

November 6, 2020

VIA ELECTRONIC MAIL TO: gregory.mcilwain@energytransfer.com

Mr. Greg McIlwain
Senior Vice President, Operations
Rose Rock Midstream Operating, LLC
Energy Transfer, LP
1300 Main Street
Houston, Texas 77002

Re: CPF No. 4-2020-5010

Dear Mr. McIlwain:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a reduced civil penalty of \$67,000, and specifies actions that need to be taken by Rose Rock Midstream Operating, LLC, 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 and the terms of the compliance order completed, as determined by the Director, Southwest Region, 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: Ms. Mary McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. Kelcy Warren, Chief Executive Officer, Energy Transfer, LP,
kelcy.warren@energytransfer.com
Mr. Todd Nardozzi, Director – Regulatory Compliance, Energy Transfer, LP,
todd.nardozzi@energytransfer.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)	
)	
Rose Rock Midstream Operating, LLC,)	CPF No. 4-2020-5010
)	
Respondent.)	
)	

FINAL ORDER

From July 23, 2018, through July 19, 2019, 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 Rose Rock Midstream Operating, LLC’s (Rose Rock or Respondent) crude oil pipeline systems in Oklahoma and Kansas. At the time of the inspection, Rose Rock, a subsidiary of SemGroup Corporation, operated the assets covered by this inspection. Energy Transfer, LP (Energy Transfer), acquired SemGroup Corporation in December 2019.¹

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated May 26, 2020, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice), which also included warning items pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Rose Rock had committed five violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$84,200 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations. The warning items required no further action, but warned the operator to correct one of the probable violations or face possible future enforcement action.

After receiving an extension of time to respond, Energy Transfer, on behalf of Rose Rock, responded to the Notice by letter dated July 10, 2020 (Response). The company did not contest the allegations of violation but provided an explanation of its actions and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

¹ Energy Transfer Press Release, Sept. 16, 2019, *available at* <https://ir.energytransfer.com/news-releases/news-release-details/energy-transfer-acquire-semgroup-5-billion-transaction> (last accessed Oct. 16, 2020).

FINDINGS OF VIOLATION

In its Response, Rose Rock did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.406(a), which states:

§ 195.406 Maximum operating pressure.

(a) Except for surge pressures and other variations from normal operations no operator may operate a pipeline at a pressure that exceeds any of the following:

(1) The internal design pressure of the pipe determined in accordance with §195.106. However, for steel pipe in pipelines being converted under §195.5, if one or more factors of the design formula (§195.106) are unknown, one of the following pressures is to be used as design pressure:

(i) Eighty percent of the first test pressure that produces yield under section N5.0 of Appendix N of ASME/ANSI B31.8 (incorporated by reference, *see* §195.3), reduced by the appropriate factors in §§195.106(a) and (e); or

(ii) If the pipe is 12³/₄ inch (324 mm) or less outside diameter and is not tested to yield under this paragraph, 200 p.s.i. (1379 kPa) gage.

(2) The design pressure of any other component of the pipeline.

(3) Eighty percent of the test pressure for any part of the pipeline which has been pressure tested under subpart E of this part.

(4) Eighty percent of the factory test pressure or of the prototype test pressure for any individually installed component which is excepted from testing under §195.305.

(5) For pipelines under §195.302(b)(1) and (b)(2)(i), that have not been pressure tested under subpart E of this part, 80 percent of the test pressure or highest operating pressure to which the pipeline was subjected for 4 or more continuous hours that can be demonstrated by recording charts or logs made at the time the test or operations were conducted.

The Notice alleged that Respondent violated 49 C.F.R. § 195.406(a) by failing to establish a maximum operating pressure (MOP) for its pipeline segments. Specifically, the Notice alleged that Rose Rock failed to maintain records of pressure tests or operational pressures for the Riverside to Hanston pipeline segment and the Hanston to Hudson pipeline segment. Therefore, Rose Rock failed to demonstrate that MOP was properly established pursuant to 49 C.F.R. § 195.406(a).

Respondent did not contest this allegation of violation. Accordingly, based upon a review of the evidence, I find that Respondent violated 49 C.F.R. § 195.406(a) by failing to establish the MOP on two pipeline segments.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b), which states:

§ 195.432 Inspection of in-service breakout tanks.

(a) ...

(b) Each operator must inspect the physical integrity of in-service atmospheric and low-pressure steel above-ground breakout tanks according to [American Petroleum Institute (API)] Std 653 (except section 6.4.3, *Alternative Internal Inspection Interval*) (incorporated by reference, see §195.3). However, if structural conditions prevent access to the tank bottom, its integrity may be assessed according to a plan included in the operations and maintenance manual under §195.402(c)(3). The risk-based internal inspection procedures in API Std 653, section 6.4.3 cannot be used to determine the internal inspection interval.

The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b) by failing to complete an external in-service breakout tank (BOT) inspection in accordance with API Std 653, Section 6.3, *Inspections from the Outside of the Tank*, which requires external inspection of in-service BOTs every five years. Specifically, the Notice alleged that Rose Rock exceeded the five-year inspection requirement for two BOTs at the Kansas Tank Farm, and 13 BOTs at the Cushing Tank Farm.

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. § 195.432(b) by failing to inspect in-service BOTs in accordance with API Std 653.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b), as quoted above, by failing to complete an initial internal out-of-service BOT inspection on three tanks in accordance with API 653, Section 6.4, *Internal Inspection*, which requires an inspection within the first 10 years of operation. Specifically, the Notice alleged that Rose Rock failed to take Tanks #2524 (in-service 3/1/2009), #2525 (in-service 1/31/2009), and #3505 (in-service 6/24/2009) out of service to perform the initial internal out-of-service inspections within the first 10 years of operation.

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. § 195.432(b) by failing to complete an initial internal out-of-service BOT inspection on three tanks within the first 10 years of operation.

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 violation, up to a maximum of \$2,000,000 for any related series of violations.² 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; 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 \$84,200 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$40,400 for Respondent's violation of 49 C.F.R. § 195.406(a), for failing to establish the MOP for two pipeline segments. Rose Rock neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. In this case, Respondent failed to comply with a requirement that was clearly applicable and did not present a reasonable justification for its noncompliance. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$40,400 for violation of 49 C.F.R. § 195.406(a).

Item 3: The Notice proposed a civil penalty of \$15,200 for Respondent's violation of 49 C.F.R. § 195.432(b), for failing to complete an external in-service BOT inspection on two tanks within the five-year requirement. Rose Rock neither contested the allegation nor presented any evidence or argument justifying a reduction in the proposed penalty. Respondent failed to comply with an applicable requirement, but offered a reasonable justification for its non-compliance and was therefore granted a "Good Faith" credit in the Notice. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$15,200 for violation of 49 C.F.R. § 195.432.

Item 4: The Notice proposed a civil penalty of \$28,600 for Respondent's violation of 49 C.F.R. § 195.432(b), for failing to complete an initial out-of-service BOT inspections on three tanks within the first 10 years of operation, as required. Respondent did not contest the allegation of violation, but requested a reduction in the proposed penalty amount based on reconsideration of the "Good Faith" penalty assessment criterion found in Part E8 of the Violation Report for this item.³ Respondent failed to comply with an applicable requirement, but offered a reasonable justification for its non-compliance. Specifically, Rose Rock stated it reasonably believed it had to perform the 10-year initial out-of-service BOT internal inspections within the *calendar* year of the 10th year of service, not on or prior to the calendar date 10 years after placing the BOT in service.⁴ Rose Rock further noted that PHMSA had provided a "Good Faith" credit for an identical justification for non-compliance concerning Item 3. In her Region Recommendation,

² These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

³ Pipeline Safety Violation Report (Violation Report), (May 26, 2020) (on file with PHMSA).

⁴ Each of the BOTs that Rose Rock failed to inspect by the regulatory deadline were scheduled to be removed from service within calendar year 2019 prior to PHMSA's inspection. Response, at 3.

the Director agreed that a “Good Faith” credit should also be applied to Item 4.⁵ Because Respondent had already taken concrete action toward inspecting the BOT prior to PHMSA’s inspection, I approve the Director’s decision. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced civil penalty of \$11,400 for violation of 49 C.F.R. § 195.432(b).

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 **\$67,000**.

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 \$67,000 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 the violation of 49 C.F.R. § 195.406(a). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.406(a) (**Item 1**), Respondent must maintain a 20 percent pressure reduction for the segments identified below until such time Rose Rock provides records to PHMSA that conform to the requirements of § 195.310 and demonstrate that the two segments identified below have been pressure tested in accordance with Subpart E of 49 CFR 195.
 - Riverside to Hanston
 - Hanston to Hudson

⁵ Region Recommendation, at 4.

Respondent must provide pressure test records to the Director no later than 180 days from receipt of the Final Order.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

It is requested (not mandated) that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Mary L. McDaniel, P.E., Director, Southwest Region, Pipeline and Hazardous Materials Safety Administration. It is requested that these costs be reported in two categories: (1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and (2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (49 C.F.R. § 190.223), for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

WARNING ITEMS

With respect to Items 2 and 5, the Notice alleged probable violations of Part 195, but identified them as warning items pursuant to § 190.205. The warnings were for:

49 C.F.R. § 195.420(b) (**Item 2**) — Respondent's alleged failure to inspect, at intervals not exceeding 7 ½ months but at least twice each calendar year, each mainline valve to determine that it is functioning properly; and

49 C.F.R. § 195.452(f)(8) (**Item 5**) — Respondent's alleged failure to perform its review of integrity assessment results and information analysis by a person qualified to evaluate the results and information, as required.

If OPS finds a violation of any of these items 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.

November 6, 2020

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued