

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

In the Matter of the General Investigation Into)
the Operations of Kansas Gas Service, Inc., a)
Division of ONE Gas, Regarding the Natural Gas) Docket No. 17-KGSG-069-GIP
Incident that Occurred at 918 West 5th Street,)
Newton, Kansas.)

**NOTICE OF FILING OF STAFF'S REPLY TO RESPONSE OF KANSAS GAS
SERVICE TO STAFF'S REPORT AND RECOMMENDATION**

COMES NOW, the Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission", respectively) and files its Reply to the Response of Kansas Gas Service, Inc., a Division of ONE Gas, Inc. ("KGS" or "Company") to Staff's Report and Recommendation ("Staff R&R") and states as follows:

1. Staff hereby files the attached Reply to KGS's Response to Staff's R&R filed by KGS on January 19, 2018.

WHEREFORE Staff submits its Reply to Response of KGS to Staff's R&R for Commission review and consideration and for such other relief as the Commission deems just and proper.

Respectfully submitted,


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

FROM: Leo M. Haynos, Chief Engineer
Jeff McClanahan, Director of Utilities

DATE: March 20, 2018

SUBJECT: Docket No. 17-KGSG-069-GIP: Staff's Reply to Kansas Gas Service's Response to Staff's Initial Report and Recommendation

EXECUTIVE SUMMARY

On June 2, 2016, a natural gas fire occurred in Newton, Kansas, that injured an employee of NPL Construction Company (NPL) who was performing natural gas service line replacements for KGS. Because the injured worker required hospitalization, the natural gas fire is considered a natural gas pipeline safety incident. On November 9, 2017, Staff filed a Report and Recommendation (R&R) regarding the incident which recommended the Commission find KGS at fault for several violations of pipeline safety regulations and assess a \$53,950 penalty to KGS. On January 19, 2018, KGS filed its Response to Staff's R&R. In its Response, KGS objects to portions of the Staff's R&R as conflating the duties of the contractor toward its employees with the duties KGS owes towards its internal employees. In addition, KGS requests the Commission limit its consideration of Staff's R&R only to evidence directly related to the incident that gave rise to this Docket.

Staff contends the root cause of this incident is the failure of KGS to enforce its existing procedures, and the failure of KGS to develop procedures and training for its employees performing pipeline maintenance tasks while working in a potentially hazardous atmosphere. Further, Staff contends the information in its R&R is accurate and contains information that is relevant to the incident. However, in the interest of moving this Docket to conclusion, Staff offers the following Reply to KGS's Response. The numbering system adopted in this Reply corresponds to that of the KGS Response. The following paragraphs also include relevant quotations from the KGS Response in order to provide context to Staff's Reply.

ANALYSIS OF KGS RESPONSE

- 1. Delayed Notification (PNC Nos. 1 & 2):** “KGS admits it did not provide timely notification and claims that its failure to comply was two-fold: (1) internal confusion about who was responsible for making the notification; and (2) NPL refused to provide information to KGS regarding the incident.”

Staff Reply: Neither justification for KGS’s failure to comply with its duty to notify the KCC absolves them of their legal duty. Internal confusion regarding responsibility for notification further supports Staff’s position that KGS is not enforcing its internal procedures. KGS’s failure to press NPL for information regarding the incident further supports Staff’s contention that KGS has lax enforcement of existing internal procedures. Although KGS acknowledges its failure to provide timely notification, it requests the Commission modify the penalty to reflect a single reporting violation “because the delay in the telephonic and written reports arose from the same set of facts and not a separate incident”. Staff disagrees. As noted in Staff’s R&R, Staff was notified of this incident by OSHA personnel on July 27, 2016 - 55 days after the incident. Upon learning of this incident, Staff immediately called KGS’s Director of Engineering to request more information and KGS continued to delay its response to filing the required notice and reports by an additional 23 days. Therefore, Staff requests the Commission view KGS’s two administrative lapses as separate events. Both the initial delay of 55 days and the subsequent delay of 23 days hindered the KCC’s ability to properly investigate the incident.¹

- 2. The Failure of KGS’s Contractor Personnel to Follow its Written Operations and Maintenance Procedures:**

A. Personal Protective Equipment (PPE): “KGS acknowledges that NPL’s worker failed to wear fire resistant clothing and fresh air breathing apparatus in a gaseous environment in violation of NPL’s workers’ training and procedures and in contravention of their contractual duties to KGS. KGS has taken steps to audit NPL to ensure compliance with PPE requirements.”

Staff Reply: Staff agrees the steps taken by KGS are an acceptable resolution to Staff’s allegation regarding this violation.

B. Fire Watch: “KGS denies that a fire watch was not on site at the time of the injury incident. Instead KGS points to Staffs own statements which support the fact that the second crewman on site at the time of the injury incident (and as referred as the "helper" and "coworker" in Staffs Report and Recommendation and hereafter referred to as "Co-worker") was assigned to the fire extinguisher and was present at the time of the injury. Accordingly, the Company respectfully requests the Commission to find any allegations and associated requests for penalties related to this allegation to be contradicted by Staffs own findings and thus unsupported by reliable evidence and therefore denied.”

¹ Staff’s R&R at p. 6 - 7.

Staff Reply: Staff maintains its findings are supported by reliable evidence. The evidence was provided by KGS in response to Staff's data requests. More complete details of the provided evidence are as follows:

KGS Standard 1185 of its Operations and Maintenance Manual is titled, "Prevention of Accidental Ignition". Page 4 of the Standard includes a subheading under Repair and Maintenance Precautions which lists the following precautionary steps that *should be* taken:

"Whenever it is necessary to perform any work in an area where the potential for accidental ignition exists, the following precautionary steps should be taken...A fire extinguisher (minimum size 20-pounds) *shall be* placed at the job site and personnel assigned to operate the fire extinguisher, as necessary." (emphasis added).

Additional guidance is provided by KGS's Contract Inspector's Guide which states, "when working in a potentially gaseous atmosphere, an adequately sized fire extinguisher, in working order, must be manned by a third employee."² In its response to Staff Data Request 7, KGS states the whereabouts of the third man assigned to the crew was unknown to KGS. The person identified as the "helper" in Staff's Report and Recommendation (R&R) also provided a statement which indicates he was not dedicated to performing a fire watch with the fire extinguisher. Rather he had many tasks to perform. The helper's statement is as follows:

"I was handing tools to (the burn victim) *to stop the gas from leaking* so he could remove the saddle and put a new one. *The saddle was loose* so I got up to get the fire bottle on all of a sudden it blew up in fire. I ripped the pin out of the bottle and blew him and the hole out. It was 2:25 pm 6-2-16. I called (the NPL foreman) at 2:25. (The NPL employee identified in DR7 as the third man on the crew) *rushed over* and got (the burn victim) and took him to the hospital. We used a wrench to take off the saddle. *I also jumped back in the hole while the gas was blowing with no fire suit after everyone got away. I tightened the bolts down with a wrench so the gas would quit blowing so the area was safe.* He four wheel cut the service to plug the line. After the line was plugged and the gas was stopped, he sawed off the existing pipe so he could have room to work. Used the crescent to loosen the saddle. *The saddle was loose enough to move to shove a plug in the main. I turned to get the fire bottle and the hole ignited..*"³ (emphasis added).

From his statement, it appears the helper was performing several functions rather than the function of a dedicated fire watch as described in KGS procedures. Based on the statement of the helper, after the victim was taken to the hospital, the helper entered the gaseous atmosphere (without PPE) and secured the leaking gas line. In this case, there is no indication that even a "2nd man" was present to

² Bullet point number 5 of page 2 of Tab#4 from the Contract Inspector Guide concerning Personnel Qualification

³ Response to Staff Data Request 32.

man the fire extinguisher which had already been discharged and may have been unable to extinguish a potential fire if it had re-ignited.

C. Cathodic Protection Rectifier: “KGS denies a failure to follow procedures as it applies to Standard 1185, "Installation and Renewal of Mains." This standard only applies to rectified mains. The bare steel service line the contractor was replacing at the time of the injury, was not a rectified main, and did not fall under this standard. KGS further disagrees with the assumption that this incident was the result of an arc from the cathodic protection since this line was not rectified. The Company has reviewed this possibility and has not discovered any evidence to support this theory. Further, our inquiries have determined that it is neither an industry practice nor a regulatory requirement to turn off rectifiers on a rectified main prior to performing replacement of bare steel service lines. Thus, the Company respectfully requests the Commission to find any allegations and associated requests for penalties related to this issue to be unsupported by reliable evidence and therefore denied.”

Staff Reply: In its Response to Staff’s R&R, KGS continues to avoid addressing Staff’s allegation that KGS failed to follow its procedures. In KGS Standard 1185 regarding Measures to Prevent Accidental Ignition, the KGS procedure states, the potential for electric arcing (a spark caused by the separation or interruption of an electrical circuit) *shall* be reduced by: ...

- “*Operating vehicles or other engine-driven equipment* (backhoes, trucks, compressors, etc., whether gasoline or diesel operated) *only upwind* of any source of gas. (Sparks or arcing from alternators, starters, etc., can cause Ignition of gas);
- Properly using bonding wire *when cutting or separating steel pipe*. A bond wire creates a temporary bypass for the electrical current to flow through, which eliminates arcing when cutting or separating pipe (Refer to Gas Construction Standard 1600 - Corrosion Control);
- *Turning off rectifiers;*” (emphasis added)

Regardless of whether KGS considered the pipeline involved in this incident to be a “rectified pipeline”, it was connected to an energized rectifier⁴ and, as such, would present the potential ignition hazard envisioned by the KGS procedure. The facts provided through KGS in response to Staff’s data requests and in meetings between Staff, NPL and KGS acknowledge that KGS and/or its contractor did not comply with *any* of the above listed items that Staff has emphasized in the KGS procedure. It is Staff’s contention that KGS’s complacency to follow or enforce its procedures directly contributed to this incident. KGS personnel would have been required to disconnect the rectifier. KGS construction crews in Newton stated to Staff they were not aware of rectifiers being shut off while replacing service lines on a rectified system.

⁴ Response to Staff Data Request 1.

- 3. The Alleged Failure of KGS and its Contractors to Require Compliance with Written Procedures:** “KGS asserts that “this incident is not indicative of the alleged systemic failure, but is rather the result of individual conduct, which did not conform to the Company’s practices.”⁵

Staff Reply: It is unclear from KGS’s response whether they blame the employees for willful disregard of company policies and procedures or whether they claim their actions were human error, i.e. negligence. Nevertheless, regardless of the mental state of the employee, employee failure to follow company procedures is ultimately the responsibility of the employer. KGS has a duty to establish and *enforce* company policies and procedures. Based upon KGS’s line of reasoning, once the employee has been informed of the policies and procedures, KGS cannot be blamed if the employee willfully or negligently disregards that policy. KGS has a duty not only to inform employees of company policies and procedures but to ensure that those policies are enforced.

- 4. KGS’s Objection to Staff’s Use of Unrelated Records:** “...KGS requests the Commission decline to consider Exhibit 4 for the purposes of supporting the allegation of any pattern or practice.”

Staff Reply:

The pictures included in Staff’s Exhibit 4 were taken by one of the Commission’s Damage Prevention Special Investigators who regularly respond to natural gas pipeline damages. For the pictures provided, the Investigator asserts gas was escaping from the pipelines while the work was ongoing and the pictures taken were from a safe distance. Staff’s investigator also asserts KGS personnel were on scene taking pictures from approximately the same location. Staff contends the photographs provide clear indications of KGS’s approach at that time toward enforcing its policies regarding working in hazardous conditions. Although Staff’s Damage Prevention investigators do not enforce or investigate pipeline safety regulations, Staff agrees with KGS that Staff was remiss for not reminding KGS management on site during the event and in control of the situation of the potential safety hazard.

- 5. Review of Rules and Regulations Related to Operator and/or Contractor Training Programs:** “KGS contends, “the training requirements of 192.805(h) do not require training ‘under blowing gas conditions’ in full PPE as Staff suggests. Accordingly, the Company did not fail to incorporate any required elements into its OQ program as alleged by Staff...It is KGS's position that neither federal nor state law imposes a requirement (or guidance) upon operators to provide training on covered tasks through the observation of workers performing such tasks (in blowing gas conditions), while donning PPE. Furthermore, the imposition of such a requirement as recommended by Staff is tantamount to substantive rulemaking without notice and comment. It would impose new duties not currently required by statute or regulation; therefore, such a requirement of KGS under these circumstances would be inherently unfair. Moreover, the creation of new substantive duties would require affording due process to all other potentially effected utilities. Therefore, KGS respectfully requests the Commission to find that imposing such

⁵ Response of KGS to Staff’s R&R at p. 6.

a requirement upon the Company as suggested would be procedurally incorrect and as a consequence any associated requests for penalties related to this purported evidence, be deemed unsupported by reliable evidence and therefore denied.”

Staff Reply: As KGS states in its Response, the Operator Qualification (OQ) regulation found in 49 CFR192.805 is a performance-based regulation which provides the operator with maximum flexibility in meeting the requirements of the regulation. Staff’s R&R contends the training of personnel performing the task of replacing bolt-on service tees while wearing supplied air respirators and full PPE is not adequate, and the R&R provides reasons to support its contention. In its Response, KGS does not provide any defense of the adequacy of its training methods for this task other than to claim Staff is overreaching its regulatory jurisdiction. Staff’s contention of inadequate training is partially based on its interview of the burn victim on his training to replace service tees under full PPE. He claimed he performed the task under the direct observation of his supervisor. Assuming the supervisors are properly trained, this approach for on-the-job training and qualification for the task would be acceptable if it is described and documented in KGS’s OQ plan. In order to be consistently applied by all properly trained supervisors, KGS would be required to have a procedure that describes bolt-on service tee replacements on energized mains while under full PPE in its operations and maintenance manual. To Staff’s knowledge, such a procedure does not exist.

- 6. Failure to Maintain Equipment Necessary to Safely Perform a Task in a Hazardous Atmosphere:** “KGS acknowledges that on the day of the incident, the Contractor had one truck with an inoperable fresh air supply, and KGS agrees that it has a duty to ensure that its contractors maintain operable equipment.. However, KGS believes it is inappropriate to require KGS to meet this obligation by supplying equipment to its contractors.”

Staff Reply: For the sake of clarity, Staff notes that KGS misconstrues Staff’s argument. Staff does not request KGS supply equipment to NPL or other contractors. Instead, Staff takes the position that KGS has a duty to ensure compliance with its policies and procedures. KGS believes that “strict adherence” to a stop work policy in the event of an equipment failure will effectively resolve the issue. Staff interprets this statement of “strict adherence” by KGS to mean “zero-tolerance” for violation of this policy and agrees with that approach.

PNC 5:

In its Response, KGS argues it cannot be reasonably penalized for the alleged failure to have a procedure for the removal and replacement of bolt on services tees on live gas mains, as during all times relevant to this matter, KGS has had a procedure in place for the removal and replacement of bolt on service tees. As per the request of Staff made in prior communications, KGS has agreed to clarify its procedure, but argues that a request to amend a procedure cannot be construed as a failure to have one. KGS also objects to Staff’s classification of the stopping and plugging activity as "hot tapping." As commonly used throughout the industry, "hot tapping" involves attaching a branch

connection and valve on the outside of an operating pipeline, and then cutting out the pipeline wall within the branch and removing the wall section through the valve.

Staff Reply: As noted in Staff's R&R, the KGS classroom lesson plan titled, DQ 50, provides an outline of how to select fittings for various applications in distribution gas systems. Pages 2 and 4 of the DQ 50 standard address general preparation and selection of various types of fittings. However, there is no discussion that specifically addresses installing fittings on energized mains. KGS Standard OGSops1.1122R describes precautions to be taken when working on energized gas mains, but it provides no discussion regarding removal and replacement of bolt-on service tees on live gas mains. Therefore, Staff contends KGS does not have a procedure that addresses replacing bolt-on service tees – or any tees for that matter – on energized gas mains.

Staff agrees with KGS regarding the industry's generally accepted definition of a "hot tapping" procedure. However, KGS's definition of hot tapping is much broader than the limited scenario of tapping a pipeline below a valved connection. As noted in Staff's R&R, KGS's relevant definitions are as follows:

2.1. Tapping: The practice of opening a hole in the wall of a pipeline.

2.2. Hot Tapping: Tapping while the pipeline is in operation.

The sequence of events for removing a bolt-on tee as described in Staff's R&R meets the above definition of opening a hole in the wall of the pipeline while the pipeline is in operation. In this case, the "wall" of the pipeline was removed by unbolting the tee rather than drilling a hole through the side of the pipe.

7. KGS's Summary of its Response to Staff's Recommendations:

A. Fire Extinguisher Training: "KGS confirms that it already provides its own employees with fire training. NPL is required to do the same under the terms of its contract with the Company. Additionally, as per the Corrective Action Plan attached hereto, KGS has instituted steps that will ensure that the contractor no longer breaches its duties enumerated within the terms of the contract."

Staff Reply: Attachment A to the KGS Response provides a satisfactory answer to Staff's recommendation. During routine pipeline safety inspections, Staff will verify field personnel have the appropriate PPE and fire extinguisher training.

B. Staff's Recommendation Related to Fresh Air Breathing Equipment:

"...Additionally, as stated earlier, the Corrective Action Plan addresses this concern and KGS has taken steps to ensure compliance. As result, KGS respectfully requests that the Commission find that this concern has been adequately addressed by the Company and its contractor and that by granting Staffs requests on this issue, the Commission would be placing an unnecessary and costly burden on the Company (its contractors) and its customers."

Staff Reply: In Attachment A to the KGS Response, KGS's contractor agrees to create a maintenance record for fresh air units. This corrective action plan is acceptable to Staff in place of a recommendation to have a "spare" fresh air truck for each operating area. During routine pipeline safety inspections, Staff will verify KGS has inspected the maintenance records of its contractor's fresh air equipment and the maintenance records of KGS in-house fresh air equipment.

CONCLUSION

Regarding the above numbered items 1, 2B, 2C, 3, 4, 5, and PNC 5, Staff offers additional information in reply to KGS's Response. For these numbered items, Staff maintains the findings discussed in Staff's original R&R accurately describe the results of our investigation into this matter.

Regarding the above numbered items 2A, 6, 7A, and 7B, Staff maintains the findings in its original R&R are accurate. For these numbered items, Staff believes the corrective action taken by KGS to address Staff's concerns are appropriate, and we recommend the Commission accept KGS's Response in these matters as resolving these issue raised by Staff.

RECOMMENDATION

Staff notes nothing in KGS's Response would cause us to alter our initial findings. Staff reiterates that as a result of its investigation, Staff asserts actions not taken by KGS employees leading up to this incident resulted in violations of Kansas Pipeline Safety Regulations. Furthermore, KGS's methods for training and evaluating its employees' qualifications for performing covered tasks while working in a blowing gas environment is inadequate. KGS also failed to provide timely notice and reports of the pipeline incident. In summary, the above described facts result in Staff's recommendation that the Commission find KGS in violation of the reporting requirements in 49 CFR Part 191.5 and CFR Part 191.9(a) as adopted by K.A.R. 82-11-3. Staff further recommends the Commission find KGS in violation of 49 CFR Part 192.605(a), 49 CFR Part 192.627, and 49 CFR Part 192.805(h) as adopted by K.A.R. 82-11-4. Staff finds no reason to modify its initial recommendation to the Commission to assess a civil penalty of \$53,950 to KGS.

However, based on the KGS Response and the corrective action taken to date by KGS and NPL, Staff modifies its additional recommendations as follows:

1. Develop written procedures regarding the replacement of bolt-on service tees in blowing gas conditions;
2. Modify the definition of "hot-tapping" in the KGS Operations manual as limited to the characteristics of hot-tapping describe in KGS's Response.
3. Develop a formal methodology for evaluating a worker's knowledge, skill, and ability to perform tasks in blowing gas conditions while wearing appropriate PPE.

CERTIFICATE OF SERVICE

17-KGSG-069-GIP

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Staff's Reply to Response of Kansas Gas Service to Staff's Report and Recommendation was served via electronic service this 23rd day of March, 2018, to the following:

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