

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

ELECTRONIC INVESTIGATION OF)
ALLEGED FAILURE TO COMPLY WITH)
KRS 278.495, 807 KAR 5:027, AND)
49 C.F.R. PART 192)

NOTICE OF FILING

Notice is given to all parties that Commission Staff's Division of inspections Brief
has been filed into the record of this proceeding.



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Public Service Commission
P.O. Box 615
Frankfort, KY 40602

DATED: FEB 07 2020

cc: Parties of Record

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BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION STAFF'S POST-HEARING BRIEF

The city of Drakesboro, Kentucky (Drakesboro), owns and operates facilities used to distribute natural gas at retail and is subject to the jurisdiction of the Kentucky Public Service (Commission) under KRS 278.495(2) to enforce federal minimum pipeline safety standards. Pursuant to this authority, the Commission's Division of Inspections (DOI) conducted a standard periodic inspection of the city's natural gas distribution system and prepared an inspection report dated February 26, 2019 (February Report), in which it cited Drakesboro for thirty-five violations of pipeline safety standards. Based on the findings in the February Report, the Commission initiated this case to conduct a formal investigation into Drakesboro's natural gas facilities and to determine whether Drakesboro should be assessed a civil penalty pursuant to KRS 278.992.

The Commission held formal hearings in this matter on March 8, June 19, and November 15, 2019, to receive evidence regarding the findings of violation set forth in the February Report and the measures taken by the city to remedy the cited violations. On November 15, 2019, the Commission entered a post-hearing scheduling order providing

for post-hearing staff data requests and the submission of briefs by DOI and the city. On February 5, 2020, the Commission amended the briefing schedule and authorized Drakesboro to supplement its responses to DOI's post-hearing data request. DOI hereby respectfully submits its post-hearing brief.

VIOLATIONS

As outlined in February Report, DOI identified the following violations of federal pipeline safety standards during its February 2019 inspection of the city's gas distribution system:

1. Drakesboro's written procedural manual for operations and maintenance activities did not include all procedures required by **49 CFR §192.605**.
2. Drakesboro's plan to minimize the hazard resulting from a gas pipeline emergency did not include all procedures required by **49 CFR §192.615**.
3. Drakesboro did not have a written program to prevent damage to underground pipelines from excavation activities as required by **49 CFR §192.614**.
4. Drakesboro did not have a written public education program as required by **49 CFR § 192.616**.
5. Drakesboro did not have a written anti-drug plan as required by **49 CFR § 199.101**.
6. Drakesboro did not have a written alcohol misuse plan as required by **49 CFR § 199.202**.
7. Drakesboro did not conduct drug tests as required by **49 CFR § 199.105**.
8. Drakesboro did not provide training for supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause as required by **49 CFR § 199.113 (c)**.
9. Drakesboro did not have a written distribution integrity management plan as required by **49 CFR § 192.1005**.
10. Drakesboro did not have welding procedures as required by **49 CFR § 192.225**.

11. Drakesboro did not have written plastic joining procedures as required by **49 CFR § 192.273(b)**.
12. Drakesboro's operator qualification program did not meet the requirements of **49 CFR § 192.805**.
13. Drakesboro did not submit annual reports as required by **49 CFR § 191.11**.
14. Drakesboro did not send the customer notification required by **49 CFR § 192.16**.
15. Drakesboro did not send public awareness messages as required by **49 CFR § 192.616**.
16. Drakesboro did not train appropriate operating personnel to ensure they are knowledgeable of emergency procedures as required by **49 CFR § 192.615(b)(2)**.
17. Drakesboro did not establish and maintain liaison with appropriate fire, police, and other public officials as required by **49 CFR § 192.615(c)**.
18. Drakesboro did not review or update its operation and maintenance plan as required by **49 CFR § 192.605 (a)**.
19. Drakesboro did not conduct periodic sampling of combustible gases in its distribution lines to assure the proper concentration of odorant test as required by **49 CFR § 192.625(f)** since November 2017.
20. Drakesboro did not conduct patrolling of its distribution mains as required by **49 CFR § 192.721** since 2017.
21. Drakesboro did not conduct a leakage survey in its business district as required by **49 CFR § 192.723** in 2018. Additionally, the employee who is listed on the record of the 2017 survey as having conducted the survey, Jordon Shaw, verified to Staff on February 7, 2019, that he did not conduct the leak survey.
22. Drakesboro did not conduct regulator/relief valve inspections as required by **49 CFR § 192.739**.
23. Drakesboro did not conduct valve inspections as required by **49 CFR § 192.747** since 2016.
24. Drakesboro did not test pipelines under cathodic protection as required by **49 CFR § 192.465 (a)**.

25. Drakesboro did not conduct cathodic protection rectifier inspections as required by **49 CFR § 192.465 (b)**.
26. Drakesboro did not conduct atmospheric corrosion inspections as required by **49 CFR § 192.481**.
27. Drakesboro's pipeline markers did not meet the requirements of **49 CFR § 192.707**.
28. Drakesboro failed to ensure that individuals performing covered tasks were qualified as required by **49 CFR § 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 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 CFR § 192.311**.
30. Drakesboro did not ensure that combustible gas in its distribution lines was properly odorized as required by **49 CFR § 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 **CFR § 192.605(a)**.
32. Drakesboro did not offer excess flow valves to existing customers as required by **49 CFR § 192.383(d)**.
33. Drakesboro failed to ensure that each person making joints in plastic pipelines is qualified as required by **49 CFR § 192.285**.
34. Drakesboro failed to maintain for the useful life of each pipeline record of each test performed under 49 CFR Subpart J as required by **49 CFR 192.517**.
35. Drakesboro failed to keep records of the following procedures as required by **49 CFR § 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).

DOI conducted a follow-up inspection of Drakesboro's gas system on June 14, 2019. As outlined in its follow-up inspection report dated June 17, 2019 (June Report),¹ DOI determined that Drakesboro had cleared 23 of the cited violations but that 12 violations remained outstanding. Of most concern was the city's failure to conduct atmospheric corrosion inspections, failure to ensure individuals performing pipe-to-soil readings and rectifier cathodic protection inspections were qualified to perform the tasks, failure to locate and repair the damaged plastic main previously repaired with a clamp, and failure to maintain adequate documentation of regulator/relief valve inspections and leak repairs. DOI Inspector Holbrook recommended in the June Report that Drakesboro hire a qualified specialist to assess the pipelines cathodic protection system.

DOI conducted another follow-up inspection of Drakesboro's gas system on August 22, 2019, and prepared an inspection report dated October 23, 2019 (October

¹ A copy of the June Report was filed into the record in this case on June 18, 2019.

Report). DOI determined that at the time of the second follow-up inspection, Drakesboro had cleared the remaining violations.²

The Commission conducted another hearing in this matter on November 15, 2019, to review Drakesboro's compliance efforts and to consider the scope of system improvement that would be necessary to ensure the safe operation of the city's gas system in the future. At the hearing, the Commission heard testimony from Shawn Martin of Russmar Utility Management (Russmar), the contractor hired by Drakesboro to operate its gas system, regarding the condition of the city's regulator stations and cathodic protection system. Mr. Martin testified that the inspection of the city's regulator stations revealed that regulators at four of the regulator stations were obsolete and should be replaced. He testified that the estimated cost to replace regulators and reconfigure the regulator stations ranged from \$25,000 for the Union Ridge Regulator Station to \$15,000 for the smaller Mill Pond Road Station, and that if pressure is reduced near the Purchase Station, it may be possible to eliminate one of the regulator stations.³ Copies of the Regulator and Relief Valve Inspection Reports prepared for Russmar were introduced at the hearing as PSC Exhibit 2.

Mr. Martin also testified regarding an assessment performed by Russmar of the cathodic protection system on Drakesboro's piping.⁴ Based on its assessment, Russmar

² A copy of the inspection report of DOI's second follow-up inspection was introduced as PSC Exhibit 1 at the November 15, 2019 hearing in this matter.

³ Video Transcript of November 15, 2019 Hearing (November HVT) at 9:23:27 to 9:28:50 AM.

⁴ *Id.*, at 9:29:40.

prepared a Cathodic Protection Troubleshooting Report (CP Report), a copy of which was introduced at the hearing as PSC Exhibit 3.

Russmar's assessment of the cathodic protection system identified serious problems. According to the CP Report, the rectifier on the system was producing inadequate amperage to protect the piping from external corrosion. Pipe-to-soil readings at road crossings, junction lines, and a sampling of consumer taps did not meet the criteria in 49 CFR Appendix D to Part 192 of a negative (cathodic) voltage of at least 0.85 volt.⁵ The CP Report also indicates that the cathodic protection system's groundbed was too close to the main.

The CP Report states that before the issues with the rectifier and ground bed can be addressed, the main must be isolated by addressing areas where the current on the piping is subject to shorting out. The CP Report sets forth three steps that must be taken 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.

Mr. Martin testified that he anticipates the rectifier and ground bed will need to be replaced, and also that an additional rectifier will need to be installed.⁶

Going forward, Mr. Martin testified that Drakesboro has two options to address the threat posed by external corrosion on the metal piping. Follow the recommendations in

⁵ *Id.*, at 9:31:44 to 9:34:12 AM.

⁶ *Id.*, at 9:37:46 to 9:38:30 AM.

the CP Report and fix the cathodic protection system on the existing metal pipe, or replace the metal pipe with new plastic piping.⁷ The problem with fixing the cathodic protection system on the existing metal pipe is that it is unknown how long the piping has been in the ground unprotected from external corrosion or, therefore, the condition of the piping. Also, Mr. Martin testified that at this stage, it's difficult to estimate what it would take to repair the existing cathodic protection system because of all the unknowns about the condition of the system.⁸ He estimated it would cost two million dollars to replace the existing metal piping with plastic pipe.⁹

Mr. Martin and Drakesboro Mayor Mike Jones each testified at the November hearing that the city was working with Abacus Engineering (Abacus) to pursue grants to finance work on the Drakesboro system.¹⁰ According to the mayor, however, the city had not yet signed a contract with Abacus, and no grant application for funding had been submitted or prepared.¹¹ The mayor was not able to provide any time frame for when an application would be ready to file.¹²

Mr. Martin testified that work on the gas system would likely be done in phases, with the first phase addressing the immediate need to cathodically protect the system. He said that the estimated level of funding that would be pursued for the first phase is

⁷ *Id.*, at 9:39:39 AM.

⁸ *Id.*, at 9:40:17 to 9:40:40 AM.

⁹ *Id.*, at 9:52:44 AM.

¹⁰ *Id.*, at 10:40:05 to 10:40:51 AM; 10:08:36 to 10:08:54 AM.

¹¹ *Id.*, at 10:09:40 AM.

¹² *Id.*, at 10:14:21 to 10:15:16 AM.

\$650,000, and that Drakesboro likely would be required to fund a percentage of the costs of the project. Mr. Martin was not sure whether this funding would only be for replacement of segments of the main per the CP Report's recommendation or if the city could use the funding for repairs and the purchase of new regulators.¹³ Mayor Jones testified that it had not been determined whether the first phase would involve pipe replacement or fixing the cathodic protection system on the existing pipes.¹⁴

Inspector Holbrook testified at the November 15, 2019 hearing that in her opinion, Drakesboro current employees do not have the knowledge or experience to operate its gas system in compliance with pipeline safety standards without a third-party operator.¹⁵ Mr. Martin concurred with her assessment.¹⁶

CIVIL PENALTY ASSESSMENT

KRS 278.992(1) provides that any person who violates any minimum pipeline safety standard adopted by the United States Department of Transportation or any regulation adopted by the Commission governing the safety of pipeline facilities shall be subject to a civil penalty not to exceed the maximum civil penalty contained in 49 CFR § 190.223, as amended. As of the date of DOI's standard periodic inspection of Drakesboro's gas system, the maximum civil penalty was \$218,647 for each violation for

¹³ *Id.*, at 9:46:14 to 09:47:04 AM.

¹⁴ *Id.*, at 10:13:10 to 10:13:40 AM.

¹⁵ *Id.*, at 9:16:18 to 9:16:52 AM.

¹⁶ *Id.*, at 9:48:16 to 9:48:42 AM.

each day the violation continues, with a maximum administrative civil penalty not to exceed \$2,186,465 for any related series of violations.¹⁷

In determining the amount of the proposed penalty, KRS 278.992(1) provides that the Commission shall 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 has cited the gravity of the violation to be the most important mandatory penalty assessment consideration.¹⁸

Additionally, the Commission has referenced the assessment considerations applied under federal law by Pipeline and Hazardous Material Safety Administration (PHMSA) to determine the amount of the civil penalty for violation of a federal pipeline safety standard.¹⁹ These considerations are: (1) the nature, circumstances and gravity of the violation, including adverse impact on the environment; (2) the degree of the respondent's culpability; (3) the respondent's history of prior offenses; (4) any good faith by the respondent in attempting to achieve compliance; and (5) the effect on the respondent's ability to continue in business. Additionally, PHMSA may also consider the economic benefit gained from the violation, if readily ascertainable.²⁰

Application of Assessment Factors

¹⁷ Effective July 31, 2019, 49 CFR § 190.223 was amended to increase the maximum civil penalty to \$218,647 for each violation for each day the violation continues, with a maximum civil penalty not to exceed \$2,186,465 for any related series of violations.

¹⁸ See Case No. 2017-00119, Louisville Gas & Electric Company-Alleged Failure to Comply with KRS 278.495, 807 KAR 5:022, and 49 CFR. PART 192 (Ky. PSC March 16, 2018), at 26.

¹⁹ See *id.*, at 25.

²⁰ See 49 CFR § 190.225.

1. Gravity

DOI first notes that in assessing the gravity of Drakesboro's violations of minimum federal pipeline safety standards, it considered the fact that none of the violations occurred in a highly populated area or resulted in a reportable incident.

Fourteen of the cited violations²¹ pertain to missing or incomplete records or plans. In general, DOI does not consider violations relating to records as serious as operational or equipment/infrastructure deficiencies. An operator's failure to maintain required records, however, prevents the Commission from determining whether the operator is conducting its pipeline operations in compliance with minimum federal pipeline safety standards. Additionally, in this case Drakesboro's failure to maintain records necessary to carry out procedures that are required to provide a reasonable level of safety was pervasive and, in DOI's assessment, indicative of an overall laxness of attitude toward natural gas pipeline safety. At the time of the February inspection, Drakesboro had never filed an annual report in compliance with 49 CFR § 191.11 since the regulation was promulgated.²² Although DOI considers the gravity of record and plan violations to be low, circumstances clearly warrant the assessment of a penalty against Drakesboro.

²¹ DOI finds that the following violations relate to required records or plans: Violations 1-6, 9-13, 18, 34, and 35. DOI notes that Violation 35 is for the failure to maintain 10 separate categories of records, including records of critical safety equipment inspections. The failure to maintain any one of these categories of records supports assessment of a penalty under KRS 278.992(1).

²² See February Report, at p. 33. 49 CFR § 191.11 became effective in 2010, see 75 FR 72905, so the first year a report was required to be filed was 2011. At the time of the February 2019 inspection, the report for 2018 was not yet due, so Drakesboro failed to file the required annual report in eight years.

DOI will address the gravity of each of the operational and facilities-related violations in the order listed in the Periodic Report.

Violations 7 and 8 are based on Drakesboro's failure to comply with federal drug and alcohol testing requirements in 49 CFR Part 199. DOI considers the gravity of these violations to be moderate. These requirements are necessary to insure that pipeline safety functions regulated by 49 CFR Part 192 are performed by individuals who are not impaired and who have passed a drug test.

Violations 14 and 15 are based on Drakesboro's failure to comply with its obligation to communicate pipeline safety information to its customers, specifically the customer's responsibility to maintain customer piping and a pipeline safety public awareness message. DOI considers the gravity of these violations to be moderate.

Violations 16 and 17 are based on deficiencies in Drakesboro's plans to minimize hazards resulting from a gas pipeline emergency. DOI considers the gravity of these violations to be moderate, particularly in light of the fact that Drakesboro's other violations of pipeline safety standards increased the risk of the occurrence of a pipeline safety emergency.

Violations 19-26 are based on Drakesboro's failure to carry out required testing and inspections of its facility. Violations 19-21 are violations of required procedures necessary to minimize the risk of leaking pipelines. DOI considers the gravity of these violations to be serious. Violation 19 is based on Drakesboro's failure to conduct periodic sampling of gas in its pipelines to assure the proper concentration of odorant as required by 192 CFR § 625(f). At the time of the February inspection, Drakesboro had failed to

sample the gas in its distribution system to ensure the gas was properly odorized in each of the 14 preceding months.

Violation 21 is based on the city's failure to conduct a leakage survey in its business district in 2017 or 2018. The density of people in a business district and the presence of pavement that can allow escaping gas to migrate and accumulate, creating a heightened risk of property damage and loss of life in the event of ignition. Performance of a leakage survey in each business district, as well as sampling gas in distribution lines to assure proper concentration of odorant (Violation 19) and patrolling of distribution mains (Violation 20) critical tasks necessary to maintain a reasonable level of safety.

DOI considers Violation 21 to be particularly egregious because it became clear at the March 8, 2019 hearing that a former city employee had falsified leak survey records for 2017 and 2018. Specifically, leak survey summaries provided to DOI during the February 2019 inspection indicate that city employee Jordan Shaw conducted leak surveys in December 2017 and December 2018. At the March 8 hearing, however, Mr. Shaw testified that he did not perform the surveys or know how his name got on them.

Violations 22 and 23 are based on Drakesboro's failure to perform required inspections of regulator stations and valves on its system. DOI considers the gravity of these violations to be moderate. Regulator stations and critical system valves are necessary for the safe operation of the city's distribution system, and regular inspection of these facilities is necessary to ensure these facilities are in proper working order.

Violations 24-26 are based on Drakesboro's failure to comply with requirements necessary to control external and atmospheric corrosion on its metallic pipelines. DOI considers the gravity of these violations to be serious. Corrosion control is essential to

protect the integrity of Drakesboro's distribution pipes and to minimize the risk of pipeline leaks. Violation 25 is based on Drakesboro's failure to conduct rectifier inspections in violation of 49 CFR § 192.465(b), which requires an operator to inspect each cathodic protection rectifier at least six times per year. The city inspected the rectifier on its system only once in 2018,²³ and thus failed to test five times during 2018.

Violation 27 is based on Drakesboro's defective line markers for its distribution mains. DOI considers the gravity of this violation to be very serious. Proper marking of mains is necessary to minimize the risk of pipeline damage from excavation activities.

Violation 28 is based on Drakesboro's failure to ensure that individuals performing covered tasks were properly qualified. DOI considers the gravity of Violation 28 to be moderate. Having properly qualified and trained personnel to perform safety-related duties is important to the safe and reliable operation of the gas system.

Violation 29 is based on Drakesboro's improper repair of a damaged two-inch plastic main. DOI considers the gravity of Violation 29 to be very serious. The city's use of an improper method to repair a 2-inch plastic main compromised the integrity of the pipe and created an unacceptable risk of a gas pipeline emergency.

Violation 30 is based on Drakesboro's failure to ensure that the gas in its distribution system contained a natural odorant or was odorized so that at a concentration in air of one-fifth of the lower explosive limit, the gas is readily detectable by a person with a normal sense of smell. DOI considers the gravity of this violation to be serious. According to testimony at the March 8, 2019 hearing, once odorant was added to the system, the city received over 100 reports of gas leaks, primarily inside customers' homes

²³ February Report, at p. 46, Question 4.

but also at a few meter sets. Upon investigation of the reports, combustible levels of gas were found in customers' homes.²⁴

Violation 31 is based on Drakesboro's failure to follow procedures in its emergency plan in response to two reports of gas leaks. DOI considers the gravity of this violation to be moderate.

Violation 32 is based on Drakesboro's failure to offer customers who are served by service lines installed prior to April 14, 2017, an excess flow valve to shut off the flow of gas in the event the service line breaks. DOI considers the gravity of this violation to be moderate.

Violation 33 is based on Drakesboro's failure to ensure that each person making joints on plastic pipe is qualified under the applicable joining procedure. As with Violation 28, DOI considers the gravity of Violation 33 to be moderate because having properly qualified and trained personnel is important to the safe and reliable operation of the gas system.

2. Good Faith

DOI acknowledges that Drakesboro has taken the steps necessary to remedy the pipeline safety violations cited in the February 2019 Periodic Report, and that as of DOI's August 22, 2019 follow-up inspection, the city was in compliance with minimum federal pipeline safety standards. The Commission has held, however, that not all corrective measures warrant an abatement or suspension of a civil penalty. Operating expenses

²⁴. Video Transcript of March 8, 2019 Hearing (March HVT) at 11:01:55 to 11:04:46 AM.

that an operator incurs simply to comply with minimum federal pipeline safety regulations do not warrant a penalty abatement.²⁵

In response to a post-hearing data from DOI, Drakesboro submitted a ledger of transactions it contends reflects expenses the city has incurred to achieve compliance with pipeline safety standards.²⁶ According to the city, these expenses total \$285,815.92. The ledger produced by Drakesboro lists transactions and payees but does not identify what most of the expenses were for. For example, there are multiple payments to G & C Supply Co., Inc., but no indication of what these payments were for, with the exception of a payment on September 4, 2019, in the amount of \$441.66 for "Blac Permase."

The majority of the transactions are payments to Russmar, the third-party contractor brought in by Drakesboro to operate its gas system as required by the Commission in its March 12, 2019 Order. A number of these transactions reference work on the city's O & M plan, its regulators and relief valves, rectifier system and cathodic protection but others contain no description and presumably are for Russmar's monthly management fee.²⁷

Drakesboro also produced a list of unpaid bills relating to its gas distribution system that total \$84,053.98. Certain of the transactions appear on both the list of unpaid bills and the ledger of transactions relating to the gas system. Other bills listed as unpaid, however do not appear on the ledger, such as an outstanding balance in the amount of

25

²⁶ Response to information Request by Public Service Commission, at Response No. 1 and Exhibit A. (filed December 3, 2019).

²⁷ Based on Mr. Martin's testimony

\$42,631.34 listed as due Vanguard Mapping Solutions LLC (Vanguard). As such, it is unclear what exactly what the total of gas-related expenses incurred and the total paid are.

The invoices, receipts and other documentation of gas-related transactions that Drakesboro provided in response to DOI's second request for information do not clear things up. There is no documentation of most of the expenses listed on the ledger of transactions, but there are invoices marked paid, such as five from Vanguard, that are not listed on the ledger.²⁸

In its post-hearing data request, DOI also asked Drakesboro for documentation of any efforts to pursue the potential upgrade, maintenance or replacement of the system's distribution system, including any agreement the city has reached with any engineering firm and any funding application made regarding such work. In its response, Drakesboro stated that although it has no written agreement, its Mayor reached an oral agreement with Abacus Engineering to provide assistance with obtaining financing for system upgrades as well as recommendations regarding the upgrades and repairs that will be needed for the system to operate safely.²⁹ The city, however, still has not provided an engineering assessment or study with a proposed course of action, an estimation of costs, or concrete funding options. What the city has provided to date is simply insufficient to justify a suspension of the penalty or a portion thereof contingent on the city making infrastructure investments. While DOI would support suspension of a portion of a penalty contingent on the city making infrastructure investments, there is no proposed project or

²⁸ *Id.*, at Exhibit B.

²⁹ *Id.*, at Response No. 3 and Exhibit C.

firm estimate in the record of the cost of the work that will be necessary for the safe operation of the system upon which to base a contingent suspension.

While DOI bears the burden to establish that Drakesboro violated minimum federal pipeline safety standards, it is DOI's position that the city should bear the burden to present to the Commission sufficient grounds for penalty mitigation under KRS 278.992(1). What Drakesboro has filed to date appear to be mainly costs incurred by the city to operate its system in compliance with the law, and not the type of infrastructure investment that would warrant a contingent suspension of any penalty assessed.

3. Size of Operator

DOI acknowledges that Drakesboro has a relatively small gas system with approximately 667 service connections and that this fact should be considered by the Commission as a mitigating factor in the assessment of a penalty

Recommended Penalty Amount

Based on the foregoing application of the statutory penalty assessment factors, DOI recommends assessment of the following civil penalties:

| | |
|--------------|---------------------------|
| Violation 1 | \$ 2,000 |
| Violation 2 | \$ 2,000 |
| 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 | \$ 16,000 (8 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 (2017 and 2018) |
| Violation 22 | \$ 20,000 |
| Violation 23 | \$ 20,000 |
| Violation 24 | \$ 20,000 |
| Violation 25 | \$100,000 (5 occurrences) |
| Violation 26 | \$ 20,000 |
| Violation 27 | \$ 40,000 |
| Violation 28 | \$ 20,000 (two employees) |
| Violation 29 | \$ 40,000 |
| Violation 30 | \$ 20,000 |
| Violation 31 | \$ 20,000 (2 occurrences) |
| Violation 32 | \$ 10,000 |
| Violation 33 | \$ 10,000 |
| Violation 34 | \$ 2,000 |
| Violation 35 | \$ 24,000 |
| Sub-total | \$804,000 |
| Less adjustment for size | <u> x .25</u> \$201,000 |

In making this recommendation, DOI notes that the potential civil penalty is much higher. At the time of the June 14, 2019 inspection, 12 of the violations cited in the February Report remained outstanding and thus subject to assessment of a penalty for each day the violation continued. DOI has not proposed assessing a penalty for each day these violations persisted.

Additionally, the CP Report indicates that Drakesboro's piping has not been protected against external corrosion for some period of time due to the failure of the cathodic protection system. 49 CFR § 192.455 requires each pipeline operator to ensure that underground pipelines are protected from external corrosion. DOI did not cite Drakesboro for violating 49 CFR § 192.455 because at the time of the initial inspection in February 2019, the condition of the cathodic protection system was unknown due to

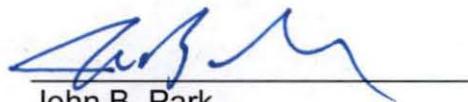
Drakesboro's failure to test and inspect the system. DOI notes that this violation continues.

Remedial Measures

In addition to assessment of a substantial civil penalty, DOI recommends that the Commission require Drakesboro to take the following remedial measures:

1. Perform a leakage survey of its entire gas distribution system at least once each calendar year. The system's metal piping has not been protected by cathodic protection and hence subject to external corrosion for an unknown period of time, creating a heightened risk of gas leakage that warrants more frequent surveys.
2. Conduct a weekly odorant test using an odorometer. The city's past failure to ensure that the gas in its system was properly odorized warrants more frequent sampling. DOI recommends that weekly testing continue through June 2020, after which monthly testing is sufficient provided the weekly tests indicate there has been proper odorization.
3. Continue to use 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. The contractor should have personnel on site on weekdays and on call on weekends 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.
4. Either commence a DOI-approved project to repair the cathodic protection system on the existing metal pipes or replace the piping, sell its gas distribution system, or cease operating the system by March 31, 2021.

Respectfully submitted,



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