

DIRECT TESTIMONY
OF
MARK KERN
PIPELINE SAFETY ANALYST II
ENERGY DIVISION
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On Its Own Motion

vs.

Bushnell, Illinois, a municipal corporation

Docket No. 10-0668

Citation for alleged violations of Federal Rules Incorporated by the Illinois Commerce
Commission

November 30, 2011

1 **WITNESS IDENTIFICATION**

2 **Q. What is your name and business address?**

3 A. My name is Mark Kern. My business address is 527 East Capitol Avenue,
4 Springfield, Illinois 62701.

5 **Q. By whom are you employed and in what capacity?**

6 A. I am employed by the Illinois Commerce Commission (“Commission” or
7 “ICC”) as a Pipeline Safety Analyst II in the Pipeline Safety Program
8 (“PSP”) of the Energy Division. In my current position, I perform audits
9 and inspections for the natural gas pipeline safety program, which ensures
10 the natural gas system operators in Illinois are meeting the minimum
11 federal safety standards prescribed by Title 49 of the Code of Federal
12 Regulations (“CFR”) adopted in IL Administrative Code Part 590 and by
13 the Illinois Gas Pipeline Safety Act (“Act”) (220 ILCS 20).

14 **Q. Please describe your education and experience?**

15 A. Prior to employment with the Commission, I was employed in the
16 agriculture industry. I earned a Bachelors of Civil Engineering from the
17 University of Illinois at Urbana-Champaign in 1992. I was employed
18 during the summers of 1991 and 1992, as a student intern in the
19 engineering department at Central Illinois Light Company in Springfield,
20 Illinois. I have received extensive technical training at the Transportation
21 Safety Institute (“TSI”) in Oklahoma City, which is where state and federal
22 pipeline safety inspectors receive technical education relating to the
23 enforcement and interpretation of pipeline safety standards. My training at

24 TSI has included subjects such as Introduction to Part 192, Pipeline
25 Safety Regulation Application and Compliance, Natural Gas Odorization,
26 Joining of Pipeline Materials, Incident Investigation, Operator Qualification,
27 Pipeline Corrosion Control, and various other technical aspects of natural
28 gas pipeline operations. I have worked as a Pipeline Safety Analyst for
29 the Commission for the past 17 years.

30 **PURPOSE OF TESTIMONY**

31 **Q. What is the purpose of this proceeding?**

32 A. The purpose of this proceeding is to demonstrate that the City of Bushnell
33 ("Bushnell") has violated numerous Commission rules regarding 49 CFR
34 Part 192 in its operation of the Bushnell Municipal Gas System.

35 **Q. What is the purpose of your testimony?**

36 A. The purpose of my testimony is to present Commission Staff's ("Staff")
37 position. I have performed inspections and created, or participated in
38 creating reports, including the Staff Report filed on November 1, 2010,
39 which led to the initiating order in this proceeding. The Staff Report is
40 attached to and incorporated into my testimony as Attachment A.

41 **Q. What authority or jurisdiction does the ICC have in this matter?**

42 A. Enforcement of the Minimum Federal Safety Standards is granted to the
43 Commission under an agreement pursuant to 49 U. S. C. §60105 with the
44 U. S. Department of Transportation ("USDOT") Office of Pipeline Safety.
45 The federal standards codified under 49 CFR Parts 192 and 199 have
46 been adopted by the State of Illinois in 83 Ill. Adm. Code Part 590.

47

48 **Q. How did you become aware of the violations identified in the Staff**
49 **Report?**

50 A. I became aware of the violations while conducting a record audit of
51 Bushnell on August 10 and 11, 2010. The record audit was conducted in
52 Bushnell's business office located at 127 Ludwig Street, Bushnell, Illinois.
53 The audit included discussions with Kevin McCleery, the operator of the
54 system, and a review of 2009 system compliance records.

55 **Q. Please describe the Bushnell system.**

56 A. The Bushnell system serves the City of Bushnell in McDonough County,
57 Illinois. According to the 2010 Annual Report filed with the U.S.
58 Department of Transportation, Pipeline and Hazardous Materials Safety
59 Administration ("PHMSA"), the Bushnell natural gas distribution system
60 has approximately 43 miles of cathodically-protected steel gas main and
61 14 miles of polyethylene ("PE") gas main. The system has 353 plastic
62 service lines and 1,300 steel service lines serving approximately 1,653
63 customers based on the service line count.

64 **Q. Please describe the violation of 49 CFR §192.615(b)(3) that you**
65 **identified.**

66 A. Section 192.615(b)(3) requires the natural gas system operator to review
67 employee activities and to determine whether procedures were effectively
68 followed in each emergency. During the August 10-11, 2010 record audit,
69 I requested that Mr. McCleery provide documentation demonstrating
70 Bushnell's compliance with this code section following the November 25,

71 2009 explosion at 519 N. Washington Street. Kevin McCleery did not
72 provide documentation confirming that the required review of employee
73 activities had been conducted.

74 **Q. Please describe the violation of 49 CFR §192.615(c) that you**
75 **identified.**

76 **A.** Section 192.615(c) requires each system operator to establish and
77 maintain liaison with appropriate fire, police and other public officials to
78 share information regarding resources or entities that may respond to a
79 natural gas emergency, acquaint those officials with the operator's ability
80 to respond to an emergency, identify the types of gas pipeline
81 emergencies that require notification, and plan for mutual assistance.
82 During the August 10-11, 2010, inspection, I requested that Kevin
83 McCleery provide documentation demonstrating Bushnell's compliance
84 with Section 192.615(c). Kevin McCleery did not provide documentation
85 regarding meetings or other communication with fire, police, and public
86 officials regarding emergency response during 2009.

87 **Q. Please describe the violation of 49 CFR §192.616(d).**

88 **A.** Section 192.616(d) requires the operator to educate persons engaged in
89 excavation-related activities on the use of a one-call notification system
90 prior to excavating and the hazards involved with excavating around
91 natural gas pipelines. During the inspection, I requested Kevin McCleery
92 provide documentation demonstrating Bushnell's compliance with this
93 code section. Kevin McCleery did not provide documentation
94 demonstrating compliance with this section during 2009.
95

96 **Q. Please describe the violation of 49 CFR §192.747(a) that you**
97 **identified.**

98 A. Section 192.747(a) requires the operator to check and service each valve,
99 the use of which may be necessary for the safe operation of a distribution
100 system, at intervals not exceeding 15 months, but at least once each
101 calendar year. During the August 10-11, 2010 inspection, I requested that
102 Kevin McCleery provide documentation demonstrating compliance with
103 Section 192.747. Kevin McCleery did not provide documentation that all
104 of Bushnell's emergency valves in the city of Bushnell had been checked
105 and serviced during 2009.

106 **Q. Was Bushnell notified of these violations?**

107 A. Yes. Notices of Probable Violation ("NOPVs") were sent to Bushnell on
108 August 13, 2010 outlining each individual violation. (See Attachment B)

109 **Q. How did Bushnell respond to the August 13, 2010, 49 CFR**
110 **§192.615(b)(3) NOPV?**

111 A. Staff received a response letter from Bushnell on August 23, 2010. The
112 letter stated that corrective actions had been taken by adding to the
113 Emergency Plan, under Duties and Responsibilities of the Utility
114 Superintendent, that a review of employee activities will be performed at
115 the earliest possible time following an incident.

116 **Q. How did Bushnell respond to the August 13, 2010 NOPV citing 49**
117 **CFR §192.615(c)?**

118 A. Staff received a response letter from Bushnell on September 15, 2010
119 stating that meetings were held with the Police Department, Fire
120 Department and General Public during March, 2009. However, Bushnell
121 failed to provide any documentation of such a meeting. The letter stated
122 that Bushnell had already conducted meetings with the Fire Department
123 during 2010, though Bushnell provided no documentation of such a
124 meeting. The September 15, 2010 letter also stated that Bushnell should
125 be scheduling meetings with the Police Department and the general public
126 in the near future.

127 Staff received documentation on January 24, 2011 regarding an
128 emergency responder meeting held on December 2, 2010 with the Mayor
129 of Bushnell, one or more representatives of the Bushnell Fire Department,
130 the Police Chief of Bushnell and the county Emergency Services and
131 Disaster Agency (“ESDA”) Coordinator. Staff received documentation of
132 an ESDA meeting conducted January 13, 2011 that included the Mayor,
133 one or more representatives of the Fire Department, one or more
134 representatives of the Police Department and ESDA Coordinator. Staff
135 received a documentation of a meeting held on December 3, 2009
136 attended by the one or more representatives of the Police Department and
137 Fire Department, as well as the ESDA Coordinator.

138 **Q. How did Bushnell respond to the August 13, 2010, NOPV citing 49**
139 **CFR §192.616(d)?**

140 A. Staff received a response letter from Bushnell on September 15, 2010
141 stating that a preconstruction meeting was held at City Hall on October 28,
142 2009. Bushnell provided a copy of an attendance sheet for this meeting
143 that listed Mike McCleery¹ as an attendee. The letter stated that Bushnell
144 will have someone in attendance at future preconstruction meetings with
145 excavators and contractors.

146 **Q. How did Bushnell respond to the August 13, 2010, NOPV citing 49**
147 **CFR §192.747(a)?**

148 A. Staff received a response letter on August 23, 2010 stated that Kevin
149 McCleery would create an inspection sheet for each of the valves in the
150 system that will include an area that employees can sign indicating that
151 maintenance had been performed. Staff did not receive an example of
152 such a valve maintenance sheet. The letter did not indicate that valve
153 maintenance had been performed as a result of the issuing of this NOPV.

154 **Q. Did these actions resolve any of the violations?**

155 A. As to NOPV # 5050, concerning 49 CFR §192.615(b)(3), Staff received
156 documentation of a change to the Emergency Plan on November 17,
157 2010. With the receipt of this documentation, this violation can be
158 considered corrected.

159 As to NOPV # 5051, concerning 49 CFR §192.615(c), Bushnell provided
160 documentation, in a letter received on November 17, 2010, of meetings

¹ In the interests of clarity, Staff notes that all other references to Mr. McCleery are to Kevin McCleery, who is Mike McCleery's brother.

161 held with Fire and Police Department personnel. Therefore, this NOPV
162 can be considered corrected.

163 As to NOPV # 5052, concerning 49 CFR §192.616(d), due to the receipt of
164 documentation of meetings being held with excavators and contractors,
165 received in letters dated September 15, 2010 and November 17, 2010, to
166 comply with this requirement, this NOPV can be considered corrected.

167 As to NOPV # 5053, concerning 49 CFR §192.747(a), Bushnell has not, to
168 date, provided any example of a valve maintenance sheet nor any
169 documentation of any valve maintenance performed as a result of the
170 issuing of this NOPV. Therefore, this NOPV cannot be considered
171 corrected until a subsequent record audit confirms such valve
172 maintenance has been performed.

173 **Q. What is your recommendation to the Commission?**

174 A. I recommend that the Commission find that Bushnell has violated 49 CFR
175 §192.615(b)(3), 192.615(c), 192.616(d) and 192.747(a). I further
176 recommend that Bushnell should be subject to a civil penalty assessment
177 for failure to comply with the minimum federal safety standards included in
178 these sections.

179 **Q. Under the Act, what factors should be considered in determining the
180 amount of penalty?**

181 A. For purposes of determining the amount of penalty, Section 7(b) states:

182 ...the Commission shall consider the appropriateness of the
183 penalty to size of the business of the person charged, the
184 gravity of the violation, and the good faith of the person

185 charged in attempting to achieve compliance, after
186 notification of the violation.

187

188 Q. **How would you describe the size of Bushnell's natural gas**

189 **distribution system?**

190 A. According to data submitted on the calendar year 2010 PHMSA Annual
191 Report, Bushnell serves a total of 1653 service lines.

192 Q. **How would you describe the gravity of these offenses?**

193 A. Bushnell failed to comply with the Federal Code. Bushnell failed to
194 conduct activities necessary to meet the minimum requirements to
195 maintain records related to the maintenance of the natural gas system
196 under their control and provide such documentation upon demand to the
197 Commission. The offenses included failure to maintain valves that may be
198 necessary in an emergency, failure to maintain liaison with emergency
199 responders and failure to provide damage prevention information to
200 excavators. I would consider all of the violations to be serious because
201 each violation hindered Bushnell from operating their natural gas
202 distribution system in a safe manner.

