



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

AUG 24 2004

Mr. Rob Martinovich
Senior Vice President of Operations
Duke Energy Field Services
6120 S. Yale, Suite 1100
Tulsa, OK 74136

RE: CPF No. 4-2004-1003

Dear Mr. Martinovich:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$4,000. 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,

for Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

cc: Mr. R. M. Seeley, Director, OPS Southwest Region

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

In the Matter of)

Duke Energy Field Services,)

Respondent.)

CPF No. 4-2004-1003

FINAL ORDER

On April 21-25, 2003, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Panhandle Eastern Pipeline Company's (PEPL's) onshore pipeline facilities and records in the Guymon-Hansford area of Texas and Oklahoma, which are operated by Duke Energy Field Services (Respondent). As a result of the inspection, the Director, Southwest Region, OPS, issued to Respondent, by letter dated February 11, 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 violated 49 C.F.R. §192.605 and proposed assessing a civil penalty of \$4,000 for the alleged violation.

Respondent responded to the Notice by letter dated March 4, 2004 (Response). Respondent contested the allegation, offered information in explanation of the allegation and requested reconsideration. Respondent did not request a hearing, and therefore has waived the right to one.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. §192.605 (a) by failing to have an updated O&M Manual and Standard Operating Procedures (SOP) available to appropriately maintain its facilities. Respondent has an agreement with Panhandle Eastern Pipeline (PEPL) to operate certain PEPL pipelines located in Texas, Kansas and Oklahoma. At time of the inspection, the O & M Manual and SOP in use by Respondent had not been updated for the years 2001 and 2002.

In its Response, Respondent explained that it entered into an agreement in 1998 with PEPL to operate certain PEPL pipelines and to do so in accordance with PEPL's 1998 O & M Manual and SOP. A facility-specific O & M Manual and SOP were created for the Guymon-Hansford area PEPL pipelines operated by Respondent. Respondent further explained that the agreement only allowed facility-specific updates that would be necessary to comply with changes in applicable laws or

regulations. Respondent contends that it reviewed the facility-specific O&M manual and SOP in 2001 and 2002 and no required changes were identified.

After the OPS inspection, Respondent submitted documentation to the OPS regional office indicating that updated O&M manual and SOP was provided to Respondent by PEPL. Respondent also explained that based upon changes in the terms of its operating agreement with PEPL, the updates and the O&M manual and SOP will now be provided by PEPL.

Respondent stated that the O & M Manual and SOP were not updated as the terms of the agreement between Respondent and PEPL did not provide for sufficient flexibility with respect to voluntary modifications or revisions. All gas and hazardous liquid pipeline operators must prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response to safely and effectively maintain its facilities. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. The language in 49 C.F.R. §192.605 is mandatory, as it uses the word "must" and creates an obligation for all gas operators to update their O&M manuals. Compliance with federal regulations is not optional. The O & M Manual and SOP in use by Respondent at time of the inspection had not been updated for the years 2001 and 2002. Accordingly, I find that Respondent violated 49 C.F.R. §192.605(a) by failing to updated its O & M Manual and SOP at intervals not exceeding 15 months, but at least once each calendar year.

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. The Notice proposed a \$4,000 civil penalty for violation of 49 C.F.R. § 195.605(a).

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 civil penalty of \$4,000, as Respondent failed to updated its O & M Manual and SOP at intervals not exceeding 15 months, but at least once each calendar year. Procedures are essential to an operator's employees being able to perform their duties. An operator needs to have written procedures instructing personnel to recognize those safety-related conditions that can affect

a pipeline's operation so that issues can be appropriately addressed and reported. Respondent does not deny that the O & M Manual and SOP were not updated as required by 49 C.F.R. §195.605(a). Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$4,000.

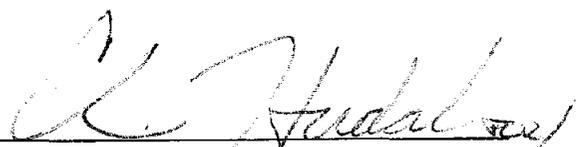
Payment of the civil penalty must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-120), P.O. Box 25770, 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) 954-8893.

Failure to pay the \$4,000 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 an United States District Court.

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

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.



Stacey Gerard
Associate Administrator
for Pipeline Safety

AUG 24 2004

Date Issued