

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**August 2, 2006**

<b>IN RE:</b>	)	
	)	
<b>ATMOS ENERGY CORPORATION-</b>	)	<b>DOCKET NO.</b>
<b>MURFREESBORO INCIDENT 8/2/05, FORMAL</b>	)	<b>05-00323</b>
<b>NOTICE OF VIOLATIONS -REPORT OF</b>	)	
<b>NATURAL GAS SAFETY INSPECTION #05-267</b>	)	

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**ORDER APPROVING PROPOSED CIVIL PENALTY AND  
ACCEPTING RESPONSE OFFERING LONG TERM CORRECTIVE ACTIONS**

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This matter came before Chairman Ron Jones, Director Pat Miller and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on March 20, 2006 for consideration of the Formal Notice of Violation ("FNOV") issued by the TRA's Gas Pipeline Safety Division and the response by Atmos Energy Corporation ("Atmos") proposing a plan of long-term corrective action and accepting the penalty amount.

**BACKGROUND**

On August 2, 2005, a release of natural gas occurred on a two-inch polyethylene distribution main operated by Atmos and located at 5410 Sherrington Drive, Murfreesboro, Tennessee. The natural gas was ignited, resulting in injury to one Atmos employee who was transported to Vanderbilt University Medical Center where he was admitted for burns received in the incident.

Under authority set forth in Tenn. Code Ann. § 65-28-106 and 49 U.S.C. § 60105(a), the Gas Pipeline Safety Division ("Investigative Staff") conducted an investigation of this

incident. The purpose of this investigation was to determine cause and whether there were violations of federal safety standards as adopted by the State of Tennessee in Tenn. Code Ann. § 65-28-105 and applied to gas utilities through TRA Rule 1220-4-5-.48.

The investigation of this incident is detailed in Gas Safety Inspection Report #05-267 filed by Investigative Staff in this docket on December 1, 2005. In this Report, the Investigative Staff concludes that the incident resulted from the failure of Atmos employees to follow established written procedures for avoiding damage to underground natural gas lines when excavating. Specifically, the operator of mechanized excavation equipment failed to maintain a safe distance from the gas line to avoid damage to facilities. The damage to the gas line by the cutting edge of the backhoe bucket also evidences that hand digging was not performed within the tolerance zone that is prescribed in Atmos' written procedures for performing this task.

After the gas line was damaged and with gas being released, additional digging was performed with the backhoe to expose the damaged main for repair. This action caused an ignition source to be in close proximity to a hazardous atmosphere, action strictly forbidden by 49 C.F.R. § 192.751(a) of the Minimum Federal Safety Standards ("MFSS") which requires that all ignition sources be removed from the area when the presence of gas "constitutes a hazard of fire or explosion."<sup>1</sup>

The Report by Investigative Staff states that natural gas operators are required by Section 192.605(a) to develop and follow "a manual of written procedures for conducting operations and maintenance activities."<sup>2</sup> These procedures must be in sufficient detail to avoid any confusion or doubt as to the manner in which the individual should handle the task or emergency situation. While the Atmos manuals may address some or all areas required by

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<sup>1</sup> 49 C.F.R. § 192.751(a)

<sup>2</sup> 49 C.F.R. § 192.605(a)

the MFSS, they did not mirror the procedures that employees are taught for use in performing their assigned tasks. These same procedures are used to determine the employee's qualification for such tasks. Because those procedures are required to be but, in fact, were not located in the Operations and Maintenance, the manual was determined by the Investigative Staff to be inadequate.

Also, according to Investigative Staff, Atmos failed to include adequate written procedures in its Emergency Operating Procedures that address the appropriate response to uncontrolled escaping gas. This fact demonstrates that Atmos failed to sufficiently adhere to 49 C.F.R. § 192.615(a) which states, "Each operator shall establish written procedures to minimize the hazard resulting from a gas pipeline emergency."

On November 28, 2005, the Investigative Staff issued a FNOV to Atmos for failing to comply with 49 C.F.R. § 192.605(a), § 192.615(a), and § 192.751(a).<sup>3</sup> In the FNOV, under provisions of Tenn. Code Ann. § 65-28-108, the Investigative Staff also assessed a civil penalty in the amount of \$13,000. Atmos was required to respond to the FNOV in one of three ways. Atmos could either: (1) submit a written statement of corrective measures that have achieved compliance, (2) submit a written plan of action outlining the corrective measures that will be taken and when compliance is anticipated, or (3) request an informal conference with the Gas Pipeline Safety Division Chief.<sup>4</sup>

The civil penalty amount of \$13,000 was determined by applying a formula which has been utilized in the past by the Gas Pipeline Safety Division. The amount of ten thousand dollars (\$10,000) per day per violation is used in the formula. This is the maximum daily

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<sup>3</sup> Section 192.605(a) details required provisions and procedures for Operations and Maintenance manuals. Section 192.615(a) details required provisions and procedures for Emergency Response plans. Section 192.751(a) requires the removal of possible sources of ignition whenever a hazardous amount of gas is present.

<sup>4</sup> See TRA Rule 1220-4-5-.47(6).

amount allowed by Tenn. Code Ann. § 65-28-108.<sup>5</sup> The penalty amount is determined by applying other factors in the calculation. These factors include the public safety, the size of the natural gas system, and amount of time the violation existed. Each of these factors are given a certain weight from 1.0 to 3.0 depending upon the factual circumstances. Because three violations were cited, the penalty for each violation was assessed separately as follows:

	Civil Penalty Amount		$\frac{\$10,000 \times \text{No. of Days} \times \text{System Size Factor}}{\text{Public Safety Factor}}$
§192.605(a):	\$3,250	=	$\frac{\$10,000 \times 1.0 \times 0.65}{2.0}$
§192.615(a):	\$3,250	=	$\frac{\$10,000 \times 1.0 \times 0.65}{2.0}$
§192.751(a):	\$6,500	=	$\frac{\$10,000 \times 1.0 \times 0.65}{1.0}$
	<u><b>\$13,000</b></u>	=	Potential Maximum Civil Penalty

In the above formula, the violation of Section 192.751(a) was assigned the highest priority for public safety in that is needed to be corrected immediately to protect the public. For this reason, this violation was assigned a 1.0 as the public safety factor. Both Sections 192.605(a) and 192.615(a) violations were assigned a public safety factor of 2.0 because the violation required prompt not immediate attention and the failure to correct could result in loss of service and/or reliability to the customer. The amount of time in all three instances in this case was one day. The gas system size factor was assigned 0.65 to correlate to gas systems with 10,001 to 50,000 gas meters.

Atmos responded to the FNOV in writing on December 8, 2005, requesting an informal conference pursuant to TRA Rule 1220-4-5-.47(6)(a)(3). Informal conferences took place at the offices of the TRA in Nashville, Tennessee on January 10 and February 9, 2006. In an effort to resolve this matter, Atmos submitted in writing, on February 28, 2006, a proposed Action Plan designed to (1) monitor and evaluate the effectiveness of Atmos'

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<sup>5</sup> Tenn. Code Ann. § 65-28-108 provides that the overall maximum penalty is \$500,000.

ongoing safety and operation and maintenance policies and procedures, (2) improve upon such policies and procedures where applicable and (3) reassert the importance of personal responsibility in executing assigned job duties per established procedures. Atmos agreed with the findings and conclusions set forth in the Gas Pipeline Safety Division's FNOV. In addition, Atmos agreed to pay the full amount of \$13,000 assessed penalty upon approval of the agreement by the Authority.

#### **MARCH 20, 2006 AUTHORITY CONFERENCE**

At a regularly scheduled Authority Conference held on March 20, 2006 the panel reviewed and discussed the FNOV and proposed plan of action. After careful review, the panel determined the Gas Pipeline Safety Division properly conducted its incident investigation under authority established in both federal and state statutes and regulations. The Gas Pipeline Safety Division assessed a fair and reasonable civil penalty for the aforesaid violations based on the evidence discovered in the course of the investigation. The panel also found that Atmos has responded with immediate corrective action and proposed long term corrective action and acknowledged that Atmos is in agreement with the Gas Pipeline Safety Division findings and has agreed to pay the full amount of civil penalty.

The panel voted unanimously to approve the Gas Pipeline Safety Division's FNOV and proposal for civil penalties and to accept Atmos' response offering a long-term corrective action plan and payment of the penalty amount. Under provisions of the Gas Pipeline Safety Division's certification with the Federal Department of Transportation and Tenn. Code Ann. §65-28-108, assessed penalties are dedicated for use in Tennessee's Gas Pipeline Safety program. Therefore, payment of the \$13,000 penalty would be made directly to the TRA. The panel voted unanimously that Atmos would submit the full payment of \$13,000 to the TRA by April 19, 2006.

**IT IS THEREFORE ORDERED THAT:**

1. The Formal Notice of Violation is approved and, as filed in this docket, is incorporated into this Order as if fully rewritten herein.
2. The Response to Notice of Violation is accepted and, as filed in this docket, is incorporated into this Order as if fully rewritten.
3. Atmos Energy Corporation is ordered to make full payment of Thirteen Thousand Dollars (\$13,000) in civil penalty to the TRA by April 19, 2006.<sup>6</sup>

  
Ron Jones, Chairman

  
Pat Miller, Director

  
Sara Kyle, Director

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<sup>6</sup> Atmos made payment of the civil penalty in the amount of \$13,000 to the Authority on April 17, 2006.