203 Q. **Has Bushnell made a good faith effort in trying to achieve**
204 **compliance?**

205 A. Yes although the operator responded in a timely manner to only two of the
206 four NOPVs issued in the response letter received on August 23, 2010.
207 The remaining NOPVs were addressed in letters received on September
208 15, 2010 and on November 17, 2010. These responses provided
209 documentation for all but the NOPV concerning Section 192.747(a). This

210 NOPV may be corrected at the next record audit, providing Bushnell can
211 provide documentation of valve maintenance activities performed on
212 emergency valves within the town of Bushnell.

213 Q. **What penalties may be assessed against Bushnell?**

214 A. 47 U.S.C. §60122, which was adopted by Section 7 of the Act, allows for
215 civil penalties of not more than \$100,000 for each violation, for a maximum
216 of \$1,000,000. Both the Act and the federal regulations state that each
217 day the violation persists is also a separate violation.

218 Q. **In this situation, what would be considered a violation?**

219 A. Bushnell failed to provide documentation that the gas system emergency
220 valves within the town of Bushnell were maintained, during 2009 and
221 2010, as required by 49 CFR §192.747(a). Bushnell failed to review
222 employee activities following the November 25, 2009 incident at 519 N.
223 Washington Street, as required by 49 CFR §192.615(b)(3). Bushnell
224 failed to maintain liaison with fire, police and other public officials during
225 2010, as required by 49 CFR §192.615(c). Finally, Bushnell failed to
226 provide information to contractors and excavators during 2010, as
227 required by 49 CFR §192.616(d). The total penalty that could be
228 assessed against Bushnell for violations of these four sections of the Act
229 and federal regulations would be \$4,000,000 or the maximum amount
230 (\$1,000,000) for each of the four offenses.

231 Q. **What is your recommendation as to what penalty should be**
232 **assessed against Bushnell?**

233 A. Bushnell was in violation of 49 CFR §192.747(a), as they provided no
234 documentation that gas system emergency valves within the City of
235 Bushnell were maintained during 2009 or 2010. Based on the statutory
236 considerations for determining the amount of penalty, I would recommend
237 a penalty of \$10,000 for this violation.

238 Regarding 49 CFR §192.615(b)(3), Bushnell did not provide
239 documentation of review employee activities following the November 25,
240 2009 incident at 519 N. Washington Street. Based on the statutory
241 considerations for determining the amount of penalty, I recommend a
242 penalty of \$10,000 for this violation.

243 Regarding 49 CFR §192.615(c), Bushnell did not document maintaining
244 liaison with fire, police and public officials during 2010. Based on the
245 statutory considerations for determining the amount of penalty, I
246 recommend a penalty of \$10,000.

247 Regarding 49 CFR §192.616(d), Bushnell did not provide documentation
248 relating to damage prevention information to contractors and excavators
249 during 2010. Based on the statutory considerations for determining the
250 amount of penalty, I recommend a penalty of \$10,000.

251 Q. **Please summarize your position.**

252 A. Staff concludes that, concerning the NOPVs issued on August 13, 2010,
253 Bushnell should be found in violation of 49 CFR §192.747(a),
254 192.615(b)(3), 192.615(c) and 192.616(d). A total penalty assessment of
255 \$40,000 should be issued for these four violations.

256 Q. **Does this conclude your direct testimony?**

257 A. Yes, it does.

Staff Report
Bushnell Municipal Gas
Bushnell, Illinois
November 1, 2010

Subject

Bushnell Municipal Gas System Compliance Violations

Introduction

As authorized by Section 3 of the Illinois Gas Pipeline Safety Act (the "Act") [220 ILCS 20/3], the Illinois Commerce Commission ("Commission") adopted, in 83 Ill. Adm. Code 590, federal safety standards in 49 CFR Sections 191.23, 192, 193, and 199 as minimum standards for the transportation of gas and for gas pipeline facilities.

At 2:02 p.m., on November 25, 2009, the Bushnell Gas Department ("Bushnell") was notified that a natural gas ("gas") line was damaged by a contractor installing water lines using directional boring. Upon receipt of the damage notification, Bushnell responded and arrived at location of the damaged gas line at 2:10 p.m. The damaged line was located near a residential property located at 519 N. Washington St. The resident of 519 N. Washington St. notified Bushnell City Hall of a gas odor inside the home at 2:10 p.m. At 2:15 p.m. City Hall notified a Bushnell Gas Serviceman of the gas odor report at 519 N. Washington St. The Bushnell Gas Serviceman informed City Hall that he was already on the scene. At 2:26 p.m., an explosion occurred at the 519 N. Washington St. residence.

On August 11, 2010, a compliance audit was conducted of Bushnell. The compliance inspection included records relating to emergency response, public awareness and systems maintenance.

Emergency Response Issues

Staff conducted an investigation of the November 25, 2009, incident at 519 N. Washington St. in Bushnell, Illinois. The investigation concluded that an excavator had damaged the gas main and adjacent sanitary sewer facilities. The damage to the sanitary sewer allowed gas to enter the sewer main. Gas traveled through the sewer main and sewer lateral to 519 N. Washington St. and then migrated from the sewer lateral into the residence. The gas accumulated inside the residence and combined with air until it reached an explosive level. The gas-air mixture came in contact with a source of ignition and an explosion occurred.

Staff's incident investigation findings indicate that Bushnell failed to adequately respond and take appropriate actions in several respects regarding the gas odor notification.

First, the incident investigation established that Bushnell failed to meet the requirements of 49 CFR 192.605 (a), Procedural manual for operations, maintenance, and emergencies. An operator is required by 192.605(a) to prepare and follow an operations and maintenance ("O&M") manual. Bushnell had the appropriate O&M manual, including a Section B thereof which details the procedure to follow during a gas leak emergency. Staff's investigation established that the Bushnell gas serviceman who responded to the gas leak took no actions to, and did not, determine the extent of the gas migration. Failure to identify the extent of leak migration resulted in the failure of Bushnell employees to initiate the appropriate corrective actions necessary to control the flow of escaping natural gas.

Second, the incident investigation established that Bushnell failed, following the November 25, 2009, incident to meet the requirements of 49 CFR 199.105 (b), Drug tests required. An operator is required to conduct post-accident drug testing. The CFR allows the operator 32 hours after an incident to drug test employees who actions may have contributed to, or whose actions can not be ruled out as contributing to, an incident. The Bushnell gas service employees that responded to the gas main hit and gas odor complaint did not determine the extent of the gas leak. That failure to determine the extent of leak migration was a direct "cause" of the explosion. However, Bushnell then failed to conduct the proper drug testing within the time frame permitted.

Third, the incident investigation established that Bushnell failed, following the November 25, 2009, incident to meet the requirements of 49 CFR 199.225 (a), Alcohol tests required. An operator is required to conduct post-accident alcohol testing. The operator has up to eight hours after an incident to test for the presence of alcohol if the actions of the employee(s) may have contributed to, or the actions by the employee(s) can not be ruled out as a contributing to, an incident. The Bushnell gas service employees who responded to the gas main hit and gas odor complaint did not determine the extent of the gas leak. The failure to determine the extent of the gas leak was a direct cause of the explosion that occurred. Bushnell failed to conduct post-accident alcohol testing within the time frame permitted.

Fourth, the incident investigation established that Bushnell failed, prior to the November 25, 2009, incident to meet the requirements of 49 CFR 192.625 (a), Odorization. An operator is required to odorize the gas in the distribution system at a concentration that is readily detectable at 1% gas in air or below. Odor intensity testing equipment that mixes measured quantities of gas with measured quantities of air is used to provide the test sample. Odor intensity readings obtained after the incident and varied from .65% to 1.2% gas in air. A review was conducted by Staff of the odor intensity readings taken throughout the Bushnell system, prior to the incident and those odor intensity readings, recorded from July 16th thru November 9th, varied from .9% to 1.33% gas in air.

Finally, the incident investigation established that Bushnell failed to meet the requirements of 49 CFR 192.741 (c), Pressure limiting and regulating stations: Telemetering or recording gauges. An operator is required to inspect pressure recordings and take the necessary actions when indications of

abnormally high pressures or low pressures are indicated. Staff inspected the pressure recording chart that had been in place on for the Bushnell gas system prior to, and including, November 25, 2009. The chart was a monthly (31 day) chart, but the installation date of the chart was not recorded. A pressure spike was recorded on the chart. The pressure spike lasted for seven days. Bushnell was not able to provide Staff with the cause of that pressure spike. Bushnell also failed to investigate the pressure spike or to take corrective action and, although the pressure spike itself had no direct contribution to the November 25, 2009, explosion, the violation was noted by Staff.

Record Audit Issues

During the course of the incident investigation process, Bushnell became due for a routine compliance record audit. A Commission Pipeline Safety Staff member conducted a record audit of the Bushnell Municipal Gas System on August 11, 2010. The purpose of the record audit was to review 2009 operating records to determine compliance with 49 CFR 191, 192 and 199. Staff discovered four violations as part of this audit and issued a letter identifying each violation on August 13, 2010.

Staff requested records and performed an inspection to determine if 49 CFR Section 192.615 (b) (3), Emergency Plan, requirements had been met. Section 192.615 (b) (3) requires the operator to review employee activities to determine whether the procedures were effectively followed in each emergency. Bushnell could not provide to Staff documentation that the incident which occurred on November 25, 2009, was reviewed to determine if the procedures were effectively followed.

Staff requested records and performed an inspection to determine if 49 CFR Section 192.615 (c), Emergency Plan, requirements had been met. Section 192.615 (c) requires the operator to establish and maintain liaison with appropriate fire, police, and other public officials. Bushnell could not provide to Staff documentation that liaison meetings were conducted with fire, police, and public officials in 2009.

Staff requested records and performed an inspection to determine if 49 CFR Section 192.616 (a)-(d), Public Awareness, requirements had been met. Section 192.616 requires the operator to develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's ("API") Recommended Practice (RP) 1162. Further, the operator is specifically required to educate excavators regarding damage prevention activities, steps that should be taken for public safety in the event of a gas pipeline release and procedures for reporting such an event. Bushnell could not provide to Staff documentation that the required information was provided to excavators in 2009.

Staff requested records and performed an inspection to determine if 49 CFR Section 192.747 (a), Valve maintenance: Distribution Systems, requirements had been met. Section 192.747 (a) requires the operator to check and service each valve, once per calendar year not to exceed 15 months, which may be necessary for the safe operation of a distribution system. Bushnell could not provide to Staff documentation that the required valve inspections were conducted in 2009.

Staff Compliance Action

On August 13, 2010, a Notice of Probable Violation letter was sent by the Manager of the Pipeline Safety Program to Bushnell Municipal Gas System for failure to comply with 49 CFR 192.615 (b)(3), for failure to review employees actions during an emergency; 192.615 (c), for failure to maintain liaison with fire, police and other public officials; 192.616 (a)-(d), for failure to follow the Public Awareness Program and 192.747 (a), for failure to perform emergency valve maintenance.

On August 26, 2010, a Notice of Probable Violation ("NOPV") letter was sent by the Manager of the Pipeline Safety Program to Bushnell Municipal Gas System for failure to comply with 49 CFR 192.625 (a), regarding deficient odorant levels in the gas; 192.741 (c), regarding failure to maintain adequate pressure indication records and failure to address abnormally high readings; 192.605 (a), for failure to follow the emergency procedures; 199.105 (b), for failure to perform post-accident drug testing; and 199.225 (a), for failure to perform post-accident alcohol testing.

Operator Response To Compliance Actions

On August 23, 2010, a letter was received from the Honorable Steve Russell, Mayor of Bushnell. The letter addressed the NOPV issued citing 49 CFR Part 192.615 (b) (3). The letter stated that the Bushnell Emergency Plan was amended to include incident review under the "Duties and Responsibilities for the Utility Superintendent". However, the letter did not discuss whether a review of the November 25, 2009 incident had been conducted.

A second letter received on August 23, 2010, from Mayor Russell regarding the NOPV issued citing 49 CFR Part 192.747, explained that a sign-off sheet will be created for each of the valves in the Bushnell system. The employee(s) conducting the inspection will be required to sign the form indicating that the appropriate maintenance has been performed. The letter did not state if the inspections have been conducted.

The response letters received did not address the NOPVs citing 192.615 (c) and 192.616 (d) discussed in the August 13, 2010 NOPV letter. Staff contacted Bushnell and explained that all NOPV issues cited in the NOPV letter must be addressed.

On September 15, 2010, a letter was received from Mayor Russell. The letter explained that meetings had been held with the fire department in 2010 and that meetings with the police and public officials should be scheduled in the near future. The meetings are intended to bring Bushnell into compliance with the requirements of 192.615 (c) but had not been conducted.

The September 15, 2010 letter also addressed the NOPV issued citing 192.616 (d). The letter stated that Mike McCleery, Utility Superintendent had attended a preconstruction meeting at the City Hall. Minutes from the meeting were attached to the letter. Neither the letter nor the notes from the meeting include reference to discussions relating to the requirements of CFR part 192.616 (d).

The response to the NOPV letter dated August 26, 2010, is due on September 27, 2010 and has not been received.

Conclusion

Bushnell's failure to comply, and to maintain records to demonstrate compliance, with numerous sections of the CFR noted above constitutes a disregard of the standards and processes that each operator under the jurisdiction of the Illinois Commerce Commission must meet to maintain compliance with required federal standards.

Recommendation

Staff recommends that a Citation Order be issued to initiate a proceeding to determine whether Bushnell Municipal Gas failed to comply with 49 CFR 192.605 (a), 192.615 (b) (3), 192.615 (c), 192.616 (a)-(d), 192.625 (a), 192.741 (c), 192.747 (a), 199.105 (b), and 199.225 (a) and whether civil penalties should be assessed as allowed by Section 7 of the Illinois Gas pipeline Safety Act (220 ILCS20/7).



Prepared By:

Darin R. Burk

Pipeline Safety Program Manager

Energy Division



Approved By:

Harry Stoller, Director

Energy Division



ILLINOIS COMMERCE COMMISSION

August 13, 2010

The Honorable Steve Russell
Mayor of Bushnell
148 East Hail St.
Bushnell, Illinois 61422

Re: Notice of Probable Violation

Dear Mayor Russell:

During our Pipeline Safety Staff ("Staff") August 10 & 11, 2010, inspection of the Bushnell Municipal Utilities 2009 compliance records, our Analyst observed the following probable violations with reference to Part 192 of the Federal Regulations for the Transportation of Natural Gas. A Notice of Probable Violation ("NOPV") has been issued for each section of the Code of Federal Regulations cited. The NOPV's were discussed with Kevin McCleery on August 11, 2010. The violations are outlined below.

Bushnell Municipal Utilities is in probable violation with reference to the following code sections:

§192.615 Emergency plans.

(b) Each operator shall:

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

Bushnell Municipal Utilities could not provide any documentation of the review of employee activities following the November 25, 2009 incident at 519 N. Washington Street, Bushnell, IL.

§192.615 Emergency plans.

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

- (1) Learn the responsibility and resources of each government organization that may respond to a gas pipeline emergency;*
- (2) Acquaint the officials with the operator's ability in responding to a gas pipeline emergency;*

- (3) Identify the types of gas pipeline emergencies of which the operator notifies the officials; and,*
- (4) Plan how the operator and officials can engage in mutual assistance to minimize hazards to life or property.*

Bushnell Municipal Utilities could not provide any documentation of liaison with Fire, Police and Public Officials during 2009.

§192.616 Public Awareness

- (a) Except for an operator of a master meter or petroleum gas system covered under paragraph (j) of this section, each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see § 192.7).*
- (b) The operator's program must follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator's pipeline and facilities.*
- (c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.*
- (d) The operator's program must specifically include provisions to educate the public, appropriate government organizations, and persons engaged in excavation related activities on:*
 - (1) Use of a one-call notification system prior to excavation and other damage prevention activities;*
 - (2) Possible hazards associated with unintended releases from a gas pipeline facility;*
 - (3) Physical indications that such a release may have occurred;*
 - (4) Steps that should be taken for public safety in the event of a gas pipeline release; and*
 - (5) Procedures for reporting such an event.*

Bushnell Municipal Utilities could not provide any documentation of meeting with Excavators and Contractors, during 2009, to meet the requirements of this section.

The Honorable Steve Russell
August 13, 2010
Page 3

§192.747 Valve maintenance: Distribution systems.

(a) Each valve, the use of which may be necessary for the safe operation of a distribution system, must be checked and serviced at intervals not exceeding 15 months, but at least once each calendar year.

Bushnell Municipal Utilities could not provide documentation of performing valve maintenance during 2009.

Upon receipt of the NOPV's, Bushnell Municipal Utilities may submit to this office by September 13, 2010, in writing, evidence refuting the probable violations referenced in the NOPV's or submit a written plan of action outlining actions to be taken to correct each issue of the violation, including a schedule and the date when compliance is anticipated. The response should include the steps Bushnell Municipal Utilities has taken, or expects to take to prevent a reoccurrence of this situation.

Once the inadequacies identified herein have been addressed, documentation confirming the corrective action must be forwarded to this office. Staff will review the documentation provided to determine compliance. If the review verifies the intent of the requirement has been met, this enforcement action will be closed.

Failure to respond and take corrective actions will result in the initiation of a Citation Order and subject Bushnell Municipal Utilities to a penalty assessment as allowed under Section 7 of the Illinois Gas Pipeline Safety Act (220 ILCS 20/7).

If you have any questions concerning this matter, please contact Mark Kern at (217) 414-9357 or I may be contacted at (217) 785-1165.

Sincerely,



Darin R. Burk
Manager- Pipeline Safety

DRB/ns
cc: Kevin McCleery, Superintendent

**ILLINOIS COMMERCE COMMISSION
PIPELINE SAFETY**

NOTICE OF PROBABLE VIOLATION

Date: August 11, 2010

Company or Municipality: Bushnell Municipal Utilities

Town: Bushnell, Illinois

Name of System Personnel Notified: Kevin McCleery

ICC Representative: Mark Kern

Apparent Noncompliance Found (including specific citation to appropriate statute or rule):

§192.615 Emergency plans

(b) Each operator shall:

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

Bushnell Municipal Utilities could not provide documentation of a review of employee activities following the November 25, 2009 Incident at 519 North Washington Street as required by Part192.615(b)(3).

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ICC Representative: Mark Kern

Apparent Noncompliance Found (including specific citation to appropriate statute or rule):

§192.615 Emergency plans.

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

- (1) Learn the responsibility and resources of each government organization that may respond to a gas pipeline emergency;
- (2) Acquaint the officials with the operator's ability in responding to a gas pipeline emergency;
- (3) Identify the types of gas pipeline emergencies of which the operator notifies the officials; and,
- (4) Plan how the operator and officials can engage in mutual assistance to minimize hazards to life or property.

Bushnell Municipal Utilities could not provide documentation of liaison meeting with Fire, Police and Public Officials during 2009 as required by Part 192.615(c).

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Apparent Noncompliance Found (including specific citation to appropriate statute or rule):

§192.616 Public Awareness

(d) The operator's program must specifically include provisions to educate the public, appropriate government organizations, and persons engaged in excavation related activities on:

- (1) Use of a one-call notification system prior to excavation and other damage prevention activities;
- (2) Possible hazards associated with unintended releases from a gas pipeline facility;
- (3) Physical indications that such a release may have occurred;
- (4) Steps that should be taken for public safety in the event of a gas pipeline release; and
- (5) Procedures for reporting such an event.

Bushnell Municipal Utilities could not provide documentation of providing information to Excavators and Contractors during 2009 as required by Part 192.616(d).

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ICC Representative: Mark Kern

Apparent Noncompliance Found (including specific citation to appropriate statute or rule):

§192.747 Valve maintenance: Distribution systems.

(a) Each valve, the use of which may be necessary for the safe operation of a distribution system, must be checked and serviced at intervals not exceeding 15 months, but at least once each calendar year.

Bushnell Municipal Utilities could not provide documentation that valve maintenance, as required by Part 192.747, was performed during 2009.