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

1200 New Jersey Avenue, SE
Washington, DC 20590

September 19, 2022

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

Mr. Greg McIlwain
Executive Vice President, Operations
Energy Transfer Company
1300 Main Street
Houston, Texas 77002

Re: CPF No. 4-2022-010-NOPV

Dear Mr. McIlwain:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws two of the allegations of violation, makes other findings of violation, and assesses a civil penalty of $57,700. The penalty payment terms are set forth in the Final Order. It further finds that Energy Transfer Company has completed some of the actions specified in the Notice of Probable Violation to comply with the pipeline safety regulations. When the civil penalty has been paid and the remaining terms of the compliance order have been 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: 2022.09.15 14:59:25 -04'00'

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Bryan Lethcoe, Director, Southwest Region, Office of Pipeline Safety
Mr. Todd Nardozzi, Director, Regulatory Compliance, Energy Transfer Company, todd.nardozzi@energytransfer.com

Mr. Eric Amundsen, Senior Vice President, Operations, Energy Transfer Company, eric.amundsen@energytransfer.com
Mr. Chris Lason, Vice President – Asset Integrity, Energy Transfer Company, chris.lason@energytransfer.com
Mr. Mark Milliken, Vice President, Technical Services, Energy Transfer Company, mark.milliken@energytransfer.com
Ms. Heidi Slinkard, Chief Counsel, Energy Transfer Company, heidi.slinkard@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	)	
Energy Transfer Company,	)	**CPF No. 4-2022-010-NOPV**
Respondent.	)	

FINAL ORDER

From March 1, 2021, through October 20, 2021, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), inspected Energy Transfer Company's (ETC or Respondent) Lone Star NGL North Pipeline System located in New Mexico and Texas. ETC operates approximately 5,500 miles of NGL pipelines with an aggregate transportation capacity of approximately 3 million barrels per day.[1]

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated February 9, 2022, 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 ETC had committed four violations of 49 C.F.R. part 195, proposed assessing a civil penalty of $57,700 for the alleged violations, and proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice also included an additional two warning items pursuant to 49 C.F.R. § 190.205, which warned the operator to correct the probable violations or face possible future enforcement action.

ETC responded to the Notice by letter dated March 11, 2022 (Response). Respondent contested several of the allegations, offered additional information in response to the Notice, and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

[1] *Business Overviews*, ENERGY TRANSFER, *available at* https://energytransfer.com/natural-gas-liquids/ (last visited August 25, 2022).

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.262(d), which states:

> **§ 195.262 Pumping equipment.**
> (a) . . . .
> (d) Except for offshore pipelines, pumping equipment must be installed on property that is under the control of the operator and at least 15.2 m (50 ft) from the boundary of the pump station.

The Notice alleged that Respondent violated 49 C.F.R. § 195.262(d) by failing to install pumping equipment at least 15.2 meters (50 feet) from the boundary of the pump station. Specifically, the Notice alleged that ETC's pumping equipment for the Lone Star NGL North Pipeline System at Pump Station 4 (LSX4), located approximately four miles northeast of Morgan, Texas, was not installed 50 feet from the boundary of the pump station, but rather 38 feet.

In its Response, ETC disagreed with PHMSA's allegation, and argued that the pumping equipment is installed 57 feet from the boundary of ETC controlled property. Respondent noted that during the inspection the PHMSA inspector measured the distance from the base of the pumping equipment to the closest chain-link fence surrounding the pumping equipment. However, Respondent provided documentation with its Response showing that ETC controlled property extending beyond the chain-link fence, including up to a second barbed wire fence, for a total distance of 57 feet from the pumping equipment to ETC's property boundary.

In a recommendation for final action submitted pursuant to § 190.209(b)(7), the Director recommended withdrawing the alleged violation of § 195.262(d). Accordingly, after considering all of the evidence, I hereby order that Item 1 of the Notice be withdrawn.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.403(a)(2), which states:

> **§ 195.403 Emergency response training.**
> (a) Each operator shall establish and conduct a continuing training program to instruct emergency response personnel to:
> (1) . . . .
> (2) Know the characteristics and hazards of the hazardous liquids or carbon dioxide transported, including, in case of flammable HVL, flammability of mixtures with air, odorless vapors, and water reactions;

The Notice alleged that Respondent violated 49 C.F.R. § 195.403(a)(2) by failing to conduct a training program to instruct emergency response personnel to know the characteristics and hazards of the hazardous liquids transported. Specifically, the Notice alleged that the drills conducted by ETC for the Northeast Texas Team of the Lone Star NGL North Pipeline System, which transports highly-volatile liquid (HVL), did not simulate emergency situations and specific company response activities required for HVL. It further alleged that Respondent was unable to provide records of emergency response personnel training for the Northeast Texas Team of the Lone Star NGL North Pipeline System.

