

OCTOBER 23, 2012

Mr. Mark S. Lynch
President
New York State Electric and Gas Corporation
89 East Avenue
Rochester, NY 14649-0001

Re: CPF No. 1-2012-1004

Dear Mr. Lynch:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$52,000. 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 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: Mr. Byron Coy, P.E., Director, Eastern Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS
Mr. Kevin Speicher, New York State Department of Public Service
3 Empire State Plaza Albany, NY 12223
Mr. Michael Eastman, Vice President, Gas Operations, Rochester Gas and Electric –
89 East Ave., Rochester, NY 14649-0001
Mr. John J. Sherman, Chairman and Chief Executive Officer, Inergy Midstream, L.P. -
2 Brush Creek Blvd., Suite 200, Kansas City, MO 64112

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

**New York State Electric and Gas
Corporation,**

Respondent.

)
)
)
)
)
)
)

CPF No. 1-2012-1004

FINAL ORDER

From July 12 through August 23, 2010, pursuant to 49 U.S.C. § 60117, representatives of the New York State Department of Public Service, acting as agent for 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 New York State Electric and Gas (NYSEG or Respondent) in Watkins Glen, New York. At the time of the inspection, NYSEG operated a natural gas storage facility known as the Seneca Storage Facility and the associated Seneca West Pipeline, which is approximately 20 miles long and connects the Seneca Storage Facility to a transmission pipeline in Big Flats, New York.¹

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated May 21, 2012, a Notice of Probable Violation and Proposed Civil Penalty (Notice), which also included a warning pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that NYSEG committed various violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$52,000 for the alleged violations. The warning item required no further action, but warned the operator to correct the probable violation or face possible enforcement action.

NYSEG responded to the Notice by letter dated June 18, 2012 (Response).² The company did not contest the allegations of violation but provided an explanation of its actions. Respondent did not request a hearing and therefore has waived its right to one.

¹ On July 13, 2011, NYSEG sold the Seneca Storage Facility and the Seneca West Pipeline to Inergy Midstream, LP, the current operator of the facilities.

² While the Seneca Storage Facility and the Seneca West Pipeline were operated by NYSEG at the time of the inspection, the Notice was addressed to Rochester Gas and Electric Corporation. Both companies are subsidiaries of Iberdrola USA. See <http://www.iberdrolausa.com/OurCompanies/nyseg.html> (last accessed October 9, 2012).

FINDINGS OF VIOLATION

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

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.625(b), which states:

§ 192.625 Odorization of gas.

(a) A combustible gas in a distribution line must contain a natural odorant or be odorized so that at a concentration in air of one-fifth of the lower explosive limit, the gas is readily detectable by a person with a normal sense of smell.

(b) After December 31, 1976, a combustible gas in a transmission line in a Class 3 or Class 4 location must comply with the requirements of paragraph (a) of this section unless:

(1) At least 50 percent of the length of the line downstream from that location is in a Class 1 or Class 2 location;

(2) The line transports gas to any of the following facilities which received gas without an odorant from that line before May 5, 1975;

(i) An underground storage field;

(ii) A gas processing plant;

(iii) A gas dehydration plant; or

(iv) An industrial plant using gas in a process where the presence of an odorant:

(A) Makes the end product unfit for the purpose for which it is intended;

(B) Reduces the activity of a catalyst; or

(C) Reduces the percentage completion of a chemical reaction;

(3) In the case of a lateral line which transports gas to a distribution center, at least 50 percent of the length of that line is in a Class 1 or Class 2 location; or

(4) The combustible gas is hydrogen intended for use as a feedstock in a manufacturing process.

The Notice alleged that Respondent violated 49 C.F.R. § 192.625(b) by failing to odorize the gas in its transmission line. Specifically, the Notice alleged that NYSEG failed to odorize the gas in the Seneca West Pipeline, which the company's Operations and Maintenance (O&M) Procedure 7.650 indicated was located within a Class 3 location. In its Response, NYSEG did not contest the allegation of violation. The company stated, however, that while its philosophy was to conservatively design all facilities to Class 3 requirements, the entire Seneca West Pipeline was located entirely within Class 1 and 2 locations and that therefore the exemption in § 192.625(b)(1) applied to this pipeline. NYSEG acknowledged that the company's O&M procedure did not specify that the exemption applied to this line.

Notwithstanding Respondent's contention that the pipeline was exempt from the odorization requirement, NYSEG did not submit any evidence demonstrating that at least 50 percent of the length of the downstream line was in a Class 1 or Class 2 location. The company's O&M

procedure stated only that the pipeline should be operated as if it were in a Class 3 location; therefore, the gas was required to be odorized. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.625(b) by failing to odorize the gas in its transmission line.

Item 2: 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 a record of each test, survey, or inspection required by Subpart I of Part 192. Specifically, the Notice alleged that NYSEG could not produce a record of the internal pipe-surface inspection required by § 192.475(b)³ when meters were replaced at the Seneca Storage Facility in 2009.

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. § 192.491(c) by failing to maintain a record of each test, survey, or inspection required by Subpart I of Part 192.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 192.616(f), which states:

§ 192.616 Public awareness.

(a) Except for an operator of a master meter or petroleum gas system covered under paragraph (j) of this section, each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, *see* § 192.7)

(f) The program and the media used must be as comprehensive as necessary to reach all areas in which the operator transports gas.

The Notice alleged that Respondent violated 49 C.F.R. § 192.616(f) by failing to ensure its public education program was as comprehensive as necessary to reach all areas in which the company transported gas. Specifically, the Notice alleged that NYSEG's public education program did not ensure that the required information would reach all the public living along the pipeline right-of-way (ROW).

³ 49 C.F.R. § 192.475(b) states, in relevant part: "Whenever any pipe is removed from a pipeline for any reason, the internal surface must be inspected for evidence of corrosion. . . ."

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. § 192.616(f) by failing to ensure its public education program was as comprehensive as necessary to reach all areas in which it transported gas.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 192.491(c), as quoted above, by failing to maintain a record of each test, survey, or inspection required by Subpart I of Part 192. Specifically, the Notice alleged that NYSEG failed to maintain a record of the most recent atmospheric corrosion inspection required by § 192.481(a).⁴

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. § 192.491(c) by failing to maintain a record of each test, survey, or inspection required by Subpart I of Part 192.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 192.706(a), which states:

§ 192.706 Transmission lines: Leakage surveys.

Leakage surveys of a transmission line must be conducted at intervals not exceeding 15 months, but at least once each calendar year. However, in the case of a transmission line which transports gas in conformity with § 192.625 without an odor or odorant, leakage surveys using leak detector equipment must be conducted—

(a) In Class 3 locations, at intervals not exceeding 7½ months, but at least twice each calendar year

The Notice alleged that Respondent violated 49 C.F.R. § 192.706(a) by failing to conduct leakage surveys of its transmission line at intervals not exceeding 7½ months, but at least twice each calendar year. Specifically, the Notice alleged that no instrumented leakage surveys had been conducted on the transmission lines at the Seneca Storage Facility and that there was only a record of one instrumented leak detection survey, performed in 2009, for the Seneca West Pipeline.

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. § 192.706(a) by failing to conduct leakage surveys of its transmission line at intervals not exceeding 7½ months, but at least twice each calendar year.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

⁴ 49 C.F.R. § 192.481(a) requires each operator to inspect each onshore pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion at least once every three calendar years, but at intervals not exceeding 39 months.

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 \$52,000 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$10,000 for Respondent's violation of 49 C.F.R. § 192.625(b), for failing to odorize the gas in its transmission line. As discussed above, NYSEG did not contest the allegation of violation but claimed that the pipeline was exempt from the odorization requirement. Respondent failed to present any evidence supporting its contention or any information justifying a reduction in the proposed penalty. Public safety is jeopardized when a gas pipeline in a populated area is not odorized. The regulatory requirement is clear and NYSEG is fully culpable for the failure to odorize the pipeline. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000 for violation of 49 C.F.R. § 192.625(b).

Item 2: The Notice proposed a civil penalty of \$8,700 for Respondent's violation of 49 C.F.R. § 192.491(c), for failing to maintain a record of each test, survey, or inspection required by Subpart I of Part 192. NYSEG neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. The failure to maintain records of corrosion inspections on the pipeline limits the operator's ability to analyze corrosion threats. While NYSEG was fully culpable for the failure to maintain these records, the violation did not pose a significant threat to pipeline integrity or public safety. I find that the nature, circumstances, and gravity of the violation support the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$8,700 for violation of 49 C.F.R. § 192.491(c).

Item 3: The Notice proposed a civil penalty of \$10,000 for Respondent's violation of 49 C.F.R. § 192.616(f), for failing to ensure that its public education program was as comprehensive as necessary to reach all areas in which it transported gas. NYSEG neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. While NYSEG had a public awareness program, it was not comprehensive enough to ensure that the public living along the ROW had adequate information about the pipeline and the potential impact of a natural gas release or ignition. While pipeline integrity was not significantly impacted by the violation, public safety could have been adversely affected if a pipeline incident had occurred. I find that the nature, circumstances, and gravity of the violation support the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000 for violation of

49 C.F.R. § 192.616(f).

Item 4: The Notice proposed a civil penalty of \$8,700 for Respondent's violation of 49 C.F.R. § 192.491(c), for failing to maintain a record of each test, survey, or inspection required by Subpart I of Part 192. NYSEG neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. The failure to maintain records of corrosion inspections on the pipeline limited the operator's ability to analyze corrosion threats. While NYSEG was fully culpable for the failure to maintain these records, the violation did not pose a significant threat to pipeline integrity or public safety. I find that the nature, circumstances, and gravity of the violation support the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$8,700 for violation of 49 C.F.R. § 192.491(c).

Item 5: The Notice proposed a civil penalty of \$14,600 for Respondent's violation of 49 C.F.R. § 192.706(a), for failing to conduct leakage surveys of its transmission line at intervals not exceeding 7½ months, but at least twice each calendar year. NYSEG neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. While pipeline integrity was not significantly impacted by the violation, public safety and the safety of operator personnel could have been impacted if a pipeline incident had occurred as a result of the operator's noncompliance. I find that the nature, circumstances, gravity, and duration of the violation support the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$14,600 for violation of 49 C.F.R. § 192.706(a).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$52,000**.

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 (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$52,000 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 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.

WARNING ITEM

With respect to Item 6, the Notice alleged a probable violation of Part 192 but did not propose a civil penalty or compliance order for this item. Therefore, this is considered to be a warning item. The warning was for:

49 C.F.R. § 192.751(c) **(Item 6)** — Respondent's alleged failure to have sufficient warning signs to minimize the danger of accidental ignition of gas at the NYSEG Hibbard Road and Backer Road valve set facilities.

NYSEG stated in its Response that it would communicate this issue to Inergy Midstream, LLC, the current owner of the Seneca West Pipeline. If OPS finds a violation of this provision, the pipeline operator may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent has the 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 the 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. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed but does not stay any other provisions of the Final Order, including any required corrective actions. 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.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued