

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

The Public Service Commission's Division of Inspections conducted a standard periodic inspection of the city of Augusta's (Augusta) natural gas distribution system on September 5, 6, 7, and 13, 2018. The results of that inspection were incorporated into an inspection report dated September 17, 2018, a copy of which was mailed to Augusta for review and response. The inspection discovered 11 probable violations of federal pipeline safety standards as codified in 49 C.F.R. Parts 191, 192 and 199. The Public Service Commission (Commission) is charged with enforcement of federal pipeline safety regulations by operation of KRS 278.495(2),¹ which subjects Augusta to its inspection and enforcement jurisdiction.

¹ KRS 278.495(2) vests the Commission with the authority to regulate the safety of natural gas facilities owned or operated by any public utility, county or city and used to distribute natural gas at retail. The Commission's authority may be exercised in conjunction with and pursuant to its authority to enforce any minimum safety standard adopted by the United States Department of Transportation pursuant to 49 U.S.C. section 60101 et seq. or any amendments thereto. The Commission is certified by the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) as having adopted the minimum federal safety regulations and as having established substantially the same enforcement measures as those in the federal pipeline safety statutes. The Commission enforces federal and state pipeline safety laws and regulations for intrastate natural gas transmission pipelines and for local natural gas retail distribution systems. It has jurisdiction over 28 intrastate pipeline operators, 21 distribution utilities, 49 municipal distribution systems, and 113 other natural gas operators such as master meter systems and gathering line operators.

The probable violations as set out in the inspection report of Division Inspector Melissa Holbrook were as follows:

1. Failure to keep and maintain records necessary to administer operating and maintenance procedures established by 49 C.F.R. § 192.605, specifically regarding:

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

2. Failure to conduct employee training on emergency procedures as required by 49 C.F.R. § 192.615(b)(2).

3. Failure to conduct a leakage survey in its business district during the year 2017 in violation of 49 C.F.R. § 192.723(b)(1), which requires such a survey to be conducted at intervals not to exceed 15 months, but at least once in each calendar year.

4. Failure to inspect and service each critical valve, the use of which may be necessary for the safe operation of its gas distribution system at intervals not exceeding 15 months, but at least once in each calendar year. All critical valves were not inspected in 2016 in violation of 49 CFR § 192.747.

5. On March 27, 2014, Augusta used an improper method (clamp) to repair third-party damage to a two-inch plastic main on Wagel Road and failed to repair or remove an imperfection or damage to the plastic pipe, which could impair its service ability in violation of 49 C.F.R. § 192.311.

6. Augusta failed to employ a qualified individual to conduct the critical task of pipe-to-soil readings in violation of 49 C.F.R. § 192.805(b).

7. Augusta failed to provide training on indications of probable drug use to supervisory personnel responsible for determining whether an employee must be drug tested based on reasonable cause in violation of 49 C.F.R. § 199.113(c).

8. Regulation 49 C.F.R. § 191.11 requires each operator of a distribution pipeline system to submit an annual report on DOT Form PHMSA F7100.1-1 not later than March 15th for the preceding calendar year. Augusta failed to timely submit its report for the year 2017.

9. Augusta's operation and maintenance plan does not meet all requirements of 49 C.F.R. § 192.605.

10. Augusta's gas pipeline emergency plan does not meet all of the requirements of 49 C.F.R. § 192.615.

11. Regulation 49 C.F.R. § 192.739 requires the inspection and testing of each pressure regulator station at intervals not to exceed 15 months but at least once every calendar year. The configurations of three of Augusta's four regulator stations did not allow for the proper testing of each regulator's lock-up mechanism.

Augusta responded to the inspection report by letter dated October 25, 2018, in which it conceded the violations and expressed its intent to correct the cited deficiencies and to thereafter remain in compliance.² Thereafter, the Division of Inspections, acting through the Commission's Executive Director issued a Demand for Remedial Measures and Penalty Assessment letter to Augusta on February 7, 2019.³ Augusta responded by

² See Augusta's letter to Melissa Holbrook, Utility Regulatory & Safety Inspector dated October 25, 2018, at Public Service Commission's IRS System Site.

³ See Letter from Executive Director, Gwen Pinson, to Augusta Mayor, Michael C. Taylor, dated February 7, 2019, at Public Service Commission's IRS System Site.

letter on March 4, 2019, that it had completed the remedial measures demanded and furnished documentation that supported that the required work had been completed. It declined to pay the assessed penalty and requested that the assessment be reconsidered.⁴ This administrative action was filed on June 27, 2019, for the purpose of addressing whether a penalty should be assessed against Augusta and, if so, in what amount. The initiating Order established a hearing date of August 20, 2019. In its response to the initiating Order, Augusta admitted the violations but reiterated its post inspection conduct in remediating the deficiencies as evidence of good faith, which should be considered in an assessment proceeding.⁵

FACTS

Augusta owns and operates a natural gas distribution system, which provides retail gas service to 550 customers through 31 miles of coated steel and plastic pipelines.⁶ August has three full-time natural gas system employees.⁷ The 2018 Independent Audit Report notes that Augusta collected \$451,621 from its natural gas distribution system for the year ending June 30, 2018, and realized operating net income of \$123,247.⁸

Prior to September 5, 2019, the utility was last inspected in 2016 on follow-up to an inspection in 2015 and prior to that in 2012 and 2009. Each of the previous inspections noted deficiencies that Augusta either did not address or failed to remedy on a timely

⁴ See Augusta's letter dated March 4, 2019, at Public Service Commission IRS System Site.

⁵ See Augusta's Response to Initiating Order at Public Service Commission IRS System Site.

⁶ PSC Exhibit 1, Inspection Report dated September 17, 2018.

⁷ *Id.*

⁸ Augusta in Response to Staff's Post Hearing Request for Information (filed Sept. 6, 2019), 2018 Independent Audit Report for City of Augusta at 36.

basis.⁹ A Utility inspection report dated May 1, 2009, noted a failure to inspect “critical key valves” and regulator stations in 2008.¹⁰ The 2012 inspection report found that Augusta had not implemented a Public Awareness Plan and that a 4-year program effectiveness evaluation has not been put into place. Augusta had not inspected four relief regulators in 2011 and 2012 at the following facilities: City Gate, Valley High, Dutch Ridge, or at the Columbia Gas Transmission point of delivery. This was a repeat violation. In its response, Augusta promised to implement the public awareness program and evaluation and later stated that inspection and testing had been completed on the four relief regulators.¹¹ The 2015 inspection found five violations including failure to conduct annual readings on four CP test stations, two locations where plastic gas mains were exposed, no records to support that the required public awareness program had been communicated to the proper audiences and that the public awareness effectiveness program evaluation had not been performed.¹² A third-party contractor employed by Augusta to perform regulator station inspections, however, recommended that Augusta reconfigure its regulator stations in 2015, 2016, 2017, and 2018 so that the lock-up mechanism of each could be tested as required by federal pipeline safety regulations 49 C.F.R. § 192.739.¹³

⁹ Division of Inspections’ Exhibits 3, 4, 5, 6, 7, and 8.

¹⁰ Division of Inspections’ Exhibit 3.

¹¹ Division of Inspections’ Report dated July 20, 2012 and Response at PSC Exhibit 6.

¹² Division of Inspections’ Report and Follow-Up Inspection Report at PSC Exhibit 7.

¹³ See Augusta’s Response to Division of Inspections Post-Hearing Data Requests with attached reports from third-party contractor, for years 2015, 2016, 2017, and 2018 (filed Sept. 6, 2019) at 3 through 17. Regulation 49 C.F.R. § 192.739 requires each pressure limiting station relief device and pressure regulating station and its equipment to be inspected and tested at intervals not exceeding 15 months, but at least once each calendar year.

Augusta has an established history of willfully ignoring a known safety deficiency as evidenced by its failure to undertake necessary remedial action repeatedly recommended by its own third party contractor and as noted in violations which were cited in inspection reports in 2009, 2012, and 2018. The September 17, 2018 Inspection Report, in addition to the safety violations identified, expressed concern about several aspects of Augusta's natural gas distribution system and the manner in which it was operated. Augusta had identified fifteen critical valves which are required to be inspected. Of the 15 critical valves identified by Augusta, seven could either not be found or were inaccessible. Augusta's operation and maintenance plan did not state how often odor tests of the system were to be conducted. While utility personnel stated that such tests were conducted monthly, a review of the records found no evidence to support that statement. Utility records showed tests conducted in January, February, and March 2015, November 2016, and 7 out of 12 months in 2017. There was no record of odorant being tested in June 2018. Moreover, the machine used to test the presence of odorant was old, out of date, and had not been calibrated since December 2017. In its inspection report of May 11, 2015, Inspector Joel Grugin noted a violation by Augusta of 49 C.F.R. § 625(f) stating: "City of Augusta's odorometer had not been calibrated to manufacturer's requirements on an annual basis as required. The readings were taken and recorded but were invalid due to the machine being out of calibration."¹⁴ As pointed out by Inspector Melissa Holbrook in her testimony at the hearing, when odorant tests are conducted, a

¹⁴ Division of Inspections' Exhibit 7, Inspection Report dated May 11, 2015, at 3.

written record of such tests are required to be made.¹⁵ Inspector Holbrook also testified that if the odorometer is not calibrated, the reading cannot be expected to be accurate.¹⁶

On February 7, 2019, the Commission's Executive Director, Gwen Pinson, sent a letter to Augusta that outlined each of the violations found during the September 2018 inspection and established a timeline for the completion of remedial measures designed to bring the utility into legal compliance with federal pipeline safety regulations.¹⁷ The letter also proposed a civil penalty in the amount of \$37,500. To its credit, Augusta completed the necessary remedial work within the time allotted and Augusta's mayor attended a natural gas training seminar presented by the Public Service Commission jointly with the Kentucky Gas Association in May 2019. Operating personnel of the Augusta gas distribution system were also directed to attend a training seminar titled "Municipal and Small Operator Training" to be presented by the Public Service Commission and the Kentucky Gas Association in 2020. That operator training program unfortunately had to be canceled due to the outbreak of the COVID-19 virus. Although the violations identified by Inspector Holbrook in her September 17, 2018 inspection report have been corrected, the number of safety deficiencies found, the serious nature of several of those deficiencies, and Augusta's checkered history of noncompliance make the assessment of a civil penalty appropriate.

¹⁵ Hearing Video Testimony (HVT) of the August 20, 2019 Hearing, at 11:37:44–11:40:22.

¹⁶ *Id.* at 12:00:30–12:01:13.

¹⁷ See letter from Executive Director, Gwen Pinson, to Augusta Mayor, Michael C. Taylor, dated February 7, 2019, at Public Service Commission's IRS system site.

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. 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 C.F.R. § 190.223, as of December 31, 2011, for each violation for each day that the violation persists. As of December 31, 2011, the maximum civil penalty under 49 C.F.R. § 190.223 was \$100,000 per violation per day, not to exceed \$1,000,000 for any related series of violations. As amended, KRS 278.992(1) provides that the civil penalty shall not exceed the maximum civil penalty contained in 49 C.F.R. § 190.223, as amended. Because the initial inspection occurred prior to the effective date of the statutory amendments, the penalty amounts in effect prior to the amendments were applied.

In determining the amount of a penalty to be assessed, the Commission must consider the appropriateness of the penalty to 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.¹⁸ In addition, the Commission will consider the following:

1. The nature, circumstances, and gravity of the violation including any adverse impact on the environment;

¹⁸ KRS 278.992(1).

2. The degree of culpability;
3. History of prior offenses;
4. Any good faith in attempting to achieve compliance; and
5. Ability of the entity charged to continue in business.

The Commission may also consider within its discretion, the economic benefit gained, if any, from the violation and such other matters as justice may require.¹⁹

The Commission considers the gravity of the violation to be the most important mandatory penalty assessment consideration.²⁰ The Division of Inspections cited Augusta for 11 violations of federal pipeline safety regulations. Augusta has admitted that it committed each of those violations. Several of the violations are considered by the Commission to be serious and high in gravity. At least one has apparently continued to exist with knowledge of Augusta's utility since 2009.

Violation number 11 involves the defective installation in three of the four regulation stations operating by Augusta. Regulation 49 C.F.R. § 192.739 requires the inspection and testing of each pressure regulator station at intervals not to exceed 15 months but at least once each calendar year. Augusta's three regulator stations were so configured that the lock-up mechanism of each regulator could not be tested. Regulators exist for the purpose of controlling the pressure of natural gas as it flows through the distribution lines to the residences and places of business of the ultimate consumer. The regulator when operating properly ensures that the maximum safe operating pressure for the pipeline system is not exceeded. Failure of a lock-up mechanism on a regulator could

¹⁹ 49 C.F.R. § 190.225.

²⁰ Case No. 2017-00119, *Louisville Gas & Electric Company Alleged Failure to Comply with KRS 278.495, 807 KAR 5:022 and 49 C.F.R. Part 192* (Ky. PSC Mar. 6, 2018) at 26.

result in excessive gas pressure increasing the risk of leaks and possible explosion. Inspector Holbrook testified that three of the regulator stations were so configured that testing the lock-up mechanism was not possible.²¹ The inability to properly test the regulators was known to Augusta's gas utility at least as far back as 2009.²² A 2012 inspection report noted that Augusta had not inspected four relief regulators in either 2010 or 2011.²³ An independent contractor employed by Augusta noted the problem and recommended reconfiguration of the regulator stations in 2015, 2016, 2017, and in 2018 prior to the inspection, which once again found the identical violation.

The Commission also considers the violations of 49 C.F.R. § 192.723(b)(1) – failure to conduct a leak survey in the business district during 2017, and 49 C.F.R. § 192.311 – failure to properly repair a damaged plastic main, to be substantial in gravity. Placing a clamp, which is no more than a short-term temporary repair over a damaged and potentially leaking pipe rather than replacing it, represents assumption of an unreasonable risk that escaping natural gas will migrate through the ground and into a building where the chances of encountering an ignition source are a known hazard. It is also significant that this unacceptable condition was allowed to remain unaddressed for more than five years until the utility inspector happened to find it while reviewing the only record of pipe repair contained in the gas utility's business records. The failure to conduct a leak survey in Augusta's business district poses an increased risk to public safety because of higher concentrations of people in areas of commercial activity.

²¹ HVT of the Aug. 20, 2019 Hearing at 11:23:40 a.m.

²² See Division of Inspections' Exhibit 3, Inspection Report dated May 1, 2009.

²³ Division of Inspections' Exhibit 5, Inspection Report dated July 20, 2012.

A leak in Augusta's business district where large numbers of people can be expected to congregate in retail stores, restaurants, and other businesses poses a significant danger of bodily injury and possibly death to members of the public as well as substantial damage to property.

Augusta was cited for and admitted that in violation of 49 C.F.R. § 192.603(b), it failed to maintain records of installing and pressure testing new service lines, installation of excess flow valves, inspections of atmospheric corrosion, and had no records of all leaks detected and repaired. Without records, it cannot be determined with certainty that required safety procedures were actually performed. In cases where there is an absence of records, the burden of proof rests with the utility, and in cases such as the one before us, a lack of records can be presumed to mean that the required procedures were not followed. In like manner, Augusta had no properly trained personnel to conduct pipe soil readings as required by 49 C.F.R. § 192.805(b), and its supervisory personnel had not undergone drug and alcohol reasonable cause training as mandated by 49 C.F.R. § 199.113(c). These violations as well as the failure to conduct emergency procedure training for its employees as required by 49 C.F.R. § 192.615(b)(2) and that its emergency plan and its operation and maintenance plan were found to be in violation of 49 C.F.R. §§ 192.615 and 192.605 respectively demonstrate serious management deficiencies about which Augusta either knew or should have known. Considered as a grouping of what otherwise might be considered minor to moderate violations, they represent a disturbing picture of a utility that has lost its focus on the inherent dangers of natural gas, and above all, its duty to protect the public.

Augusta's natural gas utility is a small distribution system, which collected \$451,621 in 2018, and according to its 2018 audit report realized operating income of \$123,247. The Commission recognizes the limited ability of Augusta to pay a large civil penalty in view of its limited customer base and has taken the size of its gas utility into consideration in assessing a penalty. Nevertheless, a small utility is held to the same standard of compliance with federal safety standards as a large investor-owned utility. At some point, a prudent, small utility that cannot afford to operate in compliance with federal regulations might consider either selling to a larger entity with greater resources and expertise or perhaps closing its doors altogether in the interest of public safety. Augusta, although small, is an unregulated utility with the unfettered ability to raise its rates at will. The penalty hereinafter imposed will not adversely affect its ability to continue as an ongoing business concern. The Commission also recognizes that Augusta accepted responsibility for the violations and did not contest the accuracy of the inspection report or the testimony of Inspector Holbrook and that it acted quickly to bring its system into compliance after receiving notice of the violations. It is regrettable, however, that Augusta failed to address several of these known violations in previous years. Some are repeat violations cited in previous inspection reports.

The Commission considers the gravity of these continuing violations to be high, and Augusta's indifference to the violations, prior to the facing the threat of a civil penalty, disturbing.

After considering the evidence in light of the requirements of KRS 278.92(1) and 49 C.F.R. § 190.225, the Commission assesses the following penalties for the violations cited by Inspector Holbrook, all of which have been admitted by Augusta:

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 - \$ 500

Violation 9 - \$ 1,000

Violation 10 - \$ 1,000

Violation 11 - \$90,000

TOTAL: \$142,500

The Commission, in consideration of the size of Augusta's natural gas utility, hereby reduces the penalty by 75 percent to \$35,625. Augusta should be given credit for some but not all of the expenditures it has made to correct the deficiencies cited. Augusta shall be given credit for the purchase of a new odorometer in the amount of \$4,833 and the redesign and rebuilding of four regulator stations in the amount of \$5,170 for a total penalty assessment in the amount of \$25,622.

IT IS THEREFORE ORDERED that:

1. Augusta is assessed a civil penalty in the total amount of \$25,622 for the 11 violations set out in the body of this Order.
2. Augusta shall pay \$25,622 within 30 days of the date of this Order by cashiers or money order payable to the Kentucky State Treasurer, and mailed or

delivered to the Office of General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40601.

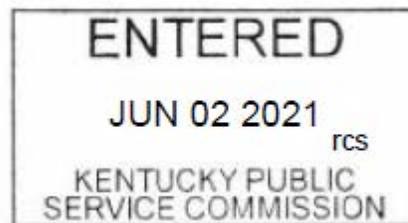
THIS IS A FINAL AND APPEALABLE ORDER OF THE PUBLIC SERVICE COMMISSION.

An application for rehearing may be filed with the Commission within 20 days after service of this Order as provided by KRS 278.400. Any appeal of this Order must be filed with the Franklin Circuit Court within 30 days after service of this Order or within 20 days after an application for rehearing has been denied by failure of the Commission to act or, within 20 days after service of the final Order, as set out in KRS 278.410.

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By the Commission

Vice Chairman Kent A. Chandler did not participate in the deliberations or decision concerning this case.



ATTEST:


Executive Director

Case No. 2019-00188

*City of Augusta Augusta Public Gas Project
219 Main Street
Augusta, KY 41002

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