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# Georgia Public Service Commission

(404) 463-6526
(800) 282-5813

244 Washington Street, SW
Atlanta, GA 30334-5701

FAX: (404) 463-6532
psc.ga.gov

DOCKET # 37038
DOCUMENT # 217782

Docket No. 37038

City of Commerce Gas System
P. O. Box 348 27 Sycamore Street
Commerce, GA 30529

REF: 199 Inspection # JS23-034

☒ Certified Mail ☐ Regular Mail ☒ Email

Attention: Mr. Matthew Hailey

On December 19, 2023, a representative of the Georgia Public Service Commission Pipeline/Facilities Safety Office conducted an inspection of your gas system. The enclosed inspection report numbered JS23-034 is provided for your information and file.

In conjunction with this inspection report, Staff has recommended the following enforcement(s):

Enforcement Action:

- ☒ Notice of Probable Violation
- ☒ Notice of Probable Violation with Proposed Civil Penalty
- ☐ Notice of Amendment

Enforcement Letter:

- ☐ Warning Letter
- ☐ Letter of Concern

Enforcement Notification:

- ☐ Observed Issue
- ☐ No Violation

Please review and respond to this report in accordance with the attached Instructions for Responding to Enforcement Actions, Enforcement Letters, and Notifications Issued by the Georgia Public Service Commission. Please refer to Docket No. 37038 in your response.

Please let me know if there are any questions concerning this report at (404) 985-4271 or mthebert@psc.ga.gov. Thank you for your continuing contribution toward increased pipeline safety.

Sincerely,

Michelle Thebert

Michelle L. Thebert
Director, Office of Pipeline Safety/Facilities Protection

COMMISSIONERS

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## REPORT OF NATURAL GAS SAFETY

INSPECTION NO: JS23-034

OPERATOR: City of Commerce Gas System

INVESTIGATOR: Jason Smith

INSPECTION DATE: December 19, 2023 REPORT MAILED DATE: February 28, 2024

Any questions concerning this report may be directed to the above address or by telephoning (404) 463-6526.

1. PURPOSE OF INSPECTION

To conduct an inspection of the Operator's anti-drug and alcohol programs required by 49CFR Parts 40 and 199

2. CONTINUING VIOLATIONS

| Violation | Description | Inspection# | Date |
|---|---|---|---|
| Under Consent Agreement | Operator is under a Consent Agreement. | DJ23-003 | 1/25/2023 |

3. CLEARED VIOLATIONS

4. NEW VIOLATIONS

| Violation | Description | Inspection# | Date |
|---|---|---|---|
| 199.239 | Operator obligation to promulgate a policy on the misuse of alcohol. | JS23-034 | 12/19/2023 |
| 199.101 | Anti-Drug Plan | JS23-034 | 12/19/2023 |
| 192.805(b) | Ensure through evaluation that individuals performing covered tasks are qualified. | JS23-034 | 12/19/2023 |

5. OTHER RECOMMENDATIONS/COMMENTS

SEE ATTACHED INSPECTION REPORT

On December 6, 2023, Pipeline Safety Staff began reviewing the City of Commerce Gas System's anti-drug and alcohol plan. Then on December 19, 2023, Staff reported to the City of Commerce to conduct a drug & alcohol inspection on the Operator's anti-drug and alcohol plan and records.

During this inspection the City of Commerce was represented by:
Tracy Nelson – Human Resources Director / Designated Employer Representative
Leslie Prince – Compliance Systems (Consortium Representative)
Lonnie Roberson - Natural Gas Utility Director
Tim Franklin - MGAG/SRCS (Consultant)

Pipeline Safety Staff was represented by:
Jason Smith - Lead Inspector
Glen Murphy - Pipeline Safety Inspector

At the time of this inspection, the City of Commerce Gas System was under a Final Order/Consent Agreement for probable violations and civil penalties which were cited in Inspection Number JB19-011. The Operator's compliance with the terms of the Consent Agreement is addressed under follow-up Inspection Number JS23-033.

During this inspection, Staff reviewed the City of Commerce Gas System's anti-drug and alcohol plan for compliance with Parts 40 and 199 of the Pipeline Safety Regulations utilizing PHMSA's anti-drug and alcohol inspection form. Staff examined the Operator's drug and alcohol testing records for covered employees who fall under the plan, Management Information System (MIS) data, qualification documentation for service agents, and records demonstrating how the City of Commerce Gas System ensures their contractors who perform covered functions for them are following the drug & alcohol regulations. While on site Staff also performed a Protocol 9 OQ field verification inspection on the City of Commerce Gas System employees.

## NOTICE OF PROBABLE VIOLATION

As a result of this inspection Staff found that the City of Commerce Gas System was in probable violation of the minimum federal safety standards; specifically:

1. 49CFR §199.101 Anti-drug plan.
   (a) Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this part and the DOT Procedures.

   STAFFS COMMENTS: 49 CFR, §199.115, and §199.245 address oversight of contractor employees. Under these sections an operator may provide by contract that the drug and alcohol testing, education, and training required by Part 199 be carried out by the contractor; however, the operator remains responsible for ensuring that the requirements of Parts 199 and Part 40 are complied with.

PHMSA Drug & Alcohol inspection form question number 6 - Operator Oversight of Contractor D&A Programs states: "If a contractor performs covered functions on the pipeline and is allowed to have its own D&A Programs, does the process ensure the contractor fully complies with Parts 199 and 40?"

Section 7.1 'Contractor Employees' section of the Operator's Anti-Drug and Alcohol Plan states:

1. With respect to those employees who are contractors or employed by a contractor, City of Commerce may provide by contract that the drug testing, education, and training required by this part be carried out by the contractor provided:

1.a. City of Commerce remains responsible for ensuring that the requirements of this part are complied with; and

NOTE: Contractor compliance verification process is included in Appendix EE, Operator Company Policies.

During the inspection, Staff requested to review Appendix EE of the Operator's Anti-Drug and Alcohol Plan; however, the City of Commerce DER found that Appendix EE in their plan was missing. The Operator informed Staff that they do have access to their contractor's written drug & and alcohol plans, and MIS data sheet and reviewed these documents. Staff asked the Operator to provide documentation to demonstrate they reviewed their contractors' drug & and alcohol plans and records; however, Commerce was not able to provide anything.

PROBABLE VIOLATION: The City of Commerce Gas System failed to demonstrate that they complied with their procedures for oversight of their contract employees as required by their anti-drug and alcohol plan.

2. 49CFR §199.239 Operator obligation to promulgate a policy on the misuse of alcohol.
   (a) General requirements. Each operator shall provide educational materials that explain these alcohol misuse requirements and the operator's policies and procedures with respect to meeting those requirements.
      (1) The operator shall ensure that a copy of these materials is distributed to each covered employee prior to start of alcohol testing under this subpart, and to each person subsequently hired for or transferred to a covered position.

STAFFS COMMENTS: PHMSA Drug & Alcohol inspection form Question Number 15 - Alcohol Misuse Program Educational Materials states: "Do records indicate educational materials were provided that explain alcohol misuse requirements and the policies and procedures with respect to meeting those requirements?"

Staff asked the Operator to demonstrate they provided educational materials to the last gas system employee (hired approximately two years prior). The Operator was not able to locate a record of what material was provided to that employee. The Operator was able to provide a certificate of completion for 'substance abuse in the workplace, an employee guide';

however, Staff found that these classes don't inform the employees of the Operators policy to terminate employment if alcohol testing shows more than 0.02.

PROBABLE VIOLATION: The City of Commerce Gas System failed to demonstrate that they provide educational materials that explain the alcohol misuse requirements and the Operator's policies and procedures with respect to meeting those requirements to each covered employee prior to the start of alcohol testing under this subpart, and to each person subsequently hired for or transferred to a covered position.

3. §192.805 - Qualification program.
Each operator shall have and follow a written qualification program. The program shall include provisions to:
(b) Ensure through evaluation that individuals performing covered tasks are qualified;

STAFFS COMMENTS: While reviewing operator qualification records for Lonnie Robinson, Staff noticed under Task #1291 'Locating Underground Pipeline' that the evaluator name column, was left blank. Upon further review, Staff noticed another five (5) blank (empty) spaces under the evaluator name column. Staff then noticed that Lonnie Robinson is named as the person evaluating himself on 29 different tasks.

Commerce's Operator Qualification plan, Section 4.1.1 'Evaluators' states: "Evaluators responsible for evaluating an individual's qualifications to perform respective covered tasks should have the required knowledge, through training or experience, to ascertain an individual's ability: (1) to perform Covered Task, and (2) to recognize and react to abnormal operating conditions that might surface while performing those task."

Commerce's Operator Qualification plan, Section 4.1.2 "Performance Measures" states: "Evaluations shall be an objective, consistent process that documents an individual's ability to perform the covered task. This includes the individual's ability to recognize and react to abnormal operating conditions that City of Commerce could reasonably anticipate the qualified individual could encounter while performing the covered task"

Staff determined that by allowing their personnel to evaluate and qualify themselves the City of Commerce has failed to demonstrate that their evaluation process is objective and consistent, or that their personnel possess the knowledge, skills, and abilities to perform their identified covered tasks.

Staff notes that the City of Commerce has previously received several violations related to its operator qualification program, including §192.805(a) in Inspection Number DJ18-054 and §192.805(b), §192.805(c), §192.805(d), and §192.805(e) in Inspection Number JB19-011.

PROBABLE VIOLATION: The City of Commerce Gas System failed to demonstrate that they have ensured through evaluation that individuals performing covered tasks on the natural gas system are qualified.

PROPOSED CIVIL PENALTY

Under Commission Rule 515-9-1.01, by virtue of the authority vested in the Commission by law and pursuant to orders issued by the Commission on May 4, 1967, July 6, 1967, April 23, 1968, and October 29, 1970, all Rules and Regulations prescribed by the United States Department of Transportation applicable to the "Transportation of Natural and Other Gas by Pipeline: Minimum Safety Standards" (C.F.R. 49, Parts 191 and 192) are by this Rule made the Rules and Regulations of the Georgia Public Service Commission for the safe installation and operation of all natural gas transmission and distribution facilities by companies subject to the jurisdiction of the Commission within this State.

Under Commission Rule 515-9-3-.08 (Written Formal Notice of Violation), the Commission may propose a civil penalty in conjunction with this notice of probable violation. Further, the City of Commerce Gas System is subject to civil penalties under O.C.G.A. § 46-2-91(b) which states that: Any operator which violates any rule or regulation of the commission prescribed pursuant to subsection (i) of Code Section 46-2-20, or which fails, neglects, or refuses to comply with any order after notice thereof, shall be liable to a penalty not to exceed the maximum penalties provided for in 49 C.F.R. Section 190.223.

Staff has reviewed the circumstances surrounding the probable violations cited in this report and has recommended the civil penalty/penalties listed below. Please note that this recommended amount is less than the amount authorized by Georgia law.

| Item # | Code / Rule | Description | Proposed Penalty |
|---|---|---|---|
| 3 | §192.805(b) | Qualification Program / Evaluations | $10,000.00 |
| TOTAL PROPOSED PENALTY | | | $10,000.00 |

Please review and respond to this report in accordance with the attached Instructions for Responding to Enforcement Letters Issued by the Georgia Public Service Commission.

# OPERATOR RESPONSE FORM

Informal Conference Requested: Yes ☐ No ☐

Operator Name: City of Commerce

Docket Number: 37038

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Responses required within **30 days of electronic mail.** Provide the following information for this report:

Response to Inspection Number:_____

| Type of Enforcement Action(s) cited in report: | | | Informal Conference Requested | |
|---|---|---|---|---|
| ☐ Notice of Probable Violation (NOPV) | ☐ New | ☐Continuing | ☐ Yes | ☐ No |
| ☐ Notice of Amendment (NOA) | ☐ New | ☐Continuing | ☐ Yes | ☐ No |
| ☐ Warning Letter | ☐ New | ☐Continuing | ☐ Yes | ☐ No |
| ☐ Letter of Concern | ☐ New | ☐Continuing | ☐ Yes | ☐ No |
| ☐ Observed Issue | ☐ New | ☐Continuing | ☐ Yes | ☐ No |
| ☐ Proposed Civil Penalty | $_____ PCP $ Amount (Total for report) | | | |

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Indicate below (A-E) based on the type of Enforcement Actions in this report: (Check all that apply)
Complete a separate copy of Page 2, Operator Response to Enforcement Action, for each cited item.

A. Response for **Notice of Probable Violation** (with and without proposed civil penalty):
   1. ☐ Written statement indicating that corrective measures have achieved Compliance or
   2. ☐ Written plan of action outlining the corrective measures that will be taken to achieve compliance and when compliance is anticipated.

B. Response for **NOA**:
   1. ☐ Contested: Attach written explanation, information, or other material in answer to the allegations in the Notice of Amendment stating your reasons for objecting to the NOA, in whole or in part; or
   2. ☐ Not Contested: Explanation, information, or other material believed to warrant modification of the NOA in whole or in part; or
   3. ☐ Written request for clarification. (Attached)

C. Response for **Continuing** and/or **Existing** violations:
   Current status, updates, expected completion dates, proposed modifications, etc., of the continuing and/or existing violations, even if this information was previously provided. Referencing a previously filed response letter, as status, updates, etc. alone is not sufficient for this response. Failure to provide this information may result in formal interrogatories from the Director through data requests.

D. Response for ☐ **Letter of Concern** / ☐ **Warning Letter**
   I acknowledge receipt of the Letter of Concern/Warning Letter:_____
   SIGNATURE / TITLE

   Additional Comments: (Optional)_____

E. Response for **Observed Issue** and **No Violation**: (Optional Response)
   Staff requests that the Operator acknowledge receipt of the Observed Issue/No Violation in writing, or by submitting an email to the FPU Director

# Operator Response to Enforcement Action

Enforcement Action for:_____ ☐ New Violation ☐ Continuing Violation
Enter Code / Commission Rule (Complete a separate attachment for each enforcement action)

| Enforcement Action(s) cited in report: | Conference Requested: | |
|---|---|---|
| ☐ Notice of Probable Violation (NOPV) | ☐ Yes ☐ No | $_____ Proposed Penalty for this violation |
| ☐ Notice of Amendment (NOA) | ☐ Yes ☐ No | |
| ☐ Warning Letter | ☐ Yes ☐ No | |
| ☐ Letter of Concern | ☐ Yes ☐ No | |
| ☐ Observed Issue | ☐ Yes ☐ No | |
| ☐ Proposed Civil Penalty | ☐ Yes ☐ No | |

OPERATORS RESPONSE: _____

_____

_____

_____

_____

_____

_____

_____

Response Provided by: _____ Date:_____
Name / Title

---

Internal use only:

Lead Inspector: _____ Date Response Reviewed:_____

Actions Acceptable: ☐ Yes ☐No Re-inspection Needed:☐ Yes ☐ No Clear Violation:☐ Yes ☐ No

_____

Supervisor Review by:_____ Date Reviewed:_____

Additional Enforcement Recommended: ☐ Yes ☐ No

_____

Director Review

Approved: ☐ Yes ☐No Schedule Special Follow-up Inspection: ☐ Yes ☐ No

Cleared Violation: ☐ Yes ☐ No

Comments:_____

_____

**Filings:**
For all written responses or any other official correspondence, the Operator shall file the response at the following address:

Ms. Sallie Tanner, Executive Secretary
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30334

The Operator must file **five (5)** copies of any response and/or official correspondence, as well as a CD with an electronic version of the response in Microsoft Word and/or a PDF, if applicable.

**Informal Conference:**
Any Operator who chooses to request an informal conference shall request such a conference through emailing the Director (michellet@psc.state.ga.us), calling the Director (404-463-2765), or selecting the "Request Conference" choice.

