

FILE



APR 17 AM 1:04

U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

APR 10 2006

Mr Greg P Bilinski
Vice President Transmission
Duke Energy Gas Transmission
5400 Westheimer Court
P O Box 1642
Houston, Texas 77251

RE CPF No 1-2002-3001

Dear Mr Bilinski

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It withdraws two of the allegations of violation, makes findings of violation and assesses a civil penalty of \$11,600. 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 of that document under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

| | | |
|-------------------------------|---|---------------------|
| In the Matter of |) | |
| Duke Energy Gas Transmission, |) | CPF No. 1-2002-3001 |
| Respondent. |) | |

FINAL ORDER

On November 5-9, 2001, a representative of the Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's facilities and records at the Algonquin LNG, Inc , plant located at 121 Terminal Road, Providence, Rhode Island. As a result of the inspection, the Director, Eastern Region, OPS, issued to Respondent, by letter dated April 29, 2002, a Notice of Probable Violation and Proposed Civil Penalty (Notice)¹. In accordance with 49 C F R § 190.207, the Notice proposed finding that Respondent had violated 49 C F R §§ 193.2603, 193.2637, 193.2717, and 193.2917 and proposed assessing a civil penalty of \$45,000 for the alleged violations.

Respondent responded to the Notice by letter dated May 16, 2002 (Response). Respondent contested the allegations and requested a hearing. By letter dated July 26, 2002 Respondent sent a "Statement of Issues for Hearing." The hearing was held on August 21, 2002, in Washington, D C. A representative from the Rhode Island Public Utility Commission (PUC), which inspects Respondent's facility on OPS' behalf pursuant to interstate agent certification, attended the hearing. Respondent filed a "Post-Hearing Closing Argument" dated October 8, 2002.

FINDINGS OF VIOLATION

Item 1 in the Notice alleged that Respondent had violated 49 C F R § 193.2603, which states that "[e]ach component in service, including its support system, must be maintained in a condition that is compatible with its operational or safety purpose by repair, replacement, or other means." The Notice alleged that Respondent used an air supply pressure gauge that was not maintained in a satisfactory operable condition because it was observed to be reading over scale. The gauge was a diaphragm-type gauge manufactured by Ashcroft (Gauge 1).

¹This case, however, is no longer before RSPA for decision. Effective February 20, 2005, the Pipeline and Hazardous Materials Safety Administration (PHMSA) was created to further the highest degree of safety in pipeline transportation and hazardous materials transportation. See, section 108 of the Norman Y. Mineta Research and Special Programs Improvement Act (Public Law 108-426, 118 Stat. 2423-2429 (November 30, 2004)). See also, 70 Fed. Reg. 8299 (February 18, 2005) re-delegating the pipeline safety functions to the Administrator, PHMSA.

There was no dispute that, at the time of the inspection, the needle of Gauge 1 was in the 6 o'clock position and reading beyond the printed scale on the face of the gauge. Respondent contended that Gauge 1, although reading beyond the printed scale, was not over pressured because it was built to withstand pressures up to 25 pounds. Respondent further contended that Respondent only used Gauge 1 to see how much "instrument air" pressure was going to pressure control valve PCVTL-3. The air pressure went into the "valve operator" which opened or closed the valve. Gauge 1 showed that the valve was fully open, which would allow Respondent to offload gas from an LNG truck. Respondent stated that the same information, that is, whether the valve was open or closed, could be gotten from a visual observation of the valve stem, which was physically located approximately 7 to 8 feet away from Gauge 1. Respondent characterized Gauge 1 variously as a "reference gauge," "not critical," "ancillary" and "for operator convenience."

In its arguments, Respondent relied on the definition of "component" in 49 C.F.R. § 193.2007, which states

Component means any part, or system of parts functioning as a unit, including, but not limited to, piping, processing equipment, containers, control devices, impounding systems, lighting, security devices, fire control equipment, and communication equipment, whose integrity or reliability is necessary to maintain safety in controlling, processing, or containing a hazardous fluid [Italics in original.]

Respondent contended that Gauge 1's integrity or reliability was not necessary to maintain safety in controlling, processing or containing a hazardous fluid.

OPS noted that the term "component" includes control devices, and that § 193.2603 applies not only to components, but to component support systems. According to OPS, Gauge 1 was mounted on a regulator and valve operator and all made part of PCVTL-3. Gauge 1 was a valve position indicator gauge that was an integral part of the support system of PCVTL-3. Testimony at the hearing revealed that the use of this pressure control valve is directly related to the loading and unloading of the LNG trucks and is specifically referenced in the plant procedures.

Respondent contended that it did not "rely" on Gauge 1, and would use the valve stem position indicator as the ultimate verification as to whether the valve was open or closed. Notwithstanding Respondent's contention, however, it was clear from the testimony that Gauge 1 was referred to frequently. The valve stem, though in proximity, is, according to OPS, under some piping and not as easily viewed. I find that Gauge 1 was a part of the PCVTL-3 support system and also a "component" within the meaning of § 193.2007.

Respondent provided Ashcroft literature pertaining to Gauge 1. That information shows the basic operating range of the gauge as between 0 to 100%. The information includes the following warning: "All gauge components should be selected considering the medium operating conditions to prevent misapplication. Improper application can be detrimental to the gauge, and can cause failure and possible personal injury or property damage." Respondent, in its Closing Argument,

argued that the photograph presented by OPS showed Gauge 1 to be reading beyond its printed scale to a point at which it is approximately 115% of range and that this point on the scale represents a pressure of about 17 psi. Respondent further argued that this means that the gauge in question was only operating at 77% of its proof pressure and at 17% of its burst pressure.

Respondent's argument fails for two reasons. First, Respondent's calculations are based on a guess as to what the position of the pointer meant. Respondent assumes Gauge 1 is reading "approximately 115% of range." There was no more "scale" to be read under the gauge pointer, however, and no assurance that positions beyond the scale are proportionate.

Secondly, the issue is whether Gauge 1 was maintained in a condition compatible with its operational or safety purpose, not whether it can withstand extreme pressures. OPS contended that because the needle of Gauge 1 was not situated within the printed 0 to 100% scale for at least 10 minutes at the time of the inspection, the accuracy of Gauge 1 was compromised.

At the hearing Respondent stated that Gauge 1 had been installed approximately 5 months prior to the OPS inspection. Respondent described the way Gauge 1 worked: an employee would turn a dial sufficient to allow enough instrument air to the "valve operator" to open the valve. Respondent suggested an employee might turn the dial such that the face of the gauge registered beyond the marked 100% point to be sure that PCVTL-3 would fully open. Testimony at the hearing indicated it was not uncommon for employees to dial in pressures past the 100% mark. Respondent contended that even so, the capacity and operating parameters of Gauge 1 were not exceeded. According to OPS, however, in so doing, Respondent was not using the gauge in a manner compatible with its intended operational purpose. A product information sheet for Ashcroft gauges indicated that the maximum continuous pressure a gauge should be subjected to is 75% of the gauge range (scale) as specified in ASME B40.1. I find that Respondent did not maintain Gauge 1 in a condition compatible with its operational purpose. Accordingly, I find that Respondent violated § 193.2603.

Item 2 in the Notice alleged that Respondent had violated 49 C.F.R. § 193.2637, which requires prompt corrective action whenever an operator learns that corrosion is not controlled as required by Subpart G (entitled "Maintenance") of the regulations. The Notice alleged that three gauges were severely corroded and appeared inoperative. One was an air supply gauge mounted on a regulator that showed air pressure going from the regulator to two pressure transmitters ("Gauge 2"). Another was an air supply pressure gauge located on a back-up truck skid monitor ("Gauge 3"). The third was a nitrogen pressure supply gauge ("Gauge 4"). In its Response, Respondent contended that OPS had not determined whether the gauges were in fact inoperative. After the hearing, but prior to the issuance of this Order, OPS withdrew its allegation of violation. Therefore, I am withdrawing this allegation and make no determination on the alleged violation of 49 C.F.R. § 193.2637.

Item 3 in the Notice alleged that Respondent had violated 49 C.F.R. § 193.2717(b) by failing to conduct fire drills. Compliance with paragraph (b) requires reference to paragraph (a) of this section, which makes reference to some regulations, such as § 193.2805, that are no longer in effect because they have been "removed and reserved" (see 65 FR 10950, 10960, March 1, 2000). I am therefore withdrawing this allegation of violation.

Item 4 in the Notice alleged that Respondent failed to have adequate warning signs on its perimeter fence in violation of 49 C.F.R. § 193.2917(a), as the existing warning signs on the perimeter fence located along the public entrance road to the plant were faded and illegible even during daylight hours. At the hearing, Respondent conceded that some signs on the perimeter fence were faded. Respondent stated, however, that OPS did not include in its photographs of the fence other signs in the vicinity that were present and legible. OPS suggested and Respondent agreed that OPS would go out and take additional photographs of the public road approach to the plant. OPS, with the assistance of the Rhode Island Department of Public Utilities, did so on October 29, 2002. Respondent declined to be present when the pictures were taken. These photographs showed that Respondent's legible signs, for example, its logo sign and "Private Property" sign, were not located near its faded warning sign.

The Notice also alleged that there were no warning signs on the perimeter fence located between the plant and an adjoining property, that of Providence Gas Company, for an approximate linear distance of 350 feet. In its Closing Argument, Respondent stated that the Providence Gas Company is surrounded by "an 8-foot fence topped with barbed wire" and that the fence "is not a way 'reasonably used to approach the enclosure.'" Respondent referenced notes by its Plant Manager in 1997 indicating that a Rhode Island PUC inspector was going to "check into the need for [Respondent] to install fence warning signs on the shared fence between this facility and Providence Gas Co." When the manager received the PUC checklist report indicating compliance with § 193.2917 was satisfactory, Respondent considered the matter settled.

Respondent submitted one OPS and seven Rhode Island PUC inspection reports for inspections conducted between 1988 and 1999. The reports showed an "S" for satisfactory in the "Subpart J-Security" section, "Warning signs" category. No inspection was conducted in 2000.

A finding of "satisfactory" in the "Warning signs" category in prior years does not mandate such a finding for 2001. In this case, a change in circumstances warranted action on the part of the facility operator. Respondent was aware that the Providence Gas facility had been sold, that it was undergoing environmental remediation for hazardous waste contamination, and that many subcontractors were coming and going from the site. It wasn't clear whether Providence Gas facility personnel were providing 24-hour surveillance at the site. Respondent stated at the hearing that it did not object to OPS' requiring signs because of changed circumstances, it did object to the civil penalty in the Notice because of an alleged "different interpretation" of the regulation by OPS.

Respondent is not prejudiced because OPS did not spell out the above information in the Violation Report. As was noted at the hearing, § 193.2509(a) requires an operator to determine the types and places of emergencies other than fires that may reasonably be expected to occur at an LNG plant due to activities adjacent to the plant.

The Notice also alleged that one warning sign was observed to be installed upside down. As Respondent correctly pointed out, however, the upside down sign was a company logo sign, and not a warning sign. Accordingly, I find Respondent violated § 193.2917(a) as to the faded warning signs and the lack of a sign on the fence adjoining the Providence Gas property.

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.

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.

The Notice proposed a total civil penalty of \$45,000 for the four violations. The Notice in **Item 2** proposed a civil penalty of \$10,000 for violation of 49 C.F.R. § 193.2637, in not promptly taking action to correct corrosion on three other gauges. This allegation of violation was withdrawn. Therefore, I find the proposed civil penalty is withdrawn.

With respect to **Item 3** of the Notice, because I have withdrawn the allegation of violation of § 193.2717(b) regarding fire drills, and its associated penalty of \$20,000, the total proposed civil penalty is now \$15,000.

The remaining violations, regarding maintenance, corrosion and security, are not of the sort that would immediately lead to an incident. The penalties associated with those violations are proportionate to the danger posed by the violations.

The Notice in **Item 1** proposed a civil penalty of \$5,000 for violation of 49 C.F.R. § 193.2603, as Respondent failed to maintain a gauge in a condition compatible with its operational purpose. Gauge 1 was a part of the PCVTL-3 support system and also a "component" within the meaning of § 193.2007. Respondent has not shown any circumstance that would justify reduction or elimination of the proposed civil penalty. Subjecting equipment to operational conditions outside of its intended design range significantly compromises the reliability of the equipment to perform its intended function accurately. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$5,000, for violation of § 193.2603.

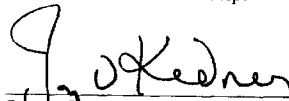
The Notice in **Item 4** proposed a civil penalty of \$10,000 for violation of § 193 2917, failing to place warning signs, recognizable at night, along the perimeter fence Respondent was also found to have a sign that was installed upside-down However, the sign was a logo sign and not a warning sign As to the other instances of violation, faded and illegible signs on the perimeter fence, and lack of signage on the fence adjoining the Providence Gas facility Illegible and incorrectly installed warning signs can significantly increase the risk of property trespass by outside parties unaware of the dangers associated with the operation of a LNG facility Accordingly, having reviewed the record and considered the assessment criteria, the penalty is reduced proportionately and I assess Respondent a civil penalty of \$6,600, for violation of 49 C F R § 193 2917

A determination has been made that Respondent has the ability to pay this penalty without adversely affecting its ability to continue in business Accordingly, having reviewed the record and considered the assessment criteria, I assess respondent a total of \$11,600

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-300), Federal Aviation Administration, Mike Monroney Aeronautical Center, P O Box 25082, Oklahoma City, OK 73125, (405) 954-8893

Failure to pay the \$11,600 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 petition for reconsideration of this Final Order However, if the civil penalty is paid, the case closes automatically and Respondent waives the right to petition for reconsideration The filing of the petition automatically stays the payment of any civil penalty assessed 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 terms and conditions of this Final Order are effective on receipt

for


 Stacey Gerard
 Associate Administrator
 for Pipeline Safety

APR 10 2006

 Date Issued