

May 3, 2019

Ms. Lynn J. Good
Chairman, President, and CEO
Duke Energy Corporation
550 South Tryon Street
Charlotte, North Carolina 28202

Re: CPF No. 2-2018-1004

Dear Ms. Good:

Enclosed please find the Final Order issued in the above-referenced case to your subsidiary, KO Transmission Company. It makes findings of violation and assesses a civil penalty of \$94,900. It further finds that KO Transmission Company has completed the actions specified in the Notice to comply with the pipeline safety regulations and acknowledges receipt of payment of the full penalty amount, by wire transfer dated July 30, 2018. This enforcement action is now closed. Service of the Final Order by certified mail is effective upon the date of mailing, 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. James A. Urisko, Director, Southern Region, Office of Pipeline Safety, PHMSA
Mr. Victor Gaglio, Senior Vice President and Chief Operations Officer Natural Gas,
Duke Energy Corporation
Mr. Franklin H. Yoho, CEO, KO Transmission Company, 550 South Tryon Street,
Charlotte, North Carolina 28202

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

_____)
In the Matter of)

KO Transmission Company,)
a subsidiary of Duke Energy Corporation,)

Respondent.)
_____)

CPF No. 2-2018-1004

FINAL ORDER

From July 31 through September 21, 2017, 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 KO Transmission Company (KOT or Respondent) in its Erlanger, Kentucky, and Cincinnati, Ohio offices. KOT is a wholly-owned subsidiary of Duke Energy Corporation that operates and co-owns, with Columbia Gas Transmission Corporation, approximately 90 miles of natural gas transmission pipeline near Lexington, KY.¹

As a result of the inspection, the Director, Southern Region, OPS (Director), issued to Respondent, by letter dated June 29, 2018, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice), which also included warnings pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that KOT had committed four violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$94,900 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations. The warning items required no further action but warned the operator to correct the probable violations or face possible future enforcement action.

Duke responded to the Notice on behalf of Respondent by letter dated July 30, 2018 (Response). The company did not contest the allegations of violation, paid the proposed civil penalty of \$94,900, and completed the proposed compliance actions. In accordance with 49 C.F.R. § 190.208(a)(1), such payment authorizes the Associate Administrator to make findings of violation and issue this final order without further proceedings. Respondent did not request a hearing and therefore has waived its right to one.

¹ KO Transmission Company website, available at <http://www.kotransmission.com/> (last accessed November 21, 2018).

FINDINGS OF VIOLATION

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

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.805, which states, in relevant part:

§ 192.805 Qualification program.

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

- (a) Identify covered tasks;
- (c) Allow individuals that are not qualified pursuant to this subpart to perform a covered task if directed and observed by an individual that is qualified; . . .
- (g) Identify those covered tasks and the intervals at which evaluation of the individual's qualifications is needed;
- (h) After December 16, 2004, provide training, as appropriate, to ensure that individuals performing covered tasks have the necessary knowledge and skills to perform the tasks in a manner that ensures the safe operation of pipeline facilities; and
- (i) After December 16, 2004, notify the Administrator or a state agency participating under 49 U.S.C. Chapter 601 if the operator significantly modifies the program after the administrator or state agency has verified that it complies with this section. . . .

The Notice alleged that Respondent violated 49 C.F.R. § 192.805 by failing to include provisions in its written qualification program that are required under paragraphs (c), (g), (h), and (i) of that section. Specifically, the Notice alleged that KOT's written qualification program failed: (1) to provide sufficient details to describe how § 192.805(c) would be satisfied for KOT's particular system, including the conditions under which non-qualified individuals could perform a covered task if directed and observed by a qualified individual (e.g., information on span-of-control ratios and verbal communications for applicable covered tasks); (2) to show how and if evaluation criteria would be applied under § 192.805(g) to establish re-qualification intervals; (3) to address the requirement under § 192.805(h) that KOT would provide training, as appropriate, to ensure that individuals performing covered tasks had the necessary knowledge and skills to perform the tasks in a manner that ensured the safe operation of pipeline facilities; and (4) to explain how KOT would meet the requirement under § 192.805(i) that KOT notify the Administrator or a state agency if KOT significantly modified its qualification program.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.805 by failing to include provisions in its written qualification program required under paragraphs (c), (g), (h), and (i) of that section.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.809, which states, in relevant part:

§ 192.809 General.

