

OCTOBER 1, 2014

Mr. Jeffrey M. Householder
President
Florida Public Utilities Company
1015 6th St, NW
Winter Haven, FL 33881

Re: CPF No. 2-2014-0001

Dear Mr. Householder:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$40,600, issues warnings, and specifies actions that need to be taken by Florida Public Utilities Company in order to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Southern Region, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Wayne T. Lemoi, Director, Southern Region, Office of Pipeline Safety
Mr. Michael McCarty, Safety, Compliance and Training Manager,
Florida Public Utilities Company, 1641 Worthington Road, Suite 220, West Palm
Beach, FL 33409

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of)	
)	
Florida Public Utilities, Co.,)	CPF No. 2-2014-0001
a subsidiary of Chesapeake Utilities Corp.,)	
)	
Respondent.)	
)	

FINAL ORDER

On August 26-30, 2013, 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 the Florida Public Utilities Company (FPUC or Respondent), a subsidiary of Chesapeake Utilities Corp. The inspection included liquefied petroleum gas (LPG) pipeline systems operated by Respondent in Brevard, Broward, and Palm Beach counties, Florida, and its records and procedures in West Palm Beach, Florida. FPUC is comprised of seven divisions, eight propane districts, and five affiliates, through which it provides natural gas, electricity, and propane gas to 118,000 persons within the State of Florida.¹

As a result of the inspection, on February 18, 2014, the Director, Southern Region, OPS (Director), issued a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice) to Respondent. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§ 192.11, 192.465, 192.481, 192.605, 192.625, 192.707, 192.723, 192.739, 192.741, 192.743, and 192.747, and proposed assessing a civil penalty of \$40,600 for two of the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct six of the alleged violations and warned Respondent to take corrective measures with respect to seven of the alleged violations.

FPUC replied to the Notice by letter dated March 12, 2014 (Response). Respondent did not contest the allegations of violation. Respondent did provide information on the corrective

¹ See *About FPU*, Florida Public Utilities Company, <http://www.fpuc.com/about/> (last visited September 8, 2014); see also *FPU Fact Sheet*, Florida Public Utilities Company, <http://www.fpuc.com/about/corporate-fact-sheet/> (last visited September 8, 2014); see also *FPU Companies and Affiliates*, <http://www.fpuc.com/about/fpufamily/> (last visited September 8, 2014).

actions it had taken and planned to take and requested that PHMSA consider a reduction in the proposed civil penalty. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

In its Response, Respondent did not contest the allegations that it violated 49 C.F.R. Part 192 as follows:

Item 1: The Notice alleged Respondent violated 49 C.F.R. § 192.11(b) which states:

§ 192.11 Petroleum gas systems.

(a)

(b) Each pipeline system subject to this part that transports only petroleum gas or petroleum gas/air mixtures must meet the requirements of this part and of ANSI/NFPA 58 and 59.

NFPA 58 § 6.7.4.5.

The point of discharge from the required pressure relief device on regulating equipment installed outside of buildings in fixed piping systems shall be located not less than 3ft. (1 m) horizontally away from any building opening below the level of such discharge, and not beneath any building unless this space is well ventilated to the outside and is not enclosed for more than 50 percent of its perimeter.

NFPA 58 § 6.7.4.6.

The point of discharge [of a regulator] shall also be located not less than 5 ft. (1.5 m) in any direction away from any source of ignition, openings into direct-vent (sealed combustion system) appliances, or mechanical ventilation air intakes.

The Notice alleged Respondent violated § 192.11(b) by operating a pressure relief device with its point of discharge less than three feet from a crawlspace vent. The Notice also alleged Respondent violated § 192.11(b) by operating a regulator with points of discharge less than five feet from sources of ignition. Specifically, the PHMSA inspector identified a pressure relief device with its point of discharge less than three feet from a crawlspace vent at 1024 Sebastian Road on Respondent's Barefoot Bay system. Additionally, the inspector found a regulator with a point of discharge less than five feet from sources of ignition at the 1310 NW 55th Avenue location on its Lauderhill West system.

Respondent did not contest these allegations. Accordingly, based upon a review of all of the evidence, I find Respondent violated 49 C.F.R. 192.11(b) by operating a regulator with its point of discharge less than three feet from a crawlspace vent and operating a pressure relief device with points of discharge less than five feet from sources of ignition at the specified locations.

Item 7: The Notice alleged Respondent violated 49 C.F.R. § 192.625(f), which states:

§ 192.625. Odorization of gas.

(a)

(f) To assure the proper concentration of odorant in accordance with this section, each operator must conduct periodic sampling of combustible gases using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable. Operators of master meter systems may comply with this requirement by -

(1) Receiving written verification from their gas source that the gas has the proper concentration of odorant; and

(2) Conducting periodic “sniff” tests at the extremities of the system to confirm that the gas contains odorant.

The Notice alleged Respondent violated § 192.625(f) by failing to assure the proper concentration of an odorant in the air by conducting periodic sampling of combustible gases using an instrument capable of determining the percentage of gas in the air at which the odor becomes readily detectable. Specifically, the Notice alleged that FPUC failed to perform these checks during calendar years 2009 through 2013 on its Barefoot Bay, Caroma Lane, Casa Del Sol, Lauderhill-East, Lauderhill-West, and Promenade at Inverarry systems. Additionally, low odorant readings were identified at 327 Kiwi St in Respondent’s Barefoot Bay system.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find Respondent violated 49 C.F.R. § 192.625(f) by failing to assure proper concentration of an odorant in the air by conducting periodic sampling of combustible gases using an instrument capable of determining the percentage of gas in the air at which the odor becomes readily detectable on the specified systems.

Item 8: The Notice alleged Respondent violated 49 C.F.R. § 192.707(a), which states in relevant part:

§ 192.707 Line markers for mains and transmission lines.

(a) Buried pipelines. Except as provided in paragraph (b) of this section, a line marker must be placed and maintained as close as practical over each buried main and transmission line:

(1) At each crossing of a public road and railroad; and

(2) Wherever necessary to identify the location of the transmission line or main to reduce the possibility of damage or interference.

The Notice alleged Respondent violated § 192.707(a) by failing to place and maintain line markers as close as practical over each buried main at each crossing of a public road. Specifically, the PHMSA inspector found several locations without line markers where mains crossed public roads on the Barefoot Bay, Lauderhill-East, and Lauderhill-West systems. Additionally, the inspector identified line markers on Respondent’s Lauderhill-East system having impaired readability due to fading.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find Respondent violated 49 C.F.R. § 192.707(a) by failing to place line markers where mains crossed public roads at the Barefoot Bay, Lauderhill-East, and Lauderhill-West system and by having line markers on Respondent's Lauderhill-East system with impaired readability due to fading.

Item 11: The Notice alleged Respondent violated 49 C.F.R. § 192.739(a), which states in relevant part:

§ 192.739 Pressure limiting and regulating stations: Inspection and testing.

(a) Each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment must be subjected at intervals not exceeding 15 months, but at least once each calendar year, to inspections and tests to determine that it is -

- (1) In good mechanical condition;
- (2) Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed;
- (3) Except as provided in paragraph (b) of this section, set to control or relieve at the correct pressure consistent with the pressure limits of §192.201(a); and
- (4) Properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation.

The Notice alleged Respondent violated § 192.739(a) by failing to inspect and test its pressure limiting and regulating stations at least once each calendar year, at intervals not exceeding fifteen months. Specifically, the Notice alleged Respondent failed to conduct these inspections for the following systems:

- a) Caroma system, for calendar years 2010, 2011, 2012;
- b) Promenade at Inverrary system, for calendar years 2010, 2011, 2012;
- c) Casa Del Sol system, for calendar years 2010, 2011, 2012; and
- d) Barefoot Bay system, for calendar year 2010.

Additionally, the inspector identified vents that were not properly installed and protected from dirt, liquids, or other conditions that might prevent their proper operation at Respondent's Casa Del Sol system and its underground tank at Lauderhill II-West system.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find Respondent violated 49 C.F.R. § 192.739(a) by failing to regularly inspect and test its pressure limiting and regulating stations at least once each year, at intervals not exceeding fifteen months, at its Caroma, Promenade at Inverrary, Casa Del Sol, and Barefoot Bay systems and by failing to properly install and protect vents on its Casa Del Sol and Lauderhill II-West systems.

Item 12: The Notice alleged Respondent violated 49 C.F.R. § 192.741(a), which states:

§ 192.741 Pressure limiting and regulating stations: Telemetering or recording gauges.

(a) Each distribution system supplied by more than one district pressure regulating station must be equipped with telemetering or recording pressure gauges to indicate the gas pressure in the district.

The Notice alleged that Respondent violated § 192.741(a) by failing to place telemetering or recording pressure gauges in distribution systems served by more than one pressure regulating station. Specifically, the PHMSA inspector found Respondent's Caroma, Casa Del Sol, and Lauderhill-West distribution systems are served from two separate regulator stations but did not have telemetering or recording pressure gauges.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find Respondent violated § 192.741(a) by failing to place telemetering or recording pressure gauges in its Caroma, Casa Del Sol, and Lauderhill-West distribution systems.

