

**Before the
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Pipeline Safety
Washington, D.C.**

_____)	
In the Matter of)	
)	CPF No. 2-2019-3001
Southern LNG Company, L.L.C.)	Notice of Probable Violation
)	
Respondent.)	
_____)	

**REQUEST FOR HEARING, WRITTEN RESPONSE,
AND STATEMENT OF ISSUES**

I. Request for Hearing

Southern LNG Company, L.L.C. (Southern LNG or the Company) respectfully requests an in-person hearing on the above referenced Notice of Probable Violation (NOPV) and Proposed Civil Penalty issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to 49 C.F.R. §§ 190.208(a)(4) and 190.211(b). The NOPV alleges two violations of 49 C.F.R. Part 191 regarding incident reporting and safety-related condition reporting at the Company’s Elba Island liquefied natural gas (LNG) terminal (Terminal) and proposes a total civil penalty of \$55,200 for both items. The NOPV was received by Southern LNG on December 20, 2019. PHMSA granted Southern LNG’s January 7, 2020 request for an extension of time to respond to the NOPV on January 13, 2020, extending the response deadline to February 24, 2020. As such, this request is timely pursuant to 49 C.F.R. § 190.208.

Prior to issuance of the NOPV, the Company had been in discussions with PHMSA with regard to the extent of its jurisdiction at the Terminal. In order to continue those discussions with PHMSA, Southern LNG respectfully requests an in person settlement meeting with the Southern Region. While the Company fully believes that this matter can be resolved without resort to a hearing, Southern LNG is filing this Request for Hearing, Written Response, and Statement of Issues as set forth under 49 C.F.R. § 190.211(b) in order to preserve its rights. In the event that a hearing is scheduled in this matter, please be advised that Southern LNG in-house counsel and/or Troutman Sanders law firm will represent the Company at any hearing.

As set forth below, Southern LNG believes, consistent with applicable law and prior historical practice, that the particular portion of the Terminal at issue is exclusively regulated by the U.S. Coast Guard (USCG) and is expressly exempt from PHMSA jurisdiction. For that reason, the

Company respectfully requests that the entire NOPV and the Proposed Civil Penalty be withdrawn.

Please note that with this submission, Southern LNG makes reference to the various aspects of the facility as well as PHMSA's Pipeline Safety Violation Report (PSVR) which include controlled unclassified information (CUI), critical energy infrastructure information (CEII), sensitive security information, and/or confidential business information that is protected from disclosure under exemptions to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as well as regulations issued by the Federal Energy Regulatory Commission (FERC) at 18 C.F.R. § 388.113 and PHMSA at 49 C.F.R. Part 7 and 49 C.F.R. § 190.343.

II. Background

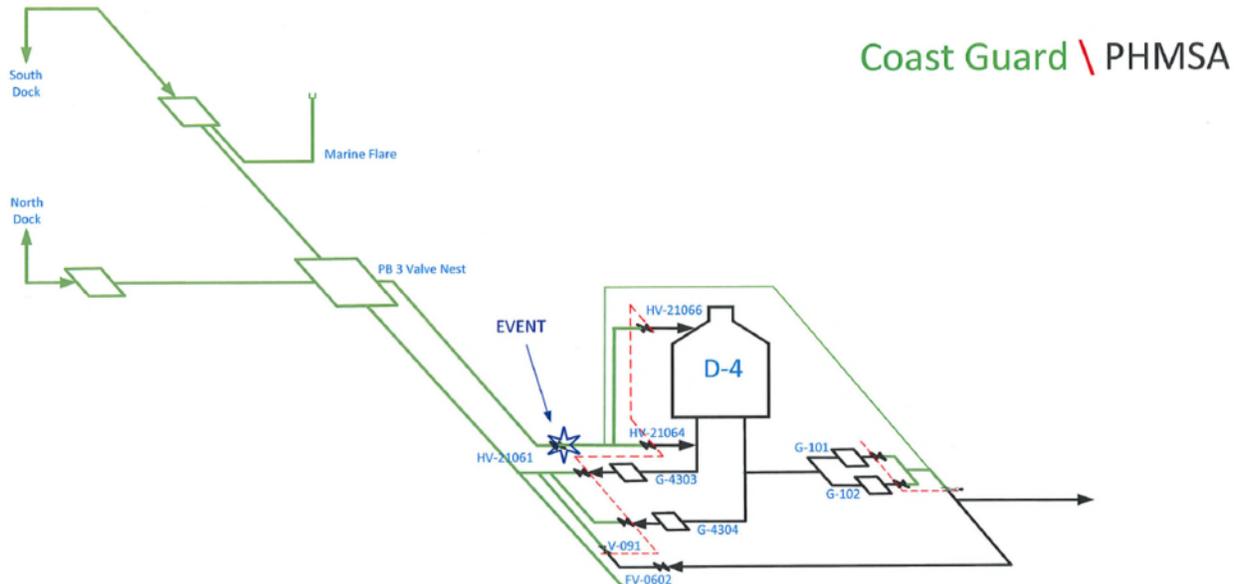
A. Terminal Background

Southern LNG operates the Terminal located in Chatham County, Georgia. The Terminal was originally installed in the 1970s to import LNG from marine cargo for domestic use. In the 1980s, the Terminal was decommissioned and in 2000 it was recommissioned and subsequently expanded to receive marine cargos at two docks and vaporize imported natural gas to interconnections and the interstate pipeline grid. In 2016, the Terminal was again expanded to allow LNG to be liquefied and loaded for export at the existing marine cargo facility. The first liquefaction train was placed in service in 2019.

Southern LNG has historically operated and maintained the Terminal subject to the jurisdiction of various federal regulatory agencies, including the USCG, PHMSA, and FERC. Specifically, Southern LNG operates its Terminal consistent with established jurisdictional boundaries based on relevant federal statutes, federal regulations, and various memoranda of understanding (MOU) clarifying potentially overlapping jurisdiction of federal agencies.

Clearly delineated jurisdictional boundaries are essential to operation of any LNG marine terminal, including this Terminal. Based on PHMSA and USCG regulations and as informed by MOUs between the agencies, Southern LNG has designated the beginning of PHMSA pipeline safety jurisdiction at the Terminal as the last valve immediately before the receiving tanks. This jurisdictional demarcation is also consistent with historical inspections of the Terminal by PHMSA and the USCG. Figure 1 below depicts the jurisdictional demarcation as it relates to the portion of the Terminal at issue in the NOPV allegations.

Figure 1, Delineation of PHMSA and USCG Jurisdiction at Relevant Portion of LNG Terminal



B. Event at Issue and Subsequent Discussions with PHMSA

Southern LNG experienced an event on May 15, 2018, when the main fill valve (HV-21061) for LNG Tank D-4 and an out of service lateral 32-inch piping on the tank side of the valve – areas of the Terminal that are exclusively regulated by the USCG – were subjected to increased pressure. *Southern LNG letter to Mr. Urisko, PHMSA (Sep. 26, 2019)*. The section of the pipe where the event occurred was out of service for tie-ins as part of the construction of the liquefaction project at the facility (*i.e.*, the pipe was isolated and LNG was evacuated from the pipe). *Id. at p. 2*. Southern LNG verbally reported the event to FERC that day. Following subsequent investigations into the cause of the event, the Company determined that combustion occurred on the out of service line, causing a detonation at the closed Tank D-4 main fill valve HV-21061. *Id.* The detonation within the pipe caused the pipe to expand, damaged the fill valve, and stretched the flange bolts, allowing LNG to pass through and drip into the insulation. *Id.*

Updates regarding Southern LNG’s investigation of the event were provided verbally and in writing to FERC pursuant to FERC’s June 1, 2016 Order Granting Section 3 and Section 7 Authorizations to Southern LNG. PHMSA received notice of the event during an October 3, 2018, phone call with Terminal personnel and Southern LNG provided PHMSA with a copy of the incident report following that call and separately provided facility diagrams on October 4, 2018. Southern LNG and PHMSA further discussed jurisdictional delineations at the Terminal by telephone on October 17, 2018 and Southern LNG provided additional information, including relevant piping and instrumentation diagrams and a third party inspection report.

During a subsequent in-person meeting at the Terminal on October 30, 2018, PHMSA and Southern LNG engaged in additional discussion regarding jurisdiction as it relates to the event. At that meeting, PHMSA indicated that it would meet with the USCG to discuss the issue further and would follow-up with Southern LNG after those meetings. In November 2018, Southern

LNG provided PHMSA with additional valve information and a copy of the Company's final investigation report. The parties engaged in additional brief discussions regarding the event and PHMSA jurisdiction during a June 2019 PHMSA inspection of the Elba Island liquefaction project.

In response to an August 2019 request from PHMSA to file a safety related condition (SRC) report, Southern LNG submitted a letter to PHMSA on September 26, 2019, to file a SRC report while expressly stating that the Company did not consider the event to qualify for reporting under Part 191. *Southern LNG letter to Mr. Urisko, PHMSA (Sep. 26, 2019)*. For the reasons stated in the letter, Southern LNG specifically requested a waiver of the five day reporting requirement in the event that PHMSA did not agree with Southern LNG's position. *Id.* Subsequently, Southern LNG responded to an October 2019 email from PHMSA requesting information regarding the cost of the repair. *Id.* The Company expected to continue to work with both PHMSA and the USCG to clarify the jurisdictional boundaries at the Terminal and, if necessary, file a formal request for jurisdictional determination. After fully cooperating with PHMSA and providing the information requested by the Agency, the only follow-up Southern LNG received from PHMSA since October 2019, however, is the NOPV at issue.

III. Southern LNG's Response to PHMSA NOPV Allegations

As explained above, Southern LNG believes that the event in question occurred in an area of the Terminal that is exclusively regulated by the USCG, consistent with federal regulations and exemptions, historical agreements between PHMSA and the USCG, and prior regulatory inspections of the Terminal. For that reason, the PHMSA incident and SRC reporting regulations do not apply to this portion of the LNG facility. Further, there is no prior regulatory enforcement or guidance that indicates otherwise. To the extent that PHMSA intends to expand its jurisdiction beyond what is established in its regulations, the Agency must comply with fair notice and due process requirements under the Administrative Procedure Act and the U.S. Constitution.

Southern LNG does not believe that PHMSA has jurisdiction over the valve and piping at issue in the NOPV allegations, but even if PHMSA did have jurisdiction, the Company believes that the event could not have been both a reportable incident and a reportable safety-related condition under Part 191.

A. NOPV Item 1 Should be Withdrawn

1. PHMSA Allegation

§ 191.5 Immediate notice of certain incidents.

(a) At the earliest practicable moment following discovery, but no later than one hour after confirmed discovery, each operator must give notice in accordance with paragraph (b) of this section of each incident as defined in § 191.3

KM failed to notify PHMSA at the earliest practicable moment following discovery, but no later than one hour after confirmed discovery, of a reportable incident, in violation of 49 C.F.R. §

191.5. As of the date of this letter, KM has not notified PHMSA of the incident described above, which was discovered on August 2, 2018.

Reportable incident is defined in 49 C.F.R. § 191.3 to include the following:

- (1) An event that involved a release of . . . liquefied natural gas, liquefied petroleum gas, refrigerant gas, or gas from an LNG facility, and that results in one or more of the following consequences:
- (ii) Estimated property damage of \$50,000 or more, including loss to the operator and others, or both, but excluding cost of gas lost;
- (3) An event that is significant in the judgement of the operator, even though it did not meet the criteria of paragraph (1) or (2) of this definition.

KM is required to notify PHMSA of an incident involving a release of LNG or natural gas from an LNG facility and causing more than \$50,000 in property damage. Note that KM followed the recommendations of the "Kinder Morgan, Savannah, GA, Inspection 32-inch Line to Tank D4" report prepared by TEAM Industrial Services, Inc. dated August 27, 2018 (TEAM Report), and removed and replaced the damaged components. The estimated cost associated with the defects and physical damages to the listed components above was reported by KM as \$497,880, which exceeds \$50,000.

KM is also required to report an event that is significant in the judgement of the operator. KM determined the event significant when it reported the event to FERC in its January to April 2018 and June 2018 Semi-Annual Operating report.

2. Southern LNG Response to NOPV Item 1

The portion of the Terminal at issue in the May 15, 2018 event meets the plain language of PHMSA's "marine cargo transfer system" exemption. That exemption provides that transfer piping from a vessel loading dock to a receiving tank is exempt in relevant part under PHMSA Part 193 and Part 191 regulations. As confirmed in applicable federal regulations, MOUs, and PHMSA guidance, PHMSA jurisdiction begins at the last manifold or, in the absence of a manifold, the last valve immediately before the receiving tanks. Because there is no manifold immediately before the receiving tanks, PHMSA jurisdiction begins at the last valve (i.e., HV-21066 and HV-21064, which are respectively the top fill and bottom fill valves) immediately before and including tank D-4 and equipment and piping leading to and including the LNG facility (as reflected in Figure 1).¹ In turn, the USCG solely regulates transfer piping from that valve to the vessel loading docks, including the valve and piping involved in the May 15, 2018 event (HV-21061).² This jurisdictional demarcation is consistent with historical inspections of the Terminal by PHMSA and the USCG.

¹ This interpretation is consistent with PHMSA's own guidance, which states that "other than the siting requirements in Subpart B of 49 CFR Part 193," marine cargo transfer system "facilities between the vessel and the last valve on the storage tank are not regulated under 49 CFR Part 193." FAQ 49 CFR Part 193, available at <https://search.usa.gov/search?query=Marine+Cargo+Transfer+System&op=GO&affiliate=dot-phmsa-2>.

² A marine transfer area for LNG, as regulated by the USCG under the Ports and Waterways Safety Act, 46 U.S.C. §

The federal Pipeline Safety Act defines an LNG facility as a gas pipeline facility used in transporting or storing LNG or for LNG conversion, in interstate or foreign commerce, which expressly “does not include” any part of a structure or equipment located in navigable waters (as defined in the Federal Power Act). *49 U.S.C. § 60101(14)*. Along those lines, “marine cargo transfer systems” and associated piping are expressly *exempt* in relevant part from PHMSA regulation under 49 C.F.R. Part 193, as “marine cargo transfer systems and associated facilities. . . between the marine vessel and the last manifold (or in the absence of a manifold, the last valve), located immediately before a storage tank.” *49 C.F.R. § 193.2001(b)(3)*.

PHMSA defines “cargo transfer systems” to include “a component, or system of components functioning as a unit, used exclusively for transferring hazardous fluids in bulk between a tank car, tank truck, or marine vessel and a storage tank.” *49 C.F.R. § 193.2007*.³ Further, PHMSA defines a “waterfront LNG plant” as “an LNG plant with docks, wharves, piers, or other structures in, on, or immediately adjacent to the navigable waters of the United States or Puerto Rico and any shore area immediately adjacent to those waters to which vessels may be secured and at which LNG cargo operations may be conducted.” *Id.* While PHMSA does not define “manifold” in its Part 193 regulations, associated guidance or relevant enforcement precedent, common dictionaries, technical dictionaries, and industry standards define “manifold,” which derives its meaning from the word “many,” to generally mean a chamber or pipe with many or several outlets or branches.⁴

In 1986, the USCG and a predecessor agency to PHMSA executed a MOU “to avoid duplication of regulatory efforts regarding waterfront LNG facilities and to maximize the exchange of relevant information.” *MOU Between the USCG and the Research and Special Programs Administration for Regulation of Waterfront Liquefied Natural Gas Facilities (May 1986)*.⁵ The

70034 et seq., includes “that part of a waterfront facility handling LNG between the vessel, or where the vessel moors, and the last manifold or valve immediately before the receiving tank.” *33 C.F.R. § 127.005* (emphasis added).

³ Although the term “marine cargo transfer system” is not defined in Part 193 regulations, PHMSA uses the definition of a “cargo transfer system.” *PHMSA Interpretation, Letter from J. Wiese to J. Wright (July 31, 2009)* (stating that “a marine cargo transfer system is defined in Subpart A as ‘a component, or system of components functioning as a unit, used exclusively for transferring hazardous fluids in bulk between a . . . marine vessel and a storage tank’”).

⁴ See e.g., Merriam Webster <https://www.merriam-webster.com/dictionary/manifold> (defining “manifold” in this context as “a pipe fitting with several lateral outlets for connecting one pipe with others.”); Oxford English Dictionary (2d ed. 1989) (defining “manifold” in the context of mechanics as “a pipe that has a number of branches, or a number of inlets or outlets); Dictionary of Mechanical Engineering (4th ed. 1996) (defining “manifold” as “a chamber or pipe with many openings.”); Schlumberger Oilfield Glossary (defining “manifold” in the context of production as “[a] common pipe or chamber having several lateral outlets.”); National Fire Protection Association (NFPA) Glossary of Terms (2019 ed.) (defining “manifold” in the context of design and installation of oxygen-fuel gas systems (NFPA 51) as “an assembly of pipe and fittings for connecting two or more cylinders for the purposes of supplying gas to a piping system or directly to a consuming device.”).

⁵The 1986 MOU superseded an earlier 1978 MOU which included identical in substance language regarding PHMSA jurisdiction. In 2004, PHMSA’s predecessor, USCG, and FERC executed an Interagency Agreement (IA) to clarify and avoid duplicative regulation of waterfront LNG facilities. That IA similarly provided that USCG is responsible for “all matters pertaining to the safety of facilities and equipment located in or adjacent to navigable

MOU designates USCG as responsible for regulatory requirements for “all matters pertaining to structure or equipment (or portions thereof) located in the navigable waters and facilities located between the vessel and the last manifold (or valve) immediately before the receiving tank(s)” other than site selection responsibilities of PHMSA’s predecessor agency. *Id.* (emphasis added). PHMSA’s predecessor agency was in turn responsible for establishing regulations with respect to “all other matters pertaining to the facility beyond and (including) the last manifold (or valve) immediately before receiving tank(s).” except those structures or equipment located in navigable waters. *Id.* (emphasis added).

As applied to the Terminal, and consistent with federal statutes, regulations, MOUs, and PHMSA guidance regarding the same, PHMSA jurisdiction does not begin until the last valve located immediately before the receiving storage tank, D-4, which are located at the top and bottom fill valves, HV-21066 and HV-20164 respectively. There is no “manifold” in this area as that term is defined by Southern LNG in its procedures and as understood by industry. Specifically, Southern LNG procedures define “manifolds” as “[c]omplex array of pipes and valves that allows station operators to direct incoming fluids from any receiving point to pieces of equipment or exit points.” *Southern LNG Procedure LNG-P0005 Master Glossary*. As depicted in Figure 1, PHMSA jurisdiction begins *downstream* from the valve (HV-21601) and piping involved in the May 15, 2018 event. That valve and piping are considered marine transfer piping subject to USCG regulation under 33 C.F.R. Part 127 and explicitly excluded from regulation by PHMSA under the plain language of 49 C.F.R. § 193.2001(b)(3).

There is no prior PHMSA enforcement precedent or regulatory guidance which indicates an alternate jurisdictional demarcation and there is no support for PHMSA’s position that regulatory jurisdiction between PHMSA and USCG stops and starts at the main fill valve for receiving tanks. The NOPV’s expansive application of the Agency’s jurisdiction has not previously been articulated to the regulated community and is contrary to fair notice requirements under the Administrative Procedure Act (5 U.S.C. § 554), due process requirements under the U.S. Constitution (U.S. Const. amend. V.), and newly promulgated Department of Transportation regulations incorporating recent policy memorandums regarding transparency, due process, and fairness in enforcement (49 C.F.R. Part 5).

B. PHMSA NOPV Item 2 Should be Withdrawn

1. PHMSA Allegation

§ 191.25 Filing safety-related condition reports.

(a) Each report of a safety-related condition under § 191.23(a) must be filed (received by OPS within five working days, not including Saturday, Sunday, or Federal Holidays) after the day a representative of the operator first determines that the condition exists,

waters up to the last valve immediately before the receiving tanks.” *Interagency Agreement Among the FERC, USCG, and the Research and Special Programs Administration for the Safety and Security Review of Waterfront Import/Export Liquefied Natural Gas Facilities (February 2004).*

but not later than 10 working days after the day a representative of the operator discovers the condition. Separate conditions may be described in a single report if they are closely related. Reports may be transmitted by electronic mail to InformationResourcesManager@dot.gov or by facsimile at (202) 366-7128.

KM failed to file a safety-related condition report as soon as the condition was discovered, but not later than 10 working days after discovery, in violation of 49 C.F.R. § 195.25 [sic]. KM filed the safety-related condition report on September 26, 2019, which is 288 working days after discovery.

49 C.F.R. § 191.23(a)(6) states, in relevant part, that each operator shall report a safety-related condition involving facilities in service with "[a]ny malfunction or operating error that causes the pressure of a . . . LNG facility that contains or processes LNG to rise above its . . . working pressure . . . plus the margin (build-up) allowed for operation of pressure limiting or control devices." For plastic deformation to occur, the pipe must experience an internal pressure that exceeds the yield stress of the pipe material. The fact that plastic deformation occurred indicates that the LNG facility experienced an internal pressure above its designed working pressure plus the allowable build-up for operation of pressure limiting or control devices.

Despite concluding that a 3/4-inch vent valve was inadvertently left open, creating a combustible mixture that resulted in a detonation and over pressure event in the pipe between D-4 and HV-21061, KM did not file a safety related condition report until September 26, 2019, in violation of 49 C.F.R. § 195.25 [sic].

2. Southern LNG Response to NOPV Item 2

For the same reasons articulated in Section III.A.2, Southern LNG believes that the event in question occurred in an area of the Terminal that is exclusively regulated by the USCG given that it is a marine cargo transfer system exempt from PHMSA regulation. As such, PHMSA SRC reporting regulations do not apply.

While Southern LNG believes that PHMSA does not have regulatory jurisdiction over the valve and piping at issue in the NOPV, even if PHMSA does have jurisdiction, both NOPV Item 1 and NOPV Item 2 cannot stand as a legal matter. By definition, a SRC report is not an "incident." 49 C.F.R. § 191.3 (defining incident); 49 C.F.R. § 191.23(b)(2) (outlining circumstances where a SRC report is not required, including a SRC that "is an incident or results in an incident before the deadline for filing the safety-related condition report"). The reverse is also true. By definition, a pipeline "incident" is not a SRC. PHMSA may not allege both under the relevant Part 193 and Part 191 regulations for the same conditions.

On August 2, 2018, when the alleged SRC took place under the NOPV, the portion of the Terminal at issue remained out of service. Southern LNG returned the line back to service on November 11, 2018,⁶ after it completed repairs of the valve and fill line. As described above, in

⁶ Southern LNG letter to Mr. Urisko, PHMSA (Sep. 26, 2019).

order to be responsive to PHMSA's request for a SRC report, Southern LNG filed a written SRC report for the May 15, 2018 event on September 26, 2019, while expressly noting that it did not consider the event to qualify as a SRC that required reporting under Part 191. Southern LNG further requested that PHMSA waive the five day reporting requirement if it found that a report was required; a request to which PHMSA did not respond.

IV. Proposed Civil Penalty Should be Withdrawn

Because a violation of PHMSA reporting regulations did not occur, the entirety of PHMSA's Proposed Civil Penalty should be withdrawn along with the NOPV allegations. Further, PHMSA's Proposed Civil Penalty as set forth in the Agency's Proposed Civil Penalty Worksheet does not accurately reflect the relevant statutory and regulatory penalty factors, including but not limited to, good faith and other matters as justice may require.

V. Preliminary Statement of Issues

Southern LNG respectfully contests both alleged violations in the NOPV and the Proposed Civil Penalty in their entirety and the Company intends to raise the following issues at the Hearing:

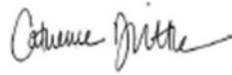
1. Whether NOPV Item 1, alleging a violation of 49 C.F.R. § 191.5(a), should be withdrawn because it is incorrect as a matter of law;
2. Whether NOPV Item 2, alleging a violation of 49 C.F.R. § 191.25(a), should be withdrawn because it is incorrect as a matter of law;
3. Whether PHMSA's exercise of its jurisdiction violates due process and fair notice;
and
4. Whether the Proposed Civil Penalty should be withdrawn because the pipeline facility at issue is not jurisdictional to PHMSA.

VI. Summary

For all of the reasons identified above, and in consideration of other matters as justice may require, the Company respectfully requests that PHMSA withdraw the NOPV and the Proposed Civil Penalty.

In the event that the parties are unable to resolve these issues in advance of a hearing, Southern LNG intends to present evidence and engage in discussion with PHMSA on these issues at the hearing in this case. Southern LNG reserves the right to revise and supplement this Written Response and Statement of Issues at or before the hearing. Southern LNG also reserves the right to respond to any new factual assertions or arguments introduced by PHMSA during the proceeding of the case.

Respectfully submitted,



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