

February 26, 2016

Mr. Gregory L. Ebel
President and CEO
Spectra Energy Corporation
5400 Westheimer Court
Houston, TX 77056

Re: CPF No. 1-2015-1003

Dear Mr. Ebel:

Enclosed please find the Final Order issued in the above-referenced case to your subsidiary, Texas Eastern Transmission, LP. It makes findings of violation and assesses a civil penalty of \$58,700. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid, as determined by the Director, Eastern Region, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided 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: Mr. Byron Coy, P.E., Director, Eastern Region, OPS
Mr. Rick Kivela, Director, Operational Compliance, Spectra Energy Partners, LP
Mr. J. Andrew Drake, Vice President, Operations and EHS,
Texas Eastern Transmission, LP

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

| | | |
|---------------------------------------|---|----------------------------|
| In the Matter of |) | |
| |) | |
| Texas Eastern Transmission, LP, |) | CPF No. 1-2015-1003 |
| a subsidiary of Spectra Energy Corp., |) | |
| |) | |
| Respondent. |) | |
| |) | |

FINAL ORDER

On June 23-27 and August 11-14, 2014, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site construction inspection of the facilities and records of Texas Eastern Transmission, LP (TETLP or Respondent), a subsidiary of Spectra Energy Corp. The inspection involved construction activities associated with the company’s TEAM 2014 project in Shermans Dale and Perulack, Pennsylvania. The Texas Eastern natural gas transmission system consists of 9,022 miles of pipeline transporting natural gas from the Gulf Coast region of Texas and Louisiana to Ohio, Pennsylvania, New Jersey and New York.¹

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated February 17, 2015, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that TETLP had violated 49 C.F.R. § 192.303 and proposed assessing a civil penalty of \$58,700 for the alleged violations.

TETLP responded to the Notice by letter dated April 15, 2015 (Response). The company contested the allegations, offered additional information in response to the Notice, and requested that the proposed civil penalty be reduced or eliminated. Respondent did not request a hearing and, therefore, has waived its right to one.

¹ <http://www.spectraenergy.com/Operations/US-Natural-Gas-Pipelines/Texas-Eastern-Transmission/> (last accessed September 28, 2015).

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 192, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.303, which states:

§ 192.303 Compliance with specifications or standards.

(a) Each transmission line or main must be constructed in accordance with comprehensive written specifications or standards that are consistent with this part.

The Notice alleged that Respondent violated 49 C.F.R. § 192.303 by failing to construct each transmission line and main in accordance with comprehensive written specifications or standards that are consistent with Part 192. Specifically, the Notice alleged that TETLP failed to follow its own written construction specification *CS-PL1.7, Onshore Pipelines and Meter Stations, Revision Date 12/12/2012* (CS-PL1.7) when placing backfill over the pipe during construction.

CS-PL1.7, Section 19: Backfill, stated: “Contractor shall exercise care when placing backfill over pipe. The area around the pipe to 8 inches above the pipe in the trench shall be backfilled with small, fine material meeting the requirements for padding in §18.” *Section 18, Padding*, stated: “Padding material imported to the work area or mechanically sifted from native trench soils shall be free of stones larger than 1½ in (38 mm) in any dimension.”² However, during a field visit on June 26, 2014, a PHMSA inspector observed stones that were larger than 1½ inches being placed within 8 inches of the transmission line. The PHMSA inspector requested the measurements of the sifter grate that was being used in the backfill machine, and found that the grid spacing was 2 inches by 2 inches. The inspector took photographs of the backfill material and the backfill machine grate to document that stones larger than 1½ inches were being used.³

In its Response, TETLP acknowledged that some of the stones in the backfill material had dimensions larger than 1½ inches and that the mesh grid spacing at the time was 2 inches by 2 inches. TETLP stated that immediately following the PHMSA inspector’s discovery, the company replaced the backfill machine grate with a 1½-inch grid. In addition, the company updated its construction specifications to state that backfill material “shall be required to pass through a screen with a 1 ½” x 1 ½” mesh size.”⁴ Notwithstanding these changes to its activities and its construction specifications following the PHMSA inspection, TETLP argued that there had been minimal risk of damage to the pipeline coating from the larger stone size and that pipeline safety had not been compromised by the company’s failure to follow its own construction specifications.

After considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.303 by failing to construct each transmission line and main in accordance with comprehensive written specifications or standards that are consistent with Part 192.

² Pipeline Safety Violation Report (Violation Report), (February 12, 2015) (on file with PHMSA), Exhibit A, at 4-5.

³ Violation Report, Exhibit B.

⁴ Response, at 2.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.303, as quoted above, by failing to construct each transmission line and main in accordance with comprehensive written specifications or standards that are consistent with Part 192. Specifically, the Notice alleged that TETLP failed to document the identification of those individuals who performed welds on the pipeline, as required by its written construction specifications in *CS-PL1.7, Onshore Pipelines and Meter Stations, Revision Date 12/12/2012* (CS-PL1.7) and *CS-NDE1.1, Non-Destructive Examination – Appendix* (CS-NDE1.1 Appendix).

CS-PL1.7, Section 10B16, Welding and Tie-Ins, stated: “Each qualified welder shall mark with a felt tip marker or paint stick the number or symbol assigned to them by the Company adjacent to each weld for which that person was responsible.”⁵ *CS-PL1.7, Section 10D, Weld Examination*, specified that non-destructive examination of welds must be done according to the company’s *Non-Destructive Examination Manual, CS-NDE1.1*.⁶ The CS-NDE1.1 Appendix also required that the identification of all welders involved in each weld be reported on Form TS-406.⁷ Therefore, TETLP’s written specifications required that the identity of all welders be recorded on both the pipeline itself and Form TS-406.

During the inspection, the PHMSA inspector reviewed randomly-selected welds and their associated records. For three weld locations, the welders had not been identified on Form TS-406. For one weld, only one of the two welders was listed on the form, and that welder was not on TETLP’s qualified welders list as of the date the weld was performed. Similarly, for nine weld locations, this individual was identified on Form TS-406, but was not on the list of qualified welders as of the date the welds were performed. Therefore, for 13 welds, the identification of the welder was not properly recorded on Form TS-406.

In its Response, TETLP acknowledged that “clerical errors resulted in certain instances where the welder ID stenciled on the pipe did not match the associated documentation,” but maintained that pipeline safety was not compromised because all welders on the project were properly qualified and all girth welds were radiographically inspected. In addition, TETLP stated that the forms that the PHMSA inspector reviewed had not gone through the company’s daily quality control process and, therefore, “were not considered final DOT construction records for the project.”⁸ However, the welds at issue were performed on June 18 and June 21, 2014, and the PHMSA inspection and review of records began on June 23. Therefore, the quality control process should have been completed and the forms should have properly identified the qualified welders for each weld by the time the PHMSA inspection began.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.303 by failing to construct each transmission line and main in accordance with comprehensive written specifications or standards that are consistent with Part 192.

⁵ Violation Report, Exhibit G, at 3.

⁶ Violation Report, Exhibit D, at 1.

⁷ Violation Report, Exhibit E, at 2.

⁸ Response, at 4.

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 an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.⁹ In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$58,700 for the violations cited above. Respondent requested that PHMSA find a lesser level of culpability and credit TETLP with a good faith effort to continuously improve."¹⁰

Item 1: The Notice proposed a civil penalty of \$30,200 for Respondent's violation of 49 C.F.R. § 192.303, for failing to construct each transmission line and main in accordance with comprehensive written specifications or standards that are consistent with Part 192. Respondent did not contest the violation but asserted that pipeline safety was not compromised by the company's failure to follow its own construction specifications and requested the elimination or reduction of the proposed penalty amount.

I am not persuaded by TETLP's argument for a reduced penalty. The Violation Report states that "[p]ipeline safety or integrity was minimally affected" as a result of this violation and, therefore, took into account its relatively low level of gravity.¹¹ The Violation Report also notes that Respondent failed to take appropriate action to comply with a requirement that was clearly applicable.¹² Respondent provided no argument as to why the culpability finding in the Violation Report was incorrect. Respondent's assertion of a general good-faith effort to continuously improve is based on corrective actions taken after PHMSA learned of the violation, and therefore does not warrant a reduction in the proposed penalty. Respondent provided no explanation as to how its interpretation of this specific construction specification was reasonable. Therefore, a credit for good faith is not applicable in this situation.¹³

⁹ The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90, § 2(a)(1), 125 Stat. 1904, January 3, 2012, increased the civil penalty liability for violating a pipeline safety standard to \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.

¹⁰ Response, at 5.

¹¹ Violation Report, at 11.

¹² *Id.* at 12.

¹³ *Id.*, at 13.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$30,200 for violation of 49 C.F.R. § 192.303.

Item 2: The Notice proposed a civil penalty of \$28,500 for Respondent's violation of 49 C.F.R. § 192.303, for failing to construct each transmission line and main in accordance with comprehensive written specifications or standards that are consistent with Part 192. Respondent did not contest the allegation but asserted that pipeline safety was not compromised by the company's failure to properly record welder stencil numbers and requested the elimination or reduction of the proposed penalty amount.

Again, I am not persuaded by TETLP's argument for a reduced penalty. The Violation Report states that "[p]ipeline safety or integrity was minimally affected" as a result of this violation and therefore took into account its relatively low level of gravity.¹⁴ The Violation Report also notes that Respondent failed to take appropriate action to comply with a requirement that was clearly applicable.¹⁵ Respondent provided no argument as to why the culpability finding in the Violation Report was incorrect. Similarly, Respondent's assertion of a general good-faith effort to continuously improve is based on corrective actions taken after PHMSA learned of the violation. Respondent provided no explanation as to how its interpretation of the record-keeping specifications was reasonable. Therefore, a credit for good faith is not applicable in this situation.¹⁶

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$28,500 for violation of 49 C.F.R. § 192.303.

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$58,700**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such 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. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, ATTN: Shelby Jones, 6500 S MacArthur Blvd., Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$58,700 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 district court of the United States.

¹⁴ *Id.* at 21.

¹⁵ *Id.*, at 22.

¹⁶ *Id.*, at 23.

Under 49 C.F.R. § 190.243, Respondent has the right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of the Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed but does not stay any other provisions of the Final Order, including any required corrective actions. If Respondent submits payment of 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 upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued