

February 4, 2019

Ms. Lynn J. Good
Chairman, President, and CEO
Duke Energy Corporation
139 East Fourth Street, Mail Drop EX403
Cincinnati, OH 45202

Re: CPF No. 2-2018-6002

Dear Ms. Good:

Enclosed please find the Final Order issued in the above-referenced case to your subsidiary, Duke Energy Kentucky, Inc. It makes findings of violation, assesses a civil penalty of \$55,700, and specifies actions that need to be taken by Duke Energy Kentucky, Inc., to comply with the pipeline safety regulations. This is to acknowledge receipt of payment of the full penalty amount, by wire transfer, dated June 12, 2018. When the terms of the compliance order have been completed, as determined by the Director, Southern Region, this enforcement action will be 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 VP & Chief Operations Officer Natural Gas, Duke Energy Corporation

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)	
)	
Duke Energy Kentucky, Inc.,)	CPF No. 2-2018-6002
 a subsidiary of Duke Energy Corporation,)	
)	
Respondent.)	
)	

FINAL ORDER

Between July 31 and 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 of Duke Energy Kentucky, Inc. (Duke Energy or Respondent), in Kenton County, Kentucky, and the records of Duke Energy in Cincinnati, Ohio, and Erlanger, Kentucky. Duke Energy is a subsidiary of Duke Energy Corporation, which conducts natural gas transmission and distribution operations in the Carolinas, Tennessee, southwestern Ohio and Northern Kentucky.¹ In addition, Respondent operates a 2.91-mile 8-inch Liquefied Petroleum Gas (LPG) pipeline in Kenton County, Kentucky.²

As a result of the inspection, the Director, Southern Region, OPS (Director), issued to Respondent, by letter dated May 15, 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 Duke Energy had committed four violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$55,700 for two of the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the other two 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 Energy responded to the Notice by letter dated June 8, 2018 (Response). The company did not contest the allegations of violation, paid the proposed civil penalty of \$55,700, and agreed to complete the proposed compliance actions. In accordance with 49 C.F.R. § 190.208(a)(1), payment of the penalty authorizes the Associate Administrator to make findings of violation and to issue this final order without further proceedings. Respondent did not request a hearing and therefore has waived its right to one.

¹ Duke Energy 2017 Annual Report, available at https://www.duke-energy.com/annual-report/_media/pdfs/our-company/investors/de-annual-reports/2017/2017annualreport.pdf (last accessed September 26, 2018).

² Pipeline Safety Violation Report (Violation Report), (May 22, 2018) (on file with PHMSA), at 1.

FINDINGS OF VIOLATION

In its Response, Duke Energy did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.1(a), which states:

§ 195.1 Which pipelines are covered by this Part?

(a) *Covered.* Except for the pipelines listed in paragraph (b) of this Section, this Part applies to pipeline facilities and the transportation of hazardous liquids or carbon dioxide associated with those facilities in or affecting interstate or foreign commerce, including pipeline facilities on the Outer Continental Shelf (OCS). Covered pipelines include, but are not limited to:

- (1) Any pipeline that transports a highly volatile liquid;
- (2) Any pipeline segment that crosses a waterway currently used for commercial navigation;
- (3) Except for a gathering line not covered by paragraph (a)(4) of this Section, any pipeline located in a rural or non-rural area of any diameter regardless of operating pressure;
- (4) Any of the following onshore gathering lines used for transportation of petroleum:
 - (i) A pipeline located in a non-rural area;
 - (ii) A regulated rural gathering line as provided in § 195.11; or
 - (iii) A pipeline located in an inlet of the Gulf of Mexico as provided in § 195.413.

The Notice alleged that Respondent violated 49 C.F.R. § 195.1(a) by failing to apply Part 195 to certain covered pipelines. Specifically, the Notice alleged that Duke Energy failed to incorporate its Constance Cavern Liquid Propane Gas (LPG) Storage Facility (Constance Cavern) into all relevant portions of Duke Energy's hazardous liquid pipeline safety program.

The term "Pipeline or pipeline system" is defined in § 195.2 as:

[A]ll parts of a pipeline facility through which a hazardous liquid or carbon dioxide moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

Furthermore, "pipeline facility" is defined in § 195.2 as "new and existing pipe, rights-of-way and any equipment, facility, or building used in the transportation of hazardous liquids or carbon dioxide." Duke Energy's Constance Cavern meets the definition of "pipeline facility" because the submerged pumps and appurtenances within the cavern transfer LPG out of the storage cavern to a bi-directional pipeline for transport downstream (relative to the cavern) to the company's Erlanger plant. Additionally, Constance Cavern receives LPG from the same bi-directional pipeline via trucking injection at the Erlanger plant. Therefore, Constance Cavern is covered by Part 195.

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. § 195.1(a) by failing to apply Part 195 to certain covered pipelines.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.446(a), which states:

§ 195.446 Control room management.

(a) *General.* This section applies to each operator of a pipeline facility with a controller working in a control room who monitors and controls all or part of a pipeline facility through a SCADA system. Each operator must have and follow written control room management procedures that implement the requirements of this section. The procedures required by this section must be integrated, as appropriate, with the operator's written procedures required by § 195.402. An operator must develop the procedures no later than August 1, 2011, and must implement the procedures according to the following schedule. The procedures required by paragraphs (b), (c)(5), (d)(2) and (d)(3), (f) and (g) of this section must be implemented no later than October 1, 2011. The procedures required by paragraphs (c)(1) through (4), (d)(1), (d)(4), and (e) must be implemented no later than August 1, 2012. The training procedures required by paragraph (h) must be implemented no later than August 1, 2012, except that any training required by another paragraph of this section must be implemented no later than the deadline for that paragraph.

The Notice alleged that Respondent violated 49 C.F.R. § 195.446(a) by failing to have and follow written control room management (CRM) procedures that implement the requirements of § 195.446. Specifically, the Notice alleged that Duke Energy did not have CRM procedures because it failed to identify its Erlanger air-propane plant office (Erlanger office) as a control room. The term "Control room" is defined in § 195.2 as "an operations center staffed by personnel charged with the responsibility for remotely monitoring and controlling a pipeline facility." The term "Controller" is defined in § 195.2 as "a qualified individual who remotely monitors and controls the safety-related operations of a pipeline facility via a SCADA system from a control room, and who has operational authority and accountability for the remote operational functions of the pipeline facility."

During the inspection, PHMSA inspectors interviewed personnel at the Erlanger office regarding certain plant operators' roles in operating and controlling Duke Energy's Line LP03, as well as its Constance Cavern facility. Based on these interviews, PHMSA allegedly determined that the Erlanger office remotely controlled the pipeline and was therefore a "control room." PHMSA also determined that certain operators at the Erlanger air-propane plant met the definition of "controller" set forth above. As such, Duke Energy was allegedly required to have and follow written CRM procedures.

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. § 195.446(a) by failing to have and follow written control room management procedures that implement the requirements of § 195.446.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(b)(5), which states:

§ 195.452 Pipeline integrity management in high consequence areas.

(a)

(b) *What program and practices must operators use to manage pipeline integrity?* Each operator of a pipeline covered by this section must:

(1) Develop a written integrity management program that addresses the risks on each segment of pipeline . . .

(5) Implement and follow the program.

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(b)(5) by failing to follow its own written integrity management program (IMP). Specifically, the Notice alleged that Duke Energy failed to follow its: (1) *Assessment Methods Selection Process Flowchart, GD70.06-006*, procedure when it used an integrity-assessment method that was not specified in the procedure as an approved method; (2) *Hazardous Liquid IMP Information Analysis, GD75.01-008*, when it failed to review assessment results and perform an information analysis within the required 150-day timeframe; (3) *Continuing Evaluation and Assessment, GD75.01-007*, when it failed to perform the required formal evaluations of the integrity of its pipelines that must “consider the results of the baseline and subsequent assessments, the information analysis performed after each assessment, decisions regarding remediation and decisions regarding preventive and mitigative measures;” and (4) *Hazardous Liquid Pipeline IMP, Section 9 – Performance Plan, and Appendix B – Performance Measures*, when it failed to compile the required annual IMP performance measures for calendar years 2013, 2014, and 2015.

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. § 195.452(b)(5) by failing to follow its own written IMP.

Item 9: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(l)(1)(ii), which states:

§ 195.452 Pipeline integrity management in high consequence areas.

(a)

(l) *What records must an operator keep to demonstrate compliance?*

(1) An operator must maintain, for the useful life of the pipeline, records that demonstrate compliance with the requirements of this subpart. At a minimum, an operator must maintain the following records for review during an inspection:

(i)

(ii) Documents to support the decisions and analyses, including any modifications, justifications, deviations and determinations made, variances, and actions taken, to implement and evaluate each element of the integrity management program listed in paragraph (f) of this section.

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(l)(ii) by failing to maintain, for the useful life of the pipeline, documents to support the decisions and analyses, including any modifications, justifications, deviations and determinations made, variances, and actions taken, to implement and evaluate each element of the integrity management program listed in § 195.452(f). Specifically, the Notice alleged that four segments of the pipeline were pressure-

tested as part of a baseline assessment on October 20, 2005. Under Duke Energy's *Continuing Evaluation and Assessment Procedure, GD75.01-007*, each pipeline covered by its IMP must be reassessed "within a maximum period of five years of the previous assessment." Accordingly, the four segments were required to be reassessed by October 20, 2010; however, the Notice alleged that this was not done. Duke Energy did not have any records or documents to support the decision to deviate from implementing its IMP regarding reassessments for these four in-service segments.

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. § 195.452(l)(ii) by failing to maintain documents to support the decisions and analyses, including any modifications, justifications, deviations and determinations made, variances, and actions taken, to implement and evaluate each element of the integrity management program required under § 195.452(f).

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.³ 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; 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 \$55,700 for the violations cited above.

Item 6: The Notice proposed a civil penalty of \$39,200 for Respondent's violation of 49 C.F.R. § 195.452(b)(5), for failing to follow its own IMP. Duke Energy neither contested the allegation nor presented any evidence or argument justifying elimination of the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$39,200 for violation of 49 C.F.R. § 195.452(b)(5).

Item 9: The Notice proposed a civil penalty of \$16,500 for Respondent's violation of 49 C.F.R. § 195.452(l)(1)(ii), for failing to maintain documents to support the decisions and analyses, including any modifications, justifications, deviations and determinations made, variances, and actions taken, to implement and evaluate each element of the integrity management program required under § 195.452(f). Duke Energy neither contested the allegation nor presented any evidence or argument justifying elimination of the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of

³ 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).

\$16,500 for violation of 49 C.F.R. § 195.452(l)(1)(ii).

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 **\$55,700**, which amount was paid in full by wire transfer on June 12, 2018.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1 and 4 in the Notice for violations of 49 C.F.R. §§ 195.1(a) and 195.446(a), 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. 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 § 195.1(a) (**Item 1**), Respondent must revise its written plans and procedures to incorporate Constance Cavern and to include all pipeline facilities (as defined in § 195.2) located at the plant site and on plant property, including plant property security fencing. The revisions, at a minimum and as applicable to each facility, must be in accordance with Duke Energy's written plans and procedures used to administer its pipeline safety program including, but not limited to, written plans and procedures required by Part 195, Subparts F and G.
2. With respect to the violation of § 195.1(a) (**Item 1**), Respondent must also provide to PHMSA, for approval, a written list of activities, with a completions schedule, that are required to be performed in order for Constance Cavern to comply with Duke Energy's revised written plans and procedures described in Compliance Order Item 1 above.
3. Submit to the Director, Southern Region, OPS, within 30 days following receipt of the Final Order, written documentation of steps taken to satisfy Compliance Order Items 1 and 2 above.
4. With respect to the violation of § 195.446(a) (**Item 4**), Respondent must revise its written CRM procedures to incorporate its Erlanger office as a control room, and identify individuals located at the Erlanger office who control Line LP03 as controllers (as defined in § 195.2), and provide to PHMSA, for approval, a written list of activities, with a completions schedule, that are required to be performed in order for the Erlanger office and individuals identified as controllers to be in compliance with Duke Energy's revised CRM procedures.
5. Submit to the Director, Southern Region, OPS, within 60 days following receipt of the Final Order, written documentation of steps taken to satisfy Compliance Order Item 4 above.

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.

It is requested 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.

WARNING ITEMS

With respect to Items 2, 3, 5, 7, 8, 10, 11, and 12, the Notice alleged probable violations of Part 195 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. § 195.49 (**Item 2**) — Respondent's alleged failure to complete an annual report on DOT Form PHMSA F 7000-1.1 for 2016; and

49 C.F.R. § 195.402(a) (**Item 3**) — Respondent's alleged failure to review its manual of written procedures for handling emergencies, at intervals not exceeding 15 months, but at least once each calendar year; and

49 C.F.R. § 195.446(j)(1) (**Item 5**) — Respondent's alleged failure to maintain records that demonstrate compliance with the requirements of § 195.446(e)(3), relating to alarm management; and

49 C.F.R. § 195.452(f) (**Item 7**) — Respondent's alleged failure to continually change its integrity management program to reflect operating experience, conclusions drawn from the results of integrity assessments, and other maintenance and surveillance data; and

49 C.F.R. § 195.452(j)(5)(iv) (**Item 8**) — Respondent's alleged failure to notify OPS 90 days before conducting an assessment using "other technology;"

49 C.F.R. § 195.573(a)(1) (**Item 10**) — Respondent's alleged failure to conduct cathodic protection tests on its protected pipeline at least once each calendar year, but with intervals not exceeding 15 months;

49 C.F.R. § 195.588(b)(1) (**Item 11**) — Respondent's alleged failure to follow the requirements of NACE SP0502 (incorporated by reference, *see* § 195.3) for performing external corrosion direct assessments; and

49 C.F.R. § 195.589(c) (**Item 12**) — Respondent's alleged failure to maintain records for at least five years of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by Subpart H of Part 195 in sufficient detail to demonstrate the adequacy of corrosion-control measures or that corrosion requiring control measures does not exist.

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.

February 4, 2019

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued