

December 19, 2022

VIA ELECTRONIC MAIL: stan.horton@bwpipelines.com

Mr. Stanley Horton
President and Chief Executive Officer
Boardwalk Pipeline Partners, LP
9 Greenway Plaza, Suite 2800
Houston, Texas 77046

Re: CPF No. 4-2021-015-NOPV

Dear Mr. Horton:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws one Item and its associated compliance order, makes a finding of violation as to the remaining Item, withdraws the associated compliance order item, and assesses a civil penalty of \$38,000 to Gulf South Pipeline Company, LLC. 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 e-mail is effective upon the date of transmission and acknowledgement of receipt as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Bryan Lethcoe, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. Tony G. Rizk, P.E., Vice President, Technical Services, Boardwalk Pipelines
Partners, LP, tony.rizk@bwpipelines.com
Ms. Tina Baker, Manager, Compliance Services, Boardwalk Pipelines Partners, LP,
tina.baker@bwpipelines.com

CONFIRMATION OF 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)

Gulf South Pipeline Company, LLC,)
a subsidiary of Boardwalk Pipeline Partners, LP,)

Respondent.)
_____)

CPF No. 4-2021-015-NOPV

FINAL ORDER

From November 20, 2019, through October 25, 2020, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), inspected the newly constructed Willis Lateral Pipeline of Gulf South Pipeline Company, LLC (Gulf South or Respondent), a subsidiary of Boardwalk Pipeline Partners, LP. The Willis Lateral Pipeline traverses from San Jacinto County to Montgomery County, Texas.

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated November 2, 2021, 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 Gulf South committed two violations of 49 C.F.R. part 192, proposed assessing a civil penalty of \$38,000 for the alleged violations, and proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice also included an additional two warning items pursuant to 49 C.F.R. § 190.205, which warned the operator to correct the probable violations or face possible future enforcement action

On November 17, 2021, Gulf South requested an extension of time to respond to the Notice. Respondent's request was granted. Gulf South responded to the Notice by letter dated December 14, 2021 (Response). Respondent contested two of the allegations, offered additional information in response to the Notice, requested that the proposed civil penalty be reduced, and asked that the proposed compliance order (PCO) for Item 3 be withdrawn and the PCO for Item 4 be amended if not withdrawn. 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 3: The Notice alleged that Respondent violated 49 C.F.R. § 192.179(b)(1), which states:

§ 192.179 Transmission line valves.

(a)

(b) Each sectionalizing block valve on a transmission line, other than offshore segments, must comply with the following:

(1) The valve and the operating device to open or close the valve must be readily accessible and protected from tampering and damage.

The Notice alleged that Respondent violated 49 C.F.R. § 192.179(b)(1) by failing to protect valves from tampering and damage at two separate valve site locations: the Willis Lateral Line Origination Station and the Willis Lateral Line Terminus Station. Specifically, the Notice alleged that PHMSA found the main gate to the Willis Lateral Line Origination Station did not have locks. The Notice also alleged that PHMSA identified an “emergency valve” at the Willis Lateral Line Terminus Station that was accessible by an opening in the fencing surrounding the interconnect pipeline area.

In its Response, Respondent argued that Item 3 must be withdrawn because “OPS fail[ed] to establish that the valves and the operating devices to open or close the valves are not protected from tampering and damage.”¹ Respondent contended that the Origination Station and the Terminus Station are both at least partially enclosed by perimeter fencing and that the valves within those enclosures were secured with chains and locks. Respondent further contended that “PHMSA has previously found that locks provide protection from tampering.”² Respondent also argued that “OPS also [did] not explain why the lack of a lock on the main gate or a hole in the fencing undermines the stated purpose of fencing to alert others to the presence of the valves at the stations so as to prevent damage.”³

After considering all of the evidence and the legal issues presented, I withdraw the allegation of violation. PHMSA has previously found that valves secured by chains with locks provide sufficient protection from tampering.⁴ In this case, the evidence shows that the valves at both stations were secured by chains with locks. There is no evidence that these measures failed to provide sufficient protection from tampering. The evidence also shows that there was fencing around the stations, but that the gates were not locked and there were gaps in the fencing. While the evidence shows the fences were not fully secure, it does not show how the fencing was not

¹ Gulf South Pipeline Company, LLC, CPF No. 4-2021-015-NOPV Written Response to Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order, dated December 14, 2021 (hereinafter “Response”) (on file with PHMSA), at 6.

² Response, *supra*, at 6.

³ *Id.*

⁴ See Honeoye Storage Corp., Warning Letter, CPF No. 1-2012-0002W, dated April 2, 2011; Williams Gas Pipeline Co., LLC, Final Order, CPF No. 4-2010-1002, dated August 23, 2010; Alyeska Pipeline Service Co., Decision on Petition for Reconsideration, CPF No. 5-2000-5006, dated June 23, 2004.

sufficient to protect the valves from damage. Accordingly, I withdraw this allegation of violation.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 192.805(b), which states:

§ 192.805(b) Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

- (a)
- (b) Ensure through evaluation that individuals performing covered tasks are qualified;

The Notice alleged that Respondent violated 49 C.F.R. § 192.805(b) by failing to ensure through evaluation that individuals performing a covered task on its pipeline are qualified. Specifically, the Notice alleged that Gulf South failed to ensure that Entergy Texas, Inc. (Entergy)'s third-party contractor, McDermott International, Ltd. (McDermott), was qualified, per its Operator Qualification Program⁵ (OQ Plan), when performing the covered task of making an interconnection between Gulf South's Willis Lateral Pipeline and Entergy's Montgomery County Power Station's gas supply line in Montgomery County, Texas, on August 3, 2020. Gulf South and Entergy had an interconnection agreement for this work.⁶ Respondent, in its Response, conceded that the interconnect work at issue is a covered task.

In its Response, Respondent argued it was not required to ensure through evaluation that the individuals performing the interconnection are qualified, as required by § 192.805(b), because there was a qualified employee with "full stop work authority" observing Entergy's contractor connect the insulating flange to Gulf South's pipeline. Respondent contended that this was consistent with § 192.805(c).

Per § 192.805, each operator shall have and follow a written qualification program. Section 192.805(b) requires that the written qualification program include provisions to "ensure that individuals performing covered tasks are qualified." Section 192.805(c) "allow[s] individuals that are not qualified pursuant to [subpart N] to perform a covered task if directed and observed by an individual that is qualified." Respondent's OQ Plan states that personnel are required to ensure that contractors and entities performing covered tasks on its facilities are qualified.⁷ The OQ Plan requires Gulf South to "notify [the] contractor of the covered tasks that will be performed by the contractor."⁸ It also specifically requires that Gulf South "[s]ecure from the contractor or VeriSource documentation (in paper form) required to ensure that the contractor's employees that will be performing the covered task(s) is qualified under this OQ Program to

⁵ *Boardwalk Pipelines, Operator Qualification Program*, Version 5.50, Effective Date 4/1/2020. See Pipeline Safety Violation Report, CPF 4-2021-015-NOPV, Exhibit C-15.

⁶ Pipeline Safety Violation Report, CPF 4-2021-015-NOPV, Exhibit C-13.

⁷ Violation Report, Exhibit C-3, at page 5.

⁸ Violation Report, Exhibit C-15, at pages 17 and 18.

perform the covered task(s).”⁹ The OQ Plan also states that the operator must “[e]nsure documentation is maintained for all contractors performing covered tasks.”¹⁰

The record shows that Respondent did not comply with the regulations or its OQ Plan. Gulf South was unable to provide any OQ records for personnel who performed the covered task to show it complied with § 192.805(b). The record also shows that Respondent did not maintain documentation showing McDermott personnel were qualified in accordance with its OQ Plan. Respondent also failed to notify the contractor of the covered tasks that would be performed in compliance with its OQ Plan. Further, Respondent could not show that it reviewed the Entergy OQ Plan before the covered tasks were performed. Accordingly, I find Respondent failed to show that it took steps to ensure the individuals performing the covered task on its pipeline were qualified per § 192.805(b) or that it followed its own OQ Plan, which required Respondent to maintain documentation showing individuals performing covered tasks were qualified.

I find that Respondent also did not comport with § 192.805(c) or its own OQ Plan that requires a qualified individual to “remain in a position where they can direct and observe the performance of the covered task at all times” if non-qualified personnel are utilized to perform covered tasks.¹¹ The record shows Respondent did not “direct and observe” the personnel who performed the covered task at issue.¹² During the PHMSA inspection, the Boardwalk Manager of Compliance provided a written statement that detailed the following:

Boardwalk’s (BWP) employee, Alan Pearson, was using his OQ and experience to ensure [Entergy’s] contractor was installing to industry standards and BWP’s requirements outlined in the ICA Agreement and Specifications and would have shut down work if a safety issue was to arise or if he felt that the work was not being done correctly. As previously stated, BWP will have an experienced employee on site to oversee any work that may affect its facilities. We would not allow a connection to our facility without a BWP representative present. *He was not directing [Entergy’s] contractor nor was he providing span of control.*¹³ (Emphasis Added).

This written statement shows that covered Gulf South personnel were not “directing and observing” the covered task which was being performed by an individual that Respondent did not know was qualified or not. Respondent, therefore, does not meet the requirements of § 192.805(c) or Respondent’s own OQ Plan.

In its Response, Respondent further argued it was in compliance with its OQ Plan because the OQ Plan states: “Individuals included in the program are employees, contractors and all others

⁹ *Id.*

¹⁰ *Id.*

¹¹ Violation Report, Exhibit C-15, at page 35.

¹² Violation Report, Exhibit C-12.

¹³ Violation Report, Exhibit C-12.

who may perform covered tasks on regulated facilities (unless they are specifically exempted by the applicable regulation) operated by Boardwalk.”¹⁴ I do not find this argument persuasive because this provision does not alter the fact that no qualified employee was directing and observing the unqualified individual who performed the covered task, in accordance with § 192.805(c) and Gulf South’s OQ Plan.

Accordingly, after considering all of the evidence and the legal issues presented, I find that Respondent violated 49 C.F.R. § 191.805(b) by failing to ensure through evaluation that individuals performing a covered task on its pipeline were qualified per the OQ Plan.

This finding of violation will be considered a prior offense 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 \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.¹⁵

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; any effect that the penalty may have on its ability to continue doing business; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. 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 \$38,000 for the violations cited above.

Item 4: The Notice proposed a civil penalty of \$38,000 for Respondent’s violation of 49 C.F.R. § 192.805(b), for failing to ensure through evaluation that individuals performing covered tasks are qualified. In its Response, Respondent argued that if Item 4 is not withdrawn the civil penalty should be reduced. Respondent asserted that the Violation Report overstates the potential safety risk in the Gravity section because Gulf South followed § 192.805(c), which permits a non-qualified individual to perform a covered task if directed and observed by a qualified individual. Respondent also argued that because it complied with § 192.805(c) the statement under the Culpability section, that Respondent “failed to comply with an applicable requirement,” is without support. Finally, Gulf South argued that the statement in the Good Faith section of the Violation Report that Respondent did not have a reasonable justification for non-compliance fails to account for its compliance with § 192.805(c).

Respondent’s arguments for a civil penalty reduction are, essentially, that it was in compliance

¹⁴ Violation Report, Exhibit C-3, at page 6.

¹⁵ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223 for adjusted amounts.

with § 192.805(c). For the reasons described under the Findings of Violation section above, I found that Respondent violated both 49 C.F.R. §§ 192.805(b) and (c). Therefore, no penalty reduction is warranted.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$38,000** for violation of 49 C.F.R. § 192.805(b).

Payment of the civil penalty must be made within 20 days after receipt of this Final Order. 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 \$38,000 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 3 and 4 for violations of 49 C.F.R. §§ 192.179(b)(1) and 192.805(b), respectively. 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.

With regard to the violation of § 192.179(b)(1) (Item 3), Respondent argued the compliance terms should be withdrawn. For the reasons described in the Findings of Violation section above, I have withdrawn the allegation of violation for Item 3. Accordingly, I hereby withdraw the associated compliance order for this Item.

With regard to the violation of § 192.805(b) (Item 4), Respondent argued that the proposed compliance terms, as written, are “overbroad and inconsistent with § 192.805(c).” Specifically, Gulf South requested that, if the underlying violation is not withdrawn, the language be amended to “state that any third-party entity or its contractors are covered under the Boardwalk OQ...to permit Gulf South to direct and observe third-party entities and their contractors when they perform a covered task on Gulf South’s facilities.” I agree.

For the reasons stated above, Respondent failed to comply with § 192.805(b) and its OQ plan. However, the terms of the proposed compliance order for Item 4 are not necessary and are inconsistent with § 192.805(c). Respondent’s OQ Plan states that personnel are required to

ensure that contractors and entities performing covered tasks on its facilities are qualified.¹⁶ The OQ Plan requires Gulf South to “notify [the] contractor of the covered tasks that will be performed by the contractor.”¹⁷ Gulf South’s OQ Plan requires it to “[s]ecure from the contractor or VeriSource documentation (in paper form) required to ensure that the contractor’s employees that will be performing the covered task(s) is qualified under this OQ Program to perform the covered task(s),”¹⁸ and such documentation must be “maintained for all contractors performing covered tasks.”¹⁹ Furthermore, Respondent’s OQ Plan requires a qualified individual to “remain in a position where they can direct and observe the performance of the covered task at all times” if non-qualified personnel are utilized to perform covered tasks.²⁰ While Respondent failed to follow its OQ Plan, the provisions as written appear to be consistent with §§ 192.805(b) and (c). Further, the proposed compliance order requiring modification to Gulf South’s OQ Plan “to state that any third-party entity or its contractors are covered under its OQ Plan” could actually result in changes to the procedures that would not be consistent with the provisions in §192.805(c). For this reason, the Proposed Compliance Order item for the violation of Item 4 is withdrawn.

WARNING ITEMS

With respect to Items 1 and 2, the Notice alleged probable violations of Part 192, but identified them as warning items pursuant to § 190.205. The warnings were for:

49 C.F.R. § 192.605(a) (**Item 1**) — Respondent’s alleged failure to follow *Boardwalk Pipelines, Operations and Maintenance Manual: Natural Gas, Pipeline Operations, Section 2180-Prevention of Accidental Ignition (Effective Date 12/20/2019; Revision Date 7/20/2020)* as it relates to fire extinguishers at its facilities; and

49 C.F.R. § 192.605(a) (**Item 2**) — Respondent’s alleged failure to follow *Boardwalk Pipelines, Operations and Maintenance Manual: Natural Gas, Pipeline Operations, Section 2180-Prevention of Accidental Ignition (Effective Date 12/20/2019; Revision Date 7/20/2020)* as it relates to warning signage at its facilities.

If OPS finds a violation of any of these items 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, Office of Pipeline Safety, PHMSA, 1200 New Jersey

¹⁶ Violation Report, Exhibit C-3, at page 5.

¹⁷ Violation Report, Exhibit C-15, at pages 17 and 18.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*, at page 35.

Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. The written petition must be received no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted 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. 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.

December 19, 2022

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued