

May 18, 2020

**VIA ELECTRONIC MAIL TO: kelcy.warren@energytransfer.com**

Mr. Kelcy L. Warren  
Chairman and Chief Executive Officer  
Energy Transfer, LP  
8111 Westchester Drive  
Dallas, Texas 75225

**Re: CPF No. 1-2019-1001**

Dear Mr. Warren:

Enclosed please find the Final Order issued in the above-referenced case to your subsidiary, Rover Pipeline, LLC. It makes a finding of violation and assesses a reduced civil penalty of \$50,200. 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 electronic mail is effective upon the date of transmission 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. Joe Perez, Senior Vice President, E&C Services Support, Rover Pipeline, LLC,  
joseph.perez@energytransfer.com  
Ms. Catherine D. Little, Counsel, Troutman Sanders LLP, catherine.little@troutman.com

**CONFIRMATION OF RECEIPT REQUESTED**

**U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, D.C. 20590**

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<b>In the Matter of</b>	)	
	)	
<b>Rover Pipeline, LLC,</b>	)	<b>CPF No. 1-2019-1001</b>
<b>a subsidiary of Energy Transfer, LP,</b>	)	
	)	
<b>Respondent.</b>	)	
	)	

**FINAL ORDER**

On various dates between January 25 and June 18, 2018, 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 a pipeline construction project (the Rover Pipeline Project) undertaken by Rover Pipeline, LLC (Rover or Respondent) in Ohio and West Virginia. Rover Pipeline, LLC is a subsidiary of Energy Transfer, LP (Energy Transfer) which operates the 713-mile natural gas pipeline, portions of which were under construction at the time of the inspection. The pipeline is designed to transport natural gas from the Marcellus and Utica Shale areas where it is produced across parts of Ohio, West Virginia, and Pennsylvania.<sup>1</sup>

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated May 31, 2019, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Rover had violated 49 C.F.R. § 192.241(c) and proposed assessing a civil penalty of \$143,000 for the alleged violation.

Rover responded to the Notice by letter dated June 21, 2019, as supplemented by letter dated July 12, 2019 (Response). Respondent contested the allegation and requested a hearing. A hearing was subsequently held on November 7, 2019, in West Trenton, New Jersey before a PHMSA Presiding Official. At the hearing, Respondent was represented by counsel. Respondent provided additional materials prior to the hearing on October 28, 2019 (Pre-hearing submission), and following the hearing on December 9, 2019 (Post-hearing submission). The Director submitted a post-hearing recommendation on January 6, 2020 (Recommendation).

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<sup>1</sup> Pipeline Safety Violation Report (Violation Report), (June 7, 2019) (on file with PHMSA), at 1.

### **FINDING 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. § 192.241(c), which states:

**§ 192.241 Inspection and test of welds.**

(a)...

(c) The acceptability of a weld that is nondestructively tested or visually inspected is determined according to the standards in section 9 or Appendix A of API Std 1104 (incorporated by reference, see §192.7). Appendix A of API Std 1104 may not be used to accept cracks.

The Notice alleged that Respondent violated 49 C.F.R. § 192.241(c) by failing to determine the acceptability of nondestructively tested welds according to the standards in section 9 or Appendix A of API Std 1104. Specifically, the Notice alleged that Rover failed to identify 33 welds that were unacceptable under section 9 of API Std 1104 at the time of the nondestructive examination.<sup>2</sup>

In its Response and at the hearing, Rover explained that as an initial matter, it believed that OPS acted inappropriately in issuing the Notice. Respondent explained that OPS had already taken compliance action against Rover in a prior case, CPF No. 1-2018-1018 (the 2018 NOPV). Rover stated that the prior case encompassed the specified welding issues that Rover had cooperated fully with that proceeding which reached a satisfactory conclusion when the Final Order for that proceeding was issued on October 16, 2019. Specifically, Rover stated that:

Rover did not contest the 2018 NOPV and agreed to implement the terms of the Proposed Compliance Order, much of which it had already implemented such as re-audit and repair of the 33 welds. The NOPV that is the subject of this contested matter was not received until almost 7 months later on June 3, 2019, even though it arises out of the same set of inspections, facts, and circumstances as the 2018 NOPV. In fact, the NOPV at issue in this challenge involves the same remedial measures undertaken to address the weld qualification issues that were the subject of the 2018 NOPV and which had been completed well in advance of that 2018 NOPV.<sup>3</sup>

OPS disagreed and stated that:

The Eastern Region was within its rights to allege a violation of the pipeline safety regulations once Rover informed it that 33 welds were found not to be acceptable under Section 9 of API 1104. Whether this allegation was included in CPF 1-2018-1018 or CPF 1-2019-1001 is immaterial. Ultimately, the instant case is distinct from prior enforcement actions

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<sup>2</sup> Notice, at 1-2.

<sup>3</sup> Post-hearing submission, at 2.

related to this pipeline project because this case is about passing, burying, and placing unacceptable welds in-service, whereas the prior case was not.<sup>4</sup>

Having considered these arguments, Respondent is correct that OPS could have amended the Notice in CPF No. 1-2018-1018 prior to issuing the Final Order for that proceeding in October of 2019. Whether the decision by OPS to issue a second NOPV is impermissible and compels the complete withdrawal of this case, however, is another question. For example, there were no civil penalties assessed in the prior case and therefore no duplication of penalties occurred. In addition, the 2018 NOPV cited a different code section, § 192.243(b), that focused on a lack of adherence to Rover's procedures for ensuring the qualifications of its personnel conducting non-destructive examinations. OPS' decision to issue this case following prior case CPF No. 1-2018-1018 did not unfairly prejudice Respondent and was not legally impermissible.

Turning to the merits of the allegation, in its Response and at the hearing, Rover acknowledged that it discovered 33 welds that were not acceptable under Section 9 of API 1104 and required remediation. Respondent, however, disagreed that the identification and remediation of these welds amounted to a *per se* violation of § 192.241(c). Respondent also argued that its review of radiographs and ultimate determination that 33 welds were not acceptable under API 1104 Section 9 involved judgment calls and should not be considered as demonstrations of non-compliance. Respondent explained that it believed the regulations anticipate that some pipeline welds will not be non-destructively tested and thus may not meet the acceptability standards of API Section 9).<sup>5</sup>

As OPS correctly pointed out, however, this argument ignores the fact that all welds that are NDT must meet the acceptability standards of API Section 9. OPS stated:

If an operator elects to examine 100% of the welds completed, then the operator has elected to confirm that all those welds are free from imperfections that might impact pipeline integrity under API Std. 1104. An operator cannot insulate itself from a violation of § 192.241 simply because it has elected to examine more than the bare-minimum number of welds non-destructively tested pursuant to § 192.243.<sup>6</sup>

Respondent also argued that only 13 of the 33 welds had been placed into service and as such the instances of violation at most could be 13, not 33 as OPS suggested.<sup>7</sup> During the hearing, OPS acknowledged that if an operator were to change its determination of weld acceptability during its quality control process ensuring remediation before the pipeline segment was buried and placed in-service, then a violation of § 192.241(c) would not have occurred.<sup>8</sup> According to the

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<sup>4</sup> Recommendation, at 8.

<sup>5</sup> Post-hearing submission, at 4.

<sup>6</sup> Recommendation, at 4.

<sup>7</sup> Post-hearing submission, at 6.

<sup>8</sup> Hearing transcript, at 37.

PHMSA's Pipeline Glossary, "an in-service pipeline is a pipeline that is being used to transport natural gas or hazardous liquid."<sup>9</sup> Therefore, Respondent is correct that merely burying the segment does not constitute placing it in service. In this case, there was no dispute that 13 of the 33 welds that were not acceptable under Section 9 of API Std 1104 were placed in service.

Accordingly, after considering all of the evidence and the legal issues presented, I find that Respondent violated 49 C.F.R. § 192.241(c) by failing to determine the acceptability of 13 of the 33 specified non-destructively tested welds according to the standards in section 9 or Appendix A of API Std. 1104.

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.<sup>10</sup> 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; 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 \$143,000 for the violation cited above.

**Item 1:** The Notice proposed a civil penalty of \$143,000 for Respondent's alleged violation of 49 C.F.R. § 192.241(c), for failing to determine the acceptability of 33 specified non-destructively tested welds according to the standards in section 9 or Appendix A of API Std. 1104. With respect to the nature of this violation, the failure to identify unacceptable welds is a serious matter. Two of these welds were in the vicinity of the Ohio River. With respect to the circumstances, Respondent already received a credit for self-reporting and I find that the magnitude of this credit is supported by the record. With respect to gravity, as discussed above I found that a violation had occurred with respect to 13 of these 33 welds. Accordingly, the number of instances of violation has been changed from 33 to 13 resulting in a reduction of the penalty.

With respect to culpability, OPS acknowledged that Respondent discovered the unacceptable welds and was in the process of repairing or replacing them when it notified PHMSA of the

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<sup>9</sup> PHMSA's website, available at <https://primis.phmsa.dot.gov/comm/glossary/index.htm#InServicePipeline> (last accessed May 14, 2020).

<sup>10</sup> These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

issue. Based on this information, I find that Respondent took documented action to address the cause of the non-compliance, and was in the process of correcting the non-compliance before OPS learned of the violation. Accordingly, the culpability factor has been modified resulting in a further reduction of the penalty. With respect to good faith, the unacceptable welds were buried and placed in service. Therefore, the record does not support any reduction with respect to this factor.

Under the applicable penalty considerations, I may also consider other matters as justice may require. This includes a potential reduction where an operator's noncompliance was against heightened procedures as opposed to the basic requirement in the code. Based on this information and to help ensure operators are not dis-incentivized from conducting non-destructive testing beyond that which is minimally required, I find that this instance of non-compliance falls within the intent of the credit. Accordingly, the other matters as justice may require factor has been modified resulting in a further reduction of the penalty.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced civil penalty of **\$50,200** for violation of 49 C.F.R. § 192.241(c).

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 \$50,200 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.

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, 2<sup>nd</sup> 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.

May 18, 2020

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Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

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Date Issued