

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF VALLEY GAS,)	CASE NO.
INC.'S FAILURE TO COMPLY WITH KRS 278.495,)	2022-00001
807 KAR 5:027, AND 49 C.F.R. PART 192)	

ORDER

The Commission initiated this proceeding to conduct a formal investigation and to determine whether Valley Gas, Inc. (Valley Gas) should be subject to penalties pursuant to KRS 278.992 for seven violations of the minimum pipeline safety standards alleged in an August 13, 2021 inspection report prepared by staff from the Commission's Division of Inspections (DOI).¹ On February 11, 2022, Valley Gas filed a memorandum in response to the allegations contained in the Commission's January 10, 2022 Order and DOI's August 13, 2021 inspection report. In its response, Valley Gas stated that it had performed remedial measures to cure the deficiencies noted in DOI's inspection report. The Commission conducted a hearing in this matter on May 3, 2022. After the hearing, Commission Staff filed post-hearing data requests, and Valley Gas responded on June 24, 2022. Additionally, both Commission Staff and Valley Gas have filed post-hearing briefs. This matter is now ripe for a decision on the merits.

BACKGROUND

Valley Gas owns and operates underground facilities used to distribute natural gas to approximately 480 customers in Irvington, Kentucky. Valley Gas is subject to the

¹ Opening Order (Ky. PSC Jan. 10, 2022), Appendix A, Inspection Report.

Commission's jurisdiction under KRS 278.495(2) to enforce minimum safety standards adopted by the United States Department of Transportation pursuant to the federal pipeline safety laws, 49 U.S.C. Section 60101, *et seq.*

DOI staff conducted a standard periodic inspection of Valley Gas's distribution system over six days in July and August of 2021.² Notably, DOI staff made the following seven findings in its inspection report:

1. Valley Gas had not conducted an annual review of its written operations and maintenance procedures as required by 49 CFR § 192.605(a).

2. Valley Gas had not conducted emergency response training as required by 49 CFR §192.615(b)(2).

3. Based on a review of Valley Gas's records from 2019–2021, Valley Gas had not maintained sufficient odorant levels to meet the requirement that a concentration in air of one-fifth of the lower explosive limit was readily detectable by a person with a normal sense of smell per 49 CFR § 192.625. Further, a majority of the readings showed a concentration of one percent of gas in the air.

4. Valley Gas could not produce records that its mains were patrolled in accordance with 49 CFR § 192.721(b).

5. Valley Gas did not conduct inspections and tests of its Bewleyville Road regulator station at least once per calendar year as required by 49 CFR § 192.739(a). DOI Staff noted that the current configuration of the Bewleyville Road regulator station did not allow proper testing of the equipment at that regulator station.

² Opening Order (Ky. PSC Jan. 10, 2022), Appendix A, Inspection Report at 3.

6. Valley Gas could not produce complete operator qualification records for its employees performing covered tasks for the period between September 2014 and February 2020 as required by 49 CFR § 192.807(b).

7. Valley Gas employees were performing covered tasks for which they did not have current operator qualification certifications in violation of 49 CFR § 192.805(b). Valley Gas's records indicated that its employees were not qualified to perform the following tasks:

- Pipe-To-Soil Potentials (CP Readings) – No record of training;
- Emergency Valve Inspection – No record of training;
- Odorization Testing – Expired certification; and
- Locate and Mark Underground Facilities – Expired certification.³

DOI Staff also noted that it had cited Valley Gas previously with respect to findings 1, 4, 5, and 7 during its 2019 inspection.⁴

Valley Gas sent DOI a letter dated September 2, 2021, in response to DOI's inspection report.⁵ In that letter, Valley Gas did not dispute any of DOI's findings as noted in DOI's report. Rather, Valley Gas noted the corrective measures that it had undertaken to cure the deficiencies that DOI noted in its inspection report. The corrective measures corresponding to the recommended findings listed above included:

1. Valley Gas contracted with a third party, Utility Safety & Design, Inc. (USDI), to develop new plans and manuals in accordance with 49 CFR § 192.605. Valley Gas

³ Opening Order (Ky. PSC Jan. 10, 2022) at 2–3 and Appendix A, Inspection Report at 3–4.

⁴ Opening Order (Ky. PSC Jan. 10, 2022), Appendix A, Inspection Report at 4; see *also* DOI Hearing Exhibit 4.

⁵ DOI Hearing Exhibit 2.

stated that USDI had provided Valley Gas with a form to document its annual review of Valley Gas's operations and maintenance procedures.⁶

2. Valley Gas stated that USDI's new procedures manual included a section on emergency response training. As part of the new procedures manual USDI provided, Valley Gas was required to have all employees complete training as to its emergency response plan at least annually. Valley Gas was also required to have its employees successfully complete a written test to determine the effectiveness of the training. USDI provided forms for Valley Gas to document each employee's successful completion of the emergency response training.⁷

3. Valley Gas stated that it had reviewed the requirements and procedures for conducting odorant tests. Valley Gas also stated that it had its odorization equipment recalibrated and that USDI had provided new odorant inspection forms with its new manual.⁸

4. Valley Gas stated that USDI had provided it with the forms necessary to document patrolling of its mains as required by 49 CFR § 192.721(b).⁹

5. In response to this finding, Valley Gas stated that it had completed its annual inspection of the Bewleyville Road regulator station. However, the configuration of the Bewleyville Road station did not allow for testing lock-up of the regulators.¹⁰ Valley

⁶ DOI Hearing Exhibit 2 at unnumbered page 1.

⁷ DOI Hearing Exhibit 2 at unnumbered page 2.

⁸ DOI Hearing Exhibit 2 at unnumbered page 2.

⁹ DOI Hearing Exhibit 2 at unnumbered page 2.

¹⁰ DOI Hearing Exhibit 2 at unnumbered page 2.

Gas further stated that USDI had reconfigured the Bewleyville Road regulator station and performed the required inspections as of August 4, 2021.¹¹

6. Valley Gas stated that it had contracted with USDI to complete the appropriate operator qualification (OQ) training and evaluations for all Valley Gas's employees that did not have current qualifications for tasks they were expected to perform. Upon successful completion of the online module training, Valley Gas's employees would then be field evaluated by USDI personnel to become compliant with 49 CFR § 192.807(b).

7. As referenced above, Valley Gas stated that it had contracted with USDI to update its OQ plans and to complete all necessary training with Valley Gas's employees to become certified to complete covered tasks.¹²

DOI investigator, David Nash, confirmed in a follow-up inspection report that Valley Gas had satisfactorily cured the deficiencies noted in the August 13, 2021 inspection report.¹³

On May 3, 2022, the Commission conducted an evidentiary hearing. Mr. Nash was DOI's sole witness.¹⁴ Mr. Nash testified as to the contents of his investigation reports, which noted the seven separate violations of the federal pipeline standards.¹⁵ During cross-examination, Mr. Nash testified that he lacked personal knowledge of how the

¹¹ DOI Hearing Exhibit 2 at unnumbered page 2.

¹² DOI Hearing Exhibit 2 at unnumbered page 3.

¹³ DOI Hearing Exhibit 3.

¹⁴ Hearing Video Transcript (HVT) of the May 3, 2022 Hearing at 09:19:49 a.m.–09:37:37 a.m.

¹⁵ HVT of the May 3, 2022 Hearing at 09:21:31 a.m.–09:29:37 a.m.

Commission determined the amount of any financial penalties for such violations.¹⁶ Valley Gas did not attempt to cross-examine Mr. Nash as to the factual bases of any of the violations alleged in his August 13, 2021 report. Kevin Kasey testified on behalf of Valley Gas. Mr. Kasey testified as to the remediation efforts that Valley Gas undertook to cure the deficiencies noted in DOI's report.¹⁷

LEGAL STANDARD

KRS 278.992(1) provides that any person who violates any minimum pipeline safety standard adopted by the United States Department of Transportation or any regulation adopted by the Commission governing the safety of pipeline facilities shall be subject to a civil penalty. The Kentucky General Assembly amended KRS 278.992(1) in 2018 to change the maximum civil penalty that may be assessed for violation of minimum pipeline safety standards. The maximum civil penalty as of the time of DOI's August 13, 2021 inspection report was \$225,134 for each violation for each day the violation continued, with a maximum administrative civil penalty not to exceed \$2,251,334 for any related series of violations.

In determining the amount of a penalty to be assessed, the Commission must consider the appropriateness of the penalty to 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.¹⁸ In addition, the Commission will consider the following:

¹⁶ HVT of the May 3, 2022 Hearing at 09:37:40 a.m.

¹⁷ HVT of the May 3, 2022 Hearing at 09:41:19 a.m.–10:26:25 a.m.

¹⁸ KRS 278.992(1).

