

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CITY OF DRAKESBORO D/B/A DRAKESBORO)	
NATURAL GAS COMPANY)	
_____)	CASE NO.
)	2019-00065
ALLEGED FAILURE TO COMPLY WITH KRS)	
278.495, 807 KAR 5:022, AND 49 C.F.R. PART)	
192)	

ORDER

The Commission initiated this proceeding to conduct a formal investigation and determine whether the city of Drakesboro d/b/a Drakesboro Natural Gas Company (Drakesboro) should be subject to penalties pursuant to KRS 278.992 for violations of minimum pipeline safety standards alleged in a February 26, 2019 inspection report prepared by staff from the Commission’s Division of Inspections (DOI). Drakesboro filed a written response to the allegations and filed other documents requested by the Commission and DOI staff; DOI staff conducted two follow-up inspections during the course of this matter; and the Commission conducted hearings in this matter on March 8, 2019, June 19, 2019, and November 15, 2019. Following the November 15, 2019 hearing, DOI staff and Drakesboro submitted post-hearing briefs. This matter is now before the Commission for a decision on the merits.

BACKGROUND

Drakesboro is a city in Muhlenberg County, Kentucky that offers retail gas service to approximately 667 customers.¹ DOI staff scheduled a standard periodic inspection of Drakesboro's natural gas facilities for the first week of March 2019.² Mike Jones, who took office as the mayor of Drakesboro on January 2, 2019,³ testified that he contacted DOI staff in early February 2019 and stated that he did not want to wait until the inspection but rather wanted DOI staff to come to Drakesboro as soon as possible to help Drakesboro get everything in order.⁴ Mayor Jones testified that DOI staff scheduled an in-person meeting with him in Drakesboro prior to the scheduled inspection based on his request,⁵ and Melissa Holbrook, a pipeline safety inspector with DOI's Gas Branch,⁶ testified that the meeting took place on February 7, 2019.⁷

Mayor Jones and Inspector Holbrook testified that Eddie Brake, who had been in charge of the operation of Drakesboro's natural gas for a significant period,⁸ abruptly quit

¹ See Order (Ky. PSC Feb. 28, 2019), Appendix: Inspection Report (February Inspection Report) at 1.

² Hearing Video Transcript (HVT) of the March 8, 2019 Hearing (March 8, 2019 HVT), 10:07:18.

³ *Id.* at 01:13:58–01:14:15.

⁴ *Id.* at 01:17:20–01:18:36.

⁵ *Id.* at 01:18:08; see also March 8, 2019 HVT at 10:07:00; HVT of the June 19, 2019 Hearing (June 19, 2019 HVT) at 01:03:12 (where Melissa Holbrook, an inspector with DOI, testified that Mayor Jones called her prior to the scheduled inspection to request a meeting due to some issues with Drakesboro's natural gas facilities).

⁶ March 8, 2019 HVT at 10:05:30-10:06:17; see also March 8, 2019 HVT at 10:54:59-10:56:55 (Inspector Holbrook discusses training she received from the federal government to qualify as a gas safety inspector and indicates that she is certified as a gas safety inspector.).

⁷ *Id.* at 10:08:10.

⁸ June 19, 2019 HVT at 01:03:53; see also March 8, 2019 HVT at 12:03:45-12:05:32; 12:07:45 (Mr. Brake testifies that he had been in charge of Drakesboro's natural gas system).

at the February 7, 2019 meeting between Drakesboro and DOI staff.⁹ Inspector Holbrook testified that she then spoke to Mayor Jones and Drakesboro's remaining employees to determine whether Drakesboro had a qualified operator to operate the system and respond to leaks given Mr. Brake's resignation. She testified that she determined that Drakesboro did not have a qualified operator.¹⁰

Mayor Jones testified that he was informed by DOI staff that if Drakesboro did not retain a contractor to operate its natural gas facilities that DOI staff would have to reach out to the Commission to request that the Commission shut down Drakesboro's system.¹¹ Inspector Holbrook testified that with her assistance Mayor Jones was able to get Atmos Energy, Inc., which operates other natural gas distribution facilities in the area, to agree to assist Drakesboro on a temporary, emergency basis, but that she informed Mayor Jones that Drakesboro would need to retain a third-party contractor to operate the system in the short term.¹² Drakesboro contacted Vanguard Mapping Solutions, LLC (Vanguard) on or about February 7, 2019, and Vanguard did begin providing assistance to Drakesboro in maintaining its gas system on February 8, 2019.¹³

Josh Duvall, the owner and president of Vanguard, testified that when Vanguard first began working on Drakesboro's system on February 8, 2019, that their priority was

⁹ March 8, 2019 HVT at 10:08:10 and 01:46:08.

¹⁰ *Id.* at 10:09:18; *see also* June 19, 2019 HVT at 01:04:20 (Ms. Holbrook testified that when Mr. Brake quit that Drakesboro had no qualified operator.).

¹¹ March 8, 2019 HVT at 01:18:40.

¹² *Id.* at 01:19:04; *see also* June 19, 2019 HVT at 01:03:35 (Ms. Holbrook testified that during the meeting Mr. Brake quit and left Drakesboro without a qualified operator, so she informed Drakesboro that they would need to obtain a third party contractor).

¹³ March 8, 2019 HVT at 10:59:20 and 01:20:24; June 19, 2019 HVT at 3:57:46-03:59:30.

to address any safety issues.¹⁴ He testified that Vanguard immediately determined that there was no odorant in Drakesboro's gas system and that Vanguard filled Drakesboro's odorant system and that they were detecting odorant within the city limits by the evening of February 8, 2019.¹⁵ He testified that once odorant was added to the system, they began to receive a large amount of leak calls based on customers smelling gas.¹⁶ He noted that from February 8, 2019, through March 1, 2019, that Vanguard received approximately 103 leak calls and that most of those calls were for leaks in houses, but some of the leaks were found to be emanating from meters or underground pipelines.¹⁷ He testified that Vanguard would pick up a gas leak on their combustible gas indicator as soon as they entered the house at nearly every house from which Vanguard received a leak report.¹⁸ He testified that Vanguard spent the majority of its time at Drakesboro responding to leak calls after the odorant was added to make the system safe before it started to address other issues with the system.¹⁹

Mr. Duvall also testified that on the three or four occasions in which Vanguard uncovered Drakesboro's steel pipe to repair leaks that the steel pipe was pitted and

¹⁴ March 8, 2019 HVT at 11:00:00.

¹⁵ *Id.* at 11:01:05; see also June 19, 2019 HVT at 1:05:20; March 8, 2019 HVT at 10:18:24 (where DOI staff testify regarding Vanguard finding there was no odorant in the system).

¹⁶ March 8, 2019 HVT at 11:01:55.

¹⁷ March 8, 2019 HVT at 11:02:53; see also June 19, 2019 HVT at 1:05:51; March 8, 2019 HVT at 10:20:30 (where DOI staff testify regarding the significant number of leak calls received when odorant was added to the system).

¹⁸ March 8, 2019 HVT at 11:03:40.

¹⁹ *Id.* at 11:04:05.

corroded.²⁰ He testified that he could not necessarily say whether the deterioration of the pipe was caused by the material in the pipe, the soil, or the lack of cathodic protection.²¹ However, he testified that whenever Vanguard exposed pipeline that they would perform a cathodic protection test on that section of line and each time they conducted a test it revealed inadequate cathodic protection.²²

Based on apparent issues with Drakesboro's system, DOI staff moved up its scheduled standard periodic inspection of Drakesboro's natural gas system to February 18, 2019, and conducted the inspection from February 18, 2019, through February 21, 2019. Inspector Holbrook, who led the inspection, indicated that she documented the findings of the inspection in DOI staff's inspection report dated February 26, 2019 (February Inspection Report).²³ The February Inspection Report noted the following violations of federal pipeline safety standards:²⁴

1. Drakesboro's written procedural manual for operations and maintenance activities does not include all procedures required by 49 C.F.R. §192.605.
2. Drakesboro's plan to minimize the hazard resulting from a gas pipeline emergency does not include all procedures required by 49 C.F.R. §192.615.
3. Drakesboro does not have a written program to prevent damage to underground pipelines from excavation activities as required by 49 C.F.R. §192.614.

²⁰ March 8, 2019 HVT at 11:06:30 and 11:14:30; *but see* Hearing Video Transcript of the November 15, 2019 Hearing (Nov. 15, 2019 HVT) at 09:38:00–09:39:38 (in which a representative from RussMar testified that on the two occasions when they exposed the steel main to repair leaks that it appeared to be in good condition based on a visual inspection).

²¹ March 8, 2019 HVT at 11:14:48.

²² March 8, 2019 HVT at 11:15:14.

²³ March 8, 2019 HVT at 10:24:15.

²⁴ February Inspection Report at 4–6.

4. Drakesboro does not have a written public education program as required by 49 C.F.R. § 192.616.
5. Drakesboro does not have a written anti-drug plan as required by 49 C.F.R. § 199.101.
6. Drakesboro does not have a written alcohol misuse plan as required by 49 C.F.R. § 199.202.
7. Drakesboro has not conducted drug tests as required by 49 C.F.R. § 199.105.
8. Drakesboro has not provided training for supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause as required by 49 C.F.R. § 199.113(c).
9. Drakesboro does not have a written distribution integrity management plan as required by 49 C.F.R. § 192.1005.
10. Drakesboro does not have welding procedures as required by 49 C.F.R. § 192.225.
11. Drakesboro does not have written plastic joining procedures as required by 49 C.F.R. § 192.273(b).
12. Drakesboro's operator qualification program does not meet the requirements of 49 C.F.R. § 192.805.
13. Drakesboro has not submitted annual reports as required by 49 C.F.R. § 191.11.
14. Drakesboro has not sent the customer notification required by 49 C.F.R. § 192.16.
15. Drakesboro has not sent public awareness messages as required by 49 C.F.R. § 192.616.
16. Drakesboro has not trained appropriate operating personnel to ensure they are knowledgeable of emergency procedures as required by 49 C.F.R. § 192.615(b)(2).
17. Drakesboro did not establish and maintain liaison with appropriate fire, police, and other public officials as required by 49 C.F.R. § 192.615(c).
18. Drakesboro does not review or update its operation and maintenance plan as required by 49 C.F.R. § 192.605(a).

19. Drakesboro has not conducted periodic sampling of combustible gases in its distribution lines to assure the proper concentration of odorant test as required by 49 C.F.R. § 192.625(f) since November 2017.

20. Drakesboro has not conducted patrolling of its distribution mains as required by 49 C.F.R. § 192.721 since 2017.

21. Drakesboro has not conducted a leakage survey in its business district as required by 49 C.F.R. § 192.723 since 2017. Additionally, Jordon Shaw, the employee listed on the record of the 2017 survey as having conducted the survey, verified to Staff on February 7, 2019, that he did not conduct the leak survey.

22. Drakesboro has not conducted regulator/relief valve inspections as required by 49 C.F.R. § 192.739.

23. Drakesboro has not conducted valve inspections as required by 49 C.F.R. § 192.747 since 2016.

24. Drakesboro has not tested pipelines under cathodic protection as required by 49 C.F.R. § 192.465(a).

25. Drakesboro has not conducted cathodic protection rectifier inspections as required by 49 C.F.R. § 192.465(b).

26. Drakesboro has not conducted atmospheric corrosion inspections as required by 49 C.F.R. § 192.481.

27. Drakesboro's pipeline markers do not meet the requirements of 49 C.F.R. § 192.707.

28. Drakesboro failed to ensure that individuals performing covered tasks were qualified as required by 49 C.F.R. § 192.805(b). At the time of Staff's inspection, two employees of Drakesboro who were not properly qualified were performing covered tasks. Staff also received a report from a customer that prisoners turned on the gas service and entered the home to relight appliances.

29. Drakesboro did not properly repair a damaged plastic main on Wyatt's Chapel Road as required by 49 C.F.R. § 192.311.

30. Drakesboro did not ensure that combustible gas in its distribution lines was properly odorized as required by 49 C.F.R. § 192.625(a).

31. Drakesboro failed to follow procedures in its emergency plan in response to two reports of gas detected inside and outside of homes as required by 49 C.F.R. § 192.605(a).

32. Drakesboro has not offered excess flow valves to existing customers as required by 49 C.F.R. § 192.383(d).

33. Drakesboro has failed to ensure that each person making joints in plastic pipelines is qualified as required by 49 C.F.R. § 192.285.

34. Drakesboro has failed to maintain, for the useful life of each pipeline, records of each test performed under 49 C.F.R. Subpart J as required by 49 C.F.R. 192.517.

35. Drakesboro has failed to keep records of the following procedures as required by 49 C.F.R. § 192.603(b): installation of new service lines; installation of excess flow valves; response to and repair of leaking pipelines; atmospheric corrosion inspections; odorant tests (2018 and 2019); patrolling of distribution mains (2018); leak surveys (2018); valve inspections (2018 and 2019); pipe-to-soil readings (2018); and cathodic protection rectifier inspections (2018).

As a result of the alleged violations identified by DOI staff, the Commission entered an Order on February 28, 2019, initiating this matter, requiring Drakesboro to report whether it retained a qualified third party to operate and maintain its gas system or would shut down operations, establishing a deadline for Drakesboro to file a written response to the allegations contained in the inspection report, and setting a hearing regarding violations alleged in the February Inspection Report for March 8, 2019.²⁵ The hearing was conducted on March 8, 2019, and evidence was taken regarding Drakesboro's current operations to determine whether immediate actions were necessary to safeguard the public, but the hearing was continued until June 19, 2019, to take additional evidence regarding the alleged violations to provide Drakesboro more time to respond to the allegations.²⁶

²⁵ Order (Ky. PSC Feb. 28, 2019).

²⁶ March 8, 2019 HVT at 09:55:07.

Prior to the March 8, 2019 hearing, Drakesboro filed a March 1, 2019 contract between it and RussMar Utility Management (RussMar) that Drakesboro contended was “proof of [Drakesboro] contracting with a qualified third party operator of its natural gas company services.”²⁷ Mayor Jones testified that Drakesboro entered into a contract with RussMar as opposed to Vanguard, which assisted Drakesboro from February 8, 2019, until March 1, 2019, because Drakesboro was not able to reach a formal written agreement with Vanguard to operate and maintain Drakesboro’s system.²⁸

At the March 8, 2019 hearing, Shawn Martin, the chief operating officer of RussMar,²⁹ testified, among other things, that the flat rate annual fee in the contract covered RussMar providing a single employee onsite during normal working hours to work and assist with normal every day operations and to assist the city in resolving their current compliance deficiencies.³⁰ He testified that RussMar would provide a 24-hour on-call service technician and emergency crews if necessary but that Drakesboro would have to pay by the hour for those services.³¹ He testified that RussMar expected to identify the current leaks and provide Drakesboro with a recommendation and estimate for repairing the leaks but that RussMar would not proceed with repairing leaks unless Drakesboro

²⁷ Drakesboro’s Notice of Filing (filed Mar. 4, 2019); see *also* Drakesboro’s Amended Notice of Filing (filed Mar. 6, 2019) (which includes the contract and an appendix describing the scope of work that was not included with the first filing).

