

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CITY OF AUGUSTA – ALLEGED FAILURE TO)	
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' Post-Hearing Reply Brief has been filed into the record of this proceeding.

for 
Gwen R. Pinson
Executive Director
Public Service Commission
P.O. Box 615
Frankfort, Kentucky 40602

DATED OCT 18 2019

cc: Parties of Record

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COMMISSION STAFF'S POST-HEARING REPLY BRIEF

Pursuant to the post-hearing briefing schedule established by the Commission, as revised by Order entered October 8, 2019, the Commission's Division of Inspections (DOI) submits this Reply Brief.

Discussion

In its Post-Hearing Brief, Augusta concedes that there is no dispute regarding the violations cited in the Staff Report. Augusta disputes just the civil penalty assessment recommended by DOI. Augusta contends it should be assessed a lower penalty than recommended by DOI for some of the violations and no penalty for others.

Augusta's argument comes down to a dispute with DOI as to the gravity of certain of the violations of pipeline safety standards and the extent of credit the city should receive for remedial actions it took after being cited for the violations. Where the difference between Augusta and DOI's application of the statutory penalty assessment factors is one of degree, DOI will not repeat the arguments made in its post-hearing brief.

Violation 1: DOI contends that Augusta's pervasive failure to maintain required records was indicative of a lax attitude on the part of the city to pipeline safety. Augusta disputes this, citing the current mayor's commitment to the safe operation and

maintenance of the city's gas system and the prompt actions taken by the city to correct the violations.¹

The gravity of a violation, however, is determined at the time the violation is committed, and is not affected by actions an operator takes after being cited for the violation to correct it. While an operator may be given credit for post-violation good faith compliance efforts, such efforts do not reduce the gravity of the violation and are a separate penalty assessment factor.

The actions Augusta took to cure record-keeping violations after being cited has no bearing on the city's attitude toward pipeline safety at the time of the violations. It remains DOI's position that the pervasiveness of the violations is evidence that the city was not taking its obligations under pipeline safety regulations seriously enough, and that this warrants assessment of a civil penalty.

Violation 2: Augusta states that its failure to train employees on emergency procedures could have created an unacceptable risk to public safety *in the event* of a gas pipeline emergency. Augusta asserts that since no pipeline emergency occurred, the gravity of the violation should be considered low.

DOI disagrees. The city's good fortune that a pipeline emergency did not occur does not lessen the gravity of the city's failure to conduct emergency response training. The unacceptable risk from a pipeline safety standpoint was that city employees would be unable to respond appropriately in the event of a pipeline emergency. The city's failure to train created the unacceptable risk, which existed regardless of the fact that no emergency occurred. Luck is not a mitigating factor.

¹ City of Augusta's Post-Hearing Brief, at 3-4.

Violation 3: Augusta asserts that its failure to conduct a leakage survey in its business district in 2017 should not be considered serious because the failure was due to adverse weather conditions and the survey was conducted within three months after the deadline. DOI notes that weather is a variable every operator must take into account when scheduling critical tasks such as business-district leakage surveys. Bad weather does not lessen the gravity of failing to conduct a leakage survey in an area where ignition of leaking gas could cause loss of life and property.

Violation 7: Augusta admits that training supervisory personnel on indicators of probable drug use is very important and that it should have completed the training sooner. Augusta asserts, however, that the gravity of this violation should be considered low and no penalty assessed because the city “has always maintained a random drug testing program of all of its gas system employees.”²

DOI first notes that there is no evidence in the record regarding a random drug-testing program. Regardless, the existence of such a program does not relieve the city of the responsibility to provide proper training to personnel who will decide whether an employee must be drug tested based on reasonable cause.

Violation 6: Augusta claims that it did not have an individual qualified to perform pipe-to-soil readings as required by 49 CFR §192.805(b) was due to a change in training materials used by the contractor hired by the city to conduct operator training. There is no evidence in the record to support this assertion, and it is not properly considered in evaluating the gravity of this violation.

² *Id.*, at 6.

Violation 11: Augusta asserts in its post-hearing brief that the gravity of the violations based on the configuration of three of the city's four regulator stations is not high. Augusta admits that the as-installed configuration of these stations made it impossible to test the lock-up function of all of the regulators. Augusta asserts, however, that these violations are of lesser gravity than asserted by DOI because each station has a pressure relief valve downstream from the regulator(s) that perform the lock-up function.

DOI first notes that Augusta did not make this argument or present evidence in support of it at the hearing. DOI, however, after careful consideration, agrees that the relief device at each station mitigates the risk posed by a potential failure of a regulator's lock up to stop the flow of gas. DOI nonetheless still considers these violations serious. The inability to conduct a complete inspection and test of the functionality of all components of the regulator stations compromised the integrity of the city's gas system.

Augusta also notes that Commission Staff performed a standard inspection of the city's gas system on April 27, 2015. Citing the Inspection Report introduced at the hearing as PSC Exhibit 7, Augusta asserts that Staff Inspector Grugin "found all regulator stations to be satisfactory."³

DOI acknowledges that Augusta was not cited in connection with the configuration of its regulator stations following the 2015 inspection. The Staff Report cited by the city, however, does not include regulator stations in the "Summary of Areas Inspected" on page 2 of the Report. In any event, even if the inspector missed the regulator station violations in 2015, the configuration of three of the stations in such a manner as to preclude a complete inspection would still be out of compliance with federal gas safety

³ *Id.*, at 9.


requirements. The contractor that inspects Augusta’s regulator stations put the city on notice of the problem in 2015 and specifically recommended in 2016, 2017, and 2018 that the city reconfigure the stations so that the lock up function of the regulators could be tested.⁴ The city, however, only fixed the problem after being cited by DOI.

Conclusion

Based on the foregoing, DOI revises its recommendation of the penalty for the violations based on the configuration of the three regulator stations from \$90,000 to \$60,000. With this revision, DOI now recommends assessment of a civil penalty as follows:

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	<u>\$ 60,000</u>
	\$113,000
Less adjustment	<u> x .25</u>
for size	\$ 28,250
Less cost of	<u>(\$ 4,833)</u>
odorometer	
TOTAL PENALTY	\$ 23,417

⁴ See City of Augusta’s Response to Commission Staff’s First Post-Hearing Request for Information.

for Mahe 3.7.19 

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