

Dynegy Kendall Energy, LLC
1401 County Line Road
Minooka, IL 60447

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Illinois Commerce Commission
GAS PIPELINE SAFETY



DYNEGY

November 25, 2014

Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701

Attention: Mr. Darin R. Burk
Manager – Pipeline Safety

Re: Notice of Probable Violations (NOPV #'s 2014-V001-00057, 2014-V002-00057, 2014-V003-00057, 2014-V001-00058, 2014-V-002-00058, and 2014-V003-00058); Inspection Report # 2014-P-00406

Dear Mr. Burk:

Dynegy Kendall Energy, LLC (Dynegy Kendall) submits this response to the above-captioned "Notice of Probable Violations" (Notice) dated October 29, 2014. The Notice identifies NOPVs regarding recordkeeping requirements associated with 49 CFR §192.615(b)(2), which concerns emergency plan personnel training, and 49 CFR §192.615(c)(1)-(4), which concerns liaison with appropriate fire, police and other public officials. This response respectfully disputes the probable violations alleged by the ICC but identifies actions both taken and pending by Dynegy Kendall to enhance the effectiveness and scope of its current Emergency Plan with respect to the two issues raised by the ICC's record audit and NOPVs.

NOPV #s 2014-V001-0057, 2014-V002-00057, and 2014-V003-0057

These NOPVs, issued for 2011-2013, respectively, state that "Documentation was not provided that Dynegy Kendall Energy employees who are responsible for responding to an emergency were trained...to assure they are knowledgeable of the emergency procedures." The NOPVs explicitly allege "the failure to meet the requirements as stipulated under [49 CFR §] 192.615 (b) (2)," which requires the operator to train the appropriate operating personnel to assure that they are knowledgeable of the emergency procedures and verify that the training is effective.

Dynegy Kendall disputes the ICC's assertion that such training is required on an annual basis, and, as a consequence, disputes the basis for NOPV #s 2014-V001-0057 (alleging no documentation of training in 2011), 2014-V002-00057 (alleging no documentation of training in 2012), and 2014-V003-0058 (alleging no documentation of

training in 2013). Annual training is not required by 49 CFR § 192.615(b)(2), which the NOPV alleges has not been met. Nor is annual training required in 49 CFR § 192.603(b). In a follow-up communication with the ICC Analyst concerning these NOPVs, the Analyst has cited to 49 CFR § 192.605(a) as the regulatory basis for these NOPVs. See Attachment 1 (email from M. Smith, ICC, to T., Benninghoff, Dynegey Kendall, Nov. 24, 2014). 49 CFR § 192.605(a) states, in pertinent part, that “Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. ... This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least one each calendar year.” While the cited section requires an annual *review* and *update* of the operator’s operating and maintenance plan, annual training is not specified in 49 CFR § 192.605(a).

Training requirements were discussed with the Analyst in detail during a meeting held on October 2, 2014. Although annual training is not specified in the applicable regulations, Dynegey Kendall agreed to perform training annually, when its contractor, EMS USA (EMS), performs its routine patrol of the Dynegey Kendall pipeline. EMS specializes in pipeline safety requirements, e.g., the safety, security, and integrity of natural gas pipelines, is well-known in the field, and has provided services to Dynegey Kendall in the past. The EMS trainer will require, among other things, operators to demonstrate “functional competency”, i.e., correct operation of the valve which isolates the flow of natural gas to the facility. Training competencies and future due dates will be tracked locally in the plant’s Maximo system. After the October 2, 2014 meeting, Dynegey Kendall scheduled emergency plan training for December 8, 2014, the earliest date that EMS is available.

While Dynegey Kendall agreed to provide such operator training annually, Dynegey Kendall does not agree that the lack of documented annual training in 2011, 2012 and 2013 are separate violations of the applicable regulations. Annual training is not specified in 49 CFR § 192.615(b)(2) as cited in the NOPV, is not specified in 49 CFR § 192.603(b), and is not specified in 49 CFR § 192.605(a) as referenced by the Analyst.

NOPV #s 2014-V001-0058, 2014-V002-00058, and 2014-V003-0058

These NOPVs, issued for 2011-2013, respectively, state that “Documentation was not provided that liaison was established and maintained...with appropriate fire, police, and other public officials.” The NOPVs explicitly allege “the failure to meet the requirements as stipulated under [49 CFR §] 192.615(c) (1)-(4),” which requires the operator to “establish and maintain liaison with appropriate fire, police and other public officials to: (1) Learn the responsibility and resources of each government organization that may respond to a gas pipeline emergency; (2) Acquaint the officials with the operator’s ability in responding to a gas pipeline emergency; (3) Identify the types of gas pipeline emergencies of which the operator notifies the officials; and (4) Plan how the operator and officials can engage in mutual assistance to minimize hazards to life or property”. The NOPV letter further states that such liaison meetings “must be conducted annually”,

but does not provide a citation to the applicable section of the Code of Federal Regulations for the statement that liaison meetings must be conducted "annually".

Dynegy Kendall disputes the ICC's assertion that a liaison meeting with appropriate fire, police and other public officials is required on an annual basis and, as a consequence, disputes the basis for NOPV #s 2014-V001-0058 (alleging no documentation of liaison in 2011), 2014-V002-00058 (alleging no documentation of liaison in 2012), and 2014-V003-0058 (alleging no documentation of liaison in 2013). The regulation cited by the ICC as the basis for these NOPVs, 49 CFR §192.615(c)(1)-(4), does not contain a requirement to conduct annual liaison meetings (See Attachment 2).

Notwithstanding Dynegy Kendall's challenge to the alleged requirement to conduct liaison meetings annually, Dynegy Kendall management met with all potential emergency responders in Kendall County on November 4, 2014 to establish the liaison. (See Attachment 3). The Kendall County Sheriff's Office and the Minooka Fire Department, as well as the Kendall County Sheriff's Office Incident Command staff, attended these meetings.¹ Dynegy Kendall management discussed the Emergency Response Plan prepared for Dynegy Kendall by EMS and left a copy of this plan with each of the emergency responder's respective representatives. Dynegy Kendall has also contacted the Minooka Police Department multiple times to set up a similar meeting, most recently on November 4. We currently await the Minooka Police Department's response with a proposed meeting date. Liaison meetings will be conducted annually, and tracked in the plant's Maximo system.

The October 29th Notice states that documentation must be forwarded to your office once the action items identified therein have been addressed. Documentation of the meetings held with the Kendall County Sheriff's Office and the Minooka Fire Department is attached. (See Attachment 3). Dynegy Kendall will submit documentation to your office of the emergency plan training (scheduled for December 8, 2014) and the requested but as-yet-unscheduled meeting with the Minooka Police Department after each occurs.

With completion of the emergency plan training scheduled for December 8, 2014 and upon occurrence of the requested but as-yet-unscheduled meeting with the Minooka Police Department, we believe all of the action items identified in the Notice will have been addressed.

¹ While the words "other public officials" are not defined in the regulation, Dynegy Kendall believes that meeting with all potential emergency responders satisfies the 49 CFR §192.615(a)(2) requirement for the operator to establish liaison with appropriate fire, police, and other public officials.

November 24, 2014
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If you have any questions concerning this matter, please contact Alan Bargender at 815-521-1000 ext. 50 or Tod Benninghoff at 815-521-1000 ext. 99.

Sincerely,

A handwritten signature in black ink that reads "Alan Bargender". The signature is written in a cursive style with a large, looped initial 'A'.

Alan M. Bargender
Managing Director, Dynegy Kendall Energy

Enclosures

cc: Martin W. Daley/Ontelaunee
Andreas H. Leskovsek/Houston
Mitchell Lancaster/Houston