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

1200 New Jersey Avenue, SE
Washington, DC 20590

August 3, 2022

VIA ELECTRONIC MAIL TO: paul.bieniawski@enstorinc.com

Mr. Paul Bieniawski
Chief Executive Officer
Enstor Gas, LLC
10375 Richmond Ave., Suite 1900
Houston, Texas 77042

Re: CPF No. 3-2021-056-NOPV

Dear Mr. Bieniawski:

Enclosed please find the Final Order issued in the above-referenced case. It makes a finding of violation and reduces the civil penalty to $0. This enforcement action is now closed. Service of the Final Order by e-mail is effective upon the date of transmission and acknowledgement of receipt as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

ALAN KRAMER MAYBERRY
Digitally signed by ALAN KRAMER MAYBERRY
Date: 2022.08.03 09:24:59 -04'00'

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Gregory A. Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. Todd Cash, Vice President, Compliance, Enstor Gas, LLC, todd.cash@enstorinc.com
Ms. Lisa M. Tonery, Counsel, Orrick, Herrington & Sutcliffe LLP, ltonery@orrick.com
Ms. Mariah T. Johnston, Counsel, Orrick, Herrington & Sutcliffe LLP, mjohnston@orrick.com

CONFIRMATION OF 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	)	
	)	
Mississippi Hub, LLC,	)	**CPF No. 3-2021-056-NOPV**
an affiliate of Enstor Gas, LLC,	)	
	)	
Respondent.	)	

FINAL ORDER

From November 6 through 20, 2020, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted a pipeline safety inspection of the control room procedures and records of Mississippi Hub, LLC, an affiliate of Enstor Gas, LLC (Enstor or Respondent), in Katy, Texas.[1]

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated October 7, 2021, a Notice of Probable Violation and Proposed Civil Penalty (Notice).[2] In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Enstor had violated 49 C.F.R. § 192.631(e)(2) and proposed assessing a civil penalty of $23,100 for the alleged violation.

After requesting and receiving an extension of time to respond,[3] Enstor responded to the Notice by letter dated December 3, 2021 (Response). The company did not contest the allegation of violation but provided an explanation of its actions and requested that the proposed civil penalty be reduced or eliminated. Respondent did not request a hearing and therefore has waived its right to one.

[1] In February 2019, Sempra Energy sold Mississippi Hub, LLC to ArcLight Capital Partners, LLC. ArcLight Capital Partner's affiliate, Enstor Gas, LLC, began operating the Mississippi Hub facility in August 2019. *See* Response at 1-2; *see also* Enstor Press Release (Feb. 7, 2019), *available at* https://www.enstorinc.com/news/sempra-energy-completes-sale-us-natural-gas-storage-assets-arclight-capital-partners (last accessed May 10, 2022). On May 11, 2022, ArcLight Capital Partners sold Enstor to Infrastructure Investment Funds. *See* Enstor Press Release (May 11, 2022), *available at* https://www.enstorinc.com/news/iif-acquires-enstor-gas-arclight (last accessed June 28, 2022).

[2] Although the Notice was addressed to "Enstor-Mississippi Hub," Respondent explained that the Mississippi Hub facility is operated by Enstor Gas, LLC, an affiliate. Response at 1.

[3] The request for a time extension was submitted by "attorneys for Mississippi Hub, LLC."

FINDING OF VIOLATION

In its Response, Enstor did not contest the allegation in the Notice that it violated 49 C.F.R. Part 192, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.631(e)(2), which states:

> **§ 192.631 Control room management.**
> (a) . . .
> (e) *Alarm Management.* Each 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:
> (1) . . .
> (2) Identify at least one each calendar month points affecting safety that have been taken off scan in the SCADA host, have had alarms inhibited, generated false alarms, or that have had forced or manual values for periods of time exceeding that required for associated maintenance or operating activities;

The Notice alleged that Respondent violated 49 C.F.R. § 192.631(e)(2) by failing to have a written alarm management plan to provide for effective controller response to alarms that included provisions to identify at least once each calendar month points affecting safety that have been taken off scan in the SCADA host, have had alarms inhibited, generated false alarms, or that have had forced or manual values for periods of time exceeding that required for associated maintenance or operating activities. Specifically, the Notice alleged that Enstor failed to identify at least once each calendar month off-scan, inhibited, manual or forced alarms for the years 2017, 2018, and 2019.

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. § 192.631(e)(2) by failing to have a written alarm management plan to provide for effective controller response to alarms that included provisions to identify at least once each calendar month points affecting safety that have been taken off scan in the SCADA host, have had alarms inhibited, generated false alarms, or that have had forced or manual values for periods of time exceeding that required for associated maintenance or operating activities.

This finding of violation will be considered a prior offense 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 $200,000 per violation for each day of the violation, up to a maximum of $2,000,000 for any related series of violations.[4]

[4] These amounts are adjusted annually for inflation. *See* 49 C.F.R. § 190.223.

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; any effect that the penalty may have on its ability to continue doing business; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. 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 $23,100 for the violation cited above.

Item 1: The Notice proposed a civil penalty of $23,100 for Respondent's violation of 49 C.F.R. § 192.631(e)(2) for failing to have a written alarm management plan to provide for effective controller response to alarms that included provisions to identify at least once each calendar month points affecting safety that have been taken off scan in the SCADA host, have had alarms inhibited, generated false alarms, or that have had forced or manual values for periods of time exceeding that required for associated maintenance or operating activities.

In its Response, Enstor requested a reduction or elimination of the proposed civil penalty. Specifically, Respondent stated that in August 2019, after Enstor acquired the Mississippi Hub facility, it updated the form to record the safety points set forth in § 192.631(e)(2). Response at 2. Enstor also stated that its SCADA team provided the monthly alarm and event history to the Remote Operations Center (ROC) to utilize in completing its monthly alarm review.[5] *Id.* Further, in preparing for the November 2020 OPS inspection, Enstor realized that its definition of "safety-related points" only included alarms, and subsequently revised it to include points affecting safety that have been taken off scan in the SCADA host, have had alarms inhibited, generated false alarms, or that have had forced or manual values for periods of time exceeding that required for associated maintenance or operating activities. *Id.*

Enstor requested a reduction or elimination of the penalty for three reasons. First, it claimed that this violation was a minor, record-keeping issue that did not impact pipeline safety. *Id.* at 3. Second, Enstor stated that it began operating the facility in late 2019, and once it began to do so, made updates to its control room management forms and procedures prior to the 2020 inspection. *Id.* Third, Enstor explained that it has a history of compliance, and worked to ensure its written procedures were adequate for the safe operation of its pipeline facilities in response to the Notice of Amendment that was served concurrently with this case. *Id.* at 3-4; *see also* CPF 3-2021-055-NOA.

I will address each of Respondent's arguments in order. First, the Pipeline Safety Violation Report already notes that this violation minimally affected pipeline safety under the civil penalty assessment factor for the gravity of the violation. *See* Pipeline Safety Violation Report (Violation Report) at 6 (Oct. 12, 2021) (on file with PHMSA). Further, under the civil penalty assessment factor for the nature of the violation, the Violation Report correctly notes that this is an activities violation, rather than a record-keeping violation. *Id.* at 5. Record-keeping violations involve missing, inaccurate, or incomplete records. *Id.* In this case, Enstor failed to conduct an activity. Namely, Respondent failed to identify points affecting safety that have been taken off scan in the SCADA host, have had alarms inhibited, generated false alarms, or that

[5] The ROC is a third-party contractor employed by Respondent. Violation Report, at 1.

have had forced or manual values for periods of time exceeding that required for associated maintenance or operating activities at least once each calendar month. Therefore, I see no reason to find that the violation was merely a record-keeping, rather than a substantive, violation.

Second, Enstor argues that Sempra Energy operated the Mississippi Hub facility for a vast majority of the period during which the violation occurred, and once it began operating the facility in August 2019, it identified the noncompliance and took steps to address it. Specifically, Enstor states that in August 2019, it updated Form OM1100-04 to record the safety points set forth in § 192.631(e)(2). Response at 2. Additionally, prior to PHMSA's inspection, Enstor explained it revised its definition of "safety-related points." *Id.* Although Enstor did not achieve full compliance through these efforts, it had taken documented action to correct the non-compliance prior to PHMSA discovering the violation. In his evaluation of Enstor's response materials, the Director supported a change under the culpability civil penalty assessment factor, and I agree such a change is appropriate. Therefore, I am changing the culpability factor from "[t]he operator failed to comply with an applicable requirement" to "[a]fter the operator found the non-compliance, the operator took documented action to address the cause of the non-compliance, and was in the process of correcting the non-compliance before PHMSA learned of the violation."

Third, Enstor requested a reduction or elimination of the penalty due to its history of compliance. The Violation Report already incorporates an operator's compliance history into the civil penalty calculation. Violation Report at 2. Therefore, I see no reason to further alter the civil penalty based on this information.

Accordingly, after having reviewed the record and the assessment criteria, and based upon a finding that a culpability credit is warranted, the civil penalty assessed is reduced to $0.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the 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. The written petition must be received no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. 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.

ALAN KRAMER MAYBERRY
Digitally signed by ALAN KRAMER MAYBERRY
Date: 2022.08.03 09:23:57 -04'00'

August 3, 2022

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued