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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CITY OF LIBERTY GAS COMPANY)

ALLEGED FAILURE TO COMPLY WITH)
KRS 278.492 AND 49 C.F.R. PART 192)

CASE NO. 2017-00053

CITY OF LIBERTY'S RESPONSE

The City of Liberty, by counsel, hereby provides the following response to the Public Service Commission's orders dated February 28, 2017, and February 6, 2017.

On February 6, 2017, the Public Service Commission issued an order establishing this case and ordering, *inter alia*, for the City of Liberty ("City" or "Liberty") to respond in writing within 20 days. The City never received a copy of this original February 6 order. It was unaware of the case and unaware of any requirement to file a written response. Its failure to file a written response within the time period was certainly not intentional. The City would have responded in a timely fashion if it had known about the February 6 order when it was originally issued.

The focus of the Commission's inquiry is whether the City should be subject to any penalties prescribed in KRS 278.992 for alleged violations of 49 C.F.R. Section 192.723(b)(1), 49 C.F.R. Section 192.723(b)(2), and 49 C.F.R. Section 192.605(a). Most of the relevant facts underlying the City's circumstances are described in the documents that have been entered in the case record. The City operates a gas distribution system that provides service to approximately 650 customers. The gas operations are a department of the City and not a separate entity. The

City employs five full-time employees who provide maintenance on all of the city's utility operations, including gas, water, and sewer. Utility billing services are performed by other office employees.

Following an inspection of the City's gas operations in May 2009, a Commission inspector documented a deficiency of the City for not conducting leakage surveys in its business district each year. The next Commission inspection was conducted in March 2012, and the Commission inspector specifically noted that the City complied with periodic-leak-survey requirements. See Standard Inspection Report of a Gas Distribution Operator at 10, 22. The inspector even stated in his report that "Ronnie Wesley has done an excellent job in correcting all of the deficiencies from the previous inspection and in maintaining Liberty's natural gas system. . . . No deficiencies were found during this inspection."

The next Commission inspection was conducted in July 2015, after which the Commission inspector cited the City for failing to conduct a leakage survey in its business district each year and outside its business district every three years. The inspector found that the City had not conducted a leakage survey since 2009.

The City does not have records to explain the discrepancy between the 2012 Commission inspection report that indicates there were no deficiencies and the 2015 report that found that there had been no leakage surveys since 2009.¹ Nevertheless, if City officials were aware in 2012 that the City was not in compliance with regulations, emphasis would have been placed on ensuring future compliance.

¹ The City's lead operator, Ronnie Wesley, passed away in 2014, and it is possible that he was performing these surveys himself. The City has a Combustible Gas Indicator ("CGI") instrument that is capable of performing the survey. The City has not located any records of any leak surveys being performed by City employees (or a third party) during this time period. The City has reports of regular patrols of the gas system, which are designed to locate leaks.

When the City received the 2015 inspection report, employees immediately began discussing how they would remedy the deficiency and have a leakage survey performed. There was a miscommunication, however, between office staff and maintenance staff as to who would contact a third party to perform the inspection. As a result, the City did not enter into a contract with Heath Consultants, Inc., (“Heath”) to perform the survey until June 13, 2016. Heath’s leakage control survey of the City’s entire system was performed on July 19-21, 2016, and the survey discovered only two leaks, both of which were Grade 2 leaks. Those leaks were repaired within the timeframe that is appropriate pursuant to industry standards.

The City has requested that Heath continue to perform annual leakage control surveys on the City’s system. The 2016 contract between the City and Heath had an option to renew, which the City exercised. The City is in the process of working with Heath to schedule inspection dates for the 2017 summer.

As a result of the 2015 inspection findings and subsequent internal miscommunication, the City has taken extra steps to ensure that similar problems do not occur in the future. In addition to attempting to contract with Heath to perform annual leakage detection surveys, the City has developed a calendaring system, whereby each of the utility maintenance employees has access to a calendar that displays deadlines for required inspections, tasks, and after-action reports. This calendar will add transparency within the department to ensure that requirements are completed in a timely fashion.

To the extent that the City’s actions constitute a violation of the minimum safety standards adopted by the United States Department of Transportation pursuant to the federal pipeline safety laws, 49 U.S.C. §§ 60101 et seq., the Commission may issue a civil penalty, but in doing so, it should consider the following factors: “the size of the business of the person

charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of the violation.” KRS 278.992(1). Applying these factors to the present case demonstrates that any potential penalty should be relatively small.

The City of Liberty is a small town in Casey County. Its gas department only serves 650 customers. Overall, its gas department is relatively small compared to other utilities, which would suggest that any potential penalty should likewise be small.

As to the gravity of the violation, the City recognizes that the Department of Transportation’s standards are important. It recognizes the mandatory nature of compliance and does not intend to minimize the nature of any safety standard. The City is mindful that it has continued to operate its gas system in an otherwise safe manner and has continued its routine patrolling of the system, which can be vital in discovering leaks. It also highlights that the July 2016 leak detection survey only discovered two relatively minor leaks in the entire system, and those leaks were repaired within industry-standard timeframes. As such, the City believes that the circumstances related to this factor weigh in favor of a relatively small penalty.

The Commission should also give credit to the attempts by the City to achieve compliance once it was notified in 2015 that the lead detection survey had not been performed within the applicable time period. Even though the leak detection survey was not complete until 2016, the delay after receiving the inspection report was a result of an inadvertent miscommunication between City employees. The City has also implemented a new calendaring system for the City’s gas department, whereby deadlines and regulatory requirements are tracked to better ensure compliance. Because the City has attempted to achieve compliance as best as it can and executed an after-action plan to ensure future compliance, any penalty should be relatively small.

KRS 278.992 specifically provides that the Commission may compromise the assessment of any penalty. When analyzing the factors articulated in the statute and discussed above, the City believes that, if the Commission determines a penalty is justified, it would be most appropriate to suspend any assessed penalty and eventually void it after a period of demonstrable compliance with 49 C.F.R. Section 192.723(b)(1) and 49 C.F.R. Section 192.723(b)(2).²

Ultimately, the failure to complete any required leakage surveys was an oversight on the City. The City cannot change what occurred in the past. It, however, has the ability to affect the future. It has taken steps to correct previous deficiencies and to ensure that they do not occur in the future. The City is committed to being diligent in the future to schedule and perform all surveys and inspections as required by regulations and the City's Operations and Maintenance Manual. Accordingly, the City believes that no civil penalty should be issued in this matter, or to the extent that the Commission deems that a penalty is warranted, that it be suspended and eventually voided after a period of demonstrable compliance with the regulations.

Respectfully submitted,



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² PSC Case No. 2012-00362 involving the City of Tompkinsville provides a good comparison. Tompkinsville appears to have about twice as many customers as Liberty. See Tompkinsville Natural Gas System, Post-Case Referenced Correspondence, Case No. 2012-00362 (filed January 2, 2014)(listing approximately 1,150 customers). Tompkinsville had been cited for 14 different violations, including not conducting timely leakage surveys. Id. Order at 2-7(Ky. PSC Jan. 7, 2013). During the leak detection process, they discovered 20 Grade 1 leaks and repaired more than 66 total leaks. Id. at 5. The Commission approved of an agreed civil penalty in the amount of \$9,000 that Tompkinsville was assessed and paid \$1,500 of the \$9,000 fine in full satisfaction of that proceeding. It appears that Liberty's circumstances do not warrant a penalty as great as Tompkinsville.