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STATE OF NEW HAMPSHIRE



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January 23, 2015

Mr. Daniel Saad  
President  
Liberty Utilities  
15 Buttrick Rd  
Londonderry, NH 03053

**RE: Liberty Utilities, New Hampshire Gas Division  
Notice of Probable Violations of Natural Gas Pipeline Safety Act and  
NH Code of Administrative Rules Part 500  
Control # PS1501LU  
Pipeline Affected: Services at Cross Street, Nashua**

Dear Mr. Saad:

Pursuant to the Natural Gas Pipeline Safety Act, 49 U.S.C. §60101 *et seq.*, applicable state law as set forth at RSA 370:2, and the relevant regulations of the New Hampshire Public Utilities Commission (Commission) N.H. Code Admin. Rules Part Puc 511 (together, the gas pipeline safety laws), the Commission hereby serves upon Liberty Utilities (Liberty) this Notice of Probable Violation pursuant to Puc 511.05 with respect to gas services that were not abandoned at the main and that contained pressurized gas but which no longer served residences at or near 21 Cross Street in Nashua, New Hampshire.

This notice arises from a July 29, 2014, inspection by the Commission's Safety Division of work conducted at 21 Cross Street in Nashua and its inspection of a cast iron bare steel main replacement project at Cross Street in the vicinity of Whitney Street. The inspections revealed probable operations and maintenance violations of 49 CFR §192.723, §192.605, §192.603, and §192.481. The Safety Division found the following regarding a gas service formerly feeding 21 Cross Street:

- the bare steel service was either partially abandoned, within the interior of a residence, or not abandoned at the main;
- the bare steel service was not included as part of the required 3 year walking leak survey for bare steel services;
- the bare steel service interior portion was not part of the 3 year atmospheric corrosion survey;

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- the bare steel service was only subsequently abandoned because of work originally planned for tie over of the plastic service to a replacement of main as part of the Cast Iron Bare Steel program;
- in failing to perform these functions, procedures were not followed and records not adequately maintained.

Please note that this notice reflects a series of probable violations.

Probable Violation No. 1

49 CFR §192.723

Failure to conduct a leakage survey with leak detector equipment outside business districts as frequently as necessary, but at least once every 5 calendar years at intervals not exceeding 63 months. However, for cathodically unprotected distribution lines subject to § 192.465(e) on which electrical surveys for corrosion are impractical, a leakage survey must be conducted at least once every 3 calendar years at intervals not exceeding 39 months.

The Safety Division alleges that 21 Cross Street, Nashua, is outside of the business district, making it subject to a walking survey of all services. This type of walking survey involves a trained technician carrying a hand-held device such as a flame ionization unit from the side of the road to where the service enters each building. In addition, the Safety Division asserts that Liberty Utilities records incorrectly referenced the 21 Cross Street location as 24 Whitney Street and failed to provide accurate documentation of these segments of the natural gas distribution system, particularly related to the services that have been relocated or abandoned, and where new installations have occurred over the years. Liberty is required to be aware of such activity, to update its records in a sufficient manner, and to ensure required maintenance is conducted.

Records subsequently provided by Liberty indicate that at 21 Cross Street a 27 foot gas service was installed on August 21, 1915 and entered the building on the exterior side facing Cross Street. Records further indicate that on Oct 11, 2006 a second plastic service that was 95 feet in length was installed to a different location to the back side of the of the residential building. It was presumed the original steel service was abandoned near the 6 inch cast iron main by a misfiled retirement record dated Feb 22, 1985. [This proved to be at an incorrect address as it was for 15 ½ Cross Street not 21 Cross Street]. Another document stated that the service was abandoned on December 31, 1997 which appears to be a generic date reference. The original service became inactive but remained pressurized with natural gas up to an interior service valve located within the residence.

Liberty must conduct a walking survey of the original bare steel piping since it remained pressurized as well as the piping installed in 2006. The surveys are not required to be done simultaneously and may be done on different cycles since the bare steel service surveys are required to be done every 3 years and plastic surveys are allowed to be as infrequent as five years. Records do indicate gas leak surveys were conducted for the 24 Whitney Street in 2014 and 2011 which the Safety Division assumed was for the plastic service.

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Adding to the Safety Division's concerns related to this location is that on July 29, 2014, during a cast iron main replacement project, Liberty's subcontractor hit the 1.25 inch bare steel service after being given a work package by Liberty that did not indicate that the bare steel service remained pressurized and contained gas, causing a dangerous situation. The service was not marked out because the company [apparently] assumed that the service had been abandoned.

Liberty records did not document that walking leak surveys were performed on a 3 year basis for the pipe segments that were subsequently damaged. Documentation for 21 Cross Street did not show that the two services were both surveyed, and they did not show that the surveys were performed for the required frequency as required by 49 CFR §192.723 and Puc 508.04 (e). Documentation of leak surveys at 21 Cross Street did not exist.

Probable Violation No.2      49 CFR §192.605  
Failure to follow company written procedures

The Safety Division alleges that Liberty maintained a manual for Operation and Maintenance (O&M) but that it was not followed. Liberty's O&M procedure *12 C Leakage Surveys* in subsections 6.1 (Frequency) and 6.4 (Other Patrol Surveys dictate walking survey) describe the procedures for conducting and documenting service leak surveys and requires walking leak surveys on services to residential buildings as described above. Liberty did not follow its O&M procedures with regard to 21 Cross Street.

Probable Violation No.3      49 CFR §192.603  
Failure to keep records necessary to administer the operating and maintenance procedures established under §192.605.

The Safety Division alleges that Liberty maintained records for 21 Cross Street but that they were not accurate enough to administer the procedures of Liberty's O&M manual. The O&M manual requires walking leak surveys on services to residential buildings as described above. The Safety Division alleges Liberty improperly recorded dates and locations of pipeline retirements which resulted in improper or no maintenance being performed. Liberty is not in compliance with §192.603.

Probable Violation No.4      49 CFR §192.481  
Failure to inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion at least once every 3 calendar years, but with intervals not exceeding 39 months.

The Safety Division alleges that Liberty did not perform the required atmospheric inspections every 3 years for the interior portion of the bare steel service at 21 Cross Street or, if they did perform them, then Liberty did not maintain the associated records as required by §192.491 (c).

Safety Division proposed conditions in addition to civil penalties

Given the importance of maintaining accurate records of operation and maintenance activities and the fact that these unknown pressurized services became contributing factors in subsequent damages to pipelines, the Safety Division imposes the following additional requirements:

1. Liberty's record keeping of leak surveys can be improved to document precisely where a leak survey was performed rather than have confusion over buildings with multiple addresses and those that involve corner lots. Liberty has delayed implementing the Verotrack Systems leak survey software that has the ability to document in a more thorough fashion walking leak surveys. The Safety Division will require Liberty to implement the Verotrack leak survey software or equivalent for the New Hampshire pipelines in conjunction with performing leak surveys for 2015. Liberty shall forward a detailed explanation to the Safety Division with 60 days including cost/benefit analysis performed if this is not feasible.
2. Prior to the next annual revision, Liberty should include within its DIMP plan as an identified threat for each of the primary eight categories the realized threats self-imposed of Liberty's record retention system for potential risks associated with inaccurate, incomplete or missing facility records. Associated weighting shall be emphasized and applied when analyzing risks.

Civil Penalties

RSA 374:7-a, III and Puc 511.05(c)(5) require the Commission's Safety Division to set forth the factors relied upon by the Safety Division in making its determination of civil penalties. The factors are essentially identical to the factors that the federal Office of Pipeline Safety has long relied upon in assessing similar penalties under the National Gas Pipeline Safety Act. See 49 CFR §190.225. The Safety Division considered the severity of not appropriately following the most minimal of federal safety regulations, Liberty's inability to properly follow its own written procedures and possible affects upon the integrity of the pipeline. Consideration was given to the effects and proximity to customers along the pipeline and potential impacts to non-customers and associated safety hazards of not maintaining gas distribution pipelines and services. The Safety Division considered the fact that Liberty's records were insufficient to the extent that its own subcontractors that routinely perform gas operations were placed at risk. This was coupled with the fact that interior piping was never checked for integrity monitoring leaving the residence owner at potential risk. The Safety Division also considered the prior history of offenses and found that similar violations occurred in 2013 at Loudon Road, Concord (although not all conditions were exactly the same), the nature and circumstances of the above probable violations, as well as the effect the associated imposition of civil penalties will have on Liberty's ability to continue operations.

In light of these factors, the Commission Staff imposes civil penalties as follows:

**Probable Violation No. 1**

**\$ 6,000**

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(Non-compliance with 49 CFR §192.723, Distribution System Leak Surveys.)

**Probable Violation No. 2** **\$ 500**  
(Non-compliance with 49 CFR §192.605, not following written operation and maintenance procedures.)

**Probable Violation No. 3** **\$ 5,000**  
(Non-compliance with 49 CFR §192.603, Insufficient Records.)

**Probable Violation No. 4** **\$ 4,500**  
(Non-compliance with 49 CFR §192.481, not performing atmospheric corrosion surveys.)

**TOTAL CIVIL PENALTIES** **\$ 16,000**

Other Conditions

Pursuant to RSA 374:7-a, the company has the right to seek compromise of these penalties. Puc 511.06 requires the company to take one of the following steps:

- (a) Upon receipt of the NOPV the respondent shall either:
- (1) Submit to the commission within 30 days, in writing, evidence refuting the probable violation referenced in the NOPV;
  - (2) Submit to the commission within 30 days, a written plan of action outlining action the respondent will take to correct the violations, including a schedule and the date when compliance is anticipated<sup>1</sup>;
  - (3) Execute a consent agreement with the commission resolving the probable violation and remit the civil penalty; or
  - (4) Request in writing within 30 days, an informal conference with the commission staff to examine the basis of the probable violation.
- (b) Any utility involved in the NOPV shall provide a representative for any informal conference or hearing scheduled relative to that NOPV.

Enclosed is a Consent Agreement that would resolve the civil penalty without need for an informal conference. Liberty may execute the Consent Agreement and remit a check or money order payable to the State of New Hampshire, in the amount of \$16,000. Responses and payments relevant to this notice should reference "PS1501 LU Cross Street Leak Survey" and be directed to the Safety Division Director at the Public Utilities Commission.

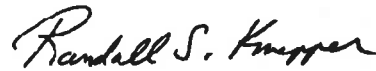
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<sup>1</sup> This option may not apply to violations that are written after the violation has occurred. It usually applies only to forward looking violations.

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Alternately, Liberty may file with the Executive Director a request for an informal conference before the Commission within 30 days of receipt of this Notice of Violation in accordance with Puc 511.06.

Sincerely,



Randall S. Knepper  
Director, Safety Division

cc: R MacDonald, Liberty, Field Operations & Construction Director  
Leo Cody, Liberty, Compliance & Quality Assurance & Emergency Management Manager

enclosure

**NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION**

**CONSENT AGREEMENT**

**WHEREAS**, the New Hampshire Public Utilities Commission (Commission) received evidence that Liberty Utilities (Respondent) committed a possible violation of the National Gas Pipeline Safety Act, 49 U.S.C. §60101 *et seq.*, New Hampshire state law and/or Puc 500 (the gas pipeline safety laws);

**WHEREAS**, after investigation the Commission then issued a Notice of Probable Violation (NOPV) pursuant to Puc 511.05 on January 23, 2015 against Liberty Utilities alleging that on July 2, 2014 at 21 Cross St , Nashua the Respondent violated the gas pipeline safety laws; and

**WHEREAS**, the Respondent was afforded the opportunity pursuant to Puc 511.06 to, as applicable, refute the probable violation referenced in the NOPV, to submit a plan of action outlining action the Respondent will take to correct the violation, to execute a consent agreement to resolve the probable violation and remit any civil penalty, or request an informal conference to examine the basis of the probable violation.


**NOW, THEREFORE**, the Commission and the Respondent hereby agree as follows:

1. Liberty Utilities violated the gas pipeline safety laws as described in NOPV PS1501LU.
2. A civil penalty of \$16,000 is imposed on the Respondent for the above violation[s], which civil penalty shall be received by the commission on or before February 23, 2015.
3. Respondent shall also take actions as outlined in NOPV PS1501LU section *Safety Division proposed conditions in addition to civil penalties*
4. The Commission shall pursue no further action against the Respondent arising out of the facts alleged in the NOPV except as provided in paragraph 7 and in order to enforce this Agreement.
5. This Agreement shall not release the Respondent from any claims of liability made by other parties under applicable law.
6. This Agreement shall not constitute a waiver of the Respondent's right to pursue any other party or person for any claims based on facts alleged in the NOPV.
7. This Agreement shall be considered by the Commission in assessing any civil penalties for future violations, if any, of the gas pipeline safety laws.

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8. This Agreement shall be construed in accordance with the laws of the State of New Hampshire and the Rules of the New Hampshire Public Utilities Commission.

Dated: 2/25/15 By:   
For the New Hampshire Public Utilities Commission

Dated: 2/23/2015 By:   
For the Respondent