

DECEMBER 5, 2013

Mr. Thomas C. O'Conner
Principal Executive Officer
Texas Eastern Transmission, LP
5400 Westheimer Court
Houston, TX 77056

Re: CPF No. 1-2013-1001

Dear Mr. O'Conner:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a reduced civil penalty of \$87,100, and specifies actions that need to be taken by Texas Eastern Transmission, LP, 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, 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. Byron E. Coy, PE, Director Eastern Region, OPS
Mr. Theopolis Holeman, Texas Eastern Transmission, LP, Group VP, US Operations &
Services

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

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| In the Matter of |) | |
| |) | |
| Texas Eastern Transmission, LP, |) | CPF No. 1-2013-1001 |
| |) | |
| Respondent. |) | |
| |) | |

FINAL ORDER

During the week of August 22, 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 Texas Eastern Transmission, LP (TETCO or Respondent), in the Armagh/Lilly area of Pennsylvania. TETCO, an indirect, wholly-owned subsidiary of Spectra Energy Transmission, LLC (Spectra), is primarily engaged in the interstate transportation of natural gas, operating over 9,200 miles of transmission pipelines from the Gulf Coast to the Northeast United States.¹

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated January 8, 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 TETCO had violated 49 C.F.R. §§ 192.605(a), 192.745(a), and 192.465(d) and proposed assessing a civil penalty of \$95,500 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct one of the alleged violations.

Spectra, on behalf of TETCO, responded to the Notice by letter dated February 8, 2013 (Response). The company contested certain allegations, offered additional information in response to the Notice, and requested that the proposed civil penalty be reduced or eliminated. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 192, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.605(a), which states:

¹ Spectra Energy website, *available at* <http://www.spectraenergy.com/Operations/US-Natural-Gas-Pipelines/> (last accessed September 11, 2013).

§ 192.605 Procedural manual for operations, maintenance and emergencies.

(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. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

The Notice alleged that Respondent violated 49 C.F.R. § 192.605(a) by failing to follow its own manual of written procedures for monitoring atmospheric corrosion of acoustically insulated pipe. Specifically, the Notice alleged that TETCO failed to follow its written procedure *2-5020, Atmospheric Pipe Inspection*, which required the company to pay particular attention to piping under acoustic insulation. In this instance, it was alleged that TETCO had failed, since 2007, to inspect a section of insulated piping located at the Armagh and Lilly compression stations and had failed to install inspection ports to allow visual inspection of the pipeline.

TETCO did not dispute the alleged violation but, rather, claimed it was duplicative of the allegations contained in an earlier enforcement action, CPF No. 4-2012-1009. TETCO asserted that either the violation should be withdrawn or the proposed corrective action order modified to reflect that TETCO had already complied with the terms of the proposed Compliance Order. In CPF No. 4-2012-1009, TETCO had been cited for failing to properly inspect insulated piping located at its Atlanta Compressor Station, in violation of its procedure *2-5000*. In the present case, TETCO has been cited for failing to inspect insulated piping at the Armagh and Lilly compressor stations, in Pennsylvania, in violation of a different procedure, *2-5020*. Each violation was found by different inspectors, in different regions, on different days, and involved different procedures.

Having reviewed the allegations contained in both cases, I find they are not duplicative in nature. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.605(a) by failing to follow its own manual of written procedures for monitoring atmospheric corrosion, which required the company to pay particular attention to piping under acoustic insulation.

TETCO also raised the issue of whether the terms of the proposed compliance order are duplicative of the compliance order issued in CPF No. 4-2012-1009. This will be discussed in the Compliance Order section below.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.745(a), which states:

§ 192.745 Valve maintenance: Transmission lines.

(a) Each transmission line valve that might be required during any

emergency must be inspected and partially operated at intervals not exceeding 15 months, but at least once each calendar year.

The Notice alleged that Respondent violated 49 C.F.R. § 192.745(a) by failing to partially operate certain transmission line valves that might be required in an emergency during annual inspections. Specifically, the Notice alleged that, based upon PHMSA's review of the company's Valve Maintenance Records from 2007 to 2010 and discussions with the operator during the inspection, TETCO failed to properly operate 11 transmission valves during the company's annual inspections.

Respondent contests this allegation of violation on two grounds. First, TETCO asserts that seven of the valves were improperly classified as emergency valves. Those valves are: ARMA-RSC-2, ARMA-RSC-5, 12-305, ARMA-AN-1, ARMA-AN-2, ARMA-DP-2, and ARMA-PT-1. Second, TETCO contends that the four remaining valves were in fact operated within the required timeframes under § 192.745(a).

TETCO has provided evidence supporting its characterization of seven of the valves as "non-emergency" valves. Having reviewed the information provided, I agree that seven of the referenced valves are not emergency valves and therefore did not require inspection under § 192.745(a). To the extent that this may impact the proposed penalty, this will be discussed in the Assessment of Penalty section below.

Additionally, TETCO has provided documentation to demonstrate that three of the remaining four emergency valves were partially operated each year, pursuant to § 192.745(a):

- Exhibit B and C of TETCO's Response provide evidence that valve #27-505 was operated in 2008 and 2009. TETCO failed to provide any evidence that it properly operated valve #27-505 in 2010;
- Exhibit D of TETCO's Response provides evidence that valve #12-50 was operated on June 5 and 18, 2009; and
- Exhibit E & F of TETCO'S Response provides evidence that valve #AMRA-SBD-1 was operated on 4/4/2009 and 10/12/09.

TETCO offered no evidence that valve #19-516 was operated in 2009; it merely makes an unsubstantiated claim that its employee operated the valve during an annual inspection within the relevant time period. Such a claim is insufficient to establish that the valve was properly operated. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.745(a) on two occasions: first, by failing to operate emergency valve #27-505 in 2010 and, second, by failing to operate valve #19-516 in 2009.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 192.465(d), which states:

§ 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 Respondent violated 49 C.F.R. § 192.465(d) by failing to take prompt remedial action to correct a deficiency indicated by the company's cathodic protection (CP) monitoring program. Specifically, the Notice alleged that from July 14, 2008, until August 8, 2011, TETCO failed to take any action to remediate low-voltage readings on a valve emerging from the ground in the compressor room of the Lilly Compressor Station (i.e., test point 34). The Notice alleged that the failure to take such a reading violated TETCO's own procedures, which required that remedial action be initiated prior to the next scheduled survey on July 27, 2009.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.465(d) by failing to take prompt remedial action to correct a deficiency indicated by its CP monitoring program.

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. 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 \$95,500 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$12,500 for Respondent's violation of 49 C.F.R. § 192.605(a), for failing to follow its own manual of written procedures for monitoring atmospheric corrosion of acoustically insulated pipe. As discussed above, TETCO did not contest the violation, but contended that the penalty should be reduced or stricken as duplicative of the penalty assessed in NOPV No. 4-2012-1009. For the reasons previously stated, I do not believe that Item 1 is duplicative of the violation assessed in NOPV No. 4-2012-1009. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$12,500 for violation of 49 C.F.R. § 192.605(a)

Item 2: The Notice proposed a civil penalty of \$49,300 for Respondent's violation of 49 C.F.R. § 192.745(a), for failing to partially operate 11 transmission valves that might be required during an emergency. As noted above, TETCO provided evidence that seven of the

valves had been misclassified by PHMSA and should not have been considered when calculating the penalty. Additionally, TETCO was able to demonstrate that of the four remaining valves, two of them were properly tested. Therefore, I have reduced the penalty to the amount that would have been proposed for two, as opposed to eleven, violations.² Based upon the foregoing, I assess Respondent a reduced civil penalty of \$40,900 for violation of 49 C.F.R. § 192.745.

Item 3: The Notice proposed a civil penalty of \$33,700 for Respondent's violation of 49 C.F.R. § 192.465(d), for failing to take prompt remedial action to correct a deficiency indicated by its CP monitoring. While TETCO did not contest the allegation of violation, it did request a penalty reduction on the grounds that the gravity determination and culpability ascribed to the company in the Violation Report were incorrect.³ Specifically, TETCO contended that the gravity and culpability determinations should be modified because, although there were CP readings that normally required remedial action, the company believed there was never any real potential for harm. According to TETCO, this was because the pipe was located inside a compressor building, the reading taken in 2011 was satisfactory, and the low readings were from a gate valve set in crushed stone, which was not a sufficient medium for CP effectiveness or measurement.

The Violation Report noted that “[p]ipeline integrity or safe operation was potentially compromised in a populated area...”⁴ The location of the facility is not in dispute, nor the fact that safety was potentially compromised by the low reading. The CP readings themselves are not in dispute. The fact that TETCO took no action to determine the cause of the improper readings prior to PHMSA's inspection is also not in dispute. Following receipt of the Notice, TETCO fashions an explanation as to why the CP readings were low, but cannot refute the fact that it took no *action* to verify why they were low, as required by the regulation.

TETCO also attempts to have the penalty reduced because no accident occurred. However, the fact that there was no accident was already considered in proposing the penalty. In fact, had an accident occurred, the “gravity” finding and penalty would have been adjusted upward. Therefore, I find that the “gravity” finding was appropriate in this instance.

Furthermore, I find no basis to reduce TETCO's culpability in this instance. “[A]n operator will generally be considered culpable for any failure to comply with the requirements absent some justification for the failure, such as an unforeseeable event outside of its control.”⁵ Again, TETCO has provided no explanation as to why it failed to take prompt action to remediate, or even investigate, the deficient CP readings, which was required not only by its own procedures but by § 192.465(d) as well.

Accordingly, having reviewed the record and considered the assessment criteria, I assess

² When a civil penalty is assessed for more than one instance of a violation (e.g., 11 valve inspections), the additional instances typically elevate the total penalty by less than the amount assessed for the first instance.

³ Pipeline Safety Violation Report (Violation Report), January 8, 2013, at 7.

⁴ Violation Report, at 18.

⁵ *White Cliffs Pipeline, LLC*, Final Order, C.P.F. No. 3-2011-5015, 2013 WL 1247518. (February 5, 2012).

Respondent a civil penalty of \$33,700 for violation of 49 C.F.R. § 192.465(d).

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 **\$87,100**.

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 (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 1 in the Notice for violation of 49 C.F.R. § 192.605. 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.

Having reviewed the terms of the proposed compliance order for this action and that of NOPV No. 4-2012-1009, I agree with Respondent and find that the two are duplicative. TETCO has already been ordered to:

Survey all applicable insulated segments of its pipeline facilities throughout its pipeline system to ensure they are protected from atmospheric corrosion under thermal insulation. Based on this review and survey, develop and follow a plan, process, and procedure to ensure that the inspection, testing, and monitoring of pipe coating under thermal insulation are performed in a manner consistent with 49 C.P.R. § 195.481(b). (emphasis added).

The Director of the Southern Region has indicated that Respondent has taken the following actions to address some of the cited violations in CPF No. 4-2012-1009:

Surveyed all applicable insulated segments of its pipeline facilities throughout its pipeline system ensuring they are protected from atmospheric corrosion under thermal insulation. Developed and followed a plan, process, and procedure to ensure that the inspection, testing, and monitoring of pipe coating under thermal insulation are performed in a manner consistent with 49 C.P.R. § 195.481(b).

Having completed a survey of its entire insulated pipeline system, TETCO does not now need to survey the Armagh and Lilly compressor stations again for corrosion. Accordingly, I find that compliance has been achieved with respect to this violation. Therefore, the compliance terms proposed in the Notice for Item 1 is not included in this Order.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order [CPF No. 1-2013-1001]. 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.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued