

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



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VIA BOTH CERTIFIED MAIL -- RETURN RECEIPT REQUESTED -- AND EMAIL

April 19, 2016

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

RE: MASTER METER SYSTEM – EXTENSION OF TIME UNTIL MAY 9, 2016 FOR COMPLIANCE AND RETURN OF FORM

Dear Mr. Moyal,

On April 7, 2016, you met with David Coombs and Connie Hendricks from the Utah Division of Public Utilities' Pipeline Safety Staff (Safety Staff) at the site of the Millstream Motel. Safety Staff discussed your master meter system with you and conducted another inspection of the system for the purpose of (1) verifying changes that you said you had made to the facility since the previous inspection in January and (2) reiterating what you must do to bring your master meter system into compliance. During this meeting, Safety Staff gave you until May 9, 2016, a date which has been approved by Safety Staff management, to submit your plan of action to Safety Staff or to me, or further legal actions will be commenced before the Public Service Commission of Utah (Commission).

You and Safety Staff discussed several topics during the April 7, 2016 inspection. Some of the important parts of those discussions are noted below.

Mr. Coombs clarified that the Safety Staff and Division of Public Utilities (Division) do not mandate use of a specific contractor to install cathodic protection, and that your

impression that Safety Staff did so was inaccurate. As a courtesy during the April meeting, you were provided with a list of contractors.

You indicated that you expected the property to be sold soon, but later informed us that a potential sale had not materialized and that you were exploring other options. You said that you would like to get out of the motel business. You noted that you are not taking on any new renters and that you have posted a "no vacancy" sign.

With Safety Staff, you discussed actions you had taken since the January inspection. Specifically with regard to natural gas usage and your master meter system, you indicated that you had consolidated tenants into two buildings, and that 12 rooms were rented. You also indicated that all gas heat had been turned off to those 12 rooms and that gas was only used for the three or four water heaters providing hot water to those rooms. You showed Safety Staff what you said was the only meter on the property, a meter in a locked storage facility in the north building that still has tenants. Mr. Coombs inspected the previously installed cathodic protection computer and determined that because the cathode protection system lacked a physical connection to the existing pipeline, there was no cathodic protection system in place.

Mr. Coombs explained the regulatory system and process, and provided you with a copy of PHMSA's "Guidance Manual for Operators of Small Natural Gas Systems" and Safety Staff forms pertaining to master meter systems and operators. These forms included the emergency plan, operation and maintenance plan, public awareness plan and handout, and a plan of action. Mr. Coombs indicated that if his management agreed, you would have until May 9, 2016 to return the plan of action form to Safety Staff or to me (management has agreed to the May 9th deadline). On the action plan form, you would explain how and when the facility will be brought into compliance with applicable laws and regulations. Mr. Coombs reiterated that you have two options: voluntarily comply or have an action filed with the Commission to mandate your compliance.

The Commission has issued new rules affecting master meter system operations, and some reports that were previously not required for master meter systems, are now required. A copy of the new rules is included. You must comply with these new rules. Please contact Pipeline Safety at (801) 530-6285 if you have any questions about the new rules.

The Division, the Safety Staff, and the Attorney General's Office work together with master meter system systems and operators to promote and protect the public safety. We will take further action if your written action plan is not received by May 9th, 2016. Please review

prior correspondence from me for more details, but in summary, the Attorney General's Office will file with the Commission a Complaint and Notice of Probable Violation or a Request for Agency Action. The Complaint and Notice of Probable Violation or Request for Agency Action will request, among other things, that you (1) be ordered to comply with applicable law and (2) be assessed penalties related to your noncompliance. In addition, if necessary, the Attorney General's Office will file further proceedings against you in District Court. This letter satisfies the requirement under Commission rule R746-409 that you be provided notice before proceedings are initiated before the Commission.

You are specifically subject to, without limitation, Utah Code Ann. Section 54-13-1 through 54-13-8 and Commission Administrative Rule R746-409. Under these provisions, as the owner and operator of a master meter system, you must comply with certain pipeline safety statutes and regulations including, but not limited to, the federal Natural Gas Act and related federal and state legislation.¹ Appropriate cathodic protection is required. In addition, for example, you must: report certain accidents or incidents related to your master meter system and file related accident or incident reports; file an annual report no later than March 15 of each year with the Commission; have [on your property] a plan for the operation and maintenance of [your master meter system]; and have [on your property] a plan to minimize hazards resulting from an incident involving [your master meter system] which complies with the "essential requirements stated in Title 49 CFR Part 192.615; and a gas detector leak survey may be required."² You can find the applicable statutes, regulations, and rules on Utah's Pipeline Safety webpage. The webpage can be found at publicutilities.utah.gov/pipeline.html.

Consequences for failing to comply with applicable statutes, regulations, and rules, after notice and opportunity for hearing before the Commission or District Court, include substantial fines. These fines may be up to but not more than \$100,000 per violation per day, but may not exceed \$1,000,000 "for any related series of violations."³ The Pipeline Safety Staff is available to assist you with these compliance requirements. You can contact Connie Hendricks at (801) 530-6286 for more information and assistance.

To avoid the commencement of legal action against you before the Commission, by May 9, 2016, send your completed written action plan by mail or email to:

¹ See, e.g. Utah Code Ann. Sections 54-13-2 and 54-13-3.

² See R746-409-4 through R746-409-6.

³ Utah Code Ann. Sections 54-13-8(1) and (2).

Division of Public Utilities
Pipeline Safety Section
P.O. Box 146751
Salt Lake City UT 84114-6751
pipelinesafety@utah.gov

or

Patricia E. Schmid
Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140857
Salt Lake City, UT 84114-0857
pschmid@utah.gov

An additional copy of the action plan form is attached for your convenience.

If you have any questions, please contact me by phone at (801) 366-0380, or by email at pschmid@utah.gov.

Sincerely,



Patricia E. Schmid
Assistant Attorney General

Attachment

cc: Chris Parker
Al Zadeh
Connie Hendricks

THE PLAN OF ACTION

Complete and Return No Later Than MAY 9, 2016

FACILITY NAME: _____

STREET ADDRESS: _____

CITY: _____ STATE _____ ZIP CODE _____

PLEASE PROVIDE A SHORT NARRATIVE OUTLINING PROPOSED ACTION TO BE TAKEN OR WORK ALREADY PERFORMED:

NAME OF CONTRACTOR WHO WILL OR HAS ALREADY PERFORMED WORK:

PROJECTED OR ACTUAL DATE WORK TO BE COMPLETED: _____

Authorized Signature/Title

Date

Telephone Number

THANK YOU FOR YOUR COOPERATION

HOME / PUBLICATIONS / ADMINISTRATIVE CODE

UTAH ADMINISTRATIVE CODE

The Utah Administrative Code is the body of all effective administrative rules as compiled and organized by the Division of Administrative Rules (see Subsection [63G-3-102\(5\)](#); see also Sections [63G-3-701](#) and [702](#)).

NOTE: For a list of rules that have been made effective since April 1, 2016, please see the [codification segue](#) page.

NOTE TO RULEFILING AGENCIES: Use the RTF version for submitting rule changes.

Download the [RTF file](#)

R746. Public Service Commission, Administration.

Rule R746-409. Pipeline Safety.

As in effect on April 1, 2016

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R746-409-1. General Provisions.

A. Scope and Applicability -- Pursuant to Title 54, Chapter 13, the following rules shall apply to persons engaged in the transportation of gas as defined in CFR Title 49 Parts 191 and 192.

B. Adoption of parts of CFR Title 49 -- The Commission adopts and incorporates by this reference the following parts of CFR Title 49, effective September 1, 2015:

1. Part 190 with the exclusion of Part 190.223 which is superseded by Title 54, Chapter 13, Part 8, Violation of chapter -- Penalty;
2. Part 191;
3. Part 192;
4. Part 198; and
5. Part 199.

C. Persons engaged in the transportation of gas, including distribution of gas through a master-metered system, shall comply with the requirements of CFR Title 49, identified in Section R746-409-1.B, including all minimum safety standards.

R746-409-2. Definitions.

For purposes of these rules, the following terms shall bear the following meanings:

- A. "Authorized Inspector" means a person employed or authorized by the Commission or the director of the Division.
- B. "CFR" means the Code of Federal Regulations;
- C. "Commission" means the Public Service Commission of Utah;
- D. "Division" means the Division of Public Utilities, Utah Department of Commerce;
- E. "Federally Reportable Incident" has the same meaning set forth in Part 191.3. Definitions, Incident.
- F. "Operator" has the same meaning set forth in CFR Title 49, Part 191.3, Definitions, Operator.

G. "Part 190" means CFR Title 49, Part 190, Pipeline Safety Programs and Rulemaking Procedures.

H. "Part 191" means CFR Title 49, Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports.

I. "Part 192" means CFR Title 49, Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.

J. "Part 198" means CFR Title 49, Part 198, Regulations for Grants to Aid State Pipeline Safety Programs.

K. "Part 199" means CFR Title 49, Part 199, Drug and Alcohol Testing.

L. "Pipeline Facility" has the same meaning set forth in Part 191.3 Definitions, Pipeline facility.

M. "State Reportable Incident" means an event that falls within the definition of a federally reportable incident or a safety-related condition as identified in CRF Title 49, Part 191.23, Reporting safety-related conditions, or meets one or more of the following:

1. Results in damage to any segment of:
 - a. steel main, twelve inches or greater in diameter, or
 - b. transmission pipeline;
2. Requires removal from service or repair of any segment of:
 - a. steel main, twelve inches or greater in diameter, or
 - b. transmission pipeline;
3. Results in property damage of \$15,000 or more, including the loss to the operator and others, or both, but excluding the cost of gas that is lost;
4. Results in the loss of gas service to ten or more customers; or
5. Results in the known evacuation of any highly populated areas including commercial businesses, office buildings, eateries, schools, churches or public meeting places.

N. "Transportation of Gas" has the same meaning set forth in CFR Title 49, Part 191.3, Definitions, Transportation of gas.

R746-409-3. Inspections.

A. Access for inspection

1. During Normal Business Hours -- During normal business hours, an authorized inspector, upon presentation of appropriate credentials, may enter an operator's offices and pipeline facilities to inspect and examine the records and pipeline facilities, if the records and pipeline facilities are relevant to determining compliance with applicable state and federal pipeline safety statutes, rules and regulations.
2. Outside of Normal Business Hours -- For incidents occurring outside of normal business hours, an authorized inspector, upon presentation of appropriate credentials, may enter an operator's pipeline facilities involved in or associated with an incident to inspect and examine the pipeline facilities, if inspection of the pipeline facility is relevant to determining compliance with applicable state and federal pipeline safety statutes, rules and regulations.

B. Reasons for Inspection -- Inspections are ordinarily conducted pursuant to one of the following:

1. Routine inspection, including but not limited to a compliance inspection;
2. A complaint received from a member of the public;
3. Information obtained from a previous inspection;
4. A pipeline incident; or
5. When deemed appropriate by the Commission.

C. Testing -- To the extent necessary to carry out its responsibilities, the Commission may require testing of portions of intrastate pipeline facilities which have been involved in or affected by an incident.

D. Further Action -- When information obtained from an authorized inspector or from other appropriate sources indicates that further action is warranted, the Division shall issue a warning letter to an operator and, if necessary, initiate proceedings, including but not limited to seeking the issuance of Commission subpoenas to compel the production of records and the taking of testimony, hearings and related procedures, before the Commission.

R746-409-4. Reporting and Notification Requirements.

A. An operator must comply with the notification and reporting requirements contained in Part 191 and Section R746-409-4.

B. Telephonic notification to the Division.

1. For incidents requiring immediate notice under Part 191.5, an operator must also provide contemporaneous telephonic notification of the same information required under Part 191.5 to the Division at

(844)-GAS-2525 or (844)-427-2525.

2. State Reportable Incidents. An operator must provide telephonic notice to the Division at (844)-GAS-2525 or (844)-427-2525 of all state reportable incidents, including the location and known details at the time of reporting, at the earliest practicable moment when safely possible following discovery.

C. Written Reports required by Part 191. For all reports required under Part 191, including updates and supplemental reports, an operator shall contemporaneously furnish these reports to the Commission and the Division in accordance with Section R746-409-4.F.

D. Excavation Damage Quarterly Report. Each operator with more than 10,000 customers shall file a quarterly excavation damage report within 60 days after the end of the each quarter with the Commission and the Division in accordance with Section R746-409-4.F on a form approved by the Division.

E. Reports Relating to Safety Issues. An operator shall prepare and file reports relating to safety issues as requested and described by the Commission or the Division in accordance with Section R746-409-4-F.

F. Filing of Written Reports:

1. All required written reports shall be filed with the Commission in accordance with Commission's filing requirements posted on the Commission's website at <http://www.psc.utah.gov> at the "Filing Req" tab under the Document column labeled "Pipeline Safety."

2. All required written reports shall be filed electronically with the Division at the following e-mail address: pipelinesafety@utah.gov.

R746-409-5. Written Plans.

A. An operator must develop and implement all plans required in Parts 192 and 199, including operations and maintenance plans, emergency response plans, public awareness plans, operator qualifications plans, anti-drug and alcohol misuse plans, and integrity management plans (both transmission and distribution). These plans must be made available to the Commission or the Division upon request.

R746-409-6. Remedies.

A. Rules of Practice and Procedure -- The Commission's Rules of Practice and Procedure, R746-100, shall govern and control proceedings before the Commission regarding pipeline safety, with the exception of the additional remedies and procedures specified herein.

B. Hazardous Facility Order -- If the Commission finds, after notice and a hearing, that a particular intrastate pipeline facility is hazardous to life or property, it may issue a Hazardous Facility Order requiring the owner or operator of the intrastate pipeline facility to take corrective action. Civil penalties set forth in Section 54-13-8 may also be imposed. Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other action as may be appropriate.

C. Waiver of Notice and Hearing -- The Commission may waive the requirement for notice and hearing in Subsection (B) above before issuing an order pursuant to this section when it or the Division determines that the failure to do so would result in the likelihood of serious harm to life or property. However, the Commission shall include in the order an opportunity for hearing as soon as practicable after issuance of the order.

D. Hazardous Conditions -- The Commission may find an intrastate pipeline facility to be hazardous under paragraph 2 of this section if:

1. Under the facts and circumstances the Commission determines the particular facility is hazardous to life or property; or

2. The intrastate pipeline facility, or a component thereof, has been constructed or operated with equipment, material, or technique which the Commission determines is hazardous to life or property, unless the operator involved demonstrates to the satisfaction of the Commission that, under the particular facts and circumstances involved, such equipment, material, or technique is not hazardous to life or property.

E. Considerations -- In making a determination under paragraph (D)(2) of this section, the Commission may consider, if relevant:

1. The characteristics of the pipe and other equipment used in the intrastate pipeline facility involved, including its age, manufacturer, physical properties, including its resistance to corrosion and deterioration, and the method of its manufacture, construction, or assembly;

2. The nature of the materials transported by the facility, including their corrosive and deteriorative qualities, the sequence in which the materials are transported, and the pressure required for the transportation;

3. The aspects of the areas in which the intrastate pipeline facility is located, in particular the climatic and geologic conditions, including soil characteristics, associated with the areas, and the population density and population and growth patterns of such areas;

4. A recommendation of the National Transportation Safety Board issued in connection with an investigation conducted by the board;

5. Other factors as the Commission may consider appropriate.

F. Contents of Hazardous Facility Order -- A Hazardous Facility Order issued by the Commission shall contain the following information:

1. A finding that the pipeline facility is hazardous to life or property;
2. The relevant facts which form the basis for the finding;
3. The legal basis for the order;
4. The nature and description of particular corrective action required of the respondent;
5. The date by which the required action must be taken or completed and, where appropriate, the duration of the order.

G. No Longer Hazardous -- The Commission shall rescind or suspend a Hazardous Facility Order whenever it determines that the facility is no longer hazardous to life or property.

KEY

rules and procedures, safety, pipelines

Date of Enactment or Last Substantive Amendment

March 30, 2016

Notice of Continuation

March 31, 2016

Authorizing, Implemented, or Interpreted Law

54-13-3; 54-13-5; 54-13-6

ADDITIONAL INFORMATION

CONTACT

For questions regarding the *content* or *application* of rules under Title R746, please contact the promulgating agency (Public Service Commission, Administration). A list of agencies with links to their homepages is available at <http://www.utah.gov/government/agencylist.html> or from <http://www.rules.utah.gov/contact/agencycontacts.htm>.