

**NOTICE OF PROBABLE VIOLATION
and
PROPOSED COMPLIANCE ORDER**

VIA E-MAIL TO MR. MICHAEL SOLOMON

December 1, 2022

Mr. Michael Solomon
Vice President & Chief Operating Officer
Elevation Midstream
1200 Larimer St., Suite 750
Denver, CO 80202

CPF 5-2022-052-NOPV

Dear Mr. Solomon:

From April 11 through 15, 2022, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code, inspected Elevation Midstream's (Elevation) procedures for control room management in Brighton, Colorado.

As a result of the inspection, it is alleged that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violations are:

- 1. § 195.446 Control room management.**
 - (a) ...**
 - (j) *Compliance and deviations.* An operator must maintain for review during inspection:**
 - (1) Records that demonstrate compliance with the requirements of this section; ...**

During the inspection, Elevation failed to present records demonstrating compliance with § 195.446(c)(1), which requires operators to provide its controllers with the information, tools, processes and procedures necessary for the controllers to carry out the roles and responsibilities the operator has defined by implementing API RP 1165. Specifically, Elevation was unable to present sufficient records to establish the SCADA system was compliant with API RP 1165.

2. § 195.446 Control room management.

(a)...

(c) Provide adequate information. Each operator must provide its controllers with the information, tools, processes and procedures necessary for the controllers to carry out the roles and responsibilities the operator has defined by performing each of the following:

(1) ...

(2) Conduct a point-to-point verification between SCADA displays and related field equipment when field equipment is added or moved and when other changes that affect pipeline safety are made to field equipment or SCADA displays;

Elevation failed to conduct a point-to-point verification between SCADA displays and related field equipment when changes that affect pipeline safety are made to field equipment or SCADA displays. Specifically, during the inspection, Elevation failed to provide documentation to PHMSA to confirm that it has ever conducted point-to-point verifications while conducting field maintenance of pipeline facilities.¹

Proposed Compliance Order

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$239,142 per violation per day the violation persists, up to a maximum of \$2,391,142 for a related series of violations. For violation occurring on or after May 3, 2021 and before March 21, 2022, the maximum penalty may not exceed \$225,134 per violation per day the violation persists, up to a maximum of \$2,251,334 for a related series of violations. For violation occurring on or after January 11, 2021 and before May 3, 2021, the maximum penalty may not exceed \$222,504 per violation per day the violation persists, up to a maximum of \$2,225,034 for a related series of violations. For violation occurring on or after July 31, 2019 and before January 11, 2021, the maximum penalty may not exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022.

We have reviewed the circumstances and supporting documents involved in this case, and have decided not to propose a civil penalty assessment at this time.

¹ *Id.*

With respect to Item 1 pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Elevation Midstream. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Warning Item

With respect to Item 2, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct this item. Failure to do so may result in additional enforcement action.

Operator Response to PHMSA Inspection:

After the PHMSA inspection but prior to issuance of this Notice, on September 21, 2022, Elevation submitted an evaluation (completed on June 23, 2022) of its SCADA system for compliance with the requisite sections of API RP 1165. My staff reviewed the evaluation and it satisfies the requirements of Item 1 of the Proposed Compliance Order.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 5-2022-052-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Dustin Hubbard
Director, Western Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Enforcement Proceedings

cc: PHP-60 Compliance Registry
PHP-500 J. Dunphy (#22-232653)

PROPOSED COMPLIANCE ORDER

Pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Elevation Midstream a Compliance Order incorporating the following remedial requirements to ensure the compliance of Elevation Midstream with the pipeline safety regulations:

- A. In regard to Item 1 of the Notice pertaining to Elevation Midstream's failure to implement the required sections of API RP 1165, Elevation Midstream must conduct an evaluation of its SCADA system for compliance with the requisite sections of API RP 1165 within 30 days of receipt of the Final Order. Elevation Midstream must present to PHMSA for review and approval a plan for correcting any deficiencies identified through its evaluation of the SCADA system within 90 days of receipt of the Final Order.

- B. It is requested (not mandated) that Elevation Midstream maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Dustin Hubbard, Director, Western Region, Pipeline and Hazardous Materials Safety Administration. 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.