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Houston, TX 77002

VIA CERTIFIED MAIL

July 12, 2019

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Robert Burrough  
Director, Eastern Region  
Pipeline and Hazardous Materials Safety Administration  
Department of Transportation  
840 Bear Tavern Road, Suite 300  
West Trenton, NJ 08628

Re: Energy Transfer Partners/Rover Pipeline LLC's  
PHMSA's Notice of Probable Violation and  
Proposed Civil Penalty CPF 1-2019-1001  
Request for Hearing

Dear Mr. Burrough:

The Pipeline Hazardous Materials and Safety Administration (PHMSA or the Agency) Eastern Region issued a Notice of Probable Violation and Proposed Civil Penalty to Rover Pipeline LLC (Rover or the Company) on May 31, 2019 (the 2019 NOPV), which Rover received on June 3, 2019. The Company believes that the issues raised in this 2019 NOPV and Proposed Civil Penalty are capable of resolution without resort to a hearing and respectfully requests a settlement meeting with the Eastern Region. In order to preserve its rights, however, Rover is filing this Request for Hearing along with a written response and statement of issues, pursuant to 49 C.F.R. Parts 190.208(a)(4) and 190.211(b).

As set forth below, the Company respectfully requests that the 2019 NOPV and the Proposed Civil Penalty be withdrawn in its entirety. In the event that a hearing is scheduled in this matter, please be advised that Rover in-house counsel and/or Troutman Sanders law firm will represent the Company at any hearing.

#### Background

The 2019 NOPV was issued as a result of inspections conducted by PHMSA between January and June 2018. The 2019 NOPV alleges one violation of Part 192.241 asserting that Rover failed to determine the acceptability of nondestructively tested welds according to the standards in section 9 or Appendix A of API Standard 1104. The 2019 NOPV also proposes a civil penalty of \$143,000. Notably, the 2019 NOPV at issue in this Request for Hearing was preceded by a NOPV issued on September 18, 2018, CPF 1-2018-1018 (2018 NOPV) that was issued as a result of those *very same* inspections.

The 2018 NOPV also alleges violations related to the inspection of welds by nondestructive testing (NDT) and examination (NDE) auditors, specifically alleging a violation of Part 192.243, along with two other violations, and included a Proposed Compliance Order (PCO) but no penalty. Rover did not contest the 2018 NOPV and agreed to implement the terms of the PCO, some of which were already completed at the time the 2018 NOPV was issued, while also requesting an alternative method for compliance with PCO Item 3.

Included among the activities that were already completed by Rover in advance of issuance of the 2018 NOPV and PCO, Rover had conducted a re-audit and repair of all x-ray welds performed by Rover's previously NDE and NDT auditors as set forth in Rover's written responses to the 2018 NOPV. That re-audit went beyond and was more thorough than the requirements of the PCO that was subsequently issued, and the results of the Company's re-audit were provided to PHMSA in Rover's June 30, 2018 NDE Audit and Repair Tracker Summary Report. In particular, as part of that effort, and again prior to issuance of the 2018 NOPV, Rover notified PHMSA of its discovery of 33 welds that, upon further review were found not to be acceptable and required remediation. Those same 33 welds are the subject of this 2019 NOPV.

To complicate matters further, approximately two weeks prior to the issuance of the 2019 NOPV by the Eastern Region, the Eastern Region submitted a Region Recommendation to PHMSA counsel on May 17, 2019, regarding the 2018 NOPV (this despite the fact that Rover did not contest the 2018 NOPV; Region Recommendations usually are prepared only after Hearings in contested cases) That Region Recommendation discusses the *same* 33 welds, and goes on to state that the proposed violation and PCO for Item 1 in the 2018 NOPV should remain unchanged, but then subsequently issues this 2019 NOPV to address that same issue. Rover has submitted a response to the Region Recommendation under separate cover.

#### PHMSA Allegation

In the 2019 NOPV, PHMSA alleges one violation of 49 C.F.R. Part 192.241(c) (inspection and test of welds), which states that

The acceptability of a weld that is nondestructively tested or visually inspected is determined according to the standards in section 9 or Appendix A of API Std 1104 (incorporated by reference, see § 192.7). Appendix A of API Std 1104 may not be used to accept cracks.

#### *Part 192.241(c).*

PHMSA goes on to state that "Rover failed to determine the acceptability of nondestructively tested welds according to the standards in section 9 or Appendix A of API Std 1104. Specifically, Rover failed to identify 33 welds that were unacceptable under section 9 of API Std 1104 at the time of nondestructive examination." Further, PHMSA suggests that in conducting a re-audit effort in compliance with the PCO issued under the 2018 NOPV, Rover

discovered evidence that shows it failed to comply with § 192.241(c). Specifically, Rover discovered that several NDE qualified Level II technicians, tasked with determining acceptability of completed welds, had failed to identify 33 welds that

were unacceptable under the radiographic test method acceptance criteria in Section 9 of API Std 1104. All of these welds required repair under § 192.245(a); several of which were noted to have resided on segments that were already placed in service.

PHMSA includes a Proposed Civil Penalty for \$143,000, but the NOPV does not include a PCO.

### Rover Response

Item 1 of the 2019 NOPV is both factually and legally incorrect. Rover used qualified technicians and qualified procedures, for the purpose of determining the acceptability of welds in accordance with referenced standards in Section 9 of API Standard 1104 and 49 C.F.R. Part 192.241(c). The 2019 NOPV contradicts its own allegation by the statement in footnote 1: "*Rover used section 9 of API Std 1104 to determine the acceptability of welds that are nondestructively tested or visually inspected. Rover did not provide any documentation demonstrating that it had use[d] or could use Appendix A to comply with § 192.241.*" Contrary to the allegations set forth in PHMSA's 2019 NOPV, however, Rover's qualified Level II technicians did in fact utilize the acceptance criteria standards in section 9 of API Standard 1104 to determine the acceptability of nondestructively tested welds. The mention of Rover's lack of documentation relative to the use of API 1104 Appendix A is perplexing based on the fact that Rover did not utilize Appendix A acceptance criteria for any of the welds in question.

Upon a third review, the 33 welds at issue that were initially identified as acceptable were simply a judgment call, fully within the bounds of and anticipated by API 1104. Through its quality assurance and quality control review, Rover subsequently determined that these 33 welds should be excavated and repaired, work which was completed several months prior to issuance of the 2018 NOPV. Thus, Rover used qualified personnel to examine welds according to applicable law, and Rover itself (not PHMSA as indicated in the 2018 NOPV) identified the 33 welds that needed further examination and/or remediation.

Part 192.241(d) generally requires nondestructive testing of 10% of a random selection of every day's field welds in class 1 locations, such as the location of the majority of the welds at issue on the Rover pipeline. Rover nondestructively tested 100% of the welds on the Rover Pipeline, and through multiple reviews of that testing consistent with API 1104 Section 9 criteria only identified 33 welds for further review, excavation and repair (i.e., 0.23% of the welds). The Part 192 regulations requiring nondestructive testing and review of weld acceptability anticipate that operators will identify welds that should be excavated and repaired. Simply because Rover identified a very small percentage of welds that had been initially identified as acceptable does not indicate that it did not follow API 1104 Section 9 criteria or Part 192.241(c) requirements.

In addition to being incorrect as a matter of fact and law, the 2019 NOPV is factually unnecessary and procedurally unusual. Although the PCO issued under the 2018 NOPV required that Rover conduct a re-audit of the welds, as noted above, that re-audit was already conducted and repairs had been completed by Rover by June 30, 2018, nearly three months prior to the issuance of the 2018 NOPV, and coincident with the completion of the PHMSA inspections underlying the 2018 NOPV as well as the 2019 NOPV. Moreover, the second (2019) NOPV is based on the *same* underlying facts, inspections and allegations contained in the first (2018) NOPV.

PHMSA regulations and established practice suggest that the Agency should have simply amended the 2018 NOPV if it had a basis to add new allegations or seek additional relief. The 2018 NOPV has not yet been finalized, thus the Agency could address any additional or new concerns it had, after the fact, in the 2018 NOPV rather than issue a new (2019) NOPV. Instead, the Agency issued the unnecessary 2019 NOPV, but preceded it with a most unusual Region Recommendation by the Eastern Region, dated May 17, 2019. In the Region Recommendation, the Eastern Region states that it:

takes no exception with Rover's final disposition of thirty-three (33) welds that required remediation because of its findings, and as detailed in their NDE Audit and Repair Tracker Summary Report. Based on the information provided by Rover, and the uncontested completion of the actionable items for compliance, PHMSA recommends that the proposed violation and PCO for Item 1 remain in the Order as outlined in the Notice.

*PHMSA Eastern Region Recommendation re 2018 NOPV (May 17, 2019), p. 3.*

Procedurally, the issuance of this second 2019 NOPV is misplaced, given that PHMSA can amend a NOPV any time prior to issuance of a Final Order. *49 C.F.R. Part 190.207(c)*. The 2019 NOPV added nothing to the allegations, only adding a proposed penalty, which could have been added through an Amended (2018) NOPV. For the reasons set forth in this response, Rover contests the proposed penalty in its entirety.

In light of the above, there is no factual, legal or procedural basis for the 2019 NOPV.

#### Statement of Issues

1. Whether the 2019 NOPV should be withdrawn because Rover complied with 49 C.F.R. Part 192.241(c).
2. Whether the Proposed Civil Penalty should be withdrawn because Rover complied with 49 C.F.R. Part 192.241(c).
3. Whether the 2019 NOPV should be withdrawn because PHMSA should have more appropriately addressed any underlying issue or Proposed Civil Penalty as part of the 2018 NOPV.

#### Summary

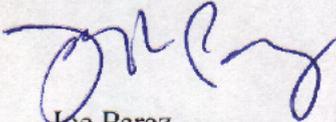
PHMSA has created more confusion than necessary for this matter. Based on the same inspections, underlying documents and issues, PHMSA Eastern Region issued two NOPVs, one in 2018 and a second more recently in 2019. Further, just two weeks prior to issuance of the 2019 NOPV, PHMSA Eastern Region issued a Region Recommendation for resolution of the 2018 NOPV, addressing the very same issues addressed in the 2019 NOPV. Rover did not contest the 2018 NOPV, thus it was unusual for PHMSA to issue a Region Recommendation for that action.

Rover has issued a separate response to the Region Recommendation, respectfully requesting that the Region withdraw the Region Recommendation or that the Associate Administrator disregard

it, both because it is not authorized under PHMSA's regulations and because the modifications it seeks as to Item 2 of the PCO are moot. Rover similarly requests that the Region withdraw the 2019 NOPV for reasons addressed above, namely that the alleged violation is without factual, legal or procedural basis.

Rover is committed to pipeline safety and ensuring public safety and pipeline integrity. To the extent any issues remain, we also respectfully suggest that they could likely be resolved informally through a meeting, or, if necessary, a Consent Agreement (as allowed by PHMSA regulations at 49 C.F.R. Part 190.219).

Sincerely,

A handwritten signature in blue ink, appearing to read 'Joe Perez', with a stylized flourish at the end.

Joe Perez  
SVP E&C Services Support