

February 9, 2018

Mr. Stephen C. Thompson
President and CEO
Eastern Shore Natural Gas Company
1110 Forrest Avenue
Suite 201
Dover, DE 19904

Re: CPF No. 1-2017-1002

Dear Mr. Thompson:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$37,300. 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 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: Director, Eastern Region, Office of Pipeline Safety, PHMSA
Mr. Eric M. Pearson, Senior Manager, Operations Compliance & Engineering
Eastern Shore Natural Gas Co., 1110 Forrest Avenue, Suite 201, Dover, DE 19904

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)	
)	
Eastern Shore Natural Gas Company, a subsidiary of Chesapeake Utilities Corporation)	CPF No. 1-2017-1002
)	
Respondent.)	
)	

FINAL ORDER

From December 1, 2014, through December 19, 2014, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the records of Eastern Shore Natural Gas Company (ESNG or Respondent) in Dover, Delaware.¹ ESNG, a subsidiary of Chesapeake Utilities Corporation, owns and operates 455 miles of natural gas transmission pipelines in Delaware, Maryland, and Pennsylvania.²

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated January 17, 2017, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that ESNG had violated 49 C.F.R. § 192.745 and proposed assessing a civil penalty of \$37,300 for the alleged violation.

ESNG responded to the Notice by letter dated February 2, 2017 (Response). The company did not contest the allegation of violation, but provided a supplemental explanation of its actions and requested that the proposed civil penalty be reduced or eliminated. Respondent did not request a hearing and therefore has waived its right to one.

FINDING OF VIOLATION

In its Response, ESNG did not contest the allegation in the Notice that it violated 49 C.F.R. Part 192, as follows:

¹ The inspection covered ESNG's Daleville Compressor Station, Bridgeville Compressor Station, Honey Brook Compressor Station, P140 valve in Dover, DE; P290 valve in Salisbury, MD; and C050 valve in Federalsburg, MD. (Pipeline Safety Violation Report (Violation Report) (January 17, 2017) (on file with PHMSA), at 2.

² Eastern Shore Natural Gas Co.'s website, available at <http://www.esng.com/> (last accessed November 24, 2017).

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.745(a), which states:

§ 192.745 Valve maintenance: Transmission lines.

(a) Each transmission line valve that might be required during any emergency must be inspected and partially operated at intervals not exceeding 15 months, but at least once each calendar year.

The Notice alleged that Respondent violated 49 C.F.R. § 192.745(a) by failing to partially operate each transmission line valve that might be required during an emergency at intervals not exceeding 15 months, but at least one each calendar year. Specifically, the Notice alleged that there were seven instances in which ESNG failed to operate three separate valves that might be used in an emergency. During the inspection, a PHMSA representative reviewed ESNG's transmission line valve records for 2012, 2013, and 2014, and identified three mainline block valves that were reported as being inoperable on more than one occasion. Regarding these valves, the records indicated the following: (1) Valve P140 – “Will not turn...” in 2012, 2013, and 2014; (2) Valve P290 – “Paved over” in 2013 and 2014; and (3) Valve C050 – “Will not turn...” in 2013 and 2014. Furthermore, in an email from ESNG to PHMSA on January 7, 2015, ESNG stated that “[a]s mainline block valves, our procedures state that they are critical valves and must be inspected and operated each year.”³

In its Response, Respondent stated that it had “elected not to contest the alleged violation...”⁴ Accordingly, based upon a review of the record and supporting evidence, I find that Respondent violated 49 C.F.R. § 192.745(a) by failing to partially operate each transmission line valve that might be required during an emergency at intervals not exceeding 15 months, but at least one each calendar year. 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.⁵ 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

³ Violation Report, at Exhibit A-03.

⁴ Response, at 1.

⁵ 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).

subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$37,300 for the violation cited above.

Item 1: The Notice proposed a civil penalty of \$37,300 for Respondent's violation of 49 C.F.R. § 192.745(a), for failing to partially operate on seven occasions three separate mainline block valves that had been deemed critical valves, pursuant to ESNG's procedures, at intervals not exceeding 15 months, but at least once each calendar year. In its Response, ESNG requested mitigation or elimination of the proposed civil penalty based on several factors addressed in the Violation Report.

With respect to the nature, circumstances, and gravity of the violation, the Violation Report alleged that PHMSA had discovered the violation, that the violation concerned a failure to perform an activity, and that pipeline safety was "minimally affected."⁶ Respondent argued that the violation did not cause any incident, abnormal operation, or impact to the community, which may contribute to the gravity of the violation. I have reviewed the Violation Report and find that it appropriately classified the gravity of the violation as minimally impacting safety. Therefore, no further reduction is warranted based on the information Respondent provided.

With respect to culpability, the Violation Report alleged that Respondent failed to take appropriate action to comply with a requirement that was clearly applicable.⁷ Respondent argued that it had taken prompt remedial action to address the violation, and that the valves were no longer critical. Respondent's post-inspection corrective actions are duly noted, but do not constitute grounds to reduce the penalty because they were taken after PHMSA had already identified the violation.⁸

With respect to good faith, the Violation Report alleged that ESNG was not entitled to a good faith "credit" on the proposed penalty. Respondent argued that it attempted in good faith to comply,⁹ but, having reviewed the record, I find that Respondent's actions do not qualify for a good-faith credit because the company lacked "a credible justification" for its failure to perform the required valve operations.¹⁰ The regulation establishes clear timing requirements for valve inspections and there was no other reasonable interpretation held by ESNG that justified a failure to comply.

Finally, with respect to economic benefit and ESNG's enforcement history, the Violation Report made no allegation that either factor was considered in arriving at the proposed penalty. Respondent argued that it did not financially gain from the alleged violation and that its

⁶ Violation Report, at 7-9.

⁷ *Id.*, at 10.

⁸ *See, e.g.*, Enbridge Pipelines LLC, Final Order, CPF No. 3-2007-5022, at 3, 2009 WL 2336996 (Jun. 2, 2009) (finding corrective action taken after an accident had already occurred did not warrant mitigation of the proposed penalty).

⁹ Response, at 4.

¹⁰ Violation Report, at 11.

enforcement history reflected only one Notice of Probable Violation and two Notices of Amendment over the past 15 years.¹¹ Since neither factor was considered in the proposed penalty amount, the information provided by Respondent does not affect the amount of the penalty.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$37,300 for violation of 49 C.F.R. § 192.745(a).

In summary, having reviewed the record and considered the assessment criteria for each Item cited above, I assess Respondent a total civil penalty of **\$37,300**.

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 (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$37,300 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.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the 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, no later than 20 days after receipt of service of the Final Order by Respondent. Any petition submitted must contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. 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.

February 9, 2018

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued

¹¹ Response, at 4.