Item 13: The Notice alleged Respondent violated 49 C.F.R. § 192.743(a), which states:

§ 192.743 Pressure limiting and regulating stations: Capacity of relief devices.

(a) Pressure relief devices at pressure limiting stations and pressure regulating stations must have sufficient capacity to protect the facilities to which they are connected. Except as provided in §192.739(b), the capacity must be consistent with the pressure limits of §192.201(a). This capacity must be determined at intervals not exceeding 15 months, but at least once each calendar year, by testing the devices in place or by review and calculations.

The Notice alleged Respondent violated § 192.743(a) by failing to test the capacity of a relief device, either in place or by review and calculations, at least once each calendar year at intervals not exceeding fifteen months. Specifically, the PHMSA inspector found FPUC did not test the capacity of a relief device, in place or by review and calculations, located downstream of its Lauderhill-East system within the required interval.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find Respondent violated 49 C.F.R. § 192.743(a) by failing to test the capacity of a relief device, in place or by review and calculations, downstream of its Lauderhill-East system at least once each calendar year, in intervals not exceeding fifteen months.

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 \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 for any related series of violations.² 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; the Respondent's ability to pay the penalty and 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 \$40,600 for the two violations cited below.

Item 10: The Notice proposed a civil penalty of \$18,700, for Respondent violating 49 C.F.R. § 192.723(b) by not conducting a leakage survey of the "green zone" of its Barefoot Bay system at least once every five calendar years, at intervals not exceeding sixty-three months. With respect to the nature, circumstances, and gravity of this violation, surveying the conditions along a section of gas pipeline once every five calendar years is a key part of pipeline safety; failure to do so may result in a pipeline leak that has an adverse impact on the environment. With respect to culpability, Respondent did not contest the violation and provided no basis for its failure to comply with § 192.723(b). While Respondent stated that a leakage survey of the "green zone" was completed on December 7, 2013 – a date outside of the five-year statutory period, nothing in the record constitutes a good faith effort to comply prior to the OPS inspection.

Respondent has presented no evidence or arguments that would warrant a reduction in the civil penalty amount proposed for this Item in the Notice. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$18,700 for violation of 49 C.F.R. 723(b).

Item 11: The Notice proposed a civil penalty of \$21,900, for Respondent violating 49 C.F.R. § 192.739(a) by failing to conduct regulator inspections at its Caroma, Promenade at Inverrary, Casa Del Sol, and Barefoot Bay systems. The Notice also proposed this penalty for Respondent violating 49 C.F.R. § 192.739(a) by not properly installing and protecting vents on its Casa Del Sol and Lauderhill II-West systems. With respect to the nature, circumstances, and gravity of this violation, inspecting pressure regulator stations along four sections of gas pipelines at least once every calendar year, as well as properly installing and protecting vents on two sections of pipeline, are key parts to pipeline safety; failure to do so may result in a pipeline leak that has an adverse impact on the environment. With respect to culpability, Respondent did not contest the violation, nor present any evidence or argument justifying a reduction of the proposed penalty. While Respondent noted that after the PHMSA inspection on August 26-30, 2013, steps have been implemented to remedy these violations, nothing in the record constitutes a good faith

² Effective January 3, 2012, the maximum administrative civil penalties for violations of the federal pipeline safety regulations were doubled to \$200,000 per violation per day of violation with a maximum of \$2,000,000 for a related series of violations (The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Pub. L. 112-90)). Because the violations in this case occurred prior to the increase, the higher maximums do not apply.

effort to comply prior to the OPS inspection.

Respondent has presented no evidence or arguments that would warrant a reduction in the civil penalty amount proposed for this Item in the Notice. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$21,900 for violation of 49 C.F.R. § 192.739(a).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$40,600**.

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, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$40,600 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 7, 8, 11, 12, and 13 for violations of 49 C.F.R. §§ 192.11(b), 192.625(f), 192.707(a), 192.739(a), 192.741(a), and 192.743(a). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas, or who owns or operates a pipeline facility, is required to comply with the applicable safety standards established under Chapter 601.

In its Response, FPUC stated its intent to address the violations cited in the Notice. I acknowledge Respondent's efforts in taking initial steps to remedy these violations, but note that FPUC did not provide any documentation with its Response showing that the corrective actions have been completed. Accordingly, the compliance terms proposed in the Notice for Items 1, 7, 8, 11, 12, and 13 are included in this Order.

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 § 192.11(b), **(Item 1)**, Respondent must survey all of its PHMSA regulated systems in the state of Florida, identify all locations

that do not meet the NFPA standard, and take corrective actions to bring the identified locations into compliance with the distances specified in the NFPA 58 (2004) standard.

2. With respect to the violation of § 192.625(f), (**Item 7**), Respondent must use an instrument to verify that the percentage of gas in the air exists at a concentration of one-fifth of the lower explosive limit, and that this gas is readily detectable by a person with a normal sense of smell. Further, Respondent must conduct this instrumented sampling at multiple locations within each system, including at the extremities of the systems and within dead legs, for all of its PHMSA regulated systems in the state of Florida where this sampling was not already conducted.
3. With respect to the violation of § 192.707(a), (**Item 8**), Respondent must survey all of its PHMSA regulated systems in the state of Florida, identify locations where buried mains cross public roads, and ensure that pipeline markers meeting the requirements of §192.707(d) are placed and maintained as close as practical over each buried main at each crossing of a public road.
4. With respect to the violation of § 192.739(a), (**Item 11**), Respondent must survey all of its PHMSA regulated systems in the state of Florida, identify locations where its pressure limiting and regulating stations have not been inspected in the last fifteen months, and must inspect and test its pressure limiting and regulating stations to ensure they meet the requirements of §192.739(a).
5. With respect to the violation of § 192.741(a), (**Item 12**), Respondent must survey all of its PHMSA regulated systems in the state of Florida, identify locations where its LPG distribution systems are supplied by more than one pressure regulating station which do not have telemetering or recording pressure gauges installed, and install telemetering or recording pressure gauges in these systems.
6. With respect to the violation of § 192.743(a), (**Item 13**), Respondent must survey all of its PHMSA regulated systems in the state of Florida and determine the capacity of all relief devices, by testing the devices in place or by review and calculations, thus ensuring they have sufficient capacity to protect the facilities to which they are connected.
7. Respondent must complete the above items and prepare records to document the results within 90 days after the receipt of this Order.
8. Within 100 days following receipt of this Order, Respondent must provide to the Director, Southern Region, Office of Pipeline Safety, U.S. Department of Transportation, 223 Peachtree Street, Suite 600, Atlanta, GA 30303, written documentation demonstrating that these compliance order items have been completed and must make such records available for inspection by PHMSA representatives.

9. It is requested (not mandated) that FPUC maintain documentation of the safety improvement costs associated with fulfilling this compliance order and submit the total to the Director, Southern Region, OPS. It is requested that these costs be reported in two categories:
- (a) Total cost associated with preparation/revision of plans, procedures studies, and analyses; and
 - (b) Total cost associated with replacements, additions, and other changes to pipeline infrastructure.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000 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.

WARNING ITEMS

With respect to Items 2, 3, 4, 5, 6, 9, and 14, the Notice alleged probable violations of Part 192 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings are for:

49 C.F.R. § 192.465 (**Item 2**) – Respondent’s alleged failure to test pipelines under cathodic protection at least once each calendar year, but with intervals not exceeding fifteen months;

49 C.F.R. § 192.465 (**Item 3**) – Respondent’s alleged failure to take prompt remedial action to correct external corrosion control deficiencies identified by its monitoring;

49 C.F.R. § 192.481 (**Item 4**) – Respondent’s alleged failure to inspect each of its onshore pipelines, or portion of pipelines, that are exposed to the atmosphere for evidence of atmospheric corrosion at least once every three calendar years, but with intervals not exceeding fifteen months;

49 C.F.R. § 192.605 (**Item 5**) – Respondent’s alleged failure to review and update its procedural manual for operations, maintenance, and emergencies at intervals not exceeding fifteen months, but at least once each calendar year;

49 C.F.R. § 192.605 (**Item 6**) – Respondent’s alleged failure to periodically review the work done by its personnel to determine the effectiveness and adequacy of the procedures used in normal operation and maintenance, and to modify the procedure when deficiencies were found;

49 C.F.R. § 192.723 (**Item 9**) – Respondent’s alleged failure to conduct leakage surveys

in business districts, at intervals not exceeding fifteen months, but at least once each calendar year; and

49 C.F.R. § 192.747 (**Item 14**) – Respondent’s alleged failure to check and service each valve which may be necessary for the safe operation of its pipeline distribution system at intervals not exceeding fifteen months, but at least once each calendar year.

Respondent presented information in its Response showing that it had taken certain actions to address the cited items. If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order [**CPF No. 2-2014-0001**]. The petition must be sent to: 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. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued