

July 26, 2021

VIA ELECTRONIC MAIL TO: vern.yu@enbridge.com

Mr. Vern Yu
Executive Vice President and President, Liquid Pipelines
Enbridge, Inc.
200 Fifth Avenue Place
425 – 1st Street S.W.
Calgary, Alberta, Canada T2P 3L8

Re: CPF No. 3-2020-5005

Dear Mr. Yu:

Enclosed please find the Decision on Reconsideration issued in the above-referenced case. It denies your Petition for Reconsideration. Service of the Decision by electronic mail is deemed effective upon the date of transmission, or as otherwise 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. Gregory Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. Darren Hunter, Hunter Masalski LLC, Counsel for Enbridge, darren@huntermasalski.com
Mr. David Stafford, Manager, U.S. Compliance, Enbridge, david.stafford@enbridge.com
Mr. Michael Koby, Vice President, U.S. Operations, Enbridge, michael.koby@enbridge.com

CONFIRMATION OF 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)

Express Holdings (USA), LLC,)
a subsidiary of Enbridge, Inc.,)

Petitioner.)
_____)

CPF No. 3-2020-5005

DECISION ON RECONSIDERATION

In a May 20, 2021 Final Order, I found that Express Holdings (USA), LLC (Express or Petitioner) had violated five sections of 49 C.F.R. Part 192 following an on-site pipeline safety inspection by the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS) of the Platte pipeline system based in Casper, Wyoming operated by Express.¹

In the Final Order, I assessed a civil penalty of \$46,600 for Petitioner’s violation of 49 C.F.R. § 195.401(b)(1) for failing to make non-integrity management repairs on its pipeline system within a reasonable time after it discovered a condition that could adversely affect the safe operation of the pipeline system (Item 1). I assessed a civil penalty of \$58,400 for Petitioner’s violation of 49 C.F.R. § 195.406(b) for failing to provide adequate controls and protective equipment to control the operating pressure of the pipeline system to prevent it from exceeding 110 percent of the maximum operating pressure (MOP) established under § 195.406(a) during surges or other variations from normal operations (Item 3). I assessed a civil penalty of \$77,700 for Petitioner’s violation of 49 C.F.R. § 195.412(a) for failing to inspect the surface conditions on or adjacent to the pipeline right-of-way at intervals not exceeding three weeks, but at least 26 times each calendar year by an appropriate means for traversing the right-of-way (Item 6). I assessed a civil penalty of \$29,300 for Petitioner’s violation of 49 C.F.R. § 195.581(a) for failing to clean and coast each pipeline or portion of pipeline that was exposed to the atmosphere (Item 7). I assessed a civil penalty of \$58,400 for two instances of Petitioner’s violation of 49 C.F.R. § 195.583(b) for failing to give particular attention to pipe at pipe supports in spans over water during atmospheric corrosion inspections (two instances of Item 8). I withdrew one allegation of violation in full (Item 2) and withdrew another allegation in part (one instance of Item 8) after being persuaded by Express’ arguments that OPS did not prove that a violation had occurred in

¹ *Express Holdings (USA), LLC*, Final Order, CPF No. 3-2020-5005 (May 20, 2021) (Final Order).

those instances.²

On June 9, 2021, Express submitted a Petition for Reconsideration (Petition) of the Final Order.³ Specifically, the Petition seeks reconsideration of Items 1 and 8 in the Final Order and requests that these two findings of violation and the associated civil penalties be withdrawn.⁴ Having considered the full record and the arguments presented in the Petition, I am denying the Petition and affirming the Final Order without modification.

Background

Between November 14, 2016 and February 3, 2017, pursuant to 49 U.S.C. § 60117, representatives of OPS conducted an on-site pipeline safety inspection of the Platte pipeline system based in Casper, Wyoming operated by Petitioner. The Platte crude oil pipeline system consists of approximately 933 miles of 20-inch diameter pipe, 33 storage/breakout tanks, and 19 pump stations running from Casper Wyoming to Wood River Illinois.⁵ Express is a subsidiary of Enbridge, Inc. which acquired the system through a merger with Spectra Energy Corporation in February of 2017.⁶

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated March 19, 2020, a Notice of Probable Violation and Proposed Civil Penalty (Notice).⁷ In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Express had committed eight violations of 49 C.F.R. Part 195, two of which were warning items. The Notice proposed assessing a total civil penalty of \$346,400 for six of the alleged violations. The two warning items required no further action, but warned Respondent to correct the probable violations or face possible future enforcement action.

Express contested three of the allegations in the Notice and requested a hearing. A hearing was subsequently held on October 23, 2020, via video teleconference before a PHMSA Presiding Official. At the hearing, Respondent was represented by counsel. On May 20, 2021, I issued a Final Order in this case.

² OPS alleged a total of eight violations including two warning items that required no further action, but warned Respondent to correct the probable violations or face possible future enforcement action (Items 4 and 5).

³ Petition for Reconsideration submitted by Mr. Darren J. Hunter, Counsel for Express Holdings (USA), LLC, to Mr. Alan K. Mayberry, Associate Administrator for Pipeline Safety, PHMSA, dated June 9, 2021 (Petition).

⁴ *Id.*

⁵ PHMSA Safety Violation Report (Violation Report), (March 19, 2020) (on file with PHMSA), at 1.

⁶ Enbridge, Inc. website, Enbridge's Energy Infrastructure Assets, Factsheet 53, available at https://www.enbridge.com/~/_media/Enb/Documents/Factsheets/FS_EnergyInfrastructureAssets.pdf?la=en (last visited April 22, 2021). Spectra Energy Corporation acquired the Platte pipeline system from Kinder Morgan Pipelines (USA) Inc. in March of 2013.

⁷ Notice of Probable Violation and Proposed Civil Penalty, CPF No. 3-2020-5005 (March 19, 2020).

With respect to Item 1, I found that Petitioner violated 49 C.F.R. § 195.401(b)(1) for failing to make non-integrity management repairs on its pipeline system within a reasonable time after it discovered a condition that could adversely affect the safe operation of the pipeline system and assessed a civil penalty of \$46,600. In assessing the civil penalty for this item, I applied the statutory civil penalty assessment factors including the nature, circumstances, gravity, and culpability of this violation.⁸ I noted that promptly addressing an adverse condition is a fundamental responsibility of pipeline operators and that ensuring that the risk of an overpressure condition is addressed before becoming a potential integrity threat is a key part of safely operating a hazardous liquid pipeline system. Accordingly, I found that the proposed civil penalty of \$46,600 was supported by the record.

With respect to Item 8, I found that Petitioner violated 49 C.F.R. § 195.583(b) for failing to give particular attention to pipe at pipe supports in spans over water during atmospheric corrosion inspections in two of the three alleged instances involving child guard spans and assessed a reduced civil penalty of \$52,500 for those two instances. In assessing the civil penalty for this item, I applied the civil penalty assessment factors including the nature, circumstances, gravity, and culpability of this violation. Since I found that Express did not violate this regulation with respect to the Meng span and withdrew this instance of the allegation, the penalty proposed in the Notice for the Meng span instance of the violation was also withdrawn. As for the two remaining instances associated with the child guard spans, I noted that atmospheric corrosion inspections are a fundamental part of basic pipeline maintenance and that ensuring that any surface corrosion is detected and addressed before becoming a potential integrity threat is a key part of safely operating a pipeline. Accordingly, I found that a civil penalty of \$52,500 for the two remaining instances was supported by the record.

On June 9, 2021, Express submitted a petition requesting reconsideration of Items 1 and 8 in the Final Order.

Standard of Review

Under 49 C.F.R. § 190.243, a respondent is afforded the right to petition the Associate Administrator for reconsideration of a Final Order. However, that right is not an appeal or an opportunity to seek a de novo review of the record.⁹ It is a venue for presenting the Associate Administrator with information that was not previously available or requesting that any errors in the Final Order be corrected. Requests for consideration of additional facts or arguments must be supported by a statement of reasons as to why those facts or arguments were not presented prior to the issuance of the Final Order. Repetitious information or arguments will not be considered.

⁸ 49 U.S.C. § 60122(b).

⁹ 49 C.F.R. § 190.243(a)-(d).

Item 1

With respect to Item 1, OPS cited a transient study conducted by Petitioner's predecessor that identified the risk of overpressure conditions and set forth recommendations designed to prevent the pipeline pressure from exceeding 110 percent of the MOP. Throughout this proceeding, and again in its Petition, Express argues that PHMSA did not take into account certain information concerning this transient study. The transient study included a recommendation for the installation of an Automated Pipeline Shutdown (APS) between Casper and Salisbury and the modification of an existing APS between Salisbury and Wood River. Petitioner's officials argued that the transient study contained recommendations, not mandates. Petitioner argued that there was no regulatory requirement under Part 195, including under the Control Room Management (CRM) standard set forth in Section 195.446, for operators to install an APS making the installation of an APS a voluntary measure that would supplement existing practices and provide an additional layer of surge protection. Petitioner cited the views of two of its officials that its predecessors elected not to implement the recommendations concerning the installation of an APS, but instead believed that its operating and maintenance procedures addressed the risk.¹⁰ Express acknowledged that after it assumed ownership and operational control of the pipeline, it commissioned its own transient study and implemented the recommendation to install an APS but maintained that it was not necessary and not required under the standard.¹¹

The Petition states that "The practical implication of this ruling is profound. Simply stated, a pipeline operator is not required to implement recommendations that were provided in a study commissioned by a previous operator."¹² Petitioner, however, misstates the holding in the Final Order. In fact, I agreed with Express that implementation of the particular remedy recommended by the transient study—installation of an APS—was not enforceable as a code requirement.¹³ The study did, however, provide Express with sufficient information identifying potential overpressure conditions that could adversely affect the safe operation of its pipeline system to make it aware that action was required to address these conditions under the cited regulation in a comparably effective manner.

Petitioner then went on to assert that it had sufficient measures in place that made further action to address the potential safety condition identified in the transient study unnecessary.¹⁴ This argument, however, is repetitive as it was discussed at length during the hearing and was fully addressed in the Final Order which laid out various evidence to the contrary establishing that the existing safeguards were inadequate. This evidence produced by OPS was unrebutted by Express. It included the fact that the Wood River relief valve had been improperly set and had to be lowered from 260 to 218 psi in 2016. In addition, incorrect set-points were in place for the

¹⁰ Petition, at 3.

¹¹ *Id.*

¹² *Id.*

¹³ Final Order, at 5.

¹⁴ Petition, at 2.

supervisory control and data acquisition (SCADA) controls at the Harrisburg Pump Station and the Marysville Pump Station during the relevant time frame. The Final Order explained that if Respondent had reviewed the required hydrostatic pressure test information and set up a new surge analysis, these inaccurate controls could have been identified and corrected, but instead incorrect set-points continued for an extended period of time.¹⁵ In discussing the notable absence of a surge analysis being performed, Petitioner stated that it had incorporated additional block valves with instrumentation. OPS believed that this type of change would itself call for a new surge analysis since the addition of these valves could actually make the transients worse if not properly controlled through proper set-points on discharge pressure and adequate employment of valve timing. Finally, if the pressure control measures identified by Respondent as having been sufficient to address the overpressure condition such as adherence to its control room management procedures had been adequate, there would have been no need to issue MOC 2018-246 in 2018, which ultimately implemented APS and changes to APS systems.¹⁶

Thus, the need for pressure control measures (which had been known to Petitioner and its predecessor as far back as the 2011 completion of the study) continued through the 2017 merger and at least into 2018. While Petitioner's personnel who attended the hearing had different views about the need for overpressure protection measures such as an APS and may have considered the study to be dated, those views do not surmount the facts indicating the inadequacies of the overpressure protection up through the 2018 time period that were documented by OPS.

Having considered Petitioner's arguments, the preponderance of the evidence in this proceeding supports the finding in the Final Order that Petitioner violated 49 C.F.R. § 195.401(b)(1) for failing to make non-integrity management repairs on its pipeline system within a reasonable time after it discovered a condition that could adversely affect the safe operation of the pipeline system.

Item 8

With respect to Item 8, Petitioner argues that the photographs PHMSA referenced in Exhibit C of the Violation Report did not support the finding of violation in the Final Order for the two child guard spans as those photographs were taken during PHMSA's inspection in 2016 and 2017 which was after the atmospheric corrosion inspections for the two spans were conducted in 2014 and 2015.¹⁷ Petitioner's Regional Compliance Advisor stated at the hearing that he felt the earlier photographs did not show any staining or other indications of atmospheric corrosion.¹⁸

Petitioner's argument amounts to the proposition that only the earliest photographs should be in evidence, and the 2017 photographs should be excluded. However, atmospheric corrosion inspections are conducted on a three-year cycle because corrosion is a long-term process. If not

¹⁵ Final Order at 4.

¹⁶ *Id.*

¹⁷ Petition at 4.

¹⁸ Petition at 5.

addressed, external corrosion progresses over time from surface oxidation to actual pitting in the pipe wall resulting in metal loss. While the earlier photography was not done nearly as thoroughly as the 2017 photography, the discoloration present in the areas of the child guards was consistent with the beginnings of atmospheric corrosion. Accordingly, I find that all of the photographs submitted by Petitioner and by OPS are relevant including the photographs in the OPS Violation Report. The Violation Report states:

After PHMSA encouraged Express to remove child guard brackets during atmospheric corrosion inspections, operator personnel removed the child guards from span 9-1446+87-9350 on March 7, 2017 and observed pitting of the pipe surface in the area that was previously covered by the child guard bracket.¹⁹

This evidence was rebutted by Express. Since corrosion is a long-term process, the pitting that had already taken place by early 2017 indicates that active corrosion had begun to occur much earlier and further investigation as part of the most recent inspection was required but not done.

Having considered Petitioner's arguments, the preponderance of the evidence in this proceeding, including the totality of the photographic evidence, supports the finding in the Final Order that Petitioner violated 49 C.F.R. § 195.583(b) for failing to give particular attention to pipe at pipe supports in two spans over water during atmospheric corrosion inspections.

RELIEF DENIED

Based on the information provided in the Petition, a review of the record, and for the reasons stated above, I am affirming the Final Order without modification.

This Decision is the final administrative action in this proceeding.

July 26, 2021

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued

¹⁹ Violation Report, at 65.