



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

1200 New Jersey Avenue, SE  
Washington, DC 20590

February 3, 2023

**VIA ELECTRONIC MAIL TO: [cynthia.hansen@enbridge.com](mailto:cynthia.hansen@enbridge.com)**

Ms. Cynthia L. Hansen  
Executive Vice President and President  
Gas Transmission and Midstream  
Enbridge Inc.  
915 North Eldridge Parkway  
Houston, Texas 77079

**Re: CPF No. 4-2021-034-NOPV**

Dear Ms. Hansen:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$640,300, and specifies actions that need to be taken by Texas Eastern Transmission, LP 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 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: 2023.02.03  
13:30:13 -05'00'

Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

Enclosure (Final Order)

cc: Mr. Bryan Lethcoe, Director, Southwest Region, Office of Pipeline Safety, PHMSA  
Ms. Catherine Little, Esq., Counsel for Enbridge Inc., Bracewell, LLP,  
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CONFIRMATION OF RECEIPT REQUESTED

**U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, D.C. 20590**

	)	)	)	)	)
<b>In the Matter of</b>	)	)	)	)	)
<b>Texas Eastern Transmission, LP, a subsidiary of Enbridge Inc.,</b>	)	)	)	)	<b>CPF No. 4-2021-034-NOPV</b>
<b>Respondent.</b>	)	)	)	)	)

**FINAL ORDER**

Following two reportable incidents that occurred on Texas Eastern Transmission, LP’s<sup>1</sup> (TETLP or Respondent) pipeline facilities located near Danville and Hillsboro, Kentucky in August 2019 and May 2020, respectively, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code (U.S.C.), initiated an investigation and inspection of TETLP’s facilities and records.

The first incident occurred on August 1, 2019, at approximately 1:23 am Eastern Daylight Time (EDT) on TETLP’s 30-inch diameter Line 15 near Danville, Kentucky. Line 15 transports natural gas from the Danville Compressor Station to the Tompkinsville Compressor Station in Kentucky (Danville incident). The line failed at mile post (MP) 423.3, resulting in the release of approximately 66 million cubic feet (MMCF) of natural gas. The release of natural gas ignited and resulted in the death of one person and the hospitalization of six others. First responders evacuated approximately 75 members of the public. The resulting fire destroyed multiple structures and burned vegetation over approximately 30 acres of land. TETLP estimated damages to exceed \$19 million. On August 8, 2019, PHMSA issued a Corrective Action Order (CAO) that required TETLP to take corrective actions including a root cause analysis of the failure.<sup>2</sup>

Approximately nine months after the Danville incident, TETLP experienced another incident on one of the pipelines subject to the CAO. On May 4, 2020, at approximately 4:36 pm EDT

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<sup>1</sup> TETLP is a wholly-owned subsidiary of Spectra Energy Partners, LP, which is, in turn, a wholly-owned subsidiary of Enbridge Inc. Enbridge Inc. website, National Gas Transmission and Midstream, available at <https://www.enbridge.com/About-Us/Natural-Gas-Transmission-and-Midstream.aspx> (last accessed January 17, 2023).

<sup>2</sup> *In the Matter of Texas Eastern Transmission, LP*, Corrective Action Order, CPF No. 2-2019-1002H (Aug. 8, 2019).

TETLP experienced a second incident on its 30-inch diameter Line 10 located near Hillsboro in Fleming County, Kentucky (Hillsboro incident). Line 10, which transports natural gas from Wheelersburg Compressor Station to Owingsville Compressor Station in Kentucky, failed at MP 509.898. The failure resulted in a release of approximately 52 MMCF of natural gas, which subsequently ignited, burning a heavily wooded area on a hillside.<sup>3</sup> TETLP estimated damages for this incident at approximately \$12 million. The CAO was amended on two occasions and the amendments included preliminary findings that the cause of the girth weld failures appeared to be due to land movement and that the issue of land movement was potentially system-wide.<sup>4</sup>

As part of its investigation of these incidents, OPS reviewed the operating history of the parallel pipelines running along TETLP's right-of-way and inspected its operation and maintenance procedures for selected locations related to Lines 10, 15, and 25 in Mississippi, Alabama, Tennessee, Kentucky, Ohio, and Pennsylvania.

As a result of the inspections and investigations, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated December 21, 2021, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that TETLP had committed two violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$640,300 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct one of the alleged violations.

TETLP responded to the Notice by letter dated February 21, 2022 (Response), as supplemented by material submitted on May 27, 2022 (Pre-hearing submission). Respondent contested one of the allegations and requested an informal hearing. A hearing was subsequently held on June 8, 2022, in Houston, Texas before a Presiding Official with the PHMSA Office of Chief Counsel. At the hearing, Respondent was represented by counsel. After the hearing, Respondent provided additional written material on July 18, 2022 (Post-hearing submission). On August 18, 2022, the Director provided a region recommendation (Recommendation). On September 1, 2022, Respondent submitted a Reply to the region recommendation (Reply).

### **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. § 192.613, which states:

**§ 192.613 Continuing surveillance.**

(a) Each operator shall have a procedure for continuing surveillance of its facilities to determine and take appropriate action concerning changes in class location,

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<sup>3</sup> PHMSA Accident Report, Form PHMSA F 7100.2 - 20200057-33836, dated June 6, 2020.

<sup>4</sup> *In the Matter of Texas Eastern Transmission, LP*, Second Amended Corrective Action Order, CPF No. 2-2019-1002H (June 1, 2020), at 5.

failures, leakage history, corrosion, substantial changes in cathodic protection requirements, and other unusual operating and maintenance conditions.

(b) If a segment of pipeline is determined to be in unsatisfactory condition but no immediate hazard exists, the operator shall initiate a program to recondition or phase out the segment involved, or, if the segment cannot be reconditioned or phased out, reduce the maximum allowable operating pressure in accordance with § 192.619 (a) and (b).

The Notice alleged that Respondent violated 49 C.F.R. § 192.613 by failing to initiate a program to recondition, phase out, or reduce the maximum allowable operating pressure for segments of its pipeline systems subject to an unsatisfactory condition. Specifically, the Notice alleged that TETLP did not initiate such a program to address the adverse effects of geohazards.<sup>5</sup>

At the hearing, OPS laid out the relevant operating history of the pipeline system as it involved geohazards as follows:

- On July 3, 1990, in Gaysport, Ohio, TETLP reported that landslide movement caused its 24-inch natural gas pipeline to fail. TETLP indicated that the pipeline was located in a major landslide area that encompassed most of the pipeline right-of-way.
- On May 6, 1998, in Beallsville, Ohio, TETLP reported that forces associated with soil slippage along the hillside caused 30-inch natural gas pipeline to rupture at a girth weld.
- On December 8, 2015, in Trousdale County, Tennessee, TETLP reported that a slow natural gas leak occurred on 30-inch Line 10 (MP 307.70) resulting from a crack in a girth weld caused by a lack of penetration weld defect that was subject to secondary loading from geohazards.
- On January 21, 2019, in Noble County, Ohio, TETLP's Line 10 failed at a girth weld, causing two injuries and destroying four buildings. PHMSA determined that ground movement overstressed a girth weld and caused the failure.
- On May 4, 2020, near Hillsboro, Kentucky, TETLP's Line 10 failed again, at a girth weld, causing an explosion and fire. PHMSA, the National Transportation Safety Board (NTSB), and TETLP determined that ground movement that overstressed a girth weld caused the failure.<sup>6</sup>

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<sup>5</sup> Notice, at 3.

<sup>6</sup> Recommendation, at 3-4.

OPS noted that it had published an Advisory Bulletin in the Federal Register on May 2, 2019, concerning geohazards.<sup>7</sup> The Advisory Bulletin discussed the need for comprehensive surveillance and monitoring procedures to address geohazards including:

- Identification of areas surrounding the pipeline that may be prone to large earth movement, including but not limited to slope instability, subsidence, frost heave, soil settlement, erosion, earthquakes, and other dynamic geologic conditions that may pose a safety risk;
- Utilization of geotechnical engineers during the design, construction, and ongoing operations of a pipeline system to ensure that sufficient information is available to avoid or minimize the impact of earth movement on the integrity of the pipeline system;
- Development of design, construction, and monitoring plans and procedures for each identified location, based on the site-specific hazards identified; and
- Monitoring plans that may include identifying geodetic monitoring points (i.e., survey bench marks) to track potential ground movement; conducting stress/strain analysis utilizing in-line inspection tools equipped with Inertia Mapping Unit technology and High Resolution Deformation in-line inspection for pipe bending and denting from movement; and reducing the operating pressure temporarily or shutting-in the affected pipeline segment completely.

In its Response and at the hearing, TETLP contested the allegation in the Notice, contending that PHMSA's allegation was "divorced from the law and the facts."<sup>8</sup> Respondent stated that "PHMSA misapplies the regulation, mischaracterizes the record, and ignores the existence of TETLP's geohazard procedures and the extensive work being done to address geohazards while incorporating lessons learned in the field and in the industry."<sup>9</sup> Respondent argued that:

49 C.F.R. § 192.613 is a performance-based regulation that requires operators to "have a procedure for continuing surveillance" for certain enumerated conditions including in relevant part, "other unusual operating and maintenance conditions." There is no reference to the requisite specificity or comprehensiveness of the "procedure." There is also no specific reference to geohazards or landslides, although TETLP agrees that they are captured by "other unusual operating and maintenance conditions."<sup>10</sup>

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<sup>7</sup> Advisory Bulletin, *Pipeline Safety: Potential for Damage to Pipeline Facilities Caused by Earth Movement and Other Geological Hazards*, 84 Fed. Reg. at 18920-21 (May 2, 2019).

<sup>8</sup> Post-hearing submission, at 2.

<sup>9</sup> *Id.*

<sup>10</sup> Post-hearing submission, at 3.

With respect to the alleged inadequacy of its procedures, Respondent argued that the lack of specifics prescribing the content of an operator's procedures for continuing surveillance in §192.613 should mean that its failure to initiate a program to recondition, phase out, or reduce the maximum allowable operating pressure for segments of its pipeline systems subject to an unsatisfactory condition was permissible under the regulations. In other words, Respondent argued that if its procedures met the applicable requirements and did not trigger the initiation of such a program, its failure to initiate and conduct the program could not constitute non-compliance regardless of the series of operating failures that were occurring.

TETLP argued that its pre-May 2020 procedures did meet the minimum standards in the regulation and provided fourteen of its Standard Operating Procedures (SOPs) that TETLP stated covered geohazard management for its pipeline systems. Respondent explained that it was also taking steps in its field work in the months prior to the Hillsboro incident to address geohazards. TETLP stated that it implemented revised procedures for geohazards in May 2020 that had substantially more specificity and explained that it had been developing these revised procedures (which it called "interim" procedures) for geohazards prior to the Hillsboro incident, but they were not provided to OPS during the inspection because OPS did not ask for them.<sup>11</sup>

Finally, Respondent argued that if the failure incidents involving geohazards constituted a basis for the need to initiate a remedial program, it would mean that PHMSA was applying a strict liability standard in this case. Respondent stated "The existence of an incident does not infer or equate to the absence of a program or actions in the field to address certain conditions. Neither the Pipeline Safety Act nor PHMSA regulations provide for strict liability because an incident occurred."<sup>12</sup>

Having carefully considered Respondent's arguments, I find them to be unpersuasive. With regard to the fourteen procedures that were in effect prior to the May 2020 revisions, they were not focused on geohazards and addressed several operational topics, such as integrity management, pipeline patrolling, direct assessment, in-line tool inspections, mining, right-of-way maintenance, and encroachment. Some of these procedures either applied only to High Consequence Areas, only to long-mining areas, or were general patrolling procedures not specifically covering continuing surveillance of areas prone to geohazards.

Notably, the Director reviewed all fourteen of these procedures and determined that they did not provide Respondent's personnel with effective guidance for monitoring and addressing the threat of geohazards causing an unsatisfactory condition on its pipeline. With respect to what Respondent referred to as the "most pertinent" five procedures, the Director explained that:

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<sup>11</sup> Post-hearing submission, at 8.

<sup>12</sup> Post-hearing submission, at 12.



While SOP 1-6060, “Mining Subsidence and Soil Slippage” did mention geohazards, this procedure is only applicable to areas affected by longwall mining yet dozens of other geohazard sites on TETLP’s system are also not in longwall mining areas.

TETLP also cited two sentences from SOP 1-5010, “Right-of-Way Maintenance,” only one of which refers to geohazards. This single sentence refers to noting evidence of “erosion, scour, subsidence, or slides,” during right-of-way patrols. A visual observation, however, cannot detect all types of hazardous land movement, nor does this procedure require any follow-up or mitigative actions for land movement such as scour, subsidence, or landslides.

TETLP also cited one sentence from SOP 1-6040, “Aerial Pipeline Patrol,” in support of its argument that this was part of its geohazard procedures. It required pilots to observe and document “soil slippage” and “landslide areas” once per year. However, in practice, this procedure failed to identify geohazards. For example, TETLP personnel were aware of potential land movement prior to both incidents through an aerial patrol report but “did not feel [the slope] was enough of a concern to call Central Region Operations integrity engineers.” TETLP did not have technical criteria to determine when to report land movements or geohazards because there were no procedures with such criteria. Nor did TETLP have specific training for patrolling pilots to identify the preliminary signs of land movement or precursors to a landslide. Absent these critical geohazard procedures, TETLP personnel were forced to make arbitrary, uniformed decisions when reporting land movement and geohazards.

TETLP also cited SOP 1-6010, “Pipeline Patrol and Leakage Survey Frequency Criteria,” because it references “scour, seismic activity, soil slides, [and] subsidence,” once. One reference to geohazards does render this procedure a geohazard procedure. As is the case with all fourteen SOPs, this was a general operating procedure not intended to monitor and manage geohazards.

TETLP also cites its Integrity Management Program - Threat Response Guidance – Section 490 (TRDG 490), as evidence it had existing geohazard procedures. However, this procedure only applies to High Consequence Areas (HCAs), which account for only eight percent of TETLP’s pipeline facilities. Most of the identified geohazards sites were not in HCAs, and the Fleming and Noble County incidents did not occur in HCAs. A procedure



addressing geohazards only in HCAs does not meet the continuing surveillance requirements of § 192.613.<sup>13</sup>

The other nine SOPs are general operating procedures and do not mention geohazards. TETLP failed to identify any portion of these procedures that are relevant to managing and monitoring geohazards.

In its response and at the hearing, Respondent discussed at length its efforts to work with leading technical experts and Enbridge personnel, leading a joint industry project, and its intention to further develop revised procedures in the months prior to the adoption of the revised procedures in May of 2020.<sup>14</sup> Respondent also discussed at length various field activities it had voluntarily undertaken and how it was incorporating lessons learned.<sup>15</sup> While Respondent certainly deserves credit for these efforts, this information does not overcome the absence of effective procedures actually being in place for geohazards along the subject pipelines for purposes of determining compliance.

This conclusion is also evidenced by the NTSB report issued on May 31, 2022 which states:

In 2018, Enbridge identified the rupture location as a potential geohazard. They took action to analyze the active landslide and started taking steps to mitigate the hazard before the rupture. However, Enbridge's pre-rupture analysis estimated a girth weld tensile strain demand that was at least three times lower than post-rupture analysis later indicated. The post-rupture analysis demonstrated that in April 2018 or earlier Enbridge could have foreseen the likelihood that the tensile strain demand would exceed the strain capacity due to documented land movement at the site.<sup>16</sup>

Moreover, even if adequate procedures has been in effect, as of the time of the May 2020 failure, the actual failure incident history of the pipelines, including the analysis of prior failures, should have played a central role in Respondent's decisions concerning the need to initiate a program to recondition, phase out, or reduce the maximum allowable operating pressure for segments of its pipeline systems subject to an unsatisfactory condition as required by the regulations. Three major pipeline ruptures involving geohazards in a relatively short time span cannot be considered to be a satisfactory condition for a pipeline that transports hazardous products. Contrary to Respondent's argument, this is not a matter of strict liability. The mere fact that the pipeline had one or more failures and released natural gas does not in-and-of itself constitute a violation. However, when a regulation such as §192.613 that requires certain actions in the presence of an

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<sup>13</sup> Recommendation, at 7-8.

<sup>14</sup> Post-hearing submission, at 7-9.

<sup>15</sup> Post-hearing submission, at 10.

<sup>16</sup> NTSB, Accident Report PIR-22/01, *Enbridge Inc. Natural Gas Pipeline Rupture, Hillsboro, Kentucky, May 4, 2020* (May 31, 2022), <https://www.nts.gov/investigations/AccidentReports/Reports/PIR2201.pdf> (NTSB Report).

unsatisfactory condition (such as a series of failures that involve similar causes) is allegedly violated, the fact that the failures occurred is of course a relevant fact. Therefore, nothing in this Order should be construed as the application of a strict liability standard.

With regard to TETLP's argument that it was developing "interim" procedures with substantially more specificity on geohazards, it must be recognized that only one set of procedures is in effect at any one time and the relevant procedures for purposes of determining compliance were the ones in place prior to the May 2020 revisions. For a revised procedure to be operative, it must be finalized by the appropriate company official, have an effective date, and formally replace the old procedure in the operating and maintenance manual of procedures so that all personnel know to follow it. That did not occur here. Thus, even if Respondent had provided the "interim" procedures that were under development prior to the Hillsboro incident, they would not have negated the allegation.

Finally, it should be noted that if PHMSA were to adopt Respondent's position that the application of its procedures such as they existed did not call for the initiation of a remedial program under §192.613 and thus were effectively exculpatory, it would have the perverse effect of incentivizing operators to have inordinately sparse procedures that lacked appropriate criteria and steps for taking appropriate action to address unsatisfactory conditions. Vague procedures that lack the specificity needed to accomplish the purpose of the underlying regulations can impede an operator from taking needed action even when repeated failure incidents manifestly indicate such a need. This would be entirely at odds with the purpose and intent of the Pipeline Safety Act and the Part 192 regulations issued thereunder.

Respondent did not demonstrate that it had initiated a program to recondition, phase out, or reduce the maximum allowable operating pressure for segments of its pipeline systems subject to an unsatisfactory condition prior to the issuance of the Notice as required by the plain language of §192.613. Accordingly, after considering all of the evidence and the legal issues presented, I find that a preponderance of the evidence shows that Respondent violated 49 C.F.R. § 192.613 by failing to initiate a program to recondition, phase out, or reduce the maximum allowable operating pressure for segments of its pipeline systems subject to an unsatisfactory condition, specifically the adverse effects of geohazards.

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 192.705(a), which states:

**§ 192.705 Transmission lines: Patrolling.**

(a) Each operator shall have a patrol program to observe surface conditions on and adjacent to the transmission line right-of-way for indications of leaks, construction activity, and other factors affecting safety and operation.

The Notice alleged that Respondent violated 49 C.F.R. § 192.705(a) by failing to patrol in order to observe the surface conditions on and adjacent to its transmission line rights-of-way for indications of leaks, construction activity, and other factors affecting safety and operation. Specifically, the Notice alleged that TETLP failed to maintain its rights-of-way to allow for the

observation of surface conditions on and adjacent to the transmission line rights-of-way when viewed via aerial patrols.

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. § 192.705(a) by failing to patrol in order to observe the surface conditions on and adjacent to its transmission line rights-of-way for indications of leaks, construction activity, and other factors affecting safety and 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 the violation, up to a maximum of \$2,000,000 for any related series of violations.<sup>17</sup>

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 \$640,300 for the violations cited above.

**Item 1:** The Notice proposed a civil penalty of \$552,900 for Respondent's violation of 49 C.F.R. § 192.613, for failing to initiate a program to recondition, phase out, or reduce the maximum allowable operating pressure for segments of its pipeline systems subject to an unsatisfactory condition.

Respondent argued that the proposed civil penalty amount in the Notice should be reduced or eliminated. With respect to the nature, circumstances, gravity, and culpability factors, one of Respondent's witnesses maintained that there was no causal link between the alleged violation and the Hillsboro incident in Fleming County, Kentucky.<sup>18</sup>

As discussed during the hearing, however, TETLP determined there was an increase in strain demand at the Fleming County site, a known landslide location in September 2019 based on June 2019 IMU strain data, yet TETLP concluded that urgent action was not required and opted to

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<sup>17</sup> These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223 for adjusted amounts.

<sup>18</sup> Post-hearing submission, at 14.

wait for warmer weather to address the issue.<sup>19</sup> While TETLP was waiting to take action, it experienced the Hillsboro incident due to geohazards on May 4, 2020, at the very location previously identified as unsatisfactory in September 2019. As OPS pointed out, this second pipeline failure that occurred is expressly the risk § 192.613 is designed to prevent.

As to good faith, Respondent argued that the Company was undertaking good faith efforts to comply with the minimal performance-based regulation, in the absence of express regulatory requirements, prior enforcement, and industry standards on geohazard management. Notably, the NTSB identified the probable cause of the Hillsboro incident as TETLP's "analysis of an active landslide that did not fully address uncertainties associated with pipeline defects, landslide movement, and corresponding pipeline response."<sup>20</sup> Such a finding is consistent with the culpability level reflected in the proposed penalty amount and the circumstances do not justify a good faith credit. It should also be noted that none of the penalty consideration factors reflected in the proposed civil penalty amount in the Notice reflected any heightened level of egregiousness or deliberate decision not to comply. Regarding "other matters as justice may require," TETLP cited the work it did with experts to address its programs and procedures, to implement those changes in the field, and leading the joint industry program to establish an industry standard to management geohazards. These efforts, however, are not circumstances beyond the operator's control that prevented compliance with this important regulation and do not implicate this factor. I find that the record supports the civil penalty amount proposed in the Notice. Respondent presented no information that would warrant a reduction in the civil penalty proposed in the Notice for this item. Based upon the foregoing, I assess Respondent a civil penalty of \$552,900 for violation of 49 C.F.R. § 192.613.

**Item 2:** The Notice proposed a civil penalty of \$87,400 for Respondent's violation of 49 C.F.R. § 192.705(a), for failing to patrol in order to observe the surface conditions on and adjacent to its transmission line rights-of-way for indications of leaks, construction activity, and other factors affecting safety and operation. With regard to the nature, circumstances, and gravity of this violation, observing surface conditions to address any potential right-of-way encroachments is a key part of safely operating a pipeline. With respect to the culpability and good faith factors, the Notice did not reflect any heightened level of egregiousness or deliberate decision not to comply and I find that the record supports the civil penalty amount proposed in the Notice. Respondent presented no information that would warrant a reduction in the civil penalty proposed in the Notice for this item. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$87,400 for violation of 49 C.F.R. § 192.705.

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 **\$640,300**.

Payment of the civil penalty must be made within 20 days after receipt of this Final Order. 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.

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<sup>19</sup> Transcript, at 62-63.

<sup>20</sup> NTSB Report, at 6.

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 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 2 in the Notice for violation of 49 C.F.R. § 192.705(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.

With regard to the violation of §192.705(a) (Item 2), Respondent argued the compliance terms should be withdrawn/modified. [Summarize and address Respondent's argument.]

For the above reasons, the Compliance Order is not withdrawn/modified as set forth below.

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 § 192.705(a) (**Item 2**) pertaining to TETLP's failure to patrol in order to observe the surface conditions on and adjacent to its transmission line rights-of-way for indications of leaks, construction activities, and other factors affecting safety and operation, TETLP must:

(a) Review right-of-way maintenance programs, to include personnel training across the TETLP system, to ensure surface conditions are maintained in a manner appropriate for observations during patrols. The review must examine instances that may have obstructed personnel in past maintenance efforts; and

(b) Develop and implement a program to identify and address locations of the TETLP system that impede personnel from observing the surface conditions on and adjacent to the right-of-way for indications of ground movement, indications of leaks, or other factors that may affect the safe operation of the pipeline. The program must define timeframes to complete all planned implementation.

2. TETLP must submit the review and written program required by this Compliance

Order to Bryan Lethcoe, Director, Southwest Region, Pipeline and Hazardous Materials Safety Administration within 45 days of receipt of this 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.

PHMSA requests that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. 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 (*see* 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.

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, 2<sup>nd</sup> 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 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.

**ALAN KRAMER**  
**MAYBERRY**

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Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

February 3, 2023

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Date Issued