

**Before the
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Pipeline Safety
Central Region
Kansas City, Missouri 64106**

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In the Matter of)	
)	
Panhandle Eastern Pipe Line Company, LP,)	CPF No. 3-2014-1008S
)	
)	
Respondent.)	Notice of Proposed Safety Order
_____)	

**INVOCATION OF INFORMAL CONSULTATION
and
REQUEST FOR HEARING**

Panhandle Eastern Pipe Line Company, LP (PEPL or the Company) received the above referenced Notice of Proposed Safety Order (Notice) from the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency), Office of Pipeline Safety (OPS) on December 24, 2014, in electronic format.¹ Pursuant to 49 C.F.R. Part 190.239, the Company respectfully invokes the opportunity for informal consultation concerning the Notice. In the event that informal consultation does not result in a consent agreement between PHMSA and the Company, pursuant to 49 C.F.R. Part 190.239(b)(2) and (3), the Company requests a hearing. Pursuant to 49 C.F.R. Part 190.239, this request is timely.

PEPL is optimistic that the issues presented in this matter can be resolved through the informal consultation process provided for in the regulations. The parties have been working on the issues for some time, and both PHMSA and PEPL are familiar with each other's concerns. If the parties cannot reach informal resolution, PEPL requests that the parties proceed to hearing for formal resolution. At this time, in order to allow the parties sufficient time to attempt to resolve the matter through informal consultation, PEPL respectfully requests that the Hearing Officer postpone setting a date for the hearing until the informal consultation process has concluded. In either event, the Company is committed to working with PHMSA to ensure public safety and pipeline integrity.

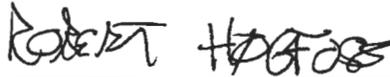
As required by 49 C.F.R. Parts 190.239(b)(3) and 190.211(b), this Request for Hearing includes a Statement of Issues (attached), which incorporates by reference a Response to the Notice (attached). Also, as required by 49 C.F.R. Part 190.211(b), please be advised that the Hunton &

¹ The Notice was issued to "Energy Transfer Partners, L.P. Panhandle Eastern Pipe Line Company's (ETP/PEPL) pipeline system." The correct and proper name for this entity is "Panhandle Eastern Pipe Line Company, LP."

Williams law firm, along with Company counsel, will represent the Company at both the informal consultation and any hearing that is scheduled for this matter.

With this Request, the Company requests a complete copy of the case file pursuant to 49 C.F.R. Part 190.209.

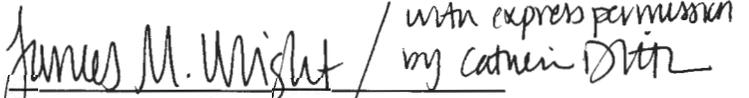
Respectfully submitted,



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**PANHANDLE EASTERN PIPE LINE
COMPANY, LP**



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Date: January 23, 2015

**Before the
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Pipeline Safety
Central Region
Kansas City, Missouri 64106**

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**Request for Hearing
STATEMENT OF ISSUES**

In connection with its "Invocation of Informal Consultation and Request for Hearing," and in accordance with the requirements of 49 C.F.R. Parts 190.239 and 190.211(b), Panhandle Eastern Pipe Line Company, LP (PEPL or the Company) hereby provides the Statement of Issues that it intends to raise at a Hearing, should this matter not be resolved through informal consultation. The Statement of Issues incorporates by reference the Company's Response to the Notice of Proposed Safety Order (Response).

The Company is committed to ensuring pipeline integrity and public safety. Toward that end, the Company has been cooperating with the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) in responding to the issues raised in the Notice of Proposed Safety Order (Notice), long before the Notice was issued. Based on meetings and discussions over the past year, the Company continues to review, update and implement as appropriate various changes to process and management systems regarding Integrity Management and Corrosion Control programs. For those reasons, the Company is hopeful that further good faith discussions through the informal consultation process will be able to address any remaining issues.

The Notice as issued contains factual misstatements and inaccuracies, however, which improperly color the allegations that provide the purported foundation for requested investigative and corrective actions. Those misstatements and inaccuracies are addressed in the Company's Response, but affect the issues identified below.

Without admitting any facts or conclusions set forth in the Notice, in the event that the parties do not reach resolution during informal consultation, the Company intends to raise the following issues at a Hearing:

1. **The Notice Fails to Adequately Identify the Existence of a Pipeline Integrity Risk Condition for a Specified Pipeline or Portion Thereof, as Required by 49 U.S.C. 60117(l) and 49 C.F.R. Part 190.239**

Applicable law requires that a PHMSA Safety Order issue only after a finding of “the existence of a condition that poses a pipeline integrity risk...[for a] specified pipeline or portion thereof.” 49 C.F.R. Part 190.239(b)(emphasis added). The Notice cites to a long list of past incidents, inspections and enforcement actions. All but three of the more than twenty historical issues alleged have already been resolved and the majority closed out by PHMSA.¹ Further, the remaining three (3) issues noted are all but closed out.² Although the Notice also identifies two incidents that have not yet been addressed through any formal PHMSA enforcement action (the Line 400 incident that occurred on November 28, 2013, near Houstonia, Missouri, and the Line 100 incident that occurred on October 13, 2014, near Centerview, Missouri), the Notice still fails to identify a specified integrity risk condition of concern, nor does it acknowledge that PEPL has in fact been working cooperatively with the Agency on investigations into both incidents.

Congress did not give PHMSA unfettered authority to direct pipeline operators to take investigative and corrective actions that are not otherwise prescribed in regulations. If a violation of established law exists, the proper course for the Agency is to issue one of various enforcement actions (Warning Letter, Notice of Amendment, Notice of Probable Violation). Likewise, if the Agency makes the requisite finding that a specific condition poses a risk to pipeline integrity, it may issue a Notice of Proposed Safety Order. Congress did not authorize the Agency to issue broad injunctive relief directives unrelated to any violations of law or unconnected to any specific finding of an integrity risk condition.

2. **Many of the “Proposed Corrective Measures” in the Notice are Overbroad, Ultra Vires, or Moot**

Many of the “Proposed Corrective Measures” set forth in the Notice are unrelated to any pipeline integrity risk condition, which is required by the Pipeline Safety Act and Part 190. 49 U.S.C. 60117(l); 49 C.F.R. Part 190.239. In addition, numerous Proposed Corrective Measures in Items 1-5, 8 and 9 impose obligations that are already required by PHMSA regulations or that largely duplicate efforts already completed or underway by the Company. Other Proposed Corrective Measures prematurely propose actions that are not yet supported by any completed analysis or findings. Taken together, the corrective measures proposed by

¹ Issues identified in the Notice on pp. 2 – 8, but already closed out by PHMSA as resolved include the following: CPF 3-2008-1002 – closed on July 8, 2011; CPF 3-2007-1016H – closed on Aug. 28, 2012; CPF 4-2008-1012M – closed on Oct. 19, 2009; CPF 4-2008-1013M – closed on Jan. 11, 2010; CPF 3-2010-1008W – closed on Dec. 29, 2010; CPF 3-2013-1015 – closed on April 9, 2014; CPF 3-2014-1006W – closed on Sept. 26, 2014.

² The following enforcement actions remain open because the Company is awaiting responses from the Agency on its completed corrective actions: Corrective Action Order CPF 3-2009-1009H, Notice of Amendment (NOA) CPF 3-2010-1006M, and NOA CPF 3-2010-1011M.

the Notice impose unprecedented, overbroad and unworkable requirements, and are therefore either *ultra vires* or moot.

3. **The Notice Violates the Administrative Procedure Act and Constitutional Prohibitions**

The Notice as issued, and the “Proposed Corrective Measures” included, would remove a broad range of issues and operational activities managed by the Company that are subject to existing law and regulation, and place those issues and activities under a potentially interminable level of review and re-direction by one Region of a federal agency, despite the fact that the actions requested by the Notice would extend to multiple Regions. Specifically, the Notice directs the Company to take various investigative and corrective actions throughout “*the entire PEPL pipeline system*” (Notice, pp. 10, 12, 13 – 15). The Company owns the PEPL system in eight states, six of which are in PHMSA’s Central Region and two in PHMSA’s Southwest Region. The Southwest PHMSA Region shares jurisdiction over the PEPL system, and has in fact exercised jurisdiction in both past and currently active matters that overlap with this action. The Central Region has no authority to direct activities in other Regions.

Congress provided the Agency with enabling legislation that directs the promulgation of regulations – after public notice and comment – consistent with the Administrative Procedure Act. This Notice would ignore such legislative and regulatory directives, and instead transfer an unrestricted level of discretion to a sub-unit of the Agency. The law does not anticipate such a result.

4. **The Notice Exceeds the Statutory Intent for the Scope of Injunctive Relief**

As drafted, the Notice exceeds the scope of injunctive relief provided for by the Pipeline Safety Act and the Administrative Procedure Act. Courts have vacated injunctions where the scope of injunction was too broad. See e.g., *U.S. v. Spectro Foods Corp.*, 544 F.2d 1175, 1181 (3rd Cir. 1976) (finding that use of broad language in a preliminary injunction that, in effect, “ordered the FDA to supervise and control the conduct of defendants’ business” was in error).

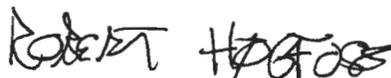
Summary and Conclusion

Congress created the Safety Order enforcement alternative in 2006, and PHMSA first promulgated rules to implement that authority in 2008. Since then, the Agency has only issued sixteen Proposed Safety Orders prior to this Notice. The majority of those have indeed been resolved through informal consultation, and PEPL hopes and expects that this matter can also be resolved in that manner. The Company has already completed or initiated actions addressing the subjects of many of the measures proposed in the Notice, and it believes that further consultation will be able to address any remaining issues.

For all of these reasons, and other matters as justice may require, the Company respectfully requests that PHMSA resolve this matter through informal consultation and entry of consent agreement. In the event that informal consultation does not result in entry of a consent

agreement, PEPL reserves the right to amend this Statement of Issues prior to proceeding to a hearing.

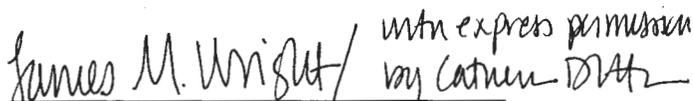
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**PANHANDLE EASTERN PIPE LINE
COMPANY, LP**



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Date: January 23, 2015

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Panhandle Eastern Pipe Line Company, LP,)	CPF No. 3-2014-1008S
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**Request for Hearing
RESPONSE TO NOTICE OF PROPOSED SAFETY ORDER**

The Regional Director for the Central Region of the Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety (PHMSA or the Agency), issued an unsigned Notice of Proposed Safety Order (Notice) to Panhandle Eastern Pipe Line Company, LP (PEPL or the Company) on December 24, 2014. The facts alleged and actions requested in this Notice concern the pipeline system owned and operated by PEPL, which extends beyond the boundaries of PHMSA's Central Region.

It is the Company's hope and expectation that this matter will be resolved through informal consultation and written consent agreement. PHMSA has only issued sixteen Notices of Proposed Safety Orders prior to this one, the large majority of which have been resolved through informal consultation and consent agreement. None of those prior Notices, however, were as lengthy or contained such expansive and open ended requests for corrective measures as this current Notice. In addition, none of those prior PHMSA Notices proposed corrective measures without any connection to focused findings or specific integrity risk conditions, as compared to this Notice where they are based on generalization and presumption.

For those reasons, if informal consultation is unsuccessful, without admitting any of the allegations, facts or conclusions set forth in the Notice, the Company seeks a Hearing on the preliminary findings, alleged integrity risk conditions and proposed corrective measures. The Company's response to the elements of the Notice is set forth below.

I. Applicable Law

Congress created the Safety Order enforcement alternative in 2006. *49 U.S.C. § 60117(l)*. PHMSA issued interim final regulations to implement that authority in 2008 and final

regulations in 2009. *49 C.F.R. Part 190.239*. Pursuant to Congressional direction and PHMSA regulation, Safety Orders require a threshold finding by the Agency, specifying a pipeline condition that poses an integrity risk to public safety, property, or the environment (hereinafter “integrity risk condition”). *49 U.S.C. § 60117(l); 49 C.F.R. Part 190.239(b)*. In making this determination, the Agency must consider numerous factors, including the likelihood that: (1) the condition will impair the serviceability of a pipeline; (2) the condition will worsen over time; and (3) that the condition is present or could develop on other areas of the pipeline. *Id.*

As drafted, the Notice fails to identify a condition predicate required by both Congress and the Agency before issuance of a Safety Order. In the Notice, the Central Region does not identify a specific integrity risk condition or conditions, but instead sets forth a summary of various historical incidents, inspections, and enforcement actions that have occurred over the past eight years on a 6,000 mile system that crosses two PHMSA Regions, regardless of whether those matters have been satisfactorily closed out or not. The Agency’s own regulations require that “the existence of a condition that poses a pipeline integrity risk...[be specific to a] specified pipeline or portion thereof.” *49 C.F.R. Part 190.239(b)* (emphasis added). The list of past incidents, inspections, enforcement actions and other events set forth in the Notice does not, however, identify any current or specified integrity risk condition, as required by law.

The Central Region’s allegations and inferences that the Company has a long list of open matters where “significant improvements...have not occurred” (*Notice, p. 2*), combined with the suggestion that the two recent incidents have gone untended, are incorrect as a matter of fact. As a matter of law, the allegations fail to make the required finding predicate to issuance of a Safety Order.

II. Alleged Preliminary Findings

The Notice as issued contains numerous factually misleading statements, giving readers an inaccurate impression of the Company’s performance that contradicts the objective facts. The Notice is unusually long (longer than any Proposed Safety Order previously issued by the Agency): twenty-six pages of allegations, directives and appendices. The first eight pages contain an overlapping litany of past incidents, inspection findings, inspection discoveries, enforcement actions, and irrelevant facts and statements inferring that PEPL has not responded to safety issues or concerns. Not included or mentioned in the Notice are the results of numerous other inspections of facilities, records and programs that did not identify any serious deficiencies in Company performance. The Notice expressly and incorrectly states that “significant improvements...have not occurred.” *Notice, p. 2*. In contrast, PHMSA’s own website documents the fact that virtually all of the issues listed in the Notice have long been closed out by the Agency itself, in recognition of corrective actions (“improvements”) already completed by the Company, at the request, review and approval of the Agency.

The Notice identifies more than twenty incidents, inspections, enforcement actions, and other events that have occurred over the past eight years on PEPL’s more than 6,000 mile interstate system. Although not made clear in the Notice, the incidents, inspections and enforcement actions listed reduce to only a handful (3) of outstanding (not closed) matters. All three of the outstanding matters are before PHMSA for closure, with no outstanding items or actions still due

from the Company. The Notice also fails to note that the PEPL system crosses more than one PHMSA Region, and inappropriately directs the Company to take actions beyond the Central Region's jurisdictional boundaries ("*the entire pipeline system,*" Notice, pp. 10, 12 - 15).

There are only two recent incidents identified in the allegations that have not yet been fully resolved: the October 13, 2014 Centerview, Missouri matter and the November 28, 2013, Houstonia, Missouri matter. As drafted, the Notice incorrectly implies that the Company has done nothing in response to those incidents. The record shows otherwise. Over the past year, the Company has conducted extensive investigations and has already completed or is in the process of completing numerous corrective actions in regard to these incidents, all in cooperation with and at the request and approval of PHMSA. Reports, documents and proposed corrective measures reflecting those activities were provided to the PHMSA Central Region office months ago, but the Company has not received formal comment or response that furthers the resolution of these matters.

The Notice as drafted attempts to create a legal cause of action that is not supported by the facts, or the applicable law.

III. Proposed Corrective Measures

The Notice includes thirteen separate Items under "Proposed Corrective Measures." One of those (Item 10) is optional rather than mandatory (maintaining cost documentation), and three are procedural standards (Items 11-13). PEPL requests revision or withdrawal of the remaining proposed corrective measures: Items 1-9, as may be agreed to during informal consultation. Substantive concern is directed to Items 1-5, which propose broad corrective measures across the entire PEPL system, including extensive additional sub-requirements. In particular, while the Central Region has been unresponsive to prior Company requests over the past year to coordinate with other Regions and PHMSA Headquarters, its proposed corrective measures direct activities in the PHMSA Southwest Region, for which the Central Region has no jurisdiction.

As a general and threshold objection, the Company notes that because the Agency has not identified a specific integrity risk condition associated with these proposed corrective measures, the Agency has not met the statutory requirement that all corrective actions be both necessary and targeted to remedy the alleged integrity condition. *49 U.S.C. § 60117(l)* (authorizing PHMSA upon determining that a pipeline facility has a condition that poses an integrity risk, to require "necessary corrective action," including physical inspection, testing, repair, or other appropriate action, "to remedy that condition."). In promulgating its safety order regulations, PHMSA explained,

...we have no intention of imposing requirements beyond what the law allows. PHMSA understands the need to ensure a strong linkage between identified risk conditions and any mandated corrective actions, and we are committed to tailoring any mandatory actions to the nature and scope of the threat.

74 Fed. Reg. 2889, 2890 (Jan. 16, 2009). The Agency also notes that its approach is intended to “ensure a direct nexus between risk conditions and required safety controls.” *Id.* (emphasis added). The Agency has not met its statutory and regulatory burden in the Notice.

The Company’s specific response to each of the corrective actions proposed in Items 1-9 is set forth below.

A. Item 1: 100 Line RCFA and Metallurgical Analysis

Item 1 concerns the recent (October 2014) incident near Centerview, Missouri, where the pipeline disengaged in the longitudinal direction at a mechanical coupling. The Company has already been working cooperatively with the Agency in investigating this matter. Items 1.A, 1.B and 1.C of the proposed corrective actions in the Notice are largely duplicative of the Company’s ongoing investigation, metallurgical analysis, and Root Cause Failure Analysis (RCFA), all of which are well underway and have been supervised and approved by the Central Region (*e.g.*, follow specific protocols for metallurgical testing and lab analyses). The Notice did not acknowledge that these actions are in progress, nor has the Central Region been responsive to these ongoing investigative actions. For example, notice was provided to the Central Region when the lab work was to be conducted – as requested – but the Agency declined to participate.

Most problematic, Items 1.D, 1.E and Appendix B item (J) prematurely propose corrective measures that are not supported by any completed analysis or findings. Logically and typically, the findings and conclusions of an RCFA guide any corrective measures or remediation. PHMSA regulations and industry standards incorporated into the Agency regulations (such as ASME B31.8S) require the completion of investigations before reaching any conclusions on appropriate corrective measures. This common sense requirement is underscored by PHMSA’s statement in its final rule promulgating the Safety Order regulations, noting that PHMSA orders will impose “flexible and adaptive measures, as opposed to prescriptive remedial requirements” and that the initial proposed actions will “typically be diagnostic and performance-oriented.” 74 Fed. Reg. 2889, 2890 (Jan. 16, 2009).

It is unprecedented and inexplicable for the Central Region to prescribe detailed corrective measures prior to the completion of an accident investigation. Even more inexplicable, the Notice fails to even acknowledge the Agency’s awareness of and involvement with an investigation that is already underway, or refer to its importance in developing corrective measures. The Notice makes sweeping and unprecedented conclusions suggesting that the mere existence of a coupling or couplings on an interstate natural gas transmission pipeline must be eliminated. Mechanical couplings are recognized in ASME B31.8S, Managing System Integrity of Gas Pipelines, as a construction threat (incorporated by reference at 49 C.F.R. Part 192.917). The standard advises that this type of construction threat alone does not pose an integrity issue, but that the presence of this threat in conjunction with the potential for outside forces significantly increases the likelihood of an event. It further advises that data be integrated and evaluated to determine where these characteristics co-exist with external

or outside force potential. As proposed, the Notice fails to recognize the due process normally afforded an operator as well as sound engineering and integrity management principles embodied in a consensus standard and incorporated by the Agency's own integrity management regulations. As a result, the proposed corrective measures are unwarranted and unnecessary.

B. Item 2: 400 Line Houstonia RCFA

Item 2 of the Notice (*pp. 11-12*), concerns the 2013 Houstonia incident on Line 400 of the PEPL system. The Company has already completed extensive investigative and corrective actions in response to this incident, at the request of and in cooperation with PHMSA. The Company conducted an internal investigation immediately following the incident and provided the Central Region with a final RCFA report in June of 2014. In a parallel effort and at the Region's request, PEPL commissioned an independent investigation and RCFA. The final report from that effort was delivered to PHMSA in August of 2014. The Central Region has not yet responded to those documents that were submitted last year, despite having requested those investigations. Instead, the Notice directs the Company to undertake extensive corrective measures, including actions already known by the Central Region to be complete or underway.

As with Item 1 of the Notice, the Central Region should follow its own regulations and established procedure, and review completed RCFA findings with the operator so that appropriate corrective measures can be determined.

C. Item 3: Leak Detection Survey

Item 3 of the Notice (*pp. 12-13*) proposes that the Company conduct an instrumented leak detection survey of "the entire system," by air or ground. There is no alleged relation of this request to any pipeline integrity risk condition predicate to issuance of the Notice. More to the point, leak detection surveys are already required by PHMSA regulation (*see, e.g., 49 C.F.R. Part 192.706*), and the Company meets or exceeds the applicable regulation requirements. The suggestion that the Company should incrementally enhance or duplicate actions already required by law is inexplicable, and in direct conflict with PHMSA's directions for use of Safety Orders ("we have no intention of imposing requirements beyond what the law allows"). *74 Fed. Reg. 2889, 2890 (Jan. 16, 2009)*. The fact that this Item suggests that a required activity should be removed from applicable legal requirements and transformed to fall under the discretion of an Inspector from the Central Region is *ultra vires*.

D. Items 4 and 5: Third Party Consultant Review and Comprehensive Safety and Integrity Improvement Work Plan

Items 4 and 5 of the Notice (*pp. 13-18*), constitute the bulk of the corrective measures proposed. These two Items would have the Company retain a third party consultant, approved by the Central Region, to undertake a remarkably broad and unauthorized review of PEPL programs, procedures and activities, and then report those findings to the

Region for further direction regarding internal pipeline operational decisions beyond the confines of the Notice as issued. Additional actions and obligations are set forth in the lengthy and detailed Appendices to the Notice (Appendix A (elements of review of the Company's corrosion control plan), Appendix B (elements of the Integrity Work Plan), Appendix C (elements of a safety culture improvement program), and Appendix D (elements for enhanced data systems)) which mandate, among other things, the adoption of industry best practices and implementation of: "conservative corrosion growth rates;" "conservative interaction rules;" "the most conservative (lowest predicted failure pressure) equation."

Actions taken in response to those directives would then be incorporated into the Order through the requirements of Items 6 and 7. In addition, Item 6 would also have the Company constantly revise work plans (detailed below) "whenever necessary to incorporate new information obtained during the failure investigations and remedial activities" and submit them on a rolling basis for further review and approval. *Notice, p. 18.*

There is no alleged relationship between the actions proposed in Items 4 and 5 and any specific integrity risk condition. Rather, as examples: Item 5.B.iii prescribes "IWP shall include additional field testing, inspections, and evaluations to determine whether and to what extent the conditions associated with the failure, or any other integrity-threatening condition are present elsewhere on the system" and Item 5.B.iv prescribes "IWP shall include the performance of repairs of other corrective measures that fully remediate any integrity-threatening condition everywhere." *Notice, p. 17.* As such, these proposed corrective measures go well beyond applicable law, and ignore relevant facts. In addition, they are impermissibly vague, overbroad and unworkable.

The overarching scope of these proposed requirements risks authorizing a third party consultant, who lacks institutional and operational background and expertise with respect to the PEPL system, to direct processes, operations and pipeline safety decisions (*e.g.*, establishing Company procedures, including "conservative" ILI feature and corrosion growth rates, ordering pressure reductions, and requiring repair or replacement of certain pipelines, "or other measures as may be identified"). The consultant would prepare various reports and oversee numerous work plans on "the safety and integrity of the PEPL system" including: (1) an initial report with recommendations for near-term improvements on a prioritized risk basis; (2) a Comprehensive Safety and Integrity Improvement (CSII) work plan for the entire PEPL system (as approved by the consultant) to address deficiencies and improvements in four areas: Corrosion, Integrity Management, Safety Culture, and Enhanced Data Systems (each with numerous requirements and its own detailed appendix); and (3) as a subset of the Integrity Management piece, an Integrity Work Plan (IWP) to "ensure pipeline safety and an effective integrity program."

In addition to being vague and open-ended, the expansive scope of the review, reports, and work plans set forth in the Notice are not supported by any completed RCFA or previously identified integrity risk condition. Further, at times they are duplicative of one

another as well as with existing legal requirements (*e.g.*, 49 C.F.R. Part 192.945 requires operators to include methods to ensure IMP effectiveness), go beyond the scope of even the PEPL system (*e.g.*, Appendix B proposes review of incidents occurring on affiliate entities in developing the IWP), and exceed relevant regulatory requirements by incorporating vague undefined concepts such as a safety culture, “learning environment,” and enhanced data systems (*Notice, pp. 17-18*).

As noted above in regard to Items 1 and 2, the Company has already completed two RCFAs for the Houstonia incident (submitted to the Central Region months ago), and the Company is working on an RCFA for the Centerview incident, in cooperation with the Central Region. These issues could be most productively addressed if the Region would review those investigation results, findings and recommendations, and then use that information as a guideline for further discussion with PEPL and development of appropriate corrective actions and work plans.

E. Item 8: Notification of Leak Indications

Item 8 of the “Proposed Corrective Measures” in the Notice would have the Company notify the Central Region within 24 hours “of discovery of any leak indication that is not reported through other requirements in 49 C.F.R. Part 191 or the elements in the Order associated with leak survey.” *Notice, p. 18*. There is no nexus between this requested corrective measure and the threshold finding of an integrity risk condition associated with issuance of a Safety Order. This proposed requirement simply duplicates existing law (*e.g., 49 C.F.R. Parts 191.5, 191.7, 191.17 and 191.23*). To the extent it is intended to go beyond existing law, the Central Region has no authority to do so, either from Congress or regulations promulgated by the Agency.

F. Item 9: Safety Order Documentation Report

Item 9 of the “Proposed Corrective Measures” in the Notice (*pp. 18-20*), creates an unprecedented requirement that Respondent prepare an extensive “Safety Order Documentation Report” (SODR) that is to be submitted quarterly and subject to ongoing comments and new directives from the Central Region. There is no “SODR” in any regulation, guidance or previously issued Safety Order. This proposed new requirement would create an increasingly voluminous report that would be unwieldy for both the Agency and the Company to maintain or utilize. The SODR as proposed would include eleven separate sections, with appendices, which are intended to be added to and updated on a quarterly basis, and subject to additional input and re-direction from the Region (while such ongoing updates and review are also requested in Item 6). As such, this document would be inconceivably unmanageable, in a constant state of change, with no termination point anticipated.

PHMSA enforcement actions mandating corrective actions often request monthly or quarterly status reports and submittal of final documentation, but not a requirement for an ongoing report that is subject to constant oversight and re-direction. The submittal of quarterly status reports and final documentation is routine in all PHMSA Regions (and

has been previously in the Central Region). There is no need to create a new requirement.

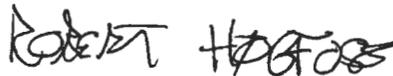
In the last paragraph of the Notice, PHMSA also includes yet another broad statement that the Agency "may identify other safety measures that need to be taken." *Notice, p. 20*. Given the fact that the Notice as drafted exceeds the bounds of the Agency's authority, this language is unnecessary and superfluous. Further, the Company has the right to appeal any decision by the Central Region to the PHMSA Associate Administrator, including any additional safety measures the Region may propose.

IV. Conclusion

The Notice as issued presents a misleading picture of the Company's operations, without identifying a specific integrity risk condition as required by law. The Notice goes on to propose expansive corrective measures across various topics, most of which are intended to apply to "the entire PEPL system." The proposed corrective measures are not linked to focused findings or specific integrity risk conditions, but are instead based on generalization and presumption. Moreover, the proposed corrective measures fail to acknowledge actions completed or underway by PEPL, including root cause findings already presented to the Region.

For the reasons discussed above and in the related Statement of Issues, including the fact that the Company has cooperated with PHMSA in addressing the overlapping incidents, inspections and enforcement actions identified in the Notice, and other matters as justice may require, the Company respectfully requests that PHMSA resolve any outstanding issues through informal consultation and entry of a consent agreement, and withdraw the Company's Request for Hearing as specified by 49 C.F.R. Part 190.239(b)(2). In the event that informal consultation does not result in entry of a consent agreement, PEPL reserves the right to amend this Response prior to proceeding to a hearing for a more formal resolution of the factual and legal issues presented.

Respectfully submitted,



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