

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CLOSURE OF INVESTIGATION – JOHNSON)	CASE NO.
COUNTY GAS COMPANY, INC.)	2019-00121

ORDER

On its own motion, the Commission initiates this proceeding to close the investigation of Johnson County Gas Company, Inc. (Johnson County).

Commission Staff (Staff) conducted a standard periodic inspection of the distribution system of Johnson County in March 2017. On March 31, 2017, Staff issued an inspection report (Inspection Report) that cited Johnson County for violations of minimum federal pipeline safety standards in 49 C.F.R. Part 192. On July 6, 2017, Staff issued a Demand for Remedial Measures and Penalty Assessment (Demand Letter) based on the violations cited in the Inspection Report. On August 7, 2017, Johnson County Gas, by counsel, submitted a response to the Demand Letter. On May 4, 2018, Staff conducted a follow-up inspection of the Johnson County Gas system.

Based on the additional information provided by Johnson County Gas in response to the demand letter and Staff's follow-up inspection, Staff issued a Revised Demand for Remedial Measures and Penalty Assessment on December 4, 2018 (Revised Demand Letter), a copy of which is attached to this Order. Johnson County paid the proposed penalty and completed all remedial measures required by Staff in the Revised Demand Letter.

The Commission finds that Johnson County has addressed to its satisfaction the probable violations cited by Staff in the Inspection Report. The Commission further finds that the Commission's investigation of the alleged violations cited in the Inspection Report should be closed.

IT IS THEREFORE ORDERED that:

1. Johnson County's payment of Staff's proposed penalty and completion of remedial measures required by Staff in the Revised Demand Letter is accepted and resolves all alleged violations of KRS Chapter 278, any regulation promulgated thereunder, or 49 C.F.R. Part 192 as well as any penalty that could be assessed under KRS 278.992(1) for the alleged violations cited in the Inspection Report.

2. Johnson County's payment of Staff's proposed penalty is not an admission by Johnson County that it violated any provision of KRS Chapter 278, any regulation promulgated thereunder, or 49 C.F.R. Part 192.

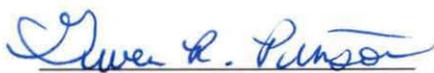
3. The Commission's investigation of the alleged violations cited in the Inspection Report is closed.

4. This case is closed and removed from the Commission's docket.

By the Commission

ENTERED
APR 15 2019
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

ATTACHMENT

ATTACHMENT TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2019-00121 DATED **APR 15 2019**

FIVE PAGES TO FOLLOW



Matthew G. Bevin
Governor

Charles G. Snively
Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
Public Service Commission
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P.O. Box 615
Frankfort, Kentucky 40602-0615
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Michael J. Schmitt
Chairman

Robert Cicero
Vice Chairman

Talina R. Mathews
Commissioner

December 4, 2018

Mark David Goss
Goss Samford PLLC
2365 Harrodsburg Road, Ste. B-325
Lexington, KY 40504

Re: Johnson County Gas Company, Inc.
Operator ID 1985

**REVISED DEMAND FOR REMEDIAL MEASURES
AND PENALTY ASSESSMENT**

Dear Mr. Goss,

On March 23, 30 and 31, 2017, Commission Staff (Staff) conducted a standard periodic inspection of the gas distribution system of Johnson County Gas Company, Inc. (Johnson County Gas). In its inspection report issued on March 31, 2017, Staff identified the following violations of federal pipeline safety standards:

1. **49 CFR §192.809(e)** – Observation of on-the-job performance may not be used as the sole method of evaluation to qualify individuals to perform covered tasks. Johnson County Gas had no record of qualifying personnel by other than observation of on-the-job performance.
2. **49 CFR §192.517(a)** – Each operator shall make, and retain for the useful life of the pipeline, a record of each pipeline segment test performed under §192.505 and 192.507. The record must contain specific test information specified in the regulation. Johnson County Gas failed to maintain records adequate to show that it tested two segments of plastic pipe used to make excavation damage repairs.
3. **49 CFR §191.11(a)** – Each operator of a distribution pipeline system must submit an annual report on DOT Form PHMSA¹ F 7100.1-1 each year, no later than March 15. At the time of the inspection, Johnson County Gas had not submitted the report.

¹ "PHMSA" refers to the United States Pipeline and Hazardous Materials Safety Administration (PHMSA).

On July 6, 2017, Staff issued a Demand for Remedial Measures and Penalty Assessment, in which it cited Johnson County Gas for the above-described violations, prescribed required remedial measures, and found that Johnson County Gas should be assessed a civil penalty under KRS 278.992(1) in the amount of \$22,500. On August 7, 2017, Johnson County Gas, by counsel, submitted a response to the demand letter. Included with the response were copies of operator qualification tests and certificates of completion for each of the individuals who perform covered tasks for the company. Regarding Staff's second finding of violation, Johnson County Gas asserted that 49 CFR §192.517(a) is inapplicable because its pipeline system is comprised entirely of plastic pipe. Johnson County Gas also provided a copy of its gas distribution system annual report for 2016, which indicates it was submitted to PHMSA on March 7, 2017.

On May 4, 2018, Staff conducted a follow-up inspection of the Johnson County Gas system. Staff determined that Johnson County Gas has taken measures to cure the violations cited in the July 6, 2017 demand letter.

Based on the additional information provided by Johnson County Gas in response to the demand letter and Staff's follow-up inspection, it is Staff's revised determination that Johnson County Gas violated the following federal pipeline safety standards:

1. **49 CFR §192.807** – Each operator shall maintain records that demonstrate compliance with 49 CFR Part 192, Subpart N – Qualification of Pipeline Personnel. Johnson County Gas failed to maintain records demonstrating compliance with Subpart N for three individuals performing covered tasks.
2. **49 CFR §192.517(b)** – Each operator shall maintain a record of each test of a plastic pipe segment required by 49 CFR §192.513 for at least five years. Johnson County Gas failed to maintain records adequate to show that it tested two segments of plastic pipe used to make excavation damage repairs.

REMEDIAL MEASURES

To address the pipeline safety violations cited in this letter, Johnson County Gas must take the following remedial measures:

- Within 60 days of the date of this letter, Johnson County Gas shall file with the Commission its written program for the qualification of individuals performing covered tasks on Johnson County Gas's distribution system. Johnson County Gas's written qualification program shall comply with 49 CFR §192.805 and shall identify specific intervals at which re-valuation of individuals performing covered tasks is needed.

- Qualification records maintained pursuant to 49 CFR §192.807 shall include qualification dates by individual for each covered task performed by the individual.
- Johnson County Gas shall contract with a third party, approved by Staff in advance, to provide training and evaluation services to qualify or requalify all individuals performing covered tasks on Johnson County Gas's distribution system. Johnson County Gas shall notify Staff by email within 30 days of hiring a third party to provide qualification services.
- If Johnson County Gas hires a third party to perform operator qualification services, Johnson County Gas shall notify Staff by email within 30 days of hiring the third party.
- Johnson County Gas shall maintain records of tests of plastic pipe segments sufficient to identify the specific piece of pipe tested, the MAOP of the segment, and the test pressure.

CIVIL PENALTY

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 not to exceed the maximum civil penalty contained in 49 CFR §190.223, as amended, for each violation for each day that the violation persists. The maximum civil penalty under 49 CFR §190.223 is \$209,002 per violation per day, not to exceed \$2,090,022 for any related series of violations.

In determining the amount of the proposed penalty, Staff considers the assessment factors set forth in KRS 278.992(1): "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." Additionally, Staff considers the assessment factors applied under federal law by the Associate Administrator for Pipeline Safety for PHMSA to determine the amount of the civil penalty for violation of a federal pipeline safety standard.²

² Federal law provides that PHMSA shall consider: (1) the nature, circumstances and gravity of the violation, including adverse impact on the environment; (2) the degree of the respondent's culpability; (3) the respondent's history of prior offenses; (4) any good faith by the respondent in attempting to achieve compliance; and (5) the effect on the respondent's ability to continue in business. The Associate Administrator also may consider: (1) the economic benefit gained from the violation, if readily ascertainable, without any reduction because of subsequent damages; and (2) such other matters as justice may require. See 49 CFR Section 190.225.

Based on its investigation of this matter and consideration of the penalty assessment factors discussed above, Staff concludes that Johnson County Gas should be assessed a civil penalty in the amount of \$1,250. Staff considers each of the violations to be a record-keeping violation that prevents the Commission from determining whether Johnson County Gas is conducting its pipeline operations in compliance with minimum federal pipeline safety standards. Staff considers the corrective measures Johnson County Gas has taken and the fact that Johnson County Gas has a relatively small gas system with 279 customers to be mitigating factors.

If Johnson County Gas does not wish to contest the proposed civil penalty, it should mail or deliver a cashier's check or money order made payable to the "**Kentucky State Treasurer**" in the amount of \$1,250, within 30 days of the date of this letter, to:

Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

Payment of the proposed civil penalty and completion of all remedial measures will satisfy and resolve any and all claims against Johnson County Gas for violation of KRS 278.495, KAR Title 807, or 49 CFR Parts 191, 192 or 199, as well as for any penalty that could be assessed under KRS 278.992(1), arising out of the pipeline safety violations cited herein. Johnson County Gas's payment of the proposed civil penalty will not be considered an admission by Johnson County Gas that it willfully violated any provision of KRS 278.495, KAR Title 807, or 49 CFR Parts 191, 192 or 199. Upon payment of the proposed penalty and completion of remedial measures, the Commission will confirm the resolution of this matter by entry of an order. Payment of the penalty constitutes a waiver by Johnson County Gas of any right to a hearing in any proceeding initiated to close the investigation.

Commission Staff will conduct follow-up inspections as needed to determine Johnson County Gas's compliance with the remedial measures specified herein. Johnson County Gas may be subject to assessment of additional penalties if any violation cited herein persists beyond the time specified in this letter to cure said violation.

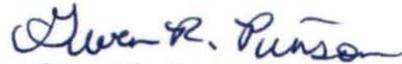
If Johnson County Gas does not pay the proposed civil penalty within 30 days of the date of this letter, the Commission will institute an administrative proceeding against Johnson County Gas and hold a formal hearing during which Johnson County Gas will have an opportunity to present evidence and show cause why it should not be subject to penalties under KRS 278.992(1) for the pipeline safety violations cited herein.

Mark David Goss
December 4, 2018
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This demand letter addresses only those matters specifically referred to in this document. This demand letter does not waive or otherwise affect any obligations or liabilities that may result from other activities by Johnson County Gas.

If you have any questions, please contact John Park at 502-782-2589.

Sincerely,



Gwen R. Pinson
Executive Director

*Johnson County Gas Company, Inc.
P. O. Box 447
Betsy Layne, KY 41605

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