

RECEIVED

FEB 14 1990

BEFORE THE PUBLIC SERVICE COMMISSION

COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

The Staff of the Public Service Commission,)
)
Complainant,)
)
v.) Case No. GC-89-223
)
The Kansas Power and Light Company,)
)
Respondent.)
)

APPEARANCES: William M. Shansey, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

Jeffrey S. Southard, Director of Litigation, The Kansas Power and Light Company, 801 Kansas Avenue, Topeka, Kansas 66601, for The Kansas Power and Light Company.

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

HEARING

EXAMINER: Cecil I. Wright.

REPORT AND ORDER

On May 10, 1989, Commission Staff filed its complaint against The Kansas Power and Light Company (KPL) alleging that KPL had failed to follow certain rules concerning on-site observation of excavations near gas lines. Staff is seeking penalties totaling \$79,500 in its complaint. The Commission gave notice of the complaint and KPL filed its answer on July 17, 1989, denying it had violated the safety rules.

Pursuant to the Commission's procedural schedule, a hearing was held November 20, 1989. Briefs were later filed by KPL, Staff and Public Counsel.

RECEIVED
JUL 11 1988

Findings of Fact

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

The Kansas Power and Light Company is a regulated public utility which provides gas service to customers in an area of western Missouri including the Kansas City metropolitan area. On December 5, 1988, an explosion occurred as a result of a natural gas leak in KPL's cast iron 6-inch gas line at 6906 Longview Road in Kansas City, Missouri. As part of their normal duties, gas safety engineers from the Commission's Gas Department investigated the explosion. The engineers filed a report concerning their investigation with the Commission in Case No. GS-89-122. As a result of the investigation this complaint was filed.

The complaint alleges that KPL did not follow proper procedures in on-site inspections. The complaint is based on 49 C.F.R. Part 192, adopted by the Commission at 4 CSR 240-40.030. These rules are promulgated by the United States Department of Transportation for the operation of gas systems such as KPL's. Specifically, Staff alleges that KPL did not comply with the provisions of 49 C.F.R. 192.603, 192.13(c), 192.614, 192.605 and 192.755.

Read together, the provisions of the federal safety regulations, and therefore the Commission's rules, require KPL to maintain and modify, as appropriate, and to follow, the plans, procedures and programs required to be established by these safety rules. 49 C.F.R. 192.13(c). KPL must have a written operating and maintenance plan meeting the requirements of Part 192 and keep records necessary to administer the plan. 49 C.F.R. 192.603(b). KPL shall include in its operating and maintenance plans instructions to employees covering normal operating procedures and specific procedures when facilities present the greatest hazard to public safety. 49 C.F.R. 192.605. KPL, for its buried pipeline, shall carry out a written program to prevent damage to that pipeline by excavation activities which, at a minimum,

provides for notice of excavation, marking of gas pipelines in the area of excavation activity, and inspection of the excavation as frequently as necessary during the excavation activities to ensure the integrity of the pipeline. 49 C.F.R. 192.614. When a cast iron gas pipeline is disturbed by the excavation activity, the gas pipeline must be protected as necessary from damage. 49 C.F.R. 192.755.

KPL, at the time of the explosion at 6906 Longview Road and during the excavation activity along Longview Road, had in place plans and procedures as required by Part 192. KPL had Operating Management Bulletin #31A which required KPL employees to become informed of excavation activity, pay strict attention to inquiries for line locations and to keep proper records, and to place stakes and markers sufficient in number to be recognizable and which were not hidden by weeds or debris. Bulletin #31A stated that direct field contact with field representatives of the contractor is very important. Bulletin #31A also states that the frequency of necessary field observations depends upon the type of gas facility involved. Gas mains of 6 inches or more diameter are required to be observed at least daily. During these daily on-site observations, KPL employees should reverify main markers and discuss with contractor personnel the potential for exposing or digging near gas pipes.

In addition to Bulletin #31A KPL had an Operations, Maintenance & Inspection Manual with a section dealing specifically with cast iron pipes. The section on cast iron pipe became effective in April 1986. Paragraph 13.00 of the manual establishes requirements when there is excavation around cast iron pipes and requires that on-site observations should be made which analyze whether earth movement would put stress on the cast iron pipe, what type of equipment is working around the pipe, the provisions for backfilling, and repair or removal if damage occurs.

In February 1988 KPL representatives attended a preconstruction conference at which the city of Kansas City, Missouri, discussed the construction of a water main along the north side of Longview Road. The construction as originally

contemplated would cross KPL's 6-inch cast iron gas line which was also located along the north side of Longview Road. When actually constructed, the water main did not cross the gas pipe.

The allegations in this matter concern whether KPL employees followed the procedures required by Bulletin #31A and Paragraph 13.00 of the manual, and thus 4 CSR 240-40.030, in observing the progress of the construction of the water main. Staff alleges that KPL did not perform daily on-site observation as required by KPL procedures and did not become informed of adverse conditions which might have made replacement of the cast iron pipe necessary. These adverse conditions were the reported use of a hydraulic breaker, the lack of testing to ensure adequate backfill compaction, and that saturated soil conditions might have been present which would hamper backfill efforts.

The evidence indicates that initially KPL did not know whether its procedures were followed with regard to the water main construction and, further, that KPL was unaware that the proposed crossing of its cast iron line by the water main did not occur. When Staff began its investigation KPL did not know that Keith Wilkinson, the construction and maintenance supervisor responsible for the area which included Longview Road, had driven by the construction every day. KPL kept no records indicating any contact between its personnel and the contractor except for the location requests. These requests indicate a KPL employee marked the gas line but there is no signature on the form showing KPL's employee spoke with a contractor representative about the construction.

Keith Wilkinson testified that the employee who marked the location of the gas line for the contractor had talked with the contractor and the contractor had agreed to move the construction further away from the gas line. There is no other evidence that this conversation took place and, as indicated, there is no contractor signature on the location request to show any contractor personnel were spoken with.

Sharon K. Barnes, the Kansas City engineer who was at the construction site daily, did not talk with any KPL personnel concerning the construction. Wilkinson did not talk with any contractor personnel even though he drove by the construction site daily, viewing the progress of the construction from his car. From this he decided that the cast iron gas pipe was not affected by the construction and so made no additional inquiries. Wilkinson testified he had not seen Bulletin #31A but was aware of Paragraph 13.00 concerning cast iron mains. This daily drive-by, KPL contends, fulfils the requirements of Bulletin #31A.

In 1988 the number of breaks in cast iron mains nearly doubled from 38 to 70. These breaks resulted in several explosions. Whether the breaks were caused by drought or other factors, KPL was aware that cast iron mains should be closely watched to ensure any damage was repaired.

There is no direct evidence in this case of what caused the cast iron pipe at 6906 Longview Road to break. The construction of the water main along Longview Road may or may not have had an effect. The evidence, though, is that KPL had procedures in place which, if followed, would have reduced the possibility that the excavation for the water main contributed to the break. The evidence is that KPL personnel made only a cursory attempt to ensure the excavation did not affect the gas pipe.

Since the plans for the water main contemplated two crossings of the gas pipeline, KPL should have been especially concerned that its field personnel observe the excavation closely. KPL's own procedures call for daily on-site observations for excavation near 6-inch gas mains. The fact the gas pipe was cast iron should have made KPL doubly cautious.

There is no competent evidence that any KPL personnel ever spoke with the excavation contractor concerning the proximity of the excavation to the gas pipe. There is evidence that a hydraulic breaker may have been used on the site, which could have caused damage to the gas pipe. There is evidence that a cast iron main

was exposed by the excavation. Whether this cast iron pipe was KPL's or not, a KPL employee should have been on-site to ensure it wasn't. There was evidence of improper backfilling and possible saturated soil conditions during the excavation.

KPL did not know of these conditions or occurrences during the excavation, nor could any KPL witness testify that they were not true since no KPL personnel were ever on-site. Drive-bys may have sufficed for some daily observations once on-site observations were made, but drive-bys alone are not sufficient to fulfil the on-site requirements of KPL's procedures. The evidence indicates that the spoils of the excavation covered some of KPL's markers. As a result, an employee who only drove by would not see the markers so he could not estimate the distance between the gas line and the excavation. Nor could the markers be reverified from a vehicle, as is required by KPL's procedures.

The Commission finds that KPL's management did not inform its field supervisor of the requirements of Commission safety regulations or KPL's own procedures. The Commission finds that KPL's field personnel did not fulfil the requirements of KPL's procedures for on-site observation of excavations around 6-inch gas mains. By failing to follow the procedures KPL has violated 4 CSR 240-40.030.

Staff proposes that the Commission authorize the General Counsel's Office to seek penalties in the amount of \$2,000 a day for the 34 days of construction parallel to the cast iron pipe and \$500 a day for the 23 days of construction parallel to the steel gas line along Longview Road. Staff seeks a total penalty of \$79,500.

The primary focus of this case involves the construction parallel to KPL's cast iron gas line. KPL followed the same procedure, though, for the construction along the steel line portion. The Commission has determined that the fine should be the same for both types of gas lines since the requirements of KPL's procedures differentiate only by the size of the pipe.

The failure to follow the procedures was continuing from the beginning of the construction on August 23, 1988 through the completion on November 10, 1988. On-site inspections are an essential part of the safety procedures for excavations around gas lines. Failure to perform the inspections is a serious violation of the Commission's safety rule. The Commission has determined that the penalty should be \$2,000 a day for the 57 days of construction. The total penalties authorized are \$114,000.

Conclusions of Law

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

The Commission has jurisdiction over the subject matter of this dispute under the provisions of Chapters 386 and 393, R.S.Mo. 1986. The Commission may assess penalties against any person found to have violated any rule of the Commission and each day's continuance of a violation is deemed to be a separate offense. Section 386.570, R.S.Mo. 1986. By Commission rule 4 CSR 240-40.030 gas utilities in the state of Missouri must meet the safety requirements of 49 C.F.R. 192. 49 C.F.R. 192 requires a gas utility to have in place safety procedures to ensure that excavations near gas lines do not cause damage to these gas lines and to follow those procedures.

The evidence in this case is that KPL had proper procedures in place as required by 4 CSR 240-40.030 and 49 C.F.R. 192 but that KPL personnel did not follow these procedures during the construction of a water main along Longview Road in Kansas City, Missouri. This failure to follow proper procedures was a violation of 4 CSR 240-40.030. The Commission has concluded that since KPL has violated 4 CSR 240-40.030, KPL will be assessed a penalty of \$114,000 for the violation. If KPL does not comply with this order the General Counsel's Office shall be authorized to seek enforcement of the penalties pursuant to Section 386.600, R.S.Mo. 1986.

It is, therefore,

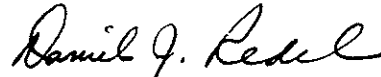
ORDERED: 1. That The Kansas Power and Light Company violated 4 CSR 240-40.030 by not following proper safety inspection procedures during the construction of a water main along Longview Road in Kansas City, Missouri from August 23, 1988 to November 10, 1988.

ORDERED: 2. That The Kansas Power and Light Company shall pay penalties of One Hundred Fourteen Thousand Dollars (\$114,000) for the violation of 4 CSR 240-40.030.

ORDERED: 3. That the General Counsel of the Missouri Public Service Commission is hereby authorized to seek penalties against The Kansas Power and Light Company in the amount of One Hundred Fourteen Thousand Dollars (\$114,000) if this Report And Order is not complied with.

ORDERED: 4. That this Report And Order shall become effective on the 15th day of March, 1990.

BY THE COMMISSION



Daniel J. Redel
Acting Secretary

(S E A L)

Steinmeier, Chm., Mueller, Rauch,
McClure and Letsch, CC., Concur and
certify compliance with the
provisions of Section 536.080,
R.S.Mo. 1986.

Dated at Jefferson City, Missouri,
on this 13th day of February, 1990.