

DECEMBER 31, 2012

Mr. Russell K. Girling
President
TransCanada Corporation
450-1 Street SW
Calgary, Alberta, Canada
T2P 5H1

Re: CPF No. 3-2011-1012

Dear Mr. Girling:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$28,700. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. 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. Vern Meier, Great Lakes Gas Transmission Company, 717 Texas Street, Suite 2400,
Houston, Texas 77002
Mr. Daniel Cerkoney, Great Lakes Gas Transmission Company, 717 Texas Street, Suite
2400, Houston, Texas 77002
Mr. Ken Crawl, Great Lakes Gas Transmission Company, 717 Texas Street, Suite 2400,
Houston, Texas 77002
Mr. David Barrett, Central Region Director, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS

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)	
)	
TransCanada, Great Lakes Gas)	CPF No. 3-2011-1012
Transmission Company)	
)	
Respondent.)	
)	

FINAL ORDER

On July 26-30, August 9-13, and September 20-23, 2010, 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 inspection of the gas integrity management program and safety-related condition reporting of TransCanada, Great Lakes Gas Transmission Company (GLGT) in Calgary, Alberta, Canada. GLGT transports over 2.2 billion cubic feet of pipeline quality natural gas per day through 2,115 miles of dual, high-pressure pipelines.¹ TransCanada owns 53.6 percent of Great Lakes Gas Transmission Company.²

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated July 27, 2011, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that GLGT had violated 49 C.F.R. § 191.23 and proposed assessing a civil penalty of \$28,700 for the alleged violation.

GLGT responded to the Notice by letter dated August 24, 2011 (Response), contested the allegation and requested an informal conference. An informal conference was subsequently held with the Central Region and GLGT personnel on January 31, 2012. An additional Response (Response 2) was provided on February 14, 2012.

FINDING OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 191, as follows:

¹ http://www.gtgt.com/1_frame.htm (last visited December 5, 2012).

² http://www.transcanada.com/docs/Investor_Centre/2011_TCC_MDA.pdf (last visited December 5, 2012).

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 191.23, which states:

§ 191.23 Reporting safety-related conditions.

(a) Except as provided in paragraph (b) of this section, each operator shall report in accordance with § 191.25 the existence of any of the following safety-related conditions involving facilities in service:

(4) Any material defect or physical damage that impairs the serviceability of a pipeline that operates at a hoop stress of 20 percent or more of its specified minimum yield strength.

The Notice alleged that Respondent violated 49 C.F.R. § 191.23(a)(4) by failing to report a material defect that impaired the serviceability of its pipeline as a safety related condition (SRC) to PHMSA as required in accordance with the reporting requirements of § 191.25. This regulation requires that the operator submit a Safety-Related Condition Report (SRCR) within five working days after the day a representative of the operator determines that the condition exists, but not later than 10 working days after the day the operator discovers the condition. Specifically, the Notice alleged that GLGT performed an in-line inspection (ILI) of its 36 inches diameter 200 Line from CS 8 to CS 9 on May 14, 2009. GLGT received a final report from the vendor on July 10, 2009, that included Dent 28, which was characterized as a dent with metal loss.³ The pressure on the affected pipeline segment was reduced on October 23, 2009 and Dent 28 was remediated on October 28, 2009.

In its response, GLGT contended that the alleged violation did not occur because indications from the ILI did not meet the standard that required reporting of a SRC. GLGT argued that although the defect was an immediate repair condition per §192.933(d), it did not impair the serviceability; therefore, a safety related condition report was not required. To determine whether the serviceability had been impaired, an engineering assessment had to be conducted.⁴ GLGT contended that based on the ILI vendor's report, it could not confirm whether the defect actually impaired the serviceability of the pipeline until it was excavated. Since the ILI report indicated that the plain dent was 3.63 percent of the nominal diameter of 36 inches, GLGT maintained that the corrosion was within acceptable limits as defined in ASME B31G and was not considered an unacceptable or injurious dent per ASME B31.8, para. 851.4.1. Therefore, the integrity of the pipeline was not impaired.

I disagree. On July 10, 2009, the ILI report characterizes Dent 28 as a dent with metal loss. According to § 192.933(d), any dent with any indication of metal loss is an immediate repair condition that requires an operator to temporarily reduce operating pressure or shut down the pipeline until the operator completes the repair of these conditions. In Response 2, GLGT conceded that the dent was an immediate repair condition. Due to the fact that the integrity management regulations required immediate remedial action of such a dent, the dent was considered a material defect that impaired the serviceability of the pipeline. Therefore, GLGT should have reported the dent as a SRC unless it met an exception as provided by §191.23(b), which it did not. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 191.23 by failing to report a material defect that impaired the serviceability

³ The dent was subsequently classified by GLGT as an immediate repair condition as defined in § 192.933(d)(1)(ii).

⁴ Response 2 at 3.

of its pipeline as a SRC to PHMSA as required by the reporting requirements of § 191.25.

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

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 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; the Respondent's ability to pay the penalty 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 \$28,700 for the violation cited above.

Item 1: The Notice proposed a civil penalty of \$28,700 for Respondent's violation of 49 C.F.R. § 191.23, for failing to failing to report a material defect that impaired the serviceability of its pipeline as a SRC to PHMSA as required by the reporting requirements of § 191.25. A dent with metal loss can lead to a leak or rupture of the pipeline thus posing a risk to life, property, and the environment. The dent was located in a high consequence area. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$28,700 for violation of 49 C.F.R. § 191.23.

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 **\$28,700**.

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 (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$28,700 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.

Under 49 C.F.R. § 190.215, 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. § 190.215. 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