

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

VALLEY GAS, INC.'S POST-HEARING RESPONSE

Valley Gas, Inc. (“Valley Gas”), by counsel, submits the following as its Response to Commission Staff’s Post-Hearing Brief dated June 10, 2022.

**1. The Staff has Failed to Identify Why Valley Gas is Being Penalized in an Amount Greater than Other Gas Operators for the Same Violations.**

In its Post-Hearing Brief, the Staff acknowledges that “[r]emaining at issue, therefore, if whether the Commission should assess Valley Gas a civil penalty under KRS 278.992(1) for the violations and, if so, the amount of the penalty.” Staff Post-Hearing Brief at 5.

The Staff then goes on to correctly cite to KRS 278.992(1) for the factors for the Commission to consider in determining the amount of the proposed penalty, including “the size of the business of the person charges, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of the violation.” Staff Post-Hearing Brief at 5-6. However, the Staff has completely failed to address why Valley Gas is being penalized in an amount greater than other gas operators which are larger than Valley Gas, for the same violations, and after Valley Gas’s good faith attempt (and ultimate success) in achieving compliance after notification of the violations.

The first violation cited in the Inspection Report is a violation of 49 CFR § 192.605(a), which states:

*General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response... This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year.*

The Staff's reported finding regarding Valley Gas' alleged violation of the above Safety Standard is "Valley Gas failed to conduct an annual review of its written operations and maintenance procedures." Furthermore, the Staff found that this violation is a repeat violation from the previous inspection of Valley Gas conducted in September 2019.

However, in *In the Matter of: City of Augusta Alleged Failure to Comply with KRS 278.495 & 49 C.F.R. Parts 191 & 192, No. 2019-00188*, 2021 WL 2322454, at \*2 (June 2, 2021), the Commission assessed a civil penalty to the City of Augusta ("Augusta") in the amount of \$1,000, finding "Augusta's operation and maintenance plan does not meet all requirements of 49 C.F.R. § 192.605." Augusta provides retail gas service to 550 customers, which is larger than Valley Gas, and had a long history of willfully ignoring known safety deficiencies. *Id.* at 3.

Here, the operation and maintenance procedures that Valley Gas had in place during the time of the inspection have been deemed to be sufficient, but the failure to review those operation and maintenance procedures is why Valley Gas has been penalized. Surely the mere failure to review adequate procedures is less serious of a violation than having noncompliant procedures in the first place. Yet and still, the Staff continues to penalize Valley Gas more than Augusta for the same violation, without any support for this inconsistency.

Another example of inconsistent enforcement and assessment of penalties is the amount of the civil penalty assessed against Valley Gas for 49 CFR § 192.615(b)(2). 49 CFR § 192.615(b)(2) states:

*Each Operator shall... Train the appropriate operating personnel to assure that they are knowledgeable of the emergency procedures and verify that the training is effective.*

The Staff's reported finding regarding Valley Gas' alleged violation of the above Safety Standard is "Valley Gas failed to conduct emergency response training."

The civil penalty assessed against Valley Gas for the alleged violation of 49 CFR § 192.615(b)(2) is disproportionate to civil penalties assessed against other gas companies by this Commission for the same violation. The Staff has assessed a civil penalty of \$20,000 to Valley Gas due to this alleged violation. In *Augusta*, the Commission penalized Augusta only \$5,000 for the exact same violation. In *In the Matter of: 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*, No. 2019-0065, 2021 WL 795440, at \*4 (Feb. 25, 2021), this Commission assessed only a \$10,000 penalty for Drakesboro's failure to train personnel on emergency procedures or ensure the training was effective.

As stated above, Augusta provides retail gas service to 550 customers, which is larger than Valley Gas, and had a long history of willfully ignoring known safety deficiencies. *Augusta*. at 3. Furthermore, Drakesboro Natural Gas Company offered retail gas service to approximately 667 customers and the Staff found that "Drakesboro's was not able to produce any record that it trained personnel on emergency procedures or that the training was effective." *Drakesboro*, at 24.

Here, Valley Gas has been penalized in an amount that is twice as much as the penalty in *Drakesboro* and four times more than the penalty assessed in *Augusta*, without any explanation of how the Valley Gas violation is different than either the *Augusta* or *Drakesboro* violations. Although the Staff found this alleged violation to be of a serious nature, the violations in *Augusta* and *Drakesboro* were likewise deemed serious, and this is not a repeat violation of Valley Gas.

In an effort to avoid reciting the same arguments made in Valley Gas' own Post-Hearing Brief, Valley Gas directs the Commission to look to Valley Gas' Post-Hearing Brief for a more

thorough analysis, but to understand that the Staff is accessing significantly inconsistent civil penalties for the same violations, to a smaller gas operator which has taken substantial remedial efforts to achieve compliance, without any justification or support for this differing assessment.

**2. The Proposed Assessed Civil Penalty Should be Reduced for the Good Faith Remedial Measures Taken by Valley Gas in Attempting to Achieve Compliance.**

The Staff, in its Post-Hearing Brief, recognizes that “[t]he Commission in the past has taken into consideration the cost of pipeline safety improvements in determining the amount of a penalty under KRS 278.992(1).” PSC Post-Hearing Brief, at 8. However, the Staff goes further to claim that “not all corrective measures warrant an abatement or suspension of a civil penalty, and that expenditures necessary for an operator simple to achieve compliance with legal obligations do not support compromise of a penalty.” *Id.* The Staff concludes that “the costs Valley Gas has incurred to date are in the nature of ordinary compliance costs and do not justify a reduction in any penalty.” *Id.*

As stated above, one of the factors for the Commission to consider is “the good faith of the person charged in attempting to achieve compliance, after notification of the violation.” KRS 278.992(1). The Staff argues that ordinary compliance costs should not result in a reduction to the penalty, which completely contradicts the factor outlined in KRS 278.992(1) and would render this factor of no effect.

KRS 278.992(1) clearly gives the Commission the obligation to consider “the good faith of the person charged in attempting to *achieve compliance*, after notification of the violation.” (emphasis added). The Staff points to certain invoices provided by Valley Gas, including “invoices from USDI and journal entries that include charges for assistance in responding to DOI’s 2021 inspection and the findings of violation” as examples of services that the Staff does not consider to be remedial measures. If viewed through the lens of a “but-for” analysis, though, this expense

clearly would not have existed but-for the citations being addressed. Valley Gas should be credited for not only addressing the citations, but for making the expense to engage a company to ensure that the citations were timely and properly addressed. As another example, Valley Gas has provided an invoice in the amount of \$8,520.00 which directly applies to, “Test Reg Stations, Install Testing Provisions Where Required, Reconfigure 2115 Bewleyville Rd Station, Read CP Test Stations, Perform Leak Survey/Business Dist & Zone 3, Rebuild 3” Mooney Reg & Pilot at Town Border Station, Replace Liq Site Glass Gauge, Install Reg & Relig Valve, Inst...” (Valley Gas Post-Hearing Brief at Exhibit 15 – 12169USDI). This expenditure, along with a number of other expenditures made by Valley Gas as outlined in its initial Post-Hearing Brief, goes directly to attempting to achieve compliance after notification of a violation.

In *Augusta*, the Commission gave Augusta a credit “for the purchase of a new odorometer in the amount of \$4,833 and the redesign and rebuilding of four regulator stations in the amount of \$5,170...” *Augusta*, at 8. However, the Staff has still recommended that none of the expenditures made to achieve compliance should be credited, other than the expenditures for operator compliance software that the Staff considers a “proactive step”. PSC Post-Hearing Brief, at 9. While Valley Gas certainly believes it should be credited for the proactive steps that go above and beyond achieving compliance, Valley Gas should also be credited for expenditures that go toward attempting to achieve compliance, after notification of the violation, as KRS 278.992(1) authorizes.

### **CONCLUSION**

In light of the foregoing, Valley Gas maintains that the calculation of the total penalty amount and reductions for expenditures contained within Valley Gas’ own Post-Hearing Brief remains accurate and the Commission should follow.

However, in the alternative, if the Commission does not agree with Valley Gas' calculation, Valley Gas asserts that the total amount that the Commission determines after lowering of the amount in accordance with Section 1 above, should further be credited and lowered for the expenditures that the Commission deems are made to achieve compliance, and any remaining amount thereafter, if any, should be suspended contingent upon Valley Gas using a compliance app approved in writing by the Staff.

Respectfully submitted,

*/s/ Parker M. Wornall*

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**CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing was filed via upload to the PSC Portal on this day of June 24, 2022, thereby sending notice to all counsel of record.

/s/ Parker M. Wornall  
Counsel for Respondent