



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

FEB 11 2008

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

Mr. Walter L. Ferguson
Senior Vice-President Operations
CenterPoint Energy Gas Transmission Company
1111 Louisiana St., Suite 1120
Houston, TX 77002-5254

Re: CPF No. 4-2005-1008

Dear Mr. Ferguson:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$177,500, and specifies actions to be taken to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Southwest Region, this enforcement action will be closed. Your receipt of the Final Order constitutes service 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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590**

_____)
In the Matter of)

CenterPoint Energy Gas)
Transmission Company,)

Respondent)
_____)

CPF No. 4-2005-1008

FINAL ORDER

On May 3 – 21, 2004, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an on-site pipeline safety inspection of Respondent’s facilities and records in Texas and Louisiana. As a result of the inspection, the Director, Southwest Region, PHMSA, issued to Respondent by letter dated June 15, 2005, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent committed violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$179,500 for the alleged violations. The Notice also proposed that Respondent take certain measures to correct the alleged violations.

After requesting and receiving an extension of time to respond, Respondent responded to the Notice by letter dated August 16, 2005 (Response). Respondent contested one of the allegations, offered supplemental information concerning the allegations, and requested that the proposed civil penalty be reduced. Respondent did not request a hearing, and therefore has waived its right to one.

FINDINGS OF VIOLATION

Item 1 in the Notice alleged Respondent violated 49 C.F.R. § 192.465(d), which states:

49 C.F.R. § 192.465 – External corrosion control: Monitoring.

(a) Each pipeline that is under cathodic protection must be tested at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of § 192.463

(d) Each operator shall take prompt remedial action to correct any deficiencies indicated by the monitoring.

The Notice alleged that Respondent failed to promptly address deficiencies in its cathodic protection system, as evidenced by cathodic protection readings at several test stations that did not meet the applicable -850 millivolt (mV) criteria during consecutive years. As specified in § 192.463 and Appendix D to Part 192, each cathodic protection system must provide a level of protection that complies with one or more of the applicable criteria. A cathodic protection system that does not meet the -850mV criteria or another applicable criteria (such as the 100mV criteria) may not be providing sufficient protection against corrosion and is considered deficient. When monitoring indicates that a cathodic protection system is deficient, an operator must take prompt remedial action to correct the deficiency pursuant to § 192.465(d). PHMSA considers remedial action to be prompt if evaluations are completed and corrective action begins within a few months (proportionately less where monitoring is more frequent) and all necessary remedial actions have been completed by the next scheduled monitoring.

In this case, Respondent's records show that it applied the -850mV criteria at several test locations, but some of the locations failed to meet that or another applicable criteria for consecutive years. Accordingly, Respondent did not take prompt remedial action as specified in § 192.465(d) to correct those deficiencies. Respondent did not contest this allegation of violation. Therefore, I find Respondent violated 49 C.F.R. § 192.465(d) as alleged in the Notice.

Item 2 in the Notice alleged Respondent violated 49 C.F.R. §§ 192.605(a) and 192.463(a). Those sections state as follows:

49 C.F.R. § 192.605 – Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities

(b) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following, if applicable, to provide safety during maintenance and operations . . .

(2) Controlling corrosion in accordance with the operations and maintenance requirements of subpart I of this part [§§ 192.451 – 192.491].

49 C.F.R. § 192.463 – External corrosion control: Cathodic protection.

(a) Each cathodic protection system required by this subpart must provide a level of cathodic protection that complies with one or more of the applicable criteria contained in appendix D of this part. If none of these criteria is applicable, the cathodic protection system must provide a level of cathodic protection at least equal to that provided by compliance with one or more of these criteria.

The Notice alleged that Respondent failed to follow its procedures for applying the 100mV cathodic protection criteria at several test points on its pipeline system. As specified in § 192.463 and appendix D of Part 192, a cathodic protection system is required to provide a level of protection that meets an applicable criteria, such as the 100mV criteria. A cathodic protection system that does not meet the applicable criteria may not be providing sufficient protection against corrosion and is considered deficient.

Respondent's manual of procedures includes provisions for applying the 100mV criteria. However, Respondent's records show that at several test points where that criteria had been used, Respondent failed to achieve the minimum negative polarization voltage shift required by its own procedures. Specifically, the voltage shift as tested at several locations was less negative than 100mV. In its Response, Respondent did not contest this allegation of violation. Therefore, I find Respondent violated 49 C.F.R. §§ 192.605(a) and 192.463(a) as alleged in the Notice.

Item 3 in the Notice alleged Respondent violated 49 C.F.R. § 192.745(a), which states:

49 C.F.R. § 192.605 – Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities

(b) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following, if applicable, to provide safety during maintenance and operations.

(1) Operating, maintaining, and repairing the pipeline in accordance with each of the requirements of . . . subpart M of this part [§§ 192.701–192.755]

49 C.F.R. § 192.745 – Valve maintenance: Transmission lines.

(a) Each transmission line valve that might be required during any emergency must be inspected and partially operated at intervals not exceeding 15 months, but at least once each calendar year.

The Notice alleged that Respondent failed to follow its own procedures for inspecting and partially operating each transmission line valve that might be required during an emergency. At the time of the inspection, Respondent's manual of written procedures stated: "Each mainline block valve . . . or any other valves that might be required during any emergency shall be inspected and partially operated at intervals not exceeding 15 months, but at least once each calendar year to be sure they are in good condition and operate properly."

The Notice alleged that Respondent's valve inspection records for the Ruston-Perryville and Buckley areas indicated many valves had not been partially operated over the course of several years, even though many of the valves had been inspected.

Specifically, the Notice alleged there were 174 occurrences of Respondent failing to operate a valve that might be required during an emergency.

In its Response, Respondent asserted that it conducted an internal review of the same records examined by PHMSA, as well as its own maintenance practices. Based on its review, Respondent contended that with respect to 147 of the 174 alleged violations, Respondent was in compliance with its written procedures and with applicable regulations. Of the allegations contested, Respondent claimed that 26 were the result of data entry errors, 33 were associated with valves that are not required during an emergency, 11 were associated with valves that were operated at times other than annual inspection and maintenance events, and 77 were instances where an employee had verified operation of the valve even though no documentation is available. Respondent submitted records and documents to support its claim that it was in compliance with respect to the 147 referenced occurrences. Respondent did not contest the remaining 27 alleged violations.

With regard to Respondent's contention that 26 occurrences listed in the Notice were the result of data entry errors, Respondent submitted records of maintenance activities for the valves in question and explained that the errors were a function of the management system utilized at the time. The records submitted include two dated work orders—for valves FM-38 0+00 (BV46248) and FM-2 11+89 (BV46128)—that show those valves were in fact operated and “closed” in 2003 and 2004, respectively. The documentation does not, however, show that operations took place for the other 24 occurrences since the documentation did not include work orders dated prior to the PHMSA inspection. Undated records, or documentation of operations that took place after the date of the PHMSA inspection, do not rebut the allegations of violation, because they do not prove that Respondent operated the valves within the specified time period. Accordingly, I find Respondent has demonstrated compliance with respect to only two of the 26 occurrences that Respondent contended were the result of data entry errors.

With regard to Respondent's contention that 33 occurrences listed in the Notice were associated with valves that are not required during an emergency, Respondent submitted a table of valves that Respondent labeled “not in emergency service.” Respondent did not submit information regarding how or when it determined these valves are not required during an emergency. During the May 2004 PHMSA inspection, Respondent was asked several questions pertaining to its compliance with § 192.745 and the procedures in its written manual associated with the requirement to partially operate valves that might be required during an emergency. Respondent indicated during the inspection that its procedures did not distinguish which valves might be required during an emergency and which ones would not. During interviews with personnel, the PHMSA inspector also found that some technicians considered certain valves to be emergency valves while other technicians did not.

Subsequent to the PHMSA inspection, Respondent amended its procedures to designate which valves might or might not be required during an emergency. Based on those amendments, Respondent has contended that 33 alleged missed inspections are associated with valves that are not presently considered to be required during an emergency. While the regulation provides that Respondent determines which valves on its pipeline system might or might not be required

during an emergency, at the time of the PHMSA inspection Respondent had not made such a determination. At the time of PHMSA's inspection, Respondent was required by § 192.745 to inspect and partially operate all emergency valves at the designated intervals. Respondent had not distinguished which valves were emergency valves and had not determined that the valves associated with these 33 occurrences were not necessary in an emergency.

Respondent failed to consistently operate those valves as required at the time pursuant to § 192.745. Therefore, I find Respondent has not demonstrated compliance with respect to any of these 33 occurrences.

Respondent also asserted that 11 valves listed in the Notice had been operated at the requisite intervals during operations that were not part of annual inspection and maintenance events. Respondent submitted block valve history records for two valves (F-1-F 350+15 (002) and F-1-F 350+15 (003)) that indicate the valves had been operated and closed in 2001. However, the documentation submitted does not show that other valves had been operated or closed. For example, the computer-generated history record for block valve (001) did not indicate that the valve had been operated, although an undated handwritten note said that it had been. Documentation provided for the other valves did not indicate at all if those valves had been operated. Therefore, I find the evidence submitted by Respondent is sufficient to demonstrate compliance with § 192.745 for only two of these 11 valves.

Finally, Respondent claimed that 77 occurrences were operations that had been verified by employees but that no documentation of compliance existed. Respondent did not provide any documentation with respect to those 77 occurrence. Therefore, Respondent has not demonstrated compliance with the regulation.

After reviewing the documentation provided by Respondent, I find Respondent has demonstrated compliance with respect to 4 of the 174 alleged violations. Accordingly, I find Respondent violated 49 C.F.R. § 192.745(a) as alleged in the Notice, except for the following four valves: FM-38 0+00 (BV46248), FM-2 11+89 (BV46128), F-1-F 350+15 (002), and F-1-F 350+15 (003).

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to a 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. The Notice proposed a total civil penalty of \$179,500 for the violations.

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.

Item 1 in the Notice proposed a civil penalty of \$51,000 for failing to promptly correct deficiencies in cathodic protection, in violation of 49 C.F.R. § 192.465(d).

Pipelines that are not maintained with adequate levels of cathodic protection may develop external corrosion that over time leads to a pipeline failure. Respondent requested mitigation of the proposed civil penalty based on the corrective action it has taken to bring the deficient areas into compliance and Respondent's overall commitment to safety. I do not find the corrective action completed by Respondent after its receipt of the Notice justifies reducing the civil penalty, because Respondent has an affirmative obligation to maintain its pipeline system in compliance with applicable pipeline safety regulations at all times and to correct any deficiencies.

I also find Respondent has not provided any evidence that was not reviewed by PHMSA at the time of the inspection pertaining to its good faith attempt to achieve compliance. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$51,000 for violation of § 192.465(d).

Item 2 in the Notice proposed a civil penalty of \$38,000 for failing to follow Respondent's written procedures for cathodic protection, in violation of 49 C.F.R. §§ 192.605(a) and 192.463(a). Failing to ensure that established operations and maintenance procedures are followed threatens the safety of a pipeline system. Specifically, pipelines that are not maintained with adequate levels of cathodic protection may be damaged by external corrosion, which over time can lead to a pipeline failure that risks the safety of people and the environment. Respondent requested mitigation of the proposed civil penalty based on corrective action that it has taken, including revising procedures, establishing a corrosion manager position, and reviewing the appropriateness of selected criteria. I do not find that the corrective action taken by Respondent after its receipt of the Notice justifies reducing the civil penalty, because Respondent has an affirmative obligation to maintain its pipelines system in compliance with applicable pipeline safety regulations at all times and to correct any deficiencies.

Respondent also requested mitigation based on its commitment to safety, and the limited scope of the violations. However, I do not find Respondent has provided any evidence that was not reviewed by PHMSA at the time of the inspection pertaining to Respondent's good faith attempt to achieve compliance with §§ 192.605(a) and 192.463(a). Respondent has not demonstrated that the scope of the violations warrants a reduction in the penalty, as the civil penalty amount was proposed specifically for the violations that were found. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$38,000 for violation of §§ 192.605(a) and 192.463(a).

Item 3 in the Notice proposed a civil penalty of \$90,500 for failing to inspect and partially operate transmission line valves that may be required during an emergency, in violation of 49 C.F.R. § 192.745(a). Valves that might be required during any emergency must be operable at all times to minimize and avoid possible danger to the public and environment in the event of an emergency. Respondent's failure to identify which valves might be required during an emergency and to regularly ensure proper operation of those valves significantly increased the risk that during an emergency, Respondent would not be able to operate valves necessary to avoid a hazardous condition. In its Response, Respondent was able to demonstrate that it was in compliance with respect to four of the 174 alleged violations. Accordingly, a proportional reduction to the civil penalty is appropriate. However, Respondent did not present any additional reasons for reducing the civil penalty.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced civil penalty of \$88,500 for violating § 192.745(a).

Respondent has not provided any evidence suggesting that Respondent is not able to pay the proposed civil penalty. Therefore, I find Respondent is able to pay the penalty without adversely affecting its ability to continue in business.

Having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of **\$177,500**.

Payment of the civil penalty must be made within 20 days of service. 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 \$177,500 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 2 and 3. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under Chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations. Respondent must:


1. Submit documentation demonstrating that each pipeline segment located in the East Texas and Louisiana Districts, including those segments listed in Tables I, II, and III in the Notice, are in compliance with 49 C.F.R. §§ 192.465(d), 192.605(a) and 192.463(a).
2. Submit documentation demonstrating that each transmission line valve, including each valve listed in Tables IV and V in the Notice, which might be required during any emergency, is in compliance with 49 C.F.R. § 192.745(a).
3. Complete each of the above items and submit documentation of completion within 30 days of receipt of this Final Order. Documentation shall be submitted to the Director, Southwest Region, Office of Pipeline Safety, 8701 South Gessner Dr, Suite 1110, Houston, TX 77074-2949.

The Director, Southwest Region, may grant an extension of time to comply with any of the Compliance Order items upon a written request timely submitted by the Respondent demonstrating good cause for an extension.

Failure to comply with this Order may result in administrative assessment of civil penalties not to exceed \$100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

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. All other terms of the order, including any required corrective action, remain in full effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective on receipt.



Jeffrey D. Wiese *for*
Associate Administrator
for Pipeline Safety

FEB 11 2008

Date Issued