

April 21, 2023

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

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

**Re: CPF No. 4-2022-012-NOPV**

Dear Mr. McIlwain:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws one of the allegations of violation, makes other findings of violation, assesses a civil penalty of \$19,300, and specifies actions that need to be taken by Florida Gas Transmission Company, 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 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 K. Mayberry  
Associate Administrator  
for Pipeline Safety

Enclosure

cc: Mr. Bryan Lethcoe, Director, Southwest Region, Office of Pipeline Safety, PHMSA  
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**

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**In the Matter of** )

**Florida Gas Transmission Company, LLC,** )  
**an affiliate of Energy Transfer, LP,** )

**Respondent.** )  
\_\_\_\_\_ )

**CPF No. 4-2022-012-NOPV**

**FINAL ORDER**

From March 9, 2020, through July 9, 2021, pursuant to 49 U.S.C. § 60117, representatives 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 Florida Gas Transmission Company, LLC (FGT or Respondent) in Texas, Louisiana, Mississippi, Alabama, and Florida.

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated February 22, 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 FGT had violated 49 C.F.R. parts 191 and 192, proposed assessing a civil penalty of \$19,300 for the alleged violations, and proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice also included an additional three 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.

FGT responded to the Notice by letter dated April 8, 2022 (Response). FGT contested several of the allegations, offered additional information in response to the Notice, and requested that the proposed civil penalty be eliminated. Respondent did not request a hearing and therefore has waived its right to one.

**FINDINGS OF VIOLATION**

The Notice alleged that Respondent violated 49 C.F.R. Parts 191 and 192, as follows:

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 191.5, which states:

**§ 191.5(a) Immediate notice of certain incidents.**

(a) At the earliest practicable moment following discovery, but no later than one hour after confirmed discovery, each operator must give notice in accordance with paragraph (b) of this section of each incident as defined in § 191.3.

The Notice alleged that Respondent violated 49 C.F.R. § 191.5(a) by failing to report two incidents to the National Response Center (NRC) at the earliest practicable moment but no later than one hour after confirmed discovery. Specifically, the Notice alleged on March 21, 2019, FGT discovered a reportable incident in Pinecrest, Florida at 5:21 PM, but did not report the incident to NRC until over an hour and a half later at 7:55 PM. The Notice also alleged that on November 7, 2019, FGT discovered a reportable incident in Orlando, Florida at 10:43 PM, but did not report the incident until over 11 hours later, at 10:25 AM on November 8, 2019.

In its Response, FGT argued that based on the circumstances of each incident, the probable violation should be reduced to a warning item and the civil penalty withdrawn. Arguments relating to the proposed civil penalty are addressed below in the Assessment of Penalty.

FGT argued that the proposed violation should be reduced to a warning item because in both instances, the delays “involved efforts by the company to make accurate determinations of whether reporting thresholds had been met prior to making calls to the NRC and not intentional efforts to delay or avoid reporting.”

Section 191.5(a) requires notice of certain incidents “at the earliest practicable moment following discovery, but no later than one hour after confirmed discovery.” Section 191.3 defines “confirmed discovery” as “when it can be reasonably determined, based on information available to the operator at the time a reportable event has occurred, even if only based on a preliminary evaluation.” In prior cases, I have said that when §§ 191.3 and 191.5 are “read together, § 191.5(a) requires operators to report incidents at the earliest practicable moment, but no later than one hour after it can be reasonably determined, based on the information available, that a reportable event has occurred, even if only based on a preliminary evaluation.” *In the Matter of Southern Star Central Gas Pipeline Inc*, Decision on Petition for Reconsideration, 1-2021-037, 2022 WL 1047171 at \*2 (April 4, 2022). Further, as I have noted previously, when PHMSA published its rule to amend this regulation in 2017, “PHMSA explained the purpose of the revised notification requirement is to alert local, state, and federal agencies at the earliest practicable moment so that emergency personnel or investigators can be dispatched quickly. Without this requirement...each operator could have a different methodology that would potentially take hours or days before an operator completed its evaluation and determined that an accident or incident had in fact occurred.” *Id*; see also 82 FR 7972 (Jan 23, 2017).

PHMSA recognizes Respondent’s assertion that the delays were a result of trying to gather additional information in order to make accurate determinations of whether thresholds have been met. However, given the critical importance of immediate reporting, I do not find the delays warrant withdrawing the alleged violation or reducing it to a warning.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R.

§ 191.5(a) by failing to report at earliest practicable moment but no later than one hour after discovery two reportable incidents as required.

**Item 5:** The Notice alleged that Respondent violated 49 C.F.R. § 192.935(b)(2), which states:

**§ 192.935 What additional preventive and mitigative measures must an operator take?**

(a) ...

(b) Third party damage and outside force damage –

(1) ...

(2) *Outside force damage.* If an operator determines that outside force (e.g., earth movement, loading, longitudinal, or lateral forces, seismicity of the area, floods, unstable suspension bridge) is a threat to the integrity of a covered segment, the operator must take measures to minimize the consequences to the covered segment from outside force damage. These measures include increasing the frequency of aerial, foot or other methods of patrols; addition external protection; reducing external stress; relocating the line; or inline inspections with geospatial and deformation tools.

The Notice alleged that Respondent violated 49 C.F.R. § 192.935(b)(2) failing to take measures to minimize the consequences from outside force damage. Specifically, the Notice alleged that FGT's records indicate that though FGT has multiple standard operating practices (SOP) to identify potential preventative and mitigating factors of outside force damage, in practice FGT only conducts right-of-way (ROW) patrols to address the threat of outside forces. The Notice documented that FGT identified five SOPs that address the potential threats of outside force damage, including I.16 River Crossing Inspections and Post Flood Surveys, I.24 Management of Depth of Cover and Evaluation, I.25 Pipeline Spans and Aerial Crossing Inspections, I.26 Mining Subsidence and Soil Slippage, and I.42 Geohazard Management Guidelines. Based on a review of Respondent's records provided during and after the inspection, however, the Notice alleged Respondent only performed ROW patrols to address the threat of outside forces.

In its Response, Respondent contested the alleged violation and explained that ROW patrols are only one of the ways it evaluates outside force damage. FGT argued that PHMSA has not made available clear examples, discussions, or exhibits to support a finding that it is in violation of the regulations. Additionally, FGT stated it has numerous SOPs to address outside force damage which it has either enhanced or developed since receiving the Notice.

The Violation Report for Item 5 lists as supporting evidence FGT's *Pipeline Integrity Management Plan, revised January 20, 2020*. Having reviewed this evidence, I find that Section 9.1 of the IMP describes data sources to be considered for preventative and mitigative measures analysis. For weather-related and outside forces, the data include patrolling, soil stability, seismic activity, flooding data, any available scour depths studies of waterways, and assessment data. I find this evidence does not demonstrate the allegation in the Notice that "only ROW patrols are being carried out to address the threat of outside force" or that "FGT limited its evaluation of outside force damage to [ROW] patrols for identifying potential preventative and

mitigative measures.”<sup>1</sup> Therefore, I find there is insufficient evidence to find FGT in violation of § 192.935(b)(2).

Accordingly, after considering all of the evidence, Item 5 and the corresponding compliance item are hereby withdrawn.

**Item 6:** The Notice alleged that Respondent violated 49 C.F.R. § 192.935(c), which states:

**§ 192.935 What additional preventive and mitigative measures must an operator take?**

(a) ...

(c) *Automatic shut-off valves (ASV) or Remote control valves (RCV)*. If an operator determines, based on a risk analysis, that an ASV or RCV would be an efficient means of adding protection to a high consequence area in the event of a gas release, an operator must install the ASV or RCV. In making that determination, an operator must, at least, consider the following factors – swiftness of leak detection and pipe shutdown capabilities, the type of gas being transported, operating pressure, the rate of potential release, pipeline profile, the potential for ignition, and location of nearest response personnel.<sup>2</sup>

The Notice alleged that Respondent violated 49 C.F.R. § 192.935(c) by failing to conduct an evaluation, based on a risk analysis, regarding the use of an automatic shut-off valve (ASV) or remote control valve (RCV) on its pipeline system. Specifically, the Notice alleged that at the time of the inspection, FGT could not show any documentation that it had conducted an evaluation to determine whether it needed to install an ASV or RCV on its pipeline system.

In its Response, FGT provided additional information describing its installation of ACVs on its mainline valves to protect the high consequence areas (HCAs) and agreed to follow the proposed compliance order.

Accordingly, having considered the evidence, I find that Respondent violated 49 C.F.R. § 192.935(c) by failing to conduct an evaluation, based on risk analysis, regarding the use of an ASV or RCV on its pipeline system.

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

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<sup>1</sup> Notice, at 5.

<sup>2</sup> § 192.935(c) (2021). Subsequent to the Notice, PHMSA amended § 192.935(c) by “Pipeline Safety: Requirement of Valve Installation and Minimum Rupture Detection Standards,” Final Rule, 87 FR 20940 (Apr. 8, 2022).

\$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>3</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 \$19,300 for the violation cited above.

**Item 1:** The Notice proposed a civil penalty of \$19,300 for Respondent's violation of 49 C.F.R. § 191.5(a), for failing to notify NRC at the earliest practicable moment, but no later than one hour after confirmed discovery, of two reportable incidents in 2019. Respondent requested that PHMSA withdraw the proposed civil penalty on the basis that FGT had no history of prior violation of 49 C.F.R. § 191.5, that the gravity of the violation had minimal effect on pipeline safety, and because the delays were based on efforts by FGT to determine whether the incidents met reporting thresholds. Additionally, FGT included the training material slides it intends to use to prevent similar occurrences in the future with its Response.

Upon review of the Notice and Violation Report, I find that the proposed penalty already took into account the violation was as a first-time offense, therefore there is no reason to further reduce the penalty based on FGT having no prior history of violating 49 C.F.R. §191.5. Likewise, the proposed penalty represented the lowest gravity, having a minimal effect on pipeline safety. Therefore, a further reduction on that basis is also not warranted. Moreover, FGT's argument that the penalty should be withdrawn because the delays were based on efforts by FGT to determine whether the incidents met reporting thresholds is also not a reason to reduce or withdraw the civil penalty. As explained above, the purpose of this notification requirement is to alert local, state, and federal agencies at the earliest practicable moment so that emergency personnel or investigators can be dispatched quickly. Therefore, I find FGT did not have a reasonable justification for its non-compliance under the good faith assessment factor. Finally, FGT included the training slides it intends to use to prevent delayed reporting in the future. While PHMSA recognizes Respondent's swift corrective measures to comply with pipeline safety regulations, such actions taken after an inspection are not a basis for a reduction or withdrawal of a civil penalty.<sup>4</sup> Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$19,300 for violation of 49 C.F.R. § 191.5(a).

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<sup>3</sup> These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223 for adjusted amounts.

<sup>4</sup> See *In the Matter of Oasis Midstream Partners LP, a General Partner of Oasis Petroleum Inc.*, Final Order 3-2019-5020, 2020 WL 6870720 at 7 (August 19, 2020) ("While Oasis is to be commended for improving its internal processes to ensure compliance with the pipeline safety regulations, such post-inspection activities do not warrant the withdrawal of, or a reduction in, a proposed civil penalty.")

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 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 5 and 6 in the Notice for violations of 49 C.F.R. §§ 192.935(b)(2) and 192.935(c), respectively. 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.

As stated above, the compliance item corresponding to the alleged violation of § 192.935(b)(2) (Item 5) is withdrawn. Therefore, the proposed compliance order with respect to Item 5 is not included.

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 § 192.935(c) (**Item 6**), Respondent must conduct an evaluation, based on a risk analysis, that an ASV or RCV would be an efficient means of adding protection to the HCAs and provide documentation or records of the evaluation within 90 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 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.

### **WARNING ITEMS**

With respect to Items 2, 3 and 4, the Notice alleged probable violations of Part 192, but identified them as warning items pursuant to § 190.205. The warnings were for:

49 C.F.R. § 192.481(c) (**Item 2**) — Respondent’s alleged failure to clean and coat sections of its pipeline at the West Miami Meter Station thereby failing to provide protection against corrosion found during the inspection;

49 C.F.R. § 192.915(b) (**Item 3**) — Respondent’s alleged failure to have qualified individuals conduct, review, and analyze integrity assessments and evaluations of its pipeline facilities; and

49 C.F.R. § 192.921(a)(1) (**Item 4**) — Respondent’s alleged failure to validate its baseline assessment by not conducting excavation digs on its FLMEF-2426 pipeline segment following the 2018 assessment as required and in accordance with its written procedures.

FGT presented information in its Response showing that it had taken certain actions to address the cited items. 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, 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.

April 21, 2023

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Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

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Date Issued