

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
	:	
Vs.	:	
	:	
The Peoples Gas Light and Coke	:	05-0341
Company.	:	
	:	
	:	
Citation for alleged violation of Commission:	:	
Rules regarding leakage surveys.	:	

**REPLY BRIEF OF THE STAFF OF
THE ILLINOIS COMMERCE COMMISSION**

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January 11, 2006

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Pursuant to 83 Ill. Adm. Code 200.800, Staff of the Illinois Commerce Commission (“Staff”), by and through its attorney, hereby files its Reply Brief in the above-captioned proceeding.

I. INTRODUCTION

Staff continues to advocate findings that Peoples did not act in good faith to come into compliance with the inside safety leakage surveys and that the offense is a serious offense. Staff submits that under the facts at hand, the imposition of a \$1,000,000 penalty is appropriate.

Although there is virtually no disagreement regarding the facts in this docket, Peoples has come to a completely contrary position in regards to its good faith, the serious nature of the offense and the appropriateness of the fine to be imposed. In its Initial Brief Peoples argues:

The \$1 million penalty sought by Staff is excessive and unjustified because the public safety concerns raised by technical non-compliance

are minimal and Peoples Gas' ever increasing efforts to perform the ISIs demonstrate its good faith. (Peoples IB, p. 12)

On the other hand, Staff has argued that “[a]ny accumulation of natural gas is hazardous”, that “[l]eakage surveys are critical to ensuring the safety and integrity of the natural gas distribution systems”, and that “Peoples has failed utterly to demonstrate good faith in its attempt to achieve compliance”. (Staff IB, pp. 12 & 13) In order to determine which of the contradictory viewpoints to adopt, the Commission should examine the reasoning behind the Company's and Staff's arguments.

II. ARGUMENT

A. Good Faith

In support of its proclamations of good faith, Peoples relies largely upon its late filed exhibit (Resp. Ex. 1) which reflects that at the end of the year 2005, Peoples will have completed 116,900 due or past due inside leakage surveys, leaving 10,000 outstanding overdue leakage surveys. (Peoples IB, pp. 4 & 7) Peoples views Staff as “fail[ing] to acknowledge Peoples Gas' devotion of significant effort and resources to the performance of ISIs and the success that ultimately was achieved.” (*Id.*, p. 12) Peoples continues to attempt to shift responsibility for its failure to conduct the inside leak surveys upon the customers by stating that it cannot control its ability to gain access to its customers premises. (*Id.*, p. 13) Finally, Peoples characterizes the 10,000 inside leak surveys which it projects will remain overdue at years' end as *de minimus*. (*Id.*)

Staff has no quarrel with the numbers presented by Peoples. As Staff tried to make clear in testimony, Staff's review of compliance with the safety standards consists

of an audit of the company's records. (Tr., p. 38) All of the numbers used in this proceeding come directly from Peoples' records.

Insofar as Peoples' "devotion of significant effort and resources" to the performance of inside leak surveys, it should be noted that no significant effort took place on the part of Peoples until it was made a respondent in this proceeding and was facing the likelihood of the Commission imposing a penalty. It is remarkable that Peoples was able by December 4 to complete 116,900 inside leak surveys in 2005 (Resp. Ex. 1) as compared to 28,333 in 2000, 35,735 in 2001, 20,676 in 2002, 25,165 in 2003, and 52,297 in 2004 (Staff Ex. 1.0, Ex. D). Peoples, while congratulating itself on its efforts to complete the surveys, has failed to provide a justification of why it did not complete the surveys during the four year timeframe it had committed to in early 2000.

Peoples used various tactics to notify customers of the need for the inspection from 2000 to 2005. A review of the record indicates that in 2000 Peoples used a combination of cold calls and appointments to access residences and began using a pilot two-letter campaign¹. (Resp. Ex. C, p. 4) By its own admission, the results of this approach were disappointing; the Company completed only 28,333 surveys that year. (Resp. Ex. C, p. 4) Nevertheless, in 2001 Peoples continued to pursue the same tactics, again with disappointing results, completing 35,735 due and past due surveys.

In 2002, Peoples used a "new" approach by assigning regular field service crews to complete inside surveys along with other customer work. (Resp. Ex. C, p. 5) Peoples continued using cold calls, now in 3 mile sweeps and initiated the three-letter campaign. These approaches were unsuccessful. At the end of the year, Peoples had only

¹ Peoples Initial Brief (p. 6) references a three-letter campaign, but that appears to be a typographical error.

completed 20,676 of the required surveys. (*Id.*) One is left to wonder why by the end of the first quarter, or surely at the midpoint of 2002, Peoples was not cognizant of the dire failure of the program. After all, in early 2000, Peoples had committed to completing 75,000 inside safety leakage surveys per year over the next 4 years. By the start of 2002, two years had passed and even combined, Peoples' completions did not total 75,000.

If Peoples was concerned about coming into compliance with the safety regulations, Peoples should have been in emergency mode by mid 2002. Apparently it was not. The mere 20,676 due or past due leak surveys completed by year's end left Peoples further behind in completing the surveys than it had been at the beginning of 2002. Peoples has offered no explanation of why additional steps were not taken at that time. Indeed the "new approach" adopted in 2002, "assigning regular field service crews to perform ISIs along with other customer work" (Resp. Ex. C, p. 5) seems repetitive of matching AMR installations with inside surveys which was done in 2000 (Resp. Ex. C, p. 4).

Peoples continued to plod along with its attempts at compliance. In 2003, the only "new" concept applied was to "consolidate[] meter changes, AMR installs, and ISIs by square miles." (Resp. Ex. C., p. 5) This concept appears to be another iteration of the "new" approaches adopted in 2000 and 2002. Peoples continued to use the three-letter campaign. Not surprisingly, the results of these efforts were similar to the results in 2002, with completion of 25,165 due or past due leakage surveys by the end of the year. Once again, 2003 ended with Peoples further behind in completing leakage surveys (68,936) than it had been at the beginning of the year (60,282). (Staff Ex. 1.0, Ex. D)

In total after 3 years of efforts to come into compliance with the requirement, Peoples had completed 81,576 due and past due leakage surveys. This is only slightly higher than the number of leakage surveys Peoples had promised to complete each year starting in 2000. Although Peoples claims that it used its best efforts, the results belie the claim. In fact, with 68,936 past due leakage surveys at the end of 2003, it was within a thousand of being as far behind then as it had been at the beginning of 2000 (69,780) when it was first notified of the violation. (Staff Ex. 1.0, Ex. D)

At first blush, it appears that Peoples made progress in 2004 when it completed 52,297 due or past due leakage surveys. (*Id.*) However that number pales when one considers that 71,123 leakage surveys came due to be completed that year. (*Id.*) The 71,123 surveys that came due were a result of Peoples, having completed that number 5 years previously. Again, one is left to wonder how Peoples was able to complete 71,123 leakage surveys prior to being notified of the violation and prior to the time that it committed to completing 75,000 leakage surveys annually, yet 5 years later could only complete 52,297. The record provides no evidence to support that there was any change in circumstances. The record does demonstrate that at the end of 2004 after 5 years of what Peoples claims was a good faith effort at coming into compliance with the inside leakage survey requirement, Peoples found itself with a larger inventory of due and past due leakage surveys than when it began its attempts at compliance in 2000. The facts in the record fly in the face of Peoples' arguments of good faith.

B. Gravity of the Violation

Peoples defends its position that the failure to perform the required inside leakage surveys is not a grave offense by stating: that Peoples "did not create an actual

safety threat for its customers” (Peoples IB, p. 14), that “evidence of gas leaks were found in less than 0.6%” of leakage surveys conducted since January 2000 (*Id.*), and that the failure to conduct the survey is “not an *actual* safety threat” but “a *potential* harm”. (*Id.*, pp. 14-15)

Staff has never alleged that Peoples *created* a safety threat. Staff’s position is that leakage surveys are critical to ensuring the safety and integrity of the natural gas distribution system as they provide an opportunity to take corrective action on otherwise undiscovered leaks which could cause explosions or fires and thus the loss of property or life. (Staff Ex. 1.0, p. 3) Completing inside leakage surveys on residential service lines once every 5 years is part of the Commission’s Minimum Safety Standards for Transportation of Gas and for Gas Pipeline Facilities (83 Ill. Adm. Code 590). Peoples has neither complied with the requirement nor received a waiver from it. The argument that Peoples’ disregard of the safety standards results in a minimal safety risk because it creates a potential harm rather than an actual safety threat (see Peoples. IB, p. 15), ignores the nature of the subject matter.

As indicated in Peoples’ Gas Service Department Manual: any accumulation of natural gas must be considered hazardous and leak investigation is one of the most important phases of gas service work. (See Staff Ex. 2.0, Ex. A, p. 1, Section 11.1) Peoples admitted that it found 2,688 leaks since 2000 during its inside residential leakage surveys: this is the number of gas leaks found in the “less than .06%” of the leakage surveys conducted since January 2000. (Staff Ex. 2.0, p. 2, Peoples IB, p. 14) Peoples attempted to minimize the significance of the leaks by stating that “most are very minor leaks detectable with instruments only” and that “most customers become aware of potentially unsafe conditions well before the periodic inside safety

inspections...” (Resp. Ex. B, p. 2) However, these statements ignore the very concerns that the inside leakage survey requirement was adopted to prevent: leaks which are only detectable by sensitive equipment and leaks which are not recognized by a gas consumer. (Staff Ex. 2.0, p. 3) To argue that 2,688 “minor” leaks do not raise a concern and reflect only a potential harm disregards the indisputable fact that natural gas is a highly volatile substance and that the potential harm in question is an explosion which, in a residence, would surely result in great loss of property and likely result in loss of life. That potential harm is gigantic and unacceptable.

What is more, Peoples has failed to act responsibly and come into compliance with the inside leakage survey requirement within a reasonable timeframe. Note that Staff worked with Peoples for a period of over 5 years before filing the Staff Report which resulted in the initiation of this proceeding. By now, Peoples has allowed this potential harm to continue affecting tens of thousands of homes over a six year time span.

Peoples relies upon two orders from other jurisdictions which it claims are consistent with or support its position regarding the lack of gravity of harm of violating the leakage survey requirement. Both cases are inapposite to the proceeding before the Commission.

First, Peoples relies upon a Michigan case, *In re Consumers Energy Company*, 2002 Mich. PSC Lexis 277, Case No. U-13156, September 16, 2002. Unlike this proceeding, the Michigan order is the result of a settlement agreement between the Company and the Michigan Public Service Commission (“MPSC”) Staff. The MPSC order granted a partial waiver of the inside leakage survey requirement. In the order, the MPSC instructed its Staff to notify the United States Department of Transportation’s

Office of Pipeline Safety (“USDOT”) of the issuance of the order. Interestingly, by letter of November 25, 2002, the USDOT notified the MPSC that it objected to the Michigan waiver and therefore the waiver was stayed. (See attached Ex. A) Subsequently, on May 4, 2004, the USDOT notified the MPSC that it concurred with the waiver contingent upon the MPSC’s representations that the energy company was in the 3rd year of a ten year program to remove residential meters to outside locations and the work should be completed in 7 years. (See attached Ex. B) USDOT granted the waiver only based upon MPSC’s statement that “[i]n ten years the problem will not exist if this operator... is allowed through this waiver to use its resources to solve the problem permanently”.
(*Id.*)

None of the facts of the Michigan case are present in this docket. There is no settlement agreement between Staff and Peoples. Nor has Peoples offered a program to permanently solve the inside leakage survey problem. The facts in the Michigan case, where the Company worked cooperatively with the MPSC Staff to resolve the problem, are entirely different from the docket currently before the Commission. In this docket, there is a disagreement regarding both the gravity of the harm of the violation and the good faith of Peoples in curing the violation. Peoples citation to and reliance on the Michigan order should be disregarded.

The other order relied upon by Peoples is equally irrelevant. *Re Revisions Regulations Governing the Procedures Relating to the Inactivation, Abandonment and Leakage Survey of Gas Service Lines*, 1994 WL 711411 (Mass. D.P.U. 94-142) September 29, 1994, is an order which initiated a rulemaking to consider whether changes should be made to the leakage survey requirements. (See attached Ex. C) Peoples cites the concerns raised by the Massachusetts Department of Public Utilities

("DPU") regarding the leakage survey requirements. However, in fact, the final order in the rulemaking concluded that the existing regulations governing the leakage surveys would remain in effect and unchanged. (1995 WL 125607 Mass. DPU 94-142, February 27, 1995, see attached Ex. D) No weight should be given to the references to this order as it simply consists of the reasoning behind the *initiation* of a rulemaking where *no action was taken in the final order* in regards to the leakage survey rules.

C. Policy Considerations

The penalties provided for in the Illinois Gas Pipeline Safety Act ("Act") (See 220 ILCS 20/6 and 7) provide the Commission with a tool to be used to encourage recalcitrant companies, such as Peoples, to maintain compliance with the Act. The imposition of a \$ 1 million dollar penalty on Peoples for its failure to come into compliance with federal and state minimum safety requirements regarding conducting inside leakage surveys is appropriate taking into consideration: (1) the time period (over a six years) which has lapsed while Peoples remains out of compliance; (2) the indifference exhibited by Peoples in coming into compliance; (3) the number of households affected (in the tens of thousands); and (4) the potential harm that could be caused by an undetected leak (loss of life or property).

Peoples' argument that the imposition of a \$1 million penalty would be unprecedented and unfair is erroneous. While the Commission has not previously imposed fines for violations of the inside leakage survey requirements, Staff has identified 3 previous Commission orders which discuss the imposition of fines for violations of the Act.

1. Docket No. 89-0475

In 1989, the Commission initiated a Citation order directing Illinois Power Company (“IP”) to show cause why civil penalties should not be imposed for violations of the Illinois Gas Pipeline Safety Act, Docket No. 89- 0475. IP and Staff entered into a stipulated settlement agreement, the Revised Agreement, in which IP agreed to implement all Staff’s recommendations in regards to the alleged violation. (See Order, Docket No. 89-0475, January 15, 1992) IP also agreed to pay a \$6,000 penalty, which IP and Staff agreed was the maximum amount which could be imposed for the violations alleged.² In the Revised Agreement, IP denied that it had violated the Act. The Revised Agreement also provided that it would not constitute a precedent for future issues which may arise between the parties. The Commission stated that approval of the Revised Agreement turned upon whether it furthered the objectives of the Act to establish and enforce compliance with minimum standards for the transportation of gas and for pipeline facilities. The Commission found that IP had agreed to remedy the situation that gave rise to the violation, to pay a compromised penalty viewed by Staff as the maximum amount which could be assessed, and to take steps intended to ensure that there would be no recurrences. The Commission approved the Revised Agreement finding that it was consistent with Section 557 (now Section 7) and the other provisions and objectives of the Act and represented a reasonable resolution of the matter. (*Id.*)

2. Docket No. 93-0127

In 1993, the Commission entered a citation order against Monarch Gas Company (“Monarch”), Docket No. 93-0127, to show cause why civil penalties should

² At that time, the federal and state regulations regarding maximum penalties provided for a maximum of a \$1,000 penalty per violation and six separate offenses were charged. (*Id.*)

not be imposed for three alleged violations of the Act. After a contested hearing and the briefing schedules were completed, the Commission adopted Staff's position and found against Monarch. (Order, Docket No. 93-0127, March 22, 1995) After considering the size of the Company, which had net operating income of \$148,642 and \$203,642 in the years 1993 and 1994, respectively, Staff recommended a total civil penalty of \$54,000. (*Id.*) The Commission analyzed the gravity of the violation and the good faith of Monarch separately for each of the 3 violations.

The Commission imposed Staff's recommended \$1,000 penalty for Monarch's failure to pressure test a service line. This was one tenth the maximum allowable civil penalty for the violation, but the Commission noted the Company's good faith in pressure testing the line on the same day that it was notified of the violation. The Commission further concluded that the penalty appropriately considered the potential safety hazard resulting from the violation and the proximity of the line to residences. (*Id.*)

The second violation concerned the use of a PVC water pipe. Staff recommended a penalty of \$100 per day for each day between the date of notification of the violation until the violation was rectified, or 230 days. In adopting Staff's recommendation, the Commission found that Monarch had not operated in good faith. The Commission also stated,

... In addition, a penalty in the amount recommended by Staff provides a signal to other companies to determine promptly whether pipe is in fact unauthorized and if so, remove unauthorized pipe. If the Commission relieves Monarch of responsibility from the time the pipe was discovered, companies would have no incentive to ascertain quickly whether the pipe is unauthorized. ... (*Id.*)

Thus, despite the consensus of Monarch and Staff that the gravity of the PVC pipe violation was less than that of the failure to pressure test the service line in terms of the threat to the public safety, based upon Monarch's lack of good faith in coming into compliance, the Commission ordered Monarch to pay a \$23,000 fine for the violation. (*Id.*)

The third violation was Monarch's failure to properly discontinue service at 15 separate locations. Staff testified that Monarch had a history of not properly discontinuing service and that it had found the same violation on previous occasions. Staff and Monarch disagreed regarding the seriousness of the violation with Staff alleging it to be the most serious and Monarch arguing that it was the least serious offense. The Commission concluded that the repetitive nature of the violation was an indication of bad faith on the part of Monarch. It adopted Staff's proposed penalty of \$2,000 per instance and found that the penalty recognized the repetitive nature of the violation. The Commission found that improper service disconnections constituted 15 serious violations that jeopardized public safety. (*Id.*)

3. Docket No. 90-0362

In a citation case against Central Illinois Light Company ("CILCO"), Docket No. 90-0362, CILCO and Staff entered in a Stipulated Settlement Agreement ("Agreement"). The citation alleged that CILCO failed to pressure test service lines as required by its operating procedures. (Order, Docket No. 90-0363, September 20, 2000) This resulted in a gas explosion. In the Agreement, CILCO did not admit to the violations, but it agreed to change its operating procedures in such a way as to satisfy all the recommendations made by Staff and to enhance pipeline safety not only in regards to service lines, but also in other areas of CILCO's gas operations. (*Id.*)

CILCO also agreed to pay the maximum civil penalty that could be imposed in the case.³ The Agreement provided that it did not constitute precedent for future issues between the parties or with respect to other gas pipeline operators. (*Id.*)

In its order approving the Agreement, the Commission stated that approval of a settlement brought under the Act, absent an admission of violations or a determination of violations through litigated hearing turns upon a finding of whether the settlement furthers the goal of the Act and otherwise represents a reasonable resolution of the matter. The Commission stated that CILCO had remedied the situation that gave rise to the explosion, had agreed to pay the maximum penalty that could be imposed, and had taken steps intended to enhance safety in all operating areas of the Company. The Commission found that through the Agreement, the deterrent objectives of the Act had been met in a way that fosters voluntary compliance without the expenditure of resources for costly litigation and therefore approved the Agreement. (*Id.*)

4. CILCO Cases

Peoples has attempted to draw a contrast between Staff's recommendation in the instant proceeding as compared to the Commission action in *Central Illinois Light Company Proposed general increase in gas rates*, Docket No. 94-0040. (See Peoples IB, p. 18) However, Peoples has misconstrued the facts surrounding that proceeding. In the CILCO rate case, the Commission found that CILCO had engaged in a course of conduct that led to the existence of a substantial threat to public safety, and which necessitated the immediate and accelerated replacement of the majority of the cast iron system and the expenditure of significant sums that would not have been spent but for

³ At that time the maximum penalty was \$1,000 for each violation for each day the violation persists. A \$10,000 penalty was imposed as a maximum of 10 service lines were involved in the violation. (*Id.*)

CILCO's imprudence. (Order, Docket No. 94-0040, pp. 25-26, December 12, 1994)
The Commission also found that CILCO's conduct was a substantial threat to public safety. The Commission made a \$ 7,065,000 reduction to CILCO's rate base⁴ and a \$310,000 reduction in CILCO's depreciation expense. (*Id.*)

The Commission never issued a citation order based upon the facts referenced in Docket No. 94-0040 because those issues were addressed in *United States of America v. Central Illinois Light Co.*, 94-3249 in the United States District Court, Central District of Illinois, Springfield Division ("US v. CILCO"). *US v. CILCO* was resolved by a consent decree on September 16, 1994. According to the terms of the Consent Decree CILCO was fined \$843,646.76 and ordered to pay \$156,353.24 for the cost of the investigation. In addition, CILCO agreed to accept a \$4,824,563.00 disallowance in the pending rate case (Docket No. 94-0040). (See Consent Decree attached as Ex. E) CILCO also agreed to underwrite and not seek to recover through utility rates, the expense of an outside expert, chosen by the Commission, to examine its manuals and systems to insure that it was in compliance with all applicable statutes and regulations as well as agreeing to certain other conditions. (*Id.*)

D. Summary

This proceeding is only unique in the sense of the particular regulation Peoples is violating. The Commission has historically taken very seriously the authority delegated to it by the legislature to establish and enforce compliance with minimum safety standards for the transportation of gas and for pipeline facilities. In the past, the Commission has recognized the deterrent effect that penalties can have upon future violations either by the entity being fined or by other entities which may find themselves

⁴ CILCO had agreed to accept a portion of this disallowance as discussed *infra*.

in similar situations in the future. (See Monarch Gas and CILCO discussions *supra*) The small number of prior penalty cases identified by Staff is testament to the effectiveness with which the Commission has wielded the enforcement tools provided by the legislature.

A penalty is particularly appropriate in the matter at hand where Peoples, far from voluntarily coming into compliance or quickly implementing new policies to ensure compliance in the future, continues to deny the serious nature of the offense and states that “100% compliance is impractical”. (Peoples IB, p. 13) Peoples continues to take this position, six years after having been notified that it is in violation of the minimum federal and state safety regulations. Neither has Peoples requested a waiver of the regulations.⁵ It appears that Peoples is of the view that compliance with the minimum safety standards is optional.

Indeed the only truly exceptional characteristic of this proceeding is Peoples’ absolute aplomb in refusing to comply with the safety standards that it is this Commission’s duty to enforce. Because of the enormity, in terms of duration and in terms of households affected, of the violation Staff recommends a \$1 million penalty. Staff proposed that the penalty be calculated as \$20 for each of the 87,762 meters that were past due on January 1, 2005. (Staff Ex. 1.0) Because this calculation exceeds the \$1 million maximum penalty that may be assessed, Staff did not calculate the penalty which would be imposed if each day the violation existed was counted as a separate violation as provided for in the Act at Section 7. (*Id.*) The penalty may be calculated in any number of ways, but given the number, the protracted duration, the ongoing nature, and the gravity of the violations, it is difficult to conceive of a calculation

⁵ Illinois rules must be at least “as inclusive, as stringent, and compatible with...” the federal minimum safety standards (220 ILCS 20/3), thus any waiver would have to be approved through the USDOT.

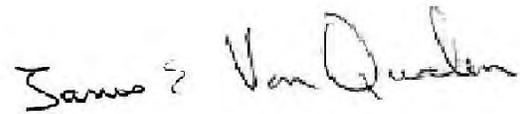
method that would result in a penalty of less than \$1 million. In any event the same considerations, i.e., the number, the duration, the ongoing nature, and the gravity of the violations, make it clear that it is necessary to send Peoples a clear message that the Commission will not tolerate disregard for safety regulations.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the Staff of the Illinois Commerce Commission respectfully requests the Commission:

1. Find that Peoples is in violation of 83 Ill. Adm. Code 590.10 which adopts 49 CFR 192.723(b)(2) as the minimum safety standards for the transportation of gas and for gas pipeline facilities;
2. Find that Peoples gas has been in violation of 83 Ill. Adm. Code 590.10 since January 10, 2000;
3. Find that Peoples is a large natural gas distribution company with net utility operating income of \$58,682,020 in 2004;
4. Find that Peoples' failure to comply with 83 Ill. Adm. Code 590.10 (adopting 49 CFR 192.723(b)(2)) from January 2000 to the present is a grave violation of the safety standards;
5. Find that Peoples has failed to demonstrate that it acted in good faith in attempting to achieve compliance with 83 Ill. Adm. Code 590.10 (adopting 49 CFR 192.723(b)(2));
6. Order that Peoples shall be charged a penalty of \$1,000,000; and
7. Allow such other and further relief, as this Commission deems appropriate.

Respectfully submitted,



Janis Von Qualen
Counsel for the Staff of the Illinois
Commerce Commission

January 11, 2006

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Exhibit A

Nicor Gas Ex. 3.0
Attachment N
Docket No. 09-0301

U.S. Department
of Transportation
**Research and
Special Programs
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

NOV 25 2002

Mr. Paul Proudfoot
Supervisor, Gas Safety Program
Michigan Public Service Commission
Lansing, MI 48909-7721

Dear Mr. Proudfoot:

We have considered your letter of September 20, 2002, notifying us that the Commission granted the Consumers Energy Company a waiver from compliance with 49 CFR 192.481 and 192.723(b)(2) for portions of residential service lines located inside buildings upstream from the outlet of customer meters. Section 192.481 requires operators to reevaluate every 3 years the need for atmospheric corrosion control on exposed pipelines. Section 192.723(b)(2) requires operators to conduct leakage surveys, using leak detection equipment, on distribution lines located outside business districts every 5 years or, if the pipeline is buried or submerged and not cathodically protected, every 3 years.

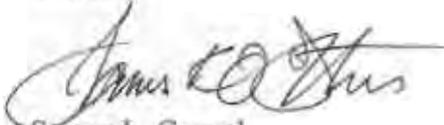
The justification for waiver of § 192.481 is that atmospheric corrosion on interior portions of residential service lines is a slow process that rarely results in leaks. Also, on interior portions of service lines, a leakage survey is generally the only practical method of evaluating the need to control atmospheric corrosion. If a leak were to occur, it would be microscopic and smelled by meter readers, who are regularly in the vicinity of the piping. The company would annually test and certify its meter readers as capable of smelling gas at a safe level or provide those readers not certified with a gas monitor set at 5 percent of the lower explosive limit. The waiver of § 192.723(b)(2) is similarly justified by the likelihood that leaks would be detected sooner through monthly visits of meter readers than by checking for leaks once every 5 years with leak detection equipment. Any meter reader who smells gas would report the problem immediately for further investigation.

After considering the justification, we believe more substantiation is needed to assure the waiver is consistent with pipeline safety. The purpose of § 192.481 is to require evaluation of the need for corrosion control before leakage occurs. The same meter readers Consumers might assign to sniff the air for gas could just as readily visually examine the meter and observable interior piping for rust. The waiver does not explain why Consumers will not use its meter readers to make such examinations. For piping that is walled in or otherwise not readily observable, there may be no practical way to comply with § 192.481.

As to §192.723(b)(2), the waiver does not substantiate to our satisfaction that relying on the ability of meter readers to smell leaking gas would provide a level of safety equivalent to compliance with § 192.723(b)(2). We are concerned that a meter reader's sense of smell might change between annual certifications, or that the odorant level in the gas could change. Moreover, since Consumers intends to provide some meter readers with gas monitoring equipment, the meter readers could use the equipment to meet the requirements of § 192.723(b)(2). The waiver does not explain why Consumers will not take the same action at least every 5 years on all interior piping and meters.

Therefore, we object to the waiver, and under 49 U.S.C. 60118(d), the Commission's action granting the waiver is stayed. Within 90 days, the Commission may appeal this matter in writing and request an opportunity for a hearing. We will consider any additional information you submit in deciding whether to withdraw our objection.

Sincerely,



Stacey L. Gerard
Associate Administrator for
Pipeline Safety

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Exhibit B

MAY - 4 2004

Mr. Paul Proudfoot
Supervisor, Gas Safety Program
Michigan Public Service Commission
Lansing, MI 48909-7721

Dear Mr. Proudfoot:

On September 20, 2002, you notified this office that the Michigan Public Service Commission (Commission) granted the Consumers Energy Company a waiver from compliance with 49 CFR 192.481, *Atmospheric corrosion control: Monitoring*, and 192.723(b)(2), *Distribution systems: Leakage surveys*, for portions of residential service lines located inside buildings upstream from the outlet of customer meters. This office stayed the waiver on November 25, 2002 pending additional information to justify the granting of the waiver.

Section 192.481 requires operators to reevaluate every three years the need for atmospheric corrosion control on exposed pipelines. Section 192.723(b)(2) requires operators to conduct leakage surveys, using leak detection equipment, on distribution lines located outside business districts every five years or, if the pipeline is buried or submerged and not cathodically protected, every three years.

After reviewing supporting documentation submitted by your office to the Office of Pipeline Safety, Central Region (OPS-C) in response to the stayed waiver, you indicated that the Consumers Energy Company is in the third year of a ten year program to move residential meters to outside locations, and that the work should be completed in seven years. Based on that information and the additional information submitted by your office to OPS-C, this office concurs with the granting of the waiver with the following contingencies:

- Any extensions to the time required for the Consumers Energy Company to complete the metering project must be justified to the Commission. This is consistent with the statement in your September 20, 2002 letter where you stated, "[i]n ten years the problem will not exist if this operator . . . is allowed through this waiver to use its resources to solve the problem permanently," and
- This waiver is exclusively applicable to residential meters, i.e., buildings designed for and currently occupied as a personal residence(s). This waiver does not apply to institutions, hotels, motels, and buildings not intended for personal residence.

Provided the Commission agrees to the aforementioned conditions, this office does not object to the issuance of this waiver; nor does this office believe that granting this waiver with the aforementioned conditions is inconsistent with pipeline safety.

Sincerely,

A handwritten signature in black ink, appearing to read "Stacey L. Gerard". The signature is fluid and cursive, with the first name being the most prominent.

Stacey L. Gerard
Associate Administrator
for Pipeline Safety

Exhibit C

H

Re Revision Regulations Governing the Procedures Relating to the Inactivation,
Abandonment and Leakage Survey of Gas Service Lines
D.P.U. 94-142

Massachusetts Department of Public Utilities
September 29, 1994

Before Gordon, chairman, and Wehster, commissioner

BY THE DEPARTMENT:

*1 ORDER COMMENCING RULEMAKING AND PROPOSING REGULATIONS, NOTICE OF PUBLIC HEARING,
AND SOLICITATION OF INITIAL COMMENTS

I. INTRODUCTION

In 1985, the Department of Public Utilities ('Department') promulgated regulations governing the procedures related to the inactivation, abandonment, and leakage surveys of gas service lines by gas corporations and municipalities subject to G.L. c. 164. D.P.U. 85-61 (1985); 220 C.M.R. § 107. Generally, those regulations require gas companies and municipal gas departments to follow specific procedures and timetables when: (1) inactivating service lines; (2) abandoning service lines presently inactive or those that become inactive; (3) performing leakage surveys on all service lines located outside business districts; and (4) maintaining and preparing records and reports on inactive and abandoned service lines. 220 C.M.R. § 107.00. An inactive service line is one where gas service to the customer has been discontinued but the service line has not been abandoned. *Id.* at § 107.01(2). An abandoned service line is one which is disconnected or cut off at the main, or at the distribution line that is the source of supply and which is purged, inerted and sealed. *Id.* Pursuant to these regulations, a service line that has been inactive for a certain period of time must be abandoned to remove a potential source of gas leakage.

In 1986, the Department promulgated regulations governing the procedures for the determination of violations of codes pertaining to the safety of pipeline facilities and the transportation of gas. Those regulations provided, among other things, that the Department may commence an enforcement proceeding by issuing a notice of probable violation ('NOPV') if the Department has reason to believe that a violation of 220 C.M.R. §§ 101 through 107, or of any other regulation pertaining to the safety of pipelines has occurred. D.P.U. 86- 87 (1986); 220 C.M.R. § 69.03. A NOPV can result in a fine or other penalty.

In this Order, the Department raises issues concerning the practicability of compliance and enforcement of these regulations and proposes to revise these regulations. The purpose of the proposed revisions to 220 C.M.R. § 107 is to make the burdens imposed on service line operators commensurate with any increment in safety to be derived from the enforcement of the regulation. The purpose of the proposed revision to 220 C.M.R. § 69.03 is to supplement the procedures by which compliance with these regulations is enforced.

II. PROPOSED REVISION OF 220 C.M.R. § 107

A. Issues Raised by 220 C.M.R. § 107

The Department has enforced 220 C.M.R. § 107, in its present form, since 1985. During that time, service line operators have expressed concern about the necessity and practicability of meeting certain requirements set forth in the regulation.

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See, e.g., Essex County Gas Company, D.P.U. 93-106 (1993). Upon review of the regulation and in response to industry experience under the regulation, the Department proposes to revise 220 C.M.R. § 107. The reasons for this proposal are several. First, the regulation, in its present form, may pose an unwarranted economic burden on service line operators by requiring them, in many instances, to discard relatively new and possibly still useful gas service lines after a five-year inactivation period. Second, service line operators may also be forced to incur an unnecessary costs in attempting to comply with 220 C.M.R. § 107.03, which requires a probably redundant severance at the customer end of the service line, in light of certain requirements of the federal regulations. See, 49 C.F.R. § 192.727(b). Third, recent changes to the federal regulations, 49 C.F.R. § 192, necessitate revisions to certain timing requirements governing leakage surveys outside business districts. Fourth, with respect to leakage surveys outside business districts, service line operators evidently encounter chronic difficulty in gaining access to buildings for the purposes of performing leakage surveys on inside segments of service lines such that strict compliance with the state and federal regulations may be impracticable.

*2 1. The Five-Year Abandonment Requirement

220 C.M.R. § 107, in its present form, may pose an economic burden on service line operators by requiring them, in many instances, to discard relatively new and potentially useful gas service lines. As presently set forth in 220 C.M.R. § 107, any service line which becomes inactive after the effective date of the regulation, August 8, 1985, 'shall be abandoned by the end of five years if it has not been reactivated.' 220 C.M.R. § 107.04.

The requirement to abandon an inactive service line after five years has raised questions regarding the safety benefit, if any, gained thereby and the questionable economic efficiency of abandoning certain inactive gas service lines after only a five-year dormancy period. See e.g., Essex, D.P.U. 93-106. In Essex, Essex County Gas petitioned the Department for a waiver of the five year abandonment provision on certain service lines, all of which had been installed after 1985. Id. Essex County Gas asserted costs were needlessly incurred by abandonment and later reinstallation of inactive service lines because § 107 fails to significantly augment the level of safety achieved. Id. at 3. In support of its claim, Essex County Gas cited the durability and corrosion resistant properties of the service lines installed in recent years. Id. Essex County Gas also forecast that economic recovery would decrease the number of inactive accounts. Id. The Department granted Essex County Gas Company the requested waiver and extended to ten years the period of inactivity requiring abandonment. Id. at 7. The Department reasoned that the recent vintage of the service lines together with the durable materials would assure no degradation of safety or leakage due to corrosion prior to the end of the extension period. Id. at 4.

The Department suspects that the problems encountered by Essex County Gas Company in attempting to comply with 220 C.M.R. § 107 may be typical of other operators of gas service lines. In the middle 1980's, many service line operators installed additional service lines to meet the projected demand of economic growth. As the economy faltered in the 1990's, service line operators inactivated an increasing number of customer service lines. These service lines are scheduled for abandonment in the near future under the regulatory mandate of 220 C.M.R. § 107.04. The five-year inactivity requirement of § 107.04 may impose an unreasonable economic burden on service line operators and their ratepayers with little, if any, enhancement of safety.

The Department recognizes that service line operators have an economic investment in service line installations, the cost of which is borne by their rate payers. The costs resulting from abandonment of the inactive service lines would amount to more than the original installation investment by the service line operators, since the abandonment procedures themselves require additional expenditure. Further, should a customer, or a successor at the site, reconsider the decision to discontinue gas service, service line operators will incur expenses to re-install replacement service lines for those previously abandoned. As in Essex, D.P.U. 93-106, extending

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the allowable inactivation period from five years to ten years would allow the operator a greater potential for serving new customers efficiently and economically.

*3 Moreover, an extension of the inactivation period would not appear, on its face, to diminish the level of safety significantly. [FN1] The Department regards it as probable that the integrity of the service lines has improved due to the non-corrosive nature of the polyethylene pipe and the application of cathodic protection to certain steel service lines now required by the federal regulations. See 49 C.F.R. § 192. Specifically, in 1970, the United States Department of Transportation ('DOT') enacted regulations entitled Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards. [FN2] Id. On July 31, 1971, those regulations were amended with the inclusion of Subpart I, Requirements for Corrosion Control, which established standards for all steel pipelines installed after July 31, 1971. Id. at § 192.455. Those standards require that operators coat and cathodically protect all permanent steel pipelines installed in areas of active corrosion. Id. The Department recognizes that the federal regulations ensure that steel service lines installed after July 31, 1971 possess a high resistance to leakage from corrosion and that plastic service lines are inert to corrosive forces. Therefore, such service lines appear to present little risk to public safety should they remain inactive for a period longer than five years.

2. Unnecessary Disconnection at Customer End

Service line operators also may incur an unreasonable economic burden in attempting to comply with 220 C.M.R. § 107.03 in light of certain requirements of the federal regulations. See, 49 C.F.R. § 192.727(b). Section 107.03 goes beyond federal regulations and requires operators to cut an inactive service line not just at the main but also at the foundation of the structure served. This second cut appears to have no clear safety justification and thus may result in economic waste. See 220 C.M.R. §§ 107.01(2), 107.03; 49 C.F.R. § 192.727.

Under 49 C.F.R. § 192.727(b), '[e]ach pipeline abandoned in place must be disconnected from all sources and supplies of gas; purged of gas; and sealed at the ends .'. Thus, an operator must disconnect the service line only at the source of supply, purge the line of gas, and seal the resulting open ends of the pipe to comply with the federal regulations for abandonment. Further, the federal regulations provide:

Whenever service to a customer is discontinued, one of the following must be complied with: (1) The valve that is closed to prevent the flow of gas to the customer must be provided with a locking device or other means designed to prevent the opening of the valve by persons other than those operated by the operator. (2) A mechanical device or fitting that will prevent the flow of gas must be installed in the service line or in the meter assembly. (3) The customer's piping must be physically disconnected from the gas supply and the open pipe ends sealed.

49 C.F.R. § 192.727(d).

*4 The present § 107 regulations define an 'abandoned' service line as one which is 'disconnected or cut off at the main purged, inerted and sealed in accordance with 49 CFR 192.727(b) and 220 CMR 107.03.' 220 C.M.R. § 107.01(2). Presently 220 C.M.R. § 107.03 provides:

When a service line is abandoned, the meter and assembly [FN3] must be removed. The end of the operator's pipe that is within the customer's building must be cut off below ground and sealed outside the building, or must be sealed by inserting a device within the service line to a point that is outside the building wall or foundation. Provisions must be made so that the seal or device cannot be readily removed. When the end of the operator's pipe is located above ground outside the building, the above-ground segment must be removed and the remaining segment below ground sealed. In any case, the pipeline's above-ground or below-ground entry point into the building or foundation, provided for the operator's pipe, must be sealed after the pipe has been removed.

The Department questions the cost/benefit of the slight increment, if any, to safety obtained in requiring operators to meet 220 C.M.R. § 107.03 since compliance with the federal regulations appears to result in an appropriate measure of safety by severing the service line from the source of supply and insuring that the flow of gas is prevented from entering the customer's building. Given that an operator must meet at least one of the federal inactivation requirements as a prerequisite to abandoning a service line, the § 107 requirements appear to be onerous without increasing the level of safety significantly.

The § 107 requirement that an operator remove the meter and assembly may not yield any economic benefit for the operator or safety benefit for the public. The increment, if any, in safety derived from this requirement appears to be minimal given that when a service line is inactivated under the federal standards, the service stops upstream of the meter and the meter is sealed and locked.

The § 107 regulations also require an operator to sever the customer end of the service line below ground and seal it outside the building or seal it by inserting a device within the service line to a point outside the foundation. This requirement seems to be an unwarranted burden on operators. If the service line is disconnected and sealed in close proximity to the main, as permitted in satisfaction of the federal standards, a second disconnection and seal outside the foundation or the insertion of a device into the service line to a point outside the building wall appears costly, burdensome, and unwarranted by any advantage obtained. If the operator elects to disconnect the service line outside the foundation wall, the operator will incur the costs to excavate and disconnect the service line. In addition, the operator may encounter resistance by property owners who do not want excavations conducted on their property. [FN4] If the operator elects to insert the device through the foundation, which also requires access to the premises, an operator may encounter this same type of resistance. From a safety perspective, the Department questions the safety benefits gained from disconnecting and sealing the service line at the foundation or inserting a device if the service line is disconnected and sealed at the main. If a service line is disconnected and sealed at the main, the second disconnection or insertion of a device outside the building, appears to offer little, if any protection, from gas migrating through the soil. When a service line is properly inactivated, proximate to the main, the line would appear to be effectively sealed.

*5 The requirement that the seal or device not be readily removed in the abandonment process of § 107 regulations appears to be unnecessary inasmuch as the seal at the customer end of the abandoned service line is generally a locked meter stop or a locking plug. These devices are installed as part of the inactivation process under federal regulations. 49 C.F.R. § 192.727(d).

3. The Timing of Leakage Surveys

Recent changes to the federal regulations 49 C.F.R. § 192 necessitate revisions to certain timing requirements governing leakage surveys outside business districts. On October 22, 1992, 49 C.F.R. § 192 was amended to require operators to employ leak detector equipment when conducting leakage surveys outside business districts. 49 C.F.R. § 192.723(b)(2). Further, the amendment created a two-tiered approach to the timing of leakage surveys based on the classification of the pipe. Id. The federal regulations require that leakage surveys be performed on each service line outside business districts as frequently as necessary, but at intervals not exceeding five years. Id. The federal regulations also require that leakage surveys may not exceed three years for cathodically unprotected distribution lines subject to 49 C.F.R. 192.465(e), that is, those service lines without cathodic protection upon which operators employ leakage survey to determine active corrosion. Id.

Presently, 220 C.M.R. § 107.07 requires operators to conduct leakage surveys on all active and identified inactive service lines outside of business districts as frequently as necessary, but at intervals not to exceed five years. The surveys must cover at least twenty percent of the service lines each year. 220 C.M.R. § 107.07 Thus, for those cathodically unprotected distribution lines subject to 49 C.F.R. 192.465(e), operators must follow two timetables when conducting leakage surveys; a

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five-year timetable to comply with the state requirements and a three year timetable to comply with the federal requirements. In view of the change to the federal regulations and in order to avoid confusion, the Department believes that the § 107 regulations should correspond with the amended federal code. The proposed regulations, therefore, adopt the three-year timetable for cathodically unprotected service lines and a five-year timetable for all other service lines.

4. Accessing Inside Segments of Service Lines

A strict reading of the federal standards could lead one to conclude that the segment of a service line inside a building wall must be leak surveyed, thus necessitating entry into the structure served by the gas line. See 49 C.F.R. § 192.723. However, insistence on strict compliance with the requirements of 49 C.F.R. § 192.723 may impose a burden on operators which is not justified by any significant increment in safety. Operators apparently have found it difficult to establish a systematic, cost-effective method to gain entry to a structure for the purposes of surveying inside piping for leakage. Many operators may find the inside portions of service lines inaccessible since many households are vacant during the business hours and customers' concerns for personal security prevent calls after business hours.

*6 Moreover, it is not clear that the costs incurred in attempting to access the interior segment of a service line are justified. The Department regards it as possible that most gas leaks in service lines occur in the segment located between the main and the outer surface of the building wall where the service line is more susceptible to corrosive elements. Operators evidently encounter little, if any, difficulty in complying with the leakage survey requirements for those segments. Conversely, the small segment of a service line in a structure generally does not appear to be exposed to the same corrosive elements. The remaining portion of piping, which is customer-owned, is not required by regulation to be leak surveyed unless a customer reports a leak.

B. Proposed Changes to 220 C.M.R. 6 107.00

In light of the above issues raised by continual enforcement of the present regulations, the Department proposes to revise 220 C.M.R. § 107. The proposed changes to 220 C.M.R. § 107.00 seek to balance the burdens of compliance against the probability and gravity of harm without degrading safety. The following highlights the Department's proposed changes to 220 C.M.R. § 107.00. A complete copy of the proposed regulation is attached as Attachment A.

The Department proposes to revise the regulations which presently require the abandonment of all service lines within five years of becoming inactive by extending the time within which abandonment of inactive service lines must be accomplished. See 220 C.M.R. § 107.04. The Department proposes to increase the allowable inactivation period for coated and cathodically protected service lines and plastic service lines, which are installed after July 31, 1971, from five years to ten years. The proposal will require all service lines installed on or before July 31, 1971 to be abandoned within five years of inactivation, which is consistent with the present requirements of 220 C.M.R. § 107.04. The proposal, if adopted, would benefit both operators and consumers. The extension would allow operators additional time to establish service for new customers before prematurely deactivating useful equipment. Many new customers would benefit from being spared the expenditure for a new service line installation. A former customer or that customer's successor at the served address would have an increased period to reinstitute natural gas service without having to install a new service line.

The Department also proposes to revise the actual physical procedures operators must follow in order to abandon a service line. See 220 C.M.R. § 107.03. The Department proposes to revise the § 107 regulations such that a service line would be considered effectively abandoned when it is disconnected and sealed at the main. The revision, if adopted, would eliminate the present additional requirement that an operator either (1) disconnect and seal the service line outside the building below ground level, or (2) insert a protective device to prevent gas flow within the

service line to a point that is outside the building wall. Id. The Department notes that a property owner remains free to request total removal of a service line from the property under the proposed regulations.

*7 The proposed revision to 220 C.M.R. § 107 also encompasses the procedures for leakage surveys for service lines outside of business districts. The federal regulations preempt the state regulations on leakage surveys except for the state-mandated requirement that 20 percent of the cathodically protected and plastic service lines be surveyed each year. 49 C.F.R. § 192.723. The 20 percent requirement does not synchronize with the federal requirement that cathodically unprotected steel service lines must be surveyed for leakage once every three years. Therefore, the Department proposes to eliminate the 20 percent requirement. Further, the Department proposes to revise the regulation to require leakage surveys at intervals not exceeding three years on cathodically unprotected buried steel services. The Department proposes to revise the regulation to require leakage surveys at intervals not exceeding five years on plastic service lines and cathodically protected steel service lines and on those segments of service lines located inside a structure.

Given the high rate of inaccessibility to buildings outside business districts, even with prior notification, the Department recognizes that there may be operational efficiencies in coordinating the requirements of state and federal law. For example, a more efficient and economical approach to leakage surveys may be to coordinate the performance of leakage surveys with the replacement of gas meters every seven years, as required by G.L. c. 164, § 115A. The Department notes that an operator may apply for an exception to or waiver from the leakage survey requirements of the state and federal regulations, respectively, on those portions of service lines inside buildings. See proposed 220 C.M.R. § 107.02, attached; 220 C.M.R. § 101.02(2); 49 U.S.C. § 60118. The request for exception would be supported by relevant data such as a cost/benefit study on this topic, or an alternate leakage survey plan which might display the advantages of coupling these leakage surveys with the replacement of gas meters. However, the Secretary of DOT may override the Department's decision to grant an exception pertaining requirements set forth in to 49 C.F.R. § 192 should he determine it to be inconsistent with pipeline safety.

III. THE PROPOSED REVISION OF 220 C.M.R. § 69.03

The Department also proposes to amend 220 C.M.R. § 69.03. The present regulation permits the Department to commence an enforcement proceeding by issuing a NOPV if the Department has reason to believe that a violation of 220 C.M.R. § 101 through 4 107 or any code or regulation or rule pertaining to safety of pipeline facilities or transportation of gas has occurred or is occurring. 220 C.M.R. § 69.03. The proposed amendment to 220 C.M.R. § 69.03 creates two subsections: (a) warning letters and (b) notices of probable violation. The present 220 C.M.R. § 69.03 is renumbered to 220 C.M.R. § 69.03(b). The addition of 220 C.M.R. § 69.03(a) would establish a supplementary enforcement procedure whereby the Department may issue a warning letter notifying an owner or operator of a probable violation and advising him to correct it or be subject to an enforcement action under 220 C.M.R. § 69.00.

*8 IV. THE DEPARTMENT'S SOLICITATION OF COMMENTS

The Department seeks evidence and expert testimony on the economic feasibility of maintaining the present regulations, given the evidently low probability of increased benefit to the public by maintaining the regulations in their present form. The regulations in their present form appear to address a highly attenuated risk at exaggerated cost and with doubtful effect. The Department believes that the risk (if any) can be more cost effectively managed. See United States v. Carroll Towing Co., 159 F.2d 169, 173 (1947); See, generally, S. Breyer, Breaking the Vicious Circle: Toward Effective Risk Regulation (1993). The Department specifically solicits factual and expert testimony on whether the proposed changes in regulation remain consistent with the Department's important obligation to promote safety in gas distribution. A strong evidentiary record, based on actual operating experience and sound engineering judgment, must underpin any decision to

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proceed from proposed to final regulations.

The proposed revisions to 220 C.M.R. § 107.00 and 220 C.M.R. § 69.03 are attached to this Order as Attachment A and Attachment B, respectively. A copy of the proposed regulations may be obtained upon request from Mary L. Cottrell, Secretary, Department of Public Utilities, 100 Cambridge Street, 12th Floor, Boston, Massachusetts, 02202. Pursuant to G.L. c. 30A, § 2, the Department will hold a public hearing on November 29, 1994 at 10:00 a.m., at the Department's offices, 100 Cambridge Street, 12th Floor, Boston, Massachusetts, to hear public comment on the proposed amendment of 220 C.M.R. 5 107.00. Interested persons may present facts, opinions, or arguments relating to the proposal at the public hearing. Preliminary written comments from persons intending to testify at the hearing should be submitted no later than 5:00 p.m. on November 22, 1994, at the offices of the Secretary of the Department, 100 Cambridge Street, 12th Floor, Boston, Massachusetts, 02202. It is appropriate for written comments to include substitute redraft language for the proposed rules. Final written comments should be submitted no later than 5:00 p.m. on December 9, 1994, at the offices of the Secretary of the Department, 100 Cambridge Street, 12th Floor, Boston, Massachusetts, 02202. A true copy

ATTACHMENT A

220 CMR 107.00 ABANDONMENT OF GAS SERVICE LINES AND LEAKAGE SURVEY PROCEDURES

Section

- 107.01 Applicability
- 107.02 Application for Exceptions from Provisions of 220 CMR 107.00
- 107.03 Definitions
- 107.04 Procedures for Abandonment of Service Lines
- 107.05 Abandonment of Service Lines
- 107.06 Records and Reports For Inactive and Abandoned Service Lines
- 107.07 Leakage Survey For Service Lines Located Outside Business Districts

107.01: Applicability

Notwithstanding any other provisions of regulations, 220 CMR 107.00 applies to any person engaged in the storage, transportation or distribution of gas and is not limited to gas corporations, gas companies or municipal gas departments.

*9 107.02: Application for Exceptions from Provisions of 220 CMR 107.00

Any person engaged in the operation of a service line may make a written request to the Department for an exception to the provision of these regulations. The request shall justify why the exception should be granted and shall demonstrate why the exception sought does not derogate from the safety objective of 220 CMR 107.00.

The Department may deny the exception or grant the exception as requested, or as modified by the Department and subject to conditions. Any exception shall be issued in writing and may be made by the Director of the Division. Any such person aggrieved by a decision of the Director regarding a request for an exception may appeal the Director's decision to the Commission. Any appeal shall be in writing and shall be made not later than fourteen ten business days following issuance of the written decision of the Director.

107.03: Definitions

As used in 220 CMR 107.00:

Abandoned means that: (1) The service line is disconnected or cut off at or as close as practical to the main; and (2) Any opening in the main or the open end of the segment of the service line left thereto is sealed; and (3) The service line is

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purged of gas, except when the volume of gas is so small that there is no potential hazard; and (4) The open end of the disconnected service line near the main and traversing to the premises is sealed. Department means the Massachusetts Department of Public Utilities. Distribution line means a gas pipeline, other than a gas-gathering or transmission line, that is normally used by utilities for the transportation of natural gas and/or other flammable gas to customers. Inactive service line means a service line where gas service to the customer has been discontinued but the service line has not been abandoned. Main means a distribution line that serves as a common source of supply for more than one service line. Operator means a person who engages in the transportation of gas. Person means any individual, firm, joint venture, partnership, corporation, association, state agency, municipality, municipal department, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof. Pipe means any pipe or tubing used in the transportation of gas, including pipe-type holders. Pipeline means all parts of the those physical facilities through which gas moves in transportation including pipe valves and other appurtenances attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders and fabricated assemblies. Purge means the act of removing natural gas from an inactive service line and replacing it with air or another noncombustible gas. Service line means a distribution line that transports gas from a common source of supply to (a) a customer meter or the connection to a customer's piping, whichever is further downstream, or (b) the connection to a customer's piping if there is no meter.

*10 107.04: Procedures for Abandonment of Service Lines

Each operator shall prepare and follow written procedures for the inactivation and abandonment of service lines. The procedures shall be included in the operator's procedural manual pursuant to 49 CFR 102.605.

107.05: Abandonment of Service Lines

(1) Inactive service lines which shall be abandoned promptly, with due consideration to public safety, are those:

(a) Located in, or close to, excavations; or (b) Located in, or close to, buildings being demolished; or (c) Discovered to be leaking gas; or (d) Unrecorded or previously unknown lines discovered in the course of leakage surveys, construction, maintenance or inspection of pipeline facilities.

(2) All service lines inactivated on or before August 8, 1985, and not later reactivated, shall be abandoned on or before August 8, 1995. (3) A service line which was installed on or before July 31, 1971, and which becomes inactive after August 8, 1985, shall be abandoned not later than five years after the inactivation date, provided it has not been reactivated within the five-year period. (4) A service line which was installed after July 31, 1971, and which becomes inactive after August 8, 1985, shall be abandoned by the end of ten years, provided it has not been reactivated within the ten-year period.

107.06: Records and Reports For Inactive and Abandoned Service Lines

(1) Readily accessible records of inactive service lines shall be maintained by the operator. Such records shall include the service line's location, the date the service line was installed, and the date the service line became inactive. If any information is unavailable to or unobtainable by the operator, it shall be listed on the record as 'unknown.' (2) Readily accessible records of the location of any service line that is abandoned after August 8, 1985 shall be maintained by the operator for at least five years after the date of abandonment or for such longer time as the operator deems appropriate. (3) Not later than March 15 each year, each operator shall submit to the Department an annual report indicating the total number of inactive service lines in its distribution system on December 31st of the preceding calendar year, and the number of inactive service lines abandoned during the preceding year.

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107.07: Leakage Survey for Service Lines Outside Business Districts

(1) Leakage surveys, with appropriate gas detection equipment, such as a flame ionization detector or an equivalent device gas detectors, shall be made, to the outside of the foundation walls, over all active and identified inactive service lines outside of business districts, as defined by 220 CMR 101.06(21)(a). A leakage survey of each such line shall be conducted as frequently as necessary, but

(a) At intervals not exceeding five (5) years for plastic service lines or cathodically protected steel service lines; and (b) At intervals not exceeding three (3) years for steel service lines without cathodic protection.

*11 (2) In areas outside of business districts, leakage surveys, with appropriate equipment, such as a combustible gas detector, shall be made, on the segment of a service line located inside a building, at intervals not to exceed five (5) years. (3) Persons participating in leakage surveys shall be trained to recognize the locations of unknown or unidentified, leaking inactive service lines encountered during survey analysis. If any part of 220 CMR 107.07 conflicts with Department regulations contained in 220 CMR 101.06, 220 CMR 107.07 shall be controlling.

REGULATORY AUTHORITY 220 CMR 107.00: M.G.L. c. 164. s. 76C.

ATTACHMENT B

220 CMR 69.03: Commencement of Enforcement Proceedings

(a) Warning Letters

Upon determining that a probable violation of 220 CMR 101-113 or any provision of any other code or regulation or rule pertaining to the safety of pipeline facilities and the transportation of gas has occurred or is occurring, the Department may issue a warning letter notifying the owner or operator of the probable violation and advising the operator to correct the violation or be subject to enforcement action under 220 CMR 69.03(b) through 69.09.

(b) Notice of Probable Violation

The Department may begin an enforcement proceeding by issuing a notice of probable violation ('NOPV') if the Department has reason to believe that a violation of 220 CMR 101-113 or any provision of any other code or regulation or rule pertaining to the safety of pipeline facilities and the transportation of gas has occurred or is occurring. The NOPV may be issued by the Commission or its designee. The NOPV shall state the **provision(s)** of the codes, regulations or rules which the respondent is alleged to have violated and the evidence upon which the allegations are based, shall give notice of response options available to the respondent under 220 CMR 60.04, and, if a civil penalty is proposed, shall state the amount of the proposed civil penalty and the maximum civil penalty for which the respondent may be liable under law.

REGULATORY AUTHORITY 220 CMR 60.00: M.G.L. c. 164, ss. 76C and 105A

FOOTNOTES

FN1 The Department specifically seeks factual and expert testimony concerning industry experience on this point.

FN2 The Department, acting through the Pipeline Engineering and Safety Division, serves as an agent for the DOT in the enforcement of the federal regulations promulgated by the DOT pertaining to pipeline safety. See G.L. c. 164, § 105A; 220 C.M.R. § 100, Regulatory Authority.

FN3 The assembly is the piping and fittings installed to connect the inlet side of the meter to the gas service line, and to connect the outlet side of the meter to

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the customer's fuel line

FN4 The tenant in possession or fee holder at the time of such excavation may have succeeded to the property since inactivation of the service and may block the excavation -- thereby rendering the operator perforce noncompliant with § 107.03.

END OF DOCUMENT

Exhibit D

H

Re Revision of the Present Regulation 220 C.M.R. § 107
D.P.U. 94-142

Massachusetts Department of Public Utilities
February 27, 1995

Before Gordon, chairman, and Webster, commissioner.

BY THE DEPARTMENT:

I. INTRODUCTION

*1 On September 2, 1994, the Department of Public Utilities ('Department ') issued an Order Commencing Rulemaking and Proposing Regulations, Notice of Public Hearing, and Solicitation of Initial Comments ('Order') with reference to the regulations on the inactivation, abandonment, and leakage survey of gas service lines and the commencement of enforcement proceedings. In the order, the Department raised issues concerning the practicability of compliance and enforcement of the regulations. Order at 2. The Department stated that the purpose of the proposed revisions to 220 C.M.R. § 107 is to make the burdens imposed on service line operators commensurate with any incremental safety to be derived from the enforcement of the regulation. Id. at 2. The purpose of the proposed revision to 220 C.M.R. § 69.03 is to supplement the procedures by which compliance with the regulations is enforced. Id. The Department further stated that the proposed regulations would more cost effectively manage any related risk to public safety. Id. at 14, citing, United States v. Carroll Towing Company, 159 F.2d 169, 173 (1947) (Hand, J.); S. Breyer, Breaking the Vicious Circle: Toward Effective Risk Regulation (1993). As the **naturel** gas industry moves toward increased competition and thus increased efficiency of operations, the Department is mindful of its role to ensure that operating regulations for local distribution companies be economically rational -- though not at a sacrifice or derogation of public safety. This is the import of Justice Breyer's recent lectures and, before that, the concept that underlay Judge Hand's approach to imposing legal liability.

Generally, the proposed regulations, as set forth, extend the period a gas service line installed after July 31, 1971 may remain inactive before being abandoned. [FN1] The extension is from five years to ten years. The proposed regulations also alter the procedure service line operators must follow in order to abandon an inactive service line. The proposed regulations would do so by eliminating the present requirement to sever or seal the line exterior to the foundation wall. A service line operator would be required only to make a single cut at the main and seal both ends of that cut in order to abandon a service line. The proposed regulations also revise the requirements of conducting leakage surveys on gas service lines located outside of business districts. Finally, the proposed regulations would allow the Department to issue a warning letter as a supplemental enforcement action. In the Order, the Department noted that a strong evidentiary record, based on actual operating experience and sound engineering judgement, must underpin any decision to proceed from proposed to final regulations. Order at 14. Several successive opportunities for comment were allowed to elicit that record.

The Attorney General of the Commonwealth of Massachusetts ('Attorney General ') notified the Department of his intervention in this matter purportedly under the rate-related authority granted him by G.L. c. 12, § 11E. Inasmuch as the instant proceeding is a rulemaking where public comment is solicited and not an adjudicatory proceeding pertaining to rates, persons are not required to intervene in the proceeding. The Attorney General did not file any comments on the proposed regulations.

*2 Pursuant to notice duly issued, the Department accepted initial comments on the proposed regulations from Bay State Gas Company ('Bay State'), Colonial Gas Company ('Colonial'), Fall River Gas Company ('Fall River'), and the Massachusetts Natural Gas Council ('Gas Council'). [FN2] Simultaneously with its initial comments, the Gas Council filed a Motion of the Massachusetts Gas Companies to Schedule One or More Technical Sessions and To Bifurcate the Proceeding ('Request'). [FN3] In light of the pending Request, initial comments focussed on the Department's proposed regulations governing the inactivation and abandonment of service lines.

On November 29, 1994, a public hearing was held to receive oral comments on the proposed regulations. Testimony was received from John P. Erickson, vice-president of operating and engineering services with the American Gas Association ('AGA'); Kenneth Margossian, president and chief operating officer of Commonwealth Gas Company ('ComGas') and Hopkinton LNG Corporation and chairman of the Gas Council; Thomas Bonner, vice-president, distribution for Boston Gas Company ('Boston Gas'); Paul LaShoto, director of operations and chief engineer for Bay State; Stanley T. Kastanas, manager of regulatory compliance and project engineering for Colonial; and John Dustin, superintendent of technical services at ComGas.

Supplemental written comments ('Supplemental Comments') were received on December 9, 1994 from the John A. Erickson, Bay state, The Berkshire Gas Company ('Berkshire'), Boston Gas, Colonial, ComGas, Essex County Gas Company ('Essex'), the Gas Council, and North Attleboro Gas Company ('North Attleboro').

Upon request of certain commenters, the Department accepted further comments ('Final Comments') on the proposed regulations governing leakage surveys on February 10, 1995. Such comments were received from Bay State, Berkshire, Boston Gas, Colonial, [FN4] ComGas, Essex, and the Gas Council.

II. DISCUSSION AND ANALYSIS

Generally, the commenters supported, with only minor recommended modifications, the Department's proposed regulations governing the inactivation and abandonment of gas service lines and the enforcement procedures (Bay State Initial Comments at 2; Colonial Initial Comments at 6; Fall River Initial Comments at 1; Gas Council Initial Comments at 4). They also supported the Department's effort to reassess the regulations by comparing the costs of compliance with the incremental benefit to public safety (Bay State Initial Comments at 2; Colonial Initial Comments at 6; Fall River Initial Comments at 1; Gas Council Initial Comments at 4). However, the Department received many comments regarding the need for a more in-depth and technical analysis of the requirements for leakage surveys (Bay State Final Comments at 2; Berkshire Final Comments at 2; ComGas Final Comments at 2-3; Essex Final Comments at 1; Gas Council Final Comments at 1). The commenters provided the Department with information regarding the engineering and business realities faced by the service line operators in support of the proposed regulations and the recommended modifications. In the following sections, the Department address the issues raised by the commenters.

*3 A. Inactivation and Abandonment of Service Lines

In the Order, with regard to the inactivation and abandonment of service lines, the Department suggested that the additional cost of compliance with the present regulations does not enhance safety significantly. Order at 2. The Department noted that the litigation, in its present form, may pose an unwarranted economic burden on service line operators by requiring them, in many instances, to discard relatively new and possibly still useful gas service lines after a five-year inactive period. Id. The Department further noted that service line operators may also be forced to incur an unnecessary costs in attempting to comply with 220 C.M.R. § 107.03, which, in light of certain requirements of the federal regulations, requires a probably redundant severance at the customer end of the service line. Id. at 2, citing 49 C.F.R. § 192.727(b). The comments received by the Department support the Department's propositions.

1. Public Safety

With regard to the public safety issue, Mr. Erickson, whose primary responsibility with the AGA is to monitor pipeline-safety regulations, testified that, in his professional judgement, the proposed regulations governing abandonment of service lines would not compromise public safety in that the proposed abandonment procedures are consistent with the federal regulations (Tr. at 17). Mr. Erickson provided the Department with data on over 1700 distribution incidents [FN5] that have occurred in the United States since 1984. He stated that after review of these data, he could not find one instance where a service line properly abandoned under federal procedures was identified as the cause of a reportable incident (Tr. at 17). Based on his review of these data, he further testified that he was not aware of any time where a plastic or cathodically protected service line, that had been reactivated in accordance with the federal pipeline safety regulations, was involved in a reportable incident (Tr. at 19-20). Mr. Erickson testified further that in his experience, he has never heard of an incident, reportable or nonreportable, where a properly abandoned service caused an incident (Tr. at 21).

The Department's propositions regarding public safety are further supported by the comments of service line operators. The Gas Council submitted that the single-cut procedure for abandonment required by the federal regulations is sufficient for public safety as its members are not aware that this abandonment procedure has contributed to any incident (Gas Council Initial Comments at 6). Several commenters stated that they had employed a single-cut approach to abandonment, the approach proposed by the Department, prior to August 8, 1985, the date 220 C.M.R. § 107.03 was implemented and were not aware of an instance where public safety was endangered by such a procedure (Tr. at 47; Bay State Initial Comments at 3; Berkshire Supplemental Comments at 1-2; Colonial Initial Comments at 3; North Attleboro Supplemental Comments at 1). From 1976 to 1985, Boston Gas abandoned 16,620 service lines by the single-cut method and experienced no incidents arising out of that procedure (Tr. at 47; Boston Gas Supplemental Comments at 4). [FN6] Mr. Bonner testified that, based on his experience, a single cut at the main is sufficient to thwart the flow of gas to the building (Tr. at 47). Colonial also stated that a single cut, sealed at both open ends exposed by the cut, at the main is sufficient to eliminate any chance of migrating gas (Colonial Initial Comments at 3). Colonial commented that of the 3000 service lines abandoned by the single-cut approach prior to 1985, it has not experienced a single incident involving property damage or injury that could have been avoided by a second cut (id. at 3). [FN7] Since 1985, Bay State has abandoned 8,800 services and has found no evidence that the additional expense of making a second cut at the foundation has improved safety (Bay State Initial Comments at 3; See also ComGas Supplemental Comments at 4). [FN8] Further, Bay State compared the operations of its subsidiary in Maine, Northern Utilities, which has abandoned approximately 13,000 service lines since 1973 under the provisions of the federal regulations allowing one cut at the main (Tr. at 56). Bay State commented that it acquired Northern Utilities in 1979 and since that time has not experienced any problems with public safety arising from an inactive service line which was abandoned with one cut at the main (id.).

*4 The commenters also stated that extending the period during which certain service lines may remain inactive prior to abandonment will not compromise public safety (Gas Council Initial Comments at 6). The Gas Council explained that plastic pipe and metallic pipe cathodically protected are proper candidates for extended inactivity because they do not corrode and, therefore, poses no risk to public safety (Gas Council Initial Comments at 7). Colonial stated that inactive service lines are subject to monitoring and thus pose no greater risk to public safety than active service lines (Colonial Initial Comments at 4; See also Berkshire Supplemental Comments at 2).

In addition, several commenters suggested that, if implemented, the proposed regulations governing the inactivation and abandonment of service lines would actually enhance public safety by allowing service line operators to allocate the resources saved from complying with certain unnecessary requirements to more effective uses such as system maintenance and improvements and improved leak response time (Tr. at 48; Gas Council Initial Comments at 7). The Department will

expect that the industry, as it testified through its trade organization, the Gas Council, to make good on this adoptive representation.

2. Extended Inactivation Period

Several commenters provided the Department with information to support the Department's proposition that the regulation, in its present form, may pose an unwarranted economic burden on service line operators by requiring them, in many instances, to discard relatively new and possibly still useful gas service lines after a five-year inactivation period. According to Bay State, extending the inactivation period from five to ten years will allow more services to be reactivated, thus improving asset utilization and decreasing company costs (Bay State Initial Comments at 4; See also, Colonial Initial Comments at 5). The Department received comments which indicate that costs to customers would decrease under the proposed regulation because of reduced reactivation costs (Colonial Initial Comments at 5).

More specifically, Essex commented that since 1985, it has abandoned and reactivated approximately 15 plastic or cathodically protected steel services which would have come within the proposed ten-year extension and would have saved the Company 'thousands of dollars' (Essex Supplemental Comments at 1). Berkshire notes that in its service territory there has been a significant migration of population out of its service territory, resulting in increased inactive services (Berkshire Supplemental Comments at 2). Berkshire submits that the additional inactivation period allowed by the proposed regulations would allow further marketing efforts to utilize the service line asset by returning it to active use, saving the Company the cost of abandonment (Berkshire Supplemental Comments at 2). Boston Gas provided the Department with data to suggest that the company would save \$1,209,733 per year if the inactivation period were extended from five to ten years (Boston Gas Supplemental Comments, Attachment 3).

*5 Colonial commented that approximately \$250,000 could have been saved had it been permitted to abandon service lines over a period of 10 years rather than five years (Colonial Supplemental Comments at 2). Colonial based this conclusion on its estimate that 500 services abandoned since 1985 could have remained active had the inactivation period been extended (id.). Based on estimations from its marketing department, Colonial states that approximately 50 percent of the 500 abandoned services could have been reactivated had the inactivation period been extended to 10 years, saving Colonial's customers approximately \$300,000 (id. at 4). [FN9] Colonial submitted that if the proposed regulations are enacted, the Company will not be required approximately 1,000 services, at an additional savings of \$500,000 (id.). [FN10]

ComGas commented that of 1,144 inactive services that were abandoned since 1985, 13.8 percent, or 158, were reactivated during the following nine-year period (ComGas Supplemental Comments at 7). ComGas estimated that if the period for inactivation is extended, it would save approximately \$85,000 per year (id. at 10-11). [FN11]

3. Elimination of the Second-Cut Requirement

The Gas Council submits that savings of \$2.6 million would be realized over the next five years if the proposed changes to the abandoned services regulations are promulgated (Gas Council Supplemental Comments at 1). The comments received indicate that the cost savings result from costs associated with the actual abandonment, as well as the time and resources wasted from an inability to gain access to a person's property in order to make the second cut at the foundation wall (Bay State Initial Comments at 3; Fall River Initial Comments at 1). Various service line operators provided the Department with estimates of their individual cost savings.

Essex estimated that the requirement for the second cut since 1985 has cost the company approximately \$42,000 with no measurable increase in safety (Essex Supplemental Comments at 1). According to Berkshire, it could have saved, since 1985, approximately \$450,000, or \$125 per service line, had a second cut at the main not been required (Berkshire Supplemental Comments at 2). Boston Gas estimated that

it would have saved a total of \$2,966,673, or \$140 per service, had the second-cut not been required (Boston Gas Supplemental Comments at 3). Bay State estimates that the cost to abandon a service is \$400 and that by eliminating the second-cut requirement, the cost would be reduced by 20 percent (Bay State Supplemental Comments at 2).

Colonial estimates that approximately \$600,000 could have been saved since 1985 by eliminating a second cut of a service line at the foundation (Colonial Supplemental Comments at 2). Colonial submitted that the average cost saved per abandoned service would be \$167 id. . Colonial further commented that approximately 50 percent of all initial attempts to gain access to a customer's home for the purposes of abandoning an inactive service line are unsuccessful (id. at 3). Colonial estimates that it could save an additional \$45,000 lost due to the inability to gain access had only a single cut at the main been required (id.). [FN12]

*6 ComGas also commented that it would experience cost savings if a second cut at the foundation were not required (ComGas Supplemental Comments at 5, 6, 8). ComGas estimated that, by eliminating the second-cut requirement, the time to abandon a service would be reduced by 40 to 50 minutes, which equates to a savings of approximately \$198 per service (id. at 8). ComGas further estimated that it would have saved \$1,229,000 since 1985 had only one cut been required (id.). ComGas stated that if the proposed regulations were implemented, it would not be required to abandon approximately 300 services per year, saving the company \$58,000 per year (id. at 9). ComGas also commented on the difficulty of contacting a non-customer, who has no incentive to cooperate, to gain access to the property in order to abandon a service (id. at 6). ComGas highlighted such problems as (1) unknown names and phone numbers; (2) hostile confrontations; and (3) misbeliefs of property owners that the inside piping is theirs and that it will add value to their property (id.; See also, Bay State Initial Comments at 3).

4. Recommendations and Findings

The record contains sufficient evidence, based on actual **operating** and **engineering** experience, to support a Department decision to proceed **from proposed** to final regulations governing the inactivation and abandonment of service lines. The **Department** finds that such **regulations** will ease the economic burden **placed on service** line operators without compromising public safety. Moreover, **the** Department finds that these regulations will be conducive to more competitive pricing of natural gas for consumers.

The Gas Council has recommended minor clarifications to the language of the proposed regulations regarding the applicability of the regulations at 220 C.M.R. § 107.05(1) and the definitions of the time periods for inactivation of service lines at 220 C.M.R. § 107.05(3). The Department finds the Gas Council's recommended language clarifies that certain inactive pipelines, because of either their location or condition poses an additional risk to public safety, should be abandoned promptly, regardless of when the service line became inactive. Therefore, the final regulation specify that the regulations requiring prompt abandonment govern wherever they ??, regardless of the activation or inactivation date. Further, the final regulations provide that a service line, which was installed after July 31, 1971 and which becomes inactive after August 8, 1985, shall be abandoned not later than ten years after the most recent inactivation date. ■

The Gas Council, as well as individual service line operators, expressed concern that some of the pipe installed prior to July 31, 1971 is either plastic or cathodically protected, [FN13] yet would not qualify for the extended inactivation period under the proposed regulations (Gas Council Initial Comments at 8; Bay State Initial Comments at 4; Colonial Gas Initial Comments at 5). The commenters recommended that the extended inactivation period be based upon material type rather than installation date (Bay State Supplemental Comments at 2; Boston Gas Supplemental Comments at 2; ComGas Supplemental Comments at 11). In response to a Department request, several service line operators provided the Department with an estimate of 103,775 as the number of pre-1971 services in their service territory which are either cathodically protected or plastic (See Bay State Supplemental

Comments at 2; Boston Gas Supplemental Comments at 2; ComGas Supplemental Comments at 11; Colonial Supplemental Comments at 3). [FN14]

*7 The Gas Council proposes an additional clause be inserted at 220 C.M.R. § 107.05(3) that will allow an operator to establish that a service line installed before July 31, 1971 nevertheless meets the federal code requirements for pipe installed after that date (Gas Council Initial Comments at 8). As stated above, the Department, in proposing the regulations, considered whether the economic burden on service line operators by requiring them, in many instances, to discard possibly still useful gas service lines after a five-year inactivation period was warranted by any commensurate contribution to public safety. The Department selected the July 31, 1971 date as the demarcation between those services which would qualify for an extended inactivation period to coordinate with the effective date of the federal regulations requiring cathodic protection. See, 49 C.F.R. § 192.455. The Department's intent was to ease the economic burden placed on service line operators while maintaining a level of safety by allowing an extended inactivation period for plastic or cathodically protected inactive services, which are not subject to corrosion and, thus, pose no risk to the public safety. The Department agrees with the commenters that it is more appropriate to address the issue as one of adequate cathodic protection, rather than a specific installation date. Moreover, it appears that the service line operators maintain adequate records that easily identify such pre-July 31, 1971 pipe. Therefore, in the final regulations, the Department includes a provision in 220 C.M.R. § 107.05(13) that will allow service line operators to qualify for the extended inactivation period by establishing that a pre-July 31, 1971 service line due for abandonment is plastic or, in the alternative, is cathodically protected in accordance with 49 C.F.R. §§ 192.463 and 192.455(a)(1) and (2).

B. Leakage Surveys

In support of its Request to bifurcate the rulemaking, the Gas Council filed a memorandum stating that the complexity of the legal and technical issues related to both the existing and proposed regulations governing leakage surveys of service lines cannot be adequately addressed initially in a formal public hearing (Memorandum at 2). The Gas Council, therefore, recommended that the Department bifurcate this rulemaking and schedule technical sessions for the purpose of informally discussing the legal and technical issues raised by the proposed regulations governing leakage surveys id. . The Gas Council's initial comments were otherwise reticent on the subject of leakage survey (Tr. at 12-13).

In the comments the Department received regarding the proposed regulations of leakage surveys, most reiterated the Gas Council's position that in-depth, informal discussions of the companies operating experiences are warranted in order to formulate a comprehensive approach to leakage survey requirements (Bay State Final Comments at 2; Berkshire Final Comments at 2; Essex Final Comments at 1; Gas Council Final Comments at 1; ComGas Final Comments at 2-3). Berkshire, ComGas and the Gas Council suggested that, during technical sessions, operational and maintenance experiences could be discussed (Berkshire Final Comments at 1; ComGas Final Comments at 2; Gas Council Final Comments at 1). ComGas also suggested that during technical sessions, it could discuss current issues and operational solutions as the value of flame ionization gas detection equipment, the introduction of new technology, and alternative checks that ensure public safety (ComGas Final Comments at 2).

*8 The commenters expressed a need for clarity in the regulations governing leakage surveys in order to frame their day-to-day system operating plans (Boston Gas Final Comments at 1; ComGas Final Comments at 2). A number of commenters stated that it is inappropriate to have leakage surveys addressed in both 220 C.M.R. § 101.06(21), entitled 'Distribution Systems Leakage Surveys and Procedures,' and in 220 C.M.R. § 107.07, entitled 'Leakage Survey of All Service Lines' (Bay State Final Comments at 1; Berkshire Final Comments at 1; Boston Gas Final Comments at 2; Essex Final Comments at 1; Gas Council Final Comments at 1). Bay State contends that the respective headings do not accurately describe the applicability of the regulation (Bay State Final Comments at 1). Bay State further contends that additional confusion is caused by the partial overlap in the different treatments by each

section for various classifications of gas distribution piping (*id.*). Berkshire explained that coordination will facilitate understanding and compliance (Berkshire Final Comments at 1). ComGas suggests that confusion, unintended non-compliance and wasted resources may occur with the continued separation of the leakage survey requirements (ComGas Final Comments at 2).

The commenters also contend that the proposed regulations governing leakage surveys may cause confusion among operators given that some requirements appear more or less stringent than the federal pipeline safety regulations promulgated by the United States Department of Transportation ('DOT') within 49 C.F.R. 192.723. The commenters correctly note that if the Department were to promulgate requirements different than those promulgated by DOT, the Department's requirements must be more stringent than the DOT requirements. See, Commonwealth v. Vitello, 367 Mass. 224, 247 (1975). Bay State, Essex and the Gas Council suggest that the DOT regulations, 49 C.F.R. 192.723 (b), contain mandatory leakage survey requirements for gas distribution system operators, sufficient to assure the safety of the general public (Bay State Final Comments at 1; Essex Final Comments at 1, Gas Council Final Comments at 1). ComGas suggests that the Massachusetts regulations on leakage surveys should be consolidated in one section and mirror the federal regulations to avoid confusion and potential challenges by DOT (ComGas Final Comments at 2).

In proposing the regulations governing leakage surveys, the Department intended to offer a practical resolution to operators confronted with the impracticalities of complying with the current regulations. [FN15] Apparently, the proposal was not received in this light; but no other practical alternatives were offered. Nevertheless, the comments raised interesting issues that warrant a second look at the proposed leakage survey regulations. This was the response that the Department sought to elicit, if the proposal the Department advanced, in fact, raised practical problems in its implementation (Tr. at 32). Therefore, the Department will reserve, for now, judgment on the regulations governing leakage surveys. The Department authorizes the Director of the Pipeline Engineering and Safety Division ('Director'), if he deems it useful, to assemble a limited consultative panel or working group of his own choosing from persons knowledgeable in gas distribution safety and U.S. DOT regulations to explore these and other issues regarding leakage surveys. The Director is authorized to conduct informal discussions with the panel. In any event, the Director is instructed to report any findings he might make to the Department within 90 days of this Order. Accordingly, the existing regulations governing leakage surveys will remain in effect and unchanged by the final regulations effected by this Order, pending the Director's report.

*§ C. Commencement of Enforcement Proceedings

The Department proposed regulations provide that an enforcement proceeding may be commenced with the issuance of a warning letter, or a notice of probable violation ('NOPV'). The issuance of a warning letter as an enforcement action would be at the Department's and thus the Director's discretion depending on the nature of the violation. The commenters expressed support for the Department's proposed regulations supplementing the Department's enforcement actions, with one recommended modification (Tr. at 56; Gas Council Initial Comments at 3, 9; Colonial Initial Comments at 2-3; Bay State Initial Comments at 5). Colonial commented that warning letters and NOPVs are intended to accomplish the same result, *i.e.*, assure the public and the Department of compliance with safety regulations (Colonial Initial Comments at 2). Colonial further commented that, since the NOPV process is more formal, and perhaps adversarial, the cost of such a process can be significant *id.* Colonial suggests that a warning letter will provide the companies with sufficient incentive to initiate reasonably necessary steps to assure compliance with the applicable regulations without the burden of the costs associated with the NOPV process (*id.*).

Several commenters recommend that the Department clarify the effect of the Department's warning letter (Bay State Initial comments at 5; Colonial Initial Comments at 2; Gas Council Initial Comments at 9). The commenters recommend language that provides that no such warning letter will be deemed to be based on a finding or adjudication by the Department that a violation exists, nor will it constitute

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evidence that a violation exists (Bay State Initial Comments at 5; Colonial Initial Comments at 2; Gas Council Initial Comments at 9). The commenters expressed concern that such a clarification will preclude the use of warning letters as evidence of fault in a civil action (Bay State Initial Comments at 5; Colonial Initial Comments at 2; Gas Council Initial Comments at 9).

The Department's proposed regulations provided that a warning letter could, as a matter of enforcement discretion, be used to commence an enforcement proceeding in order to ensure compliance with the applicable safety regulations in a less formal and costly manner. In the alternative and as a matter of discretion, the proposed regulations further provided that the Department may proceed immediately to an NOPV, bypassing the warning letter altogether and without notice of intent to bypass. The final regulation preserves and effects this distinction and provides the associated enforcement discretion. As with the NOPV, the Department did not intend that the issuance of a warning letter should be construed as evidence of an actual violation of a safety regulation. Therefore, the Department finds that the suggested modification of the proposed regulation, i.e., to indicate a warning letter will not be deemed as evidence of an actual violation, is reasonable. Accordingly, the final regulations include language proposed by the Gas Council.

***10 III. ORDER**

Accordingly, after due notice, public hearing, and consideration, it is

DETERMINED: that the regulations attached hereto, and designated as 220 C.M.R. s. 107.00 et seq. and ~~220 C.M.R. s. 69.03~~ are reasonably necessary for the administration of Chapter 164 of the General Laws; and it is

ORDERED: that the regulations entitled 'Abandonment of Gas Service Lines and Leakage Survey Procedures' and 'Commencement of Enforcement Proceedings' attached hereto are hereby ADOPTED; and it is

FURTHER ORDERED: that these regulations shall take effect upon publication in the Massachusetts Register. A true copy

220 CMR 107.00 ABANDONMENT OF GAS SERVICE LINES AND LEAKAGE SURVEY PROCEDURES

107.01: Applicability

Notwithstanding any other provisions of regulations, 220 CMR 107.00 applies to any person engaged in the storage, transportation or distribution of gas and is not limited to gas corporations, gas companies or municipal gas departments.

107.02: Application for Exceptions from Provisions of 220 CMR 107.00

Any person engaged in the operation of a service line may make a written request to the Department for an exception to the provision of these regulations. The request shall justify why the exception should be granted and shall demonstrate why the exception sought does not derogate from the safety objective of 220 CMR 107.00.

The Department may deny the exception or grant the exception as requested, or as modified by the Department and subject to conditions. Any exception shall be issued in writing and may be made by the Director of the Pipeline Engineering and Safety Division. Any such person aggrieved by a decision of the Director regarding a request for an exception may appeal the Director's decision to the Commission. Any appeal shall be in writing and shall be made not later than ten business days following issuance of the written decision of the Director.

107.03: Definitions

As used in 220 CMR 107.00:

Abandoned means that: (1) The service line is disconnected or cut off at or as close as practical to the main; and (2) Any opening in the main or the open end of

the segment of the service line left thereto is sealed; and (3) The service line is purged of gas, except when the volume of gas is so small that there is no potential hazard; and (4) The open end of the disconnected service line near the main and traversing to the premises is sealed. Department means the Massachusetts Department of Public Utilities. Distribution line means a gas pipeline, other than a gas-gathering or transmission line, that is normally used by utilities for the transportation of natural gas and/or other flammable gas to customers. Inactive service line means a service line where gas service to the customer has been discontinued but the service line has not been abandoned. Main means a distribution line that serves as a common source of supply for more than one service line. Operator means a person who engages in the transportation of gas. Person means any individual, firm, joint venture, partnership, corporation, association, state agency, municipality, municipal department, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof. Pipe means any pipe or tubing used in the transportation of gas, including pipe-type holders. Pipeline means all parts of those physical facilities through which gas moves in transportation including pipe valves and other appurtenances attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders and fabricated assemblies. Purge means the act of removing flammable gas from a distribution line and replacing it with a noncombustible gas. Service line means a distribution line that transports gas from a common source of supply to (a) a customer meter or the connection to a customer's piping, whichever is further downstream, or (b) the connection to a customer's piping if there is no meter.

*11 107.04: Procedures for Abandonment of Service Lines

Each operator shall prepare and follow written procedures for the inactivation and abandonment of service lines. The procedures shall be included in the operator's procedural manual pursuant to 49 CFR 192.605.

107.05: Abandonment of Service Lines

(1) Notwithstanding any provision of 220 CMR 107.05(2), (3), or (4), inactive service lines which shall be abandoned promptly, with due consideration to public safety, are those:

(a) located in, or close to, excavations; or (b) located in, or close to, buildings being demolished; or (c) discovered to be leaking gas; or (d) unrecorded or previously unknown lines discovered in the course of leakage surveys, construction, maintenance or inspection of pipeline facilities.

(2) All service lines inactivated on or before August 8, 1985, and not later reactivated, shall be abandoned on or before August 8, 1995. (3) A service line which was installed on or before July 31, 1971, and which becomes inactive after August 8, 1985, shall be abandoned not later than five years after the most recent inactivation date, provided, however, that if the operator can demonstrate that such service line is **plastic** or, in the alternative, is **cathodically protected** in accordance with 49 CFR 192.463 and 49 CFR 192.455(a)(1) and (2), then such service line shall be abandoned in accordance with 220 CMR 107.05(4), (4). (4) A service line which was installed after July 31, 1971, and which becomes inactive after August 8, 1985, shall be abandoned not later than ten years after the most recent inactivation date.

107.06: Records and Reports For Inactive and Abandoned Service Lines

(1) Readily accessible records of inactive service lines shall be maintained by the operator. Such records shall include the service line's location, the date the service line was installed, and the date the service line became inactive. If any information is unavailable to or unobtainable by the operator, it shall be listed on the record as 'unknown.' (2) Readily accessible records of the location of any service line that is abandoned after August 8, 1985 shall be maintained by the operator for at least five years after the date of abandonment or for such longer time as the operator deems appropriate. (3) Not later than March 15th of each year,

each operator shall submit to the Department an annual report indicating the total number of inactive service lines in its distribution system on December 31st of the preceding calendar year, and the number of inactive service lines abandoned during the preceding year.

107.07: Leakage Survey of All Service Lines

(1) Leakage surveys, using a gas detector system, such as flame ionization equipment or equivalent devices, must be made over all active and identified inactive service lines outside of business districts, as defined by 220 CMR 101.06(21)(a), as frequently as necessary but at intervals not exceeding five (5) years. The surveys shall cover at least twenty percent (20%) of the service lines each year and shall begin no later than during calendar year 1986. Persons participating in leakage surveys shall be trained to recognize the possible existence of locations of unknown or unidentified ~~leaking~~ inactive service lines that may be found during survey analysis. If any part of 220 CMR 107.07(1), conflicts with Department regulations contained in 220 CMR 101.04, 220 CMR 107.07(1) shall be controlling. (2) [Reserved]

*12 REGULATORY AUTHORITY

220 CMR 107.00: M.G.L. c. 164, s. 76C.

220 CMR 69.03: Commencement of Enforcement Proceedings

(1) Warning Letters

Upon determining that a probable violation of 220 CMR 101-113 or any provision of any other code or regulation or rule pertaining to the safety of pipeline facilities and the transportation of gas has occurred or is occurring, the Department may issue a warning letter notifying the owner or operator of the probable violation and advising the operator to correct it or be subject to enforcement action under 220 CMR 69.03(b) through §9.09. No such warning letter will be deemed to be based on a finding or adjudication by the Department that a violation exists, ?? will it constitute evidence that a violation exists.

(2) Notice of Probable Violation

The Department may begin an enforcement proceeding by issuing a notice of probable violation ('NOPV') if the Department has reason to believe that a violation of 220 CMR 101-113 or any provision of any other code or regulation or rule pertaining to the safety of pipeline facilities and the transportation of gas has occurred or is occurring. The NOPV may be issued by the Commission or its designee. The NOPV shall state the **provision(s)** of the codes, regulations or rules which the respondent is alleged to have violated and the evidence upon which the allegations are based, shall give notice of response options available to the respondent under 220 CMR §9.04, and, if a civil penalty is proposed, shall state the amount of the proposed civil penalty and the maximum civil penalty for which the respondent may be liable under law.

REGULATORY AUTHORITY

220 CMR 69.00: M.G.L. c. 164, ss. 76C and 105A.

FOOTNOTES

FN1 For a definition of an 'inactive' or 'abandoned' service line, refer to the final regulations at 220 C.M.R. § 107.03 in Attachment A to this Order.

FN2 The Gas Council is composed of investor-owned and municipal natural gas utilities in the Commonwealth of Massachusetts, including Bay State, The Berkshire Gas Company, Boston Gas Company, Colonial, Commonwealth Gas Company, Essex County Gas Company, Fall River, Fitchburg Gas and Electric Company, North Attleboro Gas

Company, the Town of Middleboro Gas and Electric Department, Wakefield Municipal Light Department, the Town of Westfield Gas and Electric Light Department, and the City of Holyoke Gas and Electric Light Department.

FN3 The instant is a rulemaking and not an adjudicatory proceeding. Therefore, the Department will treat what the Companies have labelled a 'motion' as a comment or request and will respond to it as such. The Department will address the Companies' Request in Section II.B., below.

FN4 The Department accepted Colonial's final **comments** on February 17, 1995.

FN5 An incident is an event that involves a release of gas from a pipeline and death, personal injury, or property loss exceeding \$50,000. 49 C.F.R. § 191.3. All such incidents must be reported to the United States Department of Transportation. 49 C.F.R. § 191.9.

FN6 In preparing its **comments**, Boston Gas reviewed the records maintained by Boston Gas on incident reports filed with both the United States Department of Transportation and the Department (Boston Gas Supplemental Comments at 4). Boston Gas also questioned a number of experienced operating staff, whose primary concern is safety, to ascertain whether any non-reportable incidents occurred before 1985 (id.).

FN7 Colonial stated that in preparing its comments submitted November 29, 1994, it reviewed Incident Reports submitted for the period 1971 to date, Operator's Reports for the period 1955 through 1985, service records for all odor calls for the period January 1, 1992 to date, time records, leakage records for the period 1978 through 1986, Abandoned Service Records for the period 1985 to date, other relevant records kept in the usual course of business and consulted with several long-term employees (Colonial Supplemental Comments at 1-2).

FN8 Bay State's witness, Paul LaShoto, an employee of 23 years experience in engineering, based his assertions on his own personal recollection, supported by direct questioning of longtime employees of the company's distribution departments in Brockton, Lawrence, Springfield, as well as in Maine and New Hampshire (Bay State Initial Comments at 1; Bay State Supplemental Comments at 1). Bay State commented that records do not exist in a form which would provide the Department with documentary support for the proposed regulations and accordingly offered testimonial evidence (Bay State Supplemental Comments at 1).

FN9 Colonial estimates the cost to install a new service line to be \$1,200 (Colonial Supplemental Comments at 4).

FN10 Colonial estimates that it costs approximately \$500 per service to abandon a service line under the existing regulations (Colonial Supplemental Comments at 3)

FN11 ComGas explained that 56 percent of its services that would be abandoned under the existing regulations are plastic or cathodically protected and, therefore, would qualify for the extension under the proposed regulations (ComGas Supplemental Comments at 10). ComGas assumes that 25 percent, or 42, of these services would be reactivated at an average cost of \$1,200 per service id. Thus, the company would save \$50,000 per year (300 X 0.56 X 0.25 X 1200) in reactivation costs id. ComGas estimated that it would also save \$838 per service in abandonment costs, or \$35,000 (\$838 X 42 services) (id.).

FN12 Colonial based this estimation of a conservative assumption that an unsuccessful attempt to gain access costs Colonial's customers approximately \$25 for truck time, direct labor, and overhead (Colonial Supplemental Comments at 3).

FN13 The pipe is either cathodically protected at installation or retro-fitted.

FN14 Bay State has 20,938 pre-July 31, 1971 protected services; Boston Gas has 73,264 pre-July 31, 1971 cathodically protected services and only a few plastic services; ComGas has 3,013 pre-July 31, 1971 cathodically protected steel services

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since 1971; Colonial has approximately 6,560 pre-July 31, 1971 cathodically protected steel services no plastic services (Bay State Supplemental comments at 2; Boston Gas Supplemental Comments at 2; COMGas Supplemental Comments at 11; Colonial Supplemental Comments at 3).

FN15 See, Order at 13.

END OF DOCUMENT

Exhibit E

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION

FILED

SEP 16 1994

JOHN M. WATERS, Clerk
U. S. DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)

Plaintiff)

v.)

CENTRAL ILLINOIS LIGHT CO.)

Defendant.)

No. 94-3249

CONSENT DECREE

The plaintiff has brought an action against the defendant claiming violations of the Natural Gas Pipeline Safety Act (Pipeline Safety Act), 49 U.S.C. §1671 et. seq. The parties desire to avoid further litigation and have reached agreement which is memorialized by the Consent Decree. Defendant does not admit any liability or wrongdoing on its part and this Consent Decree shall not constitute any admission on its part of any liability or wrongdoing here. This Consent Decree constitutes a final judgment binding on all parties to this action.

WHEREAS, the parties have stipulated and agreed as follows:

1. That the Central Illinois Light Company (CILCO) has agreed to pay as a settlement, and not to seek to recover through utility rates, the sum of one million dollars (\$1,000,000.00) payable as follows:

(a) a fine in the amount of \$843,646.76; and,

(b) the cost of investigation in the total amount of \$156,353.24

2. That CILCO has accepted the Illinois Commerce Commission (ICC) staff's recommended disallowance of \$4,824,563.00 in the pending CILCO rate case at the ICC.

3. That CILCO has agreed that it will underwrite, and not seek to recover through utility rates, the reasonable expense of an outside expert, selected by the ICC, to examine its manuals and systems to insure that it is in compliance with all applicable statutes and regulations.

4. That CILCO has agreed to cooperate with the United States government in its investigation and prosecution of any individuals who may be responsible for willful violations of any applicable statute or regulation. In that regard, with the exception of third-party materials provided to CILCO pursuant to joint defense agreement, CILCO will allow the United States access to all documents subpoenaed by the grand jury which thus far have been withheld based upon CILCO's assertion of the attorney-client or work-product privileges. The parties agree that CILCO's production of such documents to the United States pursuant to grand jury subpoena is not intended to and does not constitute a general waiver of applicable privileges with respect to third parties. The United States agrees to maintain any such documents in strict confidence, pursuant to Fed.R.Crim.P. 6(e), and not disclose such documents to third parties without first affording CILCO notice and a reasonable opportunity to object to such disclosure.

5. This stipulation and agreement between the parties is intended as a full and final settlement, release and waiver of any and all claims, asserted or assertable, by the United States against CILCO, its parent, subsidiaries, affiliates or assigns ("the Company"), based upon any allegation presently known to the United States, as ascertained through the

investigation of the Company by the United States Departments of Justice and Transportation, that the Company or any of its directors, officers, employees or agents may have violated the provisions of the Pipeline Safety Act or any other applicable statute or regulation. By this language, the United States only releases the Company for its responsibility for the actions of its directors, officers, employees and agents. The United States does not release or waive any claims it may have against individual directors, officers, employees or agents of the Company.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. CILCO shall pay a fine in the amount of \$843,646.76 payable to The United States Department of Justice c/o AUSA Byron Cudmore within 30 days of the entry of this order.

2. CILCO shall within 30 days of the entry of this order, pay the government's cost of investigation as follows:

(a) \$33,819.23 payable to the United States Department of Justice c/o AUSA Byron Cudmore; said sum representing the cost of investigation expended by the United States Department of Transportation; and,

(b) \$122,534.01 shall be paid to the State of Illinois, Illinois Commerce Commission.

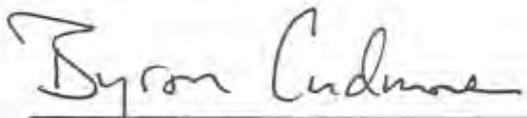
3. CILCO shall underwrite the reasonable expense of an outside expert selected by the ICC to examine its manuals and systems to insure that they are in compliance with all applicable statutes and regulations.

4. This Court shall retain jurisdiction over this matter for the purpose of enforcement of the order within.

ENTERED THIS 16 DAY OF Sept., 1994

BY: 
RICHARD MILLS
UNITED STATES DISTRICT JUDGE

APPROVED:



BYRON CUDMORE
Assistant United States Attorney
Counsel for The United States of America



MARK POLLACK
Jenner & Block
Counsel for CILCO



LEE DODD
Assistant United States Attorney
Counsel for The United States of America