

Mr. Theopolis Holeman
Vice President of Operations
Texas Eastern Transmission Corporation
5400 Westheimer Court
Houston, TX 77056-5310

RE: CPF No. 4-2001-1001

Dear Mr. Holeman:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$4,500. 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.

Sincerely,

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

cc: Gregory P. Bilinski, Vice President Transmission, Duke Energy

Enclosure

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED) AND TELECOPY

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
Washington, DC 20590

In the Matter of)
)
Texas Eastern Transmission Corporation,) CPF No. 4-2001-1001
)
Respondents.)

FINAL ORDER

Between September and November 2000, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's facilities and records in Texas and Louisiana, including the Baytown Area and Monroe Area. As a result of the inspection, the Director, Southwest Region, OPS, issued to Respondent, by letter dated March 9, 2001, 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 violated 49 C.F.R. §§192.465, 192.707(a), 192.707(c) and proposed assessing a civil penalty of \$9,500 for the alleged violations.

In a letter dated April 6, 2001, Respondent submitted a Response to the Notice. Respondent contested the alleged violations, offered an explanation and requested withdrawal of the proposed civil penalty. Respondent did not request a hearing and therefore, has waived the right to one.

FINDINGS OF VIOLATIONS

Item 1 in the Notice alleges that Respondent violated 49 C.F.R. §192.465(a), as records available at the time of the inspection indicated that certain cathodic protection test leads, on Line 26 from milepost (MP) .85 to MP 5.5 in the Monroe Area of Louisiana, were tested at an interval greater than 18 months.

In response to Item 1, Respondent contested the alleged violation and explained that attempts were made on 5/12/99 and 6/7/99 to take readings, which are recorded in its technician's daily planner. Respondent argues that the high water level of the Quachita River is a force majeure (an act of God) which caused the late reads identified by the OPS inspector. Respondent advises that it will institute provisions to address this type of situation in its operating procedures.

Respondent must test each pipeline that is under cathodic protection at least once each calendar year. Respondent lacks documentation to support that testing was performed within the required 15 month intervals at:

Test lead location	1998 Survey reading date	1999 Survey reading date
MP .85 TS next to MM1	1/13/98	7/27/99
MP 2.18 CAA at D'arrbonne	1/14/98	7/27/99
MP 2.33 Koch crossing	1/14/98	7/27/99
MP 2.64 F/L crossing	1/14/98	7/27/99
MP 2.80 Koch 30"crossing	1/14/98	7/27/99
MP 3.46 United Carbon crossing	1/14/98	7/27/99
MP 4.24 4" crossing	1/14/98	7/28/99
MP 4.25 F/L crossing	1/14/98	7/28/99
MP 4.36 UGPL Xing	1/14/98	7/28/99
MP 5.19 Koch crossing	1/14/98	7/27/99
MP 5.35 Koch 2"crossing	1/14/98	7/27/99
MP 5.50 Aux. valve 26-21	1/14/98	7/27/99
MP 5.00 Blowdown valve 26-17	1/14/98	7/27/99
MP 5.5 CA at MLV.	1/14/98	7/27/99
MP 5.50 MLV 26-16	1/14/98	7/27/99

49 C.F.R. §192.465(a) requires an annual inspection to be conducted within 15 months of the last inspection. The additional three (3) months provides flexibility in scheduling for the operator. This allows the operator to take into account vacations and bad weather when scheduling the tests. The 15-month interval was exceeded before Respondent attempted to perform the test on 5/12/99. April 27, 1999 was the latest that Respondent could have performed the tests and remained in compliance. Respondent lacks documentation to support that testing was performed within the required 15 month intervals. Respondent has not shown any circumstance that would have prevented or justified it not monitoring each test lead location timely. Accordingly, I find Respondent violated 49 C.F.R. § 192.465(a) by exceeding the 15-month interval.

Item 2 in the Notice alleges that Respondent violated 49 C.F.R. §192.707(a), as line markers were not installed to identify the location of the pipeline entering the Entergy Plant meter station in the Baytown Area in Texas.

In response to Item 2, Respondent contested the alleged violation and explained that at the time of the inspection the meter facility was less than a month old, the entrance gate was not attached, and the identification signs for the gate had not been installed. Respondent further explained that Entergy officials had been provided with the names and numbers of Respondent's personnel in case of an emergency. Respondent advises that, shortly after the inspection, the entrance gate and facility identification signs were installed.

The rule contemplates the protection of both people and property from an accidental discharge from the pipeline. Respondent has not shown any circumstance that would have prevented or justified it not installing line markers to identify the location of the pipeline. Accordingly, I find Respondent violated 49 C.F.R. § 192.707(a).

Item 3 in the Notice alleges that Respondent violated 49 C.F.R. § 192.707(c), as Respondent did not have line markers installed along the aboveground valve setting at the Entergy Plant lateral tap in the Baytown Area, which is accessible to the public.

In response to Item 3, Respondent contested the alleged violation and argued that there was a sign on the vent post approximately 50 feet from the pig launching facility, along the entrance into the site. Respondent explained that at the time of the inspection, the facility was less than a month old and the entrance gate had not been installed. However, shortly after the inspection, the gate and additional signs were installed.

The accident reporting system shows a significant number of accidents involving pipelines caused by third parties. This rule contemplates the protection of both people and property by identifying the location of the pipeline. Respondent has not shown any circumstance that would have prevented or justified it not installing line markers to identify the location of the pipeline. Accordingly, I find Respondent violated 49 C.F.R. § 192.707(c).

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to a civil penalty not to exceed \$25,000 per violation for each day of the violation up to a maximum of \$500,000 for any related series of violations. The Notice proposed a total penalty assessment of \$9,500 for Items 1, 2, and 3.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, consideration is given to 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.

With respect to violation of 49 C.F.R. § 192.465(a) (Item 1), Respondent argued that the high water level of the Quachita River is a force majeure (an act of God) which caused the late reads identified by the OPS inspector. Respondent's argument fails as Respondent knows that the test leads are located in a flood plain of the Quachita River and should have plans and procedures in place to obtain the readings. Testing each pipeline that is under cathodic protection at least once each calendar year, but with intervals not exceeding 15 months, is key to determining whether the cathodic protection is adequate.

Inspection and testing at required intervals are essential to knowing that the pipeline equipment is being maintained, will function properly and that its integrity is not compromised. Failure to perform the proper monitoring on each test station could result in inadequate protection of the pipe and could result in a leak in the future. This is a preventive measure designed to prevent leaks before a leak occurs. Accordingly, having reviewed the record and considered the assessment criteria, Respondent is assessed a civil penalty of \$4,500. Respondent has the ability to pay this penalty amount without adversely affecting its ability to continue business.

The Notice proposed assessing a civil penalty of \$2,500 for Item 2, violation of 49 C.F.R. §192.707(a). Requiring an operator to properly identify the location of its pipeline is intended to prevent third persons from accidentally damaging the pipeline and thereby causing a hazardous substance to be released into the surrounding environment. Prior to the inspection of the one month old meter facility, the construction contractor had placed above and along the pipeline right-of-way several line markers. In this case, although the markings did not meet the requirements of the regulations, the existence of the pipeline was indicated by alternative means. Respondent has now corrected the situation. Accordingly, having reviewed the record and considered the assessment criteria, no penalty will be assessed.

The Notice proposed assessing a civil penalty of \$2,500 for Item 3, violation of 49 C.F.R. §192.707(c). Unmarked or inaccurate line markers increase the risk of harm to the public, environment, and property. Based upon the information provided by Respondent, the construction contractor had placed above and along the pipeline right-of-way several line markers. Also, Respondent's company sign was on the vent post approximately 50 feet from the pig launching facility along the entrance road into the site, identifying the name of the operator and an emergency contact number. Respondent promptly installed the gate and additional signs to ensure compliance with the regulations. Respondent has now corrected the situation. Accordingly, having reviewed the record and considered the assessment criteria, no penalty will be assessed.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$4,500. A determination has been made that Respondent has the ability to pay this penalty without adversely affecting its ability to continue business.

Payment of the civil penalty **must be made within 20 days of service**. Payment can be made by sending a certified check or money order (containing the CPF Number for this case) payable to " U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-320), P.O. Box 25770, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this **payment to 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.** After completing the wire transfer, send a copy of the **electronic funds transfer receipt** to the **Office of the Chief Counsel** (DCC-1), Research and Special Programs Administration, Room 8407, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590-0001.

Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25770, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the \$4,500 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 4 C.F.R. § 102.13 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 an United States District Court.

Under 49 C.F.R. § 190.215, Respondent has a right to 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, shall remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective upon receipt.

Stacey Gerard
Associate Administrator
for Pipeline Safety

Date Issued