

**OCT 8 2010**

Dr. Dean R. Tibbs  
Mare Island Operating Company, Inc.  
c/o Advanced Energy Strategies  
1800 Sutter St., Suite 870  
Concord, CA 94520

Mr. David Elder  
General Manager, Mare Island  
Island Energy  
440 Walnut Avenue  
Vallejo, CA 94592

**Re: CPF No. 5-2006-0001**

Dear Dr. Tibbs and Mr. Elder:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, determines that Mare Island Operating Company, Inc., and Island Energy have completed the actions specified in the Notice to comply with the pipeline safety regulations, and withdraws the proposed civil penalty. Therefore, this case is now closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

Enclosure

cc: Chris Hoidal, Director, Western Region, PHMSA

Mr. Garrett Evans, General Manager  
Pittsburg Power Company  
City of Pittsburg  
65 Civic Avenue  
Pittsburg, CA 94565

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7009 1410 0000 2472 2940]**

**U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, D.C. 20590**

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<b>In the Matter of</b>	)	
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	)	
<b>Mare Island Operating Company, Inc.,</b>	)	
<b>Respondent,</b>	)	
	)	<b>CPF No. 5-2006-0001</b>
	)	
<b>and</b>	)	
	)	
	)	
<b>Pittsburg Power Company,</b>	)	
<b>d/b/a Island Energy,</b>	)	
<b>a division of the City of Pittsburg, California,</b>	)	
<b>a municipal corporation.</b>	)	

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**FINAL ORDER**

On November 16, 2005, 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 inspection of the facilities and records of a municipal gas system operated by Mare Island Operating Company, Inc. (MIOC or Respondent), in Vallejo, California. At the time, MIOC operated the facility pursuant to an agreement with the facility’s owner, Pittsburg Power Company (PPC), doing business as Island Energy, a public utility owned by the City of Pittsburg, California, and providing retail electric and natural gas services to Mare Island, California.<sup>1</sup>

As a result of the inspection, the Director, Western Region, OPS (Director), issued to MIOC, by letter dated February 13, 2006, 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 MIOC had violated 49 C.F.R. § 192.809 and proposed assessing a civil penalty of \$5,000 for the alleged violation. The Notice also proposed ordering MIOC to take certain measures to correct the alleged violation.

MIOC responded to the Notice by letters dated March 28, 2006, and June 30, 2006 (collectively, Response). MIOC did not contest the allegation but objected to the civil penalty. The company agreed to satisfy the terms of the proposed compliance order and described the steps it planned to take to do so. MIOC did not request a hearing and therefore waived its right to one.

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<sup>1</sup> Specifically, PPC is a “joint powers authority,” a public entity permitted under California law, and owned by the City of Pittsburg and the Redevelopment Authority of the City of Pittsburg. See <http://www.pittsburgpowerco.com>; <http://www.islandenergy.com> (last accessed Sept. 1, 2010).

The proposed compliance order required MIOC to develop and submit certain written materials and records to PHMSA, but the company failed to do so. By letter dated December 8, 2009, PPC explained that the City of Pittsburg had taken over operations of the Mare Island facility and stated that it had come to the company's attention that MIOC had never submitted the written materials and records required by the proposed compliance order. PPC stated that MIOC had finished developing these materials in May 2007 and attached a copy of the materials with the letter.

### **FINDING OF VIOLATION**

In its Response, MIOC did not contest the allegation in the Notice that it violated 49 C.F.R. Part 192, as follows:

**Item 1:** The Notice alleged that MIOC violated 49 C.F.R. § 192.809, which states:

**§ 192.809 General.**

(a) Operators must have a written qualification program by April 27, 2001. The program must be available for review by the Administrator or by a state agency participating under 49 U.S.C. Chapter 601 if the program is under the authority of that state agency.

(b) Operators must complete the qualification of individuals performing covered tasks by October 28, 2002.

(c) Work performance history review may be used as a sole evaluation method for individuals who were performing a covered task prior to October 26, 1999.

(d) After October 28, 2002, work performance history may not be used as a sole evaluation method.

(e) After December 16, 2004, observation of on-the-job performance may not be used as the sole method of evaluation.

The Notice alleged that Respondent violated 49 C.F.R. § 192.809 by failing to have a written qualification program in place as of the date of the OPS inspection. MIOC 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. § 192.809 by failing to have a written qualification program in place as of the date of the OPS inspection.

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

### **COMPLIANCE ORDER**

The Notice proposed a compliance order with respect to Item 1 of the Notice for violation of 49 C.F.R. § 192.809. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. The Director indicates that MIOC and PPC have taken the following actions specified in the proposed compliance order:

With respect to the violation of § 192.809 (**Item 1**), MIOC developed, and PPC submitted, a written qualification program that, upon review, satisfies the requirements of the regulation.

Accordingly, I find that compliance has been achieved with respect to this violation. Therefore, the compliance terms proposed in the Notice are not included in this Order.

### **ASSESSMENT OF PENALTY**

Under 49 U.S.C. § 60122, Respondent is subject to an administrative 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 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; the Respondent's ability to pay the penalty and 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 \$5,000 for the violation cited above.

**Item 1:** The Notice proposed a civil penalty of \$5,000 for Respondent's violation of 49 C.F.R. § 192.809, for failing to have a written qualification program in place as of the date of the OPS inspection. Island Energy contends that the proposed penalty should be waived, as this was the first OPS inspection of its facilities since the company began operations on Mare Island in April 1997. Respondent further states that the anticipated cost of the compliance order, \$30,000, already constitutes a significant investment of its scarce resources.

This case presents unusual circumstances. On the one hand, a small public utility such as Island Energy, like any other pipeline operator, is subject to potential civil penalties for violating the Pipeline Safety Laws and Regulations. It is critical that municipal gas systems, like private utilities, comply with these safety regulations in order to protect their own personnel and the public from the risk of pipeline accidents. On the other hand, it appears in this case that MIOC is no longer doing business as a pipeline operator and that PPC was not served with the Notice and notified that it could face the possible imposition of a civil penalty. Accordingly, I find that these circumstances constitute "such other matters as justice may require," and that they necessitate the withdrawal of the proposed penalty of \$5,000.

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

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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

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Date Issued