

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
WASHINGTON, DC

In the Matter of)
)
All American Pipeline Company,) CPF No. 52006
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Respondent.)
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)

FINAL ORDER

On February 6, 1992, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of Respondent's facilities and records in Bakersfield, California. As a result of the inspection, the Director (formerly Chief), Western Region, OPS, issued to Respondent by letter dated March 30, 1992, a Notice of Probable Violation and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§ 192.17 and 192.706(a) and proposed that Respondent take certain measures to correct the alleged violations.

Respondent responded to the Notice by letter dated April 24, 1992 (Response 1). Respondent contested the allegations and requested a hearing that was held on October 8, 1992. After the hearing, OPS clarified its position in a paper dated December 15, 1992 sent to Respondent on December 17, 1992 (Position Paper). Respondent responded to OPS's position paper on February 11, 1993 (Response 2).

FINDINGS OF VIOLATION

Item 1 in the Notice alleged that in 1990 Respondent had not submitted an annual report (Form 7100.2.1) on its 6-inch gas pipeline operating in San Bernardino County, California, in violation of 49 C.F.R. § 192.17.

Item 2 alleged that Respondent had violated 49 C.F.R. § 192.706(a), which requires an operator of a transmission line to provide for periodic leakage surveys of its line in its operating and maintenance plan. The Notice alleged that Respondent failed to have written procedures for and to conduct leakage surveys of the San Bernardino 6-inch line.

According to Respondent's description, the 6-inch, 6.5-mile line at issue operates to provide gas delivery service exclusively to its Cadiz Pump Station and gas to the line is supplied from a Pacific Gas & Electric (PG&E) intrastate transmission pipeline. As Respondent described, a service distribution line comes off of the PG&E line until the metering station where Respondent takes custody and at the PG&E-owned metering skid, the pressure in the line is reduced to 275 psig.

Respondent argued that the allegations should be dismissed for several reasons. Respondent argued that OPS does not have jurisdiction over the line. Respondent explained that it is not an operator engaged in the statutorily-defined transportation of gas because it does not operate the 6-inch line as a gathering, transmission or distribution pipeline. Rather, Respondent asserted that the facility is a customer-owned conduit through which gas is delivered to the ultimate consumption point at Respondent's Cadiz facility.

Respondent acknowledged that the line is longer than most typical customer-owned service lines and is located on property not owned by Respondent, but said such criteria are not relevant to determining if OPS has jurisdiction over the line.

Respondent further asserted that even if it were involved in the transportation of gas, the 6-inch line and the PG&E line to which the 6-inch line is integrally connected, are intrastate facilities and OPS cannot enforce compliance with federal standards when such facilities are subject to state regulation. Respondent explained that PG&E's operations are not subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC) and that California exercises pipeline safety jurisdiction over PG&E's lines.

At the time the Notice was issued, Respondent was cited under the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. App. §1671 et seq. This Act has since been recodified at 49 U.S.C. § 60101 et seq. The relevant definitions applicable to determining OPS's statutory authority have not changed. 49 U.S.C. § 60102 authorizes the Secretary of Transportation

(Secretary) to prescribe pipeline safety standards for pipeline transportation and for pipeline facilities. Pipeline transportation is defined to include transporting gas.

49 U.S.C. § 60101(a)(19). A pipeline facility is defined to include a gas pipeline facility, which means a pipeline, right of way, facility, building or equipment used in transporting gas. 49 U.S.C. § 60101(a)(3), (a)(18). Transporting gas is defined as the gathering, transmission, or distribution of gas by pipeline in interstate or foreign commerce. 49 U.S.C.

§ 60101(a)(21)(A). Interstate or foreign commerce is commerce that affects any commerce between a place in a State and a place outside that state. 49 U.S.C. § 60101(a)(8)(A)(ii). The statute does not further define gathering, transmission and distribution.

Under the statute, jurisdiction is dependent on the transportation of gas. Respondent's San Bernardino 6-inch line is used to transport natural gas from the PG&E meter to the Cadiz facility. The line crosses public land. The line affects interstate transportation as the gas from the line is used to power the pumps for Respondent's interstate liquid pipeline. Respondent, as operator of the line, is involved in the transportation of gas and thus, falls within the jurisdiction of the pipeline safety statute. Whether the line is regulated as a distribution, gathering or transmission line depends upon how those terms are defined by the pipeline safety regulations.

Moreover, Respondent's line is subject to federal enforcement. The Secretary is authorized to impose minimum Federal safety standards on both interstate and intrastate pipelines. Under 49 U.S.C. § 60105, the Secretary cedes enforcement authority over intrastate pipelines back to a State upon certification that the State has adopted those standards and that the State is adequately enforcing them under State law. A State can also regulate those intrastate lines that OPS does not regulate. Respondent has demonstrated that PG&E's line is an intrastate line regulated by California. However, it has not demonstrated that the State regulates the 6-inch line at issue.

Respondent next argued that even if it were an operator within the scope of the statute, it disagreed with OPS's classification of the line. Because one allegation in the Notice

(§ 191.17) classified Respondent's 6-inch line as a

gathering line and the other (§ 192.706) classified it as a transmission line, Respondent maintained that it cannot be classified and regulated as both.

I agree that the line cannot be both a gathering and transmission line. However, the dual classification was inadvertent. Section 191.17 applies to both gathering and transmission lines. In Item 1, OPS intended to allege Respondent failed to comply with § 191.17 as a transmission

operator but omitted the word "transmission" from the allegation. At the hearing and in its position paper, OPS further clarified its intent to classify the line as transmission.

Accordingly, I will not address Respondent's arguments concerning whether the line is a gathering line since OPS did not intend to classify the 6-inch line as such. The issue remains whether Respondent's line is a transmission line subject to the pipeline safety regulatory requirements.

Respondent maintained that its line does not meet any of the criteria specified in 49 C.F.R. § 192.3 (pre-1996 definition) as defining a transmission line because the line does not transport gas from a gathering line or storage facility to a distribution center or storage facility, does not operate at a hoop stress of more than 20 percent of SMYS and does not transport gas within a storage field. Rather, Respondent explained that the line connects to a PG&E transmission line, operates at a maximum of 300 psig, which is below 20% SMYS, and delivers gas solely to the Cadiz pump station.

In its position paper OPS maintained that a line does not have to operate above 20% SMYS to be classified a transmission line. OPS asserted that Respondent's line is a transmission line because it is a tap or branch line from a transmission line used to deliver relatively large volumes of gas. OPS based its argument on two interpretation letters that it had issued. In the first, a 1990 letter to the Public Utility Commission of Oregon, OPS explained that unlike the service line definition, the regulations do not specify a point on a pipeline at which jurisdiction over the transmission of gas ends. OPS said that it considers the full length of a pipeline used in the transmission of gas to come within the scope of the pipeline safety regulations, without limitation by customer meters or the beginning of customer piping. The letter further explained that a branch line from a transmission line is classified as transmission when it is used to deliver large volumes of gas, which the letter said included delivery in the 400-800 psig range.

In the second letter, a 1978 letter to the East Tennessee Natural Gas Company, OPS defined a large volume customer as one with attributes similar to those of a distribution company, such as receipt of similar volumes of gas and operation of piping facilities common to a distribution company. OPS maintained that the volume of gas Respondent's line transports (within the 275-300 psig range) more closely

resembles that transported by a transmission line than a service line that usually operates between 4 to 10 psig.

Respondent controverted OPS's position that the line is a transmission line because it is a branch line serving a large volume customer. Respondent questioned whether OPS's interpretations are substantive amendments to the transmission line definition that have not been subject to the rulemaking process. Respondent said that these unpublished letters expand the definition of transmission line and because they have not been developed in accordance with proper administrative procedure cannot be used as the basis for an enforcement action.

Respondent further maintained that even if these interpretations were part of the pipeline safety regulations, the 6-inch line does not fit within their scope. Respondent explained that the line is not a tap on an interstate transmission line; rather, the line is connected to an intrastate PG&E line. Furthermore, it is neither a high pressure gas line as the maximum pressure is 300 psig nor a large volume customer because it does not have attributes similar to a distribution company. Respondent explained that it consumes the gas it receives from PG&E, not distributes it. Moreover, according to Respondent, distribution companies receive gas in quantities 20 to 60 times greater than volumes consumed at Respondent's Cadiz facility (10 to 32 MMCFD compared to Cadiz's .5 MMCFD).

Respondent argued that this is a customer-owned line that is left to the State to regulate. As support, Respondent pointed to a 1992 statutory requirement that the Secretary report on the safety of customer-owned service lines, which Respondent said shows that such lines were meant to be exempted.

OPS does not currently regulate customer-owned service lines. The 1992 provision in a pipeline reauthorization act (Pub. L. 102-508; October 24, 1992) required the Secretary to conduct a review of DOT and state rules, procedures and other measures with respect to the safety of such lines. Congress became concerned about the safety of customer-owned service lines following five accidents in Kansas and Missouri during a 7-month period in 1988 that killed four people, injured 12 others, and destroyed four homes. The accidents, which were primarily due to corrosion, had occurred on service lines supplying gas to homes. The undertaking of this required study did not imply that these lines were meant to be exempted from federal regulation.

Respondent's line defies easy classification. The line has

attributes of a customer-owned service line, but because of its length, crossing of public land, and volumes transported, also has attributes similar to a transmission line. As Respondent acknowledged, it consumes the gas it receives, not distributes it. Yet, the line does not fit within any of the criteria listed in the pre-1996 transmission line definition. The line is closer to OPS's interpretation of an extension from a transmission line serving a large volume customer, except the volumes the line transports are not within the range indicated to be indicative of transmission.

In a recent rulemaking, OPS, as part of the President's Regulatory Reinvention Initiative, codified its longstanding interpretation that transmission includes pipelines that connect a large volume customer to a gathering or transmission line, with the large volume customer marking the end point of transmission. 61 Fed. Reg. 28770; June 6, 1996. OPS explained that, by interpretation, volume has been an established indicator of transmission. In the rule, OPS gave examples of large volume customers, such as factories, power plants and institutional users of gas. RSPA further explained that it would not specify a minimum volume of gas a pipeline has to transport to a customer to qualify as a transmission line.

Without reaching the issue of whether the letters of interpretation merely clarified, rather than expanded, the pre-1996 transmission line definition, the evidence of record does not support a finding that Respondent's line should be regulated as a transmission line, as that term was defined in 1992. The evidence does not show that the line meets any of the criteria specified in the pre-1996 definition. Even under the interpretation, Respondent refuted the claim that the power plant customer has attributes similar to those of a distribution company.

Note, however, that under the present definition of transmission line, the evidence of record would support a finding that the line at issue is a transmission line as the San Bernardino 6-inch line links a transmission line to a power plant, specifically included as a large volume customer.

Accordingly, the allegations are withdrawn.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to both

items. Since the allegations are withdrawn, no further compliance action is required with respect to these items.

Richard B. Felder
Associate Administrator
for Pipeline Safety