



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

230 Peachtree Street N.W.
Suite 2100
Atlanta, GA 30303

WARNING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

September 9, 2020

Mr. Danny Schedule
Senior Director
Midstream Operations & Construction
NextEra Energy, Inc.
601 Travis Street
Suite 1900
Houston, TX 77002

CPF 2-2020-6002W

Dear Mr. Schedule:

On September 16 – 19 and October 15 – October 17, 2019, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected your Florida Power & Light Company (FPL) pipeline system in Florida. FPL is a subsidiary of NextEra Energy, Inc.

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

1. **§195.432 Inspection of in-service breakout tanks.**
 - (a) ...
 - (b) **Each operator must inspect the physical integrity of in-service atmospheric and low-pressure steel above-ground breakout tanks according to API Std 653 (except section 6.4.3, *Alternative Interval Inspection Interval*) (incorporated by reference, see**

§195.3). However, if structural conditions prevent access to the tank bottom, its integrity may be assessed according to a plan included in the operations and maintenance manual under §195.402(c)(3). The risk-based internal inspection procedures in API Std 653, section 6.4.3 cannot be used to determine the internal inspection interval.

FPL failed to comply with the regulation because it did not inspect the physical integrity of an in-service atmospheric above-ground breakout tank according to API Std 653. Specifically, FPL failed to perform an internal inspection of a 500,000-barrel oil tank (Tank A) at FPL's Martin Terminal before it was due in May 2018, the due date established by FPL.

Upon PHMSA inspectors' request for records documenting the required internal inspection of Tank A, FPL personnel informed the inspectors that FPL did not conduct the internal inspection. They further explained that Tank A was scheduled to be emptied, abandoned, and deconstructed, and that FPL received a waiver from the Florida Department of Environmental Protection (FDEP), exempting FPL from the inspection requirements of API Std 653 through December 2020. On or about June 15, 2019, FPL removed all product from the tank and removed the tank from service.

Though FDEP granted FPL a waiver of its API Std 653 internal and external inspection requirements, FDEP's waiver did not exempt FPL from the pipeline safety requirements in Part 195, specifically the Part 195 requirement to conduct an internal inspection of the tank by the established due date. An operator may request to waive compliance with one or more of the Federal pipeline safety regulations by applying for a special permit in accordance with §190.341. However, FPL did not apply for a special permit from PHMSA waiving the May 2018 internal inspection requirement for Tank A.

2. §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, variance, and actions taken to implement and evaluate each element of the integrity management program listed in paragraph (f) of this section.

FPL failed to comply with the regulation because it did not maintain for review during an inspection records supporting its analyses and determinations made, variance, and actions taken to implement and evaluate each element of the integrity management program listed in §195.452(f). Specifically, FPL did not maintain the following records for review during the inspection:

- A. Records regarding whether portions of its pipeline system, other than line pipe, could affect a high consequence area (HCA), per §195.452(f). At the time of PHMSA’s inspection, FPL did not have any records or supporting documentation showing that it analyzed and determined whether a failure at pump stations and breakout tanks could affect an HCA.
- B. Records to support additional measures taken to prevent and mitigate the consequences of a pipeline failure (“P&M Measures”) that could affect an HCA per §195.452(i). Although FPL had conducted risk analysis for its 16-inch TMT line, FPL did not document whether any P&M Measures were considered or taken. FPL’s *Pipeline Risk Assessment Reports* (Risk Reports) dated March 5, 2019, and March 22, 2018, for its TMT 16-inch Pipeline concluded that “[t]here are no recommended Preventative & Mitigative (PM) Measures by the [Local Risk Management Team] as the existing barriers [on the HCA segments for the TMT-16 in line] are deemed sufficient.” Existing barrier(s) listed in the Risk Reports are not *additional* P&M Measures per §195.452(i).

3. §195.589 What corrosion control information do I have to maintain?

(a) ...

(c) You must maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures does not exist. You must retain these records for at least 5 years, except that records related to §§195.569, 195.573(a) and (b), and 195.579(b)(3) and (c) must be retained for as long as the pipeline remains in service.

FPL failed to comply with the regulation because it did not maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart for at least 5 years in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures did not exist.

On or around April 2019, FPL removed the in-line-inspection tool trap (“pig trap”) at its Martin Terminal. During PHMSA’s inspection, FPL stated the internal inspection of the pig trap was conducted during the removal project. FPL personnel, however, were unable to provide any documentation or record of the internal corrosion inspection required by §195.579.

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 conduct additional enforcement action or penalty assessment proceedings at this time. We advise Florida Power & Light Company to correct the items identified in this letter. Failure to do so will result in Florida Power & Light Company being subject to additional enforcement action.

No reply to this letter is required. If you choose to reply, in your correspondence please refer to **CPF 2-2020-6002W**. 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).

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Urisko', written over a horizontal line.

James A. Urisko
Director, Office of Pipeline Safety
PHMSA Southern Region