

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

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

In the Matter of the City of Ford, Kansas,)
Regarding Violations of Kansas Pipeline)
Safety Regulation 49 CFR Part 192 as) Docket No. 17-FORP-219-SHO
Adopted by K.A.R. 82-11-4, and a Violation)
of K.A.R. 82-11-6(b).)

ORDER TO SHOW CAUSE

NOW, the above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

I. BACKGROUND

1. 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. The Commission has adopted such regulations.¹ Such rules and regulations are applicable to:

(1) All public utilities and all municipal corporations or quasi-municipal corporations transporting natural gas or rendering gas utility service; (2) all operators of master meter systems, as defined by 49 C.F.R. § 191.3; (3) all operators of privately or publicly owned pipelines providing natural gas service or transportation directly to the ultimate consumer for the purpose of manufacturing goods or generating power; and (4) providers of rural gas service under the provisions of K.S.A. 66-2101 through 66-2106, and amendments thereto.²

2. Pursuant to K.S.A. 66-1,151, the Commission is authorized to impose civil penalties for violations of the gas pipeline safety rules and regulations. Penalties may not exceed

¹ For reference, the Commission's adoption of Natural Gas Pipeline Safety regulations may be found at K.A.R. 82-11-1 through K.A.R. 82-11-11. The Commission's Kansas Underground Utility Damage Prevention Act regulations may be found at K.A.R. 82-14-1 through K.A.R. 82-14-6.

² K.S.A. 66-1,150(a).

\$25,000 for each violation for each day a violation persists.³ Additionally, the maximum civil penalty shall not exceed \$1,000,000 for any related series of violations.⁴

3. Pursuant to K.A.R. 82-1-237, the Commission has the authority to investigate a party under its jurisdiction and order a hearing on its own motion when the Commission believes the party is in violation of the law or any order of the Commission. K.A.R. 82-11-6(e) provides that a show cause hearing may be held by the Commission when all other reasonable measures have failed to produce operator compliance, or when non-compliance presents an imminent danger to persons or property.

4. The City of Ford, Kansas ("City" or "Ford"), operates a municipal natural gas utility with approximately eight miles of pipeline serving 127 customers.⁵ Accordingly, pursuant to K.S.A. 66-1,150 *et seq.* and K.A.R. 82-11-1 *et seq.*, the City is subject to the Commission's pipeline safety regulations.

5. On November 17, 2016, Commission Staff (Staff) prepared a Report and Recommendation wherein Staff expresses concerns regarding the condition of the City's natural gas distribution system as well as the City's ability to operate and maintain the system.

6. On August 23, 2016, Staff completed its most recent annual inspection of the City. Regarding external corrosion control, according to Staff and to the best of Staff's knowledge, a large portion of Ford's natural gas distribution system does not meet cathodic protection regulatory requirements.⁶ Specifically, a rectifier station was found to be inoperable.⁷ Regarding atmospheric corrosion control, Staff found that virtually all of the City's above

³ K.S.A. 66-1,151

⁴ K.S.A. 66-1,151.

⁵ See Staff's Report and Recommendation, p. 2 (Nov. 16, 2016) (Report and Recommendation).

⁶ See *id.* at p. 1.

⁷ See *id.* at p. 2.

ground gas piping had no protective coating and exhibited atmospheric corrosion.⁸ Additionally, the City's records demonstrate a lack of knowledge necessary to operate a natural gas distribution system, with the City's most recent annual report indicating 17% of the gas purchased in the preceding year was lost or unaccounted for.⁹ Finally, Staff provided a history of Notice of Probable Noncompliance (PNC) issued to the City, as well as when responses were received.¹⁰ Staff's summation indicates that over the last five years the City has consistently failed to respond to Staff PNCs regarding pipeline safety regulatory compliance.

7. Staff recommends a civil penalty be issued to the City in the amount of \$6,000 for violations of 49 C.F.R. 192.463 and 49 C.F.R. 192.479 as adopted by K.A.R. 82-11-4, and K.A.R. 82-11-6(b). In the alternative, Staff recommends the Commission reduce the penalty to \$500 on condition the City hire a consultant to rectify the cathodic and accounting system concerns. Pursuant to K.S.A. 66-1,152, the Commission has the authority to compromise on such a penalty.

II. FINDINGS OF FACT

8. Staff's Report and Recommendation, dated November 17, 2016, is hereby adopted and incorporated by reference into this Order. The findings contained within Staff's Report and Recommendation forms the basis for the Commission's issuance of this Order to Show Cause.

9. The Commission finds Staff's Report and Recommendation dated November 17, 2016, indicates the City of Ford has committed multiple violations of Kansas Gas Pipeline Safety Regulations as set forth in Counts 1 through 3, below.

⁸ See *id.*

⁹ See *id.* at p. 1. Third party contractors have verified the system is not leaking, but Staff indicated the ability to account for gas sales and lost revenue indicate the system will have difficulty maintaining safe operations due to lack of funds. See Staff's Report and Recommendation, p. 1.

¹⁰ See Staff's Report and Recommendation, p. 2.

10. The Commission further finds the alleged violations, if proven to be valid, would constitute violations of Kansas Administrative Regulations and various provisions of the Federal Natural Gas Pipeline Safety Regulations, as adopted by the Kansas Administrative Regulations. The alleged violations are more fully set out in the following counts.

Count 1

11. 49 C.F.R. 192.463 as adopted by K.A.R. 82-11-4, External Corrosion Control: Each cathodic protection system . . . must provide a level of cathodic protection that complies with one or more of the applicable criteria contained in Appendix D of 49 C.F.R. Part 192. A rectifier station was found to be inoperable in August of 2016. Ford's contractor had previously informed the City of the criteria not being met in April of 2016. An inoperable rectifier station is an apparent violation of 49 C.F.R. 192.463 as adopted by K.A.R. 82-11-4.

Count 2

12. 49 C.F.R. 192.479 as adopted by K.A.R. 82-11-4, Atmospheric Corrosion Control: Each operator must clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere. The August 2016 inspection found that virtually all aboveground gas piping in the system had no protective coating and exhibited atmospheric corrosion. Failing to clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere is an apparent violation of 49 C.F.R. 192.479 as adopted by K.A.R. 82-11-4.

Count 3

13. Return of Evaluation Form as adopted by K.A.R. 82-11-6: Each completed evaluation form in [described in K.A.R. 82-11-6(a)] shall be signed by the operator and returned to the gas pipeline safety section within 30 calendar days of the date the evaluation letter and evaluation form were received by the operator. Each evaluation form shall detail the actions

taken by the operator, or shall set forth a proposed plan to bring the operator's system into compliance with the applicable safety standards. As detailed in Staff's Report and Recommendation, the City of Ford has yet to respond to Staff's evaluation issued August 23, 2016, and has an extensive history of failing to respond timely to Staff's inspection results. Failure to respond to and return the evaluation letter and evaluation form detailing the actions taken by the operator, or setting forth a proposed plan to bring the operator's system into compliance with the safety standards [described in Article 11 of Kansas Administrative Regulations chapter 82] is an apparent violation of K.A.R. 82-11-6(b).

III. CONCLUSIONS OF LAW

14. The Commission finds Staff's investigation shows the City has committed multiple violations of Kansas Gas Pipeline Safety Regulations as set forth in Counts 1 through 3, above.

15. 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.

16. The Commission concludes pursuant to K.S.A. 66-1,151 each of the foregoing alleged violations, if proven to be valid, constitutes a separate and distinct violation subject to sanctions or civil penalties by the Commission of up to \$25,000 for each violation for each day that the violation persists.¹¹ Additionally, the maximum civil penalty shall not exceed \$1,000,000 for any related series of violations.¹² The Commission further concludes Pursuant to K.A.R. 82-1-237 and K.A.R. 82-11-6(e), a proceeding with regard to the alleged violations at issue in

¹¹ K.S.A. 66-1,151.

¹² K.S.A. 66-1,151.

Counts 1 through 3, as set forth above, is necessary and appropriate. The Commission finds and concludes a show cause proceeding is required to produce operator compliance.

17. The Commission hereby finds and concludes the City of Ford, Kansas, shall be required to enter an appearance before the Commission within the next 30 days and show cause as to why the Commission should not impose the full monetary civil penalty as recommended by Staff, or any other penalty as permissible by law.

18. Specifically, the City of Ford, Kansas is hereby directed to show any and all remedial action taken to correct the serious and concerning discoveries discussed in Staff's Report and Recommendation.

19. The Commission finds and concludes a hearing may be required after reviewing the Answer provided by the City of Ford. The Commission hereby elects not to schedule an evidentiary hearing pending the presentation of information by the City of Ford, Kansas in its Answer to this Show Cause Order.

20. If the City fails to appear or participate in this proceeding as ordered by the Commission, the City may be held in default pursuant to K.S.A. 77-520. If such default occurs, a judgment and civil penalty may be assessed against the City.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) The City of Ford, Kansas, is hereby made a party to this proceeding and shall enter an appearance in this proceeding within thirty (30) days from the date of service of this Order.

(B) The City of Ford, Kansas, shall provide an Answer to this Order identifying any and all remedial action taken to correct the serious and concerning discoveries discussed in Staff's Report and Recommendation. This response shall be due within thirty (30) days from the date of service of this Order.


(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. 77-542.¹³

(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.

Emler, Chairman; Albrecht, Commissioner; Apple, Commissioner

Dated: DEC 22 2016



Amy L. Green
Secretary to the Commission

Order Mailed Date

DEC 23 2016

¹³ K.S.A. 77-537(b); K.S.A. 66-118b; K.S.A. 77-529(a)(1).

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chair Jay Scott Emler
Commissioner Shari Feist Albrecht
Commissioner Pat Apple

FROM: Edye Leslie, Pipeline Safety Inspector
Leo Haynos, Chief of Energy Operations and Pipeline Safety
Jeff McClanahan, Director of Utilities

DATE: November 16, 2016

SUBJECT: Docket Number: 17- ForP- 219- SHO
In the Matter of the City of Ford, Kansas, Regarding Violations of the
Kansas Pipeline Safety Regulations 49 CFR Part 192 as adopted by
K.A.R. 82-11-4, and a Violation of K.A.R. 82-11-6(b) .

EXECUTIVE SUMMARY:

Staff is recommending the Commission issue an Order requiring the City of Ford, Kansas ("City" or "Ford"), to show cause as to why it should not be penalized \$6,000 for failing to comply with Kansas Pipeline Safety Regulations. Recognizing the financial condition of the municipal operation, Staff recommends the Commission provide Ford with the alternative of reducing the penalty to \$500, if the City hires an outside consultant to repair its cathodic protection system by February 1, 2017, and it establishes an accounting system that correctly accounts for gas purchases and sales.

The penalty recommendation is based on outstanding Notices of Probable Noncompliance (PNCs) issued by Staff and Staff's records which demonstrate Ford has repeatedly failed to timely reply to PNCs.

To the best of Staff's knowledge, a large portion of the Ford natural gas distribution system currently does not meet cathodic protection regulatory requirements. Although risk of pipe failure is not considered an immediate safety concern, a continued failure to maintain cathodic protection will place the integrity of the system at risk. In addition to regulatory compliance concerns, Ford's records demonstrate a lack of knowledge necessary to operate a natural gas distribution system. In its most recent annual report filed with the Commission, Ford states 17% of the gas it purchased in the preceding year was lost or unaccounted for. Although third party contractors have verified the system is not leaking, the inability to account for gas sales and revenue from the lost gas indicates a system that will have difficulty maintaining a safe gas system because of lack of necessary funds to pay for improvements.

BACKGROUND:

Ford operates a municipal natural gas utility with eight miles of pipeline serving 127 customers. As such, it is subject to Kansas Pipeline Safety Regulations K.A.R. 82-11-1 et seq. The Commission is the state agency empowered to administer the pipeline safety regulations. As part of this duty, Staff regularly inspects Ford's natural gas utility operations to assure compliance with regulations. Staff last completed an Annual Inspection for the City on August 23, 2016, and discovered two PNCs with pipeline safety regulations as follows:

- 49 CFR Part 192.463 as adopted by K.A.R. 82-11-4, External Corrosion Control: Each cathodic protection system...must provide a level of cathodic protection that complies with one or more of the applicable criteria [listed in regulations]. A rectifier station was found to be inoperable in August of 2016. Ford's contractor had previously informed the City of the criteria not being met in April 2016.
- 49 CFR Part 192.479 as adopted by K.A.R. 82-11-4, Atmospheric Corrosion Control: Each operator must clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere. The August 2016 inspection found that virtually all above ground gas piping in the system had no protective coating and exhibited atmospheric corrosion.

Regarding these probable violations of pipeline safety regulations, Staff issued PNCs to Ford on August 29, 2016, and sent emails to Ford on September 6 and 12 reminding them of the reply due date of October 4, 2016. As of November 16, 2016, a reply has not been received. Over the last five years, Ford has consistently failed to respond to Staff PNCs regarding pipeline safety regulatory compliance.

The table below provides a summary of Ford's untimely responses to Staff's PNCs:

Probable Violation	Date issued	Date Response Due	Date Response Received	Date Compliance Achieved
192.463 Corrosion	8/23/2016	10/4/2016	None at this date	Unknown
192.479 Corrosion	8/23/2016	10/4/2016	None at this date	Unknown
191.11 Annual Rpt	6/30/2016	8/5/2016	8/9/2016	8/9/2016
191.11 Annual Rpt	5/27/2015	7/4/2015	9/4/2015	9/4/2015
192.605 Procedures	6/6/2012	8/18/2012	4/25/2013	4/25/2013
192.725 Procedures	6/6/2012	8/18/2012	4/25/2013	4/25/2013
192.225 Procedures	6/6/2012	8/18/2012	4/25/2013	4/25/2013
192.381 Procedures	6/6/2012	8/18/2012	4/25/2013	4/25/2013
192.616 Public Awareness	7/30/2012	9/12/2012	7/9/2013	7/9/2013
192.616 Public Awareness	5/11/2010	6/19/2010	3/9/2011	3/9/2011
192.465 Corrosion	5/11/2010	6/19/2010	3/9/2011	3/9/2011
192.727 Procedures	5/11/2010	6/19/2010	3/9/2011	3/9/2011

ANALYSIS:

Kansas pipeline safety regulations establish minimum requirements for operators of natural gas pipeline systems. The purpose of the regulations is to provide for the public safety of people living and working around underground pipelines. Ford operates a natural gas pipeline distribution system which obliges the City to meet minimum safety requirements for its citizens and the public generally. Staff's latest findings of safety violations are concerned with corrosion of metallic pipelines in the system. While leak surveys indicate corrosion is not an immediate threat to the system, failure to make the necessary repairs will only lead to further deterioration of the piping and more expensive future repairs.

As noted above, Ford has continually demonstrated a disregard or inability to meet its minimum pipeline safety obligations. Over the last five years, Staff has issued Ford nine PNCs for which we have not received a timely response. Using this record of past performance, Staff has calculated a proposed civil penalty using a standard calculation method shown in Attachment 1. The penalty calculation methodology assigns a base penalty amount for each violation and multiplier for any action (or inaction) that demonstrates a disregard for public safety. The methodology also accounts for the ability of the operator to pay the penalty. Using this methodology, Staff calculated a civil penalty of \$6,000 would be appropriate for Ford's latest failure to comply with pipeline safety regulations. Because the primary goal of pipeline safety regulations is compliance with applicable laws, Staff recommends the Commission also consider reducing the penalty to \$500, if Ford corrects the PNCs within the near future and develops a means to correctly account for its gas purchases and sales. A reduction in a civil penalty is allowed by K.S.A. 66-1,152 if the expenditures are made for a project that benefits pipeline safety or the community as a whole.¹ Staff notes that correction to the PNC involving cathodic protection will require Ford to acquire the services of a contractor to perform the work because Ford does not have the necessary expertise to perform the task.

RECOMMENDATION:

Staff recommends a civil penalty be issued to the City of Ford in the amount of \$6,000 for violations of 49 CFR Part 192.463 and 192.479 as adopted by K.A.R. 82-11-4, and K.A.R. 82-11-6(b). Staff further recommends the Commission approve an alternative to the penalty amount that would allow Ford to reduce the penalty to \$500 and hire a consultant to remediate the cathodic protection problems in its system. As part of the penalty reduction, Staff also recommends Ford be required to reconcile its accounting system to accurately account for purchases and sales of natural gas.

¹ K.S.A. 66-1,152. Same; compromise of penalty; alternative to civil penalty. Any civil penalty may be compromised by the state corporation commission. ... In lieu of all or part of the civil penalty, the commission may consider and approve, before or at hearing, a requirement, negotiated with commission staff, that the person charged make payment to or expenditures for a project that is related to natural gas pipeline safety or underground utility damage prevention and benefits the industry or community as a whole.

Kansas Corporation Commision Staff Pipeline Safety Penalty Calculator

Penalty Categories

	<u>Base penalty</u>	<u>Yes/No</u>	<u>Calculated Base Penalty</u>	<u>Explanation (if applicable)</u>
Failure to implement/perform requirement	\$500.00	Yes	\$500.00	City of Ford failed to maintain Cathodic Protection as required per 192.463(b)(2) as adopted by K.A.R. 82-11-4 and failed to take action as required by K.A.R. 82-11-4(n).
Failure to implement/perform requirement	\$500.00	Yes	\$500.00	City of Ford failed to Respond to Staff PNCs as per K.A.R. 82-11-6(b)
Failure to implement/perform requirement	\$500.00	Yes	\$500.00	City of Ford failed to comply with requirements to control atmospheric corrosion required by 192.479 as adopted by K.A.R. 82-11-4
\$1,500.00 Total Base Penalty				

Aggravating Circumstances

<u>Description</u>	<u>Multiplier</u>	<u>Yes/No</u>	<u>Calculated Multiplier</u>	<u>Explanation (if applicable)</u>
<i>Select ONLY the most serious of the three circumstances below</i>				
Violation occurred in class 3 location	2	Yes	2	City of Ford is in a class 3 location
Repeat violation within past 5 years	2	Yes	2	3 violations repeated within a 5 yr period
No response to PNC	2	Yes	2	Current no response, past consistent with up to a year delay
Violation not promptly corrected	2	Yes	2	City notified of deficiency, no effort to correct
No measures taken to prevent recurrence	2		1	
Operator uncooperative in resolution of the violation	5		1	
Gross negligence/willful or wanton conduct	10		1	
16 Aggravating Multiplier				
\$24,000.00 Total Aggravated Penalty				

Mitigating Circumstances

<u>Operator Resources (Dist.)</u>	<u>Multiplier</u>	<u>Yes/No</u>	<u>Calculated Multiplier</u>	<u>Explanation (if applicable)</u>
meters < 250	0.25	Yes	0.25	
0.25 Mitigating Multiplier				
\$6,000.00 Final Recommended Penalty Amount				

CERTIFICATE OF SERVICE

17-FORP-219-SHO

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 DEC 22 2016.

ATTN: CITY CLERK
CITY OF FORD
310 E 8TH ST
PO BOX 108
FORD, KS 67842

ROBERT VINCENT, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
r.vincent@kcc.ks.gov

/S/ DeeAnn Shupe

DeeAnn Shupe

Order Mailed Date

DEC 23 2016