



STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

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March 9, 2016

Mr. Kurt Adams, President  
Summit Natural Gas of Maine  
442 Civic Center Drive, Suite 100  
Augusta, ME 04330 (Via E-Mail and US Mail)

**RE: NOTICE OF PROBABLE VIOLATION (NOPV) Docket No. 2016-00039**

Dear Mr. Adams:

I received a telephone call from Mr. Bert Stefanic at 10:31PM on Wednesday, February 17, 2016, notifying me that Summit Natural Gas of Maine (SNGME) had responded to a gas odor call in the vicinity of the Applebee's restaurant in the parking lot of the Shaw's Plaza on Western Avenue in Augusta. Mr. Stefanic also noted that gas had been detected in nearby manholes. Once the approximate location of the gas leak was pinpointed, a subsequent excavation revealed three electrical conduits which appeared to have been damaged during the installation of a two inch gas main. The gas main was installed using trenchless technology on or about November 18, 2014, by ElectriCom Utility Construction. At least one of the electrical conductors, in one of the conduits, was also apparently damaged and the resultant arcing ultimately burned through the plastic wall of the gas main, causing the leak.

The Commission's Gas Safety Staff has conducted an investigation of this incident and determined that SNGME violated Chapter 420 of the Commission's Rules and 49 C.F.R. Part 192 by failing to properly locate the underground electrical conduits and by failing to maintain the required clearance from other utility facilities. These violations are extremely serious given the potential consequences. The failure to excavate or otherwise protect the underground electrical lines resulted in the migration of gas throughout large portions of the area surrounding the leak. In some locations, gas had concentrated into an explosive mixture of gas and air, creating an immediate and extremely serious threat to life and safety. Had gas continued its migration and entered a nearby building – for example the Applebee's restaurant – and ignited, the resulting damage could have been catastrophic and caused multiple fatalities.

Pursuant to 49 C.F.R. § 190.223 and 35-A M.R.S. § 4516-A, the Commission has authority to impose civil penalties on entities that violate federal or state pipeline safety regulations.

In light of the above finding, the Gas Safety Staff finds the following probable violations and is recommending the following penalty:

**Probable Violations<sup>1</sup>**

**Failure to expose existing underground facilities and provide adequate clearance between those facilities when installing mains by trenchless technology.**

**49 C.F.R. § 192.325; Chapter 420, §§ 3(D)(2) and 5(C)(3)(b).**

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**Recommended Penalty:               \$250,000**

Penalties are assessed for failure to adhere to state and federal rules or for employing unsafe practices and are also intended to serve as a deterrent. In determining the amount of penalties to assess, the Gas Safety Staff takes into account (1) the nature, circumstances, and gravity of the violation, including adverse impact on the environment; (2) the degree of the Company's culpability; (3) the Company's history of prior offenses; (4) the Company's ability to pay; (5) any good faith by the Company in attempting to achieve compliance; (6) the effect of the Company's ability to continue in business; and (7) any such other matters as justice may require. 35-A M.R.S. § 4516-A; 49 C.F.R. § 190.225(a).

In determining the penalty amount in this matter, the Gas Safety Staff has taken into account all of the above factors by balancing the adverse impact on safety, NOPVs previously issued to SNGME<sup>2</sup>, and SNGME's culpability in this matter against other factors<sup>3</sup>, including ongoing mitigative measures, the impact the proposed penalty will have on the ability of SNGME to remain in business, and SNGME's ability to pay the

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<sup>1</sup> The Chapter 420 sections referenced are from the version that was effective from March 5, 2011 to September 26, 2015.

<sup>2</sup> On October 10, 2014, over a month before the installation which is the subject of this NOPV, an NOPV was issued to SNGME for similar, but unrelated, violations in Docket No. 2014-00328. At that time, 26 incidents of damage to sewer and water facilities had been documented. The particular violations recited in this NOPV were not contemplated by the NOPV in Docket No. 2014-00328.

<sup>3</sup> Another electrical conduit and its associated conductor(s) were damaged during the November 2014 installation of the main which is the subject of this NOPV. This is irrefutable evidence of SNGME's knowledge of the existence of underground electrical conduit in the parking lot of the plaza. SNGME's failure to thoroughly investigate the situation at that time, and SNGME's failure to properly locate all other underground conduits/facilities in the vicinity of the installation, is negligent at best.

penalty amount. The Gas Safety Staff has determined that the penalty of \$250,000 is appropriate in this instance.

Additionally, in any resolution of this matter pursuant to Chapter 420, § 8(C)(1) of the Commission's Rules, the Gas Safety Staff requires that SNGME take the following remedial measures:

1. At all locations where SNGME has installed mains or services by HDD or other trenchless technology, it shall verify that no other electrical or propane facilities were damaged or have inadequate separation. This shall be conducted by utilizing the services of an independent line locator, having a minimum of ten years of experience locating electrical and other underground utility facilities. All facilities located through this process, which were not accounted for in the bore logs or field notes reviewed as part of DN 2014-00328, shall be excavated and inspected; and
2. Pay the full recommended penalty amount.

In accordance with Chapter 420, § 8 of the Commission's Rules SNGME must file a written response within 10 days of receiving this NOPV. In responding, SNGME may:

1. Submit a written plan specifying actions that SNGME will take to correct the violation, a schedule of completion of each action step, and a final date of compliance. If the Commission accepts the corrective plan submitted by SNGME and SNGME implements the corrective actions, the violation is resolved (Chapter 420, § 8(C)(1)); or
2. Request an informal conference. Upon request for an informal conference, the Gas Safety Staff will establish a date, time, and location for the conference. During the conference, the Gas Safety Staff will review the NOPV with SNGME to identify corrective actions and reach a mutually acceptable resolution of the violation and proposed administrative penalty, if any. If this effort fails, the Gas Safety Staff may refer the violation to the Commission for formal action (Chapter 420, § 8(C)(2)).

Sincerely,



Gary A. Kenny, P.E.  
Gas Safety Manager