

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
New York on November 17, 2022

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard
David J. Valesky
John B. Maggiore

CASE 22-G-0425 - Proceeding on Motion of the Commission
Regarding a Staff Investigation into New York
State Electric and Gas Corporation's Response
to a Natural Gas Incident at 2592 Carmel
Avenue, Brewster, New York.

ORDER ADOPTING PROPOSED SAMPLING PLAN

(Issued and Effective November 18, 2022)

BY THE COMMISSION:

INTRODUCTION

This Order concerns a sampling plan for inspections of a distribution system component. The Commission seeks to ensure that public utilities maintain constant vigilance over their gas distribution systems, with public safety as a paramount concern. The Commission holds public utilities responsible for the maintenance and safety of their gas facilities, especially when there are known, problematic components in their systems.

By way of background, on August 11, 2022, the Commission issued an Order to Commence a Proceeding and Show Cause, directing New York State Electric and Gas Corporation (NYSEG) to submit a remediation, inspection, and detection plan

for review and approval within 60 days, to proactively identify, detect, and remediate any natural gas leaks due to installation errors regarding the PermaLock Tapping Tee, a component used by the utility in its distribution system.¹ The Commission's August Order stemmed from an investigation by the Department of Public Service Staff into a February 2, 2022 natural gas incident occurring at 2592 Carmel Avenue, Brewster, New York.

On August 22, 2022, NYSEG requested a 30-day extension, pursuant to 16 NYCRR §3.3(a), for the development of an inspection and remediation plan for the potential installation errors regarding the Permalock Tapping Tees at issue in this case. On August 25, 2022, the Secretary granted the 30-day extension.

NYSEG'S SAMPLING PLAN

On October 12, 2022, NYSEG submitted a letter to the Commission, entitled "Risk Assessment Sampling Plan," (Sampling Plan) wherein NYSEG details the proposed sample population, sampling methodology, technique for inspection, and quarterly reporting on NYSEG'S findings. The Sampling Plan also included an estimated timeline for completion.

NYSEG has indicated that there are currently 362,546 PermaLock Tapping Tees in the combined territories of NYSEG and its sister company, Rochester Gas and Electric Corporation (RGE). NYSEG has engaged a third-party statistician to develop a mathematical method for randomly selecting 450 inspection

¹ Case 22-G-0425, Proceeding on Motion of the Commission Regarding a Staff Investigation into New York State Electric and Gas Corporation's Response to a Natural Gas Incident at 2592 Carmel Avenue, Brewster, New York, Order to Commence Proceeding and Show Cause (August 11, 2022).

sites.² NYSEG has represented that out of the 362,546 PermaLock Tapping Tees, there have been six (6) documented cases of incorrect installation and two (2) documented natural gas leaks. The Commission notes that NYSEG had no method of proactively detecting incorrectly installed PermaLock Tapping Tees or long-term records of work crews associated with legacy installations of such components, thus lessening the significance of the small number of "documented cases." Nevertheless, NYSEG's detection and remediation efforts must begin somewhere; NYSEG, through its statistician, created and proposed a predictive mathematical model to formulate a random sampling size of 450.³

In accordance with the proposed Sampling Plan, NYSEG will perform in-line camera inspections of a randomized sample of 450 "sites" throughout the NYSEG and RGE service territories. The inspections will also include multiple additional "opportunistic" inspections of each tapping tee that can be reached with an in-line camera at a previously designated site. Therefore, NYSEG has indicated that the total number of inspections to be performed will likely exceed 450 sites statewide. In reviewing the proposal, the Commission relies upon NYSEG's affirmative representation of conducting additional opportunistic inspections in the field beyond the 450 baseline metric and expects the utility to put forth good-faith efforts to inspect as many PermaLock Tapping Tees as practicable.

² Out of the 450 randomly selected sites, 150 sites will be in the Brewster, New York area, 150 sites will be in the Rochester RGE territory, and 150 sites will be scattered throughout the remainder of NYSEG and RGE territories throughout New York State.

³ The model presents a known failure rate between .000017 (6 known improper installations out of 362,546) and .0000055 (2 known leaks out of 362,546).

NYSEG'S Sampling Plan includes a provision that requires quarterly reports to be sent to the Department of Public Service, detailing the Sampling Plan's findings and progress, as well as milestone reports at certain completion benchmarks. NYSEG has indicated that it intends on performing the majority of inspections before the 2023 Winter season, and subsequently completing the project by Spring 2024.

ABSENCE OF CRITICAL RECORDS

NYSEG has informed the Department that it cannot ascertain from its own historical records the specific personnel involved in installing the PermaLock Tapping Tee related to the February 2, 2022, natural gas leak incident occurring at 2592 Carmel Avenue. The absence of available and reliable recordkeeping has complicated the remedial action in this matter.

Pursuant to 16 NYCRR Part 255, the Distribution Integrity Management Program requires that pipeline operators must have knowledge of their systems, identify threats to their systems, evaluate and rank risk, implement measures to address risk, and measure performance.⁴ If NYSEG had the ability to locate and access reliable records regarding the installation details, involved personnel, and utilized equipment, such information might have supported a recommendation to begin with a smaller initial sample size. The absence of such reliable information, along with corporate incident memoranda and a National Transportation Safety Board notice,⁵ supports the

⁴ 16 NYCRR §§255.1001 - 255.1015 (Gas Distribution Pipeline Integrity Management Programs and Plans).

⁵ Case 22-G-0425, Order to Commence Proceeding and Show Cause (August 11, 2022) at 9; NTSB Incident No. DCA17FFP006, "Installation of PermaLock Mechanical Tapping Tee Assemblies" (adopted June 18, 2018).

metric of 450 initial sample sites coupled with additional opportunistic inspections. The scenario encountered here underscores the importance of utilities maintaining reliable record keeping pertaining to piping and component installation. Should the Department encounter similar scenarios, the Commission has the regulatory authority to order changes to internal utility protocols and procedures if they are found to be systemically deficient.⁶

LEGAL AUTHORITY

PSL §65(1) requires that utilities provide “service, as shall be safe and adequate and in all respects just and reasonable.” PSL §66(2) empowers the Commission to hold utilities to this obligation, by vesting the Commission with the authority to investigate utilities and their performance, as well as to order utilities to make reasonable improvements that are in the public interest.

The Commission has regulatory authority to ensure that utilities meet their obligations to provide safe, adequate, and reliable service to New York customers. As the Public Service Law makes clear, “[e]very combination gas and electric corporation . . . shall adhere to every provision of this chapter and every order or regulation adopted under authority of this chapter[.]”⁷ The Commission has the ability to require utilities to “file periodic reports” on a specific topic or issue.⁸

⁶ E.g., Case 14-G-0212, Proceeding on Motion of the Commission to Investigate the Practices of Qualifying Persons to Perform Plastic Fusions on Natural Gas Facilities, Order Investigating the Practices and Obtaining Information Concerning Plastic Fusions on Natural Gas Facilities (issued June 27, 2014).

⁷ PSL §25-a(1).

⁸ PSL §66(10).

In addition, PSL §25-a(3) and (4) authorize the Commission to commence an administrative penalty proceeding against a combination gas and electric corporation. Under PSL §25-a(4), the Commission may assess a civil penalty not exceeding the greater of \$250,000 or "three one-hundredths of one percent of the annual intrastate gross operating revenue of the corporation[] . . . whichever is greater[.]"⁹ Any such penalties are not recoverable from ratepayers¹⁰ and if not remitted in a timely fashion, counsel to the Commission may bring a special proceeding in a court of competent jurisdiction to collect.¹¹

PENDING APPARENT VIOLATIONS

The August 2022 Order to Show Cause summarized information presented by DPS Staff that provided a sufficient credible basis to merit ordering NYSEG to respond to the apparent violations set forth therein. Each alleged violation identified relates to the February 2, 2022, incident in the vicinity of 2592 Carmel Avenue, Brewster, New York or the installation or maintenance of gas system infrastructure in the Brewster area. The Commission notes that today's order does not resolve the apparent violations identified in the August 2022 Order, which remain pending. The Commission anticipates that, at a future juncture, it may evaluate those allegations and consider imposing, for each established violation, a civil penalty of up to the greater of \$250,000 or three one-hundredths of one percent of the annual intrastate gross operating revenue. The Commission also notes that on October 6, 2022, NYSEG requested a 30-day extension, pursuant to 16 NYCRR §3.3(a), to continue settlement discussions with Department Staff regarding

⁹ PSL §25-a(4) (i).

¹⁰ PSL §25-a(9).

¹¹ PSL §25-a(8).

the apparent violations. On October 12, 2022, the extension was granted.

DISCUSSION AND CONCLUSION

The Department of Public Service, Office of Electric, Water, and Gas (OEGW) and Office of Investigation and Enforcement (OIE) staff members have reviewed NYSEG's Sampling Plan and its underlying methodology. Under the advisement of OEGW and OIE Staff, the Commission hereby approves NYSEG's Sampling Plan as a reasonable initial approach to address remedial actions and NYSEG is directed to implement the Sampling Plan forthwith. The Commission relies on NYSEG's affirmative representation that it will also undertake additional opportunistic inspections as part of the sampling plan. The Commission also hereby directs NYSEG to submit Quarterly reports, pursuant to PSL §66(10), to the Department of Public Service, Office of Electric, Water, and Gas and Office of Investigations and Enforcement staff, detailing the Sampling Plan's findings and progress. If additional anomalies and defects are detected in NYSEG's underground gas facilities, NYSEG may be required to increase its sampling size.

In addition, NYSEG is hereby directed to affirmatively repair and remediate all installation errors concerning the Permalock Tapping Tees identified as a result of the Sampling Plan implementation. NYSEG shall submit a final report to the Commission, detailing its findings and remedial actions, at the conclusion of its Sampling Plan efforts.

As noted above, the unresolved apparent violations identified in the August 2022 Order remain pending and active before the Commission.

In conclusion, the Commission again emphasizes its expectation that utilities maintain their distribution systems

and components to ensure public safety and that they avoid or replace components whose failure can harm to public. For the reasons discussed above in this Order, the Commission approves the proposed Sampling Plan.

The Commission orders:

1. Consistent with the discussion in this Order, the Sampling Plan, submitted by New York State Electric & Gas Corporation is hereby approved in order to identify, detect, and remediate any natural gas leaks due to installation errors concerning Permalock Tapping Tees.

2. New York State Electric & Gas Corporation is directed to affirmatively repair and remediate all installation errors concerning the Permalock Tapping Tees identified as a result of the Sampling Plan.

3. Starting within 90 days of this Order, New York State Electric & Gas Corporation is directed to submit Quarterly reports to the Department of Public Service, Office of Electric, Water, and Gas and Office of Investigations and Enforcement staff, detailing the Sampling Plan's findings, progress, and remediation actions.

4. New York State Electric & Gas Corporation is directed to complete the Sampling Plan work no later than May 17, 2024.

5. New York State Electric & Gas Corporation is directed to submit a final report to the Commission no later than 45 days after the conclusion of its Sampling Plan efforts and remediation actions.

6. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary