

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

NOTICE OF FILING

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



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P.O. Box 615
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DATED JUN 10 2022

cc: Parties of Record

Case No. 2022-00001

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COMMISSION STAFF'S POST-HEARING BRIEF

Valley Gas, Inc. (Valley Gas), owns and operates underground facilities used to distribute natural gas to approximately 480 customers in Irvington, Kentucky. Valley Gas is subject to the Commission's jurisdiction under KRS 278.495(2) to enforce minimum safety standards. Pursuant to this authority, Staff from the Kentucky Public Service Commission's Division of Inspections (Staff) performed a periodic regulatory compliance inspection of the gas distribution system of Valley Gas on July 12, 14, 15 and 19, 2021. Based on its review of the facilities and operations and management practices of the utility, Staff prepared an Inspection Report dated July 26, 2021 (Inspection Report) in which it cited Valley Gas for seven violations of minimum federal pipeline safety standards.

On October 11, 2021, issued a Demand for Remedial Measures and Penalty Assessment (Demand Letter) to Valley Gas. In the Demand Letter, Staff directed Valley Gas to take the certain remedial measures and proposed an assessment of civil penalties in the total amount of \$42,000 for the above-referenced violations. Valley Gas rejected the proposed penalty assessment, and by Order dated January 10, 2022, the Commission initiated this case to conduct a formal investigation into Valley Gas's natural

gas facilities and to determine whether Valley Gas should be assessed a civil penalty pursuant to KRS 278.992.

On May 3, 2022, the Commission held a formal hearing in this matter at which it received evidence regarding the findings of violation set forth in the Staff Report and the measures Valley took to cure the cited deficiencies. On May 5, 2022, the Commission entered a post-hearing scheduling order providing for post-hearing staff data requests and the submission of briefs by DOI and the Valley Gas. DOI submits this Brief in compliance therewith.

VIOLATIONS

Valley Gas did not contest Staff's findings of violations of pipeline safety standards in response to the January 10, 2022 initiating order or at the May 3, 2022 hearing in this matter. Nor has the city disputed that at the time of DOI's July 2021 inspection, it was not in compliance with certain regulatory requirements.

Staff conducted follow-up inspections of Valley Gas's facilities on November 2, 2021, January 6, 2022, and March 1, 2022. Based on these inspections, Staff prepared an inspection report dated May 1, 2022 (Supplemental Report) in which it found that Valley Gas had cleared the violations cited in the July 2021 Inspection Report.¹

The findings of violation and the city's responses to them are summarized below in the order in which the violations appear in the Staff Report.

1. **49 CFR § 192.605** – Procedural manual for operations, maintenance, and emergencies.
 - (a) General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. This manual must be reviewed and

¹ Video Transcript of Hearing ("H.V.T.") at 9:32:35 AM, and at DOI Exhibit 3.

updated by the operator at intervals not exceeding 15 months, but at least once each calendar year.

Finding: Valley Gas failed to conduct an annual review of its written operations and maintenance procedures.

Response of Valley Gas: Valley Gas contracted with Utility Safety and Design, Inc. (USDI), to develop a new Operations and Maintenance Manual (O&M Manual). The O&M Manual requires that procedural manuals be reviewed and updated at intervals not exceeding 15 months, but at least once each calendar year.

2. **49 CFR § 192.615** – Emergency Plans.

(b) Each Operator shall: . . . (2) Train the appropriate operating personnel to assure that they are knowledgeable of the emergency procedures and verify that the training is effective.

Finding: Valley Gas failed to conduct emergency response training.

Response of Valley Gas: Valley Gas contracted with USDI to provide operating personnel emergency plan training and evaluation.

3. **49 CFR § 192.625** – Odorization of Gas.

(a) A combustible gas in a distribution line must contain a natural odorant or be 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.

Finding: According to 2019-2021 sampling test records, gas in the Valley Gas distribution system was not properly odorized.

Response of Valley Gas: Valley Gas had its odorizer re-calibrated and tested by the manufacture. Valley Gas contracted with USDI to inspect odorizing equipment, prepare inspection forms and replace gauges on the odorization station.

4. **49 CFR § 192.721** – Distribution systems: Patrolling

(b) 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 1/2 months, but at least four times each calendar year; and

(2) Outside business districts, at intervals not exceeding 7 1/2 months, but at least twice each calendar year.

Finding: Valley Gas could not produce records indicating that its mains were patrolled as required.

Response of Valley Gas: Valley contracted with USDI to develop the O&M Manual and procedural forms. The Manual contains a new patrolling schedule and a form to document required patrols of mains.

5. **49 CFR § 192.739** – Pressure limiting and regulating stations: Inspection and testing.

(a) Each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment must be subjected at intervals not exceeding 15 months, but at least once each calendar year, to inspections and tests. . . .

Finding: Valley Gas failed to conduct inspections and tests of its Bewleyville Road regulator station at least once in calendar year 2020. The current configuration of the station does not all proper testing of the equipment.

Response of Valley Gas: Valley Gas contracted with USDI to reconfigure the Bewleyville Road regulator station and to inspect and test this and other regulator stations on the Valley Gas distribution system.

6. **49 CFR § 192.807** – Recordkeeping.

Each operator shall maintain . . . (b) Records supporting an individual's current qualification shall be maintained while the individual is performing the covered task. Records of prior qualification and records of individuals no longer performing covered tasks shall be retained for a period of five years.

Finding: Valley Gas could not produce complete operator qualification records for employees performing covered tasks for the period between September 2014 and February 2020.

Response of Valley Gas: Valley Gas contracted with Arc Randolph and Associates and USDI to provide OQ training and evaluation of all Valley Gas employees who lacked current qualifications for tasks they were expected to perform.

7. **49 CFR § 192.805** – Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to: . . . (b) Ensure through evaluation that individuals performing covered tasks are qualified; . . .

Finding: Valley Gas employees without current operator qualification certifications were performing the following covered tasks:

- Pipe-To-Soil Potentials (CP Readings) – No record of training.
- Emergency Valve Inspection – No record of training.
- Odorization Testing – Expired certification; and
- Locate and Mark Underground Facilities – Expired certification.

Response of Valley Gas: Valley Gas contracted with USDI to review and update its Operator Qualification Plan, and to provide OQ training and evaluation of all Valley Gas employees who perform covered tasks.

CIVIL PENALTY ASSESSMENT

DOI acknowledges that as of the date of staff's follow-up inspection of Valley Gas's gas distribution system, Valley Gas had addressed the violations cited in the Inspection Report. Remaining at issue, therefore, is whether the Commission should assess Valley Gas a civil penalty under KRS 278.992(1) for the violations and, if so, the amount of the penalty.

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 set forth in 49 CFR § 190.223, as amended. As of the date of Staff's 2021 inspection of the Valley Gas, the maximum civil penalty was \$225,134 for each violation for each day the violation continues, with a maximum administrative civil penalty not to exceed \$2,251,334 for any related series of violations.²

In determining the amount of the proposed penalty, 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

² 86 Fed. Reg. 1745 (May 3, 2021).

compliance, after notification of the violation.” The Commission considers the gravity of the violation to be the most important mandatory penalty assessment consideration.³

Additionally, the Commission has found instructive 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.⁴ The Commission can consider these factors, including the operator’s “history of prior offenses,” in assessment of a penalty under KRS 278.992(1).⁵

Application of Assessment Factors

1. Gravity

Staff considers Violations 2, 3, 5, and 7 to be serious. Proper training of employees (Violation 2) is essential to responding to a natural gas emergency. The failure of Valley Gas to maintain sufficient odorant levels so that gas is readily detectable at a concentration in air of one-fifth of the lower explosive limit (Violation 3) posed an unacceptable risk that an undetected gas leak would lead to an explosion. Violation 5 involved the failure to conduct inspection and tests of infrastructure necessary for the safe operation of the gas system. Violation 7 involves the performance of tasks that affect the operation or integrity of the gas system by employees who were not currently qualified.

³ 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.

⁴ See *id.*, at 25. Federal law provides that PHMSA shall 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; and (5) the effect on the respondent's ability to continue in business. The Associate Administrator also may consider: (1) the economic benefit gained from the violation, if readily ascertainable, without any reduction because of subsequent damages; and (2) such other matters as justice may require. See 49 CFR Section 190.225.

⁵ *Id.*

Violation 4 is also serious. Patrolling of mains to detect leaks is an essential maintenance activity. Valley Gas states in response to Violation 4 that although it had no records, Valley Gas patrolled mains once a year when meters were manually read. 49 CFR § 192.721 requires to patrol mains in business districts at intervals not exceeding 4 1/2 months, but at least four times each calendar year, and to patrol mains outside business districts at intervals not exceeding 7 1/2 months, but at least twice each calendar year.

Violation 1 involves the failure of Valley Gas to conduct an annual review of its manual of written procedures for conducting operations, maintenance, and emergency response activities. Staff considers the gravity of Violation 1 to be moderate. It is important for operators to review their written procedures regularly to ensure they are up to date.

Violation 6 is a record-keeping violation. Although less serious, the failure of Valley Gas to maintain OQ records prevents the Commission from determining whether Valley Gas is conducting its operations in compliance with minimum federal pipeline safety standards.

2. Good Faith

Valley Gas argues that any penalty assessed for violations of federal pipeline safety standards should be waived entirely or reduced by the amount of money Valley Gas spent on remedial measures. At the hearing, Kevin Kasey, Vice President and field operator of Valley Gas, testified that Valley Gas had spent approximately \$31,000 to correct the violations. In Response to Staff's Post-hearing Request for Information, Valley

Gas states that Valley Gas spent \$40,265.90 on measure to remedy the violations cited in the 2021 Inspection Report.

The Commission in the past has taken into consideration the cost of pipeline safety improvements in determining the amount of a penalty under KRS 278.992(1).⁶ The Commission, however, has held that not all corrective measures warrant an abatement or suspension of a civil penalty, and that expenditures necessary for an operator simply to achieve compliance with legal obligations do not support compromise of a penalty.⁷ It is DOI's position that the costs Valley Gas has incurred to date are in the nature of ordinary compliance costs and do not justify a reduction in any penalty.

Valley Gas itemizes the cost of remedial measures in its Response to Staff's Post-hearing Request for Information. Certain of the expenditures cited by Valley Gas clearly should not be considered for purpose of penalty assessment. For example, Valley Gas provided invoices from USDI and journal entries that include charges for assistance in responding to DOI's 2021 inspection and the findings of violation.⁸ DOI does not consider these services to be remedial measures.

Other expenses listed by Valley Gas are of the type regularly incurred by gas operators to comply with minimum pipeline safety standards. Valley Gas has itemized expenses for OQ training and evaluation, review and update of manuals of written

⁶ See Case No. 2019-00188, *City of Augusta - A Alleged Failure to Comply with KRS 278.495 and 49 CFR. PARTs 191 and 192* (Ky. PSC June 2, 2021), at 13.

⁷ Case No. 2017-00119, at 28 ("The Commission finds, however, that the measures are steps that any reasonable and prudent operator would take in response to such a clear failure to perform an adequate inspection, and do not warrant a reduction in the penalties given the gravity of these violations.")

⁸ See Valley Gas, Inc.'s Response to Commission Staff's Post-hearing Request for Information, at Ex. 1 (Follow-up with David Nash - \$140); Ex. 2 (KY PSC Audit and sales tax - \$517.04); and Ex. 8 (Audit Representation - \$3,120).

procedures, and regulator inspection. Kevin Kasey, Valley Gas Vice President, testified at the hearing that these expenditures were necessary for Valley Gas to achieve compliance.⁹ DOI does not recommend a reduction of any penalty based on the expenditures made by Valley Gas to clear the violations cited in the 2021 Inspection Report.

In addition to the remedial costs Valley Gas has incurred, Kasey testified at the hearing that Valley Gas has obtained a quote from Holland Supply Company for operator compliance software. According to Kasey, the software is a cloud-based app that will manage and organize compliance tasks record-keeping and allow employees to enter information in the field. Kasey testified that Valley Gas is soliciting bids for similar operation platforms from two companies, USDI and PipeSuite. The quote from Holland Supply Company ranged from \$1,529.50 per month for the Basic Plan up to \$3,339.00 for the Premier Plan.¹⁰

DOI notes that pipeline safety regulations do not require operators to utilize compliance software and permit operators to maintain all records in paper format. Licensing an app that would keep track of maintenance activities and provide for digital record-keeping is a proactive step that goes what is required for Valley Gas to comply with pipeline safety regulations. For this reason, DOI recommends that the Commission consider suspending a portion of any penalty contingent upon Valley Gas using a compliance app approved in writing by DOI. DOI

⁹ H.V.T. at 10:26:43 AM.

¹⁰ *Id.* At 10:18:05 AM to 10:21:

3. Size of Operator

DOI acknowledges that Valley Gas has a relatively small distribution system with approximately 480 service connections and that this fact should be considered by the Commission as a mitigating factor in the assessment of a penalty.

4. Compliance History

It is DOI's position that it appropriate for the Commission to consider the past compliance history of Valley gas when considering its request for penalty abatement based on response measures taken. Four of the seven violations cited in the 2021 Inspection Report were repeat violations from the previous inspection conducted in September 2019, which cited Valley Gas for nine violations of pipeline safety standards.¹¹ DOI declined to issue a demand letter following the 2019 inspection but sent Valley Gas a Warning Letter dated December 1, 2020. In the letter, DOI advised Valley Gas that it would be inspected annually until it could demonstrate a record of safety compliance, and that if Valley Gas were again found to be in violation of any pipeline safety standard, it would be subject to penalty assessment "with due consideration of its compliance history."¹² Less than a year after the Warning Letter was sent, Valley Gas was again found to be in violation of pipeline safety regulations.

The operator's history of non-compliance goes back further. DOI cited Valley Gas for six violations in its 2015 inspection and four violations in 2014.¹³ Valley Gas has had OQ violations in each of the last four inspections and a recurring problem with record-

¹¹ H.V.T., as PSC Division of Inspections Ex. 4.

¹² H.V.T., at PSC Division of Inspections Ex. 6.

¹³ *Id.*, at PSC Division of Inspections Hearing Exhibit 5 (2015 Inspection Report) and 11:01:58 AM (Valley Gas witness acknowledging 2014 inspections).

keeping requirements. Valley Gas's poor compliance history reflects an unacceptably lax approach to gas pipeline safety and the dangers inherent in operating a gas pipeline system.

Recommended Penalty

Based on its investigation of this matter and consideration of the penalty assessment factors discussed above, Staff recommends that Valley Gas be assessed a civil penalty as follows:

Violation 1 -	\$ 2,000
Violation 2 -	\$ 20,000
Violation 3 -	\$ 40,000 (2020, 2021)
Violation 4 -	\$ 4,000
Violation 5 -	\$ 20,000
Violation 6 -	\$ 2,000
Violation 7 -	\$ 80,000 (4 covered tasks)
	<u>\$168,000</u>
Penalty reduction for operator size -	<u>(\$126,000)</u>
Total Penalty -	\$42,000

DOI recommends that all but \$10,000 of the penalty be suspended contingent upon Valley Gas licensing and using an operations management platform approved in writing by DOI for a period of five years. Abatement of the entire penalty is unwarranted considering the operator's compliance history, but it is DOI's position that the remainder of the penalty would be better spent on ensuring the operator is able to stay in compliance in the future.

Respectfully submitted,



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