

OCT 13 2011

Mr. Jeff Barger
Vice President, Operations
Dominion Transmission, Inc.
445 West Main Street
Clarksburg, WV 26301

Re: CPF No. 1-2009-1006

Dear Mr. Barger:

Enclosed please find the Decision on the Petition for Reconsideration filed by Dominion Transmission, Inc. in the above-referenced case. For the reasons set forth in the Decision, your petition is denied. When the civil penalty has been paid and the terms of the compliance order have been completed, as determined by the Director, Eastern Region, this enforcement action will be closed. Service of the Decision by certified mail is complete upon mailing as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, Pipeline Safety
Mr. Byron Coy, Director, Eastern Region, PHMSA
Ms. Susan A. Olenchuk, Van Ness Feldman
1050 Thomas Jefferson St., NW, Washington, D.C. 20007

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 1160 0001 0075 9930]

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

_____)	
In the Matter of)	
)	
Dominion Transmission, Inc.,)	CPF No. 1-2009-1006
)	
Petitioner.)	
_____)	

DECISION ON PETITION FOR RECONSIDERATION

On December 30, 2010, pursuant to 49 U.S.C. §§ 60118 and 60122 and 49 C.F.R. § 190.213, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a Final Order in this proceeding finding that Dominion Transmission, Inc. (DTI or Petitioner) committed violations of the gas pipeline safety regulations in 49 C.F.R. Part 192. The Final Order assessed a civil penalty of \$191,500 for the violations, withdrew several allegations, and ordered DTI to take corrective measures to remedy the violations. DTI, a subsidiary of Dominion Resources, Inc., operates approximately 3,700 miles of pipeline that transport primarily natural gas in Pennsylvania, New York, West Virginia, Ohio, Maryland, and Virginia.¹

After receiving an extension of time, DTI submitted a Petition for Reconsideration dated February 23, 2011 (Petition). In its Petition, DTI requested that PHMSA withdraw the finding of violation in Item 5 of the Final Order and the \$27,800 civil penalty associated with that item. Petitioner also sought to clarify several factual statements in the Final Order. In response to additional material submitted for the record and made available to Petitioner by the PHMSA inspector on May 12, 2011, DTI supplemented its Petition by letter dated May 26, 2011 (Supplement).

Pursuant to 49 C.F.R. § 190.215, a respondent may petition PHMSA for reconsideration of a final order issued pursuant to § 190.213. PHMSA does not consider repetitious information or arguments, but may consider additional facts or arguments, provided the respondent submits a valid reason why such information was not presented prior to issuance of the final order. PHMSA may grant or deny, in whole or in part, a petition for reconsideration without further proceedings, but may request additional information, data, and comment as deemed appropriate.

¹ This information is reported by DTI in accordance with 49 C.F.R. §§ 191.17 and 195.49. On its website, the company states that it maintains 7,800 miles of pipeline. <http://www.dom.com/business/gas-transmission/index.jsp> (last visited Aug. 17, 2011).

DTI provided a reason why its Petition contains facts and arguments not presented prior to issuance of the Final Order. Petitioner explained the new facts and arguments concern a regulatory interpretation contained in agency guidance material that the company became aware of only upon issuance of the Final Order. For this reason, I consider the facts and arguments in DTI's Petition.

Item 5: The Final Order determined that DTI violated 49 C.F.R. § 192.743, which states:

§ 192.743 Pressure limiting and regulating stations: Capacity of relief devices.

(a) Pressure relief devices at pressure limiting stations and pressure regulating stations must have sufficient capacity to protect the facilities to which they are connected. Except as provided in § 192.739(b), the capacity must be consistent with the pressure limits of § 192.201(a). This capacity must be determined at intervals not exceeding 15 months, but at least once each calendar year, by testing the devices in place or by review and calculations.

The Final Order found that DTI failed to determine whether two pressure relief devices had sufficient capacity to protect the pipeline facilities to which they were connected. The two pressure relief devices located at the Stateline Compressor Station were identified in the Final Order as a 2-inch relief valve on the LN-16 pipeline and an 8-inch relief valve on the LN-24 pipeline.²

In its Petition, DTI stated that the finding of violation should be withdrawn because § 192.743 does not apply to the two valves under PHMSA's own interpretation of the regulation. Specifically, Petitioner alleged that a guidance document published on the agency's website establishes that only primary over-pressure safety devices are subject to the relief capacity requirement. DTI noted the guidance states with regard to § 192.743 that "[s]et points and capacities of back-up or secondary over-pressure safety devices do not have to meet the code requirements, but the devices must be tested for functionality on an annual basis, not to exceed 15 months."³

DTI explained that both the 2- and 8-inch relief valves are "back-up or secondary over-pressure safety devices." The company noted that the 2-inch valve on the LN-16 pipeline is downstream of primary over-pressure protection provided by a regulator. The 8-inch valve on the LN-24 pipeline is also downstream of three regulators operated in parallel that provide primary over-pressure protection.⁴ Since the regulators serve as primary over-pressure protection devices, Petitioner argued, the two relief valves are back-up or secondary over-pressure protection devices not subject to annual capacity determinations under the agency's interpretation of § 192.743.

² The Final Order withdrew three other alleged violations of § 192.743 after determining the regulation did not apply to those devices. Final Order at 5-6.

³ *Operations and Maintenance Guidance 49 CFR 192 (Subparts L & M)* at 132 (Jul. 18, 2005). This and other guidance is published on the PHMSA website at <http://www.phmsa.dot.gov/foia/e-reading-room>.

⁴ Petition at 4 and Exhibit A, Schematics of Stateline Compressor Station.

Analysis

The issue to be decided is whether PHMSA has interpreted § 192.743 through the guidance document to exclude the types of relief valves in question that are located downstream of a regulator.

The requirement for pipeline operators to have pressure relief devices is derived from several regulations. Section 192.619 establishes the maximum pressure for pipeline segments to be safely operated and, depending on the manner in which that limit was calculated, requires “over-pressure protective devices [to be] installed on the segment in a manner that will prevent the maximum allowable operating pressure from being exceeded, in accordance with § 192.195.”⁵ The purpose of this requirement is to protect pipelines from the risks associated with internal pressures exceeding the safe limit of the pipeline.

Section 192.195(a) specifies that “each pipeline that is connected to a gas source so that the maximum allowable operating pressure could be exceeded as the result of pressure control failure . . . must have pressure relieving or pressure limiting devices that meet the requirements of §§ 192.199 and 192.201.” Likewise, under § 192.201(b) if there is more than one pressure regulating or compressor station feeding into a pipeline, “relief valves or other protective devices must be installed at each station to ensure that the complete failure of the largest capacity regulator or compressor . . . will not impose pressures on any part of the pipeline” higher than permitted. The purpose of these provisions is to reduce the risk of overpressure in pipelines when a pressure control failure occurs, such as the failure of a regulator or compressor. To protect against that risk, §§ 192.195(a) and 192.201(b) require pipelines to have pressure relieving or pressure limiting devices. The devices are in addition to the pressure control provided by the regulator or compressor so that if the pressure control fails, the pipeline is protected by the relieving or limiting devices.

Pressure relieving devices that are installed to protect a pipeline in accordance with these provisions must have capacity that is sufficient to protect the pipeline in the event of an overpressure caused by failure of pressure control. As noted above, § 192.743 requires that operators verify annually that the pressure relief devices have sufficient capacity.

Under a plain reading of these regulations, Petitioner’s 2- and 8-inch relief valves are subject to capacity determinations under § 192.743 because they protect the pipeline facilities to which they are connected from an overpressure if there is a failure of the upstream regulator.

As Petitioner noted, however, PHMSA has stated in an internal agency guidance document that capacities of “back-up or secondary over-pressure safety devices” are not subject to § 192.743.⁶

⁵ § 192.619(b).

⁶ The guidance at issue was developed for internal use by agency personnel during compliance, inspection, and enforcement activities. According to the cover page, it contains agency “techniques” and “procedures” and “is intended to be used solely as a reference by PHMSA personnel.” The guidance notes further that in the event of a conflict between the document and any regulation, the regulation would be controlling.

Petitioner correctly noted that the document does not clarify the meaning of “back-up or secondary” devices and does not explain whether a relief valve downstream of a regulator would be considered a back-up or secondary device. DTI interpreted the guidance to mean that a pressure relief valve downstream of a regulator is a back-up or secondary device because the regulator serves as the primary over-pressure safety device.

After evaluating the regulations enumerated above, I must reject Petitioner’s interpretation of the guidance because it is not consistent with the language and purpose of the safety regulations. Specifically, DTI’s interpretation would conflict with the requirement that operators have a pressure relieving or pressure limiting device to protect the pipeline if the regulator fails. If the relief valves were not required to be checked for sufficient capacity under § 192.743, the pipeline would not be protected against an overpressure caused by failure of the regulator.

The internal guidance document clarifies how the agency intends to enforce this particular regulation, but the guidance must be read so as to be consistent with the language and intent of the regulations. The reference in the guidance to “back-up or secondary over-pressure safety devices,” which “do not have to meet the code requirements” may only refer to pressure relief devices that are not otherwise required to be installed on the pipeline facility for over-pressure protection. For example, if an operator has a relief valve of requisite capacity to protect the pipeline facility in case of a failure of pressure control, the guidance informs agency inspectors that PHMSA does not intend to enforce § 192.743 against additional relief valves the operator chooses to install on the facility that are not otherwise required under Part 192.

This reading of the guidance is consistent with both the language and safety purpose of the regulations enumerated above, as well as the determination in the Final Order that certain other relief devices are not subject to §§ 192.739 or 192.743.⁷ In Items 4 and 5, the Final Order discussed pipeline facilities that had other means of protection, such as a second “monitor” regulator, pilot-operated shutoff valve, or high-pressure shutdown switch. In those situations, the Final Order determined that additional relief valves were not subject to the requirements.⁸

In its Supplement, DTI contended that even if PHMSA determines the relief valves are subject to the regulation, the agency should withdraw the civil penalty because this interpretation is not apparent from the language of the regulation or guidance material. In support of this contention, Petitioner noted that neither the regulation nor the guidance explains the term “secondary.” In addition, DTI contended that it made a reasonable, good-faith interpretation of the regulation and guidance material.⁹ Since regulators are over-pressure safety devices, Petitioner explained, it was reasonable to believe that relief valves downstream of the regulators are secondary over-pressure safety devices. Petitioner requested the civil penalty be withdrawn for these reasons.

⁷ Final Order at 5-6.

⁸ The PHMSA inspector offered a similar reading of the guidance in an e-mail communication with DTI dated March 1, 2011. The communications were submitted for the record by the PHMSA inspector on May 12, 2011.

⁹ Supplement at 1.

The present determination that DTI's 2- and 8-inch relief valves are subject to § 192.743 is based on the language of the overpressure protection regulations, which are not ambiguous in requiring that each pipeline have a relief valve or other safety device of sufficient capacity to protect the pipeline from an overpressure caused by failure of the regulator. DTI's interpretation that the regulation and guidance do not require a safety device of sufficient capacity apart from the regulator is not reasonable because it conflicts with the language of the regulation and would compromise the regulations' safety purpose. There is also no evidence that Petitioner was relying on a good-faith interpretation of the regulation based on the guidance in question when it committed the violations of § 192.743. The company was not aware of the guidance until issuance of the Final Order more than two years after PHMSA identified the violations. For these reasons, there is no justification to reduce or withdraw the civil penalty.

Accordingly, for the above reasons, DTI's petition to withdraw the finding of violation and associated civil penalty for Item 5 of the Final Order is *denied*.

Payment of the \$191,500 civil penalty assessed in the Final Order is now due and must be made within 20 days of receipt of this Decision. 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-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$191,500 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.

Factual Clarifications

In its Petition, DTI requested to clarify certain factual statements in the Final Order. In Item 5 of the Final Order, PHMSA described the Springdale Meter and Regulator (M&R) Station as being protected manually by company personnel rather than the relief device referred to in the Notice of Probable Violation (Notice).¹⁰ Petitioner clarified that overpressure protection at Springdale M&R Station is not achieved by personnel but by a "worker/monitor regulator set," a type of regulator arrangement that involves two separate regulators: one primary (worker) and one secondary (monitor).¹¹

¹⁰ Final Order at 6.

¹¹ Petition at 5. *See also* DTI's Response to the Notice (Response) at 7 (Jul. 29, 2009).

In Item 4 of the Final Order, PHMSA similarly described the fuel gas bypass relief valve at the Stateline Compressor Station as being personally operated by DTI employees.¹² Petitioner clarified that the device is downstream of a worker/monitor regulator set and the location is manned by a DTI employee during inspection and maintenance of the regulator set when the fuel gas run is operating on bypass.¹³ The device itself is not personally operated by the employee. These clarifications are noted for the record.

This Decision on Reconsideration is the final administrative action in this proceeding.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued

¹² Final Order at 5.

¹³ Petition at 5-6. *See also* DTI's Response at 5.