

December 14, 2015

Mr. Luke Fletcher
Chief Executive Officer & President
Florida Gas Transmission Company, LLC
800 E Sonterra Blvd
San Antonio, TX 78258

Re: CPF No. 4-2013-1019

Dear Mr. Fletcher:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$197,200, and modifies actions that need to be taken by Florida Gas Transmission Company, 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, Southwest Region, this enforcement action will be closed. Service of this Final Order is made pursuant to 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. Rod Seeley, Director, Southwest Region, PHMSA
Mr. Bob Hogfoss and Ms. Catherine Little, Hunton & Williams LLP,
Bank of America Plaza, Suite 4100, 600 Peachtree Street, N.E., Atlanta, GA 30308

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)
)
Florida Gas Transmission Company, LLC,) **CPF No. 4-2013-1019**
)
Respondent.)

FINAL ORDER

On February 13-14, 2012, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an investigation of a rupture that occurred on a gas pipeline operated by Florida Gas Transmission Company, LLC (FGT or Respondent) in East Baton Rouge, Louisiana.¹

As a result of the investigation, the Director, Southwest Region, OPS (Director), issued a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice) to Respondent on November 21, 2013. In accordance with 49 C.F.R. § 190.207, the Notice alleged that FGT committed two violations of the natural gas pipeline safety regulations, proposed a civil penalty of \$197,200, and proposed certain corrective action. The Notice also contained one warning item under 49 C.F.R. § 190.205.

FGT responded to the Notice on December 20, 2013, contested the alleged violations and requested a hearing. Additional written materials were submitted by Respondent on June 13, 2014. In accordance with 49 C.F.R. § 190.211, a hearing was held on June 25, 2014, in Houston, Texas, before a Presiding Official from the Office of Chief Counsel, PHMSA. Respondent submitted a post-hearing brief and additional materials on August 8, 2014. The Director submitted a written evaluation of Respondent's response material on January 7, 2015.

¹ FGT operates approximately 5,400 miles of natural gas pipelines from Texas to Florida, as reported by FGT for the 2014 calendar year pursuant to 49 C.F.R. § 191.17. FGT is a subsidiary of Energy Transfer Partners, L.P. (ETP). Other subsidiaries of ETP include Panhandle Eastern Pipe Line Co., Sunoco Pipeline L.P., Mid-Valley Pipeline Co., West Texas Gulf Pipe Line Co., and Trunkline Gas Co.

BACKGROUND

On February 13, 2012, at 2:26 a.m., a rupture occurred on the FGT LAMEB-8 natural gas pipeline in East Baton Rouge, Louisiana, downstream of the Zachary Compressor Station.² FGT Gas Control contacted the Zachary Station at 2:30 a.m. to report that one of the station's compressor engines had gone offline.³ During the conversation, two more compressors went offline and a pressure drop was noted. The pressure drop resulted in the automatic closure of the mainline valve.

The Zachary Station Operations Manager arrived at the site of the failure and confirmed a rupture had occurred. Local fire departments were already onsite when the Operations Manager arrived. Persons within a half-mile of the area were evacuated.⁴

As a result of the incident, the Director issued a Notice of Proposed Safety Order to FGT on February 24, 2012. PHMSA and FGT executed a Consent Agreement to resolve that matter on May 1, 2012.⁵ The Consent Agreement required FGT to arrange for metallurgical examination of the failed pipe, to perform additional corrosion control evaluations, and to take other actions. The results of the metallurgical examination determined the "failure occurred as a result of wall section thinning and subsequent tensile overload due to external corrosion."⁶

The incident caused estimated property damage of \$13,000.⁷ As of April 30, 2013, the total estimated cost associated with the incident, including cost of performing actions under the Consent Agreement was \$2.32 million.⁸ The terms of the Consent Agreement were satisfied and that matter was closed by the Director on December 19, 2013.⁹ A few weeks before closing the Consent Agreement, the Director issued the Notice in this case, alleging two violations of the safety regulations related to corrosion control.

FINDINGS OF VIOLATION

Item 2 and Item 3 of the Notice alleged that Respondent committed violations of 49 C.F.R. §§ 192.463(a) and 192.469, respectively. The alleged violations were as follows:

² OPS Pipeline Safety Violation Report at 11 (Nov. 25, 2013).

³ Violation Report, Exhibit A(2) – FGT Incident Report PHMSA Form 7100.2 at 13 (*rev.* Jul. 3, 2013).

⁴ FGT Prehearing Submission at 4 (Jun. 13, 2014).

⁵ Florida Gas Transmission Co., CPF No. 4-2012-1001S, 2012 WL 3144498 (May 25, 2012).

⁶ Violation Report, Exhibit A(3) – FGT Fifth Quarterly Report at 3 (Apr. 30, 2013).

⁷ FGT Incident Report PHMSA Form 7100.2 at 3. In its Prehearing Submission at 2, however, Respondent contended there was no property damage associated with the incident.

⁸ FGT Fifth Quarterly Report at 5.

⁹ Prehearing Submission at 3.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.463(a), which states:

§ 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. If none of these criteria is applicable, the cathodic protection system must provide a level of cathodic protection at least equal to that provided by compliance with one or more of these criteria.

The Notice alleged Respondent violated § 192.463(a) by failing to provide an adequate level of cathodic protection on the pipeline. Specifically, the Notice alleged that Respondent performed a close interval survey (CIS) of the LAMEB-8 pipeline in 2012 following the rupture. Data from the CIS indicated there were areas on the pipeline that did not have cathodic protection that met the applicable -850mV criteria.

Respondent contested the allegation and explained that cathodic protection surveys performed for two consecutive years prior to the incident indicated the pipeline had adequate cathodic protection. Following the post-incident CIS in which deficiencies were identified, Respondent installed new groundbeds and rectifiers to increase the level of cathodic protection and remediate the deficiencies. Respondent argued no violation occurred because the Company promptly responded to the CIS by taking corrective action. Respondent also argued the proposed penalty should be lower in light of the good faith corrective action taken prior to receiving the Notice.

Applicable Safety Standards

Buried steel pipelines that transports gas must have cathodic protection to protect against the risks of external corrosion.¹⁰ Criteria for determining the adequacy of cathodic protection are listed in Appendix D of 49 C.F.R. Part 192.¹¹ One of the criteria is a measured potential of -850mV with reference to a saturated copper-copper sulfate half-cell with the protective current applied, known as the -850mV criteria.¹²

Operators must monitor their cathodic protection systems to ensure the protection meets the applicable criteria. Monitoring is conducted through regular tests or surveys of the cathodic protection system.¹³ If a survey identifies potentials that do not meet applicable criteria, an operator must take “prompt remedial action” to correct the deficiency.¹⁴ In most instances,

¹⁰ §§ 192.455 and 192.457.

¹¹ § 192.463.

¹² 49 C.F.R. Part 192, Appendix D, paragraph (I)(A)(1).

¹³ § 192.465(a).

¹⁴ § 192.465(d).

“prompt remedial action” means the deficiency must be corrected before the next regular inspection cycle of the cathodic protection.¹⁵

Discussion

PHMSA reviews the record to determine whether the cathodic protection on Respondent’s pipeline was adequate under the regulation. Results from the CIS performed in 2012 indicated that protection levels did not meet the -850mV criteria in the area of the failure. Quarterly reports filed by FGT under the Consent Agreement also noted areas of deficient cathodic protection.¹⁶ This evidence shows the pipeline did not have adequate cathodic protection.

While Respondent argued that it promptly corrected the deficiencies identified by the 2012 CIS, evidence shows the deficiencies were actually known for several years. In a document referred to as the “Root Cause Failure Analysis Report” (RCFA), FGT provided factual information in response to questions related to the failure that occurred February 13, 2012.¹⁷ The RCFA documented that low potentials were identified in 2009 during an earlier CIS.¹⁸ The RCFA also documented that not all of the low potentials were remediated.

For example, Question 26 of the RCFA asks if all low potentials from the 2009 CIS were addressed. FGT answered that they were not, and that the most severe deficiency at a line crossing had its budget for remediation turned down three straight years.¹⁹ Likewise, FGT answered Question 31 stating the pipeline failure occurred at a low potential area that was documented in two previous surveys “but was not investigated or remediated.”²⁰ This evidence demonstrates Respondent’s pipeline had inadequate cathodic protection leading up to the failure that were not promptly remediated.

Accordingly, having reviewed the record, I find Respondent violated § 192.463(a) by failing to provide a level of cathodic protection on its pipeline that complied with applicable criteria. FGT has already taken corrective action to address these low potential areas.

¹⁵ See, e.g., CenterPoint Energy Gas Transmission Co., CPF No. 4-2005-1008, Item 1, 2008 WL 565345, at *1 (Feb. 11, 2008) (stating “PHMSA considers remedial action to be prompt if . . . all necessary remedial actions have been completed by the next scheduled monitoring”).

¹⁶ FGT Fifth Quarterly Report at 3.

¹⁷ Violation Report at 26; Exhibit A(5) – FGT Root Cause Failure Analysis (RCFA) Report.

¹⁸ RCFA Report at 1-2.

¹⁹ Violation Report at 12; RCFA Report at 2.

²⁰ Violation Report at 12; RCFA Report at 2.

Item 3. The Notice alleged 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 § 192.469 by failing to have sufficient test stations to determine the adequacy of cathodic protection on its pipeline. Specifically, the Notice alleged that cathodic protection surveys using test stations in 2010 and 2011 indicated there was adequate cathodic protection, even though there were areas that did not have adequate protection as documented in a CIS.

Respondent argued that the pipeline has sufficient test stations to determine the adequacy of cathodic protection. The test stations, Respondent explained, are spaced at distances consistent with industry practice. In the judgment of FGT's corrosion control personnel, they are sufficient to ensure there is adequate cathodic protection. Respondent noted the regulation does not specify a uniform distance between stations and PHMSA guidance recognizes spacing may vary widely depending upon local conditions.²¹

Applicable Safety Standards

Operators of gas pipelines that have cathodic protection must test the cathodic protection at regular intervals to ensure it meets applicable requirements for corrosion control.²² Test stations are the locations on a pipeline designated by the operator where cathodic protection readings are taken.²³ Periodic surveys typically involve taking readings at those test stations. Operators may also perform CIS, which tests the cathodic protection at much shorter distances. For example, CIS may test the protection every two to three feet along the pipeline, whereas survey test stations may be much farther apart.²⁴

Pipelines must have a "sufficient" number of test stations so that when performing a survey, the operator can determine if cathodic protection is adequate.²⁵ The regulation does not establish a specific number of test stations or specific distance between test stations, but does establish a performance-based minimum level of safety that must be achieved.²⁶ Rather than establishing a

²¹ Prehearing Submission at 2, *citing* PHMSA's Corrosion Enforcement Guidance for Part 192. A copy of the guidance was not included in the record, but the latest revision is available on the PHMSA website at: <http://www.phmsa.dot.gov/foia/e-reading-room> (*accessed* Nov. 19, 2015).

²² § 192.465(a).

²³ PHMSA Part 192 Corrosion Enforcement Guidance at 94, § 192.469 (*rev.* Dec. 9, 2014).

²⁴ *See* PHMSA Stakeholder Awareness and Outreach Pipeline Glossary on the PHMSA website at: <http://primis.phmsa.dot.gov/comm/glossary> (link to "Close Interval Survey") (*accessed* Nov. 19, 2015).

²⁵ § 192.469.

²⁶ Tennessee Gas Pipeline Co., CPF No. 4-2012-1020, at 3, 2013 WL 8284480, at *2 (Dec. 26, 2013).

uniform distance for test stations, the rule provides operators flexibility to achieve compliance in a manner appropriate for their pipeline system, as long as the minimum level of safety is being achieved.²⁷ In this case, test stations on Respondent's pipeline must be sufficient to enable FGT to determine if the protection is adequate and if there are any deficiencies.

Discussion

PHMSA reviews the record to determine whether test stations on Respondent's pipeline were sufficient to assess the adequacy of cathodic protection. As noted above, Respondent performed a CIS in 2009 that identified areas with inadequate cathodic protection. Upgrades were made to address some of the deficiencies, including increasing rectifiers, but not all deficiencies were remediated.²⁸ When Respondent conducted surveys using test stations in 2010 and 2011, the surveys found no deficiencies in the cathodic protection. The 2012 CIS confirmed, however, that deficiencies still existed on the line. These deficiencies were not identified by the test stations in 2010 and 2011.

The facts presented in this case are similar to a prior enforcement action involving another operator.²⁹ In that case, the operator performed a CIS in 2008 that identified cathodic protection deficiencies. The company took remedial measures and installed additional test stations. The next year, it conducted a survey using test stations and found no deficiencies. When the company performed another CIS in 2010, numerous locations were identified that still had inadequate cathodic protection from 2008. PHMSA concluded that the operator had failed to comply with the requirement in § 192.469 to have sufficient test stations, noting the company should have done more to determine if the test stations added in 2008 were adequate.

While FGT argued that its test stations were appropriately spaced, the evidence demonstrates Respondent's pipeline did not have sufficient test stations to determine the adequacy of cathodic protection. The surveys conducted by Respondent at test stations in 2010 and 2011 did not detect inadequate cathodic protection areas that were detected by CIS in 2009 and 2012.

Accordingly, having reviewed the record, I find Respondent violated § 192.469 by failing to have sufficient test stations to determine the adequacy of cathodic protection.

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

²⁷ See, e.g., Magellan Pipeline Co., CPF No. 4-2012-5010, at 9, 2014 WL 5431188, at *8 (Sept. 2, 2014) (discussing performance-based line marker requirements).

²⁸ RCFA Report at 1-2.

²⁹ Spectra Energy Trans., LLC, CPF No. 3-2013-1005, at 2, 2015 WL 1885172, at *1 (Mar. 11, 2015).

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations. The Notice proposed a civil penalty of \$197,200 for the violations cited above.

In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, PHMSA 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 good faith of Respondent in attempting to comply with the pipeline safety regulations; and the effect on Respondent's ability to continue in business. In addition, PHMSA may consider economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require.

Item 2: The Notice proposed a civil penalty of \$158,400 for Respondent's failure to provide an adequate level of cathodic protection on its pipeline in violation of § 192.463(a).

The proposed penalty amount was based on factual assertions in the Violation Report relevant to each of the penalty assessment criteria in § 190.225. With regard to the nature and circumstances of the violation, the Report noted that the violation was a result of conduct by FGT and that it was discovered by PHMSA. With regard to gravity, the Report noted the violation was a causal factor in a pipeline incident, as defined in § 191.3, and that low cathodic protection levels contributed to corrosion of the pipe that ruptured. The pipeline incident caused evacuations and property damage.

With regard to the degree of Respondent's culpability and good faith, the Violation Report suggested that no reduction to the penalty was appropriate under these factors because FGT failed to take appropriate action to comply with a requirement that was clearly applicable. The Violation Report also noted a history of five offenses in the five-year period prior to issuance of the Notice.

Respondent argued the proposed penalty should be reduced to reflect proactive and good faith efforts by FGT to remediate deficiencies prior to issuance of the Notice. Respondent installed new groundbeds and rectifiers after the 2012 CIS to improve cathodic protection. FGT also implemented extensive corrective measures under the Consent Agreement. Respondent noted that a subsequent CIS performed in 2013 demonstrated all low potentials have been remediated.

When considering good faith of a respondent under the assessment criteria, PHMSA looks at the actions the operator was taking in attempting to comply with the regulation when the violation occurred.³⁰ A respondent's actions after a violation was discovered to remediate the violation generally do not warrant reducing a penalty because the operator already has an affirmative duty to correct known compliance issues.³¹

³⁰ City of Richmond, Virginia, CPF No. 1-2013-0001, 2014 WL 2875598 (May 2, 2014).

³¹ § 192.603(a).

PHMSA acknowledges the measures taken by FGT to remediate the cathodic protection deficiencies that were discovered. These actions, however, do not warrant reducing the penalty because they were taken after the incident had occurred, when Respondent was under a regulatory obligation to correct the deficiencies.³² For the same reason, Respondent's efforts to comply with the Consent Agreement do not justify reducing the penalty.

Based on a review of the record, PHMSA finds the proposed civil penalty is supported by the evidence and is appropriate under the applicable assessment criteria. Respondent is assessed a civil penalty of \$158,400 for the violation of § 192.463(a).

Item 3: The Notice proposed a civil penalty of \$38,800 for Respondent's failure to have sufficient test stations to determine the adequacy of cathodic protection in violation of § 192.469.

With regard to the nature and circumstances of the violation, the Violation Report noted the violation was a result of equipment not being installed and this was discovered by PHMSA. With regard to gravity, the Report suggested that pipeline safety had been "significantly compromised" due to the inability of Respondent to determine the adequacy of cathodic protection during annual surveys, which led to a pipeline failure.

With regard to the degree of Respondent's culpability and good faith, the Violation Report suggested that no reduction was appropriate, because FGT had failed to take appropriate action to comply with a requirement that was clearly applicable. The Violation Report likewise noted five prior offenses.

Respondent argued the penalties for Item 2 and Item 3 should be reduced or withdrawn because both of the violations rely on circumstances of low cathodic protection potentials. Respondent cited a prior PHMSA order to support this position.³³

In the prior final order cited by Respondent, PHMSA found certain violations of the same regulation were sufficiently similar that their combined penalties should be below the maximum amount permissible for a single violation. Specifically, PHMSA found the operator's alleged failure to evaluate line marking jobs performed by a line locator (Item 6) was essentially the same as the failure to conduct adequate oversight of the line locator (Item 4). Both allegations involved the same regulatory requirement and the same evidentiary basis, namely, the conduct of the manager responsible for overseeing the line locator.

The Agency also found the operator's alleged failure to follow procedures for correcting repeated encroachments (Item 8) was essentially the same as the failure to take appropriate action to address repeated encroachments (Item 7). Even though these two items cited separate regulatory requirements, they essentially involved the same requirement and they involved the

³² § 192.465(d).

³³ Prehearing Submission at 6, *citing* Colorado Interstate Gas Co., CPF No. 5-2008-1005, at 12, 2009 WL 5538649 (Nov. 23, 2009).

same evidentiary basis: the actions taken or not taken to address repeated encroachments. PHMSA found each pair were related for purpose of the civil penalty cap that applies to a single related series of violations.

There have been other enforcement cases in which an operator has argued multiple violations were the same, but PHMSA found they were actually separate and distinct violations. This is particularly the case where the violations involve separate regulatory requirements or required proof of different facts. For example, an operator's failure to perform a risk analysis to consider the threat of flooding was found to be a separate violation from the operator's failure to have procedures for responding to flooding and other natural disasters.³⁴ Although the violations both related to an accident caused by flooding, they each involved a separate regulatory requirement and separate evidence.

In the present matter, Item 2 concerns the requirement to have adequate cathodic protection, and Item 3 concerns the requirement to have test stations to enable the monitoring of cathodic protection. These are separate regulatory requirements. In addition, Item 3 requires proof that Respondent failed to have a sufficient number of test stations, whereas the sufficiency of test stations is not an issue in Item 2. Even though evidence of low cathodic protection readings is relevant to both violations, overlap of some evidence is not a sufficient basis by itself to render the violations a single offense. PHMSA finds Item 2 and Item 3 are separate and distinct violations.

Based on a review of the record, the proposed civil penalty is supported by the evidence and is appropriate under the applicable assessment criteria. Respondent is assessed a civil penalty of \$38,800 for the violation of § 192.469.

In summary, Respondent is assessed a total civil penalty of **\$197,200** for the violations cited above.

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, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$197,200 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

³⁴ ExxonMobil Pipeline Co., CPF No. 5-2013-5007, 2015 WL 780721, at *22 (Jan. 23, 2015). *See also*, Enbridge Energy Partners, L.P., CPF No. 3-2008-5011, 2010 WL 6531629 (Aug. 17, 2010) (evaluating multiple violations and finding none were so related they constituted a single offense).

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 the violation of § 192.469 (Item 3). Under 49 U.S.C. § 60118(a), each person who owns or operates a natural gas pipeline facility is required to comply with the applicable safety standards established under chapter 601, including those established in 49 C.F.R. Part 192.

Respondent requested that the proposed compliance order be withdrawn because the Company has already taken actions to satisfy the requirements.³⁵ FGT noted that it has addressed localized areas of low potentials by performing CIS in 2012 and 2013, increasing output of existing rectifiers, testing cathodic protection at foreign line crossings, installing additional negative leads, completing additional test readings, installing new ground beds and rectifiers, and recoating portions of the pipeline.³⁶

PHMSA recognizes efforts taken by FGT to address deficiencies in cathodic protection. With respect to the proposed compliance order, however, the efforts do not appear to address the actions that were proposed to demonstrate compliance with § 192.469. For example, Respondent did not produce documentation demonstrating it has completed a review of existing test stations. Since FGT did not satisfy the requirements of the proposed compliance order, the terms are not withdrawn.

Respondent also requested that the terms of the proposed compliance order be modified to reflect the flexibility permitted by the regulation that allows each operator to determine appropriate means of complying with § 192.469, whether that be installing additional groundbeds, rectifiers, or test stations.³⁷

At the hearing, both parties acknowledged that compliance with § 192.469 may be possible without installing additional test stations if other methods of compliance were available, such as figuring out different protection levels at existing test stations to ensure adequate cathodic protection along the pipeline. I agree with Respondent the compliance order should be modified. The Company will be required to submit its plan for compliance to the Director for approval.

Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, FGT is ordered to take the following actions to ensure compliance with the applicable pipeline safety regulations:

³⁵ Prehearing Submission at 7.

³⁶ FGT Post-hearing Brief at 3 (Aug. 8, 2014).

³⁷ FGT Response at 3 (Dec. 20, 2013).

1. With respect to the violation of § 192.469 (**Item 3**), FGT must conduct a documented review and analysis of existing test stations and other contact points for electrical measurement on the LAMEB-8 30" pipeline.
2. Based on the documented review and analysis performed under Paragraph 1, FGT must identify additional actions that will ensure future monitoring is capable of determining the adequacy of cathodic protection along the pipeline. Additional actions must include those measures that are necessary to ensure compliance with § 192.469, such as installation of additional test stations, changing of cathodic protection levels at existing test stations, or other appropriate measures. Include a schedule for completing the additional actions within six months of the date of this Order.
3. Submit the documented review and analysis prepared under Paragraph 1, and the identification of additional actions and schedule prepared under Paragraph 2, to the Director for prior approval within 45 days of the date of this Order.
4. Submit documentation demonstrating completion of the additional actions, as approved by the Director under Paragraph 3, within six months of the date of this Order.
5. It is requested that FGT maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. 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 replacement, additions or 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 demonstrating good cause for an extension.

Failure to comply with this Compliance Order may result in the 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.

WARNING ITEM

With respect to Item 1, the Notice alleged a probable violation of Part 192, but specifically considered it to be a warning item. In accordance with § 190.205, a respondent may submit a response to a warning, but no adjudication is conducted to determine whether a violation occurred. The warning was for:

§ 191.5(a) (**Item 1**) – Respondent's alleged failure to report a pipeline incident to the National Response Center (NRC) at the earliest practicable moment following discovery. The Notice alleged that FGT received alarms in its control room at 2:26 a.m. and by 2:30 had identified the incident, but Respondent failed to notify the NRC until 5:14 a.m.

Respondent contended that it reported the incident to the NRC at the earliest practicable moment following confirmation that a reportable incident had occurred. Respondent recognized PHMSA has issued advisories and other interpretations stating notifications should be made within one to two hours. Respondent argued, however, that PHMSA has never issued a definitive rule requiring notification within 2 hours in every case. Given that FGT personnel took actions between 2:30 a.m. and 5:14 a.m. to investigate the emergency, shut down the line, and evacuate persons in the area, FGT contended that its notification was at the earliest practicable moment in compliance with § 191.5.

Respondent is warned that if OPS finds this issue in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent may submit a petition for reconsideration of this Final Order to the Associate Administrator for Pipeline Safety, PHMSA, 1200 New Jersey Avenue SE, East Building, 2nd Floor, Washington, D.C. 20590, no later than 20 days after receipt of the Final Order. A petition must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed, however, the other terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

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