

August 23, 2021

VIA ELECTRONIC MAIL TO: michele.harradence@enbridge.com

Michele Harradence
Senior Vice President and Chief Operations Officer
Gas Transmission & Midstream Business Unit
Enbridge, Inc.
5400 Westheimer Court
Houston, Texas 77056

Re: CPF No. 4-2021-030-NOPV

Dear Ms. Harradence:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$49,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of the Final Order by e-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. Nathan Atanu, Manager, Operational Compliance, Enbridge, Inc.,
nathan.atanu@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**

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In the Matter of)		
)		
Texas Eastern Transmission, LP, a subsidiary of Enbridge, Inc.,)	CPF No. 4-2021-030-NOPV	
)		
Respondent.)		
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FINAL ORDER

On August 27, 2004, pursuant to 49 U.S.C. § 60118(c), the Associate Administrator, Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), issued an order granting a special permit to Texas Eastern Transmission, LP (TETLP or Respondent), waiving certain provisions of 49 C.F.R. § 192.611 (Special Permit) for segments of the TETLP 24-inch Line 12 and 30-inch Line 19 pipeline systems located in Perry, Berks, Huntingdon, Juniata, Montgomery, and Bucks Counties, Pennsylvania and Hunterdon County, New Jersey.¹ The order placed certain conditions and limitations on the Special Permit.² On May 15, 2015, PHMSA amended the Special Permit segment definitions, conditions, and limitations.³ TETLP is a subsidiary of Spectra Energy Partners, LP, a subsidiary of Enbridge, Inc., and operates a natural gas transportation network of 8,835 miles from the Gulf Coast to the northeast United States.

On multiple dates beginning December 3, 2020 through April 1, 2021, pursuant to 49 U.S.C. § 60117, a PHMSA representative conducted an inspection of TETLP's 2020 Special Permit Annual Report. As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated April 20, 2021, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that TETLP had violated the conditions of the Special Permit and proposed assessing a civil penalty of \$49,000 for the alleged violation.

TETLP responded to the Notice by letter dated May 20, 2021 (Response). Although TETLP stated it was not contesting the allegation and would pay the civil penalty, TETLP offered additional information in response to the Notice and expressed partial disagreement with the

¹ See PHMSA RSPA-2003-15122.

² *Id.*

³ *Id.*

facts supporting the allegation. This information is discussed in more detail below. Respondent did not request a hearing and therefore has waived its right to one.

FINDING OF VIOLATION

The Notice alleged that Respondent violated the order and Special Permit as follows:

Item 1: The Notice alleged that Respondent violated Special Permit Condition 20 which states:

Condition 20

(a) General: TETLP must account for ILI tool tolerance and corrosion growth rates in scheduled response times and repairs and document and justify the values used. TETLP must demonstrate ILI Tool tolerance accuracy for each ILI Tool run by usage of calibration excavations and unity plots that demonstrate ILI Tool accuracy to meet the tool accuracy specification provided by the vendor (typical for depth within +10% accuracy for 80% of the time). The unity plots must show: a) actual anomaly depth versus predicted depth and b) actual failure pressure/MAOP versus predicted failure pressure/MAOP. Discovery date must be within 90 days of an ILI Tool run for each type [of] ILI Tool (HR-geometry, HR-deformation or high resolution HR-MFL)

(d) Response Time for ILI Results: The following section provides the required timing for excavation, investigation, and remediation of anomalies based on ILI data results in accordance with 49 CFR §§ 192.485 and 192.933, and must incorporate appropriate class location design factors in the anomaly repair criteria for *special permit segments* and *special permit inspection areas* including all HCAs. Reassessment by ILI will reset the timing for anomalies not already investigated and/or repaired. TETLP must evaluate ILI data by using either the ASME Standard B31G, "*Manual for Determining the Remaining Strength of Corroded Pipelines*" (ASME B31G), the modified B31G (0.85dL) or R-STRENG for calculating the predicted FPR to determine anomaly responses.

■ *Special permit inspection area*:

- Immediate response: Any anomaly within a *special permit inspection area* operating up to 80.77% SMYS that meets either: (1) an FPR equal to or less than 1.1; or (2) an anomaly depth equal to or greater than 80% wall thickness loss.

The Notice alleged that Respondent failed to follow the requirements in Condition 20 of the Special Permit for discovery and response time following the performance of an in-line inspection (ILI) tool run in a special permit inspection area. Specifically, the Notice alleged that TETLP failed to discover two anomalous conditions within 90 days following the completion of an ILI tool run and also failed to take action as required in response to an immediate response condition located in a Class 1 location in accordance with Condition 20 and 49 C.F.R. §§ 192.485 and 192.933.

The Notice alleged that TETLP's 2020 Special Permit Annual Report included the identification of two anomalous conditions that were identified with an ILI tool run with Magnetic Flux Leakage – Circumferential Technology (MFL-C). This test had been conducted on November 21, 2019, and the final vendor report was delivered on March 18, 2020. However, TETLP failed to discover the conditions until April 23, 2020, 154 days after the ILI run date.

The Notice further stated that the anomalous conditions caused Failure Pressure Ratios (FPR) of 1.038 and 1.164 on Line 12 at Mile Post (MP) 97.19. This pipeline location is within Special Permit Inspection Area A, operates at 77.7% specified minimum yield strength (SMYS), and is a Class 1 location requiring immediate action.

In its Response, TETLP raised three points. First, it recognized that Condition 20 of the Special Permit requires discovery within 90 days of an ILI tool run for "(HR-geometry, HR-deformation or high resolution HR-MFL)" ILI technology and that discovery did not occur for 154 days. TETLP noted that it utilized Electromagnetic Acoustic Transducer (EMAT) ILI technology which was not included under the 90-day discovery deadline. TETLP also noted that EMAT technology results in longer vendor analysis timelines than traditional ILI technology. Second, TETLP agrees that it conducted MFL-C ILI tool runs for which it did not have discovery within the required 90 days. TETLP stated, however, that the Special Permit did not specify MFL-C technology as subject to the 90-day deadline. Third, TETLP argued that it did not fail to comply with the response requirements in Condition 20 because it did not consider the anomalous conditions to require an immediate response. TETLP ran both MFL-A (conducted on May 3, 2018, and assessed on August 14, 2018) and MFL-C (conducted on November 21, 2019, vendor report delivered March 18, 2020, and assessed on April 23, 2020) ILI tools because they provide somewhat differing and complementary analysis. TETLP argued its MFL-A results, an FPR of 1.419, "conclusively determined" that the anomalous condition at MP 97.19 did not meet the requirements of an "immediate" anomalous condition under 49 C.F.R. § 192.993. However, Respondent also stated that "[g]iven the facts above, TETLP is not contesting this finding and will make the civil penalty payment of \$49,000."

After reviewing the evidence presented, I disagree with Respondent's contentions. With regards to Respondent's first and second points, Condition 20 mandated a 90-day discovery date for "each type [of] ILI Tool." The quoted phrase means each type of ILI tool that Respondent uses, including but not limited to the types of ILI tools specifically mentioned. Accordingly, Respondent was required to discover conditions within 90 days following the completion of each of its tool runs, including EMAT, MFL-C and MFL-A. Respondent's failure to discover two conditions within that timeframe did not comply with Condition 20. If Respondent determines that it cannot regularly meet the 90-day requirement in the Special Permit using a certain ILI technology, such as where vendors take longer to provide a response, the appropriate course of action pursuant to § 190.341 would be for Respondent to request modifications to the Special Permit and provide appropriate supporting evidence to extend the timeline, including appropriate measures to mitigate any safety risks that result from longer discovery times.

Respondent's third contention, that its MFL-A test, conducted 18 months prior its MFL-C test, "conclusively determin[e]d" there was no immediate anomalous condition, also fails. The Special Permit states an immediate response is required if the FPR is equal to or less than 1.1.

The MFL-C results, an FPR of 1.038, is within that range. Respondent points to the MFL-A results from 18 months earlier that showed an FPR of 1.419. However, external corrosion is a time-dependent threat, and results from 18 months prior may not be sufficient grounds to discard the MFL-C results. Although TETLP's response describes the comparative advantages and disadvantages of MFL-A and MFL-C tools, TETLP does not satisfactorily explain why a result from 18 months prior would end the matter "conclusively." I find that Respondent's failure to take action was neither justified nor in accordance with Condition 20.

Accordingly, after considering all of the evidence and the legal issues presented, I find that Respondent violated Condition 20 of the Special Permit by failing to discover two anomalous conditions within 90 days following the completion of an ILI tool run conducted on November 21, 2019, and also failing to take action as required in response to an immediate response condition located in Area A, a Class 1 location.

This finding of violation will be considered a prior offenses 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; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. 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 \$49,000 for the violation cited above.

Item 1: The Notice proposed a civil penalty of \$49,000 for Respondent's violation of Condition 20 of the Special Permit, for failing to discover anomalies within 90 days of an ILI and failing to take immediate action following discovery of an anomalous condition within a Class 1 location. Respondent did not present any evidence or argument justifying a reduction in the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$49,000 for violation of Condition 20 of the Special Permit.

Failure to pay the \$49,000 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

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

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.

Issuance of this enforcement action does not preclude PHMSA's authority to seek a modification, suspension, or revocation of the Special Permit issued under PHMSA RSPA-2003-15122 at any time, as provided in 49 CFR § 190.341(j)(1). If such action is taken, PHMSA will provide Texas Eastern Transmission, LP with the opportunity to show cause why the proposed action should not be taken.

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 the Final Order by Respondent. Any petition submitted must contain a brief 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 any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

August 23, 2021

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued