

Mr. William K. Gayden
President, Chief Executive Officer, & Chairman
Merit Energy Company
13727 Noel Road
Suite 500, Tower 2
Dallas, TX 75240

07/16/2009

Re: CPF No. 5-2004-1011

Dear Mr. Gayden:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$32,000, and finds that Merit Energy has satisfactorily completed all of the corrective actions proposed in the Notice of Probable Violation. 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.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

Cc: Mr. Chris Hoidal, Director, Western Region, OPS
Mr. James J. Volker, President and Chief Executive Officer, Whiting Petroleum
Corporation, 1700 Broadway, Suite 2300, Denver, Colorado, 80290-2300

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 0390 0005 6162 5586]

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

)	
In the Matter of)	
)	
Merit Energy Company,)	CPF No. 5-2004-1011
)	
Respondent.)	
)	

FINAL ORDER

From August 19 to August 20, 2003, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), inspected a three-mile residue gas¹ pipeline, generally known as the Bridger Lake Pipeline, then-operated by Merit Energy Company (Merit or Respondent) in the State of Utah.²

As a result of that inspection, the Director, Western Region, OPS (Director), issued to Merit, by letter dated March 17, 2004, 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 Merit violated Parts 191 and 192 of the pipeline safety regulations, assessing a total civil penalty of \$35,000, and ordering the company to take certain measures to correct the alleged violations.

After receiving an extension of time, Merit responded to the Notice by letter dated June 8, 2004 (Response). The company disputed some of the allegations of violation and requested that the civil penalties be “held in abeyance.”³ Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

Item 1 of the Notice alleged that Merit violated 49 C.F.R. § 191.17(a), which states:

¹ “Residue gas” is defined as the natural gas “remaining after processing in a separator or other plant which removes liquid hydrocarbons contained in the gas when produced.” MANUAL OF OIL AND GAS TERMS, 924 (10th ed. 1997).

² Whiting Petroleum Corporation currently owns and operates the Bridger Lake Pipeline that is the subject of this Final Order.

³ Response at 2.

§ 191.17 Transmission and gathering systems; Annual report.

(a) Except as provided in paragraph (b) of this section, each operator of a transmission or a gathering pipeline system shall submit an annual report for that system on Department of Transportation Form RSPA 7100.2-1. This report must be submitted each year, not later than March 15, for the preceding calendar year.

The Notice alleged that Merit violated 49 C.F.R. § 191.17(a) by failing to timely submit annual reports on the Bridger Lake Pipeline for the 2001, 2002, and 2003 calendar years. Merit did not contest these allegations but stated in its Response that its annual reports for those years had all been filed “as of May 2004.” Accordingly, upon consideration of all of the evidence, I find that Merit violated § 191.17(a) by failing to submit its 2001, 2002, and 2003 annual reports on or before March 15, 2002, March 15, 2003, and March 15, 2004, respectively.

Item 2 of the Notice alleged that Merit violated 49 C.F.R. § 192.469, which states:

§ 192.469 External corrosion control: Test stations.

Each pipeline under cathodic protection required by this subpart must have sufficient test stations or other contact points for electrical measurement to determine the adequacy of cathodic protection.

The Notice alleged that Merit violated 49 C.F.R. § 192.469 by failing to provide sufficient test stations or other contact points for electrical measurement to determine the adequacy of the Bridger Lake Pipeline’s cathodic protection. Specifically, the Notice stated that the line only had two cathodic protection test stations at the time of the OPS inspection and that this was not a sufficient number to comply with the regulation. Merit did not contest this allegation. Therefore, upon consideration of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.469 by failing to have sufficient test stations or other contacts points for electrical measurement to determine the adequacy of the Bridger Lake Pipeline’s cathodic protection.

Item 3 of the Notice alleged that Merit violated 49 C.F.R. § 192.603(b), which states, in relevant part:

§ 192.603 General provisions.

- (a) . . .
- (b) Each operator shall keep records necessary to administer the procedures established under § 192.605.

The Notice alleged that Respondent violated § 192.603(b) by failing to keep records necessary to administer the operations, maintenance, and emergencies procedures it had established under 49 C.F.R. § 192.605. Specifically, the Notice alleged that Merit failed to keep records to demonstrate adequate compliance with five different regulations and

that two of those instances of noncompliance were serious enough to warrant findings of violation and civil penalties.

Item 3(b) alleged that Respondent violated § 192.603(a) by failing to keep records of the inspections and electrical tests required under 49 C.F.R. § 192.467(d) to assure the adequacy of the electrical isolation on the Bridger Lake Pipeline. Specifically, it alleged that Merit failed to keep any records of such tests for the 2001, 2002, and 2003 calendar years. Merit argued in its Response “that it did not need to test” the Bridger Lake Pipeline “for electrical isolation” during these years because Questar Corporation, the operator of a transmission pipeline⁴ that interconnects with the Bridger Lake Pipeline, owned certain devices⁵ that provided insulation for the two pipelines and that Questar had conducted and kept records of the required electrical tests for these devices. Merit also noted that it recently obtained and reviewed those test records for the 2001, 2002, and 2003 calendar years.

I do not find Merit’s argument persuasive. When a pipeline operator relies upon the operator of an interconnected pipeline to conduct the electrical isolation tests required by § 192.467(d), both operators are required to keep and review the records for such tests.⁶ Indeed, Merit’s post-Notice decision to obtain and review Questar’s electrical isolation testing records shows that it knew (or should have known) of that obligation. Regardless, Respondent does not dispute its status as the operator of the Bridger Lake Pipeline during the 2001, 2002, and 2003 calendar years or that the electrical isolation requirements of § 192.467 applied to that line throughout this period. Accordingly, upon consideration of all of the evidence, I find that Merit violated 49 C.F.R. § 192.603(b) by failing to keep records necessary to administer the procedures established under § 192.605, including the testing required under § 192.467(d) to demonstrate the adequacy of electrical isolation on the cathodically-protected Bridger Lake Pipeline for the 2001, 2002, and 2003 calendar years.

Item 3(d) alleged that Merit violated § 192.603(a) by failing to keep records of the periodic reviews of the Bridger Lake Pipeline operations, maintenance and emergencies manual (O&M Manual) that every operator is required to perform under 49 C.F.R. § 192.695(a). Specifically, the Notice alleged that Merit failed to review and update its O&M Manual for the 2000, 2001, and 2002 calendar years. Respondent did not contest the allegations for the 2000 and 2002 calendar years, but argued in its Response that it had revised its O&M Manual in the 2001 calendar year, a copy of which was submitted for the record. Accordingly, upon consideration of all of the evidence, I find that Respondent violated § 192.603(b) by failing to keep a record of the O&M Manual reviews that it was required to perform under 49 C.F.R. § 192.695(a) for the 2000 and

⁴ The 2,500-mile Questar Pipeline is located in Utah, Wyoming, and Colorado. <http://www.questarpipeline.com> (accessed on December 1, 2008).

⁵ These included the blow-down riser, Block Valve BR-2, and the insulating flange. Response at 1.

⁶ See 49 C.F.R. § 192.3 (defining operator and pipeline for purposes of Part 192); 49 C.F.R. § 192.603 (requiring “[e]ach operator” to “keep records”).

2002 calendar years, but that it made and kept a record of the required O&M Manual review for the 2001 calendar year.

Item 4 of the Notice alleged that Merit violated 49 C.F.R. §§ 192.731(a), 192.739, and 192.743(a)-(c), which state, in relevant part:

§ 192.731 Compressor stations: Inspection and testing of relief devices.

(a) Except for rupture discs, each pressure relieving device in a compressor station must be inspected and tested in accordance with §§ 192.739 and 192.743, and must be operated periodically to determine that it opens at the correct set pressure. . . .

§ 192.739 Pressure limiting and regulating stations: Inspection and testing.

Each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment must be subjected at intervals not exceeding 15 months, but at least once each calendar year, to inspections and tests to determine that it is--

- (a) In good mechanical condition;
- (b) Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed;
- (c) Set to function at the correct pressure; and
- (d) Properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation. . . .

§ 192.743 Pressure limiting and regulating stations: Testing of relief devices.

(a) If feasible, pressure relief devices (except rupture discs) must be tested in place, at intervals not exceeding 15 months, but at least once each calendar year, to determine that they have enough capacity to limit the pressure on the facilities to which they are connected to the desired maximum pressure.

(b) If a test is not feasible, review and calculation of the required capacity of the relieving device at each station must be made at intervals not exceeding 15 months, but at least once each calendar year, and these required capacities compared with the rated or experimentally determined relieving capacity of the device for the operating conditions under which it works. After the initial calculations, subsequent calculations are not required if the review documents that parameters have not changed in a manner which would cause the capacity to be less than required.

(c) If the relieving device is of insufficient capacity, a new or additional device must be installed to provide the additional capacity required.

The Notice alleged that Merit violated 49 C.F.R. §§ 192.731(a) and 192.739 by failing to inspect and test each pressure relieving device in a compressor station at intervals not exceeding 15 months, but at least once each calendar year. Specifically, it alleged that Merit failed to inspect and test the compressor station pressure relief valve on the Bridger Lake Pipeline during the 2000, 2001, and 2002 calendar years.

The Notice also alleged that Merit violated 49 C.F.R. §§ 192.731(a) and 192.743(a)-(d) by failing to inspect and test in place (or, in the alternative, to review and calculate) the compressor pressure relief valve to determine whether it had enough capacity to limit the pressure on the facilities to which it was connected to the desired maximum pressure. In particular, the Notice alleged that Merit had not tested (or, in the alternative, reviewed and calculated) the compressor pressure relief valve on the Bridger Lake Pipeline during the 2000, 2001, and 2002 calendar years. Merit did not contest these allegations. Accordingly, upon consideration of all of the evidence, I find that Merit violated 49 C.F.R. §§ 192.731(a), 192.739, and 192.743(a)-(c) by failing to inspect and test the pressure relief valve at the Bridger Lake Pipeline compressor station for the 2000, 2001, and 2002 calendar years.

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

ASSESSMENT OF PENALTY

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of a civil penalty, I 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 \$35,000 for the four Notice Items. Merit argued in its Response that "all civil penalties should be held in abeyance." Each of the four proposed penalties and Respondent's arguments in opposition thereto are discussed individually below.

Notice Item 1 proposed a civil penalty of \$14,000 for Respondent's failure to submit timely annual reports as required by 49 C.F.R. § 191.17(a) for the 2001, 2002, and 2003 calendar years. Merit did not contest that violation, but offered three reasons why a civil penalty should not be assessed. First, it noted that the three reports had eventually been filed. Second, it argued that it had installed "[a] new compliance and filing system" and hired a private contractor to monitor the system, effectively ensuring the timely submission of future reports. Third, it contended that the Bridger Lake Pipeline had neither suffered any leaks nor required any repairs during the years in question.

I find each of these arguments unconvincing. With respect to the first two contentions, Merit's belated compliance with 49 C.F.R. § 191.17(a) and its post-inspection actions to avoid future violations are not grounds for reducing or eliminating a proposed penalty. PHMSA requires that gas pipeline operators submit timely annual reports to facilitate the gathering of information for the agency's compliance activities and to ensure the effective regulation of the nation's critical pipeline infrastructure. As for its third argument, the fact that the Bridger Lake Pipeline apparently operated without incident during the years in question is commendable but not controlling. The goal of the pipeline safety regulations is to avoid failures and other adverse events. Thus, the mere fact that a pipeline operator has not experienced any recent incidents is not a persuasive reason for reducing a civil penalty.

It should also be noted, as indicated in the OPS inspection report, that Merit received a warning letter for committing the same violation of § 191.17(a) in June 2000.⁷ Accordingly, upon consideration of the penalty assessment criteria and all of the evidence, I assess a civil penalty of \$14,000 for Respondent's failure to submit timely annual reports for the 2001, 2002, and 2003 calendar years.

Notice Item 3(b) proposed a civil penalty of \$7,000 for Merit's violation of 49 C.F.R. §§ 192.603 and 192.467(d) in failing to make and keep electrical isolation testing records for Bridger Lake Pipeline for the 2001, 2002, and 2003 calendar years. Respondent objected to the assessment of this penalty for two reasons, namely, that it had recently obtained records for the years in question from Questar and that Merit had installed its own insulating flange near one of the block valves on the Bridger Lake Pipeline. I do not agree that such actions warrant the reduction or elimination of the proposed penalty. PHMSA requires that annual electrical isolation testing records be made and kept by *every* operator to ensure the prompt detection of deterioration in that company's cathodic protection system and to verify the timely performance of such tests. Respondent's conduct in this case frustrated both purposes. Accordingly, upon consideration of the penalty assessment criteria and all of the evidence, I assess a civil penalty of \$7,000 for Merit's failure to keep electrical isolation testing records for calendar years 2001, 2002, and 2003.

Notice Item 3(d) proposed a civil penalty of \$7,000 for Respondent's violation of 49 C.F.R. § 192.605(a) in failing to make and keep records of its periodic O&M Manual reviews for the 2000, 2001, and 2002 calendar years. Merit argued in its Response that a civil penalty should not be assessed, citing evidence that it had reviewed its O&M Manual in May 2004, after the OPS inspection, and that this review led to updated rules and procedures and new sections on operator compliance and emergency response to safety-related conditions. Merit also stated that it had recently hired an outside contractor to assist with its future procedural manual reviews. Neither of these arguments—i.e., Merit's belated compliance with 49 C.F.R. § 192.605(a) or its post-inspection actions to avoid future regulatory violations—justifies reducing or eliminating the proposed penalty. The fact nevertheless remains that Merit did revise its O&M Manual in 2001, an

⁷ CPF No. 5-2000-1006 (issued June 16, 2000). At the time of the 2000 inspection, Merit had failed to submit an annual report for the Bridger Lake Pipeline in a timely manner.

act of compliance that warrants an appropriate reduction in the proposed penalty. Accordingly, based upon the penalty assessment criteria and all of the evidence, I assess a reduced civil penalty of \$4,000 for Merit's failure to make and keep records of its annual O&M Manual review for calendar years 2000 and 2002.

Notice Item 4 proposed a penalty of \$7,000 for Respondent's violation of 49 C.F.R. §§ 192.731(a), 192.739, and 192.743(a)-(c) in failing to properly inspect and test the pressure relief device in the Bridger Lake Pipeline compressor station for the 2000, 2001, and 2002 calendar years. Merit argued in its Response that a civil penalty should not be assessed, citing the fact that its monthly production logs for that three-year period showed that the relief valve was functioning properly whenever the pipeline experienced an "upset condition" and that it had recently inspected the pressure relief valve in question. Neither of these arguments warrants a penalty reduction. PHMSA requires the routine testing of pressure relief valves to ensure their safe and effective operation and Respondent has not produced any evidence or provided any reason that would justify its repeated failure to do so. Accordingly, based upon the penalty assessment criteria and all of the evidence, I assess a civil penalty of \$7,000 for Merit's failure to properly inspect or test the compressor station relief valve for calendar years 2000, 2001, and 2002.

For these reasons, I hereby assess Merit a total civil penalty of **\$32,000** for Notice Items 1, 3(b), 3(d), and 4.

PAYMENT OF PENALTY

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 \$32,000 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 2 and 4 for violations by Respondent of 49 C.F.R. §§ 192.469, 192.731(a), 192.739, and 192.743(a)-(c). 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. The Director has indicated that Respondent has taken the following actions specified in the proposed compliance order:

- With regard to 49 C.F.R. § 192.469 (Item 2), Respondent has installed sufficient cathodic protection stations on the Bridger Lake Pipeline; and
- With regard to 49 C.F.R. §§ 192.731(a), 192.739, and 192.743(a)-(c) (Item 4), on March 25, 2004, Respondent has satisfactorily inspected the pressure relief valve on the Bridger Lake Pipeline.

Accordingly, since Respondent has achieved compliance with respect to these violations, it is unnecessary to include the proposed compliance terms in this Order.

WARNING ITEMS

With respect to Items 3(a), 3(c), 3(e), and 3(f), the Notice alleged probable violations of Part 192, but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. §§ 192.603(b) and 192.465(a) (Item 3a) — Merit allegedly did not have a record for its 2001 cathodic protection survey of the Bridger Lake Pipeline at the time of the OPS inspection.

49 C.F.R. §§ 192.603(b) and 192.481 (Item 3c) — Merit allegedly did not have a record of conducting an atmospheric corrosion control inspection of the Bridger Lake Pipeline from June 2000 to August 2003 at the time of the OPS inspection.

49 C.F.R. § 192.603(b) and 192.739(a)-(d) (Item 3(e)) — Merit allegedly did not have a record for its 2000, 2001, and 2002 inspections of the low- and high-pressure shut-down switches for the compressor on the Bridger Lake Pipeline at the time of the OPS inspection.

49 C.F.R. § 192.603(b) and 192.745 (Item 3(f)) — Merit allegedly did not have records for its 2000, 2001, and 2002 inspections of two of the emergency valves on the Bridger Lake Pipeline at the time of the OPS inspection.

Merit presented information in its Response indicating that it had taken certain actions to address these warning items. Having considered that information, I find that probable violations of Part 192 occurred as of the date of the inspection. Merit is hereby advised to review and correct such conditions. In the event OPS finds a violation of any of these items in a subsequent inspection, Merit may be subject to future enforcement action.

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 terms of the order, including any required corrective action and amendment of procedures, shall remain in full force and effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order shall be effective upon receipt.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued