

OCTOBER 30, 2013

Mr. David G. Dehaemers, Jr.
Chief Executive Officer
Tallgrass Interstate Gas Transmission Company, L.L.C.
6640 W. 143rd St., Suite 200
Overland Park, KS 66223

Re: CPF No. 3-2012-1007

Dear Mr. Dehaemers:

Please find enclosed the Final Order issued in the above-referenced case. It makes a finding of violation and specifies actions that need to be taken by Tallgrass Interstate Gas Transmission Company, L.L.C. to comply with the pipeline safety regulations. When the terms of the compliance order have been completed, as determined by the Director, Central 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,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Ms. Linda Daugherty, Central Region Director, OPS
Jessica Toll, Esq., Assistant General Counsel, Kinder Morgan, Inc.
370 Van Gordon St., Lakewood, CO 80228-8304
Robert Hogfoss, Esq., Hunton & Williams LLP
Bank of America Plaza Suite 4100, 600 Peachtree Street NE, Atlanta, GA 30308

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)	
)	
Tallgrass Interstate Gas)	
Transmission Company, L.L.C.,)	
)	CPF No. 3-2012-1007
<i>formerly,</i>)	
)	
Kinder Morgan Interstate Gas)	
Transmission Company, L.L.C.,)	
)	
Respondent.)	

FINAL ORDER

During September through November, 2010, 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 operations and maintenance procedures of Kinder Morgan Interstate Gas Transmission Company, L.L.C. (KMIGT) in Kearney, Nebraska.

As a result of the inspection, the Director, Central Region, OPS (Director), issued a Notice of Probable Violation and Proposed Compliance Order (Notice) to KMIGT by letter dated August 29, 2012. In accordance with 49 C.F.R. § 190.207, the Notice alleged that KMIGT committed a single violation of the natural gas pipeline safety regulations and proposed certain remedial action. The Notice did not propose a civil penalty.

KMIGT responded to the Notice on October 1, 2012, by contesting the alleged violation and requesting a hearing. In a pre-hearing submittal dated January 4, 2013, KMIGT provided additional information regarding the alleged violation and informed PHMSA that the company had been acquired by Tallgrass Energy Partners, LP. As a result of the acquisition, the KMIGT business entity changed its name to Tallgrass Interstate Gas Transmission Company, L.L.C. (TIGT). KMIGT and TIGT are referred to collectively as Respondent in this Order.¹

¹ TIGT operates approximately 4,700 miles of gas transmission pipeline in Nebraska, Kansas, Colorado, and Wyoming as indicated by its 2012 annual report filed pursuant to 49 C.F.R. § 191.17.

In accordance with 49 C.F.R. § 190.211, a hearing was held on January 15, 2013, in Kansas City, Missouri before the Presiding Official from the Office of Chief Counsel, PHMSA. Attendees from KMIGT, TIGT, and OPS were present at the hearing. After the hearing, Respondent provided a post-hearing written submittal dated February 15, 2013.

FINDING OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. § 192.605(c)(4), which states:

§ 192.605 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations

(c) *Abnormal operation.* For transmission lines, the manual required by paragraph (a) of this section must include procedures for the following to provide safety when operating design limits have been exceeded:

- (1) Responding to, investigating, and correcting the cause of:
 - (i) Unintended closure of valves or shutdowns;
 - (ii) Increase or decrease in pressure or flow rate outside normal operating limits;
 - (iii) Loss of communications;
 - (iv) Operation of any safety device; and
 - (v) Any other foreseeable malfunction of a component, deviation from normal operation, or personnel error, which may result in a hazard to persons or property
- (4) Periodically reviewing the response of operator personnel to determine the effectiveness of the procedures controlling abnormal operation and taking corrective action where deficiencies are found.

The Notice alleged that Respondent violated 49 C.F.R. § 192.605(c)(4) by failing to prepare and follow written procedures for reviewing its response to certain abnormal operations. Specifically, the Notice alleged that Respondent did not review its response to an abnormal operation that occurred on March 3, 2010, because Respondent did not consider the event to be an abnormal operation. On that date, Respondent's pipeline experienced a malfunction of a regulator pilot and release of gas from a relief valve. The Notice alleged the event was an abnormal operation as defined in § 192.605(c)(1) because it involved the operation of a safety device (i.e., relief valve) and because the operating design limit (i.e., set point of the regulator) had been exceeded resulting in the release of gas. The Notice alleged that Respondent's procedures and operating personnel did not classify the event as an abnormal operation.

The evidence produced by OPS included a Lost Causation Report prepared by Respondent on March 4, 2010. The report documented the release of gas from the Lexington TBS #2 first-cut relief valve. The release occurred when a "malfunctioning pilot on the regulator prevented the

regulator from locking up at set point.”² It also noted that the “1st cut regulator did not lockup and the resulting pressure increase caused the relief valve to vent.” Respondent determined the root cause was a filter that had allowed dirt or debris to foul the pilot stem and seat which prevented regulator lock up. Also included in evidence was a copy of Respondent’s operations and maintenance (O&M) Procedure 1902, *Abnormal Operation*, dated November 1, 2009.

Respondent did not contest the facts of the event that occurred on March 3, 2010, but contested the allegation that the event was an abnormal operation under § 192.605(c). In its written submissions and at the hearing, Respondent argued that an abnormal operation only occurs “when operating design limits have been exceeded.”³ Respondent contended that operating design limits were never exceeded in this case. Instead, the system and the relief valve “operated as intended within the limits of normal conditions and operations.”⁴ Neither the maximum allowable operating pressure (MAOP) nor the design parameters of the relief valve were exceeded according to Respondent, and the normal operation of the relief valve did not present a hazard to persons or property.⁵

Respondent argued further that the set points of a regulator cannot be considered an “operating design limit” because they are just signals transmitted by a controller. Set points vary frequently and situationally, according to Respondent, sometimes changing by the day or by the hour depending on the pressure the operator intends to send to a customer.⁶ Respondent insisted that if OPS were to define abnormal operation as either exceeding a regulator set point or the operation of any relief valve, it would be a significant change to the industry and require a magnitude of additional reviews for situations commonly occurring within normal operations.

I. Regulatory requirement

Section 192.605(a) requires each operator to have and follow a manual of written procedures for operations and maintenance activities. The procedures must address, among other things, the handling of abnormal operations to provide safety when operating design limits have been exceeded.⁷ Abnormal operations are pipeline events that occur outside the expected range of normal operations, which could result in an imminent hazard or emergency.⁸

The following events are listed in the regulation, which must be responded to, investigated, and corrected: (i) unintended closure of valves or shutdowns; (ii) increase or decrease in pressure or flow rate outside normal operating limits; (iii) loss of communications; (iv) operation of any

² Pipeline Safety Violation Report, Exhibit A, p. 1 (Aug. 29, 2012).

³ § 192.605(c).

⁴ Response, p. 3 (Oct. 1, 2012).

⁵ Respondent noted that in the preamble to the final rule, the agency discussed a pressure excursion above MAOP as an example of an abnormal condition. Operation and Maintenance Procedures for Pipelines, 59 Fed. Reg. 6579, 6582 (Feb. 11, 1994).

⁶ Post Hearing Submittal, p. 2 (Feb. 15, 2013).

⁷ § 192.605(c).

⁸ Operation and Maintenance Procedures for Pipelines, 54 Fed. Reg. 46685, 46688 (*proposed* Nov. 6, 1989).

safety device; and (v) any other foreseeable malfunction of a component, deviation from normal operation, or personnel error, which may result in a hazard to persons or property.

The parties at the hearing discussed at length the meaning of the phrase “when operating design limits have been exceeded” in § 192.605(c), and whether this terminology limited application of the rule. Respondent essentially argued this phrase creates a threshold for applicability of the rule. According to Respondent, an event that is specifically listed in § 192.605(c)(1) is not an abnormal operation if design limits were not exceeded.

Reviewing § 192.605(c), the phrase “when operating design limits have been exceeded” appears in the introductory text. The phrase completes a sentence that describes the purpose of the procedures required by the rule. The purpose of procedures for addressing abnormal operations is “to provide safety when operating design limits have been exceeded.” In this context, the phrase is a descriptive reference to the types of events covered by the rule, which are then listed.⁹

The regulatory history of the rule supports reading the phrase as a description of the abnormal operations covered by the rule. When PHMSA proposed § 192.605(c) in 1989, the agency explained that it would make the O&M procedural requirements for Parts 192 and 195 “reasonably similar.”¹⁰ At the time, § 195.402(d) already required procedures for responding to abnormal operations on hazardous liquid pipelines and PHMSA believed it was appropriate for the same requirements to be adopted for natural gas transmission lines. In discussing the standard proposed for § 192.605(c), the agency stated that the regulation requires procedures for safety “when operating design limits are exceeded, *as indicated by, among other items*, operation of safety devices, unintended closure of valves or shutdowns, pressure excursions beyond normal limits, and loss of communications.”¹¹ This suggests the events listed in § 192.605(c)(1) are examples of when operating design limits are exceeded.

Current PHMSA staff manuals describe the regulation in the same manner. For example, in “Operations & Maintenance Enforcement Guidance: Part 192 Subparts L and M” (Dec. 7, 2011), there is a glossary that defines an abnormal operation as: “Exceeding operating design limits, *including . . . (iv) operation of any safety device; and (v) any other foreseeable malfunction of a component . . .*”¹² While guidance does not constitute a rule, it can demonstrate a consistent regulatory interpretation adopted by the agency. In this case, PHMSA interprets abnormal operations as defined by the list of events in § 192.605(c)(1).

Both the regulatory history and applicable guidance suggest that the events listed in § 192.605(c)(1) are abnormal operations because they are instances in which operating design

⁹ The words “abnormal operations” do not actually appear in the introductory text.

¹⁰ 54 Fed. Reg. 46687.

¹¹ 54 Fed. Reg. 46688 (emphasis added).

¹² (Emphasis added.) See also “Operations & Maintenance Enforcement Guidance Part 195 Subpart F” (Dec. 7, 2011). PHMSA makes certain administrative staff manuals available on its website at <http://www.phmsa.dot.gov/foia/e-reading-room>.

limits are exceeded. In other words, the events are abnormal operations subject to the rule because they are inherently “outside the limits of normal conditions.”¹³

II. Analysis and finding

On March 3, 2010, Respondent’s system experienced a malfunction of a pipeline component resulting in the operation of a safety device and release of gas.

With respect to whether the event in question was an abnormal operation, I have considered Respondent’s argument that no abnormal operation occurred because the relief valve operated as intended and because the MAOP and design parameters of the valve were never exceeded.

A surge in pressure above MAOP is only one example of an abnormal condition.¹⁴ Not all abnormal operations are associated with increases in pressure. For example, the rule states that a *decrease* in pressure outside the normal range is also an abnormal operation.¹⁵ In addition, some abnormal operations are not associated with changes in pressure, such as the loss of communications and a malfunction of a component.¹⁶ The fact that MAOP was not exceeded in this case does not necessarily mean the event was a normal operation.

Likewise, it is not determinative that the relief valve operated as intended. All safety devices are expected to operate as designed. The regulation still requires operators to treat the operation of a safety device as an abnormal operation under § 192.605(c)(1)(iv). Although Respondent argued that some relief valves may activate during normal operations, the relief valve in this case did not activate during normal operations. It activated in association with the malfunction of a regulator, which is an abnormal operation under § 192.605(c)(1)(v).

I have considered Respondent’s argument that the set point of a regulator cannot be considered the “operating design limit” and that a decision to the contrary would be a significant change in the industry.

The issue of whether pressure exceeding a regulator set point, by itself, constitutes an abnormal operation is not presented in the facts of this case. The event that occurred in this case involved two separate criteria that are listed as abnormal operations in § 192.605(c)(1): the malfunction of a component and the operation of a safety device.

Although Respondent argued there would be significant change to the industry were PHMSA to find an abnormal operation in this case, I conclude that finding an abnormal operation is required by the text of the regulation. The finding is also consistent with prior administrative explanations in both regulatory history and applicable guidance. Furthermore, I do not agree this finding will broaden the scope of the regulation to cover normal operations. The application of

¹³ 59 Fed. Reg. 6582.

¹⁴ § 192.605(c)(1)(ii).

¹⁵ § 192.605(c)(1)(ii).

¹⁶ § 192.605(c)(1)(iii).

the regulation remains limited by its terms. Section 192.605(c) only applies to operations outside normal operating limits and other types of deviation from normal operation. In this case, the malfunction of a regulator pilot resulting in the operation of a relief valve was outside normal operations and should have been recognized by Respondent as an abnormal operation.

III. Conclusion

For the reasons stated above, I find the malfunction of the regulator pilot resulting in the operation of a relief valve was an abnormal operation under § 192.605(c)(1)(iv) and (v). Accordingly, Respondent was required to review the response of personnel to such conditions periodically to determine the effectiveness of its procedures under § 192.605(c)(4). Respondent did not have and follow procedures for reviewing the response of operator personnel to such events and therefore did not comply with the regulation.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to the violation of § 192.605(c)(4). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of natural gas by pipeline or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601 of title 49, United States Code.

The proposed compliance order sought to require Respondent to develop procedures for identifying abnormal operations like the event at issue in this case. It also sought to require Respondent to amend training and qualification materials to ensure that personnel can follow the new procedures.

In its post-hearing submission, Respondent objected to Item 1(iv) of the proposed compliance order, which sought to require Respondent to go back one year to identify abnormal operations that were not previously identified and to review the response of operator personnel under § 192.605(c)(4). Respondent argued it would be difficult to reclassify events as abnormal operations after the fact when they were not initially identified as such.

Having considered Respondent's objection, I agree that requiring Respondent to review past actions to determine the effectiveness of new procedures is not a necessary exercise.¹⁷ It would be more appropriate for Respondent to prospectively comply with § 192.605(c)(4) by reviewing its future actions taken under the new procedures, and to determine the effectiveness of those procedures. For this reason, the retroactive review sought under Item 1(iv) of the proposed compliance order is not included.

¹⁷ I did not find additional justification for ordering this action in the Notice or Violation Report.

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. Amend the written procedures for the periodic review of the response of personnel to abnormal operations under § 192.605(c)(4). The procedures must clarify the types of events that are abnormal operations under § 192.605(c)(1) consistent with this Final Order.
2. Amend any associated training materials and written qualification programs, as appropriate, to ensure that personnel can follow the procedures prepared under Item 1 of this Compliance Order.
3. Submit documentation demonstrating compliance with Items 1 and 2 of this Compliance Order within 90 days of receipt of this Order. Documentation must be submitted to the Director, Central Region, Pipeline and Hazardous Materials Safety Administration, 901 Locust St., Suite 462, Kansas City, MO 64106.

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

Failure to comply with this Order may result in the 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.

Under 49 C.F.R. § 190.215, Respondent may submit a petition for reconsideration of this final order to the Associate Administrator for Pipeline Safety, PHMSA, 1200 New Jersey Avenue SE, East Building, 2nd Floor, Washington, D.C. 20590, no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The terms of the order, including the corrective action, remain in effect upon the filing of a petition for reconsideration unless the Associate Administrator, upon request, grants a stay.

The 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