

August 27, 2020

**VIA ELECTRONIC MAIL TO: anthony.scaraggi@na.engie.com**

Mr. Anthony Scaraggi  
Vice President of Operations  
Distrigas of Massachusetts, LLC  
18 Rover Street  
Everett, Massachusetts 02149

**Re: CPF No. 1-2019-3001M**

Dear Mr. Scaraggi:

Enclosed please find the Order Directing Amendment issued in the above-referenced case. It withdraws the Notice of Amendment. Therefore, this enforcement action is now closed. Service of the Order Directing Amendment by electronic mail is effective upon the date of transmission, as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

Enclosure

cc: Mr. Robert Burroughs, Director, Eastern Region, Office of Pipeline Safety, PHMSA  
Ms. Susan Olenchuk, Counsel for the Respondent, Van Ness Feldman, LLP,  
sam@vnf.com  
Ms. Bryn S. Karaus, Counsel for Respondent, Van Ness Feldman, LLP, bsk@vnf.com  
Ms. Susan Bergles, Assistant General Counsel, Exelon Corporation,  
susan.bergles@exeloncorp.com

**CONFIRMATION OF RECEIPT REQUESTED**

**U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, D.C. 20590**

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**In the Matter of** )

**Distrigas of Massachusetts, LLC,** )

**Respondent.** )  
\_\_\_\_\_ )

**CPF No. 1-2019-3001M**

**ORDER DIRECTING AMENDMENT**

From June 11, 2019, through June 13, 2019, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of Distrigas of Massachusetts, LLC's (Distrigas or Respondent),<sup>1</sup> plans and procedures of its liquefied natural gas (LNG) Import Terminal in Everett, Massachusetts.

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated September 17, 2019, a Notice of Amendment (NOA). In accordance with 49 C.F.R. § 190.206, the NOA alleged certain inadequacies in the Respondent's maintenance procedures and proposed requiring Distrigas to amend its procedures to comply with 49 C.F.R. § 193.2605 and § 193.2621(b).

After requesting and receiving the case file, Distrigas responded to the NOA by letter dated October 7, 2019 (Response). Distrigas contested the allegations of inadequacy, provided a summary of its position, and requested a hearing. On October 29, 2019, the Region notified the Presiding Official to schedule a hearing. Prior to scheduling the hearing, the Region sent a closure letter to the operator on November 18, 2019, stating that the procedures submitted by the Respondent addressed the deficiencies identified in the NOA. On November 19, 2019, Distrigas responded to the Closure Letter by reiterating its request for a hearing, stating that the NOA should be fully withdrawn, and not closed. An informal hearing was held on January 21, 2020.

**WITHDRAWAL OF NOTICE OF AMENDMENT**

**Item 1:** The NOA alleged that the Respondent's procedures were inadequate with regard to 49 C.F.R. § 193.2605(b), which states:

**§ 193.2605 Maintenance procedures.**

<sup>1</sup> Everett LNG Facility, formerly known as Distrigas, is a subsidiary of Exelon Generation Company, LLC.

- (a) ....
- (b) Each operator shall follow one or more manuals of written procedures for the maintenance of each component, including any required corrosion control. The procedures must include:
  - (1) The details of the inspections or tests determined under paragraph (a) of this section and their frequency of performance; and
  - (2) A description of other actions necessary to maintain the LNG plant according to the requirements of this subpart.

The NOA alleged that Distrigas' procedures for the maintenance of each component were inadequate. Specifically, the NOA alleged that Distrigas failed to include adequate guidance in its maintenance procedures on how to keep records for the testing of transfer hoses, as required by § 193.2621(b), which states that LNG hoses must be "visually inspected for damage or defects before each use." The NOA alleged that Distrigas' records and procedures omitted critical details. Upon reviewing the relevant procedures, the inspector noted several inadequacies in the record keeping and related procedures for the testing of transfer hoses required under § 193.2621(b). The NOA noted inadequacies in the following areas:

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" and "Carrier, Per" from the Bill of Lading record fields;
4. Who completes/signs off on the Bill of Lading records; and
5. Details of the frequency of completing Bill of Lading records.

During the hearing, the Region stated that, once it completed a thorough post inspection review of the operator's original procedures, many of the NOA's allegations were rendered moot (Items 1, 2, 4, and 5). However, it continues to maintain that certain terms used in Distrigas' original procedure<sup>2</sup> are inconsistent with the Bill of Lading (BOL) that Distrigas uses to record its compliance with § 193.2621(b). The Director argues that this sole incongruity is a legitimate and independent basis for the issuance of the NOA and that closure (and not withdrawal) is appropriate.

The BOL uses the terms "Carrier" and "Shipper" while the original procedure simply referred to "Operator." Following the inspection and in what it now argues was an attempt to assuage the OPS inspector's concerns, Distrigas amended the original procedure. Distrigas' updated (10/25/19) procedure now uses "Operator/Shipper" and includes the following note: "Operator/Shipper is also the shipper, per and the driver/carrier is also the carrier, per for all parts of this procedure and the uniform straight Bill of Lading."<sup>3</sup> The Respondent maintains that, while it amended the procedure, it was not admitting liability but rather assuaging the inspector's concerns. The Region continues to maintain that the original procedure was so deficient as to render the issuance of the NOA necessary. The only remaining dispute solely concerns whether the lack of complete congruity between the

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<sup>2</sup> "Original procedure" refers to the procedure reviewed by OPS during the 2019 inspection.

<sup>3</sup> Pipeline Safety Case File, at 15 (September 13, 2019)(on file with PHMSA).

original procedure and the BOL rise to the level of “inadequate to assure safe operation of a pipeline facility,” the required standard for issuance of an NOA. Part 190.206 and Section 3 of the Pipeline Enforcement procedures state the following:

§ 190.206 states:

**§ 190.206 Amendment of plans or procedures.**

(a) A Regional Director begins a proceeding to determine whether an operator's plans or procedures required under parts 192, 193, 195, and 199 of this subchapter are inadequate to assure safe operation of a pipeline facility by issuing a notice of amendment. The notice will specify the alleged inadequacies and the proposed revisions of the plans or procedures and provide an opportunity to respond. The notice will allow the operator 30 days following receipt of the notice to submit written comments, revised procedures, or a request for a hearing under § 190.211.

(b) After considering all material presented in writing or at the hearing, if applicable, the Associate Administrator determines whether the plans or procedures are inadequate as alleged. The Associate Administrator issues an order directing amendment of the plans or procedures if they are inadequate, or withdraws the notice if they are not. In determining the adequacy of an operator's plans or procedures, the Associate Administrator may consider:

- (1) Relevant pipeline safety data;
- (2) Whether the plans or procedures are appropriate for the particular type of pipeline transportation or facility, and for the location of the facility;
- (3) The reasonableness of the plans or procedures; and
- (4) The extent to which the plans or procedures contribute to public safety.

Section 3 of the Pipeline Enforcement Procedures states:

A Notice of Amendment is used to notify an operator that its plans or procedures required under 49 Parts 192, 193, 195, and 199 are “inadequate” to assure safe operation of a pipeline facility. Deficiencies related to an operator’s plans or procedures that cause them to be “inadequate” may include those that:

Repeat or paraphrase the regulatory text, instead of providing instructions for how to implement a regulatory requirement;

Provide instructions for compliance in a vague, general or conflicting manner that offers little or no practical or meaningful guidance, and therefore increases the likelihood of error, confusion, or the exercise of poor judgment by the operator.

A BOL ordinarily serves as evidence of a contract between a shipper and a carrier, and provides a receipt upon the exchange of goods, in this case LNG. Distrigas also uses its BOL to comply with the requirement that it visually inspected its transfer hoses. Simply put, whenever a

shipment of LNG leaves the facility, the shipper must affirm by signature that they have completed the required inspection. The original procedure stated that “Operator’s full signature on the Bill of Lading indicates that the truck load hoses have been visually inspected.” The BOL included Distrigas’ logo on the top left hand corner of the form, leaving no doubt that this is the operator’s form. At the bottom, there is a place for both the shipper and carrier’s signatures.

Though the original procedure used the term “Operator” and not “Operator/Shipper” and the BOL uses the term “Shipper”, these basic terms are not so “vague, general or conflicting” that they were “inadequate to assure safe operation” of this facility. The LNG plant will always be the Operator (and shipper) and the carrier will always be the person picking up the LNG from the terminal. The personnel conducting the transaction and completing the BOL would be perfectly aware of whether they represented the shipper or the carrier, irrespective of whether the procedure used the term “shipper.” After reviewing the BOLs reviewed by the OPS inspector, I find the records and the original procedure to be clear and capable of providing meaningful guidance.

The Respondent argues that it amended the original procedure to address the inspector’s concerns, and did not intend to admit that its original procedure was so lacking as to endanger the safe operation of its facility. Based upon my review of the original procedure, and in light of the fact that there were no missing or incomplete records, nor any documented instance where the procedure triggered confusion for the operator’s personnel, I conclude that the original procedure provided sufficiently clear instructions on how to implement the regulatory requirement (i.e., proper execution of the BOL following the visual inspection). Contrary to the Region’s determination, I further conclude that the required form was not “vague, general, or conflicting ... [such that it] offer[ed] little or no practical or meaningful guidance.” (Enforcement Procedures, Section 3). While the Region had legitimate concerns at the time of the inspection, it appears the substantive concerns were ultimately addressed by procedures that existed at the time of the inspection but had not yet been reviewed by the Region.

The Notice of Amendment is withdrawn.

August 27, 2020

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Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

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Date Issued