



**Southern Natural Gas
Company, L.L.C.**
a Kinder Morgan operated company

March 21, 2018

Mr. James A. Urisko
Director, Southern Region
Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
233 Peachtree Street, Suite 600
Atlanta, Georgia 30303

**Re: Warning Letter
CPF 2-2017-1003W**

Dear Mr. Urisko:

Southern Natural Gas Company, L.L.C. ("SNG") is in receipt of the above referenced Warning Letter, dated July 27, 2017. In the Warning Letter, PHMSA alleges that SNG violated 49 C.F.R. Part 192.161(c) for maintaining a wooden platform connected to steel pipe supports. PHMSA's interpretation of 49 C.F.R. Part 192.161 as articulated in the Warning Letter appears to be inconsistent with the plain language of Part 49 C.F.R. Part 192.161, PHMSA enforcement precedent, and industry standards. In addition, such structures have been common industry practice since the 1950s, particularly in low lying areas in Louisiana and Texas. For these reasons, SNG respectfully offers the following response and requests the opportunity to meet with the Southern Region to discuss this issue further.

PHMSA Finding

- 1. § 192.161 Support and anchors.
(c) Each support or anchor on an exposed pipeline must be made of durable, noncombustible material and must be designed and installed as follows:**

SNG failed to meet the regulation because it did not ensure that each support of an exposed pipeline was made of noncombustible material.

During an on-site inspection of SNG's facility at Air Products Tap (M.P. 68.202 on the 20-inch Main Pass-Franklinton), PHMSA inspectors observed supports of the exposed pipeline made, in part, of wood. Please note that, absent a definition in §192.3 of the Code of Federal Regulations or other incorporated references, Webster's defines

2

“support” as “something that serves as a foundation, prop, brace, or stay.” While the support components in immediate contact with the exposed pipe is made of steel, the entire load-bearing platform conveying the load to a solid foundation is wood, a combustible material.”

SNG Response

As noted above, SNG respectfully disagrees with PHMSA’s interpretation of 49 C.F.R. Part 192.161 in this Warning Letter. The SNG “pipe supports” at issue are comprised of steel and are noncombustible. Those pipe supports are further braced by a wooden platform which provides access to the pipe . Photographs of the platform at the Air Products Tap are included as Attachment 1. To date, PHMSA regulations, enforcement precedent under Part 192.161 and other PHMSA rules regarding pipe supports, and industry standards apply the regulation at 49 C.F.R. Part 192.161(c) solely to the pipe supports in contact with the pipe—*i.e.*, the steel noncombustible pipe supports attached to the SNG pipe—and not to other supporting equipment or structures.

Regulatory Background

By way of background, Part 192.161(c) is a PHMSA design standard under Subpart C promulgated in 1970. *Final Rule, 35 Fed. Reg. 13,248, 13,262 (Aug. 19, 1970)*. As a design standard, it is applicable to pipe constructed and installed after the effective date of the Part 192 rules (1970) or to supports which have been replaced, relocated or otherwise changed since 1970. *49 C.F.R. Part 192.13*. It is based on a requirement in industry standard ASME B31.8 (1968), which remains the same in the most recent version of ASME,

All permanent hangers, supports, and anchors shall be fabricated from durable incombustible materials, and designed and installed in accordance with good engineering practice for the service conditions involved. All parts of the supporting equipment shall be designed and installed so that they will not be disengaged by movement of the supported piping.

Gas Transmission and Distribution Piping Systems, ASME B31.8, Section 834.3 (1968); Final Rule, 35 Fed. Reg. at 13,262; NPRM, 35 Fed. Reg. 5713, 5714 (Apr. 8, 1970).

As set forth above, the regulation and ASME standard upon which it is based clearly require that pipe supports in contact with the pipe be constructed of noncombustible material. Part 192.161 makes this distinction when read in its entirety, as evidenced by 49 C.F.R. Part 192.161(d) which indicates that a structural support is connected to the pipe (but may not be welded directly to the pipe). *49 C.F.R. Part 192.161(d)*. The relevant provision of ASME further distinguishes between pipe supports and anchors as compared to supporting equipment. *ASME B31.8, Section 834.3 (1968) (excerpted above), included at Attachment 2.*

3

PHMSA Enforcement Precedent

PHMSA enforcement precedent further aligns with this application of the regulation and definition of pipe supports. *PHMSA Final Order, In re City of Charlottesville, CPF 1-2012-0007 (Aug. 13, 2014), Attachment 3.* In that Final Order, PHMSA found that the operator violated 49 C.F.R. Part 192.161(c) by maintaining an aboveground pipe supported by wooden blocks in immediate contact with the pipe. *Id.* Notably, the wooden pipe supports were further supported by a roof and there was no discussion of the roof's combustibility. *Id.* Finally, PHMSA consistently refers to pipe supports being in contact with the pipe in Agency corrosion enforcement precedent regarding inspection of pipe supports. See e.g., *PHMSA NOPV, In re: Enterprise Products Partners, L.P., CPF 4-2017-5019 at 4 (May 10, 2017)* (regarding a violation of Part 195.581 atmospheric corrosion requirements, PHMSA states that "[a]tmospheric corrosion was present on the underside of the pipe at the pipe supports."); *PHMSA NOPV, In re: ANR Pipeline Company, CPF 3-2016-1001 at 7 (Jan. 28, 2016)* ("ANR did not clean and coat the pipeline at the supports where it is exposed to the atmosphere.").

In addition, PHMSA's reliance on the broad common English dictionary definition of pipe supports is misplaced in light of (1) additional PHMSA regulations regarding pipe supports in contact with pipe; (2) PHMSA enforcement precedent under this regulation alleging a violation of wooden pipe supports in contact with the pipe; and (3) PHMSA enforcement precedent regarding pipe supports in other contexts. See e.g., *Dolan v. U.S.P.S., 546 U.S. 481, 486 (2006)* ("The definition of words in isolation . . . is not necessarily controlling in statutory construction. A word in a statute may or may not extend to the outer limits of its definitional possibilities. Interpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis.").

PHMSA Has Not Provided the Industry with Fair Notice

As outlined above, this Warning Letter is the first time that PHMSA has indicated that a wooden platform connected to steel pipe load bearing supports runs afoul of Part 192.161(c), simply because the wooden platform which provides access to the pipe and serves as supporting equipment is made of wood. This is not consistent with Part 49 C.F.R. Part 192.161 when read in its entirety, PHMSA enforcement precedent, and industry standards. Further, construction of wooden platforms connected to steel pipe supports and anchors is common industry practice, in particular in Louisiana and Texas low country, and has been since the 1950s. Attachment 4 to this letter includes numerous photographs of other platforms from other operators in the same area as the SNG platform with similar construction.

To the extent that PHMSA is articulating a new interpretation of this regulation in this Warning Letter, the Agency has not provided the industry with notice and an opportunity to comment. The Administrative Procedure Act and recent Fifth Circuit case law under the Pipeline Safety Act require that a regulation must provide a regulated entity with fair notice of the obligations it imposes and be issued pursuant to notice and comment rulemaking. *5 U.S.C. § 554(b)*. Fair notice requires the agency to have "state[d] with ascertainable certainty what is meant by the standards [it] has promulgated." *ExxonMobil Pipeline Co v. U.S. DOT*, No. 16-60448, 2017 U.S.

4

App. LEXIS 15144 (5th Cir. Aug. 14, 2017) (citing *Diamond Roofing Co*, 528 F.2d at 649). “In the absence of notice—for example, where the regulation is not sufficiently clear to warn a party about what is expected of it—an agency may not deprive a party of property by imposing civil or criminal liability.” *Id.* (citing *Gen Elec. Co. v. EPA*, 53 F.3d 1329 (D.C. Cir. 1995)).

Summary

As outlined above, PHMSA’s interpretation of 49 C.F.R. Part 192.161(c) in the Warning Letter issued to SNG is inconsistent with the plain language of Part 49 C.F.R. Part 192.161, PHMSA enforcement precedent, and industry standards. Therefore, SNG requests that PHMSA withdraw the warning letter and that the allegations not be considered prior violations in subsequent enforcement SNG also requests the opportunity to meet with the Southern Region to further discuss this issue and appreciates the Agency’s consideration of this response. If you have any questions, please do not hesitate to contact me.

Sincerely,



Thomas C. Dender
Vice President of Operations

cc: Jaime Hernandez
Cy Harper
Mike Roberts
Martin Muller
Ken Peters