

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

**Illinois Commerce Commission** :  
**On Its Own Motion** :  
**-vs-** :  
**Creal Springs, Illinois, a municipal** : **12-0637**  
**corporation** :  
: :  
**Citation for alleged violations of federal** :  
**rules incorporated by the Illinois Commerce:** :  
**Commission.** :

**ORDER**

September 22, 2015



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By the Commission:

**I. PROCEDURAL HISTORY**

On November 28, 2012, the Illinois Commerce Commission ("Commission") initiated this proceeding pursuant to Section 7 of the Illinois Gas Pipeline Safety Act (the "Pipeline Safety Act"), 220 ILCS 20/-101 et seq., to determine whether the City of Creal Springs ("Creal Springs" or "City"), Illinois an Illinois municipal corporation and operator of the Creal Springs Gas Utility, has failed to comply with 49 C.F.R. §192.465(d), §192.615(c), §192.625(f) and §192.721(b), adopted by the Commission, and, if violations occurred, whether the Commission should impose civil penalties.

On January 10, 2013, pursuant to due notice, a prehearing conference was held before a duly-authorized Administrative Law Judge. A schedule was set for the filing of testimony. Appearances in the proceeding were entered by counsel on behalf of Creal Springs and Staff ("Parties"). No other appearances were entered and no intervening petitions were filed. On February 5, 2015, Commission Staff ("Staff") and Creal Springs jointly submitted a Stipulation, resolving all contested issues. An evidentiary hearing was held on March 24, 2015. Staff presents the testimony of Matthew Smith, Pipeline Safety Analyst II in the Commission's Pipeline Safety Program ("PSP") and Darin Burk, Manager of the PSP, and the Verified Statement of Aaron McElravy, Pipeline Safety Analyst II. Creal Springs presents the testimony of its Mayor, Joyce Rich, Creal Springs Gas Superintendent, Marion "Jeff" Marks, and Creal Springs Treasurer, Nancy Pappas. The matter was marked "Heard and Taken" on March 24, 2015.

**II. APPLICABLE LEGAL STANDARDS**

The Gas Pipeline Safety Act requires the Commission to:

. . . adopt rules establishing minimum safety standards for the transportation of gas and for pipeline facilities. Such rules shall be at least as inclusive, as stringent, and compatible with, the minimum safety standards adopted by the Secretary of Transportation under the Federal Act. 220 ILCS 20/3.

The Federal Act refers to 49 U.S.C.A. §60101 et seq. At 83 Ill. Adm. Code 590, "Minimum Safety Standards for Transportation of Gas and for Gas Pipeline Facilities" ("Part 590"), the Commission incorporated by reference the applicable federal rules (49 CFR 191.1, 191.3, 191.5, 191.7, 191.9, 191.11, 191.13, 191.15, 191.17, 191.23, 191.25, 192, 193 and 199) "Minimum Safety Standards." Part 590 has been updated biennially since then to adopt any amendments to the Minimum Safety Standards.

Penalties are provided for in Section 7 of the Gas Pipeline Safety Act which provides in relevant part:

- (a) Any person violating paragraph (a) of Section 6 of this Act or any rule or order issued under this Act is subject to a civil penalty not to exceed the maximum penalties established by Section 60122(a)(1) of Title 49 of the United States Code for each day the violation persists.

Section 7 of the Pipeline Safety Act provides guidance for the Commission in determining the amount of the penalty. Section 7(b) provides *inter alia*:

. . . the Commission shall consider the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation . . . .

The Minimum Safety Standards include a rule regarding corrosion control. Section 465(d), which provides:

Each operator shall take prompt remedial action to correct any deficiencies indicated by the monitoring [of external corrosion].

The Minimum Safety Standards require that gas pipeline operators maintain liaison with public officials. Section 192.615(c) provides:

Each [gas system] 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.

The Minimum Safety Standards dictate the level and monitoring of gas odorization. Section 192.625(f) provides:

To assure the proper concentration of odorant in accordance with this section, each operator must conduct periodic sampling of combustible gases using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable. Operators of master meter systems may comply with this requirement by—

(1) Receiving written verification from their gas source that the gas has the proper concentration of odorant; and

(2) Conducting periodic “sniff” tests at the extremities of the system to confirm that the gas contains odorant.

The Minimum Safety Standards require that portions of the gas pipeline must be patrolled. Section 192.721(b) provides:

Mains in places or on structures where anticipated physical movement or external loading could cause failure or leakage must be patrolled—

(1) In business districts, at intervals not exceeding 4½ months, but at least four times each calendar year; and

(2) Outside business districts, at intervals not exceeding 7½ months, but at least twice each calendar year.

### **III. BACKGROUND**

On September 17, 2012, Staff provided a Staff Report, asserting that Creal Springs was in violation of Sections 192.465(d), 192.615(c), 192.625(f) and 192.721(b) of the Minimum Safety Standards. The Staff Report states that documentation provided by Creal Springs in the course of a May 2009 audit revealed that in nine separate locations, readings indicated deficient cathodic protection, i.e., deficient levels of corrosion control, in violation of Section 192.465(d). It states Creal Springs was unable to provide records demonstrating it established and maintained liaison with police, fire, and public officials in violation of Section 192.615(c). The Staff Report asserts that Creal Springs had not demonstrated that it had conducted periodic sampling of the pipeline gas to determine whether it had maintained adequate levels of odorant to allow leak detection, in violation of Section 192.625(f). The Staff Report states that Creal Springs was unable to provide records demonstrating it had periodically patrolled mains, in places or on structures where

physical movement or loading could cause failure or leakage, as required by Section 192.721(b).

#### **IV. EVIDENCE**

##### **A. Violations of the Minimum Safety Standards**

###### **1. Staff Position**

Staff witness Matthew Smith testifies that he conducted three separate audits of Creal Springs during two different inspection dates, specifically March 29, 2012 ("March 2012 audit"), and April 24-26, 2012 ("April 2012 Audit"). The first audit was of Creal Springs' calendar year 2011 compliance records. The second audit was an inspection of the natural gas facilities in the Creal Springs gas distribution system. The third audit was a review of Creal Springs' Public Awareness Program. Mr. Smith testifies that the audits established that Creal Springs failed to meet several of the requirements of the Minimum Safety Standards.

Mr. Smith testifies that he noted deficiencies in the course of the April 2012 audit. He states that he met with Mayor Rich to conduct an exit meeting upon completion of the audit. Mr. Smith says that during that meeting, he provided an outline of all Issues, Notice of Amendments ("NOAs"), and Notice of Probable Violations ("NOPVs") discovered during the audit. Mr. Smith indicates that he explained each item in detail to Mayor Rich, and that both the Mayor and he signed the exit meeting document. Mr. Smith testifies that a copy of the exit meeting form was provided to Mayor Rich.

Mr. Smith explains that Minimum Pipeline Safety deficiencies are grouped into three different categories: Issues (lesser infractions); NOAs; and NOPVs. Mr. Smith explains that an Issue is a term that is used to describe aspects of the operator's procedures, manuals, planning or operations that are deficient in that they do not meet requirements established in the Minimum Safety Standards, but are nonetheless minor or lesser infractions. He says, typically, an Issue is used to advise the operator that the deficiency needs to be addressed. He explains that if the Issue is not addressed by the operator, then it can be escalated to a NOPV.

Mr. Smith states that an NOA is used to inform an operator that there is a deficiency in the operator's plans per the requirements set forth by the Minimum Safety Standards. Mr. Smith testifies that an NOA is used to detail the deficiency and to allow the operator time to correct the plan. He states an operator receives a letter from the PSP Manager detailing each NOA, requiring the operator to respond by a specified date, and providing a timeline for correcting the deficiency. He explains that the letter also informs the operator that if the deficiency is not corrected, a NOPV will be issued for each deficiency. Mr. Smith states that if the deficiencies identified in a NOPV are not corrected, the PSP may file a Staff Report recommending that the Commission initiate a citation proceeding, as was done to initiate this proceeding.

Mr. Smith states that as a result of the audits, Creal Springs was cited for four Issues, four NOAs, and 15 NOPVs. He testifies that the PSP Manager issued the NOA letters detailing the deficient procedures to Mayor Rich. He states the NOA letters required a response and submission of amended procedures. Mr. Smith testifies that, as of February 13, 2013, no response and no amended procedures had been provided by Creal Springs. Mr. Smith states that the PSP Manager issued a letter to Creal Springs detailing the deficiencies and issued a NOPV for each deficiency. Mr. Smith stated that the letter was mailed to Mayor Rich on May 11, 2012, and requested a response by June 14, 2012, specifying a plan of action to address each deficiency. He testifies that the letter further stated that Creal Springs' failure to respond to the letter and take corrective actions would lead to initiation of a Citation Order. Mr. Smith says that no response was received.

Mr. Smith states that because Creal Springs failed to respond to the two letters issued by the PSP Manager, he was directed to review previous audits of Creal Springs to determine if a pattern or history existed of Creal Springs' continued failure to meet obligations of the Minimum Safety Standards. Mr. Smith determined that Creal Springs had been informed at various times of deficiencies in previous audits. He states his review focused on four different sections of the Minimum Safety Standards, for which Creal Springs has repeatedly failed to meet the requirements: Sections 192.465 (d), 192.615 (c), 192.625 (f), and 192.721 (b).

Mr. Smith testifies that he conducted an audit of Creal Springs' compliance records and an associated field audit on July 9-11, 2013 ("July 2013 audit") to determine if it had corrected the deficiencies. He states he reviewed compliance records dating from April 24, 2012, to July 9, 2013 and that Creal Springs had not completely remediated the deficiencies.

Mr. Smith testifies that Section 192.465 of the Minimum Safety Standards, entitled "External Corrosion Control: Monitoring," requires that gas pipeline operators monitor pipelines under cathodic protection to determine whether such pipelines are externally corroded. He states Section 192.465 requires an operator to promptly remediate a deficient reading that is discovered when cathodic protection readings are obtained. He states that the Minimum Safety Standards provide four methods by which an operator can meet the cathodic protection requirement. Mr. Smith states Creal Springs has chosen to meet the requirement with a method whereby a negative (cathodic) voltage of at least 0.85 volts of direct current ("DC"), with reference to a saturated copper-copper sulfate half cell, is required on the pipeline system. He states that Creal Springs had consistently failed to satisfy this requirement.

Mr. Smith observes that, at the time of his July 2013 audit, he found that one of the deficient gas services was replaced with a polyethylene service pipe. He states that as the polyethylene service pipe does not require cathodic protection, the violation at that location was corrected. However, he states, Creal Springs failed to maintain adequate cathodic protection at other locations, for example cathodic protection had been deficient

at 1019 Creal Springs Road since 2009. Mr. Smith testifies that three other locations, continued to have deficient cathodic protection.

Mr. Smith asserts that without proper cathodic protection, steel pipelines will corrode, i.e., rust, and ultimately leak. He explains that to prevent corrosion, a pipeline must have a coating to limit the amount of surface area in contact with the soil and an applied current system. Mr. Smith says that the current system is used to impart a negative electric charge to the metal. He explains that the combination of proper coatings and negative electric charge will allow the steel pipeline to remain intact.

Mr. Smith states that if the corrosion results in a gas leak it creates a risk of explosion. He testifies that a gas leak follows the path of least resistance, and that various factors contribute to the location where the gas will escape to the atmosphere. Mr. Smith states soil conditions, gas pressure within the pipeline, and the type of cover at grade level (i.e., turf, concrete, asphalt, etc.) all may affect where the gas leak will reach the atmosphere. Mr. Smith says that depending on these factors, a gas leak that vents to the surface close to the leak in the pipeline, but away from structures, could have a low potential for causing an explosion. He explains the migration of the gas will be affected by close proximity to structures or concrete cover material at grade level. He states if the path of least resistance is a sewer line, connected to several buildings, the leaking gas can enter numerous buildings through the sewer line and accumulate in each building. Mr. Smith states that, if the leak is not detected and repaired, a build-up of natural gas could be ignited, causing an explosion in that building.

Mr. Smith states that Section 192.615(c) of the Minimum Safety Standards requires each operator to establish and maintain liaison with appropriate fire, police, and other public officials to share information regarding the resources or entities that may be needed to respond to a natural gas emergency. He says liaison meetings acquaint officials with the operator's ability to respond to an emergency, identify the types of gas pipeline emergencies that require notification, and are used to plan for mutual assistance. Mr. Smith explains that Creal Springs may need to request assistance from the fire department if a natural gas pipeline is damaged and leaking due to excavation damage. He says the fire department would need to know its role in the emergency and the actions that Creal Springs may take during the emergency. Mr. Smith asserts that Creal Springs has failed to maintain liaison with public officials as required.

Mr. Smith testifies that Creal Springs provided a record of a liaison meeting held in June 2012, but that that no police officials were present. He notes that the minutes of the meeting indicate that gas valves would not be shut off by the Creal Springs Fire Department unless it was an emergency, but that it was not clear if the minutes referred to customer meter valves at each residence or underground emergency valves. Mr. Smith raises a concern that if the Creal Springs Fire Department is granted rights to shut off underground emergency valves, then each fireman would be required to be operator-qualified and drug and alcohol tested, according to requirements in Sections 192 and 199 of the Minimum Safety Standards. Mr. Smith testified that Section 192.615(c) requires that the liaisons make officials and the utility aware of the responsibilities of each

government official in an emergency. He explains that the purpose of the liaison meeting requirement is to maintain a dialogue between the utility and the officials as to which officials may be contacted in an emergency and what actions may be required of each official. Mr. Smith says this dialogue should alleviate any confusion when an emergency occurs and assure that each official understands their role in the emergency.

Mr. Smith testifies that Section 192.625(f) of the Minimum Safety Standards requires each operator to conduct periodic sampling of combustible gases using an instrument capable of determining the percentage of gas in the air at which the odor becomes readily detectable. Mr. Smith states that natural gas is odorless, and without the addition of an odorant, gas leaks would be undetectable without special leak detection equipment, which normal users of natural gas, such as families and businesses, do not possess. Mr. Smith explains that odorant is added to make the gas detectable at a minimum of 1% concentration of gas in the air. He says the 1% concentration allows a person with a normal sense of smell to detect a potential gas leak before the leak reaches the range of approximately 5% concentration in the air, at which gas explodes. Mr. Smith asserts that Creal Springs has failed to conduct the required periodic sampling on several occasions.

Mr. Smith testifies that, during the July 2013 audit, he was provided compliance records which indicated Creal Springs verified the amount of odorant injected in the gas system by monitoring the odorizer tank levels monthly. Mr. Smith states that there were records of Creal Springs conducting monthly samplings during which the odorant levels were obtained using a calibrated machine. He states these compliance records are consistent with records maintained by operators in Illinois to meet the obligations of Section 192.625 (f) of the Minimum Safety Standards.

Mr. Smith testifies that Section 192.721(b) of the Minimum Safety Standards requires operators to periodically patrol mains in places or on structures, where anticipated physical movement or external loading could cause failure or leakage, to ensure the integrity of the pipeline facility. He states such locations include mains attached to buildings, mains on bridges, or mains crossing under highways or railroads. Mr. Smith testifies that a pipeline should be patrolled to observe any factors that may affect pipeline operations and to allow an operator to correct any potential hazards observed during the patrol, including evidence of excavation, soil grading, demolition, land subsidence, soil erosion, and flooding along the pipeline, any of which might damage or compromise the pipeline. He states that the pipeline needs to be inspected, if exposed, for any forms of damage or deterioration. Mr. Smith asserts that Creal Springs was unable to document that it had made such patrols on two separate occasions in the past.

Mr. Smith states in the July 2013 audit he was provided with compliance records indicating that Creal Springs conducted a patrol both inside and outside the business district of their natural gas system within the required time frames for 2012 and up to the July 2013 audit. He finds these compliance records to be consistent with records maintained by operators in Illinois to meet the obligations of Section 192.721(b) of the Minimum Safety Standards.

Mr. Smith testifies that the July 2013 audit revealed two new, possibly hazardous, violations. He states that, while conducting a field audit to verify the paper compliance records, he observed what appeared to be a vent casing. He explains a vent casing is connected to a casing pipe to vent away natural gas in case a leak occurs. He says it is a larger diameter pipe and allows the heavy loading to be absorbed and not transferred to the gas main. Mr. Smith explains that typically a casing pipe is used to protect a gas main from external loading forces caused by railroad trains or heavy vehicles on the highway; it would be installed under railroad tracks or a highway with the gas main inserted inside.

Mr. Smith states that Jeff Marks, the Creal Springs Gas Superintendent was not aware of a casing in his system. He says when he showed Mr. Marks the casing, Mr. Marks did not recognize the casing and thought the vent casing might be a handrail. Mr. Smith says that he asked Mr. Marks to do further research into whether the vent casing is part of the natural gas distribution system. Mr. Smith is concerned that Mr. Marks, who is operator qualified, was unable to recognize a vent casing. He is also concerned about whether the casing is insulated from the gas main. He asserts that operators are required to inspect a casing for electrical isolation and to take necessary action if electrical isolation does not exist. Mr. Smith explains that if the casing and gas main are in contact, then an electrical current short can occur, causing a reduction in cathodic protection which could cause the gas main to leak.

Mr. Smith testifies that, during the July 2013 audit, he also discovered that although Mr. Marks was qualified to calibrate Creal Springs' Combustible Gas Indicator ("CGI") to investigate gas leaks, he was not calibrating it correctly. Mr. Smith recounts that during a previous audit he had determined that the CGI had not been calibrated for years and that Mr. Marks was not qualified to conduct either an inside or outside leak investigation with the CGI. During the July 2013 audit, he determined that Mr. Marks was qualified to conduct the inspection but was not calibrating the CGI to the correct settings. Mr. Smith emphasizes the need for the CGI to be properly calibrated in order to discover gas leaks. He states that this type of equipment is typically calibrated monthly by operators in Illinois. Mr. Smith testifies that without a properly calibrated CGI, a gas leak can be missed. He says a house explosion could occur because of a failure to properly identify and classify gas levels during a leak investigation.

Mr. Smith testifies that Creal Springs needs to address the deficient cathodic protection reading in violation of Section 192.465 (d), its failure to conduct an annual liaison meeting in violation of Section 192.615 (c), its failure to obtain an odor intensity test in violation of Section 192.625 (f); and its failure to conduct patrols of the pipeline system in violation of Section 192.721 (b) of the Minimum Safety Standards.

## **2. Creal Springs Position**

### **a. Mayor Rich**

Joyce Rich testifies that she was elected Mayor of Creal Springs in April 2009, and began her term in May of that year. Mayor Rich states that shortly prior to the time she was sworn into office several audits were conducted on the gas system and several issues were determined to exist, and subsequent to that time Creal Springs has had other audits. Mayor Rich says that at the time she became Mayor, Phillip Jeralds, was the gas superintendent, but was removed from that position and replaced by Jarrett Deaton. She explains that Jarrett Deaton, left abruptly in February 2012, under less than ideal circumstances, and that attempts to locate various records relating to the gas distribution system have been difficult and, in some cases entirely unsuccessful.

Mayor Rich indicates that Creal Springs has considered alternatives to operating the gas system itself. She states that in 2009, an effort was made to sell the system and contact was made with various other potential operators, but no offers were received. She asserts that more recently, contact was made with Ameren and Liberty Utilities to ascertain whether or not either would have interest in acquiring the system. She testifies that Ameren indicated that it would have no interest whatsoever. She states that Liberty Utilities has very recently expressed interest in examining records relating to the system, and a possible acquisition. Mayor Rich states that at the time of her direct testimony, the degree of interest and the likelihood of acquisition by Liberty is not known, and that no other operators were known to Creal Springs that might be interested.

Mayor Rich testifies that in April, 2010, Mr. Marks was hired and became qualified to work on the gas system. Mayor Rich asserts that Mr. Marks was the most qualified employee, in experience, training, and ability, available at the time that he was hired and has had substantial education and experience thereafter. She says that, shortly after his employment in 2010, Mr. Marks began education as an operator. Mayor Rich testifies that Mr. Marks successfully completed a number of training courses given by Utility Safety & Design ("USDI"). She states that, on May 24, 2012, Mr. Marks received a detailed evaluation of his abilities conducted by Tyler Enloe for USDI. She asserts Mr. Enloe found Mr. Marks to be qualified as to knowledge and skill relative to his duties including plastic pipe use and joining. She states that at the time he was hired, she believed Mr. Marks was qualified and that he is qualified now.

Mayor Rich agrees that she was aware of the March and April 2012 audits, and took part in an exit meeting on April 26, 2012. Mayor Rich states that she received correspondence from Darin Burk on March 29, 2012 and responded to it on May 15, 2012. She testifies that she received letters from Mr. Burk dated May 11 and July 13, 2012, but could find no record of a response. Mayor Rich indicates that it would have been her responsibility to respond to those letters. She testifies that during most of 2012 and particularly during the period in question, her husband had certain medical issues requiring treatment that consumed a significant portion of her time and attention. She says that she does not offer this as an excuse but rather as an explanation, and that

failure to make a written response was not due to a lack of concern or desire to comply with regulations and requirements for the operation of a gas distribution system.

Mayor Rich asserts that many of the issues that arose from the March and April, 2012, audits related to an inability on the part of Creal Springs to provide records relating to the performance of required actions relating to the gas distribution system. She states that upon the departure of the prior superintendent, records that were believed to be kept and that should have been available could not be located and consequently could not be presented to the PSP. She says that the audits involved here began approximately one month after Mr. Marks became superintendent. Mayor Rich testifies that Mr. Marks has worked diligently in the role of gas superintendent and has maintained records.

Mayor Rich asserts that although, in April, 2012, Creal Springs was unable to provide evidence of liaison meetings, meetings were in fact held. She testifies that correspondence dated January 20, 2012, addressed to the Williamson County Fire Protection District addressed a meeting on January 19, 2012, and contained copies of Creal Springs' emergency procedures for the District's records. Mayor Rich states that such meetings are being documented in more detail and the records are available.

Mayor Rich states that Creal Springs uses USDI and has done so for a number of years. She states that since March of 2010, aside from the monthly retainer, Creal Springs paid USDI approximately \$69,000.00 for inspections, service, material and repair. On June 5, 2013, when Mayor Rich offered direct testimony, she states that the last leak and cathodic protection survey and regulator station inspection performed by USDI were dated June 18, 2012. She states that USDI reports reflect the data from such surveys and inspections beginning 2009 and continuing through 2012. Mayor Rich asserts that in locations where USDI's report revealed defective cathodic protection, the pipe in question was either removed, replaced with plastic pipe, or such replacement or removal was scheduled. Mayor Rich testifies that Creal Springs has come within the limits of federal regulations.

**b. Mr. Marks**

Mr. Marks testifies that he is operator qualified. He states that shortly after becoming employed by the City, he began training to work on the gas distribution system, and continues to receive training. Mr. Marks testifies that prior to the departure of Mr. Deaton, he was not responsible for maintaining the manual. He explains that he only became aware of this responsibility some time after becoming superintendent. He asserts that once he became aware of the responsibility, he took steps to undertake it.

Consistent with Mayor Rich, Mr. Marks acknowledges the accuracy of the NOPVs and NOAs. Mr. Marks explains that at the time of the 2012 audits, adequate inspection, test and maintenance records could not be located. He believes that the substantive requirements were in fact met, notwithstanding the lack of documentation. He testifies that based on his knowledge and involvement in the gas department, including

participation in maintenance and operation of the system, as well as contact with others, he believes that many of the undocumented requirements were in fact completed.

Mr. Marks testifies that Creal Springs has retained USDI for a number of years to conduct leak and cathodic protection surveys and other services. At the time of direct testimony, Mr. Marks states the last leak and cathodic protection surveys and regulator station inspection performed by USDI was dated June 18, 2012. He says that USDI's report reflects the data from such surveys and inspections beginning 2009 and continuing through 2012. Mr. Marks testifies that in locations where USDI's report revealed defective cathodic protection, the pipe in question was either removed, replaced with plastic pipe, or such replacement or removal was scheduled. Mr. Marks asserts that Creal Springs is now compliant with federal regulations and is able to operate and maintain the gas system under his supervision.

## **B. Corrective Action**

### **1. Creal Springs Position**

#### **a. Mayor Rich**

Mayor Rich states that, with USDI's assistance, all updates to the Creal Springs manual were added in May of 2012, and have been maintained since that time. Mayor Rich explains that Creal Springs now has internet access to updates to the manual where they can be downloaded and inserted more quickly and timely. She states that Creal Springs would be accessing that service on at least a monthly basis to check for updates. Mayor Rich states that at the time of her testimony, to her knowledge, the manual is up to date. She states that to keep it up to date, a complete copy would be downloaded from the USDI website and a hard copy kept on site.

Mayor Rich testifies that it was her understanding and belief that external corrosion and cathodic protection issues have been resolved, although attempts to locate records of such compliance had not been successful.

Mayor Rich testifies that the portion of the Creal Spring Operations and Maintenance ("O&M") manual having to do with public awareness was updated and is current in that regard at the time of her direct testimony. She states that Creal Springs secured the services of Paradigm Public Awareness Program ("Paradigm"), which has been associated with USDI since 2011. Mayor Rich says that Paradigm provides an effective baseline Public Awareness Collaborative Program for Creal Springs, and has done so for the years 2012 and 2013. Mayor Rich testifies that Paradigm identifies stakeholder audiences, prepares the appropriate public awareness brochure, provides postage and reply care surveys and conducts effective measurement reports after each mailing. Mayor Rich states that prior to 2012, Creal Springs prepared and delivered the materials relative to the public awareness program. Mayor Rich believes this addresses the public awareness issue.

Mayor Rich asserts that, since Mr. Marks became the gas superintendent, record keeping and manual maintenance have been stressed and Creal Springs' record keeping is significantly better than it was previously. She explains that Creal Springs instituted a program whereby monthly tests and inspections were scheduled and that the schedule is kept in the Treasurer's office and with the gas department. Mayor Rich testifies that records of the tests and inspections are kept regularly, and that if a test or inspection is not accomplished on the specified date, it remains on the calendar until it is accomplished and noted.

Mayor Rich testifies that it was brought to her attention during the July 2013 exit meeting that Mr. Marks had been incorrectly calibrating the City's CGI, which may have led to improper testing results. She states corrective action was taken immediately. She says that on July 15, 2013, Mr. Marks was instructed by an employee from USDI on the proper procedure to calibrate the CGI. Mayor Rich asserts that from the time of his instruction, Mr. Marks has successfully calibrated the CGI and since that time there have been no further issues with the calibration of the CGI.

Mayor Rich testified that after the July 2013 exit meeting, Creal Springs immediately met with Tyler Enloe of USDI to discuss a plan of action in regard to the information provided. She states that during the week of August 26, 2013, USDI replaced Test Stations which needed to be replaced and performed inspections, documenting their results, in regard to the other NOPVs noted by Staff witness Smith. She testifies that any issues found by USDI were immediately remedied in accordance with the Code of Federal Regulations.

Mayor Rich explains that Creal Springs changed its record keeping system and became better able to maintain the records for the required testing which was being performed on a regular basis. She states the records will be maintained in the gas department's office and be readily available for inspection. Mayor Rich testifies that Creal Springs implemented a tickler system on its calendar to remind Creal Springs of the required testing to be performed prior to the date that the testing is to occur. She states the superintendent will be advised of when the testing is to occur, as will Mayor Rich and another City employee. She says the system will remind Creal Springs to verify that the testing has been completed and recorded. She anticipates this will ensure that Creal Springs does not overlook a required testing and that the testing is recorded.

Mayor Rich testified that Creal Springs conducted a meeting to maintain liaisons with public officials as required by Section 192.615(c) of the Minimum Safety Standards, on September 30, 2013. She states that all public agencies which may respond to Creal Springs in the event of an emergency in the gas system were invited. Mayor Rich says that a copy of the agenda and a list of those present was maintained and is attached to her testimony. She states that Creal Springs scheduled another liaison meeting with these individuals on February 28, 2014. She says that representatives of several entities present professed confusion regarding the need for the meeting, since no other municipalities held them.

Mayor Rich states that the Lake of Egypt Fire district and ambulance service did not send a representative to the meeting, but that she met with Lake of Egypt Fire Chief, Kirby Crites, and also the director of the Lake of Egypt Ambulance Service on Thursday, October 3, 2013. She states that she presented them with a packet of the materials provided to the attendees at the meeting on September 30th, 2013. She testifies that the role of both the fire fighters and the ambulance crew, in the case of a gas emergency was discussed. She testifies that Chief Crites indicated he was unable to attend the Liaison Meeting on September 30, 2013. She states the Chief marked his calendar for the scheduled meeting on February 28, 2014, and stated he or a representative would attend that meeting.

**b. Mr. Marks**

Mr. Marks testifies that he understands the importance of the O&M manual, maintaining familiarity with its contents, and keeping it up to date. Mr. Marks states that once he became aware that it is his the responsibility to keep the O&M manual current, he took steps to undertake it. He believes the manual is up to date, now.

Mr. Marks asserts that he has documented all work done since April 2012. He confirmed the testimony of Mayor Rich with respect to the use of the Paradigm Public Awareness Program to satisfy public awareness requirements.

Mr. Marks testifies that he sets schedules for required inspections and testing. He says those schedules are on file with Creal Springs' treasurer and each item remains on the schedule until completed and checked off. He states that Creal Springs' CGI is now calibrated on a monthly basis to assure accuracy. Mr. Marks states that Creal Springs meets with emergency responders as required and he documents the meetings. He states that Creal Springs' odorizer is calibrated once yearly and that it was calibrated most recently within the two weeks prior to his direct testimony. Mr. Marks testifies that he works closely with USDI during its annual inspections and during repair and maintenance. Mr. Marks believes that the system, while needing work, is safe and the work scheduled will result in deficiencies being corrected before any safety issues arise. He testifies that at the time of the April, 2012 audit, Creal Springs was unable to evidence liaison meetings, but that the meetings were held. He states the 2013 meeting was properly documented and the record of that meeting will be maintained.

Mr. Marks testified that, since the March and April 2012 audits, Creal Springs has taken the following corrective measures: (1) documented and maintains records for the liaison meeting occurring on February 25, 2013; (2) conducts and documents monthly odorization samplings, beginning May 1, 2012, and for each successive month after; (3) conducted pipeline test and maintained reports relative to same; (4) retained USDI to conduct and report leakage surveys for mains and service lines, identifying all leaks and the class of same; (5) conducts and documents routine patrolling of the pipeline system; (6) prepares and maintains an annual surveillance annual report; and (7) maintains and reviews the O&M manual.

Mr. Marks asserts that there has been constant improvement of the gas distribution system since he was employed, and that it is in considerably better condition than it had been for years. He testifies that the suggested penalty of \$62,000.00 would devastate the gas department and jeopardize future improvements and possibly the existence of the system itself. He states that customers and everyone else in the community deserve to have a safe reliable system and that Creal Springs is and will continue to provide it.

## **2. Staff Position**

Mr. McElravy testifies that he was assigned to conduct audits to determine Creal Springs' compliance relative to the Staff Report dated September 17, 2012 and violations of Sections 192.615(c), 192.625(f), 192.465(d), and 192.721(b) of the Minimum Safety Standards. He asserts he reviewed the records of the audits and inspections of Creal Springs by PSP Staff, and conducted a record audit of Creal Springs.

Mr. McElravy states on July 9–10, 2013, Matt Smith conducted a record audit of Creal Springs. He says that audit record reflects that Creal Springs had a meeting to maintain liaison with public officials, on February 25, 2013. Mr. McElravy states that based on Mr. Smith's audit, PSP Staff determined that Creal Springs was in compliance with 192.615(c). Mr. McElravy states that at the time of his record audit on December 2, 2014, he found no deficiencies associated with Section 192.615(c) at that time.

Mr. McElravy testifies that records show that during his July 2013 audit, Mr. Smith obtained documentation of odorant intensity readings. He states PSP Staff found Creal Springs to be in compliance with Section 192.625, based on Mr. Smith's audit. Mr. McElravy testifies that during his December 2, 2014, audit, he identified no deficiencies associated with Section 192.625(f).

Mr. McElravy testifies that his audit revealed that on July 11, 2013, Matt Smith conducted a field audit of Creal Springs and determined that the service had been replaced where the cathodic protection reading had been deficient in violation of Section 192.465(d). He states that PSP Staff determined the violation had been corrected and closed. Mr. McElravy identified no deficiencies associated with Section 192.465(d) during his record audit on December 2, 2014.

Mr. McElravy states on July 9-10, 2013, Mr. Smith conducted a record audit of Creal Springs to determine if patrols were performed within the required intervals. He says that during Mr. Smith's audit it was determined that Creal Springs had conducted the required patrols. Mr. McElravy states that he identified no deficiencies associated with Section 192.721(b) during his record audit on December 2, 2014.

Mr. McElravy testifies that Creal Springs has provided documentation and taken corrective action to become compliant with the violations outlined in the Staff Report dated September 17, 2012 including Sections 192.615(c), 192.625(f), 192.465(d), and 192.721(b) of the Minimum Safety Standards. He states that no other violations of federal regulations enforced by the PSP have been identified. Mr. McElravy asserts that, as it does with all gas system operators, PSP Staff will continue to periodically inspect and

audit Creal Springs. Mr. McElravy concludes that Creal Springs is in compliance with Sections 192.615(c), 192.625(f), 192.465(d), and 192.721(b) of the Minimum Safety Standards.

### **C. Penalty**

#### **1. Staff Position**

At the time of filing direct testimony, Mr. Smith recommended a penalty of \$62,000.00. He states that a separate violation occurs each day that it is not corrected from the time the NOPV was issued. He explains that, in assessing a penalty, Section 7 (b) of the Pipeline Safety Act the appropriateness of the penalty to the size of the business or person charged, the gravity of the violation and the good faith effort of the person charged in attempting to achieve compliance must be considered. Mr. Smith testifies that he considered these violations of the Minimum Safety Standards to be relatively grave, in that each rule being violated is a significant, substantive public safety protection. At the time of his direct testimony, he states Creal Springs has not responded to the NOPVs, that he is unaware of any evidence of a good faith effort to achieve compliance, and that Creal Springs failure to achieve compliance over the course of years is apparent. Mr. Smith states that the discovery of new violations during the July 2013 audit accentuates the point that the individuals at Creal Springs do not understand the federal requirements and/or the requirements listed in their own O&M manual. Mr. Smith says that the lack of overall progress remained a concern that should not be overlooked. In partial mitigation, Mr. Smith observes that Creal Springs' customer base is approximately 190 gas services, indicating that Creal Springs is unable to pay an \$8,000,000 civil penalty for this violation.

In direct testimony, Mr. Smith stated that after adjusting for the size of the system, along with the gravity of the offense and the relative lack of good faith, he recommends a civil penalty assessment of \$16,000 for failure to comply with the requirement of Section 192.465(d), a civil penalty of \$14,000 for failure to comply with the requirements of Section 92.615 (c), a civil penalty of \$16,000 for failure to comply with the requirements of Section 192.625 (f) and a civil penalty of \$16,000 for failure to comply with the requirement of Section 192.721 (b), for a total recommendation of \$62,000

In surrebuttal testimony, Mr. Burk states that Creal Springs has taken actions to correct the violations but has exhibited a continued pattern of refusal to comply with other requirements of the Minimum Safety Standards. Mr. Burk states that at the time of his testimony, PSP's records indicated that Creal Springs continued to be in violation of its own procedures associated with leak classification and monitoring. Based upon its ongoing failure to comply with the safety requirements, Mr. Burk reasons that Creal Springs is not serious in addressing the obligation to adhere to the Minimum Safety Standards. Mr. Burk concurred with the \$62,000 penalty assessment recommended by Mr. Smith.

Mr. McElravy, who provided testimony after Creal Springs had rectified all violations complained of in the Staff Report, recommends a reduced penalty of \$6,200.

Mr. McElravy indicates that the PSP Manager is in agreement with his recommendation. Mr. McElravy explains the recommendation is based upon PSP Staff's consideration of the statutorily required factors.

He states that the City of Creal Springs has a population of 543 persons as of the 2010 census. He notes Creal Springs had 158 gas customers, as of October 4, 2013. Mr. McElravy calculates that a penalty of \$6,200 represents a penalty of approximately \$11.42 per citizen, or approximately \$39.24 per gas customer. Mr. McElravy states that if Peoples Gas Light and Coke Co., which has approximately 830,000 customers, was fined a similar amount per customer, the fine would amount to over \$32.5 million. Under these circumstances, he opines, a fine of \$6,200 is appropriate to the size of Creal Springs.

Mr. McElravy explains that although the violations alleged are of a relatively grave nature, Creal Springs has taken steps to rectify them, and has successfully done so. He notes that Creal Springs has taken steps to prevent recurrences of the same problems, hiring an additional employee and purchasing additional equipment. Mr. McElravy finds this constitutes a demonstration of good faith by Creal Springs in attempting to achieve, and more important, to maintain, compliance with the Minimum Safety Standards.

## **2. Creal Springs Position**

Mayor Rich objected to Staff's recommendation of a \$62,000.00 penalty. Mayor Rich states that Creal Springs could not pay a penalty in the amount of \$62,000, as it would effectively remove all funds that would otherwise be available for maintenance and would deplete all cash reserves. She testifies that for fiscal year ("FY") 2012 actual net income from the gas department was \$5,486.00 and for FY 2013 through March 13, 2013, net income from the gas department was \$22.00. She states that based on past performance and anticipated performance, Creal Springs budgeted FY 2014 for a loss of \$386.00. Mayor Rich states that as of May 1, 2013, the cash on hand was \$41,813.00 but that amount would be reduced by invoices from March and April less income.

Mayor Rich testifies that Creal Springs serves a small community, with approximately 159 customers during any given month. Mayor Rich testifies that the community is not wealthy; the population was 543 with a 13% poverty rate. She states that of the 159 customers, 20% paid their gas bills late, and another 11% received funds from heat assistance programs. Mayor Rich testifies that a penalty of \$62,000.00 would be devastating, and while Creal Springs acknowledges that it failed to meet all of the regulations, a much, much smaller penalty is recommended and requested by Creal Springs.

Mayor Rich testifies as to mitigating factors. She asserts that Creal Springs' gas distribution system has been constantly improving since at least 2009, and that it was in considerably better condition when she offered her direct testimony than it had been for years. She states the budget for Creal Springs' gas system for FY 2014 showed a

potential profit of only \$2,988.00, not taking into account the cost of any additional upgrades to the gas system. She asserts that Creal Springs recently expended \$18,746.30 on the repairs and maintenance completed by USDI and USSI in August, 2013. She stated that Creal Springs was in the process of having more of its gas lines replaced and conducting other maintenance on its gas system, including replacement of the remaining coil steel lines. She states that funds permitting, Creal Springs would seek to hire an additional part-time employee who would become certified and have full understanding of the gas system. She asserts that then, should the need arise, the City would have more than one employee able to manage the gas system. Mayor Rich asserts that correcting all issues then existing in the distribution system would cost an estimated \$89,750.00.

Mayor Rich testifies that taking into consideration the costs of the upgrades and the potential penalty that may be assessed against the City, it is clear that Creal Springs would not have the funds to cover both costs. As a result, those costs would have to be borne by customers, resulting in an increase in utility costs. A raise in the current rate to meet that expense would be beyond the reach of the majority of Creal Springs' customers. She says Creal Springs is not a wealthy community and an increase in utility costs may force a majority of customers to go without heat in the winter months.

Mayor Rich states those customers and everyone else in the community deserves to have a safe reliable system. She asserts that Creal Springs was dedicated to providing that system so long as it remained the operator. Mayor Rich explains that operation has been made more difficult by the fact that Creal Springs had three different superintendents from 2009 to 2013, and its work force was limited as was its resources. Mayor Rich testified that since 2009 the City worked to perform the necessary upgrades and maintenance to its gas system to its best understanding of the law and its obligations. Since 2009, she says, the City has expended \$167,630.95 in maintenance and repairs, not including any of the costs associated with training, supplies, salaries, equipment, or any other expenses. Mayor Rich testifies that Creal Springs now has a better understanding of what is required of it based on the law and feels that it is on the right track to full compliance with the law.

Ms. Pappas testifies that she is the elected Treasurer of Creal Springs. She states that in that capacity, she is familiar with Creal Springs' financial books, records and income from various sources, as well as with population and demographic statistics. She says that the population of Creal Springs according to the most recent census, 2010, was 543, down 169 people from the 2000 population of 702.

Ms. Pappas testifies that Creal Springs' gas utility account, as of January 15, 2014, held a balance of \$44,729.48, but \$6,430.70 in customer deposits and crosswalk LIHEAP funds had to be held and were not available for use by the City for other purposes. She states that Creal Springs had current liabilities against those funds of \$29,491.02, leaving \$8,807.76 on hand with another \$17,012.91 in a certificate of deposit. She concludes that the available funds of \$25,820.67 within the gas utility account would be insufficient

to cover the \$78,470.00 cost of the scheduled replacement of valves in the gas distribution system.

Ms. Pappas asserts that Creal Springs had several other restricted accounts which could only be expended for designated purposes. Ms. Pappas states that on January 15, 2014, the general fund contained \$97,178.20 with current liabilities of \$16,871.51, State Tax due in the amount of \$524.22, \$265.00 in unemployment tax due; leaving a balance of \$73,517.47. Ms. Pappas asserts that Creal Springs was unlikely to see significant increases in revenue.

Ms. Pappas testifies that a fine of \$62,000 would have a devastating impact on Creal Springs' finances. She states it is almost certain that services would have to be cut impacting those residing in the City. She adds that such a fine would impact Creal Springs' ability to make all of the improvements to the gas distribution system that are presently slated to be done. She says the City would have greater difficulty in meeting the weekly payroll of \$2,500-2,700, and would likely be unable to hire an additional person to assist with the gas distribution system as presently planned. She calculates that a fine in that amount would amount to at least \$114.18 for each man, woman, and child in the City. Ms. Pappas explains that Creal Springs is a small community serving approximately 159 customers during any given month, and that a penalty of \$62,000.00 would amount to a penalty of \$389.93 per customer.

She understands that the City has made great strides toward bringing the gas distribution system into compliance with the federal rules; that it is committed to improving the system; and is dedicated to proper maintenance, and inspection of the gas distribution system while closely complying with the rules and regulations. Ms. Pappas asserts that a penalty in the amount of \$5,500.00 would adequately penalize the City without preventing the City from continuing to improve the gas distribution system and from providing the regular services to its citizens. She states that for a community of 543 citizens, a penalty in the amount of \$5,500.00 is very significant but not devastating.

Ms. Pappas states that she understands the goal is to ensure that the gas distribution system is properly maintained and monitored in keeping with applicable statutes, rules and regulations. She believes that the \$62,000 penalty requested by the PSP Staff would impede the City's ability to do so. She states that the City spent significant amounts on the system in the year prior to her testimony and is slated to spend in excess of \$78,000.00 for additional improvements in the immediate future. She maintains that a penalty of \$5,500.00 would provide a significant penalty, while not preventing the continued improvements presently scheduled by the City and defeating the goal of the gas distribution system being properly maintained.

## **V. STIPULATION**

On February 5, 2015, Staff and Creal Springs presented a Stipulation to resolve this matter. The Stipulation states that the parties agree that Creal Springs took various remedial actions, including but not limited to: retaining the services of an additional

employee to assist with system operations and regulatory compliance; implementing certain improved policies and procedures; obtaining additional safety and system maintenance equipment. The Stipulation provides that Creal Springs shall employ and maintain the employment of a minimum of two qualified individuals to perform tasks covered by the Minimum Safety Standards. The Stipulation states that any future violation of the Minimum Safety Standards, by Creal Springs, will be considered a repeat violation for purposes of Commission determination of a civil penalty or appropriate remedial action in any future Commission proceeding. The Stipulation provides that Creal Springs shall pay a penalty of \$6,200.00 immediately upon Commission approval of the Stipulation.

## **VI. COMMISSION ANALYSIS AND CONCLUSIONS**

Having reviewed the entire record, the Commission finds that the violations of the Minimum Safety Standards identified in the Initiating Order and in Staff audits have been corrected. Creal Springs has made improvements to the system and pledges to maintain the system in compliance with the Minimum Safety Standards. Creal Springs is a small municipal gas system. Staff raises concerns about what appears to have been a past pattern and practice by Creal Springs to disregard the Minimum Safety Standards. The Commission is advised by Staff that, during this proceeding, Creal Springs has undertaken and has in fact, remediated the violations. Staff testifies that Creal Springs has been improving its pipeline safety performance. Mayor Rich and Mr. Marks testify that, now and in the future, Creal Springs will maintain the system in compliance with the Minimum Safety Standards. The Commission finds that this commitment coupled with the remedial measures testified to by Mayor Rich and Mr. Marks, and set forth in the Stipulation, demonstrate good faith on the part of Creal Springs.

The violations alleged are grave, gas pipeline safety directly affects the safety, health and welfare of Illinoisans. However, the parties are in agreement that the violations have been corrected. Applying these considerations, the Commission finds a penalty of \$6,200, coupled with the improvements, identified in testimony and the Stipulation, to be appropriate. The Commission finds that the Stipulation constitutes a reasonable and appropriate resolution to this proceeding, is in the public interest, and should be approved and adopted. Accordingly, the Commission approves and adopts the terms of the Stipulation.

## **VII. FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having considered the record herein, is of the opinion and finds that:

- (1) The City of Creal Springs is an Illinois municipal corporation engaged in the distribution of natural gas to the public in the State of Illinois and, as such, is subject to the Illinois Gas Pipeline Safety Act;
- (2) the Commission has jurisdiction over Creal Springs and of the subject matter of this proceeding;

- (3) the findings of fact and conclusions of law set forth in the prefatory portion of this Order are supported by the record herein and are hereby adopted as findings of fact and conclusions of law;
- (4) the Commission Staff and Creal Springs entered into a Stipulation specifying the steps Creal Springs would take to improve gas pipeline safety;
- (5) the Stipulation requires Creal Springs to pay a civil penalty in the amount of \$6,200; and
- (6) the terms of the Stipulation are consistent with Section 7(b) of the Gas Pipeline Safety Act, and the Stipulation should be adopted as full and complete resolution to this docket and the allegations contained in the Staff Report.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the terms of the Stipulation, attached as an Appendix to this Order, are adopted and shall be implemented as set forth above.

IT IS FURTHER ORDERED that Creal Springs, Illinois, a municipal corporation, shall pay a penalty of Six Thousand Two Hundred Dollars (\$6,200) by check, with a notation of this docket number, made out to the Illinois Commerce Commission and delivered to the Financial Information Section of the Commission's Administrative Services Division, 527 E. Capitol Avenue, Springfield, Illinois 62701, within thirty (30) days of the entry of this order.

IT IS FURTHER ORDERED that any motions, objections, or petitions in this proceeding that have not been specifically ruled on should be disposed of in a manner consistent with the findings and conclusions herein.

IT IS FURTHER ORDERED that subject to the provisions of 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 22nd day of September, 2015.

(SIGNED) BRIEN SHEAHEN

Chairman