

DEC 22 2011

Mr. J. L. Davis
President
Western Gas Interstate Company
211 N. Colorado
Midland, TX 79701

Re: CPF No. 4-2010-1001

Dear Mr. Davis:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws the allegations of violation, the proposed compliance order and the proposed civil penalty. This enforcement action is now 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. R. M. Seeley, Director, OPS, Southwest Region
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS
Mr. Bart Bean, Operations Manager, Western Gas Interstate Company
Mr. Billy Hawkins, Division Manager, Western Gas Interstate Company

CERTIFIED MAIL - RETURN RECEIPT REQUESTED [71791000164203020243]

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

In the Matter of)
)
Western Gas Interstate Company,) **CPF No. 4-2010-1001**
)
Respondent.)

FINAL ORDER

On April 14 -17, 2009, 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 pipeline safety inspection of the facilities and records of Western Gas Interstate Company (WGI or Respondent) in Guymon, Oklahoma. WGI, headquartered in Midland, Texas, owns and operates 150 miles of natural gas pipeline in the Texas and Oklahoma Panhandles.¹

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated January 13, 2010, 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 WGI had violated 49 C.F.R. §§ 192.463(a) and 192.465(d) and proposed assessing a civil penalty of \$120,000 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

Upon requesting and receiving an extension of time, WGI responded to the Notice by letter dated April 9, 2010, contesting the allegations and requesting a hearing (Response). A hearing was subsequently held on November 3, 2010, in Houston, Texas, with an attorney from the Office of Chief Counsel, PHMSA, presiding. After the hearing, Respondent provided additional written material for the record, by letter dated November 22, 2010 (Closing).

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. § 192.463(a), which states, in relevant part:

¹ <http://www.westerngasinterstate.com/> (last accessed 6/15/2011).

§ 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....

The Notice alleged that Respondent violated 49 C.F.R. § 192.463(a) by failing to demonstrate that it had provided a level of cathodic protection that complied with one or more of the applicable criteria contained in appendix D of this part. Specifically, it alleged that WGI's procedure "*P-192.455, Installation of Cathodic Protection System*," had identified criteria from appendix D that the company used to determine adequate cathodic protection. However, another WGI procedure, *Conduct Cathodic Protection Surveys*,² described and allowed only one acceptable method for determining cathodic protection, which was the negative voltage of at least 850 millivolts (mv). PHMSA alleged that the company had failed to apply this criteria to certain pipe segments and that the company's records and pipe-to-soil potential test operations revealed several locations that failed to meet the -0.85 mv criteria.

In Response, WGI presented two defenses. First, the company argued that the pipeline segments identified in the Notice were uncoated steel that had been constructed and placed in service prior to August 1, 1971. WGI contended that cathodic protection equipment was not required³ on the bare pipe installed prior to 1971 in the absence of "active corrosion." In support of its position, the company pointed out that under 49 C.F.R. § 192.465(e)(1), the term "active corrosion" was defined as "continuing corrosion which, unless controlled, could result in a condition that is detrimental to public safety."⁴ The company contended that active corrosion was not found on any of the pipeline segments identified in the Notice and that its procedure for providing cathodic protection on bare pipe was voluntary and not a regulatory requirement.

Second, the company speculated that the Notice stemmed from a certain ambiguity or imprecise wording in its Operations and Maintenance (O&M) Manual. WGI acknowledged that its O&M procedure P-192.465(a) for cathodic protection could be interpreted to imply that WGI intended to achieve -0.85 mv of cathodic protection for its entire pipeline system, even though that was neither the company's intent nor practice.⁵ Respondent argued that the Notice identified areas where WGI's O&M Manual needed clarification but that it failed to identify a regulatory violation regarding installation of cathodic protection equipment.

² *WGI Procedure P-192.465(a), Conduct Cathodic Protection Survey*. See PHMSA Violation Report, Exhibit A.

³ 49 C.F.R. § 192.457(b) states:

(b) Except for cast iron or ductile iron, each of the following buried or submerged pipelines installed before August 1, 1971, must be cathodically protected in accordance with this subpart in areas in which active corrosion is found:

(1) Bare or ineffectively coated transmission lines...

⁴ 49 C.F.R. 192.465(e)(1) Response, at 3. This regulation has since been amended (75 FR 48603; Aug. 11, 2010).

⁵ WGI stated that "certain cathodic protection procedures which were intended to apply only to pipelines installed *after* August 1, 1971 could have been read to apply to pipelines installed *before* August 1, 1971. Closing, at 1.

Upon consideration of all of the evidence, I find that the company's procedures described and allowed negative voltage of at least 850 mv as the only acceptable method for determining cathodic protection and that such procedures were not followed with regard to the bare pipe segments in question here. However, it is clear that the Notice did not allege a failure by Respondent to follow its own procedures under 49 C.F.R. § 605(a).⁶

I further find the evidence does not support a finding of violation of 49 C.F.R. § 192.463(a) since there is no proof that WGI was required to use the negative voltage of at least 850 mv on this pre-1971 pipe. After the hearing, Respondent subsequently submitted revised procedures in its Closing. A review of the revised procedures shows that WGI's procedures are now consistent with the current regulation and clarify that WGI considers pipelines installed prior to 1971 under different criteria than those pipelines installed after that date. Based upon the foregoing, I hereby order that Item 1 of the Notice be withdrawn.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.465(d), which states:

§ 192.465 External corrosion control: Monitoring.

(a)

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

The Notice alleged that Respondent violated 49 C.F.R. § 192.465(d) by failing to take prompt remedial action to correct deficiencies following test readings that showed inadequate levels of cathodic protection. The supporting allegation of violation in Item 1 was withdrawn; therefore, this allegation of violation is also withdrawn.

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 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 \$120,000 for the violations cited above. The allegations of violation for Items 1 and 2 in the Notice have been withdrawn so therefore the proposed civil penalty is also withdrawn.

⁶ I would note that had the agency cited Respondent for a violation of 49 C.F.R. 192.605(a), it is likely that WGI would have been found in violation, based on the company's failure to follow its own cathodic protection procedures.

COMPLIANCE ORDER

The Notice proposed a Compliance Order with respect to Item 1 and 2 in the Notice for violations of 49 C.F.R. §§192.463(a) and 192.465(d), respectively. The allegations of violations have been withdrawn. Accordingly, the compliance terms are not included in this Order and no further action is required.

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 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 this 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. Unless the Associate Administrator, upon request, grants a stay, all other 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