

JUNE 28, 2013

Mr. Gary Buchler
Vice President of Engineering and Operations
El Paso Natural Gas Company, L.L.C.
1001 Louisiana St, Suite 1000
Houston, TX 77002

Re: CPF No. 4-2012-1004M

Dear Mr. Buchler:

Enclosed please find the Order Withdrawing the Notice of Amendment issued in the above-referenced case. It withdraws the allegation that certain written procedures of El Paso Natural Gas Company, L.L.C. were inadequate for safe operation. This enforcement action is now closed. Service of the Order by certified mail is effective upon the date of mailing as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Rod Seeley, Director, Southwest Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS
Ms. Jessica Toll, Assistant General Counsel, Kinder Morgan Inc.
370 Van Gordon St, P.O. Box 281304, Lakewood, CO 80228
Mr. Robert Hogfoss, Esq., Hunton & Williams LLP, Bank of America Plaza, Ste 4100
600 Peachtree St N.E., Atlanta, GA 30308

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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

In the Matter of)
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)
El Paso Natural Gas Company, L.L.C.,) **CPF No. 4-2012-1004M**
)
Respondent.)

ORDER WITHDRAWING NOTICE OF AMENDMENT

On October 20, 2011, 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 inspection of the written operations and maintenance procedures of El Paso Natural Gas Company, L.L.C. (El Paso or Respondent) in Houston, Texas. El Paso is a subsidiary of Kinder Morgan Inc. and operates approximately 10,000 miles of natural gas transmission pipeline located primarily in Arizona, New Mexico, and Texas.¹

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued a Notice of Amendment to Respondent on March 22, 2012 (Notice). In accordance with 49 C.F.R. § 190.237, the Notice alleged that Respondent's written procedures were inadequate to assure safe operations and proposed that certain revisions be made.

El Paso responded to the Notice by letter dated April 27, 2012, contested the alleged inadequacy, and requested a hearing. Respondent submitted additional written materials on August 3, 2012. In accordance with 49 C.F.R. § 190.211, a hearing was held on August 14, 2012, in Houston, Texas, before the Presiding Official from the Office of Chief Counsel, PHMSA. After the hearing, Respondent provided a Post-hearing Submittal dated September 14, 2012.

Item 1: The Notice alleged that Respondent's procedures were inadequate with regard to § 192.605(a), which states:

§ 192.605 Procedural manual for operations, maintenance, and emergencies.

(a) *General.* Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response

¹ El Paso reported pipeline system information for calendar year 2011 pursuant to 49 C.F.R. § 191.17. El Paso was acquired by Kinder Morgan Inc. during the course of this proceeding.

(b) *Maintenance and normal operations.* The manual required by paragraph (a) of this section must include procedures for the following, if applicable, to provide safety during maintenance and operations.

(1) Operating, maintaining, and repairing the pipeline in accordance with each of the requirements of this subpart and subpart M of this part.

The Notice alleged that El Paso's written procedures were inadequate for conducting operations and maintenance activities in accordance with class location requirements. Specifically, the Notice alleged that Respondent's procedure *Section 200—Pipeline Design General Standards* contained an incorrect method for determining the area of a Class 3 location along a pipeline. The procedures used a measurement of 100 yards from the boundary of a frequently used building or outside area. The Notice alleged that a measurement of 220 yards was required.

At the hearing and in its written submissions, Respondent maintained that its procedures for using a 100-yard measurement were consistent with § 192.5 as well as other interpretive guidance and internal documents prepared by PHMSA.

Background

The natural gas pipeline safety regulations use class location as a method of providing higher safety standards for pipelines in more densely populated areas.² Class 1 and 2 areas are less populated, while Class 3 and 4 areas are more densely populated. Determining which class location applies to a segment of pipeline is accomplished by measuring population according to the methods set forth in § 192.5. The method for identifying a Class 3 location is as follows:

§ 192.5 Class locations.

(a) This section classifies pipeline locations for purposes of this part. The following criteria apply to classifications under this section.

(1) A "class location unit" is an onshore area that extends 220 yards (200 meters) on either side of the centerline of any continuous 1-mile (1.6 kilometers) length of pipeline

(b) Except as provided in paragraph (c) of this section, pipeline locations are classified as follows

(3) A Class 3 location is:

(i) Any class location unit that has 46 or more buildings intended for human occupancy; or

(ii) An area where the pipeline lies within 100 yards (91 meters) of either a building or a small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period. (The days and weeks need not be consecutive.)

(c) The length of Class locations 2, 3, and 4 may be adjusted as follows

² See, e.g., § 192.619.

(2) When a cluster of buildings intended for human occupancy requires a Class 2 or 3 location, the class location ends 220 yards (200 meters) from the nearest building in the cluster.

Section 192.5 provides two methods for establishing a Class 3 location, either of which may be satisfied. The first method, § 192.5(b)(3)(i), measures the number of buildings within a “class location unit”—a one-mile length of pipeline extending 220 yards on either side of the centerline of the pipe. The mile-long zone, referred to as a “sliding mile,” is moved along the pipeline and the number of buildings within the zone at any point during the movement determines the class location for the entire mile-long zone.³ A Class 3 location is any class location unit that has 46 or more buildings intended for human occupancy.

The other method for identifying a Class 3 location is based on whether there is a certain type of frequently used building or outside area within close proximity to the pipeline. Under § 192.5(b)(3)(ii), a Class 3 location is any area where the pipeline lies within 100 yards of a building or a small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period. By comparison to the first method, this method does not require counting the number of buildings within 220 yards of the pipeline; rather, it requires the identification of a single frequently used building or outside area within 100 yards.

Once a Class 3 location is identified, the length of the class location along the pipeline differs depending on which of the two methods was used.⁴ Under the first method, which measures the number of buildings, the length of the Class 3 area is one class location unit (i.e., one mile of pipeline). It may be longer if the “sliding mile” continues to have 46 or more buildings as it moves along the pipeline. There is an exception to the one-mile length under this method when the 46 or more buildings are part of a “cluster,” for example, where all the buildings are located at a major road crossing. When a cluster of buildings requires a Class 3 location under § 192.5(b)(3)(i), the class location ends 220 yards from the nearest building in the cluster, rather than extending an entire mile in both directions.⁵

Under the second method of determining a Class 3 location, which identifies any frequently used building or outside area within 100 yards of the pipeline, the parties disagreed about the length of the class location. Both parties offered their own interpretation of the regulation.

OPS argued that the length of a Class 3 location under § 192.5(b)(3)(ii) should be determined by using a two-step process. The first step is to measure 100 yards from the pipeline to determine whether there is a frequently used building or outside area. If there is, an operator must use a second step to determine the distance of the class location up and down the pipeline. The second

³ The term “sliding mile” was used in the original notice of proposed rulemaking. *See* Class Location Definitions, 35 FR 5012, 5013 (*proposed* Mar. 24, 1970).

⁴ Neither party contended that the length of a Class 3 location under § 192.5(b)(3)(ii) should be equivalent to a one-mile class location unit under § 192.5(b)(3)(i).

⁵ § 192.5(c)(2).

step involves measuring a 220-yard arc from the boundary of the frequently used building or outside area back to the pipeline. OPS explained that although the code is silent on this second step in § 192.5(b)(3)(ii), the language in § 192.5 as a whole establishes a minimum length for a Class 3 area that is calculated using a 220-yard arc. OPS explained that this method results in a longer length of Class 3 area than Respondent's method, and thus a greater level of safety.

Respondent, on the other hand, argued that the plain language of the regulation requires the linear length of the class location under § 192.5(b)(3)(ii) to be 100 yards from the boundary of the frequently used building or outside area. Respondent acknowledged that a 220-yard measurement is relevant when building density is used under § 192.5(b)(3)(i), but argued that "the relevant regulation at issue, 49 C.F.R. Part 192.5(b)(3)(ii) states that a Class 3 location is an area where the pipeline lies within 100 yards (300 feet) of either a building or a well-defined outside area that meets certain assembly requirements. The radial arc under these circumstances thus extends 300 feet from the structure to the pipeline for purposes of evaluating these areas, and that arc continues to define the appropriate class location linearly along the pipeline itself."⁶

Analysis and findings

Having considered the plain language of the regulation, I find that Respondent's method of implementing the requirement was permissible. Pursuant to § 192.5(b)(3)(ii), a Class 3 location must be determined by measuring 100 yards from the pipeline to any frequently used building or outside area. It follows necessarily that pipe located more than 100 yards from a frequently used building or outside area does not meet the definition of a Class 3 location under § 192.5(b)(3)(ii). Accordingly, based on the language in the regulation, I must conclude that this 100-yard measurement establishes the minimum length of the Class 3 location.

The position offered by OPS at the hearing is not sustainable because the regulation does not impose an additional step of using a 220-yard arc from the building or outside area to establish the length of the class under § 192.5(b)(3)(ii). The 220-yard measurement for establishing class location under § 192.5(c)(2) is only applicable when a cluster of 46 or more buildings requires a Class 3 location, not when the presence of a single frequently used building or outside area causes the location to be Class 3. The cluster exception was adopted to avoid a situation where a two-mile stretch of Class 3 would be created solely by a small group of buildings at a road crossing.⁷ This type of situation does not arise under § 192.5(b)(3)(ii).⁸ Ultimately, there is nothing in the regulation explicitly requiring a 220-yard measurement to establish the length of the class under § 192.5(b)(3)(ii).

Written interpretations published by PHMSA did not support the position advocated by OPS. I reviewed several interpretations issued between 1982 and 1996 that discussed a 220-yard measurement, but only in the context of the cluster exception, which is not applicable to the method in § 192.5(b)(3)(ii). Respondent, on the other hand, cited an interpretation issued in

⁶ Pre-hearing submission at 4 (emphasis in original).

⁷ Establishment of Minimum Standards, 35 FR 13,248, 13,251 (Aug. 19, 1970).

⁸ The 220-yard measurement for Class 4 locations under § 192.5(c)(1) is also not relevant here.

1976 concerning § 192.5(b)(3)(ii), which supports the operator's position by discussing uses of property that would not cause a "pipeline within 100 yards" to be a Class 3 location.⁹

Internal PHMSA training material, submitted by Respondent, depicted the length of a Class 3 location under § 192.5(b)(3)(ii) to be 100 yards from the boundary of the frequently used building or outside area.¹⁰ This material was prepared by the agency for internal use and does not constitute official agency guidance material, but nevertheless reflected a reading of the regulation consistent with the plain language.

For the reasons stated above, there is insufficient cause to find Respondent's procedures for determining the area of a Class 3 location along a pipeline were inadequate to assure safe operations. Therefore, the allegation is withdrawn.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued

⁹ PHMSA Interpretation #PI-76-059 (Sept. 14, 1976) available at: <http://phmsa.dot.gov/pipeline/regs/interps>. When the interpretation was issued, the relevant regulation was codified at § 192.5(d)(2).

¹⁰ Post-hearing submission at 4.