In its Response, ETC neither admitted nor denied the allegations described in the Notice. Nor did it contest the factual allegations underlying the alleged violation. Rather, ETC asked for a reduction of the proposed civil penalty. Respondent also provided additional information as to the measures it undertook in response to the proposed compliance order (PCO) and asked that it be considered satisfied.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.403(a)(2) by failing to conduct a training program to instruct emergency response personnel to know the characteristics and hazards of the hazardous liquids transported.

ETC's request for a reduction of the civil penalty and its request that the PCO be considered satisfied are discussed in the sections below.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(f)(1), which states:

> **§ 195.452 Pipeline integrity management in high consequence areas.**
> (a) . . . .
> (f) *What are the elements of an integrity management program?* An integrity management program begins with the initial framework. An operator must continually change the program to reflect operating experience, conclusions drawn from results of the integrity assessments, and other maintenance and surveillance data, and evaluation of consequences of a failure on the high consequence area. An operator must include, at minimum, each of the following elements in its written integrity management program:
> (1) A process for identifying which pipeline segments could affect a high consequence area;

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(f)(1) by failing to have and follow a process for identifying which pipeline segments could affect a high consequence area (HCA). Specifically, the Notice alleged that Respondent failed to correctly identify and verify locations and boundaries of pipe segments that could affect HCAs. The Notice further alleged that during inspection of the Lone Star NGL North Pipeline System, PHMSA requested ETC Field Operations personnel identify HCAs in their area of responsibility. Of the five teams of personnel, only one team identified two segments that could affect HCAs in their areas. There were five other segments that could affect HCAs for that team that it did not identify. Furthermore, HCA milage and location records provided by ETC showed a total of 40 segments that could affect HCAs, of which only two were correctly identified by Field Operations personnel.

In its Response, ETC argued that during the inspection it provided PHMSA with a listing of all HCA segments of the Lone Star NGL North Pipeline System. Respondent further stated that, per their integrity management program, it conducts site-specific identification and verification of the pipeline segments that could affect HCAs. ETC asserted that the inability of Field Operation personnel to identify which pipeline segments could affect HCAs in the field without reference to maps or web-based mapping programs does not demonstrate a lack of a process for identifying which pipeline segments could affect an HCA.

In a recommendation for final action submitted pursuant to § 190.209(b)(7), the Director recommended withdrawing the alleged violation of § 195.452(f)(1). Accordingly, after considering all of the evidence, I hereby order that Item 4 of the Notice be withdrawn.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(f)(6) and 195.452(i)(1), which states:

> **§ 195.452 Pipeline integrity management in high consequence areas.**
> (a) . . . .
> (f) *What are the elements of an integrity management program?*....An operator must include, at minimum, each of the following elements in its written integrity management program:
> (1) . . . .
> (6) Identification of preventative and mitigative measures to protect the high consequence area (see paragraph (i) of this section); . . .
> (i) *What preventative and mitigative measures must an operator take to protect the high consequence area?*
> (1) *General requirements*. An operator must take measures to prevent and mitigate the consequences of a pipeline failure that could affect a high consequence area. These measures include conducting a risk analysis of the pipeline segment to identify additional actions to enhance public safety or environmental protection. Such actions may include, but are not limited to, implementing damage prevention best practices, better monitoring of cathodic protection where corrosion is a concern, establishing shorter inspection intervals, installing EFRDs on the pipeline segment, modifying the systems that monitor pressure and detect leaks, providing additional training to personnel on response procedures, conducting drills with local emergency responders and adopting other management controls.

The Notice alleged that Respondent violated 49 C.F.R. §§ 195.452(f)(6) and 195.452(i)(1) by failing to demonstrate its process for identifying threats by conducting segment risk analysis, and by failing to demonstrate the identification, evaluation, and implementation for preventive and mitigative measures (P&MMs) in accordance with the regulations and its Pipeline Integrity Management Plan. Specifically, the Notice alleged that for the 2021 risk analysis and the three Integrity Segment Summaries for the Baden North to LSX2, LSX2 to LSX3, and LSX3 to LSX4 segments of the Lone Star NGL North Pipeline System, ETC failed to list all threat concerns prioritized by risk and failed to develop proposed P&MMs and time frames to address each threat.

In its Response, ETC neither admitted nor denied the allegations described in the Notice. Nor did it contest the factual allegations underlying the alleged violation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. §§ 195.452(f)(6) and 195.452(i)(1) by failing to demonstrate its process for identifying threats by conducting segment risk analysis, and by failing to demonstrate the identification, evaluation, and implementation for P&MMs in accordance with the regulations and its Pipeline Integrity Management Plan.

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.[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; 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 $57,700 for the violation cited above.

Item 2: The Notice proposed a civil penalty of $57,700 for Respondent's violation of 49 C.F.R. § 195.403(a)(2), for failing to conduct a training program to instruct emergency response personnel to know the characteristics and hazards of the hazardous liquids transported.[3] ETC requested that PHMSA reconsider the civil penalty calculation, specifically the factors of "history of prior offenses" and "good faith."

Regarding the history of prior offenses factor, Respondent argued that PHMSA assigned a point value of five to this factor in the civil penalty worksheet, commensurate to a history of two to three prior violations, despite ETC not having a prior violation of § 195.403. I find this argument unpersuasive. History of prior offenses is not the same as repeat offenses. An alleged violation is a repeat violation if, during the five years prior to the issuance of this case's notice letter, the allegation cites the same basic conduct that was cited (even if, in rare circumstances, a different code section was used) as a finding of violation in PHMSA's final action in a previous case (Final Order, Consent Order, or Decision on Petition for Reconsideration) and it occurred after PHMSA's final decision was issued. In this case, repeat offense was calculated as zero in the civil penalty worksheet. History of prior offenses includes all prior violations, not limited to

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

[3] The Notice listed the amount of the proposed civil penalty twice. In the first instance, the Notice listed it as $57,700. In the second instance, the Notice listed it as $57,000. On February 23, 2022, the Director provided to Respondent the civil penalty worksheet in this matter. The worksheet confirms the correct value is $57,700.

violations of § 195.403. Since ETC has had three findings of violation in the past five years (*see* CPF 4-2019-5016), the appropriate point value is five.

Regarding the "good faith" factor, ETC requested a point reduction of up to -10 (negative 10) "in acknowledgement of the comprehensive drills and actual events that required the activation of the emergency response plan for the Northeast Texas Team of the Long Star NGL North Pipeline System." I find this argument unpersuasive. As Respondent acknowledges, these drills and events did not involve HVL products. Per the violation report, good faith is not a gauge of an operator's system-wide approach to regulatory compliance generally, but it instead focuses solely on efforts taken to comply with the requirement that was violated, and considers whether the operator had a reasonable justification for its non-compliance. Respondent did not have, and did not provide, a reasonable justification for non-compliance. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **$57,700** for violation of 49 C.F.R. § 195.403(a)(2).

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. 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 $57,700 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 Items 1, 2, 4, and 5 in the Notice for violations of 49 C.F.R. §§ 195.262(d), 195.403(a)(2), 195.452(f)(1), and 195.452(f)(6) and 195.452(i)(1), respectively. 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. The Director has indicated that Respondent has taken the following actions to address the cited violation for Item 2:

> Respondent, in September and October 2021, conducted HVL-specific training and exercises for the Northwest and Northeast areas of the Lone Star Express pipeline system, and provided documentation of both training sessions and exercises to PHMSA.

Accordingly, I find that compliance has been achieved with respect to Item 2. Therefore, the compliance terms proposed in the Notice for Item 2 is not included in this Order.

For the reasons set forth in the Findings of Violation section above, I have withdrawn Items 1 and 4 of the Notice. Accordingly, I hereby withdraw the compliance terms proposed in the Notice for these Items.

As for the remaining compliance terms, 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:

> With respect to the violation of §§ 195.452(f)(6) and 195.452(i)(1) (**Item 5**), Respondent must amend its procedure to identify when an identified threat is significant enough to warrant implementation. ETC must also review the most recent risk analysis for the Lone Star NGL North Pipeline System, prioritize threats identified, and determine appropriate P&MMs to address those threats. The amended procedure and the P&MM analysis must be provided to PHMSA within **60** days of 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.

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 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.

WARNING ITEMS

With respect to Items 3 and 6, 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. § 195.412(a) **(Item 3) ─** Respondent's alleged failure to inspect the surface conditions on or adjacent to each pipeline right-of-way at intervals not exceeding three weeks, but at least 26 times each calendar year; and

> 49 C.F.R. § 195.452(h)(4)(i)(A) **(Item 6)** — Respondent's alleged failure to temporarily reduce operating pressure until repairs could be made to an immediate repair condition.

ETC presented information in its Response showing that it had taken certain actions to address the cited items. If OPS finds a violation of these provisions 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. 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
Digitally signed by ALAN KRAMER MAYBERRY
Date: 2022.09.15 14:58:56 -04'00'

September 19, 2022

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued