

**JUL 08 2009**

Mr. Kevin J. Degenstein  
President and Chief Operating Officer  
Energy West Development, Inc.  
1 First Avenue South  
P.O. Box 2229  
Great Falls, MT 59401

**Re: CPF No. 5-2005-0002**

Dear Mr. Degenstein:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation and finds that you have completed the actions specified in the Notice that were required to bring Energy West into compliance with the pipeline safety regulations. The Final Order also finds that you have addressed the inadequacies in your procedures that were cited in the Notice of Amendment. Therefore, this case is now closed. Your receipt of the Final Order constitutes service 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: Chris Hoidal, Director, OPS Western Region

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 1160 0001 0046 9723]**

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

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<b>In the Matter of</b>	)	
	)	
<b>Energy West Development, Inc.,</b>	)	<b>CPF No. 5-2005-0002</b>
	)	
<b>Respondent.</b>	)	
_____	)	

**FINAL ORDER**

In October and November 2004, pursuant to 49 U.S.C. § 60117, representatives 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 Energy West Development, Inc. (Energy West or Respondent), regarding the company's Shoshone Pipeline in Montana and Wyoming. Respondent is a subsidiary of Energy West, Inc., a natural gas utility company with operations in Montana, Wyoming, North Carolina, and Maine.

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated February 14, 2005, a Notice of Probable Violation, Proposed Compliance Order, and Notice of Amendment (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Energy West had committed certain violations of 49 C.F.R. Part 192, and ordering Respondent to take certain measures to correct the alleged violations. The Notice also proposed, in accordance with 49 C.F.R. § 190.237, that Respondent amend its written procedures for operations, maintenance and emergencies.

Energy West responded to the Notice by letters dated March 10, 2005, April 15, 2005, and May 31, 2007 (collectively, Response). The company did not contest the allegations of violation but provided information concerning the corrective actions it had taken to correct said violations and submitted its revised procedures. Respondent did not request a hearing and therefore has waived its right to one. The following order discusses each of the 16 Items raised in the Notice and is divided into four sections: Findings of Violations; Compliance Order; Amendment of Procedures; and Warning Item.

## FINDINGS OF VIOLATION

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 192.14, which states, in relevant part:

**§ 192.14 Conversion to service subject to this part.**

(a) A steel pipeline previously used in service not subject to this part qualifies for use under this part if the operator prepares and follows a written procedure to carry out the following requirements....

(4) The pipeline must be tested in accordance with subpart J of this part to substantiate the maximum allowable operating pressure permitted by subpart L of this part.

(b) Each operator must keep for the life of the pipeline a record of the investigations, tests, repairs, replacements, and alterations made under the requirements of paragraph (a) of this section.

The Notice alleged that Respondent violated § 192.14 because it did not prepare and follow a written procedure for testing the pipeline in accordance with subpart J of Part 192 to substantiate its maximum allowable operating pressure (MAOP). Since the Shoshone Pipeline was previously used in service but not subject to 49 C.F.R. Part 192, this testing was required.

Specifically, the Notice alleged that there was inadequate documentation for the conversion to service of the Shoshone Pipeline showing how the line's MAOP was calculated. In addition, the Notice alleged that the company's hydrostatic test records used in such determination lacked any consideration of the pipeline's profile or the location/elevation of deadweight testers.

Under § 192.14(a)(4), operators are required to test converted pipelines in accordance with the requirements of subpart J (Test Requirements) in order to establish that the MAOP meets the standards of Part 192.<sup>1</sup> The Shoshone Pipeline was converted from crude oil to gas service in 2001 and has transported natural gas since 2003. During the inspection, Respondent was unable to demonstrate that it had tested the line in accordance with subpart J to substantiate an MAOP of 791 psig. In addition, Energy West needed to utilize hydrostatic testing data on elevation and the location of the deadweight testers in order to properly calculate the lowest test pressure of the line, a key component in computing MAOP under § 192.619. Without this vital information, Respondent was unable to substantiate the current MAOP of the line. As noted above, Respondent did not contest this allegation and therefore, upon consideration of all of the evidence, I find that Energy West violated § 192.14(a)(4), by failing to prepare and follow a written procedure for testing the Shoshone Pipeline in accordance with subpart J of Part 192 to substantiate the MAOP of the line.

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<sup>1</sup> See 49 C.F.R. § 192.619.

**Item 3:** The Notice alleged that Respondent violated 49 C.F.R. §§ 192.195(a) and 192.739(a), which state:

**§ 192.195 Protection against accidental overpressuring.**

(a) *General requirements.* Except as provided in §192.197, each pipeline that is connected to a gas source so that the maximum allowable operating pressure could be exceeded as the result of pressure control failure or of some other type of failure, must have pressure relieving or pressure limiting devices that meet the requirements of §§192.199 and 192.201....

**§ 192.739 Pressure limiting and regulating stations: Inspection and testing.<sup>2</sup>**

(a) 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—

- (1) In good mechanical condition;
- (2) Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed;
- (3) Except as provided in paragraph (b) of this section, set to control or relieve at the correct pressure consistent with the pressure limits of §192.201(a); and
- (4) Properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation....

The Notice alleged that Respondent did not have any overpressure protection devices on the Shoshone Pipeline. In addition, it alleged that even if such devices existed, the company did not have any records that such devices or equipment had been properly tested at the required intervals.

During the inspection, Respondent's personnel admitted that Energy West had not installed overpressure devices on this line.<sup>3</sup> Instead, the company relied on its supplier to regulate the pressure and safeguard against overpressure incidents. Under the pipeline safety regulations, each operator is responsible for ensuring that its pipeline is protected from pressure control failures and must therefore either maintain its own overpressure devices or monitor its supplier's devices by recording the type, location, and inspection date for each device.

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<sup>2</sup> This regulation was amended by direct final rule effective October 8, 2004, which preceded the inspection date by six days. See, Pipeline Safety: Pressure Limiting and Regulation Stations, 69 Fed. Reg. 27861 (May 17, 2004) (codified at 49 C.F.R. § 192.739) and 69 Fed. Reg. 54248 (September 8, 2004). Although the Notice erroneously cited the text of the former § 192.739, Respondent is aware of the material facts that formed the basis of this allegation of violation and the associated terms of the proposed compliance order. Further, the amended regulation did not affect Respondent's obligation to inspect pressure limiting devices at the required intervals.

<sup>3</sup> Violation Report, at 4.

Although Respondent in this case chose to rely on its supplier, it could not produce records demonstrating that the overpressure devices existed or that they were tested at least once each calendar year at intervals not exceeding 15 months. As noted above, Energy West did not contest this violation. Accordingly, upon consideration of all of the evidence, I find that Energy West violated 49 C.F.R. §§ 192.195 and 192.739 by failing to have overpressure protection devices on its pipeline and to test such devices each calendar year at intervals not exceeding 15 months.

**Item 4:** The Notice alleged that Respondent violated 49 C.F.R. § 192.241, which states:

**§ 192.241 Inspection and test of welds.<sup>4</sup>**

(a) Visual inspection of welding must be conducted by an individual qualified by appropriate training and experience to ensure that:

(1) The welding is performed in accordance with the welding procedure; and

(2) The weld is acceptable under paragraph (c) of this section.

(b) The welds on a pipeline to be operated at a pressure that produces a hoop stress of 20 percent or more of SMYS<sup>5</sup> must be nondestructively tested in accordance with §192.243, except that welds that are visually inspected and approved by a qualified welding inspector need not be nondestructively tested if:

(1) The pipe has a nominal diameter of less than 6 inches (152 millimeters); or

(2) The pipeline is to be operated at a pressure that produces a hoop stress of less than 40 percent of SMYS and the welds are so limited in number that nondestructive testing is impractical.

(c) The acceptability of a weld that is nondestructively tested or visually inspected is determined according to the standards in Section 9 of API Standard 1104 (incorporated by reference, *see* §192.7). However, if a girth weld is unacceptable under those standards for a reason other than a crack, and if Appendix A to API 1104 applies to the weld, the acceptability of the weld may be further determined under that appendix.

The Notice alleged that Energy West violated § 192.241 by failing to perform visual inspections *and* non-destructive testing of certain tie-in welds used for portions of the Shoshone Pipeline that were replaced after the conversion to service. Under the pipeline safety regulations, an operator

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<sup>4</sup> This regulation was amended by final rule effective July 14, 2004. Therefore, at the time of the October and November 2004 inspections, the regulation quoted here was in effect. *See*, Pipeline Safety: Periodic Updates to Pipeline Safety Regulations (2001), 69 Fed. Reg. 32886 (June 14, 2004) (codified at 49 C.F.R. § 192.241). The Notice erroneously cited the text of the former § 192.241, but the error was not raised by Respondent and, in any event, is harmless. The new requirements did not affect Respondent's obligation to visually inspect welding projects or conduct nondestructive testing of welds.

<sup>5</sup> Specified minimum yield strength. For definition, see 49 C.F.R. § 192.3.

must ensure that all welds are visually inspected. Respondent's personnel stated during the inspection that the welder himself visually inspected the pipeline but Energy West could not produce any records documenting that this inspection took place.<sup>6</sup>

Further, under § 192.241(b), Respondent was required to nondestructively test such welds since the Shoshone Pipeline had a diameter greater than six inches and a hoop stress equal to 40% of SMYS. Respondent could not produce any records demonstrating that it had conducted nondestructive testing of these welds. As noted above, Energy West did not contest this allegation. Accordingly, upon consideration of all of the evidence, I find that Energy West violated 49 C.F.R. § 192.241 by failing to perform either visual inspections or nondestructive testing of certain repair welds on the Shoshone Pipeline.

**Item 5:** The Notice alleged that Respondent violated 49 C.F.R. §§ 192.463(a) and 192.465(d), which state:

**§ 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....

**§ 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 Energy West violated § 192.463 by failing to provide a level of cathodic protection on the Shoshone pipeline that complied with one or more of the applicable criteria contained in Appendix D of subpart I (Requirements for Corrosion Control). Specifically, the Notice alleged that the Shoshone Pipeline had experienced low cathodic protection readings since December 2002 but that the company had failed to take prompt remedial action to correct such deficiencies. As noted above, Respondent did not contest this allegation. Accordingly, upon consideration of all of the evidence, I find that Respondent violated 49 C.F.R. §§ 192.463 and 192.465 by failing to provide an adequate level of cathodic protection of its Shoshone Pipeline since December 2002.

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<sup>6</sup> Violation Report, at 5.

**Item 6:** The Notice alleged that Respondent violated 49 C.F.R. §§ 192.473 and 192.491(c), which state:

**§ 192.473 External corrosion control: Interference currents.**

(a) Each operator whose pipeline system is subjected to stray currents shall have in effect a continuing program to minimize the detrimental effects of such currents.

(b) Each impressed current type cathodic protection system or galvanic anode system must be designed and installed so as to minimize any adverse effects on existing adjacent underground metallic structures.

**§ 192.491 Corrosion control records.**

(a) ...

(c) Each operator shall maintain a record of each test, survey, or inspection required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that a corrosive condition does not exist. These records must be retained for at least 5 years, except that records related to §§ 192.465(a) and (e) and 192.475(b) must be retained for as long as the pipeline remains in service.

The Notice alleged that Respondent violated §§ 192.473 and 192.491(c) by failing to have a continuing program in effect for a pipeline subjected to stray currents in order to minimize the detrimental effects of such currents. Respondent was not only required to test for stray currents but was also obligated to maintain records of these inspections for at least five years. The Notice alleged that Energy West was unable to produce records showing that it had actually conducted an interference study with Rocky Mountain Pipeline. Respondent contended at the time of the inspection that such a study was conducted in 2003 or 2004. As noted above, Energy West did not contest this allegation. Accordingly, upon consideration of all of the evidence, I find that Energy West violated 49 C.F.R. §§ 192.473 and 192.491 by failing to show that it had in effect a continuing program to minimize stray currents and to keep records of said interference study for a period of five years.

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

**COMPLIANCE ORDER**

The Notice proposed a compliance order with respect to the violations listed in Items 2, 3, 4, 5, 6. 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:

1. In response to Item 2, Energy West analyzed and documented the hydrostatic test data for its Shoshone Pipeline and accounted for elevation differences to determine its MAOP.
2. In response to Item 3, Respondent installed a pressure relief valve on the line that feeds the Shoshone Pipeline. This pressure relief valve limits pressure to 690 psig which is below the MAOP of 960 psig.
3. In response to Item 4, Respondent excavated all tie-in welds made during the conversion to service for the Shoshone Pipeline and nondestructively tested each weld using radiography. All welds were found acceptable.
4. In response to Item 5, Respondent completed an instant off/native CP monitoring survey and found that all test stations met criteria listed in National Association of Corrosion Engineers RPO169.
5. In response to Item 6, Respondent has completed additional interference studies with Rocky Mountain Pipeline Company, as well as similar studies at other foreign crossings. The studies revealed no interference with the Rocky Mountain Pipeline; however, interference with other pipelines was discovered. Energy West has informed the Director of actions it is taking to mitigate interference concerns.

Accordingly, since compliance has been achieved with respect to these violations, the compliance terms are not included in this Order.

### **AMENDMENT OF PROCEDURES**

Items 1, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of the Notice alleged certain inadequacies in Respondent's Operating and Maintenance Manual and proposed to require amendment of Energy West's procedures to comply with the requirements of Part 192. In its Response, the company submitted copies of its amended procedures, which the Director has reviewed. Accordingly, based on the results of this review, I find that Respondent's original procedures as described in the Notice were inadequate under 49 C.F.R. § 190.237 to ensure safe operation of its pipeline system, but that Respondent has corrected the identified inadequacies. Accordingly, it is unnecessary to issue an Order Directing Amendment.

**WARNING ITEM**

With respect to Item 16, the Notice alleged a probable violation of 49 C.F.R. § 192.614(c)(3) for Respondent's failure to include in its damage prevention program a procedure for recording one-call notices of planned excavation activities. The Notice did not propose a civil penalty or compliance order for this item so it is considered a warning item. As noted above, Energy West did not contest this allegation. Accordingly, having considered all of the evidence in the record, I find, pursuant to 49 C.F.R. § 192.205, that a probable violation of 49 C.F.R. § 192.614(c)(3) has occurred and Respondent is hereby advised to correct such condition. In the event that OPS finds a violation for this item in a subsequent inspection, Respondent 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.

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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

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Date Issued