



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue SE
Washington, DC 20590

NOV 15 2016

Mr. Kenneth D. Daly
President NY Jurisdiction
Niagara Mohawk Power Corp.
One Metro Tech Center
Brooklyn, NY 11201

Re: CPF No. 1-2015-3003

Dear Mr. Daly:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and withdraws the proposed civil penalty. This enforcement action is now closed. Service of the Final Order is made pursuant to 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Acting Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Bryon Coy, Director, Eastern Region, OPS
Mr. Ross Turrini, Senior Vice President, Gas Process & Engineering
Niagara Mohawk Power Corp., 25 Hub Drive, Melville, NY 11747
Mr. David C. Lodemore, Senior Counsel, National Grid USA
40 Sylvan Road, Waltham, MA 02451

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

§ 193.2605 Maintenance procedures.

(a)

(b) Each operator shall follow one or more manuals of written procedures for the maintenance of each component, including any required corrosion control. The procedures must include:

(1) The details of the inspections or tests determined under paragraph (a) of this section and their frequency of performance

The Notice alleged that Respondent violated § 193.2605(b)(1) by failing to follow its written maintenance procedures for isolating and purging a boil-off compressor. During the inspection, OPS inspectors reviewed Respondent's procedures and related records and noted that a boil-off compressor had been taken out of service on October 23, 2013. The inspectors requested records related to the activity, including a checklist that was required to be completed under Section 5.0 of Respondent's written procedures. The Notice alleged that when Niagara provided a copy of the checklist, it was not dated and portions were not signed.

At the hearing and in its Post-hearing Brief, Respondent "did not dispute that the C-1 isolation and purge checklist should have been signed and was not," however, it believed that important mitigating information warranted reducing the alleged violation to a warning.² In particular, Respondent argued "the actual isolation and purging process was performed safely, in accordance with the procedure and with the appropriate level of management oversight."³ At the hearing, OPS did not contest Respondent's assertion that the isolation and purging process was properly performed in accordance with the Company's procedures.

Respondent explained that on the day of the maintenance activity, the LNG Plant Supervisor was present for the work and utilized the checklist at issue. She completed the checklist in her handwriting, checked off the appropriate boxes and initialed the front of the document. In addition, plant personnel recorded the maintenance activity in the LNG Plant Logbook with the names of the persons involved and the time the activity was completed. The Supervisor reviewed the entries for accuracy and initialed the logbook page. Finally, a Hot Work Permit was created on the day of the maintenance. The permit shows the signature of three individuals: one person signed the permit out, another person who performed the work signed, and the Supervisor signed after determining the work had been properly performed. All of these documents were stored in the LNG Plant Files.

At the hearing, OPS discussed the importance of following procedures, including procedures that require a checklist to be signed. A missing signature, OPS explained, may indicate that the checklist was not followed or that the operator does not pay enough attention to detail. Accordingly, OPS maintained the facts proved a violation in this instance.

² Post-hearing Brief at 2.

³ Post-hearing Brief at 3.

Analysis

Section 193.2605 requires pipeline operators to follow their written procedures for performing maintenance activities involving a facility. Respondent's written procedures for isolating and purging a boil-off compressor included provisions for performing the maintenance task itself and separate provisions for keeping records of the task.⁴ For example, the procedures required Respondent to lower tank pressure prior to isolation, perform electrical isolation and gas isolation using a number of steps, and complete purging and isolating.

The record keeping provisions required, among other things, that Respondent forward the "completed, signed checklist" to the Supervisor. They also required a plant logbook to be updated. Plant management is required to review the documents for accuracy and sign, and the records must be retained for at least five years. The evidence in this case indicates Respondent performed the maintenance activity, completed the checklist, updated the logbook, reviewed the documents for accuracy and initialed them, and retained the records. Respondent did not, however, sign the checklist as required.

For this reason, I must find Respondent failed to follow its procedures regarding the signing of the checklist. The other actions Respondent performed to complete the maintenance task and to keep records of the activity are acknowledged and will be considered below with regard to the proposed civil penalty.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 193.2605 by failing to follow its written procedures for the maintenance of a boil-off compressor, which required the checklist to be signed. 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 an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 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, PHMSA 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 good faith of Respondent in attempting to comply with the pipeline safety regulations; and the effect on Respondent's ability to continue in business. In addition, PHMSA may consider the economic benefit gained from the violation and such other matters as justice may require.

The Notice proposed a civil penalty of \$11,500 for Respondent's violation of 49 C.F.R. § 193.2605, for failing to sign the checklist used to isolate and purge the boil-off compressor.

⁴ OPS Pipeline Safety Violation Report, dated July 8, 2015, Exhibit A-02.

The proposed penalty was based on assertions in the Notice and Violation Report relevant to the penalty assessment criteria in § 190.225. With regard to the nature, circumstances, and gravity of the violation, OPS alleged in the Violation Report this violation concerned a failure to follow procedures that was discovered by PHMSA, but that the violation minimally affected safety.

With respect to the good faith of Respondent in attempting to comply with the pipeline safety regulations, OPS alleged in the Violation Report that no credit was due for good faith because Respondent did not follow its procedures. When considering good faith in attempting to achieve compliance, PHMSA looks at “the attempt by the operator to comply with the cited regulation prior to the occurrence of the violation.”⁵ The cited regulation required Respondent to follow its procedures for performing a particular maintenance activity and for keeping records. It was not disputed in this case that Respondent performed the activity according to the applicable procedures, but did not fully comply with the record keeping procedures that required a “completed, signed checklist.” Respondent did, however, follow its record keeping procedures for updating the logbook, review of the logbook by a supervisor for accuracy and signature, and retention of the records in the appropriate file.

I find Respondent exhibited good faith in attempting to comply with its procedures by performing the activity properly, completing the checklist, updating the logbook, reviewing the documents for accuracy and initialing them, and retaining the records. In addition to overseeing the work and initialing the checklist and the logbook, the plant supervisor signed and cleared the work permit after determining the activity had been completed according to Respondent’s procedures.

At the hearing, OPS indicated that it did not believe Respondent had made a good faith attempt to achieve compliance because signing the checklist was just as important as the other procedures. I agree that when procedures require a checklist to be signed, it is necessary for the operator to document the completion of those steps by signing the form. As noted in the finding of violation section of this decision, there is no question Respondent did not sign the form and therefore the Operator did not comply with its procedures. When deciding an appropriate penalty, however, I cannot ignore evidence that Respondent followed its procedures by taking other actions to document satisfactory completion of the maintenance activity.

Consideration of good faith in an enforcement matter is particularly dependent on the facts of the case.⁶ In *White Cliffs Pipeline, LLC*, PHMSA found an operator was not entitled to a reduction of the penalty based on good faith because there was no evidence that the operator took action to maintain certain records.⁷ In *National Grid LNG, L.P.*,⁸ however, PHMSA found another

⁵ *White Cliffs Pipeline, LLC*, CPF No. 3-2011-5012, at 6, 2013 WL 1247518, at *5 (Feb. 5, 2013).

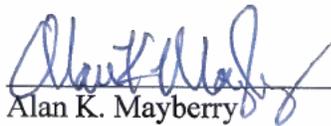
⁶ See, e.g., *Belle Fourche Pipeline Co.*, CPF No. 5-2009-5042, at 20-21, 2011 WL 7006607, at *19 (Nov. 21, 2011) (explaining that PHMSA applies the assessment criteria on a case-by-case basis. Given the unique facts of each offense, it is not uncommon for there to be some variance in penalties assessed for the same code section. Moreover, PHMSA has been increasing civil penalties over the years).

⁷ *White Cliffs Pipeline, LLC*, CPF No. 3-2011-5012, at 6.

operator had made a good faith attempt to comply with its procedures by properly performing laboratory tests and responding to the results even though it had neglected to prepare a plan required by its procedures for addressing the tests.

In this case, Niagara presented evidence showing substantial compliance with its maintenance procedures. On this basis, I find justification for reducing the \$11,500 proposed civil penalty. With due consideration to the nature, circumstances, and gravity of the violation, degree of Respondent culpability, history of prior offenses, and ability to continue in business, I withdraw the penalty associated with Item 1.

Under 49 C.F.R. § 190.243, Respondent may submit a petition for reconsideration of this Final Order to the Associate Administrator for Pipeline Safety, PHMSA, 1200 New Jersey Avenue SE, East Building, 2nd Floor, Washington, D.C. 20590, no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.



Alan K. Mayberry
Acting Associate Administrator
for Pipeline Safety

NOV 15 2016

Date Issued

⁸ *National Grid LNG, L.P.*, CPF No. 1-2007-3006, at 3, 2009 WL 5538660, at *3 (Dec. 29, 2009).