²⁸ See June 19, 2019 HVT at 01:04:30; 01:07:260; and 01:13:38-01:14:33 (where DOI staff discussed Vanguard initially working on the system and then RussMar); see *also* March 8, 2019 HVT at 10:16:23; 10:35:00–10:36:30; 10:38:30; 10:58:50 (where DOI staff testified regarding Vanguard working on the system but being unable to reach a formal and/or long term contract with the city to operate the city).

²⁹ March 8, 2019 HVT at 12:30:19.

³⁰ March 8, 2019 HVT at 12:36:23

³¹ March 8, 2019 HVT at 12:34:31 and 12:53:20.

agreed to the repair and the cost for the repair.³² He testified that the contract allowed RussMar to act without authority from Drakesboro in the event of an emergency.³³

Mayor Jones testified at the March 8, 2019 hearing that Drakesboro was taking steps to resolve the deficiencies identified in the February Inspection Report.³⁴ He noted that Drakesboro entered into a contract with Vanguard, and then RussMar, to have personnel available 24/7 for maintenance and that Drakesboro was billed approximately \$81,000 for Vanguard's work between February 7, 2019, and March 1, 2019.³⁵ He stated that Drakesboro adopted a new "zero tolerance" substance abuse policy and that all employees had since been drug tested.³⁶ He testified that Drakesboro established a new emergency plan³⁷ and schedule for completing compliance tasks.³⁸ He further testified that it was Drakesboro's intent to address and fix each of the 35 violations identified in the February Inspection Report.³⁹

Inspector Holbrook testified at the March 8, 2019 hearing that at the time of the February 2019 inspection that Drakesboro had two staff members who were in the process of completing certain operator qualification training, but there was no record

³² *Id.* at 12:37:05.

³³ *Id.* at 12:54:54; *see also* Drakesboro's Amended Notice of Filing (filed Mar. 6, 2019) (which includes the contract between RussMar and Drakesboro with an appendix describing the scope of work in a manner consistent with Mr. Martin's testimony).

³⁴ March 8, 2019 HVT at 01:24:25.

³⁵ *Id.* at 01:23:40.

³⁶ *Id.* at 01:26:24.

³⁷ *Id.* at 01:28:28.

³⁸ *Id.* at 01:31:09.

³⁹ *Id.* at 01:34:08.

those staff members had completed the necessary training at the time of the inspection.⁴⁰ She also testified that simply participating in an operator qualification training course and passing an exam was not sufficient to demonstrate the necessary knowledge, skills, and ability to satisfy the pipeline safety standards such that even after Drakesboro's staff completed their training and passed the written test that they would need additional hands-on experience before they had the skills and ability to operate the system without assistance.⁴¹ She testified that at the time of the inspection Drakesboro's staff, which included Jordan Shaw and Donald Sims, did not have the necessary experience to respond to leaks on their own.⁴² She recommended that there be a qualified third-party operator on-site or within a very close proximity until Drakesboro's employees gain the requisite skills, knowledge, training, and experience.⁴³

Eddie Brake testified at the March 8, 2019 hearing that as city administrator, he was in charge of the natural gas system and responsible for the city's compliance with natural gas safety regulations.⁴⁴ He claimed in his testimony that the city had records that it is required to maintain pursuant to federal gas safety regulations, including records of odorant tests, leak surveys, patrolling, operator qualifications, and leak reports, but he acknowledged that the records were no longer present at the time that he left his position

⁴⁰ *Id.* at 10:25:50.

⁴¹ March 8, 2019 HVT at 10:26:12; *see also* March 8, 2019 HVT at 11:20:20 (in which the president of Vanguard testified that crews operating a gas system needed to pass their operator qualification exams but also needed several years of field experience under experienced staff to safely operate the system); March 8, 2019 HVT at 12:11:55 (in which Eddie Brake stated that he felt Jordan Shaw would be able to handle emergencies on the case system with a little additional training).

⁴² *Id.* at 10:26:42.

⁴³ *Id.* at 10:28:54.

⁴⁴ *Id.* at 12:03:45-12:05:32; 12:07:45.

with Drakesboro.⁴⁵ He claimed that Drakesboro moved the file cabinet containing the records from the sewer plant to a city building as part of an effort to review the records and that when he went to go through the file cabinet that the records were gone.⁴⁶ Notably, he is the only witness to assert that the records existed.

Mr. Brake acknowledged that Drakesboro had been using inmates to perform certain tasks for their natural gas distribution operation, including reading meters and assisting with leak repairs.⁴⁷ However, he claimed that inmates were not allowed to go into customer's homes.⁴⁸ Conversely, a customer of Drakesboro's gas system testified that two inmates and an employee of Drakesboro came to her home to turn on her gas service at the end of 2018 and that the employee and one inmate came into her home to light pilots.⁴⁹

Jordan Shaw testified at the March 8, 2019 hearing that despite Drakesboro's records indicating that he and Blake Bishop performed required leak surveys in December 2017 and December 2018 that he and Mr. Bishop did not perform those surveys or complete the records indicating that they performed the leak surveys.⁵⁰ In fact, Mr. Shaw testified that he was not even employed by Drakesboro in December 2018 when Drakesboro's records indicate he performed the leak survey and, therefore, could not

⁴⁵ March 8, 2019 HVT at 12:08:35-12:09:00; 12:14:19-12:15:02.

⁴⁶ *Id.* at 12:14:19-12:15:33.

⁴⁷ *Id.* at 12:06:47.

⁴⁸ *Id.* at 12:12:38.

⁴⁹ *Id.* at 12:16:35.

⁵⁰ *Id.* at 11:50:22.

have performed the leak survey at that time.⁵¹ Mr. Shaw also indicated that he knew that Mr. Bishop, who was an inmate in the county jail, was not around to perform or participate in the 2018 survey because he had been removed from the work detail due to disciplinary issues in the jail.⁵²

Following the March 8, 2019 hearing, the Commission entered Orders imposing conditions on Drakesboro's continued operation of its natural gas system during the pendency of this matter. The Commission ordered that (1) Drakesboro use a qualified third-party contractor approved by the Commission to operate its gas system; (2) the contractor have at least one employee dedicated to Drakesboro's system during regular working hours and on-call during nights and weekends; (3) the third-party contractor have available and provide additional qualified personnel as necessary to respond promptly to emergencies on the Drakesboro natural gas distribution system; (4) customer calls to Drakesboro's emergency number for reporting gas leaks and other emergencies be routed to and answered by the dedicated third-party contractor; (5) Drakesboro preauthorize the third-party contractor to provide additional services as necessary to respond to a natural gas leak classified as a Grade 1 leak under the Gas Piping and Technology Committee (GPRTC) standards for grading natural gas leaks; (6) Drakesboro provide leak reports to the Commission; and (7) Drakesboro complete a leakage survey of its Drakesboro's entire natural gas distribution by April 11, 2019.⁵³

⁵¹ March 8, 2019 HVT at 11:51:48; *see also* March 8, 2019 HVT at 12:10:35 (in which Eddie Brake indicated that the records stating that Jordan Shaw performed the leak studies could not have been accurate).

⁵² *Id.* at 12:01:12.

⁵³ Order (Ky. PSC Mar.12, 2019).

On March 22, 2019, Drakesboro filed a written response to the allegations in the February Inspection Report. In its response, Drakesboro admitted to, in whole or in part, violation numbers 13, 21, 27, 28, 30 32, and 33. Drakesboro denied violation numbers 2, 3, 4, 5, 6, 7, 9, 11, 12, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 28, 29, 31, 34, and 35 due to lack of knowledge. Drakesboro did not admit or deny violation 8 and did not respond to Violation 10. Drakesboro denied violation 1 that its written procedural manual for operations and maintenance activities does not include all procedures required by 49 C.F.R. §192.605.⁵⁴

DOI staff conducted a follow-up inspection of Drakesboro's natural gas distribution system on June 14, 2019, and found that Drakesboro had resolved some of the violations identified in the February 2019 Inspection Report.⁵⁵ Specifically, DOI staff indicate that they found that Drakesboro had resolved violation numbers 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 16, 17, 18, 19, 20, 23, 24, 30, 31, and 33 at the time of the follow-up inspection. However, DOI staff found that Drakesboro had not resolved violation numbers 8, 13, 14, 15, 21, 22, 25, 26, 27, 29, 32, 34, and 35 as of the time of the June 14, 2019 inspection.⁵⁶

Inspector Holbrook testified at the June 19, 2019 hearing regarding the actions Drakesboro had taken to resolve the violations identified in the February 2019 Inspection Report and Drakesboro's continued efforts to resolve the remaining violations identified in the inspection report.⁵⁷ Further, she indicated that efforts to resolve the violations

⁵⁴ Drakesboro's Answer (filed Mar. 22, 2019).

⁵⁵ June 17, 2019 Inspection Report (filed June 18, 2019) (June Inspection Report).

⁵⁶ June 19, 2019 HVT at 00:07:25; see *also* June Inspection Report.

⁵⁷ June 19, 2019 HVT at 00:07:27-00:35:40.

identified a corrosion problem in Drakesboro's system and indicated that the system is not adequately protected from corrosion, and she stated that Drakesboro now needed to bring in a corrosion expert to evaluate the corrosion in the gas system and to identify the issues with Drakesboro's corrosion protection system, including its rectifiers.⁵⁸ She also noted that a regulator was iced over when she conducted her initial inspection, indicating that Drakesboro's current pressure regulators could not handle the drop in pressure from the transmission lines to the pressure of Drakesboro's gas distribution system, and, therefore, that Drakesboro needed to bring in an expert that specializes in regulators to review the system as a whole to determine what repairs or upgrades would be necessary to resolve the issues with Drakesboro's regulators.⁵⁹ Finally, she testified that Drakesboro needed to have someone determine which of their meters are not functioning properly, so it can get a better idea of the gas loss they are experiencing on the system.⁶⁰ Inspector Holbrook testified that without inspections to better understand those issues, it would not be possible to assess the overall condition of Drakesboro's system.⁶¹

Marvin Anderson, an employee of RussMar primarily assigned to work at Drakesboro, testified at the June 19, 2019 hearing that RussMar identified 7 Grade III leaks, 22 Grade II leaks, and 0 Grade I leaks when it conducted a leak survey of Drakesboro's system.⁶² He stated that as of the date of the hearing that RussMar had

⁵⁸ *Id.* at 00:36:17.

⁵⁹ *Id.* at 00:36:30.

⁶⁰ *Id.* at 00:36:45.

⁶¹ *Id.* at 00:37:25.

⁶² *Id.* at 01:25:11.

stopped about 15 or 16 of those leaks using a band clamp. However, he noted that the band clamp was a temporary fix and that a permanent fix would require removing the damaged section of pipe and replacing the main itself. He stated that RussMar would get together with the Mayor to determine a plan to permanently fix the leaks.⁶³

Mr. Anderson testified that he has been involved in training Drakesboro's employees particularly David Simms, who Mr. Anderson indicated is Drakesboro's employee primarily assigned to work on its gas system. He stated that he goes out on all of the calls with Mr. Simms to assist him and demonstrates how to properly approach various issues that arise on the system.⁶⁴ Mr. Anderson testified that Mr. Simms was picking up on things quickly and that he felt he would make a good operator.⁶⁵ However, Mr. Anderson testified that in his opinion Drakesboro's personnel were not qualified at the time of the June 19, 2019 hearing to operate the system on their own.⁶⁶ He also testified that Drakesboro is going to need to hire at least two more dedicated gas employees that are operator qualified before Drakesboro can operate the system itself.⁶⁷

At the conclusion of the of June 19, 2019 hearing, the record was left open to obtain additional evidence from Shawn Martin from RussMar, who missed the hearing

⁶³ June 19, 2019 HVT at 01:26:41; *see also* June 19, 2019 HVT at 04:21:15 (Donald Simms testified that 21 of the leaks identified during the leak survey had been repaired with temporary clamps but he acknowledged that those leaks would need to be reevaluated and permanently repaired.).

⁶⁴ *Id.* at 01:32:30.

⁶⁵ *Id.* at 01:34:29.

⁶⁶ *Id.* at 01:39:54; 01:53:10.

⁶⁷ *Id.* at 01:55:27; 04:16:30 (Donald Simms acknowledged that he needed additional time to train under RussMar before he could operate the gas system without them and stated that he might feel comfortable operating the gas system in a year to a year and half without a third-party contractor depending on his skill level at that time and the condition of the system.).

due to flight delays, and additional evidence regarding RussMar's continued efforts to resolve the violations identified in the February Inspection Report. DOI staff conducted a second follow-up inspection of Drakesboro's system on August 22, 2019, and determined that Drakesboro had resolved the alleged violations identified in the February Inspection Report as of the date of the August 22, 2019 inspection. However, DOI staff's findings were based in part on the assistance Drakesboro was receiving from RussMar, including the availability of experienced RussMar staff to assist Drakesboro's employees in their operation and maintenance of Drakesboro's gas system. As noted below, DOI staff continued to recommend that Drakesboro have a qualified third-party operator based on the inability of Drakesboro's current employees to operate the system on their own.

At the November 15, 2019 hearing, Shawn Martin testified regarding inspections of the condition of Drakesboro's system conducted by or at the direction of RussMar. Specifically, he stated that an inspection of the Drakesboro's regulator stations revealed that Drakesboro's regulators are obsolete and should be replaced at a cost of \$15,000 to \$25,000 per regulator depending on the regulator.⁶⁸ Mr. Martin further testified that an inspection of Drakesboro's cathodic protection system revealed significant issues with the cathodic protection system discussed in the Cathodic Protection Troubleshooting Report (CP Report),⁶⁹ including the rectifier producing inadequate amperage to protect the piping from external corrosion, pipe-to-soil readings that do not meet the criteria in 49 C.F.R. Appendix D to Part 192, and the systems ground bed is too close to the main.⁷⁰

⁶⁸ Nov. 15, 2019 HVT at 09:23:25–09:29:00.

⁶⁹ Notice of Filing (filed Jan. 22, 2020) (including a video of the November 15, 2019 hearing and exhibits to the hearing, which included the CP Report as PSC Exhibit 3 (CP Report)).

⁷⁰ *Id.* at 09:28:58–09:37:46.

The CP Report indicated that before issues with the cathodic protection system can be addressed that Drakesboro must take the following steps to isolate the main:

1. Replace segments of the main at all road crossings with new seals and 4-wire test stations at the vent pipes.
2. Isolate junction lines from the main and install new valves with the 4-wire test stations.
3. Install insulated spuds on all meters.

Once the work to isolate the main is completed, Mr. Martin testified that the rectifier and ground bed will need to be replaced, and also that an additional rectifier will need to be installed.⁷¹

Mr. Martin testified that because Drakesboro's cathodic protection system had not been properly inspected that it is unclear how long Drakesboro's natural gas system has been unprotected from external corrosion and, therefore, the condition of the pipe was unclear.⁷² Mr. Martin also testified that without knowing the condition of the pipes that it is not possible to determine the cost to repair the cathodic protection system.⁷³ Mr. Martin noted that an alternative to repairing the cathodic protection would be to replace the steel lines in the system with polyethylene lines,⁷⁴ which he estimated would cost about \$2 million and need to be completed in phases.⁷⁵ Mr. Martin indicated that replacing Drakesboro's steel lines with new polyethylene lines would probably be the best way to

⁷¹ *Id.* at 09:37:46-09:38:30.

⁷² *Id.* at 09:38:35.

⁷³ *Id.* at 09:40:17.

⁷⁴ *Id.* at 09:39:39-09:41:45.

⁷⁵ *Id.* at 09:52:44-09:53:10.

address the issues with Drakesboro's cathodic protection system, because the costs are more certain and because Drakesboro is able to obtain grant money for the new lines. However, Mr. Martin testified that it would be necessary for Drakesboro to repair its cathodic protection system or replace its steel lines to operate the system safely in the long term.⁷⁶

Mr. Martin and Mayor Jones both testified that the city was working with Abacus Engineering and Land Surveying, Inc. (Abacus) to pursue grants and loans to finance work on the Drakesboro's gas system.⁷⁷ Mayor Jones testified that as of the time of the November 15, 2019 hearing the city was working with Abacus but no grant application had been prepared or submitted.⁷⁸ However, Drakesboro filed a letter from Abacus dated February 18, 2020, with its post-hearing brief discussing the work Abacus proposed.⁷⁹

The letter from Abacus indicated that it conducted a review of Drakesboro's gas system, identified the areas of most concern, and made a recommendation for Phase I remediation on a portion of Drakesboro's gas main.⁸⁰ Specifically, Abacus opined that the steel gas main along Kentucky Highway 431 (John Prine Avenue) presents the largest threat to the safety of Drakesboro and its citizens.⁸¹ Abacus recommended that Phase I

⁷⁶ *Id.* at 09:34:10–09:54:00.

⁷⁷ *Id.* at 09:40:30–09:40:51; 10:08:36–10:09:34.

⁷⁸ *Id.* at 10:09:40.

⁷⁹ Drakesboro's Post-Hearing Brief (filed Feb. 21, 2020) at 3, Exhibit A.

⁸⁰ *Id.*, Exhibit A.

⁸¹ *Id.*

of the remediation work consist of replacing a section of that gas main and some associated mains.⁸² In describing Phase I of the remediation work, Abacus stated that:

Phase I will entail replacement of approximately 5,000 lineal feet of steel gas line with four-inch (4") diameter polyethylene gas line. Of the total distance, 4,700 lineal feet will be replaced [beginning immediately south of Gregory's Recycling and proceed northward along Highway 431, crossing Kentucky Highway 176 and continuing northward to the intersection of Highway 431 and Cornette Street]. The remaining 300 lineal feet of line will be placed westward along Highway 176 . . . beginning at the intersection of Highway 431 with Highway 176. This will end the gas line replacement and place the tie-in just prior to the United States Post Office.⁸³

Abacus estimated that Phase I would cost \$509,527.52, though it indicated that the estimate was preliminary and subject to change.⁸⁴

DOI staff filed a post-hearing brief in this matter on February 7, 2020. DOI staff noted that they identified the 35 violations mentioned above during the February 2019 inspection; that 12 of those violations had not been resolved as of the June 17, 2019 inspection; and that all of the violations had been resolved to the extent possible as of the August 22, 2019 inspection. DOI staff argued that as of the date of the February 2019 inspection that the maximum civil penalty for each violation for each day was \$218,647 with a maximum administrative civil penalty not to exceed \$2,186,465 for any related series of violations pursuant to KRS 278.992(1) and 49 C.F.R. § 190.223.⁸⁵ Based on the aggravating and mitigating factors of the violations, DOI staff recommended a penalty

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ DOI Staff's Post-Hearing Brief at 9–10.

in the amount of \$804,000 for the violations identified in the February Inspection Report and recommended that it be adjusted to \$201,000 based on Drakesboro's size, subject to conditions set forth therein.⁸⁶

In its post-hearing brief, which it filed on February 21, 2020, Drakesboro did not dispute the violations alleged by DOI staff in the February Inspection Report. Rather, Drakesboro stated that it agreed with the recitation of the record in DOI staff's post-hearing brief and argued that the factors to be considered when establishing a penalty justify reducing the penalty recommended by DOI staff. Specifically, Drakesboro argued that it had no history of prior offenses, that the current city administration was not at fault for Drakesboro's violations, that any penalty will jeopardize its ability to make recommended repairs and upgrades to its gas system, and that it has incurred significant expense to comply with gas safety regulations. Drakesboro also argued that a monetary penalty would simply punish the citizens and customers of Drakesboro. Thus, Drakesboro argued that the civil penalty should be in the form of a requirement that it expend funds to complete necessary upgrades.

In its reply to Drakesboro's post-hearing brief, DOI staff stated that Drakesboro's argument that imposing a monetary penalty would simply punish Drakesboro's citizens and customers was "well taken" but noted that the purpose of a penalty was both to punish and to deter future actions and that the deterrence function warrants imposition of a civil penalty in this case. DOI staff did not object to suspending a portion of the penalty to allow Drakesboro to complete necessary repairs and upgrades and then waiving the

⁸⁶ DOI Staff's Post-Hearing Brief at 18–19.

penalty if Drakesboro did so, but it argued that any such suspension and waiver should be contingent upon the following conditions:⁸⁷

1. Drakesboro filing monthly progress reports on the implementation of the Phase I rehabilitation project;
2. Drakesboro commencing pipeline replacement in accordance with Phase I project, entering into a contract to sell its gas distribution system to another operator, or ceasing operating the system on or before March 31, 2021;
3. Drakesboro's inclusion of the recommendations set forth in the CP Report in Phase I of the rehabilitation project;
4. Drakesboro notifying the Commission 30 days in advance of any transfer of its gas distribution;
5. Drakesboro performing a leakage survey of its entire gas distribution system at least once each calendar year; and
6. Drakesboro's continued use of a third-party contractor approved by DOI to operate its gas system and perform all leak surveys, regulator inspections, cathodic protection system inspections, and major maintenance activities at least through calendar year 2020, at which time DOI will review the city's ability to operate its gas system safely with qualified and properly trained city employees.

JURISDICTION

Drakesboro is a city in Muhlenberg County, Kentucky that offers retail gas service to approximately 667 customers.⁸⁸ KRS 278.495(2) grants the Commission authority to regulate the safety of natural gas facilities that are owned by any city and used to distribute natural gas at retail. KRS 278.992(1) provides the Commission authority to assess civil penalties for violations of minimum safety standards adopted by USDOT pursuant 49 U.S.C. § 60101, *et seq.*, and amendments thereto, and Commission

⁸⁷ DOI staff's Reply Brief (filed Feb. 28, 2020) at 5.

⁸⁸ See Order (Ky. PSC Feb. 28, 2019), February Inspection Report at 1.

regulations. Thus, the Commission has jurisdiction over the violations of the minimum safety standards alleged in the February Inspection Report and at issue herein.

FINDINGS OF VIOLATION

The material facts in this matter are not in dispute. DOI staff presented evidence that Drakesboro violated most of the pipeline safety standards as alleged. Drakesboro explicitly admitted to many of the violations and did not dispute most others. Drakesboro's witnesses did not dispute any of the material facts presented by DOI staff and acknowledged most of the evidence presented by DOI staff. Drakesboro similarly did not dispute DOI staff's recitation of the record in its brief but rather argued for a reduced penalty for the violations. Thus, except as noted below, the Commission finds that Drakesboro violated the pipeline safety standards as alleged in the February Inspection Report and makes the findings below with respect to each alleged violation.

Violation 1

An operator engaged in the transportation of natural gas is required to prepare and follow a manual of written procedures for conducting operations and maintenance activities.⁸⁹ Pursuant to 49 C.F.R. § 192.605(b)(5), (8), and (9), respectively, the written procedures must include procedures for starting up and shutting down any part of the pipeline in a manner designed to assure operation within the maximum allowable operating pressure (MAOP) limits;⁹⁰ procedures for periodically reviewing the work done by operator personnel to determine the effectiveness and adequacy of the procedures

⁸⁹ 49 C.F.R. § 192.605.

⁹⁰ 49 C.F.R. § 192.605(b)(5).

used;⁹¹ and procedures for taking adequate precautions in excavated trenches to protect personnel from the hazards of unsafe accumulations of vapor or gas.⁹²

Inspector Holbrook testified that Drakesboro had written operations and maintenance procedures at the time of the February 2019 inspection but that those procedures did not include all of the required components. She indicated that she gave Drakesboro credit for the procedures that it had in place at the time of the February 2019 inspection but that she indicate the deficiencies in Drakesboro's procedures in the February Inspection Report.⁹³ In the February Inspection Report, DOI staff indicated that Drakesboro's written operations and maintenance procedures did not include procedures required by 49 C.F.R. § 192.605(b)(5), (8), and (9).⁹⁴ There was no evidence presented indicating that Drakesboro's written procedures included procedures necessary to satisfy those required components. Inspector Holbrook did indicate that Drakesboro developed new written procedures that satisfied these requirements prior to the June 14, 2019 inspection.⁹⁵ Thus, the Commission finds that Drakesboro violated 49 C.F.R. § 192.605 by failing to maintain written procedures required by 49 C.F.R. § 192.605(b)(5), (8), and (9) as of the February 2019 inspection and that Drakesboro had resolved those violations prior to the June 14, 2019 follow-up inspection.

Violation 2

⁹¹ 49 C.F.R. § 192.605(b)(8).

⁹² 49 C.F.R. § 192.605(b)(9).

⁹³ June 19, 2019 HVT at 00:41:05.

⁹⁴ February Inspection Report at 11 (indicating that Drakesboro's procedures were unsatisfactory with respect to those components).

⁹⁵ June 19, 2019 H.V.T. at 00:07:27-00:09:25.

An operator is required to establish and follow written procedures to minimize the hazard resulting from a gas pipeline emergency.⁹⁶ Pursuant to 49 C.F.R. § 192.615(a)(1), (2), (3), (4), and (10), respectively, the written emergency procedures must include procedures for “[r]eceiving, identifying, and classifying notices of events which require immediate response by the operator;”⁹⁷ “[e]stablishing and maintaining adequate means of communication with appropriate fire, police, and other public official;”⁹⁸ “[p]rompt and effective response to a notice of each type of emergency;”⁹⁹ “availability of personnel, equipment, tools, and materials, as needed at the scene of an emergency;”¹⁰⁰ and “[b]eginning action under § 192.617, if applicable, as soon after the end of the emergency as possible.”¹⁰¹

Inspector Holbrook testified that Drakesboro had written emergency procedures at the time of the February 2019 inspection; that DOI staff gave Drakesboro credit for the procedures it had in place at the time of the February 2019 inspection; and that DOI staff indicate the deficiencies in Drakesboro’s emergency procedures in the February Inspection Report.¹⁰² In the February Inspection Report, DOI staff indicated that Drakesboro’s written emergency procedures did not include procedures required by

⁹⁶ 49 C.F.R. § 192.615; 49 CFR § 192.605(a).

⁹⁷ 49 C.F.R. § 192.615(a)(1).

⁹⁸ 49 C.F.R. § 192.615(a)(2).

⁹⁹ 49 C.F.R. § 192.615(a)(3).

¹⁰⁰ 49 C.F.R. § 192.615(a)(4).

¹⁰¹ 49 C.F.R. § 192.615(a)(10).

¹⁰² June 19, 2019 HVT at 00:40:51.

49 C.F.R. § 192.615(a)(1), (2), (3), (4), and (10).¹⁰³ There was no evidence presented indicating that Drakesboro's written procedures included procedures necessary to satisfy those required components at the time of the February 2019 inspection. Inspector Holbrook did indicate that Drakesboro developed new written procedures that satisfied these requirements prior to the June 14, 2019 inspection.¹⁰⁴ Thus, the Commission finds that Drakesboro violated 49 C.F.R. § 192.615(a)(1), (2), (3), (4), and (10) by failing to maintain procedures that satisfied those regulations as of the February 2019 inspection and that Drakesboro had resolved those violations prior to the June 14, 2019 follow-up inspection.

Violation 3

An operator of a buried pipeline is required to have a written program that meets the minimum requirements of 49 C.F.R. § 192.614(c) to prevent damage to the pipeline from excavation activities.¹⁰⁵ DOI staff indicated that at the time of the February 2019 inspection that Drakesboro did not have a written damage prevention plan that met the requirements of 49 C.F.R. § 192.614(c).¹⁰⁶ There was no evidence presented indicating that Drakesboro's damage prevention plan satisfied the requirements of 49 C.F.R. § 192.614(c) at the time of the February 2019 inspection. Inspector Holbrook indicated that Drakesboro developed new written procedures that satisfied that requirement prior to the

¹⁰³ February Inspection Report at 11 (indicating that Drakesboro's procedures were unsatisfactory with respect to those components); see *also* June 19, 2019 HVT at 00:07:27–00:09:25 (in which Inspector Holbrook discusses the violations and Drakesboro's efforts to resolve them).

¹⁰⁴ June 19, 2019 HVT at 00:07:27–00:09:25.

¹⁰⁵ 49 C.F.R. § 192.614.

¹⁰⁶ February Inspection Report at 12 and 38; see *also* June 19, 2019 HVT at 00:40:51 (indicating that deficiencies in procedures were noted in the reports).

June 14, 2019 inspection.¹⁰⁷ Thus, the Commission finds that Drakesboro violated 49 C.F.R. § 192.614(a) by failing to maintain a written damage prevention plan that satisfied the requirements of 49 C.F.R. § 192.614(c) and that Drakesboro had resolved that violation prior to the June 14, 2019 follow-up inspection.

Violation 4

An operator is required to develop and implement a written continuing public education program that follows the recommendations of the American Petroleum Institute's Recommended Practice 1162 and satisfies the requirements of 49 C.F.R. § 192.614 (b), (c), (d), (e) and (f).¹⁰⁸ DOI staff indicated that at the time of the February 2019 inspection that Drakesboro's was not able to produce any written continuing public education program.¹⁰⁹ There was no evidence presented that Drakesboro had a written continuing public education program at the time of the February 2019 inspection. Inspector Holbrook indicated that Drakesboro developed a program that satisfied that requirement prior to the June 14, 2019 inspection.¹¹⁰ Thus, the Commission finds that Drakesboro violated 49 C.F.R. § 192.616 by failing to maintain any written continuing education plan as of the February 2019 inspection and that Drakesboro had resolved that violation prior to the June 14, 2019 follow-up inspection.

Violation 5

¹⁰⁷ June 19, 2019 HVT at 00:07:27–00:09:25.

¹⁰⁸ 49 C.F.R. § 192.616.

¹⁰⁹ February Inspection Report at 15-16 and 38.

¹¹⁰ June 19, 2019 HVT at 00:07:27-00:09:25.

An operator is required to maintain and follow a written anti-drug plan that complies with the requirements of 49 C.F.R. § 199.101. DOI staff indicated that at the time of the February 2019 inspection that Drakesboro did not have such a plan.¹¹¹ There was no evidence presented that Drakesboro had a written anti-drug plan at the time of the February 2019 inspection. However, Mayor Jones indicated at the March 8, 2019 hearing that Drakesboro had implemented an anti-drug plan, and Inspector Holbrook indicated that Drakesboro had a plan at the time of June 14, 2019 inspection.¹¹² Thus, the Commission finds that Drakesboro violated 49 C.F.R. § 199.101 by failing to maintain any written anti-drug plan as of the February 2019 inspection but that the violation was resolved by March 8, 2019.

Violation 6

An operator is required to maintain and follow a written alcohol misuse plan that conforms to the requirements of 49 C.F.R. Part 199 and Department of Transportation procedures concerning alcohol-testing programs.¹¹³ DOI staff indicated that at the time of the February 2019 inspection that Drakesboro did not have such a plan.¹¹⁴ There was no evidence presented that Drakesboro had a written alcohol misuse plan at the time of the February 2019 inspection. Inspector Holbrook indicated that Drakesboro developed new written procedures that satisfied that requirement prior to the June 14, 2019

¹¹¹ February Inspection Report at 56.

¹¹² June 19, 2019 HVT at 00:07:27-00:09:25.

¹¹³ 49 C.F.R. § 199.101.

¹¹⁴ February Inspection Report at 56.

inspection.¹¹⁵ Thus, the Commission finds that Drakesboro violated 49 C.F.R. § 199.101 by failing to maintain any written alcohol misuse plan as of the February inspection but that the violation was resolved as of the June 14, 2019.

Violation 7

An operator is required to conduct drug tests for prohibited substances as described in 49 C.F.R. § 199.105 prior to hiring any employee, following an accident, at random, when there is reasonable cause to believe an employee is using a prohibited drug, and prior to allowing an employee to return to work after they failed or refused to take a drug test.¹¹⁶ DOI staff indicated that at the time of the February 2019 inspection that Drakesboro was unable to produce records indicating that it drug tested its employees.¹¹⁷ At the June 2019 follow-up inspection, Drakesboro produced drug tests for its employees conducted on February 19, 2019, the day after Drakesboro first met with DOI staff for the inspection.¹¹⁸ Drakesboro has not produced any documentation indicating that drug tests were performed prior to that date. Thus, the Commission finds that Drakesboro violated 49 C.F.R. § 199.105 by failing to drug tests of its employees.

Violation 8

An operator is required to provide an employee assistance program and that program must include training for supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause regarding the indicators of

¹¹⁵ June 19, 2019 HVT at 00:07:27-00:09:25.

¹¹⁶ 49 C.F.R. § 199.105.

¹¹⁷ June 19, 2019 HVT at 00:09:25; See *also* February Inspection Report at 56 (indicating that Drakesboro does not perform random drug tests).

¹¹⁸ June 19, 2019 HVT at 00:09:25

probable drug use.¹¹⁹ DOI staff indicated that at the time of the February 2019 inspection that Drakesboro had not provided the required training to supervisory personnel.¹²⁰ Inspector Holbrook testified that Drakesboro had not completed the training as of the June 14, 2019 follow-up inspection but stated that Mayor Jones told her he was going to reach out to the police chief to complete the training.¹²¹ Drakesboro did not produce any evidence that the training had been provided as of the February 2019 inspection or the June 2019 follow-up inspection. Inspector Holbrook indicated that this violation had been resolved as of the second follow-up inspection on August 22, 2019.¹²² Thus, the Commission finds that Drakesboro violated 49 C.F.R. § 199.113 as alleged by failing to train supervisory personnel regarding the indicators of probable drug use and that the violation continued until at least June 14, 2019.

Violation 9

A gas distribution operator is required to develop and implement an integrity management program (DIMP) that includes a written integrity management plan as specified in 49 C.F.R. § 192.1007.¹²³ An operator must completely reevaluate their integrity management plan periodically based on the complexity of its system and

¹¹⁹ 49 C.F.R. § 199.113(a), (b).

¹²⁰ February Inspection Report at 4.

¹²¹ June 19, 2019 HVT at 00:11:10.

¹²² November 15, 2019 Hearing PSC Exhibit 1: October 23, 2019 Inspection Report (October Inspection Report).

¹²³ 49 C.F.R. § 192.1005.

changes in factors affecting the risk of failure but must at minimum reevaluate the program at least every five years.¹²⁴

DOI staff indicated that at the time of the February 2019 inspection that Drakesboro was not able to produce any integrity management plan required by 49 C.F.R. § 192.1005.¹²⁵ Inspector Holbrook testified that at the time of the follow-up inspection that Drakesboro provided a plan from 2014, but she indicated she believed that it needed to be updated to satisfy the regulatory requirements due to the age of the plan.¹²⁶

Based on the evidence presented, the Commission is not able find that Drakesboro's DIMP program, as drafted, failed to meet the applicable regulatory requirements, because there was no evidence presented as to how the program failed to comply with those requirements. However, given that Drakesboro was not able to produce a copy of its DIMP program at the time of the inspection and the condition of its system February 2019, the Commission does find that Drakesboro was not implementing a DIMP program as required by 49 C.F.R. § 192.1005.

Violation 10

Pursuant to 49 C.F.R. § 192.225(a), “[w]elding must be performed by a qualified welder or welding operator in accordance with welding procedures qualified under section 5, section 12, Appendix A or Appendix B of [American Petroleum Institute Standard] 1104 . . . or section IX of the ASME Boiler and Pressure Vessel Code . . . to produce welds meeting the requirements of this subpart.” “Each welding procedure must be recorded in

¹²⁴ 49 C.F.R. § 192.1007(f).

¹²⁵ June 19, 2019 H.V.T. at 00:12:00.

¹²⁶ *Id.*

detail, including the results of the qualifying tests. This record must be retained and followed whenever the procedure is used.”¹²⁷

DOI staff indicated that at the time of the February 2019 inspection that Drakesboro’s did not record welding procedures in a manner sufficient to satisfy 49 C.F.R. § 192.225 but rather simply referred to the model codes.¹²⁸ Drakesboro did not dispute DOI staff’s assertions regarding how it recorded welding procedures. Further, as noted above, 49 C.F.R. § 192.225 clearly requires more than simply referring to the model codes. Thus, the Commission finds that Drakesboro violated 49 C.F.R. § 192.225 by failing to record welding procedures in a manner sufficient to satisfy the requirements of that regulation.

Violation 11

Pursuant to 49 C.F.R. § 192.273(b), “[e]ach joint must be made in accordance with written procedures that have been proven by test or experience to produce strong gastight joints.”¹²⁹ Regulation 49 C.F.R. § 192.283 establishes requirements for qualifying joining procedures for plastic pipes. DOI staff indicated that at the time of the February 2019 inspection that Drakesboro did not have written qualified joining procedures.¹³⁰ Drakesboro did not dispute DOI staff’s assertions that it did not have written qualified joining procedures at the time of the February 2019 inspection. Thus, the Commission

¹²⁷ 49 C.F.R. § 192.225(b).

¹²⁸ February Inspection Report at 23–24; *see also* June 19, 2019 HVT at 00:12:26 (Inspector Holbrook discusses Drakesboro’s efforts to resolve this violation as of the time of the June 14, 2019 follow-up inspection.).

¹²⁹ 49 C.F.R. § 192.273(b).

¹³⁰ February Inspection Report at 25.

finds that Drakesboro violated 49 C.F.R. § 192.273 by failing to maintain written qualified joining procedures for plastic pipes in Drakesboro's system.

Violation 12

Pursuant to 49 C.F.R. § 192.805, an operator is required to have and follow a written operator qualification program that includes provisions to:

- (a) Identify covered tasks;
- (b) Ensure through evaluation that individuals performing covered tasks are qualified;
- (c) Allow individuals that are not qualified pursuant to this subpart to perform a covered task if directed and observed by an individual that is qualified;
- (d) Evaluate an individual if the operator has reason to believe that the individual's performance of a covered task contributed to an incident as defined in Part 191;
- (e) Evaluate an individual if the operator has reason to believe that the individual is no longer qualified to perform a covered task;
- (f) Communicate changes that affect covered tasks to individuals performing those covered tasks;
- (g) Identify those covered tasks and the intervals at which evaluation of the individual's qualifications is needed; [and]
- (h) . . . provide training, as appropriate, to ensure that individuals performing covered tasks have the necessary knowledge and skills to perform the tasks in a manner that ensures the safe operation of pipeline facilities.¹³¹

DOI staff indicated that at the time of the February 2019 inspection that Drakesboro's written qualification program did not include requirements for reevaluating qualifications for covered tasks; a requirement that the operator qualification plan be communicated to contractors and a process to ensure that contractors are following the plan; a process to ensure that personnel making joints in plastic pipelines are qualified; a requirement that contractors be qualified before completing covered tasks; a process to

¹³¹ 49 C.F.R. § 192.805(a)–(h).

ensure that persons who inspect joints in plastic pipes are qualified; and a process to ensure that corrosion control procedures are carried out by, or under the direction of, qualified personnel.¹³² There was no evidence that Drakesboro had an operator qualification program that met those requirements. Thus, the Commission finds that Drakesboro failed to maintain a written qualification program that complied with 49 C.F.R. § 192.805(b), (c), (g) and (h).

Violation 13

An operator of a distribution system must submit an annual report for its system on DOT Form PHMSA F 7100.1-1 by March 15 of the year following the calendar year for which the report is being made.¹³³ Inspector Holbrook testified that Drakesboro had not submitted its 2017 annual report pursuant to 49 C.F.R. § 191.11 as of the February 2019 inspection or the June 2019 follow-up inspection and that as of the follow-up inspection that Drakesboro has also not submitted its 2018 annual report.¹³⁴ An employee from RussMar, Jeff Roberts, acknowledged Drakesboro had not filed its annual report for 2017 or 2018 as of the February 2019 inspection or the June 2019 follow-up inspection,¹³⁵ and Drakesboro did not dispute that it failed to file the annual report.¹³⁶ Thus, the Commission

¹³² February Inspection Report at 26; *see also* June 19, 2019 HVT at 00:12:44 (Inspector Holbrook discusses Drakesboro's efforts to resolve this violation as of the time of the June 14, 2019 follow-up inspection.).

¹³³ 49 C.F.R. § 191.11.

¹³⁴ June 19, 2019 HVT at 00:12:59.

¹³⁵ *Id.* at 02:12:23.

¹³⁶ Drakesboro's Answer, paragraph 13.

finds that Drakesboro violated 49 C.F.R. § 191.11 by failing to file its 2017 annual report by March 15, 2018, and failing to file its 2018 annual report by March 15, 2019.

Violation 14

Pursuant to 49 C.F.R. § 192.16, an operator who does not maintain the customer's buried piping as described in 49 C.F.R. § 192.16(a) is required to notify each customer once in writing, within 90 days after the customer first receives gas at a particular location, that:

- (1) The operator does not maintain the customer's buried piping.
- (2) If the customer's buried piping is not maintained, it may be subject to the potential hazards of corrosion and leakage.
- (3) Buried gas piping should be—
 - (i) Periodically inspected for leaks;
 - (ii) Periodically inspected for corrosion if the piping is metallic; and
 - (iii) Repaired if any unsafe condition is discovered.
- (4) When excavating near buried gas piping, the piping should be located in advance, and the excavation done by hand.
- (5) The operator (if applicable), plumbing contractors, and heating contractors can assist in locating, inspecting, and repairing the customer's buried piping.¹³⁷

An operator is required to make a copy of the notice currently in use and evidence that notices have been sent to customers within the previous three years available to inspectors.¹³⁸

DOI staff indicated that at the time of the February 2019 inspection that Drakesboro could not produce any records that it provided customer notifications as required by

¹³⁷ 49 C.F.R. § 192.16(a)–(c).

¹³⁸ 49 C.F.R. § 192.16(a)–(c).

49 C.F.R. § 192.16,¹³⁹ and Drakesboro did not produce any such record in this matter. Inspector Holbrook testified that Drakesboro had provided customer notifications to some of its customers as of the June 2019 follow-up inspection, but that it had not provided notifications to all customers.¹⁴⁰ Thus, the Commission finds that Drakesboro violated 49 C.F.R. § 191.16 by failing to maintain a copy of the customer notification currently in use and records of the customer notifications it provided in the last three years.

Violation 15

Pursuant to 49 C.F.R. § 192.616, an operator is required to develop and implement a written continuing public education program that follows the recommendations of the American Petroleum Institute's Recommended Practice 1162 and satisfies the requirements of 49 C.F.R. § 192.614(b), (c), (d), (e) and (f).¹⁴¹ DOI staff indicated that at the time of the February 2019 inspection, Drakesboro's was not able to produce any written continuing public education program or records that it had been implemented.¹⁴² There was no evidence presented that Drakesboro had implemented any customer awareness program at the time of the February 2019 inspection. Further, both Inspector Holbrook and Mayor Jones indicated at the June 19, 2019 hearing that Drakesboro had not yet provided customer awareness pamphlets intended to implement its continuing public education program to customers but that those pamphlets were at the printers and

¹³⁹ February Inspection Report at 34.

¹⁴⁰ June 19, 2019 HVT at 00:14:12.

¹⁴¹ 49 C.F.R. § 192.616.

¹⁴² February Inspection Report at 15-16; 38.

would shortly be provided to customers.¹⁴³ Thus, the Commission finds that Drakesboro violated 49 C.F.R. § 192.616 by failing to implement any written continuing public education program as of the February 2019 inspection and that the violation was not resolved as of June 19, 2019.

Violation 16

Pursuant to 49 C.F.R. § 192.615(b), an operator is required to “[t]rain the appropriate operating personnel to assure that they are knowledgeable of the emergency procedures and verify that the training is effective.”¹⁴⁴ DOI staff indicated that at the time of the February 2019 inspection that Drakesboro’s was not able to produce any record that it trained personnel on emergency procedures or that the training was effective.¹⁴⁵ Drakesboro has not produced any record that it had trained its personnel regarding the emergency procedures prior to the February 2019 inspection or that it verified that the training was effective. Inspector Holbrook testified that Drakesboro completed this training on the date of the follow-up inspection.¹⁴⁶ Thus, the Commission finds that Drakesboro violated 49 C.F.R. § 192.615(b).

Violation 17

¹⁴³ See June 19, 2019 HVT at 00:15:10 (Inspector Holbrook testified that Drakesboro had not provided the public awareness messages required by 49 C.F.R. § 192.616 but that Drakesboro informed her that the public awareness brochures were at the printers as of the time of the follow-up inspection.); June 19, 2019 HVT at 03:47:42 (Mayor Jones testified that Drakesboro had not completed the public awareness messaging but would do so when it next read the gas meters).

¹⁴⁴ 49 C.F.R. § 192.615(b)(2).

¹⁴⁵ February Inspection Report at 38.

¹⁴⁶ June 19, 2019 HVT at 00:15:45.

Pursuant to 49 C.F.R. § 192.615(c), each operator is required to maintain liaison with the appropriate fire, police, and other public officials to:

- (1) Learn the responsibility and resources of each government organization that may respond to a gas pipeline emergency;
- (2) Acquaint the officials with the operator's ability in responding to a gas pipeline emergency;
- (3) Identify the types of gas pipeline emergencies of which the operator notifies the officials; and
- (4) Plan how the operator and officials can engage in mutual assistance to minimize hazards to life or property.

DOI staff indicated that at the time of the February 2019 inspection that Drakesboro had no record that it satisfied this requirement,¹⁴⁷ and Drakesboro did not produce any such record in this matter. Inspector Holbrook also testified that Drakesboro had not established a liaison as of the June 14, 2019 follow-up inspection but that they did on the day of that inspection.¹⁴⁸ Thus, the Commission finds that Drakesboro violated 49 C.F.R. § 192.615(c).

Violation 18

Pursuant to 49 C.F.R. § 192.605(a), an operator is required to review and update its manual of written procedures for conducting operations and maintenance activities each calendar year and in no case at an interval of less than 15 months.¹⁴⁹ DOI staff indicated that Drakesboro had not reviewed and updated its procedure as required at the time of the February 2019 inspection.¹⁵⁰ Drakesboro did not present evidence

¹⁴⁷ February Inspection Report at 39.

¹⁴⁸ June 19, 2019 HVT at 00:16:17.

¹⁴⁹ 49 C.F.R. § 192.605(a).

¹⁵⁰ February Inspection Report at 10.

demonstrating that it had reviewed and updated its procedures as required, and it is evident that it did not prior to the February 2019 inspection given the significant issues with Drakesboro's written procedures. Thus, the Commission finds that Drakesboro violated 49 C.F.R. § 192.615(a) by failing to review and update its written procedures at the required intervals.

Violation 19

A combustible gas distribution line is required to contain an odorant so that the gas is readily detectable by a person with a normal sense of smell at a concentration in air of one-fifth of the lower explosive limit.¹⁵¹ Pursuant to 49 C.F.R. § 192.625(f):

To assure the proper concentration of odorant in accordance with this section, each operator must conduct periodic sampling of combustible gases using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable. Operators of master meter systems may comply with this requirement by: (1) Receiving written verification from their gas source that the gas has the proper concentration of odorant; and (2) Conducting periodic "sniff" tests at the extremities of the system to confirm that the gas contains odorant.

Commission regulation 807 KAR 5:027, Section 5(4), requires an operator to conduct an odorant test at least once every 30 days.

DOI staff indicated that Drakesboro's last recorded odorant test was in November 2017, but noted that no employee of Drakesboro signed off on the test.¹⁵² Eddie Brake, the longtime operator of Drakesboro's gas system, vaguely indicated that odorant tests were conducted and that Drakesboro had records of the test at some point that went

¹⁵¹ 49 C.F.R. § 192.625(a).

¹⁵² February Inspection Report at 40.

missing.¹⁵³ However, Mr. Brake's testimony indicating that odorant tests occurred between November 2017 and the February 2019 inspection or that there were valid records of those tests was not credible because he claimed that the records disappeared just as they were going to be reviewed¹⁵⁴ and some records that are available, such as the records of leak tests, were falsified.¹⁵⁵ Further, when odorant was added to the system on February 8, 2019, Drakesboro, which has approximately 667 customers,¹⁵⁶ received over a hundred leak reports based on customers smelling gas within three weeks. It is implausible to the Commission that such a significant percentage of leaks could have arisen in a short period, and therefore the Commission finds that odorant had not been in Drakesboro's system in sufficient quantities for a significant period because at least some of the leaks, which must have developed over time, would have been identified earlier if the system had been properly odorized. Thus, the Commission finds that Drakesboro violated 807 KAR 5:027, Section 5(4), by failing to conduct odorant tests from November 2017 until at least February 8, 2019, when Vanguard introduced odorant to Drakesboro's system.

¹⁵³ See March 8, 2019 HVT at 12:08:35–12:09:00; 12:14:19–12:15:02 (Eddie Brake claimed that Drakesboro had records that it completed certain activities required by federal gas safety regulations, including records of odorant tests, leak surveys, patrolling, operator qualifications, and leak reports, but he acknowledged that the records were no longer present at the time that he left his position with Drakesboro.).

¹⁵⁴ See June 19, 2019 HVT at 01:15:28 (Inspector Holbrook testified that Mr. Brakes claimed that the records disappeared when his filing cabinet was moved.); *see also* March 8, 2019 HVT at 12:14:19–12:15:02 (Mr. Brake claimed that Drakesboro moved a file cabinet containing the records from the sewer plant to a city building as part of an effort to review the records and that when he went to go through the file cabinet that the records were gone).

¹⁵⁵ See June 19, 2019 HVT at 01:13:13 (Inspector Holbrook testified as to Jordan Shaw's statements that he did not conduct the December 2017 leak survey as indicated in Drakesboro's records).

¹⁵⁶ See February Inspection Report at 1 (indicating the number of customers served by Drakesboro).

The Commission further finds that Drakesboro's failure to conduct an odorant test from November 2017 until at least February 8, 2019, was far too long an interval to "assure the proper concentration of odorant" as required by 49 C.F.R. § 192.625(f). In fact, even if there had been odorant in the system when it was tested in February 2019, odorant tests at intervals of over a year would be insufficient to assure that the system is properly odorized. However, in this case, it is clear that the frequency of the tests were insufficient because the evidence indicates that there was no odorant in the system in February 2019. Thus, the Commission finds Drakesboro violated 49 C.F.R. § 192.625(f) by failing to conduct periodic odorant tests to assure the proper concentration of odorant and that the violation had been ongoing for at least ten days when an odorant test was ultimately conducted on or about February 8, 2019.

Violation 20

Pursuant to 49 C.F.R. § 192.721, an operator is required to conduct patrolling of its distribution system at a frequency that must be determined by "the severity of the conditions which could cause failure or leakage and the consequent hazards to public safety."¹⁵⁷

Mains in places or on structures where anticipated physical movement or external loading could cause failure or leakage must be patrolled—(1) In business districts, at intervals not exceeding 4 ½ months, but at least four times each calendar year; and (2) Outside business districts, at intervals not exceeding 7 ½ months, but at least twice each calendar year.¹⁵⁸

¹⁵⁷ 49 C.F.R. § 192.721(a).

¹⁵⁸ 49 C.F.R. § 192.721(b).

DOI staff indicated that Drakesboro had no record of conducting any patrolling since 2019.¹⁵⁹ Mr. Brake indicated generally that patrolling had been conducted when he was operating Drakesboro's gas system and that there were records for the same, but as discussed above, his testimony was not credible because the records disappeared when they were about to be reviewed and some records that have been presented were falsified. Moreover, 49 C.F.R. § 192.721 requires the frequency of patrolling to be based on the condition and location of the pipes being patrolled,¹⁶⁰ but DOI staff indicated that Drakesboro's written procedures did not include any specifics regarding when and where it would patrol. Given the fact that it has no record of patrolling since November 2017 and no specific plan for patrolling, the Commission finds that Drakesboro violated 49 C.F.R. § 192.721 by failing to engage in patrolling from November 2017 until at least February 2019.

Violation 21

Pursuant to 49 C.F.R. § 192.723, an operator of a distribution system is required to conduct a leakage survey based on the nature of the operations of the system and the local conditions, except that the leakage survey must meet the minimum requirements set forth in that regulation. The leakage survey must, at a minimum, be conducted in business districts once each calendar year and at intervals not exceeding 15 months.¹⁶¹ Outside of business districts, the leakage survey must, at a minimum, be conducted every three calendar years and at intervals not exceeding 39 months for cathodically

¹⁵⁹ February Inspection Report at 5 and 19.

¹⁶⁰ June 19, 2019 HVT at 00:18:17; 49 C.F.R. § 192.721.

¹⁶¹ 49 C.F.R. § 192.723(b)(1).

unprotected distribution lines subject to 49 C.F.R. § 192.465(e) on which electrical surveys for corrosion are impractical, and every five calendar years and at intervals not exceeding 63 months for other lines outside business districts.¹⁶²

DOI staff indicated that at the time of the February 2019 inspection that Drakesboro presented records indicating that it last conducted a leakage survey in its business district in 2017.¹⁶³ In this matter, Drakesboro produced a record of a leakage survey conducted by Jordan Shaw in December 2017 and partially completed record of a leakage survey conducted by Mr. Shaw in December 2018.¹⁶⁴ However, Mr. Shaw indicated that he did not conduct the 2017 leakage survey and did not even work at Drakesboro when the 2018 leakage survey was allegedly conducted. There would have been no reason to falsify the records if the leakage surveys had actually been conducted.

Further, Inspector Holbrook testified that RussMar provided records indicating that they had completed a leak survey between March 20, 2019, and April 16, 2019. She testified that RussMar indicated that they identified no Class I leaks, 22 Class II leaks, and 7 Class III leaks.¹⁶⁵ Given the size of Drakesboro's system, it is unlikely that Drakesboro would have identified that many leaks if it had been conducting leak surveys and repairing leaks at the intervals required by 49 C.F.R. § 192.723. Thus, the Commission finds that Drakesboro violated 49 C.F.R. § 192.723 by failing to conduct a leakage survey in 2017 and 2018.

¹⁶² 49 C.F.R. § 192.723(b)(2).

¹⁶³ February Inspection Report at 41.

¹⁶⁴ March 8, 2019 HVT at 10:53:47 AM, Commission Staff Exhibit 1.

¹⁶⁵ June 19, 2019 HVT at 00:19:55.

Violation 22

Pursuant to 49 C.F.R. § 192.739, operators are required to inspect each regulating station and its equipment at intervals not exceeding 15 months, but at least once each calendar year. DOI staff indicated that at the time of the February 2019 inspection that Drakesboro was not able to produce records that a regulator inspection occurred in 2018 and the regulators themselves had ice on them indicating that they were not functioning properly.¹⁶⁶ As noted with respect to other missing records, Mr. Brake indicated that the records existed, but that they were lost. However, for the reasons discussed above, the Commission does not find Mr. Brake's testimony that the records existed to be credible and further finds that the absence of records, under the circumstances in this case, indicate that the inspections were not conducted. Thus, the Commission finds that Drakesboro violated 49 C.F.R. § 192.739 by failing to conduct regulator inspections in 2018.

Violation 23

Pursuant to 49 C.F.R. § 192.747, operators are required to check and service each valve necessary for the safe operation of a distribution system at intervals not exceeding 15 months but at least once each calendar year. DOI staff indicated that at the time of the February 2019 inspection that Drakesboro was not able to produce records that valve checks or maintenance had occurred since 2016.¹⁶⁷ As noted with respect to other missing records, Mr. Brake indicated that the records existed but that they were lost. However, for the reasons discussed above, the Commission does not find Mr. Brake's

¹⁶⁶ February Inspection Report at 32 and 42.

¹⁶⁷ February Inspection Report at 44.

testimony that the records existed to be credible and further finds that the absence of records, under the circumstances in this case, indicate that the inspections were not conducted. Thus, the Commission finds that Drakesboro violated 49 C.F.R. § 192.747 by failing to check and maintain valves in 2017 or 2018.

Violation 24 and Violation 25

Pursuant to 49 C.F.R. § 192.465, operators are required to check pipelines under cathodic protection and service each valve necessary for the safe operation of a distribution system at intervals not exceeding 15 months, but at least once each calendar year.¹⁶⁸ Each rectifier must be inspected six times each calendar year, but with intervals not exceeding 2.5 months to ensure it is operating properly.¹⁶⁹ Operators are required to maintain records of their inspections of pipelines under cathodic protection for the life of the pipeline and are required to maintain records of their rectifier inspections for a period of five years.¹⁷⁰

DOI staff indicated that at the time of the February 2019 inspection that Drakesboro's last recorded inspection of pipelines under cathodic protection was on September 27, 2017, and its last recorded rectifier inspection occurred on February 21, 2018.¹⁷¹ Drakesboro did not offer any specific evidence indicating that pipelines under cathodic protection and rectifiers had been inspected, respectively, since those dates. Further, when the pipelines under cathodic protection were tested following the February

¹⁶⁸ 49 C.F.R. § 192.465(a).

¹⁶⁹ 49 C.F.R. § 192.465(b).

¹⁷⁰ 49 C.F.R. § 192.491(c).

¹⁷¹ February Inspection Report at 46.

2019 inspection, it was determined that the cathodic protection system was not offering sufficient protection,¹⁷² which indicates that the Drakesboro had not been inspecting the system as required. Thus, the Commission finds that Drakesboro violated 49 C.F.R. § 192.465 (a) by failing to conduct an inspection of pipelines under cathodic protection since September 27, 2017, and failing to conduct an inspection of its rectifiers since February 21, 2018.

Violation 26

Pursuant to 49 C.F.R. § 192.481, an operator is required to inspect each pipeline or portion of a pipeline exposed to the atmosphere for evidence of atmospheric corrosion at least once every three calendar years, but with intervals not exceeding 39 months.¹⁷³ DOI staff indicated that Drakesboro had records of atmospheric corrosion inspections of regulator stations being conducted on May 2, 2017, but no record of atmospheric corrosion inspections being conducted on exposed piping and meter settings.¹⁷⁴ There was no evidence presented indicating that Drakesboro had conducted inspections of exposed piping and meter settings other than the regulator stations. Thus, the Commission finds that Drakesboro violated 49 C.F.R. § 192.481 by failing to inspect all pipes exposed to cathodic protection.

Violation 27

Pursuant to 49 C.F.R. § 192.707(a), “a line marker must be placed and maintained as close as practical over each buried main and transmission line: (1) At each crossing

¹⁷² Nov. 15, 2019 HVT at 09:28:58–09:37:46.

¹⁷³ 49 C.F.R. § 192.481(a).

¹⁷⁴ February Inspection Report at 48.

of a public road and railroad; and (2) Wherever necessary to identify the location of the transmission line or main to reduce the possibility of damage or interference.” Further, pursuant to 49 C.F.R. § 192.707(c), “[l]ine markers must be placed and maintained along each section of a main and transmission line that is located aboveground in an area accessible to the public.” Each line markers must be written legibly on a background of sharply contrasting color on each line marker and must include the name and telephone number of the operator and “[t]he word ‘Warning,’ ‘Caution,’ or ‘Danger’ followed by the words ‘Gas (or name of gas transported) Pipeline.’”¹⁷⁵

DOI staff indicated that at the time of the inspection that they were unable to read Drakesboro’s pipeline makers and that they needed to be replaced.¹⁷⁶ Drakesboro acknowledged that pipeline makers needed to be replaced at the time of the February 2019 Inspection.¹⁷⁷ Further, the undisputed testimony was that the pipeline markers had not been replaced as of the date of the June 14, 2019 follow-up inspection but that they had been replaced before the second follow-up inspection on August 22, 2019. Thus, the Commission finds that 49 C.F.R. § 192.707 by failing to maintain line marks that were legible at the time of the February 2019 inspection and that the violation continued until at least June 19, 2019.

Violation 28

Pursuant to 49 C.F.R. § 192.805(b), an operator is required to “[e]nsure through evaluation that individuals performing covered tasks are qualified.” DOI staff indicated

¹⁷⁵ 49 C.F.R. § 192.481(d).

¹⁷⁶ February Inspection Report at 32.

¹⁷⁷ Drakesboro’s Answer, paragraph 27.

that at or about the time of the inspection that two employees of Drakesboro were performing covered tasks that they were not properly qualified and that they received reports that inmates from the county prison assisted Drakesboro's employees in turning on gas service.¹⁷⁸ Drakesboro admitted that its employees performing covered tasks were not properly qualified pursuant to 49 C.F.R. § 192.805 at or about the time of the February 2019 inspection but pointed that it retained a third-party contractor to perform the tasks.¹⁷⁹ Thus, the Commission finds that Drakesboro violated 49 C.F.R. § 192.805(b) by failing to ensure that at least two persons completing qualified tasks on Drakesboro's behalf were properly qualified.

Further, while no violation was alleged for this conduct, and the Commission will not make a finding of a violation for that reason, the undisputed evidence indicates that Drakesboro used inmates to perform labor related to its gas operations, including, at minimum, performing physical labor, such as digging around natural gas mains, necessary to complete covered tasks. Further, a report for a leakage survey performed by Drakesboro, which was apparently falsified, indicated that the leakage survey was performed by an employee and an inmate, and a customer testified that an inmate accompanied an employee of Drakesboro into her home to light pilot lights after assisting with the installation of a meter and activation of service. It would be unlawful for an unqualified inmate to perform covered tasks,¹⁸⁰ and the Commission does not believe that it is safe to involve any inmates in the performance of covered tasks in any way, even

¹⁷⁸ February Inspection Report at 5.

¹⁷⁹ Drakesboro's Answer, paragraph 28.

¹⁸⁰ See 49 C.F.R. § 192.805.

as unskilled labor. Thus, if Drakesboro, which indicated it has stopped the practice, or other operators have inmates perform work related to their gas systems in the future, the Commission intends to closely scrutinize the work perform and impose penalties if they are improperly involved in an covered tasks or their work otherwise jeopardizes safety.

Violation 29

Pursuant to 49 C.F.R. § 192.311, “[e]ach imperfection or damage that would impair the serviceability of plastic pipe must be repaired or removed.” DOI staff indicated that at the time of the inspection they determined that Drakesboro had repaired a 2-inch plastic pipe on Wyatt’s Chapel Road using a clamp.¹⁸¹ The undisputed testimony presented in this matter, was that it was improper to repair a plastic pipe using a clamp. Drakesboro did not dispute that the plastic pipe had been repaired using a clamp. Inspector Holbrook testified that the clamp remained on the pipe as of the June 14, 2019 follow-up inspection, but she indicated that she was told by Drakesboro that they had identify the location of the clamp as of the June 19, 2019 hearing and would be correcting it shortly.¹⁸² Inspector Holbrook later indicated that the plastic pipe had been properly repaired as of the second follow-up inspection. Thus, the Commission finds that Drakesboro was violating 49 C.F.R. § 192.311 as of the February 2019 inspection by operating the section of its system with the plastic pipe repaired with a clamp and that the violation continued until at least June 19, 2019.

Violation 30

¹⁸¹ February Inspection Report at 5.

¹⁸² June 19, 2019 HVT at 00:27:24.

As noted above, a combustible gas distribution line is required to contain an odorant so that the gas is readily detectable by a person with a normal sense of smell at a concentration in air of one-fifth of the lower explosive limit pursuant to 49 C.F.R. § 192.625(a). The undisputed evidence was that Drakesboro had no odorant in its system on February 8, 2019, when Vanguard first came to assist in the operation of the pipeline, and Drakesboro admitted that it had violated 49 C.F.R. § 192.625(a) by failing to maintain odorant in the system. Thus, the Commission finds that Drakesboro violated 49 C.F.R. § 192.625(a) by failing to maintain sufficient odorant in its distribution system on February 8, 2019.

Violation 31

Pursuant to 49 C.F.R. § 192.605(a), an operator is required to prepare and follow written procedures to minimize the hazard resulting from a gas pipeline emergency. DOI staff indicated that at the time of the inspection they determined that Drakesboro failed to follow its emergency procedures pursuant to 49 C.F.R. § 192.605(a) in response to two reports of gas leaks detected inside and outside of homes.¹⁸³ However, while the evidence has indicated that Drakesboro's written emergency procedures in place at the time of the February 2019 inspection failed to meet the regulatory requirements in a number of ways, as discussed above with respect to other violations, the evidence was not clear with respect to how Drakesboro violated 49 C.F.R. § 192.605(a) by failing to follow its written emergency procedures.¹⁸⁴ Thus, the Commission is not able to find that

¹⁸³ February Inspection Report at 6.

¹⁸⁴ See June 19, 2019 HVT at 00:29:00 (Inspector Holbrook testifies generally about the alleged violation.).

Drakesboro violated 49 C.F.R. § 192.605(a) by failing to follow its written emergency procedures with respect to the two reports of gas leaks at issue.

Violation 32

An operator is required to install an excess flow valve on any new or replacement service line installed to a single family residency, certain multifamily residences, and small commercial customers after April 14, 2017, except as provided in 49 C.F.R. § 192.383(c).¹⁸⁵ An operator is required to install an excess flow valve upon request by an existing customer on service lines not exceeding 1,000 SCFH and who do not qualify for one of the exceptions in 49 C.F.R. § 192.383(c).¹⁸⁶ Pursuant to 49 C.F.R. § 192.383(e), an operator is required to notify existing customers in writing or electronically of their right to request that an excess flow valve be installed pursuant to 49 C.F.R. § 192.383(d).

DOI staff indicated that at the time of the February 2019 inspection that Drakesboro did not offer excess flow valves to existing customers.¹⁸⁷ Drakesboro admitted that it had not offered excess flow valves as required but indicated in its March 22, 2019 answer that it had ordered the excess flow valves for customers and that it would “distribute them upon receipt.”¹⁸⁸ Inspector Holbrook testified that Drakesboro had not offered excess flow valves to existing customers and that Drakesboro indicated it was going to wait until the customer awareness brochures, discussed above, had arrived and offer the excess

¹⁸⁵ 49 CFR § 192.383(a), (b); see also 49 CFR § 192.383(c) (listing exceptions to the requirement that an excess flow valve be installed).

¹⁸⁶ 49 CFR § 192.383(d).

¹⁸⁷ February Inspection Report at 6, 10, and 36.

¹⁸⁸ Drakesboro’s Answer, paragraph 32.

flow valves at the same time that those brochures were distributed.¹⁸⁹ Thus, the Commission finds that Drakesboro violated 49 C.F.R. § 192.383 by failing to notify customers whose service lines were installed prior to April 14, 2017, in writing or electronically, of their right to request that an excess flow valve be installed pursuant to 49 C.F.R. § 192.383(d).

Violation 33

Pursuant to 49 C.F.R. § 192.285(a), “[n]o person may make a plastic pipe joint unless that person has been qualified under the applicable joining procedure by: (1) Appropriate training or experience in the use of the procedure; and (2) Making a specimen joint from pipe sections joined according to the procedure that passes the inspection and test set forth in [49 C.F.R. § 192.285(b)].” DOI staff indicated that at the time of the February 2019 inspection that Drakesboro had no employees who were qualified to conduct plastic pipe fusion and no record of any employees being qualified had been maintained.¹⁹⁰ Drakesboro admitted that it had failed to ensure that each person making joints in plastic pipelines was qualified as required by 49 C.F.R. § 192.285 but indicated that it had retained a qualified contractor and obtained training for its employees since the February 2019 inspection.¹⁹¹ Thus, the Commission finds that Drakesboro violated 49 C.F.R. § 192.285 by failing to ensure that each person making joints in plastic pipelines was qualified as required by that regulation.

Violation 34

¹⁸⁹ June 19, 2019 HVT at 00:29:54; *see also* June 19, 2019 HVT at 03:48:54 (where Mayor Jones indicates that they will offer excess flow valves to customers for free if they will pay to have it put in).

¹⁹⁰ February Inspection Report at 6 and 35.

¹⁹¹ Drakesboro’s Answer, paragraph 33.

“No person may operate a segment of a steel or plastic pipeline at a pressure that exceeds a maximum allowable operating pressure (MAOP),”¹⁹² and “[n]o person may operate a new segment of pipeline, or return to service a segment of pipeline that has been relocated or replaced, until . . . [i]t has been tested in accordance with [Subpart J of Part 192, including 49 C.F.R. §§ 192.505 through 192.515,] and § 192.619 to substantiate the maximum allowable operating pressure [(MAOP)].”¹⁹³ Pursuant to 49 C.F.R. § 192.517, an operator must maintain records of each test performed pursuant to 49 C.F.R. §§ 192.505, 192.506, and 192.507 for the useful life of the pipeline and “must maintain a record of each test required by §§ 192.509, 192.511, and 192.513 for at least 5 years.”

DOI staff indicated that at the time of the February 2019 inspection that Drakesboro was unable to produce records of inspections conducted pursuant to Subpart J of 49 C.F.R. Part 192.¹⁹⁴ Drakesboro acknowledged that it was not able to locate those records at the time of the inspection, but it indicated it was still attempting to locate the records when it filed its March 22, 2019 answer.¹⁹⁵ Inspector Holbrook testified that Drakesboro did not maintain, and is currently not able to locate, records of each test performed under 49 C.F.R. Subpart J as required by 49 C.F.R. § 192.517 such that it did not have an MAOP substantiated through pressure tests.¹⁹⁶ Thus, the Commission finds that

¹⁹² 49 C.F.R. § 192.619(a).

¹⁹³ 49 C.F.R. § 192.503(a).

¹⁹⁴ February Inspection Report at 6 and 37.

¹⁹⁵ Drakesboro's Answer, paragraph 33.

¹⁹⁶ June 19, 2019 HVT at 00:31:28.

Drakesboro violated 49 C.F.R. §§ 192.503 and 192.517 by failing to substantiate an MAOP with pressure tests conducted pursuant to Subpart J of 49 C.F.R. Part 192.

Violation 35

Pursuant to 49 C.F.R. § 192.603(b), “[e]ach operator shall keep records necessary to administer the procedures established under § 192.605,” which requires an operator to prepare and follow a manual of written procedures for conducting operations and maintenance activities.¹⁹⁷ DOI staff indicated that at the time of the February 2019 inspection that Drakesboro failed to maintain records of the installation of new service lines, the installation of excess flow valves, response to and repair of leaking pipelines, atmospheric corrosion inspections, odorant tests, the patrolling of distribution mains, leak surveys, valve inspections, pipe-to-soil readings, and cathodic protection rectifier inspections. There was no evidence presented disputing those violations. Thus, the Commission finds that Drakesboro violated 49 C.F.R. § 192.603(b) by failing to maintain those records.

PENALTY ASSESSMENT

KRS 278.992(1) provides that a person who violates minimum pipeline safety standards is subject to a civil penalty not to exceed the maximum civil penalty allowed by 49 C.F.R. § 190.223 “for each violation for each day that the violation persists.” The maximum civil penalty allowed by 49 C.F.R. § 190.223 as of the date of the February 2019 inspection for each violation for each day was \$218,647 with a maximum administrative civil penalty not to exceed \$2,186,465 for any related series of violations. Thus, based on the violations identified above, Drakesboro could be subject to civil

¹⁹⁷ 49 C.F.R. § 192.605.

penalties up to \$7,433,998¹⁹⁸ even before penalties for multiple violations of the same standard or continuing violations are included.

Including penalties for multiple violations of the same standard and continuing violations would significantly increase the statutory maximum civil penalty authorized by KRS 278.992(1). For instance, the record supports a finding that a number of the violations identified in the February Inspection Report actually constituted multiple violations:

1. Violation 1 arose from Drakesboro's failure to maintain written operation and maintenance procedures necessary to satisfy three distinct regulatory requirements, 49 C.F.R. § 192.605(b)(5), (8), and (9), and therefore, it is actually three separate violations.

2. Violation 2 similarly arose from Drakesboro's failure to maintain written emergency procedures necessary to satisfy five distinct regulatory requirements, 49 C.F.R. § 192.615(a)(1), (2), (3), (4), and (10), and therefore, it is actually five separate violations.

3. Violation 13 arose from Drakesboro's failure to file its 2017 annual report by March 15, 2018 and its failure to file its 2018 annual report by March 15, 2019, which supports a finding of two violations of 49 C.F.R. § 191.11.

4. Violation 19 arose from Drakesboro's failure to conduct odorant tests from November 2017 through February 2019 and that supports a finding of 14 violations of 807 KAR 5:027, Section 5 (4), which requires odorant tests to be conducted every 30 days.

5. Violation 21 arose from Drakesboro's failure to conduct leak surveys in its business district in 2017 and 2018 and that supports a finding of two violations of 49 C.F.R. § 192.723(b)(1), which requires annual leak surveys in a business district.

6. Violation 25 arose from Drakesboro's failure to conduct rectifier inspections from February 21, 2018, until at least the February 2019 and that supports a finding of at least five violations of 49 C.F.R. § 192.465, which requires six rectifier inspections per year at intervals not to exceed 2.5 months.

7. Violation 28 arose from Drakesboro's failure to ensure that two employees performing covered tasks were properly qualified and that supports a finding of at least two violations of 49 C.F.R. § 192.805(b).

¹⁹⁸ 34 violations x \$218,647 per violation = \$7,433,998

Including just those multiple violations, without regard to any continuing violations, the statutory maximum civil penalties for Drakesboro's violations of minimum pipeline safety standards is \$13,118,820.¹⁹⁹

In determining the amount of the penalty for each violation, KRS 278.992(1) directs the Commission to consider "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." The Commission also finds instructive and will consider, in assessing penalties under KRS 278.992(1), the factors used by the PHMSA Associate Administrator for Pipeline Safety, to determine the amount of a civil penalty for a violation of a federal pipeline safety standard:

- (a) The Associate Administrator will 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;
 - (5) The effect on the respondent's ability to continue in business; and
- (b) The Associate Administrator may consider:
 - (1) The economic benefit gained from violation, if readily ascertainable, without any reduction because of subsequent damages; and

¹⁹⁹ 60 violations x \$218,647 per violation = \$13,118,820.

(2) Such other matters as justice may require.²⁰⁰

The Commission is also mindful of the dual purpose of civil penalties when determining the amount of the penalties. Specifically, “[w]hile the fines imposed may be intended to punish . . . , they are also designed to deter similar conduct in the future.”²⁰¹ Fines are intended to deter further violations by both the fined party and others similarly situated.²⁰²

The Commission also notes that the assessment of a civil penalty for violation of minimum pipeline safety standards is a matter vested in the sound discretion of the Commission. “The assessment of a penalty is particularly delegated to the administrative agency. Its choice of sanction is not to be overturned unless ‘it is unwarranted in law’ or ‘without justification in fact.’ The assessment is not a factual finding but the exercise of a discretionary grant of power.”²⁰³

Here, Drakesboro’s violations are extremely serious because Drakesboro failed to take some of the most basic and important safety measures necessary to protect its customers and citizens. As noted above, Drakesboro did not have odorant in its system as of February 8, 2019. Inspector Holbrook testified that the absence of odorant in a natural gas distribution system is a significant issue because natural gas is odorless and colorless, so there would be no way for customers to detect leaks if odorant is not added.

²⁰⁰ 49 C.F.R. § 190.225.

²⁰¹ *Denton v. Kentucky Horse Racing Authority*, 172 S.W.3d 803, 808 (Ky. 2004) (quoting *Vanhoose v. Commonwealth*, 995 S.W.2d 389, 393 (Ky. Ct. App. 1999)).

²⁰² *Vanhoose*, 995 S.W.2d at 393.

²⁰³ *Id.* at 393 (quoting *Panhandle Coop. Ass’n v. Environmental Protection Agency*, 771 F.2d 1149, 1151 (8th Cir.1985)).

She explained that an undetected gas leak in a home served by Drakesboro could result in the occupants suffocating from gas inhalation or being killed or severely injured in a gas explosion caused by something as simple as an occupant flipping a light switch.²⁰⁴ Thus, Drakesboro's failure to maintain odorant in its gas distribution system, which was caused by its failure to conduct periodic odorant tests, could have easily resulted in deaths or serious injuries.

To make matters worse, many of Drakesboro's other violations made leaks significantly more likely. For instance, Drakesboro failed to inspect the regulators that prevent its system from becoming over pressurized;²⁰⁵ Drakesboro failed to offer pressure relief valves to customers to protect them in the event Drakesboro's system becomes over pressurized; and Drakesboro failed to inspect its pipelines under cathodic protection and its rectifiers. Drakesboro also failed to conduct annual leak surveys in its business district that might have otherwise identified leaks even in the absences of odorant. Thus, the evidence indicates that Drakesboro failed to take steps at multiple levels necessary to identify risks and maintain the safety of its natural gas system.

When Drakesboro implemented the safety measures to bring it back into compliance with federal pipeline safety regulations, it identified significant issues with its system and those of its customers. For instance, Drakesboro, which only has about 667 customers, received over a hundred reports of gas leaks based on the smell of gas within a few weeks of adding odorant to the system;²⁰⁶ an inspection of the cathodic protection

²⁰⁴ June 19, 2019 HVT at 1:05:15; 1:16:10.

²⁰⁵ June 19, 2019 HVT at 00:37:00.

²⁰⁶ See June 19, 2019 HVT. at 01:05:15; March 8, 2019 HVT at 10:20:15. (where inspector Holbrook discusses the leak calls when odorant was added); see *also* March 8, 2019 HVT. at 11:02:53 (in which Vanguard's representative testified to receiving 103 leak calls between February 8, 2019, and March

system revealed that it was not functioning properly and that Drakesboro's system was not adequately protected from corrosion; an inspection of Drakesboro's regulator stations revealed that its regulators were obsolete and need to be replaced; and a leak survey identified 7 Grade III leaks and 22 Grade II leaks when it was finally conducted. In short, the issues that the odorant and inspections are intended to identify were present in Drakesboro's system to a significant degree. Thus, Drakesboro actions were not mere technical violations, but rather actually put its citizens and customers at significant risk such that it was apparently sheer luck that someone was not injured.

Even Drakesboro's violations that otherwise might have been less serious if taken alone are serious when taken together. For instance, Drakesboro's written operation and maintenance procedures and its emergency procedures failed to include a number of required procedures, and Drakesboro then failed to carry out some of those procedures as required. Further, the number of violations indicates a general disregard or lack of knowledge of natural gas safety regulations, and an inability to operate the system safely without assistance. Thus, the Commission is not able to find that any of Drakeboro's violations are not serious under the circumstances.

The Commission acknowledges that DOI staff only identified a single violation at Drakesboro's last inspection in 2017.²⁰⁷ However, the undisputed evidence in this matter indicates that at least some records prepared after that 2017 inspection had been falsified and a number of records disappeared. Further, the violations identified at the February

1, 2019); June 19, 2019 HVT at 03:59:30 (Mayor Jones agreed that when Vanguard started work that they determined there was no odorant in the system and that when Vanguard placed odorant in the system that Drakesboro received approximately 103 calls reporting leaks.).

²⁰⁷ See February Inspection Report at 2 (indicating that Drakesboro had a single violation during its 2017 inspection).

2019 inspection go back as far as 2017 and some of them were ongoing throughout 2018. Thus, Drakesboro's history of violations does not weigh in favor of reducing any penalty.

However, as Drakesboro itself noted, it is a city and therefore any civil penalties against Drakesboro will be borne by the same customers that the gas safety regulations are intended to protect. Further, Mayor Jones, who does deserve credit for taking quick action, contacted DOI staff shortly after taking office to push up a previously scheduled inspection when he noticed things that concerned him in the operation of Drakesboro's natural gas facilities, and he and Drakesboro's other employees and contractors have been working with DOI staff in good faith to correct the violations and to otherwise repair and upgrade Drakesboro's system. Finally, Eddie Brake, who operated the gas system until February 8, 2019, and appears to be primarily responsible for the violations, is no longer with Drakesboro. Thus, the culpability, or lack thereof, weigh in favor of reducing any penalty assessed against Drakesboro.

Drakesboro's size and the effect of significant penalties on its ability to continue operations also weigh in favor of reducing the penalties. Drakesboro has only 667 customers, and it had only \$471,762 in revenue from natural gas sales in its fiscal year ending June 30, 2018,²⁰⁸ and at least \$456,237 in expenses and interest payments in the same year.²⁰⁹ Further, Drakesboro's efforts to resolve the violations identified by DOI staff cost over \$200,000 in the first year, and the inspections Drakesboro conducted as part of its compliance effort revealed that Drakesboro's system requires significant work

²⁰⁸ Drakesboro's Uniform Financial Information Report Fiscal Year 2017-2018 at 5 (filed May 3, 2019).

²⁰⁹ *Id.* at 7–8 (indicating the wages and salary, other operation expenditures, and interest payments attributable to Drakesboro's natural gas system).

in the short term to ensure that it can continue to operate safely. Thus, significant penalties would likely jeopardize Drakesboro's ability to continue its operations.

Having reviewed the record and considered the assessment criteria, the Commission finds that Drakesboro should be assessed civil penalties totaling \$864,000, calculated as follows:

Violation 1	\$6,000 (3 occurrences)
Violation 2	\$10,000 (5 occurrences)
Violation 3	\$2,000
Violation 4	\$2,000
Violation 5	\$2,000
Violation 6	\$2,000
Violation 7	\$10,000
Violation 8	\$10,000
Violation 9	\$2,000
Violation 10	\$2,000
Violation 11	\$2,000
Violation 12	\$2,000
Violation 13	\$4,000 (2 occurrences)
Violation 14	\$10,000
Violation 15	\$10,000
Violation 16	\$10,000
Violation 17	\$10,000
Violation 18	\$2,000
Violation 19	\$280,000 (14 occurrences)
Violation 20	\$20,000
Violation 21	\$40,000 (2 occurrences)
Violation 22	\$20,000
Violation 23	\$20,000
Violation 24	\$20,000
Violation 25	\$100,000 (5 occurrences)
Violation 26	\$20,000
Violation 27	\$20,000
Violation 28	\$40,000 (2 occurrences)
Violation 29	\$40,000
Violation 30	\$100,000
Violation 31	-----
Violation 32	\$10,000
Violation 33	\$10,000
Violation 34	\$2,000
Violation 35	\$24,000
<hr/> Total	\$864,000

Given the number of violations and their severity, the Commission felt that it would be difficult to reduce the penalties any further while holding Drakesboro accountable for each of the violations. However, the Commission acknowledges that even those penalties, when taken together, would likely affect Drakesboro's ability to continue operations if they immediately came due and the Commission immediately attempted to collect on the same. Further, as noted above, Drakesboro requires significant work to remain in compliance with federal pipeline safety standards and to provide safe and adequate service to its customers in the mid to long term, and the payment of such significant penalties, in relation to its typical annual revenue from gas service of about \$450,000 to \$500,000, would make it difficult for it to do so. To address those issues, Drakesboro and DOI staff, respectively, suggest that the Commission suspend all or most of the penalties assessed subject to certain conditions, including that funds be used to make necessary upgrades to Drakesboro's system.²¹⁰

The Commission observes that it has authority pursuant to KRS 278.992(1) to both assess penalties pursuant to the criteria established therein and to compromise any civil penalties assessed.²¹¹ While the penalties assessed are reasonable under the circumstances, the Commission does not want to place Drakesboro in a situation in which

²¹⁰ See Drakesboro's Post-Hearing Brief at unnumbered page 5, Conclusion ("The purpose of any civil penalty should not be [to] punish the citizens and consumers, which it would do if it were in the form of a direct civil penalty against the city. Instead, the civil penalty should serve a purpose. The civil penalty should be in the form of a requirement that the City expend its funds to complete necessary upgrades."); see also DOI staff's Reply Brief at 4 (indicating that all but \$30,150, 15 percent, of the penalty they proposed should be suspended conditioned upon Drakesboro completing significant repairs to the system, among other things).

²¹¹ See KRS 278.992 (1) ("Any civil penalty assessed for a violation may be compromised by the commission."); see also KRS 278.495 (granting the Commission authority to regulate the safety of natural gas facilities that are owned by cities and used to distribute natural gas at retail).

it will be unable to perform necessary repairs or where such repairs will be delayed, because the Commission's primary concern with enforcing the safety standards is to ensure that natural gas systems are operated safely.²¹² The Commission is also conscious of the fact that the deterrence effect of imposing a significant penalty is different when the entity being penalized is a city run utility because the customers will ultimately bear the cost of the penalty. Thus, the Commission believes that it would be reasonable to compromise civil penalties assessed in this matter by suspending and then waiving Drakesboro's obligation to pay a significant portion of the penalties if Drakesboro satisfies certain conditions intended to improve the safety of Drakesboro's system in the long term.

Drakesboro and DOI staff disagree regarding how and what conditions should be satisfied. DOI staff argue for specific conditions discussed above, and Drakesboro argues that the conditions should be based on the amount it spends to operate and improve its system and that the penalties should be offset by amounts it has or will spend on third-party contractors to operate the system and to make improvements. The Commission finds that Drakesboro's proposal to simply offset the penalties based on amounts spent is unreasonable, because the third-party contractors operating Drakesboro's system are performing tasks that Drakesboro must and should have been performing in the ordinary course of business. Further, by simply allowing any amounts spent on the system to be offset against the penalties, there would be no guarantee that Drakesboro would make the improvements necessary to provide safe service in the long

²¹² See KRS 278.495(2) (granting the Commission authority to regulate the safety of city owned or operated natural gas facilities).

term. Thus, the Commission finds that the suspension and ultimate waiver or satisfaction of the penalties should be based on Drakesboro satisfying specific conditions.²¹³

The first condition recommended by DOI staff is that Drakesboro complete the Phase I remediation project recommended by Abacus, and the Commission believes that condition is reasonable. As noted above, Drakesboro's cathodic protection system was not functioning properly when it was tested in 2019, and Drakesboro failed to conduct required inspections of the cathodic protection system, so it is unclear how long Drakesboro's steel pipes have been unprotected from corrosion. Further, Drakesboro's contractors stated that to operate the system safely in the long term that it would be necessary to repair the cathodic protection system, or replace Drakesboro's steel mains with polyethylene lines. However, because it might be necessary to replace all or most of Drakesboro's mains even if the cathodic protection system were repaired, Drakesboro's contractor and engineer recommended that Drakesboro simply begin replacing its steel lines with polyethylene lines that do not require cathodic protection, and they proposed to begin this process by completing the Phase I remediation project recommended by Abacus. Drakesboro indicated its intent to pursue that remedy as well.²¹⁴ Thus, as a condition of the Commission suspending a portion of the penalties, the Commission finds that Drakesboro must complete the Phase I remediation project recommended by Abacus and discussed above by March 1, 2022.

²¹³ The Commission also notes that if Drakesboro satisfies the conditions that there will be very little difference between the conditions included herein and the offset proposed by Drakesboro because Drakesboro indicated it intended to perform the largest project included as a condition herein and Drakesboro's contractor recommended the other project. Further, the estimated cost of the projects required by the conditions below is approximately \$600,000.

²¹⁴ See Drakesboro's Post-Hearing Brief at unnumbered page 3.

In addition to the Phase I remediation project, DOI staff argue that the Commission should condition any suspension of the penalties assessed in this matter on Drakesboro including the recommendations set forth in the CP Report in the Phase I project. DOI staff assert that the scope of work required to correct the ground bed and rectifier issues cannot be determined until the main is isolated and certain deficiencies are corrected. DOI staff argue that the Phase I project should provide for the deficiencies to be corrected so that the measures needed to provide appropriate cathodic protection can be determined.²¹⁵

The CP Report states, in relevant part, that:

Before the rectifier and ground bed issues can be addressed, the main line will need to be isolated. However the following issues should be corrected first:

1. All road-crossing mains will need to be replaced with new spacers in seals along with 4-wire test stations at the vent pipes.
2. Junction lines will need to be isolated from the main. As well as new valves installed along with 4-wire test stations.
3. All consumer meters will need insulated spuds installed.²¹⁶

Based on Mr. Martin's explanation at the November 15, 2019 hearing, the CP Report recommended correcting those deficiencies to isolate the steel main primarily so Drakesboro could determine the extent to which the cathodic protection system needed to be repaired or upgraded and so the cathodic protection system would function properly once it was upgraded.²¹⁷ However, Mr. Martin also indicated that in lieu of repairing and

²¹⁵ DOI staff's Reply Brief at 4.

²¹⁶ CP Report at 2

²¹⁷ See Nov. 15, 2019 HVT at 09:34:12-09:39:38.

making necessary upgrades to its cathodic protection system that Drakesboro could replace its steel lines with polyethylene lines, which do not require cathodic protection.²¹⁸

As discussed above, the Commission understands that Drakesboro intends to replace its steel lines entirely with polyethylene lines and that it is pursuing the Phase I remediation work recommended by Abacus as part of that process.²¹⁹ For that reason, it is not clear from the record that all of the deficiencies identified in the CP Report must be corrected because if the steel lines are going to be replaced, then cathodic protection will not be necessary, at least in the mid to long term. Further, even if Drakesboro corrected the deficiencies identified in the CP Report to improve Drakesboro's cathodic protection system in the short term, while it moves forward with replacing its steel lines, it is not clear from the record that correcting all such deficiencies would provide any additional cathodic protection, because the replacement of a major steel main with polyethylene lines as proposed in the Phase I remediation project would likely cut portions of the steel system off from the rectifiers, and projects to eliminate shorts would not appear to provide any benefit in sections of the system cut off from the rectifiers. Thus, while Drakesboro must correct the deficiencies identified in the CP Report if doing so in specific instances is necessary to comply with any gas safety regulations or to protect public safety while it replaces its steel lines,²²⁰ the Commission finds that the suspension and ultimately

²¹⁸ Nov. 15, 2019 HVT at 09:39:38–09:40:05; 10:00:18–10:01:29.

²¹⁹ Nov. 15, 2019 HVT at 09:40:35 (discussing Drakesboro retaining Abacus and pursuing the replacement of its steel system with polyethylene lines).

²²⁰ See, e.g., Nov. 15, 2019 HVT at 10:00:18–10:01:32 (in which Mr. Martin indicated that it might be necessary to make the repairs recommended in the CP Report even if they are replacing the steel pipe if, based on their assessment, it is taking too long or that it might be necessary to perform some of the repairs if only a portion of the steel system is replaced).

satisfaction of the penalties should not be conditioned on Drakesboro correcting the deficiencies identified in the CP Report as part of the Phase I remediation project because the record is not clear enough regarding the cost of the projects and what deficiencies would still need to be corrected in the short term.

However, the Commission does recognize that the Phase I remediation project does not include the replacement of all of Drakesboro's steel lines.²²¹ Further, if Drakesboro's steel lines are not properly protected by the cathodic protection system, then there is a risk that they may corrode and ultimately fail. In fact, although the evidence is mixed, there is evidence that of Drakesboro's steel lines have at least some corrosion,²²² and as noted above, it is unclear how long the cathodic protection has been inadequate. For those reasons, the Commission finds that additional precautions are necessary to improve the safety of Drakesboro's system while issues are being addressed and that Drakesboro should, at minimum, begin planning for the projects necessary to replace all of its steel lines. Thus, the Commission finds that as a condition of it suspending any penalties herein that Drakesboro must file a plan with the Commission by March 1, 2022, for the replacement of all steel mains in its system and perform a leak survey of its entire gas distribution system at least once each calendar

²²¹ See Nov. 15, 2019 HVT at 9:52:44 (where Mr. Martin stated that replacing the steel lines would need to be completed in multiple phases and that it would likely cost about \$2 million).

²²² See March 8, 2019 HVT at 11:14:30 AM (in which Mr. Duvall also testified that on the three or four occasions in which Vanguard uncovered Drakesboro's steel pipe to repair leaks that the steel pipe was pitted and corroded based on a visual inspection); *but see* Nov. 15, 2019 HVT at 09:38:00–09:39:38 (in which Mr. Martin testified that on the two occasions when RussMar exposed the steel main to repair leaks that it appeared to be in good condition based on a visual inspection).

year and at intervals not exceeding 15 months until it replaces all steel mains in its system.²²³

Further, while DOI staff did not make any recommendations with respect to Drakesboro's regulators in its reply brief, evidence at the hearings indicated that some or all of Drakesboro's regulators need to be replaced. Specifically, an inspection of Drakesboro's four regulators indicated that they are obsolete and should be replaced at a cost of \$15,000 to \$25,000 per regulator depending on the regulator. Mr. Martin did testify that it might be possible to eliminate up to two of the regulator stations by making adjustments at the purchase point, but the only evidence in the record is that Mr. Martin had not determined whether that would be possible.²²⁴ Thus, as another condition of the Commission suspending a portion of the penalties, the Commission finds that Drakesboro must replace all of its four regulators and perform any related work on the regulator stations necessary to make Drakesboro's system safe in the long term by March 1, 2022, unless a licensed engineer opines, in writing, that a regulator station may be eliminated, in which case Drakesboro may satisfy this condition by replacing all of the regulators not eliminated and satisfying any conditions identified by the licensed engineer as being necessary to eliminate the other regulators within the same period.

²²³ The Commission observes that Drakesboro performed a leak survey of its entire system in the second quarter of 2019 and, therefore, more than 15 months will have passed between that leak survey and this Order. Thus, if Drakesboro did not perform a leak survey of its entire system in 2019, then it could satisfy this requirement performing a leak survey within three months of this order and then performing a leakage survey of its entire gas distribution system at least once each calendar year and at intervals not extending 15 months, until its cathodic protection system is repaired or it replaces all lines that require cathodic protection.

²²⁴ Nov. 15, 2019 HVT at 9:23:25–9:29:00.

DOI staff next recommend that any suspension of the penalties be conditioned on Drakesboro continuing to use third party contractors to operate its system until DOI staff determine that Drakesboro has sufficient operator qualified employees to operate on its own but at least until the end of December 2020. The Commission notes that evidence at the most recent hearings indicated that Drakesboro had a single individual who worked regularly with personnel from RussMar and was approaching the level of competence necessary to perform most covered tasks without assistance. However, the evidence further indicated that he would not be ready to operate the system without assistance from contractors until at least early 2021. More importantly, a representative of Drakesboro's contractor testified that Drakesboro would really need at least two qualified operators to safely operate the system and that Drakesboro's less qualified operators would more likely be able to work on their own once necessary repairs and upgrades were made to the system such that they were less likely to face significant emergencies. Thus, the Commission finds that Drakesboro should continue to use a third-party contractor, consistent with the March 12, 2019 Order in this matter, to operate its gas system and perform all leak surveys, regulator inspections, cathodic protection system inspections, and major maintenance activities at least through February 2022.²²⁵

While the Commission is willing to compromise a significant portion of the penalties assessed in this matter to ensure Drakesboro's compliance with the conditions discussed

²²⁵ The Commission imposed this requirement through February 2022 because the evidence indicates that Drakesboro would not have sufficient personnel through that period. The Commission also wanted to impose a firm ending date on this condition as it relates to the suspension and satisfaction of the penalties. However, the Commission observes that while this condition may end in February 2022 as it relates to the satisfaction of the penalties, Drakesboro's obligation pursuant to the federal regulations to have qualified personnel operating its system will not. Thus, regardless of the time period imposed in this condition, Drakesboro will have a regulatory obligation to continue using contractors if it has insufficient qualified personnel.

above, the Commission does not believe that all of the penalties should be suspended or eliminated in consideration for Drakesboro's compliance with the conditions imposed herein. As noted above, a purpose of the penalties are to deter noncompliance with the gas safety regulations. The Commission believes that if the only consequences or perceived consequences of cities and nonprofit gas companies violating the gas safety regulations were that the Commission would require compliance then that deterrence would not be effective. Further, the Commission finds DOI staff's recommendation that Drakesboro be required to pay approximately \$30,000 of the penalties to be reasonable in light of the conditions imposed. Thus, the Commission finds that Drakesboro must pay \$30,000 of the penalties assessed within 180 days to deter future noncompliance by both Drakesboro and operators of other similarly situated natural gas systems and that the remainder of the penalties assessed shall be suspended subject to the conditions identified herein.

If Drakesboro complies with the conditions identified herein and makes a timely payment of the \$30,000 in penalties that are not suspended, then the Commission will consider the portion of the penalties that are suspended as discussed herein to be satisfied. However, the Commission notes that compliance with the conditions imposed herein will not substitute for compliance with pipeline safety regulations and Drakesboro's failure to comply with any such regulation will result in additional penalties regardless of its compliance with conditions established herein. Further, if the Commission finds, after a hearing, that Drakesboro has failed or refused to comply with the conditions identified herein, then the finding of such a failure or refusal, which the Commission would consider to be a rejection of the compromise set forth herein, shall result in the suspended portion

of the assessed penalties becoming due within 180 days of Drakesboro's failure or refusal to comply.

Lastly, the Commission notes that DOI staff recommend in the alternative that the Commission agree to compromise the bulk of the penalty assessed herein if Drakesboro contracted to sell its gas distribution system to another operator or agreed to cease operating the system by March 31, 2021.²²⁶ The Commission would be open to such possibilities provided that Drakesboro proposed to transfer the system to another operator or cease operations in a manner that was in the public interest and did not jeopardize the health, welfare, or safety of Drakesboro's customers. However, the Commission finds that it would not be appropriate to establish such blanket alternative conditions. Rather, if Drakesboro determines that it is in the public interest and the interest of its customers to transfer its system or cease operations, then Drakesboro should make a request in this matter and the Commission will determine whether it will accept such actions as satisfaction of the suspended portion of the penalties assessed herein.²²⁷

IT IS THEREFORE ORDERED that:

1. Drakesboro is assessed civil penalties in the total amount of \$864,000 for the violations identified herein.
2. Drakesboro shall pay \$30,000 of the penalties within 180 days of the date of this Order by cashier's check or money order payable to the Kentucky State Treasurer,

²²⁶ DOI staff's Reply Brief at 5.

²²⁷ This Order should not be construed as prohibiting Drakesboro from shutting down its gas operations or taking any other necessary actions in the event of an emergency or to protect public safety.

and mailed or delivered to the Office of the General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

3. The remaining civil penalties assessed shall be suspended contingent upon:

(a) Drakesboro completing of the Phase I project recommended by Abacus by March 1, 2022;

(b) Drakesboro replacing its four regulators and performing any related work on the regulator stations necessary to make Drakesboro's system safe in the long term by March 1, 2022, unless a licensed engineer opines that a regulator station may be eliminated, in which case Drakesboro may satisfy this condition by replacing all of the regulators not eliminated and satisfying any conditions identified by the licensed engineer as being necessary to eliminate regulators within the same period;

(c) Drakesboro filing a plan with the Commission by March 1, 2022 for the replacement of all steel mains in its system.

(d) Drakesboro filing monthly progress reports, until such work is completed, on the implementation of the Phase I project and the work on the regulators, including the status of the city's efforts to obtain financing as well as copies of engineering reports, construction plans and specifications, requests for proposals, contracts, and a description of any work completed to date;

(e) Drakesboro performing a leakage survey of its entire gas distribution system at least once each calendar year and at intervals not extending 15 months, until it replaces all steel mains in its system; and

(f) Drakesboro's continued use of a third-party contractor approved by DOI, consistent with the March 12, 2019 Order in this matter, to operate its gas system and perform all leak surveys, regulator inspections, cathodic protection system inspections, and major maintenance activities at least through February 2022.

4. The monthly progress reports filed pursuant to ordering paragraph 3 above shall be in lieu of the biweekly reports required by ordering paragraph 7 of the Commission's Order dated March 12, 2019.

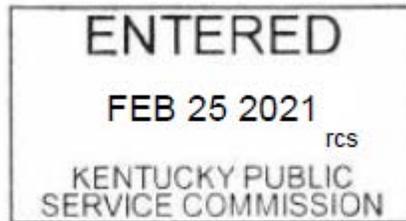
5. The Commission shall consider payment of the suspended portion of the penalties to be satisfied upon Drakesboro's satisfaction of the conditions discussed herein above.

6. Any documents filed pursuant to ordering paragraph 3 shall reference this case number and shall be retained in the post-case correspondence file.

7. The case shall be closed and removed from the Commission's docket.

By the Commission

Vice Chairman Kent A. Chandler did not participate in the deliberations or decision concerning this case.



ATTEST:


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