

August 23, 2021

VIA ELECTRONIC MAIL: mark.hewett@nngco.com

Mr. Mark Hewett
President and Chief Executive Officer
Northern Natural Gas Company
1111 South 103rd Street
Omaha, NE 68124

Re: CPF No. 3-2021-1002

Dear Mr. Hewett:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws one of the allegations of violation, makes a finding of violation, assesses a civil penalty of \$19,300, and finds that Northern Natural Gas Company has completed the actions specified in the Notice to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid, this enforcement action will be closed. Service of the Final Order by electronic mail is effective upon the date of transmission as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Gregory Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. Tom Correll, Vice President, Pipeline Safety and Risk, Northern Natural Gas Company, thomas.correll@nngco.com
Mr. Royce Ramsay, Vice President, Operations, Northern Natural Gas Company, royce.ramsay@nngco.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

Northern Natural Gas Company,

Respondent.

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CPF No. 3-2021-1002

FINAL ORDER

From May 13, 2019 through August 22, 2019, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), and state agents from Michigan, Iowa, and Minnesota conducted an on-site pipeline safety inspection of the facilities and records of Northern Natural Gas Company (Northern Natural or Respondent) in Nebraska, Iowa, Minnesota, Wisconsin, and Michigan. Northern Natural is a subsidiary of Berkshire Hathaway Energy Company, a subsidiary of Berkshire Hathaway, Inc.¹ Northern Natural operates approximately 7,000 miles of pipe in Iowa, Michigan, Minnesota, and Wisconsin.²

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated March 2, 2021, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (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 Northern Natural had committed three violations of 49 C.F.R. part 192 and proposed assessing a civil penalty of \$35,100 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations. The warning item required no further action, but warned the operator to correct the probable violation or face possible future enforcement action.

Northern Natural responded to the Notice by letter dated March 30, 2021, and updated on April 2, 2021 (Response). Northern Natural did not contest the allegations, but offered additional information in response to the Notice and requested that the Notice be withdrawn and civil penalties rescinded. Respondent did not request a hearing and therefore has waived its right to one.

¹ Northern Natural Gas, About Us/Overview, available at <https://www.northernnaturalgas.com/aboutus/Pages/Overview.aspx> (last accessed August 11, 2021).

² Pipeline Safety Violation Report (Violation Report), (June 21, 2019), at 1 (on file with PHMSA).

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. § 192.605(a), which states:

§ 192.605 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

The Notice alleged that Respondent violated 49 C.F.R. § 192.605(a) by failing to follow its manual of written procedures for conducting operations and maintenance activities. Specifically, the Notice alleged that Northern Natural failed to follow Sections 5.6.1.1 and 5.6.1.2 of its procedures, Engineering Standard 7570 “Joining of Pipe & Piping Components Other Than by Welding” (Revision 11 8/20/2019) because 26 locations within pipeline facilities contained flanges with bolts that did not extend beyond the nut, but rather ended within the nut, and were therefore not completely engaged.

Respondent did not contest this allegation of violation and provided information concerning corrective action it has taken. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.605(a) by failing to follow its written procedures for conducting operations and maintenance activities.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.631(c)(3), which states:

§ 192.631 Control room management.

(a)

(c) *Provide adequate information.* Each operator must provide its controllers with the information, tools, processes and procedures necessary for the controllers to carry out the roles and responsibilities the operator has defined by performing each of the following:

(1)

(3) Test and verify an internal communication plan to provide adequate means for manual operation of the pipeline safely, at least once each calendar year, but at intervals not to exceed 15 months.

The Notice alleged that Respondent violated 49 C.F.R. § 192.631(c)(3) by failing to test and verify its internal communication plan to provide adequate means for manual operation of the pipeline safely, at least once each calendar year, but at intervals not to exceed 15 months.

Specifically, the Notice alleged that Northern Natural's Control Room records show that it exceeded the annual test of its Internal Communication Plan by 47 days when it tested its internal communication plan on June 29, 2016, and did not conduct another test until November 15, 2017.

In its Response, Northern Natural did not contest that the violation had occurred as alleged and provided additional information concerning corrective action it has taken, including amendment of its procedures and training of personnel. Northern Natural argued, however, that this item should be withdrawn because it was "previously addressed in a Warning Letter (CP 3-2021-1001W) dated February 11, 2021."

After considering all of the evidence and additional information provided by Respondent, I disagree. Although the Director issued a warning letter to Respondent on February 11, 2021, Item 2 of the letter warned Respondent about a probable violation of § 192.631(c)(4). The violation alleged in this Item, § 192.631(c)(3), is distinct from that referenced in the warning letter and is a separate regulatory requirement. The warning letter stated that Northern Natural's failure was to "properly test any backup SCADA system... Specifically, the company only tested the SCADA server performance and did not test the full SCADA system..." The Notice Item alleged Respondent exceeded the annual test of its Internal Communication Plan by 47 days. These are two distinct allegations.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.631(c)(3) failing to test and verify its internal communication plan to provide adequate means for manual operation of the pipeline safely, at least once each calendar year, but at intervals not to exceed 15 months, when it exceeded the annual test of its Internal Communication Plan by 47 days in 2017.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 192.631(j)(1), which states:

§ 192.631 Control room management.

(a)

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

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

The Notice alleged that Respondent violated 49 C.F.R. § 192.631(j)(1) by failing to have records that demonstrated compliance with the requirements of § 192.631(e)(5), which requires Respondent to monitor the content and volume of general activity being directed to and required of each controller at least once each calendar year, but at intervals not to exceed 15 months, to assure controllers have sufficient time to analyze and react to incoming alarms. Specifically, the Notice alleged that Northern Natural was not able to provide records in response to a September 21, 2019 *Request for Specific Information*, showing that review of the content and volume of general activity directed to and required of each controller was performed for the years 2016 and 2018.

In its Response, Northern Natural did not contest that the violation had occurred as alleged and

provided additional information concerning corrective action it has taken, including amendment of its procedures and training of personnel. Northern Natural argued, however, that this item should be withdrawn because it was “previously addressed in a Warning Letter (CPF 3-2021-1001W) dated February 11, 2021.”

Having reviewed the record, I find that prior to issuance of the Notice in this case, the Director issued Warning Letter CPF 3-2021-1001W. Item 3 of the letter alleged that “Northern Natural Northern Natural failed to maintain records to demonstrate compliance with the requirements of § 192.631[(j)(1)].” It referred to the same set of facts, Northern Natural’s inability to “produce records for the inspection years 2016, 2017 and 2018,” as those in Item 3 of the Notice. In other words, there appears to be duplicative cases brought for the same probable violation. There is no record of the Director having ever withdrawn the Warning Letter or otherwise intending to replace the warning with the violation alleged in the Notice. In the Director’s written evaluation of response material and recommendation for final action for this case, submitted pursuant to § 190.209(b)(7), the Director recommended this item be withdrawn. Accordingly, I hereby order that Item 3 be withdrawn.

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 \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.³

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 \$35,100 for the violations cited above.

Item 2: The Notice proposed a civil penalty of \$19,300 for Respondent’s violation of 49 C.F.R. § 192.631(c)(3), for failing to failing to test and verify its internal communication plan to provide adequate means for manual operation of the pipeline safely, at least once each calendar year, but at intervals not to exceed 15 months. Respondent argued this item and proposed penalty should be withdrawn because it was previously addressed in a Warning Letter. I have already rejected this argument. Respondent did not otherwise present any evidence or arguments justifying elimination of the proposed penalty.

³ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

Regarding the nature, circumstances, and gravity of the violation, PHMSA noted in the Violation Report that the alleged violation was discovered by PHMSA and minimally affected safety. Regarding culpability and good faith, PHMSA noted in the violation report that Respondent failed to comply with an applicable requirement and did not have a reasonable justification for its non-compliance. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$19,300 for violation of 49 C.F.R. § 192.631(c)(3).

Item 3: The Notice proposed a civil penalty of \$15,800 for Respondent's alleged violation of 49 C.F.R. § 192.631(j)(1). Since this alleged violation has been withdrawn, the proposed penalty is not assessed.

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 **\$19,300**.

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 (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$19,300 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 1 in the Notice for violation of 49 C.F.R. § 192.605(a). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. The Director indicates that Respondent has taken the following actions specified in the proposed compliance order:

1. With respect to the violation of § 192.605(a) (**Item 1**), Respondent has completed all actions as required in the Proposed Compliance Order for his Item. Specifically, Respondent has replaced or readjusted all flange bolts in the locations specified in the NOPV to bring them into compliance with Engineering Standard 7570.

Accordingly, I find that compliance has been achieved with respect to this violation. Therefore, the compliance terms proposed in the Notice are not included in this Order.

WARNING ITEM

With respect to Item 4, the Notice alleged probable violation of Part 192, but identified it as a warning item pursuant to § 190.205. The warning was for:

49 C.F.R. § 192.713(a)(2) (**Item 4**) — Respondent's alleged failure to repair pipe anomalies by a method that reliable engineering tests and analyses show can permanently restore the serviceability of the pipe for anomalies. Specifically, the Notice alleged that on the New Lisbon Branch Line WIB14601, specifically Dent 30, Northern Natural did not abrade the gouges until smooth prior to the application of a ClockSpring as required by ClockSpring Installation Manual, section 3.1.4. ASME B 31-4 edition 2006 Table 451.6.2(b)-2 and Northern Natural Procedure 80.201 "Repair of In-Service Pipelines." The Notice also stated that Northern Natural has already replaced the repair.

Northern Natural presented information in its Response showing that it had taken certain actions to address the cited items. If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

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, no later than 20 days after receipt of service of this Final Order by Respondent. Any petition submitted must contain a 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 corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

August 23, 2021

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued