

November 29, 2018

Mr. Gary Buchler
Chief Operating Officer, Natural Gas Pipelines
Tennessee Gas Pipeline Company
1001 Louisiana Street, Suite 1000
Houston, TX 77002

Re: CPF No. 1-2016-1011; 1-2016-1012

Dear Mr. Buchler:

Enclosed please find the Final Order issued in the above-referenced cases. It withdraws the allegations of violation for both Notices, the associated civil penalties, and compliance orders. These cases are now closed. Service of the Final Order by certified mail is effective upon the date of mailing as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Robert Burrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA
Ms. Jessica Toll, Esq., Assistant General Counsel, Kinder Morgan, 370 Van Gordon
Street, Lakewood, CO 80228
Ms. Catherine D. Little, Esq., Bank of America Plaza, Suite 4100, 600 Peachtree Street,
N.E., Atlanta, GA 30308

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)	
Tennessee Gas Pipeline Company,)	
Respondent.)	CPF No. 1-2016-1011; 1-2016-1012

FINAL ORDER

From August - October 2015, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of Tennessee Gas Pipeline Company (Tennessee Gas or Respondent). Tennessee Gas operates approximately 13,900 miles of pipeline from the Gulf coast in Texas and Louisiana through Arkansas, Mississippi, Alabama, Tennessee, Kentucky, Ohio, and Pennsylvania.

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letters dated November 10, 2016, and November 21, 2016, two Notices of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notices). In accordance with 49 C.F.R. § 190.207, each Notice proposed finding that Tennessee Gas violated 49 C.F.R. §192.605 and proposed assessing a civil penalty of \$34,500 for the alleged violation. The Notices also proposed ordering Respondent to take certain measures to correct the alleged violations.

Tennessee Gas responded to the Notice by letter dated December 9, 2016 (Response). The company contested the allegations and requested a hearing. A hearing was subsequently held on April 26, 2017, in West Trenton, New Jersey. At the hearing, Respondent was represented by counsel.

WITHDRAWAL OF ALLEGATION- 1-2016-1011

At the hearing, Tennessee Gas contested the allegation in the Notice that it violated 49 C.F.R. Part 192, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.605, which states:

§ 192.605 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. . .

(b) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following, if applicable, to provide safety during maintenance and operations.

(1) Operating, maintaining, and repairing the pipeline in accordance with each of the requirements of this subpart and subpart M of this part.

(2) Controlling corrosion in accordance with the operations and maintenance requirements of subpart I of this part.

§ 192.481 Atmospheric corrosion control: General.

(a) Each operator must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion, as follows....

(b) During inspections the operator must give particular attention to pipe at soil-to-air interfaces, under thermal insulation, under disbanded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water.

(c) If atmospheric corrosion is found during an inspection, the operator must provide protection against the corrosion as required by §192.479.

The Notice alleged that Respondent violated 49 C.F.R. § 192.605 by failing to prepare and follow for each pipeline, a manual of written procedures for operating, maintaining, and repairing the pipeline to control corrosion in accordance with the requirements of § 192.481(b). Specifically, the Notice alleged that the Tennessee Gas procedure for monitoring atmospheric corrosion, *O&M Procedure 918*, failed to provide specific guidance on how to give particular attention to pipe under thermal insulation. OPS argued that the Respondent's procedure failed to give sufficient detail such that a corrosion technician could adequately detect the presence of atmospheric corrosion during an inspection. In the Notice, OPS stated that the procedure "failed to provide . . . details such as . . . i. Criteria for selecting the option. ii. Individual(s) responsible for selecting the method. iii. Documentation of the selected method...."¹

Tennessee Gas strongly objected to OPS' decision to issue an NOPV based on the circumstances presented by this case. The Respondent referred to OPS' Part 192 Corrosion Enforcement Guidance. Tennessee Gas argued that, while not legally enforceable, PHMSA guidance does not support either (1) the use of a Notice of Probable Violation to address the level of detail in existing procedures; or (2) enforcement actions that allege two offenses for a single violation that is based on the same evidence.² Additionally, Tennessee Gas refuted OPS' allegation that its

¹ Notice of Probable Violation 1-2016-1011 (Notice), (November 10, 2016) (on file with PHMSA), at 1.

² "Based on PHMSA procedural Part 190 rules, internal Agency enforcement procedures, and prior Agency enforcement, PHMSA should have issued a single NOA in this instance." Tennessee Gas Post- Hearing Brief, at 7.

procedure failed to provide sufficient detail for a corrosion technician to perform an inspection. Respondent argued that *O&M Procedure 918* allows for a corrosion technician to elect between visually inspecting pipes by removing insulation or clamps *or* developing a program whereby visual inspections occur in select critical areas or predetermined inspection locations (*emphasis added*). The Respondent argued that this flexibility is allowed by the regulation, and comports with the requirement that its O&M Manual include procedures that mandate particular attention be paid to pipe under thermal insulation.

