



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

233 Peachtree Street Ste. 600
Atlanta, GA 30303

**NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

May 15, 2018

Ms. Lynn J. Good
Chairman, President and Chief Executive Officer
Duke Energy Kentucky, Inc.
139 East Fourth Street, Mail Drop EX403
Cincinnati, OH, 45202

CPF 2-2018-6002

Dear Ms. Good:

Between July 31, 2017 and September 21, 2017, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected Duke Energy Kentucky, Inc.'s (Duke Energy) records in its Cincinnati, Ohio and Erlanger, Kentucky offices, and inspected Duke Energy's facilities in Kenton County, Kentucky.

As a result of the inspection, it is alleged that Duke Energy committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violations are:

1. §195.1 Which pipelines are covered by this Part?

(a) Covered. Except for the pipelines listed in paragraph (b) of this Section, this Part applies to pipeline facilities and the transportation of hazardous liquids or carbon dioxide associated with those facilities in or affecting interstate or foreign commerce, including pipeline facilities on the Outer Continental Shelf (OCS). Covered pipelines include, but are not limited to:

- (1) Any pipeline that transports a highly volatile liquid;**
- (2) Any pipeline segment that crosses a waterway currently used for commercial navigation;**

(3) Except for a gathering line not covered by paragraph (a)(4) of this Section, any pipeline located in a rural or non-rural area of any diameter regardless of operating pressure;

(4) Any of the following onshore gathering lines used for transportation of petroleum:

(i) A pipeline located in a non-rural area;

(ii) A regulated rural gathering line as provided in §195.11; or

(iii) A pipeline located in an inlet of the Gulf of Mexico as provided in §195.413.

Duke Energy failed to comply with the regulation because it did not incorporate its Constance Cavern Liquid Propane Gas (LPG) Storage Facility (Constance Cavern) into all relevant portions of its pipeline safety program.

Section 195.2 defines *pipeline* or *pipeline system* as “all parts of a pipeline facility through which a hazardous liquid or carbon dioxide moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.” Furthermore, § 195.2 defines *pipeline facility* as “new and existing pipe, rights-of-way and any equipment, facility, or building used in the transportation of hazardous liquids or carbon dioxide.”

Duke Energy’s Constance Cavern meets the above-referenced definition of “pipeline facility” because the submerged pumps and appurtenances within the cavern transfer LPG out of the storage cavern to the bi-directional pipeline for transport downstream (relative to the cavern) to the Erlanger plant. Furthermore, the cavern receives LPG from the same bi-directional pipeline via trucking injection at the Erlanger plant. Consequently, Constance Cavern is covered under § 195.1.

2. §195.49 Annual report.

Each operator must annually complete and submit DOT Form PHMSA F 7000-1.1 for each type of hazardous liquid pipeline facility operated at the end of the previous year. An operator must submit the annual report by June 15 each year, except that for the 2010 reporting year the report must be submitted by August 15, 2011. A separate report is required for crude oil, HVL (including anhydrous ammonia), petroleum products, carbon dioxide pipelines, and fuel grade ethanol pipelines. For each state a pipeline traverses, an operator must separately complete those sections on the form requiring information to be reported for each state.

Duke Energy failed to comply with the regulation because it did not complete its 2016 Annual Report as required by § 195.49.

Part F, Section 5 of the Annual Report requires operators to provide “Mileage Inspected and Actions Taken in Calendar Year Based on Other Inspection Techniques.” Review of Duke Energy’s integrity assessment plan indicated that, in Calendar Year 2016, Duke Energy conducted an integrity assessment on its Line LP03 using “Other Technology” (LP-ICDA). Duke Energy failed to include this data in Part F, Section 5 of its 2016 Annual Report.

3. **§195.402 Procedural manual for operations, maintenance, and emergencies.**
(a) **General.** Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

Duke Energy failed to comply with the regulation because it could not demonstrate that it reviewed its emergency plans and procedures at intervals not exceeding 15 months, but at least once each calendar year. Specifically, Duke Energy could not demonstrate that it had reviewed its *Plan for Emergencies and Natural Disasters* at intervals not exceeding 15 months, but at least once each calendar year.

Records provided to the PHMSA inspectors consisted of the first page of the 2014, 2015, and 2016 revisions of the *Plan for Emergency and Natural Disasters*. The pages referenced only the December revision (edition) dates of the prior year. While Duke Energy personnel provided plan approval records for the referenced years, these records did not indicate that the plans had been reviewed as required of the regulations.

Similarly, records documenting the required annual reviews of Duke Energy's Hazardous Liquid Operations Plan (HLOP) referenced review due dates for years 2014, 2015, and 2016, but did not provide the dates the reviews were completed.

4. **§195.446 Control room management.**
(a) **General.** This section applies to each operator of a pipeline facility with a controller working in a control room who monitors and controls all or part of a pipeline facility through a SCADA system. Each operator must have and follow written control room management procedures that implement the requirements of this section. The procedures required by this section must be integrated, as appropriate, with the operator's written procedures required by §195.402. An operator must develop the procedures no later than August 1, 2011, and must implement the procedures according to the following schedule. The procedures required by paragraphs (b), (c)(5), (d)(2) and (d)(3), (f) and (g) of this section must be implemented no later than October 1, 2011. The procedures required by paragraphs (c)(1) through (4), (d)(1), (d)(4), and (e) must be implemented no later than August 1, 2012. The training procedures required by paragraph (h) must be implemented no later than August 1, 2012, except that any training required by another paragraph of this section must be implemented no later than the deadline for that paragraph.

Duke Energy failed to comply with the regulation because it did not have and follow written control room management (CRM) procedures that implement the requirements of § 195.446. Specifically, Duke Energy did not identify the Erlanger air-propane plant office (Erlanger office) as a control room, as defined in § 195.2

Control room is defined in § 195.2 as “an operations center staffed by personnel charged with the responsibility for remotely monitoring and controlling a pipeline facility.” Furthermore, *controller* is defined in § 195.2 as “a qualified individual who remotely monitors and controls the safety-related operations of a pipeline facility via a SCADA system from a control room, and who has operational authority and accountability for the remote operational functions of the pipeline facility.” During the inspection, PHMSA inspectors interviewed personnel at the Erlanger office regarding certain plant operators’ roles in operating and controlling Duke Energy’s Line LP03, as well as its Constance Cavern facility.

Based on the information and facts listed below, the Erlanger office is a Control Room and certain Erlanger plant operators are Controllers, per § 195.2.

- August 3, 2017 interview with the gas Control Manager (Cincinnati): Control Center calls the Erlanger air-propane plant (Erlanger Plant), located at the north end of Line LP03, and instructs Erlanger personnel when to operate the pipeline. (*See below* regarding Erlanger operation of the pipeline.) Cincinnati Gas Control monitors the LP03 line pressures, receives safety-related alarms, and has the ability to shut down the pumps at Constance Cavern.
- August 4, 2017 and September 21, 2017 interviews at Erlanger plant with the Systems Operations Manager and an Erlanger Plant Operator:
 - Erlanger could be called on to start and operate the LP03 line to supply its natural gas system during certain peak demand days during winter months.
 - Starting the pipeline on peak days to supply the propane-air plant: Erlanger operator(s) remotely start the submerged pump(s) and manipulate certain valves located at Constance Cavern (3.41 pipeline miles from Erlanger), via the use of Erlanger SCADA screen data and pump on/off and valve positioning commands. Erlanger operators monitor the pipeline operation and pressure on a 24/7 basis when the line is operating in withdrawal mode.
 - Refilling Constance Cavern: propane trucks typically pump the propane into the pipeline at Erlanger, and the product moves down the pipeline into the cavern via gravity flow. May take a month to refill the cavern, depending on storage volume and number of Mon-Fri 12-hour daytime (only) shifts when re-filling the cavern.
- November 10, 2017 email response conveys that Duke Energy considers Cincinnati Gas Control to be its only control room. Procedure GD50.1263-2, titled “Erlanger Gas Plant – Starting, Operating And Shutting Down Mixing System,” also conveys pipeline start up and shutdown as part of the Erlanger plant operation.

As of PHMSA’s inspection, Duke Energy did not consider the Erlanger office as a Control Room, and the referenced operators as Controllers, subject to the Control Room Management requirements of § 195.446. Furthermore, Duke Energy provided no records or related procedures, indicating it conducted any study referencing the *Control Room* and *Controller* definitions in § 195.2, to determine whether the Erlanger was a Control Room. The Erlanger office is located at the south end of the 3.41-mile long Line LP03, and

remotely controls the pipeline; therefore, it meets the definition of a Control Room, as defined in § 195.2. Because the Erlanger office is a Control Room, Duke Energy was required to have and follow written CRM procedures that implement the requirements of § 195.446.

5. **§195.446 Control room management.**

...(j) Compliance and deviations. An operator must maintain for review during inspection:

(1) Records that demonstrate compliance with the requirements of this section.

Duke Energy failed to comply with the regulation because it did not maintain records relating to alarm management as prescribed in §195.446(e)(3).

Section 195.446(e)(3) requires that “[e]ach operator using a SCADA system must have a written alarm management plan to provide for effective controller response to alarms. An operator’s plan must include provisions to... [v]erify the correct safety-related alarm set-point values and alarm descriptions when associated field instruments are calibrated or changed and at least once each calendar year, but at intervals not to exceed 15 months.” Duke Energy’s CRM records did not accurately describe a pressure deviation alarm for Line LP03 in its annual (not to exceed 15 months) safety-related alarm reviews, as required by § 195.446(e)(3). Duke Energy’s 2014, 2015, and 2016 safety-related alarm review records describe the pressure deviation alarm as “RTU Calculation Based on Pressures.” However, in its response to PHMSA’s request to describe the programming/algorithm(s) in its Supervisory Control and Data Acquisition (SCADA) system that would trigger the leak detection alarm(s), Duke Energy described the alarm as *“When comparison of Constance Cavern outlet pressure and Erlanger Gas Plant pressure deviates more than 5 psig for a period of more than 2 minutes.”*

6. **§195.452 Pipeline integrity management in high consequence areas.**

...(b) What program and practices must operators use to manage pipeline integrity? Each operator of a pipeline covered by this section must:

...(5) Implement and follow the program.

Duke Energy failed to comply with the regulation because it did not follow its Integrity Management (IM) program as follows:

A. Duke Energy performed an integrity assessment on its Line LP03 in 2016 using a Liquid Petroleum Internal Corrosion Direct Assessment (LP-ICDA) assessment method. At the time of the assessment, which was completed on July 1, 2016, Section 8 of Duke Energy’s Hazardous Liquid Pipeline IMP, dated September 30, 2013, and Duke Energy Procedure GD70.06-006, titled “Assessment Methods Selection Process Flowchart,” did not specify LP-ICDA as an approved integrity assessment method. Duke Energy drafted a LP-ICDA procedure in February of 2016, prior to the 2016 assessment, but the procedure was not finalized until April 6, 2017. Furthermore, as of PHMSA’s 2017 inspection, Duke Energy had not incorporated the above-referenced LP-ICDA procedure into its IM program.

B. Item 4A of Duke Energy Procedure GD75.01-008, titled “Hazardous Liquid IMP Liquid Analysis,” requires that “Within 150 days of completion of the Integrity Assessment for each pipeline, a review of the assessments results will be completed and the Information Analysis will be performed.” Following a June 6, 2016, External Corrosion Direct Assessment (ECDA) of Line LP03, the required Information Analysis was submitted to Duke Energy on July 20, 2017, 259 days after the 150-day deadline required by the above-referenced procedure.

C. Section 3 of Duke Energy Procedure GD75.01-007 (Effective Date November 25, 2013), titled “Continuing Evaluation and Assessment,” requires that Duke Energy perform formal evaluations of the integrity of its pipelines, including the development and documentation of a formal process for such evaluations. Furthermore, the same procedure requires that the evaluations “will consider the results of the baseline and subsequent assessments, the information analysis performed after each assessment, decisions regarding remediation and decisions regarding preventive and mitigative measures.” Duke Energy conducted an ECDA assessment of its Line LP03 on June 6, 2016. At the time of PHMSA’s inspection, Duke Energy personnel were unable to produce a record of the required formal evaluation. Duke Energy stated that its Continual Assessment Plan (CAP) complied with this requirement. However, the CAP does not provide the information required by the above-referenced procedure, such as the results of the assessment, the information analysis, decisions regarding remediation, and decisions regarding Preventive and Mitigative Measures (P&MMs).

D. Duke Energy failed to compile Integrity Management Program (IMP) performance measures for Calendar Years 2013, 2014, and 2015 on the *Performance Measures* spreadsheet, as required to be gathered annually by Duke Energy’s Hazardous Liquid Pipeline IMP “Section 9 – Performance Plan, and Appendix B - Performance Measures.”

7. **§195.452 Pipeline integrity management in high consequence areas.**

...(f) What are the elements of an integrity management program? An integrity management program begins with the initial framework. An operator must continually change the program to reflect operating experience, conclusions drawn from results of the integrity assessments, and other maintenance and surveillance data, and evaluation of consequences of a failure on the high consequence area. An operator must include, at minimum, each of the following elements in its written integrity management program...

Duke Energy failed to comply with the regulation because it did not change its IM program to reflect operating experience, conclusions drawn from results of the integrity assessments, and other maintenance and surveillance data. Specifically, Duke Energy did not include, nor reference in its IM program, the LP-ICDA procedures that were used to assess Line LP03 in 2015 after it determined that the line could not be assessed using in-line inspection (ILI) tools.

Duke Energy installed ILI tool launchers and receivers on its Line LP03 in preparation for an integrity assessment in 2015. When attempting to run the ILI tool(s) it was discovered that restrictions in the line prevented a successful tool run. As an alternative, a LP-ICDA

assessment was conducted 2016 on Line LP03 in 2016, between Constance Cavern and the Erlanger air-propane plant. The 2016 LP-ICDA report conveys that the assessment was conducted according to Duke Energy's LP-ICDA procedure, as well as guidance from NACE Standard Practice (SP) 0208-2008, titled "Internal Corrosion Direct Assessment Methodology for Liquid Petroleum Pipelines." However, such procedures were neither approved nor incorporated into Duke Energy's IMP.

8. **§195.452 Pipeline integrity management in high consequence areas.**

...(j) What is a continual process of evaluation and assessment to maintain a pipeline's integrity?—(1) General. After completing the baseline integrity assessment, an operator must continue to assess the line pipe at specified intervals and periodically evaluate the integrity of each pipeline segment that could affect a high consequence area.

...(5) Assessment methods. An operator must assess the integrity of the line pipe by any of the following methods. The methods an operator selects to assess low frequency electric resistance welded pipe or lap welded pipe susceptible to longitudinal seam failure must be capable of assessing seam integrity and of detecting corrosion and deformation anomalies.

(i) In-Line Inspection tool or tools capable of detecting corrosion and deformation anomalies, including dents, gouges, and grooves. For pipeline segments that are susceptible to cracks (pipe body and weld seams), an operator must use an in-line inspection tool or tools capable of detecting crack anomalies. When performing an assessment using an In-Line Inspection tool, an operator must comply with §195.591;

(ii) Pressure test conducted in accordance with subpart E of this part;

(iii) External corrosion direct assessment in accordance with §195.588; or

(iv) Other technology that the operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify OPS 90 days before conducting the assessment, by sending a notice to the address or facsimile number specified in paragraph (m) of this section.

Duke Energy failed to comply with the regulation because it did not notify OPS 90 days before conducting an assessment using "other technology." Specifically, Duke Energy conducted a LP-ICDA on its Line LP03 in 2016 and did not notify OPS. LP-ICDA is considered "other technology" under § 195.452(j)(5).

Duke Energy assessed Line LP03 for the identified threat of internal corrosion in 2016. Duke Energy personnel conveyed to the PHMSA inspector that the LP-ICDA assessment served as a P&MM for continual monitoring of the internal corrosion threat. This explanation notwithstanding, Duke Energy's reassessment plan reviewed by PHMSA indicated the 2016 LP-ICDA assessment of Line LP03 was an integrity re-assessment.

9. **§195.452 Pipeline integrity management in high consequence areas.**

...(l) What records must an operator keep to demonstrate compliance?

(1) An operator must maintain, for the useful life of the pipeline, records that demonstrate compliance with the requirements of this subpart. At a minimum, an operator must maintain the following records for review during an inspection:

...(ii) Documents to support the decisions and analyses, including any modifications, justifications, deviations and determinations made, variances, and actions taken, to implement and evaluate each element of the integrity management program listed in paragraph (f) of this section.

Duke Energy failed to comply with the regulation because it did not maintain records or documents to support its decisions and analyses, including any modifications, justifications, deviations and determinations made, variances, and actions taken, to implement and evaluate each element of the integrity management program listed in § 195.452(f).

Duke Energy could not produce records or documentation as to why the segments listed below were not assessed within Duke Energy's prescribed time period, contrary to the requirements of § 195.452(l)(1)(ii). Each segment was baseline-assessed by pressure test on October 20, 2005 and, per the procedure, each was required to be re-assessed by October 20, 2010. It is noted that the below-listed segments were components of pipelines that were still in service as of the dates of the PHMSA inspection.

- Segment in Casing 23: 400-foot Interstate I-71/75 crossing; pipe was not re-assessed, and was replaced on November 15, 2011.
- Segment in Casing 55: Amsterdam Road; re-assessed on December 5, 2012.
- Segment in Casing 39: Crescent Springs Pike crossing; pipe was not re-assessed, and was abandoned in place on August 3, 2012.
- Segment in Casing 13221 I-275 crossing; pipe was not re-assessed, and was replaced on September 10, 2012.

10. §195.573 What must I do to monitor external corrosion control?

(a) Protected pipelines. You must do the following to determine whether cathodic protection required by this subpart complies with §195.571:

(1) Conduct tests on the protected pipeline at least once each calendar year, but with intervals not exceeding 15 months. However, if tests at those intervals are impractical for separately protected short sections of bare or ineffectively coated pipelines, testing may be done at least once every 3 calendar years, but with intervals not exceeding 39 months.

Duke Energy failed to comply with the regulation because it did not conduct tests on its protected pipeline at least once each calendar year, but with intervals not exceeding 15 months.

Per records documenting Duke Energy's 2014 annual cathodic protection (CP) survey, pipe-to-soil (p/s) potential readings were taken at three test stations in the vicinity of Duke Energy's Erlanger air-propane plant on February 9, 2014. Records documenting the 2015 annual CP survey indicate the subsequent p/s potential readings at the above-referenced test stations were taken on August 26, 2015, exceeding the 15-month interval by 109 days. Records indicate that, on March 31, 2015, the corrosion technician "couldn't get inside the Duke Energy station," leading to Duke Energy exceeding with 15-month interval.

11. §195.588 What standards apply to direct assessment?

...(b) The requirements for performing external corrosion direct assessment are as follows:

(1) **General.** You must follow the requirements of NACE SP0502 (incorporated by reference, see §195.3). Also, you must develop and implement a **External Corrosion Direct Assessment (ECDA) plan that includes procedures addressing pre-assessment, indirect examination, direct examination, and post-assessment.**

Duke Energy failed to comply with the regulation because it did not follow the requirements of NACE SP0502 (incorporated by reference, *see* §195.3). Specifically, Duke Energy did not follow the pre-assessment step in NACE SP0502 when conducting continual ECDA integrity assessments on its Line LP03 in 2012 and 2016, as follows.

- A. Duke Energy combined segments of multiple pipelines into one ECDA Region. Duke Energy included the hazardous liquid 8-inch Line LP03 cased pipe segment (Casing #55) and predominantly 24-inch natural gas transmission pipeline cased segments into a single Region when conducting the 2012 Cased Pipe ECDA (CECDA) on Line LP03. NACE SP0502-2008 Sections 3.5.1.1.1 and 3.5.1.3 indicate that an ECDA region is, in part, a portion of a pipeline segment.

From NACE SP0502-2008^a (*emphasis added*):

3.5 Identification of ECDA Regions

3.5.1 The pipeline operator shall analyze the data collected in the Pre-assessment Step to identify ECDA regions.

3.5.1.1 The pipeline operator should define criteria for identifying ECDA regions.

3.5.1.1.1 An ECDA region is **a portion of a pipeline segment** that has similar physical characteristics, corrosion histories, expected future corrosion conditions, and that uses the same indirect inspection tools.

- B. The 2016 Line LP03 *ECDA Preassessment Step Data Element Sheet* indicates the pipeline joint coating types as “Heat shrinks and hot wax with paper were applied at the joints.” This description is incomplete because the original pipeline joint coating type was not included. 1961 engineering records indicate that 156 rolls of Royston “4-in. wide Hi-flo Quik-wrap” and 10 gallons of “Raybond A-36 primer” were specified for the initial construction project, indicating that a hand-applied tape wrap coating was applied at the girth weld joints during original construction.

Certain shrink sleeves and hand-applied tapes are known to be shielding coatings which, in the event of a disbondment or loss of adhesion, diverts or prevents the flow of cathodic protection current from its intended path. Table 1 of NACE SP0502-2010, titled “*ECDA Data Elements*,” requires joint coating type to be determined during the Preassessment Step, and conveys that “*ECDA may not be appropriate for coatings that cause shielding.*” The above-referenced records indicate that Duke Energy failed to meet the NACE SP0502-2010 requirement for joint coating type to be determined

^a The 2012 CECDA records indicate that NACE SP0502-2010 was used; regardless, at the time of the assessment the 2008 edition was the code-referenced edition. The 2010 edition became effective March 6, 2015.

during the Preassessment Step. Furthermore, Table 2 of NACE SP0502-2010, titled "ECDA Tool Selection Matrix," conveys the following:

"Shielding by Disbonded Coating: None of these survey tools is capable of detecting coating conditions that exhibit no electrically continuous pathway to the soil."

12. 195.589 What corrosion control information do I have to maintain?

...(c) You must maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures does not exist. You must retain these records for at least 5 years, except that records related to §§195.569, 195.573(a) and (b), and 195.579(b)(3) and (c) must be retained for as long as the pipeline remains in service.

Duke Energy failed to comply with the regulation because it did not maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures does not exist.

During PHMSA's inspection, Duke Energy personnel were unable to produce records confirming inspection for evidence of internal corrosion when pipe was removed in 2014 to install an ILI tool launcher and receiver on Line LP03.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$209,002 per violation per day the violation persists, up to a maximum of \$2,090,022 for a related series of violations. For violations occurring prior to November 2, 2015, the maximum penalty may not exceed \$200,000 per violation per day, with a maximum penalty not to exceed \$2,000,000 for a related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violations and has recommended that you be preliminarily assessed a civil penalty of \$55,700 as follows:

<u>Item number</u>	<u>PENALTY</u>
6	\$39,200
9	\$16,500

Warning Items

With respect to Items 2, 3, 5, 7, 8, 10, 11, and 12, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct these items. Failure to do so may result in additional enforcement action.

Proposed Compliance Order

With respect to items 1 and 4, pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Duke Energy Kentucky, Inc. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 2-2018-6002** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Urisko', is written over a horizontal line.

James A. Urisko
Director, Office of Pipeline Safety
PHMSA Southern Region

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Compliance Proceedings

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Duke Energy Kentucky, Inc. (Duke Energy) a Compliance Order incorporating the following remedial requirements to ensure the compliance of Duke Energy with the pipeline safety regulations:

1. In regard to Item 1 of the Notice pertaining to Duke Energy's failure to include its Constance Cavern facility in all relevant portions of its pipeline safety program,
 - a. Duke Energy must revise its written plans and procedures to incorporate the Constance Cavern Liquid Propane Gas (LPG) Storage Facility (Constance Cavern), to include all *pipeline facilities* as defined in 195.2 that are located at the plant site and on plant property, including plant property security fencing. The referenced revisions, as a minimum and as applicable to each facility, must be in accordance with Duke Energy's written plans and procedures it uses to administer its pipeline safety program including, but not limited to, those written plans and procedures required of Subparts F and G of Title 49, CFR Part 195 (Part 195).
 - b. Duke Energy must provide to PHMSA for approval a written list of activities, with a completion schedule, that are required to be performed in order for Constance Cavern to be in compliance with Duke Energy's revised written plans and procedures that are described in Item 1a. above.
 - c. Duke Energy must complete all activities described in Item 1b. above.
2. In regard to Item 4 of the Notice pertaining to Duke Energy's failure to identify the Erlanger air-propane plant office (Erlanger office) as a control room, as defined in § 195.2,
 - a. Duke Energy must revise its written control room management (CRM) procedures to incorporate its Erlanger office as a *Control room*, and identify the individuals located at the Erlanger office who control Line LP03 as *Controllers*, all as defined in § 195.2.
 - b. Duke Energy must provide to PHMSA for approval a written list of activities, with a completion schedule, that are required to be performed in order for the Erlanger office and individuals. as referenced in item 1b. above, to be in compliance with Duke Energy's revised CRM procedures and § 195.2.
 - c. Duke Energy must complete all activities described in Item 2b. above.
3. Duke Energy must complete the above Items within the following time requirements.
 - a. Within 30 days of receipt of the Final Order Duke Energy must complete the requirements of Items 1a. and 1b. above.
 - b. Within 60 days of receipt of the Final Order Duke Energy must complete the requirements of Items 2a. and 2b. above.

- c. Within 150 days of receipt of the Final Order Duke Energy must provide written documentation confirming the completion of Items 1 and 2 above to the Director, Office of Pipeline Safety, PHMSA Southern Region.
- 4. It is requested (not mandated) that Duke Energy maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director, Office of Pipeline Safety, PHMSA Southern Region. 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.