

July 10, 2018

Robert Burrough
Director, Eastern Region
Pipeline and Hazardous Materials Safety Division
820 Bear Tavern Road, Suite 103
West Trenton, NJ 08628

Re: Niagara Mohawk Power Corporation (Niagara) Liquefied Natural Gas (LNG) Facility
in Providence, RI. **CPF 1-2018-3005**

Dear Mr. Burrough:

On June 12, 2018, the Pipeline and Hazardous Materials Safety Division (“PHMSA”) of the U.S. Department of Transportation issued a Notice of Probable Violation (“NOPV”) to Niagara Mohawk Power Corporation (“Niagara” or the “Company”). The NOPV relates to an alleged violation of Title 49 of the Code of Federal Regulations observed during PHMSA’s inspection of the Niagara liquefied natural gas plant in Providence, Rhode Island between August 29 and August 31, 2017. Niagara responds to the Department’s allegations and requests that PHMSA conduct an informal hearing to review the allegations and civil penalty pursuant to 49 CFR § 190.211. Niagara will be represented by counsel at the hearing, and respectfully requests that any relevant material in the PHMSA case file be provided no later than 30 days prior to the hearing.

As noted below, the Company believes that both the legal and factual basis for the allegations warrant further review and consideration by PHMSA.

PHMSA’s NOPV

PHMSA’s NOPV alleges a violation of Section 193.2635(d) of the federal regulations which requires an operator to inspect each component of an LNG facility that is protected from atmospheric corrosion at least every 3 years, in order to give early recognition of ineffective corrosion protection.¹ More specifically, PHMSA alleges that “Niagara failed to conduct effective AC [atmospheric corrosion] inspections for the insulated glycol system and three insulated vaporizers at its Providence LNG Plant during the timeframe of 2014 to 2017.”

¹ 49 C.F.R. § 193.2635 subsection (d).

The PHMSA NOPV indicated that the inspection team had reviewed the plant's AC Inspection procedure 17.PR-M5 Rev 9 (the Procedure) and its records of AC inspections from 2014 to 2017. It described the glycol system as consisting of 1,650 feet of 8 inch pipe covered by thermal insulation. The NOPV then alleged that "Inspecting these carbon steel components required specialized preparation or expanded effort to access and evaluate them for evidence of AC." The NOPV goes on to state that "Niagara's Procedure failed to provide a pathway for the inspection of carbon steel components under thermal insulation" and noted that the record evidence indicated that the insulation had not been removed during the AC inspections. The analysis concluded that as the thermal insulation had not been removed and "Niagara's actions and procedure present no alternate method to perform the AC inspections" Niagara failed to conduct "effective AC inspections of above-ground components under insulation . . . from 2014 to 2017."

Statement of Issues

1. PHMSA is improperly imposing an obligation to conduct AC inspections under thermal insulation where no such obligation exists in the regulations.

The crux of PHMSA's NOPV is the contention that Niagara had an obligation under 49 CFR § 193.2635 to conduct AC inspections under the thermal insulation at least once every three years, but nothing in the regulations actually requires this. Title 49, Code of Federal Regulations (CFR) § 193, sets forth the federal safety standards that apply to LNG facilities. Subpart G of those regulations, entitled "Maintenance," includes Section 193.2635, entitled "Monitoring Corrosion Control." The section states in relevant part that "[c]orrosion protection provided as required by this subpart [G] must be periodically monitored to give early recognition of ineffective corrosion protection [and] . . . (d) each component that is protected from atmospheric corrosion must be inspected at intervals not exceeding 3 years." The section does not include any language about inspecting under insulation.

Importantly, other parts of the PHMSA regulations containing provisions that require monitoring of atmospheric corrosion are written differently. The provisions under Part 192 are applicable to natural gas pipelines and require the pipeline operator to inspect each onshore pipeline or portion thereof that is exposed to the atmosphere at least once every 3 years and specify that "[d]uring inspections the operator *must give particular attention* to pipe at soil-to-air interfaces, *under thermal insulation*, under disbonded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water."² Similarly, the provisions under Part 195 applicable to hazardous materials pipelines require such inspections on the same 3-year schedule and are worded almost identically: "[d]uring inspections you must give particular attention to pipe at soil-to-air interfaces, under thermal insulation, under disbonded coatings,

² 49 C.F.R. §§ 192.481(a)-(b) (emphasis added).

at pipe supports, in splash zones, at deck penetrations, and in spans over water.”³ Thus, these provisions expressly require inspection under insulation, in contrast to Section 193.2635(d), which does not expressly require inspection under insulation.⁴

The comparison between the language in Section 193 and the language in Sections 192 and 195 is striking in the current context. Clearly, if the authors of the regulations had wanted to impose an obligation on LNG facilities to inspect under thermal insulation they could have simply used the language from the surrounding sections. That they chose not to, evinces the clear intent not to impose such an obligation on LNG facilities. And yet PHMSA’s NOPV does not recognize this important distinction - essentially imposing the same obligation under Section 193 as it would under Sections 192 or 195. We respectfully submit that this is an error in interpreting the regulations and should not be allowed to stand.

2. Niagara’s AC Maintenance and Inspection Protocols Meet and Exceed the Requirements of Section 193.2635.

The Providence LNG Plant’s glycol system is actually significantly larger than described in the NOPV. It actually consists of over 3,000 feet of 8 inch carbon steel pipe, most of which, during the period 2014-2017, was covered with asbestos insulation and jacketed in aluminum, which together served both as a thermal insulator and protection against AC. The asbestos insulation was decades old and the plant had an on-going maintenance program of replacing the asbestos insulation with polycarbonate insulation wherever the asbestos insulation or jacket was in a deleterious condition.

The PHMSA NOPV focused exclusively on the LNG Plant Atmospheric Corrosion Inspection Procedure, 17.PR-M5 Rev 9, but this was just one part – albeit an important part -- of the LNG plant’s AC detection protocol. Further inspections of the glycol and vaporizer components were performed daily during the period in question as part of the Company’s routine “Operational Inspections,” and further AC inspections were performed on sections of the pipe itself when the old asbestos insulation was stripped off during the on-going maintenance program which steadily replaced much of the thermal insulation during the 2014 to 2017 period. At the informal hearing, the Company will present evidence of each aspect of the AC detection protocol which, taken together, more than satisfied the requirements of Section 193.2635 and provided effective early detection of AC.

³ 49 C.F.R. §§ 195.583(a)-(b).

⁴ PHMSA maintains on its website a set of interpretations of various regulations. <https://www.phmsa.dot.gov/regulations/title49/b/2/1>. There are no PHMSA interpretations of the regulations quoted above.

3. The proposed Civil Penalty of \$48,000 is Overly Punitive

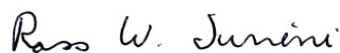
PHMSA has considerable latitude in determining the appropriate response for a probable violation, including the authority to issue a warning letter in lieu of an enforcement action under 49 CFR 190.205. PHMSA regulations at 49 CFR 190.225 provide a number of factors to be considered in determining an enforcement response. In the event that PHMSA upholds the violation, the Company submits that a fair assessment of these factors indicates that a warning letter would be a more appropriate response, or in the alternative a significant reduction to the civil penalty is warranted.

One of the factors to be considered in assessing an appropriate penalty is whether the entity made a good faith attempt to achieve compliance. At the informal hearing, the Company will provide evidence that its current AC procedures and maintenance regime were indeed a good faith attempt to achieve compliance. Moreover we will show that PHMSA inspectors during prior on-site inspections carefully reviewed the same AC procedures that are alleged to be deficient in this proceeding and proposed only relatively minor changes to them – all of which were made. The fact that our procedures had been vetted by prior PHMSA inspection teams gave the Company and Plant personnel even more reason to be confident that our procedures in this regard were compliant.

CONCLUSION

The safety and security of the Providence Liquefied Natural Gas (LNG) Facility's operations are of paramount importance to the Company, its customers and its neighbors. The Company greatly appreciates the diligence shown by PHMSA during its inspections, and we look forward to the opportunity to resolve the issues identified in the NOPV through an informal hearing to be conducted by the Department's staff in Washington DC. Thank you for your kind attention and consideration of this matter.

Sincerely,



Ross Turrini

Senior Vice President, Gas Process and Chief Engineer

Cc: David Lodemore, Senior Counsel II, FERC Regulatory
Thomas F. Smith, Director LNG Operations
Tim Woycik, Director Process Safety