

June 8, 2021

VIA ELECTRONIC MAIL TO: aaron.wimberly@enlink.com

Mr. Aaron Wimberly
Vice President, EH&S
Enlink Midstream, LLC
1722 Routh Street, #1300
Dallas, Texas 75201

CPF No. 4-2020-5006

Dear Mr. Wimberly:

Enclosed please find a Consent Order incorporating the terms of the Consent Agreement between the Pipeline and Hazardous Materials Safety Administration (PHMSA) and Enlink Midstream, LLC, which was executed on June 8, 2021. Service of the Consent Order and Consent Agreement by electronic mail is deemed effective upon the date of transmission, or as otherwise 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: Order and Consent Agreement

cc: Ms. Mary McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. James Bristow, Senior Counsel, Enlink Midstream, LLC, james.bristow@enlink.com
Mr. Vince Murchison, Counsel for Enlink Midstream, LLC, Murchison Law Firm,
vince.murchison@pipelinelegal.com
Mr. Brett Kutnick, Counsel for Enlink Midstream, LLC, Jackson Walker, LLP,
bkutnick@jw.com

CONFIRMATION OF RECEIPT REQUESTED

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

_____)	
In the Matter of)	
)	
EnLink Midstream, LLC,)	
)	
Respondent,)	
)	
and)	CPF No. 4-2020-5006
)	
EnLink Processing Services, LLC,)	
)	
and)	
)	
EnLink Permian, LLC.)	
_____)	

CONSENT AGREEMENT AND ORDER

WHEREAS, on February 18, 2020, the Director, Southwest Region, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (Director), issued to EnLink Midstream, LLC (EnLink Midstream), a Notice of Probable Violation and Proposed Compliance Order (Notice), pursuant to Chapter 601 of 49 U.S. Code, for an alleged violation of 49 C.F.R. § 195.452. The Notice also proposed ordering EnLink Midstream to take certain measures to correct the alleged violation; and

WHEREAS, on March 16, 2020, EnLink Midstream submitted a written response to the Notice, in which the company contested the alleged violation and offered additional information. EnLink Midstream did not request a hearing and therefore waived its right to one; and

WHEREAS, on July 27, 2020, the Associate Administrator for Pipeline Safety, PHMSA, issued a Final Order, finding that EnLink Midstream had committed a violation of 49 C.F.R. § 195.452(f)(6) with respect to EnLink Midstream’s hazardous liquid integrity management program (Hazardous Liquid IMP). Specifically, the Final Order found that EnLink Midstream had failed to properly determine if Emergency Flow Restricting Devices (EFRDs) were needed on its Cajun Sibon NGL Pipeline System as preventive and mitigative measures (P&M Measures) to protect a High Consequence Area (HCA). The Final Order also included a Compliance Order that required EnLink Midstream to perform an EFRD study to include consideration of all the factors listed in 49 C.F.R. § 195.452(i)(4); and

WHEREAS, on August 20, 2020, EnLink Midstream filed a petition for reconsideration pursuant to 49 C.F.R. § 190.243, seeking reconsideration of the entire Final Order, including the finding of violation and the terms of the Compliance Order (Petition). EnLink Midstream presented several grounds for reconsideration, including: (1) that EnLink Midstream did not violate 49 C.F.R. § 195.452(f)(6), as found in the Final Order; (2) that the Final Order improperly applied the standard of conduct required by the regulation; (3) that PHMSA failed to provide fair notice of the compliance expectations under the cited regulations; (4) that PHMSA failed to meet its burden of proving the alleged violation; and (5) that the Compliance Order should be withdrawn because it was ambiguous and impermissibly broad; and

WHEREAS, on January 4, 2021, the Associate Administrator for Pipeline Safety, PHMSA, issued a Decision on the Petition (Decision), which granted in part and denied in part EnLink Midstream's Petition. The Decision affirmed that EnLink Midstream violated 49 C.F.R. § 195.452(f)(6), which incorporates 49 C.F.R. § 195.452(i)(4), by failing to conduct an EFRD analysis for its IP-1000 segment of the Cajun Sibon NGL Pipeline System. Specifically, the Decision rejected EnLink Midstream's contention that operators must perform an EFRD analysis only if the general risk analysis required under 49 C.F.R. § 195.452(i)(2) first identifies a need for additional P&M Measures. The Decision also rejected EnLink Midstream's fair notice argument, finding that EnLink Midstream should have identified with ascertainable certainty the standard with which PHMSA expected EnLink Midstream to conform. However, the Decision did issue an Amended Compliance Order that provided a clarification to the scope of the required corrective actions; and

WHEREAS, on February 5, 2021, EnLink Midstream filed a Petition for Review in the U.S. Court of Appeals for the Fifth Circuit, seeking judicial review of the Final Order and the Decision on the Petition.¹ EnLink Midstream also requested that PHMSA grant an administrative stay of the Amended Compliance Order pending resolution of this matter before the Fifth Circuit;² and

WHEREAS, EnLink Midstream and its subsidiaries, EnLink Processing Services, LLC (EnLink Processing) and EnLink Permian, LLC (EnLink Permian) [EnLink Processing and EnLink Permian are collectively referenced as EnLink] and PHMSA (PHMSA, EnLink, and EnLink Midstream are collectively referred to as the Parties) met on several occasions to discuss potential resolution of the disputed issues, and as the result of these good-faith discussions, the Parties have reached agreement on the terms and conditions of a settlement, as set forth herein. The Parties agree that this Consent Agreement and Order (Agreement) will avoid further administrative or judicial proceedings or litigation, is the most appropriate means of resolving this proceeding, and will serve the public interest by promoting safety and protection of the environment.

NOW, THEREFORE, pursuant to 49 C.F.R. Part 190 and upon consent and agreement of the Parties, it is Ordered and Adjudged as follows:

¹ EnLink Midstream, LLC v. U.S. DOT et al., Case No. 21-6004 (5th Cir.).

² On March 5, 2021, PHMSA responded to EnLink's request for an administrative stay by extending the compliance deadline for the Amended Compliance Order to June 3, 2021. By letter dated May 28, 2021, PHMSA extended said compliance deadline to July 3, 2021.

I. General Provisions.

1. EnLink Midstream and EnLink Processing acknowledge that they received proper notice of PHMSA's action in this proceeding and that the Notice, Final Order, and Decision issued in this action all state claims upon which relief may be granted pursuant to 49 U.S.C. § 60101, *et seq.*, and the regulations and administrative orders issued thereunder. PHMSA further acknowledges that, while EnLink Midstream, LLC was the entity named in the Notice, Final Order, and Decision, EnLink Processing Services, LLC³ is the actual operator of the Cajun Sibon NGL Pipeline System at issue in this enforcement action.

2. EnLink acknowledges that EnLink Processing and EnLink Permian, and their respective pipeline systems, are subject to the jurisdiction of the Federal pipeline safety laws, 49 U.S.C. 60101, *et seq.*, and the regulations and administrative orders issued thereunder. EnLink Midstream does not own or operate any pipeline subject to the jurisdiction of the Federal pipeline safety laws.

3. EnLink Midstream and EnLink agree to the terms of this Agreement and hereby waive any further procedural requirements with respect to its issuance. EnLink Midstream and EnLink further waive all rights to contest the adequacy of the Notice, Final Order, and Decision issued in this proceeding and the validity of this Agreement, including all rights to administrative or judicial hearings or appeals.

4. This Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to this proceeding and the issues embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to settlement other than those expressly contained in this Agreement, except that the terms of this Agreement may be construed by reference to the Notice.

5. Nothing in this Agreement affects or relieves EnLink of its responsibility to comply with all applicable requirements of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder. Nothing in this Agreement alters PHMSA's right of access, entry, inspection, and information gathering, or its authority to bring any enforcement action against EnLink pursuant to the Federal pipeline safety laws, the regulations and administrative orders issued thereunder, or any other provision of Federal or state law, with the exception of the following:

- a. As long as EnLink maintains substantial compliance with the Compliance Measures set forth in Section III of this Agreement, PHMSA agrees that it will not bring an enforcement action against EnLink, or EnLink Midstream on behalf of EnLink, alleging a violation of 49 C.F.R. § 195.452(f)(6) as it relates to EFRDs, or § 195.452(i)(4), that occurs during the duration of the Agreement.

³ The Operator ID for EnLink Processing Services, LLC (OPID 32005) was properly identified in the Pipeline Safety Violation Report (Violation Report) that accompanied the Notice. PHMSA tracks its enforcement actions by the OPID identified in each Violation Report.

- b. Notwithstanding paragraph 5(a) above, to the extent a violation of 49 C.F.R. §§ 195.452(f)(6) and 195.452(i)(4) relating to EFRDs occurs in connection with a reportable accident, as defined in 49 C.F.R. § 195.50, nothing in this Agreement shall limit the right of PHMSA to pursue any administrative or other remedies for hazardous conditions or violations (including penalties) of the Federal pipeline safety laws or regulations.

6. This Agreement does not waive or modify any Federal, state, or local laws or regulations applicable to EnLink's pipeline systems. This Agreement is not a permit or a modification of a permit under any Federal, state, or local laws or regulations. EnLink and EnLink Midstream remain responsible for achieving and maintaining compliance with all applicable Federal, state, and local laws, regulations and permits.

7. This Agreement does not create rights in, or grant any cause of action to, any person not a party to this Agreement. PHMSA is not liable for any injuries or damages to persons or property arising from acts or omissions of EnLink or EnLink Midstream or their officers, employees, or agents carrying out the work required by this Agreement. PHMSA, its officers, employees, agents, and representatives shall not be liable for any cause of action arising from any acts or omissions of EnLink or EnLink Midstream or their contractors in carrying out any work required by this Agreement.

8. This Agreement shall apply to and be binding upon PHMSA, EnLink Midstream and EnLink, their officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.

II. Findings of Fact and Violations.

9. EnLink Midstream and EnLink acknowledge that the Notice, Final Order, and Decision issued in this proceeding state claims upon which relief may be granted pursuant to 49 U.S.C. § 60101, *et seq.*, and the regulations and administrative orders issued thereunder. By entry of this Agreement, PHMSA does not withdraw its interpretation or application of the pipeline safety regulations set forth in the Final Order and Decision, but agrees to withdraw the finding of violation of 49 C.F.R. § 195.452(f)(6) for the Cajun Sibon NGL Pipeline System as set forth in the decisions.

10. This Agreement shall not constitute a finding of violation of any Federal law or regulation and may not be used in any civil proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of the violation of any law, rule, regulation, or requirement, except in a proceeding to enforce the provisions of this Agreement. The Parties agree, however, that Item 1 of the Final Order shall be considered a prior offense by EnLink Processing, in any future enforcement action brought by PHMSA against EnLink Processing.

III. Compliance Measures.

11. Within 30 days following the Effective Date of this Agreement, EnLink will revise its Hazardous Liquid IMP in accordance with the Decision and submit it to the Director for review

and approval; provided, that the Director's approval shall be limited, for purposes of this Agreement, to the revisions addressing EFRDs, including the installation of EFRDs. Nothing in this paragraph alters PHMSA's right of inspection and information gathering, or its authority to bring any enforcement action against EnLink with regard to portions of EnLink's Hazardous Liquid IMP not revised pursuant hereto.

12. EnLink agrees to perform EFRD analyses on all HCA and could-affect HCA segments for their interstate 49 C.F.R. Part 195-regulated pipelines. The analyses must consider all of the factors listed in 49 C.F.R. § 195.452(i)(4) to determine whether any EFRDs are needed on their respective systems in addition to existing EFRDs. The analyses will also consider the existing EFRDs to ensure that they have been installed in locations to protect HCAs in the event of a hazardous liquid pipeline release in accordance with 49 C.F.R. § 195.452(i)(4). EnLink must perform these EFRD analyses within the following timeframes:

- a. No later than 180 days from the date the Director approves the revised portions of the Hazardous Liquid IMP as specified in paragraph 11, EnLink Processing will complete EFRD analyses for the Cajun Sibon NGL Pipeline System; and
- b. No later than 18 months from the date the Director approves the revised portions of the Hazardous Liquid IMP as specified in paragraph 11, EnLink will complete EFRD analyses for the remainder of their interstate 49 C.F.R. Part 195-regulated pipelines.

13. EnLink must submit the EFRD analyses performed pursuant to paragraph 12 within the specified timeframes to the Director for review and approval prior to the installation of any EFRDs that must be installed as a result of any such EFRD analyses.

14. To the extent that the EFRD analyses, as approved by the Director pursuant to paragraph 13, determine that any newly identified EFRDs or any components thereof are needed on a pipeline segment to protect an HCA in the event of a hazardous liquid pipeline release, EnLink shall install the same pursuant to the provisions of 49 C.F.R. § 195.452(i)(4) and EnLink's revised Hazardous Liquid IMP. Prior to installation of the EFRDs, EnLink shall submit a plan and schedule for installation of the EFRDs to the Director, and allow the Director to review and provide comments within 14 days of receipt of the plan and schedule. EnLink shall notify the Director of any modifications to such plan and schedule to accommodate permitting, authorizations, land matters, equipment procurement, the provisions of utilities, and/or other approvals necessary for the installation of the EFRDs.

15. EnLink shall submit quarterly progress reports to the Director reviewing the status of all the Compliance Measures set forth above.

16. The Director may grant an extension of time to comply with any of the Compliance Measures above upon a written request timely submitted by EnLink and demonstrating good cause for an extension.

17. It is requested (not mandated) that EnLink maintain documentation of the safety improvement costs associated with fulfilling this Agreement and submit the total to the Director. PHMSA requests that these costs be reported in two categories: (1) total cost associated with the preparation/revision of plans, procedures, studies and analyses; and (2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

IV. Petition for Review.

18. On March 8, 2021, the Parties filed a joint motion to abate EnLink Midstream's appeal in the Fifth Circuit, and on March 10, 2021, the Court responded by dismissing the Petition for Review, without prejudice to the right of either party to reinstate the petition within 180 days. The Parties agree that this Agreement resolves all disputed issues in this proceeding, that no party may reinstate the Petition for Review in the U.S. Court of Appeals for the Fifth Circuit, and that each party shall bear its own costs for the previously-filed Petition for Review.

V. Review and Approval Process.

19. With respect to any submission of any document or plan required by this Agreement that requires the approval of the Director, the Director may: (a) approve, in whole or in part, the submission, (b) disapprove, in whole or in part, the submission, or (c) any combination of the foregoing. If the Director approves or approves in part, EnLink will take all action as approved by the Director. If the Director disapproves all or any portion of the submission, the Director will provide EnLink with a written notice of the deficiencies and a reasonable period of time to correct them. EnLink will correct all deficiencies within the time specified by the Director and resubmit for approval.

20. The Director and EnLink will attempt to resolve informally any dispute arising under this Agreement, including but not limited to any decision of the Director. The Director and EnLink first will confer in an effort to resolve any dispute. If the Director and EnLink are unable to resolve informally the dispute within 15 business days of EnLink providing notice of a dispute to the Director, EnLink may request in writing, within 10 business days of the end of said 15-day period, a written determination resolving the dispute by the Associate Administrator for Pipeline Safety, PHMSA. Along with its request, EnLink will provide the Associate Administrator with all information EnLink believes is relevant to the dispute. If the request is submitted as provided herein, the Associate Administrator will promptly issue a written determination that shall be final. Decisions of the Associate Administrator will constitute final agency action and are subject to judicial review. The existence of a dispute and PHMSA's consideration of matters placed in dispute will not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this Agreement during the pendency of the dispute resolution process, except as agreed by the Director or the Associate Administrator in writing, or ordered by a court of competent jurisdiction.

VI. Enforcement.

21. This Agreement is subject to all enforcement authorities available to PHMSA under 49 U.S.C. § 60101, *et seq.*, and 49 C.F.R. Part 190, including the assessment of civil penalties as

determined in accordance with the requirements of 49 U.S.C. § 60122 and 49 C.F.R. §§ 190.223 to 190.225, if PHMSA determines that EnLink is not substantially complying with the terms of this Agreement or any determination made by the Director under Section III, Compliance Measures. Failure to comply with the terms of this Agreement may also result in referral to the Attorney General for appropriate relief in a United States District Court pursuant to 49 U.S.C. § 60120(a).

VII. Effective Date.

22. The term “Effective Date,” as used herein, is the date on which this Agreement has been signed by all of the Parties.

VIII. Modification.

23. The terms of this Agreement may be modified only by mutual agreement of the Parties. Such modifications must be in writing and signed by the Parties. Any party may request modification by submitting a written request to the other Parties.

IX. Termination.

24. This Agreement terminates upon completion of all the Compliance Measures set forth in Section III, as determined by the Director; provided, however, paragraph 5(a) of this Agreement shall survive the termination of this Agreement for a period of five (5) years from the date of termination. EnLink may request written confirmation from PHMSA when this Agreement is terminated and the Director will provide such confirmation. Nothing in this Agreement prevents EnLink from completing any of the obligations earlier than the deadlines provided for in this Agreement.

X. Ratification.

25. The Parties’ undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this document.

26. The Parties, hereby, agree to all the conditions and terms of this Agreement.

For EnLink Midstream, LLC (Respondent):

Aaron Wimberly
Vice President EH&S

Date

For EnLink Processing Services, LLC

Aaron Wimberly
Vice President EH&S

Date

For EnLink Permian, LLC

Aaron Wimberly
Vice President EH&S

Date

For PHMSA:

Alan K. Mayberry
Associate Administrator for Pipeline Safety

June 8, 2021

Date