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State of Utah
Department of Commerce
Division of Public Utilities

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**NOTICE OF PROBABLE VIOLATION, PROPOSED HAZARDOUS
FACILITY ORDER, PROPOSED CIVIL PENALTY, AND PROPOSED
COMPLIANCE ORDER**

VIA EMAIL AND CERTIFIED MAIL – RETURN RECEIPT REQUESTED

October 20, 2016
Mr. Michael Moyal
Millstream Motel
1450 Washington Blvd.
Ogden, UT 84404
memoyal@gmail.com

Dear Mr. Moyal:

You have represented that you own the Millstream Motel located at 1450 Washington Blvd, Ogden, Utah (Motel) and operate its natural gas master meter system (Master Meter System). As detailed below, you have failed to comply with applicable statutes and regulations in connection with your operation of the Master Meter System. This letter constitutes your Notice of Probable Violation, Proposed Hazardous Facility Order, Proposed Civil Penalty, and Proposed Compliance Order (collectively, Notice).

On January 6, 2016, you met with representatives from the Utah Pipeline Safety Section (Pipeline Safety) of the Utah Division of Public Utilities (Division) at the Motel. Later, on April 7, 2016, Pipeline Safety conducted a site visit at the Motel.

Based on the January meeting, the April site visit, and information available to the Division, it appears that you have committed probable violations of the Public Service Commission of Utah's (Commission) statutes pertaining to pipeline safety found at Utah Code Ann. § 54-13-1 et seq., the Commission's rules found at R746-409-1 et seq., and the federal Pipeline Safety Regulations, Title 49, Code of Federal Regulations adopted by the Public Service Commission of Utah (Commission) in Utah Code Ann. §§ 54-13-2 and 54-13-3 and R746-409-1 et seq.

The Probable Violations, Proposed Hazardous Facility Order, Proposed Civil Penalty, and Proposed Compliance Order comprising the Notice are discussed individually below. In addition, the Proposed Hazardous Facility Order and the Proposed Compliance Order are attached.

PROBABLE VIOLATIONS

1. 49 C.F.R. § 192.463 External corrosion control states:

Cathodic protection

(a) Each cathodic protection system required by this subpart must provide a level of cathodic protection that complies with one or more of the applicable criteria contained in Appendix D of this part. If none of these criteria is applicable, the cathodic protection system must provide a level of cathodic protection at least equal to that provided by compliance with one or more of these criteria....

You failed to have operational cathodic protection for the Master Meter System that provided a level of cathodic protection compliant with Appendix D of Part 192.

During the April site visit, Pipeline Safety staff noted that while at some time a cathodic protection system had been installed on the Master Meter System, it was no longer operable and had been disconnected from the Master Meter System.

Consequently, you were directed to install an appropriate cathodic protection system or to cease operating the Master Meter System and inform Pipeline Safety.

To date, neither Pipeline Safety nor the Attorney General's Office have received notice that an appropriate cathodic protection system has been installed on the Master Meter System or that you have ceased operating the Master Meter System.

2. 49 C.F.R. § 192.491 Corrosion control records states:

(a) Each operator shall maintain records or maps to show the location of cathodically protected piping, cathodic protection facilities, galvanic anodes, and neighboring structures bonded to the cathodic protection system. Records or maps showing a stated number of anodes, installed in a stated manner or spacing, need not show specific distances to each buried anode.

(b) Each record or map required by paragraph (a) of this section must be retained for as long as the pipeline remains in service.

(c) Each operator shall maintain a record of each test, survey, or inspection required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that a corrosive condition does not exist. These records must be retained for at least 5 years, except that records related to §§ 192.465 (a) and (e) and 192.475(b) must be retained for as long as the pipeline remains in service.

You failed to maintain records or maps to show the location of cathodically protected piping, cathodic protection facilities, galvanic anodes, and neighboring structures bonded to the cathodic protection system for the Master Meter System. You also failed to maintain a record of each test, survey, or inspection required by 192.465(a) to demonstrate the adequacy of corrosion control measures or that a corrosive condition does not exist and failed to maintain the same as required for the Master Meter System. Additionally, you did not produce any records evidencing when the cathodic protection system that had been installed on the Master Meter System stopped providing an adequate level of cathodic protection.

At the time of the April site visit, Pipeline Safety informed you that you were required to maintain corrosion control records for the Master Meter System. You did not produce any records.

To date, neither Pipeline Safety nor the Attorney General's Office have received evidence of your compliance or that you have ceased operating the Master Meter System.

3. 49 C.F.R. § 192.603 states:

General Provisions

(a) ...

(b) Each operator shall keep records necessary to administer the procedures established under § 192.605.

You did not keep records necessary to administer the procedures established under Section 192.605 that pertain to master meter pipeline systems. You failed to keep records demonstrating that you:

- Reviewed and updated, in accordance with Section 192.605(a), the Master Meter System's manual at intervals not exceeding 15 months, but at least once each calendar year.

* * *

- Provided, in accordance with Section 192.616(j), its customers public awareness messages twice annually.

* * *

- Performed a leak survey, in accordance with Section 192.723(b)(2) of your system, with leak detector equipment, as frequently as necessary, but at least once every five (5) calendar years at intervals not exceeding 63 months.

At the time of the April site visit, Pipeline Safety informed you that you were required to keep maintenance and operations records for the Master Meter System. You did not produce any such records.

To date, neither Pipeline Safety nor the Attorney General's Office have received evidence of your compliance or that you have ceased operating the Master Meter System.

4. 49 C.F.R. § 192.605 states:

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 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.

You failed to prepare and follow a manual of written procedures for conducting operations and maintenance activities and for emergency response pertaining to operation of master meters. The manual should have included master meter procedures pertaining to:

- Section 192.605(b)(1) for operating, maintaining, and repairing the pipeline in accordance with each of the requirements of 192 subpart L and subpart M.
- Section 192.605(b)(2) for controlling corrosion in accordance with the operations and maintenance requirements of part 192 subpart I.
- Section 192.605(b)(3) for making construction records, maps, and operating history available to appropriate operating personnel.
- Section 192.605(b)(4) for gathering of data needed for reporting incidents under Part 191 of this chapter in a timely and effective manner.
- Section 192.605(b)(8) for periodically reviewing the work done by operator personnel to determine the effectiveness, and adequacy of the procedures used in normal operation and maintenance and modifying the procedures when deficiencies are found.

- Section 192.605(b)(9) for taking adequate precautions in excavated trenches to protect personnel from the hazards of unsafe accumulations of vapor or gas, and making available when needed at the excavation, emergency rescue equipment, including a breathing apparatus and, a rescue harness and line.
- Section 192.605(b)(11) for responding promptly to a report of a gas odor inside or near a building, unless the operator's emergency procedures under § 192.615(a)(3) specifically apply to these reports.
- Section 192.605(e) for:
 - Continuing surveillance, in accordance with Section 192.613(a)
 - Emergency response, in accordance with Section 192.615
 - Investigation of failures, in accordance with Section 192.617.

At the time of the April site visit, Pipeline Safety staff informed you that you were required to have a written procedures manual for operations, maintenance, and emergencies pertaining to master meters. You did not produce such a manual.

To date, neither Pipeline Safety nor the Attorney General's Office have received evidence of your compliance or that you have ceased operating the Master Meter System.

5. 49 C.F.R. § 192.616 states:

Public Awareness

(a)...

(j) Unless the operator transports gas as a primary activity, the operator of a master meter or petroleum gas system is not required to develop a public awareness program as prescribed in paragraphs (a) through (g) of this section. Instead the operator must develop and implement a written procedure to provide its customers public awareness messages twice annually. If the master meter or petroleum gas system is located on property the operator does not control, the operator must provide similar messages twice annually to persons controlling the property. The public awareness message must include:

- (1) A description of the purpose and reliability of the pipeline;**
- (2) An overview of the hazards of the pipeline and prevention measures used;**
- (3) Information about damage prevention;**
- (4) How to recognize and respond to a leak; and**
- (5) How to get additional information.**

You did not develop and implement a written procedure to provide your customers public awareness messages twice annually regarding the Master Meter System.

At the time of the April site visit, Pipeline Safety informed you that you were required to have written procedures for providing your master meter customers public awareness messages. You did not produce written procedures for providing your customers public awareness messages.

To date, neither Pipeline Safety nor the Attorney General's Office have received evidence of your compliance or that you have ceased operating the Master Meter System.

PROPOSED HAZARDOUS FACILITY ORDER

Pursuant to Commission Utah Code Ann. §§ 54-13-2 and 54-13-3 and R746-409-6, the Division requests that the Commission adopt a Hazardous Facility Order suspending the use of your Master Meter System until such time as you present the Commission with evidence supporting a finding that (1) the facility is no longer hazardous because you have provided a level of cathodic protection that complies with one or more of the applicable criteria contained in 49 CFR Part 192, Appendix D or (2) that you have ceased operating the Master Meter System, and the Commission rescinds its order. The Commission may issue a Hazardous Facility Order in addition to imposing a Civil Penalty and issuing a Compliance Order.

The Commission may issue a Hazardous Facility Order if it finds that "a particular intrastate pipeline facility is hazardous to life or property" pursuant to R746-409-6. Pursuant to a Hazardous Facility Order, the Commission may suspend or restrict use of the facility until the hazardous conditions have been corrected. The Division believes that your Master Meter System merits a Hazardous Facility Order because the system lacks appropriate cathodic protection and has not been maintained consistent with pipeline safety laws for a significant period of time. The Division's recommendation is supported by this Notice, Utah Code Ann. § 54-13-1 et seq., and R746-409-1 et seq.

Please refer to the Proposed Hazardous Facility Order, which is made part of this Notice.

PROPOSED CIVIL PENALTY

The Division proposes that the Commission find you liable for a civil penalty of up to \$1,000,000, the maximum penalty allowable by law, for violations commencing May 10, 2016 and continuing to the present time, with the amount to be determined based on evidence and the statutory considerations described below. In addition to imposing a Civil Penalty, the Commission may issue a Hazardous Facility Order and a Compliance Order.

Under R746-409-6, the Commission may impose civil penalties upon you. Utah Code Ann. § 54-13-8, states that if the Commission finds after notice and an opportunity for hearing that you have violated any provision of Chapter 54-13-1 et seq. or R746-409-1 et seq. you are liable for civil penalties. Utah Code Ann. § 54-13-8 provides that the Commission can order that you are "liable for a civil penalty of not more than \$100,000 for each violation for each day the violation persists" [and that] ... [t]he maximum civil

penalty assessed under this section may not exceed \$1,000,000 for any related series of violations.”

Utah law sets forth how penalties for violations shall be calculated. Utah Code Ann. § 54-8-13(4) states:

- (4) In determining the amount of the penalty, the commission shall consider:
 - (a) the nature, circumstances, and gravity of the violation; and
 - (b) with respect to the person found to have committed the violation:
 - (i) the degree of culpability;
 - (ii) any history of prior violations;
 - (iii) the effect on the person’s ability to continue to do business;
 - (iv) any good faith in attempting to achieve compliance;
 - (v) the person’s ability to pay the penalty; and
 - (vi) any other matter, as justice may require.

The Division has reviewed the circumstances and sought supporting documents involved in this case. In connection with the Request for Agency Action, the Division will conduct discovery to aid it in applying the statutory considerations set forth above to update its penalty recommendation to the Commission.

PROPOSED COMPLIANCE ORDER

The Division proposes that the Commission adopt a Compliance Order pursuant to applicable statutes including Utah Code Ann. § 54-13-1 et seq., R746-409-1 et seq., United States Code § 60118, and applicable rules pertaining to Proposed Violation Item Nos. 1, 2, 3, 4, and 5. In addition to issuing a Compliance Order, the Commission may issue a Hazardous Facility Order and impose civil penalties.

Please refer to the enclosed Proposed Compliance Order, which is made a part of this Notice.

RESPONSE TO THIS NOTICE

Documents, material, and information you submit are subject to being made publicly available pursuant to Utah’s Government Access and Records Management Act (GRAMA). If you believe that all or a portion of what you provide qualifies for confidential or protected treatment under GRAMA, submit the documents in compliance with Utah Code Ann. § 63G-2-101 et seq.

If you have questions, please contact Patricia E. Schmid, Assistant Attorney General for the Division, at (801) 366-0380.

Sincerely,

Chris Parker
Director, Division of Public Utilities

cc: Al Zadeh, Lead, Pipeline Safety (w/ enclosures)
Patricia E. Schmid, Utah Attorney General's Office (w/ enclosures)
Ogden City Attorney (w/ enclosures)
Ogden City Code Enforcement (w/ enclosures)

Encls.: Proposed Hazardous Facility Order
Proposed Compliance Order