

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

August 5, 2016

MAINE PUBLIC UTILITIES COMMISSION
Notice of Probable Violation Pertaining to
Summit Natural Gas of Maine, Inc.
Regarding Improper Butt Fusion

Docket No. 2014-00219

MAINE PUBLIC UTILITIES COMMISSION
Notice of Probable Violation Pertaining to
Summit Natural Gas of Maine, Inc.
Regarding Improper Installation of
Electrofusion Tee

Docket No. 2014-00221

MAINE PUBLIC UTILITIES COMMISSION
Notice of Probable Violation Pertaining to
Summit Natural Gas of Maine, Inc.
Regarding Improper Cover Depth

Docket No. 2015-00342

MAINE PUBLIC UTILITIES COMMISSION
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Summit Natural Gas of Maine, Inc.
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Pipeline Installation Procedures

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Summit Natural Gas of Maine, Inc.
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Summit Natural Gas of Maine, Inc.
Regarding Failure to Locate Underground
Facilities

Docket No. 2016-00039

CONSENT AGREEMENT

The Gas Safety Manager for the Maine Public Utilities Commission and Summit Natural Gas of Maine, Inc. (Summit or the Company) agree to this Consent Agreement regarding violations of 49 C.F.R. Part 192 (the Federal Code) and/or Chapter 420 (the

State Code) of the Commission's Rules.¹ This Consent Agreement is intended to provide a full and final resolution of all gas safety violations asserted against Summit in the above-captioned dockets.

The Notices of Probable Violations resolved by this Consent Agreement (the NOPVs) generally relate to construction performed on Summit's distribution systems during the 2013 and 2014 construction seasons by personnel who were, in certain instances, not properly qualified and whose work did not comply with applicable regulatory requirements. Beginning with the 2015 construction season, Summit instituted improved processes aimed at ensuring that the contractors it hires to perform future work on its distribution systems, and the Company personnel who supervise that work, will be properly qualified to perform the work for which they were hired, and that their work will comply with applicable regulatory requirements. These processes include heightened oversight of contractors by Summit personnel and revisions to the Company's construction manual. To implement these process changes, Summit made changes in key management and operational personnel. These actions have addressed concerns raised by the Gas Safety Staff (Staff) in the above-captioned NOPVs.

Each of the pending NOPVs, including the background and terms agreed upon by the Staff and Summit to resolve them, is addressed separately below.

¹ The Commission's Chapter 420 Rules are codified at 65-407 C.M.R. ch. 420 (Safety Standards for Natural Gas and Liquefied Natural Gas Facility Operators). Unless otherwise noted, all citations to Chapter 420 are to the version currently in effect (eff. September 26, 2015). To the extent that citations are to the version of Chapter 420 that was in effect from March 5, 2011 through September 25, 2016, the citation will include a parenthetical reference to the 2011 version.

A. Docket No. 2014-00219 (Butt Fusions)**1. The Butt Fusion NOPV.**

On July 11, 2014, the Commission's Gas Safety Manager filed a NOPV against Summit related to a field inspection he performed on November 21, 2013 at Winthrop Street in Hallowell where employees of Summit's Contractor, Tetra Tech, were performing a butt fusion of an eight-inch diameter high density polyethylene (HDPE) main (the Butt Fusion NOPV). The Butt Fusion NOPV was issued because when a Tetra Tech employee deployed the hand-operated hydraulic fusion machine to fuse the pipe, he only achieved an interfacial fusion pressure² of about 52 psi and failed to configure and operate the machine to achieve an interfacial fusion pressure of 60-90 psi in accordance with the pipe manufacturer's recommendations.

The Butt Fusion NOPV cited violations of 49 C.F.R. §§ 192.273(b) and (c)³ for failure to make joints in accordance with written procedures and the failure of inspection staff to ensure compliance with construction procedures. Staff proposed a \$20,000 civil penalty.

² The interfacial fusion pressure refers to the amount of pressure applied to the butt fusion (measured in pounds per square inch) while the fusion area cools.

³ Section 192.273(b) and (c) provide:

§ 192.273 General.

* * * *

(b) Each joint must be made in accordance with written procedures that have been proven by test or experience to produce strong gastight joints.

(c) Each joint must be inspected to insure compliance with this subpart.

2. The Informal Conference.

By letter dated July 21, 2014, Summit requested an informal conference, which was held on September 25, 2014. Summit and Staff discussed the allegations in the Butt Fusion NOPV and Summit's perspective related to the pertinent issues.

3. Agreed Conditions.

Summit and Staff have reached a mutually acceptable resolution to this matter, and agree to or acknowledge the following:

- a. Summit has provided documentation to Staff that: (a) all Summit employees and contractors involved in the construction of HDPE pipelines including, but not limited to, construction inspectors and other applicable operations personnel, have received proper training and are qualified for the joining of HDPE by all applicable methods; and (b) all Summit employees and contractors involved in the design of HDPE pipelines are familiar with the proper method for the joining of HDPE by all applicable methods.

- b. Summit has provided documentation from the manufacturer of their HDPE pipe (Dura-Line) that testing by an independent laboratory, in accordance with the appropriate ASTM standard, indicates that a

butt fusion joint made with an interfacial fusion pressure of 52 psi is adequate to meet the burst test requirements of 49 C.F.R. § 192.283(a)(1)(i) and the tensile test requirements of 49 C.F.R. § 192.283(a)(3).

- c. No later than May 1, 2017, Summit will amend its operator qualification (OQ) plan to prohibit any Summit employee or contractor from performing or inspecting HDPE butt fusion joints unless they have been qualified through written testing and hands on practical examination to perform butt fusions with that machinery. The purpose of this amendment to the OQ plan is to ensure that personnel are able to verify that the machine is configured and operated to achieve the interfacial fusion pressure for each size pipe that may be joined by that machine. Until Summit has so amended its OQ plan it will ensure that butt fusions are performed and inspected only by Summit technicians and contractors while using machinery they have been qualified on through hands on practical examination and written testing.
- d. Summit has implemented mitigation measures that include conducting accelerated leak surveys of mains (see Section B(2)(b) below), performing visual inspections of fittings for proper preparation, documenting inspection results in exposed pipe

reports that are completed for each pipe exposure, and review of exposed pipe reports by Summit supervisory personnel. If a butt fusion on Summit-owned pipe fails, the determined root cause of the failure and its risk ranking will be added to the risk matrix in accordance with Section 6 of Summit's Distribution Integrity Management Plan (DIMP).

- e. Summit will pay the proposed \$20,000 civil penalty pursuant to the terms of this Consent Agreement.

B. Docket No. 2014-00221 (Electrofusion Tees and Voluntary Mitigation Plan for Electrofusion Couplings)

1. The Electrofusion Tee NOPV and Voluntary Mitigation Plan for Electrofusion Couplings.

On July 11, 2014, the Commission's Gas Safety Manager filed an NOPV against Summit citing four violations of 49 C.F.R. § 192.605(a) with regard to failures of Company personnel to follow Summit's procedure manual while installing a two-inch electrofusion tee on an eight-inch HDPE main on Second Street in Hallowell on January 16, 2014 (the Electrofusion Tee NOPV).⁴ Staff was near the work site when the electrofusion tee, which had been installed by Tetra Tech, failed pressure testing.

⁴ Section 192.605(a) provides:

§ 192.605 Procedural manual for operations, maintenance, and emergencies.
(a) General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and

Among other things, the Electrofusion Tee NOPV noted that Tetra Tech personnel did not properly prepare the surface of the main before fusing the tee to the main, which resulted in a weak fusion between the tee and the main. As a result of the Electrofusion Tee NOPV, and multiple meetings between the Staff and Summit representatives, during 2014 and 2015, Summit performed a comprehensive investigation of electrofusion tees installed during 2013 and 2014 by its contractors on its Maine distribution systems. The primary focus of that investigation was the adequacy of the preparation of the main prior to the fusion process. Through that investigation, Summit identified three contractors that had high rates of failure of visual inspections and/or destructive testing of electrofusion tees fused to mains: Tetra Tech, PES and CCB (collectively, the Identified Contractors). As a result of the investigation, Summit replaced all CCB electrofusion tees that failed visual inspection, and replaced all electrofusion tees installed by Tetra Tech and PES regardless of whether those tees passed or failed visual inspection.

Summit's inspection and remediation of electrofusion tees also brought to light additional instances of inadequate surface preparation related to the installation of electrofusion couplings. After extensive discussions between Summit and the Staff, Summit filed a Voluntary Mitigation Plan (VMP) in the Electrofusion Tee NOPV docket on September

for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

23, 2015.⁵ Summit's VMP proposed inspections, testing, and replacement of couplings based on visual inspection and destructive testing results. The VMP focused primarily on the work of the three Identified Contractors, but also required Summit to perform visual inspections of couplings installed by other contractors to determine whether additional investigation of coupling installations performed by those other contractors was warranted. In addition to locating and inspecting couplings, the VMP proposed that Summit perform destructive testing on a sample of couplings that passed visual inspection for the three Identified Contractors. If any of the couplings in this sample failed destructive testing, all couplings installed by that contractor would be removed from Summit's distribution systems. The VMP imposed a December 31, 2015 completion deadline.

The Commission approved Summit's VMP by an Order dated October 1, 2015. During the implementation of the VMP, Summit replaced the couplings installed by CCB that failed visual inspection, and replaced all couplings installed by Tetra Tech and PES regardless of whether those tees passed or failed visual inspection.⁶ Summit completed the VMP by its December 31, 2015 deadline, except for two Tetra Tech couplings that were later replaced during June of 2016 pursuant to authority granted by the Commission's May 16, 2016 Order Amending Order.⁷

⁵ Summit's VMP is CMS Item No. 11 in Docket No. 2014-00221.

⁶ PES installed only four couplings on Summit's distribution systems and Summit replaced all four without performing any destructive testing on PES couplings.

⁷ The two couplings were located in the approach to the Gardiner-Randolph Bridge. By a Motion to Modify Voluntary Mitigation Plan filed in the Electrofusion Tee NOPV docket on February 16, 2016, Summit requested the Commission's permission to replace those

On December 15, 2015, Summit filed a Notice of Substantial Completion regarding the VMP. In that Notice, Summit proposed additional measures that it would take prospectively to address any remain electrofusion fittings that might remain in the Company's distribution systems. These measures include accelerated leak surveys and the maintenance of a coupling database.

2. Agreed Conditions.

Summit and Staff have reached a mutually acceptable resolution of this matter, and agree to or acknowledge the following:

- a. Summit has completed the electrofusion tee mitigation and the VMP to Staff's satisfaction.

- b. Summit will continue to perform accelerated leak surveys per the schedule described below. For purposes of this Consent Agreement, accelerated leak surveys refers to mobile leak surveys of distribution mains and does not include walking or other surveys of service lines. Summit may request permission from Staff to modify (including the termination of) its accelerated leak survey obligation imposed by this Consent Agreement no earlier than December 31, 2019.

two couplings during the 2016 construction season. The Commission's May 16, 2016 Order Amending Order granted Summit's Motion to Modify the VMP.

1. Identified Contractors. Accelerated leak surveys will be performed at least six times per year at intervals no greater than every 75 days on those portions of its distribution systems where construction was performed by the Identified Contractors.

 2. Non-Identified Contractors. Accelerated leak surveys will be performed at least four times per year at intervals no greater than every 105 days on those portions of its distribution systems where construction was performed by non-Identified Contractors.
- c. When portions of Summit's distribution systems are exposed during the normal course of operations, all exposed couplings will be identified to ensure that they were inspected and mitigated as appropriate pursuant to the terms of the VMP. All Tetra Tech or PES couplings that are discovered will be replaced. In addition, any CCB couplings will be verified through GIS as having already been inspected as part of the VMP. If such confirmation cannot be made, then the coupling will be visually inspected and replaced if it fails visual inspection.

- d. If Summit identifies couplings that were installed by the Identified Contractors that were not inspected or replaced during the VMP as appropriate, then it will create a database that includes relevant information related to any such couplings. Summit will perform an analysis for the purpose of determining why such couplings were not located during the VMP, and use the information collected to identify any trends or commonalities that may allow Summit to reasonably identify, locate and investigate other similarly situated couplings.

- e. Beginning July 1, 2016 and semi-annually thereafter through 2019, Summit will report to Commission Staff on the results of accelerated leak surveys and additions to the couplings database described above. At Staff's request, Summit will meet with Staff to answer any questions related to the reporting.

- f. This Consent Agreement resolves all enforcement claims against Summit for electrofusion couplings and tees installed on its distribution systems prior to January 1, 2015 as follows:
 1. All electrofusion couplings installed by any Summit contractor; and

2. All electrofusion tees installed by any of the Identified Contractors.

- g. This Consent Agreement imposes no independent obligation upon Summit to expose electrofusion tees or couplings beyond Summit's need to expose such fittings during the normal course of business or as may be required by Federal Code or State Code.

- h. Summit has implemented mitigation measures that include conducting accelerated leak surveys of mains (see Section B(2)(b) above), performing visual inspections of fittings for proper preparation, documenting inspection results in exposed pipe reports that are completed for each pipe exposure, and review of exposed pipe reports by Summit supervisory personnel. Summit has also installed locator balls at fittings examined and/or installed during the VMP. Summit will provide guidance to personnel responsible for locating its piping to include markings that identify the presence of tees installed for bypass purposes during the VMP and will add guidance to its annual contractor training materials that tees can extend from the side or top of the main. If an electrofusion tee or coupling on Summit-owned pipe fails, the determined root cause of the failure and its risk ranking

will be added to the risk matrix in accordance with Section 6 of Summit's DIMP.

- i. Summit will pay the proposed \$30,000 civil penalty in accordance with the terms of this Consent Agreement.

C. Docket No. 2015-00342 (Insufficient Cover of Mains and Service Lines)

1. The Insufficient Cover NOPV.

On November 16, 2015, the Commission's Gas Safety Manager filed an NOPV against Summit related to a field inspection performed by Staff on November 2, 2015 on Quimby and Child Streets in Augusta during Summit's work on the VMP (the Insufficient Cover NOPV). The Insufficient Cover NOPV cites violations of 49 C.F.R. § 192.605 and Chapter 420, §§ 5(C)(3)(a) and 5(C)(4)(a) (2011) of the Commission's Rules with regard to two service lines and a two-inch diameter main that had less than the minimum cover required by the State Code. Staff recommended a civil penalty of \$1,000.

2. The Informal Conference.

By letter dated November 25, 2015, Summit requested an informal conference to discuss the Insufficient Cover NOPV with Staff. During the informal conference on February 25, 2016, Summit explained that during its work on the VMP and other various

operations, it had identified approximately 200 streets on its distribution systems where mains and service lines installed prior to January 1, 2015 that do not meet the minimum cover requirements under State Code.⁸

The shallow pipe locations identified by Summit are the result of trenchless construction methods. Summit has not exposed the entirety of its distribution system that were constructed prior to January 1, 2015; therefore, it is likely that additional streets on its distribution systems have mains and service lines installed prior to January 1, 2015 that do not satisfy State Code minimum cover standards.⁹

During the informal conference, Summit described to Commission Staff the procedure Summit could follow to lower mains and service lines safely to meet State Code. The process would generally include exposing the shallow pipe in each direction until the point where the pipe depth complies with the State Code; excavating a new trench next to the exposed pipe; supporting the pipe in its existing trench with strapping or other supports; hand excavating the soil beneath the pipe to a depth that will provide sufficient cover to comply with State Code when the pipe is lowered; lowering the pipe into the deepened trench; backfilling the entire trench; and restoring the surface (pavement or grass).

⁸ The mains and service lines at issue in this NOPV meet Federal Code requirements for burial depth.

⁹ At Staff's request, Summit provided additional information on May 6, 2016 specifying known locations of shallow facilities.

Summit representatives explained during the informal conference that lowering the pipe may create a greater risk to public safety than leaving the pipe in place at its current depth. Commission Staff agree with Summit that lowering the shallow pipe would likely present greater risks to public safety than leaving the pipe in place at its current depth.

3. Agreed Conditions.

Summit and Staff have reached a mutually acceptable resolution of the Insufficient Cover NOPV, and agree to or acknowledge the following:

- a. Summit will have no obligation to lower any main or any service line that was installed prior to January 1, 2015 for the purpose of achieving additional cover, except as expressly provided in this Section C(3)(a)(1) and (2).
 1. If Summit exposes a company-owned main or service line, installed at any time, that fails to meet the minimum cover requirements of the Federal Code, then Summit shall bring that main or service into compliance with the minimum cover requirements of the Federal Code within 30 days or a timeframe mutually agreed to by Summit and Staff. If the minimum cover requirements of the Federal Code are

amended after this Consent Agreement has been approved by the Commission, then the Federal Code, as amended (and not this Consent Agreement), shall solely govern Summit's obligations, if any, with regard to bringing mains and service lines into compliance with the amended Federal Code.

2. If Summit exposes a company-owned main or service line that was installed on or after January 1, 2015 that fails to meet the minimum cover requirements of the State Code, then Summit shall bring that main or service line into compliance with the minimum cover requirements of the State Code within 30 days or a timeframe mutually agreed to by Summit and Staff. If the minimum cover requirements of the State Code are amended after the this Consent Agreement has been approved by the Commission, then the State Code, as amended (and not this Consent Agreement), shall solely govern Summit's obligations, if any, with regard to bringing its mains and service lines into compliance with the amended State Code.

- b. This Consent Agreement resolves all enforcement claims against Summit for mains and service lines installed prior to January 1,

2015 on the basis that such mains or service lines do not meet the minimum cover requirements of State Code.

- c. This Consent Agreement imposes no independent obligation upon Summit to expose piping in addition to its need to expose mains and service lines during the normal course of business or as may be otherwise required by Federal Code or State Code.

- d. This Consent Agreement does not limit the authority of any federal, state or local government authority with regard to their jurisdiction over pipeline installations in public rights of way.

- e. Summit will add guidance to its annual contractor training materials that tees can extend from the side or top of the main.

- f. Summit shall pay the proposed \$1,000 civil penalty pursuant to the terms of this Consent Agreement.

D. Docket No. 2015-00343 (Insufficient Clearance)**1. The Insufficient Clearance NOPV.**

On November 16, 2015, the Commission's Gas Safety Manager filed an NOPV against Summit related to a field inspection performed by Staff on November 2 and 3, 2015 on Child Street in Augusta and Center Road in Fairfield during Summit's work on the VMP (the Insufficient Clearance NOPV). The Insufficient Clearance NOPV cites Summit for violating 49 C.F.R. § 192.605(a)¹⁰ and Section 5(C)(3)(b) (2011) of the Commission's Chapter 420 Rules¹¹ with regard to four segments of gas piping that were in close proximity to, or in contact with, ledge, rock, or a PVC pipe that appeared to be a sewer lateral. Staff proposed a civil penalty of \$1,000.

¹⁰ 49 C.F.R. § 192.605(a) states, in pertinent part:

(a) General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. . . .

¹¹ Chapter 420, § 5(C)(3)(b) (2011) provides:

3. Minimum Cover and Separation Standards for Mains and Service Lines

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b. Separation from Subsurface Structures

1) Where there is interference with other subsurface structures, including other utilities, the pipe shall be laid at a clearance distance of not less than twelve (12) inches away from such structures unless adequate shielding is provided to protect the gas pipeline and the other utility.

2) Any interfering structure which provides a space in which an explosive atmosphere might accumulate in the event of a leak shall be avoided where possible and preference shall be given to crossing over rather than under such structures.

2. The Informal Conference.

By letter dated November 25, 2015, Summit requested an informal conference to discuss the Insufficient Clearance NOPV with Staff. During the informal conference on February 25, 2016, Staff provided additional information concerning the Insufficient Clearance NOPV and Summit provided its perspective on the violations.

3. Agreed Conditions.

Summit and Staff have reached a mutually acceptable resolution of the Insufficient Clearance NOPV, and agree to or acknowledge the following:

- a. No later than August 31, 2016, Summit will install shielding in accordance with Chapter 420, § 5(C)(3)(b) (2011) between its piping and the PVC piping near Center Road referenced in the Insufficient Clearance NOPV.¹²
- b. No later than August 31, 2016, Summit will expose the segments of pipe along Child Street and Center Road referenced in the Insufficient Clearance NOPV and place barriers between the piping and ledge or rock to avoid direct contact.

¹² Section 5(C)(3)(b) was not amended during the Commission's 2015 rulemaking proceeding. For consistency, the Consent Agreement references the 2011 version of the regulation that applied when the construction was initially performed.

- c. During preparation for the 2016 construction season, Summit provided re-training to service technicians and contractors concerning minimum clearance requirements and Summit policies regarding trench conditions.

- d. Summit has implemented mitigation measures that include conducting accelerated leak surveys of mains (see Section B(2)(b) above), visually inspecting pipe, documenting inspection results in exposed pipe reports that are completed for each pipe exposure, and review of exposed pipe reports by Summit supervisory personnel. Summit will amend its Operations and Maintenance Manual to implement the following:
 - 1. Summit piping exposed during the normal course of business that has less separation than required by the State Code will, within 30 days or a timeframe mutually agreed to by Summit and Staff, be shielded in accordance with engineering recommendations and the installation of such shielding will be noted on the exposed pipe report or other appropriate documentation.

 - 2. Summit piping exposed during the normal course of business that has deleterious materials near the pipe will be noted on the exposed pipe report, or other appropriate documentation,

and the material will be removed and replaced with approved backfill material.

- f. This Consent Agreement resolves all enforcement claims against Summit for mains and service lines installed prior to January 1, 2015 on the basis that such mains or service lines do not meet minimum separation requirements of State Code.
- g. This Consent Agreement imposes no independent obligation upon Summit to expose its mains and service lines in addition to its need to expose mains and service lines during the normal course of business or as may be required by Federal Code or State Code.
- h. Summit will pay the proposed \$1,000 civil penalty pursuant to the terms of this Consent Agreement.

E. Docket No. 2016-00015 (Insufficient Operator Qualifications for Tapping a Live Main)

1. The Hot Tap NOPV.

On January 15, 2016, the Commission's Gas Safety Manager filed an NOPV against Summit based on observations during a field inspection performed by Staff on December 3, 2015 on Second Street in Hallowell while Summit was working on the VMP (the Hot Tap

NOPV). The Hot Tap NOPV cites Summit for violating 49 C.F.R. § 192.627 by allowing a technician to tap a pipeline under pressure without the necessary qualifications. Staff proposed a civil penalty of \$5,000.¹³

The Hot Tap NOPV relates to Summit's VMP work during the early winter of 2015. Summit hired a contractor who provided in-line camera equipment and performed inspections of distribution piping to help locate electrofusion couplings. During that process, the in-line camera was inserted into the main through an electrofusion tee fitting that was installed on the distribution system. After the tee was installed, the main had to be tapped so the camera could be inserted into the main.¹⁴ The Hot Tap NOPV concerns the qualifications of the Summit technician who tapped the main while it was under pressure. The tapping of a main under pressure is commonly referred to in the gas industry as a "hot tap." Hot tapping allows the main to be tapped without shutting off the flow of gas to downstream customers.

The Hot Tap NOPV states that the Summit technician was properly qualified to perform Covered Task No. 51, which is the qualification necessary when installing a tee

¹³ Section 192.627 states:

§ 192.627 Tapping pipelines under pressure. Each tap made on a pipeline under pressure must be performed by a crew qualified to make hot taps.

¹⁴ The tapping of a gas main refers to the process during which a cutter is advanced through a fixture attached to the main and the cutter removes a section of the wall of the gas main (commonly referred to as a "coupon"). Mains are commonly tapped for the purpose of installing a new customer service line or a branch main to serve customers on a side street.

that has a built-in tapping device.¹⁵ The Hot Tap NOPV states that qualification for Covered Task No. 51 was not appropriate for the work being performed, and that qualification for Covered Task 37 was necessary for a camera tee hot tap because that hot tap required specialized equipment.¹⁶ The Hot Tap NOPV cites Summit for violating 49 C.F.R. § 192.627 because the technician was not qualified under Covered Task 37. Staff recommended a civil penalty of \$5,000.¹⁷

2. The Informal Conference.

By letter dated January 26, 2016, Summit requested an informal conference with Staff, which was conducted on February 25, 2016. During the informal conference, Staff provided additional information concerning the Hot Tap NOPV and Summit explained its perspective on the operator qualification covered tasks at issue. Staff stated during the informal conference that the Summit technician who performed the tapping of the main appeared knowledgeable and Staff was not concerned that the hot tap being performed posed a threat to public safety.

¹⁵ Covered Task No. 51 is entitled "Install Tapping Tee on Pipe" and includes the procedure for tapping a main under pressure.

¹⁶ Covered Task No. 37 is entitled "Cutting into a pipeline while the pipeline contains natural gas, under pressure, using specialized tapping equipment"

¹⁷ Section 192.627 states:

§ 192.627 Tapping pipelines under pressure. Each tap made on a pipeline under pressure must be performed by a crew qualified to make hot taps.

3. Agreed Conditions.

Summit and Staff have reached a mutually acceptable resolution of the Hot Tap NOPV, and agree to or acknowledge the following:

- a. No later than May 1, 2017, Summit will amend its OQ plan to require all technicians and contractors to be qualified under Covered Task No. 37 prior to tapping a pressurized main using specialized tapping equipment. Until Summit has so amended its OQ plan it will ensure that only technicians and contractors qualified under Covered Task No. 37 are permitted to tap a pressurized main using specialized tapping equipment.
- b. No later than May 1, 2017, Summit will amend Appendix D of the Northeast Gas Association OQ plan as adopted by Summit to include guidance that Covered Task #37 applies to any tapping of a pipeline using specialized tapping equipment including, but not limited to, Mueller taps, TDW taps, and camera inspection tees.
- c. Summit will pay the propose \$5,000 civil penalty pursuant to the terms of this Consent Agreement.

F. Docket No. 2016-00039 (Horizontal Directional Drill Shaw's Plaza HDD)**1. The Shaw's Plaza HDD NOPV.**

On March 9, 2016, the Commission's Gas Safety Manager filed an NOPV against Summit related to a gas leak at the Shaw's Plaza on February 17, 2016 (the Shaw's Plaza HDD NOPV). The piping that leaked was installed across a parking lot during November of 2014 by Summit's contractor, ECI, using horizontal directional drilling (HDD) construction. Based on Summit's investigation of the cause of the leak, Summit found that wires for the parking lot lighting were damaged during the HDD installation of the piping and arcing of the wires melted the gas main and caused a leak. The Shaw's Plaza HDD NOPV cited Summit for violating 49 C.F.R. § 192.325¹⁸ and Sections 3(D)(2) (2011)¹⁹ and 5(C)(3)(b) (2011)²⁰ of the Commission's Chapter 420 Rules. Staff proposed a civil penalty of \$250,000.

¹⁸ Section 192.325(b) and (c) state:

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(b) Each main must be installed with enough clearance from any other underground structure to allow proper maintenance and to protect against damage that might result from proximity to other structures.

(c) In addition to meeting the requirements of paragraph (a) or (b) of this section, each plastic transmission line or main must be installed with sufficient clearance, or must be insulated, from any source of heat so as to prevent the heat from impairing the serviceability of the pipe.

¹⁹ Section 3(D)(2) (2011) provided:

D. Location of Underground Facilities Where Trenchless Technology Is Used

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2. When the gas utility is installing natural gas facilities with these techniques, the procedures shall require mandatory exposure of existing

3. The Informal Conference.

By letter dated March 16, 2016, Summit requested an informal conference with Staff, which was conducted on April 29, 2016. During the informal conference, Staff and Summit representatives discussed their perspectives on the Shaw's Plaza HDD NOPV. Summit acknowledged the serious nature of the leak and described its investigation into the circumstances that led to the incident. At the time of the conference, Summit had initiated a plan to locate, investigate and remediate any other potential incursions of gas piping on private underground facilities due to HDD construction in accordance with the NOPV.

2. Agreed Conditions.

underground facilities when alternate methods of protecting these facilities are impractical or not available.

²⁰ Section 5(C)(3)(b) (2011) provided:

3. Minimum Cover and Separation Standards for Mains and Service Lines

* * * *

b. Separation from Subsurface Structures

1) Where there is interference with other subsurface structures, including other utilities, the pipe shall be laid at a clearance distance of not less than twelve (12) inches away from such structures unless adequate shielding is provided to protect the gas pipeline and the other utility.

2) Any interfering structure which provides a space in which an explosive atmosphere might accumulate in the event of a leak shall be avoided where possible and preference shall be given to crossing over rather than under such structures.

Summit and Staff have reached a mutually acceptable resolution of the Shaw's Plaza HDD NOPV, and agree to or acknowledge the following:

- a. No later than October 31, 2016, Summit will complete its investigation of all locations where HDD construction was used to ensure that all potential incursions of gas piping on private underground facilities are identified and remediated. Summit has retained Dig Smart of Maine, Inc. to identify and locate private underground facilities during this investigation. All potential incursions will be potholed, visually inspected and remediated as necessary.

- b. Summit has implemented mitigation measures that include conducting accelerated leak surveys of mains (see Section B(2)(b) above), performing visual inspections of piping, documenting inspection results in exposed pipe reports that are completed for each pipe exposure, and review of exposed pipe reports by Summit supervisory personnel. In addition, Summit's Operations and Maintenance Manual will be amended pursuant to Section D(3)(d)(1) and (2) of this Consent Agreement.

- c. Summit will continue to perform accelerated leak surveys in accordance with Section B(2) of this Consent Agreement.

- d. This Consent Agreement resolves all enforcement claims against Summit for mains and service lines installed prior to January 1, 2015 by HDD construction on the basis that such mains or service lines do not meet the minimum separation requirements of State Code or Federal Code or were not potholed or located during construction.

- d. Summit will pay the proposed \$250,000 civil penalty pursuant to the terms of this Consent Agreement.

G. General Terms and Conditions.

In addition to the conditions applicable to each of the NOPVs resolved by this Consent Agreement, Summit and Staff also agree to the following general terms and conditions governing this Consent Agreement:

1. Summit will pay the recommended civil penalties for each of the NOPVs resolved by this Consent Agreement after the Commission has issued a written order approving this Consent Agreement without material modification.

2. This Consent Agreement is intended to provide a full and final resolution of all gas safety violations related to the actions of Summit's contractors in

instances in which the violation was caused by the actions of a contractor, and the actions of Summit in instances in which the violation was caused by the actions of Summit in the above-captioned Dockets.

3. This Consent Agreement shall not release Summit from any claims of liability made by other parties under applicable law.
4. This Consent Agreement shall not constitute a waiver of Summit's claims or rights to take legal action against any other party or person for their actions related to the facts or matters alleged in any of the NOPVs resolved by this Consent Agreement. Further, this Consent Agreement shall not be construed to affect the rights or liabilities of Summit or its contractors in connection with any litigation that might arise out of or relate to the subject matter of the NOPVs.
5. This Consent Agreement shall not constitute a waiver of Summit's position or arguments with regard to any other NOPVs.
6. Notwithstanding anything in this Consent Agreement to the contrary, the Commission shall consider this Consent Agreement when assessing any penalties for future violations of 49 C.F.R. Part 192 and/or Chapter 420 of the Commission's Rules.

7. The enforceability of this Consent Agreement is contingent upon the Commission's approval of this Consent Agreement in its entirety without material modification. The rejection of any term of this Consent Agreement shall constitute a rejection of the Consent Agreement in its entirety.

Dated: _____

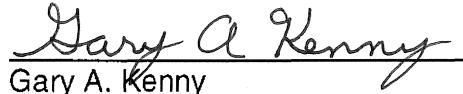
By:



Matthew Kapi
Senior Director of Legislative and
Regulatory Affairs
Summit Utilities, Inc.

Dated: 8/5/16

By:



Gary A. Kenny
Gas Safety Manager
Maine Public Utilities Commission