1. The nature, circumstances, and gravity of the violation including any adverse impact on the environment;
2. The degree of culpability;
3. History of prior offenses;
4. Any good faith in attempting to achieve compliance; and
5. Ability of the entity charged to continue in business.

The Commission may also consider, within its discretion, the economic benefit gained, if any, from the violation and such other matters as justice may require.¹⁹ The Commission considers the gravity of the violation charged to be the most important mandatory penalty assessment consideration.²⁰

DISCUSSION AND FINDINGS

First, the Commission notes that Valley Gas did not contest the factual bases underlying the allegations outlined in DOI's August 13, 2021 report.²¹ Rather, Valley Gas presented evidence of the actions it undertook to cure the violations DOI identified, as well as the amounts Valley Gas incurred to remediate the violations DOI identified. In effect, Valley Gas argued that it should receive a dollar-for-dollar credit for all monies it expended to remediate the violations DOI found during its inspection of Valley Gas's operations, thereby reducing its financial penalties to \$0.²² Valley Gas's focus was on

¹⁹ 49 C.F.R. § 190.225.

²⁰ Case No. 2019-00188, *City of Augusta Alleged Failure to Comply with KRS 278.495 and 49 C.F.R. Parts 191 and 192* (Ky. PSC June 2, 2021) at 9; Case No. 2017-00119, *Louisville Gas & Electric Company Alleged Failure to Comply with KRS 278.495, 807 KAR 5:022 and 49 C.F.R. Part 192* (Ky. PSC Mar. 6, 2018) at 26.

²¹ See, e.g., DOI Hearing Exhibit 2, which noted the corrective actions Valley Gas undertook to remedy the deficiencies identified in DOI's August 13, 2021 report.

²² See Valley Gas's Post-Hearing Brief (filed June 10, 2022).

reducing its financial penalties, not on contesting that the violations were committed in the first place. Accordingly, the Commission finds that Valley Gas committed the seven violations of the minimum federal pipeline safety standards, as DOI alleged in its August 13, 2021 report, and as the violations themselves went uncontested at the May 3, 2022 hearing.

The Commission finds that Valley Gas should not receive a dollar-for-dollar credit for all amounts that it expended to remediate the deficiencies that DOI noted in its August 13, 2021 report. Valley Gas should not receive the financial credit and benefit for doing what it was already required to do under the law. While the Commission has reduced financial penalties to utilities in prior cases, the Commission has never reduced financial penalties to the extent argued by Valley Gas.²³

The Commission thus must assess an appropriate financial penalty for each of Valley Gas’s violations of the minimum federal pipeline standards. Both DOI and Valley Gas filed post-hearing briefs listing the amount of each proposed penalty, separated by violation. The table below summarizes the respective positions of DOI and Valley Gas:

Violation²⁴	DOI Proposed Penalty	Valley Gas Proposed Penalty
1	\$2,000	\$1,000
2	\$20,000	\$5,000
3	\$40,000	\$40,000
4	\$4,000	\$4,000

²³ See Case No. 2019-00188, *City of Augusta Alleged Failure to Comply with KRS 278.495 and 49 C.F.R. Parts 191 and 192* (Ky. PSC June 2, 2021) at 13 (in which the Commission gave a utility credit for the purchase of a new odorometer and for the redesign and rebuilding of four regulator stations).

²⁴ Each violation number corresponds to DOI’s recommended findings as outlined in the August 13, 2021 report.

5	\$20,000	\$20,000
6	\$2,000	\$2,000
7	\$80,000	\$20,000

After reviewing the parties' respective positions in their post-hearing briefs, there is no dispute as to the financial penalties associated with Violations 3, 4, 5, and 6. The Commission finds that each of these penalties is appropriate and in line with Commission precedent. Accordingly, the Commission accepts the amounts of the proposed penalties associated with Violations 3, 4, 5, and 6.

Violation 1 involved Valley Gas's failure to conduct an annual review of its written operations and maintenance procedures as required by 49 CFR § 192.605(a). DOI proposed a \$2,000 penalty for this violation.²⁵ Valley Gas proposed a \$1,000 penalty for this violation.²⁶ In Case No. 2019-00065, the Commission assessed a \$2,000 penalty upon the city of Drakesboro for a violation of 49 CFR § 192.605(a).²⁷ In light of this Commission precedent, as well as the fact that Valley Gas had previously been cited for this same violation,²⁸ the Commission finds that a \$2,000 penalty for this violation is appropriate.

²⁵ Commission Staff's Post-Hearing Brief (filed June 10, 2022).

²⁶ Valley Gas's Post-Hearing Brief (filed June 10, 2022).

²⁷ Case No. 2019-00065, *City of Drakesboro D/B/A Drakesboro Natural Gas Company Alleged Failure to Comply with KRS 278.495, 807 KAR 5:022, and 49 C.F.R. Part 192* (Ky. PSC Feb. 25, 2021) at 61.

²⁸ Opening Order (Ky. PSC Jan. 10, 2022), Appendix A, Inspection Report at 4; see also DOI Hearing Exhibit 4.

Violation 2 involved Valley Gas's failure to conduct emergency response training as required by 49 CFR §192.615(b)(2). DOI proposed a \$20,000 penalty for this violation.²⁹ Valley Gas proposed a \$5,000 penalty for this violation.³⁰ In Case No. 2019-00065, the Commission assessed a \$10,000 penalty upon the city of Drakesboro for this same violation of 49 CFR §192.615(b)(2).³¹ The Commission finds that a \$10,000 penalty for this violation is appropriate.

Violation 7 involved Valley Gas's employees performing covered tasks for which they did not have current operator qualification certifications in violation of 49 CFR § 192.805(b). Valley Gas's records indicated that its employees were not qualified to perform the following tasks:

- Pipe-To-Soil Potentials (CP Readings) – No record of training;
- Emergency Valve Inspection – No record of training;
- Odorization Testing – Expired certification; and
- Locate and Mark Underground Facilities – Expired certification.³²

DOI proposed an \$80,000 penalty for this violation (\$20,000 x 4 occurrences),³³ while Valley Gas proposed a \$20,000 penalty for this violation (\$5,000 x 4 occurrences).³⁴ In Case No. 2019-00065, the Commission assessed a penalty of \$20,000 per occurrence

²⁹ Commission Staff's Post-Hearing Brief (filed June 10, 2022).

³⁰ Valley Gas's Post-Hearing Brief (filed June 10, 2022).

³¹ Case No. 2019-00065, *City of Drakesboro D/B/A Drakesboro Natural Gas Company Alleged Failure to Comply with KRS 278.495, 807 KAR 5:022, and 49 C.F.R. Part 192* (Ky. PSC Feb. 25, 2021) at 61.

³² Opening Order (Ky. PSC Jan. 10, 2022) at 2–3 and Appendix A, Inspection Report at 3–4.

³³ Commission Staff's Post-Hearing Brief (filed June 10, 2022).

³⁴ Valley Gas's Post-Hearing Brief (filed June 10, 2022).

for the same violation, totaling \$40,000 for two occurrences.³⁵ However, the Commission's Order in Case No. 2019-00065 alluded to the fact that the utility in that case used jail inmates to perform covered tasks for which they were unqualified, though the Order is also clear to state that the utility's use of jail inmates to perform covered tasks was not the basis of the alleged violation.³⁶ Nonetheless, those facts demonstrate even more so the egregiousness of the violation in that case. In Case No. 2019-00118, the city of Augusta was assessed a penalty of \$5,000 for one occurrence of this same violation of 49 CFR § 192.805(b).³⁷ With consideration that this violation was a repeat violation from the 2019 inspection of Valley Gas's operations, as well as the seriousness of the violation, the Commission finds that a \$15,000 penalty per occurrence of this violation, totaling \$60,000 (\$15,000 x 4 occurrences), is appropriate under these circumstances.

Next, the Commission will consider the size of Valley Gas's operations and the effect of any penalties on Valley Gas's abilities to continue its operations. As previously noted, Valley Gas is a small utility, serving approximately 480 customers. A penalty of the size calculated for each of Valley Gas's violations described above would likely jeopardize Valley Gas's ability to continue its operations. This factor weighs in favor of reducing Valley Gas's total penalty. In Case No. 2019-00188, the Commission reduced

³⁵ Case No. 2019-00065, *City of Drakesboro D/B/A Drakesboro Natural Gas Company Alleged Failure to Comply with KRS 278.495, 807 KAR 5:022, and 49 C.F.R. Part 192* (Ky. PSC Feb. 25, 2021) at 61.

³⁶ Case No. 2019-00065, *City of Drakesboro D/B/A Drakesboro Natural Gas Company Alleged Failure to Comply with KRS 278.495, 807 KAR 5:022, and 49 C.F.R. Part 192* (Ky. PSC Feb. 25, 2021) at 48.

³⁷ Case No. 2019-00188, *City of Augusta Alleged Failure to Comply with KRS 278.495 and 49 C.F.R. Parts 191 and 192* (Ky. PSC June 2, 2021) at 13.

Augusta's total penalty by 75 percent because of its small size.³⁸ The Commission finds that Valley Gas's total penalty should be reduced by 75 percent, which is in line with prior Commission precedent.

Moreover, the Commission finds that Valley Gas should receive credit for some of the expenditures that it made toward remediating its deficiencies. In Case No. 2019-00188, the Commission gave Augusta credit for its purchase of a new odorometer and the redesign and rebuilding of four regulator stations.³⁹ Here, Valley Gas provided invoices and documentation showing the amounts it paid toward the purchase of a new odorometer and the redesign and rebuild of a regulator station.

However, the invoice provided by Valley Gas for the purchase of the new odorometer also includes labor for items not related to the odorometer. For example, included in the invoice's total is USDI having prepared draft responses to Commission Staff on behalf of Valley Gas.⁴⁰ Because the cost of the odorometer is not separately delineated, the Commission finds that it cannot give Valley Gas credit for the purchase of the new odorometer.

USDI's materials and labor to redesign and rebuild Valley Gas's regulator station is more clearly delineated; therefore, the Commission finds that Valley Gas should be

³⁸ Case No. 2019-00188, *City of Augusta Alleged Failure to Comply with KRS 278.495 and 49 C.F.R. Parts 191 and 192* (Ky. PSC June 2, 2021) at 13.

³⁹ Case No. 2019-00188, *City of Augusta Alleged Failure to Comply with KRS 278.495 and 49 C.F.R. Parts 191 and 192* (Ky. PSC June 2, 2021) at 13.

⁴⁰ Valley Gas's Response to Commission Staff's Post-Hearing Request for Information (filed May 24, 2022), Exhibit 9.

credited with \$12,169.63, as an expense related to the redesign and rebuild of the Bewleyville Road regulator station.⁴¹

To summarize, the Commission finds that Valley Gas should be assessed a civil penalty for its seven violations, as follows:

Violation 1 -	\$ 2,000
Violation 2 -	\$10,000
Violation 3 -	\$40,000
Violation 4 -	\$ 4,000
Violation 5 -	\$20,000
Violation 6 -	\$ 2,000
Violation 7 -	<u>\$60,000</u>
Total	\$138,000

Valley Gas's total civil penalty should be reduced by 75 percent because of its small operator size, thereby reducing the total civil penalty to \$34,500. Further, Valley Gas should be credited \$12,169.63 for the redesign and rebuild of the Bewleyville Road regulator station, thus lowering Valley Gas's total civil penalty to \$22,330.37.

The Commission finds that Valley Gas should pay \$10,000 within 30 days of the date of service of this Order, with the remaining balance suspended on the condition that Valley Gas continue to use a third-party contractor, such as USDI, or another contractor approved in writing by DOI, to ensure compliance with all minimum federal safety standards, for a period of five years.

IT IS THEREFORE ORDERED that:

1. Valley Gas is assessed civil penalties in the total amount of \$22,330.37 for the violations identified herein.

⁴¹ Valley Gas's Response to Commission Staff's Post-Hearing Request for Information (filed May 24, 2022), Exhibit 4.

2. Valley Gas shall pay \$10,000 of the penalties within 30 days of the date of service of this Order by cashier's check or money order payable to the Kentucky State Treasurer, and mailed or delivered to the Office of the General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

3. The remaining civil penalties assessed shall be suspended contingent upon Valley Gas continuing to use a third-party contractor, such as USDI, or another contractor approved in writing by DOI, to ensure compliance with all minimum federal safety standards, for a period of five years.

4. Valley Gas shall file a report annually no later than December 31 of each year, documenting its use of a third-party contractor.

5. The Commission shall consider payment of the suspended portion of the penalties to be satisfied upon Valley Gas's satisfaction of the conditions discussed above.

6. Any documents filed pursuant to ordering paragraph 4 shall reference this case number and shall be retained in the post-case correspondence file.

7. This case shall be closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman



Commissioner

ENTERED
APR 05 2023 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

*Valley Gas, Inc.
401 S First Street
P. O. Box 366
Irvington, KY 40146

*Valley Gas, Inc.
Valley Gas, Inc.
401 S First Street
P. O. Box 366
Irvington, KY 40146

*Parker M Wornall
Commonwealth Counsel Group PLLC
10343 Linn Station Rd., Suite 100
Louisville, KENTUCKY 40223