(a) Operators must have a written qualification program by April 27, 2001. The program must be available for review by the Administrator or by a state agency participating under 49 U.S.C. Chapter 601 if the program is under the authority of that state agency.

(b) Operators must complete the qualification of individuals performing covered tasks by October 28, 2002. . . .

(d) After October 28, 2002, work performance history may not be used as a sole evaluation method.

(e) After December 16, 2004, observation of on-the-job performance may not be used as the sole method of evaluation.

The Notice alleged that Respondent violated 49 C.F.R. § 192.809 by failing to dis-allow the use of work-performance-history reviews as a sole evaluation method of qualification after October 28, 2002, and observation of on-the-job performance as a sole evaluation method of qualification after October 16, 2004. Specifically, the Notice alleged that KOT's written operator qualification plan did not dis-allow the use of the two methods stated above as sole evaluation methods as of the date of the PHMSA inspection in 2017.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.809 by failing to dis-allow the use of work-performance-history reviews as the sole evaluation method of qualification after October 28, 2002, and observation of on-the-job performance as the sole evaluation method of qualification after October 16, 2004.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 192.465(a), which states:

§ 192.465 External corrosion control: Monitoring.

(a) Each pipeline that is under cathodic protection must be tested at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of §192.463. However, if tests at those intervals are impractical for separately protected short sections of mains or transmission lines, not in excess of 100 feet (30 meters), or separately protected service lines, these pipelines may be surveyed on a sampling basis. At least 10 percent of these protected structures, distributed over the entire system must be surveyed each calendar year, with a different 10 percent checked each subsequent year, so that the entire system is tested in each 10-year period.

The Notice alleged that Respondent violated 49 C.F.R. § 192.465(a) by failing to test each pipeline under cathodic protection (CP), at least once each calendar year but with intervals not exceeding 15 months, to determine whether such system meets the requirements of § 192.463 at several test stations. Specifically, the Notice alleged that KOT exceeded the 15-month test interval at seven test sites from between 70 and 120 days.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.465(a) by failing to test each pipeline under CP, at least once each calendar year but with intervals not exceeding 15 months, to determine whether such system meets the requirements of § 192.463 at several test stations.

Item 14: The Notice alleged that Respondent violated 49 C.F.R. § 192.921(a), which states:

§ 192.921 How is the baseline assessment to be conducted?

(a) *Assessment methods.* An operator must assess the integrity of the line pipe in each covered segment by applying one or more of the following methods depending on the threats to which the covered segment is susceptible. An operator must select the method or methods best suited to address the threats identified to the covered segment (*See* §192.917).

The Notice alleged that Respondent violated 49 C.F.R. § 192.921(a) by failing to conduct a baseline assessment on two covered segments of line pipe. Specifically, the Notice alleged that KOT failed to provide any documentation that pipe segments HCA30 and HCA20, which Respondent had identified as segments covered by its integrity management program, had ever been the subject of a baseline assessment or any other integrity assessment.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.921(a) by failing to conduct a baseline assessment on two covered segments of pipe.

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.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; 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 \$94,900 for the two violations cited above.

Item 6: The Notice proposed a civil penalty of \$42,400 for Respondent's violation of 49 C.F.R.

² These amounts are adjusted annually for inflation. *See, e.g.*, Pipeline Safety: Inflation Adjustment of Maximum Civil Penalties, 82 Fed. Reg. 19325 (April 27, 2017).

§ 192.465(a), for failing to test, at least once each calendar year but with intervals not exceeding 15 month, each pipeline under CP to determine whether its CP system meets the requirements of § 192.463 at several test stations. KOT neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$42,400 for violation of 49 C.F.R. § 192.465(a).

Item 14: The Notice proposed a civil penalty of \$52,500 for Respondent's violation of 49 C.F.R. § 192.921(a), for failing to conduct a baseline assessment on two covered segments of pipe. KOT neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$52,500 for violation of 49 C.F.R. § 192.921(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 **\$94,900**. Respondent paid the civil penalty in full, by wire transfer dated July 30, 2018.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to **Items 1 and 2** in the Notice for violations of 49 C.F.R. §§ 192.805 and 192.809, respectively. 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. The Director indicates that KOT has taken the following actions specified in the proposed compliance order:

1. With respect to the violation of § 192.805 (**Item 1**), Respondent has revised its written operator qualification program as follows:
 - (a) For each covered task that KOT allows "not qualified" individuals to perform, develop a justifiable "span-of-control ratio" for the purpose of assuring that such individuals will be directed and observed by a qualified individual when performing the task;
 - (b) For each covered task, determine an evaluation interval, based on a written justification, at which re-evaluation of individuals' qualifications are needed;
 - (c) Develop and/or identify a written training program that meets the requirements of § 192.805(h). KOT must include, or make reference to, the training program in its written operator qualification program, and must include cross-references between each covered task and the applicable required training; and
 - (d) Include the notification requirement as specified in § 192. 805(i).
2. With respect to the violation of § 192.809 (**Item 2**), Respondent has revised its written operator qualification plan to include the program restrictions required under §§ 192.809(d) and 192.809(e).

Accordingly, I find that compliance has been achieved with respect to these violations. Therefore, the compliance terms proposed in the Notice are not included in this Order.

WARNING ITEMS

With respect to Items 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 15, and 16, the Notice alleged probable violations of Parts 191 and 192 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 192.945(a) **(Item 3)** — Respondent's alleged failure to use appropriate methods to measure whether its integrity management program was effective in assessing and evaluating the integrity of each covered pipeline segment and in protecting high consequence areas;

49 C.F.R. § 191.17(a) **(Item 4)** — Respondent's alleged failure to submit several types of required data in its annual report for transmission pipeline systems;

49 C.F.R. § 191.29(a)(1) **(Item 5)** — Respondent's alleged failure to provide certain geospatial data on its pipelines to PHMSA for the National Pipeline Mapping System;

49 C.F.R. § 192.605(a) **(Item 7)** — Respondent's alleged failure to prepare and follow certain required provisions of its own operations and maintenance manual;

49 C.F.R. § 192.615(b)(2) **(Item 8)** — Respondent's alleged failure to provide documentation that its emergency response personnel are knowledgeable of the company's emergency-response procedures;

49 C.F.R. § 192.709(c) **(Item 9)** — Respondent's alleged failure to maintain records showing the most recent inspection for evidence of atmospheric corrosion of above-ground facilities;

49 C.F.R. § 192.907(a) **(Item 10)** — Respondent's alleged failure to follow two sections of its own written integrity management program;

49 C.F.R. § 192.925(b) **(Item 11)** — Respondent's alleged failure to conduct proper External Corrosion Direct Assessments (ECDA) because it did not follow the requirements of NACE SP0502;

49 C.F.R. § 192.225(a) **(Item 12)** — Respondent's alleged failure to ensure that certain of its welders were tested in accordance with KOT's own qualified welding procedures;

49 C.F.R. § 192.947(d) **(Item 13)** — Respondent’s alleged failure to maintain, for the useful life of the pipeline, integrity management documents that supported various decisions, analyses, and processes developed and used to implement and evaluate each element of its program;

49 C.F.R. § 192.917(a) **(Item 15)** — Respondent’s alleged failure to identify and evaluate all potential threats to each pipeline segment covered by its integrity management program; and

49 C.F.R. § 192.709(c) **(Item 16)** — Respondent’s alleged failure to maintain adequate records of each pipeline right-of-way patrol conducted during calendar years 2016 and 2017.

If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

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

May 3, 2019

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued