Response of Mountaineer Gas Company to Initial Joint Staff Memorandum

Mountaineer Gas Company ("Mountaineer" or "Gas Company"), by counsel, submits this Response to the Initial Joint Staff Memorandum ("Initial Legal Memo"), including an Engineering Division Initial Memorandum ("Initial Engineering Memo") both dated December 6, 2023; and to the Further Joint Staff Memorandum ("Further Legal Memo"), including an Internal Memorandum from the Gas Pipeline Safety Division ("Initial Pipeline Safety Memo") both dated December 8, 2023 (together "Staff Initial Memoranda").

Preliminary Comments

This proceeding relates to an incident that occurred on November 10, 2023, in which a high-pressure water main located on the west side of Charleston, West Virginia, ruptured and water infiltrated Mountaineer's gas lines. The water main is owned and operated by West Virginia-American Water Company ("WVAW" or "Water Company"). Following the break in the Water Company's main, water expelled with significant force and punctured a gas pipeline owned and operated
by Mountaineer. This in turn caused water to flow into Mountaineer’s Gas Distribution Pipelines,¹ including numerous customer service lines, and ultimately into some customer-owned house piping and appliances. The infiltration of water in the distribution pipelines compelled Mountaineer to interrupt gas service to some customers and undertake emergency repairs to Mountaineer’s lines and customer-owned lines, as well as replacing many customers’ appliances.

The Commission issued an order on November 16, 2023, initiating a general investigation. The scope of the investigation is: “The cause and/or causes of the water main breaks and natural gas outage, as well as in general throughout the systems of the utilities, to determine measures, policies and/or practices that should be implemented or expanded by WVAWC and MGC to minimize or prevent water line breaks and gas outages.” Comm’n Order at 2.

Mountaineer is cognizant that Chapter 24 of the West Virginia Code, vests the Commission with the authority and duty to enforce and regulate the practices, services, and rates of public utilities in order to “[p]rovide for the availability of adequate, economical, and reliable utility services throughout the state. W.Va. Code §24-1-1(a)(2). Mountaineer agrees with the Commission’s initiation of the

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¹The terms “Mountaineer’s Gas Distribution Pipelines” and “Mountaineer’s Gas Distribution System” both include all company owned pipelines, which may be referred to using a variety of gas industry terms, including but not limited to - distribution lines, mainlines, taps, service pipes, customer service pipe, pipelines, pipes, or lines.
general investigation as this is clearly in the public interest and within the scope of the Commission's jurisdiction.

The Order required Commission Staff to make recommendations for information and evidence that should be formally filed by the utilities and for scheduling proceedings in this matter. The Staff submitted its recommendations to the Commission in the Staff Initial Memoranda. The Commission further ordered that Mountaineer, WVAW, and any other interested party respond to the Staff recommendations for further proceedings within five (5) business days of the Staff recommendations. Mountaineer files this response consistent with the Commission's directive.

Mountaineer Response to Staff Recommendations

Mountaineer supports the initial recommendations of the Legal, Engineering, and Pipeline Safety Divisions. Commission Staff's recommendations are reasonable and recognize the positions of Mountaineer and WVAW. Three class action lawsuits have been filed against Mountaineer and WVAW asserting various claims for damages. In addition, Mountaineer instituted an action against WVAW. Given the pendency of these actions, the Staff recommendations reflect

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2 As of the date of this filing, the following Class Actions have been filed against Mountaineer in the Circuit Court of Kanawha County: Robert Ruffin v. Mountaineer Gas Company and West Virginia-American Water Company, Civil Action No. 23-C-1003, Thomas Toliver et al. v. West Virginia-American Water Company and Mountaineer Gas Company, Civil Action No. 23-C-1007, and Kate Dodson v. West Virginia-American Water Company and Mountaineer Gas Company, Civil Action No. 23-C-1010.

the need for the Commission to maintain separation of this investigation and the
civil actions. Furthermore, the Commission should not allow this investigation to
be used for discovery relating to the civil actions or otherwise seek an adjudication
beyond the Commission's jurisdiction. In fact, allowing the efforts in the civil actions
to be comingled in the general investigation of the Commission, would create
delays and impediments to the Commission's stated goals.

The Commission and Staff are aware of the pending outside legal
proceedings and the need to ensure this regulatory general investigation is not
used for purposes of the ongoing litigation. Indeed, the Commission and Staff
faced a similar circumstance in connection with the Commission's investigation of
the water crisis that occurred in January, 2014. In that proceeding, Case No. 14-
0872-W-GI, the Commission made several observations, in particular:

4. Although the Commission acts in both a quasi-legislative
and a quasi-judicial capacity in these types of proceedings involving
utilities, the Commission is not a court of general jurisdiction, cannot
award damages, and is limited to exercising only that authority
granted to it by the Legislature.

5. Unlike courts of general jurisdiction in this state that
resolve legal disputes and determine liability between plaintiffs and
defendants, with the assistance of juries, the Commission has been
given a different charge by the West Virginia Legislature and has the
responsibility for appraising and balancing the interests of current and
future utility service customers, the general interest of the State's
economy, and the interests of the utilities subject to its jurisdiction in
its deliberations and decisions (W.Va. Code §24-1-1(b)).

6. Also, unlike courts of general jurisdiction that can impose
compensatory or punitive damages in its awards, the Commission
authority in matters such as this is to review the practices, acts, and
service of a public utility, if the Commission finds that the utility actions were unjust, unreasonable, insufficient, or unjustly discriminatory, or otherwise in violation of any provisions of West Virginia Code, Chapter 24, or that any service is inadequate, the Commission can then order reasonable practices or services to be followed or provided by the utility. (W.Va. Code §24-2-7). Our examination of the issues in this general investigation will focus on the actions and activities of WVAWC following the spill, not on whether, in 20/20 hindsight, prior WVAWC certificate projects might have been designed differently.

Comm'n Order, Case No. 14-0872-W-GI (May 21, 2014) at 7-8. The Commission further stated: “Discovery that is considered by the Commission to be vexatious, burdensome, unduly expansive, or for purposes of harassment will not be tolerated and will be rejected, Requests must be limited to information that is available to the party served, and shall not include development of new information, calculations, workpapers or declarations.” Id. at 14. Mountaineer submits similar protocols should be adopted in this proceeding.

The Staff indicates that its investigative process may include “additional investigation outside the formal discovery process.” Initial Legal Memo p. 1 and 3. As the Commission and Staff are aware, gas utilities are extensively regulated under the U.S. Department of Transportation, Pipeline Hazardous Materials and Safety Administration. As a part of the federal regulatory framework the Commission has a separate Gas Pipeline Safety Division. The Pipeline Safety Director recounts that the “Division is required to investigate routine operations and maintenance activities as well as emergency response activities, including investigation of certain events and outages that may be reported to us. Gas
Pipeline Safety has been monitoring and reviewing Mountaineer's response to this event, including site visits, and is aware of some of the facts regarding the event."

Mountaineer is required to perform certain tests and inspections, and retain appropriate records as required by 49 CFR Part 192 regulations for its operations; concurrently, the Gas Pipeline Safety Director routinely conducts reviews of Mountaineer's compliance with pipeline safety regulations and has ongoing investigative duties and responsibilities. Mountaineer requests that the Commission guard against any party to this general investigation interfering with the requirements of Mountaineer and the duties and responsibilities of the Gas Pipeline Safety Director. Initial Pipeline Safety Memo p. 1.

The Commission has established reasonable parameters for the scope of this general investigation that are in the public interest and, in particular, in the interests of both utilities' customers. The latitude of this investigation should facilitate the Commission's stated goals of identifying the cause and/or causes of the incident(s), the practices and procedures of the utilities that should be implemented or expanded to minimize widespread loss of service for customers, both in geographical scope and in the duration, when water line breaks and gas outages occur, and to minimize the occurrences of loss-of-service water main breaks and gas outages. Mountaineer requests that no party be allowed to breach the long-standing requirements, practices, and protocols that are in place at the Commission with regard to the Gas Pipeline Safety Director carrying out of her duties.
Mountaineer supports the Staff recommendation for the goal of processing the investigation within a timeframe of 180-250 days. Mountaineer would, however, point out the information the Staff seeks to review will be technical, voluminous and to some extent confidential. As the Staff has suggested, and Mountaineer agrees, the Staff investigate process should, as much as possible, be encouraged to be informal and include onsite investigative work. Similar to the safety audits of the Gas Pipeline Safety Director, the financial audits of Utilities Division Staff, and the investigative field work of the Engineering Division, a tremendous amount of information can be reviewed, evaluated, and consider by the Staff experts. With the Commission established parameters in this general investigation and the Staff experts assigned to this matter, there is no benefit to requiring the copying, redacting, and distributing of the voluminous records of Mountaineer that are routinely kept and reviewed as required by 49 CFR Part 192 regulations and the Commission's Rules for the Government of Gas Utilities and Gas Pipeline Safety, 150 CSR 4, Gas Rule 11.4. In fact, abandoning the established practices and protocols would likely place an undue burden on the Gas Pipeline Safety Director's work and create unnecessary delays in the submitting of Staff reports and recommendations.

Mountaineer is working to compile the information and data requested in the Staff's first request for information. Mountaineer will work cooperatively to facilitate the Staff's investigation. Mountaineer believes the next step in the general investigation should be for the Staff to propose the timeframe for its informal and
onsite investigative work. The Staff can provide its plan for audits and meetings with Mountaineer and WVAW’s personnel. Mountaineer believes the stated goals of the Commission can be accomplished completely and in a reasonable timeframe with informal and onsite investigative work.

Summary

Mountaineer welcomes the opportunity to inform the Commission and Staff of its position regarding the November 10 incident and the Gas Company’s actions in response. Mountaineer believes the cause of gas outage is the rupture of WVAW’s main line, and not any act or omission of Mountaineer. In addition, the Gas Company believes the investigation will confirm Mountaineer’s response was appropriate. Mountaineer shares the Commission’s and its Staff’s goal to minimize widespread loss of service for customers both in geographical scope and in the duration, when water line breaks and gas outages occur; and further to minimize the occurrences of loss-of-service water main breaks and natural gas outages.

MOUNTAINEER GAS COMPANY
By Counsel

R. Booth Goodwin II (WVSB 7165)
Benjamin B. Ware (WVSB #10008)
Richard D. Owen (WVSBV#2794)
GOODWIN & GOODWIN, LLP
300 Summers Street, Ste. 1500
Charleston, WV 25301
Phone: (304)346-7000
Fax: (304)344-9692
Email: rbg@goodwingoodwin.com
Email: bbw@goodwingoodwin.com
Email: rdo@goodwingoodwin.com

Caryn Watson Short (WVSB 4962)
Mountaineer Gas Company
P.O. Box 5201
Charleston, WV 25361
Email: carynshort@mgcww.com
CERTIFICATE OF SERVICE

I certify service of “RESPONSE OF MOUNTAINEER GAS COMPANY TO INITIAL JOINT STAFF MEMORANDUM” on December 13, 2023, upon the parties of record by electronic mail:

Christopher Howard, Esq.
Timothy Gibson, Esq.
Public Service Commission of West Virginia
201 Brooks Street
Charleston, WV 25301
choward@psc.state.wv.us
tgibson@psc.state.wv.us

Robert Passmore, Esq.
West Virginia-American Water Company
1600 Pennsylvania Avenue
Charleston, WV 25302-3932
robert.passmore@amwater.com

Robert F. Williams, Esq.
Director, Consumer Advocate Division
300 Capitol Street, Suite 810
Charleston, WV 25301
rwilliams@cad.state.wv.us

John Auville, Esq.
Heather B. Osborn, Esq.
Bobby Lipscomb, Esq.
Consumer Advocate Division
300 Capitol Street, Suite 810
Charleston, WV 25301
jauville@cad.state.wv.us
hosborn@cad.state.wv.us
blipscomb@state.wv.us