

**NOTICE OF PROBABLE VIOLATION
and
PROPOSED COMPLIANCE ORDER**

OVERNIGHT EXPRESS DELIVERY

May 6, 2021

Mr. Matt Lamb
Vice President, Eastern Pipeline Operations
Eastern Gas Transmission and Storage, Inc.
925 White Oaks Boulevard
Bridgeport, WV 26330

CPF 1-2021-020-NOPV

Dear Mr. Lamb:

From February 24 - 28, 2020, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected Dominion Energy Transmission, Inc.'s Operator Qualifications (OQ) program in your office located in Bridgeport, West Virginia.

Subsequently, on November 1, 2020, Dominion Energy Transmission, Inc., OPID 2714, was acquired by Berkshire Hathaway Energy, a subsidiary of Berkshire Hathaway, Inc. As a result of that acquisition, the name of OPID 2714 was changed to Eastern Gas Transmission and Storage, Inc., referred to hereinafter as EGTSI. This acquisition did not change the OQ procedures in use or the operator's staff that PHMSA followed up with after the inspection.

As a result of the inspection, it is alleged that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violations are:

1. § 192.805 Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

(a) Identify covered tasks; ...

EGTSI failed to have and follow a written qualification program that identified operations and maintenance (O&M) welding inspection as a covered task.

During the inspection, the PHMSA inspector reviewed EGTSI's *D.O.T. Operator Qualification Compliance Plan, Revision date: 12/11/18*¹ (OQ Compliance Plan), and observed that O&M welding inspection was not included as a covered task. When questioned during the inspection, EGTSI failed to provide an explanation as to why the O&M welding inspection was not identified as a covered task using the four-part test prescribed in § 192.801(b). EGTSI's OQ Compliance Plan Section 3, Covered Tasks, indicated that EGTSI applied the four-part test to all identified activities to determine which tasks are covered.

Section 192.801(b) states:

For the purpose of this subpart, a covered task is an activity, identified by the operator that:

- 1) Is performed on a pipeline facility;
- 2) Is an operations or maintenance activity;
- 3) Is performed as a requirement of this part; and
- 4) Affects the operation or integrity of the pipeline.

Based on a review of EGTSI's records and procedures for its welding inspection process, it meets the § 192.801(b) 4-part test as follows:

1. EGTSI's welding inspection process is performed on EGTSI's pipeline facility.
2. EGTSI utilizes welding inspection for O&M pipe replacement projects.
3. Welding inspection is an activity required in accordance with § 192.241(a).
4. The inspection of welds affects the operation or integrity of the pipeline. EGTSI's welding inspection process ensures all applicable Welding Procedure Specifications are followed, as well as all visual weld inspections are performed as required.

EGTSI did not respond to PHMSA's written request to show how O&M welding inspection did not meet the § 192.801(b) four-part test. Rather, they only indicated that they do not consider it to be a covered task. EGTSI indicated that they require Company approved training for their welding inspectors.

Therefore, EGTSI failed to have and follow a written qualification program that included the identification of O&M welding inspection as a covered task in accordance with § 192.805(a).

¹ The document provided to PHMSA contained a revision date of 12/11/18, but EGTSI clarified during and after the inspection that the actual revision date of the version reviewed was 12/31/19.

2. § 192.805 Qualification program.

Each operator shall have and follow a written qualification program. The program will include provisions to:

- (a) ...
- (b) Ensure through evaluation that individuals performing covered tasks are qualified; ...**

EGTSI failed to ensure through evaluation that 90 individuals performing covered tasks were qualified.

During the inspection, PHMSA inspectors reviewed EGTSI's OQ Compliance Plan and associated OQ records of individual's covered task qualifications. Section 2 of EGTSI's OQ Compliance Plan concurred with the "Qualified" definition found in § 192.803(b), which states:

Qualified means that an individual has been evaluated and can:

- (a) Perform assigned covered tasks; and
- (b) Recognize and react to abnormal operating conditions.

However, it was found that in 90 cases EGTSI had granted covered task initial or requalifications to individuals based on the individual's renewal of training certificates from the same industry professional organization. In these cases, the renewal of training certificates did not include an evaluation of the individual's ability to perform the covered tasks or recognize and react to abnormal operating conditions (AOCs). The certificate renewal process for this organization includes an on-line application, self-certification of recent work history, meetings and workshop attendance, etc. and the renewal fee payment.

Based on the OQ records that EGTSI provided to PHMSA, 90 of the individuals who had been granted qualification had not been evaluated to ensure the individual is able to properly perform the covered task and recognize and react to task specific AOCs.

Therefore, EGTSI failed to ensure through evaluation that 90 individuals performing covered tasks were qualified, in accordance with § 192.805(b).

3. § 192.805 Qualification program.

Each operator shall have and follow a written qualification program. The program will include provisions to:

- (a) ...
- (g) Identify those covered tasks and the intervals at which evaluation of the individual's qualifications is needed; ...**

EGTSI failed to follow its written qualification program. Specifically, EGTSI failed to follow its OQ Compliance Plan and the OQ Compliance Plan appendix *Process for Determining OQ Re-qualification Intervals* (Requalification Appendix) regarding its process for determining covered task requalification intervals.

EGTSI's OQ Compliance Plan, Section 9, *Qualification Evaluation and Intervals*, describes their process to establish a requalification interval for each covered task, and further, indicates that two of the criteria applied to establish the requalification interval are difficulty of performance and frequency of performance.

EGTSI's Requalification Appendix describes the performance of a D-F analysis (difficulty - frequency) for each covered task to justify the requalification interval. EGTSI indicated this process had been in use since the inception of the OQ rule.

As part of its inspection, the PHMSA team reviewed a summary spreadsheet prepared by EGTSI, DETI Qualification and Requalification Methods (as of 11-14-2019), which lists 93 individual covered tasks and their respective requalification intervals.

EGTSI was unable to produce any records to document the performance of the D-F analysis, in accordance with the OQ Compliance Plan and the Requalification Appendix, to justify the requalification intervals for any of the 93 covered tasks. During the inspection, EGTSI indicated that its review of the archived records did not reveal any documentation that these analyses had been performed for covered tasks. The compliance staff further indicated that this process would be implemented prospectively for all current covered tasks utilized by EGTSI.

Thus, although EGTSI could demonstrate that it had established requalification intervals for each of its covered tasks, it failed to follow its OQ Compliance Plan and Requalification Appendix, and failed to document the results of D-F analyses to justify the established covered task requalification intervals.

Proposed Compliance Order

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022. For violations occurring prior to November 2, 2015, the maximum penalty may not exceed \$200,000 per violation per day, with a maximum penalty not to exceed \$2,000,000 for a related series of violations. We have reviewed the circumstances and supporting documents involved in this case, and have decided not to propose a civil penalty assessment at this time.

With respect to Items 1 and 2, pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to EGTSI Energy Transmission, Inc. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Warning Item(s)

With respect to Item 3, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment

proceedings at this time. We advise you to promptly correct these items. Failure to do so may result in additional enforcement action.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 1-2021-020-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Robert Burrough
Director, Eastern Region
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Enforcement Proceedings

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Eastern Gas Transmission and Storage, Inc. (EGTSI) a Compliance Order incorporating the following remedial requirements to ensure the compliance of EGTSI with the pipeline safety regulations:

1. In regard to Item Number 1 of the Notice pertaining to EGTSI's failure to have and follow a written operator qualification (OQ) program that identified covered tasks in accordance with § 192.805(a):
 - a. EGTSI must ensure all activities associated with operations and maintenance (O&M) welding inspection on its pipeline facilities, which meet the four-part test, are identified as a covered task in its written OQ program as prescribed in § 192.805(a).² EGTSI is required to submit the related amendment(s) from its covered task list.
 - b. EGTSI must amend its OQ Compliance Plan to ensure through evaluation that individuals who perform O&M welding inspection covered task(s) in the amended cover task list are qualified as prescribed in § 192.805(b). EGTSI must submit the related amendments from its OQ Compliance Plan, which must include but is not limited to: evaluation method and criteria, and evaluation for recognition and reaction to abnormal operating conditions.
2. In regard to Item Number 2 of the Notice pertaining to EGTSI's failure to ensure through evaluation that individuals performing covered tasks were qualified in accordance with § 192.805(b):
 - a. EGTSI must review and amend their OQ Compliance Plan and current list of acceptable means of qualification, including all industry certifications and/or renewal of certifications to ensure all individuals performing covered tasks have been evaluated in accordance with the requirements of 49 CFR 192 - Subpart N, Qualification of Pipeline Personnel. EGTSI must submit their revised OQ Compliance Plan, with attachments, to the Eastern Region Director for approval.
 - b. EGTSI must prepare and implement a written plan that will ensure that all individuals who had been qualified without evaluation are evaluated to ensure they are qualified to perform their assigned covered tasks, and recognize and react to abnormal operating conditions. Documentation must be submitted that verifies the employees in question have been evaluated for both performing the covered task(s) and recognizing AOCs based on EGTSI's amended procedures in accordance with item 2. (a) requirement, and must be submitted to the Eastern

² A covered task is defined as an activity that (1) is performed on a pipeline facility; (2) is an operation and maintenance task; (3) is performed as a requirement of Part 192; and (4) affects the operation or integrity of the pipeline (referred to as the "four-part test"). See 49 C.F.R. §192.801.

Region Director for approval.

3. Within 180 days of the Final Order, EGTSI must submit to the Director, Eastern Region, documentation that demonstrates satisfactory completion of Items 1 & 2. All submissions must be directed to Director, Eastern Region, Robert Burrough, Director, Eastern Region, 840 Bear Tavern Road, Suite 300, West Trenton, NJ 08628.
4. It is requested (not mandated) that EGTSI maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Robert Burrough, Director, Eastern Region, Pipeline and Hazardous Materials Safety Administration. 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.