

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CLOSURE OF INVESTIGATION – B & H GAS)	CASE NO.
COMPANY, INC.)	2019-00122

ORDER

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

Commission Staff (Staff) conducted a standard periodic inspection of the distribution system of B & H Gas in March 2017. On March 31, 2017, Staff issued an inspection report (Inspection Report) that cited B & H Gas 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, B & H Gas submitted, by counsel, a response to the Demand Letter. On May 4, 2018, Staff conducted a follow-up inspection of the B & H Gas distribution system.

Based on the additional information provided by B & H 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. B & H Gas paid the proposed penalty and completed all remedial measures required by Staff in the Revised Demand Letter.

The Commission finds that B & H Gas 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. B & H Gas'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. B & H Gas's payment of Staff's proposed penalty is not an admission by B & H Gas 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

Case No. 2019-00122

ATTACHMENT

ATTACHMENT TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2019-00122 DATED **APR 15 2019**

FOUR PAGES TO FOLLOW



Matthew G. Bevin
Governor

Charles G. Snaveley
Secretary
Energy and Environment Cabinet

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Chairman

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Talina R. Mathews
Commissioner

December 4, 2018

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

Re: B & H Gas Company, Inc.
Operator ID 1985

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

Dear Mr. Goss,

On March 24, 28 and 29, 2017, Commission Staff (Staff) conducted a standard periodic inspection of the gas distribution system of B & H Gas Company, Inc. (B & H). 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. B & H 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. B & H failed to maintain records demonstrating compliance with Subpart N for three individuals performing covered tasks.
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, B & H 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 B & H for the above-described violations, prescribed required remedial measures, and found that B & H should be assessed a civil penalty under KRS 278.992(1) in the amount of \$22,500. On August 7, 2017, B & H, 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, B & H asserted that 49 CFR §192.517(a) is inapplicable because its pipeline system is comprised entirely of plastic pipe. B & H 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 B & H gas system. Staff determined that B & H has taken measures to cure the violations cited in the July 6, 2017 demand letter.

Based on the additional information provided by B & H in response to the demand letter and Staff's follow-up inspection, it is Staff's revised determination that B & H 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. B & H 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. B & H failed to maintain records adequate to show that it tested four segments of plastic pipe used to make excavation damage repairs.

REMEDIAL MEASURES

To address the pipeline safety violations cited in this letter, B & H must take the following remedial measures:

- Within 60 days of the date of this letter, B & H shall file with the Commission its written program for the qualification of individuals performing covered tasks on B & H's gas distribution system. B & H's written qualification program shall comply with 49 CFR §192.805, and specifically shall identify the 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.

- B & H 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 B & H's gas distribution system. B & H shall notify Staff by email within 30 days of hiring a third party to provide qualification services.
- B & H 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 and date.

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

Based on its investigation of this matter and consideration of the penalty assessment factors discussed above, Staff concludes that B & H should be assessed a civil penalty in the amount of \$1,750. Staff considers each of the violations to be a record-keeping violation that prevents the Commission from determining whether B & H is conducting its pipeline operations in compliance with minimum federal pipeline safety standards. Staff considers the corrective measures B & H has taken and the fact that B & H has a relatively small gas system with 250 customers to be mitigating factors.

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.

If B & H 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 \$1,750, 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 B & H 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. B & H's payment of the proposed civil penalty will not be considered an admission by B & H 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 B & H 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 B & H's compliance with the remedial measures specified herein. B & H 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 B & H does not pay the proposed civil penalty within 30 days of the date of this letter, the Commission will institute an administrative proceeding against B & H and hold a formal hearing during which B & H 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.

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

Sincerely,



Gwen R. Pinson
Executive Director

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Betsy Layne, KY 41605

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