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U.S. Department of Transportation

**Research and
Special Programs
Administration**

400 Seventh Street, S W Washington, D C 20590

November 4, 1996

Mr. Charles Stevens
Vice President, Transmission Operations
Arkansas Western Gas Company
P.O. Box 1408
Fayetteville, Arkansas 72702

Re: CPF No. 23104

Dear Mr. Stevens:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes a finding of violation, a finding of inadequate procedures, requires corrective action with respect to the procedures, and withdraws an alleged violation. The Final Order also withdraws the proposed civil penalty in its entirety. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. ~ 190.5.

Sincerely,

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

_____)
In the Matter of)
Arkansas Western Gas Company, Respondent.)
_____)

CPF 23104

FINAL ORDER

On September 27 - 28, 1993, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's facilities and records in Blytheville, Arkansas. As a result of the inspection, the Director, Southern Region, OPS issued to Respondent, by letter dated November 22, 1993, a Notice of Probable Violation and Proposed Civil Penalty (Notice) . In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§ 192.467 and 192.745, and proposed assessing a civil penalty of \$8,500 for the alleged violations. The Notice also alleged other inadequacies for which no sanction was proposed (i.e., warning items)

Respondent responded to the Notice by letter dated December 6, 1993 (Response) . Respondent offered information to explain the alleged violations in the Notice and requested dismissal of the proposed civil penalty. Respondent did not request a hearing and therefore has waived its right to one.

FINDING OF VIOLATION

Item 1 in the Notice alleged that Respondent had violated 49 C.F.R. § 192.467 in that it lacked procedures to assure the electrical isolation of casings. Respondent indicated that its Operations and Maintenance Plan did not contain written procedures on shorted casings because it was not aware that there was a regulatory requirement for such records. According to Respondent, prior inspections did not reveal that the violation existed. Respondent also explained it had misinterpreted the regulation.

The fact that Respondent may not have been cited in the past or that it had misinterpreted the regulation does not negate the fact that a violation exists. Respondent offers no reason that either of these situations excuses the violation. Furthermore, OPS has no affirmative duty to identify and cite an operator for all violations that exist at the time of each inspection of a pipeline facility. If violations are noted in subsequent inspections, there is no bar to holding an operator liable for those violations. Accordingly, I find that Respondent violated 49 C.F.R. § 192.467 by failing to keep written procedures on electrical isolation.

This finding of violation will be considered as a prior offense in any subsequent enforcement action taken against Respondent.

WITHDRAWAL OF ALLEGATIONS

Item 6 in the Notice alleged that Respondent had violated 49 C.F.R. § 192.745, by failing to inspect and partially operate each transmission line valve that might be required during any emergency at intervals not exceeding 15 months, but at least once each calendar year. In its Response, Respondent submitted information demonstrating that the valves had been inspected but that the information was inadvertently not entered in the valve records book. Because the valves were inspected and the results of the inspection were in fact entered in a separate log book, this allegation of violation is withdrawn. Respondent has indicated that record of these inspections will be maintained in the valve records book.

Item 4 in the Notice alleged that Respondent had failed to establish written procedures to minimize the hazard resulting from a gas pipeline emergency, as required by 49 C.F.R. § 192.615(a). Item 5 alleged that Respondent had failed to establish procedures for analyzing accidents and failures, as required by 49 C.F.R. § 192.617. In its Response, Respondent submitted information demonstrating that its existing plan meets the requirements of §§ 192.615(a) and 192.617. Therefore, these warning items are withdrawn.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to a civil penalty not to exceed \$25,000 per violation for each day of the violation up to a maximum of \$500,000 for any related series of violations. Section 60122 of 49 U.S.C. 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. Based upon the withdrawal of Item 6 in the Notice (49 C.F.R. § 192.745), the satisfactory nature of the revised shorted casings procedures submitted by the operator, the corrective actions taken with respect to the warning items, and the positive compliance attitude exhibited by the operator, I find that the imposition of a penalty in this case is not warranted.

AMENDMENT OF PROCEDURES

Notwithstanding my decision not to assess a penalty for Item 1, the failure to have written procedures is an inadequacy in Respondent's Operations and Maintenance Plan. In its Response, Respondent agreed that its plan requires amendment, and indicated that it has instructed its personnel to take casing-to-soil readings on all casings on its pipeline. Accordingly, I hereby order Respondent to submit copies of the revisions to its Operations and Maintenance Plan to the Director, Southern Region, OPS within 30 days of receipt of this order. The Director may extend this time in response to a written request.

WARNING ITEMS

The Notice did not propose a civil penalty with respect to Items 2 and 3. The information that Respondent presented in its Response shows that Respondent has addressed the cited items. Should similar violations come to the attention of OPS in a subsequent inspection, enforcement action will be taken.

Under 49 C.F.R. § 190.215, Respondent has a right to 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). In accordance with 49 C.F.R. § 190.215(d), filing the petition does

not stay the effectiveness of this Final Order. However, in the petition Respondent may request, with explanation, that the Final Order be stayed. The terms and conditions of this Final Order are effective upon receipt.

Richard B. Felder
Associate Administrator
For Pipeline Safety
Date Issued: November 4, 1996