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DEC 20 2017

PUBLIC SERVICE  
COMMISSION

December 20, 2017

**HAND DELIVERED**

Gwen R. Pinson  
Executive Director  
Kentucky Public Service Commission  
211 Sower Blvd  
Frankfort, KY 40601

*Re: Louisville Gas and Electric Company – Case No. 2017-00119*

Dear Ms. Pinson:

In accordance with the Commission's November 8, 2017, Order in the above-referenced matter, enclosed please find an original and ten copies of Louisville Gas and Electric Company's Post-Hearing Brief. As always, should you have any questions, please do not hesitate to contact me.

Very truly yours,

Stoll Keenon Ogden PLLC

A handwritten signature in blue ink that reads "Lindsey W. Ingram III".

Lindsey W. Ingram III

Enclosure  
400001.157415/7615914.1

DEC 20 2017

PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

LOUISVILLE GAS AND	)	
ELECTRIC COMPANY	)	
	)	
_____	)	CASE NO. 2017-00119
	)	
ALLEGED FAILURE TO COMPLY	)	
WITH KRS 278.495, 807 KAR 5:022, AND	)	
49 C.F.R. PART 192	)	

**LOUISVILLE GAS AND  
ELECTRIC COMPANY'S POST-HEARING BRIEF**

Louisville Gas and Electric Company ("LG&E" or "Company"), pursuant to the Kentucky Public Service Commission's ("Commission") November 8, 2017, Order, hereby submits this post-hearing brief in this matter.

**I. INTRODUCTION**

The Commission initiated this proceeding by its March 15, 2017, Order. In that Order, the Commission directed LG&E to respond to the Commission Staff's allegations that LG&E: (1) failed to properly install a bolt-style compression coupler on its Ballardsville gas transmission line in January 1998;<sup>1</sup> (2) failed to properly inspect the welding performed as part of that coupler installation;<sup>2</sup> and (3) failed to maintain pressure in the Ballardsville transmission line at levels below Maximum Allowable Operating Pressure ("MAOP").<sup>3</sup> The Commission

<sup>1</sup> March 15, 2017 Order, Allegation 1, pp. 4-5.

<sup>2</sup> *Id.*, Allegation 2, p. 5.

<sup>3</sup> *Id.*, Allegation 3, pp. 5-6.

directed LG&E to respond to those allegations and “show cause” why it should not be subject to the penalties permitted by 49 C.F.R. 192 and KRS 278.992.<sup>4</sup>

In response, LG&E admitted the Commission Staff’s allegations. But LG&E has also shown, through its filings in this case and its testimony at the November 8, 2017, formal hearing, that the Commission should not impose the monetary penalties allowed by law. Indeed, through what LG&E has described as its Plan of Action, it is clear that LG&E has taken swift, robust, and decisive action to ensure that it has sufficiently addressed the issues presented when, on September 17, 2014, the axial separation of the bolt-style coupler installed in January 1998, revealed that such installation was inadequate.

In developing its Plan of Action, LG&E collaborated with one of the country’s foremost experts in the area of the use of couplers in natural gas systems. Under the Plan of Action, LG&E has: (1) removed or will remove all such couplers in its transmission and high-pressure distribution systems; (2) prohibited the use of such couplers going forward except in very limited circumstances and only in lower-pressure environments; and (3) improved its training and communication efforts to minimize the chances of another coupler separation.

LG&E’s actions in response to the separation incident and the subsequent development of its robust Plan of Action demonstrate, without question, that LG&E could not have taken this situation more seriously nor addressed it more thoroughly. Thus, if the goal of a penalty is to “get LG&E’s attention,” it is clear that a penalty is completely unnecessary. In other words, LG&E’s Plan of Action “shows cause” why it should *not* be penalized at all. LG&E’s exhaustive protocols to address the issue demonstrate the utmost good faith and provide sound

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<sup>4</sup> *Id.* at 7.

reasoning for the Commission *not* to impose any monetary penalty. Alternatively, if the Commission decides to impose a penalty, it should be suspended in accordance with well-established Commission precedent.

