

Mr. Robert Fukai  
Vice President of Operations  
Washington Water Power  
East 1411 Mission  
Spokane, WA 99220

Re: CPF No. 52012

Dear Mr. Fukai:

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

Based on the recommendation of the Director, Western Region, OPS, this case will close within 20 days of your receipt of this Final Order unless you file a petition for reconsideration. No further enforcement action is contemplated with respect to the matters involved in the case. Thank you for your cooperation in our joint effort to ensure public safety.

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

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In the Matter of )  
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Washington Water Power, ) CPF No. 52012  
)  
Respondent. )  
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FINAL ORDER

On June 8-11, 1992, 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 Bonners Ferry, Sandpoint, and Coeur d'Alene, Idaho, and in Spokane, Washington. As a result of the inspection, the Director, Western Region, OPS, issued to Respondent, by letter dated June 25, 1992, 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 Respondent had violated 49 C.F.R. §§ 192.13(c); 192.465(a); 192.603(b); 192.615(a)(4); 192.615(a)(5); and 192.739 and proposed assessing a civil penalty of \$30,500 for the alleged violations. The Notice also proposed that Respondent take certain measures to correct the alleged violations.

Respondent responded to the Notice by letter dated July 20, 1992 (Response). Respondent did not contest the allegations of violation but requested that the proposed civil penalty be recategorized to a compliance order and that Respondent be allowed to apply the proposed civil penalty amount of \$ 30,500 toward implementation of corrective action. In a meeting that took place with Deborah Martin, Manager of Gas Engineering, on August 13, 1992, Respondent was advised that it is not OPS policy to allow a proposed civil penalty to be applied to an operator's implementation of corrective action.

Respondent did not request a hearing and, therefore, has waived its right to one.

FINDINGS OF VIOLATION

Respondent did not contest the alleged violations in the Notice. Accordingly, I find that Respondent violated the following sections of 49 C.F.R. Part 192, as more fully described in the Notice:

- 49 C.F.R. § 192.13(c) -- failing to maintain, modify as appropriate, and follow the plans, procedures, and programs that it is required to establish under the federal regulations;
- 49 C.F.R. § 192.465(a) -- failing to survey separately protected service lines on a 10% sampling basis;
- 49 C.F.R. § 192.603(b) -- failing to establish written operating and maintenance plans that meet the requirements for 49 C.F.R. §§ 192.475(b) and 192.751;
- 49 C.F.R. § 192.615(a)(4) -- failing to establish written procedures that, at a minimum, provide for the availability of personnel, equipment, tools and materials as needed at the scene of an emergency to minimize the hazard resulting from a gas pipeline emergency;
- 49 C.F.R. § 192.615(a)(5) -- failing to establish written procedures that, at a minimum, provide for actions toward protecting people first and then property to minimize the hazard resulting from a gas pipeline emergency;
- 49 C.F.R. § 192.739 -- failing to inspect and test each pressure limiting station, relief device, and pressure regulating station and its equipment at intervals not exceeding 15 months, but at least once each calendar year.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

At the time the Notice was issued, under 49 U.S.C. § 60122, Respondent was subject to a civil penalty not to exceed \$10,000 per violation for each day of the violation up to a maximum of \$500,000 for any related series of violations.

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 has requested that the proposed civil penalty be recategorized to a compliance order and that Respondent be allowed to apply the proposed penalty amount of \$30,500 toward implementation of corrective action. Allowing Respondent to recategorize the penalty in this way would defeat the purpose of the civil penalty program. As an operator of a pipeline for the transportation of gas, Respondent is already required to comply with the minimum safety standards contained in part 192 of Title 49 of the Code of Federal Regulations. An operator may not profit from its failure to comply by using a penalty assessment to pay for compliance measures that it was previously obligated to implement.

Nevertheless, Respondent has demonstrated good faith in attempting to achieve compliance. Following receipt of the Notice, Respondent revised its procedures per the terms of the proposed compliance order. The Western Regional Director, OPS, has accepted these measures as adequate.

The circumstances of the case further support mitigating the penalty amount. At the time of the 1992 inspection, Washington state was not certified to enforce the pipeline safety standards. Thus, the safety standards were being enforced in that state by the OPS Western Region. Since that time, however, Washington has renewed its certification and is once again responsible for enforcing the pipeline safety standards in the state.

Based on Respondent's good faith and the fact that Respondent is now under the jurisdiction of a state agency, complete mitigation of the penalty is appropriate. Accordingly, having reviewed the record and considered the assessment criteria, I rescind the proposed penalty amount and do not assess Respondent a civil penalty.

COMPLIANCE ORDER

The Notice proposed a compliance order. Respondent has demonstrated corrective action addressing the items in the proposed compliance order. The Director, Western Region, OPS, has accepted these measures as adequately fulfilling the requirements of the regulations and no further action is needed with respect to a compliance order.

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 the Final Order and must contain a brief statement of the issue(s). The terms of the order, including any required corrective action, shall remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective upon receipt.

/s/Richard B. Felder

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Richard B. Felder  
Associate Administrator for  
Pipeline Safety

Date Issued: \_\_10/20/97\_\_\_\_\_