

June 26, 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. 1-2019-5006

Dear Mr. Warren:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws one of the allegations of violation, makes a finding of violation, and specifies actions that need to be taken by your subsidiary, Sunoco Pipeline, LP, to comply with the pipeline safety regulations. When the terms of the compliance order have been completed, as determined by the Director, Eastern Region, this enforcement action will be closed. 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. Greg McIlwain, Senior Vice President – Operations, Energy Transfer Partners, LP,
gregory.mcilwain@energytransfer.com
Ms. Catherine D. Little, Esq., 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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In the Matter of)		
)		
Sunoco Pipeline, LP,)		CPF No. 1-2019-5006
a subsidiary of Energy Transfer, LP,)		
)		
Respondent.)		
)		

FINAL ORDER

On various dates from August through November, 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 the facilities and records of Sunoco Pipeline, LP (Sunoco or Respondent) for the GRE Flow Reversal/Repurposing Project on the Mariner East 2 pipeline system located in Pennsylvania (the GRE Project). Sunoco Pipeline, LP operates approximately 5,851 miles of hazardous liquid pipelines and other assets in 11 states and is a subsidiary of Energy Transfer, LP.¹

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated May 17, 2019, a Notice of Probable Violation and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Sunoco had committed two violations of 49 C.F.R. Part 195 and proposed ordering Respondent to take certain measures to correct the alleged violations.

Sunoco responded to the Notice by letter dated June 20, 2019 (Response). In its Response, Sunoco contested the allegations 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 written material prior to the hearing on October 28, 2019 (Pre-hearing submission), and following the hearing on December 28, 2019 (Post-hearing submission). The Director submitted a recommendation on January 21, 2020 (Recommendation).²

¹ Pipeline Safety Violation Report (Violation Report), (May 21, 2019) (on file with PHMSA), at 1; Energy Transfer website, available at <https://www.energytransfer.com/ownership-structure> (last accessed June 16, 2020).

² Respondent submitted a reply to the Director's recommendation on February 10, 2020, to which OPS submitted an objection on February 18, 2020. Because the record in this proceeding was closed by this time and no request to submit these items was made or granted, these submissions were disregarded.

FINDING OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.106(b), which states:

§ 195.106 Internal design pressure.

(a) ...

(b) The yield strength to be used in determining the internal design pressure under paragraph (a) of this section is the specified minimum yield strength. If the specified minimum yield strength is not known, the yield strength to be used in the design formula is one of the following:

(1)(i) The yield strength determined by performing all of the tensile tests of ANSI/API Spec 5L (incorporated by reference, see §195.3) on randomly selected specimens with the following number of tests:

Pipe size	No. of tests
Less than 6 ⁵ / ₈ in (168 mm) nominal outside diameter.	One test for each 200 lengths.
6 ⁵ / ₈ in through 12 ³ / ₄ in (168 mm through 324 mm) nominal outside diameter.	One test for each 100 lengths.
Larger than 12 ³ / ₄ in (324 mm) nominal outside diameter.	One test for each 50 lengths.

The Notice alleged that Respondent violated 49 C.F.R. § 195.106(b) by failing to conduct sufficient random tensile tests to determine the internal design pressure of certain pipeline segments undergoing a change in maximum operating pressure (MOP) where the specified minimum yield strength (SMYS) was not known. Specifically, the Notice alleged that the SMYS was not known because the historical records Respondent used to establish that the 12-inch pipe was Grade B pipe having a SMYS of 35,000 should have been supplemented with additional historical records that validated these records.

In its Response and at the hearing, Sunoco strongly disagreed with OPS and stated that the allegation should be withdrawn. Respondent explained that the pipe grade and SMYS was known by Respondent from records it inherited from a predecessor company. These records included an August 1969 system map prepared by Atlantic Pipe Line Corporation; a December 1967 Atlantic Pipe Data Sheet; and a 1989 Line Testing Committee Report from Sun Pipe Line Company, a subsequent owner of the GRE Segment.³ All of these records indicated that the GRE Segment is Grade B seamless pipe.

OPS maintained that the records provided by Respondent were insufficiently validated for the pipe grade and SMYS to be considered “known” by Respondent and pointed out that the original 1937 manufacturing records did not include mill test reports. In the Notice, OPS quoted

³ Prehearing submission, Exhibits 6-8.

extensively from two advisory bulletins published by OPS concerning verification of records.⁴ Citing Advisory Bulletin ADB-2014-04, the Notice stated that operators should validate material and strength test records for all affected segments of pipe as reminded in Advisory Bulletin ADB-12-06 which stated, “If the operator is missing records, they should create and implement a plan to obtain material documentation. If mechanical and/or chemical properties (mill test reports) are missing, the plan should require destructive tests to confirm material properties of [the] pipeline. Certain high-risk pipelines merit a greater level of due diligence.”⁵

The issue to be determined in this case is whether the records produced by Respondent were sufficient to draw the conclusion that the pipe grade and SMYS were “known.” As Sunoco noted, the term “known” is not defined in the Part 195 regulations. In interpreting undefined regulatory terms, we look to the common dictionary definition. Merriam-Webster’s dictionary defines “known” to mean “generally recognized.”⁶ Respondent produced an August 1969 system map prepared by Atlantic Pipe Line Corporation; a December 1967 Atlantic Pipe Data Sheet; and a 1989 Line Testing Committee Report from Sun Pipe Line Company, a subsequent owner of the GRE Segment.⁷ All of these records indicated that the GRE Segment is Grade B seamless pipe. Sunoco provided copies of these records and OPS did not question their authenticity. In addition, Respondent’s Senior Manager of Pipeline Integrity testified at the hearing that the pipeline had been documented, maintained, and treated as Grade B pipe.⁸ Respondent maintained that the grade and SMYS of the pipeline in question was actually “known” in the context of 49 C.F.R. § 195.106(b).⁹

Having considered these arguments, the preponderance of the evidence shows that Respondent had adequately documented that the segment of pipe in question was Grade B with a SMYS of 35,000 psi. The Region’s justification for demanding that the operator perform additional, random tensile testing was neither necessary nor reasonable in light of the operator’s production of adequate documentation demonstrating its knowledge and confidence about the internal design pressure specifications for the pipeline segments at issue in this case. Based upon the foregoing, I hereby order that Item 1 of the Notice be withdrawn.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(c), which states:

§ 195.440 Public awareness.

(a) ...

(c) The operator must follow the general program recommendations,

⁴ Notice, at 3.

⁵ 77 FR 26822 (May 7, 2012). Advisory bulletins are a form of guidance and are not enforceable.

⁶ See <https://www.merriam-webster.com/dictionary/known>.

⁷ Prehearing submission, Exhibits 6-8.

⁸ Hearing transcript, at 29.

⁹ It is also notable that when tensile testing was voluntarily conducted on the 12-inch piping, the results for the actual yield strength ended up being consistent with Respondent’s understanding from its records that the pipe was Grade B with specified 35,000 psi yield strength, and the MOP of the pipeline was never out of compliance with the Part 195 regulations.

including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

The Notice alleged that Respondent violated 49 C.F.R. § 195.440(c) by failing to follow the public awareness program requirements of API RP 1162.¹⁰ Specifically, the Notice alleged that Respondent failed to tailor its communications coverage area to fit its particular pipeline, location, and potential impact consequences.

Following the hearing, Sunoco stated that it was no longer contesting this allegation. Accordingly, after considering all of the evidence and the legal issues presented, I find that Respondent violated 49 C.F.R. § 195.440(c) by failing to follow the public awareness program requirements of API RP 1162.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1 and 2 in the Notice for alleged violations of 49 C.F.R. §§ 195.106(b), and 195.440(c), respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. With regard to the alleged violation of § 195.106(b) (Item 1), as discussed above, this allegation has been withdrawn. Therefore, the compliance terms proposed in the Notice for Item 1 are also withdrawn.

As for the remaining compliance terms regarding the violation of § 195.440(c) (Item 2), pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.440(c) (**Item 2**), within 60 days of receipt of this Final Order, Respondent must:
 - a. Modify its Public Awareness Plan (PAP) applicable to the new ME2 pipeline, including any temporary reversal and repurposed portions of the existing 12-inch PTBR to MNTL pipeline and any components of the new 16-inch ME2X pipeline which will be utilized to facilitate transportation of HVLs. Sunoco shall expand its communication coverage area for Stakeholder Audience Identification, as defined by API RP 1162, consistent with areas of potential impact for their pipeline facilities. Sunoco shall also update its PAP to reflect communication buffer area(s) and information on how buffer(s) were determined and/or rational for selection.

¹⁰ API RP 1162 is incorporated by reference in Part 195, see § 195.3.

- b. Should the modification be deemed unwarranted, Sunoco shall provide justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety, specifically, education of Stakeholder Audiences that were determined to be susceptible to product dispersion and/or thermal radiation impact.
- c. PAP modifications and/or justifications required under Item 2 shall be submitted to the PHMSA Director of the Eastern Region for evaluation and approval.
- d. Submit documentation demonstrating compliance with each of the items outlined in this Compliance Order to Robert Burrough, Director, Eastern Region, PHMSA, 840 Bear Tavern Road, Suite 103, West Trenton, New Jersey 08628.

It is requested (not mandated) that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. It is requested that these costs be reported in two categories: (1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and (2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (49 C.F.R. § 190.223), for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief 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 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 terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

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

June 26, 2020

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued