U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

MAR 1 1 2015

Mr. Greg Ebel
President-CEO
Spectra Energy Transmission, LLC
5400 Westheimer Court
Houston, Texas 77056

Re: CPF No. 3-2013-1005

Dear Mr. Ebel:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of $41,200, and specifies actions that need to be taken by Spectra Energy Transmission, LLC to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Central 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. Allan Beshore, Central Region Director, OPS
Mr. J. A. (Andy) Drake, P.E., Vice President Operations and EHS,
5400 Westheimer Court, Houston, TX 77251-1642
Bizunesh Scott, Esq., Counsel for Respondent, Steptoe & Johnson LLP,
1330 Connecticut Avenue, NW, Washington, DC 20036

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	)	
Spectra Energy Transmission, LLC	)	**CPF No. 3-2013-1005**
Respondent.	)	

FINAL ORDER

On August 9-10, 2011, 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 Spectra Energy Transmission, LLC ([SET] or Respondent) in Danville, KY. SET owns and operates over 22,000 miles of natural gas, natural gas liquids, and crude oil pipeline.

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated May 2, 2013, 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 SET had violated 49 C.F.R. §§ 192.469 and 192.937 and proposed assessing a civil penalty of $41,200 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

SET responded to the Notice by letter dated May 29, 2013 and requested a 30-day extension, which was granted. On June 21, 2013 Respondent provided its full, initial response to the Notice (Response). SET contested one of the allegations and requested a hearing. A hearing was subsequently held on November 5, 2013, at the Central Region Office in Kansas City, Missouri, with an attorney from the Office of Chief Counsel, PHMSA, presiding. At the hearing, Respondent was represented by counsel. On December 12, 2013, SET submitted its Post Hearing Brief (Brief) for this case.

FINDING OF VIOLATION

Item 1: The Notice alleged that Respondent 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 Respondent violated 49 C.F.R. § 192.469 by failing to have a sufficient number of cathodic protection test stations. Specifically, the Notice alleged that SET failed to install sufficient test stations to determine the adequacy of cathodic protection on SET's Line 10 and Line 15. SET used its test stations in its annual cathodic protection tests, and the tests stations showed no deficiency. However, the Notice stated that when SET performed a close internal survey (CIS) of its cathodic protection along the lines, the CIS identified numerous locations where the cathodic protection was inadequate. The Violation Report states that SET performed a CIS in 2008 and again in 2010. After the 2008 CIS identified cathodic protection deficiencies, SET installed nine new test stations. However, the 2010 CIS continued to show areas of deficiency while SET's test stations continued to show no deficiency. SET did not immediately remediate the situation with installation of new test stations. PHMSA contends that more test stations are needed to determine if cathodic protection is adequate within areas of former low CIS readings.

In its Response and at the hearing, SET argued that its test stations are spaced in accordance with standard industry practice, at distances of approximately one mile apart.[1] SET argued that CIS is a best practice, not a regulatory requirement, and is used to improve systems. SET also argued that PHMSA should not discourage operators from performing CISs by making allegations of violation following the results.[2] SET stated that because CIS is inherently a more accurate testing method and that many of the areas of low protection were short in length, SET argues that "no reasonable number of test stations" would be adequate to measure cathodic protection to the same accuracy as a CIS. Therefore, it questioned what it could have done differently to avoid an allegation of violation. Finally, SET argued that SET used the CIS results to remediate the low readings and that PHMSA erroneously did not allow any time for full remediation following the CIS results and alleged violation based on "Day One" of the low readings.[3]

In response to SET's arguments, at the hearing and in the Regional Recommendation, PHMSA argued that one mile spacing between test stations is not an industry standard but only an informal rule of thumb. PHMSA stated that an operator must space test stations based on the conditions of its pipeline, such as the age and type of coating. At the hearing, PHMSA pointed out that the pipeline at issue is at least 50 years old and had "antiquated coating." PHMSA also argued that § 192.469 is essentially a performance standard, such that the CIS results showing deficiencies in cathodic protection that the annual tests had not revealed established that the test stations were insufficient to determine the adequacy of the cathodic protection.

In its Regional Recommendation, PHMSA did not directly address SET's contention that PHMSA did not allow any time for SET to remediate the areas of low potential before alleging a violation. However, at the hearing when SET asked PHMSA how SET could possibly remediate in a way that would satisfy PHMSA without installing test stations every five feet, PHMSA

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[1] Response at pg. 2. Brief at 3.
[2] Brief at 6.
[3] Brief at 2 and 5.

responded that after SET added some additional test stations following the initial 2008 CIS, SET waited until 2010 to perform another CIS to see if the new stations were adequate. Because the 2010 CIS still revealed areas of inadequate cathodic protection that had not been identified by the test stations, PHMSA contends that the remediation following the 2008 CIS was ineffective and the test stations were inadequate. PHMSA stated that if SET would have acted more quickly and had repaired all the areas of deficiency by 2010, PHMSA would likely not have alleged a violation. In the Regional Recommendation, PHMSA agreed that test station placement at five foot intervals was impractical. However, PHMSA recommended that strategically locating test stations near remediated rectifier outputs or linear anodes would provide valuable information to better assure adequate cathodic protection.[4]

While I understand SET's contention that cathodic protection test stations can never be as accurate as a CIS, I am persuaded that SET should have done more to rectify low levels of cathodic protection and determine the adequacy of its remediation through another CIS or other means, prior to 2010. The results of the 2010 CIS established that the number and placement of the test stations remained inadequate. Although the violation report failed to specify the dates of the 2008 and 2010 CISs, it is clear that more than a year passed from the installation of the new test stations in 2008 until SET attempted to verify its remediation in 2010. For these reasons, I am also not persuaded by SET's claims that it had no opportunity to remediate the deficient findings of the initial 2008 CIS.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.469 by failing to have sufficient test stations or other contact points for electrical measurement to determine the adequacy of cathodic protection.

In its Response and at the hearing, SET did not contest the allegation in the Notice that it violated 49 C.F.R. Part 192.937, as follows:

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.937, which states in relevant part:

> **§ 192.937 – What is a continual process of evaluation and assessment to maintain a pipeline's integrity?**
>
> (a) *General.* After completing the baseline integrity assessment of a covered segment, an operator must continue to assess the line pipe of that segment at the intervals specified in § 192.939 and periodically evaluate the integrity of each covered pipeline segment as provided in paragraph (b) of this section. An operator must reassess a covered segment on which a prior assessment is credited as a baseline under § 192.921(e) by no later

[4] In a Post Hearing Reply Brief, SET contends that, "[F]or the first time, [the Region now argues] that SET was in violation of 49 CFR 192.469 because it did not place additional test stations in areas where it recently conducted remediation specifically by increasing rectifier outputs or installing linear nodes . . ." I disagree that the Recommendation says this. The Region maintains that the remediation efforts were inadequate to meet the performance standard set out in the regulation, as established by 2008 and 2010 CIS results. In response to SET's arguments that compliance is impossible without placing test stations every five feet, PHMSA gave suggestions about what "would be effective locations" for efficient test station placement. PHMSA does not state that failure to place test stations in these specific locations was the basis for the allegation.

> than December 17, 2009. An operator must reassess a covered segment on which a baseline assessment is conducted during the baseline period specified in § 192.921(d) by no later than seven years after the baseline assessment of that covered segment unless the evaluation under paragraph (b) of this section indicates earlier reassessment.
>
> (b) *Evaluation.* An operator must conduct a periodic evaluation as frequently as needed to assure the integrity of each covered segment. The periodic evaluation must be based on a data integration and risk assessment of the entire pipeline as specified in § 192.917. For plastic transmission pipelines, the periodic evaluation is based on the threat analysis specified in 192.917(d). For all other transmission pipelines, the evaluation must consider the past and present integrity assessment results, data integration and risk assessment information (§ 192.917), and decisions about remediation (§ 192.933) and additional preventive and mitigative actions (§ 192.935). An operator must use the results from this evaluation to identify the threats specific to each covered segment and the risk represented by these threats.

The Notice alleged that Respondent violated 49 C.F.R. § 192.937 by failing to conduct periodic evaluations to assure the integrity of Line 10 and Line 15. Specifically, the Notice alleged that SET's manager could not provide records of periodic evaluations of Line 10 and Line 15 during the inspection because SET had never conducted the evaluations. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.937 by failing to conduct periodic evaluations to assure the integrity of Lines 10 and 15.

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 $100,000 per violation for each day of the violation, up to a maximum of $1,000,000 for any related series of violations.[5] 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 $41,200 for the violations cited above.

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[5] The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90, § 2(a) (Jan. 3, 2012) increased the maximum penalty for a violation of the pipeline safety standards to $200,000 per violation for each day, up to a maximum of $2,000,000 for a related series of violations.

Item 1: The Notice proposed a civil penalty of $28,400 for Respondent's violation of 49 C.F.R. § 192.469, for failing to have sufficient test stations or other contact points for electrical measurement to determine the adequacy of cathodic protection. SET contends that PHMSA incorrectly assessed the gravity of the violation when it stated that safety was "potentially compromised." SET also disagrees with PHMSA's assessment of culpability, and SET points out that it made efforts to add test stations based on the 2008 CIS. However, I agree with the Region because the purpose of cathodic protection is to prevent or reduce corrosion. A lack of cathodic protection can result in accelerated corrosion and metal loss, which could "potentially compromise" safety. Next, in response to SET's arguments about culpability, I remind SET that the violation report acknowledges SETs efforts toward remediation and accounts for those initial steps in its penalty calculation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $28,400 for violation of 49 C.F.R. § 192.469.

Item 2: The Notice proposed a civil penalty of $12,800 for Respondent's violation of 49 C.F.R. § 192.937, for failing to conduct periodic evaluations to assure the integrity of Lines 10 and 15. SET did not contest this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $12,800 for violation of 49 C.F.R. § 192.937.

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 **$41,200**.

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, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the $41,200 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1 and 2 in the Notice for violations of 49 C.F.R. §§ 192.469 and 192.937 respectively. 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. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 192.469 (**Item 1**), Respondent must submit a plan and schedule for installation of sufficient test points within 60 days of this Order for Director, Central Region approval.

2. The installation of the test points shall be completed within 120 days of receiving the Director's approval and documentation submitted within 30 days of completing installation.

3. In regard to violation of § 192.937 (Item 2) pertaining to SET failing to conduct periodic evaluations to assure the integrity of Line 10 and Line 15, SET shall conduct periodic evaluations and the evaluations must consider the past and present integrity assessment results, data integration and risk assessment information (§ 192.917), and decisions about remediation (§192.933) and additional preventative and mitigative actions (§192.935).

4. SET shall provide documentation of evaluations for assuring integrity on Line 10 and Line 15 within 30 days of the Final Order to Director, Central Region.

5. It is requested that SET maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Director, Central Region Pipeline and Hazardous Materials Safety Administration. It is requested that these costs be reported in two categories 1.) total cost associated with preparation/revision of plans, procedures, studies, and analyses, and 2.) total cost associated with the replacements, additions and other changes to pipeline infrastructure.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

Failure to comply with this Order may result in administrative assessment of civil penalties not to exceed $200,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

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.

for: Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

MAR 1 1 2015
Date Issued