

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

In the Matter of)	
El Paso Natural Gas Company, L.L.C.)	CPF No. 5-2013-1012
Respondent.)	Notice of Probable Violation
)	REQUEST FOR HEARING

El Paso Natural Gas Company, L.L.C. (EPNG or the Company)¹ respectfully requests a hearing on the above-referenced Notice of Probable Violation (NOPV), which includes a Proposed Civil Penalty and Proposed Compliance Order, pursuant to 49 C.F.R. Parts 190.209 and 190.211. This NOPV was issued to EPNG by the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency), Office of Pipeline Safety (OPS) on August 16, 2013, and received by EPNG on August 22, 2013. Pursuant to 49 C.F.R. Part 190.209, this request is timely.

As required by 49 C.F.R. Part 190.211(a), this Request for Hearing includes a Statement of Issues (attached), which incorporates by reference a Response to the NOPV (attached). As required by 49 C.F.R. Part 190.211(a), please be advised that Jessica Toll with EPNG and/or the Hunton & Williams law firm will represent the Company at any hearing that is scheduled for this matter.

EPNG is committed to ensuring public safety, and the Company is committed to working with PHMSA to achieve that goal. As part of that overall commitment, EPNG is filing this Request for Hearing to address issues and clarify the facts underlying Items 1 and 2 of the NOPV. As set forth in the attached Response and Statement of Issues, the Company respectfully requests that Item 1 (a Warning Item) and Item 2 (including the associated Proposed Civil Penalty and Proposed Compliance Order) be withdrawn.

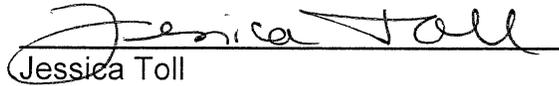
Pursuant to 49 C.F.R. Part 190.211(e), EPNG also hereby requests a copy of all material in the PHMSA case files that may be relevant to the issues raised in the NOPV and the issues raised by this Request for Hearing (including case files or materials

¹ As of May 25, 2012, Kinder Morgan, Inc., acquired El Paso Corporation, including EPNG.

relied upon during preparation of this action, CPF No. 5-2013-1012, and all other matters referenced in the NOPV or this Request for Hearing).

Respectfully submitted,

EL PASO NATURAL GAS COMPANY, L.L.C.

A handwritten signature in black ink that reads "Jessica Toll". The signature is written in a cursive style with a horizontal line underneath the name.

Jessica Toll
Assistant General Counsel
Kinder Morgan, Inc.
370 Van Gordon Street
Lakewood, CO 80228
(303) 914-7630

Date: September 19, 2013

**Before the
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
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_____)	
In the Matter of)	
)	
El Paso Natural Gas Company, L.L.C.)	CPF No. 5-2013-1012
)	Notice of Probable Violation
)	
Respondent.)	STATEMENT OF ISSUES
_____)	

In connection with its Request for a Hearing and in accordance with the requirements of 49 C.F.R. Part 190.211(a), El Paso Natural Gas Company, L.L.C. (EPNG or the Company),¹ hereby provides the Statement of Issues that it intends to raise at a Hearing. The Statement of Issues incorporates by reference the Response to the Notice of Probable Violation (Response).

Without admitting the facts and conclusions set forth in the Notice of Probable Violation (NOPV), EPNG intends to raise the following issues at a Hearing, if necessary:

1. Whether Item 1 of the NOPV should be withdrawn because the Company met its required obligations under 49 C.F.R. Parts 191.3 and 191.5, associated Agency guidance and interpretations.
2. Whether Item 2 of the NOPV, and associated Items contained in the Proposed Compliance Order, should be withdrawn, because the Company had taken required actions under 49 C.F.R. Part 192.707 to appropriately place and maintain adequate line markers; and
3. Whether the Proposed Civil Penalty under Item 2 of the NOPV should be withdrawn in light of the clarifications provided.

These issues are more fully addressed in the Company's Response to the NOPV.

