

September 7, 2018

Mr. Al Monaco
President and Chief Executive Officer
Enbridge, Inc.
5400 Westheimer Court
Houston, TX 77056

Re: CPF No. 1-2017-1010

Dear Mr. Monaco:

Enclosed please find the Final Order issued in the above-referenced case to your subsidiary, Algonquin Gas Transmission Company, LLC (Algonquin). It makes a finding of violation and assesses a civil penalty of \$36,200. It further finds that Algonquin has completed the actions specified in the Notice to comply with the pipeline safety regulations. When the civil penalty has been paid, this enforcement action will be closed. Service of the Final Order by certified mail is effective, 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
Mr. Rick Kivela, Manager, Operational Compliance, Enbridge, Inc.

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)	
)	
Algonquin Gas Transmission Company, LLC,)	CPF No. 1-2017-1010
a subsidiary of Enbridge, Inc.,)	
)	
Respondent.)	
)	

FINAL ORDER

From December 8-14, 2016, pursuant to 49 U.S.C. § 60117, representatives of the New York State Department of Public Service (NYSDPS), as agent for 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 Algonquin Gas Transmission Company, LLC's (AGT or Respondent) Algonquin Incremental Market (AIM) project in Brewster, New York. AGT is owned and operated by Enbridge, Inc.¹ AGT operates approximately 1,129 miles of pipeline in New England, with a capacity of approximately 3.08 billion cubic feet per day.²

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated June 28, 2017, 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 AGT had violated 49 C.F.R. § 192.167, and proposed assessing a civil penalty of \$36,200 for the alleged violation. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violation.

Enbridge, on behalf of AGT, responded to the Notice by letter dated August 10, 2017 (Response). The company did not contest the allegation, but offered additional information in response to the Notice and requested that the proposed civil penalty be eliminated. Respondent did not request a hearing and therefore has waived its right to one.

¹ Spectra Energy Partners, LP website, *available at* <http://www.spectraenergypartners.com/operations/natural-gas-pipelines/algonquin-gas-transmission> (last accessed August 7, 2018); Enbridge, Inc. website, *available at* <http://www.enbridge.com/media-center/news/details?id=2126823&lang=en&year=2017> (last accessed August 7, 2018).

² Spectra Energy Partners, LP website, *available at* <http://www.spectraenergypartners.com/operations/natural-gas-pipelines/algonquin-gas-transmission> (last accessed August 7, 2018).

FINDING OF VIOLATION

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.167(a)(4)(ii), which states in relevant part:

§ 192.167 Compressor stations: Emergency shutdown.

(a) Except for unattended field compressor stations of 1,000 horsepower (746 kilowatts) or less, each compressor station must have an emergency shutdown system that meets the following:

(1)

(4) It must be operable from at least two locations, each of which is:

(i)

(ii) Near the exit gates, if the station is fenced, or near emergency exits, if not fenced; . . .

The Notice alleged that Respondent violated 49 C.F.R. § 192.167(a)(4)(ii) by failing to have an emergency shutdown (ESD) system operable from at least two locations, each of which is near the exit gates of a fenced compressor station. Specifically, the Notice alleged that AGT's fenced Southeast Compressor Station had an ESD with activations points within the facility, but not near the exit gates.

The Notice stated that AGT's AIM project was installed from October 2015 through December 2016 and consisted of approximately 20.1 miles of 42-inch pipeline in New York and modification of AGT's existing Southeast Compressor Station (Station) in Brewster, New York. AGT installed a new 10,000-horsepower compressor and building to house the compressor at the Station, which had eight exit gates - four for personnel and four for vehicles. During the final walkthrough on December 8, 2016, the NYSDPS inspector noted that the Station did not have activation for its ESD system at the fenced facility's exit gates.

In its Response, Enbridge stated that "AGT is not contesting the finding of non-compliance," yet argued that a "finding of violation is not warranted" because there were 16 ESD activation points at the Station, including 4 located approximately 60 to 135 feet from an exit gate. Respondent also asserted "the number and locations of the ESD activation points at the time of the inspection did not negatively impact safety."³

AGT argued that § 192.167 does not specify the maximum distance between an ESD activation point and a fence exit gate.⁴ While this is correct, the term "near" is commonly defined as "a short distance" or "close to."⁵ As stated in a previous PHMSA final order, "[t]his requirement is intended to ensure that onsite personnel can activate the ESD System from a safe distance before

³ Response, at 2-3.

⁴ *Id.*

⁵ *Merriam-Webster.com*. Merriam-Webster, n.d. Web. 13 Mar. 2018.

leaving a compressor station in an emergency.”⁶ At the time of the NYSDPS inspection, the nearest ESD activation point to an exit gate at the Station was 60 feet, which is not “a short distance.” Even though the 16 ESD activation points were located near planned evacuation routes, their distances from the exit gates would not necessarily prevent an employee from having to “head back *toward* a hazardous area to activate the switches in the event of an emergency.”⁷

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.167(a)(4)(ii) by failing to have an emergency shutdown system operable from at least two locations, each of which is near the exit gates of the fenced compressor station.

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.⁸

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 civil penalty of \$36,200 for the violation cited above.

Item 1: The Notice proposed a civil penalty of \$36,200 for Respondent’s violation of 49 C.F.R. § 192.167(a)(4)(ii), for failing to have an emergency shutdown system operable from at least two locations, each of which is near the exit gates of the fenced compressor station. With respect to gravity, the Violation Report noted that the “[f]ailure to have an emergency shutdown system near exit gates is a safety concern to all personnel entering the station.”⁹ AGT argued the

⁶ See, *In the Matter of MoGas Pipeline, LLC*, Final Order, C.P.F. No. 3-2011-1009 (Feb. 22, 2012) (available at www.phmsa.dot.gov/pipeline/enforcement/enforcement-overview).

⁷ *Id.*, at 3. AGT acknowledged that § 192.167(a)(4)(i) requires at least ESD points to be operable outside “the gas area of the station” and that an ESD activation point located outside a compressor building is not necessarily outside “the gas area” that could ignite; however, that requirement is separate from the requirement of § 192.167(a)(4)(ii) at issue here.

⁸ 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).

⁹ Pipeline Safety Violation Report (Violation Report) (March 9, 2017) (on file with PHMSA), at 11.

proposed penalty was not warranted because the safety of the Southeast Compressor Station was not compromised.¹⁰ AGT pointed out that there were 16 ESD activation points within the Station located near planned emergency evacuation routes.¹¹ However, I find Respondent failed to comply with a requirement that was clearly applicable and this failure impacted safety. As stated above, the nearest ESD activation point to an exit gate at the Station was 60 feet, which did not ensure that onsite personnel could activate the ESD System from a safe distance before leaving the compressor station in an emergency. The proposed penalty already takes into consideration this information, and therefore, no further reduction to the penalty is warranted under this factor.

The nature and circumstances of the violation were such that important equipment was missing for a significant amount of time.¹² With respect to the degree of Respondent's culpability, the Violation Report noted that the Southeast Compressor Station was originally constructed in 1986 and did not have ESD activation points near exit gates before the 2015 modifications. Even then, AGT did not install ESD activation points near the exit gates as part of the 2015 AIM project. Therefore, I find the nature and circumstances of the violation support the proposed penalty amount. I also find Respondent is culpable for the violation because it failed to install ESD activation points at the time of construction and during modifications to the station.

With respect to the good faith of Respondent in attempting to comply with the pipeline safety regulations, the Violation Report stated that AGT did not install the ESD activation points during the original construction and AGT continued to operate the station without installing ESD activation points at the exit gates.¹³ AGT noted that it has installed one new ESD activation point and two new man gates. The new ESD activation point is approximately 11 feet from one of the new man gates, and there is an ESD activation point approximately 19 feet from the other new man gate.

Even though Respondent has now taken steps to comply with the requirement, it did so only after learning of the probable violation. Respondent did not make a clear effort to comply with the cited regulation when the violation occurred. Steps taken after PHMSA, or a State agent, discovers a violation does not generally warrant a penalty reduction for good faith. Therefore, I find AGT did not have a reasonable justification for its non-compliance and a penalty reduction is not warranted.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$36,200** for violation of 49 C.F.R. § 192.167(a)(4)(ii).

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

¹⁰ Response, at 2.

¹¹ *Id.*

¹² Violation Report, at 9-10.

¹³ *Id.*, at 13.

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 \$36,200 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 Item 1 in the Notice for violation of 49 C.F.R. § 192.167(a)(4)(ii). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. The Director indicates that Respondent has taken the following actions specified in the proposed compliance order:

1. With respect to the violation of § 192.167(a)(4)(ii) (**Item 1**), Respondent has installed emergency shutdown system activation points near the exit gates of the Southeast Compressor Station, in accordance with § 192.167(a)(4)(ii).

Accordingly, I find that compliance has been achieved with respect to this violation. Therefore, the compliance terms proposed in the Notice are not included in this Order.

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 this 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 filing of a petition automatically stays the payment of any civil penalty assessed. The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

September 7, 2018

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued