



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

400 Seventh St. S.W.
Washington D.C. 20590

DEC 30 2003

Mr. David L. Johnson
Vice President, Pipeline Safety
Enron Transportation Services Company
P.O. Box 1188
Houston, TX 77251-1188

Re: CPF No. 4-2002-1003

Dear Mr. Johnson:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes a finding of violation, assesses a civil penalty of \$10,000, and specifies actions to be taken to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty is paid and the terms of the compliance order completed, as determined by the Director, Southwest Region, this enforcement action will be closed. 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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

In the Matter of)
)
Enron Transportation)
Services Company,)
)
Respondent)
)

CPF No. 4-2002-1003

FINAL ORDER

On May 7 - 10, 2002, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of Respondent's facilities and records in Albuquerque, New Mexico. As a result of the inspection, the Director, Southwest Region, OPS, issued to Respondent, by letter dated December 9, 2002, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. § 192.707(d)(2) and proposed assessing a civil penalty of \$10,000 for the alleged violation. The Notice also proposed that Respondent take certain measures to correct the alleged violation.

Respondent responded to the Notice by letter dated January 7, 2003 (Response). Respondent did not contest the allegation, but contested the assessment of the civil penalty on procedural grounds and requested a hearing. The hearing was held on May 6, 2003 in Houston, TX. After the hearing Respondent provided a summary of the information it had presented at the hearing by letter dated June 4, 2003.

FINDINGS OF VIOLATION

In its Response and at the hearing, Respondent did not contest the alleged violation in the Notice. Accordingly, I find that Respondent violated the following sections of 49 C.F.R. Part 192, as more fully described in the Notice:

49 C.F.R. § 192.707(d)(2) -- failing to have a telephone number where Respondent can be reached at all times written on each line marker for mains and transmission lines. Field tests by the OPS inspector demonstrated that telephone numbers listed on some line markers did not match those in Respondent's written procedures and did not connect to Respondent's offices when called.

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

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to a civil penalty not to exceed \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 for any related series of violations.

In its Response and at the hearing, Respondent argued that OPS is precluded from assessing a civil penalty because the civil penalty and the compliance order (discussed below) are based on the same act. Respondent based its argument on 49 C.F.R. § 190.223(d), which requires that: “No person shall be subject to a civil penalty under this section for the violation of any requirement of this subchapter and an order issued under § 190.217, § 190.219 or § 190.233 if both violations are based on the same act.”

Respondent’s interpretation of § 190.223(d) is incorrect. Section 190.223(d) imposes limitations where OPS has issued an order under § 190.217, § 190.219 or § 190.233 and the operator subject to that order fails to comply with the terms of the order. Where there has been no violation of an order issued under § 190.217, § 190.219 or § 190.233, § 190.223(d) cannot apply. Therefore, Respondent’s argument is inapplicable because the alleged violation and resulting finding of violation are not based on violation of an order issued by OPS.

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.

The Notice proposed a total civil penalty of \$10,000 for violation of 49 C.F.R. § 192.707(d)(2).

Telephone listings on markers are crucial for individuals preparing to dig around the area of Respondent’s pipeline. In addition, failure to indicate a working telephone number that can reach Respondent’s personnel could prove disastrous in the event of an emergency. While it does not appear that Respondent was acting in bad faith and does not have a history of violating § 192.707(d)(2), Respondent’s personnel indicated that the numbers tested by the OPS inspector had not been working for over three years. Respondent’s personnel did not indicate how they were planning on correcting the invalid phone numbers on the line markers at the time of the exit interview conducted by the OPS inspector. Respondent has the ability to pay the penalty and would be able to continue in business.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$10,000.

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 \$10,000 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to the violation of § 192.707(d)(2). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of natural gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. 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. **Respondent must perform an audit to ensure Respondent is in compliance with § 192.707(d)(2). The audit shall consist of:**

- 1) A review of all applicable procedures and amendment of those procedures, where necessary;
- 2) A survey of Respondent's pipeline markers throughout its pipeline system to evaluate the compliance of markers along the pipeline right-of-way and to identify areas where additional markers may be needed; and
- 3) A plan for replacement or installation of line markers as identified by the review and survey, including a timeline of all actions to be taken. The plan shall be submitted for approval by the Director, Southwest Region, OPS within 30 days following receipt of this Final Order.

The Director, Southwest Region, OPS has indicated that Respondent has taken several actions to address the cited violation. On February 7, 2003, Respondent submitted a plan regarding the contact phone numbers on its line markers. In correspondence dated February 26, 2003, Respondent stated that it had updated the contact phone numbers on its line markers system-wide, with the exception of four miles of pipeline in the San Juan area.

Failure to comply with this Final Order may result in the assessment of civil penalties of up to \$100,000 per violation per day, or in the referral of the case for judicial enforcement.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. 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 the petition automatically stays the payment of any civil penalty assessed. All other terms of the order, including any required corrective action, remain in full effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order are effective on receipt.



Stacey Gerard
Associate Administrator
for Pipeline Safety

12/30/03
Date Issued