

February 4, 2016

Mr. Gerard M. Anderson
Chairman and CEO
DTE Energy Company
One Energy Plaza
Detroit, MI 48226

Re: CPF No. 3-2015-1004

Dear Mr. Anderson:

Enclosed please find the Final Order issued in the above-referenced case to your subsidiary, DTE Gas Company. It makes findings of violation and assesses a civil penalty of \$31,800. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise 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: Mr. Allan C. Beshore, Director, Central Region, PHMSA OPS
Ms. Alida Sandberg, Director, Engineering Services, DTE Gas Company

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)	
)	
DTE Gas Company,)	CPF No. 3-2015-1004
a subsidiary of DTE Energy Company,)	
)	
Respondent.)	
)	

FINAL ORDER

Between December 1 and 5, 2014, pursuant to 49 U.S.C. § 60117, representatives of the Michigan Public Service Commission (MIPSC), as interstate agent for 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 DTE Gas Company (DTE or Respondent) for the company’s Vector/DTE Pipeline (Subject Pipeline) in Michigan. Respondent is a subsidiary of DTE Energy Company and is engaged in the purchase, storage, transmission, distribution, and sale of natural gas to approximately 1.2 million customers in Michigan.¹

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated May 11, 2015, a Notice of Probable Violation and Proposed Civil Penalty (Notice), which also included a warning pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that DTE had violated 49 C.F.R. §§ 192.465, 192.709, and 192.921 and proposed assessing a civil penalty of \$31,800 for the alleged violations. The warning item required no further action, but warned the operator to correct the probable violation or face potential future enforcement action.

DTE responded to the Notice by letter dated June 11, 2015 (Response). The company did not contest the allegations of violation but provided an explanation of its actions and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

¹ DTE Energy Company, website, available at <https://dteenergy.mediaroom.com/index.php?s=26823> (last accessed December 23, 2015).

FINDINGS OF VIOLATION

In its Response, DTE 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. § 192.465, which states, in relevant part:

§ 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. . . .

(d) Each operator shall take prompt remedial action to correct any deficiencies indicated by the monitoring.

The Notice alleged that Respondent violated 49 C.F.R. § 192.465(d) by failing to take prompt remedial action when external corrosion control monitoring indicated two deficiencies. Specifically, the Notice alleged that DTE found broken wires for Test Points 109 and 109.5 at a foreign-line crossing on November 24, 2010, but that DTE's records indicated the company did not take remedial action on the broken wires in 2011 or 2012. DTE's October 25, 2013 monitoring records showed that the broken wires had been repaired. According to PHMSA's Pipeline Violation Safety Report dated May 11, 2015 (Violation Report), Respondent provided no other records demonstrating that the test points had been repaired prior to October 25, 2013.² DTE made certain arguments relating to the penalty amount that are discussed in the "Assessment of Penalty" section below.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.465(d) by failing to take prompt remedial action to correct two deficiencies indicated by external corrosion control monitoring.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.709, which states, in relevant part:

§ 192.709 Transmission lines: Record keeping.

Each operator shall maintain the following records for transmission lines for the periods specified:

(a)

(c) A record of each patrol, survey, inspection, and test required by subparts L and M of this part must be retained for at least 5 years or until the next patrol, survey, inspection, or test is completed, whichever is longer.

The Notice alleged that Respondent violated 49 C.F.R. § 192.709(c) by failing to retain

² Violation Report, at 4.

inspection records from 2010, 2011, and 2012 for the Operator/Monitor regulators located at the Belle River Station on the Subject Pipeline. Specifically, the Notice alleged that DTE's 2010 annual report showed DTE as the operator of the Subject Pipeline in 2010 but that DTE personnel indicated that the inspections for these facilities were probably done but they had no records of the inspections. The Violation Report alleged that Respondent provided PHMSA with inspection records for 2013 and 2014, but that no records for the Belle River Station Operator/Monitor regulators existed for earlier years.³

Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.709(c) by failing to provide inspection reports from 2010, 2011, and 2012 for the Belle River Station Operator/Monitor regulators.

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.⁴ 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 \$31,800 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$18,900 for Respondent's violation of 49 C.F.R. § 192.465(d), for failing to take prompt remedial action to correct two test-point deficiencies indicated by external corrosion control monitoring. Respondent did not contest the proposed violation but argued that the proposed penalty should be reduced. Respondent noted, in its Response, that the operator of the foreign line converted its corrosion protection system from an impressed-current cathodic protection system using rectifiers to a sacrificial anode system. Respondent argued that the foreign line's sacrificial anode system did not generate enough electric current to cause interference with the Subject Pipeline's corrosion control system. Respondent further argued that additional testing had demonstrated sufficient cathodic protection of the Subject Pipeline.

³ Violation Report at 11.

⁴ The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90, § 2(a)(1), 125 Stat. 1904, January 3, 2012, increased the civil penalty liability for violating a pipeline safety standard to \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.

Regardless of Respondent's allegations concerning the lack of interference with or sufficiency of the Subject Pipeline's corrosion control system, DTE designated Test Points 109 and 109.5 as test points to ensure adequate cathodic protection of the Subject Pipeline and monitor interference. Those purposes cannot be accomplished if the test points are not remediated. DTE should have repaired the test points after discovering the deficiencies on November 24, 2010, but failed to do so until October 25, 2013.

I find that Respondent has not demonstrated any circumstances justifying a reduction in the civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$18,900 for violation of 49 C.F.R. § 192.465(d).

Item 2: The Notice proposed a civil penalty of \$12,900 for Respondent's violation of 49 C.F.R. § 192.709(c), for failing to retain inspection reports from 2010, 2011, and 2012 for the Belle River Station Operator/Monitor regulators. Respondent did not contest the proposed violation but presented allegations in support of a reduction in the proposed penalty. The Notice further alleged that DTE's inspection reports failed to document whether Valve F5 was operated in 2010 and whether Valve F11 was operated in 2012. The Violation Report did not allege a violation of 49 C.F.R. Part 192 for the failure to document operation of the valves and the Notice did not assess a civil penalty based on records of valve operation. Rather, the proposed civil penalty for Item 2 was based entirely on Respondent's failure to provide 2010, 2011, and 2012 inspection records for the Belle River Station Operator/Monitor regulators.

Respondent did not contest these findings of violation but noted that Valve F11 is located on a pig receiver. In its Response, Respondent contended that valves located on pig receivers are not considered useful in the event of a pipeline emergency and, accordingly, requested that OPS consider the lack of a routine operational check of Valve F11 to be optional under 49 C.F.R. § 192.745. In the instant case, the Notice did not assess a civil penalty based on Respondent's records of valve operation. The penalty in Item 2 is based entirely on the failure to retain inspection records for the Belle River Station Operator/Monitor regulators. Consequently, the Response, as it pertains to Valve F11, does not justify a reduction in the proposed civil penalty and is not further addressed.⁵

I find that Respondent's failure to comply with a clearly applicable standard provides no reason to adjust the penalty for diminished culpability or good faith. DTE, a large distribution and transmission pipeline operator, is well aware of applicable regulations and the importance of maintaining inspection records to verify compliance work. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$12,900 for

⁵ The Response also alleged that DTE received a Notice of Probable Non-Compliance (MIPSC Notice) from MIPSC in 2012, which resulted in DTE's implementation of a system to track inspections and maintain recoverable records of the inspections in the future. Respondent contended that its compliance with the MIPSC Notice effectively mitigated the pipeline safety issues addressed in Item 2 of the Notice. Respondent subsequently opined that Item 2 of the Notice—DTE's failure to provide inspection records from 2010, 2011, and 2012—constituted a second citation for the same conduct. Respondent did not provide any evidence that the MIPSC Notice addressed the same failure to produce inspection records for the Belle River Station Operator/Monitor regulators and did not provide further support for amendment of the findings in Item 2. Similarly, Respondent provides no support for the assertion that compliance with the MIPSC Notice precludes OPS from finding a violation and issuing a civil penalty for the failure to produce inspection records.

violation of 49 C.F.R. § 192.709(c).

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 **\$31,800**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such 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 (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$31,800 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 district court of the United States.

WARNING ITEM

With respect to Item 3, the Notice alleged a probable violation of Part 192 but did not propose a civil penalty or compliance order for the item. Therefore, this is considered to be a warning item. The warning was for:

49 C.F.R. § 192.921(a)(1) (**Item 3**) — Respondent's alleged use of an ILI tool at a speed outside of the tool's recommended design parameters, in violation of ASME/ANSI B31.8S Section 6.2.5(b)(5).

DTE presented information in its Response showing that it had taken certain actions to address the cited item. If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent has the right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of the Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed but does not stay any other provisions of the Final Order, including any required corrective actions. If Respondent submits payment of 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 upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued