

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND	)	
ELECTRIC COMPANY FOR APPROVAL OF STATE	)	CASE NO.
WAIVER OF THE REASSESSMENT INTERVAL	)	2017-00482
REQUIRED BY 49 C.F.R §192.939	)	

ORDER

Louisville Gas and Electric Company (LG&E) owns and operates a 53-mile intrastate natural gas transmission pipeline that runs from Lebanon, Kentucky, to Louisville, Kentucky (Calvary Pipeline). In accordance with 49 C.F.R Section 192.939, LG&E is required to conduct periodic assessments of the integrity of certain segments totaling 5.93 miles of the Calvary Pipeline. On December 28, 2017, LG&E filed an application for a state waiver of the reassessment interval required by 49 C.F.R. Section 192.939 for these segments of the Calvary Pipeline. In its application, LG&E requests a seven-month extension of the deadline to complete the reassessment from December 31, 2017, to August 31, 2018.

On April 18, 2018, LG&E and Commission Staff (Staff) participated in an informal conference (IC) to discuss the company's efforts to assess the integrity of the Calvary Pipeline using in-line inspection (ILI) tools. On May 22, 2018, LG&E filed a letter with an update on the status of its efforts to complete reassessment of the pipeline. On August 29, 2018, LG&E filed notice that it had completed the integrity assessment of not only the required 5.93 miles of the Cavalry Pipeline but the entire 53 miles as of the end of July

2018, and requested its application for a waiver of the reassessment interval be approved and that this matter be closed.

On April 9, 2019, Staff issued its first request for information to LG&E. LG&E filed its responses to the requests on April 18, 2019. In its response to Question 7, LG&E states that it does not request a hearing in this matter and requests this matter be submitted for a decision on the record. No motions to intervene or comments on LG&E's application have been filed in this matter, and the Commission finds that there is sufficient information in the record to make a decision. Therefore, this matter stands submitted for a decision.

#### BACKGROUND

LG&E is a corporation organized and existing under the laws of the Commonwealth of Kentucky that furnishes electric and natural gas services in Metro Louisville and adjacent territory in Kentucky, including 17 Kentucky counties,<sup>1</sup> and is a utility subject to Commission jurisdiction.<sup>2</sup> LG&E is further subject to the Commission's jurisdiction to regulate the safety of its natural gas facilities and to enforce minimum federal pipeline safety standards adopted by the United States Department of Transportation pursuant to 42 U.S.C. Section 40601, *et seq.*<sup>3</sup>

In its Application, LG&E states that the 53-mile Calvary Pipeline is located in road rights-of-way at some points and traverses private property in others. According to LG&E,

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<sup>1</sup> Annual Report of Louisville Gas and Electric Company to the Public Service Commission for the Calendar Year Ended December 31, 2017 (Annual Report), at 4. The counties that LG&E serves in Kentucky include Barren, Bullitt, Green, Hardin, Hart, Henry, Jefferson, Larue, Marion, Meade, Metcalfe, Nelson, Oldham, Shelby, Spencer, Trimble, and Washington.

<sup>2</sup> KRS 278.010(3).

<sup>3</sup> KRS 278.495(2).

the mileage of the Calvary Pipeline by class is as follows: Class 1 – 25.6 miles; Class 2 – 8.7 miles; Class 3 – 19.1 miles; and Class 4 – 0 miles. LG&E states that 5.93 miles of the pipeline in Class 3 areas are located in a High Consequence Area (HCA), as determined by calculating the pipeline potential impact radius. LG&E states that 85 percent of the segments of pipe in an HCA were constructed in the 1980s and 1990s, with 6 percent constructed in the 1970s, 3 percent in the 2000s, and 6 percent in the 2010s. All of the pipe located in an HCA is made of 12-inch diameter steel.<sup>4</sup>

According to LG&E, the Calvary Pipeline is divided by the Bardstown regulator station. LG&E states that the portion of the pipeline north of Bardstown regulator station has a maximum allowable operating pressure (MAOP) of 400 psig, and the portion of the pipeline south of the regulator station has an MAOP of 720 psig.<sup>5</sup> LG&E states that it operated the pipeline north of the Bardstown regulator station at a recent peak of 394 psig on January 4, 2017 (1.5% below its MAOP) and that it operated the southern portion at a recent peak of 512 psig on February 19, 2015 (28.9% below its MAOP).<sup>6</sup>

LG&E states in its application that it completed a baseline assessment of the Calvary Pipeline in 2010. LG&E states that as part of this assessment, it ran a geometry ILI tool in 2009 and a magnetic flux leakage (MFL) ILI tool in 2010. According to LG&E, the results from the ILI runs indicated that the pipeline was in good condition with the exception of a 0.6-mile segment, which LG&E replaced based on the ILI data.<sup>7</sup> LG&E

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<sup>4</sup> Application at 5.

<sup>5</sup> *Id.* at 6.

<sup>6</sup> *Id.* at 9.

<sup>7</sup> *Id.* at 6.

asserts that it attempted to conduct a reassessment of the Calvary Pipeline in 2017 using ILI tools but that all of the metal loss tool runs failed. Specifically, LG&E states that it attempted to run ILI tools through the Calvary Pipeline as follows:

- 7/10/2017 Cleaning tool run through pipeline.
- 7/12/2017 Gauge plate tool run through pipeline.
- 7/18/2017 Geometry tool run through the pipeline, but run determined to be unsuccessful. The tool became stuck in pipeline ells during the run. A joint connecting two sections of the tool sheared, splitting the tool into two pieces.
- 8/4/2017 Replacement of pipeline fittings believed to be the most challenging to pass in-line inspection tools began.
- 9/29/2017 Replacement of seven fittings completed.
- 10/2/2017 Geometry tool successfully run through the pipeline.
- 10/4/2017 Metal loss tool run through the pipeline, but run determined to be unsuccessful. The onboard computer shut off during the tool run. The vendor indicated the computer shutdown was due to tool vibration during the run.
- 10/24/2017 Metal loss tool run through the pipeline, but run determined to be unsuccessful. The odometer wheels broke off of the tool
- 12/4/2017 Metal loss tool run through the pipeline, but run determined to be unsuccessful. The odometer wheels broke off the tool during the run. The vendor indicated the wheel became pinched against the tool while passing through a pipeline ell.<sup>8</sup>

LG&E asserts that it was able to identify only one vendor, T.D. Williamson (TDW), that could address the technical issues encountered during the attempted metal loss tool runs. LG&E states that TDW made modifications to the metal loss tool in an attempt to prevent the odometer wheels from breaking off the tool. LG&E states that it also consulted with TDW about using a dual diameter metal loss tool capable of passing

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<sup>8</sup> *Id.* at 7–8.

through both 10-inch and 12-inch diameter pipelines since a tool capable of passing through pipe smaller than the 12-inch Calvary Pipeline would be less likely to have odometer wheel issues like those experienced in 2017.<sup>9</sup>

LG&E states in its application that it would not attempt further ILI tool runs in 2017 because the ability to maintain product supply during the winter heating season would be impacted if the tool were to become stuck in the pipe. LG&E further asserts that flow conditions during the heating season would cause data quality issues.<sup>10</sup>

LG&E states that it has sought to comply with the requirement to reassess segments of the Calvary Pipeline located in an HCA (covered segments)<sup>11</sup> by using ILI tools because an in-line inspection of the pipe provides more comprehensive and quantitative data regarding the integrity of the pipeline than other allowed reassessment methods, specifically pressure testing and direct assessment.<sup>12</sup> LG&E asserts that in any event, it could not meet the December 31, 2017 deadline to complete reassessment using either pressure testing<sup>13</sup> or direct assessment.<sup>14</sup>

LG&E states that to ensure the integrity of the covered segments pending completion of reassessment using ILI tools, it would restrict pipeline operating pressure

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<sup>9</sup> Application at 8.

<sup>10</sup> *Id.*

<sup>11</sup> 49 C.F.R. § 192.903 defines “covered segment” or “covered pipeline segment” as a segment of gas transmission pipeline located in an HCA.

<sup>12</sup> *Id.* at 6–7.

<sup>13</sup> LG&E asserts that the earliest date a pressure test could begin likely would be June 2018 due to system supply needs and that pressure testing of all covered segments likely could not be completed in 2018.

<sup>14</sup> LG&E estimates that if vendors have personnel available, a direct assessment could not be completed until April 2018.

to no more than 394 psig on the portion of the Calvary Pipeline north of the Bardstown regulatory station and to no more than 512 psig on the southern portion. LG&E notes that these restrictions are equivalent to recent peak pressures at which the northern and southern portions were safely operated. LG&E states it would not remove these pressure restrictions until it is ready to conduct an in-line inspection of the pipeline, at which time the restrictions would be lifted to allow flexibility during in-line operations. LG&E asserts that restricting pressure to less than these recent operating peak pressures is not possible without affecting system reliability. Additionally, LG&E asserts that these operating pressures are required on the Calvary Pipeline to receive gas from the Tennessee Gas Pipeline Company at the Calvary City Gate Station and to deliver gas to the Louisville distribution system.<sup>15</sup>

In addition to restricting the operating pressure on the Calvary Pipeline, LG&E states in its Application that it would conduct leakage surveys of covered segments of the pipeline twice a month until reassessment was completed. LG&E correctly notes that this frequency of surveys exceeds applicable regulatory requirements.<sup>16</sup>

At the IC with Staff held on March 26, 2018, LG&E discussed the unsuccessful attempts in 2017 to reassess the integrity of the Calvary Pipeline using ILI tools. LG&E informed Staff that it intended to attempt another metal loss tool run the first week in May 2018. LG&E stated that it typically takes two months to receive a report from the tool

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<sup>15</sup> Application at 9–10.

<sup>16</sup> *Id.* at 10.

vendor with the results of the assessment. LG&E explained that even if the tool run is successful, the company would not know if the run produced usable data until the report from the vendor is received. Staff asked LG&E to advise the Commission after the May tool run if the tool is successfully run through the pipe and to provide a status update upon receipt of the report with the results of the run.<sup>17</sup>

On May 22, 2018, LG&E filed a status update in which it reported that it conducted a metal loss tool run on May 2, 2018. LG&E advised that some of the tool sensors were damaged in the process, and that LG&E was unable to obtain all of the information needed. LG&E stated that it was working with the vendor to resolve the problem and had scheduled another run for later that month.<sup>18</sup>

On August 29, 2018, LG&E filed another status update. LG&E reported that it completed the in-line inspection at the end of July, and that the metal tool vendor confirmed the inspection produced sufficient data to assess the integrity of the pipeline.<sup>19</sup>

In its responses to Staff's First Request for Information, LG&E confirms that it completed inspection of the Calvary Pipeline using dent or deformation (geometry) tools in 2017, and completed metal loss tool inspection of the Calvary Pipeline in 2018.<sup>20</sup> Although only required to conduct an integrity reassessment of covered segments of the

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<sup>17</sup> Memorandum dated April 23, 2018 for Informal Conference of April 18, 2018.

<sup>18</sup> LG&E Status Update Letter dated May 22, 2018.

<sup>19</sup> LG&E Notice of Assessment Completion dated August 29, 2018.

<sup>20</sup> LG&E's Response to Commission Staff's First Request for Information, at Response to Request Nos. 2 and 4.

Calvary Pipeline, LG&E elected to assess the integrity of the entire pipeline.<sup>21</sup> LG&E states that in its 2018 Annual Report, Natural or Other Gas Transmission and Gathering Systems, Form PHMSA 7100.2-1 (2018 Annual Report), it reported that it discovered and excavated 12 anomalous conditions on the Calvary Pipeline through the integrity assessment in 2018, one of which was located within an HCA.<sup>22</sup> According to LG&E, the anomalous condition within an HCA on the Calvary Pipeline reported on the 2018 Annual Report was a <3 percent dent on the bottom third of a segment of pipe.<sup>23</sup>

LG&E states that it reported this dent on the 2018 Annual Report as a scheduled condition because the dent did not meet the criteria for an immediate, one-year, or monitored condition as defined in 49 C.F.R. Section 192.939(d). LG&E states, however, that upon further review it determined that the dent did not meet the definition of, and should not have been reported as, a scheduled condition and that this error will be corrected on a supplemental report for 2018. LG&E states that it nonetheless cut out and replaced the section of pipe with the dent because the ILI tool vendor believed the dent might have interfered with the metal loss tool run.<sup>24</sup>

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<sup>21</sup> The Commission notes that PHMSA has proposed amending pipeline safety regulations to expand the scope of integrity management requirements to certain segments of transmission lines and gathering lines located outside of HCAs. Specifically, PHMSA has proposed to require periodic assessments of the integrity of all pipeline segments that are located in a class 3 or class 4 location or in a newly-defined “moderate consequence area.” See Notice of Proposed Rulemaking, 81 Fed. Reg. 20722 (2016). In its notice of proposed rulemaking, PHMSA notes that “coincident with integrity assessments of HCA segments, industry has, as a practical matter, assessed substantial amounts of pipeline in non-HCA segments. This is due, in large part, because ILI or pressure testing, by their nature, assess large continuous segments that may contain some HCA segments but that could also contain significant amounts of non-HCA segments.” *Id.* at 20815.

<sup>22</sup> LG&E’s Response to Commission Staff’s First Request for Information, at Request No. 4.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

## DISCUSSION

The Pipeline Safety Improvement Act of 2002, codified at 49 U.S.C. Section 60109, directs the Secretary of Transportation to prescribe “standards to direct an operator’s conduct of a risk analysis and adoption and implementation of an integrity management program.”<sup>25</sup> In particular, Subsection (c)(3)(A) of the statute mandates that an operator’s integrity management program provide for a baseline assessment of the integrity of each covered segment<sup>26</sup> to identify and analyze potential threats to the integrity of the segment.<sup>27</sup> Subsection (c)(3)(B) requires the integrity management program to provide a process for periodic reassessment of each covered segment at a minimum of once every seven calendar years.

Pursuant to this statutory directive, the Office of Pipeline Safety in the Pipeline and Hazardous Materials Safety Administration (PHMSA) promulgated Subpart O of 49 C.F.R. Part 192, which prescribes minimum requirements for integrity management programs on covered segments of natural gas transmission pipelines. A covered pipeline segment, as defined by 49 C.F.R. Section 192.903, is a segment of transmission pipeline located in an HCA. The regulation has two methods for establishing an area is an HCA, one of which provides that an area within a potential impact radius containing 20 or more buildings intended for human occupation is an HCA.

Under 49 C.F.R. Section 192.907, each transmission pipeline operator is required to develop and implement a written integrity management program that contains all the

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<sup>25</sup> 49 U.S.C. § 60109(c)(2)(A).

<sup>26</sup> 49 C.F.R. § 192.911(b).

<sup>27</sup> *Id.* at § 192.919(a).

elements set forth in Section 192.911 to address the risks on each covered pipeline segment. Among other elements, an operator's integrity management program must provide for a baseline assessment of the integrity of each covered segment<sup>28</sup> as well as a process for continual evaluation and reassessment of each covered segment, at the intervals specified in Section 192.939.<sup>29</sup>

Pursuant to 49 C.F.R Section 192.937(1), an operator must complete the first reassessment of a covered pipeline segment by no later than seven calendar<sup>30</sup> years after the baseline assessment of that covered segment, unless an evaluation of the segment identifies threats that warrant an earlier reassessment. An operator may conduct the integrity reassessment of the covered pipeline segment using ILI tools, by pressure testing the pipeline, through direct assessment, or using other technology the operator demonstrates can provide an equivalent assessment of the segment.<sup>31</sup>

In certain circumstances, an operator may obtain a waiver of the minimum reassessment interval. Authorized under 49 U.S.C. Section 60109(c)(5), PHMSA can "waive or modify any requirement for reassessment of a facility . . . for reasons that may include the need to maintain local product supply or the lack of internal inspection devices" provided such waiver "is not inconsistent with pipeline safety." If an operator provides

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<sup>28</sup> 49 C.F.R. § 192.911(b).

<sup>29</sup> *Id.* at (f).

<sup>30</sup> Effective January 3, 2012, Congress amended Title 49 of the United States Code to specify that pipeline integrity reassessment intervals are to be calculated using calendar rather than actual years. See 49 U.S.C. § 60109(c)(3)(B) (providing that periodic reassessments must be conducted "at a minimum of once every 7 calendar years").

<sup>31</sup> 49 C.F.R § 192.937(c).

sufficient justification of the need for the extension, PHMSA is authorized to extend a reassessment deadline “for an additional six months.”<sup>32</sup>

Pursuant to this authority, PHMSA promulgated 49 C.F.R. Section 192.943, which provides that an operator may be able to justify a longer reassessment period for a covered pipeline segment if one of the following conditions applies:

1. An operator that uses internal inspection as an assessment method cannot obtain necessary ILI tools within the required reassessment period if the actions the operator is taking in the interim ensure the integrity of the covered segment;<sup>33</sup> or
2. An operator cannot maintain local product supply if it conducts the reassessment within the required interval.<sup>34</sup>

According to 49 C.F.R. Section 192.943(b), an operator must apply for a waiver of the reassessment interval in accordance with 49 U.S.C. Section 60118 and at least 180 days before the end of the period to complete the reassessment, unless local product supply issues make this filing deadline impracticable. If local supply issues make it impracticable for the operator to apply for a waiver at least 180 days in advance of the end of the required reassessment interval, the operator must apply for the waiver as soon as the need for the waiver becomes known.<sup>35</sup>

Under 49 U.S.C. Section 60118(d), a state with a gas safety program certified under 49 U.S.C. Section 60105 has the authority to waive compliance with a federal safety

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<sup>32</sup> 49 U.S.C. § 60109(c)(3)(B).

<sup>33</sup> *Id.* at § 192.943(a)(1).

<sup>34</sup> *Id.* at § 192.943(a)(2).

<sup>35</sup> *Id.* at (b).

standard, such as the reassessment interval set forth in 49 C.F.R. Section 192.937, to the same extent as PHMSA.<sup>36</sup> The state must give PHMSA notice of the waiver at least 60 days before its effective date. If PHMSA makes a written objection before the effective date of the waiver, the waiver is stayed, and the final decision on the waiver is made by PHMSA.<sup>37</sup>

In this case, LG&E states that using the method set forth in 49 C.F.R. Section 192.903, it determined that 5.93 miles of the Calvary Pipeline are located in an HCA, and are therefore covered pipeline segments for purposes of 49 C.F.R. Part 192, Subpart O.<sup>38</sup> LG&E states that it completed the first assessment of the Calvary Pipeline using ILI tools in 2010. The Commission finds that the 2010 assessment was the baseline assessment of covered segments of the Calvary Pipeline, and that the deadline under 49 C.F.R. Section 192.939 for LG&E to complete a reassessment of the integrity of the covered segments was December 31, 2017. LG&E seeks a waiver of the reassessment interval to August 31, 2018.

LG&E filed its request for a waiver of this reassessment deadline on December 28, 2017, which is less than 180 days before the deadline to complete the reassessment. LG&E asserts that since product supply issues, not the lack of availability of ILI tools, made it impractical to reassess the pipeline's integrity by the end of the prescribed reassessment period, the requirement to apply for a waiver at least 180 days before the

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<sup>36</sup> 49 U.S.C. 60118(d).

<sup>37</sup> *Id.*

<sup>38</sup> Application at 5. LG&E notes that all HCAs on the Calvary Pipeline are in Class 3 locations.

end of the period is not applicable.<sup>39</sup> The Commission finds that LG&E's failure to complete reassessment of covered segments of the Calvary Pipeline by the December 31, 2017 deadline was not due to an inability to obtain ILI tools to assess the pipe. In fact, LG&E obtained and ran or attempted to run cleaning, gauge plate, geometry and metal loss ILI tools through the pipeline in the six months preceding the deadline. Rather, the Commission finds that LG&E's failure to complete reassessment by the deadline was due to multiple unsuccessful runs of the metal loss tool and the time constraints imposed by product supply issues. As such, the Commission finds that LG&E was required to apply as soon as the need for the waiver became known.<sup>40</sup>

LG&E states that it attempted metal loss tool runs three times before the reassessment deadline: on October 4, October 24, and December 4, 2017.<sup>41</sup> According to LG&E, the last attempt failed when the tool's odometer wheels broke off during the run.<sup>42</sup> According to LG&E, it did not schedule further runs for December due to a concern that adequate product supply for the winter heating season could not be maintained should the tool become stuck in the pipe.

The Commission finds that in light of the constraints imposed by the approaching winter heating season, LG&E's need for a waiver of the reassessment interval became known, at the latest, when the December 4, 2017 metal loss tool run failed. Additionally, in light of the time it takes after an ILI tool is run through a pipeline to determine if the run

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<sup>39</sup> Application at 8.

<sup>40</sup> 49 C.F.R. § 192.943(b).

<sup>41</sup> Application at 7–8.

<sup>42</sup> Application at 8.

produced usable data—typically two months according to LG&E representatives at the IC with Staff—<sup>43</sup> it would have been prudent for LG&E to seek a waiver after the unsuccessful run on October 24, 2017. LG&E, however, did not file its application until December 27, 2017, which was only four days prior to the deadline, thereby effectively precluding the Commission from considering the application before the deadline. The Commission admonishes LG&E that an untimely application is subject to rejection, and that in the future LG&E should err on the side of caution and apply for a waiver of a reassessment interval at least 180 days prior to the end of the reassessment interval if there is a reasonable likelihood that an extension of the deadline will be necessary.

On the merits of LG&E’s application, the Commission finds that a retroactive waiver of the reassessment interval required by 49 C.F.R. Section 192.939 for covered segments of the Calvary Pipeline is not inconsistent with pipeline safety. First, the Commission finds that the use of ILI tools to conduct integrity reassessment is preferable to assessment by other accepted methods. In fact, the Natural Gas Pipeline Safety Act mandates that the Secretary of the Department of Transportation (DOT) require each new gas transmission line and each replacement of existing transmission pipeline be designed and constructed “in a manner so as to accommodate the passage through such natural gas transmission pipeline . . . of instrumented internal inspection devices (commonly referred to as “smart pigs”).”<sup>44</sup> In proposing regulations to implement this requirement,<sup>45</sup>

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<sup>43</sup> IC Memorandum at 1 (April 23, 2018). See also the comments filed by LG&E on May 1, 2017, in Case No. 2016-00386, in which LG&E noted the approximately two months required to determine if data collected during an ILI tool run is valid.

<sup>44</sup> 49 U.S.C. § 60102(f)(1).

<sup>45</sup> See 49 C.F.R. § 192.150.

the Research and Special Programs Administration (RSPA) of the DOT provided the following background on the benefits of conducting integrity assessment using ILI tools:

Smart pigs have potential benefits in prevention not available through other tools. Texas Eastern Transmission Corporation's conduct of aboveground tests had shown that its 30-inch gas transmission line through Kentucky was adequately protected against corrosion. The operator did not realize, however, that the pipe lay over a strata of rock that shielded it from electrical current intended to stop corrosion. A smart pig, however, detected the presence of generalized corrosion.

Unfortunately, the line was not repaired and on February 31, 1986, it failed due to corrosion, and three injuries and extensive property damage resulted. Nonetheless, the accident shows that aboveground corrosion surveys may not reveal all corrosion problems. In such occasions, usually where rock, a metallic casing, or disbonded coating shields protective current, a smart pig can detect the presence of corrosion.

The Commission finds that in most instances ILI tools provide more comprehensive and quantitative data than the other permitted assessment methods. The Commission further finds that the collection of more comprehensive integrity assessment data enhances pipeline safety by enabling an operator to conduct a more accurate risk assessment pursuant to 49 C.F.R. Section 192.917(c). A more accurate risk assessment assists an operator to prioritize covered segments for reassessment pursuant to Section 192.937 and to determine what additional preventive and mitigative measures are appropriate for the covered segment pursuant to Section 192.935. The Commission therefore finds that an extension of the reassessment interval to allow LG&E to reassess covered segments of the Calvary Pipeline by internal inspection rather than another method of assessment to be consistent with pipeline safety.

To justify a waiver of the reassessment interval, an operator must demonstrate it is taking appropriate actions in the interim to ensure the integrity of the covered pipeline segment.<sup>46</sup> The Commission finds that restricting operating pressure and performing leak surveys of covered pipeline segments twice a month pending completion of the reassessment were appropriate actions for LG&E to take in the interim to ensure the integrity of the pipeline.

LG&E seeks a waiver of the reassessment interval to August 31, 2018, an eight-month extension. However, as a state authority certified under 49 U.S.C. Section 60105, the Commission may waive compliance with an integrity reassessment interval only “to the same extent” PHMSA may waive compliance.<sup>47</sup> PHMSA’s authority to waive a deadline to complete reassessment of a covered segment is limited to the power “to extend such deadline an additional six-months.”<sup>48</sup>

Specifically, 49 U.S.C. § 60109(c)(3)(B) mandates an integrity reassessment of a transmission pipeline at a minimum of once every seven calendar years using assessment methods described in subsection (c)(3)A, “[s]ubject to” subsection (c)(5). Subsection (c)(5) authorizes PHMSA to waive or modify any requirement for reassessment under subsection (c)(3)(B) upon a determination that “such waiver is not inconsistent with pipeline safety.”

Prior to 2012, there was no temporal limit on PHMSA’s authority to extend the deadline to complete a pipeline integrity reassessment. As part of the Pipeline Safety,

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<sup>46</sup> 49 U.S.C. § 60109(5).

<sup>47</sup> 49 U.S.C. §60118(d).

<sup>48</sup> 49 U.S.C. § 60109(3)(3)(B).

Regulatory Certainty, and Job Creation Act of 2011, however, Congress enacted an amendment to subsection (c)(3)(B) that added a second sentence to the subsection: “[PHMSA] may extend such [reassessment] deadline for an additional 6 months if the operator submits written notice to [PHMSA] with sufficient justification of the need for the extension.” To implement this authority, PHMSA recently published for comment guidance in the form of two frequently asked questions (FAQs) on what constitutes sufficient justification to extend the seven-year reassessment interval. One of these, new FAQ-281, states an extension of the deadline “may not exceed six months.”<sup>49</sup>

LG&E has not addressed this statutory limitation on the maximum length of an extension of the reassessment deadline. Additionally, the Commission acknowledges that it did not address the limitation on its waiver authority and in fact granted an extension of more than six months in Case No. 2016-00386. The Commission nonetheless finds that the statute clearly authorizes a single six-month extension and does not provide for additional extensions of the reassessment deadline. The Commission therefore finds that it lacks power to extend the deadline for LG&E to complete an integrity reassessment of covered segments of the Calvary Pipeline beyond June 30, 2018.

In light of the foregoing, the Commission finds that LG&E’s application for waiver of the reassessment interval for covered segments of the Calvary Pipeline and an extension of the deadline to complete the reassessment interval to August 31, 2018, should be denied. The Commission, however, finds that the deadline to complete reassessment should be extended to June 30, 2018, the maximum extension permitted

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<sup>49</sup> PHMSA Gas Transmission Integrity Management FAQs, FAQ-281, 83 FR 57388-01 (2018) (published November 15, 2018).

by law. As LG&E did not complete the reassessment by June 30, 2018, the Commission finds LG&E in violation of 49 C.F.R. Section 939.

Based on the record in this matter, however, the Commission declines to take enforcement action against LG&E, provided PHMSA does not object to the Commission's waiver of the reassessment interval. As noted, the Commission did not restrict the extension of the reassessment interval to six months in Case No. 2016-00386. Additionally, at the time LG&E filed its application in this case for an extension of the reassessment interval, PHMSA had not yet published for comment its transmission integrity FAQ clarifying that an extension of the reassessment interval is limited to a single six-month period. The federal regulation providing for deviation from reassessment intervals does not itself contain the statutory language limiting any extension of reassessment interval to six months.

IT IS THEREFORE ORDERED that:

1. LG&E's application for an extension until August 31, 2018, of the reassessment interval required by 49 C.F.R. Section 192.939 for covered segments of the Calvary Pipeline is denied.

2. LG&E is granted retroactively an extension until June 30, 2018, of the reassessment interval required by 49 C.F.R. Section 192.939 for covered segments of the Calvary Pipeline.

3. Within thirty days of the date of this Order, LG&E shall certify to the Commission that its written transmission integrity management program provides that:

a. Any request for a waiver of a transmission pipeline integrity reassessment interval shall be filed at least 180 days before the end of the required

reassessment interval, unless local product supply issues make the period impractical, in which case the request shall be filed as soon as the need for the waiver becomes known.

b. Any extension of the deadline to complete a transmission pipeline integrity reassessment is limited to an additional six months.

4. Pursuant to 49 U.S.C. Section 60118(d), the Commission shall give notice to PHMSA of its waiver of the reassessment interval required by 49 C.F.R. Section 192.939 for covered segments of the Calvary Pipeline by providing a copy of this Order to PHMSA for its review at the following address:

Associate Administrator for Pipeline Safety  
U.S. Department of Transportation  
Pipeline and Hazardous Materials Safety Administration  
1200 New Jersey Avenue, SE  
Second Floor, East Building  
Washington, D.C. 20590

6. The Commission's waiver of the reassessment interval required by 49 C.F.R. Section 192.939 for covered segments of the Calvary Pipeline shall not take effect until 60 days after the Commission provides notice of its decision to PHMSA.

7. Any documents filed in the future pursuant to ordering paragraph 2 shall reference this case number and shall be retained in the post-case file.

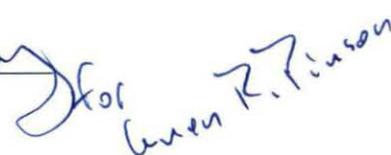
8. This case is hereby closed and will be removed from the Commission's docket.

By the Commission

ENTERED  
JUN 03 2019  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

*for*   
Gretchen R. Pinson

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