



U.S. Department  
of Transportation

**Pipeline and  
Hazardous Materials Safety  
Administration**

400 Seventh Street, S.W.  
Washington, D.C. 20590

APR 13 2006

Mr. Gregory P. Bilinski  
Vice President, Transmission  
Texas Eastern Transmission, L.P.  
5400 Westheimer Court  
Houston, TX 77056-5310

Re: CPF No. 2-2005-1004

Dear Mr. Bilinski:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It withdraws one of the allegations of violation, makes a finding of violation, and assesses a civil penalty of \$20,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds  
Pipeline Compliance Registry  
Office of Pipeline Safety

cc: Ms. Linda Daugherty  
Director, Southern Region, OPS

Enclosure

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

**In the Matter of** )

**Texas Eastern Transmission, L.P.,** )

**Respondent.** )

**CPF No. 2-2005-1004**

**FINAL ORDER**

Between May 17 and August 27, 2004, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an on-site pipeline safety inspection of Respondent's facilities and records in Mississippi, Arkansas, Alabama, and Tennessee. As a result of the inspection, the Director, Southern Region, PHMSA, issued to Respondent, by letter dated March 17, 2005, 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 violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$35,000 for the alleged violations.

Respondent responded to the Notice by letter dated April 14, 2005 (Response). Respondent stated that it intended to contest two of the allegations and requested a hearing. The hearing was held on July 14, 2005 in Atlanta, Georgia. After this hearing, Respondent provided additional information for the record on August 31, 2005.

**FINDING OF VIOLATION**

Item 1 in the Notice alleged that Respondent violated 49 C.F.R. § 192.605 by failing to demonstrate that it followed the abnormal operating procedures for correcting the condition(s) that resulted in the pipeline's maximum allowable operating pressure (MAOP) being exceeded on four specified occasions. In its August 31, 2005 letter, Respondent withdrew its contest of Item 1, but provided additional information regarding this item and requested that PHMSA consider reducing or eliminating the civil penalty proposed in the Notice for this item. Accordingly, I find that Respondent violated § 192.605 by failing to demonstrate that it followed the abnormal operating procedures for correcting the condition(s) that resulted in the pipeline's maximum allowable operating pressure (MAOP) being exceeded on four occasions.

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

### **WITHDRAWAL OF ALLEGATION**

Item 3 in the Notice alleged that Respondent violated 49 C.F.R. § 192.705 by failing to patrol the pipeline right-of-way in the vicinity of Mile Post 110 by a method that allowed the surface conditions to be observed. In its response and at the hearing, Respondent submitted information demonstrating that at least some of the patrols it had conducted during the relevant calendar year were performed in a manner that allowed the surface conditions to be observed to the extent required in a Class 1 area. Based on this information demonstrating compliance with the regulation, I am withdrawing this allegation of violation.

### **ASSESSMENT OF PENALTY**

Under 49 U.S.C. § 60122, Respondent is subject to a civil penalty not to exceed \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 for any related series of violations.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

With respect to Item 1, the Notice proposed a civil penalty of \$20,000 for Respondent's failure to demonstrate that it followed the abnormal operating procedures for correcting the condition(s) that resulted in the pipeline's MAOP being exceeded on four occasions. Responding to and promptly correcting abnormal operating conditions is an important part of pipeline safety. Over-pressure events in particular must be fully addressed because they have the potential to damage the pipeline and increase the risk of future failures. In its response and at the hearing, Respondent acknowledged that it could have better documented its response to these events, but contended that its decision not to take any corrective action was justified because it believed the cause of some of these incidents was related to equipment failure. According to the record, however, there is reason to believe that decisions made by gas control contributed to the MAOP being exceeded on most if not all of the specified occasions. Respondent failed to demonstrate that any staffing dynamics or control training issues have been identified and addressed or other follow-up actions were taken to ensure that over-pressure events would not continue to reoccur. Respondent has presented no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$20,000 for violating 49 C.F.R. § 192.605.

With respect to Item 3, the Notice proposed a civil penalty of \$15,000. Since this item was withdrawn, the proposed civil penalty for this item is not assessed.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$20,000.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment 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 (AMZ-300), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$20,000 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 United States District Court.

#### WARNING ITEM

The Notice did not propose a civil penalty or corrective action for Item 2 in the Notice, Respondent's failure to maintain visible pipeline markers at three specified locations in accordance with § 192.707. Therefore, this is considered to be a warning item. Respondent is warned that if it does not take appropriate action to correct this item, enforcement action will be taken if a subsequent inspection reveals a violation.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a petition for reconsideration of this Final Order. Should Respondent elect to do so, the petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of a petition automatically stays the payment of any civil penalty assessed. However if Respondent submits payment for 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 on receipt.

  
for Stacey Gerard  
Associate Administrator for Pipeline Safety

APR 13 2006

\_\_\_\_\_  
Date Issued