

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) PSC DOCKET NO. 392-13
PENALTIES ASSESSED TO CHESAPEAKE)
UTILITIES CORPORATION)
(OPENED AUGUST 8, 2013))

ORDER NO. 8476

AND NOW, this 21st day of November, 2013, 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 under 49 U.S.C. §60105(a) and has the authority under 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);¹ 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 to impose civil penalties, where appropriate; and

WHEREAS, Chesapeake Utilities Corporation ("Chesapeake") is an "Operator" as set forth in 26 Del. Admin. C. §8001-1.0² and 26 Del. C.

¹ In addition, 26 Del. C. §821 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).

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).

§802(11)³ in that Chesapeake acts as an operator of a buried pipeline facility used in the transportation of natural gas within the State of Delaware and therefore falls within the Commission's intrastate gas pipeline transportation jurisdiction; and

WHEREAS, a member of the Commission's staff ("Staff") performed a standard inspection of Chesapeake's distribution pipelines located at 305 South Queen Street, Dover, Delaware 19904, and noted his findings in a written report, including that there were nine key/critical sectionalizing valves that had not been exercised by Chesapeake within the past 15 months; and

WHEREAS, such failure to operate nine key/critical sectionalizing valves within the past 15 months represented nine potential violations

³ 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.

of 49 C.F.R. §192.747(a)⁴ and also one potential violation of 49 C.F.R. §192.605(a);⁵ and

WHEREAS, based on Staff's written report and findings dated May 22, 2013, 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 Chesapeake on August 8, 2013, along with a copy of Staff's written report. A copy of the NOPV and written report that Staff sent to Chesapeake is attached as Exhibit "A"; and

WHEREAS, the NOPV recommended that Chesapeake take certain remedial action⁶ and pay civil penalties of \$2,000.00;⁷ and

WHEREAS, Chesapeake promptly performed the requested remedial action; and

WHEREAS, Chesapeake and Staff entered into settlement negotiations and agreed to resolve the potential violations and proposed civil penalties by entering into a consent agreement (the

⁴ 49 C.F.R. §192.747(a) deals with "Valve maintenance: Distribution systems," and requires the following: "Each valve, the use of which may be necessary for the safe operation of a distribution system, must be checked and serviced at intervals not exceeding 15 months, but at least once each calendar year."

⁵ 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."

⁶ The NOPV stated that within thirty (30) days of the date of such NOPV, Chesapeake should exercise all nine valves or designate an alternative valve for the ones that cannot be exercised. Chesapeake was then instructed to provide Staff with documentation of the action taken by it.

⁷ Staff proposed that Chesapeake pay civil penalties in the amount of \$200.00 for each of the nine potential violations of 49 C.F.R. §192.747(a) and \$200.00 for the potential violation of 49 C.F.R. §192.605(a). Thus, the total amount of recommended civil penalties made by Staff was \$2,000.00.

"Proposed Consent Agreement") which is attached as Exhibit "B". Both Staff and Chesapeake agreed that the Proposed Consent Agreement would be subject to the Commission's review and final approval; and

WHEREAS, pursuant to 26 *Del. Admin. C.* §8001-7.1.3, Staff had requested that within 30 days of the date of the NOPV, Chesapeake exercise all nine valves or designate an alternative valve for the ones that could not be exercised and provide Staff with documentation of the action taken by Chesapeake. Because Chesapeake fulfilled this directive and corrective action, Staff does not request that Chesapeake take any additional corrective actions regarding the alleged failure to exercise the nine valves in a timely manner; and

WHEREAS, pursuant to 26 *Del. Admin. C.* §8001-7.1.2, Chesapeake agreed to pay a civil penalty in the amount of \$2,000.00 within 20 days of the date of the final Commission Order on this matter; and

WHEREAS, the amount of the civil penalty is the total sum of \$200.00 for each of the nine violations of 49 C.F.R. §192.747(a) and \$200.00 for one violation of 49 C.F.R. §192.605(a); and

WHEREAS, Staff noted in the NOPV that a mitigating factor in determining the amount of the recommended penalties is that Chesapeake had begun trying to exercise the nine valves well in advance of the deadline but that conditions prevented Chesapeake from finalizing the task; and

WHEREAS, Chesapeake has agreed that no portion of the civil penalties set forth in the Proposed Consent Agreement will be included in any way in any pending or future Delaware rate case or passed on in any way to Delaware ratepayers; and

WHEREAS, Staff and Chesapeake believe that resolving this matter through a negotiated compromise, without the need for a formal evidentiary hearing, will serve the interests of the public. Both parties assert that this settlement yields a reasonable result. In addition, both parties assert that the civil penalties agreed to in the Proposed Consent Agreement are within the bounds of the allowable civil penalty amounts based on circumstances unique to Chesapeake, 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),⁸ the Commission finds that the Proposed Consent Agreement, which is attached as Exhibit "B", is in the public interest for the reasons set forth above and therefore approves such agreement in full.

2. For the reasons set forth above and pursuant to 26 Del. Admin. C. §8001-7.1.2, 49 U.S.C. 60122(a), and subpart B of Part 190 of the Federal Regulations, the Commission assesses a civil penalty against Chesapeake in the amount of \$2,000.00.

3. Chesapeake is hereby placed on notice that the costs of the proceedings will be charged to it under the provisions of 26 Del. C. §114(b)(1).

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

⁸ 26 Del. C. §512(c) provides that the Commission may upon hearing approve the resolution of matters brought before it by stipulations or settlements whether or not such stipulations or settlements are agreed to or approved by all parties where the Commission finds such resolutions to be in the public interest.

BY ORDER OF THE COMMISSION:

/s/ Dallas Winslow
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Jeffrey J. Clark
Commissioner

Commissioner

ATTEST:

/s/ Alisa Carrow Bentley
Secretary

EXHIBIT "A"

Letter of the Notice of Potential Violations to Chesapeake
Dated August 8, 2013, and Attachment of Staff's Written Report

[NOTE: THIS DOCUMENT IS PART OF THE ATTACHED EXHIBIT "B"]

Docket NO. 392-13

alisa
Dona
Jerny
b.



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

August 8, 2013

Mr. Charles A. Russell
Chesapeake Utilities Corporation
32145 Beaver Run Drive
Salisbury, MD 21804-1774

RE: Written Notice of Potential Violation of 26 Del. Admin. C. §8001

Dear Mr. Russell:

This letter serves as notice to Chesapeake Utilities Corporation (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 May 22, 2013, Mr. Robert Schaeffgen, a member of the Commission Staff, performed a Standard Inspection of the Operator with a concentration on key/critical sectionalizing valves of the distribution system. Mr. Schaeffgen noted the following:

Records showed there were nine (9) key/critical sectionalizing valves that had not been exercised in the past 15 months.

This represents the following potential violations:

- 1) Nine (9) potential violations of 49 C.F.R. §192.747(a): Valve maintenance: Distribution systems, which requires the following:

"Each valve, the use of which may be necessary for the safe operation of a distribution system, must be checked and serviced at intervals not exceeding 15 months, but at least once each calendar year."

- 2) One 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."

Charles A. Russell, Chesapeake Utilities Corporation
August 8, 2013
Page 2

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 should exercise all nine (9) valves or designate an alternative valve for the ones that cannot be exercised. The Operator should then provide documentation to the Commission Staff of the action taken.
- 2) Civil penalties are proposed in the amount of \$200.00 for each potential violation of 49 C.F.R. §192.747(a) and \$200.00 for the potential violation of 49 C.F.R. §192.605(a). Thus, the total amount of recommended civil penalties is \$2000.00. Additional penalties may also be imposed for any additional violations found in any ensuing investigations or hearings. A mitigating factor in determining the value for the violations of 49 C.F.R. §192.747(a) is that, in all nine cases, the Operator had begun trying to exercise the valves well in advance of the deadline, but conditions prevented the finalization of the task.

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 5/22/13

cc: Julie Donoghue, Deputy Attorney General
Robert Schaeffgen, DE PSC Pipeline Safety Inspector

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> 05/22/13	3. <u>CPF #</u>			
4. <u>Pipeline Operator/Owner</u> Chesapeake Utilities, Inc.					
5a. <u>Headquarters Address</u> 909 Silver Lake Boulevard, Dover, DE 19904				5b. <u>Telephone No.</u> (302) 734-6797	
6. <u>Inspection Location</u> 350 S. Queen Street, Dover				7. <u>Inspection Unit</u> No. <u>1</u> of <u>2</u>	
8. <u>Portion of System Inspected</u> (Describe location & facility) Central and Northern Operating Districts of Chesapeake Utilities					
9. <u>Nature and Size of Operator</u>					
9a. <u>Type of Operator</u>			9b. <u>Type of Pipe in System</u>		
<input type="checkbox"/> LNG (interstate)			<input type="checkbox"/> Cast Iron		
<input type="checkbox"/> LNG (intrastate)			<input checked="" type="checkbox"/> Steel		
<input type="checkbox"/> LPG			<input checked="" type="checkbox"/> Plastic		
<input type="checkbox"/> Master Meter			<input type="checkbox"/> Other -		
<input checked="" type="checkbox"/> Other Distribution			9c. <u>Size of Operator</u> (No. of		
<input type="checkbox"/> Gathering			Miles/Customers/Storage		
<input type="checkbox"/> Transmission (interstate)			Capacity <u>865.901 miles/42,845/0</u>		
<input type="checkbox"/> Transmission (intrastate)					
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 checked="" 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 type="checkbox"/> 15. Other _____					
<input type="checkbox"/> 16. Inadequate/No Procedures					
<input type="checkbox"/> A. Construction			<input type="checkbox"/> D. Training		
<input type="checkbox"/> B. Corrosion Control			<input type="checkbox"/> E. Maintenance		
<input type="checkbox"/> C. Operations					

Violation No. 1

Violated: §192.605 (a) Procedural manual for operations, maintenance, and emergencies

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

Operator did not follow their manual of written procedures for conducting operations and maintenance activities for their distribution pipeline.

12. Provide detailed information about violation:

Operator did not maintain their distribution system sectionalizing/critical valves in accordance with the subpart L [192.605 (b) (1)] and subpart M of Part 192.

13. Public and/or environmental concerns in area of violation:

By not following their Operations and Maintenance procedures, operator may be placing their customers as well as the public-at-large by not being able to quickly isolate a part of distribution should there be a gas emergency such as a gas leak, fire or incident.

14a. Person Interviewed: Leonard Heavner Title: Manager of Gas Operations

14b. Comments of person interviewed: I was not aware of your inquiry on June 27, 2003 until this morning. I will be assisting with answering your question about our compliance with valve maintenance requirements.

I am at a disadvantage after reviewing the attached file. I had not had the opportunity to review the information contained within and want to ensure that we are providing you the most accurate information available. Would you advise me who at Chesapeake Utilities was the source for the attached file? Answer: Greg Madden and Richard Cleveland, Central and Northern Ops Dist. Mgrs.

Continuation Sheet

Violation No. 2

11a. CFR Violated: §192.747 (a) Valve maintenance

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

Operator did not check and service at intervals not exceeding 15 months, but at least once each calendar year each valve (key/sectionalizing) necessary for the safe operation of a distribution system.

12. Provide detailed information about the violation:

Operator did not exercise nine (9) of their key/sectionalizing valves in Calendar Year 2012 not to exceed 15 months.

13. Public and/or environmental concerns in area of violation:

By not operating the key/critical/sectionalizing valves annually, not to exceed 15 months, a valve might not be able to be operated when needed in an emergency response, such as a hit line.

14a. Person Interviewed: Leonard Heavner Title: Manager of Gas Operations

14b. Comments of person interviewed: He and Greg Madden, Central District Operations Manager reviewed the listing of critical valves that had been indicated to not have been operated between April 25 and May 21, 2013. An inquiry was issued to Chesapeake Utilities Charles Russell on June 27, 2013 with a response from Leonard Heavner, Manager of Operations indicating the sectionalizing valves that had not been operated at least once in CY-2012 and exceeded 15 months, See attachment.

Continuation Sheet

Violation No. _____

11a. CFR . Violated: _____

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

12. Provide detailed information about the violation:

13. Public and/or environmental concerns in area of violation:

14a. Person Interviewed:

Title:

14b. Comments of person interviewed:

15. Supporting Documents/Materials

Item No.	Description (Include date)	Source of Documents	Remarks
1	Pipeline Safety Regulations Part 192	OPS/PHMSA	

16. Inspector's Signature:

Date:

Robert Schaeffer

07/15/13

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> Fair				
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 checked="" 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:

U.S. Department of Transportation
Office of Pipeline Safety
Eastern Region

EXHIBIT TAB

Name of Operator

Exhibit No.

Evidence	Obtained from	Identifying Witness

Investigator
Name

Title

EXHIBIT "B"

Proposed Consent Agreement
Fully Executed by the Commission Staff and
Chesapeake Utilities Corporation

**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. 392-13
ASSESSED TO CHESAPEAKE UTILITIES)
CORPORATION (OPENED AUGUST 8, 2013))

PROPOSED CONSENT AGREEMENT

THIS PROPOSED CONSENT AGREEMENT is made this 22nd day of October, 2013, between Chesapeake Utilities Corporation (“Chesapeake”) and the Delaware Public Service Commission Staff (“Staff”).

WHEREAS, Chesapeake is a Delaware corporation with headquarters located at 909 Silver Lake Boulevard, Dover, Delaware 19904; and

WHEREAS, Chesapeake is an “Operator” as set forth in 26 *Del. Admin. C.* §8001-1.0¹ and 26 *Del. C.* §802(11)² 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 Under 26 *Del. Admin. C.* §8001-1.0, an “Operator” means an “underground pipeline facility operator” as defined in 26 *Del. C.* §802(11).

² 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.

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 its duties as a certified state pipeline safety compliance program, Mr. Robert Schaefergen ("Mr. Schaefergen"), a Public Utilities Engineer and member of Staff, performed a standard inspection on May 22, 2013, of Chesapeake located at 350 South Queen Street, Dover, Delaware 19904, with a concentration on key or critical sectionalizing valves of the distribution system; and

WHEREAS, Mr. Schaefergen prepared a written report which summarized his findings and which noted the following: "Records showed there were nine (9) key/critical sectionalizing valves that had not been exercised in the past 15 months;" and

WHEREAS, Chesapeake's failure to exercise nine key/critical sectionalizing valves within the past 15 months represents nine potential violations of 49 C.F.R. §192.747(a);⁴ and

WHEREAS, Chesapeake's failure to exercise nine key/critical sectionalizing valves within the past 15 months also represents one potential violation of 49 C.F.R. §192.605(a);⁵ and

WHEREAS, based on Mr. Schaefergen's written report and findings dated May 22, 2013, Mr. Gerald D. Platt, Program Manager of the Pipeline Safety Program for the State of Delaware, sent a written letter of the Notice of Potential Violations ("NOPV") to Chesapeake on August 8, 2013. A copy of the NOPV that Staff sent to Chesapeake is attached as Exhibit "A"; and

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 the following remedial action and civil penalties:

a. Within thirty (30) days of the date of the NOPV, Chesapeake should exercise all nine valves or designate an alternative valve for the ones that cannot be exercised. Chesapeake was then instructed to provide Staff with documentation of the action taken by it; and

b. Civil penalties in the amount of \$200.00 for each of the nine potential violations of 49 C.F.R. §192.747(a) and \$200.00 for the potential violation of 49 C.F.R. §192.605(a). Thus, the total amount of recommended civil penalties made by Staff was \$2,000.00; and

⁴ 49 C.F.R. §192.747(a) deals with "Valve maintenance: Distribution systems," and requires the following: "Each valve, the use of which may be necessary for the safe operation of a distribution system, must be checked and serviced at intervals not exceeding 15 months, but at least once each calendar year."

⁵ 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, Staff noted in the NOPV that Chesapeake had begun trying to exercise the nine valves well in advance of the deadline, but conditions prevented it from finalizing the task. Hence, Chesapeake's attempt was a mitigating factor in determining the penalty for the violations of 49 C.F.R. §192.747(a); and

WHEREAS, on August 13, 2013, Chesapeake responded to the NOPV by sending Staff a letter requesting an informal conference and reporting that as of July 23, 2013, it had exercised all nine of the critical valves identified by the NOPV; and

WHEREAS, Chesapeake and Staff entered into settlement negotiations and hereby proposed 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, Chesapeake has been informed that it is entitled to an administrative hearing and to be represented by counsel and that its decision to waive a hearing is a free and voluntary act made by Chesapeake;

NOW, THEREFORE, upon the mutual consent and agreement of Chesapeake 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. Chesapeake waives its right to an administrative evidentiary hearing for this proceeding.

3. Chesapeake states that 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. Chesapeake admits to all of the facts relating to the above-referenced violations.

5. Pursuant to 26 *Del. Admin. C.* §8001-7.1.2, Chesapeake agrees to pay a civil penalty in the amount of \$2,000.00 within 20 days of the date of a final Commission order that approves this Proposed Consent Agreement. This sum is the total of a civil penalty in the amount of \$200.00 for each of the nine violations of 49 C.F.R. §192.747(a) and a civil penalty in the amount of \$200.00 for one violation of 49 C.F.R. §192.605(a).

6. If Chesapeake fails to pay the sum of \$2,000.00 in civil penalties within 20 days of the date of a final Commission order approving this Proposed Consent Agreement, Chesapeake agrees that it shall pay interest 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. Pursuant to 26 *Del. Admin. C.* §8001-7.1.3, Staff requested that within 30 days of the date of the NOPV, Chesapeake exercise all nine valves or designate an alternative valve for the ones that could not be exercised. Staff further directed Chesapeake to provide Staff with documentation of the action taken by Chesapeake. Because Chesapeake has fulfilled this directive, Staff does not request that Chesapeake take any additional corrective actions regarding the alleged failure to exercise the nine valves in a timely manner.

8. Chesapeake agrees that no portion of the civil penalties set forth in this Proposed Consent Agreement will be included in any way in any pending or future Delaware rate case or passed on in any way to Delaware ratepayers.

9. This Proposed Consent Agreement is the free and voluntary act of Chesapeake and its terms are binding upon Chesapeake and may be admitted into evidence in any judicial or administrative proceeding that may be required against Chesapeake in order to enforce its terms.

10. This finding of violations, in addition to the mitigating factors, will be considered a prior offense in any subsequent enforcement action against Chesapeake.

11. Nothing in this Proposed Consent Agreement affects or relieves Chesapeake 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 Chesapeake pursuant to the federal Pipeline Safety Laws, the regulations and administrative orders issued thereunder, Delaware's law or regulations, or any other provision of Federal or State law.

12. 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.

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

14. This agreement shall survive Chesapeake and be enforceable against its successors or assigns.

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

16. 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. 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.

17. 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.

18. 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.

19. 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.

20. 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, shall constitute a final adjudication as to the Parties of all of the issues in this proceeding.

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

22. 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.

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

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

25. 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. Chesapeake 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: 10/22/13

Printed Name: GERALD D. PLATT

Title: Pipeline Safety Program Manager

CHESAPEAKE UTILITIES CORPORATION

By: Jeffrey R. Tietbohl

Date: 10 | 11 | 13

Printed Name: Jeffrey R. Tietbohl

Title: Vice President