## II. FACTUAL BACKGROUND

### A. January 5, 1998 to September 17, 2014

On or about January 5, 1998, LG&E personnel were working on LG&E's Ballardsville transmission line near U.S. Highway 42 in Oldham County, Kentucky.<sup>5</sup> The work was performed to fix a gas leak that had developed on that high-pressure transmission line. The work report form indicates that a 3-foot section of 12-inch diameter pipe was replaced and that a coupler was used as part of that work. Although more than one LG&E work crew worked on the job,<sup>6</sup> the work report form itself was prepared by Brian Claypool. D.J. Ball, who is now deceased,<sup>7</sup> was identified as the welder.<sup>8</sup> The installation of the coupler itself was performed by Mr. Ball.<sup>9</sup> The coupler was a 12-inch bolt-style compression coupler.<sup>10</sup> The work was completed, dirt that had been excavated was replaced, and the repair performed well and without incident until September 17, 2014.

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<sup>5</sup> PSC Staff Hearing Exhibit 1 was introduced at the November 8, 2017 hearing and is the work report form for the repair project completed in January 1998.

<sup>6</sup> Hearing Video Transcript, at 12:03:20.

<sup>7</sup> *Id.* at 10:10:00.

<sup>8</sup> PSC Staff Hearing Exhibit 1.

<sup>9</sup> Hearing Video Transcript, at 10:08:10.

<sup>10</sup> The coupler that separated was a bolt-style compression coupler. For purposes of this brief, "coupler" is defined as a bolt-style compression coupler.

Not long after the coupler was installed on the Ballardsville line, LG&E stopped installing those types of couplers on its transmission system.<sup>11</sup> And after that, in approximately the mid-2000s, LG&E began to remove that type of coupler when encountered during the course of ordinary excavation work.<sup>12</sup> That removal process continued and was in place when the September 17, 2014, separation incident occurred.

**B. September 17, 2014 to June 25, 2015**

In September 2014, LG&E was in the midst of a safety initiative designed to enable its transmission lines to be inspected by inline inspection tools.<sup>13</sup> As part of that initiative, LG&E needed to modify its Ballardsville transmission line so that inline inspection tools could travel the line without obstruction.<sup>14</sup> That work led LG&E's contractor, Southern Pipeline Construction Co. ("Southern Pipeline"), to the same area of the Ballardsville line that was repaired in 1998. Southern Pipeline employees began excavating the area to expose the line so the reconfiguration work could be performed. The excavation also exposed the coupler. As work was being concluded for the day on September 17, 2014, the coupler separated. The force of the escaping gas resulted in debris being scattered. That debris caused damage to a passing vehicle and a nearby house. Two Southern Pipeline employees were struck by flying debris, one

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<sup>11</sup> Hearing Video Transcript, at 9:18:05.

<sup>12</sup> *Id.* at 9:21:00.

<sup>13</sup> Grugin Report, p. 1. (After the September 17, 2014, incident, Commission Staff employee Joel Grugin performed his investigation. His August 11, 2016 written report ("Grugin Report") is attached to the Commission's March 15, 2017 Order in this matter.)

<sup>14</sup> Grugin Report, p. 1; Hearing Video Transcript, at 9:10:00.

of whom suffered a fractured arm. The other employee had only minor injuries and required no hospitalization.<sup>15</sup> The escaping gas never ignited.

In the immediate aftermath of the separation, the North Oldham Fire Department was called and arrived on the scene as well as various LG&E employees trained to handle gas escape incidents.<sup>16</sup> Through their efforts, gas supply to the immediate area was terminated so that pipeline repairs could be made. This resulted in a loss of gas service for approximately 2,400 customers. Within one day, temporary repairs were made so that gas service restoration could begin, and, by September 19, 2014, permanent repairs were made and gas service was restored to the majority of customers by September 20, 2014. Final repairs were completed on September 21, 2014.<sup>17</sup>

On September 22, 2014, LG&E removed the failed coupler along with two other couplers in the same vicinity on the Ballardsville line. Within days after that, LG&E began a detailed review of its inline inspection and construction and maintenance records to detect the presence of any couplers on its transmission system. With its records review, LG&E next began the process of proactively removing all ten<sup>18</sup> couplers on its transmission system. At the time of the November 8, 2017 hearing, all such transmission couplers had been removed except for three, and those are scheduled to be removed by April, 2018.<sup>19</sup>

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<sup>15</sup> Grugin Report, p. 2.

<sup>16</sup> *Id.* at 2; Hearing Video Transcript, at 9:48:30.

<sup>17</sup> Grugin Report, p. 2.

<sup>18</sup> Hearing Video Transcript, at 9:30:50.

<sup>19</sup> *Id.* at 9:31:40.

In addition to the work being performed to locate and remove transmission couplers, in late 2014, LG&E engaged Gas Technology Institute (“GTI”) to perform a failure analysis investigation so that the cause of the separation could be determined. GTI’s investigation culminated in a June 25, 2015, report that is part of the record in this case (“GTI Failure Analysis”).<sup>20</sup>

GTI’s investigation found that LG&E had not installed the coupler properly in 1998. When the coupler was installed, for reasons unknown to LG&E, the number of rod/lug harness devices was too few and below the manufacturer’s recommendation.<sup>21</sup> Only four were installed. Four would have been adequate if 7/8-inch rod systems had been used. However, because 3/4-inch rod systems were used, a total of six should have been installed.<sup>22</sup> Installation of this type of coupler also requires the use of brackets and those brackets must be properly welded in place. GTI concluded that the weld quality of those brackets was insufficient because only one side of the bracket legs was welded when both sides should have been welded.<sup>23</sup> GTI also found that LG&E used brackets made of relatively soft steel when harder steel should have been used.<sup>24</sup> Finally, GTI concluded that more washers should have been used to better distribute the forces being applied to the brackets by the rods inserted through those brackets.<sup>25</sup> Collectively, these deficiencies resulted in an inadequate coupler installation. LG&E has admitted that inadequacy

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<sup>20</sup> The GTI Failure Analysis is attached to the Commission’s March 15, 2017 Order.

<sup>21</sup> GTI concluded that too few rod/lug harness devices were installed (GTI Failure Analysis, p. 3).

<sup>22</sup> GTI Failure Analysis, p. 3.

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

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

<sup>25</sup> *Id.*

in this case.<sup>26</sup> GTI also concluded that it is possible that the excavation and consequent removal of soil increased the stress on the coupler causing its failure.<sup>27</sup>

LG&E submitted the GTI Failure Analysis Report to the Commission.<sup>28</sup> Receipt of that report allowed Commission Staff employee Joel Grugin, who had been involved in the Commission's investigation of the incident from the beginning, to prepare his August 11, 2016, Grugin Report. The Grugin Report, in turn, led to and supported the Commission's March 15, 2017, Order establishing this case. Taken together, the Grugin Report and the March 15, 2017, Order allege three gas pipeline safety violations: (1) LG&E did not follow its Gas Operating, Maintenance, and Inspection Procedures when it installed the coupler with inadequately sized rods, inadequate welding, and inadequate use of washers;<sup>29</sup> (2) LG&E's inspection and testing of welds was inadequate as it failed to identify the inadequate welding;<sup>30</sup> and (3) as installed with its relatively smaller and fewer rods, the MAOP for this segment of line should have been 300 psig instead of the 400 psig LG&E believed to be the case – as a result, historical pressures exceeded 300 psig on a number of occasions, and, therefore, LG&E violated MAOP levels.<sup>31</sup> LG&E admitted these violations both in its response<sup>32</sup> to the Commission's March 15, 2017 Order and at the hearing.<sup>33</sup>

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<sup>26</sup> Hearing Video Transcript, at 9:11:15; 9:12:22.

<sup>27</sup> GTI Failure Analysis, p. 28.

<sup>28</sup> Hearing Video Transcript, at 9:00:00.

<sup>29</sup> March 15, 2017 Order, pp. 4-5.

<sup>30</sup> *Id.* at 5.

<sup>31</sup> *Id.* at 5-6.

<sup>32</sup> LG&E's April 4, 2017 Response to the Commission's March 15, 2017 Order.

<sup>33</sup> Hearing Video Transcript, at 9:11:15; 9:12:22.

### III. LG&E'S PLAN OF ACTION

As discussed above, LG&E had already taken actions with respect to couplers on its transmission system long before the separation occurred. It ceased using couplers on its transmission system in the late 1990s or early 2000s, and it began removing transmission couplers in the ordinary course of business in the mid-2000s. These actions, in addition to other actions undertaken after the separation and still others that will be taken going forward, form what LG&E calls its Plan of Action. LG&E developed its Plan of Action in collaboration with GTI employee Daniel Ersoy. In addition to collaborating with LG&E in developing its Plan of Action, Mr. Ersoy prepared his expert opinion report ("Ersoy Report"<sup>34</sup>) and he appeared and testified at the November 8, 2017, hearing. As LG&E witness Lonnie Bellar testified at the hearing, the Plan of Action<sup>35</sup> consists of three main components: prohibition against the use of couplers; removal of existing couplers; and improved communication and training.<sup>36</sup>

#### A. Prohibition against use of couplers on both transmission and high-pressure distribution systems

LG&E decided long ago to stop using couplers on its transmission system, so new ones have not been installed since that time. In the course of developing its Plan of Action, LG&E has confirmed that prohibition for both its transmission and high-pressure distribution systems.<sup>37</sup> While LG&E will continue to use couplers in lower pressure applications, they will only be

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<sup>34</sup> LG&E filed the Ersoy Report in the record on October 13, 2017.

<sup>35</sup> Mr. Bellar also testified that Section 3 of the Ersoy report is a good summary of the Plan of Action and that LG&E has performed some of the items in the Ersoy Report and that it commits to performing those items that have not yet been performed. (Hearing Video Transcript, at 9:27:10.)

<sup>36</sup> Hearing Video Transcript, at 9:17:20.

<sup>37</sup> LG&E's high-pressure distribution is that portion of its distribution system having an MAOP greater than 60 psig.

allowed temporarily and with management approval for pressures between 3 – 60 psig.<sup>38</sup> They will be allowed permanently only at very low pressures (below 3 psig) where the risk of separation is practically non-existent.<sup>39</sup> The Ersoy Report addresses these prohibitions and describes the rigorous procedures LG&E will use when installing couplers in its lower pressure environments discussed in more detail below.<sup>40</sup>

**B. Removal of couplers on both the transmission and high-pressure distribution systems**

Part of the Plan of Action is the removal of couplers on LG&E's transmission and high-pressure distribution systems. For transmission, after the separation incident, LG&E immediately took steps to remove all couplers on its transmission system and did so after it performed a records review.<sup>41</sup> At this time, all couplers have been removed on the transmission system except for three and those three are scheduled to be removed by April 2018.<sup>42</sup>

Mr. Bellar testified that removal of couplers on the high-pressure distribution system began in the mid-2000s when they were encountered in the ordinary course of business.<sup>43</sup> Removal of couplers on the high-pressure distribution system is more challenging due to the quantity of couplers in that system. After the separation incident, LG&E undertook an extensive records review of its entire high-pressure distribution system to identify the presence of couplers. That review is still ongoing. Instead of proactively excavating every area in which a coupler

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<sup>38</sup> Hearing Video Transcript, at 9:18:50.

<sup>39</sup> *Id.* at 9:19:00.

<sup>40</sup> Ersoy Report, p. 8.

<sup>41</sup> Hearing Video Transcript, at 9:13:15.

<sup>42</sup> *Id.* at 9:31:40.

<sup>43</sup> *Id.* at 9:20:50.

exists in the high-pressure distribution system, LG&E decided, with Mr. Ersoy's full support, that the better and safer practice is to remove those couplers in the ordinary course of business as they are encountered in the course of other work.<sup>44</sup> However, based on the extensive records review, LG&E will know the location of those couplers as it is planning its field work. That way, LG&E can take measures before excavation begins to mitigate risks of a coupler separation.

As for the measures taken before excavation begins, LG&E's Plan of Action includes numerous practices intended to ensure safety of the public, employees, and contractors. LG&E has issued a written Standards Watch that alerts its employees and contractors to the possible presence of couplers when excavating. Proactive communications with LG&E personnel and reactive and timely communication with contractors regarding couplers has been implemented.<sup>45</sup> This will allow for the presence of couplers to be known *before* any excavation occurs.

LG&E has provided instructions to employees and contractors with steps to be taken if a coupler is encountered during excavation. Those steps include: immediate stop and hold; placing the excavation in a safe situation; stopping any further interaction with uncovered couplers; and establishing a safe perimeter outside the coupler.<sup>46</sup> Further protocols include alerting key decision-making personnel across several departments at LG&E (Engineering, Operations, and Integrity Management). These instructions also include performing leak surveys to check for system leakage that may have resulted from excavating near a coupler.<sup>47</sup> Additional

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<sup>44</sup> *Id.* at 11:16:40; 11:54:30.

<sup>45</sup> Ersoy Report, p. 4; Hearing Video Transcript, at 9:24:00; 9:25:10.

<sup>46</sup> Ersoy Report, p. 4.

<sup>47</sup> *Id.* at 5.

safety measures include documenting the area by taking pictures, recording soil type, recording system layout, and taking special precautions should any blasting be necessary.<sup>48</sup>

LG&E has also improved its welding and welding inspection processes since it installed the coupler that failed. Specifically, LG&E improved its welding inspection process in the early 2000s to include non-destructive examination of 100 percent of its transmission pipeline welds (including radiography of its girth welds)<sup>49</sup> and is currently formalizing its process for non-destructive testing of welds on its high-pressure distribution system.<sup>50</sup> Additionally, LG&E's current welding specification procedures establish guidelines for the inspection and examination of welds and the surveillance of welding activities.<sup>51</sup>

Another important aspect of the coupler removal process that is part of the Plan of Action is that LG&E will collect important information from the couplers as they are removed.<sup>52</sup> LG&E will collect information such as soil type; seal engagement length (whether the coupler had started to separate at all); the presence of washers; the quantity of rods; the condition of lugs; weld quality; and pipe and coupler alignment.<sup>53</sup> Collection of this data will allow LG&E to observe any trends or problems that might exist with couplers so that it can take any necessary action to address those trends or problems.<sup>54</sup>

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<sup>48</sup> *Id.*

<sup>49</sup> LG&E's November 15, 2017, Response to Item No. 5 of Commission Staff's Post-Hearing Request for Information; Hearing Video Transcript, at 10:16:40; 10:31:50.

<sup>50</sup> LG&E's November 15, 2017, Response to Item No. 5 of Commission Staff's Post-Hearing Request for Information.

<sup>51</sup> *Id.*

<sup>52</sup> Hearing Video Transcript, at 9:21:30.

<sup>53</sup> Ersoy Report, pp. 9-10.

<sup>54</sup> Ersoy Report, p. 10; Hearing Video Transcript, at 9:21:20; 9:23:00.

### C. Improved communication and training

LG&E's Plan of Action includes better internal and external communications and training. Mr. Bellar confirmed that the Standards Watch described above has been issued to employees, contractors, and third parties so that they know what steps should be taken if a coupler is encountered in the field.<sup>55</sup> He also described the enhanced intracompany communication process by which different departments within LG&E, including Engineering, Operations, Integrity Management, and personnel in the executive ranks, will be involved in the day-to-day decisions regarding the removal of couplers if necessary.<sup>56</sup> Those same personnel will also be involved in the decisions to be made after data collected from the removed couplers is analyzed.<sup>57</sup>

As mentioned above, LG&E plans to continue to install couplers on a limited basis in low-pressure environments. Therefore, the Plan of Action includes enhanced procedures and training designed to ensure that all future installations are performed correctly. Those procedures include enhanced specifications for couplers and their components based on attributes such as diameter, pressure, and pipe material.<sup>58</sup> Engineering design will include number of lugs, restraint bolts/rods, and washers so that the coupler to be used is appropriate for the application.<sup>59</sup> As for the installation of couplers, LG&E's training is much improved since the 1990s,<sup>60</sup> and will be further enhanced by implementing step-by-step checklists for coupler

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<sup>55</sup> Hearing Video Transcript, at 9:24:01.

<sup>56</sup> *Id.* at 9:25:15.

<sup>57</sup> *Id.*

<sup>58</sup> Ersoy Report, p. 5.

<sup>59</sup> *Id.* at 6.

<sup>60</sup> Hearing Video Transcript, at 12:09:48.

installations.<sup>61</sup> There will also be enhanced qualification requirements for those employees who install couplers including written and practical demonstrations.<sup>62</sup> There will be audit and inspection requirements with their own associated checklists.<sup>63</sup> Finally, LG&E will take steps to ensure third-party contractors adhere to the same installation requirements as LG&E.<sup>64</sup>

As a whole, LG&E's Plan of Action is a vigorous and well-developed approach that will address the concerns created as a result of the separation incident. Therefore, as set forth in more detail below, it is unnecessary for the Commission to impose a penalty.

#### IV. PENALTY

Pursuant to KRS 278.992(1), for gas pipeline safety violations, the Commission has authority to impose a civil penalty not to exceed the maximum civil penalty as set forth in 49 C.F.R. 190.223, as of December 31, 2011. On December 11, 2011, 49 C.F.R. 190.223 provided a penalty amount of \$100,000 per violation per day, not to exceed \$1,000,000 for the three related violations. All of the violations are borne from a single act – the inadequate installation of the coupler by a single employee on January 5, 1998. Because of the ongoing nature of the alleged violations in this case, the Commission could impose a maximum penalty of up to \$1,000,000 for the three related violations. KRS 278.992(1) also permits the Commission to compromise any assessed penalty.

In determining the amount of the penalty or compromise, the Commission may consider:

- the size of the company;

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<sup>61</sup> Ersoy Report, p. 6.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 7.

<sup>64</sup> *Id.*

- the gravity of the violation; and
- the good faith of the person charged in remedying the violation.<sup>65</sup>

In addition, the Commission recently noted that it finds instructive and will consider the factors used by the Pipeline and Hazardous Materials Safety Administrator's ("PHMSA") Associate Administrator in determining the amount of a civil penalty.<sup>66</sup> Those factors are:

- the nature, circumstances and gravity of the violation, including adverse impact on the environment;
- the degree of the respondent's culpability;
- the respondent's history of prior offenses;
- any good faith by the respondent in attempting to achieve compliance;
- the effect on the respondent's ability to continue in business;
- the economic benefit gained from violation, if readily ascertainable, without any reduction because of subsequent damages; and
- such other matters as justice may require.<sup>67</sup>

A review of these factors along with recent Commission decisions imposing penalties for alleged violations of 49 C.F.R. § 192 support a Commission decision not to impose a penalty on LG&E in this proceeding. LG&E's actions in response to the separation incident and the subsequent development of its robust Plan of Action demonstrate, without question, that LG&E

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<sup>65</sup> KRS 278.992(1).

<sup>66</sup> *In the Matter of: City of Olive Hill and City of Olive Hill Utility Department Alleged Failure to Comply with KRS 278.495 and 49 CFR § 192*, Case No. 2017-00167, Order at 6 (Ky. Pub. Serv. Comm'n June 21, 2017).

<sup>67</sup> *Id.* at 6-7, citing 49 C.F.R. § 190.225.

has addressed the situation as seriously and thoroughly as possible. As stated above, there is no need to “get LG&E’s attention” via the imposition of a penalty.

LG&E specifically sought out and engaged one of the country’s foremost experts on coupler use so that LG&E could be absolutely certain that its Plan of Action is sufficient and ensures safety for all. After working with LG&E, Mr. Ersoy ultimately opined as follows:

In summary, after reviewing the operator’s Framework [i.e., LG&E’s Plan of Action] and other facts considered, and taken as a whole, it is my opinion that the actions being taken in response to the findings of the Ballardsville failure are prudent and deliberate. These actions are also in line with sound engineering judgment and a focus on safety.<sup>68</sup>

Thus, LG&E’s Plan of Action “shows cause” why it should *not* be penalized at all.

In the alternative, should the Commission feel the need to impose a penalty, consideration of the factors and recent Commission decisions support a relatively low penalty amount coupled with a substantial or complete suspension of that amount on the condition that LG&E complies with its Plan of Action. Indeed, in recent cases, the Commission has suspended assessed penalties by 83 percent and 92 percent.<sup>69</sup> With respect to the factors considered in assessing a penalty, LG&E offers the following.

**A. Size of the company; effect on the company’s ability to continue in business**

LG&E is one of Kentucky’s larger gas utilities. And imposing a penalty in this proceeding of less than \$1,000,000 would have a minimal effect on LG&E’s ability to continue in business. But these factors do not support imposing an otherwise unwarranted penalty.

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<sup>68</sup> Ersoy Report, p. 4.

<sup>69</sup> In Case No. 2017-00053, the Commission suspended \$50,000 of the \$60,000 assessed penalty (83%) and in Case No. 2017-00167, the Commission suspended \$55,000 of the \$60,000 assessed penalty (92%).

Rather, the Commission often uses these factors to reduce an otherwise warranted penalty when the magnitude of the available penalty would be far too burdensome on the penalized utility. For example, in Case No. 2017-00053, the Commission determined that the City of Liberty Gas Company was subject to a maximum civil penalty of \$2,000,000, but imposed a penalty of \$60,000 with \$50,000 of the penalty suspended; in 2016, the annual revenues for the City of Liberty Gas Company were \$983,177.<sup>70</sup> And in Case No. 2017-00167, the Commission determined that the City of Olive Hill Utility Department was subject to a maximum civil penalty of \$1,000,000, but imposed a penalty of \$60,000 with \$55,000 of the penalty suspended; in 2015, the City of Olive Hill's gas system had approximately 700 customers.<sup>71</sup>

These decisions support a reduction in penalty when a small utility would be unduly burdened by the economic effect of the penalty, but do not support an increase in penalty simply because a large utility could absorb the economic effect of the penalty. Moreover, to the extent the Commission uses assessed penalties as a “stick” to encourage compliance and considers the size of the utility to determine the size of that “stick,” there is no need to do so in this proceeding. Again, LG&E’s Plan of Actions demonstrates no such “stick” is needed to ensure compliance.

**B. Gravity, nature, and circumstances of the violation**

LG&E’s situation is far different than those in recent cases involving pipeline safety violations. Recent cases involve failure to perform leak surveys for over a decade and failure to

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<sup>70</sup> *In the Matter of: City of Liberty Gas Company Alleged Failure to Comply with KRS 278.492 and 49 CFR Part 192*, Case No. 2017-00053, Post-Hearing Data Response Item No. 1 (Ky. Pub. Serv. Comm’n April 7, 2017).

<sup>71</sup> Case No. 2017-00167, Order Appendix A at 1 (Ky. Pub. Serv. Comm’n May 11, 2017).

immediately remedy an exposed pipeline necessary to provide service to an entire city.<sup>72</sup> LG&E's situation stems from one employee's inadequate installation of a coupler nearly twenty years ago. And LG&E was unaware of that inadequacy until September 17, 2014 when it was uncovered during the course of LG&E's safety initiative designed to enable its transmission lines to be inspected by inline inspection tools. Once LG&E became aware, it immediately began to determine and address the full scope of the issue. Although LG&E is not downplaying the serious nature of improperly installed couplers, the gravity of the violation does not warrant a penalty when reviewed in conjunction with the remaining factors.

**C. Good faith of the person charged and good faith in attempting to achieve compliance**

Upon discovering this issue, LG&E immediately took action to fully identify and resolve the problem.<sup>73</sup> LG&E conducted and continues to conduct extensive inspections to fully determine the scope of the problem, contracted with one of the country's foremost pipeline safety experts to assist in developing and implementing the necessary corrective action, and will continue to execute the Plan of Action. Moreover, LG&E has not attempted to excuse its action.

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<sup>72</sup> Case No. 2017-00167, Order at 11-12 (Ky. Pub. Serv. Comm'n June 13, 2017)("The Commission is deeply concerned about the gravity of the violations of leakage survey requirements given the number and history of violations, and the serious nature of potential consequences of undetected gas leaks... Liberty was or should have been aware of the potential for an explosion resulting from a gas leak and the possibility for catastrophic injury or death arising from Liberty's failure to conduct the required leakage surveys."); Case No. 2017-00053, Order at 7 (Ky. Pub. Serv. Comm'n June 21, 2017)("The Commission is deeply concerned about the serious nature of potential consequences should the exposed pipeline fail due to washouts, floods or other hazards, and there is no evidence in the record that Olive Hill attempted to achieve compliance after notification of the violation.").

<sup>73</sup> Case No. 2017-00167, Order at 5 ("The Commission further finds that Olive Hill has been aware of this violation since at least the Commission Staff's June 2015 inspection and to date has not remedied the violation.").

To the contrary, LG&E has owned its mistake and taken full responsibility for it from the beginning. LG&E has no history of unfulfilled promises.<sup>74</sup>

**D. Additional PHMSA factors**

Regarding the degree of culpability, LG&E accepts full responsibility for the inadequate installation and has and will continue to ensure compliance going forward.<sup>75</sup> LG&E is not attempting to shift blame or excuse its actions.<sup>76</sup> Rather, LG&E asserts that no penalty is required because it has and will continue to address this situation regardless of the Commission's resolution in this proceeding. There is no evidence that the inadequate installation was intentional, willful, or made for any nefarious purpose whatsoever. Regarding history of compliance, LG&E has no history of similar violations or unfulfilled promises.<sup>77</sup> Regarding any

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<sup>74</sup> Case No. 2016-00053, Order at 12-13 (“Liberty has a history of stating that it will comply with leakage survey requirements in the future in response to violations discovered by Commission Staff in periodic inspections. However, Liberty repeatedly failed to take action between 2003 and 2016 to address the cause of the continued non-compliance. Given the repeated nature of the violations and failure to follow through on assurances of future compliance, Liberty does not have a credible justification for its failure to comply with leakage survey requirements.”).

<sup>75</sup> *Id.* at 11 (“It is to Liberty's credit that it has admitted some degree of non-compliance with the leakage survey standards, and has initiated procedures to address compliance in the future.”).

<sup>76</sup> *Id.* at 12 (“Further, Liberty has a history of attempting to excuse the failure to perform the required leakage surveys based on changes in management, on its lack of knowledge of the safety standards, or on an oversight.”).

<sup>77</sup> *Id.* at 11-13 (“However, in light of Liberty's extensive history of non-compliance between 2003 and 2016, and Liberty's repeated assurances of future compliance that were not carried out, the Commission cannot agree with Liberty's assessment of the circumstances under which it has operated its gas system. The Commission is deeply concerned about the gravity of the violations of leakage survey requirements given the number and history of violations, and the serious nature of potential consequences of undetected gas leaks... Further, Liberty has a history of attempting to excuse the failure to perform the required leakage surveys based on changes in management, on its lack of knowledge of the safety standards, or on an oversight. Liberty also has a history of offering assurances after receiving a citation that it would take steps to ensure future compliance. However, as evidenced by repeated citations between 2003 and 2016, Liberty failed to fulfill those assurances or take significant steps to comply with the minimum

economic benefit gained from the violations, LG&E gained no economic benefit from the inadequate installation. It did not result in any avoidance or reduction of expenses. Moreover, LG&E has incurred and will continue to incur considerable expense in fully identifying and remedying the problem.

LG&E notes one additional factor worthy of the Commission's consideration. Ironically, the excavation that led to the separation on September 17, 2014, was being performed as part of a safety initiative so that inline inspection tools could be used. Many of those sorts of pipeline safety initiatives necessarily require exposing equipment that has worked well for years but have never been exposed. In this case, although the coupler was not installed properly, the excavation itself enabled the separation to occur. Certainly, the Commission should not discourage gas utilities from pursuing safety initiatives requiring excavation. Should the Commission impose the maximum or a large penalty in this case, gas utilities could be encouraged to be satisfied with the status quo rather than pursuing safety improvements. For this additional reason, the Commission should not impose a penalty.

## **V. CONCLUSION**

For the reasons set forth above, a penalty is not necessary for LG&E's violations. LG&E's ultimate goal is to continue to provide the safe, adequate, and reasonable service it has provided for decades. Because it appears that the Commission shares a similar goal when

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safety standards... Liberty has a history of stating that it will comply with leakage survey requirements in the future in response to violations discovered by Commission Staff in periodic inspections. However, Liberty repeatedly failed to take action between 2003 and 2016 to address the cause of the continued non-compliance. Given the repeated nature of the violations and failure to follow through on assurances of future compliance, Liberty does not have a credible justification for its failure to comply with leakage survey requirements.”).

determining whether to impose a penalty,<sup>78</sup> LG&E respectfully submits that no penalty be imposed. In the alternative, if the Commission imposes a penalty, given the Commission's recent suspension of assessed penalties by 83 percent and 92 percent, LG&E requests a substantial or complete suspension of the penalty subject to LG&E's compliance with regulatory requirements and its Plan of Action.

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Respectfully submitted,

  
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<sup>78</sup> Case No. 2017-00167, Hearing Video Transcript at 1:07:00 to 1:07:33 (“I think that we’re more interested, if we were, in terms of exacting a penalty, to do so with the idea that maybe the penalty would go to fixing this problem so that we could ensure that your citizens are safe... all we’re interested in doing is seeing that everyone is taken care of and there’s not a serious problem that happens on your watch or ours.”).