



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

AUG 18 2005

Timothy Kelley
Vice President, Regulatory Services
Total Peaking Services
Southern Connecticut Gas Company
855 Main Street
Bridgeport, Connecticut 06604

Re: CPF No. 1-2005-3003

Dear Mr. Kelley:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$30,000. 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 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, DC 20590

In the Matter of)
)
Total Peaking Services,)
)
Respondent.)
_____)

CPF No. 1-2005-3003

FINAL ORDER

Between August 23 and September 8, 2004, pursuant 49 U.S.C. § 60117, a representative of the State of Connecticut Department of Public Utility Control, as agent for the Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's facilities and records of the TPS LNG facility in Milford, Connecticut. As a result of the inspection, the Director, Eastern Region, OPS, issued to Respondent, by letter dated March 7, 2005, a Notice of Probable Violation and Proposed Civil Penalty. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. § 193.2619 and proposed assessing a civil penalty of \$45,000 for the alleged violation.

Respondent responded to the Notice by letter dated May 10, 2005 (Response). Respondent did not contest the allegations of violation but offered an explanation and requested that the proposed civil penalty be reduced. Respondent did not request a hearing, and therefore has waived its right to one.

FINDINGS OF VIOLATION

In its Response, Respondent did not contest the alleged violation in the Notice. Accordingly, I find that Respondent violated the following section of 49 C.F.R. Part 193, as more fully described in the Notice:

49 C.F.R. § 193.2619 – failing to test its low-temperature shutoff controllers at the three vaporizer outlets before use each season.

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 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 violation of § 193.2619.

In its Response, Respondent did not contest the violation. However, Respondent did explain that it "did not operate any of the vaporizers during the 2001-02 heating season." (Response, p.2) Therefore, it was not in compliance for only two seasons, not three seasons as alleged in the Notice. Based on this explanation, Respondent requested a reduction in the fine. Id.

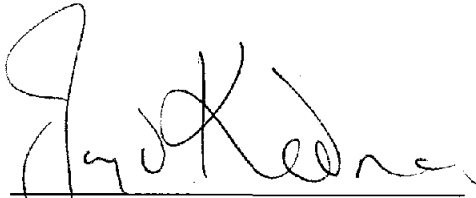
I agree that § 193.2619 requires seasonal testing only if the control system is being used in that season. Accordingly, having reviewed the record, considered the assessment criteria and the new information presented in Respondent's Response to the Notice, I will reduce the civil penalty from \$45,000 to \$30,000.

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) 954-8893.

Failure to pay the \$30,000 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 decision and the right to petition for reconsideration is waived. The terms and conditions of this Final Order are effective on receipt.



for
Stacey L. Gerard
Associate Administrator
for Pipeline Safety

AUG 18 2005

Date Issued