April 27, 2020

VIA ELECTRONIC MAIL TO: kelcy.warren@energytransfer.com

Mr. Kelcy L. Warren
President and Chief Executive Officer
Energy Transfer, LP
8111 Westchester Drive
Dallas, Texas 75225

Re: CPF No. 4-2017-3002

Dear Mr. Warren:

Enclosed please find the Decision on the Petition for Reconsideration issued in the above-referenced case to your subsidiary, Lake Charles LNG Company, LLC. It grants the relief sought in your Petition and withdraws the finding of violation in Item 2 of the December 2, 2019 Final Order issued in this case. When the terms of the Compliance Order issued with respect to Item 1 of the Final Order are completed, as determined by the Director, Southwest Region, this enforcement action will be closed. Service of the Decision on Reconsideration 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: Ms. Mary McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. Jeff Brightwell, Vice President - LNG Operations, Lake Charles LNG Company, LLC, jeffrey.brightwell@energytransfer.com
Ms. Catherine D. Little, Esq., Troutman Sanders, LLP, catherine.little@troutman.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	)	
Lake Charles LNG Company, LLC, a subsidiary of Energy Transfer, LP,	)	**CPF No. 4-2017-3002**
Respondent.	)	

DECISION ON PETITION FOR RECONSIDERATION

In a December 2, 2019 Final Order, the Pipeline and Hazardous Materials Safety Administration (PHMSA) determined that Lake Charles LNG Company, LLC (Lake Charles LNG or Petitioner) committed two violations of 49 C.F.R. Part 193 following an inspection by the Office of Pipeline Safety (OPS) of a liquefied natural gas (LNG) facility operated by Petitioner.[1] PHMSA assessed a civil penalty of $32,400 for one of the violations and ordered Lake Charles LNG to undertake certain measures to correct the violations. PHMSA also withdrew an allegation that Petitioner had committed a third violation.[2] On December 23, 2019, Lake Charles LNG submitted a Petition for Reconsideration of the Final Order (Petition). The Petition requested that PHMSA reconsider its finding in Item 2 of the Final Order that Petitioner had violated 49 C.F.R. § 193.2635(d) by failing to inspect certain piping at its Lake Charles facility to ensure protection from atmospheric corrosion was being achieved.

Given the particular circumstances of this case, I have determined that OPS should have used means other than an enforcement action alleging a code violation to notify Petitioner how the regulations apply to 300 Series stainless steel piping. Accordingly, I am granting the relief sought in the Petition.

Background

On September 15-16, 2015, pursuant to 49 U.S.C. § 60117, a representative of OPS conducted an on-site pipeline safety inspection of Petitioner's facilities and records in Lake Charles, Louisiana. As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Petitioner, by letter dated February 21, 2017, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). The Notice proposed finding that Lake

[1] *Lake Charles LNG Company, LLC*, Final Order, CPF No. 4-2017-3002 (Dec. 2, 2019) (Final Order).

[2] *Id*.

Charles LNG had committed three violations of 49 C.F.R. Part 193 and proposed assessing a civil penalty of $32,400 for one of the alleged violations. The Notice also proposed ordering Lake Charles LNG to take certain measures to correct the alleged violations.

Lake Charles LNG contested the allegations in the Notice and requested a hearing which was held in Houston, Texas before a Presiding Official from the Office of Chief Counsel. Following the hearing, on December 2, 2019, PHMSA issued a Final Order that, with respect to Notice Item 2, found that Petitioner violated 49 C.F.R. § 193.2635(d) by failing to periodically inspect a portion of the aboveground piping at its Lake Charles facility to ensure the piping is adequately protected from atmospheric corrosion.[3] Specifically, I found that Petitioner's selection and use of stainless steel as the material to resist corrosion did not exempt it from the cited regulation that required atmospheric corrosion inspections every three years.[4]

On December 23, 2019, Lake Charles LNG filed a Petition requesting that PHMSA reconsider its finding in Item 2 of the Final Order that Petitioner violated 49 C.F.R. § 193.2635(d).

Standard of Review

Under 49 C.F.R. § 190.243, a respondent is afforded the right to petition the Associate Administrator for reconsideration of a final order. However, that right is not an appeal or an opportunity to seek a de novo review of the record.[5] It is a venue for presenting the Associate Administrator with information that was not previously available or requesting that any errors in the final order be corrected. Requests for consideration of additional facts or arguments must be supported by a statement of reasons as to why those facts or arguments were not presented prior to the issuance of the final order. Repetitious information or arguments will not be considered.

Analysis

The Final Order determined that while the regulations allow an operator to determine which material it would use to resist and protect against atmospheric corrosion, I found that the ensuing three-year inspection requirement in § 193.2635(d) applied to all pipe and components subject to the atmospheric corrosion protection requirements, including 300 Series stainless steel pipe chosen by Petitioner.[6] In making this determination, I found that the three sections in Part 193 that speak to atmospheric corrosion, §§ 193.2625, 193.2627, and 193.2635(a), needed to be read in a cohesive manner that remains consistent with the purpose and intent of the corrosion control regulations.
I also emphasized that an LNG facility operator has wide latitude in developing the procedures by which its atmospheric corrosion inspections will be conducted. Nothing in the Final Order prohibited Petitioner from determining the appropriate manner of inspection for its particular

[3] Final Order, at 3-6. The Final Order also found that Petitioner violated 49 C.F.R. § 193.2629(a) and assessed a $32,400 civil penalty for this violation which has been paid.

[4] Final Order, at 6.

[5] 49 C.F.R. § 190.243(a)-(d).

[6] Final Order, at 5-6.

facility so long as the procedures account for the presence of piping that is not visually accessible, such as insulated piping. For example, operators that have insulated pipes can establish procedures for visually inspecting these pipes by removing select portions of the insulation or clamps; developing a program whereby visual inspections occur in predetermined critical inspection locations by creating inspection ports; or supplementing the visual inspections with non-destructive methods such as radiographic or ultrasonic testing.[7]

Lake Charles LNG argues in its Petition and throughout this proceeding that it did not believe it was possible that the aboveground piping at its Lake Charles facility could experience any external corrosion because it was composed of stainless steel, not carbon steel. Petitioner asserts that under the code language, it was free to decide for itself whether or not to conduct three-year atmospheric corrosion inspections.[8]

The arguments made in the Petition in this area, however, are largely repetitious. The type of stainless steel used by Petitioner at its Lake Charles facility is Type 304 stainless steel. This austenitic chromium-nickel alloy is the most common grade of the 300 Series stainless steel generally used for piping. As more fully explained in the Final Order, OPS disagreed with Petitioner, citing widely accepted industry practices on the subject of Corrosion Under Insulation (CUI), including section 4.3.3.2 of API Recommended Practice 571 (April 2011) (API RP 571), which establishes that 300 Series stainless steel was not immune from corrosion.[9] OPS noted that this would particularly be true where the operating temperatures fall outside of cryogenic temperatures for certain periods of time, as was documented to have occurred at the Lake Charles facility located in the vicinity of the Gulf of Mexico.

There is no dispute that carbon steel and stainless steel have different risk profiles. Stainless steel has a much greater resistance to corrosion than carbon steel. An operator's selection of stainless steel as a corrosion resistant pipe material is certainly a significant factor that would appropriately influence the development of procedures for the type and extent of atmospheric corrosion inspections that are needed for a given facility or set of operating conditions.[10] Nevertheless, I am not persuaded that the Final Order was erroneous in concluding that OPS met its burden of establishing that the 300 Series stainless steel material selected by Petitioner to protect against corrosion at its Lake Charles facility, while corrosion resistant, was at least potentially susceptible to CUI.

In its Petition, Lake Charles LNG also objected to the Final Order on the grounds that this case was the first instance in which OPS had ever cited an LNG facility operator having stainless steel

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[7] Final Order, at 6.

[8] Petition, at 4.

[9] API Recommended Practice 571 (April 2011) (API RP 571), Section 4.3.3.5(b)-(f). This publication is not incorporated by reference in Part 193 and not subject to enforcement, but is referenced here as indicative of industry consensus standards.

[10] While relatively minimal inspections of stainless steel pipe may be justified under the circumstances, in this case Respondent did not provide any indication that even minimal atmospheric corrosion inspections of any kind were conducted.

pipe for failure to conduct a three-year atmospheric corrosion inspection on that pipe.[11] Petitioner pointed out that OPS had never issued authoritative guidance notifying operators that the atmospheric corrosion inspection requirement applied to stainless steel piping just as it did to carbon steel piping. Petitioner argued that the use of an enforcement action by OPS to do so for the first time was a new interpretation that amounted to an unfair surprise.

Having considered these arguments, I agree that in this instance, given the risk profile variance with stainless steel as compared to conventional carbon steels, OPS could have used means other than an enforcement action alleging a code violation to notify Petitioner regarding how the regulations apply to 300 Series stainless steel piping, such as the use of a Notice of Amendment or Warning Letter, or alternatively, through the issuance of guidance to the industry at large.[12] Accordingly, I find that the relief sought by Petitioner is appropriate in this case. It should be emphasized that this determination is based on the particular circumstances of this case and should not be construed to broadly prohibit OPS from pursuing enforcement actions in other instances in which there is no prior history of enforcement in a given application of a regulation, particularly where public safety concerns indicate a need for enforcement.

RELIEF GRANTED

Based on the information provided in the Petition, a review of the record, and for the reasons stated above, the relief sought in the Petition is granted and the finding of violation in Item 2 of the December 2, 2019 Final Order is withdrawn. The Request to Stay Item 2 of the Compliance Order is dismissed as moot.

This Decision is the final administrative action in this proceeding.

April 27, 2020

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued

[11] Petition, at 9.

[12] For example, OPS could incorporate API RP 571, Section 4.3.3 into Part 193.