

OZARK GAS TRANSMISSION, L.L.C.

Suite 600
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Oklahoma City, OK 73105

Via facsimile (202) 366-7041

May 28, 2003

Stacey Gerard
Associate Administrator for Pipeline Safety
U.S. Department of Transportation,
Office of Pipeline Safety
400 Seventh Street, S.W., Room 7128
Washington, D.C. 20590

RE: CPF No. 2-2002-1004
Ozark Gas Transmission, L.L.C.
Petition for Reconsideration pursuant to 49 C.F.R. §190.215

Dear Ms. Gerard:

The purpose of this letter is to petition for reconsideration of a Final Notice in the above referenced matter which was received by Ozark Gas Transmission, L.L. C. (Ozark) on May 8, 2003. Ozark is filing this petition for reconsideration of items 3, 4a-d, 4e, 5c, and 6 of the Notice. For the reasons set forth below, Ozark requests a stay regarding the penalty assessed and a stay of the Compliance Order relating to Item 3.

Our first note of concern and basis for reconsideration of the Final Notice is our understanding and request for consideration of a Consent Order being entered in this cause. Source: Ozark Response Letter dated 4/10/03, p.8, 49 C.F.R. §_190.219. In addition, Ozark requests reconsideration of the penalty assessed. Ozark asserts that the criteria to be considered in assessing the amount of the civil penalty pursuant to 49 C.F.R. §190.225 establishes that Ozark's actions and good faith attempts to be in compliance warrant further mitigation of the penalty amount. Further, the reliance of Ozark on statements by DOT region personnel that the recommendations for a penalty were in a much lower range was considered by Ozark in determining what responses Ozark needed to take to justify its position in response to the agency notice. It was our lack of knowledge and reliance on this information that caused Ozark to not contest the allegations more strenuously. Finally, Ozark requests consideration of the circumstances present where Ozark acquired interests in the existing pipelines which are the subject of this notice in 1998. Moreover, after 1998 and continuing to the present, a third party, Arkansas Western Gas Company (AWG) is the operator of certain portions of the Ozark pipeline.

Item 3: Regulatory Reference: §192.517 Records. Each operator shall make, and retain for the useful life of the pipeline, a record of each test performed under §§192.505 and 192.507. The record must contain at least the following information:

(b) Elevation variations, whenever significant for the particular test...

In that test records for the Mountain Home Lateral Line do not contain elevation variations.

The Notice alleged that Ozark violated 49 C.F.R. §192.517 by not maintaining a sufficient record of each test performed under §§ 192.505 and 192.507 for the Mountain Home Lateral line, as test records did not contain elevation variations. On April 10, 2002, Ozark submitted an initial response to the Notice as follows:

Ozark will comply within 60 days, of the final order, to determine significant elevation differences along the line, and using hydrostatic test records, determine and/or re-confirm pipeline MAOP in accordance with 49 CFR 192.619 including, if applicable, for past class location changes 49 CFR 192.611 (emphasis added).

The current draft of the Final Order, page 1-2 provides:

In its initial response to Item 3, Respondent stated that within 60 days it would determine significant elevation differences along the Mountain Home Lateral line and determine the pipeline's maximum allowable operating pressure (MAOP) Although Respondent advised that it would submit documentation, within 60 days, determining significant elevation differences along the line, it has failed to do so.

Also in the Final Order, Ozark was issued a Compliance Order item to determine significant elevation differences along the Mountain Home Lateral line and use hydrostatic test records to determine and/or re-confirm pipeline MAOP in accordance with § 192.619. As provided in the Proposed Compliance Order, Ozark is allowed 60 days following receipt of the Final Order to accomplish this compliance item. As noted in Item 4 (e), this item relates to operation by AWG and Ozark requests a stay of this item until the Ozark Final Order addresses the operation of the Mountain Home Lateral by AWG.

Basis for Petition: Ozark requests that your office review Ozark's initial response dated April 10, 2002 and correct the Final Order to reflect Ozark's response and that Ozark has not failed to do something it advised your office it would accomplish.

Item 4a-d: Regulatory reference: §192.603. Each operator shall keep records necessary to administer the procedures established under §192.605.

In that there were (a) no records to determine MAOP of the 8.5 mile 8-inch pipeline near Kennett, MO; (b) no records of the main line regulator inspection in year 2000 for the 10-inch to 8-inch Kennett Line regulator; (c) no documentation of required follow-up actions for patrol reports performed March 2000; and (d) no records of inspection of all valves that could be used in an emergency at the Mountain Home tap, Scotland launcher/receiver site, and Kennett Station.

Basis for Petition: Ozark submitted supplemental records and documentation to the Southern Region, Office of Pipeline Safety in responses to the Notice dated April 10, 2002 and April 25, 2002. The DOT region personnel advised that the information and responses submitted were satisfactory and that it was the recommendation that all penalties associated with these Items be dropped prior to the Final Order. As noted above, Ozark understood its response was sufficient and relied on this information without knowledge that the recommendation would not be the final determination.

Item 4e: Regulatory reference: §192.603. Each operator shall keep records necessary to administer the procedures established under §192.605.

In that (e) Arkansas Western Gas Company (AWG) valve inspection records (for Ozark facilities maintained by AWG) do not indicate that blow off valves, other non-main line valves that could be used in an emergency are inspected and partially operated.

Basis for Petition: Ozark's April 10, 2002 response was as follows:

Response: As required by the operating agreement between Ozark and AWG Company, and through written correspondence, AWG officials have been informed them that they are to maintain all Jurisdictional facilities to the Department of Transportation (DOT) standards and in compliance with Ozark's Operations & Maintenance (O&M) Manual. This includes meeting the requirements for 49 CFR 192.745.

Since Ozark's initial response in April 2002, Ozark has further reviewed the Federal Regulations, as well as the Notice and Final Order, and asserts that the Office of Pipeline Safety should not have directed its audit and notice relating to facilities operated by Arkansas Western Gas (AWG) to Ozark but asserts that AWG should have been notified and had an opportunity to respond to items relating to the portion of the pipeline operated by it. As noted in Ozark's Response (4/10/02) and the Final Order, the operator of the Mountain Home Lateral and certain meter/regulator stations for the period relating to the audit was AWG. See Ozark Response (4/10/02), p. 1, 4, 5; Final Order, p. 2, 3. It is Ozark's position that AWG should have been notified as the operator of any proposed violation on the pipeline facilities it operates and allowed an opportunity to respond to such allegations.

For these reasons, Ozark requests that any penalty assessed against Ozark on this item be omitted.

Item 5c: Regulatory Reference: §192.605(a) General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response...

The October 4, 2000 Shawnee compressor station to Williams compressor station and March 19, 2001 West aerial patrols/leak surveys were not documented on Form 3101 *Pipeline Patrol and Leak Survey Report*, as required of Procedure 302.

Basis for Petition: As stated in our April 10, 2002 response to the Notice of Probable Violations, Ozark was in the process of integrating the previous Ozark O&M procedures to the new owner (Enogex) O&M procedures at the time of these patrolling activities. It is important to note that the patrols/leak surveys were completed and documented within regulatory and company time requirements. Unfortunately, the integration from the previous O&M procedures to the new O&M procedures was not complete.

It is Ozark's position that the magnitude of this penalty is not consistent with the severity level of a simple recordkeeping violation such as this (i.e. completed inspections not documented on a new O&M form) and requests reconsideration of this penalty amount.

Item 6: Regulatory Reference: §192.605(a) General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response...

Arkansas Western Gas Company (AWG) operates and maintains the Mountain Home Lateral line and certain Arkansas meter/regulator stations under written contractual agreements with Ozark. AWG personnel did not have the Ozark procedure manual, and stated that they use AWG's Operation, Inspection, and Maintenance (OIM) Plan in maintaining these facilities.

Basis for Petition: As set forth above, it is Ozark's position that because Arkansas Western Gas Company (AWG) was the operator of the Mountain Home Lateral line at the time of the inspection, the Office of Pipeline Safety should issue any proposed Notice of Violation to AWG for response. The regulation expressly places the requirement on the operator of the pipeline to comply with this section. In addition, this asserted violation only applies to a small lateral pipeline and was not applicable to the Ozark pipeline system which Ozark asserts is a mitigating factor on the penalty assessed.

Ozark respectfully requests reconsideration of the Final Order and a corresponding reduction in the penalty proposed. Ozark has disputed the allegations and shown that it will take quick and definitive actions to correct those items that need attention. Ozark has shown that the following criteria merit reconsideration:

Nature, circumstances and gravity of the violation,
Degree of Respondent's culpability,
History of Respondent's prior offenses,
Good faith by Respondent in attempting to achieve compliance, and
Such other matters as justice may require.

Ozark appreciates your consideration to its petition for reconsideration. If you have any questions or need any additional information, please call me at (405) 557-5231.

Sincerely,



E. Keith Mitchell
President
Ozark Gas Transmission L.L.C.