U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Ave., S.E.
Washington, DC 20590

SEP 22 2014

Mr. Greg Ebel
President-CEO
Spectra Energy Transmission, LLC
5400 Westheimer Court
Houston, Texas 77251-1642

Re: CPF No. 3-2013-1006

Dear Mr. Ebel:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of $96,200. 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: Ms. Linda Daugherty, Director, Central Region, OPS
Bizunesh Scott, Esq., Counsel for Spectra Energy Transmission, LLC, Steptoe & Johnson, LLP, 1330 Connecticut Avenue, NW, Washington DC 20036

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	)	
Spectra Energy Transmission, LLC	)	**CPF No. 3-2013-1006**
Respondent.	)	

FINAL ORDER

On April 23, 2004, pursuant to 49 U.S.C. § 60118(c) and 49 C.F.R. § 190.341, Spectra Energy Transmission, LLC (SET or Respondent) filed a special permit request with the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), for a waiver from certain provisions of 49 C.F.R. Part 192. On March 6, 2008, PHMSA issued an order, in docket number PHMSA-RSPA-2004-19469, granting SET a special permit with certain conditions and limitations (special permit).

On August 9-10, 2011, pursuant to 49 U.S.C. § 60117, a representative of 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 SET in Danville, Kentucky. SET owns and operates over 22,000 miles of natural gas, natural gas liquids, and crude oil pipeline. The special permit relevant to this case applied to Lines 10 and 15 within Scioto County, Ohio of the Texas Eastern Pipeline. The special permit waived the pipe replacement/pressure reduction requirements of 49 C.F.R. § 129.611(a). The special permit sections on the two lines are approximately 720 feet long. Each line also contains a special permit inspection area, which extends up to 25 miles upstream and downstream from each end of the special permit segment.

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated May 2, 2013, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that SET had violated various conditions of the special permit described above.

SET responded to the Notice by letter dated May 29, 2013 and requested a 30-day extension, which was granted. On June 21, 2013 Respondent provided its full, initial response to the Notice (Response). SET contested two of the three allegations, offered additional information in response to the Notice and requested a hearing. A hearing was subsequently held on November 5, 2013, at the Central Region Office in Kansas City, Missouri, with an attorney from the Office

of Chief Counsel, PHMSA, presiding. At the hearing, Respondent was represented by counsel. On December 12, 2013, SET submitted its Post Hearing Brief (Brief) for this case.

FINDINGS OF VIOLATION

Item 1: The Notice alleged that Respondent violated Condition "2" of the special permit which states:

> **Condition "2"**
> SET must incorporate the *Line 10 special permit segment* and the *Line 15 special permit segment* into its written integrity management plan (IMP) as "covered segments" in a high consequence area (HCA) per 49 CFR § 192.903, except for the reporting requirements contained in 49 CFR § 192.945. The special permit segments included in this special permit need not be included in SET's IMP baseline assessment plan.

The Notice alleged that Respondent violated Condition "2" by failing to incorporate the special permit line segments into its IMP as "covered segments." Specifically, the Notice alleged that upon review of SET's IMP, PHMSA inspectors saw no reference to the special permit segments in SET's IMP. The Notice stated that SET did include the special permit conditions in its Standard Operating Procedures (SOP), but asserted that SET did not follow the express terms of Condition "2," which required incorporation directly into the written IMP and amounted to violation of the condition.

Respondent contested this allegation of violation. In its Response, at the hearing, and in its Brief, SET argued that its inclusion of the special permit segments in its SOP and not explicitly into the IMP amounted to compliance with Condition "2" because: 1.) the IMP states that the IMP "is comprised of multiple documents" and lists "Standard Operating Procedures and Transmission Guidelines" as a "section" of the IMP[1], 2.) PHMSA's regulations "establish a precedent for incorporation by reference" with its use of industry standards[2], 3.) PHMSA did not explicitly state that it "wanted a specific reference literally to be included within the 62 pages of the Manual," such that SET did not have notice of the requirement[3], and 4.) PHMSA did not allege that incorporation into the SOP instead of directly into the IMP resulted in management of the segments in a way that was inconsistent with the IMP or Condition "2." Finally, SET argues that the SOP is the most proper place for the inclusion of the Condition "2" requirements because the purpose of the SOP is to "provide direction for operational personnel to execute the work."[4]

SET's most persuasive argument is that its IMP states that it is comprised of multiple documents,

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[1] Response at 2.

[2] Brief at 4.

[3] Brief at 5-6

[4] Brief at 4.

including the SOP, such that the special permit conditions actually are included in the IMP though incorporation by reference. However, at the hearing the Region raised the argument that from a compliance standpoint, in order to incorporate documents by reference into the IMP, the incorporation reference to other documents must appear in the IMP itself. As discussed in SET's brief and at the hearing, SET's IMP "includes a suite of documents." Given that this is the case, in order for the IMP and all of its incorporated documents to actually apply to the special permit segments as required, the reference to its applicability needs to appear in the most general document, the IMP itself, affirmatively stating that any incorporated documents apply to the special permit segments. Instead, the reference to the special permit segments only appeared in one of the incorporated documents. Therefore, in performing any task or analysis that required reference to the IMP itself or any incorporated document besides the SOP, the operator would have no practical knowledge that the special permit segments has to be treated as "covered segments." SET's reliance on PHMSA's practice of incorporation of documents is unassailing. It is appropriate for PHMSA's Pipeline Safety Regulations to incorporate by reference more specific documents, such as industry standards, because the regulations, like an IMP, serve as the starting point for action or analysis.

Next, I am not persuaded by SET's argument that PHMSA did not provide adequate notice that SET was required to incorporate the special permit segments into the IMP itself. The requirement that "SET must incorporate the Line 10 special permit segment and the Line 15 special permit segment into its *written integrity management plan* (IMP) as "covered segments,"" (Emphasis added) is clear and unambiguous. If SET thought it was best to incorporate the segments into the SOP rather than directly into the IMP itself, it was required to inquire with the Region about this before proceeding.

Finally, I disagree with SET's argument that its incorporation of the segments into the SOP rather than into the IMP was of no consequence because PHMSA did not allege that the action resulted in failure to manage the segments in a way that was inconsistent with the IMP or Condition "2." On the contrary, Item 3 of the Notice alleged that SET failed to manage dents as directed in the special permit as part of IMP. Therefore, SET's implication that it was following the terms of the special permit despite its failure to incorporate the segments directly into the IMP is untrue.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated Condition "2" of the special permit by failing to incorporate the special permit segments into the "written integrity management plan," as required.

Item 2: The Notice alleged that Respondent violated Condition "3", which states:

> **Condition "3"**
> SET must perform a close interval survey (CIS) of Line 10 and Line 15 along the entire length of each special permit inspection area not later than one year after the grant of this special permit and remediate any areas of inadequate cathodic protection (CP). A CIS and remediation need not be performed on either Line 10 or Line 15 if a CIS and remediation have

> been performed on the corresponding special permit inspection area less than 6 years prior to the grant of this special permit. If factors beyond SET's control prevent the completion of the CIS and remediation within one year, a CIS and remediation must be completed as soon as practicable and a letter justifying the delay and providing the anticipated date of completion must be submitted to the Director, PHMSA Central Region not later than one year after the grant of this special permit.

The Notice alleged that Respondent violated Condition "3" of the special permit which requires that SET perform a CIS and remediate any CP deficiency within one year of the grant of the permit. Specifically, the Notice alleged that SET had failed to properly remediate all areas of inadequate CP within the proscribed time period. Respondent did not contest this allegation of violation. Accordingly, after considering all of the evidence, I find that Respondent violated Condition "3" when it failed to remediate all CP deficiencies within one year of the grant of the special permit.

Item 3: The Notice alleged that Respondent violated Condition "20," which states:

> **Condition "20"**
>
> Anomaly Evaluation and Repair:
>
> (a) ...
>
> (b) Dents: SET must repair dents to Line 10 and Line 15 in the special permit inspection areas in accordance with 49 CFR §192.933 ...
>
> (c) ...
>
> (d) Response Time for ILI Results: The following guidelines provide the required timing for excavation and investigation of anomalies based on ILI results. Reassessment by ILI will "reset" the timing for anomalies not already investigated and/or repaired. SET must evaluate ILI data by using either the ASME Standard B31G, *Manual for Determining the Remaining Strength of Corroded Pipelines* (AMSE B31G), or the modified B31G(0.85dL) for calculating the predicted failure pressure ratio to determine anomaly responses.
>
> i) *Special Permit Segments*:...
>
> ii) *Special Permit Inspection Areas*: The response time must be in accordance with 49 CFR Part 192, Subpart 0, AMSE B31.8S (applicable edition) and SET's IMP.

The Notice alleged that Respondent violated Condition "20" by failing to reduce pressure as required after it discovered anomalies during the in-line-inspection (ILI) data analysis that qualified as "immediate repair conditions." 49 C.F.R. § 192.933(d) establishes repair and pressure reduction requirements for "immediate repair conditions." Specifically, the Notice alleges that on June 30, 2011, SET discovered five dents with metal loss, which qualify as "immediate repair conditions" per "Condition 20" and 49 C.F.R. § 192.933(d)(1)(ii) but failed to report the dents to PHMSA until July 2, 2011. The Notice further alleges that once PHMSA learned of the dents, PHMSA made various attempts to determine from SET's compliance

officer whether pressure had been/would be reduced, as required by § 192.933(d). When these attempts to confirm pressure reduction with SET were unsuccessful, PHMSA contacted SET's control room directly. At the hearing, the Region Director stated that control room personnel told her they had received no direction to reduce pressure. Later that day (July 2, 2011), PHMSA sent email inquiries about when the pressure reduction would take effect. SET reduced pressure on July 3, 2011, which PHMSA contends was 4 days after discovery of the immediate repair conditions.

Respondent contested this allegation of violation. In its Response, at the hearing, and in its Brief, Respondent argued that only three, not five, dents with metal loss anomalies were discovered in the special permit inspection area. Also, SET claimed that the pressure reduction actually took place within 72 hours (i.e. three days) of discovery of the dents because the discovery was made on the afternoon of Thursday June 30, 2011 and the pressure reduction took effect in the morning of Sunday July 3, 2011. Furthermore, SET maintains that it had determined that the dents did not constitute an "imminent threat" because "the metal loss identified was approximately 10% of the wall thickness."[5] In SET's closing brief, it stated that following the discovery of an "immediate repair condition," "there are a range of appropriate actions, from immediate shutdown of a pipeline to spending the time to gather data and make notifications depending on the severity and risk of the immediate repair conditions."[6]

SET further argued that waiting three days to reduce pressure is not a violation of § 192.933(d). It notes that § 192.933(d) does not specify how soon an operator must reduce pressure after discovering an immediate repair condition. Next, SET cited PHMSA FAQ-215, which states that, "immediate conditions shall be examined within five days after determination of the condition." The FAQ further states that pressure reductions should be taken "promptly" and that, "[o]perators need only notify PHMSA of their inability to examine immediate repair conditions within 5 days if they cannot reduce pressure." Furthermore, SET cites § 192.933(a)(1), which states, "If an operator is unable to respond within the time limits for certain conditions specified in this section, the operator must temporarily reduce the operating pressure." SET maintained that given that the time frame for examination is five days and that the requirement to reduce pressure only applies once the operator has determined it cannot examine or repair the condition within 5 days, the requirement for pressure reduction can't technically take effect until after the 5-day period has lapsed.

However, upon closer examination, this language in § 192.933(a) is not applicable to the timing of pressure reductions for "immediate repair conditions" because § 192.933(d) speaks more specifically on how to address these conditions. It states, " . . To maintain safety, an operator must temporarily reduce operating pressure in accordance with paragraph (a) of this section or shut down the pipeline *until* the operator completes the repair of these conditions." (emphasis added) Here, the word "until" clarifies that the pressure reduction is the first step in addressing an "immediate repair condition;" there is no language, as in (a), that indicates a pressure reduction is only necessary if a repair cannot be made in a certain time frame. SET's reliance on the statement in § 192.933(d)(1) that pressure should be reduced "in accordance with paragraph

[5] Response at 5.

[6] Brief at 11.

(a)" is incorrect because the reference to (a) speaks to calculating the reduction in the operating pressure, not the timing.

Further analysis of the FAQs that SET relies on indicates that pressure reduction should occur as soon as possible upon discovery. In FAQ-215, after discussion of the 5-day repair requirement, the FAQ goes on to say, "However, the rule also requires that pressure be reduced *once* an immediate repair condition is discovered. Pressure reductions should be taken *promptly*." (Emphasis added.) While this FAQ also does not specify the number of hours or days that may pass between discovery of an immediate repair condition and pressure reduction, the use of the words "once" and "promptly" are intended to establish that the operator should take action to reduce pressure as soon as possible. I am not persuaded that a time period of Thursday to Sunday meets this standard, whether that is considered three or four days. Additionally, the region director's difficulty in receiving confirmation that a pressure reduction was forthcoming from SET and the subsequent indication from the SET's control room that no pressure reduction was planned is evidence that the delay in instituting the pressure reduction was not the result of some technical or logistical difficulty. Furthermore, SET's contention that the dents were not "imminent threats" because there was only 10% metal loss is unavailing, as § 192.933 establishes that, "a dent that has *any* indication of metal loss" is an "immediate repair condition."

Therefore, with respect to pressure reduction, I reject SET's contention that upon discovery of an immediate repair condition, "there are a range of appropriate actions." The first action, taken as soon as possible, must be to reduce operating pressure.

Accordingly, based upon a review of all of the evidence, I find that Respondent violated Condition "20" when it failed to reduce operating pressure as required in 49 C.F.R. § 192.933.

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 $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 $96,200 for the violations cited above.

Item 1: The Notice proposed a civil penalty of $31,200 for Respondent's violation of Condition "2" of the special permit, for failing to include the special permit segments of Line 10 and Line

15 into its written IMP. SET contends that the gravity assigned by PHMSA in the violation report is not warranted and that pipeline safety was not "potentially compromised" as alleged but was at most "minimally affected."[7] However, given the significant difference between management of "covered segments" and "non-covered segments" due to the requirements of the IMP, I agree with the assertion in the violation report that safety was "potentially compromised," especially given SET's failure to respond to immediate repair conditions in a manner consistent with the IMP regulations (i.e. § 192.933), as discussed in Item 3. SET also argued that it took certain steps to comply with Condition "2" such that the "culpability" description in the Violation Report was inaccurate. However, the "culpability" description does acknowledge "minimal" or "some steps" to achieve compliance. Given that SET did not follow the express terms of Condition "2," when the language in the special permit was unambiguous, I see no justification in reducing the civil penalty as assessed. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $31,200 for violation of Condition "2."

Item 2: The Notice proposed a civil penalty of $27,500 for Respondent's violation of Condition "3" of the special permit for failing to remediate any areas of deficient CP within one year of the issuance of the special permit. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $27,500 for violation of Condition "3."

Item 3: The Notice proposed a civil penalty of $37,500 for Respondent's violation of Condition "20" of the special permit, for failing to treat dents with metal loss as "immediate repair conditions" and reduce pressure promptly. SET contends that the gravity assigned by PHMSA in the Violation Report is not warranted and that pipeline safety was not "potentially compromised" as alleged but was at most "minimally affected."[8] However, dents with any amount of metal loss are characterized as "immediate repair conditions" because of the threat they pose, and failure to reduce pressure promptly certainly increased the chances that a release could have occurred. Next, SET argued that it took certain steps to comply, such that the "culpability" assessment in the Violation Report was not accurate. However, as noted above, the Region Director's communications with SET indicated that the delay in pressure reduction was not due to logistical or technical complications. Instead, they were based on the belief that a pressure reduction was not necessary when a prudent reading of § 192.933(d) and the FAQs directed otherwise. Finally, SET argued that there should be a finding that SET's actions were in good faith given that the pressure reduction took place within three days. A reduction in the civil penalty based on "good faith" must result from a reasonable misinterpretation of the regulatory requirement. In this case, SET asserted that the dents did not pose "imminent hazard" despite the fact that §192.933(d) specifically states that "A dent that has *any* indication of metal loss" qualifies as an "immediate repair condition." Therefore, I reject this argument as well. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of $37,500 for violation of Condition "20."

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[7] Brief at 7

[8] Brief at 12

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 **$96,200**.

Payment of the civil penalty must be made within 20 days of service of this Final Order. Payment may be made by sending a certified check or money order (containing the CPF Number for this case), made payable to "U.S. Department of Transportation," to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMK-325), P.O. Box 269039, Oklahoma City, Oklahoma 73125. Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit 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, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8845.

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.

SEP 22 2014

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued