



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Ave., S.E.
Washington, DC 20590

JAN 18 2008

Timothy Kelley
Vice President Energy Services
Total Peaking Services, LLC
Southern Connecticut Gas Company
77 Hartland Street
East Hartford, CT 06108

Re: CPF No. 1-2006-3002

Dear Mr. Kelley:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$46,300. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc (by email): Mr. Byron Coy, Director, Eastern Region, PHMSA
Ms. Denise Desautels, Esq., Office of Chief Counsel, PHMSA
Ms. Anne O. McCrory, Esq., Senior Attorney, The Southern Connecticut Gas Co. and
Total Peaking Services, LLC.
Mr. Philip Sher, DPUC

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

In the Matter of)	
)	
Total Peaking Services, LLC, and)	
Southern Connecticut Gas Co.,)	CPF No. 1-2006-3002
)	
Respondent)	
)	

FINAL ORDER

On October 3-5, 2005, pursuant to 49 U.S.C. § 60117, representatives of the State of Connecticut Department of Public Utility Control (“DPUC”), as interstate agent of the Pipeline and Hazardous Materials Safety Administration (“PHMSA”), conducted an on-site safety inspection of Respondent’s liquefied natural gas facility and records in Milford, Connecticut (“LNG Facility”). Respondent is comprised of the two companies indicated above. The indicated companies jointly own and operate the LNG Facility. As a result of the inspection, the Director, Eastern Region, PHMSA, issued to Respondent, by letter dated May 23, 2006, a Notice of Probable Violation and Proposed Civil Penalty (“Notice”). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. § 193.2605(b) and assessing a civil penalty of \$46,300 for the alleged violation.

Respondent replied to the Notice by letter dated June 22, 2006 (“Response”). In its Response, Respondent offered information in explanation of the allegation of violation and sought elimination of the proposed civil penalty. In addition, by email dated June 26, 2006, Respondent requested a hearing, which was subsequently held via telephone conference on September 6, 2006, with Mr. Jim Curry, Esquire, Office of Chief Counsel, PHMSA, presiding. At the hearing, Respondent, who was represented by counsel, conceded that it had violated 49 C.F.R. § 193.2605(b) but continued to seek elimination of the proposed penalty. At the conclusion of the hearing, Respondent was afforded the opportunity to submit a post-hearing brief within three (3) weeks. Respondent’s counsel timely submitted a post-hearing brief (“Closing”) on September 26, 2006.

FINDINGS OF VIOLATION

Item 1: The Notice alleged that Respondent violated 49 C.F.R. Part 193.2605(b), which states:

49 C.F.R. § 193.2605 Maintenance procedures.

(a) Each operator shall determine and perform, consistent with generally accepted engineering practices, the periodic inspections or tests needed to meet the applicable requirements of this subpart and to verify that components meet the maintenance standards prescribed by this subpart.

(b) Each operator shall follow one or more manuals of written procedures for the maintenance of each component, including any required corrosion control. The procedures must include:

(1) the details of the inspections or tests determined under paragraph (a) of this section and their frequency of performance;.....

Notice Item 1 alleged that Respondent violated 49 C.F.R. § 193.2605(b) by failing to meet required deadlines provided in its manual of written procedures for inspection of certain fire protection components at the LNG Facility. At the inspection, Respondent offered a certain document, entitled “TPS Inspection and Maintenance Plan, IMP-7.3 Hazard Detection and Mitigation” (“IMP-7.3”), dated November 14, 2002, as its manual of written procedures. That document covered fire protection systems, including Respondent’s gas detectors and water systems, and required that fire protection systems be inspected at least semi-annually. Respondent also submitted inspection forms that indicated what types of activities Respondent was required to perform during semi-annual inspections.

During DUPC’s inspection of Respondent’s records, inspectors discovered that Respondent had failed to meet its own semi-annual inspection requirement for four (4) gas detectors at the facility. Gas detectors test for the presence of flammable gas and are intended to alert Respondent to potentially dangerous leaks that could lead to fires or explosions. DUPC inspectors discovered that Respondent had last inspected the gas detector at the AC Control House on March 29, 2004, thereby missing the required July/August 2004, February 2005, and August 2005 inspection periods. DUPC inspectors also discovered that Respondent had not performed the required August 2005 inspection of the gas detectors for the CP-30, CP-10 South, and CP-84A units.

In its Response, Respondent argued that its written policy did “not indicate with any specificity what exactly is required to ‘inspect’ the fire protection system.”¹ Respondent

¹ Response at 1.

further argued that it subjected all four (4) of the gas detectors to “manual monthly readings” to ascertain that the gas-to-air ratios were below 20% of the lower explosive level (“LEL”).² The LEL is the minimum concentration of gas in a given environment at which a fire or explosion could occur. Respondent argued that the monthly manual readings were “supportive of inspection activities for these units and consistent with the [Respondent’s] written procedures.”³

Although Respondent’s monthly readings may have been “supportive” of inspection activities, the fact remains that the required semi-annual tests were simply not performed during the monthly manual readings. Respondent’s inspection forms for semi-annual gas detector inspections contain specific provisions for performing and recording the results of gas detector readings, zero checks, span checks, as well as inspection notes taken. Respondent’s procedures also specifically require that personnel who are inspecting system components shall review the maintenance measures required from the previous inspection and make recommendations regarding required and recommended maintenance at the time of the gas detector inspections.⁴ Respondent’s practice of monthly manual readings does not satisfy the semi-annual inspection requirement set forth in Respondent’s written procedures.

The requirement for LNG operators to follow their own inspection plans is an essential part of maintaining the safety of LNG and pipeline facilities. Section 193.2605(b) requirements for operators to have and follow written procedures derive, in part, from 49 U.S.C. § 60108(a)(1), which provides that “each person owning or operating an intrastate gas pipeline facility or hazardous liquid pipeline facility shall carry out a current written plan (including any changes) for inspection and maintenance of each facility...” Early in the development of Federal pipeline safety law, Congress required operators to create, file with the Secretary, and comply with their inspection and maintenance plans.⁵ The House Report on the Natural Gas Pipeline Safety Act of 1968 found that “an important part of the program proposed by this legislation to achieve pipeline safety is the plan of inspection and maintenance according to which the company maintains surveillance of its lines and facilities.”⁶

During the hearing and in its Closing, Respondent conceded that it had missed the required semi-annual inspection intervals for the four (4) gas detectors above.⁷

After considering all of the evidence, I find Respondent violated § 193.2605(b) by failing to perform the semi-annual inspections for the AC Control House gas detector in July/August 2004, February 2005, and August 2005 and for the gas detectors for the CP-30, CP-10 South and CP-84A units in August 2005, in accordance with Respondent’s written procedures set forth in IMP-7.3.

² *Id.* at 1-2.

³ *Id.* at 2.

⁴ IMP-7.3, Procedure Guidelines 17-25.

⁵ See The Natural Gas Pipeline Safety Act of 1968, P.L. 90-481.

⁶ H.R. Rep. No. 1390 (1968), *reprinted in* U.S. Code Congressional and Administrative News, at 3239-40 (1968).

⁷ Closing at 2.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 for any related series of violations. In addition, under 49 C.F.R. § 190.223(c) any person violating a standard or order under 49 U.S.C. § 60103 (“Standards for liquefied natural gas pipeline facilities”) is subject to an additional administrative civil penalty not to exceed \$50,000 for each violation.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation; degree of Respondent’s culpability; history of Respondent’s prior offenses; Respondent’s ability to pay the penalty; good faith by Respondent in attempting to achieve compliance; the effect on Respondent’s ability to continue in business; and such other matters as justice may require.

The Notice proposed a civil penalty of \$43,600 for violation of § 193.2605(b). The failure of Respondent to follow its written procedures for the inspection and maintenance of gas detection equipment jeopardizes public safety, property, and the environment. The failure to timely inspect and test gas detectors increases the risk that a gas leak may not be detected and a fire or explosion may result. In its Response, at the hearing and in the Closing, Respondent offered arguments in support of its request for elimination of PHMSA’s proposed civil penalty.

First, in its Response, Respondent stated that once it had become aware of PHMSA’s concerns regarding the semi-annual inspections, Respondent reminded its personnel of the importance of completing semi-annual inspections and all inspection reports.⁸ Respondent also stated that it instituted an additional procedure requiring supervisors to sign-off on each semi-annual inspection report to confirm completion of the inspection and associated reports.⁹ Though PHMSA appreciates Respondent’s efforts to prevent future non-compliance, I find that Respondent’s efforts after the violation occurred do not warrant elimination or mitigation of the civil penalty. Respondent is obligated to comply with the regulations at all times and will not be given credit for subsequent efforts to improve performance.

Second, Respondent asked PHMSA to consider its practice of manual monthly readings of the gas detectors in determination of the gravity of the violation. As stated in the Findings of Violation, Respondent’s manual monthly readings do not satisfy the semi-annual inspection requirement. The semi-annual testing and inspection in Respondent’s

⁸ Response at 2.

⁹ *Id.*

written procedures appears to be intended to allow Respondent to determine if its detectors are functioning correctly. Manual monthly readings alone do not achieve this important safety goal. The regulations require that Respondent follow its written procedures. I find that Respondent's practice of manual monthly readings does not warrant mitigation of the civil penalty amount in this case.

Third, Respondent argues that its CP-30 liquefaction turbine and CP-10 Unit were not in service and that the gas sources to each were cut off at the time the respective gas detector inspections should have occurred.¹⁰ Respondent argued that the safety of the facility and employees was therefore not jeopardized by Respondent's "failure to complete th[e] inspection" of the CP-30 gas detector.¹¹ Respondent noted that it now inspects the CP-30 detector according to company policy.¹²

Respondent also argued that its CP-10 gas detector was redundant to another detector in the same building and that the Unit serviced by the CP-10 detector was taken out of service more than ten (10) years ago.¹³ Respondent explained that it "does not typically extend all of [its] equipment inspection practices to equipment that is integrally related to equipment which is no longer in service."¹⁴ However, Respondent's records indicated that, except for the August 2005 period at issue, it had historically inspected the CP-10 detector on the semi-annual schedule provided by IMP-7.3.¹⁵

Respondent also argued that its failure to inspect the AC Control House detector was a good faith mistake and was mitigated by the presence of two other detectors at the AC Control House building. Respondent argued that no significant safety issues were raised by its failure to inspect this detector. Respondent did not discuss its failure to inspect the CP-84A gas detector unit.

Respondent underestimates the importance of adherence to its inspection procedures. Written procedures are intended, in part, to prevent mistakes that could lead to accidents. Respondent's failure to inspect the four (4) gas detectors in accordance with its written procedures is not mitigated by the presence of other gas detectors nearby nor by gas sources allegedly cut off to the equipment served by the detectors. Accordingly, I find that mitigation of the proposed civil penalty is not warranted.

It is noteworthy that this is not the first time Respondent has failed to test certain components at its LNG Facility. In 2005, PHMSA issued a Final Order to Total Peaking

¹⁰ Closing at 2-3. Respondent provides no evidence that the gas sources to CP-30 and CP-10 were in fact cut off. However, it is not necessary to establish this fact to decide this matter, as it is not relevant to Respondent's failure to follow its procedures.

¹¹ Closing at 3.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ The Milford LNG plant semi-annual inspection records submitted by Respondent indicate that the CP-10 gas detector was inspected and tested in March 2004, July/August 2004 and February 2005.

Services, finding that it had failed to test certain equipment at its Milford LNG facility.¹⁶ The 2005 violation concerned a failure to test equipment according to certain deadlines. The 2005 violation for failure to inspect and test equipment is similar to the finding of violation in the present case.

For the foregoing reasons, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$46,300. There is nothing in the record indicating that payment of this penalty would adversely affect Respondent's ability to continue in business.

Payment of the \$46,300 civil penalty must be made within 20 days of service of this Final Order. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$46,300 civil penalty will result in accrual of 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 charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a United States District Court.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. However if Respondent submits payment for the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived. The terms and conditions of this Final Order are effective on receipt.



Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

JAN 18 2008

Date Issued

¹⁶ See *In the matter of Total Peaking Services*, Final Order, CPF No. 1-2005-3003 (Aug. 18, 2005) (finding that Respondent violated 49 C.F.R. § 193.2619 for failing to test the low-temperature shutoff controllers at certain vaporizer outlets before seasonal use).