



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

OCT 14 2005

Mr. Dwayne Burton
Vice President Gas Operations
Natural Gas Pipeline Company of America
Kinder Morgan, Inc.
One Allen Center
500 Dallas Street, Suite 1000
Houston, TX 77002

Re: CPF No. 4-2003-1005

Dear Mr. Burton:

Enclosed is a decision on the petition for reconsideration filed in the above-referenced case. The Associate Administrator for Pipeline Safety has denied the petition and therefore, payment of the \$30,500 civil penalty is due immediately. Actions specified in the Compliance Order must also be taken. Your receipt of this decision constitutes service under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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

In the Matter of)
)
)

Natural Gas Pipeline Company of America,)

CPF No. 4-2003-1005

A wholly-owned subsidiary of)
Kinder Morgan, Inc.,)
)

Petitioner)
_____)

DECISION ON PETITION FOR RECONSIDERATION

On October 21, 2004, pursuant to 49 U.S.C. § 60112, the Associate Administrator for Pipeline Safety issued a Final Order in this case finding Petitioner violated the pipeline safety regulations, assessed a civil penalty in the amount of \$30,500 and incorporated a Compliance Order that requires Petitioner to take specific steps to come into compliance with the regulations. On November 9, 2004, Petitioner filed a petition for reconsideration and requested a stay of the Compliance Order. OPS granted Petitioner a preliminary extension of time and by letter dated July 14, 2005 stayed the terms of the Compliance Order until the issuance of this Decision. Payment of the civil penalty was stayed automatically.

In its petition, Petitioner sought reconsideration of the findings in the Final Order that Petitioner violated 49 C.F.R. §§ 192.465(d) and 192.705(a) (Items 2 and 3, respectively) and the civil penalties associated with those violations. Petitioner also sought reconsideration of the terms of the Compliance Order associated with Item 3.

Item 2 of the Final Order found Petitioner violated § 192.465(d) by failing to take prompt remedial action at seven locations on the Love County Lateral to correct deficient cathodic protection readings. Section 192.465(d) requires each operator take prompt remedial action to correct any deficiencies indicated by monitoring. The Final Order found Petitioner had eight low pipe-to-soil potential readings on the lateral during consecutive annual surveys in June 1999 and June 2000. Petitioner's records indicated that after some corrective action had been taken, only one of the eight locations was tested and found in compliance. The remaining seven locations were not tested for another nine months. The Final Order found the delay in remediating the seven deficiencies supported finding Petitioner had violated § 192.465(d) and assessed a civil penalty of \$3,500.

In its petition, Petitioner advanced two reasons for setting aside the violation. First, Petitioner argued that OPS based the violation on a matter that was never alleged in the Notice of Probable Violation (Notice) or at the hearing. Petitioner argued OPS improperly based the violation on Petitioner's failure to survey the entire lateral following completion of the corrective action. Petitioner contended that OPS did not give proper notice that the issue of surveying the lateral would be considered. As such, Petitioner "was not given the opportunity to present evidence on the point." Petition at 3.

The Notice issued in this case alleged Petitioner did not take prompt remedial action after discovering low pipe-to-soil potentials on the Love County Lateral. The Notice identified eight specific locations where pipe-to-soil potential readings were below criteria levels during two consecutive years. Although Petitioner stated that it had taken remedial action, the order found Petitioner failed to survey the entire lateral to verify whether the deficiencies had been remediated. The order found Petitioner spot-checked only one of eight locations (710+99) on August 15, 2000 to determine compliance, but Petitioner did not survey the rest of the lateral—specifically the seven other locations—until May 15, 2001. Since remedial action necessarily requires verifying whether the chosen course of action has actually remediated the deficiencies, Petitioner had clear notice that one of the issues to be determined was whether Petitioner had promptly verified the remediation of each deficiency.

Petitioner also contended that OPS did not fully consider evidence that it complied with § 192.465(d). After a review of the record, I confirm the findings in the Final Order. Specifically, the order found Petitioner began to correct the deficiencies within approximately two months of discovering them by installing a new rectifier. Over the next six months, Petitioner determined the new rectifier was insufficient to remediate the deficiencies and began development of a new deep well groundbed, which was completed within approximately thirteen months of the initial discovery. Petitioner's test point records (Petitioner's Exhibit I.6) indicate that Petitioner spot-checked location number 710+99 on August 15, 2000, one month after completing the deep well groundbed, but there is no record that Petitioner surveyed the remaining seven locations until May 15, 2001.

In most situations, operators should correct a deficiency indicated by monitoring by the next inspection cycle. When an operator has not remediated a deficiency by the next inspection cycle, OPS looks at the circumstances to determine whether remediation was unreasonably delayed. In the present case, Petitioner initiated corrective action within a few months of discovery and completed the activities shortly after the next inspection cycle. However, Petitioner delayed surveying seven of the eight locations to verify that the deficiencies had been corrected until May 15, 2001. Prompt remedial action necessarily requires prompt verification to show the deficiencies have been remediated. The delay of an additional nine months to verify remediation was unreasonable. Accordingly, I affirm the finding that Petitioner violated § 192.465(d) at seven locations. The \$3,500 civil penalty assessed for the violation is appropriate.

Item 3 of the Final Order found Petitioner violated § 192.705 when it failed to patrol 34 right-of-way locations. Section 192.705(a) requires each operator have and follow a patrol program to

observe surface conditions on and adjacent to a transmission line right-of-way for indications of leaks, construction activity, and other factors affecting safety and operation. The frequency of patrols is determined by class location and other relevant factors, but intervals may not be longer than prescribed in § 192.705(b). Transmission lines in Class 1 and 2 locations must be patrolled at a maximum interval of 15 months, but at least once each calendar year. All highway and railroad crossings in Class 1 and 2 locations must be patrolled at a maximum interval of 7½ months, but at least twice each calendar year.

The Final Order found that Petitioner's records indicated 34 locations had never been patrolled. Petitioner's employees also stated during the inspection that Petitioner was not patrolling the locations. In its response to the Notice, Petitioner claimed that it had patrolled the locations by aerial patrol once a year. However, Petitioner submitted no documentation to demonstrate the identified locations had been patrolled. Petitioner also failed to submit such evidence at the hearing or in Petitioner's post-hearing submission. Instead, Petitioner argued that § 192.705 does not apply to the majority of the 34 locations because they are not "highway crossings." The Final Order determined that § 192.705 applies to each of the identified locations and found Petitioner failed to patrol the locations in violation of § 192.705.

In the Petition, Petitioner again stated its position that some of the locations are not highway crossings. Whether or not the locations are highway crossings does not bear on the issue of whether Petitioner ever patrolled the locations. Section 192.705 clearly states that Petitioner must patrol all Class 1 and 2 locations *at least* once each calendar year, if not more often. The Final Order found "Petitioner did not dispute the allegation that it did not provide records to demonstrate that the locations identified in the Notice were patrolled." Final Order at 6. Although Petitioner repeatedly asserted that it had patrolled the locations, there is no evidence in the record to rebut the allegation that 34 locations "have never been patrolled." Notice at 3-4. Accordingly, I affirm the finding that Petitioner violated § 192.705. The \$27,000 civil penalty assessed for the violation is appropriate.

With respect to the frequency of patrolling, under § 192.705, highway crossings in Class 1 and 2 locations must be patrolled at a maximum interval of 7½ months, but at least twice each calendar year. "All other places" on and adjacent to a transmission line right-of-way in Class 1 and 2 locations, must be patrolled at a maximum interval of 15 months, but at least once each calendar year. Petitioner put forward several reasons why it believed that 32 of the 34 locations are not highway crossings. First, Petitioner raised due process concerns with respect to its contention that OPS was defining highway outside of a rulemaking.

For the purpose of determining maximum interval between patrols, the term "highway crossing" in § 192.705 includes locations on Petitioner's pipeline system where a transmission line crosses any paved or hard-surfaced road. This includes, but may not be limited to, any state or county public highway or any road with a paved, asphalt, or chip-seal surface. The record indicates 29 locations identified in the Notice are highway crossings. Accordingly, § 192.705 requires patrolling at a maximum interval of 7½ months, but at least twice each calendar year at those 29 locations. All other locations, including unpaved, gravel, and dirt road crossings, must be

patrolled at a maximum interval of 15 months, but at least once each calendar year.¹ This is consistent with the language of § 192.705 and the term "highway," which is not separately defined in OPS regulations. It is also consistent with the intent of § 192.705, which requires more frequent patrolling at transmission line right-of-way locations where a pipeline may be subject to regular vehicular or locomotive traffic. It is not inconsistent with other OPS regulations, specifically §§ 191.23 and 195.55 (safety-related condition reports).

Petitioner also contended that OPS "ignored un rebutted evidence at the hearing that a prudent person familiar with the pipeline industry and safety purposes of the standard could have believed that an unpaved road such as Bill Barrett Road would be a 'highway' under 49 C.F.R. § 192.705." Petition at 5. The testimony of Petitioner's witness regarding what he or she could have believed is not controlling on this Decision. Petitioner further urged OPS to consider a Federal Railroad Administration (FRA) regulation.² I find the regulation is inapplicable.

Under the terms of the Compliance Order, Petitioner must verify compliance with § 192.705 in accordance with this Decision.

Relief Denied

I have considered Petitioner's request for reconsideration. I do not find Petitioner's assertions warrant withdrawal of the findings of violation, reduction in the civil penalty, or amendment to the terms of the Compliance Order. The terms of the Final Order remain in effect, including assessment of the civil penalty in the amount of \$30,500.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the 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. Failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a United States District Court.

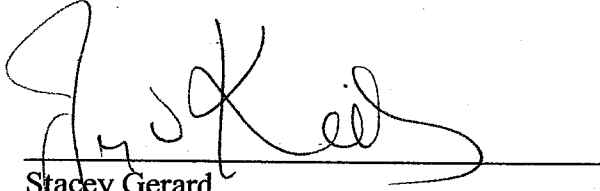
The stay of the terms of the Compliance Order granted by letter dated July 14, 2005 is withdrawn. Accordingly, Respondent is directed to comply with the terms of the Compliance

¹ Bill Barrett Road, Boots Havard Road, C.R. 223, Greens Road, and Jack Station are not highway crossings according to their description and pictures provided in Petitioner's Exhibit II.5.

² Petitioner cited 49 C.F.R. § 222.37, an FRA regulation pertaining to the establishment of "quite zones." The regulation mentions a "county road" and "State highway" in a parenthetical example of a public grade crossing under the authority and control of more than one public authority.

Order contained in the Final Order within 60 days of service of this Petition. The Director, Southwest Region, OPS may grant an extension of time for compliance with any of the terms of the Compliance Order upon a written request by the Petitioner demonstrating good cause for an extension.

This decision on reconsideration is the final administration action in this proceeding.


Stacey Gerard
Associate Administrator
for Pipeline Safety

for

OCT 14 2005

Date Issued