

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the Matter of the General Investigation Into)
Operations of Kansas Gas Service, a Division)
of ONE Gas, Inc., Regarding the Natural Gas) Docket No. 17-KGSG-218-GIP
Incident that Occurred at 9th Street and)
Magnolia Avenue in Salina, Saline County,)
Kansas.)

ORDER CLOSING GENERAL INVESTIGATION

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the files and records, and being duly advised, the Commission finds and concludes as follows:

I. BACKGROUND

1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 60101 *et seq.*) requires all pipelines transporting natural gas to meet minimum safety requirements as promulgated by the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA). Under the Act, the State of Kansas is to obtain jurisdiction over intrastate natural gas pipelines, provided the state pipeline safety program meets PHMSA certification requirements.

2. The Commission, under the authority of K.S.A. 66-1,150, has assumed jurisdiction of safety oversight for all intrastate natural gas pipelines and is annually certified by PHMSA. PHMSA requires the Commission to investigate natural gas incidents that have resulted in personal injury requiring hospitalization, a fatality, property damage exceeding \$50,000, the release of more than 3,000 MCF of natural gas, and/or other incidents otherwise considered significant.

3. On December 9, 2016, Commission Staff (Staff) filed its Motion to Open Docket.¹ Staff requested the Commission open a general investigation to examine a natural gas release that occurred at the intersection of 9th Street and Magnolia Avenue within the city limits of Salina, Kansas.² While no injuries have been associated with this specific incident, the costs associated with the repair exceed \$50,000.³ Kansas Gas Service, a division of ONE Gas, Inc. (KGS), operates the pipeline associated with this incident.⁴ KGS operates within the State of Kansas as a natural gas public utility and is lawfully certified to operate as such. The National Response Center was notified of the incident on October 16, 2016, and this situation was assigned Incident Report #1161573.⁵

4. On December 22, 2016, the Commission adopted Staff's recommendation and issued an Order Opening General Investigation.

5. On June, 20, 2017, Staff filed its Report and Recommendation.⁶ Staff recommended the Commission issue a Penalty Order to Mr. Tom Kemp d/b/a Kemp Construction L.L.C. of Derby, Kansas (Kemp), for failure to provide timely notice of excavation.⁷

II. FINDINGS AND CONCLUSIONS

6. Pursuant to K.S.A. 66-1,150 *et seq.*, the Commission is authorized to adopt rules and regulations as may be necessary to be in conformance with the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 60101 *et seq.*), as amended. Accordingly, pursuant to this authority the

¹ Motion to Open Docket (Dec. 9, 2016) (Motion to Open Docket).

² *See id.* at p. 2.

³ *See id.* at p. 4. (Note: Page 4 of the Motion may also be referenced as page 2 of Staff's November 17, 2016, Report and Recommendation attached to Staff's Motion to Open Docket.)

⁴ *See id.* at p. 1.

⁵ *See id.*

⁶ Notice of Filing of Staff's Report and Recommendation (Jun. 20, 2017) (Report and Recommendation)

⁷ *See id.* at p. 3.

Commission has jurisdiction to investigate intrastate natural gas incidents that have resulted in personal injury requiring hospitalization, a fatality, property damage exceeding \$50,000, the release of more than 3,000 MCF of natural gas and/or other incidents otherwise considered significant.⁸

7. Staff's Report and Recommendation, filed in this docket on June 20, 2017, is hereby adopted and incorporated by reference. The Commission has reviewed Staff's June 20, 2017 Report and Recommendation, and hereby adopts the findings and recommendations contained therein as its own except as limited, below.

8. Staff conducted discovery on KGS and Kemp, in addition to interviewing City of Salina and AT&T personnel.⁹ With this information, Staff was able to reconstruct a timeline of events leading up to the incident which gave rise to this general investigation.¹⁰ Kemp was installing telecommunications cable using a horizontal excavation technique when Kemp hit a natural gas main operated by KGS.¹¹ Staff concluded Kemp was operating without a valid utility locate ticket at the time the incident occurred.¹² Staff noted the failure to have a valid locate request while excavating and/or a failure to maintain markings is a violation of the Kansas Underground Utility Damage Prevention Act.¹³ The incident caused approximately \$103,000 in damages to KGS's pipeline.¹⁴ Staff recommended the Commission issue a Penalty Order to Kemp for failure to provide timely notice of excavation.¹⁵

⁸ For reference, the Commission's adoption of PHMSA regulations, reporting requirements and enforcement procedures may be found at K.A.R. 82-11-1 *et seq.*

⁹ Report and Recommendation, p. 2.

¹⁰ *See id.*

¹¹ *See id.* at pp. 1-2.

¹² *See id.*

¹³ *See id.* at p. 2.

¹⁴ *See id.*

¹⁵ *See id.* at p. 3.

9. This proceeding was opened to investigate the natural gas release that occurred at the intersection of 9th Street and Magnolia Avenue within the city limits of Salina, Kansas. The Commission finds Staff's June, 20, 2017, Report and Recommendation satisfies the Commission's obligation to investigate natural gas incidents. Accordingly, the Commission turns its attention to the issuance of a civil penalty order as recommended by Staff.

10. This docket was conducted as a general investigation for the purpose of investigating a particular natural gas incident. Because of this, Kemp has not yet been made a party to the proceeding. The Commission finds this proceeding is not the appropriate docket to levy any civil penalty against Kemp. Accordingly, the Commission finds and concludes a new docket for the issuance of a Kansas Underground Utility Damage Prevention Act civil penalty shall be opened against Kemp.

11. Regarding Commission action related to Kemp arising out of this general investigation, the Commission limits its adoption of the findings and recommendations in this proceeding to opening a new docket and issuing an initial penalty order. The Commission reserves its authority to weigh evidence and determine an appropriate civil penalty for Kemp in such a separate proceeding. Accordingly, the Commission will not make a final determination on a civil penalty for Kemp until Kemp has been afforded all necessary due process requirements. Kemp shall be afforded the same rights and opportunity to respond to Staff's recommendation as any other Kansas Underground Utility Damage Prevention Act civil penalty respondent.

12. The Commission finds the record for this general investigation is now complete and no further action is required from Staff or KGS at this time. Accordingly, the Commission finds and concludes this docket should be closed.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) A Kansas Underground Utility Damage Prevention Act penalty order docket shall be opened against Mr. Tom Kemp d/b/a Kemp Construction L.L.C. of Derby, Kansas, for failure to provide timely notice of excavation.

(B) This general investigation shall be deemed complete and the docket closed.

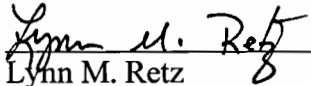
(C) Parties have 15 days, plus three days if service is by mail, from the date of service of this Order to petition the Commission for reconsideration or request a hearing, as provided in K.S.A. 77-542.¹⁶

(D) The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it may deem necessary and proper.

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: JUL 11 2017


Lynn M. Retz
Secretary to the Commission

REV

Order Mailed Date

JUL 12 2017

¹⁶ See also K.S.A. 77-537(b); K.S.A. 66-118b; K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

17-KGSG-218-GIP

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on JUL 11 2017.

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/s/ DeeAnn Shupe

DeeAnn Shupe

Order Mailed Date
JUL 12 2017