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**PUBLIC VERSION – WITH CERTAIN ATTACHMENTS REDACTED**

*By Email Only*

January 10, 2020

Ms. Kristin Baldwin, Esq.  
Presiding Official  
United States Department of Transportation  
Pipeline and Hazardous Materials Safety Administration  
1200 New Jersey Avenue SE  
East Building  
Washington, DC 20590

**Re: Distrigas of Massachusetts, LLC, Pre-Hearing Submission  
CPF No. 1-2019-3001M**

Dear Ms. Baldwin,

Pursuant to the Notice of Hearing issued on December 27, 2019, and 49 C.F.R. § 190.211(d), Distrigas of Massachusetts, LLC (Distrigas) submits its Pre-Hearing Submission in this proceeding.

Distrigas's Prehearing Submission is comprised of the following documents:

1. Revised Statement of Issues
2. Pre-Hearing Brief, with attachments (PUBLIC and NON-PUBLIC versions)

Some of the attachments to Distrigas's Pre-Hearing Brief contain confidential commercial or business sensitive information. Pursuant to 49 C.F.R. § 190.343, Distrigas is submitting a NON-PUBLIC version of its Pre-Hearing Brief with certain attachments marked "Confidential" and a PUBLIC version with the confidential attachments redacted. The information that Distrigas has marked "Confidential" consists of commercially sensitive information relating to the sale and shipment of LNG from the Everett LNG Import Terminal (Terminal) and proprietary procedures applicable to the Terminal that contain sensitive business and operational information regarding the safe loading of LNG on to trucks at the Terminal and recordkeeping practices. The redacted portions of the submission qualify for confidential treatment under 5 U.S.C. § 552(b)(4), which exempts privileged or confidential trade secrets and commercial or financial information from disclosure by federal agencies. Distrigas requests that the NON-PUBLIC version of the Pre-Hearing Brief be treated confidentially and not placed in the public docket.

The following people will attend the January 21, 2020 videoconference hearing:

1. Susan B. Bergles, Assistant General Counsel, Exelon Corporation
2. Edward Gleason, General Manager, Northeast Region, Exelon Generation Company, LLC
3. Jonathan Lauck, Plant Manager, Everett LNG Facility, Exelon Generation Corporation, LLC
4. Susan A. Olenchuk, Counsel for Respondent, Van Ness Feldman, LLP  
Bryn Karaus, Counsel for Respondent, Van Ness Feldman, LLP

The following people will be attending and available as potential witnesses for Distrigas:

Susan Stritter, Sr. Compliance Specialist, Exelon Generation LLC

Distrigas has arranged for a transcript of the hearing to be prepared at its own expense, and will provide copies of the transcript to the Presiding Official and OPS.

Distrigas requests that it be provided a copy of any communications from OPS to the Presiding Official, including the Region Director's "written evaluation of response material submitted by the respondent and recommendation for final action, if one is prepared." 49 C.F.R. § 190.209(b)(7). Under section 190.209(a), the case file is to be made available to the respondent and the Region Director's written evaluation and recommendation is part of the case file. *Id.* Distrigas also requests that it be provided an opportunity to submit a response to the Region Director's written evaluation and recommendation.

Thank you for your attention on this matter.

Respectfully submitted,

*Susan A. Olenchuk*

Susan A. Olenchuk  
Bryn S. Karaus  
Counsel for Distrigas of Massachusetts, LLC

CC: Ajoke Agboola, Esq., Counsel for the Eastern Region, OPS  
Robert Burrough, Director, Eastern Region, PHMSA  
Susan B. Bergles, Assistant General Counsel, Exelon Corporation  
Edward Gleason, General Manager, Northeast Region, Exelon Generation Company, LLC  
Jonathan Lauck, Plant Manager, Everett LNG Facility, Exelon Generation Company, LLC  
Susan Stritter, Sr. Compliance Specialist, Exelon Generation Company, LLC

**U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY**

In the Matter of	)	
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	)	
Distrigas of Massachusetts, LLC	)	CPF No. 1-2019-3001M
	)	
Respondent.	)	
	)	

**Revised Statement of Issues  
of Distrigas of Massachusetts, LLC**

Set forth below is the Revised Statement of Issues that Distrigas of Massachusetts, LLC (Distrigas) intends to raise at the January 21, 2020 hearing regarding the Notice of Amendment (NOA) issued in this case. Distrigas reserves the right to supplement these issues based upon any additional arguments that are raised at the hearing.

**1. § 193.2605 Maintenance Procedures**

Whether Distrigas' procedures for the maintenance of each component were inadequate to assure safe operation of a pipeline facility because the March 13, 2018 and June 25, 2019 versions of Distrigas' Truck Loading Procedure EMT-05 did not provide adequate guidance on recordkeeping guidance for the testing of transfer hoses used to transfer LNG to tanker trucks at the Everett LNG Import Terminal (Terminal) under 49 C.F.R. § 193.2921(b).

1. Whether the Office of Pipeline Safety (OPS) failed to satisfy its burden of proving that Distrigas' Truck Loading procedures are inadequate because 49 C.F.R. § 193.2921(b) does not relate to the testing of transfer hoses.
2. Whether OPS failed to satisfy its burden of proving that Distrigas' Truck Loading procedures are inadequate where annual testing transfer hoses is not governed by the Truck Loading procedure.
3. Whether OPS failed to satisfy its burden of demonstrating that Distrigas's procedures did not contain all necessary record retention provisions prior to the inspection and prior to issuance of the NOA.
4. Whether OPS failed to satisfy its burden of demonstrating that the Truck Loading Procedures failed to address certain recordkeeping details.
5. Whether OPS failed to satisfy its burden of demonstrating that the Truck Loading Procedures fail to include sufficient guidance on how to record information on the Bill of Lading Record.

6. Whether the NOA should be withdrawn because no legal basis or factual evidence supports the allegation that Distrigas's procedures are inadequate for the maintenance of each component or to assure the safety of the Terminal.
2. **Whether the Closure Letter should be rescinded because it violates the Pipeline Safety Act and PHMSA's regulations by foreclosing Distrigas's right to challenge the merits of the allegations contained in the NOA regarding the adequacy of the Truck Loading Procedures.**

At the hearing in this case, Distrigas intends to present evidence and engage with OPS in discussion on these issues. Distrigas reserves the right to respond to any assertions and arguments introduced by OPS during the proceedings in this case, and to supplement the record accordingly.

Respectfully submitted,

*Susan A. Olenchuk*

Susan A. Olenchuk  
Bryn S. Karaus  
Counsel for Distrigas of Massachusetts, LLC

January 10, 2020

CC: Ajoke Agboola, Esq., Counsel for the Eastern Region, OPS  
Robert Burrough, Director, Eastern Region, PHMSA  
Susan B. Bergles, Assistant General Counsel, Exelon Corporation  
Edward Gleason, General Manager, Northeast Region, Exelon Generation Company, LLC  
Jonathan Lauck, Plant Manager, Everett LNG Facility, Exelon Generation Company, LLC  
Susan Stritter, Sr. Compliance Specialist, Exelon Generation Company, LLC

**U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY**

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**In the Matter of** )  
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**Distrigas of Massachusetts, LLC** ) **CPF No. 1-2019-3001M**  
 )  
**Respondent.** )  

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**PREHEARING BRIEF  
OF DISTRIGAS OF MASSACHUSETTS, LLC**

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**UNITED STATES DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY**

In the Matter of	)	
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Distrigas of Massachusetts, LLC	)	CPF No. 1-2019-3001M
	)	
Respondent.	)	
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**Pre-Hearing Brief  
of Distrigas of Massachusetts, LLC**

**I. INTRODUCTION**

Pursuant to 49 C.F.R. § 190.211(d) (2019), Distrigas of Massachusetts, LLC (Distrigas) respectfully submits its Prehearing Brief regarding the Notice of Amendment (NOA) issued by the Office of Pipeline Safety (OPS) on September 17, 2019. The NOA arose out of an inspection of the Distrigas Everett LNG Import Terminal (Terminal) performed in June 2019 and alleges that the March 13, 2018 and June 25, 2019 versions of Distrigas’s Truck Loading Procedure, EMT-05, do not provide adequate recordkeeping guidance with respect to testing the transfer hoses used to transfer liquefied natural gas (LNG) to tanker trucks at the Terminal.

Distrigas is committed to public safety and operating and maintaining the Terminal in accordance with the regulations of the Pipeline and Hazardous Materials Safety Administration (PHMSA) and takes the NOA seriously. In this case, however, Distrigas requests that the NOA be withdrawn because its allegations are legally and factually unsupported. Neither the cited regulatory provision nor the Truck Loading Procedure relates to the testing of the transfer hoses. The evidence provided in the Case File does not support the NOA’s allegations. The information which the NOA alleges is missing from Distrigas’s Procedure is not missing or, in many cases, is not required by Part 193. Similarly, with respect to information alleged to be missing from the Bills of Lading, the information either is not missing or has no bearing on safety and is not required by Part 193. By contrast, the information that *is* required under Part 193, *i.e.*, Distrigas’s signature documenting the visual inspection of the transfer hoses before a truck is loaded *does appear* on each and every Bill of Lading. OPS has failed to satisfy its burden of proving that the Truck Loading Procedures are inadequate to assure the safety of the Terminal.

Distrigas also requests that the Closure Letter issued by OPS on November 18, 2019 be rescinded because the Pipeline Safety Act and PHMSA’s regulations provide Distrigas the right to challenge the merits of OPS’s allegations in this enforcement proceeding. Allowing the Closure Letter to stand would eviscerate that right.

## **II. BACKGROUND**

### **A. Overview of the Distrigas LNG Import Terminal**

The Terminal is located in Everett, Massachusetts, just outside of Boston. The Terminal receives imported LNG from vessels and then stores the LNG until it is either vaporized and delivered to interstate and distribution pipelines, delivered to the adjacent Mystic Generation Plant for electric power generation, or the liquid LNG is loaded onto tanker trucks for delivery to customers.

On March 29, 2018, ENGIE Gas & LNG LLC and its corporate affiliate, ENGIE Gas & LNG Holdings LLC entered into a Membership Interest and Asset Purchase Agreement with Exelon Generation Company, LLC (Exelon Generation), to buy 100 percent of the issued and outstanding membership interests in Distrigas of Massachusetts LLC, effecting the transfer of the Terminal's physical assets, employees, data systems, intellectual property, and other assets to Exelon Generation (ENGIE/Exelon Transaction). The ENGIE/Exelon Transaction closed on October 1, 2018.

### **B. Truck Loading at the Terminal**

#### *1. Bills of Lading Documenting the Shipment of LNG*

The LNG that is stored at the Terminal is not owned by Distrigas. The LNG is owned by another Exelon-owned company, Constellation, a commercial marketing company that sells natural gas and LNG to third parties. When an LNG sale occurs, the LNG is loaded onto a tanker truck at one of the Terminal's four truck scales and is shipped to the purchasing customer. Details of the LNG truck shipment are recorded on a Uniform Straight Bill of Lading Truck Shipping Record (Bill of Lading), a commonly used standardized freight shipping document that reflects an agreement between a "Shipper" (*i.e.*, Distrigas) and a "Carrier" (*i.e.*, trucking company) for the shipment of goods. Typically, a Bill of Lading contains information regarding the type, quantity and destination of the good being carried.<sup>1</sup>

In the normal course of business operations, Distrigas creates a Bill of Lading whenever a truck is loaded with LNG at the Terminal. After a truck driver (*i.e.*, Carrier) secures the tanker trailer at one of the scales, the driver presents a Truck Loading Slip<sup>2</sup> to the Distrigas operator who enters the information from the Truck Loading Slip into a truck loading computer. Information contained in the Truck Loading Slip includes the Bill of Lading number, specifies the origin and destination of the shipment, describes the commodity, and provides a shipment number. Distrigas generates a Bill of Lading by placing a blank Bill of Lading form into the truck loading computer, located in the truck driver's lounge a safe distance from the Terminal's truck loading scales. The truck loading computer then instantly transmits information to Constellation's commercial department so that it can track LNG inventory and the LNG

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<sup>1</sup> Uniform Bill of Lading, <https://www.investopedia.com/terms/u/uniform-bill-of-lading.asp> (updated May 10, 2019).

<sup>2</sup> See Attachment 1 at 3, 6, 9 and every third page thereafter for representative samples of Truck Loading Slips (Distrigas's Handwritten Bills of Lading, Computer-Printed Duplicate Bills of Lading, and Truck Loading Slips).

shipment. The LNG truck shipment and the contents of the Bill of Lading relating to the shipment are not subject to Part 193.

In addition to information received from the truck driver's Truck Loading Slip, the Distrigas Bill of Lading reflects certain information generated from the truck loading process itself. Distrigas describes some of that information in the Truck Loading Procedure, whose purpose is to ensure the safe transfer of LNG from the Terminal's tanks on to the tanker trucks. The Truck Loading Procedure states that certain information is to be recorded on the Bill of Lading, even though the other elements of the Bill of Lading are not governed by Part 193. For example, section 3.2.1.8 of EMT-05 states that, after the truck enters one of the truck loading scales, the truck driver records the scale number on the Truck Loading Slip and, if the trailer is "hot" (*i.e.*, the LNG tanker truck trailer has been unloaded for over 48 hours), indicates such on the Truck Loading Slip.<sup>3</sup> If no "hot" marking is indicated, then the trailer is not "hot." Under section 3.2.2.1 of the Truck Loading Procedure, Distrigas provides the tare weight (*i.e.*, the weight of an empty truck car) and other appropriate data as prompted by the truck loading computer.<sup>4</sup>

In the normal course of business, the information entered into the truck loading computer is reflected on the Bill of Lading when it is printed. After the truck is filled, as provided under section 3.4.2.3 of the Truck Loading Procedure, the truck driver (*i.e.*, Carrier/Driver) and Distrigas (Shipper/Operator) both sign and exchange paperwork,<sup>5</sup> including the Truck Loading Slip and the Bill of Lading.

## 2. *The Visual Inspection of Transfer Hoses*

The Truck Loading Procedure EMT-05 contains detailed procedures designed to ensure that the physical transfer of the LNG from the Terminal tanks into the tanker trucks is performed safely in compliance with Part 193. Three versions of Distrigas's Truck Loading Procedure are relevant in this proceeding. The first is the March 13, 2018 version which was effective until it was revised and updated on June 6, 2019.<sup>6</sup> The June 6, 2019 Procedure<sup>7</sup> was the version in effect and reviewed by the PHMSA Inspector during the June 2019 inspection of the Terminal.<sup>8</sup> The third version of the Truck Loading Procedure relevant to this proceeding was updated June

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<sup>3</sup> Attachment 2 at 3; Attachment 3 at 4; Attachment 4 at 4 (Distrigas Truck Loading Procedure No. EMT-05, Updated March 13, 2018; Distrigas Truck Loading Procedure No. EMT-05, Updated June 6, 2019; Distrigas Truck Loading Procedure No. EMT-05, Updated June 25, 2019). A truck trailer marked "hot" is loaded differently than a trailer that is not "hot."

<sup>4</sup> Attachment 2 at 4; Attachment 3 at 4; Attachment 4 at 4. Other data required by the truck loading computer includes who the LNG is consigned to, the destination of the shipment, the Carrier, tank number, trailer plate number, state, scale number, BTU content, date, the time in and the time out.

<sup>5</sup> Attachment 2 at 9 and Attachment 3 at 9.

<sup>6</sup> Attachment 2.

<sup>7</sup> Attachment 3.

<sup>8</sup> Attachment 11 at 3 (referring to "EMT-05 Truck Loading, updated 6/6/19"). *See also* NOA at 2 (stating that "the PHMSA Inspector reviewed Distrigas' Procedure").

25, 2019<sup>9</sup> for the purpose of clarifying for the Inspector that the “operator” is the “Shipper” and the truck driver is the “Carrier” on the Bill of Lading.<sup>10</sup>

Among the required activities described in EMT-05 are “Pre-check” tasks that are performed before a truck is loaded. These tasks, described in section 3.1 of the Procedure, are performed by Distrigas Operations personnel. One of the “Pre-check” tasks is the visual inspection of the hoses that will be used to transfer the LNG to the truck.<sup>11</sup> As required under 49 C.F.R. § 193.2513(c)(3)(ii), section 3.1.1.1 of EMT-05 states that Distrigas operations personnel must:

[v]isually check hoses, fittings, valves, and instrumentation for damage or defects before each use. Report and note any defects in the Operating Log of Events. Operator full signature on the Bill of Lading indicates that the truckload hoses have been visually inspected.<sup>12</sup>

Because visual inspection of the transfer hoses is performed immediately before each truck is loaded, the Bill of Lading is the document on which Distrigas has chosen to record the completion of the inspection. As provided in section 3.1.1.1, the Operator’s (*i.e.*, Distrigas operator’s) signature on the Bill of Lading, required under section 3.4.2.3, constitutes the record that the inspection was performed as required under 49 C.F.R. § 193.2621(b).

After the truck loading process is complete, the Bill of Lading and corresponding Truck Loading Slip are maintained by Distrigas in Truck Loading Notebooks for the retention period specified in Procedure No. RC-003, Record Retention.<sup>13</sup> The Bills of Lading serve as the record documenting that Distrigas visually inspected the transfer hoses before loading the tanker truck.

### 3. *Annual Testing of Transfer Hoses*

In addition to visually inspecting the transfer hoses before each truck is loaded with LNG, Distrigas tests the transfer hoses on an annual basis to evaluate and confirm their integrity. As required under § 193.2621(a) of PHMSA’s regulations, Distrigas tests the hoses “to the maximum pump pressure or relief valve setting.”<sup>14</sup> Annual testing is performed pursuant to Distrigas’s Maintenance Procedure EMT-029M,<sup>15</sup> not the Truck Loading Procedure. Testing the transfer hoses requires that they be disconnected and removed and taken to a separate facility.

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<sup>9</sup> Attachment 4.

<sup>10</sup> Attachment 12 at 1; Attachment 4; *see also* Attachment 5, showing in redline the differences between the June 6, 2019 version of the Truck Loading Procedure and the June 25, 2019 version.

<sup>11</sup> Attachment 2 at 2-3, Attachment 3 at 3, and Attachment 4 at 3.

<sup>12</sup> Attachment 3 at 2. All three versions of Distrigas’s Truck Loading Procedures contain this provision, with minor differences. The June 25, 2019 version changed the word “Operator” to “Operator/shipper” in the third sentence to clarify for the OPS Inspector that the Operator is the Shipper on the Bill of Lading. Attachment 4 at 2-3 and Attachment 5 at 2-3. The March 13, 2018 version of EMT-05 contained the phrase “visually inspect” instead of “visually check” in the first sentence. Attachment 2 at 2.

<sup>13</sup> Attachment 6 at 1 (Distrigas Record Retention Procedure No. RC-003, Updated June 6, 2016).

<sup>14</sup> 49 C.F.R. § 193.2621(a).

<sup>15</sup> Attachment 7 (Distrigas Truck Load Hoses Procedure No. EMT-029M, Updated October 16, 2017).

As provided in Maintenance Procedure No. EMT-029M, the paperwork documenting annual tests of the transfer hoses is retained by Distrigas in accordance with Record Retention Procedure No. RC-003. Because testing transfer hoses occurs annually (not when trucks are loaded) and requires dismantling the hoses, the Bill of Lading would not be the appropriate record for documenting that testing was completed.

4. *Truck Loading Computer Outage After the Close of ENGIE/Exelon Transaction*

In the normal course, when a truck is loaded with LNG, the Bill of Lading reflecting shipment details is generated by the truck loading computer and then signed by both Distrigas and the truck driver. After the close of the ENGIE/Exelon Transaction on October 1, 2018, however, there was a transition period when the truck loading computer was not operational because Exelon was integrating Distrigas's computer systems into the Exelon systems. During this time period (October 1-12, 2018), Distrigas completed Bills of Lading by hand.

From October 1-12, 2018, Distrigas completed a total of 166 handwritten Bills of Lading. As required under section 3.4.2.3 of the Truck Loading Procedure, each handwritten Bill of Lading was signed by both Distrigas and the truck driver. In addition, as required under section 3.1.1.1, the Distrigas Operator's signature documented that visual inspection of the truck hoses had been performed. During this 12-day period, the handwritten Bills of Lading constitute the official record of the LNG Shipment and Distrigas's visual inspection of the transfer hoses.

When the truck loading computer became operational on October 13, 2018, Constellation requested that information from all of the handwritten Bills of Lading be entered into the computer so that Constellation could track the shipments. Distrigas entered the information into the computer and then generated a duplicate reprint of each original handwritten Bill of Lading. Each computer-generated Bill of Lading bears the date of October 13, 2018, because that is the date it was printed, regardless of the date the LNG shipment occurred.<sup>16</sup> In fact, all Bills of Lading bearing the date October 13, 2018 are computer-generated duplicates of handwritten Bills of Lading that were created to document shipments that occurred from October 1 to October 12 because Distrigas did not load any trucks on October 13. These duplicates do not (and in fact, *could not*) bear the signature of the Carrier/Truck Driver because the shipment had occurred earlier in October. Rather, the signatures of the Carrier/Truck Driver and Distrigas as the Operator/Shipper appear on the original handwritten Bills of Lading.

### **III. THE INSPECTION OF THE TERMINAL AND NOTICE OF AMENDMENT**

#### **A. OPS's Inspection of the Terminal**

OPS conducted an inspection of the Terminal on June 11-13, 2019. Topics addressed during the Inspection included Distrigas's procedures for maintaining operating and inspection

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<sup>16</sup> See Attachment 1 at 2, 5, 8 and every third page thereafter for sample computer-generated duplicate reprints of the Bills of Lading (Distrigas's Handwritten Bills of Lading, Computer-Printed Duplicate Bills of Lading, and Truck Loading Slips).

records, including Distrigas's Maintenance Procedure No. RC-003 which sets forth record retention periods for inspections and tests performed under Part 193.<sup>17</sup>

The Inspector also reviewed the June 6, 2019 version of Distrigas's Truck Loading Procedure EMT-05, the Truck Loading Slips, the handwritten Bills of Lading created during October 1-12, 2018, and the computer-generated duplicate Bills of Lading. The computer-generated duplicates of the handwritten Bills of Lading for the period October 1-12, 2018 had been placed in the Truck Loading Notebook for the time period "October 13, 2018-November 17, 2018" because the duplicates reflected the date they were printed (*i.e.*, October 13, 2018) instead of the date each truck had been loaded and the LNG shipped.

Pursuant to the Inspector's request during the June 13, 2019 exit briefing, on June 18, Distrigas provided copies of a representative sample of 16 of the 166 handwritten Bills of Lading that had been created during October 1-12, 2018, along with the corresponding Truck Loading Slips and computer-generated duplicates.<sup>18</sup>

On June 21, 2019, the Inspector asked Distrigas to provide handwritten truck loading records created between October 13, 2018 and November 17, 2018.<sup>19</sup> In particular, the Inspector requested handwritten records from the time period for which the computer-generated Bills of Lading did not contain a signature in the "Carrier, per" box.<sup>20</sup> In its June 24, 2019, response, Distrigas explained that the only Bills of Lading that had been handwritten were those created October 1-12, 2018 when the truck loading computer was not operating and that no handwritten Bills of Lading were created after October 12, 2018.<sup>21</sup> Distrigas also explained that Bills of Lading dated October 13, 2018 (*i.e.*, without a signature in the "Carrier, per" box) were computer-generated duplicates of the original handwritten Bills of Lading that had been created earlier in the month.<sup>22</sup> Distrigas provided copies of the balance of the hand-written Bills of Lading created during October 1-12, 2018 and each corresponding computer-printed duplicate and Truck Loading Slip.

On June 25, 2019, Distrigas received from OPS a "Verbal Exit Briefing Report" and a list of "Requested Items."<sup>23</sup> OPS requested the Truck Loading Procedure EMT-05 applicable to calendar year 2018 and "Bills of Lading for all 10/13/18 to 11/17/18 Records."<sup>24</sup> PHMSA reiterated the allegation that, for this period, there were approximately 50 instances where the

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<sup>17</sup> Attachment 6 at 1.

<sup>18</sup> Attachment 8 (June 18, 2019 Email of Ms. Susan Stritter, Exelon, to Mr. Matthew Valerio, PHMSA).

<sup>19</sup> Attachment 9 (June 21, 2019 Email of Mr. Matthew Valerio, PHMSA, to Ms. Susan Stritter, Exelon). The placement of the October 13, 2018 duplicate reprints in the Truck Loading Notebook dated October 13, 2018 – November 17, 2018 may have caused the Inspector to incorrectly assume that additional handwritten Bills of Lading were created during that later time frame.

<sup>20</sup> *Id.*

<sup>21</sup> Attachment 10 (June 24, 2019 Email of Ms. Susan Stritter, Exelon, to Mr. Matthew Valerio, PHMSA).

<sup>22</sup> *Id.* As noted above, these reprinted duplicates do not contain the carrier's signature. The signature is reflected on the original handwritten Bill of Lading created at the time of the LNG shipment.

<sup>23</sup> Attachment 11 (June 25, 2019 Email of Ms. Kimberly Harrigan, Unispec Enterprises, Inc. (on behalf of PHMSA), to Ms. Susan Stritter, Exelon).

<sup>24</sup> *Id.* at 3, 5.

“Carrier, per” signature box had not been completed, even though the provision in section 3.4.2.3 of the June 6, 2019 version of Procedure EMT-05 requires that the operator and driver sign and exchange paperwork at the scale room window.

Despite Distrigas’s previous explanations that no handwritten Bills of Lading had been created after October 12, 2018, both of OPS’s documents claimed that “Distrigas stated it will provide the “handwritten bills of lading” records for the applicable instances during the 10/13/2018 through 11/17/2018 timeframe.”<sup>25</sup> The Verbal Exit Briefing Report also identified the following “preliminary concern”:

[T]he missing information to be included on Distrigas “Bill of Lading” records as well as the lack of procedures included in EMT-05 Truck Loading, which explain such information as (but not limited to):

- Documenting/completing the “Bill of Lading” record
- Filling out the required signature boxes
- Identification of the shipper, carrier, operator and driver<sup>26</sup>

In response, Distrigas requested that the Inspector confirm that he had received Distrigas’s previous submittals containing all of the handwritten Bills of Lading, all of which had been created between October 1-12, 2018, and the reprinted duplicates dated October 13, 2018.<sup>27</sup>

In addition, responding to OPS’s apparent confusion regarding which entity signs the boxes on the Bill of Lading, Distrigas submitted an updated June 25, 2019 version of the Truck Loading Procedure clarifying which entity signs in the “Shipper per” and “Carrier per” boxes. This updated version clarified that the “Shipper” is the Distrigas operator and the “Carrier” is the truck driver.<sup>28</sup> In response to OPS’s clarification that it had requested the Truck Loading Procedure applicable to the calendar year 2018, on June 28, 2019, Distrigas also provided the March 13, 2018 version of the Truck Loading Procedure.<sup>29</sup> On July 3, 2019, Distrigas and the Inspector convened a call to review the documentation that Distrigas had submitted.

On August 8, 2019, Distrigas received the Inspector’s “Post-Inspection Written Preliminary Findings” which was identical to the “Verbal Exit Briefing Report.”<sup>30</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 3.

<sup>27</sup> Attachment 12 (June 25, 2019 Email of Ms. Susan Stritter, Exelon, to Mr. Matthew Valerio, PHMSA).

<sup>28</sup> Attachment 12. *See also* Attachment 5.

<sup>29</sup> Attachment 13 (June 28, 2019 Email of Mr. Matthew Valerio, PHMSA, to Ms. Susan Stritter, Exelon).

<sup>30</sup> Attachment 14 at 3 (August 8, 2019 Email of Ms. Kimberly Harrigan, Unispec Enterprises, Inc. (on behalf of PHMSA), to Ms. Susan Stritter, Exelon).

## B. PHMSA's Notice of Amendment

On September 17, 2019, OPS issued the NOA stating that PHMSA has identified an “apparent inadequacy” in the March 13, 2018 and June 25, 2019 versions of the Truck Loading Procedure, EMT-05.

Citing § 193.2605, Maintenance Procedures, which states in part: “(b) Each operator shall follow one or more manuals of written procedures for the maintenance of each component. . . .”,<sup>31</sup> the NOA asserts that “Distrigas’ procedures for the maintenance of each component were inadequate.”<sup>32</sup> Specifically, according to the NOA, the Truck Loading Procedure, updated March 3[sic], 2018 “failed to include adequate guidance on record keeping for the testing of transfer hoses required by § 193.2621(b).”<sup>33</sup> The NOA also stated that the June 25, 2019 version of the Truck Loading Procedure “failed to address” recordkeeping details, and that “Therefore, Distrigas failed to include adequate guidance in its maintenance procedures on record keeping for its testing of transfer hoses required by § 193.2621(b).”<sup>34</sup> As support for these allegations, however, the NOA quotes § 193.2621(b) which requires that “[h]oses used in LNG or flammable refrigerant transfer systems must be: . . . (b) *Visually inspected* for damage or defects before each use,”<sup>35</sup> which is a different regulatory requirement unrelated to the testing of transfer hoses.

In addition, although claiming that the Inspector “reviewed Distrigas’ Procedure and associated 2018 Records for the testing of transfer hoses before each LNG truck loading transfer,”<sup>36</sup> the NOA identifies no provision in the Truck Loading Procedure addressing the testing of transfer hoses.

As apparent support for the alleged inadequacy, the NOA states that the PHMSA Inspector reviewed Distrigas’s “Procedure” and “associated 2018 Records for the testing of transfer hoses before each LNG truck loading transfer, identified by Distrigas as its Uniform Straight Bill of Lading document.”<sup>37</sup> Reflecting the confusion that plagued the post-inspection correspondence between Distrigas and OPS, the NOA alleges that these Bill of Lading “Records” contained many missing content fields including, but not limited to: “load number, out time, carrier per, hot tank, trailer plate, and state,”<sup>38</sup> and states that the Procedures “failed to include sufficient guidance on how to record the information on the Bill of Lading record.”<sup>39</sup>

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<sup>31</sup> 49 C.F.R. § 193.2605.

<sup>32</sup> NOA at 1.

<sup>33</sup> *Id.* at 1-2. It appears that the NOA intended to refer to the March 13, 2018 version of the Truck Loading Procedure which is contained in the case file. Distrigas did not update this procedure on March 3, 2018.

<sup>34</sup> *Id.* at 1.

<sup>35</sup> 49 C.F.R. § 193.2621(b). *See* NOA at 2 (emphasis added).

<sup>36</sup> NOA at 2

<sup>37</sup> *Id.* Although the NOA is not specific, the Procedure reviewed during the inspection was the June 6, 2019 version of the Truck Loading Procedure.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

The NOA added that when Distrigas was asked “how and when this data is to be completed, Distrigas provided the Procedure.”<sup>40</sup>

According to the NOA, the Procedure “failed to provide details such as:

- Record retention requirements
- Identification of what form/document, name/number that LNG truck loading transfers and transfer hose visual inspections are to be documented on
- A definition of “Operator”, “Shipper, Per” and “Carrier, Per” from the Bill of Lading record fields
- Who completes/signs off on the Bill of Lading records
- Details of the frequency of completing Bill of Lading records.”<sup>41</sup>

The NOA states that, after the inspection, Distrigas provided an updated version of EMT-05 dated June 25, 2019. Without acknowledging that the sole purpose of this updated Procedure was to clarify the identity of “Shipper” and “Carrier” on the Bill of Lading,<sup>42</sup> the NOA implies that its purpose was to address alleged “details” missing from the Procedure and states that this version “failed to address” these “recordkeeping details.”<sup>43</sup> The NOA then asserts that “Therefore, Distrigas failed to include adequate guidance in its maintenance procedures on record keeping for its testing of transfer hoses required by §193.2621(b).”<sup>44</sup>

On September 19, 2019, Distrigas requested a copy of the Case File supporting the NOA. The Case File contains a copy of the March 13, 2018 and June 25, 2019 versions of the Truck Loading Procedure, copies of a representative sample of handwritten Bills of Lading, and the associated computer-printed duplicates and truck loading slips. The Case File does not include the June 6, 2019 version of the Truck Loading Procedure which was reviewed during the inspection. On October 7, 2019, pursuant to 49 C.F.R. §§ 190.206(a) and 190.211, Distrigas submitted a request for an in-person hearing and preliminary statement of issues.

In an effort to resolve this proceeding, Distrigas and PHMSA convened a conference call on November 13, 2019. During the call, Distrigas pointed out that the alleged inadequacy in the Truck Loading Procedure is not related to the regulation cited in the NOA, 49 C.F.R. § 193.2621(b). Distrigas also demonstrated that the Truck Loading Procedures contain the information alleged to be omitted in the NOA and that record retention requirements are contained in Distrigas’s Record Retention Procedure No. RC-003 which had been reviewed during the inspection. On these bases, Distrigas requested that the Region withdraw the NOA as legally and factually unsupported.

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<sup>40</sup> *Id.* This is a reference to the March 13, 2018 version of the Truck Loading Procedure that the Inspector requested on the June 25, 2019 (See Attachment 11 at 5). Distrigas provided the March 13, 2018 version of the Procedure to the Inspector on June 28, 2019. See Attachment 13.

<sup>41</sup> NOA at 2.

<sup>42</sup> Attachment 12.

<sup>43</sup> NOA at 2.

<sup>44</sup> *Id.*

At the Region Counsel's request, after the November 13, 2019 call, Distrigas submitted for information purposes a copy of Distrigas's existing Record Retention Procedure which describes record retention periods for each inspection and test performed under Part 193.<sup>45</sup> On November 18, 2019, even though Distrigas's request for an in-person hearing was pending, OPS issued a letter purporting to close this proceeding, attempting to nullify Distrigas's right to a hearing to challenge the factual and legal bases for the allegations in the NOA.<sup>46</sup>

#### IV. SUMMARY OF ARGUMENT

Distrigas requests that the NOA be withdrawn because the allegation that the Truck Loading Procedures do not contain adequate guidance on recordkeeping for the testing of transfer hoses lacks both legal and factual support. First, the provision cited in the NOA, § 193.2621(b),<sup>47</sup> is not related to the annual testing of transfer hoses. The cited regulation addresses the visual inspection of transfer hoses, an entirely different activity. The Truck Loading Procedure also does not relate to the testing of transfer hoses because that activity is governed by a different procedure. In addition, the NOA's allegations that the Truck Loading Procedures fail to address certain recordkeeping details and to provide sufficient guidance on recording information on Bills of Lading are not supported by facts or the evidence in the Case File. First, the Inspector reviewed Distrigas's Record Retention procedures during the Inspection. In addition, as shown in the Case File, information that the NOA claims is missing from Distrigas's Procedures is not missing. Similarly, information alleged to be missing from the Bills of Lading is either not missing or has no bearing on safety and is not covered by Part 193. In this respect, the NOA misconstrues the purpose of the Truck Loading Procedure. Its purpose is to ensure the safe transfer of LNG from the Terminal's tanks to the tanker trucks. The Truck Loading Procedure does not address, and is not intended to address, every aspect of how to complete the Bill of Lading, a document whose main purpose is to document the shipment of the LNG for Constellation.

Moreover, the information that *is* required under Part 193, *i.e.*, Distrigas's signature on the Bills of Lading documenting that the visual inspection of the transfer hoses before each truck is loaded *is* present on every Bill of Lading.

Finally, Distrigas requests that the Closure Letter issued by OPS on November 18, 2019 be rescinded. The NOA is an enforcement proceeding and the Pipeline Safety Act and PHMSA's regulations provide Distrigas the right to challenge the merits of OPS's allegations that the Truck Loading Procedures are inadequate to ensure pipeline safety. If not rescinded, the Closure Letter eviscerates that right. In addition, the Closure Letter incorrectly states that Distrigas submitted its June 25, 2019 updated Truck Loading Procedure and the Record Retention Procedure for the purpose of "correcting" alleged inadequacies. The record demonstrates that Distrigas did not submit these documents for this purpose.

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<sup>45</sup> Attachment 15 (November 13, 2019 Email of Ms. Susan Olenchuk, Van Ness Feldman, to Ms. Ajoke Agboola, PHMSA).

<sup>46</sup> Attachment 16.

<sup>47</sup> 49 C.F.R. § 193.2621(b).

## V. ARGUMENT

### A. PHMSA Bears the Burden of Proving That DISTRIGAS's Truck Loading Procedures Are Inadequate.

An NOA is an enforcement proceeding that alleges that an operator's plan or procedure "is inadequate for safe operation."<sup>48</sup> PHMSA has the burden of proving that DISTRIGAS's Truck Loading Procedure is inadequate.<sup>49</sup> PHMSA has the "burden of production," *i.e.*, . . . the obligation to come forward with the evidence at different points in the proceeding," and the "burden of persuasion," *i.e.*, which party loses if the evidence is closely balanced."<sup>50</sup> PHMSA "bears the burden of proof as to all elements of the proposed violation."<sup>51</sup> To meet its burden of production, PHMSA must present sufficient evidence to sustain an allegation of violation. Where PHMSA does not produce such evidence, the allegation of violation must be withdrawn.<sup>52</sup> Similarly, if the cited regulatory provision does not relate to the alleged inadequacy, the NOA must be withdrawn.<sup>53</sup>

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<sup>48</sup> 49 U.S.C. § 60108(a)(2) (2018). *See generally*, Amendment of an Operator's Plans or Procedures, Final Rule, 56 Fed. Reg. 31, 087 (July 9, 1991) (amending PHMSA's regulations to provide that for enforcement sanctions if OPS finds an operator's plans and procedures to be inadequate).

<sup>49</sup> *See* 49 C.F.R. § 190.213(a)(1). *See also In re Inland Corp.*, Final Order, CPF No. 1-2017-5003, 2018 WL 2229407, at \*3 (D.O.T. Mar. 7, 2018) (withdrawing alleged violation where testimony was contradictory and factual evidence provided by respondent did not support OPS's claim); *In re Air Prods. & Chems., Inc.*, Final Order, CPF No. 4-2013-1001, 2015 WL 6758819, at \*3 (D.O.T. Aug. 10, 2015) (withdrawing alleged violation because PHMSA did not produce "any evidence to support its position" and thereby did not meet its burden of proof); *In re ExxonMobil Pipeline Co.*, Final Order, CPF No. 5-2013-5007, 2015 WL 780721, at \*12 (D.O.T. Jan. 23, 2015) (finding that PHMSA failed to meet burden of proving that certain measures were required under regulations); *In re So. Star Cent. Gas Pipeline, Inc.*, Final Order, CPF No. 3-2008-1005, 2011 WL 7006614, at \*4 (D.O.T. Oct. 21, 2011) (finding the evidence insufficient to sustain the allegation); *In re Golden Pass Pipeline, LLC*, Final Order, CPF No. 4-2008-1017, 2011 WL 1919517, at \*5 (D.O.T. Mar. 22, 2011) (finding that PHMSA did not meet its burden of proving that its interpretation of regulatory language was correct).

<sup>50</sup> *Schaeffer v. Weast*, 546 U.S. 49, 56 (2005) (quoting *Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Greenwich Collieries*, 512 U.S. 267, 272 (1994)); *see also In re Butte Pipeline Co.*, Final Order, CPF No. 5-2007-5008, 2009 WL 3190794, at \*1 (D.O.T. Aug. 17, 2009) ("PHMSA carries the burden of proving the allegations set forth in the Notice, meaning that a violation may be found only if the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent in its defense.").

<sup>51</sup> *In re ANR Pipeline Co.*, Final Order, CPF No. 3-2011-1011, 2012 WL 7177134, at \*3 (D.O.T. Dec. 31, 2012) (finding that evidence in violation report was insufficient to prove that ANR Pipeline Co. (ANR) knew of probable existence of safety-related condition based on in-line inspection (ILI) data alone); *see also In re CITGO Pipeline Co.*, Decision on Reconsideration, CPF No. 4-2007-5010, 2011 WL 7517716, at \*5 (D.O.T. Dec. 29, 2011) (finding lack of evidence demonstrating that breakout tank was not receiving adequate cathodic protection).

<sup>52</sup> *See, e.g., In re ExxonMobil Pipeline Co.*, Final Order, CPF No. 4-2017-5027, 2019 WL 3734516, at \*\*4-5 (D.O.T. Apr. 3, 2019) (ordering withdrawal of allegations where OPS failed to prove that Respondent engaged in the conduct that would constitute a violation); *In re Plains Pipeline, L.P.*, Final Order, CPF No. 4-2009-5009, 2011 WL 1919520, at \*\*4-5 (D.O.T. Mar. 15, 2011) (ordering withdrawal of allegation when limited evidence in the record was not conclusive); *In re EQT Corp.*, Final Order, CPF No. 1-2006-1006, 2010 WL 2228558, at \*\*6-7 (D.O.T. May 13, 2010) (finding that OPS did not present evidence or analysis proving that choice of "critical elements" was inadequate or why it was essential to know exact location of pipe transitions); *In re Bridger Pipeline Co.*, Decision on Reconsideration, CPF No. 5-2007-5003, 2009 WL 2336991, at \*\*5-6 (D.O.T. June 16, 2009) (finding evidence introduced by PHMSA insufficient to establish whether pressure transmitters were integral to overpressure control system).

<sup>53</sup> *In re Rocky Mountain Pipeline Sys.*, Final Order, CPF No. 5-2004-5001, 2006 WL 4488857, at \*\*6, 8, & 12 (D.O.T. Dec. 11, 2006) (withdrawing alleged violation where the cited regulation did not relate to alleged violation).

To meet its burden of persuasion, PHMSA “must prove, by a preponderance of the evidence, that the facts necessary to sustain a probable violation actually occurred.”<sup>54</sup> This burden is carried “only if the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent in its defense.”<sup>55</sup> A respondent will prevail under this standard not by conclusively proving compliance, but where its rebuttal evidence is more persuasive than the evidence provided by PHMSA.<sup>56</sup> If “the evidence is closely balanced,” PHMSA has not met its burden of persuasion and the allegation of violation must be withdrawn.<sup>57</sup>

Here, OPS has failed to meet its burden of demonstrating an inadequacy in any version of the Truck Loading Procedure. Therefore, the allegation that Distrigas’s “procedures for the maintenance of each component were inadequate” under 49 C.F.R. § 193.2605<sup>58</sup> cannot be sustained and the NOA must be withdrawn.<sup>59</sup>

**B. The NOA Should Be Withdrawn Because the Cited Regulatory Provision Does Not Relate to the Testing of Transfer Hoses.**

The NOA should be withdrawn because the NOA’s allegation that the Truck Loading Procedures do not provide adequate recordkeeping guidance regarding the testing of transfer hoses does not relate to the cited regulatory provision which addresses the visual inspection of transfer hoses.

The NOA alleges that Distrigas’ Truck Loading Procedures are inadequate because Distrigas failed to include adequate guidance on recordkeeping for the testing of transfer hoses required by § 193.2621(b). The NOA articulates this allegation three times. Paragraph (b) of section 193.2621, however, does not address the testing of transfer hoses. This provision addresses the visual inspection of transfer hoses, an activity that also is required under § 193.2513(c)(9)(ii) and is contained as a required “Pre-check” activity in the Truck Loading Procedure that must be performed any time a truck is loaded with LNG.

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<sup>54</sup> *In re Alyeska Pipeline Serv. Co.*, Decision on Petition for Reconsideration, CPF No. 5-2005-5023, 2009 WL 5538655, at \*3 (D.O.T. Dec. 16, 2009) (citing *In re Butte Pipeline*, 2009 WL 3190794 at \*1, n.3; *Schaeffer*, 546 U.S. at 56-58).

<sup>55</sup> *In re Butte Pipeline*, 2009 WL 3190794 at \*1.

<sup>56</sup> See *In re ANR Pipeline*, 2012 WL 7177134 at \*3. In *ANR Pipeline*, PHMSA found that ANR’s “plausible” explanation regarding the discovery of a reportable condition on its pipeline was sufficient to warrant withdrawal of the allegation of violation because the “Violation Report contain[ed] no evidence which would rebut ANR’s argument.” *Id.*

<sup>57</sup> *In re Alyeska Pipeline*, 2009 WL 5538655 at \*3 (quoting *Schaeffer*, 546 U.S. at 56). Cf. *In re Buckeye Partners, LP*, Final Order, CPF No. 1-2009-5002, 2012 WL 3144486, at \*7 (D.O.T. May 30, 2012) (where neither party “present[s] sufficient proof to prove its position,” the violation must be withdrawn because PHMSA bears the burden).

<sup>58</sup> NOA at 1.

<sup>59</sup> See *In re Inland Corp.*, 2018 WL 2229407 at \*3 (withdrawing alleged violation where factual evidence provided by respondent did not support OPS’s claim).

The annual testing and the visual inspection of transfer hoses are two different activities performed for different purposes. They are governed by different regulations and different procedures. The testing of transfer hoses occurs annually, and as required under 49 C.F.R. § 193.2621(a), involves the pressurization of the transfer hoses. This requires disconnecting the hoses and taking them to a separate facility for pressure testing. This process is governed by Distrigas's Truck Load Hose Procedure No. EMT-029M.<sup>60</sup>

By contrast, the visual inspection of the transfer hoses is governed by § 193.2621(b), the regulation cited in the NOA. Visual inspection is required in paragraph 3.1.1.1 of Distrigas's Truck Loading Procedure as a "Pre-check" activity that is performed before any truck is loaded with LNG.<sup>61</sup>

The cited regulation in the NOA does not relate to the annual testing of the transfer hoses. The NOA therefore lacks legal support and must be withdrawn.<sup>62</sup>

### **C. The NOA Should Be Withdrawn Because Distrigas's Truck Loading Procedure Is Not Related to Testing of Transfer Hoses.**

The NOA's assertion that the March 13, 2018 and June 25, 2019 versions of Distrigas's Truck Loading Procedure, EMT-05, "failed to include adequate guidance on record keeping for the testing of transfer hoses required by § 193.2621(b)" also is without merit because EMT-05 does not address the testing of transfer hoses. Indeed, the NOA offers no evidence that the Truck Loading Procedure is relevant to testing the transfer hoses.

The testing and visual inspection of the transfer hoses are two different activities governed by two different procedures. As described in section 3.1.1.1 of EMT-05, before a truck is loaded with LNG, Distrigas visually inspects the transfer hoses for damage or defects. The testing of transfer hoses, by contrast, occurs annually and is governed by Distrigas's Truck Load Hose Procedure, EMT-029M. Testing transfer hoses involves their pressurization and requires that they be disconnected from the truck scales and taken to a different facility for pressure testing. EMT-05 is not intended to address the annual testing of the transfer hoses.

Because the NOA lacks factual support, OPS has failed to meet its burden of proof and the NOA must be withdrawn.<sup>63</sup>

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<sup>60</sup> Attachment 7.

<sup>61</sup> Attachment 2 at 2 and Attachment 3 at 2.

<sup>62</sup> *In re Rocky Mountain Pipeline*, 2006 WL 4488857 at \*\*6, 8, & 12 (withdrawing alleged violation where the cited regulation did not relate to alleged violation). *See also In re Plains Pipeline*, WL 1919520 at \*3 (withdrawing allegation where alleged conduct was not addressed by the regulation).

<sup>63</sup> *In re El Paso Nat. Gas Co.*, Final Order, CPF 5-2015-1008, 2017 WL 3049149, at \*4 (D.O.T. June 16, 2017) (withdrawing allegation because it lacked evidentiary support); *In re Air Prods. & Chems*, 2015 WL 6758819 at \*3 (withdrawing alleged violation because PHMSA did not produce "any evidence to support its position" and thereby did not meet its burden of proof); *In re So. Star Cent. Gas Pipeline*, 2011 WL 7006614 at \*4 (finding the evidence insufficient to sustain the allegation).

**D. The NOA Should Be Withdrawn Because Distringas’s Procedures Contained All Necessary Provisions for Record Retention Prior to the Inspection and Prior to the Issuance of the NOA.**

The NOA alleges that Distringas failed to include adequate guidance in its maintenance procedures on recordkeeping for its testing of transfer hoses required by § 193.2621(b), but does not mention Distringas’s Record Retention Procedure No. RC-003. On the first day of the OPS inspection, June 11, 2019, the OPS Inspector asked whether Distringas had a procedure for requiring the records for every inspection and test required by Part 193. Distringas explained that Record Retention Procedure No. RC-003 describes record retention periods for each inspection and test performed under Part 193. This version of the Record Retention Procedure has been in place since June 6, 2016 and had been reviewed and approved by Distringas on September 9, 2018.<sup>64</sup>

RC-003 was discussed with OPS during the inspection and was available at the inspection, but the NOA makes no mention of this record retention procedure despite alleging missing record retention requirements in the Distringas Truck Loading Procedures. As discussed in Section IV.B above, after the November 13, 2019 conference call between Distringas and OPS, Distringas submitted the same copy of RC-003 that had been reviewed during the inspection because OPS requested it.<sup>65</sup> The November 18, 2019 Closure Letter claimed that the June 25, 2019 updated Truck Loading Procedure and Record Retention procedure “corrected” the alleged “inadequacies.”<sup>66</sup>

The NOA, at its core, is about the procedure for record retention: it alleges that Distringas “failed to include adequate guidance in its maintenance procedures on record keeping for its testing of transfer hoses required by § 193.2621(b).” RC-003 contained this guidance at the time of the inspection. Because the aspects of Distringas’s procedures relating to record retention were not inadequate, and did not need to be changed in order for OPS to make that finding, the NOA must be withdrawn.

**E. The NOA Should Be Withdrawn Because OPS Has Failed to Demonstrate that the Truck Loading Procedures Are Inadequate to Assure the Safety of the Terminal.**

The NOA claims that the Truck Loading Procedures “failed to include sufficient guidance on how to record the information on the Bill of Lading record” and states that the Procedures failed to provide the following details: (1) record retention requirements, (2) identification of what form/document, name/number that LNG truck loading transfers and transfer hose visual inspections are to be documented on, (3) a definition of operator, shipper per, carrier per from the bill of lading record fields, (4) who completes and signs off on the bill of lading records, and (5) details of the frequency of completing bill of lading records.<sup>67</sup> The NOA

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<sup>64</sup> Attachment 6.

<sup>65</sup> Attachment 15.

<sup>66</sup> Attachment 16.

<sup>67</sup> NOA at 2.

also states that the Bill of Lading records were missing information in a variety of content fields, including “load number”, “out time”, “carrier per”, “hot tank”, “trailer plate,” and “state.”

The NOA’s allegations are not supported by the facts. The NOA should be withdrawn because OPS has failed to satisfy its burden of proving that the Truck Loading Procedures are inadequate to assure the safety of the Terminal.

The Truck Loading Procedures prescribe how LNG is to be safely transferred from the Terminal’s tanks to tanker trucks and requires that certain information be recorded on the Bill of Lading. The purpose of the Bill of Lading is to document the shipment of goods from the Terminal to a destination. Much of the information contained in the Bill of Lading is required by Constellation and provided by the truck driver. The Truck Loading Procedures do not, and are not intended to, govern the completion of all of the information required to be included on the Bill of Lading. To the extent that information related to the transfer of the LNG needs to be included on the Bill of Lading (*i.e.*, the tare weight, scale number, and confirmation that transfer hoses were visually inspected, and signatures of the truck driver and Distrigas), the Truck Loading Procedures specify that such information be reflected on the Bill of Lading.

The only safety-related purpose of the Bill of Lading is to document with a signature of a Distrigas operator that the transfer hoses are visually inspected for damage or defects before each truck is loaded. Here, the NOA does not allege and the Case File contains no evidence that any of the Bills of Lading omit the signature of Distrigas.

1. *The Truck Loading Procedures Do Not Omit Any of the Information Alleged to be Missing*

The NOA’s allegation that Truck Loading Procedure fails to provide information regarding certain details is not factually supported and must be disregarded. Each of the alleged failures to provide certain details are discussed below:

*Record retention requirements:* As explained above, Distrigas’s record retention requirements are contained in a separate procedure, Record Retention No. RC-003. PHMSA’s regulations do not prohibit record retention provisions that are separate from the procedure describing a substantive requirement. In fact, this procedure was reviewed during the inspection. The Truck Loading Procedure is not inadequate in this respect.

*Identification of what form/document, name/number that LNG truck loading transfers and transfer hose visual inspections are to be documented on:* Section 3.1.1.1 of all versions of the Truck Loading Procedure state that the signature of the Operator (*i.e.*, Distrigas) on the Bill of Lading indicates that the truck hoses have been visually inspected.<sup>68</sup> None of the Procedures are inadequate with respect to specifying the form on which visual inspections are to be documented.

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<sup>68</sup> Attachment 2 at 2; Attachment 3 at 2-3; and Attachment 4 at 2-3.

*A definition of operator, shipper per, carrier per from the bill of lading record fields:* The terms “Shipper” and “Carrier” are standard nomenclature in a Bill of Lading document. Part 193 does not govern the completion of every field on the Bill of Lading. In the updated June 25, 2019 version of the Truck Loading Procedure, Distrigas clarified that the Operator signs in the “Shipper, per” box and the driver signs in the “Carrier, per” box only to respond to OPS’s apparent confusion.<sup>69</sup> This was a non-substantive change that has no bearing on whether the Truck Loading Procedure is adequate to ensure the safety of the Terminal.

*Who completes and signs off on the bill of lading records:* Section 3.4.2.3 of all versions of the Truck Loading Procedure specify that the Operator and the driver sign and exchange paperwork at the scale window.<sup>70</sup> The June 25, 2019 version of the Truck Loading Procedure merely makes clear that the “Operator” (*i.e.*, Distrigas) is the “Shipper” on the Bill of Lading and the truck driver is the “Carrier.” This change has no bearing on whether the Truck Loading Procedure is adequate for assuring the safety of the Terminal.

*Details of the frequency of completing bill of lading records:* The purpose of a Bill of Lading is to document the shipment of LNG via truck from the Terminal to a destination. It is self-evident that a Bill of Lading is not generated unless a truck is to be loaded. The Truck Loading Procedure does not need to specify the frequency for completing a Bill of Lading. The lack of a provision specifying the frequency of completing a Bill of Lading does not render the Truck Loading Procedures inadequate to assure the safety of the Terminal.

## 2. *The Bills of Lading Are Not Missing Information Related to Safety or to Part 193*

As support that the Truck Loading Procedures provide inadequate guidance for completing Bill of Lading records, the NOA alleges that Bills of Lading were missing information in several content fields, including “load number,” “out time,” “carrier per,” “hot tank,” “trailer plate,” and “state.” The NOA’s allegations are misplaced as the Bills of Lading are not missing information related to safety or to Part 193.

*Signatures in the “Carrier, per” field are not missing:* The “Carrier, per” field on the Bill of Lading is the box where the truck driver affixes his signature after a truck is loaded with LNG. Evidence in the Case File demonstrates that each original handwritten Bill of Lading which was created at the time each truck was loaded bears the truck driver’s signature. The only Bills of Lading missing the truck driver’s signature are the computer-generated duplicates of the original handwritten Bills of Lading that had been created during October 1-12, 2018 when the truck loading computer was not operational. These computer-generated duplicates were printed on October 13, 2018 after Constellation requested that information from all of the handwritten Bills of Lading (which serve as the official Bill of Lading record) be entered into the computer. Because these duplicates were printed on October 13, days after the trucks had been loaded, the truck drivers’ signatures are not, and could not be, reflected.

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<sup>69</sup> Attachment 12. *See also* Attachment 5.

<sup>70</sup> Attachment 2 at 9; Attachment 3 at 9; Attachment 4 at 9.

*Empty “Hot tank” fields do not reflect missing information:* A “hot” tank means that the LNG tanker truck trailer has been unloaded for over 48 hours. Any time a truck to be loaded with LNG is “hot,” the truck driver is responsible for indicating that status on the Truck Loading Slip.<sup>71</sup> The information is then reflected on the Bill of Lading. If the truck is not “hot,” then this box is not marked. An empty field is not an indication that information was omitted. Rather, an empty box conveys that the truck is not “hot.”

In addition, fields labeled “load number,” “out time,” “trailer plate,” and “state,” reflect administrative information that is not addressed by the Truck Loading Procedures because the Procedures are not intended to govern completion of the Bills of Lading. In addition, these fields have no bearing on the safe transfer of LNG from the Terminal to a tanker truck, do not affect a Part 193 activity, and do not render the Procedures inadequate for the safe operation of the Terminal. By contrast, and not noted by the NOA, is the fact that information that *is* required under Part 193, *i.e.*, Distrigas’s signature on the Bill of Lading to document the visual inspection of the transfer hoses before a truck is loaded *does appear* on each and every Bill of Lading.<sup>72</sup>

OPS has not satisfied its burden of proving by a preponderance of the evidence that Distrigas’s Truck Loading Procedures are, or were at any time, inadequate to assure the safety of the Terminal. Distrigas has persuasively demonstrated that OPS’s interpretation of the evidence in the case file is not supported by either the cited regulation or the Case File.<sup>73</sup> Therefore, the NOA lacks both legal and factual support and must be withdrawn.

## **VI. THE CLOSURE LETTER SHOULD BE RESCINDED BECAUSE THE PIPELINE SAFETY ACT PROVIDES DISTRIGAS THE RIGHT TO CHALLENGE THE ALLEGATIONS CONTAINED IN THE NOA**

On November 18, 2019, OPS issued a letter purporting to close this proceeding. Distrigas requests that the Presiding Official rescind the Closure Letter as an inappropriate attempt to foreclose Distrigas’s right to a hearing to challenge the merits of the NOA.

Section 60108(a)(2) of the Pipeline Safety Act states that OPS may require an operator to revise a plan for the inspection or maintenance of a facility only after giving notice and an opportunity for a hearing.<sup>74</sup> This statutory requirement is codified in § 190.206(a) of PHMSA’s regulations which provides an operator the opportunity to request a hearing in response to a NOA.<sup>75</sup> OPS may not deny Distrigas this statutory right by issuing a Closure Letter that purports

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<sup>71</sup> Distrigas loads a “hot” tanker truck differently than a truck that is not marked “hot.”

<sup>72</sup> See Attachment 1 at 1, 4, 7, and every third page thereafter.

<sup>73</sup> *In re Butte Pipeline Co.*, 2009 WL 3190794 at \*1 (“PHMSA carries the burden of proving the allegations set forth in the Notice, meaning that a violation may be found only if the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent in its defense.”); *In re ANR Pipeline*, 2012 WL 7177134 at \*3 (finding that Respondent’s “plausible” explanation regarding the discovery of a reportable condition on its pipeline was sufficient to warrant withdrawal of the allegation of violation because the “Violation Report contain[ed] no evidence which would rebut ANR’s argument.”); see also *In re CITGO Pipeline*, 2011 WL 7517716 at \*5 (finding lack of evidence demonstrating that breakout tank was not receiving adequate cathodic protection).

<sup>74</sup> 49 U.S.C. § 60108(a).

<sup>75</sup> 49 C.F.R. § 190.206(a). See also Amendment of an Operator’s Plans or Procedures, Final Rule, 56 Fed. Reg. 31,

to terminate the proceeding before Distrigas has had the opportunity to challenge the merits of the allegations in the NOA in a hearing.<sup>76</sup>

Issuance of the Closure Letter in this proceeding is tantamount to a finding that Distrigas's Truck Loading Procedures were inadequate because the Closure Letter is predicated on the incorrect assumption that the procedural inadequacies alleged in the NOA are true and that Distrigas took steps to correct them.<sup>77</sup> In this respect, the Closure Letter disregards Distrigas's Request for a Hearing challenging the merits of the NOA.

In addition, the Closure Letter inaccurately describes the reasons Distrigas submitted the updated June 25, 2019 version of the Truck Loading Procedure and the Record Retention procedure. The Closure Letter suggests that Distrigas submitted the June 25, 2019 version of the Truck Loading Procedure as a response to the June 13 notification of "apparent inadequacies found within its procedures during the inspection exit interview."<sup>78</sup> This statement is belied by Distrigas's email transmitting the June 25, 2019 update to OPS making clear that the only purpose of the updated procedure was to clarify confusion regarding the identity of the shipper and the carrier on the Bill of Lading.<sup>79</sup> The Closure Letter's suggestion that Distrigas submitted the Record Retention Procedure to correct alleged inadequacies also is incorrect. Rather, Distrigas submitted this procedure, which had been reviewed during the inspection, in response to a request by OPS.<sup>80</sup>

As a matter of procedure, a closure letter is not the same as withdrawing an NOA. Closure constitutes a finding that procedures were inadequate and that the operator corrected them. Withdrawal publically acknowledges that an NOA should not have been issued in the first place.

Allowing the Closure Letter to stand when Distrigas's request for hearing was pending and facts are in dispute would eviscerate the statutory and regulatory right to which Distrigas, and all operators, are entitled in an enforcement proceeding. Distrigas therefore requests that the Presiding Official rescind the November 18, 2019 Closure Letter.

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087 (July 9, 1991) (amending PHMSA's regulations to provide that for enforcement sanctions if OPS finds an operator's plans and procedures to be inadequate).

<sup>76</sup> See *Oceanair of Fla., Inc. v. U.S. Dep't of Transp.*, 876 F.2d 1560, 1565 (11th Cir. 1989) (stating that where a statute requires "notice and hearing" Congress intended the agency to provide opportunity for oral evidentiary hearing).

<sup>77</sup> Attachment 16 at 1 (November 18, 2019 Letter of Mr. Robert Burrough, PHMSA, to Mr. Frank Katulak, Distrigas) ("My staff reviewed the amended procedures submitted on June 25, 2019 and the Record Retention procedures submitted on November 13, 2019, and *it appears that the inadequacies outlined in this Notice of Amendment have been corrected.*") (emphasis added).

<sup>78</sup> *Id.*

<sup>79</sup> Attachment 12 at 1 (June 25, 2019 Email of Ms. Susan Stritter, Exelon, to Mr. Matthew Valerio, PHMSA) (stating that the purpose of the June 25, 2019 updated version of the Truck Loading Procedure was to "use of wording Shipper per and Carrier per as it pertained to who would sign where.").

<sup>80</sup> Attachment 15.

## VII. CONCLUSION

Based on the foregoing, Distrigas requests that PHMSA withdraw the NOA and rescind the Closure Letter.

Respectfully submitted,

*Susan A. Olenchuk*

Susan A. Olenchuk  
Bryn S. Karaus  
Counsel for Distrigas of Massachusetts, LLC

CC: Ajoke Agboola, Esq., Counsel for the Eastern Region, OPS  
Robert Burrough, Director, Eastern Region, PHMSA  
Susan B. Bergles, Assistant General Counsel, Exelon Corporation  
Edward Gleason, General Manager, Northeast Region, Exelon Generation Company, LLC  
Jonathan Lauck, Plant Manager, Everett LNG Facility, Exelon Generation Company, LLC  
Susan Stritter, Sr. Compliance Specialist, Exelon Generation Company, LLC

January 10, 2020

## **PUBLIC – REDACTED**

**In the Matter of Distringas of Massachusetts, LLC  
CPF No. 1-2019-3001M  
Before the Pipeline and Hazardous Materials Safety Administration**

### **Pre-Hearing Brief of Distringas of Massachusetts, LLC Attachments**

- Attachment 1**      **Confidential** - Distringas's Handwritten Bills of Lading, Computer-Printed Duplicate Bills of Lading, and Truck Loading Slips (Excerpt from Case File) [REDACTED]
- Attachment 2**      **Confidential** - Distringas Truck Loading Procedure No. EMT-05, Updated March 13, 2018 (Excerpt from Case File) [REDACTED]
- Attachment 3**      **Confidential** - Distringas Truck Loading Procedure No. EMT-05, Updated June 6, 2019 (Not Included in Case File) [REDACTED]
- Attachment 4**      **Confidential** - Distringas Truck Loading Procedure No. EMT-05, Updated June 25, 2019 (Excerpt from Case File) [REDACTED]
- Attachment 5**      **Confidential** – Redlined Comparison of the Distringas Truck Loading Procedure No. EMT-05, Updated June 6, 2019 (Attachment 3) and the Distringas Truck Loading Procedure No. EMT-05, Updated June 25, 2019 (Attachment 4) [REDACTED]
- Attachment 6**      **Confidential** - Distringas Record Retention Procedure No. RC-003, Updated June 6, 2016 (Reviewed with no updates, September 9, 2018) [REDACTED]
- Attachment 7**      **Confidential** - Distringas Truck Load Hoses Procedure No. EMT-029M, Updated October 16, 2017 [REDACTED]
- Attachment 8**      June 18, 2019 Email of Ms. Susan Stritter, Exelon, to Mr. Matthew Valerio, PHMSA
- Attachment 9**      June 21, 2019 Email of Mr. Matthew Valerio, PHMSA, to Ms. Susan Stritter, Exelon
- Attachment 10**     June 24, 2019 Email of Ms. Susan Stritter, Exelon, to Mr. Matthew Valerio, PHMSA
- Attachment 11**     June 25, 2019 Email of Ms. Kimberly Harrigan, Unispec Enterprises, Inc. (on behalf of PHMSA), to Ms. Susan Stritter, Exelon (Transmitting OPS's Verbal Exit Briefing Report and Requested Items)

## **PUBLIC – REDACTED**

- Attachment 12** June 25, 2019 Email of Ms. Susan Stritter, Exelon, to Mr. Matthew Valerio, PHMSA
- Attachment 13** June 28, 2019 Email of Mr. Matthew Valerio, PHMSA, to Ms. Susan Stritter, Exelon
- Attachment 14** August 8, 2019 Email of Ms. Kimberly Harrigan, Unispec Enterprises, Inc. (on behalf of PHMSA), to Ms. Susan Stritter, Exelon (Transmitting OPS's Post-Inspection Written Preliminary Findings)
- Attachment 15** November 13, 2019 Email of Ms. Susan Olenchuk, Van Ness Feldman, to Ms. Ajoke Agboola, PHMSA
- Attachment 16** November 18, 2019 Letter of Mr. Robert Burrough, PHMSA, to Mr. Frank Katulak, Distrigas

**ATTACHMENT 1 – CONFIDENTIAL**

Distrigas's Handwritten Bills of Lading, Computer-Printed  
Duplicate Bills of Lading, and Truck Loading Slips  
(Excerpt from Case File)

[REDACTED]

**ATTACHMENT 2 – CONFIDENTIAL**

Distrigas Truck Loading Procedure  
No. EMT-05, Updated March 13, 2018  
(Excerpt from Case File)  
[REDACTED]

**ATTACHMENT 3 – CONFIDENTIAL**

Distrigas Truck Loading Procedure  
No. EMT-05, Updated June 6, 2019  
(Not Included in Case File)  
[REDACTED]

**ATTACHMENT 4 – CONFIDENTIAL**

Distrigas Truck Loading Procedure  
No. EMT-05, Updated June 25, 2019  
(Excerpt from Case File)  
[REDACTED]

**ATTACHMENT 5 – CONFIDENTIAL**

Redlined Comparison of the Distrigas Truck Loading Procedure  
No. EMT-05, Updated June 6, 2019 (Attachment 3) and the  
Distrigas Truck Loading Procedure No. EMT-05, Updated  
June 25, 2019 (Attachment 4)  
[REDACTED]

**ATTACHMENT 6 – CONFIDENTIAL**

Distrigas Record Retention Procedure

No. RC-003, Updated June 6, 2016

(Reviewed with no updates, September 9, 2018)

[REDACTED]

**ATTACHMENT 7 – CONFIDENTIAL**

Distrigas Truck Load Hoses Procedure No. EMT-029M,

Updated October 16, 2017

[REDACTED]

**ATTACHMENT 8**

June 18, 2019 Email of Ms. Susan Stritter, Exelon,  
to Mr. Matthew Valerio, PHMSA

**From:** Stritter, Susan:(GenCo-Pwr) [<mailto:Susan.Stritter@exeloncorp.com>]  
**Sent:** Tuesday, June 18, 2019 1:13 PM  
**To:** Valerio, Matthew (PHMSA) <[matthew.valerio@dot.gov](mailto:matthew.valerio@dot.gov)>; Severe, Geralda (PHMSA) <[geralda.severe@dot.gov](mailto:geralda.severe@dot.gov)>; Giarratano, Steven (PHMSA) <[steven.giarratano@dot.gov](mailto:steven.giarratano@dot.gov)>  
**Cc:** Scaraggi, Anthony:(GenCo-Pwr) <[Anthony.Scaraggi@exeloncorp.com](mailto:Anthony.Scaraggi@exeloncorp.com)>; Bergles, Susan B:(BSC) <[Susan.Bergles@exeloncorp.com](mailto:Susan.Bergles@exeloncorp.com)>; Gleason, Edward:(GenCo-Pwr) <[edward.gleason@constellation.com](mailto:edward.gleason@constellation.com)>  
**Subject:** PHMSA Inspection Follow Up

Matt-

It was a pleasure meeting with you, Geralda, and Steven.

Per our exit briefing on June 13<sup>th</sup> the following is the information concerning the drivers signatures on truck load bill of lading slips on October 13, 2018.

On March 29, 2018, ENGIE Gas & LNG LLC and its corporate affiliate, ENGIE Gas & LNG Holdings LLC entered into a Membership Interest and Asset Purchase Agreement with Exelon Generation Company, LLC, to buy 100 percent of the issued and outstanding membership interests in Distrigas of Massachusetts LLC, effecting the transfer of substantial LNG terminal physical assets, employees, data systems, intellectual property, and other assets (the "Transaction"). The Transaction closed on October 1, 2018. Following the close, there was a transition period during which time Exelon's IT department was integrating Distrigas' systems. As part of that process, Distrigas' truck loading bills of lading computerized system was down from October 1-12, 2018.

The truck loading computerized system is used by Operations to provide the Exelon Commercial group with instant access to truck loading information needed for tracking sales. The computerized system, however, is not required to comply with Distrigas' truck loading procedure EMT-05.

Between October 1 and 12 2018, while the truck loading computer system was not operational, operators prepared hand-written bill of lading slips for each truck that was loaded. In total, 166 bills of lading were hand-written by Distrigas operators and signed by the operator, who inspected the hose and filled the truck, and each bill of lading also was signed by the driver as required by EMT-05.

On October 13, 2018, the Exelon Commercial group requested that Distrigas' operators enter all of the hand-written tickets into the computerized truck loading data base. This was done for commercial purposes so that the Commercial group could track the LNG sales.

Attached please find copies of a representative sample of 16 of our hand-written bills of lading, which show that the truck driver signed each bill of lading as required under EMT-05. Behind each hand written bill of lading is a copy of the computerized version of the bill of lading which was entered into the computer on October 13<sup>th</sup> at the request of the Commercial group and a copy of the dated loading ticket each driver has with them which states the bill of lading number, destination of shipment, what is being loaded, and reiterates the Shipment Number that appears on the operator's bill of lading.

Note that the "Shipment Number" (top right of the bill of lading) on the handwritten and corresponding computer-generated bills of lading do not match. The reason for this is that the operator who entered the tickets into the computerized system and signed the "Shipper per" section on the computer-generated bill of lading (who may not have been the same person who filled out the hand written document) unintentionally entered information into the system database using incorrect shipment numbers. Consequently, the shipment numbers on the computer-generated versions are approximately 5 to 7 digits different from the original hand-written bills of lading. The date and time listed on the two bills of lading also are different because the computer-generated version was created on October 13<sup>th</sup>

after the computer system became operational. All other information on the two bills of lading are the same and correct.

The hand-written bills of lading, which were created on the day of each shipment, are considered the record showing compliance with the Truck Loading Procedure EMT-05.

Please do not hesitate to call should you have any questions regarding the material proved or need additional truck loading slips for review.

Best Regards,  
Sue

**Susan Stritter**  
Senior Compliance Specialist



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**ATTACHMENT 9**

June 21, 2019 Email of Mr. Matthew Valerio, PHMSA,  
to Ms. Susan Stritter, Exelon

**From:** Valerio, Matthew (PHMSA) <[matthew.valerio@dot.gov](mailto:matthew.valerio@dot.gov)>  
**Sent:** Friday, June 21, 2019 3:21 PM  
**To:** Stritter, Susan:(Exelon Power) <[Susan.Stritter@exeloncorp.com](mailto:Susan.Stritter@exeloncorp.com)>  
**Cc:** Giarratano, Steven (PHMSA) <[steven.giarratano@dot.gov](mailto:steven.giarratano@dot.gov)>; Severe, Geralda (PHMSA) <[geralda.severe@dot.gov](mailto:geralda.severe@dot.gov)>; Scaraggi, Anthony:(Exelon Power) <[Anthony.Scaraggi@exeloncorp.com](mailto:Anthony.Scaraggi@exeloncorp.com)>; Bergles, Susan B:(BSC) <[Susan.Bergles@exeloncorp.com](mailto:Susan.Bergles@exeloncorp.com)>; Gleason, Edward:(Exelon Power) <[edward.gleason@constellation.com](mailto:edward.gleason@constellation.com)>  
**Subject:** RE: PHMSA Inspection Follow Up

Hi Sue,

Thanks for the quick response regarding the follow-ups for the truck loading bill of lading records.

Thanks for the explanation regarding the transaction of Distrigas of Massachusetts, LLC. Other than the previously mentioned truck loading bills of lading, were there any other records (related to Part 193) that were affected by this transaction? PHMSA understands the computer system was down from October 1 – 12, 2018. The current records that are being discussed and were reviewed during the site visit, was the bill of lading record book which was dated 10/13/18 through 11/17/18 (after the transaction).

- Was the computerized system down during this time period as well?
- If so, during what time periods was the computerized system down, and what was the impact on the applicable records?
- Although the truck loading computerized system may not be covered under Part 193, the applicability of the (LNG Transfer) truck loading procedure (EMT-05) requires the bill of lading records to be completed per Distrigas procedures.

Regarding the handwritten records which were to be provided and were discussed during the verbal exit briefing (VEB), these were related to the 10/13/18 – 11/17/18 records not those between 10/1/18 – 10/12/18. Please provide these records at your earliest convenience. i.e. the handwritten/Distrigas record indicating a sign off for the instances in which none was present for the "Carrier, Per" section.

In addition, Distrigas should be receiving the VEB shortly which indicates our discussion: During the inspection when discussing LNG transfers, Distrigas provided the Bills of Lading for 2016 - 2018. During the review of the "10/13/2018 through 11/17/2018 record book – bill of lading" timeframe there were approximately 50 instances where the "Carrier, per" signature box was not filled out. Distrigas Procedure - "EMT-05 Truck Loading, updated 6/6/19" Section 3.4.2.3 states, "The operator and the driver will sign and exchange the paperwork at the scale room window..." Distrigas stated during the inspection due to the changeover in ownership to Exelon Generation, this information was not filled out. Distrigas stated it will provide the "handwritten bills of lading" records for the applicable instances during the 10/13/2018 through 11/17/2018 timeframe.

Please let me know if you have any questions.

Thank you,

Matt Valerio  
General Engineer  
U.S. Department of Transportation  
PHMSA – Eastern Region  
Office: 609-771-7817 | Cell: 267-398-4699  
[matthew.valerio@dot.gov](mailto:matthew.valerio@dot.gov)

**ATTACHMENT 10**

June 24, 2019 Email of Ms. Susan Stritter, Exelon,  
to Mr. Matthew Valerio, PHMSA

**From:** Stritter, Susan:(Exelon Power)  
**Sent:** Monday, June 24, 2019 2:42 PM  
**To:** Valerio, Matthew (PHMSA) <[matthew.valerio@dot.gov](mailto:matthew.valerio@dot.gov)>  
**Cc:** Giarratano, Steven (PHMSA) <[steven.giarratano@dot.gov](mailto:steven.giarratano@dot.gov)>; Severe, Geralda (PHMSA) <[geralda.severe@dot.gov](mailto:geralda.severe@dot.gov)>; Scaraggi, Anthony:(Exelon Power) <[Anthony.Scaraggi@exeloncorp.com](mailto:Anthony.Scaraggi@exeloncorp.com)>; Bergles, Susan B:(BSC) <[Susan.Bergles@exeloncorp.com](mailto:Susan.Bergles@exeloncorp.com)>; Gleason , Edward:(Exelon Power) <[edward.gleason@constellation.com](mailto:edward.gleason@constellation.com)>  
**Subject:** RE: PHMSA Inspection Follow Up email 1 of 2

Hi Matt,

Thank you for your follow up email on Friday, June 21. I have provided follow up responses below to your additional questions:

- For clarification, during the ownership transition from ENGIE to Exelon, the specific computerized system that Distrigas uses to generate truck loading bill of ladings was down during the time period of 10/1/2018 to 10/12/2018.
- The only records, related to 49 CFR 193, that were affected were by a computer system being down were our truck loading bill of ladings between 10/1/2018-10/12/2018.
- During this time period, however, bill of lading records was completed by hand according to Distrigas procedure EMT-05.
- No other records in the truck loading books dated 10/13/2018-11/17/2018 were affected.
- As discussed during the verbal exit briefing, the records in question (reprints of 10/13/2018) that do not have "Carrier, per" signatures were reprints of the handwritten bill of ladings for trucks loaded between 10/1/2018-10/12/2018.
- There was no handwritten bill of ladings records generated during 10/13/2018-11/17/2018.

Attached are PDF copies of the handwritten truck loading bill of ladings, and the trucking companies dispatching tickets from 10/1/2018 -10/12/2018. I have included the reprinted tickets covering the 10/1/2018 to 10/12/2018 time frame. These reprinted tickets were produced on 10/13/2018 due to the computer system being down from 10/1/2018-10/12/2018 (of which you saw in the truck loading black book dated 10/13/2018-11/17/2018). Note that I have excluded the reprints of the tickets that I previously emailed to you. As stated above, the reprinted tickets are not the original tickets (which were handwritten). The reprints were generated when the truck loading computerized system was back up and running for use by our commercial group.

Additionally, I want to clarify that on 10/13/2018 Distrigas' operations department did not load any LNG trucks. As documentation for this, I have attached an email from Rick Desrocher from Transgas Inc. stating that no LNG trucks were loaded at Distrigas on 10/13/2018. . Therefore, on 10/13/2018 Distrigas was not required to have a record of any truck loading bill of ladings for this date. According to EMT-05, the operator and driver would only be required to sign and exchange paper work at the scale room window when LNG truck(s) are loaded on that day.

Please be advised you will be receiving a second email with additional follow up records as an attachment. Due to the attachment size, I was not able to send all of the records that you requested in a single email.

Should you have any questions please do not hesitate to call or email me.

Best Regards,  
Sue

**Susan Stritter**  
Senior Compliance Specialist



18 Rover Street  
Everett, MA 01844  
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## **ATTACHMENT 11**

June 25, 2019 Email of Ms. Kimberly Harrigan,  
Unispec Enterprises, Inc. (on behalf of PHMSA),  
to Ms. Susan Stritter, Exelon  
(Transmitting OPS's Verbal Exit Briefing  
Report and Requested Items)

**From:** Harrigan, Kimberly CTR (PHMSA) <[k.harrigan.ctr@dot.gov](mailto:k.harrigan.ctr@dot.gov)>  
**Sent:** Tuesday, June 25, 2019 8:34 AM  
**To:** Stritter, Susan:(Exelon Power) <[Susan.Stritter@exeloncorp.com](mailto:Susan.Stritter@exeloncorp.com)>  
**Cc:** Burrough, Robert (PHMSA) <[robert.burrough@dot.gov](mailto:robert.burrough@dot.gov)>; Riendeau, Marta (PHMSA) <[marta.riendeau@dot.gov](mailto:marta.riendeau@dot.gov)>; Springer, Michael (PHMSA) <[michael.springer@dot.gov](mailto:michael.springer@dot.gov)>; Small, Barry (PHMSA) <[barry.small@dot.gov](mailto:barry.small@dot.gov)>; Valerio, Matthew (PHMSA) <[matthew.valerio@dot.gov](mailto:matthew.valerio@dot.gov)>; Breen, Anthony (PHMSA) <[anthony.breen@dot.gov](mailto:anthony.breen@dot.gov)>  
**Subject:** [EXTERNAL] 162232 - Distrigas of Massachusetts, LLC - Verbal Exit Briefing

Dear Susan Stritter,

A verbal exit briefing was conducted on June 13, 2019; for the inspection dates indicated below during Eastern Region's 2018-19 inspection.

Please note that:

- These inspection results are preliminary.
- Enforcement letters may be issued at a later date, if deemed appropriate based on finalized inspection results.
- A response to the items in the Verbal Exit Briefing report is not required.

**Date of Verbal Exit Briefing:** 06/13/2019  
**Dates of Inspection:** 06/11/2019 – 06/13/2019  
**Operator:** DISTRIGAS OF MASSACHUSETTS LLC  
**Inspection Name:** 162232\_OPID3411\_Distrigas\_I01  
**Lead Inspector:** Matthew Valerio  
**Operator Representative:** Susan Stritter

In relation to the inspection, attached you will find copies of the following documentation:

- Verbal Exit Briefing Report
- Attendance List
- Requested Items Report

Please note, any requested items, questions or responses should be directed to the lead inspector:

Matt Valerio  
General Engineer  
U.S. Department of Transportation  
PHMSA – Eastern Region  
Office: 609-771-7817 | Cell: 267-398-4699  
[matthew.valerio@dot.gov](mailto:matthew.valerio@dot.gov)

Thank you.  
Kindest regards,

Kimberly Harrigan  
Administrative Assistant  
**Contractor - Unispec Enterprises, Inc.**  
U.S. Department of Transportation  
Pipeline and Hazardous Materials Safety Administration  
840 Bear Tavern Road, Suite 300  
West Trenton, NJ 08628  
office: 609.771.7800  
e-mail: [k.harrigan.ctr@dot.gov](mailto:k.harrigan.ctr@dot.gov)

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# Verbal Exit Briefing Report

**Date of Verbal Exit Briefing:** 06/13/2019

**Dates of Inspection:** 06/11/2019 – 06/13/2019)

**Operator:** DISTRIGAS OF MASSACHUSETTS LLC

**Operator ID:** 3411 (primary)

**Assets (Unit IDs):** DISTRIGAS OF MASSACHUSETTS, LLC - MA (251)

**System Type:** LNG

**Inspection Name:** 162232\_OPID3411\_Distrigas\_I01

**Inspection Activity:** 162232

**Lead Inspector:** Matthew Valerio

**Operator Representative:** Susan Stritter – Susan.Stritter@exeloncorp.com

## Records : Operating (PRR.OPS)

Question Title, ID Transfer of LNG , MO.LO.LNGTRANS.R

Question Text Do records show that LNG transfers were conducted in accordance with requirements?

References 193.2513(a) (193.2513(b))

Assets Covered DISTRIGAS OF MASSACHUSETTS, LLC - MA (251)

Issue Summary During the inspection when discussing LNG transfers, Distrigas provided the Bills of Lading for 2016 - 2018. During the review of the "10/13/2018 through 11/17/2018 record book – bill of lading" timeframe there were approximately 50 instances where the "Carrier, per" signature box was not filled out. Distrigas Procedure - "EMT-05 Truck Loading, updated 6/6/19" Section 3.4.2.3 states, "The operator and the driver will sign and exchange the paperwork at the scale room window..." Distrigas stated during the inspection due to the changeover in ownership to Exelon Generation, this information was not filled out. Distrigas stated it will provide the "handwritten bills of lading" records for the applicable instances during the 10/13/2018 through 11/17/2018 timeframe.

The preliminary concern however, is the missing information to be included on Distrigas "Bill of Lading" records as well as the lack of procedures included in EMT-05 Truck Loading, which explain such information as (but not limited to):

- Documenting/completing the "Bill of Lading" record
- Filling out the required signature boxes
- Identification of the shipper, carrier, operator and driver

This document is for informational purposes only. It does not commit PHMSA or state pipeline safety regulators to any of the findings, analyses, determinations, conclusions or other information contained herein. All the findings, analyses, determinations, conclusions or other information in the document are preliminary in nature and subject to change without notice, at the discretion of PHMSA or state pipeline safety regulators.

# Requested Items

Any outstanding requested items not delivered within 30 days of the request date(s) will be considered as not provided.

- IU 251 (MA) Records (2)

## Requested Items - Activity Records

No.	Activity	Item Description	Notes	Question(s)	Requested	Received	Closed	Last User
1.	Records	Bills of Lading for all 10/13/18 to 11/17/18 Records	During the inspection when discussing LNG transfers, Distrigas provided the Bills of Lading for 2016 - 2018. During the review of the "10/13/2018 through 11/17/2018 record book - bill of lading" timeframe there were approximately 50 instances where the "Carrier, per" signature box was not filled out. Distrigas Procedure - "EMT-05 Truck Loading, updated 6/6/19" Section 3.4.2.3 states, "The operator and the driver will sign and exchange the paperwork at the scale room window..." Distrigas stated during the inspection due to the changeover in ownership to Exelon Generation, this information was not filled out. Distrigas stated it will provide the "handwritten bills of lading" records for the applicable instances during the 10/13/2018 through 11/17/2018 timeframe.	MO.LO.LNGTRANS.R	6/13/2019			Matthew Valerio
2.	Records	Truck Loading 2018 Procedure	Everett LNG Facility Operating Procedure Manual - Truck Loading - EMT-05 (procedure applicable to calendar year 2018)	MO.LO.LNGTRANS.P	6/25/2019		--	Matthew Valerio

Except as required to be disclosed by law, any inspection documentation, including completed protocol forms, summary reports, executive summary reports, and enforcement documentation are for internal use only by federal or state pipeline safety regulators. Some inspection documentation may contain information which the operator considers to be confidential. In addition, supplemental inspection guidance and related documents in the file library are also for internal use only by federal or state pipeline safety regulators (with the exception of documents published in the federal register, such as advisory bulletins). Do not distribute or otherwise disclose such material outside of the state or federal pipeline regulatory organizations. Requests for such information from other government organizations (including, but not limited to, NTSB, GAO, IG, or Congressional Staff) should be referred to PHMSA Headquarters Management.

**ATTACHMENT 12**

June 25, 2019 Email of Ms. Susan Stritter, Exelon,  
to Mr. Matthew Valerio, PHMSA

**From:** Stritter, Susan:(Exelon Power)  
**Sent:** Tuesday, June 25, 2019 12:11 PM  
**To:** Valerio, Matthew (PHMSA) <[matthew.valerio@dot.gov](mailto:matthew.valerio@dot.gov)>  
**Cc:** Burrough, Robert (PHMSA) <[robert.burrough@dot.gov](mailto:robert.burrough@dot.gov)>; Riendeau, Marta (PHMSA) <[marta.riendeau@dot.gov](mailto:marta.riendeau@dot.gov)>; Springer, Michael (PHMSA) <[michael.springer@dot.gov](mailto:michael.springer@dot.gov)>; Small, Barry (PHMSA) <[barry.small@dot.gov](mailto:barry.small@dot.gov)>; Breen, Anthony (PHMSA) <[anthony.breen@dot.gov](mailto:anthony.breen@dot.gov)>; Harrigan, Kimberly CTR (PHMSA) <[k.harrigan.ctr@dot.gov](mailto:k.harrigan.ctr@dot.gov)>; Scaraggi, Anthony:(Exelon Power) <[Anthony.Scaraggi@exeloncorp.com](mailto:Anthony.Scaraggi@exeloncorp.com)>; Bergles, Susan B:(BSC) <[Susan.Bergles@exeloncorp.com](mailto:Susan.Bergles@exeloncorp.com)>; Gleason , Edward:(Exelon Power) <[edward.gleason@constellation.com](mailto:edward.gleason@constellation.com)>  
**Subject:** RE: 162232 - Distrigas of Massachusetts, LLC - Verbal Exit Briefing

Hi Matt,

Thank you for verbal exit briefing correspondence, sent via email from Kimberly Harrigan 06/25/2019, pertaining to PHMSA's inspection, of Distrigas of Massachusetts LLC, from 06/11/2019-06/13/2019.

Please note that we have received copies of the following documentation:

- Verbal Exit Briefing Report
- Attendance List
- Requested Items Report

Please confirm that you have received copies of the following records as requested in the Requested Items Report, received by Distrigas on 06/25/2019:

- Distrigas' email correspondence, on 06/18/2019, containing sample copies of the handwritten "bill of lading" with the driver's signature in the "Carrier, per" as required, a reprinted "bill of lading", and the drivers loading ticket, for review/clarification purposes.
- Distrigas' email correspondence, on 06/24/2019, in response to PHMSA's follow up email on 06/21/2019, containing copies of all the handwritten "bill of lading" 10/1/18-10/2/18 with the driver's signature in the "Carrier, per" as required, a reprinted copy on 10/13/2018 of the handwritten "bill of lading", and the drivers loading ticket (except for the ones sent via email on 06/18/2019), for review/clarification purposes.
- During the inspection a copy of the Everett LNG Facilities Operating Procedure – Truck Loading- EMT-005, Rev 26, Dated 06/06/2019 was provided.

Additionally, during the verbal exit briefing there was some confusion concerning the difference in wording between the operating procedure EMT-005 use of operator and driver and the "bill of lading" use of wording Shipper per and Carrier per as it pertained to who would sign where. Attached please find the Everett LNG Facilities -Truck Loading- EMT-005 current rev. 27, which was updated on 06/25/19 to avoid any further confusion a reference was put in in a note under section 2.3.1 identifying the operator/shipper as the Shipper, Per and the driver/carrier as the Carrier, Per. In addition all references of Operator or Driver have also been updated to operator/shipper and driver/carrier.

Should you have any questions or require any other records pertaining to your Requested Items Report, received on 06/25/2019) please do not hesitate to call or email me.

Best Regards,  
Sue

**Susan Stritter**  
Senior Compliance Specialist



18 Rover Street  
Everett, MA 01844  
Office: 617 381 8521 | Mobile: 617 839 6770  
[susan.stritter@exeloncorp.com](mailto:susan.stritter@exeloncorp.com) | [www.exeloncorp.com](http://www.exeloncorp.com)

## **ATTACHMENT 13**

June 28, 2019 Email of Mr. Matthew Valerio, PHMSA,  
to Ms. Susan Stritter, Exelon

---

**From:** Valerio, Matthew (PHMSA) <[matthew.valerio@dot.gov](mailto:matthew.valerio@dot.gov)>  
**Sent:** Friday, June 28, 2019 10:04 AM  
**To:** Stritter, Susan:(Exelon Power) <[Susan.Stritter@exeloncorp.com](mailto:Susan.Stritter@exeloncorp.com)>  
**Cc:** Scaraggi, Anthony:(Exelon Power) <[Anthony.Scaraggi@exeloncorp.com](mailto:Anthony.Scaraggi@exeloncorp.com)>; Bergles, Susan B:(BSC) <[Susan.Bergles@exeloncorp.com](mailto:Susan.Bergles@exeloncorp.com)>; Gleason , Edward:(Exelon Power) <[edward.gleason@constellation.com](mailto:edward.gleason@constellation.com)>  
**Subject:** RE: 162232 - Distrigas of Massachusetts, LLC - Verbal Exit Briefing

Hi Susan,

I received your emails from 6/18/19 (PHMSA responded 6/21/19) as well as the 6/24/19 email along with the below message dated 6/25/19. During the inspection a copy of the Everett LNG Facilities Operating Procedure – Truck Loading-EMT-005, Rev 26, Dated 06/06/2019 was received. However, the requested item was/is for the procedure applicable to the record (2018) timeframe - *Everett LNG Facility Operating Procedure Manual - Truck Loading - EMT-05 (procedure applicable to calendar year 2018)*. This requested item remains pending.

Through the recent email transmittals Distrigas has sent approximately 411 pages of record documentation. In order to effectively review this amount of material without interpreting the meanings, pages etc. I think the most efficient way would be to have a short phone conversation to review the documentation that has been received. Please let me know which day/time would work best or please suggest another timeframe:

- 7/1: 12:00PM – 2:30PM
- 7/2: 10:30AM – 2:30PM
- 7/3: 7:00 AM – 12:00PM
- 7/8: 7:00 AM – 2:30PM

Thank you,

Matt Valerio  
General Engineer  
U.S. Department of Transportation  
PHMSA – Eastern Region  
Office: 609-771-7817 | Cell: 267-398-4699  
[matthew.valerio@dot.gov](mailto:matthew.valerio@dot.gov)

---

**From:** Stritter, Susan:(Exelon Power) [<mailto:Susan.Stritter@exeloncorp.com>]  
**Sent:** Tuesday, June 25, 2019 12:11 PM  
**To:** Valerio, Matthew (PHMSA) <[matthew.valerio@dot.gov](mailto:matthew.valerio@dot.gov)>  
**Cc:** Burrough, Robert (PHMSA) <[robert.burrough@dot.gov](mailto:robert.burrough@dot.gov)>; Riendeau, Marta (PHMSA) <[marta.riendeau@dot.gov](mailto:marta.riendeau@dot.gov)>; Springer, Michael (PHMSA) <[michael.springer@dot.gov](mailto:michael.springer@dot.gov)>; Small, Barry (PHMSA) <[barry.small@dot.gov](mailto:barry.small@dot.gov)>; Breen, Anthony (PHMSA) <[anthony.breen@dot.gov](mailto:anthony.breen@dot.gov)>; Harrigan, Kimberly CTR (PHMSA) <[k.harrigan.ctr@dot.gov](mailto:k.harrigan.ctr@dot.gov)>; Scaraggi, Anthony:(Exelon Power) <[Anthony.Scaraggi@exeloncorp.com](mailto:Anthony.Scaraggi@exeloncorp.com)>; Bergles, Susan B:(BSC) <[Susan.Bergles@exeloncorp.com](mailto:Susan.Bergles@exeloncorp.com)>; Gleason , Edward:(Exelon Power) <[edward.gleason@constellation.com](mailto:edward.gleason@constellation.com)>  
**Subject:** RE: 162232 - Distrigas of Massachusetts, LLC - Verbal Exit Briefing

Hi Matt,

Thank you for verbal exit briefing correspondence, sent via email from Kimberly Harrigan 06/25/2019, pertaining to PHMSA's inspection, of Distrigas of Massachusetts LLC, from 06/11/2019-06/13/2019.

## **ATTACHMENT 14**

August 8, 2019 Email of Ms. Kimberly Harrigan,  
Unispec Enterprises, Inc. (on behalf of PHMSA),  
to Ms. Susan Stritter, Exelon  
(Transmitting OPS's Post-Inspection  
Written Preliminary Findings)

**From:** Harrigan, Kimberly CTR (PHMSA) <[k.harrigan.ctr@dot.gov](mailto:k.harrigan.ctr@dot.gov)>  
**Sent:** Thursday, August 8, 2019 10:35 AM  
**To:** Stritter, Susan:(Exelon Power) <[Susan.Stritter@exeloncorp.com](mailto:Susan.Stritter@exeloncorp.com)>  
**Cc:** Burrough, Robert (PHMSA) <[robert.burrough@dot.gov](mailto:robert.burrough@dot.gov)>; Riendeau, Marta (PHMSA) <[marta.riendeau@dot.gov](mailto:marta.riendeau@dot.gov)>; Springer, Michael (PHMSA) <[michael.springer@dot.gov](mailto:michael.springer@dot.gov)>; Small, Barry (PHMSA) <[barry.small@dot.gov](mailto:barry.small@dot.gov)>; Washabaugh, Catherine (PHMSA) <[catherine.washabaugh@dot.gov](mailto:catherine.washabaugh@dot.gov)>; Valerio, Matthew (PHMSA) <[matthew.valerio@dot.gov](mailto:matthew.valerio@dot.gov)>; Breen, Anthony (PHMSA) <[anthony.breen@dot.gov](mailto:anthony.breen@dot.gov)>  
**Subject:** [EXTERNAL] 162232 - Distrigas of Massachusetts LLC - Post-Inspection Written Preliminary Findings

Dear Susan Stritter,

Attached you will find the post-inspection Written Preliminary Findings, for the dates indicated below during Eastern Region's 2018-19 inspection.

Please note that:

- These inspection results are preliminary.
- Enforcement letters may be issued at a later date, if deemed appropriate based on finalized inspection results.
- A response to the items in the Written Preliminary Findings report is not required.

**Dates of Inspection:** 06/11/2019 – 06/13/2019  
**Operator:** DISTRIGAS OF MASSACHUSETTS LLC  
**Inspection Name:** 162232\_OPID3411\_Distrigas\_I01  
**Lead Inspector:** Matthew Valerio  
**Operator Representative:** Susan Stritter – [Susan.Stritter@exeloncorp.com](mailto:Susan.Stritter@exeloncorp.com)

Should you have any questions and/or responses with regard to the attached, please direct them to:

Matt Valerio  
General Engineer  
U.S. Department of Transportation  
PHMSA – Eastern Region  
Office: 609-771-7817 | Cell: 267-398-4699  
[matthew.valerio@dot.gov](mailto:matthew.valerio@dot.gov)

Thank you.  
Kindest regards,

Kimberly Harrigan  
Senior Administrative Assistant  
**Contractor - Unispec Enterprises, Inc.**  
U.S. Department of Transportation  
Pipeline and Hazardous Materials Safety Administration

840 Bear Tavern Road, Suite 300  
West Trenton, NJ 08628  
office: 609.771.7800  
e-mail: [k.harrigan.ctr@dot.gov](mailto:k.harrigan.ctr@dot.gov)

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# Post-Inspection Written Preliminary Findings

**Date of Inspection:** 06/11/19 – 06/13/19

**Operator:** DISTRIGAS OF MASSACHUSETTS LLC

**Operator ID:** 3411 (primary)

**Assets (Unit IDs):** DISTRIGAS OF MASSACHUSETTS, LLC - MA (251)

**System Type:** LNG

**Inspection Name:** 162232\_OPID3411\_Distrigas\_I01

**Lead Inspector:** Matthew Valerio

**Operator Representative:** Susan Stritter – Susan.Stritter@exeloncorp.com

## Preliminary Issues

### Records : Operating (PRR.OPS)

Question Text Do records show that LNG transfers were conducted in accordance with requirements?

References 193.2513(a) (193.2513(b))

Assets Covered DISTRIGAS OF MASSACHUSETTS, LLC - MA (251)

Issue Summary During the inspection when discussing LNG transfers, Distrigas provided the Bills of Lading for 2016 - 2018. During the review of the "10/13/2018 through 11/17/2018 record book – bill of lading" timeframe there were approximately 50 instances where the "Carrier, per" signature box was not filled out. Distrigas Procedure - "EMT-05 Truck Loading, updated 6/6/19" Section 3.4.2.3 states, "The operator and the driver will sign and exchange the paperwork at the scale room window..." Distrigas stated during the inspection due to the changeover in ownership to Exelon Generation, this information was not filled out. Distrigas stated it will provide the "handwritten bills of lading" records for the applicable instances during the 10/13/2018 through 11/17/2018 timeframe.

The preliminary concern however, is the missing information to be included on Distrigas "Bill of Lading" records as well as the lack of procedures included in EMT-05 Truck Loading, which explain such information as (but not limited to):

- Documenting/completing the "Bill of Lading" record
- Filling out the required signature boxes
- Identification of the shipper, carrier, operator and driver

This document is for informational purposes only. It does not commit PHMSA or state pipeline safety regulators to any of the findings, analyses, determinations, conclusions or other information contained herein. All the findings, analyses, determinations, conclusions or other information in the document are preliminary in nature and subject to change without notice, at the discretion of PHMSA or state pipeline safety regulators.

## **ATTACHMENT 15**

November 13, 2019 Email of Ms. Susan Olenchuk, Van Ness Feldman,  
to Ms. Ajoke Agboola, PHMSA

## Susan Olenchuk

---

**From:** Susan Olenchuk  
**Sent:** Wednesday, November 13, 2019 12:13 PM  
**To:** 'Agboola, Ajoke (PHMSA)'  
**Cc:** 'Bergles, Susan B:(BSC)'; 'Burrough, Robert (PHMSA)'; Bryn Karaus; 'Stritter, Susan:(Exelon Power)'  
**Subject:** [FS#581382] Distrigas Record Retention Procedure  
**Attachments:** Distrigas Record Retention Procedure RC-003 Rev 3 090918.pdf

Ajoke, thanks again for reaching out to discuss the Distrigas Notice of Amendment proceeding. We very much appreciate the further conversation. As requested, attached is Distrigas's Record Retention procedure, RC-003. Please let us know if you have any questions.

We will be in touch in the coming days regarding how Distrigas would like to proceed.

Thanks again and best regards, Susan

**Susan Olenchuk | Partner**

VanNess  
Feldman LLP

1050 Thomas Jefferson Street, NW  
Washington, DC 20007

(202) 298-1896 (office) | (202) 361-5625 (cell) | [sam@vnf.com](mailto:sam@vnf.com) | [vnf.com](http://vnf.com)

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## **ATTACHMENT 16**

November 18, 2019 Letter of Mr. Robert Burrough, PHMSA,  
to Mr. Frank Katulak, Distrigas



U.S. Department  
of Transportation

**Pipeline and  
Hazardous Materials  
Safety Administration**

840 Bear Tavern Road, Suite 300  
West Trenton, NJ 08628  
609.771.7800

**OVERNIGHT EXPRESS DELIVERY**

November 18, 2019

Frank Katulak  
President & Chief Operating Officer  
Distrigas of Massachusetts, LLC  
18 Rover Street  
Everett, MA 02149

**CPF 1-2019-3001M**

Dear Mr. Katulak:

From June 11 to June 13, 2019, a representative from the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code, conducted an on-site pipeline safety inspection of Distrigas of Massachusetts, LLC (Distrigas) procedures in Everett, Massachusetts. On June 13, 2019, Distrigas was notified of apparent inadequacies found within its procedures during the inspection exit interview. Distrigas provided updated procedures on June 25, 2019.

PHMSA issued a Notice of Amendment on September 17, 2019, which proposed amendment of your procedures. Distrigas provided its Record Retention procedures on November 13, 2019. My staff reviewed the amended procedures submitted on June 25, 2019 and the Record Retention procedures submitted on November 13, 2019, and it appears that the inadequacies outlined in this Notice of Amendment have been corrected.

This letter is to inform you no further action is necessary and this case is now closed. Thank you for your cooperation.

Sincerely,

Robert Burrough  
Director, Eastern Region  
Pipeline and Hazardous Materials Safety Administration



U.S. Department  
of Transportation

**Pipeline and  
Hazardous Materials  
Safety Administration**

840 Bear Tavern Road, Suite 300  
West Trenton, NJ 08628  
609.771.7800

**OVERNIGHT EXPRESS DELIVERY**

November 18, 2019

Frank Katulak  
President & Chief Operating Officer  
Distrigas of Massachusetts, LLC  
18 Rover Street  
Everett, MA 02149

**CPF 1-2019-3001M**

Dear Mr. Katulak:

From June 11 to June 13, 2019, a representative from the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code, conducted an on-site pipeline safety inspection of Distrigas of Massachusetts, LLC (Distrigas) procedures in Everett, Massachusetts. On June 13, 2019, Distrigas was notified of apparent inadequacies found within its procedures during the inspection exit interview. Distrigas provided updated procedures on June 25, 2019.

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This letter is to inform you no further action is necessary and this case is now closed. Thank you for your cooperation.

Sincerely,

Robert Burrough  
Director, Eastern Region  
Pipeline and Hazardous Materials Safety Administration