

MAY 29, 2013

Mr. Thomas F. Farrell, II
President
Dominion Resources Services, Inc.
701 East Cary St.
Richmond, VA 23219

Re: CPF No. 1-2012-1013

Dear Mr. Farrell:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws four of the allegations of violation and the proposed compliance order, makes two findings of violation, and assesses a reduced civil penalty of \$33,300. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise 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. Byron E. Coy, Eastern Region Director, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS
Mr. Jeffrey L. Barger, Vice President, Pipeline Operations, Dominion Transmission, Inc.,
445 West Main Street, Clarksburg, WV 26301-2450

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**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. 1-2012-1013
)	
Respondent.)	
)	

FINAL ORDER

On September 22, 2009, and June 22, 2010, pursuant to Chapter 601 of 49 United States Code, inspectors from the West Virginia Public Service Commission (WV PSC), acting as agents for the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an inspection of the Fink Kennedy Storage Field facilities of Dominion Transmission, Inc. (Dominion or Respondent), in West Virginia. Dominion is a subsidiary of Dominion Resources Services, Inc., and operates 7,800 miles of natural gas pipelines in six states — Ohio, West Virginia, Pennsylvania, New York, Maryland and Virginia.¹

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated May 14, 2012, 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 Dominion had violated 49 C.F.R. §§ 192.163, 192.603, and 192.709, and proposed assessing a civil penalty of \$150,800 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

Dominion responded to the Notice by letter dated June 14, 2012 (Response), and by letter dated July 16, 2012 (Supplemental Response). Respondent contested the allegations of violation and provided additional information. Dominion did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 192, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.163(e), which states:

¹ <https://www.dom.com/business/gas-transmission/index.jsp> (last accessed April 15, 2013).

§ 192.163 Compressor stations: Design and construction.

(a) . . .

(e) *Electrical facilities.* Electrical equipment and wiring installed in compressor stations must conform to the National Electrical Code, ANSI/NFPA 70, so far as that code is applicable.

The Notice alleged that Respondent violated 49 C.F.R. § 192.163(e) by failing to install its electrical equipment and wiring in compressor stations in conformance with the National Electrical Code, ANSI/NFPA 70. Specifically, the Notice alleged that Dominion failed to seal the electrical conduits entering the explosion-proof, factory-sealed enclosure for Panel K in the Wolf Run Compressor Station in accordance with the National Electrical Code NFPA 70-2005.

In its Response, Dominion provided additional photographic evidence of the factory-sealed enclosure for Panel K and asserted that upon further review by company personnel, Dominion had determined that the conduits between the “explosion proof and dust proof factory sealed enclosure” and the “explosion proof enclosure” were indeed factory-sealed and that therefore additional seals were not required under the National Electrical Code.²

I agree that the conduits between the enclosures were sealed. The nameplate on that equipment indicates a special design to eliminate the need for a seal between the two enclosures observed by the WV PSC inspector during the inspection. Based upon the foregoing, I hereby order that Item 1 be withdrawn.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.603(b), which states:

§ 192.603 General provisions.

(a) . . .

(b) Each operator shall keep records necessary to administer the procedures established under § 192.605.

The Notice alleged that Respondent violated 49 C.F.R. § 192.603(b) by failing to keep records necessary to administer the operations and maintenance procedures required under § 192.605. Specifically, the Notice alleged that Dominion’s procedures developed pursuant to 49 C.F.R. § 192.731 required the inspection and testing of pressure-relief devices for its compressor stations. During the WV PSC inspection, Dominion was unable to provide records of a commissioning test or initial performance test for the compressor high-pressure shutdown devices, or otherwise document that the test was performed.

In its Response, Dominion provided commissioning test records for three of the four Wolf Run Compressor Station units. Although Dominion could not locate the records for the last compressor unit, Dominion asserted that it was tested like the others.

Section 192.603 requires that Dominion keep all records necessary to administer the procedures established under § 192.605. Dominion’s mere statement that the fourth compressor station unit was tested is insufficient to demonstrate compliance with § 192.603. Accordingly, after

² Response at 3.

considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.603(b) by failing to keep records necessary to administer its operations and maintenance procedures required under § 192.605.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 192.709(c), which states:

§ 192.709 Transmission lines: Record keeping.

Each operator shall maintain the following records for transmission lines for the periods specified:

(a) ...

(c) A record of each patrol, survey, inspection, and test required by subparts L and M of this part must be retained for at least 5 years or until the next patrol, survey, inspection, or test is completed, whichever is longer.

The Notice alleged that Respondent violated 49 C.F.R. § 192.709(c) by failing to maintain a record of each patrol, survey, inspection and test required by subparts L and M of Part 192 for at least five years or until the next patrol, survey, inspection, or test is completed, whichever is longer. Specifically, the Notice alleged that Dominion failed to adequately document the original annual capacity review and the calculated relief capacity for each pressure relief device for Wolf Run Compressor Units 1-4 from 2008 until the date of the inspection, as required under 49 C.F.R. § 192.743(b). The Notice further alleged a repeat violation, as the operator had been found in violation of the same regulation in a previous enforcement action, CPF No. 1-2009-1006.

In its Response, Dominion contested the allegation, asserting that the relief devices in question provided secondary or “back up” overpressure protection and therefore no annual capacity reviews were required. Additionally, Respondent asserted that at the time of the WV PSC inspection, Respondent was still in the process of responding to virtually the same charge in another Notice of Probable Violation stemming from a 2008 Pilot Integrated Inspection and that therefore the allegation should not be characterized as a “repeat” violation.

Respondent’s first argument is essentially the same defense raised by Dominion in a prior enforcement action, CPF No. 1-2009-1006.³ In that case, I rejected Dominion’s assertion that secondary overpressure protection devices are not subject to annual capacity reviews. I found that “secondary” overpressure protection devices are indeed subject to annual capacity reviews if they are otherwise required to be installed on a pipeline for overpressure protection. I find that CPF No. 1-2009-1006 is controlling in this case. Just as in the earlier case, Dominion should have maintained records for the capacity reviews and calculated relief capacity calculations for the pressure-relief devices at the Wolf Run Station.

As for Respondent’s second argument, I agree that since the earlier case was not finalized until October 2011, Item #3 cannot be accurately described as a “repeat” violation. The alleged violation in the second case occurred prior to the final adjudication of the first one, so Dominion

³ *In the Matter of Dominion Transmission, Inc.*, CPF No. 1-2009-1006, Decision on Petition for Reconsideration (October 13, 2011).

cannot reasonably be assessed a higher penalty for ignoring an earlier agency decision involving the same regulation. Because this defense relates to the assessment of a penalty, it is discussed more fully in the Assessment of Penalties section below.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.709(c) by failing to maintain a record of each patrol, survey, inspection and test required by subparts L and M of Part 192 for at least five years or until the next patrol, survey, inspection, or test is completed, whichever is longer.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 192.709(c), as cited above, by failing to maintain a record of each patrol, survey, inspection and test required by Subparts L and M of Part 192 for at least five years or until the next patrol, survey, inspection, or test is completed, whichever is longer. Specifically, the Notice alleged that Dominion failed to produce records of emergency valve inspections and testing for well BW7752 and line H21796, for calendar years 2007 and 2008.

In its Response, Dominion contested the allegation, stating it had in fact produced the records in question during the WV PSC inspection and that no deficiencies had been identified. Dominion provided copies of the records again in its Response. After considering all of the evidence, I find that the records submitted by Dominion in its Response do satisfy the record maintenance requirement for the emergency valve inspections and testing for both well BW7752 and line H21796, for calendar years 2007 and 2008. Accordingly, I hereby order that Item 4 be withdrawn.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 192.163(e), as cited above, by failing to ensure that electrical equipment and wiring installed in its compressor stations conform to the National Electrical Code, ANSI/NFPA 70. Specifically, the Notice alleged that Dominion did not provide any documentation of the ground fault protection performance tests for the electrical components in the Wolf Run Compressor Station.

In its Response, Dominion contended that the applicable provision of the National Electrical Code, ANSI/NFPA 70, Section 230.95, does not cover the electrical facilities at the Wolf Run Compressor Station, as the combined rating of the microturbines is 900 amperes. Under the National Electrical Code, ANSI/NFPA 70, Section 230.95, ground fault protection systems are only required for systems rated for 1,000 amperes or more.

I have reviewed Section 230.95 of the National Electrical Code, *Ground Fault Protection of Equipment*, which provides: “Ground-fault protection of equipment shall be provided for solidly grounded wye electrical services of more than 150 volts to ground, but not exceeding 600 volts phase-to-phase, for each service disconnect rated 1,000 amperes or more.” Respondent’s microturbine facilities, with a combined rating of 900 amperes, do not require ground fault protection. Based upon the foregoing, I hereby order that Item 5 be withdrawn.

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

ASSESSMENT OF PENALTIES

Under 49 U.S.C. § 60122, Respondent is subject to an administrative 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. In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$150,800 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$43,700 for Respondent's violation of 49 C.F.R. § 192.163(e), for failing to install electrical equipment and wiring in compressor stations in conformance with the National Electrical Code, ANSI/NFPA 70. As discussed above, Item 1 is withdrawn. Based upon the foregoing, I withdraw the proposed penalty for violation of 49 C.F.R. § 192.163(e).

Item 2: The Notice proposed a civil penalty of \$21,200 for Respondent's violation of 49 C.F.R. § 192.603(b), for failing to keep records necessary to administer the operations and maintenance procedures required under § 192.605. For the reasons discussed above, I find that Dominion has not demonstrated compliance with § 192.603 simply by stating that it did conduct the proper testing. In its Response, Dominion provided copies of the required records for three of the four units at its Wolf Run Station facility and indicated its "belief" that the remaining unit had also been properly tested. The company asked for a reduced penalty.

Having reviewed the evidence, I find that the proposed penalty for this Item was based upon a single instance of failure to keep proper records and therefore no reduction is warranted for Dominion's partial production of documents. Respondent has not argued that the penalty should be reduced on any other grounds and I find that the proposed amount is justified by the relevant assessment considerations, including the nature, circumstances, and gravity of the violation, and the degree of operator culpability. Based upon the foregoing, I assess Respondent a civil penalty of \$21,200 for violation of 49 C.F.R. § 192.603(b).

Item 3: The Notice proposed a civil penalty of \$37,100 for Respondent's violation of 49 C.F.R. § 192.709(c), for failing to maintain a record of each patrol, survey, inspection and test required by subparts L and M of Part 192 for at least five years or until the next patrol, survey, inspection, or test is completed, whichever is longer. As discussed above, I agree with Respondent's argument that the allegation should not be considered a repeat violation. Dominion filed a Petition for Reconsideration on February 23, 2011, in the first proceeding, CPF No. 1-2009-1006, but a Decision was not issued until October 13, 2011. Since the alleged violation in the instant case occurred between September 2009 and June 2010, it cannot be accurately described as a repeat violation. Therefore, the portion of the penalty attributable to a repeat violation should be eliminated. Based upon the foregoing, I assess Respondent a reduced

civil penalty of \$12,100 for violation of 49 C.F.R. § 192.709(c).

Item 4: The Notice proposed a civil penalty of \$27,600 for Respondent's violation of 49 C.F.R. § 192.709(c), for failing to maintain a record of each patrol, survey, inspection and test required by subparts L and M of Part 192 for at least five years or until the next patrol, survey, inspection, or test is completed, whichever is longer. As discussed above, Item 4 is withdrawn. Based upon the foregoing, I withdraw the proposed penalty for violation of 49 C.F.R. § 192.709(c).

Item 5: The Notice proposed a civil penalty of \$21,200 for Respondent's violation of 49 C.F.R. § 192.163(e), for failing to install its electrical equipment and wiring in compressor stations in conformance with Section 230.95 9 of the National Electrical Code, ANSI/NFPA 70. As discussed above, Item 5 is withdrawn. Based upon the foregoing, I withdraw the proposed penalty for violation of 49 C.F.R. § 192.163(e).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$33,300**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to 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, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$33,300 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 district court of the United States.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 2 and 5 in the Notice for violations of 49 C.F.R. § 195.404. However, I have withdrawn Items 1 and 5, so the compliance terms proposed in the Notice for these Items are no longer needed. I am also withdrawing the terms proposed in the Notice for Item 2 because it involved a past recordkeeping violation that no longer needs correction.

Under 49 C.F.R. § 190.215, Respondent has the right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address.

PHMSA will accept petitions received no later than 20 days after receipt of service of the Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed but does not stay any other provisions of the Final Order, including any required corrective actions. If Respondent submits payment of 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 upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued