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DIRECT TESTIMONY
OF
MATTHEW SMITH
PIPELINE SAFETY ANALYST II
SAFETY AND RELIABILITY DIVISION
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On Its Own Motion

vs.

City of Creal Springs Gas Utility

DOCKET NO. 12-0637

Citation for alleged violations of
Federal rules incorporated
By the Illinois Commerce Commission
Regarding general requirements

February 21, 2013

23 WITNESS IDENTIFICATION

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

25 **A.** My name is Matthew Smith. My business address is 527 E. Capitol Avenue,
26 Springfield, IL.

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

28 **A.** I am employed by the Illinois Commerce Commission (“Commission”) as a Pipeline
29 Safety Analyst II in the Pipeline Safety Program (“PSP”) in the Safety and Reliability
30 Division. In my current position, I perform audits and inspections for the
31 Commission’s PSP, which ensures that natural gas system operators in Illinois are
32 meeting minimum federal safety standards prescribed by 49 Code of Federal
33 Regulations (“C.F.R.”) Parts 191, 192, 193, and 199, and by the Illinois Gas Pipeline
34 Safety Act.¹

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

36 **A.** I received a B.A. from the University of Illinois at Springfield in Legal Studies in 2001.
37 Prior to my employment with the Commission, I held the position of Journeyman
38 Welder with Ameren Illinois Company. My duties included construction activities,
39 welding, emergency response, and various other pipeline construction and
40 maintenance duties. All duties and activities that I conducted were done in a
41 manner consistent with company, state, and federal requirements. Since accepting
42 my position at the Commission, I have received extensive technical training at the
43 Pipeline and Hazardous Material Safety Administration (“PHMSA”) Training and
44 Qualification Division (“TQ”) in Oklahoma City, Oklahoma, which is where state and

¹ 220 ILCS 20/1, et seq.

45 federal pipeline safety inspectors receive technical education relating to the
46 enforcement and interpretation of pipeline safety standards. My training at TQ
47 included subjects, such as: Introduction to Part 192; Pipeline Safety Regulation;
48 Application and Compliance; Natural Gas Odorization; Joining of Pipeline Materials;
49 Incident Investigation; Pipeline Integrity Management; Operator Qualification;
50 Pipeline Corrosion Control; Pressure Regulation and Overpressure Protection; and
51 various other technical aspects of natural gas pipeline operations. I have worked as
52 a Pipeline Safety Analyst for the Commission for five years as of July 2, 2012, and
53 have a total of twenty years experience in the natural gas transportation industry.

54 **PURPOSE OF TESTIMONY**

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

56 **A.** This case was initiated to present Commission Staff's ("Staff's") findings and
57 recommendations regarding the audit of the City of Creal Springs Gas Utility ("Creal
58 Springs") that I performed. I prepared, or participated in the preparation of that
59 audit, including the Staff Report filed on November 28, 2012, which led to the
60 initiating order in this proceeding.

61 **REGULATORY AND ENFORCEMENT PROVISIONS**

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

63 **A.** I am not an attorney, but it is my understanding that, by the Natural Gas Pipeline
64 Safety Act ("Federal Act"), enacted as Public Law 90-481, Congress mandated gas
65 pipeline safety regulation by the United States Department of Transportation
66 ("USDOT") in 1968. The Federal Act provides for state pipeline safety regulation in
67 states certified by USDOT. In 1969, the Illinois General Assembly enacted the

68 Illinois Gas Pipeline Safety Act (“Illinois Act”),² Public Act 76-1288. Subsection 3(a)
69 of the Illinois Act³ charged the Commission with adopting rules that are at least as
70 inclusive and as stringent as the pipeline safety regulations adopted by the United
71 States Secretary of Transportation, and requires that the Commission seek federal
72 certification to regulate pipeline safety in Illinois. Section 9 of the Illinois Act⁴
73 requires the Commission to prepare and file with the Secretary of Transportation the
74 initial and annual certification and report required by Subsection 5(a) of the Federal
75 Act. The Commission has maintained certification since the 1970s, under the rules
76 codified at 83 Ill. Adm. Code § 590.10, et seq. Finally, the federal standards codified
77 under 49 C.F.R. Parts 191, 192, 193, and 199 have been adopted by the
78 Commission pursuant to 83 Ill. Adm. Code § 590, as required, to maintain the
79 Commission’s authority for enforcement of the Minimum Federal Safety Standards
80 granted to the Commission under an agreement pursuant to Section 5 of the Federal
81 Act⁵ with the U.S. Department of Transportation Office of Pipeline Safety.

82 **COMPLIANCE RELATED ISSUES**

83 **Q. Please describe the compliance related issues that initiated this proceeding.**

84 **A.** I conducted three separate audits during two different inspection dates. The first
85 audit I conducted was of Creal Springs’ calendar year 2011 compliance records.
86 The second audit was an inspection of the natural gas facilities in their distribution
87 system. The third audit was a review of Creal Springs’ Public Awareness Program.
88 I conducted these audits on March 29, 2012 (“March 2012 audit”), and April 24-26,

² *Id.*
³ 220 ILCS 20/3.
⁴ 220 ILCS 20/9.
⁵ 49 U.S.C.A. § 60105 (West 2012).

89 2012 (“April 2012 audit”), to determine compliance with 49 C.F.R. Parts 191 and
90 192. The audits established that Creal Springs failed to meet the requirements of
91 the Code of Federal Regulations.

92 **Q. During the March 2012 and April 2012 audits, what deficiencies did you**
93 **discover?**

94 **A.** In the course of the March 2012 audit, I determined that Creal Springs failed to meet
95 the requirements specified in its Operations and Maintenance (“O&M”) Manual as
96 required by 49 C.F.R. § 192.605 (a). On March 29, 2012, I issued a Notice of
97 Probable Violation (“NOPV”) to Creal Springs, advising it of this failure.

98 In the course of the April 2012 audit, I noted three separate deficiencies.

99 Deficiencies are grouped into three different categories: Issues; Notice of
100 Amendment (“NOA”); and NOPV. During this audit Creal Springs was cited for four
101 Issues (lesser infraction) related to its failure to satisfy various requirements.

102 Additionally, I issued four Notice of Amendments (“NOA”) detailing that Creal
103 Springs’ Public Awareness Plan must be amended to meet the requirements of 49
104 C.F.R. § 192.616. Finally, I issued fifteen NOPVs to Creal Springs for failure to meet
105 various requirements of 49 C.F.R. Part 192.

106 **Q. You mentioned there were four Issues that were issued during this audit.**

107 **What are Issues?**

108 **A.** An Issue is a term that is used to describe aspects of the operator’s procedures,
109 manuals, planning or operations that are deficient in that they do not meet
110 requirements established in the Code of Federal Regulations, but are nonetheless
111 minor or lesser infractions. Typically, an issue is used to advise the operator that the

112 deficiency needs to be addressed. If the Issue is not addressed by the operator,
113 then the PSP can escalate the Issue to a NOPV.

114 **Q. You mentioned that there were four NOA's issued during this audit. What are**
115 **NOAs?**

116 **A.** A NOA is a method that the PSP uses to inform an operator that there is a deficiency
117 in the operator's plans per the requirements set forth by 49 C.F.R. Parts 191, 192, or
118 199. The NOA is used to detail the deficiency and to allow the operator time to
119 correct the plan. In addition, the operator receives a letter from the PSP Manager
120 detailing each NOA. The letter requires the operator to respond by a specified date
121 and provide a timeline for correcting the deficiency. The letter also informs the
122 operator that if the deficiency is not corrected, a NOPV will be issued for each
123 deficiency. If the deficiencies identified in an NOPV are not corrected, the PSP may
124 file a Staff Report recommending that the Commission initiate a citation proceeding.

125 **Q. Did Creal Springs respond to any one of the four NOAs?**

126 **A.** No. The PSP Manager issued the NOA letters detailing the deficient procedures to
127 Mayor Joyce Rich, the contact for Creal Springs that PSP has on file, on May 22,
128 2012. The NOA letters stated that a response was required by June 22, 2012, and
129 the amended procedures were to be submitted by no later than August 22, 2012. As
130 of February 13, 2013, no response and no amended procedures have been provided
131 by the Mayor.

132 **Q. Was further action taken by the PSP Manager in this matter?**

133 **A.** At this time, further action has not been taken.

134 **Q. Was Creal Springs informed of the various NOPVs?**

135 **A.** Yes. Initially, I met with Mayor Rich to conduct an exit meeting upon completion of
136 the April 26, 2012, audit. During that meeting, I outlined all Issues, NOAs, and
137 NOPVs discovered during this audit. I explained each item in detail to Mayor Rich,
138 and Mayor Rich and I each signed the exit meeting document. A copy of the exit
139 meeting form was provided to Mayor Rich.

140 **Q. Were other actions taken beyond the exit meeting?**

141 **A.** Yes. At the conclusion of the audit on April 26, 2012, the PSP Manager issued a
142 letter to Creal Springs detailing the deficiencies discovered during the audit and
143 issued a NOPV for each deficiency. The letter was mailed to Mayor Rich on May 11,
144 2012, and requested a response by June 14, 2012, specifying a plan of action to
145 address each deficiency. The letter further stated that Creal Springs' failure to
146 respond to the letter and take corrective actions would lead to initiation of a Citation
147 Order.

148 **Q. Did you or anyone else in the PSP receive a response from Creal Springs**
149 **regarding the various NOPVs?**

150 **A.** No.

151 **Q. Were additional measures taken in this matter?**

152 **A.** Yes. On July 13, 2012, the PSP Manager issued a second letter stating that an
153 initial letter was sent by registered mail to Mayor Rich to address the outstanding
154 NOPVs and NOAs, but that a response was not received. The July 13 letter further
155 stated that a response was required by July 25, 2012, and that failure to respond
156 would result in the initiation of a Citation Order, including a penalty assessment.

157 **Q. Has the PSP Manager received a response from Creal Springs in this matter?**

158 **A.** No. When an operator responds to a NOPV, the original is provided to the PSP
159 Manager. A copy of the response letter is forwarded to the PSP Analyst assigned to
160 the operator; in this case I would receive a copy of the response letter. I have
161 reviewed the Creal Springs file and have not observed or received any
162 documentation responding to either the NOPV or NOA letters.

163 **Q. Previously, you stated that there were fifteen NOPVs issued at the conclusion**
164 **of the April 26 audit. Why are only four of the fifteen NOPVs being addressed**
165 **in this proceeding?**

166 **A.** After Creal Springs failed to respond to the two NOPV letters issued by the PSP
167 Manager, I was informed by the PSP Manager to review previous audits of Creal
168 Springs to determine if a pattern existed of Creal Springs' continual failure to meet
169 obligations as specified by 49 C.F.R Part 192.

170 **Q. Why were you tasked with this requirement?**

171 **A.** My understanding was that I was to determine if Creal Springs had a history of
172 failure to comply with any of the code sections cited as NOPVs and issued on April
173 26, 2012.

174 **Q. What were your findings from this review?**

175 **A.** I determined that various PSP representatives had informed Creal Springs at various
176 times that PSP had noted deficiencies in previous audits. The review focused on
177 four different sections of the Code of Federal Regulations. Creal Springs has
178 repeatedly failed to meet the requirements of those four sections of the Code of
179 Federal Regulations.

180 **Q. Please list the various sections that you determined Creal Springs has**
181 **repeatedly violated?**

182 **A.** I have determined that Creal Springs has repeatedly violated 49 C.F.R. Parts
183 192.465 (d), 192.615 (c), 192.625 (f), and 192.721 (b).

184 **Q. Addressing each of these Sections separately, you discovered during the**
185 **April 2012 audit that Creal Springs had failed to satisfy 49 C.F.R. Part 192.465**
186 **(d). What does 49 C.F.R. Part 192.465 (d) require?**

187 **A.** 49 C.F.R. Part 192.465 is entitled “External Corrosion Control: Monitoring”, and
188 requires that operators monitor pipelines under cathodic protection to determine
189 whether such pipelines are externally corroded. Subsection (d) of that Section
190 states “[e]ach operator shall take prompt remedial action to correct any deficiencies
191 indicated by the [external corrosion] monitoring.” This requirement requires an
192 operator to promptly remediate a deficient reading that is discovered when cathodic
193 protection readings are obtained.

194 **Q. What constitutes a deficient reading?**

195 **A.** 49 C.F.R. Part 192 Appendix D, Section I, Subsection A, offers four methods
196 whereby an operator can meet the cathodic protection requirement. This operator
197 has chosen to meet the requirement listed in 49 C.F.R. Part 192 Appendix D,
198 Section I, Subsection A (1). The requirement states that a negative (cathodic)
199 voltage of at least 0.85 volts of direct current (“DC”), with reference to a saturated
200 copper-copper sulfate half cell, is required on the pipeline system.

201 **Q. Has Creal Springs maintained the negative voltage of at least 0.85 volts DC?**

202 **A.** No. Staff reviewed past PSP inspection reports and determined that Creal Springs
203 has consistently failed to meet this requirement.

204 **Q. What did your review determine?**

205 **A.** Initially, PSP issued an NOPV letter to Creal Springs on October 21, 2003, indicating
206 that Creal Springs failed to properly protect portions of the cathodic protection
207 system.

208 A November 13, 2006, PSP inspection report indicated that sections of the pipeline
209 that were determined to be deficient in 2003 remained deficient in 2006.

210 A May 28, 2009, PSP inspection report indicated that nine sections of pipeline that
211 were determined to be deficient in 2006 remained deficient in 2008.

212 A January 20, 2010, PSP inspection report indicated that the operator had properly
213 addressed all deficiencies discovered during the May 28, 2009, audit.

214 I conducted an audit in Creal Springs in April 2012. The audit findings stated that a
215 cathodic test station located at 1019 Creal Springs Road had a deficient reading
216 since 2009. A NOPV was issued to Creal Springs at the conclusion of the April 2012
217 audit.

218 **Q. What will occur if Creal Springs fails to maintain, at a minimum, negative 0.85**
219 **volts DC?**

220 **A.** Without proper cathodic protection, steel pipelines will corrode, or to use a more
221 commonly understood term, rust. To prevent corrosion, a pipeline must have a
222 coating to limit the amount of surface area in contact with the soil, and an applied
223 current system. The current system is used to impart a negative electric charge to

224 the metal. This combination of proper coatings and negative electric charge will
225 allow the steel pipeline to remain intact.

226 Without adequate cathodic protection, steel pipelines corrode and ultimately leak. A
227 gas leak follows the path of least resistance. Various factors contribute to the
228 location where the gas will escape to the atmosphere. For example, soil conditions,
229 gas pressure within the pipeline, and the type of cover at grade level (i.e., turf,
230 concrete, asphalt, etc.) all may affect where gas leaving the pipeline will reach the
231 atmosphere. Depending on these factors, a gas leak that vents to the surface close
232 to the leak in the pipeline, but away from structures, could have a low potential for
233 causing an explosion. But a leak that is in close proximity to structures, and where
234 concrete is the cover material at grade level, will cause the leaking gas to migrate.
235 The leak migration follows the path of least resistance. For instance, this path may
236 be a sewer line that is connected to several buildings. The leaking gas can enter
237 numerous buildings through the sewer line and accumulate in each building. If the
238 leak is not detected and repaired, then continual build-up of natural gas could be
239 ignited in a building, thus causing an explosion in that building.

240 **Q. Do you have any additional information to add regarding 49 C.F.R. Part**
241 **192.465 (d)?**

242 **A.** Yes. The additional information will be addressed later in my testimony. The
243 additional information is regarding a NOPV response letter from Mayor Joyce Rich to
244 Darin Burk dated July 8, 2009.

245 **Q. You indicate that Creal Springs has failed to satisfy 49 C.F.R. Part 192.615 (c).**
246 **What is required by 49 C.F.R. Part 192.615 (c)?**

247 **A.** 49 CFR Part 192.615(c) requires each operator to establish and maintain liaison with
248 appropriate fire, police, and other public officials to share information regarding
249 resources or entities that may respond to a natural gas emergency, acquaint those
250 officials with the operator's ability to respond to an emergency, identify the types of
251 gas pipeline emergencies that require notification, and plan for mutual assistance.

252 **Q. Why is it important to maintain liaison with the appropriate officials?**

253 **A.** By meeting with the various fire departments, police, and public officials, the Creal
254 Springs Gas Superintendent can explain the assistance that it may request from first
255 responders, such as the police, fire department, or emergency medical teams, in the
256 event of a gas-related emergency. In turn, the fire, police, or public officials may
257 explain the assistance that each group may offer. For example, the Creal Springs
258 Gas Superintendent may explain to the fire department that a request for assistance
259 may be sent if a natural gas pipeline is damaged and leaking due to excavation
260 damage. The fire department will need to know its role in the emergency and the
261 actions that the Gas Superintendent may take during the emergency.

262 **Q. Has PHMSA advised operators of actions that may need to be taken regarding**
263 **liaison meetings?**

264 **A.** Yes. On October 28, 2010, PHMSA posted an Advisory Bulletin to all natural gas
265 operators that they "must make their pipeline emergency response plans available to
266 local emergency response officials." PHMSA further indicated that this information
267 should be provided during required annual liaison meetings.

268 **Q. Please summarize the deficiencies that you identified in the course of your**
269 **review regarding 49 C.F.R. Part 192.615 (c).**

270 **A.** I reviewed a PSP inspection report dated November 13, 2006, that indicated Creal
271 Springs was notified of a failure to meet annually with the appropriate public officials
272 and emergency response officials.

273 During an audit conducted on May 28, 2009, Creal Springs failed to provide Staff
274 with documentation regarding a required annual liaison meeting. A NOPV letter was
275 issued on June 9, 2009, for failure to meet the requirements of 49 C.F.R. Part
276 192.615 (c).

277 A record and compliance follow-up audit were conducted on January 20, 2010, to
278 determine if the deficiencies identified in the June 9, 2009, NOPV letter had been
279 properly addressed. The findings of the 2010 audit were that the deficiency had
280 been properly addressed.

281 I conducted an audit in April 2012 to determine compliance with 49 C.F.R. Part
282 192.615 (c) among other sections of the C.F.R. During my audit, Creal Springs was
283 unable to provide documentation that a required annual meeting was conducted. A
284 NOPV was issued to Creal Springs at the conclusion of that audit.

285 **Q. Why did Creal Springs become compliant during the audit on January 20,**
286 **2010, but continue to be noncompliant prior to and after that date?**

287 **A.** An operator is required to conduct a liaison meeting with the appropriate officials on
288 an annual basis. The audit in 2010 determined that a liaison meeting was
289 conducted in 2009, which brought Creal Springs into compliance. But, after that
290 audit, Creal Springs lapsed into its past practice of failing to conduct the annual
291 liaison meeting.

292 **Q. Do you have any additional information to add regarding 49 C.F.R. Part**
293 **192.615 (c)?**

294 **A.** Yes. The additional information will be addressed later in my testimony. The
295 additional information from a July 8, 2009, NOPV response letter from Mayor Joyce
296 Rich to Darin Burk.

297 **Q. You indicate that Creal Springs has failed to satisfy 49 C.F.R. Part 192.625 (f).**
298 **What is the required by 49 C.F.R. Part 192.625 (f)?**

299 **A.** 49 CFR Part 192.625(f) requires each operator to conduct periodic sampling of
300 combustible gases using an instrument capable of determining the percentage of
301 gas in the air at which the odor becomes readily detectable.

302 **Q. Why is it important to odorize natural gas?**

303 **A.** Natural gas is odorless, and without the addition of an odorant, gas leaks would be
304 undetectable without the proper leak detection equipment, which normal users of
305 natural gas, such as families and businesses, do not possess. The odorant is added
306 to allow a person with a normal sense of smell to detect a potential gas leak before
307 the leak becomes hazardous. Odorant is added to natural gas to make it detectable
308 at a minimum of 1% concentration of gas in the air, or 20% of the lower explosive
309 limit. If the natural gas is detectable at this level, or a lower level, a leak can be
310 detected prior to reaching the range at which gas explodes, which starts at
311 approximately a 5% concentration of gas in air.

312 **Q. Please summarize the deficiencies that you identified in the course of your**
313 **review regarding 49 C.F.R. Part 192.625 (f).**

314 **A.** I reviewed a PSP inspection report dated September 11, 2003. The inspection
315 report stated that a NOPV was issued to Creal Springs for failure to conduct odorant
316 level testing in 2002.

317 An audit conducted June 4, 2008, indicated Creal Springs failed to conduct odorant
318 testing and recommended that testing be conducted and documented.

319 In the course of an audit conducted May 28, 2009, Creal Springs could not provide
320 documentation of odorant testing.

321 PSP conducted an audit on January 20, 2010, to determine if Creal Springs had
322 addressed the findings identified during the May 28, 2009, audit in a satisfactory
323 manner. The report indicated that Creal Springs had not addressed the deficiency.

324 In the course of my April 2012 audit, Creal Springs was unable to provide
325 documentation during the audit that odorant testing was conducted. A NOPV was
326 issued to Creal Springs at the conclusion of the audit.

327 **Q. Do you have any additional information to add regarding 49 C.F.R. Part**
328 **192.625 (f)?**

329 **A.** Yes. The additional information will be addressed later in my testimony. The
330 additional information is from a July 8, 2009, NOPV response letter from Mayor
331 Joyce Rich to Darin Burk.

332 **Q. You indicate that Creal Springs has failed to satisfy 49 C.F.R. Part 192.721 (b).**
333 **What does 49 C.F.R. Part 192.721 (b) require?**

334 **A.** 49 C.F.R. Part 192.721(b) requires operators to periodically patrol mains in places or
335 on structures where anticipated physical movement or external loading could cause
336 failure or leakage. Such locations include mains attached to buildings, mains on

337 bridges, or mains crossing under highways or railroads. Inspection of the specified
338 locations must be conducted to ensure the integrity of the pipeline facility.

339 **Q. Why is it important to periodically patrol pipelines?**

340 **A.** A pipeline should be patrolled to observe any factors that may affect pipeline
341 operations and to allow an operator to correct any potential hazards observed during
342 the patrol.

343 **Q. What are some of the factors that you mention?**

344 **A.** An operator should observe the pipeline system to identify any evidence of
345 excavation, soil grading, demolition, land subsidence, soil erosion, and flooding
346 along the pipeline, any of which might damage or compromise the pipeline.
347 Additionally, the pipeline needs to be inspected, if exposed, for any forms of damage
348 or deterioration.

349 **Q. How can these factors cause a hazard to the pipeline?**

350 **A.** If excavation, grading, land subsidence, or soil erosion are not addressed, then
351 progressive damage may occur to the pipeline due to stresses caused by the lack of
352 support or loading pressures. If not addressed, the additional stresses on the
353 pipeline may cause a failure, thus causing a hazardous condition.

354 **Q. Please summarize the deficiencies that were noted by your review regarding**
355 **49 C.F.R. Part 192.721 (b).**

356 **A.** I reviewed a PSP inspection report dated May 28, 2009, indicating that Creal
357 Springs could not provide documentation that a patrol was completed. A NOPV was
358 issued on June 9, 2009.

359 PSP conducted a record and compliance follow-up audit on January 20, 2010, to
360 determine if Creal Springs met the requirements of the NOPV issued on June 9,
361 2009. The audit concluded that Creal Springs had met the requirements and no
362 further action was required.

363 In the course of my audit in April 2012, Creal Springs was unable to provide
364 documentation of patrolling activity.

365 **Q. Do you have any additional information to add regarding 49 C.F.R. Part**
366 **192.721 (b)?**

367 **A.** Yes. The additional information will be addressed later in my testimony. The
368 additional information is from a July 8, 2009, NOPV response letter from Mayor
369 Joyce Rich to Darin Burk.

370 **Q. You have mentioned a July 8, 2009, NOPV response letter from Mayor Rich to**
371 **Darin Burk. What additional information did you discover in this letter?**

372 **A.** I reviewed a July 8, 2009, NOPV response letter from Mayor Joyce Rich to Darin
373 Burk. The letter began by stating how Mayor Rich, on behalf of the residents of
374 Creal Springs, wanted to say thank you for “doing your job.” The letter went on to
375 state that “the majority of people are unaware that the City was not operating the
376 City’s Gas System in compliance with the rules and regulations of the Federal
377 Regulations for the Transportation of Natural Gas.” Furthermore, the letter stated
378 that they are working to correct the deficiencies “and adopt procedures that will
379 prevent any reoccurrences.”

380 **Q. Why is this letter important to this proceeding?**

381 During the exit meeting I conducted on April 26, 2012, I detailed the procedure in
382 Creal Springs' O&M plan that was required to be completed for each NOPV that was
383 issued to Creal Springs during that audit. The procedures were in place, but were
384 not being followed, even though the NOPV response letter of July 8, 2009, stated
385 the procedures would be adopted to prevent any recurrence.

386 **Q. Please summarize your testimony.**

387 **A.** Creal Springs was informed on numerous occasions that it was deficient in regards
388 to various sections of the requirements of the Code of Federal Regulations. Creal
389 Springs has repeatedly failed to meet these requirements and has shown a blatant
390 disregard for the PSP Program's requests to resolve those deficiencies.

391 **Q. What penalties may be assessed against Creal Springs?**

392 **A.** 49 U.S.C. § 60122, adopted by Section 7 of the Illinois Act,⁶ allows for civil penalties
393 of not more than \$200,000 for each violation, for a maximum of \$2,000,000. Both the
394 Illinois and the federal statute state that each day the violation persists is also a
395 separate violation.⁷

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

397 **A.** Creal Springs has four violations that need to be addressed. First, Creal Springs'
398 deficient cathodic protection reading at 1019 Creal Springs Road is a violation of the
399 requirement established in 49 C.F.R. Part 192.465 (d). Each day that corrective
400 action was not taken past a one-year time limitation is considered a separate
401 violation.

⁶ 220 ILCS 20/7.

⁷ 49 U.S.C. § 60122(a); 220 ILCS 20/7(a).

402 Second, Creal Springs' failure to conduct an annual liaison meeting with appropriate
403 public officials is a violation of the requirement established in 49 C.F.R. Part 192.615
404 (c). Each day that a meeting was not conducted from the time the NOPV was
405 issued is a separate violation.

406 Third, Creal Springs' failure to obtain an odor intensity test is a violation of the
407 requirement established in 49 C.F.R. Part 192.625 (f). Each day that an odor
408 intensity test was not conducted from the time the NOPV was issued is a separate
409 violation.

410 The failure to conduct a patrol of the pipeline system is a violation of the requirement
411 established in 49 C.F.R. Part 192.721 (b). Each day that a patrol was not conducted
412 from the time the NOPV was issued should is separate violation.

413 **Q. What do you consider an appropriate penalty considering the gravity of this**
414 **violation?**

415 **A.** Creal Springs' repeated failure to maintain compliance with the minimum safety
416 requirements of the Code of Federal Regulations warrants the maximum penalty for
417 each of the sections of the Code of Federal Regulations cited. However, 220 ILCS
418 20/7 (b) of the Illinois Act requires the Commission to consider the appropriateness
419 of the penalty to the size of the business or person charged, the gravity of the
420 violation and the good faith effort of the person charged in attempting to achieve
421 compliance. Creal Springs has not responded to the most recent NOPVs. Applying
422 these factors, I consider these violations to be relatively grave, in that each rule
423 being violated is a significant, substantive public safety protection. Further, I have
424 no evidence of a good faith effort on the part of Creal Springs to achieve

425 compliance; its failure to do so over the course of years is apparent. In partial
426 mitigation, Creal Springs' customer base is approximately 190 gas services. This
427 indicates that Creal Springs is unable to pay an \$8,000,000 civil penalty. When
428 adjusting for the size of the system, along with the gravity of the offense and the
429 relative lack of good faith, I recommend a civil penalty assessment of \$16,000 for
430 failure to comply with the requirement of C.F.R. Part 192.465(d), a civil penalty of
431 \$14,000 for failure to comply with the requirements of C.F.R. Part 192.615 (c), a civil
432 penalty of \$16,000 for failure to comply with the requirements of C.F.R. Part 192.625
433 (f) and a civil penalty of \$16,000 for failure to comply with the requirement of C.F.R.
434 Part 192.721 (b). My total civil penalty recommendation is \$62,000.

435 **Q. Does this conclude your testimony?**

436 **A.** Yes.