

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE NOTICE OF)
POTENTIAL VIOLATION OF 26 DEL.)
ADMIN. C. §8001 AND ASSOCIATED CIVIL)
PENALTIES ASSESSED TO DELMARVA POWER) PSC DOCKET NO. 15-1425
& LIGHT COMPANY)
(OPENED SEPTEMBER 25, 2015))

ORDER NO. 8799

AND NOW, this 4th day of February, 2016, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, the Commission has qualified for federal certification to operate a state pipeline safety compliance program pursuant to 49 U.S.C. §60105(a) and has the authority pursuant to 26 Del. C. §821 to make and enforce rules required by the federal National Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. Chapter 601); and

WHEREAS, the Commission is authorized by the Federal Pipeline Safety Regulations, 49 C.F.R., Parts 190-193 and 198-199, to order remedial actions and impose civil penalties where appropriate; and

WHEREAS, Delmarva Power & Light Company ("Delmarva") is an "Operator" as set forth in 26 Del. C. §802(11) and 26 Del. Admin. C. §8001-1.0 in that Delmarva acts as an operator of a buried pipeline facility used in the transportation of gas, such as propane and natural gas, within the State of Delaware and therefore falls within the Commission's jurisdiction; and

WHEREAS, a member of the Commission's staff ("Staff") conducted an investigation into an event that occurred on August 14, 2015, at Delmarva's facilities near the intersection of East 5th Street and Church Street in Wilmington, Delaware. Staff noted its findings in a written report finalized on September 22, 2015 (the "Report"). The Report states that a contractor conducting excavation work on behalf of Delmarva had struck a buried sensing line for a regulator on Delmarva's low pressure natural gas system. This damaged sensing line caused an overpressurization of the low pressure distribution system, which triggered the shut-down of some system regulator stations. Because of these shut-downs, lower than normal pressures were experienced at multiple locations throughout the city of Wilmington; and

WHEREAS, the Report also states Delmarva reported to Staff that a damaged regulator sensing line had not been located and marked by Delmarva prior to the contractor's excavation work, which ultimately resulted in the ensuing problems within the distribution system and customer establishments; and

WHEREAS, based on Staff's investigation, the Report concludes that (i) Delmarva's failure to properly mark the buried sensing line in the area of the excavation before the excavation work actually began represented one potential violation of 49 C.F.R. §192.614(c)(5);¹ and (ii) Delmarva's failure to perform

¹ 49 C.F.R. §192.614(c)(5) deals with "Damage prevention program" and provides, in pertinent part, that the damage prevention program required by 49 C.F.R. §192.614(a) " must, at a minimum provide for

the afore-mentioned task also represented one potential violation of 49 C.F.R. §192.605(a);² and

WHEREAS, based on the findings in the Report, on September 25, 2015, the Program Manager of the Pipeline Safety Program for the State of Delaware (who is also a member of the Commission Staff) sent a written letter of the Notice of Potential Violations ("NOPV") and a copy of the Report to Mr. Robert G. Kitson, Manager, Gas Engineering, Delmarva. A copy of the NOPV and Report are attached to the Proposed Consent Agreement (defined below); and

WHEREAS, the NOPV indicated Staff's recommendation that within 30 days of the date of the NOPV, Delmarva should provide to Staff, in writing, the procedural changes made by Delmarva which would provide the best protection against a similar event occurring again in the future;³ and

temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins." 49 C.F.R. §192.614(a) also deals with "Damage prevention program" and requires, in pertinent part, that except as provided in 49 C.F.R. §§192.614(d) and (e), "each operator of a buried pipeline *must carry out*, in accordance with this section, a written program to prevent damage to that pipeline from excavation activities..." [emphasis added]

² 49 C.F.R. §192.605(a) deals with "Procedural manual for operations, maintenance, and emergencies" and states the following: "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. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted."

³ Staff has confirmed that Delmarva timely provided in writing the procedural changes to Staff as set forth in the NOPV.

WHEREAS, Staff also recommended in the NOPV that the Commission impose a civil penalty of \$5,000.00 for one potential violation of 49 C.F.R. §192.614(c)(5) and a civil penalty of \$500.00 for one potential violation of 49 C.F.R. §192.605(a). Thus, the total amount of recommended civil penalties made by Staff was \$5,500.00 (the "Civil Penalties"); and

WHEREAS, Delmarva and Staff entered into settlement negotiations and agreed to resolve the potential violations and the Civil Penalties by entering into a consent agreement (the "Proposed Consent Agreement") which is attached as Attachment "A". Both Staff and Delmarva agree that the Proposed Consent Agreement is subject to the Commission's review and final approval; and

WHEREAS, Staff and Delmarva submit that resolving this matter through a negotiated compromise and without the need for a formal evidentiary hearing serves the public interest and yields a reasonable result. In addition, both parties assert that the Civil Penalties are within the bounds of allowable civil penalty amounts based on circumstances unique to Delmarva, and this settlement will avoid further administrative and hearing costs;

**NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. Pursuant to 26 Del. C. §512(c), the Commission finds that the Proposed Consent Agreement, attached as Attachment "A," is in the public interest for the reasons set forth above and, therefore, approves such agreement in full.

2. Pursuant to 49 U.S.C. §60122(a), subpart B of Part 190 of the Federal Regulations, and 26 *Del. Admin. C.* §8001-7.1.2, the Commission assesses a civil penalty against Delmarva in the amount of \$5,500.00 payable within 20 days of the date of this Order.

3. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Chair

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary

ATTACHMENT "A"

Proposed Consent Agreement

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE NOTICE OF)
POTENTIAL VIOLATION OF 26 *DEL. ADMIN. C.*)
§8001 AND ASSOCIATED CIVIL PENALTIES) PSC DOCKET NO. 15-1425
ASSESSED TO DELMARVA POWER & LIGHT)
COMPANY (OPENED SEPTEMBER 25, 2015))

PROPOSED CONSENT AGREEMENT

THIS PROPOSED CONSENT AGREEMENT (“Proposed Consent Agreement”) is made this 20th day of January, 2016, between Delmarva Power & Light Company, a Delaware corporation (“Delmarva”), and the Delaware Public Service Commission Staff (“Staff”).

WHEREAS, Delmarva is a Delaware corporation with a business address of 500 North Wakefield Drive, Newark, Delaware 19702; and

WHEREAS, Delmarva is an “Operator” as set forth in 26 *Del. C.* §802(11)¹ and 26 *Del. Admin. C.* §8001-1.0² in that such company acts as an operator of a buried pipeline facility used in the transportation of gas, such as propane and natural gas, within the State of Delaware; and

WHEREAS, the Delaware Public Service Commission (the “Commission”) has qualified for federal certification of a state pipeline safety compliance program under 49 U.S.C. §60105(a), which relates to the regulation of intrastate gas pipeline transportation; and

WHEREAS, 26 *Del. C.* §821 provides, in pertinent part, that the Commission “shall have the authority to make and enforce rules required by the federal Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. Chapter 601), to qualify for federal certification of a state pipeline safety compliance program under 49 U.S.C. § 60105(a)....;”³ and

¹ 26 *Del. C.* §802(11) defines an “underground pipeline facility operator” as an operator of a buried pipeline facility used in the transportation of gas, such as propane and natural gas, subject to the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. §1671 et seq.) [repealed by Act July 5, 1994, P.L. 103-272], or used in the transportation of hazardous liquid subject to the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 et seq.) [repealed by Act July 5, 1994, P.L. 103-272]; underground pipeline facility operators include, without limitation, natural gas, propane gas, master meter, LP gas and interstate and intrastate gas and liquid distribution facility operators as defined by these acts. **NOTE:** P.L. 103-272 amended and transferred to a new section of the U.S. Code the “Natural Gas Pipeline Safety Act of 1968” and the “Hazardous Liquid Pipeline Safety Act of 1979.” See P.L. 103-272; 108 Stat. 745; 49 U.S.C. §§60101 through 60128.

² Under 26 *Del. Admin. C.* §8001-1.0, an “Operator” means an “underground pipeline facility operator” as defined in 26 *Del. C.* §802(11).

³ 26 *Del. C.* §821 further provides, in pertinent part, that such rules shall incorporate the safety standards and penalty provisions (including injunctive and monetary sanctions) established under the federal Natural Gas Pipeline Safety Act of 1968, as amended [49 U.S.C. § 60101 et seq.], that are applicable to intrastate gas pipeline transportation and will apply to underground pipeline facility operators, as defined under 26 *Del. C.* §802(11).