**Civil Penalty Payments:**
Certified check for the full amount of the recommended civil penalty or consent agreement amount made payable to the Georgia Public Service Commission. The Operator's name, applicable Docket No., and Inspection Report No. must be included on the certified check. Mail payment to:

Ms. Michelle Thebert, Director, Facilities Protection Unit
Georgia Public Service Commission
244 Washington Street
Atlanta, Georgia 30334

**Hearing Requests:**
The Operator has the right to request a hearing before the full Commission to contest the alleged probable violations, recommended civil penalties, and all other proposed actions of enforcement. A request for a hearing must be submitted in writing and in accordance with Commission Rule 515-2-1-.04. The Operator must include a statement of the issues that you intend to raise at the hearing. The issues may relate to the allegations, new information, proposed compliance order, proposed civil penalty, or any other recommendation for enforcement action. Please refer to Commission Rule 515-9-3-.11 and O.C.G.A. § 46-2-91 for assessment considerations upon which civil penalties are based. An operator's failure to specify an issue may result in a waiver of the right to raise that issue at hearing. The request must also indicate whether or not the Operator will be represented by counsel at the hearing.

**Open Records and Trade Secret Filings:**
The Operator is advised that any material provided to the Commission, and all materials prepared by the Commission, including the Notice of Probable Violations and any Orders issued in this case, may be considered public information and subject to disclosure under the Georgia Open Records Act (O.C.G.A. § 50-18-70 et seq.). If you believe that any portion of your response material is security sensitive, privileged, confidential or may cause your company competitive disadvantages and would qualify for protection under the Commission's "Trade Secret Rule" (Commission Rule 515-3-1-.11), you must, along with the complete original document clearly marked "TRADE SECRET" on each page, provide a second copy of the document with the portions you believe qualify for trade secret treatment redacted, and an explanation of why you believe the redacted information qualifies for such trade secret treatment. Should the Commission receive a request for disclosure of any "TRADE SECRET" material, you will be notified, if after review, the materials and your provided justification are deemed not to meet any exemptions provided in the Georgia Open Records Act. You may appeal the Commission's decision to release material at that time. Your appeal will stay the release of those materials until a final decision is made.

**BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION**
**STATE OF GEORGIA**

| | | |
|---|---|---|
| **IN THE MATTER OF:** | ) | |
| | ) | |
| **Probable Violation(s) Report with** | ) | **DOCKET NO. 37038** |
| **Proposed Civil Penalty** | ) | |
| **City of Commerce Gas System** | ) | |
| **Inspection JS23-034 on December 19, 2023** | ) | |

## CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have caused to be served a copy of the foregoing, and a copy of same was served upon all parties and persons listed below via electronic mail as indicated by an asterisk. I further certify that the *City of Commerce Gas System was* served a hard copy of the above-stated document by U.S. Mail, certified/return receipt requested.

*Sallie Tanner, Executive Secretary
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, GA 30334

*James Wascher, City Manager
City of Commerce Gas System
P.O. Box 348
27 Sycamore Street
Commerce, GA 30529
jamesw@commercega.org

*Michelle Thebert, Facilities Protection Unit Director
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, GA 30334

Respectfully Submitted this 5th day of March 2024:

Cathy Nesbitt, Administrative Assistant
Georgia Public Service Commission
Facilities Protection Unit
244 Washington Street, SW
Atlanta, GA 30334

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*James Wascher, City Manager
City of Commerce Gas System
P.O. Box 348
27 Sycamore Street
Commerce, GA 30529

DOCKET NO. 37038
Inspection JS23-034

PS Form 3800, August 2006 — See Reverse for Instructions

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**SENDER: *COMPLETE THIS SECTION***

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

*James Wascher, City Manager
City of Commerce Gas System
P.O. Box 348
27 Sycamore Street
Commerce, GA 30529

DOCKET NO. 37038
Inspection JS23-034

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
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4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7011 3500 0001 0594 4644

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