



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

400 Seventh Street, S W
Washington, D C 20590

DEC 15 2005

Mr Thomas M Mathews
Chairman and Chief Executive Officer
Link Energy LLC
2000 W Sam Houston Pkwy S Ste 300
Houston, TX 77042-3627

Re. CPF No. 4-2005-5013

Dear Mr. Mathews:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes a finding 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. Your receipt of the Final Order constitutes service under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

cc. Mr. Troy E Valenzuela
Vice President of EH&S
Plains Pipeline L P.
333 Clay St Ste 1600
Houston, TX 77002-4101

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590**

In the Matter of)

Link Energy LLC,)

Respondent)

CPF No. 4-2005-5013

FINAL ORDER

On March 17, 2004, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) conducted an investigation of a pipeline failure reported by Link Energy on the 10-inch Red River hazardous liquids pipeline in Texas. As a result of the inspection, on March 31, 2005, the Director, Southwest Region, OPS, issued to Plains Pipeline L.P., the current operator of the Red River pipeline, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Plains Pipeline had violated 49 C.F.R. § 195.571 and proposed assessing a civil penalty of \$50,000 for the alleged violation.

Plains Pipeline responded on April 28, 2005 and explained that pursuant to a purchase and sale agreement with Link Energy, “Link retained responsibility for any fines, penalties, or sanctions imposed by any governmental authority for pre-closing (i.e. April 1, 2004) action by Link.”¹ Although Link Energy was not initially named as a party in the Notice, Link Energy responded to the Notice by letter dated June 20, 2005. Link Energy agreed that under the sale agreement “Link would arguably be responsible for any potential penalty arising out of this matter.”²

On August 9, 2005, OPS issued an Amended Notice of Probable Violation and Proposed Civil Penalty in order to make Link Energy a party to this enforcement action. Link Energy (hereafter “Respondent”) responded by letter dated September 29, 2005, provided an update on spill remediation efforts, and incorporated by reference prior submissions dated April 28, 2005 and June 20, 2005. Respondent contested the allegation of violation and requested that the proposed civil penalty be reduced or eliminated. Respondent and Plains Pipeline did not request a hearing, and therefore have waived their right to one.

¹ Plains Pipeline response dated April 28, 2005, page 1 (parenthetical in original)

² Link Energy response dated June 20, 2005, page 1

FINDING OF VIOLATION

Section 195.571 of Title 49 of the Code of Federal Regulation requires that cathodic protection comply with one or more of the applicable criteria and other considerations for cathodic protection contained in paragraphs 6.2 and 6.3 of NACE Standard RP0169-96 (incorporated by reference) to protect steel pipelines from external corrosion. The Notice alleged Respondent maintained cathodic protection on the Red River Pipeline that did not comply with the applicable criteria.

On March 10, 2004, the Red River Pipeline failed due to external corrosion, causing the release of approximately 350 barrels (approximately 14,700 gallons) of crude petroleum in a rural area 20 miles east of Snyder, Texas.³ OPS and Respondent personnel conducted a field inspection shortly after the failure. The OPS inspector observed external corrosion on the pipe at the site of the perforation. OPS and Respondent measured pipe-to-soil potentials on the pipeline and found that the failure site and multiple locations nearby did not meet the applicable -0.850v criterion for adequate cathodic protection. The Notice alleged Respondent subsequently performed a close-interval survey and found a few locations in the vicinity of the failure that did not meet either the -0.850v or the 100mV criteria. Based on the cause of the failure (external corrosion) and survey records demonstrating inadequate cathodic protection, the Notice alleged that the pipeline did not have adequate cathodic protection in accordance with 49 C.F.R. § 195 571

In Respondent's response dated June 20, 2005, Respondent acknowledged that the initial field inspection indicated three locations that did not meet the -0.850v criterion⁴ However, according to Respondent, a subsequent close-interval survey demonstrated that the pipeline was adequately protected Respondent explained the results of the close-interval survey, which indicated that the leak site and one other location within 8,400 feet upstream of the leak site did not comply with either the -0.850v or the 100mV criteria⁵ Respondent did not find any locations within 1,245 feet downstream of the leak site that did not comply. Respondent concluded these findings demonstrated adequate levels of cathodic protection on the pipeline in the vicinity of the failure

Respondent also contended that it acted as a "reasonable and prudent" operator by installing test stations at sufficient intervals, conducting annual surveys, and taking necessary corrective action to achieve compliance.⁶ These actions alone, however, do not necessarily demonstrate compliance with § 195.571. Annual monitoring surveys may demonstrate cathodic protection adequacy at test station locations, but might not detect below-criteria levels between test stations Although Respondent correctly argued that regulations do not explicitly require close-interval surveys annually to demonstrate compliance, 49 C.F.R. § 195.573(a) does require Respondent to identify circumstances in which close-interval surveys are necessary to determine cathodic protection adequacy. Ultimately, these issues are separate from the violation alleged in the Notice, which is whether or not Respondent complied with 49 C.F.R. § 195.571 by maintaining cathodic protection in accordance with the applicable criteria

³ See Accident Report No 20040091--2397 (form 7000-1) filed April 12, 2004

⁴ Link Energy response dated June 20, 2005, page 3.

⁵ *Id*

⁶ *Id* at 3-4

The record shows that while most of the pipeline had adequate cathodic protection in the vicinity of the failure site, several specific locations including the failure site itself were not adequately protected. Respondent acknowledged in its response dated June 20, 2005 that both the initial field survey and subsequent close-interval survey show cathodic protection at the failure site and at least one other location did not comply with either the -0.850v or 100mV criteria in accordance with 49 C.F.R. § 195.571. In addition, the OPS inspector observed external corrosion at the failure site and Respondent noted in its Accident Report filed April 12, 2004, that the primary cause of the accident was external corrosion (localized pitting). The evidence demonstrates that Respondent maintained cathodic protection that did not comply with the applicable criteria at the failure site and at least one other location. Accordingly, I find Respondent violated § 195.571 as alleged in the Notice.

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. The Notice proposed a total civil penalty of \$50,000 for the violation.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

Respondent explained that it acted in good faith to achieve compliance by conducting annual cathodic protection surveys and by taking necessary corrective action when problems were identified. For example, Respondent's predecessor installed additional ground beds when a survey performed in 2001 indicated several locations that did not comply with the -0.850v potential criterion. Respondent also provided an account of its remediation efforts since the release. Respondent has spent considerable resources performing soil and groundwater remediation and monitoring and has confirmed that the impacted area has been returned to its pre-release state.

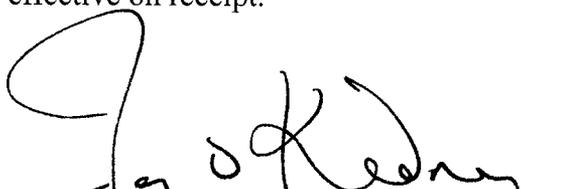
Respondent's good faith efforts to achieve compliance and post-accident remediation efforts are recognized; however, I find those actions do not justify reducing the proposed civil penalty. Respondent failed to maintain adequate cathodic protection in violation of 49 C.F.R. § 195.571. Inadequate cathodic protection is known to lead to external corrosion on steel pipelines and left unabated, external corrosion can cause pipeline failures that release hazardous liquids into the environment, as occurred on the Red River Pipeline. The release of crude petroleum presents an overwhelming danger to public safety and the environment. Accordingly, the gravity of this violation is significant.

Having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$50,000. Respondent has the ability to pay this penalty without adversely affecting its ability to continue in 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-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-4719.

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 United States District Court.

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 filing of the petition automatically stays the payment of any civil penalty assessed. However if Respondent submits payment for the civil penalty, the Final Order becomes the final administrative action and the right to petition for reconsideration is waived. The terms and conditions of this Final Order are effective on receipt.



Stacey Gerard
Associate Administrator
for Pipeline Safety

for

DEC 15 2005

Date Issued