WHEREAS, as part of the duties of a certified state pipeline safety compliance program, on August 17, 2015, Mr. Robert Schaeffgen, a member of Staff and pipeline safety inspector, began an investigation of an event that occurred on August 14, 2015, at Delmarva's facilities near the intersection of East 5th Street and Church Street in Wilmington, Delaware; and

WHEREAS, Mr. Schaeffgen prepared a written report which noted that on August 14, 2015, Delmarva notified Staff that a buried sensing line for a regulator on the Operator's low pressure natural gas system had been struck by a contractor who had been conducting excavation work on behalf of Delmarva. This damaged sensing line caused an overpressurization of the low pressure distribution system which triggered the shut-down of some system regulator stations. As a consequence of these shut-downs, lower than normal pressures were experienced at multiple locations throughout the city of Wilmington. Over the next couple of days, Delmarva responded to over 200 customer calls as a direct result of these events and re-lit extinguished pilot lights for some customers. In the subsequent investigation, Delmarva reported to Staff that a damaged regulator sensing line had not been located and marked by Delmarva prior to the contractor's excavation work which ultimately resulted in the ensuing problems within the distribution system and customer establishments; and

WHEREAS, based on Mr. Schaeffgen's written report and findings, on September 25, 2015, Mr. Gerald D. Platt, a member of Staff and the Program Manager of the Pipeline Safety Program for the State of Delaware, sent a written letter of the Notice of Potential Violations ("NOPV") to Mr. Robert G. Kitson, Manager, Gas Engineering. A copy of the NOPV Staff sent to Mr. Kitson is attached as Exhibit "A"; and

WHEREAS, a sensing line falls within the definition of a "pipeline" as set forth in 49 C.F.R. §192.3;⁴ and

WHEREAS, the NOPV notes that Delmarva's failure to properly mark the buried sensing line in the area of the excavation before the excavation work actually began represents one potential violation of 49 C.F.R. §192.614(c)(5),⁵ and Delmarva's failure to perform the afore-mentioned task also represents one potential violation of 49 C.F.R. §192.605(a);⁶ and

⁴ 49 C.F.R. §192.3 provides as a definition for Part 192 that "pipeline" means all parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.

⁵ 49 C.F.R. §192.614(c)(5) deals with "Damage prevention program" and provides, in pertinent part, that the damage prevention program required by 49 C.F.R. §192.614(a) "must, at a minimum provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins." 49 C.F.R. §192.614(a) also deals with "Damage prevention program" and requires, in pertinent part, that except as provided in 49 C.F.R. §§192.614(d) and (e), "each operator of a buried pipeline must **carry out**, in accordance with this section, a written program to prevent damage to that pipeline from excavation activities...."[emphasis added]

⁶ 49 C.F.R. §192.605(a) deals with "Procedural manual for operations, maintenance, and emergencies" and states the following: "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. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted."

WHEREAS, the NOPV indicated that the Commission is authorized by the Federal Pipeline Safety Regulations, 49 C.F.R., Parts 190-193 and 198-199 (the "Regulations"), to order remedial actions and to impose civil penalties. The NOPV further indicated that Staff recommended that within 30 days of the date of the letter, Delmarva should provide to Staff, in writing, the procedural changes made by Delmarva which would provide the best protection against a similar event occurring again in the future; and

WHEREAS, Staff recommended in the NOPV that the Commission impose a civil penalty of \$5,000.00 for one potential violation of 49 C.F.R. §192.614(c)(5) and a civil penalty of \$500.00 for the one potential violation of 49 C.F.R. §192.605(a). Thus, the total amount of recommended civil penalties made by Staff was \$5,500.00; and

WHEREAS, Delmarva and Staff thereafter entered into settlement negotiations and hereby propose to resolve all of the issues in this proceeding without recourse to a formal administrative hearing by entering into this Proposed Consent Agreement under the terms and conditions set forth herein; and

WHEREAS, Delmarva has been informed that it is entitled to an evidentiary hearing and to be represented by counsel but has decided to waive its right to an evidentiary hearing;

NOW, THEREFORE, upon the mutual consent and agreement of Delmarva and Staff (individually, a "Party," and collectively, the "Parties"), the Parties hereby propose a complete settlement of all issues in this proceeding as follows:

1. The Parties have conferred and have agreed to enter into this Proposed Consent Agreement on the terms and conditions contained herein because they believe that resolving the matter by stipulation will serve the interests of the public. The Parties also agree that the terms and conditions of this Proposed Consent Agreement will be presented to the Commission for the Commission's final approval.

2. Delmarva waives its right to an evidentiary hearing for the issues in this proceeding and makes such waiver as a free and voluntary act.

3. Delmarva states it fully understands all of the violations alleged by Staff, the facts relating to above-referenced potential violations, and all of the consequences of its consent to this Proposed Consent Agreement.

4. Delmarva admits to all of the facts as set forth above in this Proposed Consent Agreement and admits that it failed to properly mark its buried pipelines in the area of the excavation before the excavation actually began, which is a violation of 49 C.F.R. §192.614(c)(5).

5. Pursuant to 26 *Del. Admin. C.* §8001-7.1.2, Delmarva agrees to pay a civil penalty in the amount of \$5,500.00 within 20 days of the date of a final Commission order that approves this Proposed Consent Agreement without modification. This sum is a negotiated amount

representing a civil penalty totaling \$5,500.00 for one violation of 49 C.F.R. §192.614(c)(5).⁷ Pursuant to 26 *Del. C.* §116(b)(2), these civil penalties will be payable to and deposited into the General Fund of the State of Delaware.

6. If Delmarva fails to pay the civil penalty in the amount of \$5,500.00 within 20 days of the date of a final Commission order approving this Proposed Consent Agreement without modification, Delmarva agrees that it shall pay interest on such penalty amount at the current annual rate in accordance with 31 U.S.C. §3717, 31 C.F.R. §901.9, and 49 C.F.R. §89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be assessed if payment is not made within 110 days of service of a Notice of Late Payment. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Delaware Attorney General for appropriate action.

7. The terms of this Proposed Consent Agreement are binding upon the Parties and their successors and assigns, and such terms may be admitted into evidence in any judicial or administrative proceeding that may be required to enforce its terms.

8. This finding of a violation will be considered a prior offense in any subsequent enforcement action against Delmarva.

9. Nothing in this Proposed Consent Agreement affects or relieves Delmarva of its responsibility to comply with all applicable requirements of the federal Pipeline Safety Laws, 49 U.S.C. §60101, et seq., and the regulations and administrative orders issued thereunder. Nothing in this Agreement alters Staff's right of access, entry, inspection, and information gathering or Staff's authority to bring enforcement actions against Delmarva pursuant to the federal Pipeline Safety Laws, the regulations and administrative orders issued thereunder, Delaware's laws or regulations, or any other provision of Federal or State law pertaining to subsequent violations.

10. No change, amendment, or modification to this Proposed Consent Agreement shall be effective or binding unless it is in writing and is dated and signed by the Parties.

11. If Staff or the Commission fails to act on any one or more defaults hereunder by Delmarva, such failure to act shall not be a waiver of any rights hereunder on the part of the Staff or the Commission to declare Delmarva in default of this Proposed Consent Agreement and to take such action as may be permitted by it or by law.

12. The covenants contained in this Proposed Consent Agreement shall survive the termination or expiration of this Proposed Consent Agreement and shall be enforceable against the parties hereto, their respective successors or assigns.

13. The provisions of this Proposed Consent Agreement are not severable.

⁷ Although Staff's recommendations included a civil penalty for each of the violations (\$5,000.00 for a potential violation of 49 C.F.R. §192.614(c)(5) and \$500.00 for a potential violation of 49 C.F.R. §192.605(a)), the Parties have mutually agreed to a total penalty of \$5,500.00 for one violation of 49 C.F.R. §192.614(c)(5).

14. The Parties agree that this Proposed Consent Agreement may be submitted to the Commission for its consideration and final decision and that no Party will oppose such a determination, so long as such decision is consistent with the terms and conditions of this Agreement without modification. Except as expressly set forth herein, neither of the Parties waives any rights it may have to take any position in future proceedings regarding the issues in this proceeding, including positions contrary to positions taken herein or in previous cases.

15. This Proposed Consent Agreement will become effective upon the Commission's issuance of a final order approving it and all of its terms and conditions without modification. After the issuance of such final order, the terms of this Proposed Consent Agreement shall be implemented and enforceable notwithstanding the pendency of any legal challenge to the Commission's approval of this Proposed Consent Agreement or to actions taken by another regulatory agency or Court, unless such implementation and enforcement is stayed or enjoined by the Commission, another regulatory agency, or a Court having jurisdiction over the matter.

16. The Parties may enforce this Proposed Consent Agreement through any appropriate action before the Commission or through any other available remedy. Any final Commission order related to the enforcement or interpretation of this Proposed Consent Agreement shall be appealable to the Superior Court of the State of Delaware, in addition to any other available remedy at law or in equity.

17. If a Court grants a legal challenge to the Commission's approval of this Proposed Consent Agreement and issues a final non-appealable order that prevents or precludes implementation of any material term of this Proposed Consent Agreement, or if some other legal bar has the same effect, then this Proposed Consent Agreement is voidable upon written notice by either Party to the other Party.

18. This Proposed Consent Agreement resolves all of the issues specifically addressed herein and precludes the Parties from asserting contrary positions during subsequent litigation in this proceeding or related appeals; provided, however, that this Proposed Consent Agreement is made without admission against or prejudice to any factual or legal positions which any of the Parties may assert (a) if the Commission does not issue a final order approving this Proposed Consent Agreement without modifications; or (b) in other proceedings before the Commission or another governmental body so long as such positions do not attempt to abrogate this Proposed Consent Agreement. This Proposed Consent Agreement is determinative and conclusive of all of the issues addressed herein and, upon approval by the Commission, without modification, shall constitute a final adjudication as to the Parties of all of the issues in this proceeding.

19. This Proposed Consent Agreement contains all of the terms and conditions agreed to by the Parties and constitutes the final agreement between Delmarva and Staff.

20. This Proposed Consent Agreement is expressly conditioned upon the Commission's approval of all of the specific terms and conditions contained herein without modification. If the Commission fails to grant such approval, or modifies any of the terms and conditions herein, this Proposed Consent Agreement will terminate and be of no force and effect, unless the Parties agree in writing to waive the application of this provision. The Parties will

make their best efforts to support this Proposed Consent Agreement and to secure its approval by the Commission.

21. It is expressly understood and agreed that this Proposed Consent Agreement constitutes a negotiated resolution of the issues in this proceeding.

22. Each of the undersigned representatives of the Parties certifies that he or she is fully and legally authorized by the Party represented to enter into the terms and conditions hereof and to execute and legally bind that Party to it.

23. This Proposed Consent Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. If either Party sends the other Party a signature on this Proposed Consent Agreement by facsimile transmission or by e-mail as a ".PDF" format file, such signature shall create a valid and binding obligation of the Party executing it (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".PDF" signature page were an original thereof. Delmarva agrees that an uncertified copy hereof shall be valid as evidence in any proceeding that may be required for purposes of enforcement.

[SIGNATURE PAGE TO FOLLOW]

The undersigned Parties, intending to bind themselves and their successors and assigns, have caused this Proposed Consent Agreement to be signed by their duly-authorized representatives and hereby agree to all of the conditions and terms set forth in this Proposed Consent Agreement.

DELAWARE PUBLIC SERVICE COMMISSION STAFF

By: Gerald D. Platt Date: 1/20/16
Printed Name: GERALD D. PLATT
Title: Pipeline Safety Program Manager

DELMARVA POWER & LIGHT COMPANY

By: Robert M. Colacchi Jr Date: JANUARY 12, 2016
Printed Name: ROBERT M. COLACCHI, JR
Title: DIRECTOR, GAS OPERATIONS + ENVIRONMENTAL

EXHIBIT "A"

**COPY OF WRITTEN NOTICE OF POTENTIAL VIOLATIONS
OF 26 DEL. ADMIN. C. §8001 DATED SEPTEMBER 25, 2015,
FROM GERALD D. PLATT, PROGRAM MANAGER OF THE
PIPELINE SAFETY PROGRAM FOR THE STATE OF DELAWARE,
TO ROBERT G. KITSON, MANAGER, GAS ENGINEERING,
DELMARVA POWER & LIGHT COMPANY
(INCLUDING COPY OF VIOLATION REPORT DATED AUGUST 17, 2015)**



**STATE OF DELAWARE
PUBLIC SERVICE COMMISSION**

861 SILVER LAKE BOULEVARD
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904

TELEPHONE: (302) 736-7500
FAX: (302) 739-4849

September 25, 2015

Mr. Robert G. Kitson, Gas Engineering Manager
Delmarva Power & Light Company
630 Martin Luther King Jr. Blvd.
Wilmington, DE 19801

RE: Written Notice of Potential Violation of 26 Del. Admin. C. §8001 occurring on 8/14/15

Dear Mr. Kitson:

This letter serves as notice to Delmarva Power & Light Company (the "Operator") of potential violations of the State of Delaware's Rules to Establish an Intrastate Gas Pipeline Safety Compliance Program, **26 Del. Admin. C. §8001** (the "Regulations"). The Regulations, at a minimum, enforce the standards set forth in the Federal Pipeline Safety Regulations, Title 49, U.S. Code of Federal Regulations, Parts 190-193 and 198-199.

On August 14, 2015, you called me to state that a sensing line for a regulator on the Operator's low pressure system had been struck by an excavator, and this, in turn, had caused a brief period of high pressure in the main followed by extremely low, and possibly no pressure, in the main. At that time, I stated that no one from the Public Service Commission Staff ("Staff") would respond to begin an investigation until Monday, August 17, 2015. We agreed that the time that day would be better spent by the Operator taking corrective action to ensure the gas distribution system was made safe. Over the weekend, you kept me abreast of corrective actions as they progressed. In the following weeks, the Operator conducted its own investigation as to the root cause and effects of this event and provided information back to Robert Schaeffgen as to the progress of this investigation on a somewhat regular basis. On Wednesday, September 9, 2015, Robert Schaeffgen and I travelled to your office in Wilmington for a presentation provided by yourself and Don Bridge regarding the findings of the investigation and answers to previously submitted Staff questions. One of the findings brought forth in the presentation was that a contractor working for the Operator excavated and damaged a regulator sensing line that had not been marked by the Operator prior to excavating. This error initiated the ensuing problems within the distribution system and customer establishments.

This represents the following potential violations:

- 1) One (1) potential violation of **49 C.F.R. §192.614(c)(5): Damage prevention program**, which requires the following:

“(c) The damage prevention program required by paragraph (a) of this section must, at a minimum...

(5) Provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins.”

- 2) One (1) potential violation of **49 C.F.R. §192.605(a): Procedural manual for operations, maintenance, and emergencies**. This section states the following:

“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. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.”

The Commission is authorized by the Regulations to order remedial actions and to impose civil penalties. In this case, the Commission Staff is recommending the following remedial action and civil penalties:

- 1) Within thirty (30) days of the date of this letter, the Operator shall provide, in writing, the procedural changes made which will provide the best protection against an event such as this from occurring again.
- 2) Civil penalties are proposed in the amount of \$5000.00 for the potential violation of 49 C.F.R. §192.614(c)(5) and \$500.00 for the potential violation of 49 C.F.R. §192.605(a). Thus, the total amount of recommended civil penalties is \$5500.00. Additional penalties may also be imposed for any additional violations found in any ensuing investigations or hearings.

The Commission Staff is referring this matter to the Commission for a formal hearing so that the Commission can rule on this matter. A docket will be opened for this matter, and a notice of a hearing date will be sent to the Operator as soon as possible.

If you have questions regarding this matter, please don't hesitate to contact me at 302-736-7526.

Sincerely,



Gerald D. Platt, Program Manager

Enclosure: Copy of Violation Report for 8/14/15
cc: Robert Schaeffgen, DE PSC Pipeline Safety Inspector
Julie Donoghue, Deputy Attorney General

UNITED STATES DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
GAS PIPELINE SAFETY VIOLATION REPORT

1. <u>Inspector Name</u> Robert Schaeffgen	2. <u>Date of Inspection</u> 08/17/15 + follow up Mtgs.	3. <u>CPF #</u>			
4. <u>Pipeline Operator/Owner</u> Delmarva Power					
5a. <u>Headquarters Address</u> 630 Martin Luther King Jr. Boulevard Wilmington, DE 19899			5b. <u>Telephone No.</u> (302) 429-3848		
6. <u>Inspection Location</u> East 5th and Church Streets, Wilmington			7. <u>Inspection Unit</u> No. <u>1</u> of <u>1</u>		
8. <u>Portion of System Inspected</u> (Describe location & facility)					
9. <u>Nature and Size of Operator</u>					
9a. <u>Type of Operator</u> <input type="checkbox"/> LNG (interstate) <input type="checkbox"/> LNG (Intrastate) <input type="checkbox"/> LPG <input type="checkbox"/> Master Meter <input checked="" type="checkbox"/> Other Distribution <input type="checkbox"/> Gathering <input type="checkbox"/> Transmission (interstate) <input type="checkbox"/> Transmission (intrastate)			9b. <u>Type of Pipe in System</u> <u>Inspected</u> <input checked="" type="checkbox"/> Cast Iron <input checked="" type="checkbox"/> Steel <input checked="" type="checkbox"/> Plastic <input type="checkbox"/> Other -		
			9c. <u>Size of Operator</u> (No. of Miles/Customers/Storage Capacity)		
10. <u>Nature of Probable Violations</u> (Check as many as applicable)					
<input type="checkbox"/> 1. Problem in Design/Materials <input type="checkbox"/> 2. Problem in Construction <input type="checkbox"/> 3. Welding or Joining <input type="checkbox"/> 4. Problem in LNG Equipment <input type="checkbox"/> 5. Test Requirements or MAOP Qualification <input type="checkbox"/> 6. Corrosion Control <input type="checkbox"/> 7. Pressure Control <input type="checkbox"/> 8. Other Maintenance/Monitoring <input type="checkbox"/> 9. Personnel Qualifications & Training <input type="checkbox"/> 10. Fire Protection <input type="checkbox"/> 11. Security <input type="checkbox"/> 12. Anti-Drug Program <input type="checkbox"/> 13. Other Operations <input type="checkbox"/> 14. Reporting Requirements <input checked="" type="checkbox"/> 15. Other <u>Damage Prevention - Failure to Mark all buried pipelines</u> <input type="checkbox"/> 16. Inadequate/No Procedures					
<input type="checkbox"/> A. Construction <input type="checkbox"/> B. Corrosion Control <input type="checkbox"/> C. Operations		<input type="checkbox"/> D. Training <input type="checkbox"/> E. Maintenance			

Violation No. 1

§ Violated: 192.614 Damage Prevention Program

11b. Summarize what the regulation requires that operator did not do:

192.614 (a) requires that each operator of a buried pipeline distribution system carry out in accordance with 192.614 a written program to prevent damage to their pipeline by excavation activities, specifically per 192.614(c)(5), provide for the temporary marking of buried pipelines in the area of excavation activity before activity begins.

12. Provide detailed information about violation: Operator had indicated the existence of field as-built records for the area of construction with details of Regulator Station HL-21 including local valving and station lines. These HL-21 low pressure distribution system station (sensing) lines were not marked in advance of excavation activities. Brandywine Construction Co., a second-party contractor, proceeded to sever these unmarked sensing lines during excavation activities on 08/14/15 in the ROW of E. 5th and Church St, (nearest intersecting street). This caused an elevated pressure spike followed by low pressures throughout the system.

13. Public and/or environmental concerns in area of violation: The damages to the sensing lines for HL-21 caused an immediate over pressurization of the low pressure gas distribution system. Consequently, safety devices triggered the shut-down of other regulator stations in the system resulting in poor pressure, customer complaints of odorant smells, both inside as well as at/near gas meter set equipment outdoors. More than 200 complaints of poor pressure/no gas/loss of pilot flame, etc., and 45 pilots were relit of which 23 re-lights due to poor pressure.

14a. Person Interviewed: Don Bridge, and Robert Kitson

Titles: Senior Supervising (Standards) Engineer and Engineering Manager

14b. Comments of person interviewed: Stated that many (8) of the low pressure gas distribution system regulator stations shut down (safeties set at 15-16"wc) and three (3) stations continued to operate normally maintaining a downstream pressure between 7.5 and 8 inches wc. The "Event" occurred at 9:12AM on Friday 8/14/15 and HL-21 Regulator Station was isolated at 10:16AM on 8/14/15. First poor pressure call came in at 9:45AM with majority of calls at 10:15AM. Low pressure gas distribution back to operating normally at 11:12AM (Two hours after sensing lines were damaged at HL-21). No one lost gas service completely. Operator completed mobile low pressure gas leak survey that began early morning of 8/15/15 and was completed on 8/19/15. All of the safety checks, re-lights and completion of the leak survey on the low pressure distribution had been completed as of 08/19/15. Bob Kitson had acknowledged the existence of drawings showing the sensing lines for Regulator Station HL-21.

Continuation Sheet

Violation No. 2

11a. CFR § Violated: 192.605(a)

11b. Summarize what the regulation requires that operator did not do:

Operator did not follow their Operations and Maintenance procedures, G7.05 to locate Gas Pipelines in the Field.

12. Provide detailed information about the violation: Operator had field as-built records that included details of Regulator Station HL-21, yet failed to mark the location of the HL-21 sensing lines.

13. Public and/or environmental concerns in area of violation: The damages to the sensing lines associated with HL-21 caused an immediate over pressurization of the low pressure gas distribution system that resulted in customer complaints of poor pressure and odorant smells, inside as well as outside at/near the gas meter set. Consequently there were over 200 complaints of poor pressure/no gas/loss of pilot flame , etc. which had to be investigated. 45 appliance pilots had to be re-lit of which 23 were due to poor pressure.

14a. Person Interviewed: Don Bridge and Robert Kitson
Titles: Senior Supervising (Standards) Engineer and Engineering Manager

14b. Comments of person interviewed: Admitted that the sensing lines had not been marked leading to the overpressuization of the low pressure gas distribution system.

15. <u>Supporting Documents/Materials</u>			
Item No.	Description (Include date)	Source of Documents	Remarks
1	Press Release at 4PM on 8/14/15	Nick Marici	

16. Inspector's Signature: *Robert Schaefer* Date: *09/22/15*

17. <u>Compliance History</u>				
Date	Place	Describe Violation/ Noncompliance	CPF No. Date WL	Outcome
18. <u>Gravity of Offense</u>				
19. <u>Degree of Culpability</u> High				
20. <u>Ability to Continue in Business</u> Excellent				
21. <u>Ability to Pay</u> Good				
22. <u>Good Faith in Attempting to Achieve Compliance</u> Excellent				
23a. <u>Proposed Remedy</u>				
<input type="checkbox"/> Warning Letter <input checked="" type="checkbox"/> Civil Penalty: Recommended Amount \$ <u>TBD</u> <input type="checkbox"/> Compliance Order <input type="checkbox"/> Hazardous Facility Order <input type="checkbox"/> Notice of Amendment of O&M Plan				
23b. <u>Analysis of Proposed Remedy</u>				
24. Regional Director's Signature:			Date:	
_____			_____	

NEWS RELEASE



FOR IMMEDIATE RELEASE | August 14, 2015

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Delmarva Power Restoring Natural Gas to Customers *Company Responding to a Hit Line*

Wilmington, DE - Around 10 am this morning Delmarva Power began receiving customer calls regarding suspected natural gas leaks and natural gas pressure issues in several areas within the City of Wilmington. Upon receipt of the customer calls, Delmarva Power Natural Gas Division personnel were immediately dispatched to the impacted areas to assess the situation and ensure safety.

Initial reports indicate that higher than normal gas pressure was introduced into the Company's low pressure gas system due to construction work in the vicinity of a Company gas regulator station. The gas system was returned to normal operating conditions at 11:30 pm today.

As of 3pm today, the Company is continuing to respond to any outstanding calls stemming from the initial incident. Delmarva Power is recommending that natural gas customers in the City of Wilmington check to see if their pilot lights and gas appliances are operating normally and to call the Company at: **1-302-454-0317** with any concerns.

Delmarva Power advises customers that if you notice a strong natural gas odor, or if there is other evidence of a natural gas leak, do not enter the premises.

- If you smell the odor of natural gas while inside your home, leave immediately.
- As a precaution, do not smoke, make a spark or flame, switch the lights on/off or raise/lower the windows.
- From a safe place, call Delmarva Power's natural gas emergency number at:
1-302-454-0317.

-more-

Delmarva Power does not recommend that customers independently turn their gas service off at the meter unless there is an emergency. This will shut off the gas to your entire home or business. If you need help turning off the gas, for your own safety, please call Delmarva Power. The Delmarva Power natural gas meter should only be turned back on by a Company representative.

Additional natural gas safety information can be found at:

<http://www.delmarva.com/Natural-Gas-101.aspx>

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