

February 11, 2020

Mr. Kelcy L. Warren  
Chief Executive Officer  
Energy Transfer, LP  
8111 Westchester Drive  
Dallas, Texas 75225

**Re: CPF No. 4-2019-5010**

Dear Mr. Warren:

Enclosed please find the Final Order issued in the above-referenced case to your subsidiary, Sunoco Pipeline, LP. It makes a finding of violation, assesses a civil penalty of \$69,800, and specifies actions that need to be taken by Sunoco to comply with the pipeline safety regulations. When the civil penalty has been paid and the terms of the compliance order completed, 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,

Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

Enclosure (Final Order)

cc: Ms. Mary McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA  
Mr. Eric Amundsen, Senior Vice President – Operations, Energy Transfer, LP  
Mr. Mark Milliken, Senior Vice President – Technical Services, Energy Transfer, LP  
Mr. Danny Nichols, Senior Director – Regulatory Compliance, Energy Transfer, LP  
Mr. Chris Lason, Vice President – Asset Integrity, Energy Transfer, LP  
Mr. Delyn Houser, Senior Manager – Corrosion Services, Energy Transfer, LP  
Mr. Todd Nardozi, Senior Manager – Regulatory Compliance, Energy Transfer, LP

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	)	
	)	
Sunoco Pipeline, LP,	)	
a subsidiary of Energy Transfer, LP,	)	CPF No. 4-2019-5010
	)	
Respondent.	)	
	)	

**FINAL ORDER**

From January 22, 2018, through December 05, 2018, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted on-site pipeline safety inspections of the facilities and records of Sunoco Pipeline, LP's (Sunoco or Respondent) Garden City pipeline in Houston, Abilene, and Pearland, Texas. Sunoco Pipeline, LP, is a subsidiary of Energy Transfer, LP, one of the largest energy companies in the United States.<sup>1</sup>

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated March 18, 2019, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice), which also included warnings pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Sunoco had violated 49 C.F.R. § 195.573(a)(1) and proposed assessing a civil penalty of \$69,800 for the alleged violation. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violation. The warning items required no further action but warned the operator to correct the probable violations or face possible future enforcement action.

Sunoco responded to the Notice by letter dated June 3, 2019 (Response). The company did not contest the Notice, but provided additional information and requested a modification to the proposed compliance order terms. Respondent did not request a hearing and therefore has waived its right to one.

**FINDING OF VIOLATION**

In its Response, Sunoco did not contest the allegation in the Notice that it violated 49 C.F.R. Part 195, as follows:

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a)(1), which states:

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<sup>1</sup> Energy Transfer, LP website, available at <https://www.energytransfer.com/ownership-structure/> (last accessed December 18, 2019).

**§ 195.573 What must I do to monitor external corrosion control?**

(a) *Protected pipelines.* You must do the following to determine whether cathodic protection required by this subpart complies with §195.571:

(1) Conduct tests on the protected pipeline at least once each calendar year, but with intervals not exceeding 15 months. However, if tests at those intervals are impractical for separately protected short sections of bare or ineffectively coated pipelines, testing may be done at least once every 3 calendar years, but with intervals not exceeding 39 months.

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a)(1) by failing to conduct a test on its Temple to Evant Segment (located within the Fort Hood Army base) at least once each calendar year, but with intervals not exceeding 15 months, to determine the adequacy of its cathodic protection and compliance with § 195.571. Specifically, the Notice alleged that Sunoco failed to conduct an annual cathodic protection survey in 2016, 2017, and continuing up to the time of the inspection in 2018.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(a)(1) by failing to conduct a test on its Temple to Evant Segment (located within the Fort Hood Army base) once each calendar year, but with intervals not exceeding 15 months, to determine the adequacy of its cathodic protection and compliance with § 195.571.

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 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.<sup>2</sup> 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; 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 \$69,800 for the violation cited above.

**Item 2:** The Notice proposed a civil penalty of \$69,800 for Respondent's violation of 49 C.F.R. § 195.573(a)(1), for failing to conduct a test on its Temple to Evant Segment (located within the Fort Hood Army base) once each calendar year, but with intervals not exceeding 15 months, to

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<sup>2</sup> These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

determine the adequacy of its cathodic protection and compliance with § 195.571. Sunoco neither contested the allegation nor presented any evidence or argument justifying a reduction in or elimination of the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$69,800 for violation of 49 C.F.R. § 69,800.

Failure to pay the \$69,800 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.

### **COMPLIANCE ORDER**

The Notice proposed a compliance order with respect to **Item 2** in the Notice for violation of 49 C.F.R. § 195.573(a)(1). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601.

Concerning the violation of § 195.573(a)(1) (**Item 2**), Respondent stated that due to the nature of activities conducted at Fort Hood, the U.S. Army has limited and restricted Sunoco's access to certain areas of the company's right-of-way (ROW). Respondent stated that it is engaged in discussions with the Army about Sunoco's need to access the ROW and is taking steps to facilitate the relocation of the pipeline. The company stated that it would be unable to fully comply with the conditions of the proposed compliance order until the Army either permits access sufficient for Respondent to satisfy its obligations under Part 195, and/or the pipeline is relocated. In the meantime, Respondent proposed the following alternative activities to ensure continued pipeline integrity:

- 1) Continued efforts by Sunoco to negotiate access with the Army;
- 2) Weekly aerial patrols (weather permitting);
- 3) Annual in-line inspections (ILI) with a Def/MFL tool;
- 4) Analysis of ILI resultant data sets against past data sets; and
- 5) Identification of any corrosion growth rate levels that would impact the calculated time to critical wall loss.

Respondent proposed to perform these alternative activities until such time that it is able to gain full access to the pipeline or the pipeline is relocated, whichever occurs first. Respondent also stated that it would communicate with the Director, and take all appropriate action, consistent with 49 C.F.R. Part 195, should the monitoring and analysis identify actionable anomalies on the pipe.

In consideration of the Respondent's inability to access certain areas of the ROW, the Director found the alternative activities acceptable but only for a limited amount of time. The Director has recommended that a time limit of one year be imposed, along with a requirement for

Respondent to provide periodic progress reports on its discussions with the U.S. Army every three months.

Respondent cannot comply with the PCO as written in the Notice; however, allowing the Respondent to perform alternative actions indefinitely would exceed the scope of a compliance order and enter the realm of a special permit. Therefore, I find that a reasonable time limit of one year, with an opportunity to extend with approval from the Director, should be included in the order. I also find that requiring updates of the Respondent's discussions with the U.S. Army is critical for the ability of the Director to evaluate Respondent's progress toward resolving the issue of access to the ROW.

Having considered all the facts discussed above, I find that the compliance order should be modified as set forth below.

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, for a period of one year from the date of this Final Order, with an opportunity to extend the compliance period for two additional one-year periods with the approval of the Director, to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.573(a)(1) (**Item 2**), Respondent must:
  - a. Continue its efforts to negotiate access to its pipeline with the U.S. Army;
  - b. Conduct weekly aerial patrols (weather permitting);
  - c. Conduct annual ILIs with a Def/MFL tool;
  - d. Analyze the ILI resultant data sets against past data sets;
  - e. Identify any corrosion growth rate levels that would impact the calculated time to critical wall loss; and
  - f. Provide progress reports on discussion efforts for access to the pipeline segments within the U.S. Army base at Fort Hood and the conditional status of the pipeline to the Director every three months from the date of issuance of the final order.

At the end of the one-year time period, or as extended by the Director for up to three years, this Compliance Order will expire and Respondent must either come into full compliance with § 195.573(a)(1), seek and obtain a special permit from PHMSA, or face potential enforcement action. Within such limitations, the Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

It is requested (not mandated) that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. It is requested that these costs be reported in two categories: (1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and (2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

Failure to comply with this Order may result in the administrative assessment of civil penalties

not to exceed \$200,000, as adjusted for inflation (49 C.F.R. § 190.223), 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.

### **WARNING ITEMS**

With respect to Items 1, 3, and 4, the Notice alleged probable violations of Part 195 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 195.583(a) **(Item 1)** — Respondent’s alleged failure to conduct an atmospheric corrosion inspection on the Bronte to Garden City 10” segment at station # 2260+00 and 2227+64 at the required frequency of at least once every 3 years, with intervals not exceeding 39 months;

49 C.F.R. § 195.402(a) **(Item 3)** — Respondent’s alleged failure to have Corrosion Supervisors carry out periodic reviews of their operating personnel’s work (inspection records) for atmospheric corrosion evaluations; and

49 C.F.R. § 195.412(a) **(Item 4)** — Respondent’s alleged failure to carry out right-of-way inspections for that portion of the company’s ROW within the U.S. Army’s Fort Hood base, at intervals not exceeding 3 weeks but at least 26 times each calendar year.

If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2<sup>nd</sup> Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address, no later than 20 days after receipt of service of this 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. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including corrective action, remain in effect 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.

February 11, 2020

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Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

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Date Issued