

**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 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).)

COMPLIANCE ORDER

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 per 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 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 expressed 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 December 22, 2016, the Commission issued an Order to Show Cause against the City of Ford citing Staff's enumerated concerns.⁶ The Commission ordered the City to enter its appearance in the docket and to provide an answer identifying any and all remedial action taken to correct concerns cited in Staff's Report and Recommendation.⁷

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 Order to Show Cause (Dec. 22, 2016).

⁷ See *id* at p. 7.

II. DISCUSSION

7. The record in this docket indicates the City has actively taken steps to remedy the Commission and its Staff's concerns identified within Staff's November 17, 2016, Report and Recommendation.

8. After the Commission issued its Order to Show Cause, the City kept Commission Staff informed regarding its remedial actions.⁸ Though the City did not retain counsel or enter an appearance until significant time had elapsed, Staff was able to detail the City's remedial efforts in Status Updates.⁹ Staff stated it believed the City was attempting to substantively comply with the Commission's Order to Show Cause.¹⁰ Staff noted its Status Update did not relieve the City of its obligation to formally enter an appearance and submit an Answer.¹¹

9. On June 14, 2017, the Commission received a Response from the Clerk and Mayor of the City of Ford.¹² The City responded to each Count identified in the Commission's Order to Show Cause. Specifically, the City responded it had: repaired its gas system's cathodic protection system, was in the process of repainting all exposed pipes and replacing meters as needed, and took responsibility for failing to timely respond to Staff's inspection results.¹³ The City further detailed steps taken to rectify concerns surrounding lost and unaccounted for gas purchases.¹⁴

10. The City requested the Commission reconsider the civil penalty recommended, and pledged to be a more responsible gas system operator.¹⁵

⁸ See Status Update, p. 2 (Mar. 17, 2017).

⁹ See *id.*

¹⁰ See *id.* at pp. 2-3.

¹¹ See *id.* at p. 2.

¹² Response to Order to Show Cause (Jun. 14, 2016) (City Response).

¹³ See *id.* at p. 1.

¹⁴ See *id.* at p. 2.

¹⁵ See *id.*

11. As with any other natural gas utility, the Commission recognizes the need to engage in enforcement actions to ensure public safety is never compromised. Accordingly, the Commission turns to the City's response to the Order to Show Cause.

Count 1

12. 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.

13. The City stated it has repaired its gas system's cathodic protection system.¹⁶ The City provided a work invoice to indicate such repair had been completed.¹⁷ The invoice provided by the City indicates the City spent approximately \$16 thousand in graphite anodes and repaired a rectifier stack.¹⁸ The Commission finds this remedial action satisfies the concerns identified within the Commission's Order to Show Cause and Staff's Report and Recommendation.

Count 2

14. 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 virtually all above ground gas piping in the system had no protective coating and exhibited atmospheric corrosion. Failing to clean and

¹⁶ See City Response, p. 1.

¹⁷ See *id.* at p. 3.

¹⁸ See *id.*

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.

15. The City responded it was repainting all exposed pipes in addition to replacing meters as required.¹⁹ The action taken by the City regarding Count 2 is a step towards compliance, but is not yet in itself sufficient to alleviate the Commission's concerns. Once all of the City's above ground gas piping has a protective coating in place will the Commission be satisfied the City has remedied this concern. Accordingly, the Commission finds the City is taking steps to comply with the above-referenced natural gas safety regulations but is not yet fully compliant.

Count 3

16. Return of Evaluation Form as adopted by K.A.R. 82-11-6: Each completed evaluation form [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. 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).

17. The City apologized for not timely responding to Staff's previous inspection results.²⁰ The City indicated it provided a reply to Staff (regarding this proceeding) on or about

¹⁹ See City Response, p. 1.

²⁰ City Response, p. 1.

February 3, 2017.²¹ As discussed previously, Staff submitted a Status Report in March 2017 to indicate dialogue the City had engaged in and detail the City's progress towards compliance.²² The City further pledged to be a more responsible gas system operator and make safety and regulatory compliance a priority.²³

18. The Commission believes the City is actively taking steps to operate its natural gas system in a manner that provides sufficient and efficient service to its residents while maintaining the necessary and required regulatory standards. Public safety surrounding the operation of a utility, regardless of size or characteristics, is a top priority and concern for the Commission. The Commission finds the record in this proceeding indicates the City will be a more responsible and responsive natural gas utility going forward.

19. The Commission is mindful of the gravity of non-compliance previously exhibited by the City, but also recognizes the remedial action undertaken to address such concerns and a willingness to be more forthright in the future. The City has asked the Commission reconsider its civil penalty. The Commission agrees to do so on condition the City completes any and all remedial actions necessary to rectify identified shortcomings in this proceeding, and continues to maintain compliance with the Commission's pipeline safety regulations.

²¹ *See id.*

²² *See* Status Update, pp. 2-3.

²³ *See* City Response, p. 2.

III. FINDINGS OF FACT

20. 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.

21. The City of Ford, Kansas, operates a municipal natural gas utility with approximately eight miles of pipeline serving 127 customers.²⁴ 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.

22. Regarding Count 1, the Commission finds the City of Ford has actively taken steps to remedy previously identified defects. The Commission finds this remedial action satisfies the concerns identified within the Commission's Order to Show Cause and Staff's Report and Recommendation.

23. Regarding Count 2, the Commission finds the City of Ford is taking steps to remedy previously identified defects. However, the Commission finds it necessary to impose a deadline to complete this remedial action. Therefore, the Commission finds the City of Ford shall be granted 180 days from the date of this Compliance Order to complete remedial action necessary to render compliance with the Commission's natural gas pipeline safety regulations identified in Count 2.

24. Regarding Count 3, the Commission finds the City of Ford has demonstrated remorse for previously failing to comply with Commission reporting requirements. The Commission finds the record in this proceeding indicates the City will be a more responsible and responsive natural gas utility going forward.

²⁴ See Staff's Report and Recommendation, p. 2 (Nov. 16, 2016) (Report and Recommendation).

25. The Commission finds the actions taken by the City of Ford are encouraging and indicate the City will take appropriate steps necessary to remain compliant with the Commission's natural gas pipeline safety regulations. However, past conduct by the City does not obviate the need for compliance proceedings and penalties. Accordingly, the Commission finds penalty and enforcement actions are required to ensure the City of Ford fully satisfies the Commission's previously articulated concerns.

26. The Commission finds the remedial actions taken by the City merit issuing a civil penalty at the lower range of Staff's recommendation. The Commission finds a civil penalty of \$500 should be imposed against the City.

27. As stated above, the City requests this Commission exercise lenity with any civil penalty. Given the small size of the City's natural gas system and capital expenditures undertaken by the City to remedy the Commission's concerns, the Commission finds the civil penalty issued in this proceeding shall be suspended and held in abeyance for a period of two years with two caveats. First, the City of Ford must complete all necessary work to become compliant with Count 2, above, within 180 days from the effective date of this Compliance Order. Second, if no further pipeline safety or other Commission enforcement actions are brought against the City within two years from the effective date of this Compliance Order, the \$500 civil penalty shall be canceled. If the City violates the Commission's pipeline safety statutes, rules, and regulations, or any other provision of Kansas law pertaining to safe utility operations during this two-year period, the \$500 civil penalty issued in this proceeding will become due and payable immediately.

IV. CONCLUSIONS OF LAW

28. 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.

29. 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.

30. 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 per violation for each day that the violation persists.²⁵ Additionally, the maximum civil penalty shall not exceed \$1,000,000 for any related series of violations.²⁶

31. Pursuant to K.S.A. 66-1,152, the Commission may compromise on any civil penalty. The Commission may consider the appropriateness of the penalty as to the size of the entity, gravity of violation, and good faith attempts to achieve compliance.²⁷

32. The Commission concludes the City of Ford's actions to date merit issuing a civil penalty at the lower range of Staff's recommendation. Accordingly, the Commission concludes a \$500 civil penalty shall be issued against the City of Ford, Kansas.

33. The Commission concludes the City of Ford's actions to date merit compromise regarding the civil penalty issued against the City of Ford. Accordingly, the Commission concludes, pursuant to K.S.A. 66-1,152 the \$500 civil penalty issued against the City shall be suspended and held in abeyance for two years from the effective date of this Compliance Order.

²⁵ K.S.A. 66-1,151.

²⁶ K.S.A. 66-1,151.

²⁷ See K.S.A. 66-1,152.

The civil penalty shall either be canceled or imposed in accordance with the terms identified in paragraph 27, above.

34. The Commission finds the City of Ford's June 14, 2017 Response, as signed by the Mayor of the City, indicates the City has worked in good faith to respond to the Commission's Order to Show Cause. Though not a traditional formal response, the Commission accepts the City's June 14, 2017 Response, as an Answer to the Commission's Order to Show Cause. Furthermore, the Commission accepts and acknowledges the City's Counsel's Entry of Appearance.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) The City of Ford, Kansas, is hereby assessed a \$500 civil penalty.

(B) The \$500 civil penalty is hereby suspended and held in abeyance for two years from the effective date of this Compliance Order.

(C) The \$500 civil penalty shall be canceled or enforced as described in paragraph 27 of this Compliance Order.

(D) 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. 77-542.²⁸

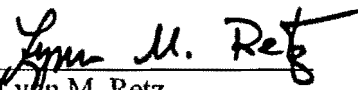
(D) The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it may deem necessary and proper.

²⁸ See also K.S.A. 77-537(b); K.S.A. 66-118b; K.S.A. 77-529(a)(1).

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: OCT 24 2017


Lynn M. Retz
Secretary to the Commission

REV

Order Mailed Date

OCT 25 2017

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 OCT 24 2017.

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/S/ DeeAnn Shupe

DeeAnn Shupe

Order Mailed Date

OCT 25 2017