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Houston, Texas 77056

## **By Electronic Mail**

October 13, 2020

Mr. Alan K. Mayberry  
Associate Administrator for Pipeline Safety  
U.S. Department of Transportation  
Pipeline and Hazardous Materials Safety Administration  
1200 New Jersey Avenue, S.E.  
Washington, DC 20590

**Re: Algonquin Gas Transmission, LLC  
Corrective Action Order, CPF 1-2020-014-CAO  
Request for Hearing**

Dear Mr. Mayberry:

As you know, the above referenced Corrective Action Order (CAO) was issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA) to Algonquin Gas Transmission, LLC (AGT or the Company) on October 1, 2020, to address two small emergency shutdown (ESD) events that occurred at the Company's Weymouth Compressor Station (Station) on September 11 and September 30, 2020. PHMSA and AGT were able to meet briefly on October 7, 2020, to discuss several significant issues and clarifications that AGT respectfully requests be incorporated into a Consent Agreement and Order or an Amended CAO, without admission or denial of any of the factual or legal allegations set forth in the CAO or waiving any rights available to AGT.

While AGT appreciates PHMSA's cooperation and willingness to meet to discuss these issues, the parties have not yet had sufficient time to conclude those discussions. For that reason and in order to preserve AGT's rights and to provide the parties with the necessary time to address these issues, through this letter AGT is timely requesting a hearing pursuant to 49 C.F.R. § 190.233(b)-(c). Because AGT believes that these issues are capable of resolution, AGT requests that PHMSA refrain from scheduling a hearing to allow the parties the opportunity to conclude their discussions.

### **Background**

AGT shares PHMSA's desire to ensure public safety and to enhance pipeline system integrity. As such, AGT promptly responded to the two ESD events at issue and continues to cooperate with PHMSA in investigating the cause of the events. In coordination with the PHMSA Eastern Region, the parties convened a meeting on October 7, 2020 to discuss several significant clarifications and modifications of the CAO. AGT followed that call with two letters dated October 7, 2020 (1) to request acceptance of DNV as an independent third party to perform the root cause failure analysis of the events, and (2) to confirm restart of the separate domestic gas system that serves as a power source for the Station and that is outside the scope of the CAO. In two separate letters dated

October 9, 2020, PHMSA responded with no objection to these requests. Also on October 9, 2020, AGT submitted a third letter to the Eastern Region summarizing the remaining issues of concern.

Based on ongoing discussions with the Region, AGT is hopeful that the parties can achieve resolution issues that addresses the Company's concerns through a Consent Agreement and Order or an Amended CAO. AGT expects that the parties will reach resolution on these issues through additional discussions, and once a final document is issued, this request for hearing would be moot and/or AGT will withdraw it as appropriate.

## **Written Response and Statement of Issues**

### **1. Determination of Necessity for Corrective Action and Preliminary Facts (pp. 1-3)**

**Hazardous Facility Finding (CAO, pp. 2-3)** (*“the continued operation of the Station without corrective measures is or would be hazardous to life, property, or the environment ...”*).

AGT believes that PHMSA's hazardous facility finding in the CAO is not appropriate under the circumstances. The first ESD event addressed in the CAO has been determined by AGT to have resulted from an O-ring gasket failure on a sump tank that occurred during the Station's commissioning activities, which triggered the manual operation of the emergency shutdown system on September 11, 2020. A small volume of natural gas, approximately 169 thousand cubic feet (mscf), was released as a result of the event. A second ESD event occurred on September 30, 2020, resulting in a small release of approximately 195 mscf of natural gas.<sup>1</sup> The cause of the second event is not yet determined.

AGT was in the process of bringing the Station into service, and it was not yet fully online or fully operational, when the two ESD events took place. The ESD system was designed and operated during both of these events consistent with PHMSA regulations. Further in designing the Station, AGT conducted extensive gas dispersion modeling that demonstrates an ESD at the Station is not a significant risk to the surrounding community. Notably, the events did not even approach the level of emissions considered to be a hazard under that modeling.

These facts were not fully considered by the Agency in its analysis and there is no reasonable basis for PHMSA's hazardous facility finding for the Station or for corrective actions to be applied to the I-10 pipeline. Due to the small volume of the gas released and the lack of injuries, fatalities, or property damage associated with these ESD events, neither of these events constitute reportable "incidents" under applicable regulations at 49 C.F.R. § 191.3. Despite that, PHMSA has defined these two events as "Incident 1" (occurring on September 11, 2020) and "Incident 2" (occurring on September 30, 2020). For the Agency to issue a CAO over very small releases, which were confined to a compressor station and neither of which were reportable incidents under PHMSA regulations, is inconsistent with prior PHMSA precedent. For these reasons, the CAO's hazardous

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<sup>1</sup> The original estimate of 275 mscf as reflected in the CAO was updated and reported to the Massachusetts Department of Environmental Protection (MADEP) as 195 mscf.

facility finding is unjustified under these circumstances. At a minimum and as described below, the I-10 pipeline must be removed from the scope of the CAO.

**Preliminary Findings (5<sup>th</sup> bullet, CAO, p. 2)** (*“There were no injuries or fatalities associated with the Incidents; however, the release of large quantities of pressurized natural gas in a heavily populated area carries a substantial risk of fire, explosion, and personal injury or death, and release harmful methane into the environment.”*).

For the reasons outlined above, this “Preliminary Finding” is inconsistent with underlying facts. AGT conducted extensive gas dispersion modeling in 2019 consistent with 49 C.F.R. § 192.167 that demonstrates an ESD at the Station is not a significant risk to the surrounding community. Further, the responsibility for regulating air emissions (including methane) in Massachusetts lies squarely with the MADEP, per delegation by the U.S. Environmental Protection Agency. For these reasons, and to be within the scope of PHMSA’s authority and prior CAO precedent, the second clause, *“however, the release of large quantities of pressurized natural gas in a heavily populated area carries a substantial risk of fire, explosion, and personal injury or death, and release harmful methane into the environment,”* should be revised to align with the facts. AGT proposed specific revisions to clarify the text to address these issues, as set forth in its letter to PHMSA’s Eastern Region on October 9, 2020.

## **2. CAO Definitions**

**“Affected Pipeline” (CAO, Definitions, p. 3)** (*“Affected Pipeline – The Weymouth Compressor Station, including incoming pipeline, I-10, back to the first upstream mainline valve.”*).

The two ESD events were strictly limited to and related to the Weymouth Compressor Station. It is unwarranted to identify other assets outside the Station, such as a section of I-10 pipeline, as part of the “Affected Pipeline.” The I-10 pipeline has operated for many years independent of the Station and there is no reasonable basis to prevent it from operating in the same manner now, bypassing the Station until it is restarted and returned to normal operation. The Agency itself specifies in the “Determination of Necessity” of the CAO (p. 3) that “continued operation of the Station” is at issue, not the pipeline, and thus corrective actions required under the CAO are understandably focused on the Station. For all of these reasons, there is no basis for including the I-10 pipeline outside the station isolation valves in the CAO, and AGT therefore requests that the definition of “Affected Pipeline” be omitted.

**“Incident 1” and “Incident 2” (CAO, Purpose and Background, p. 1)** (“*On September 11, 2020, the Station experienced an O- ring gasket failure on a sump tank during the Station’s commissioning activities (Incident 1). [ . . . ] On September 30, 2020, at approximately 10:30 AM, the Station experienced an unplanned emergency shutdown, resulting in the release of approximately 275 mscf of natural gas (Incident 2).*”).

As noted above, due to the small volume of the gas released and the lack of injuries, fatalities, or property damage associated with these ESD events, neither of these events constitute reportable “incidents” under applicable regulations at 49 C.F.R. § 191.3. The definitions of these two events in the CAO as “Incident 1” and “Incident 2” should be described more appropriately as “events” not “incidents.”

### **3. CAO Corrective Actions**

**“Removal of Pressure Restriction” and “Temporary Removal of Pressure Restriction” (CAO ¶¶ 4-5, p. 5).**

(¶ 4: “*The Director may allow the removal or modification of the pressure restriction upon a written request from AGT demonstrating that restoring the pipeline to its pre-Incident 2 operating pressure . . .*” )

(¶ 5: “*The Director may allow the removal or modification of the pressure restriction upon a written request from AGT demonstrating that restoring the Affected Segment to its pre-Incident 2 operating pressure . . .*”).

The above CAO provisions addressing removal of the pressure restriction specify that the pressure restriction applies to the “Affected Segment.” This is neither a defined term in the CAO, nor is there any reference to a pressure restriction for the “Affected Segment” or “Affected Pipeline.” As noted above, the definition of “Affected Pipeline” should be deleted. The ESD events were confined solely to the Station, and there is no justification for inclusion of the I-10 pipeline outside the Station isolation valves in the CAO. AGT requests that this be clarified to specify that removal or modification of the pressure restriction, permanently or temporarily, is limited to the Isolated Segment.

**“Restart Plan,” Contingency Plan Obligation (CAO ¶ 2.h, p. 4)** (*“Prior to restart, AGT must submit to the Director a contingency plan to operate and monitor the Isolated Segment during flooding conditions, including enhanced patrolling and surveillance.”*).

As part of the permitting process, the Station was designed to be outside the flood zone for the expected life of the facility. AGT maintains a Coastal Zone Management Act (CZMA) concurrence from the Massachusetts Office of Coastal Zone Management based on technical studies and construction and operations plans, which confirms that there is minimal risk of flooding and that the construction of the Station is consistent with the CZMA. The ESD events were not related to flood events, and therefore a flood monitoring plan should not be a requirement of the CAO. Accordingly, this provision should be omitted. On October 12, 2020, AGT provided the technical documentation and CZMA concurrence to PHMSA.

**“Return to Service” (CAO ¶ 3, pp. 4-5)** (*“After the Director approves the Restart Plan, AGT may return the Isolated Segment to service but the operating pressure must not exceed eighty percent (80%) of the actual operating pressure in effect immediately prior to Incident 2, in accordance with Item 2 above.”*).

The Station, as noted above, was not yet in full operation at the time of the events. For that reason, once remedial measures are implemented on the Isolated Segment under the CAO Restart Plan provisions, and Paragraph 2.f in particular, the Station should be authorized for normal operation up to its full MAOP. This limitation to 80% of the operating pressure immediately prior to the Incident is not necessary.

**4. Factual Corrections and Clarifications**

Below is a summary of various factual inaccuracies and other errors contained in the CAO, which should be corrected and/or clarified.

No.	CAO Reference	AGT Correction/Clarification
1.	PHMSA calls the “multiple” ESD events “Incident 1” and “Incident 2.” (CAO, p. 1)	There were only two events and these events did not meet the definition of an “Incident” as specified in 49 C.F.R. 191.3.
2.	“On September 30, 2020, at approximately 10:30 AM, the Station experienced an unplanned emergency shutdown, resulting in the release of 275 mcsf of natural gas (Incident 2).” (CAO, p. 1)	The release estimate is incorrect; as noted above, the release estimate was more recently updated and reported to the MADEP as 195 mscf.
3.	“...Respondent may request a hearing, to be held as soon as practicable, by notifying the Associate Administrator for Pipeline Safety in writing, with a copy to the Director, Southwest Region, PHMSA (Director).” (CAO, p. 3)	The CAO defines “Director” as the Director of the PHMSA Eastern Region, but states that a request for hearing should be copied to the PHMSA Southwest Region. AGT requests clarification that a copy of a request for hearing should be sent to the Director of the PHMSA Eastern Region.

No.	CAO Reference	AGT Correction/Clarification
4.	In the Preliminary Findings, first and second bullets, the description of the Atlantic Bridge Project is written as if it is in the planning stages. (pp. 1-2)	This description should be updated to better reflect the status of the project, including that it was completed several years ago but commissioning was not initiated until recently pending resolution of litigation.

**Summary**

AGT appreciates the Agency’s willingness to meet on October 7, 2020 to discuss these issues and believes that with additional time the parties can come to an agreement on relevant modifications and clarifications. The Company fully expects that resolution on the above issues will be reached with PHMSA. Toward that end, and without admitting or denying the factual and legal allegations set forth in the CAO or waiving any rights available to AGT, the Company is timely submitting this request for hearing under 49 C.F.R. § 190.233(b)-(c) to ensure that these issues can be further evaluated and discussed with the PHMSA Region. Pursuant to 49 C.F.R. §§ 190.233(c)(3) and 190.209, AGT requests a copy of the case file in this matter.

AGT will continue to work collaboratively with the PHMSA Eastern Region and we are optimistic that these issues can be resolved without the need for a hearing. As such, AGT respectfully requests that PHMSA refrain from scheduling a hearing. If the parties proceed to a hearing, which we believe is unlikely, please note that AGT will be represented by inhouse counsel as well as outside counsel with Troutman Pepper.

Thank you for your consideration of this response and request for hearing and for your cooperation in response to these events. If you have any questions, please do not hesitate to contact me.

Sincerely,

*Thomas V. Wooden, Jr.*  
 Thomas Wooden  
 Vice President, GTM Engineering and  
 Asset Management  
 Algonquin Gas Transmission, LLC

- cc: Mr. Robert Burrough, Director, Eastern Region, PHMSA  
 Ms. Linda Daugherty, Deputy Associate Administrator for Field Operations, PHMSA  
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