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CERTIFIED MAIL

August 21, 2019

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

RE: CPF 1-2019-1014W Warning Letter

Dear Mr. Burrough,

This letter is the formal response by Dominion Energy Transmission, Inc. (DETI) to the following alleged probable violation of the Pipeline Safety Regulations in Warning Letter CPF 1-2019-1014W (Warning Letter), dated July 25, 2019.¹ As described below, DETI respectfully submits that the facts do not support a finding of a probable violation and requests that the Warning Letter be withdrawn.

The regulation in question is 49 C.F.R. § 192.303:

1. § 192.303 Compliance with specifications or standards.

Each transmission line or main must be constructed in accordance with comprehensive written specifications or standards that are consistent with this part.

The following “PHMSA Allegation” is directly quoted from the Warning Letter. See page three for the start of DETI’s response to this allegation.

PHMSA Allegation:

“Dominion Energy Transmission, Inc. (DETI) failed to install portions of the ACP in the manner specified in its comprehensive written specifications or standards consistent with Part

¹ See “Attachment A” for PHMSA’s Warning Letter CPF 1-2019-1014W, dated July 25, 2019.

192 for constructing transmission lines. Specifically, DETI failed to follow its General Specifications for Pipeline Construction, dated 5/8/2018 (Construction Specifications), regarding ditching and laying pipe, developed to comply with §192.319(a).

Section 192.319(a) states:

- (a) When installed in a ditch, each transmission line that is to be operated at a pressure producing a hoop stress of 20 percent or more of SMYS must be installed so that the pipe fits the ditch so as to minimize stresses and protect the pipe coating from damage.

DETI's Construction Specifications stated (emphasis added):

3.0 DITCHING

3.1 The **ditch shall be excavated to the depth and width designated in the Pipeline Data and the Maps and Plans portions of the Contract**

...

3.4 Before the pipe is measured for bending, the bottom of the ditch shall be graded and completed by Contractor in a manner that will provide uniform support for the pipeline after it is lowered into the ditch. The ditch shall contain sufficient sacks filled with **sifted, rock-free earth or sand**, or a protective bed of sifted, **rock-free earth or sand for adequate support and protection of the pipeline**. Foam pads COMPANY used for pipe supports are prohibited...

...

4.0 BENDING, CONDITIONING, AND LAYING PIPE

...

4.12 The **pipe shall be lowered into the ditch free of loose rocks, wood, welding rods, and metal and other debris**.

DETI's Atlantic Coast Pipeline Contract, Exhibit A – Scope of Work, states in Section 3:

V) Excavating and grading ditch:

- (i) Minimum width of ditch, subject to Exhibit Q – Drawings, Specifications, and Other Documents:

Spread Number	Ditch Width (inches)
1-1	54 & 42
1-2	54
2-1	54

...

- (1) Ditch must be adequate width to accommodate all inspections, cleaning and coating as per General Specifications for Pipeline Construction in Exhibit Q – Drawings, Specifications, and Other Documents.

During field inspection of ACP Spreads 1-1 and 2-1 on December 12, 2018, the PHMSA inspectors noted the placement of pipe within the ditch at Broad Run Rd (Spread 1-1) and Democrat Rd (Spread 2-1) were not performed in a manner consistent with §192.319, DETI's Construction Specifications, and DETI's Scope of Work.

At Broad Run Rd, 42-inch diameter pipe was noted to have been placed within an apparent 42-inch wide, rock laden ditch, leaving it susceptible to potential stresses and/or damage incurred as a result of movement or settlement typically experienced during required hydrostatic testing. The excessively narrow trench also impeded adequate post installation inspection at this location, and is prohibited by DETI's specifications.

At Democrat Rd, 42-inch diameter pipe was noted to have been placed within a rock laden ditch, uncentered, and abutting rock laden trench walls. The PHMSA inspectors also conveyed concern with positioning of pipe within proximity to large unsupported boulders susceptible of damaging the pipeline from settlement above if allowed to remain. The identified conditions also have the potential to be exacerbated in the event of heavy rains and/or washouts.

Therefore, DETI failed to construct the ACP in accordance with its comprehensive written specifications or standards developed to comply with §192.319(a)."

DETI Response:

DETI respectfully requests that PHMSA withdraw this warning item. The evidence and facts included in the record do not support a probable violation of 49 C.F.R. § 192.303. The PHMSA inspection occurred at a time when DETI was temporarily prohibited from engaging in any further construction activities. DETI placed or left the pipe in the trench temporarily for further protection in response to the U.S. 4th Circuit Court of Appeal's stay of implementation which effectively suspended all construction activities across the Atlantic Coast Pipeline (ACP) project. It was not "installed" or ready for use.

The following is a timeline of the events relevant to this case:

- December 7, 2018: The United States Court of Appeals for the Fourth Circuit issued a stay of implementation of the U.S. Fish and Wildlife Service's 2018 Biological Opinion and Incidental Take Statement.² The stay suspended all construction activities across the entire project, except stand-down activities. As a result, DETI directed all work to cease at the two (2) subject areas on the ACP project (FERC Accession Number: 20181207-5147).
- December 11, 2018: The project team filed information with the Federal Energy Regulatory Commission (FERC) on work in critical areas that was needed to achieve critical stabilization, environmental and cultural resource protection, and public safety (FERC Accession Number: 20181211-5109).

² See "Attachment B" for the U.S. 4th Circuit Court of Appeals stay of implementation ORDER, filed December 7, 2018.

- December 11-12, 2018: PHMSA inspected ACP just four (4) days after the U.S. 4th Circuit Court of Appeals issued the stay and while DETI was awaiting approval from FERC to conduct any further activities.
- December 19, 2018: The project team filed an *Interim Right-Of-Way and Work Area Stabilization Plan* for review and approval by FERC (FERC Accession Number: 20181219-5240).
- January 10, 2019: FERC granted approval for both the ACP and the Supply Header Project *Interim Right-Of-Way and Work Area Stabilization Plan* (FERC Accession Number: 20190110-3043).
- Once the stabilization work was authorized by FERC, DETI completed construction and backfilling, including final inspections for these construction activities at the two (2) locations subject to this PHMSA inspection.

The two (2) subject areas referenced by the PHMSA auditor on the dates inspected are described below, along with details regarding the state of construction at the time of such inspections.

1) Broad Run Road (Spread 1-1)

On Tuesday, December 11, 2018, the PHMSA auditor walked the right-of-way (ROW) and observed current trench/ditch conditions where the segment of pipeline was presently located. In the Warning Letter, the auditor noted that the pipeline had been placed into a "...42-inch wide, rock laden trench, leaving it susceptible to potential stresses and/or damage incurred as a result of movement or settlement typically experienced during required hydrostatic testing." The auditor goes on to state in the Warning Letter that "[T]he excessively narrow trench also impeded adequate post installation inspection at this location and is prohibited by DETI's specifications." At the time of the work stoppage prior to the audit, DETI directed the pipeline contractor to lower the pipe temporarily into the pipeline trench at this location as a means of bringing the work to a stopping point that was both safe and protective of the environment.

At the time of the audit, DETI informed the auditor that the entire segment was placed in its position due to the stay that it received from the U.S. 4th Circuit Court of Appeals just days before. PHMSA acknowledged this fact in its Post-Inspection Report ("Staff notes that just prior to this inspection, the ACP project was abruptly halted by court order, and may be reasoning for discovery of these conditions.")³ This claim was made evident in the ROW through further clear evidence that included: the unwelded ends of the pipeline segment (i.e. welding had yet to be performed on either end for tie-in), several side booms located adjacent to the trench where the pipe was located, the installation of cloth slings around the pipeline (which were located in the vicinity of the side booms for their use to lift the pipeline), and the lack of backfill installed anywhere within

³ PHMSA's May 8, 2019 Written Preliminary Findings Report.

the trench where the pipeline segment was located. It was explained on the ROW to the auditor that the segment in question had to be lifted back up and centered to perform additional welding, thus the pipeline's location at the time of the audit was not reflective of its final resting location, nor were the trench conditions final. The pipe trench was dug with a minimum of a 54-inch bucket. Therefore, the width of the trench was a minimum of 54-inches, which complies with DETI's Construction Specifications and DETI's Scope of Work for the minimum width of trench required for 42-inch diameter pipe. Furthermore, at the time of inspection the segment in question was double wrapped with rock shield adding additional circumference to the pipe. The auditor did not have a measuring device to make this determination on the trench width nor did the auditor request company representatives to measure the width of the trench in this area. The rock shield had been previously (prior to the audit) installed on the pipeline segment in this location to mitigate the potential threat of rocks damaging the pipeline. In addition, the trench contained locations where it was necessary to perform additional inspection, cleaning and/or coating as per the Company's General Specifications. Lastly, the auditor was provided access to areas where the trench width was increased to conduct final inspections for work that had not yet occurred due to the FERC stay.

2) Democrat Road (Spread 2-1)⁴

On Wednesday December 12, 2018, the PHMSA auditor walked the ROW and observed current trench/ditch conditions where the segment of pipeline was presently located. In the Warning Letter, the auditor noted that the pipeline had been placed "...within a rock laden trench, uncentered, and abutting rock laden trench walls." The auditor goes on to state in the Warning Letter that "[T]he PHMSA inspectors also conveyed concern with positioning of pipe within proximity to large unsupported boulders susceptible of damaging the pipeline from settlement above if allowed to remain. The identified conditions also have the potential to be exacerbated in the event of heavy rains and/or washouts."

As discussed above, at the time of the audit, DETI indicated that the entire segment identified by the auditor was left in its position due to the stay that it received from the U.S. 4th Circuit Court of Appeals just days before. PHMSA acknowledged this fact in its Post-Inspection Report ("Staff notes that just prior to this inspection, the ACP project was abruptly halted by court order, and may be reasoning for discovery of these conditions.")⁵ This claim was made evident in the ROW through further clear evidence that included: the unwelded end of the pipeline segment (i.e. welding had yet to be performed on the downstream end), and the lack of backfill installed anywhere within the trench where the pipeline segment was located on the hill/slope. It was explained on the ROW to the auditor that the segment in question had to be lifted to perform additional welding, thus the pipeline's location at the time of the audit was not reflective of

⁴ The full reference location is Democrat Ridge Road.

⁵ PHMSA's May 8, 2019 Written Preliminary Findings Report.

its final resting location, nor were the trench conditions final. The pipe trench was dug with a minimum of a 54-inch bucket. Therefore, the width of the trench was a minimum of 54-inches, which complies with DETI's Construction Specifications and DETI's Scope of Work for the minimum width of trench required for 42-inch diameter pipe. As noted for the Broad Run Road site above, at the time of inspection the segment in question was double wrapped with rock shield adding additional circumference to the pipe. The auditor did not have a measuring device to make this determination on the trench width nor did the auditor request company representatives to measure the width of the trench in this area. The rock shield had been previously (prior to the audit) installed on the pipeline segment in this location to mitigate the potential threat of rocks damaging the pipeline.

As noted in the timeline above, the two (2) locations subject to this PHMSA inspection were included under the work of the stabilization plan approved by the FERC and have been constructed, inspected, and backfilled to DETI's appropriate specifications and standards. As part of DETI's installation process, once the pipeline is constructed and inspected to DETI's written specifications, the pipeline undergoes further scrutiny to ensure its integrity prior to operation. After backfilling, but prior to ROW restoration, DETI performs Alternating Current Voltage Gradient (ACVG) testing as an additional means to ensure the integrity of the pipeline coating is intact. If the survey reveals specific indications of coating damage, DETI will excavate down to the pipeline at that location and repair the coating. Also, after hydrostatic testing of the pipeline, but prior to placing the pipeline into service, DETI performs geometric pigging to ensure the pipeline meets acceptable geometry requirements. In the infrequent event that the pigging tool reveals indications of dents, or other ovality issues in the pipeline to acceptable industry standards, DETI will excavate down to the pipeline at that location and determine if the feature requires cut out and replacement. Through these types of activities, as well as the addition of a robust cathodic protection system, operation and maintenance surveys/tasks and ongoing pipeline integrity assessments for the life of the pipeline, DETI assures the safe operation of its pipelines.

Although the Eastern Region notes that no further action is necessary since this item is a warning item, DETI respectfully requests that PHMSA withdraw this item since the facts do not support a probable violation. At the time of the construction audit, construction was not complete. Similarly, PHMSA has withdrawn a probable violation in a recent enforcement case where construction was not complete.⁶ In that case, PHMSA alleged that the operator had failed to bury a portion of a pipeline segment to the appropriate depth of cover.⁷ However, the operator noted that construction was not complete at the time of the PHMSA inspection.⁸ Ultimately, the agency agreed that there was insufficient evidence proving that construction activity was complete and therefore, withdrew the probable violation.⁹ It is within the discretion of the Regional Director to withdraw warning items and PHMSA has taken such action in

⁶ *In the Matter of Inland Corp.*, CPF No. 1-2017-5003 (Mar. 7, 2018).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

several cases.¹⁰ If this warning item is issued as proposed, this misunderstanding could lead the public to conclude that there are problems with DETI's construction practices, a claim that is not supported by the record.

Respectfully,



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Dominion Energy Transmission, Inc.

¹⁰ PHMSA has demonstrated its authority to withdraw warning items where the facts do not support a probable violation. See *In the Matter of Buckeye Partners*, CPF No. 4-2012-5015 (Oct. 18, 2012); *In the Matter of Conoco Phillips*, CPF No. 5-2004-5009 (Sept. 20, 2006); *In the Matter of Natural Gas Pipeline Co.*, CPF No. 23103 (Aug. 18, 1997); *In the Matter of ExxonMobil*, CPF No. 5-2005-5008 (Jan. 9, 2007); *In the Matter of Bridger Pipeline*, CPF No. 5-2009-5034 (Aug. 30, 2012); *In the Matter of Kinder Morgan, Inc.*, CPF No. 5-2007-1008 (Sept. 1, 2009).