

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

NOTICE OF FILING

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



Linda C. Bridwell, PE  
Executive Director  
Public Service Commission  
P.O. Box 615  
Frankfort, KY 40602

DATED JUN 27 2022

cc: Parties of Record

Case No. 2022-00001

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

COMMISSION STAFF'S POST-HEARING REPLY BRIEF

For its Post-hearing Reply Brief, PSC Division of Inspection (DPI) states as follows.

1. This case is not an appeal from the Demand Letter issued by DOI.

The Demand Letter sent to Valley Gas, Inc. (Valley Gas) cited Valley Gas for seven violations of federal pipeline safety standards and proposed assessment of a civil penalty in the amount of \$42,000 to resolve the investigation informally. Valley Gas did not contest the findings of violation, but rejected the proposed penalty amount and requested this be brought before the hearing.

The Commission initiated this formal proceeding for the purpose of investigating the operation of the Valley Gas distribution system. DOI's Demand Letter is in no way binding on the Commission. DOI established by evidence in the record in this case that Valley Gas violated seven federal pipeline safety standards. The decision whether to assess a civil penalty and, if so, in what amount is vested by statute in the sound discretion of the Commission. DOI stands by its recommendation in its Post-Hearing Brief that Valley Gas be assessed a civil penalty in the amount of \$42,000, with all by \$10,000 of the penalty suspended contingent on Valley Gas using an operations management platform approved in writing by DOI for a period of five years.

2. The Commission is not bound by the amount of penalties assessed in other enforcement proceedings.

Valley Gas argues in its post-hearing briefs that the penalty amounts proposed by DOI are inconsistent with penalties assessed by the Commission for similar violations in prior enforcement cases. Each investigation of alleged pipeline safety standards, however, presents unique facts, and different penalties may be assessed for violation of the same regulation based on the circumstances of each situation

Additionally, Valley Gas's reliance on the Commission's decision in *City of Augusta Alleged Failure to Comply with KRS 278.495 & 49 C.F.R. Parts 191 & 192*<sup>1</sup> is misplaced due to an intervening amendment of the penalty statute, KRS 278.992. In 2018, the Kentucky General Assembly amended the statute to change the maximum civil penalty that may be assessed for violation of pipeline safety standards:

Prior to the July 14, 2018 effective date of the amendment, the civil penalty could not exceed the maximum civil penalty contained in 49 C.F.R. § 190.223, as of December 31, 2011, for each violation for each day that the violation persists. As of December 31, 2011, the maximum civil penalty under 49 C.F.R. § 190.223 was \$100,000 per violation per day, not to exceed \$1,000,000 for any related series of violations. As amended, KRS 278.992(1) provides that the civil penalty shall not exceed the maximum civil penalty contained in 49 C.F.R. § 190.223, as amended.<sup>2</sup>

Because the inspection of Augusta's gas system occurred prior to the effective date of the statutory amendment, the Commission applied the lower penalty limits in effect prior to the amendment. Currently, the maximum civil penalty is \$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.

---

<sup>1</sup> Case No. 2019-00188 (June 2, 2021).

<sup>2</sup> *Id.* at 8.

Respectfully submitted,



---

John B. Park  
Staff Attorney III  
Kentucky Public Service Commission

\*Valley Gas, Inc.  
401 S First Street  
P. O. Box 366  
Irvington, KY 40146

\*Valley Gas, Inc.  
Valley Gas, Inc.  
401 S First Street  
P. O. Box 366  
Irvington, KY 40146

\*Parker M Wornall  
Commonwealth Counsel Group PLLC  
10343 Linn Station Rd., Suite 100  
Louisville, KENTUCKY 40223