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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

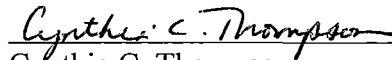
In the Matter of:

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

NOTICE OF FILING OF CITY OF AUGUSTA’S POST-HEARING BRIEF

Notice is given to all parties that the City of Augusta’s post-hearing brief has been submitted for filing into the record of this proceeding.

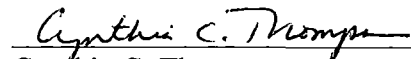
Respectfully Submitted,



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CERTIFICATE OF SERVICE

This is to certify that on this the 10th day of October, 2019, an original and ten copies were mailed to the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602-0615.



 Cynthia C. Thompson
 Legal Counsel, City of Augusta

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CITY OF AUGUSTA'S POST-HEARING BRIEF

On September 27th, 2019, the City of Augusta filed a motion for a one-week extension of time to file its post-hearing brief from October 4th, 2019 to October 11th, 2019. On October 8th, 2019, the Commission entered an Order granting such request and extending the time in which the City of Augusta had to file its post-hearing brief to October 11th, 2019. The City of Augusta submits this Brief in compliance therewith.

VIOLATIONS

The Commission Staff's Division of Inspections post-hearing brief provides the City of Augusta's responses to the eleven violations of pipeline safety standards, in which responses the City admitted all such violations. The City of Augusta (Augusta) concurs with the DOI post-hearing brief in that as there is no dispute as to the violations cited in the Commission's 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

The City of Augusta concurs with the first three paragraphs of the DOI's post hearing brief CIVIL PENALTY ASSESSMENT section, but further states, as provided by the Commission, KRS 278.992 (1) does not preclude it from considering factors other

than the three mandatory penalty assessment considerations.¹ Federal Law also provides that the Associate Administrator also may consider “such other matters as justice may require.”²

Other factors considered by the Commission include whether the non-compliance was admitted,³ whether the violation was willful,⁴ and whether the violation was a repeat violation, or there is an extensive history of non-compliance and repeated assurances of compliance that were not carried out.⁵ “Respondent’s history of prior offenses” is an assessment consideration applied under federal law by Pipeline and Hazardous Material Safety Administration.⁶

Application of Assessment Factors

1. Gravity

Violation 1. The DOI’s post-hearing brief states that “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 the DOI’s assessment, indicative of an overall laxness of attitude toward natural gas pipeline safety.”⁷

¹See Case No. 2017-00119, Louisville Gas & Electric Company- Alleged Failure to Comply with KRS 278.495, 807 KAR 5:022, and 40 CFR PART 192 (Ky. PSC March 16th, 2018) at 29.

² See 49 CFR Section 190.225 (b)(2)

³See Case No. 2017-00053, City of Liberty Gas Company- Alleged Failure to Comply with KRS 278.495, and 40 CFR PART 192 (Ky. PSC June 13th, 2017) at 11.

⁴See Case No. 2017-00119, Louisville Gas & Electric Company- Alleged Failure to Comply with KRS 278.495, 807 KAR 5:022, and 40 CFR PART 192 (Ky. PSC March 16th, 2018) at 30.

⁵See Case No. 2017-00053, City of Liberty Gas Company- Alleged Failure to Comply with KRS 278.495, and 40 CFR PART 192 (Ky. PSC June 13th, 2017) at 11, 12, 13.

⁶ See 49 CFR Section 190.225 (a)(3)

⁷ Division of Inspections Post-Hearing Brief, September 20th, 2019, at 6.

The City of Augusta vigorously denies that this violation indicates an overall laxness of attitude toward natural gas pipeline safety. Mayor Taylor's testimony at the hearing was that "if we got it we fix anything we can. If they ask for something they get it now."⁸ Mayor Taylor's testimony reflects Augusta's position that the safe operation and maintenance of its gas system is of utmost importance. This position is reinforced by the prompt correction of all noted deficiencies, and also in the purchase of the new odorometer. Augusta agrees that the gravity of this violation is low, and in considering the testimony and circumstances, believes that the assessment of a penalty for this violation is inappropriate.

Violation 2. Augusta admits that its failure to train could have resulted in an unacceptable risk to public safety in the event of a gas pipeline emergency. Augusta believes the gravity of such violation should be considered low since Augusta did not experience a gas pipeline emergency in which Augusta's gas system personnel did not properly respond. Augusta agrees, however, that any known potential for avoidable risk, where a gas system is involved, such as the failure to train for a gas pipeline emergency, is unacceptable.

Violation 3. While Augusta admitted it did not conduct its leakage survey in its business district in 2017, the testimony at the hearing indicates that the weather was a factor in scheduling such survey⁹. As the leakage survey was conducted within three months of the deadline, as soon as weather and scheduling allowed, Augusta believes that the gravity of such violation should therefore not be considered serious. Augusta believes

⁸Video Transcript of Hearing ("H.V.T.") at 2:19:03 PM.

⁹HVT at 1:41:03 PM.

that the assessment of a penalty for this violation would be inappropriate, as this violation was admitted and was not a willful or a repeat deficiency.

Violation 4. Augusta agrees that the gravity of the failure to inspect its critical valves and the inability to locate its critical valves in 2016 should be considered low to moderate. However, as this deficiency was admitted, was not a repeat deficiency, and was clearly not a willful violation, the assessment of a penalty for this violation would be inappropriate.

Violation 5. Augusta admitted that it made a temporary repair that was not made permanent in a timely manner. The testimony at the hearing indicates that such matter was “an oversight”.¹⁰ As the improper repair did not occur in a high population area,¹¹ Augusta believes that the gravity of such violation should be considered low to moderate. Such violation was admitted, was not a repeat violation, and was not willful, and Augusta therefore believes that the assessment of a penalty for this violation would be inappropriate.

Violation 6. Augusta gas system supervisor Darian Blevins was qualified in Monitoring Corrosion Control in 2007, 2010, 2013 and 2018. Augusta contracts with a qualified third party, namely ARC Randolph & Associates, to conduct Operator Qualifications training. During this training in 2016, the City’s operators should have been qualified on I-1, Pipe to Soil Readings. Instead, they were qualified only on I-10, Monitor Atmospheric Control. Before the 2016 training, module I-1 and I-10 were both contained in Module I-1a, (Monitor Atmospheric Control). When the modules were broken into separate modules, neither the City nor the qualified third party contractor, ARC Randolph

¹⁰HVT at 1:31:29 PM.

¹¹ Division of Inspections Post-Hearing Brief, September 20th, 2019, at 8.

& Associates, noticed the need to qualify for an additional module. The gravity of this violation should be considered low, given these circumstances, and as this violation was admitted, was not a repeat violation and clearly was not willful, the assessment of a penalty for this violation would be inappropriate.

Violation 7. While Augusta admits the drug and alcohol reasonable cause training is very important, and should have been completed sooner, Augusta has always maintained a random drug testing program of all of its gas system employees, and therefore the gravity of the gas supervisor's failure to have the required one hour drug and alcohol reasonable cause training should be considered low. The assessment of a penalty for this violation would be inappropriate as this violation was admitted, and was not a willful or repeat violation.

Violation 8. Augusta agrees that the gravity of Violation 8 is low, given the fact that the annual report was submitted less than one month after the deadline. Augusta believes that the assessment of a penalty for this violation would be inappropriate as this violation was admitted, and was not a willful or repeat deficiency.

Violations 9 & 10. Augusta agrees that the gravity of Violation 9 and 10 are both low, and Augusta believes that the assessment of a penalty for this violation would be inappropriate given the fact that neither was a repeat deficiency, and that neither violation was willful.

Violation 11. While DOI considers that gravity of violation 11 to be high, Augusta disagrees that the gravity of this violation should be considered high for the reasons below.

DOI's post hearing inspection brief states: "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."¹² In its defense, Augusta has inspected and tested its regulators on an annual basis, including the relief valves at each station. However, the configuration of some of its stations previously prohibited testing for lock-up, which is only one component of the testing and inspection process, of the regulator(s). The annual regulator station inspections typically included valve operation, leak checks, and confirmation of set-points of each regulator. In addition, each station contains a relief valve that was tested and inspected in accordance with 49 CFR 192.739.

DOI's post hearing inspection brief states: "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."¹³ Augusta's regulator stations contain safety devices to ensure that the mains downstream will not exceed its maximum allowable operating pressure (MAOP). The City of Augusta's regulator stations utilize pressure regulators to reduce and control the pressure on the pipelines downstream of the station and contains relief valves (the "safety devices"),

¹² Id.

¹³ Id.

which are used downstream of the pressure regulators to protect the downstream system from overpressure. These relief valves, which are designed to have sufficient capacity to maintain a safe pressure, have been inspected and tested annually in accordance with 49 CFR 192.739 to ensure they prevent the pipeline from being over-pressurized in the unlikely event a pressure regulator fails open.

DOI's post hearing inspection brief states: "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."¹⁴ In response, Augusta does not understand what is meant by "lockup mechanism on a regulator". As noted above, a "lockup test" should be performed on a regulator as one part of the annual inspecting and testing to ensure the regulator will shut completely when there is no downstream flow demand. Augusta disagrees that the downstream facilities would be subject to overpressure if a regulator were to fail because the specific purpose of the relief valves that are installed at each of the stations is to prevent overpressure. These relief valves have been and will continue to be tested and inspected as required. The DOI did not take into consideration all the factors and additional equipment installed at the stations that provide over pressure protection.

DOI's post hearing inspection brief states: "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

¹⁴Id, at 8, 9.

mechanism.”¹⁵ Again, Augusta does not understand what is meant by “lockup mechanism on a regulator”.

DOI’s post hearing inspection brief states: “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.”¹⁶ Augusta disagrees that the inability to conduct a lockup test on the regulators, which is one component of the inspection and testing process, poses a “grave risk”. One reason is because the stations were designed to include pressure relief valves, whose purpose is to prevent over-pressuring of the pipeline. Furthermore, a regulator that fails a lockup test generally only results in the regulator allowing minor amounts of gas to pass through the regulator, not full line pressure, and that’s only if/when there is no flow or load on the pipeline. Therefore, Augusta believes this does not constitute a “grave risk” to the system, does not compromise the integrity of the city’s gas system, would not overpressure the pipeline, and would not lead to catastrophic consequences.

Augusta also notes that the inspection report from Public Service Commission inspection conducted by Joel Grugin on April 27th, 2015 by PSC, found all regulator stations to be satisfactory,¹⁷ and that between the time of Mr. Grugin’s and Ms. Holbrook’s 2018 inspection, which found the regulator stations to be deficient,¹⁸ no changes were made to any of the regulator stations.

¹⁵Id., at 9.

¹⁶ Id.

¹⁷HVT at PSC Exhibit 7.

¹⁸HVT at PSC at Exhibit 1.

Augusta admits as noted by the DOI post hearing brief that Augusta was cited for failing to inspect its regulator stations back in 2009 and 2012,¹⁹ but notes that these failures to inspect violations are not at issue in this proceeding, and, in any event, these violations occurred many years ago. Furthermore, the deficiency concerning the configuration of the regulator station is a different violation, and therefore is not subject to being characterized as a repeat violation.

Augusta admits that qualified third-party inspection reports of the regulator stations had previously included recommended that three of four of the regulator stations be reconfigured to allow complete testing. Augusta further admits that such recommended reconfigurations should have been completed as a result of such recommendations. The testimony at the hearing indicates that Augusta leadership is committed to invest the time and funds as are needed to operate its gas system in a safe manner for the public and Augusta's employees.²⁰

2. Good Faith

Augusta does not dispute its legal obligations in achieving compliance with all noted deficiencies, but notes that that the good faith exhibited in achieving prompt and full compliance of all violations after notification of the violations is extremely rare, and that such achievement of full compliance is a factor to consider, and should be considered by the Commission in the assessment of a penalty.

¹⁹ HVT at PSC Exhibit 3 and 5.

²⁰HVT at 2:19:03 PM.

3. Size of Operator

As noted by the Division of Inspections post-hearing brief, Augusta is a small gas system. Per Augusta's Annual Report for Calendar Year 2018, Gas Distribution System, the Augusta gas system consists of 451 services.²¹ Augusta agrees that the small size of Augusta's gas system should be considered by the Commission as a mitigating factor in the assessment of any penalty.

CONCLUSION

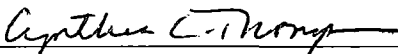
Regarding the gravity of the violations, the Division of Inspections asserts that violations 1, 8, 9, & 10 are low, violation 3 is serious, violation 5 is moderately high, and violation 11 is high. Augusta believes that most violations should be classified as low or moderate for the reasons given herein. Augusta admits it conducted the business district leak survey (violation 3) three months late, but is committed to timely conduct these extremely important surveys in the future. The gravity of violation 5, repairing a 2-inch plastic main in a low population density area, without a permanent repair made until it was brought to Augusta's attention, should be assessed as low, and was not a willful or a repeat violation. The gravity of violation 11 arguably depends on whether certain safety mechanisms in place before the reconfigurations, as set forth herein, are relevant to the analysis. Augusta believes these safety mechanisms are in fact relevant and should be considered by the Commission in classifying the gravity of violation 11.

Augusta also requests that the Commission consider the evidence in the record that Augusta does not have a history of non-compliance, or of recent repeat violations, or of attempts to excuse deficiencies. In fact, Augusta admitted all violations, and Augusta

²¹City of Augusta's Response to Commission Order, July 15, 2019, at Exhibit 8.

then promptly set out to remedy, and did remedy, all deficiencies in a timely manner. Augusta requests that the Commission fully consider Augusta's good faith, small size, and clear commitment to the safe operation of its gas system.

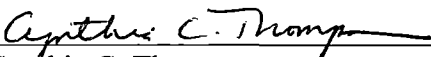
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