In its post-hearing brief, Tennessee Gas ascribed particular significance to the fact that the Notice only alleged a deficiency in its procedures, and not the actual inspections conducted pursuant to those procedures. At the hearing, OPS conceded this point, and stated that it was not alleging that Tennessee Gas either failed to conduct the required corrosion control inspections or that corrosion was found during inspections conducted pursuant to the allegedly deficient procedures.

Therefore, the only question required for decision is whether Tennessee Gas' actual procedure is so lacking in detail as to violate § 192.605 or § 192.481. In reading the plain language of these regulations, I find that TGP's procedure comports with these regulations. Tennessee Gas' procedure states "during the inspection, give particular attention to the following components. . . pipe under *thermal or noise abatement insulation*...pipe that is not visually accessible." The procedure further explicates how to inspect pipes that are not visually accessible. From a plain reading of the regulation, *O&M Procedure 918* meets the threshold set by the regulation. At the hearing, OPS conceded that it cannot require the operator to have any particular language in its procedural manual – that is left to the discretion of the operator, within the confines of the regulatory language. There is no language in this regulation that requires the operator to provide the level of detail in its procedures cited in this Notice.

Accordingly, based upon a review of the evidence, I find that Respondent did not violate 49 C.F.R. § 192.605, as alleged in the Notice, and therefore withdraw Item 1.

WITHDRAWAL OF ALLEGATION- 1-2016-1012

At the hearing, Tennessee Gas contested the allegation in the Notice that it violated 49 C.F.R. Part 192, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.605, which states:

§ 192.605 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. . .

PHMSA Pipeline Safety Enforcement Procedures Section 4, p. 25, 27 (Mar. 23, 2016) (inspectors should "use caution before citing the same code or subsection for more than one Item in a NOPV letter because if the items are based on the same evidence, it may result in a single violation being inappropriately alleged as multiple violations")

(b) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following, if applicable, to provide safety during maintenance and operations.

(1) Operating, maintaining, and repairing the pipeline in accordance with each of the requirements of this subpart and subpart M of this part.

(2) Controlling corrosion in accordance with the operations and maintenance requirements of subpart I of this part.

§ 192.481 Atmospheric corrosion control: General.

(a) Each operator must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion, as follows....

(b) During inspections the operator must give particular attention to pipe at soil-to-air interfaces, under thermal insulation, under disbanded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water.

(c) If atmospheric corrosion is found during an inspection, the operator must provide protection against the corrosion as required by §192.479.

The Notice alleged that Respondent violated 49 C.F.R. § 192.605 by failing to prepare and follow for each pipeline, a manual of written procedures for operating, maintaining, and repairing the pipeline. Specifically, the Notice alleged that Tennessee Gas' procedure for monitoring atmospheric corrosion, *O&M Procedure 918*, failed to provide specific guidance on how to give particular attention to pipe at pipe supports in accordance with §192.481(b).

Respondent contested this allegation of violation. I am adopting the arguments set forth in my consideration of the violation in 1-2016-1011. Accordingly, based upon a review of all of the evidence, I find that Respondent did not violate 49 C.F.R. § 192.605, as alleged in the Notice, and therefore withdraw Item I.

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.³ 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; 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

³ These amounts are adjusted annually for inflation. *See, e.g.*, Pipeline Safety: Inflation Adjustment of Maximum Civil Penalties, 82 Fed. Reg. 19325 (April 27, 2017).

civil penalty of \$69,000 for the violations cited in 1-2016-1011 and 1-2016-1012.

1-2016-1011 Item 1: The Notice proposed a civil penalty of \$34,500 for Respondent's violation of 49 C.F.R. § 192.605, for failing to prepare and follow for each pipeline, a manual of written procedures for operating, maintaining, and repairing the pipeline. For the reasons discussed above, I find that the Respondent did not violate this regulation. Accordingly, having reviewed the record, I withdraw the civil penalty of \$34,500.

1-2016-1012 Item 1: The Notice proposed a civil penalty of \$34,500 for Respondent's violation of 49 C.F.R. § 192.605, for failing to prepare and follow for each pipeline, a manual of written procedures for operating, maintaining, and repairing the pipeline. For the reasons discussed above, I find that the Respondent did not violate this regulation. Accordingly, having reviewed the record, I withdraw the civil penalty of \$34,500.

COMPLIANCE ORDER

The Notice proposed compliance orders with respect to Item 1 in Notice 1-2016-1011 and Item 1 in Notice 1-2016-1012 for violation of 49 C.F.R. §§ 192.605.

As stated above, I am withdrawing both Notices. Therefore, the compliance terms proposed in the Notice are also withdrawn.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

November 29, 2018

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued