

July 27, 2020

VIA ELECTRONIC MAIL TO: gregory.mcilwain@energytransfer.com

Mr. Greg McIlwain
Senior Vice President of Operations
West Texas Gulf Pipe Line Company, LLC
1300 Main Street
Houston, Texas 77002

Re: CPF No. 4-2019-5019

Dear Mr. McIlwain:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation, assesses a civil penalty of \$64,600 and specifies actions that need to be taken by West Texas Gulf Pipe Line Company, LLC, a subsidiary of Energy Transfer, LP, to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Southwest Region, this enforcement action will be closed. Service of the Final Order by electronic mail is effective upon the date of transmission 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

cc: Ms. Mary McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. Kelcy Warren, President and Chief Executive Officer, Energy Transfer, LP,
kelcy.warren@energytransfer.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

**West Texas Gulf Pipe Line Company, LLC,
a subsidiary of Energy Transfer, LP,**

Respondent.

CPF No. 4-2019-5019

FINAL ORDER

From October 14, 2018, through July 24, 2019, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety investigation of the facilities and records of West Texas Gulf Pipe Line Company, LLC (WTG or Respondent), in Texas following two releases during hydrostatic pressure testing in October 2018.¹ WTG, a subsidiary of Energy Transfer, LP, operates a 26-inch diameter hazardous liquid pipeline from Colorado City, Texas, to Longview, Texas.

As a result of the investigation, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated October 24, 2019, 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 WTG had violated 49 C.F.R. § 195.406(a) and proposed assessing a civil penalty of \$64,600 for the alleged violation. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violation.

Energy Transfer, LP, on behalf of WTG, responded to the Notice by letter dated November 21, 2019 (Response). The company did not contest the allegation of violation or proposed compliance actions, but did request that the proposed civil penalty be reduced based on certain additional information. Respondent did not request a hearing and therefore has waived its right to one.

FINDING OF VIOLATION

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

¹ See National Response Center (NRC) Report #1227441(Oct. 14, 2018) and NRC Report #1228043 (Oct. 20, 2018).

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.406(a), which states:

§ 195.406 Maximum operating pressure.

(a) Except for surge pressures and other variations from normal operations, no operator may operate a pipeline at a pressure that exceeds any of the following:

(1) The internal design pressure of the pipe determined in accordance with § 195.106. However, for steel pipe in pipelines being converted under § 195.5, if one or more factors of the design formula (§ 195.106) are unknown, one of the following pressures is to be used as design pressure:

(i) Eighty percent of the first test pressure that produces yield under section N5.0 of appendix N of ASME/ANSI B31.8 (incorporated by reference, *see* § 195.3), reduced by the appropriate factors in §§ 195.106 (a) and (e); or

(ii) If the pipe is 12 ¾ inch (324 mm) or less outside diameter and is not tested to yield under this paragraph, 200 p.s.i. (1379 kPa) gage.

(2) The design pressure of any other component of the pipeline.

(3) Eighty percent of the test pressure for any part of the pipeline which has been pressure tested under subpart E of this part.

(4) Eighty percent of the factory test pressure or of the prototype test pressure for any individually installed component which is excepted from testing under § 195.305.

(5) For pipelines under §§ 195.302(b)(1) and (b)(2)(i) that have not been pressure tested under subpart E of this part, 80 percent of the test pressure or highest operating pressure to which the pipeline was subjected for 4 or more continuous hours that can be demonstrated by recording charts or logs made at the time the test or operations were conducted.

The Notice alleged that Respondent violated 49 C.F.R. § 195.406(a) by operating a pipeline that exceeded an established maximum operating pressure (MOP). Specifically, the Notice alleged that WTG failed to have records to validate the MOP for the company's WTG #1 pipeline segment (Colorado City to Wortham, Texas) and its WTG #2 pipeline segment (Wortham to Nederland, Texas), both of which had operated without an established MOP since 2002.² It further alleged that although WTG performed hydrostatic tests on six segments by 2018, four segments remained untested at the time of the PHMSA investigation.³

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. § 195.406(a) by failing to establish MOP on its pipeline.

² In 2005, WTG established MOP via pressure testing on five segments of the line and provided these records to PHMSA during its investigation. Pipeline Safety Violation Report (Violation Report), at 5 (Oct. 24, 2019) (on file with PHMSA). In its Response, WTG stated that it believed pressure testing was performed by a previous operator in 1998, but could not find these records. Response, at 2-3.

³ In its Response, the company noted that one of these four segments was tested in 2019 and that it planned to test the remaining three segments in 2020, 2021, and 2022. Response, at 2-3.

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.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; 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 \$64,600 for the violation cited above.

Item 1: The Notice proposed a civil penalty of \$64,600 for Respondent's violation of 49 C.F.R. § 195.406(a) for failing to establish MOP on its pipeline. In its Response, WTG presented several arguments for a reduction in the civil penalty. I will address each one separately below.

First, WTG contends that the nature of the violation should be changed to a record-keeping violation rather than an "activity" violation under Part E4 of the Violation Report. WTG states that it believes pressure testing was performed in 1998 by a previous operator, but that it is "unable to locate and was unable to produce these specific records during the course of the investigation" but "believes that these records did exist."⁵ Although the company could have corroborated its claim that pressure testing was performed by producing testing records, affidavits, or other evidence showing that the testing activity actually occurred, it did not do so. Therefore, the record contains nothing more than a mere unsupported statement and an admission by WTG that the records could not be located.⁶ Therefore, I see no reason to find that the violation was merely a record-keeping, rather than a substantive, violation.

Second, WTG argues that the number of instances of violation under the "gravity" criterion in Part E6 of the Violation Report should be reduced from two to one because "the WTG pipeline system is one system" and the two releases occurred on the same Colorado City to Abilene segment, and therefore consisted of only one violation. The company contends that even though the two releases were reported separately under two different National Response Center reports, they both related to a single failure to establish MOP pursuant to § 195.406(a).

⁴ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

⁵ Response, at 3.

⁶ See *In re: Kinder Morgan Liquid Terminals, LLC*, CPF No. 1-2018-5005, Final Order, at 4 (Mar. 8, 2019) (finding that the violation was an activity violation, rather than a records violation, because the record contains "nothing more than a mere unsupported statement that the required inspections and calculations were performed, and an admission that the records do not exist").

I disagree. Contrary to WTG's description of its pipeline as a single system, there were actually 10 instances of violation because WTG operated ten different segments of its pipeline system without establishing the MOP for each one.⁷ Although five were tested in 2018, the fact remains that all ten were operational for years without any evidence, such as MOP test records, to demonstrate that MOP was properly established under § 195.406(a). Despite this, I will not increase the number of instances of violation to ten, nor will I lower it to one.

Third, WTG requests a reduction in the "culpability" assessment factor under Part E7 of the Violation Report. Specifically, the company contends that the culpability factor should be changed from "the operator failed to comply with a requirement that was clearly applicable" to "after the operator found the noncompliance, the operator took documented action to address the cause of the noncompliance, and was in the process of correcting the noncompliance before PHMSA learned of the violation." However, the penalty criteria under Part E7 contain the exception that the lower culpability level "[d]oes not apply to operator post-accident/incident enforcement actions."⁸ Although WTG was in the process of hydrotesting its line when the reportable accidents occurred, the culpability factor cannot be lowered because there is no evidence to suggest that WTG undertook the pressure testing that was ongoing when the two releases occurred in order to correct the non-compliance. Therefore, the company's post-release actions do not serve to reduce the culpability factor.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$64,600** for violation of 49 C.F.R. § 195.406(a).

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, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$64,600 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 1 in the Notice for violation of 49 C.F.R. § 195.406(a). 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

⁷ Under § 195.406, MOP is established per segment, not per "system."

⁸ Violation Report, at 11.

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:

1. With respect to the violation of § 195.406(a) (**Item 1**), Respondent must submit operating pressure recording charts or logs to verify the MOP per § 195.406(a)(5), or perform a pressure test per the requirements of §195.406(a)(3) to establish an MOP of its WTG # 1 (Colorado City to Wortham, Texas) and WTG # 2 (Wortham to Nederland, Texas) pipelines. WTG shall develop and provide the Director with the detailed process and schedule by which it will complete hydrostatic pressure testing of all remaining pipeline segments no later than the end of calendar year 2020.

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.

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, 2nd 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.

July 27, 2020

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued