



Public Service Commission State of North Dakota

COMMISSIONERS

Kevin Cramer
Tony Clark
Brian P. Kalk

Executive Secretary
Darrell Nitschke

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
Web: www.nd.gov/psc
E-mail: ndpsc@nd.gov
Phone 701-328-2400
Toll Free 1-877-245-6685
Fax 701-328-2410
TDD 800-366-6888 or 711

April 1, 2010

Mr. Ron Jablinske
Northern States Power Company d/b/a Xcel Energy
Box 2747
Fargo, ND 58108-2747

Dear Mr. Jablinske:

On September 2 – 16, 2008, Public Service Commission staff conducted an incident investigation of a house explosion at 2215 15th Street South, Fargo, ND. As a result of that inspection, three probable violations were discovered.

Attached to this letter is the Notice of Probable Violations and Proposed Compliance Order setting forth probable violations found during the above noted annual records inspection.

Please carefully note the response options detailed in the Notice of Probable Violations and the Proposed Compliance Order. Respond, in writing, within 30 days of the date you receive this Notice, or sooner, by choosing only among the options listed.

If you have any further questions or require additional information, please contact me at 328-4077.

Sincerely,

Patrick Fahm, Director
Compliance and Competitive Markets Division

**PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA**

**Northern States Power Company
Gas Safety – Fargo, ND
Inspection**

Case No. GS-08-765

NOTICE OF PROBABLE VIOLATIONS

April 1, 2010

Under North Dakota Century Code section 49-02-01.2, the Public Service Commission staff conducted an incident investigation of a house explosion at 2215 15th Street South, Fargo, ND. As a result of that investigation, Commission staff found three probable violations of the Public Service Commission's gas pipeline safety regulations, North Dakota Administrative Code Chapter 69-09-03.

DATES OF THE INVESTIGATION:

September 2 through September 16, 2008

GAS SAFETY INSPECTORS:

Kevin Hanson, Inspector

NAME OF OPERATOR:

Northern States Power Company d/b/a Xcel Energy
Box 2747
Fargo, ND 58108-2747
Telephone: (866) 837-9762

NAME OF CONTACT PERSON:

Ron Jablinske, Manager Gas & Electric Field Operations Telephone No: (701) 241-8621

RESPONSE OPTIONS:

Within 30 days of receipt of this notice:

1. If the operator intends to contest a probable violation:
 - a) request a hearing in writing and include a statement of the issues which the operator intends to raise at the hearing; or
 - b) submit written explanations, information, and other materials to defend its case.

2. If the operator intends to contest a proposed compliance order:
 - a) object to the proposed compliance order in writing; and submit written explanations, information, or other materials in support of alternative compliance actions and submit dates the actions will be completed;
 - b) submit a written response outlining actions already taken to correct the probable violations, including the date of those actions;
 - c) request the execution of a consent order to include the terms of an agreement between the Commission staff and the operator to dispose of the case, and to include an express waiver of all right to hearing or appeal of the order; or
 - d) request a hearing in writing and include a statement of the issues which the operator intends to raise at the hearing.
3. If the operator does not intend to contest a probable violation or proposed compliance order, submit a written statement admitting the violation, agreeing to the proposed compliance order, and waiving all right to hearing or appeal of the order.
4. If the operator intends to contest a proposed civil penalty:
 - a) submit a written explanation, information, or other materials that are the basis for contesting the proposed penalty, and that would mitigate or compromise the proposed penalty; or
 - b) request a hearing in writing and include a statement of the issues which the operator intends to raise at the hearing.

Do not remit the proposed civil penalty until and unless so ordered by the Commission.

COMMISSION ACTION:

A Commission order may:

- (a) require the operator to complete compliance actions;
- (b) impose a civil penalty; and
- (c) suspend operation of the pipeline system.

CIVIL PENALTIES:

Any person found in violation is subject to a civil penalty not to exceed \$10,000 for each violation for each day the violation continues, except that the maximum civil penalty may not exceed \$500,000 for any related series of violations.

PROBABLE VIOLATION NO. 1

PROVISION(S) OF THE LAWS OR RULES ALLEGEDLY VIOLATED:

49 CFR 192.617

STATEMENT OF EVIDENCE AND PROBABLE VIOLATION:

Under 49 CFR 192.603(b), in effect at the time of the incident:

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

Under 49 CFR 192.605 in effect at the time of the incident:

(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. . . .

...
(e) Surveillance, emergency response, and accident investigation. The procedures required by §§ 192.613(a), 192.615, and 192.617 must be included in the manual required by paragraph (a) of this section.

Under 49 CFR 192.617, in effect at the time of the incident:

Each operator shall establish procedures for analyzing accidents and failures, including the selection of samples of the failed facility or equipment for laboratory examination, where appropriate, for the purpose of determining the causes of the failure and minimizing the possibility of recurrence.

Xcel's written procedures for analyzing failures at Xcel Energy Gas Standards Manual page 18.13.2 state:

As soon as possible, during or after an emergency, examination of the event, should begin. Natural gas-related accidents and failures shall be investigated, to determine the cause, in order to minimize the possibility of a recurrence.... An Analysis, of the emergency event, should be conducted whenever company management deems it necessary.

SUMMARY: Xcel must have written procedures for analyzing failures to determine the causes and to minimize the possibility of recurrence, Xcel must follow its written

procedures, and Xcel must keep a record of its determinations. This analysis is separate from the telephonic notice of incidents (required under 49 CFR 191.5 and Xcel Energy Gas Standards Manual page 18.14.3), and the distribution system incident report (required under 49 CFR 191.9 and Xcel Energy Gas Standards Manual page 18.14.7 to 18.14.10).

On October 1, 2009, Commission staff requested that Xcel provide a copy of its report analyzing the September 2, 2008 Fargo incident determining the cause of the failure and action for minimizing the possibility of recurrence, letter attached. On November 13, 2009, Xcel responded that:

The report of CRT Labs was provided to the NDPSC on May 26, 2009 and a copy of the initial U.S. Department of Transportation incident report was provided to the PSC on October 2, 2008. Xcel Energy/NSP does not have any other reports.

Neither the CRT Lab report nor the incident report can fulfill the requirements under 49 CFR 192.617. The incident report only fulfills the requirements under 49 CFR 191.9. The lab report does not clearly determine the cause of the failure and does not determine action for minimizing the possibility of recurrence.

The evidence provided to staff indicates Xcel did not prepare and keep a record of its analysis of the accident and failure for the purpose of determining the causes of the failure and minimizing the possibility of recurrence.

PROPOSED CIVIL PENALTY:

\$10,000.00

PROPOSED COMPLIANCE ORDER:

Attached

PROBABLE VIOLATION NO. 2

PROVISION(S) OF THE LAWS OR RULES ALLEGEDLY VIOLATED:

49 CFR 192.615(b)(3)

STATEMENT OF EVIDENCE AND PROBABLE VIOLATION:

Under 49 CFR 192.605 in effect at the time of the incident:

Each operator shall include the following in its operating and maintenance plan:

(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.

...
(e) Surveillance, emergency response, and accident investigation. The procedures required by §§ 192.613(a), 192.615, and 192.617 must be included in the manual required by paragraph (a) of this section.

Xcel must include, in its operating and maintenance plan, procedures for 49 CFR 192.615(b)(3) to:

Review employee activities to determine whether the procedures were effectively followed in each emergency.

Xcel's written procedures at Xcel Energy Gas Standards Manual page 18.13.1 state that:

Following each emergency, employee activities shall be reviewed to determine whether the procedures were effectively followed. Consideration should be given especially to whether responses to the emergency were timely. Following Level 3 and 4 Emergencies and all DOT and/or State Agency Reportable Incidents, this review of Employee Activities shall be documented. This review is the responsibility of the local Gas Operations Manager.

SUMMARY: Xcel must have written procedures for reviewing employee activities to determine whether the procedures were effectively followed in each emergency, Xcel must follow its written procedures, and Xcel must keep a record of its review and determinations.

On October 1, 2009, Commission staff requested that Xcel provide a copy of all documents, letter attached. On November 13, 2009, Xcel responded that:

There are no documents specifically responsive to this request, additional documentation is done only if procedures were not appropriately followed. The documents referenced in the Response to Request 3 (above) were reviewed and there were verbal reviews with involved employees as necessary to verify that all procedures were effectively followed. As a result of the document review and employee discussions, it was determined that all procedures were followed.

The evidence provided to staff indicates Xcel did not prepare and keep a record of its employee activities review and determinations.

PROPOSED CIVIL PENALTY:

\$10,000.00

PROPOSED COMPLIANCE ORDER:

Attached

PROBABLE VIOLATION NO. 3

PROVISION(S) OF THE LAWS OR RULES ALLEGEDLY VIOLATED:

49 CFR 192.13(c)

STATEMENT OF EVIDENCE AND PROBABLE VIOLATION:

Under 49 CFR 192.13(c), in effect at the time of the incident:

Each operator shall maintain, modify as appropriate, and follow the plans, procedures, and programs that it is required to establish under this part.

Xcel's written procedures at Xcel Energy Gas Standards Manual page 18.13.2 state that:

After each major emergency event the Xcel Energy Gas Emergency Plan shall be reviewed for effectiveness. Any suggestions to improve the plan should be submitted, to Gas Standards, for review.

SUMMARY: Xcel must have written procedures for reviewing the Xcel Energy Gas Emergency Plan for effectiveness, Xcel must follow its written procedures, and Xcel must keep a record of its review and determinations.

On October 1, 2009, Commission staff requested that Xcel provide a copy of all documents, letter attached. Xcel provided no copies of its review or determinations.

The evidence provided to staff indicates that Xcel did not prepare and keep a record of its Gas Emergency Plan review and determinations.

PROPOSED CIVIL PENALTY:

\$10,000.00

PROPOSED COMPLIANCE ORDER:

Attached

PROPOSED COMPLIANCE ORDER

Under North Dakota Century Code 49-02-01.2, the North Dakota Public Service Commission staff proposes a compliance order incorporating the following requirements to assure compliance of Northern States Power Company d/b/a Xcel Energy, Fargo Division with North Dakota's minimum gas pipeline safety standards, North Dakota Administrative Code Chapter 69-09-03, as applicable to its operation:

REGARDING PROBABLE VIOLATION NO. ONE:

No later than May 7, 2010, NSP shall:

- Provide to the Commission a written explanation of why NSP did not perform a failure investigation of this incident.
- Perform an investigation of this failure to determine the causes of the failure and to determine action for minimizing the possibility of recurrence with the written report of the findings with the commission.

REGARDING PROBABLE VIOLATION NO. TWO:

No later than May 7, 2010, NSP shall:

- Provide to the Commission a written explanation of why NSP did not perform an employee activities review of this emergency.
- Perform an employee activities review and file the written report with the commission.

REGARDING PROBABLE VIOLATION NO. THREE:

No later than May 7, 2010, shall:

- Provide to the Commission a written explanation of why NSP did not perform an emergency plan review of this emergency.
- Perform an emergency plan review and file the written report of the findings with the commission.

OTHER

No later than May 7, 2010, NSP shall pay to the Commission \$5,310 for the costs of laboratory analysis of the failed pipe. Under North Dakota Century Code Section 28-32-26:

An agency may assess the costs of an investigation to a person found to be in violation of a statute or rule as a result of an adjudicative proceeding or informal disposition. The total costs assessed and any civil penalty that may be imposed as a result of violation may not exceed the statutorily authorized civil penalty for the violation. For the purposes of this section, costs mean reasonable out-of-pocket agency costs, not including any attorney's fees, actually incurred in conducting the investigation for which they may be assessed. Any such costs paid must be paid into the general fund and are appropriated as a refund to the agency for the purposes of defraying the costs of undertaking the investigation.