BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

Staff of the Missouri Public Service Commission,	)	
Complainant,	)	
v.	)	Case No. GC-90-6
City of Fulton, Missouri, by and through Fulton Municipal Utilities,	)	
Respondent.	)	

APPEARANCES: Gary W. Duffy, Attorney at Law, and Mark W. Comley, Attorney at Law, Hawkins, Brydon, Swearengen & England, P.C., P.O. Box 456, Jefferson City, Missouri 65102-0456, for the City of Fulton, Missouri.

Katherine C. Swaller, Attorney at Law, 100 North Tucker Boulevard, Room 630, St. Louis, Missouri 63101-1976, for Southwestern Bell Telephone Company.

Lewis R. Mills, Jr., Assistant Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the Public.

Andrew J. Snider, Assistant General Counsel, P.O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

HEARING EXAMINER: Alisa M. Dotson

REPORT AND ORDER

On July 7, 1989, the Commission Staff (Complainant) filed a complaint against the City of Fulton, Missouri, by and through Fulton Municipal Utilities (Respondent) alleging that the Respondent had violated Commission rules concerning natural gas safety and the handling of a natural gas explosion. The Complainant is seeking penalties pursuant to Section 386.600, RSMo 1986 for the violations alleged herein.

The Commission gave notice of the complaint and the Respondent generally denied the Complainant's allegations in its motion to dismiss and answer.

The Commission denied the Respondent's motion and set the matter for hearing. Southwestern Bell Telephone Company (SWB) filed a late intervention which the Commission denied. The Commission granted SWB a special appearance for the one witness that was a SWB employee. The hearing was held on December 7-8, 1989. Briefs were filed by the Staff, the City and the Office of Public Counsel (Public Counsel).

Findings of Fact

The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact.

The Respondent is a body corporate and politic, engaged in the distribution and sale of natural gas in and about its municipal boundaries located in Callaway County, Missouri, and subject to the jurisdiction of the Missouri Public Service Commission pursuant to Section 386.310(4), RSMo 1986. The Respondent operates its municipal gas system through a Board of Public Works called Fulton Municipal Utilities.

On January 7, 1989, an explosion occurred about 4:15 p.m. at a home at 312 West Fourth Street in Fulton, Missouri. The explosion destroyed the house and killed two people. Gas safety engineers from the Commission subsequently investigated the explosion. The engineers filed a report concerning their investigation with the Commission in Case No. GS-89-147. As a result of the investigation, the Complainant filed this complaint.

In its complaint, the Complainant alleged Respondent violated rules promulgated by the Commission in the area of gas safety. The Complainant

alleged that Respondent failed to record a gas odor report from the general public in violation of 4 CSR 240-40.050(4) and Respondent failed to investigate said report in violation of 4 CSR 240-40.050(2). The Complainant also alleged Respondent failed to make a timely report of the explosion in violation of 4 CSR 240-40.020(1). The Complainant further alleged that the Respondent failed to make an adequate immediate response to the emergency violating 4 CSR 240-40.050(3)(A); failed to adequately train and verify training of its employees in emergency procedures violating 49 CFR 192.615(b) adopted by the Commission at 4 CSR 240-40.030(1); failed to adequately communicate and ensure mutual assistance to minimize the hazards to life and property violating 49 CFR 192.615(c) adopted by the Commission at 4 CSR 240-40.030(1); and failed to periodically reevaluate its unprotected pipelines and cathodically protect them violating 49 CFR 192.564(e) adopted by the Commission at 4 CSR 240-40.030(1).

1. Allegations that Respondent failed to record and investigate a gas odor report from the general public in violation of 4 CSR 240-40.050(4) and 4 CSR 240-40.050(2)[1].

The Complainant's first two allegations are predicated on the testimony of Doris Miller. At the time of the explosion, she lived at 310 West Fourth Street in Fulton. Her house was next door to the house that exploded. Miller testified that she called directory assistance and asked for a number to call to report a gas odor. She testified that she called the number given and reported a gas odor around the neighborhood to a female city employee on January 5, 1989. All of Respondent's female city employees who worked on January 5 testified that they did not receive such a call.

[1]The text of the rules cited in the allegations is attached as Appendix "A" to this Report and Order, and is hereby incorporated by reference herein.

Miller testified she did not remember the number she called or the name of the person she spoke to. A supervisory employee of Southwestern Bell, Kate Pepin, testified that if Miller asked for the gas company, she would have been given the number for Empire Gas, not City Hall. Exhibit 18 shows the screen a directory assistance operator would have been viewing at the time of a call. Miller testified she requested the number of the utility company in Fulton. The first listing under utilities is the City of Fulton. Empire Gas is several lines down. Pepin's testimony that Miller would have been given the number for Empire Gas is not consistent with the exchange on the operator's screen and lacks credibility.

There is no evidence that establishes what number Miller was given to call. Miller testified the call was answered by a woman who said: "City Hall, may I help you?" Yet no woman working at City Hall remembers taking the call. The Commission finds nothing in the demeanor of Complainant's nor Respondent's witnesses that make their testimony suspect. Therefore, because there is no conclusive evidence as to whom Miller spoke on January 5 or what number she called, the Commission finds that Staff has not sustained its burden of proof that the City failed to record and investigate a gas odor report. The Commission finds the evidence does not support Complainant's allegation that Respondent violated 4 CSR 240.050(4) and 4 CSR 240.050(2).

2. Allegation that Respondent failed to make a timely report of the explosion in violation of 4 CSR 240-40.020(1).

The Complainant also alleged that the Respondent failed to make a timely report of the explosion to Commission personnel. The specific requirement of the rule is that the report be made at the "earliest, practicable moment" after discovery of a gas explosion which: (a) results in death; (b) results in personal injury necessitating inpatient hospitalization; (c) results in estimated property damage of five thousand dollars ($5,000) or more,

including cost of gas lost, to the property of the gas operator or others, or both; (d) in the judgment of the operator, was significant even though it did not meet the criteria of (1)(A), (B) or (C). There is no question that this explosion resulted in death and property damage over $5,000. The Respondent has argued that the gas explosion was not "discovered" until late evening and that the language of the rule is too vague to put it on notice as to what is timely notice.

Byron Dysart, Fulton Municipal Utilities superintendent, testified he arrived at the explosion scene about 4:20 p.m. PSC Staff was not notified until Dysart called at 8:30 p.m. Dysart testified he knew upon his arrival an explosion had occurred. He also testified it was evident to him that gas was involved because the riser was severed. Dysart further testified he assumed gas was the most likely cause of the explosion. The Fire Chief, Huff, also testified he believed an explosion had occurred upon or immediately after his arrival upon the scene. Rick Fennel, City Gas and Water Supervisor, vehemently denied that at the time he even viewed the incident as an explosion, let alone a gas explosion. However, the evidence shows that the walls were gone, the roof had collapsed and that there was debris in the streets and surrounding areas. The Commission finds that this evidence and Fennel's defensive demeanor under cross-examination makes his testimony not credible. The Commission also finds that Dysart knew it was a gas explosion hours before the call was made to the Commission Staff.

Having determined the Respondent discovered a gas explosion early in the evening the question becomes whether the City notified personnel at the "earliest practicable moment." Dysart testified he had no duties to perform at the scene. He merely watched others work for over three hours. He even testified that while watching the fire his clothes got wet and he took the

opportunity to go home to change them. Webster defines "early" as the "...first in the beginning of a period of time or of some sequence of actions, events or things." "Practicable" is defined as being "capable of being done, effected or performed." Thus, the Staff should have been notified at the first opportunity it was capable of being done. The Commission finds Dysart's mere observation of the fire and opportunity to go home and change clothes represented a period of time where many "early, practicable" moments arose and passed. Therefore, the Commission finds the City failed to notify the PSC Staff at the earliest practicable moment in violation of 4 CSR 240-40.020(1).