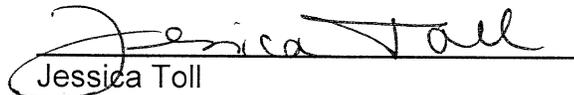
For all of the reasons identified above in this Statement of Issues and Response to the NOPV, and in consideration of other matters as justice may require, the Company

¹ As of May 25, 2012, Kinder Morgan, Inc., acquired El Paso Corporation, including EPNG.

respectfully requests that PHMSA withdraw Items 1 and 2 of the NOPV, including the associated items of the Proposed Compliance Order and Proposed Civil Penalty.

Respectfully submitted,

EL PASO NATURAL GAS COMPANY, L.L.C.

A handwritten signature in black ink, appearing to read "Jessica Toll", is written over a horizontal line.

Jessica Toll
Assistant General Counsel
Kinder Morgan, Inc.
370 Van Gordon Street
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_____)	
In the Matter of)	
El Paso Natural Gas Company, L.L.C.)	CPF No. 5-2013-1012
Respondent.)	Notice of Probable Violation
_____)	RESPONSE TO NOTICE OF PROBABLE VIOLATION

On August 16, 2013, the Associate Administrator of the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency), Office of Pipeline Safety (OPS), issued a Notice of Probable Violation (NOPV) which included a Proposed Civil Penalty and Proposed Compliance Order, to the El Paso Natural Gas Company, L.L.C. (EPNG or the Company).¹ The NOPV contained two (2) alleged violations of the federal pipeline safety regulations. Item 1 was converted to a Warning Item, but it is contested here because the same facts and interpretation of applicable law could recur. Item 2 of the NOPV is associated with a proposed a civil penalty of thirty seven thousand five hundred dollars (\$37,500), and a proposed Compliance Order outlining three (3) requested actions.

The NOPV was issued in response to PHMSA inspections of the EPNG mainline pipeline (L2000) near Milepost (MP) 391 in western Arizona. The inspections were conducted on April 23-25, 2013, in response to a third party strike of L2000 that occurred on April 23 near MP 391. Without admitting the allegations, facts or conclusions set forth in the NOPV, EPNG requests a Hearing on the violations alleged under Items 1 and 2 of the NOPV. In addition, Respondent respectfully requests that, given the information submitted in these pleadings, the Proposed Civil Penalty and the Proposed Compliance Order be withdrawn.

¹ As of May 25, 2012, Kinder Morgan, Inc., acquired El Paso Corporation, including EPNG.

Response to NOPV Item 1

NOPV Item 1: Failure to Provide Immediate Notice of Incident as Defined in 49 C.F.R. Parts 191.3 and 191.5.

PHMSA alleges that EPNG failed to report an "incident" to the National Response Center that involved pipeline damage as result of excavation activity as required by 49 C.F.R. Part 191.3, asserting that EPNG should have included both the gas released by the leak and intentional blow-down.

On April 23, 2013, an excavator operating excavation equipment (a trackhoe) in a ditch along a road near MP 391 of EPNG's 30 inch L2000 pipeline struck the pipe and caused a crack that began releasing gas. EPNG did not receive one-call notification in advance of the excavation activities, which is required by law to enable excavators to ascertain the location of underground facilities. EPNG personnel responded to the strike, as did other local and Arizona Corporation Commission (ACC) officials. EPNG closed valves on either side of the strike, and then initiated a controlled blowdown of a 16 mile section of the line (from MP 380 to MP 396), in order to perform required repair. When the blowdown was complete, the Company exposed the line where it was struck, which revealed several gouges at the 3 o'clock position, and a slight crack about 1 ½" long. EPNG placed a band clamp on the crack, and completed permanent repairs the following day.

EPNG computations estimated that less than 200,000 cubic feet of gas was released from L2000 from the time of the strike to isolation of the line. The subsequent blowdown of the line -- a voluntary, intentional, and controlled activity consistent with applicable law and Company procedure -- released approximately 23,167,000 cubic feet of gas. After review of those data, the Company concluded that no release report was necessary, as reporting is only required when an "incident" (defined as the *unintentional* release of gas) is estimated to exceed 3,000,000 cubic feet of gas. 49 C.F.R. Part 191.3; Part 191.5. This incident resulted in an unintentional release of 200,000 cubic feet of gas, far below the threshold reporting requirement of 3,000,000 cubic feet. ACC official Ryan Weight arrived at the site after the *intentional* blowdown of gas from MP 380 to MP 396 was complete, thus the ACC had notice of the incident and was present on site. Mr. Weight made no requests that Company personnel take any further action.

The events of April 23, 2013, did not result in a reportable incident under 49 C.F.R. Part 191 and/or the Company's reporting procedures. The excavation damage that occurred on April 23, 2013, resulted in gas loss of less than 200,000 cubic feet, well below the threshold reporting amount of 3,000,000 cubic feet. In order to isolate the segment from MP 380 to 396 and complete necessary repairs, the Company intentionally performed a controlled blowdown of 23,167,000 cubic feet of gas. In compliance with 49 C.F.R. Part 191.3 and associated guidance, this voluntary, intentional, and controlled blowdown was not included in estimating whether a release volume triggered incident reporting.

PHMSA regulations clearly establish that gas loss due to intentional blowdown should not be included in volume calculations for determining whether an incident is reportable. Under Part 191, an “incident” is defined to include an event that involves a release of gas from a pipeline that results in, among other things, the “*unintentional* estimated gas loss of three million cubic feet or more.” 49 C.F.R. Part 191.3 (emphasis added). In establishing this volumetric threshold for incident reporting, PHMSA included the term “unintentional” to clarify that “reporting under the volume threshold is only required for ‘unintended’ releases that exceed the specified amount.” *Final Rule, 75 Fed. Reg. 72878, 72884 (Nov. 26, 2010)*. The Agency expressly stated that this eliminated reporting for “non-consequential events,” such as “intentional blowdowns.” *Id.* The Agency explained that reporting under the volume threshold is not required because such “intentional controlled releases are not events with significant safety consequences.” *Id.* To require intentional gas loss in the incident report determination would not accurately reflect the severity of leak events and would compromise the incident reporting process and DOT incident tracking metrics.

PHMSA addresses the same point in its instructions for Form PHMSA F 7100.2 (gas incident reporting). The second sentence of that form states that “[t]he intentional and controlled release of gas for the purpose of maintenance or other routine operating activities is not to be reported if the only reportable criterion is unintentional loss of gas of 3 million cubic feet or more...” *Instructions for Form PHMSA F 7100.2, Incident Report—Natural and Other Gas Transmission and Gathering Pipeline Systems*, p. 1 (rev. 6-2011); see also pp. 11-12 (distinguishing between the estimated volume of gas released unintentionally versus intentional and controlled release/blowdown).² No other reporting criteria were met in regard to the April 23, 2013, strike near MP 391.

For all of these reasons, EPNG respectfully requests that the event that occurred near MP 391 of EPNG’s L2000 pipeline did not trigger incident reporting under applicable law. Item 1 of the NOPV should be withdrawn in its entirety.

Response to NOPV Item 2

NOPV Item 2: Failure to Place Adequate Line Markers Pursuant to 49 C.F.R. Part 192.707.

PHMSA alleges that EPNG failed to place a line marker wherever necessary to identify the location of EPNG L2000, sufficient to reduce the possibility of damage or interference, pursuant to 49 C.F.R. Part 192.707.

² It is also relevant that, prior to the revision of 49 C.F.R. Part 191.3, the regulatory reporting threshold for property damage included the cost of gas lost unintentionally, but excluded gas lost through controlled blowdown. See *PHMSA Final Order, CPF 1-2012-1009 (Dec. 27, 2012)* (finding that an operator who blew down a pipeline segment in order to perform a repair after a leak was not required to include the gas that was blown down in determining whether the reporting threshold was triggered as set forth in PHMSA’s incident reporting form instructions in place at that time).

The Company believes that the record demonstrates that it was fully in compliance with 49 C.F.R. Part 192.707 and with its own Operations & Maintenance (O&M) procedures, in regard to placement of line markers on L2000. On April 23, 2013, the day of the incident, pipeline markers were located in the area of the road crossing in a manner that allowed accurate identification of the pipeline location. Along with other line markers in the vicinity of this area, the pipeline route could be discerned from any point on or adjacent to the pipeline right of way. EPNG did not receive one-call notification prior to the excavation activities, as required by law to enable excavators to ascertain the location of underground facilities.

Pursuant to 49 C.F.R. Part 192.707, PHMSA requires that operators maintain line markers “wherever necessary to identify the location of the transmission line or main to reduce the possibility of damage or interference.” This regulation is intended to require pipeline markers to aid outsiders in determining the route of a pipeline, particularly with respect to road crossings and potential excavation sites. *Final Rule, 40 Fed. Reg. 13502, 13503 (March 27, 1975)*. In addition, the regulation is written to allow operators flexibility to offset line markers a reasonable distance from a pipeline wherever necessary (for example to obtain support for the marker, avoid an obstruction or facilitate maintenance). *Id.*

In application, this rule requires that markers identify the pipeline route and that where practical at least one marker be placed on either side of a road, and that where practical markers should be visible from one another (also referred to as line of sight). See e.g., *PHMSA Warning Letter, CPF 4-2007-1006W (Aug. 1, 2007)*. We note, however, that PHMSA itself chose not to include in the regulation language it previously proposed that would have required a marker to be visible from the immediately preceding and following marker. *Final Rule, 40 Fed. Reg. 13502, 13503 (March 27, 1975)*. The Agency also declined to include a regulatory requirement that line markers be located at fences and property boundaries. *Id.*

Lastly, as support for Item 2 of the NOPV, PHMSA references a Warning Item that the Company received on March 5, 2013 for failure to include line markers at a public road crossing under 49 C.F.R. 192.707(a)(1), stating that it was issued for the “same violation.” *NOPV, p. 2*. As reflected in EPNG’s response to the Agency’s Warning Letter, dated April 4, 2013, line markers had been installed at the road crossing in question, but at the time of the PHMSA inspection, it was discovered that the aboveground portion of the markers had been vandalized. *EPNG Response to PHMSA Warning Letter, CPF 5-2013-1003W, pp. 2-3 (April 4, 2013)*. New signs were installed the following day. *Id.* As such, the Warning Item is, in fact, distinct from the line marking allegation in this NOPV.

For all of these reasons, EPNG complied with the line marking requirements under applicable law. Item 2 of the NOPV should therefore be withdrawn in its entirety.

Response to Proposed Civil Penalty

The NOPV proposes a civil penalty associated with Item 2 of the NOPV in the amount of \$31,200 (Item 1 of the NOPV is a Warning Item only, and has no associated proposed penalty at this time). For the reasons set forth in this Response and attached Exhibits, EPNG respectfully requests that the Proposed Civil Penalty be withdrawn.

Response to Proposed Compliance Order

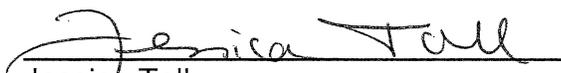
The NOPV proposes a Compliance Order that includes three items associated with Item 2 of the NOPV (Item 1 of the NOPV is a Warning Item Only, and has no associated Compliance Order items). For the reasons set forth in this Response, EPNG respectfully requests that PHMSA withdraw the Proposed Compliance Order.

Summary

For all of the reasons identified above in this Response, and other matters as justice may require, the Company respectfully requests that PHMSA withdraw the NOPV as issued, including Items 1 and 2, the Proposed Civil Penalty and the Proposed Compliance Order.

Respectfully submitted,

EL PASO NATURAL GAS COMPANY, L.L.C.



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