



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

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NOTICE OF PROBABLE VIOLATION
ELECTRONIC MAIL – READ RECEIPT REQUESTED

April 16, 2020

D.P.U. 19-PL-44

Mark Kempic
President & Chief Operating Officer
Columbia Gas of Massachusetts
4 Technology Drive
Westboro, MA 01581

Re: D.P.U. 19-PL-44, [REDACTED] LNG Comprehensive Inspection

Dear Mr. Kempic:

The Pipeline Safety Division (“Division”) of the Department of Public Utilities (“Department”) issues this Notice of Probable Violation (“NOPV”) to Bay State Gas Company d/b/a Columbia Gas of Massachusetts (“Columbia Gas,” “Company,” or “Respondent”) pursuant to 220 CMR 69.03 and Delegation Order, D.P.U. 18-44-A (2018).

During December 2019, the Division inspected the Columbia Gas liquefied natural gas (“LNG”) facilities in [REDACTED] pursuant to G.L. c.164, §§ 76 and 105A, and 220 CMR 69.02. On January 22, 2020 the Division issued an Exit Letter outlining preliminary findings from the inspection, to which the Company responded with further information on February 27, 2020. As

discussed in detail below, the Division conducted further investigation into the matter and has reason to believe that Respondent may have violated 49 C.F.R. Part 193 (“Part 193”).

I. FINDINGS

A. Fire Protection Control Systems (49 C.F.R. §193.2619)

Section 193.2619(c)(2) states, “Control systems that are intended for fire protection must be inspected and tested at regular intervals not to exceed 6 months.” Maintenance records showed regular annual inspections of the gas detectors from 2015 to 2019, each inspection exceeding the six-month window. The Company did not dispute these findings.

B. Training, Operations, and Maintenance (49 C.F.R. § 193.2713)

Section 193.2713(b) states, “A written plan of continuing instruction must be conducted at intervals of not more than 2 years to keep all personnel current on the knowledge and skills they gained in the program of initial instruction.” One employee received refresher training in 2016 and 2019, thus exceeding the two-year interval. The Company confirmed these refresher training dates.

The Company’s failure to comply with the two-year training interval also presents a violation of 220 CMR 112.11: Plans and Procedures, which provides in pertinent part:

(1) At each LNG plant, the operator shall prepare, adhere to, and maintain in promptly updated form the plans and procedures required by 220 CMR 112.00 and by 49 C.F.R. Part 193 for that plant.

C. Protective Enclosures (49 C.F.R. § 193.2905)

Section 193.2905(e) states, “Each access must be locked unless it is continuously guarded. During normal operations, an access may be unlocked only by persons designated in writing by the operator. During an emergency, a means must be readily available to all facility

personnel within the protective enclosure to open each access.” A field review identified that the gate in the eastern corner of the plant was chained and padlocked with a combination lock. It was the only gate accessible on that side of the facility without walking past the tank, and was accessible only to those with the padlock code. Plant personnel described this gate as being used only for groundskeeping. A map of the facility labeled this gate as an emergency exit. The Company verified this finding and confirmed that this gate is no longer designated as an emergency exit. One-way push gates are used for the two currently designated emergency exits.

D. Recordkeeping (220 CMR 112.12)

State regulation 220 CMR 112.12(1) states, “Each operator shall keep records adequate to substantiate compliance with 49 C.F.R. Part 193 and 220 CMR 112.00.” The Company failed to maintain records of coordination with local officials in preparation of an emergency evacuation plan, to show compliance with 49 C.F.R. § 193.2509(b)(3), which states:

To adequately handle each type of emergency identified under paragraph (a) of this section and each fire emergency, each operator must follow one or more manuals of written procedures. The procedures must provide for ...

(3) Coordinating with appropriate local officials in preparation of an emergency evacuation plan, which sets forth the steps required to protect the public in the event of an emergency, including catastrophic failure of an LNG storage tank.

The Company also failed to maintain adequate maintenance records, to show compliance with 49 C.F.R. § 193.2639(a), which states:

Each operator shall keep a record at each LNG plant of the date and type of each maintenance activity performed on each component to meet the requirements of this part. For each LNG facility that is designed and constructed after March 31, 2000 the operator shall also maintain related periodic inspection and testing records that NFPA-59A-2001 (incorporated by reference, *see* § 193.2013) requires. Maintenance records, whether required by this part or NFPA-59A-2001, must be kept for a period of not less than five years.

A review of the maintenance records from 2014 to 2018 found a number of missing records, including operational tests of the auxiliary generator from February 2014 and December 2014, and seasonal testing of vaporizers occurring after the start of the season in 2017 and 2018. In addition, there was no record of what is being inspected during LNG Tank Inspections, transfer hose inspections, and atmospheric corrosion inspections. Those inspections were tracked as a completed date in PMTS with no detail.

II. ALLEGATIONS

Based on the investigation, the Division has reason to believe that Respondent's failure to perform timely inspections, maintain records, and adhere to training intervals may be in violation of the following sections of Part 193: §§ 193.2619(c)(2), 193.2713(b), and 193.2905(e). The Division also has reason to believe that Respondent may be in violation of the following state pipeline safety regulations: 220 CMR 112.11(1) and 220 CMR 112.12(1).

III. PRIOR VIOLATIONS

The Division has previously issued a Consent Order to Columbia Gas, D.P.U. 00-PL-23, for similar violations regarding this LNG facility, and a Warning Letter, D.P.U. 18-PL-04, for similar violations regarding its [REDACTED] LNG facility.

IV. PROPOSED CIVIL PENALTY

Under G.L. c. 164, § 105A, Columbia Gas is subject to a civil penalty not to exceed \$200,000 for each violation for each day that the violation exists, up to a maximum of \$2,000,000 for any related series of violations.

In determining the amount of the civil penalty, the Division shall consider the following, pursuant to G.L. c. 164, § 105A: the appropriateness of the penalty to the size of the business of

the person, firm, or corporation charged; the gravity of the violation; and the good faith of the person, firm, or corporation charged in attempting to achieve compliance, after notification of a violation.

In the present matter, the Division has reviewed the circumstances of the allegations and is prepared to resolve this matter upon Columbia Gas's agreement to the terms in the attached Consent Order and payment of a civil penalty in the amount of \$50,000.

V. RESPONSE TO THIS NOPV

Within 30 days of receipt of this NOPV, Columbia Gas shall respond to the Division in one of the following ways, pursuant to 220 CMR 69.04:

1. Sign and return the attached Consent Order, thus agreeing to remit payment of the civil penalty by check or money order made payable to the Commonwealth of Massachusetts;
2. Submit an offer in compromise of the proposed civil penalty under 220 CMR 69.04(2);
3. Request an informal conference under 220 CMR 69.05; or
4. Submit a written reply to the Division disputing the allegation(s) contained in the NOPV. The reply must include a complete statement of all relevant facts and authority and full description of the reasons why the Respondent disputes the allegation(s) contained in the NOPV.

Failure to respond within 30 days of receipt of this NOPV will be deemed an admission to the allegations contained herein and a waiver of Columbia Gas's right to contest the allegations. If Columbia Gas fails to respond within 30 days, the Department may, without further notice, find the facts to be as alleged herein and issue a final Order, pursuant to 220 CMR 69.04(3).

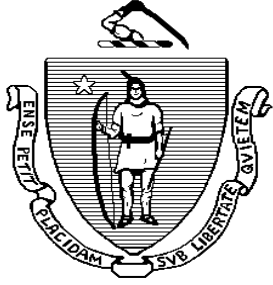
Very truly yours,

/s/

Richard Enright, Director
Pipeline Safety Division

Enclosures: Consent Order
Compliance Agreement

Cc: Katherine Silver, Columbia Gas
Meggan Birmingham, Columbia Gas
Shaela McNulty Collins, Columbia Gas
Michael Conkey, Assistant Director, Pipeline Safety Division
Laurie Ellen Weisman, Division Counsel, Pipeline Safety Division



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

CONSENT ORDER

April 16, 2020

D.P.U. 19-PL-44

In the matter of Bay State Gas Company d/b/a Columbia Gas of Massachusetts

I. JURISDICTION

1. This document, with the attached Compliance Agreement, is a Consent Order entered into between the Pipeline Safety Division (“Division”) of the Department of Public Utilities (“Department”) and Bay State Gas Company d/b/a Columbia Gas of Massachusetts (“Respondent”), and is executed in accordance with 220 CMR 69.08.
2. The Division has authority to enter into this Consent Order on behalf of the Department pursuant to Delegation Order, D.P.U. 18-44-A (2017).
3. Failure to comply with the terms of this Order may result in the assessment of civil penalties and referral of this matter to the Attorney General for appropriate action.
4. The terms and conditions of this Order become effective upon signing by the authorized representatives of the Respondent and the Department.
5. Respondent has stipulated and consented to the issuance of this Consent Order.

II. VIOLATIONS AND CIVIL PENALTY

1. Pursuant to G.L. c. 164, §§ 76 and 105A, and 220 CMR 69.02, the Division conducted a pipeline safety inspection of the Respondent’s facilities and records. As a result of the inspection, the Director of the Division issued to the Respondent a Notice of Probable Violation (“NOPV”), D.P.U. 19-PL-44, dated April 16, 2020, in accordance with 220 CMR 69.03. The NOPV is attached hereto and made a part hereof.
2. Based on information contained in the NOPV, the Division finds that the Respondent violated pipeline safety regulations contained in 49 C.F.R. Part 193 (“Part 193”) and 220 CMR 112.00, specifically:

Part 193, § 193.2619(c)(2) - Control systems

Part 193, § 193.2713(b) - Training, operations and maintenance

Part 193, § 193.2905(e) - Protective enclosures

220 CMR 112.11(1): Plans and Procedures

220 CMR 112.12(1): Records

3. Pursuant to G.L. c. 164, § 105A, the Division hereby imposes upon the Respondent a civil penalty in the amount of \$50,000 for the above-noted violations.
4. The Respondent hereby agrees, upon signing and returning this Consent Order to the Division, to remit payment of the civil penalty by check or money order in the amount of \$50,000 made payable to the Commonwealth of Massachusetts, One South Station, Boston, MA 02110.

III. RESPONDENT REQUIREMENTS

1. **Respondent shall sign the Stipulation below and return this complete document to the Division.**
2. All submissions by Respondent in accordance with this Consent Order shall be addressed to:

Director
Pipeline Safety Division
Department of Public Utilities
One South Station
Boston, MA 02110

IV. STIPULATED TERMS

Pursuant to 220 CMR 69.08(1), the Respondent through the signature below, by the person to whom this Consent Order is issued or a duly authorized representative, acknowledges agreement to the terms contained herein without admitting or denying that a violation of any Department or federal pipeline safety law or regulation occurred in relation to the above-noted matters. Further, Respondent agrees to issuance of this Consent Order and stipulates to the following:

1. Respondent, by signing the Stipulation, hereby waives:
 - (a) All rights to informal review pursuant to 220 CMR 69.05;
 - (b) All rights to a hearing pursuant to 220 CMR 69.06;
 - (c) Any and all procedural rights available in connection with the issuance of the Consent Order;
 - (d) All rights to seek any type of administrative or judicial review of the Consent Order;
and
 - (e) Any and all rights to challenge or contest the validity of the Consent Order.
2. Respondent expressly acknowledges that neither Respondent nor the Division has any intention to enter into a contract.
3. The terms and provisions of this Consent Order and Stipulation shall be binding upon, and inure to the benefit of, Respondent and the Division and their successors in interest.

4. Nothing in these Stipulated Terms shall preclude any proceedings brought by the Department to enforce the terms of the Consent Order, and nothing in these Stipulated Terms constitute, nor shall Respondent contend that they constitute, a waiver of any right, power, or authority of any other representative of the Commonwealth or an agency thereof to bring other actions deemed appropriate.

V. FINAL ORDER

1. This Consent Order and Stipulation is intended to be, and shall be construed to be, a final order of the Department issued pursuant to G.L. c. 25, § 5, having the force and effect of a remedial order, pursuant to 220 CMR 69.07(2), and expressly does not form, and may not be considered to form, a contract binding on the Division, the Department, or the Commonwealth of Massachusetts.
2. The terms of this Consent Order and Stipulation, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreement, or prior arrangements between the Division and the Respondent, whether oral or written.

By Order of the Division

_____ Date: _____
Richard Enright, Director
Pipeline Safety Division
Department of Public Utilities

The undersigned, duly authorized, stipulates to and acknowledges agreement to the terms herein.

BAY STATE GAS COMPANY D/B/A COLUMBIA GAS OF MASSACHUSETTS

_____ Date: _____
Mark Kempic
President & Chief Operating Officer

COMPLIANCE AGREEMENT
BETWEEN THE DEPARTMENT OF PUBLIC UTILITIES
AND BAY STATE GAS COMPANY D/B/A
COLUMBIA GAS OF MASSACHUSETTS

D.P.U. 19-PL-44

Bay State Gas Company d/b/a Columbia Gas of Massachusetts (“Respondent”) agrees to take the following actions within the specified time periods:

1. Within 30 days of the effective date of this Order, Columbia Gas shall pay a civil penalty of \$50,000 to the Commonwealth of Massachusetts.
2. Within 180 days of the effective date of this Order, Columbia Gas shall self-audit and document areas where maintenance and training records are missing in accordance with the records retention requirements of 49 C.F.R. Part 193, § 193.2639 and § 193.2719, and include such documentation in the records for future review.
3. Within 200 days of the effective date of this Order, Columbia Gas shall provide documentation to the Pipeline Safety Division showing that it has satisfied the requirements of Item 2.
4. Within 90 days of the effective date of this Order, Columbia Gas shall update the facility map to no longer consider the eastern gate an “exit” or replace the gate with a “crash gate” which can be used in an emergency.
5. Within 100 days of the effective date of this Order, Columbia Gas shall provide documentation to the Pipeline Safety Division showing that it has satisfied the requirements of Item 4.