

August 3, 2020

VIA ELECTRONIC MAIL TO: william.yardley@enbridge.com

Mr. William T. Yardley
President of Gas Transmission and Midstream
Enbridge, Inc.
5400 Westheimer Court
Houston, Texas 77056

Re: CPF No. 1-2019-1004

Dear Mr. Yardley:

Enclosed please find the Final Order issued in the above-referenced case to your subsidiary, Algonquin Gas Transmission, LLC. It makes findings of violation and assesses a reduced civil penalty of \$337,000. 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. Rick Kivela, Manager, Operational Compliance, Enbridge, Inc.
rick.kivela@enbridge.com
Ms. Michele Harradence, Senior Vice President and Chief Operating Officer– Gas
Transmission and Midstream, Enbridge, Inc., Michele.harradence@enbridge.com
Ms. Annie Cook, Esq., Troutman Sanders LLP, annie.cook@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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In the Matter of)	
)	
Algonquin Gas Transmission, LLC, a subsidiary of Enbridge, Inc.,)	CPF No. 1-2019-1004
)	
Respondent.)	
)	

FINAL ORDER

From May 24 through June 28, 2018, 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 the Algonquin Gas Transmission, LLC (AGT or Respondent) pipeline system in Massachusetts, Rhode Island, and New Jersey. The AGT pipeline system consists of approximately 1,125 miles of pipe spanning five states and portions of the Atlantic Outer-Continental Shelf.¹ AGT is a subsidiary of Enbridge, Inc.²

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated July 11, 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 Respondent had committed two violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$341,400 for the alleged violations.

Enbridge, Inc., the parent company, responded to the Notice on behalf of AGT by letter dated August 30, 2019 (Response). Respondent contested one of the allegations and requested a hearing. A hearing was subsequently held via telephone conference on January 9, 2020, before a PHMSA Presiding Official. At the hearing, Respondent was represented by counsel. Respondent provided additional materials prior to the hearing on December 30, 2019, and January 8, 2020 (Pre-hearing submission) and following the hearing on February 10, 2020 (Post-hearing submission). The Director submitted a post-hearing recommendation on March 11, 2020 (Recommendation).

¹ Pipeline Safety Violation Report (Violation Report), (July 12, 2019) (on file with PHMSA), at 1.

² Enbridge, Inc. website, *National Gas Transmission and Midstream*, available at <https://www.enbridge.com/About-Us/Natural-Gas-Transmission-and-Midstream.aspx> (last accessed July 9, 2020).

FINDINGS 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. § 192.481(a), which states:

§ 192.481 Atmospheric corrosion control: Monitoring.

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

If the pipeline is located:	Then the frequency of inspection is:
Onshore	At least once every 3 calendar years, but with intervals not exceeding 39 months
Offshore	At least once each calendar year, but with intervals not exceeding 15 months

The Notice alleged that AGT violated 49 C.F.R. § 192.481(a) by failing to inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion at a frequency of at least once every three calendar years, but with intervals not exceeding 39 months. Specifically, the Notice alleged that AGT failed to meet the required time interval at 17 locations exposed to the atmosphere within the Massachusetts Bay/Hubline; 63 locations within the Boston/Westwood area; and one location within the New Jersey area.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that AGT violated 49 C.F.R. § 192.481(a) by failing to inspect the specified pipelines or portions thereof that are exposed to the atmosphere for evidence of atmospheric corrosion at a frequency of at least once every three calendar years, but with intervals not exceeding 39 months.

Item 2: The Notice alleged that AGT violated 49 C.F.R. § 192.709(c), which states:

§ 192.709 Transmission lines: Record keeping.

Each operator shall maintain the following records for transmission lines for the periods specified:

(a)...

(c) A record of each patrol, survey, inspection, and test required by subparts L and M of this part must be retained for at least 5 years or until the next patrol, survey, inspection, or test is completed, whichever is longer.

The Notice alleged that AGT violated 49 C.F.R. § 192.709(c) by failing to maintain records of a test required by subpart M of 49 C.F.R. Part 192 for at least five years. Specifically, the Notice alleged that AGT failed to maintain records demonstrating that 292 emergency valves in the

South Plainfield, New Jersey operating area were partially operated in accordance with § 192.745(a) during 2016.

In its Response and at the hearing, Respondent argued that it complied with the applicable regulations and requested that the allegation and the associated proposed civil penalty be withdrawn. Respondent explained that it provided a spreadsheet-style audit report to the OPS inspectors to show that all 292 valves had been inspected and that it was providing additional records and documentation that it believed were sufficient to demonstrate that these valves had been partially operated as required.³

OPS stated that the audit report Respondent provided to the OPS inspectors contained a Yes/No column for whether partial operation of a valve occurred, and that there was an absence of any indication in the affirmative in this column for 292 valves as described in the Notice.

At the hearing, Respondent acknowledged that there was an absence of any indication in the affirmative in the relevant spreadsheet column for 292 valves as described in the Notice.⁴ Respondent explained that it had additional pertinent records in the form of individual work orders and provided these work orders at the time of the hearing.⁵ Respondent argued that these work orders were actually the “documents of record” and that the spreadsheet was redundant.⁶

Respondent argued that the individual work orders outlined relevant tasks that are expressly associated with valve operation including: Task 0900 or 0600 (depending on the work order), Verify Valve Operation; Task 0100, Note any Operation Difficulty; and Task 0110, Return to Service. Respondent noted that Task 0900 requires notation in a separate work log tab and follow-up if a valve cannot be operated, and Task 0100 requires notation of any difficulty opening and closing the valve. In addition, Task 0140 includes a “Yes/No” entry to indicate whether follow up is required and the date.⁷ Respondent argued correctly that the regulations do not dictate any particular form in which the record must be kept and cited prior PHMSA enforcement cases in which PHMSA withdrew allegations of insufficient records when additional records were presented.⁸ Having considered these arguments, I agree with Respondent that in this case, the individual work orders for the valve maintenance are relevant and I will consider them in determining whether or not compliance was achieved.

At the time of the inspection, only a sampling of the work orders was provided to the OPS inspectors. Therefore, the entire set of 292 work orders was not reviewed until the hearing took place. While Respondent’s explanation at the hearing concerning the relevance of the individual

³ Post-hearing submission, at 3.

⁴ *Id.*

⁵ See 920-page supplemental pre-hearing submission dated January 8, 2020.

⁶ Post-hearing submission, at 2.

⁷ *Post-hearing submission*, at 6.

⁸ Post-hearing submission, at 5.

work orders was persuasive, a review of all of these work orders revealed that the work orders for only 168 of the 292 valves had a “Yes” value indicated for Task 0900 or 0600 to “Verify Valve Operation”. The work orders for the remaining 124 valves did not have a “Yes” value for these tasks. Therefore, Respondent’s work order records did not demonstrate that those 124 valves had been partially operated as required. Respondent cited its written procedures and the statements of one of its employees concerning how these procedures were typically carried out to argue that it had partially operated these 124 valves, but this information does not negate the allegation that records of such partial operation were not maintained.

Accordingly, after considering all of the evidence and the legal issues presented, I find that AGT violated 49 C.F.R. § 192.709(c) by failing to maintain records demonstrating that 124 emergency valves in the South Plainfield, New Jersey operating area were partially operated in accordance with § 192.745(a) during the specified time-period.

These findings of violation will be considered prior offenses 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.⁹ 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 \$341,400 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$293,700 for Respondent’s violation of 49 C.F.R. § 192.481(a) by failing to inspect the specified pipelines or portions thereof that are exposed to the atmosphere for evidence of atmospheric corrosion at a frequency of at least once every three calendar years, but with intervals not exceeding 39 months. Respondent did not provide any information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation nor did it contest this amount. Having reviewed the record and the penalty factors including the nature, circumstances, gravity, and Respondent’s culpability, I find that the record supports the proposed penalty. Accordingly, I assess Respondent a civil penalty of \$293,700 for violation of 49 C.F.R. § 192.481(a).

⁹ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

Item 2: The Notice proposed a civil penalty of \$47,700 for Respondent's violation of 49 C.F.R. § 192.709(c) by failing to maintain records demonstrating that 292 emergency valves in the South Plainfield, New Jersey operating area were partially operated in accordance with § 192.745(a) during the specified time period. With regard to the nature and circumstances of this violation, maintaining documentation that key maintenance tasks have been completed is a key part of pipeline safety. Operators must conduct oversight of the functions carried out by their personnel and auditing records is an important means of doing so. With respect to culpability, there were no circumstances preventing Respondent from achieving compliance. Respondent was not undertaking any good-faith attempt to comply (such as enhancing its record keeping) prior to discovery of the insufficient records. With respect to the gravity of the offense, Respondent provided information showing that there were 124 instances of violation, not 292. While the penalty amount proposed in the Notice was largely a baseline penalty amount and was not a multiple of 292, it did have a minor variable component based on the number of valves. I find that a minor reduction reflecting the reduction in the number of instances to 124 is warranted. Based upon the foregoing, I assess Respondent a reduced civil penalty of \$43,300 for violation of 49 C.F.R. § 192.703(c).

Accordingly, having reviewed the record and considered the assessment of criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$337,000**.

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 \$337,000 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.

August 3, 2020

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued