

September 3, 1976

Mr. Cesar DeLeon
Acting Director
Office of Pipeline Safety Operations
Department of Transportation
Material Transportation Bureau
400 Seventh St., S. W.
Washington, D. C. 20590

Dear Mr. DeLeon:

Enclosed is a copy of an order the Arkansas Public Service Commission has issued regarding compliance with Paragraph 192.457 of the Arkansas Gas Pipeline Code and the Minimum Federal Safety Standards for gas lines.

This order is forwarded to your office pursuant to Section 3 (e) of Public Law 90-841, dated August 12, 1968, known as the "Natural Gas Pipeline Safety Act of 1968". Although Section 3 (e) requires notification 60 days prior to the effective date of any waiver the request for an extension of time could not be considered by this Commission before August 1, 1976.

The Arkansas Public Service Commission, in issuing this order, does not in any manner intend to waive any requirements for compliance, but rather allow additional time for some operators to attain compliance. The Commission determined that this approach would be in the public interest after consideration of all aspects relating to this matter.

If there are any questions regarding this, please contact this office.

Sincerely,

(signed)
Anthony Creston
Chief, Pipeline Safety

AC/jp

Enc.,

cc: The Commission

ARKANSAS
PUBLIC SERVICE COMMISSION

IN THE MATTER OF COMPLIANCE)
WITH ARKANSAS GAS PIPELINE CODE)
SECTION 192.457 - CATHODIC)
PROTECTION)

ADMINISTRATIVE ORDER

The Arkansas Gas Pipeline Code, Subpart I, Section 192.457, specifies that Operators of gas pipelines must provide cathodic protection for certain lines no later than August 1, 1976.

Although operators subject to this provision have made substantial progress toward compliance, some have reported that they have been unable to meet the Code requirements on time due to inadequate funding, shortages of materials and qualified manpower. Some Operators have petitioned the Commission for an extension of time to achieve compliance. They have demonstrated to the Commission that they have initiated a positive program toward compliance and are presently actively pursuing this program.

For the foregoing reasons, and pursuant to the authority granted in Ark. Stat. Ann. Section 73-1910 (a), the Commission has elected to extend the period for compliance with Section 192.457 until August 1, 1977.

Operators will submit quarterly progress reports to the Pipeline Safety Division of this Commission and the first report shall be submitted by November 10, 1976. Additional reports for the succeeding quarters will be submitted by February 10 and May 10, 1977, and a final report, upon completion of all required cathodic protection, will be submitted by August 1, 1977. All reports will be in a format as specified by Pipeline Safety. Any questions will be directed to Mr. Anthony Creston, Chief of Pipeline Safety. Operators who, in any quarterly report, fail to show progress toward compliance from the previous quarter, will have demonstrated a lack of cooperation and the Commission shall view this as grounds for revocation of the extension for that Operator. The Operator will thereupon be subject to civil penalties as authorized by appropriate statutes.

BY ORDER OF THE COMMISSION

This 1st day of September, 1976.

Robert C. Downie, Chairman

Pat Moran, Commissioner

John C. Pickett, Commissioner

(signed) _____
Tommie Castillow
Secretary to Commission

November 2, 1976

Mr. Anthony Creston
Chief, Pipeline Safety
Arkansas Public Service Commission
Justice Building
Little Rock, Arkansas 72201

Dear Mr. Creston:

This refers to your letter dated September 3, 1976, transmitting the Commission's Order issued on September 1, 1976, granting all operators in the State of Arkansas an extension of the August 1, 1976, deadline for compliance with 49 CFR 192.457 (b) until August 1, 1977.

Although your letter indicates the Commission does not intend the Order to be a waiver from a Federal standard, since the Order was forwarded to us pursuant to Sec. 3 (e) of the Natural Gas Pipeline Safety Act of 1968 (the Act), and it has the effect of setting a compliance deadline different from the deadline in Section 192.457 (b), we are considering the matter as a request for waiver under Sec. 3 (e) of the Act. The matter has been assigned OPSO Docket No. ARK-76-2.

As discussed hereafter, we object to the Commission's action because it goes beyond the authority of the Commission under Sec. 3 (e) and is not in accord with the certification made by the Commission pursuant to Sec. 5 (a) of the Act.

While Sec. 3 (e) authorizes a State agency to grant a waiver from a Federal standard upon application by any person, this authority only applies to those particular situations where a Federal standard is not appropriate. The Commission's Order purportedly applies to all operators subject to the Commission's jurisdiction. This broad action is inconsistent with the concept and meaning of a waiver.

Rather, we consider the Commission's action to constitute rulemaking of general applicability. Under Sec. 3(b) of the Act, the Commission lacks the authority to adopt rules of general applicability with respect to intrastate facilities that are incompatible with the minimum Federal standards. As rulemaking, the Commission's action is patently incompatible with 49 CFR 192.457 (b) and is therefore prohibited by the Act.

Additionally, the Commission, by issuing the September 1 Order, places itself in a position of being inconsistent with its existing certification under Sec. 5 (a) of the Act that it "has adopted each Federal safety standard... and is enforcing each such standard...."

Further, even if the Commission's action were within the authority of Sec. 3(e) of the Act, we would still object to that action. As stated above, the power to grant waivers under Sec. 3 (e) is intended only for those particular situations where a Federal pipeline safety standard of general applicability is not appropriate. The Commission, in support of its Order, has not presented any cogent reasons to show why Section 192.457 (b) is inappropriate in particular situations.

Accordingly, under Section 3 (e) of the Natural Gas Pipeline Safety Act of 1968 (49 USC 1672 (e)), the Commission's action is hereby stayed. The Commission within 60 days from the date of this letter may appeal this decision in writing and request an opportunity for hearing.

Although under Sec. 3 (e) of the Act, the Commission may not "grant" an extension of time to comply with an applicable standard without following the statutory waiver process, the Commission may nonetheless, in exercising its discretionary enforcement powers, consider an operator's compliance effort and other relevant factors in deciding whether a penalty should be assessed in a particular situation.

Sincerely,

Cesar DeLeon
Acting Director
Office of Pipeline Safety Operations

MTP-30:GM/LMF;peg;10/7/76
REW: TGC;10/21/76
cc: MTP-1, SW, 10

file: ARK-76-2
ops #799