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U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

11/16

Mr. Dan Tutcher
President
Enbridge Energy, Limited Partnership
1100 Louisiana, Suite 2950
Houston, TX 77002

Re CPF No 3-2004-1007

Dear Mr. Tutcher

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 findings of violation, and assesses a civil penalty of \$5,000. 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

Enclosure

cc Mr. Ivan Huntoon
Director, Central Region, OPS

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)
)
Enbridge Energy)
Limited Partnership,)
)
Respondent.)

CPF No. 3-2004-1007

FINAL ORDER

On September 3-6, 2002, October 15-16, 2002, and March 10-11, 2003, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Michigan Public Service Commission conducted an on-site pipeline safety inspection of Respondent's Vector pipeline facilities and records in Illinois, Indiana, and Michigan. As a result of the inspection, the Director, Central Region, PHMSA, issued to Respondent, by letter dated April 5, 2004, 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 \$11,500 for the alleged violations.

Respondent responded to the Notice by letter dated May 5, 2004, as supplemented by letter dated February 11, 2005 (Response). Respondent contested the allegations in part, offered information to explain the allegations, described the corrective measures it has taken, and requested that the proposed civil penalty be reduced or eliminated. Respondent did not request a hearing, and therefore has waived its right to one.

FINDINGS OF VIOLATION

Item 4 in the Notice alleged that Respondent violated 49 C.F.R. § 192.731(a) by failing to demonstrate that relief valves PSV-108 and PSV-208 were inspected in 2001 or 2002. In its response, Respondent provided documentation demonstrating that the specified valves were inspected in 2002, but acknowledged that the valves were not inspected in 2001. Accordingly, I find that Respondent violated § 192.731(a) by failing to inspect the specified relief valves in 2001.

Item 5 in the Notice alleged that Respondent violated 49 C F R § 192 743 by failing to demonstrate that yearly review and calculations of relief capacities were conducted for relief valves PSV-003, PSV-108, and PSV-208 in 2001 or 2002. In its response, Respondent provided documentation demonstrating that PSV-003 had been checked for set point in 2001, but acknowledged that yearly calculations of relief capacities for the specified valves were not documented in 2001 and 2002. Accordingly, I find that Respondent violated § 192 743 by failing to demonstrate that yearly review and calculations of relief capacities were conducted for the specified relief valves in 2001 or 2002.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

WITHDRAWAL OF ALLEGATION

Item 1 in the Notice alleged that Respondent violated 49 C F R § 192 225(b) by failing to demonstrate that a welding procedure used for the Crete Lateral construction project had been qualified by appropriate tests. In its response, Respondent submitted information demonstrating that it did have a qualified welding procedure in place at the time of the construction. 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 \$25,000 per violation for each day of the violation up to a maximum of \$500,000 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 4, the Notice proposed a civil penalty of \$3,000 for Respondent's failure to demonstrate that pressure relief valves PSV-108 and PSV-208 were timely inspected. Annual inspection and testing of relief devices is an important part of pipeline safety because their operability must be periodically verified in order to ensure protection against potential overpressure events. In its response, Respondent explained that its failure to inspect the specified valves in 2001 was an oversight, and demonstrated that it did in fact inspect the specified valves in 2002. Based on this information demonstrating compliance with the applicable regulation in one of the two years cited, a reduction of 50 percent in the civil penalty amount proposed in the Notice for this item is warranted. Accordingly, I assess Respondent a civil penalty of \$1,500 for violating 49 C F R § 192 731(a).

With respect to Item 5, the Notice proposed a civil penalty of \$3,500 for Respondent's failure to demonstrate that yearly review and calculations of relief capacities were conducted for the specified relief valves in 2001 or 2002. Annual review and calculations of relief valve capacities is an important part of pipeline safety because the sufficiency of their capacity to limit the operating pressure to the desired maximum must be periodically verified in order to prevent potential overpressure events from causing damage. In its response, Respondent explained that it had reason to believe that the relief capacities of the specified valves were sufficient during the relevant period. Respondent, however, has presented no information that would warrant a reduction in the civil penalty amount proposed in the Notice for this violation. Accordingly, I assess Respondent a civil penalty of \$3,500 for violating 49 C.F.R. § 192.743.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$5,000.

Payment of the civil penalty must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-120), P.O. Box 25082, Oklahoma City, OK 73125.

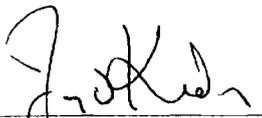
Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this payment to be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125, (405) 954-4719.

Failure to pay the \$5,000 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 ITEMS

The Notice did not propose a civil penalty or compliance order for Items 2 and 3 in the Notice. Therefore, these are considered to be warning items. The warnings were for Respondent's failure to timely inspect three rectifiers in accordance with § 192.465(b), and failure to timely conduct leak surveys at three locations in accordance with § 192.706(a). Respondent is warned that if these items are not addressed, 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

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Date Issued