

September 25, 2024

VIA ELECTRONIC MAIL TO: lpollema@midwaysunset.com

Lowell Pollema
Executive Director
Midway Sunset Cogeneration Company
3466 W. Crocker Springs Road
Fellows, California 93224

Re: CPF No. 5-2024-014-NOPV

Dear Mr. Pollema:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws one of the allegations of violation, makes a finding of violation, and assesses an adjusted civil penalty of \$21,500. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. 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. Dustin Hubbard, Director, Western Region, Office of Pipeline Safety, PHMSA
Mr. Michael Williams, DOT Primary Compliance, Midway Sunset Cogeneration Co.,
mwilliams@midwaysunset.com
Mr. Greg Jans, Plant Manager, Midway Sunset Cogeneration Co.,
management@midwaysunset.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)	
)	
Midway Sunset Cogeneration Company,)	CPF No. 5-2024-014-NOPV
)	
Respondent.)	
)	

FINAL ORDER

From March 6 through March 9, 2023, 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 Midway Sunset Cogeneration Company’s (Midway or Respondent) natural gas transmission line from the Kern River tie-in to the Midway Plant in Fellows, California.

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated July 11, 2024, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Midway had committed two violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$43,000 for the alleged violations. The Notice also included an additional two warning items pursuant to 49 C.F.R. § 190.205, which warned Respondent to correct the probable violations or face possible future enforcement action.

Midway responded to the Notice by letter dated August 9, 2024 (Response). In its Response, Respondent contested Notice Item 3 and its associated civil penalty. Midway did not contest Notice Items 1, 2, or 4. Respondent did not request a hearing and therefore has waived its right to one.

FINDING 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. § 192.605(a), which states:

§ 192.605 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

The Notice alleged that Respondent violated 49 C.F.R. § 192.605(a) by failing to follow its written procedures for conducting operations and maintenance (O&M) activities. Specifically, the Notice alleged that the Midway-Sunset Mojave Gas Operation Manual stated that the O&M manual review will be performed in July of each year, but Midway could not produce records evidencing that the O&M manual reviews were performed in 2019, 2020, 2021, or 2022.

In its Response, Midway stated that it did not contest the allegation of violation. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.605(a) by failing to follow its written procedures for conducting O&M activities.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 192.705(b), which states:

§ 192.705 Transmission lines: Patrolling.

(a)

(b) The frequency of patrols is determined by the size of the line, the operating pressures, the class location, terrain, weather, and other relevant factors, but intervals between patrols may not be longer than prescribed in the following table:

Maximum interval between patrols		
Class location of line	At highway and railroad crossings	At all other places
1, 2	7 ½ months; but at least twice each calendar year	15 months; but at least once each calendar year.
3	4 ½ months; but at least four times each calendar year	7 ½ months; but at least twice each calendar year.
4	4 ½ months; but at least four times each calendar year	4 ½ months; but at least four times each calendar year.

The Notice alleged that Respondent violated 49 C.F.R. § 192.705(b) by failing to observe surface conditions on the transmission line right-of-way for indications of leaks, construction activity, and other factors affecting safety and operation on its pipeline in a Class 1 location at highway or railroad crossings every 7½ months but at least twice each calendar year. Specifically, the Notice alleged that Midway failed to conduct the required patrol frequency in time periods including June 28, 2019, to April 27, 2020; April 27, 2020, to April 13, 2021; and April 13, 2021, to December 21, 2021.

In its Response, Midway stated that it located the records of its patrols over those time periods. Midway provided copies demonstrating completion of the required patrol frequencies. In a recommendation for final action submitted pursuant to § 190.209(b)(7), the Director recommended withdrawing the alleged violation of § 192.705(b).

Accordingly, after considering all of the evidence, I find that Midway did not fail to comply with § 192.705(b). Based upon the foregoing, I hereby order that Item 3 be withdrawn.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty exceeding \$200,000 per violation for each day of the violation, with a maximum administrative civil penalty exceeding \$2,000,000 for any related series of violations.¹

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 \$43,000 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$21,500 for Respondent's violation of 49 C.F.R. § 192.605(a), for failing to follow its written procedures for conducting O&M activities. In its Response, Midway did not present any evidence or argument justifying a reduction in or elimination of the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$21,500 for violation of 49 C.F.R. § 192.605(a).

Item 3: The Notice proposed a civil penalty of \$21,500 for Respondent's alleged violation of 49 C.F.R. § 192.705(b). Since this alleged violation has been withdrawn, for the reasons set forth above, the proposed civil penalty shall also be withdrawn.

In summary, having reviewed the record and considered the assessment criteria for each of the

¹ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223 for adjusted amounts.

Items cited above, I assess Respondent a total adjusted civil penalty of **\$21,500**.

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.

WARNING ITEMS

With respect to Items 2 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. § 192.605(a) (**Item 2**) — Respondent's alleged failure to update and review its Emergency Response Plan (ERP) manual at intervals not exceeding 15 months, but at least once each calendar year; and

49 C.F.R. § 192.805(b) (**Item 4**) — Respondent's alleged failure to confirm through evaluation that individuals performing covered tasks were qualified.

Midway 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, 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 brief 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 any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

The terms and conditions of this Final Order are effective upon service in accordance with 49

C.F.R. § 190.5.

September 25, 2024

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued