U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

AUG 31 2005

Mr. R. Alan Englehart
Vice President, Engineering Operations
Texas Gas Transmissions, LLC
P.O. Box 20008
Owensboro, KY 42301

RE: CPF No. 2-2005-1006

Dear Mr. Englehart:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of $10,000. I acknowledge receipt of Texas Gas Transmission's, payment dated April 6, 2005, in the amount of $5,000 as payment for the civil penalty assessed for Item 3. This enforcement action closes automatically upon payment of the balance of the total civil penalty. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

cc: Mr. Jeffrey B. McMaine, Manager, Pipeline Safety and Integrity, Texas Gas
Ms. Linda Daugherty, Director, OPS Southern Region

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Hx Scanned

DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

In the Matter of	)	
	)	
TEXAS GAS TRANSMISSION, LLC,	)	**CPF No. 2-2005-1006**
	)	
Respondent.	)	
	)	

FINAL ORDER

Between May 3 and July 1, 2004, pursuant to 49 U.S.C. § 60117, representatives of the Office of Pipeline Safety (OPS), Southern, conducted an inspection an on-site pipeline safety inspection of Respondent, facilities and records in Arkansas, Kentucky, Mississippi and Tennessee. As a result of the inspection, the Director, Southern Region, OPS, issued to Respondent, by letter dated March 8, 2005, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had committed violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of $15,000 for the alleged violation.

Respondent responded to the Notice by letter dated April 6, 2005 (Response). Respondent contested one of the allegations of violation, offered information to explain the allegations and provided information concerning the corrective actions it has taken. Respondent also paid the proposed civil penalty for Item 3 of the Notice and requested mitigation of the proposed civil penalty for Item 4 of the Notice. Respondent did not request a hearing, and therefore has waived the right to one.

FINDINGS OF VIOLATION

Uncontested

Respondent did not contest the alleged violation of §192.491(c), in **Item 3** of the Notice. Accordingly, I find that Respondent violated 49 C.F.R. Parts 192, as more fully described in the Notice:

> 49 C.F.R.§192.491(c)– failure to 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, as Respondent did not have records for the 2001 and 2002 annual surveys for the subject tests on the WGB line.

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

Contested

Item 4 of the Notice alleged that Respondent violated 49 C.F.R. §192.625(b) by having two (2) sections of pipeline in Class 3 locations which did not contain an odor or an odorant in Jeffersontown, Kentucky. At the time of the inspection, Respondent's Jeffersontown 8" tie-over line and the Main Line System (MLS) 26" No. 2 line which are in Class 3 locations were not odorized.

In its response, Respondent advised that the history of the line and its history of inspections makes a finding of violation inappropriate. The in-service date for the Jeffersontown 8" tie-over line was 1962. The area from Jeffersontown Station to Ellingsworth Lane became Class 3 on three different dates. Approximately 0.27 mile was classified as Class 3 in 1971; an additional mile became Class 3 in 1973; and the entire segment became Class 3 in 1984. The portion of the MLS 26" No.2 line in question was segmented in 1981. The facility was inspected twice during the 1980's by the Kentucky Public Service Commission and three times since 1993 by OPS. Respondent argued that because the inspections by the Kentucky Public Service Commission and OPS revealed no violations, a finding of violation is inappropriate.

Respondent pointed to the previous inspections to demonstrate that the alleged violation was not obvious to either it or previous inspectors. Respondent argued that the safety concerns resulting from the failure to odorize the lines was off-set by other safety precautions undertaken by Respondent over the years. Respondent advised it has continuously provided monitoring of the two unodorized lines, beyond that required by regulations, by daily flying over the lines to ensure that no disturbance or abnormalities of the lines had occurred. Respondent also advised that it enjoys a close working relationship with its customer, Louisville Gas and Electric, so that information about encroachments or any other pipeline issues are readily communicated. Respondent contended that the location of the MLS 26-inch No. 2, in the middle of the right-of-way between two transmission lines, made the unodorized line less prone to third party damage. Respondent advised that there has been no history of any safety related incidents on the subject lines.

Respondent's statement is correct that there is no history of any safety related incidents on its Jeffersontown 8" tie-over line and the Main Line System (MLS) 26" No. 2 lines. Nevertheless, the requirement to comply with 49 C.F.R. §192.625(b) should have been recognized by the Respondent when it performed the required class location study and the area became a Class 3 area in 1984. Respondent acknowledged that the absence of any notation of odorization during previous inspections does not equal compliance. Accordingly, I find that Respondent violated 49 C.F.R. §192.625 (b) (1) and (3), as Respondent failed to odorize its Jeffersontown 8" tie-over line and the Main Line System (MLS) 26" No. 2 line which are in Class 3 locations.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to a 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.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require. The Notice proposed a total civil penalty of $15,000 for violation of 49 CFR Part 192.

The Notice proposed for Item 3 a civil penalty of $5,000 for violation of 49 C.F.R.§192.491(c), as Respondent failed to maintain a record of its 2001 and 2002 annual surveys for the subject tests on its WGB line. Federal regulations require that each operator 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. Respondent did not contest the violation or the civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $5,000, already paid by the Respondent.

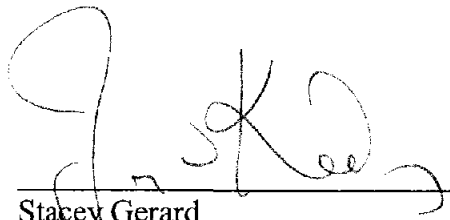
The Notice proposed for Item 4 a civil penalty of $10,000 for violation of 49 C.F.R. §192.625(b), as Respondent failed to odorize two (2) sections of pipeline in Class 3 locations, the Jeffersontown 8" tie-over line and the MLS 26" No. 2 line. Respondent conceded that the lines were not odorized but argued that the safety concerns resulting from the failure to odorize the lines was off-set by other safety precautions undertaken which extend beyond those required by the regulations. OPS applauds the Respondent's efforts and trusts that Respondent will continue those safety precautions. Respondent has taken proactive safety measures to show its good faith in pursuing and maintaining compliance. In fact, Respondent is in the process of abandoning in place the Jeffersontown MLS 26" No. 2 line. The Jeffersontown 8" tie-over line will be connected to the MLS 36-inch No. 2; thus, looping the MLS 36-inch No. 2. Abandoning the MLS 26-inch No. 2 and looping the MLS 36-inch No. 2 with the 8-inch tie-over line will alleviate the need for gas odorization. Accordingly, having reviewed the record, considered Respondent's compliance history and the assessment criteria, I assess Respondent a civil penalty of $5,000.

WARNING ITEM

The Notice did not propose a civil penalty or corrective action for Items 1, 2, 5, 6, 7, and 8 but warned Respondent that it should take appropriate corrective action to correct the items. Respondent

presented information in its response showing that it has addressed the cited items. Respondent is again warned that if OPS finds a violation in a subsequent inspection, enforcement action will be taken.

The terms and conditions of this Final Order are effective on receipt.



Stacey Gerard
Associate Administrator
for Pipeline Safety

AUG 31 2005
Date Issued