta's regulator station inspections has advised the city that the lock-up mechanism at its four regulator stations could not be inspected.²⁰ Since 2016, the contractor has specifically "[r]ecommend[ed] modifying [each] station such that lock-up test can be performed."²¹ Yet the city choose not to spend the money necessary to fix this known defect in its regulator stations until it was cited for this violation following the September 2018

¹⁸ HVT, at PSC Exhibit 3.

¹⁹ *Id.*, at PSC Exhibit 5.

²⁰ See City of Augusta's Response to Commission Staff First Post-Hearing Request for Information, at Regulator Station Inspection Reports for 2015 for the Rt. 19 & AA, Valley High, Chatham and City Gate stations.

²¹ *Id.*, at Regulator Station Inspection Reports for 2016, 2017, and 2018 for the Rt. 19 & AA, Valley High, Chatham and City Gate stations.

inspection. The city has had the benefit of the use of these funds in the interim, and it is DOI's position that Augusta should not be rewarded for fixing this critical defect only after being ordered to do so by DOI.

DOI does recommend that Augusta be given credit in the amount of \$4,832.55 for purchasing a new odorometer. DOI did not cite Augusta for a violation in connection with the condition of its odorometer and instead listed it as an area of concern. It is DOI's position that the city should be given credit for this investment in the safety of its system and its customers.

3. Size of Operator

DOI acknowledges that Augusta has a relatively small gas system with approximately 500 service connections and that this fact should be considered by the Commission as a mitigating factor in the assessment of a penalty.

Recommended Penalty Amount

Based on the foregoing application of the statutory penalty assessment factors, DOI recommends assessment of the following civil penalties:

Violation 1	\$ 5,000
Violation 2	\$ 5,000
Violation 3	\$ 15,000
Violation 4	\$ 5,000
Violation 5	\$ 10,000
Violation 6	\$ 5,000
Violation 7	\$ 5,000
Violation 8	\$ 1,000
Violation 9	\$ 1,000
Violation 10	\$ 1,000
Violation 11	\$ 90,000
	<u>\$143,000</u>
Less adjustment for size	<u>x .25</u> \$ 35,750
Less cost of odorometer	<u>(\$ 4,833)</u>

TOTAL PENALTY \$ 30,917

CONCLUSION

DOI's September 2018 periodic inspection of the gas distribution system of the city of Augusta, Kentucky, revealed a troubling lack of focus by the city on gas pipeline safety requirements. DOI acknowledges that Augusta has taken the necessary measures to bring its system into compliance with minimum federal pipeline safety standards. DOI nonetheless is of the opinion that the violations warrant sanction not only to penalize the city but to deter future violations by Augusta and other similarly situated operators.²² For this reason, and based on application of statutory penalty assessment considerations, DOI recommends to the Commission a total penalty in the amount of \$30,917.

²² The Commission has previously recognized the dual purpose of civil penalties: to punish the violator and to deter future violations. See Case No. 2017-00119, *Louisville Gas & Electric Company – Alleged Failure to Comply with KRS 278.495, 807 KAR 5:022, and 49 CFR. PART 192* (Ky. PSC March 16, 2018), at 26.



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DATED SEP 20 2019

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