

JUL 26 2010

Mr. Robert O. Bond
President
Florida Gas Transmission Company
5444 Westheimer Road
Houston, TX 77056-5306

RE: CPF No. 2-2008-1003

Dear Mr. Bond:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$50,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. 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. Jerry Rau, Director of Pipeline Integrity, Florida Gas Transmission
Mr. Wayne Lemoi, Director, Southern Region, PHMSA

CERTIFIED MAIL - RETURN RECEIPT REQUESTED[7005 1160 0001 0039 0737]

**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. 2-2008-1003
)	
Respondent.)	
)	

FINAL ORDER

Between September 18 and December 8, 2006, 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 inspection of the natural gas pipeline facilities of Florida Gas Transmission Company (FGT or Respondent) in central and south Florida and examined FGT records in the company's Maitland, Florida office. FGT, a Southern Union/El Paso affiliate, operates approximately 5,000 miles of natural gas pipelines from Texas to South Florida.

As a result of the inspection, the Director, Southern Region, OPS (Director), issued to Respondent, by letter dated February 13, 2008, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that FGT had committed certain violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$50,000 for the alleged violations. The Notice also proposed finding that Respondent had committed certain other probable violations of 49 C.F.R. Part 192 and warning Respondent to take appropriate corrective action or be subject to future enforcement action.

FGT responded to the Notice by letter dated March 20, 2008 (Response). Respondent contested one of the alleged violations, provided information to explain its actions regarding the others, 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

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.619, which states, in relevant part:

§ 192.619 Maximum allowable operating pressure: Steel or plastic pipelines.

(a) Except as provided in paragraph (c) of this section, no person may operate a segment of steel or plastic pipeline at a pressure that exceeds the lowest of the following:

- (1) The design pressure of the weakest element in the segment
- (2) The pressure obtained by dividing the pressure to which the segment was tested after construction as follows
- (3) The highest actual operating pressure to which the segment was subjected . . .
- (4) The pressure determined by the operator to be the maximum safe pressure after considering the history of the segment, particularly known corrosion and the applicable operating pressure.

(c) . . . An operator must still comply with § 192.611.¹

In addition, prior to April 14, 2006, 49 C.F.R. § 192.619(c) stated in relevant part:

(c) Notwithstanding the other requirements of this section, an operator may operate a segment of pipeline . . . subject to the requirements of § 192.611.

The Notice alleged that Respondent violated 49 C.F.R. § 192.619 by exceeding the maximum allowable operating pressure (MAOP) of a pipeline segment as established under 49 C.F.R. § 192.611.² In particular, the Notice stated that a review of FGT's reports for abnormal operations showed that on at least four occasions between October 23, 2004, and April 28, 2006, Respondent operated a 1.9-mile 20" pipeline segment immediately upstream of a compressor station in excess of 780 psig, the MAOP of the line as established under § 192.611. 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. § 192.619 by exceeding the MAOP of a pipeline segment, as established under 49 C.F.R. § 192.611.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 192.709(c), which states:

§ 192.709 Transmission lines: Record keeping.

Each operator shall maintain the following records for transmission lines for the periods specified:...

(c) A record of each patrol, survey, inspection, and test required by subparts L and M of this part must be retained for at least 5 years or until the next patrol, survey, inspection, or test is completed, whichever is longer.

¹ Effective December 22, 2008, PHMSA issued a final rule that amended 49 C.F.R. § 192.619 by adding paragraph (d) and revising the text of paragraph (a) accordingly. The amendment did not affect the substantive violation at issue in this Item.

² Section 192.611 prescribes the requirements for confirming or revising the MAOP of a pipeline in the event of a change in the surrounding class location.

The Notice alleged that Respondent violated 49 C.F.R. § 192.709(c) by failing to maintain a record of the patrols, surveys, inspections, and tests performed pursuant to 49 C.F.R. §§ 192.706, 192.731, 192.736, 192.739, and 192.745. Five instances were cited where the company allegedly failed to maintain proper records.

First, the Notice alleged that Respondent failed to maintain the proper records for the semi-annual leak surveys it conducted on two transmission lines in Class 3 locations, i.e., the Lake City Lateral and the Gainesville Lateral, as required by 49 C.F.R. § 192.706(a). Specifically, the Notice alleged that FGT's records from the leak surveys conducted on May 30 and October 31, 2005, and May 25, 2006, on the Lake City Lateral and on May 12, 2004, and May 9 and November 8, 2005, on the Gainesville Lateral did not contain any information on the type of equipment used to conduct those surveys. In addition, the Notice alleged that leak survey records for the Lake City Lateral did not reflect the start and endpoints of the Class 3 pipe surveyed.

Second, the Notice alleged that Respondent failed to maintain the proper records for certain tests performed pursuant to 49 C.F.R. § 192.731. Specifically, it alleged that FGT's records from the March 14, 2005 and March 23, 2006 high-discharge pressure shutdown tests conducted at Compressor Station 21 (West Palm Beach) did not contain the observed test pressures.

Third, the Notice alleged that Respondent failed to maintain the proper records for the gas detection and alarm tests it conducted pursuant to 49 C.F.R. § 192.736. In particular, the Notice alleged that FGT's records from the January 10, January 13, and August 30, 2006 tests performed on the audio and visual gas detection alarm devices at the Lecanto, Silver Springs, and Orland Compressor Stations lacked documentation of the performance of the lights and horns.

Fourth, the Notice alleged that Respondent failed to maintain the proper records for the annual inspections and tests it performed on certain pressure limiting and regulating stations, as required by 49 C.F.R. § 192.739. Specifically, the Notice alleged that records of the inspection conducted on January 18, 2006, at the Starke Meter regulator and of the inspection conducted on November 2, 2005, at the PGS-Jacksonville Meter Station relief valve #1 did not reflect the before ("as found") and after ("as left") device readings. In addition, the Notice alleged that the records from Respondent's station control panel test reports for Compressor Station 20 (Fort Pierce), conducted on March 28, 2005, and January 24, 2006, did not reflect the values of the high- and low-pressure setpoints for the opening and closing of Valve 2001.

Fifth, the Notice alleged that Respondent failed to maintain the proper records for the annual emergency operations valve inspections it conducted pursuant to 49 C.F.R. § 192.745. Specifically, it alleged that records from the 2004-2006 inspections conducted by the Brooker and Silver Springs teams did not reflect whether the valves were actually operated during those inspections.

In its Response, FGT provided an explanation for each of these alleged violations. The company contended, as it had during the inspection, that its personnel had performed the tests or other actions required for compliance, but that certain errors and omissions had occurred when FGT personnel entered the data into its recordkeeping system. Respondent also stated that it was

implementing a new record system, known as Enterprise Asset Management, which would prevent personnel from completing reports without including all of the required information.

Respondent's argument that it had performed the requisite tests and inspections but failed to record the results in a manner that provided complete information is unpersuasive. The alleged violations involved a failure to maintain adequate records, not a failure to perform the tests. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 709(c) by failing to properly maintain records of each patrol, survey, inspection, and test performed pursuant to 49 C.F.R. §§ 192.706, 192.731, 192.736, 192.739, and 192.745.

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 a 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 \$50,000 for violations of 49 C.F.R. Part 192.

Item 2: The Notice proposed a civil penalty of \$40,000 for Respondent's violation of 49 C.F.R. § 192.619(a), for exceeding the MAOP for its pipeline on October 23, 2004, August 31, 2005, September 4, 2005, and April 28, 2006. As noted above, Respondent did not contest these allegations. It argued, however, that the penalty should be reduced or eliminated because (1) the over-pressure events arose from a "breakdown in communications" among company personnel regarding company policy, (2) the pipeline's integrity was never threatened "since the pressure never exceeded the MAOP by 10%," and (3) FGT had taken measures following the inspection to prevent a recurrence of such events in the future.³

I reject Respondent's arguments for mitigation of the penalty. First, the cited over-pressure events reduced the effective safety margin for operating the system, as follows:

- On October 23, 2004, a leaking valve caused the pressure in the affected pipe segment to exceed MAOP for between two and four consecutive hours, reaching a maximum pressure of 789 psig. Responsible personnel were not timely notified about the high segment pressure, and the situation was not discovered or abated until field personnel brought the compressor station back online;

³ Response, at 1, 3.

- On August 31, 2005, a leaking valve caused the MAOP for the segment to be exceeded for seven consecutive one-hour periods, reaching a maximum pressure of 792 psig;
- On September 4, 2005, the MAOP for the segment was exceeded for nine consecutive one-hour periods, reaching a maximum pressure of 799 psig. FGT did not immediately reduce the pressure, choosing instead to wait for the initiation of operations at a nearby power plant to accomplish that objective; and
- On the morning of April 28, 2006, FGT's Gas Control reported excess pressure in the line to the on-call field operator, requiring the release of gas into the atmosphere. A subsequent investigation revealed that a blown fuse in the station control panel had resulted in a valve failure. Archived pressure data indicated a maximum segment pressure of 800.7 psig during the 2:00 a.m. hour, with steadily increasing maximum hourly pressures through the 6:00 a.m. hour, to a peak of 842.3 psig. Segment pressure exceeded MAOP during five consecutive one-hour periods on the date in question.

In its Response, FGT admitted that it had exceeded the MAOP for the segment in question and that these four events arose from an internal breakdown in communications regarding company policy. The company did not explain what sort of "breakdown" had occurred or why. I fail to see why poor communications among company personnel should serve to mitigate the proposed penalty since it is the obligation of all operators to ensure that its employees understand and follow regulations designed to prevent or minimize over-pressure events.

Second, the fact that these particular over-pressure events may not have caused pressure to rise in excess of 110% of MAOP is irrelevant. The repeated operation of a gas transmission pipeline in excess of MAOP reduces the effective safety margin that is designed into the system and can lead to accidents. Therefore, I find that the gravity of the violation supports the proposed penalty.

Third, I reject the argument that FGT's post-inspection efforts to educate its personnel on MAOP requirements should somehow constitute a basis for reducing or eliminating the proposed penalty. While such efforts are laudable, they are ones that would be expected of any prudent and reasonable operator in light of such violations.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$40,000 for violation of 49 C.F.R. § 192.619(a).

Item 3: The Notice proposed a civil penalty of \$10,000 for Respondent's violation of 49 C.F.R. § 192.709(c), for failing to properly maintain records of patrols, surveys, inspections, and tests required under subpart M. Respondent offered an explanation and requested a reduction of the proposed civil penalty. Although the failure to record adequate information in the test and inspection records resulted from a poorly designed record keeping system, this does not serve to reduce the gravity of the violation. Missing or incomplete test and inspection records constitutes a serious violation because, in the absence of complete and reliable records, neither a pipeline operator nor PHMSA can properly evaluate and monitor the effectiveness of an operator's safety program. Inadequate records maintenance creates questions as to whether or not Respondent has

adequately performed maintenance tests or inspections and whether or not its safety equipment is set to function as required. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000 for violation of 49 C.F.R. § 192.709(c).

In summary, having reviewed the record and considered the assessment criteria for the violations discussed above, I assess Respondent a total civil penalty of **\$50,000**. A determination has been made that Respondent has the ability to pay the total civil penalty without adversely affecting its ability to continue business.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment 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, OK 73125. The Financial Division's telephone number is (405) 954-8893.

Failure to pay the \$50,000 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.

WARNING ITEM

With respect to Item 1, the Notice alleged a probable violation of Part 192 but did not propose a civil penalty or compliance order for this item. Therefore, this is considered to be a warning item. The warning was for:

49 C.F.R. § 192.605(a) (**Item 1**) – Respondent's alleged failure to follow its manual in determining the odorant injection rate at the Lecanto 30" West Leg odorant injection station.

FGT presented information in its Response showing that it had taken certain actions to address this item. In particular, Respondent had implemented new procedures and a new records system, Enterprise Asset Management, to prevent reoccurrences of this violation in the future. Having considered such information, I find that a probable violation of 49 C.F.R. § 192.605(a) had occurred as of the date of the inspection. FGT is hereby advised to review and correct such conditions. In the event OPS finds a violation of this item in a subsequent inspection, FGT may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent has the 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 the 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 but does not stay any other provisions of the Final Order, including any required corrective actions. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

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