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November 19, 2019

By Email and Overnight Courier

Ms. Kristin Baldwin
Presiding Official
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue SE
East Building
Washington, DC 20590

Re: Distrigas of Massachusetts, LLC, CPF 1-2019-3001M
Objection to Closure Letter

Dear Ms. Baldwin,

Distrigas of Massachusetts, LLC (Distrigas) objects to the letter issued by the Eastern Region Director on November 18, 2019 purporting to close this Notice of Amendment (NOA) proceeding (Closure Letter). The Closure Letter nullifies the pending request for hearing that Distrigas submitted in this proceeding on October 7, 2019. As such, the Closure Letter violates sections 190.206(a) and 190.211 of PHMSA's regulations¹ which grant Distrigas the right to a hearing before a Presiding Official and the opportunity to challenge the allegation contained in the NOA. The Closure Letter also exceeds the Region Director's authority because the proceeding is pending before the Presiding Official. As requested in the Presiding Official's email, dated November 12, 2019, offering dates on which to schedule the hearing, Distrigas requests that the Presiding Official disregard the Closure Letter and schedule the hearing for January 21 or 22, 2020.

The NOA arose from an on-site inspection on June 10-13, 2019. During that inspection and in follow-up correspondence, the inspector raised questions regarding the adequacy of the March 3, 2018 version of Distrigas's Truck Loading Procedure, EMT-005.² On June 28, 2019, in response to the inspector's request, Distrigas submitted a revised version of the Truck Loading Procedure, EMT-005, dated June 25, 2019, addressing the inspector's concerns. At no time during the inspection or in subsequent correspondence did the inspector raise any questions or concerns about Distrigas's Record Retention Procedure RC-003 or request that Distrigas provide a copy of it.

¹ 49 C.F.R. § 190.206(a) & 190.211 (2018).

² Distrigas Everett Marine Terminal Operating Procedure Manual – Truck Loading EMT-005 (updated March 3, 2018).

On September 17, 2019, the Office of Pipeline Safety issued the NOA in CPF 1-2019-3001M alleging that one of Distrigas's maintenance procedures was inadequate under 49 C.F.R. § 193.2605. Specifically, PHMSA alleged that the June 25, 2019 revised version of Distrigas's Truck Loading Procedure EMT-005 failed to include adequate guidance on record keeping for the testing of transfer hoses under § 193.2621(b). As provided under 49 C.F.R. §§ 190.206(a) and 190.211, on October 7, 2019, Distrigas submitted a Request for Hearing and Preliminary Statement of Issues in response to the NOA.

On Wednesday, November 13, 2019, Distrigas and its counsel and the Eastern Region and its counsel held an informal meeting via conference call to discuss potential resolution of the allegation in the NOA. The parties did not resolve the NOA. During that discussion, the Eastern Region requested a copy of the Distrigas record retention procedure. Distrigas provided its Record Retention Procedure RC-003 on November 13. This procedure had been available to the Eastern Region inspectors during the inspection in June 2019, and it had not been amended since that time.

On November 14, Distrigas received an email from Counsel for the Eastern Region stating that the region had reviewed Distrigas's updated procedure (*i.e.*, the June 25, 2019 revised Truck Loading Procedure) and Distrigas's record retention procedure, and "found that the issues raised in the NOA have been addressed." Counsel for the Eastern Region stated that, if Distrigas were willing to withdraw its request for a hearing, the Eastern Region would issue a closure letter.

Distrigas declined this offer and requested instead that the Region withdraw the NOA because the revised June 25, 2019 Truck Loading Procedure EMT-005 which the Eastern Region now found to be adequate had been submitted before the NOA was issued in September 2019. Moreover, the NOA had not identified any issues with Distrigas's Record Retention Procedure. On Monday, November 18, 2018, Distrigas received the Closure Letter.

The Closure Letter is not the same as withdrawing the NOA because the Closure Letter is equivalent to a finding that Distrigas's Truck Loading procedure was inadequate and required amendment in order to satisfy the NOA and pipeline safety regulations. That is not the case here where the Eastern Region found that the revised June 25, 2019 Truck Loading Procedure *provided to the Eastern Region before the NOA was issued* was adequate. The appropriate course of action is to withdraw the NOA because there was no basis for issuing the NOA in the first place.

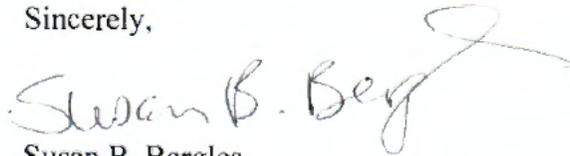
This is not a question of semantics. Distrigas is adversely affected by the Closure Letter because it gives the false impression in a public docket that Distrigas's June 25, 2019 Truck Loading Procedure was inadequate. The Closure Letter also constitutes a prior enforcement action in a potential future proceeding. Withdrawing the NOA, by contrast, properly recognizes that the Truck Loading Procedure was adequate prior to the issuance of the NOA.

In its request for a hearing, Distrigas maintains that OPS failed to meet its burden of proving that its Truck Loading Procedure is inadequate. The Closure Letter nullifies that request for hearing and violates sections 190.206(a) and 190.211 which provide respondents the right to challenge an NOA in a hearing. Distrigas filed that request for hearing and the case is now pending before the Presiding Official. The Eastern Region lacks authority to issue the Closure Letter and thereby deprive Distrigas of its right a hearing.

Distrigas requests that the Presiding Official disregard the Closure Letter as an *ultra vires* action. In response to the Presiding Official's November 12, 2019 email containing suggested dates for the hearing, Distrigas respectfully requests that the hearing be held on January 21 or 22, 2020.

Thank you for your attention on this matter.

Sincerely,



Susan B. Bergles
Assistant General Counsel
Exelon Business Services Co., LLC

cc: Ajoke Agboola, Esq., Counsel for the Eastern Region, OPS
Robert Burrough, Director, Eastern Region, PHMSA
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