



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue SE
Washington, DC 20590

NOV 15 2016

Mr. David Harris
President & CEO
AltaGas, Ltd.
1700, 355 - 4th Avenue, S.W.
Calgary, Alberta, Canada T2P 0J1

Re: CPF No. 5-2015-0007

Dear Mr. Harris:

Enclosed please find the Final Order issued in the above-referenced case to your subsidiary, Enstar Natural Gas Company. It makes findings of violation, assesses a reduced civil penalty of \$6,100, and specifies actions that need to be taken by Enstar 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, Western Region, this enforcement action will be 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,

Alan K. Mayberry
Acting Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Chris Hoidal, Director, Western Region, OPS
Mr. Jared Green, President, Enstar Natural Gas Company, P. O. Box 190288,
Anchorage, Alaska 99519-0288;
Ms. Moira Smith, Esq., Vice President and General Counsel, Enstar Natural Gas
Company, P. O. Box 190288, Anchorage, Alaska 99519-0288;

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Parts 191 and 192, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.603(b), which states:

§ 192.603 General provisions.

(a) . . .

(b) Each operator shall keep records necessary to administer the procedures established under § 192.605.

The Notice alleged that Respondent violated 49 C.F.R. § 192.603(b) by failing to keep records necessary to administer procedures required under § 192.605. Specifically, the Notice alleged that Enstar failed to keep records necessary to comply with § 192.605(b), relating to maintenance and normal operations of its natural gas distribution system. According to the Notice, Enstar failed repeatedly to keep leak-survey daily reports and supporting maps for leak surveys required under 49 C.F.R. §§ 192.706 and 192.723. The Notice alleged that Respondent's records for leakage surveys conducted on October 26, 2012, September 18, 2013, October 4, 2013, October 14, 2013, as well as for surveys conducted on Grids A1432 and A1436 in 2013, were incomplete or had missing information.

In its Response, Enstar contested this allegation of violation. The company stated that it maintained two complementary sets of records for daily leak surveys, i.e., daily leak-survey reports and field notes. While Respondent conceded that its daily leak-survey reports were "incomplete," it asserted that the field notes were complete and, when combined with the leak surveys, showed which pipelines had been surveyed and where leaks had occurred.

Upon reviewing the record, I find that Enstar's records for the survey conducted on October 14, 2013, were indeed complete and accurate; I therefore withdraw this portion of the allegations in Item 1 of the Notice. However, for the leak-survey records on the other dates listed above, I find that Enstar violated § 192.603(b) by failing to keep records necessary to administer procedures established under § 192.605.

Under § 192.603(b), Respondent has a duty to keep records necessary to conduct normal operations on its system, including records of leak surveys. PHMSA has interpreted § 192.603(b) to mean that records need to be complete, accurate, and informative enough for an operator to meet all regulatory requirements for operations and maintenance. For example, in the final order issued *In the Matter of Area Energy, LLC*, PHMSA found that the operator had failed to maintain proper records of notifications of planned excavation activities near its pipeline.⁴ In *Aera*, PHMSA found that the operator had only kept records of excavation activities *within* the right-of-way of the pipeline and not adjacent to it, a practice that did not constitute maintaining complete and accurate records that could be used to assess the "operator's promptness in making

⁴ *In the Matter of Aera Energy, LLC*, Final Order, CPF No. 5-2002-1002, (January 5, 2005); *See also, In the Matter of Merit Energy Co.*, Final Order, CPF No. 5-2004-1011, (July 16, 2009) (both available at www.phmsa.gov/pipeline/enforcement) (available at www.phmsa.dot.gov/pipeline/enforcement)

determinations about whether the pipeline right-of-way is affected, and the manner in which these determinations are made, with respect to every excavation notification it receives.”⁵

Similarly, in this case, by dividing the records of its leak surveys between leak survey reports and field notes and having records that contained numerous errors and mistakes, Enstar employees did not have access to one accurate and complete set of leak-survey reports that could be used to determine when the company’s distribution system had been surveyed or where leaks had occurred. Accordingly, after considering all of the evidence, I find that Respondent violated § 191.603(b) by failing to maintain records necessary to administer procedures required under § 192.605.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.614(a), which states:

§ 192.614 Damage prevention program.

(a) Except as provided in paragraphs (d) and (e) of this section, each operator of a buried pipeline must carry out, in accordance with this section, a written program to prevent damage to that pipeline from excavation activities. For the purposes of this section, the term “excavation activities” includes excavation, blasting, boring, tunneling, backfilling, the removal of aboveground structures by either explosive or mechanical means, and other earthmoving operations.

The Notice alleged that Respondent violated 49 C.F.R. § 192.614(a) by failing to carry out a written program to prevent damage from excavation activities to its natural gas distribution system. Specifically, the Notice alleged that Enstar’s written damage prevention procedures did not meet the requirement in 49 C.F.R. § 192.614(c)(6)(i) that operators verify the integrity of their pipelines when they have reason to believe the lines could be damaged by excavation activities.⁶ While the Notice acknowledged that Enstar did have a practice of inspecting its pipeline during or after excavation activities, several of Enstar’s relevant *procedures* did not require inspections during or after excavation activities.

In its Response, Enstar did not contest this allegation of violation, but stated that it had updated its *ENSTAR SOP 1401: Damage Prevention Program* procedures so that company personnel will verify the integrity of its system when they had reason to believe it could be damaged by excavation activities. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.614(a) by failing to carry out a written program to prevent damage from excavation activities to its natural gas distribution system.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 192.739(a)(3), which states:

⁵ See *supra* note 4.

⁶ Section 49 C.F.R. § 192.614(c)(6)(i) provides that an operator’s damage prevention program must provide for the inspection of such pipelines “as frequently as necessary during and after the activities to verify the integrity of the pipeline...”

§ 192.739 Pressure limiting and regulating stations: Inspection and testing.

(a) Each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment must be subjected at intervals not exceeding 15 months, but at least once each calendar year, to inspections and tests to determine that it is—

(1) ...

(3) Except as provided in paragraph (b) of this section, set to control or relieve at the correct pressure consistent with the pressure limits of § 192.201(a);

The Notice alleged that Respondent violated 49 C.F.R. § 192.739(a)(3) by failing to ensure that its A203 Elmendorf Power Regulator Station was inspected to determine that it was set to control or limit the pipeline's operating pressure consistent with the pressure limits of § 192.201(a). Specifically, the Notice alleged that the July 1, 2013 records for the station showed a recorded inlet pressure of 430 psi, which exceeded the regulator pressure rating of 285 psi.

In its Response, Enstar contested this allegation of violation. Respondent contended that on July 1, 2013, during annual station maintenance at its A203 Elmendorf Power Station, an Enstar employee inaccurately recorded a pressure of 430 psi. Respondent further asserted that at no time did the pressure at the A203 Elmendorf Power Station exceed 260 psi, a fact confirmed and documented by separate telemetry records.⁷ These records were submitted as Attachment 9 to the Response.

Upon review of the Response, I accept Enstar's argument and hereby order that Item 3 and its associated proposed penalty be withdrawn.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 191.11(a), which states:

§ 191.11 Distribution system: Annual report.

(a) *General.* Except as provided in paragraph (b) of this section, each operator of a distribution pipeline system must submit an annual report for that system on DOT Form PHMSA F 7100.1-1. This report must be submitted each year, not later than March 15, for the proceeding calendar year.

The Notice alleged that Respondent violated 49 C.F.R. § 191.11(a) by failing to submit an accurate annual report for its natural gas distribution system. Specifically, the Notice alleged that in its 2013 annual report, Enstar did not accurately include the number of leaks that the company had experienced on its system and failed to include its higher-pressure distribution main lines. The latter were found to be documented in the 2013 Annual Report for the Alaska Pipeline Co. (APC), a partner company to Enstar.

In its Response, Enstar conceded that its annual report did not accurately include the number of

⁷ Response, at 5, 41.

leaks on a section of its gas distribution system. Enstar stated that it had taken steps to modify its procedures for composing its annual report and that the number of leaks on its system would be accurately reported in the future.

As for the higher-pressure distribution mains, Respondent initially contested the assertion that it needed to include these lines in its annual report. Enstar argued that APC was a separate company and that these lines were actually owned by APC. After speaking with PHMSA officials on July 9, 2015, Enstar agreed to work with APC to continue to include these lines in Enstar's new Distribution Integrity Management Program (DIMP). Enstar and APC also agreed to file a new DIMP plan for the APC high-pressure distribution lines, submit a corrected 2014 APC transmission report to remove these lines, and create a new 2014 annual distribution report for APC.

Accordingly, I find Respondent violated 49 C.F.R. § 191.11(a) by failing to submit an accurate annual report for its natural gas distribution system.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 192.491(c), which states:

§ 192.491 Corrosion control records.

(a) ...

(c) Each operator shall maintain a record of each test, survey, or inspection required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that a corrosive condition does not exist. These records must be retained for at least 5 years, except that records related to §§ 192.465(a) and (e) and 192.475(b) must be retained for as long as the pipeline remains in service.

The Notice alleged that Respondent violated 49 C.F.R. § 192.491(c) by failing to maintain records demonstrating that atmospheric corrosion inspections had been completed in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosive conditions did not exist on its pipeline. Specifically, the Notice alleged that Enstar used leak-survey reports, in conjunction with atmospheric corrosion inspections, to meet this requirement but that these leak-survey reports did not indicate that atmospheric corrosion inspections had actually been performed at least once every three calendar years, as required under § 192.481(a). The Notice further alleged that Enstar's *Leak Survey & Atmospheric Corrosion Inspection Rotation Schedule* indicated that inspections for atmospheric corrosion had been completed on four-year cycles, rather than three.

In its Response, Enstar did not contest this allegation of violation but stated that its written procedures had been modified to provide that atmospheric corrosion inspections are conducted during routine leak surveys.⁸ Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.491(c) by failing to maintain records demonstrating that atmospheric corrosion inspections had been completed, in sufficient detail to demonstrate the adequacy of its corrosion control measures.

⁸ Response, at 7.

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 192.615(b), which states, in relevant part:

§ 192.615 Emergency plans.

- (a) ...
- (b) Each operator shall: ...
 - (2) Train the appropriate operating personnel to assure that they are knowledgeable of the emergency procedures and verify that the training is effective.

The Notice alleged that Respondent violated 49 C.F.R. § 192.615(b)(2) by failing to train appropriate operating personnel to assure that they are knowledgeable of the company's emergency procedures. Specifically, the Notice alleged that Enstar's gas-control dispatchers did not appear to be trained in the company's emergency procedure, *SOP 1150, Damage Response*. Further, the Notice alleged that Respondent's Operator Qualification (OQ) program and *2013 Master OQ Covered Task List* did not show that Enstar's gas-control dispatchers were included among the personnel required to be trained in Enstar's emergency procedures.

In its Response, Enstar did not contest this allegation of violation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.615(b)(2) by failing to require its gas-control dispatchers to be trained in Enstar's emergency damage response procedure – training necessary to carry out their assigned roles in this procedure.

These findings of violation will be considered 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. 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 \$24,800 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$6,100 for Respondent's alleged violation of 49 C.F.R. § 192.603(b), for failing to keep records necessary to administer procedures required under § 192.605.

As discussed above, I found that Enstar violated § 192.603(b) by failing to maintain records necessary to administer procedures required under § 192.605(b), relating to maintenance and normal operations. Respondent asserts the proposed civil penalty for this violation should be waived because it has taken steps to enhance the completeness and accuracy of its records and is developing an internal audit process to review its field records for accuracy and completeness.

Despite these post-inspection steps, Respondent still failed to comply with § 192.603(b) at all times and to keep accurate and complete records necessary to conduct normal operations. Further, PHMSA's representatives discovered this violation, and Enstar's records indicated that proper leak surveys during the proper inspection intervals had not been conducted. Also, proposed penalty has already taken into account the relatively minimal impact of the violation on safety; the proposed penalty would have been higher if this violation had a more direct impact on pipeline safety. Finally, Enstar has not presented any specific reason for a reduction or elimination of the proposed civil penalty. Therefore, based upon the foregoing, I assess Respondent a civil penalty of \$6,100 for violating § 192.603(b).

Item 3: The Notice proposed a civil penalty of \$18,700 for Respondent's alleged violation of 49 C.F.R. § 192.739(a)(3), for failing to ensure that a pressure-relief or -limiting device at its A203 Elmendorf Power Regulator Station was set to control or relieve at a pressure consistent with the pressure limits of § 192.201(a). As discussed above, I have withdrawn this Item and the associated proposed civil penalty of \$18,700.

In summary, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced total civil penalty of **\$6,100**.

Failure to pay the \$6,100 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 Items 1 through 6 for violations of 49 C.F.R. §§ 192.603(b), 192.614(a), 192.739(a)(3), § 191.11(a), § 192.491(c), and § 192.615(b)(2). 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 has indicated that Respondent has taken the following actions to address some of the cited violations:

1. With respect to the violation of § 192.614(a) (**Item 2**), Entsar has updated its *ENSTAR SOP 1401: Damage Prevention Program* so that company personnel will verify the integrity of its natural gas distribution system when they have reason to believe the system could be damaged by excavation activities;

2. With respect to the violation of § 192.491(c) (**Item 5**), Enstar has updated its form, *SOP 1415 Routine Leak Survey*, so that its inspectors will now note where atmospheric corrosion exists on its natural gas distribution system, as well as the extent and location of each instance of atmospheric corrosion;
3. With respect to the violation of § 192.615(b)(2) (**Item 6**), Enstar has added its *SOP 1150, Damage Response*, to its Gas Control OQ curriculum, which has resulted in the training and testing of its Gas Control employees in the company's emergency procedures.

Accordingly, I find that compliance has been achieved with respect to these violations. Therefore, the compliance terms proposed in the Notice for Items 2, 5, and 6 are not included in this Order.

As for the remaining compliance terms, 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:

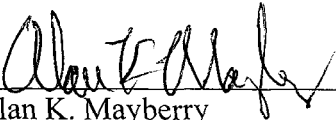
1. With respect to the violation of § 192.603(b) (**Item 1**), Respondent must modify its leak-survey procedures to ensure that leak-survey documents, including the daily leak-survey reports and highlighted grid maps, are accurate and complete after the surveys are performed;
2. With respect to the alleged violation of § 192.739(a)(3) (**Item 3**), PHMSA acknowledges the withdrawal of this violation, but asks Enstar to ensure that regulator station maintenance is performed appropriately and in a safe manner. Further, PHMSA requests that Enstar revise its regulator maintenance procedures to ensure records documenting regulator station maintenance are accurate and complete after the maintenance activity is performed;
3. With respect to the violation of § 191.11(a) (**Item 4**), Respondent must work with APC and submit to PHMSA a supplemental 2014 Annual Report, as well as a 2014 Annual distribution report for APC. Enstar must also ensure that it accurately reports the number of leaks on Federal lands and high-pressure distribution main mileage of their system;
4. Please complete Items 1 through 3 within 90 days after receipt of this Final Order;
and
5. It is requested, (not mandated), that Enstar maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Chris Hoidal, Director, Western Region, Pipeline and Hazardous Materials Safety Administration. 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.

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.

Failure to comply with this Order may result in administrative assessment of civil penalties not to exceed \$200,000 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 has a right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: 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. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by the Respondent, provided they 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. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.



Alan K. Mayberry
Acting Associate Administrator
for Pipeline Safety

NOV 15 2016

Date Issued