The Respondent complained during the proceeding and in its brief that it has been the victim of "hindsight regulation." It protested that the Complainant judges it when Complainant was not there. But this is a situation of Respondent's own making. The evidence shows that by the time Dysart notified PSC Staff emergency personnel was beginning to disperse. The fire was over. There was nothing with which Staff could assist or which it could monitor. By delaying notification of the PSC Staff, Respondent effectively preempted an on-the-scene review by Staff of its emergency response.

3. Allegation that Respondent failed to take immediate corrective action in violation of 4 CSR 240-40.050(3)(A) because it did not immediately shut off the gas, conduct leak and migration surveys and evacuate the area.

Respondent argued the language of the rule expressly gives it discretion as to what action to take and when. Respondent also argued that since the rule does not specifically prescribe shutting off the gas or conduct leak investigations or set timetables for the completion of these acts, it was not required to do them or complete them within a prescribed period of time. Respondent further argued its efforts to retrieve victims justified its failure to immediately shut off the gas and conduct a leak investigation. Respondent denied it failed to evacuate the area immediately.

4 CSR 240-40.050(3)(A) is a leak classification rule that requires Class 1 leaks be given immediate corrective action. Examples of Class 1 leaks comprise most of the rule's text. The first example is a "gas, fire, flash or explosion." The last example, intended to encompass any possibility not expressly mentioned, is a leak which in the judgment of an on-the-scene supervisor presents an immediate hazard to life and property.

Respondent argued that this last example of a Class 1 leak gave it discretion to decide what hazards were present and what action to take to correct them. But the language of the rule only defers to the judgment of an on-the-scene supervisor as to what is the classification of the leak. In this case, the incident falls under the first example of a Class 1 leak because it was a gas explosion. The Commission finds that since it is the first example that applies to the explosion, any deference as to the judgment of Respondent's personnel is preempted.

Respondent also argued that since the rule does not specifically require it to shut off the gas and conduct leak and migration investigations, it is not required to perform these tasks. Respondent also argued that since the rule does not specifically prescribe a timetable, the timeliness of its actions cannot be judged in light of the rule's language. The Commission is of the opinion that the rule does not need to specify common sense remedial actions in order for them to be taken. To release Respondent from the responsibility of taking actions not expressly required would lead to an absurd result. For example, the rule does not "expressly" prescribe Respondent contain an out-of-control fire, but no reasonable argument can be made that the "corrective action" language of the rule does not require it.

In the opinion of the Commission, the "corrective action" language of the rule encompasses many activities. In effect, the rule requires whatever

action is needed to correct a hazardous situation and minimize the risk to life and property. The Commission finds the rule need not explicitly define and prescribe an action in order to require it to be done. Moreover, the Commission finds that since the words "corrective action" are modified by the word "immediate" the timeliness of any action taken is as relevant as what action is taken.

Based on these findings, the Commission has determined that 4 CSR 240-40.050(3)(A) requires action that corrects the situation and minimizes the risk and that the action be taken at once. In order to evaluate whether Respondent's conduct met these requirements, the Commission must review the facts.

The gas was not shut off until 7:30 p.m., more than three hours after city personnel arrived at the scene. Witnesses Huff and Dysart testified they knew, upon arrival, that natural gas was involved. Both testified they saw, upon arrival, gas-fed flames from the broken gas line. Huff testified that gas was coming up under the roof and igniting. He also testified it was obvious that gas was igniting in more than one place. Dysart testified he even checked with Fennel to see if he had enough gas personnel to shut off the gas "as quickly as possible." In an effort to do that, Fennel testified he ordered a backhoe to dig up the service line. Respondent did not argue that shutting off the gas feeding the flames would not have helped "correct" the situation. Respondent's witnesses testified that they endeavored to keep the heat from the fire and the gas fumes from rescuers and onlookers but also argued that the gas-fed flames were not perceived by its personnel as hazardous. Dysart testified that he was concerned that the gas be shut off quickly.

Respondent defends its failure to immediately shut off the gas by arguing that after the first half hour of the fire, it was a "controlled burn."

Huff testified to the time, effort and personnel that were used to contain the fire and keep heat and gas fumes from rescuers. The Commission finds that the amount of effort used to contain the fire demonstrates it was not the "controlled burn" asserted by Respondent. Moreover, the Commission finds that Respondent would not have had to spend as much time and effort keeping heat from gas-fed flames and gas fumes away from personnel if it had immediately shut off the gas. By failing to do so, Respondent put its personnel and everyone else at the scene at unnecessary risk. Based on these findings, the Commission finds that shutting off the gas in this situation was corrective action. The Commission also finds that such corrective action, under 4 CSR 240-40.050(3)(A), should have been taken immediately.

The Commission does not suggest that retrieving bodies from the site of the explosion was not as important a priority as shutting off the gas at the scene. This should never have been an "either-or" situation. Rather, through proper planning and action, both processes should have been carried out simultaneously.

Respondent also argued the rule did not require it to perform timely leak and migration investigations. Respondent's witnesses Huff and Dysart testified they knew escaping natural gas was involved. Yet the first surveys were not conducted until 6:45 p.m., more than two hours after the discovery of the explosion. Respondent argued that the rule requires "corrective" action and leak and migration surveys are investigative in nature and, therefore, not required by the rule. But investigatory action is the first step of corrective action. A hazard cannot be corrected until it is defined. Therefore, the Commission finds that leak and migration investigations are corrective action.

The evidence shows natural gas was escaping from a fractured riser pipe and flames were being ignited by gas under the roof. Staff witness Bob

Leonberger testified that given the nature of the explosion and without evidence to the contrary, leaking gas should have been suspected in the incident. Yet no immediate leak and migration surveys were conducted by Respondent upon arrival at the scene and were not done for at least two hours after the explosion. The Commission is of the opinion that without such surveys, further hazards still could have existed. Without surveys, Respondent did not know the extent of gas migration into the soil, nearby structures, sewers or underground conduits. By failing to immediately perform such surveys, Respondent failed to take timely steps to determine the source of a leak and the extent of migration and the possible associated hazards to life and property.

The Commission finds the circumstances of the explosion required Respondent to immediately perform the surveys. Therefore, the Commission finds the Respondent's failure to do so in violation of 4 CSR 240.030(1).

Staff also alleged Respondent did not adequately evacuate the area. Respondent witness police officer, Phillip Herbert, testified the area was sufficiently secure in five or six minutes after the incident was discovered. Dysart testified that too many people were there. But a review of his entire testimony shows insufficient evidence to rebut the testimony of Officer Herbert that the area was adequately secured. The Commission finds the Staff has failed to sustain its burden of proof of this allegation.

4. Allegation that Respondent failed to adequately train and verify training of its personnel in emergency procedures.

The Complainant also alleged that Respondent's training of its employees was inadequate to assure knowledge of emergency procedures and to verify the effectiveness of such training as required by 49 CFR 192.615(b) adopted by this Commission at 4 CSR 240-40.030(1). Respondent denied that its training was inadequate.

Respondent has a manual entitled "Gas Operating, Maintenance and Emergency Plan." In this manual, Section 950.8 is a checklist of duties and priorities as follows:

A. Respond promptly

B. Investigate with combustible gas indicator

C. Reduce hazard, ventilate premises, evacuate premises. Turn off gas, eliminate sources of ignition, search out sources of gas.

D. Call for assistance, if needed (supervisor and/or crew)

E. Investigate atmosphere in neighboring buildings, sewers, vaults, etc. (Emphasis added)

The plan sets as priorities that the gas be shut off and surveys be conducted. Yet the record shows these were not the priorities of Respondent's personnel. Dysart and Fennel were immediately concerned with shutting off the gas. The record shows they gave up that concern without hesitation when asked to aid in the effort to retrieve bodies.

The Commission finds the Respondent failed to follow its own emergency plan. This failure is sufficient to show Respondent's employees were not properly trained to follow that plan. While Fennel testified as to the training his subordinates received and the meetings between departments in emergency procedures, the evidence shows that it was not effective in getting him and Dysart to follow such procedures. Therefore, the Commission finds the Respondent's failure to follow the priorities as set out in its emergency plan is a failure of the Respondent to adequately train its personnel and take steps to verify such training.

Respondent is required by 49 CFR 192.615(a) to have written emergency procedures and is required by 49 CFR 192.13(c) to follow these procedures. This Commission adopted these federal rules at 4 CSR 240-40.030(1). Thus, the

Commission also finds Respondent's failure to follow its emergency plan is another violation of 4 CSR 240-40.030(1) separate from its violation in its failure to train its personnel.

5. Allegation that there were inadequate communications between Respondent's fire and gas departments to ensure adequate mutual assistance.

The Complainant also alleged there were inadequate communications between Respondent's fire and gas departments to ensure adequate mutual assistance as required in 49 CFR 192.615(c) adopted by the Commission at 4 CSR 240-40.030(1). Specifically, Complainant alleged that the lack of communication manifested itself in the failure of Respondent's personnel to timely shut off the gas and conduct a leak investigation. The Respondent denied that there were any communication problems and asserted it maintains a liaison between its fire and gas personnel to a greater degree than other gas operators.

49 CFR 192.615(c) requires, among other things, that a gas operator and fire personnel learn each other's responsibility in an emergency situation and plan how they can engage in mutual assistance to minimize hazards to people and property. The law, therefore, required Fire Chief Huff to know the gas department's priorities in an emergency situation. Thus, under this rule, Huff should have known that the gas department's priority was to shut off the gas and conduct leak and migration investigations. But the record shows Huff requested the backhoe, which was obtained to shut off the gas, to retrieve bodies.

The record does not show any meeting, plan or discussion among Respondent's personnel as to what action they would take in an incident like the one on January 7. In this incident, there were gas-fed flames, gas fumes and possible gas migration and bodies to be retrieved. One backhoe was obtained to shut off the gas but used to retrieve bodies. Meanwhile, the gas was not shut off and leak and migration investigations were not done. In the opinion of the Commission, the priorities of both the gas and fire departments could have been

achieved simultaneously had there been effective planning for such a situation. If Respondent had planned or adhered to a plan on how it would locate a gas line, conduct leak and migration investigations and retrieve bodies without any time being lost to any of these tasks, such planning would have allowed Respondent's personnel to mutually assist each other. There is no evidence of a plan or adherence to a plan on how Respondent could coordinate the priorities of its gas and fire department in an effort to minimize the risk to life and property. The Commission finds this lack of planning to be in violation of 49 CFR 196.615(c) adopted by the Commission at 4 CSR 240-40.030(1).

6. Allegation that Respondent failed to reevaluate and cathodically protect its unprotected steel lines in violation of 49 CFR 192.465(e) adopted by the Commission at 4 CSR 240-40.030(1).

Complainant alleged that Respondent failed to comply with 49 CFR 192.465(e) in its reevaluation of unprotected pipelines in its service area. Complainant also alleged that Respondent did not perform any electrical surveys or complete corrosion histories on unprotected pipelines. Complainant further alleged Respondent conducted periodic leak surveys on a five-year basis instead of the three-year basis as required by the rule.

Respondent contended it does not own any bare steel service lines and that the service line involved here was customer-owned. Respondent argued that because the service line is customer-owned it has no obligation to survey the line. However, Dale Tate testified that all service lines up to the meter, even customer-owned, are surveyed every five years. The service line at 312 West Fourth Street was surveyed in 1980 and 1985. Dysart testified the meter at 312 West Fourth Street was at the side of the house. Therefore, the Respondent has, upon its own initiative, conducted surveys past property lines regardless of whose pipeline it thought it was. He also testified that, upon Commission order, Respondent surveyed all customer-owned service lines in March, 1989.

Respondent did not protest that it could not be required to survey a line it did not own.

There is no language in the rule which equates legal safety responsibility with legal ownership. The rule does not release Respondent from responsibility if it does not have ownership. Respondent has attempted to persuade this Commission that responsibility for gas pipelines depends on ownership. Thus, the parties have debated the issue of customer versus company-owned pipelines. However, the Commission believes such a debate misses the point. The rule required reevaluation every three years, regardless of ownership. This fact is supported by an extensive commentary of the definition of service line in Volume 38 of the Federal Register (No. 68, April 10, 1973). It states that the responsibility for gas pipelines is not a function of ownership, but ". . . the transfer of gas from an operator to an ultimate consumer." Thus, it is Respondent's pipeline to survey until its gas is delivered to the customer's meter. In this case, the customer's meter was at the house. Respondent had a responsibility to survey the service line to the meter regardless of legal ownership as prescribed by 49 CFR 192.465(e). As a gas operator, Respondent is expected to know how the federal government has interpreted the rules it must obey.

Therefore, the Commission finds Respondent had a duty to reevaluate it at three-year intervals and cathodically protect it if it found active corrosion.

The Respondent admits no reevaluation occurs at three-year intervals. Instead, Dale Tate testified it surveys all service lines at five-year intervals and "daily monitors" the system. Clearly, surveying its unprotected lines at five-year intervals violates the three-year interval requirement. However, the

question remains whether the "daily monitoring" of the system can reasonably be considered the equivalent of a three-year interval reevaluation.

By daily monitoring, Dale Tate testified that that meant when leaks were dug up, the piping was checked for corrosion and that gas and water personnel checked for gas odors when gas and water meters were read. The problem with the first component of Respondent's daily monitoring is that it is not checking the lines but checking those portions of the lines dug up.

The second component of Respondent's daily monitoring is also problematic. The odorants added to gas can be scrubbed from the gas as it migrates through the soil. Migrating gas may not have an odor and the leak itself may be far enough from the meter so that any odor it is emitting goes undetected. Therefore, having gas and water personnel alert to gas odors is insufficient. The Commission finds the Respondent's daily monitoring is not equivalent to the three-year interval survey required by the rule. The Commission finds the Respondent was required to use some reasonable and effectual means to reevaluate the service line at 312 West Fourth Street every three years. The Commission finds, having failed to do so, Respondent is in violation of 49 Part 192.465(e) adopted by the Commission at 4 CSR 240-40.030(1).

The rule required Respondent to reevaluate its unprotected pipelines every three years. Respondent surveyed its lines in 1985. The rule required Respondent to survey them again in 1988. But Respondent did not survey its lines again until 1989. By failing to reevaulate this line until 1989, Respondent has continually violated the rule's requirement that reevaluation take place every three years.

Evidentiary Objections

At the hearing, the Commission reserved its rulings on several evidentiary objections. Respondent objected to the introduction of a videotape, Exhibit 5, by the Complainant. Under Missouri law, in order for a videotape to be admissible evidence, it must be sponsored by a witness who can testify it is a fair and accurate description of the scene as it is being filmed. Complainant's only witness, Leonberger, did not witness the scene as it was being filmed, and, therefore, he is not qualified to sponsor it. For this reason, the Commission sustains Respondent's objection to the admission of Exhibit 5 and grants its motion to strike all of Complainant's witness Leonberger's testimony which was based on his review of the tape.

The Commission, after review of the record, grants the following motions to strike: page 3 at line 21 to page 4, lines 1-2; page 5, lines 8-11 of Exhibit 3; page 9, lines 13-16, page 10, lines 18-25, page 11, lines 3-7, and page 13, lines 3-18 of Exhibit 4.

The Commission denies the following motion to strike: page 11, lines 15-27 of Exhibit 4.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

The Commission has jurisdiction over this complaint under the provisions of Chapters 386 and 393, RSMo 1986. The Commission may assess penalties against any person found to have violated any rule of the Commission. (386.570, RSMo 1986). Municipal gas utilities must meet the safety requirements set out in Commission rules. Section 386.310(1)(4), RSMo Supp. 1989.

The evidence in this case is that Respondent violated several Commission rules regarding gas safety and emergency procedures. Respondent

failed to timely report a gas explosion in violation of 4 CSR 240-40.020(1) and failed to take immediate corrective action in that it failed to immediately shut off the gas and conduct leak and migration surveys in violation of 4 CSR 240-40.050(3)(A). The Commission found the failure to take such corrective action showed a failure to adequately train and verify the training of city employees and thereby concludes Respondent violated 49 CFR 192.615 adopted by the Commission at 4 CSR 240-40.030(1). Based on the Commission's findings that Respondent failed to engage in mutual assistance to reduce hazard to life and property, it concludes Respondent violated 49 CFR 192.615(c) adopted at 4 CSR 240-40.030(1). The Commission found the Respondent had a duty to reevaluate at three-year intervals. The Commission found that the Respondent failed to do this. Based on these findings, the Commission has concluded the Respondent violated 49 CFR 192.465 adopted at 4 CSR 240-40.030(1). The Commnission also found it was a continuing violation and concludes Respondent should be assessed penalties for every day of violation.

Because this Commission has concluded the aforesaid violations have occurred and that these portions of the complaint are sustained, the General Counsel is hereby authorized to seek, in circuit court, $2,000 for each of the five violations found herein for a total of $10,000, pursuant to Section 386.600, RSMo 1986. In addition, General Counsel is authorized to seek penalties for the continuing violation of 49 CFR 192.465(e) in the amount of $100,000.

The Commission found there was no evidence to establish that Doris Miller called Respondent on January 5, 1989 and, therefore, concludes Respondent did not violate 4 CSR 240-40.050(4) and 4 CSR 240-40.050(2). Those portions of the complaint regarding the allegation that Respondent failed to record and investigate a gas odor report and that such failure is a continuing violation

that constitutes separate counts are dismissed. Based on its findings that the area was adequately secure, the Commission concludes that portion of the complaint that alleged otherwise is also dismissed.

IT IS THEREFORE ORDERED:

1. That the complaint brought herein by the Staff of the Missouri Public Service Commission is hereby sustained in part and dismissed in part as discussed herein.

2. That Fulton Municipal Utilities violated 4 CSR 240-40.020(1) by not making a timely report of the explosion of January 7, 1989.

3. That Fulton Municipal Utilities violated 4 CSR 240-40.050(3)(A) by failing to take immediate corrective action to a Class 1 leak in that it failed to immediately shut off the gas and conduct leak and migration surveys.

4. That Fulton Municipal Utilities violated 49 CFR 192.615(b) adopted at 4 CSR 240-40.030(1) by failing to adequately train and verify the training of its employees of emergency procedures.

5. That Fulton Municipal Utilities violated 49 CFR 192.13(c) adopted by the Commission at 4 CSR 240-40.030(1) by failing to follow its emergency plan.

6. That Fulton Municipal Utilities violated 49 CFR 192.615(c) adopted at 4 CSR 240-40.030(1) by failing to adequately plan and ensure mutual assistance to minimize the hazards to life and property.

7. That Fulton Municipal Utilities violated 49 CFR 564(e) adopted at 4 CSR 240-40.030(1) by failing to re-evaluate and cathodically protect the unprotected steel lines every three years and that such was a continuing violation.

8. That upon those allegations found herein to be sustained, the General Counsel of the Missouri Public Service Commission is hereby authorized

to seek penalties against the Fulton Municipal Utilities in the amount of $110,000.

9. That this Report and Order shall become effective on August 21, 1990.

BY THE COMMISSION

Harvey G. Hubbs
Secretary

(S E A L)

Steinmeier, Chm., Mueller, Rauch, McClure and Letsch-Roderique, CC., Concur and certify compliance with the provisions of Section 536.080, RSMo 1986.

Dated at Jefferson City, Missouri, this 20th day of July, 1990.

APPENDIX "A"

1. Allegation that Respondent failed to record and investigate a gas odor report from the general public in violation of 4 CSR 240-40.050(4) and 4 CSR 240-40.050(2).

4 CSR 240-40.050(4)

Records pertaining to originating leak reports should be filed by the company for a period of not less than six (6) years after the repair of such leaks. The records of the leak repairs should be maintained for the life of the facility and shall indicate the date of the originating leak report, as well as the pertinent repair information.

4 CSR 240-40.050(2)

Any company-detected leak or any leak or odor call from the general public, police, fire or other authorities or notification of damage to facilities by contractors or other outside sources shall require immediate investigation and classification. Particular attention shall be given to leaks in sealed and unvented areas, transmission lines and in the proximity of schools, churches, hospitals and other buildings of public assembly. A follow-up inspection is required for all repaired Class 1 and Class 2 leaks.

2. Allegation that Respondent failed to make a timely report of the explosion in violation of 4 CSR 240-40.020(1).

4 CSR 240-40.020(1)

At the earliest practicable moment following discovery, gas operators shall notify designated Commission personnel by telephone of each incident within their service areas that involves an ignition, eruption or explosion resulting from the escape of natural gas which--

(a) results in death;
(b) results in personal injury necessitating inpatient hospitalization;
(c) results in estimated property damage of five thousand dollars ($5,000) or more, including cost of gas lost, to the property of the gas operator or others, or both;
(d) in the judgment of the operator, was significant even though it did not meet the criteria of (1)(A), (B) or (C).

3. Allegation that Respondent failed to take immediate corrective action in violation of 4 CSR 240-40.050(3)(A) because it did not immediately shut off the gas, conduct leak and migration surveys and evacuate the area.

4 CSR 240-40.050(3)(A)

As used in this rule, leak classifications shall be as follows:

(A) Class 1 Leak - Is a gas leak which due to its location and/or magnitude constitutes an immediate hazard to a building and/or the general public. It shall require immediate corrective action which shall provide for public safety and protect property. Examples of Class 1 leaks are -- a gas fire, flash or explosion; broken gas facilities such as contractor damage, main failures or blowing gas in a populated area; an indication of gas present in a building *emanating from company-owned facilities; gas reading equal to or above lower* explosive limit in a tunnel, sanitary sewer or confined area; gas entering a building or in imminent danger of doing so; and any leak which, in the judgment of the supervisor at the scene, is regarded as immediately hazardous to the public and/or property.

4. Allegation that Respondent failed to adequately train and verify training of its personnel in emergency procedures.

49 CFR 192.615(b)

Each operator shall:

(1) Furnish its supervisors who are responsible for emergency action a copy of that portion of the latest edition of the emergency procedures established under paragraph (a) of this section as necessary for compliance with those procedures.

(2) Train the appropriate operating personnel to assure that they are knowledgeable of the emergency procedures and verify that the training is effective.

(3) Review employee activities to determine whether the procedures were effectively followed in each emergency.

5. Allegation that there were inadequate communications between Respondent's fire and gas departments to ensure adequate mutual assistance.

49 CFR 192.615(c)

Each operator shall establish and maintain liaison with appropriate fire, police and other public officials to:

(1) Learn the responsibility and resources of each government organization that may respond to a gas pipeline emergency;

(2) Acquaint the officials with the operator's ability in responding to a gas pipeline emergency;

(3) Identify the types of gas pipeline emergencies of which the operator notifies the officials; and

(4) Plan how the operator and officials can engage in mutual assistance to minimize hazards to life or property.

6. Allegation that Respondent failed to reevaluate and cathodically protect its unprotected steel lines in violation of 49 CFR 192.465(e) adopted by the Commission at 4 CSR 240-40.030(1).

49 CFR 192.465(e)

Each operator shall, at intervals not exceeding three years, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator shall determine the areas of active corrosion by electrical survey, or where electrical survey is impractical, by the study of corrosion and leak history records, by leak detection survey, or by other means.