

September 16, 2019

Mr. Terry Roberts
President
Sturgeon Electric Company
12150 East 112th Avenue
Henderson, Colorado 80640

Re: CPF No. 5-2019-0004E

Dear Mr. Roberts:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$12,100. 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 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

cc: Mr. Dustin Hubbard, Director, Western Region, Office of Pipeline Safety, PHMSA

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)

Sturgeon Electric Company,)

Respondent.)

CPF No. 5-2019-0004E

FINAL ORDER

On April 23, 2018, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), investigated circumstances surrounding damage to a natural gas pipeline, located near 291 Sky Haven Circle in Anchorage, Alaska. On August 9, 2017, Sturgeon Electric Company (Sturgeon or Respondent), was installing underground electrical conduit using a trenching tractor when it struck a two-inch plastic gas pipeline main owned and operated by ENSTAR Natural Gas Company (ENSTAR), causing the release of natural gas.¹ Sturgeon is an electrical construction company,² and was working as a subcontractor for Chugach Electric Association, Inc. (CEA) on the date of the release.³ At the time, Sturgeon had not called Alaska Digline, Inc. (811 AK) to request a one-call ticket for the planned excavation activities.⁴ Following the release, Sturgeon contacted ENSTAR at approximately 2:55 p.m., and then contacted 811 AK to request a one-call ticket at 3:30 p.m.⁵ Sturgeon did not promptly call 911 following the damage to the pipeline and release of gas, until prompted to do so by ENSTAR.⁶

As a result of the investigation, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated March 5, 2019, a Notice of Probable Violation and Proposed Civil

¹ Pipeline Safety Violation Report (Violation Report), (March 5, 2019) (on file with PHMSA), at 1.

² Sturgeon Electric Company website, available at <http://sturgeonelectric.com/why-sturgeon/> (last accessed July 18, 2019).

³ Sturgeon Electric Company letter dated April 1, 2019, (on file with PHMSA).

⁴ Violation Report, at 10. (Sturgeon did not request an underground storage location ticket until at least 35 minutes after the release of natural gas).

⁵ *Id.*

⁶ *Id.* at Exhibits A and C.

Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Sturgeon had violated 49 C.F.R. §§ 196.103(a) and 196.109, and proposed assessing a civil penalty of \$12,100 for the alleged violations of 49 C.F.R. §196.103(a). No penalty was proposed for the alleged violation of 49 C.F.R. §196.109.

After requesting and receiving an extension of time to respond, Respondent failed to further respond within the 30-day extension granted by OPS. Under 49 C.F.R. § 190.208(d), such failure to respond constitutes a waiver of Sturgeon's right to contest the allegations in the Notice and authorizes the Associate Administrator, without further notice, to find facts as alleged in the Notice and to issue this Final Order under § 190.213. In this case, the Notice was mailed to Respondent by certified mail (USPS Article No. 7018 1830 0000 5032 8442) on March 5, 2019, and was received by Respondent on March 11, 2019, as shown by the return receipt on file with PHMSA. To date, Respondent has not responded to the Notice, aside from the previously mentioned April 1, 2019 request for additional time to respond. Under such circumstances, I find it reasonable and appropriate to enter this Final Order without further proceedings.

FINDINGS OF VIOLATION

Sturgeon did not contest the allegations in the Notice that it violated 49 C.F.R. Part 196, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 196.103(a), which states:

§ 196.103 What must an excavator do to protect underground pipelines from excavation-related damage?

Prior to and during excavation activity, the excavator must:

- (a) Use an available one-call system before excavating to notify operators of underground pipeline facilities of the timing and location of the intended excavation;

The Notice alleged that Respondent violated 49 C.F.R. § 196.103(a) by failing to use the available one-call system, 811 AK, before excavating to notify operators of underground pipeline facilities of the timing and location of the intended excavation. Specifically, the Notice alleged that Sturgeon was conducting excavation activities on August 9, 2017, but did not call 811 AK to notify operators of underground pipeline facilities in the area. A review of one-call tickets opened in the previous year for the area near the incident and interviews with Sturgeon personnel revealed that the company never contacted 811 AK prior to the damage to ENSTAR Pipeline and the release of gas.⁷

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. § 196.103(a) by failing to use the available one-call system prior to the excavation activity near 291 Sky Haven Circle in Anchorage, Alaska.

⁷ *Id.* at Exhibits B and C.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 196.109, which states:

§ 196.109 What must an excavator do if damage to a pipeline from excavation activity causes a leak where product is released from the pipeline?

If damage to a pipeline from excavation activity causes the release of any PHMSA regulated natural and other gas or hazardous liquid as defined in part 192, 193, or 195 of this chapter from the pipeline, the excavator must promptly report the release to appropriate emergency response authorities by calling the 911 emergency telephone number.

The Notice alleged that Respondent violated 49 C.F.R. § 196.109 by failing to report the release of natural gas to appropriate emergency authorities by calling 911 after its excavation activities damaged a pipeline and caused the release of gas. Specifically, the Notice alleged that Sturgeon damaged a two-inch natural gas pipeline during its excavation activities. The damage to the pipeline caused the release of gas. Sturgeon did not promptly call 911 following the damage to the pipeline and release of gas.

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. § 196.109 by failing to report the release of natural gas to appropriate emergency authorities by calling 911 after its excavation activities damaged a pipeline and caused the release of gas.

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.⁸ 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 \$12,100 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$12,100 for Respondent's violation of 49 C.F.R.

⁸ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223; Revisions to Civil Penalty Amounts, 83 Fed. Reg. 60732, 60744 (Nov. 27, 2018).

§ 196.103(a), for failing to use the available one-call system. Sturgeon neither contested the allegation nor presented 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 **\$12,100** for violation of 49 C.F.R. § 196.103(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 \$12,100 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.

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.

September 16, 2019

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued