

By Electronic and Regular U.S. Mail

April 28, 2016

Mr. Rod Seeley
Director, Southwest Region
Pipeline and Hazardous Safety Administration
U.S. Department of Transportation
8701 S. Gessner, Suite 630, Houston, Texas, 77074

Re: PHMSA Notice of Probable Violation and Proposed Civil Penalty, CPF 4-2016-5005

Dear Mr. Seeley:

On September 10, 2014, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency), Office of Pipeline Safety (OPS), conducted an accident investigation following a crude oil release on the Rose Rock Midstream, LP (RRMS or the Company) 8" Blackwell to See pipeline southeast of Blackwell, Oklahoma on April 2, 2014. As a result of this accident investigation, PHMSA issued a Notice of Probable Violation and Proposed Civil Penalty (NOPV) dated March 29, 2016. Upon receipt of the NOPV, RRMS requested and received a copy of the Agency's underlying Pipeline Safety Violation Report (PSVR). Pursuant to 49 C.F.R. Part 190.208, this request is timely.

While RRMS is not contesting the violations in the NOPV, the Company believes that a penalty reduction is warranted due to certain mitigating factors under Part 190.225 and the Pipeline Safety Act, 49 U.S.C. § 60122(b). In addition, RRMS is submitting this response to correct factual inaccuracies in the NOPV and PSVR. It is the Company's hope and expectation that these issues can be resolved amicably in light of the nature of the alleged violations and applicable law.

Background and Idled Status of Blackwell to See Pipeline

The 8" Blackwell to See pipeline segment was acquired in approximately 1997 as part of an existing crude oil gathering system. Until February 2013, RRMS relied on PHMSA interpretive guidance — as subsequently distributed by the Oklahoma Corporation Commission (OCC) to pipeline operators — which supported the Company's jurisdictional determination that the line was an unregulated gathering line. *See Interpretation Letter from J. Thomas (OPS) to M. Wilkerson (Mar. 26, 1997)*. The status of the pipeline as an unregulated gathering line was discussed with PHMSA in 2006 and again with the OCC in 2010, both times without issue. It was not until February 7, 2013, that the Company designated a portion of the line as jurisdictional following its request for a determination from the PHMSA Southwest Region, in which PHMSA concluded that portions of the pipeline were considered an interstate pipeline, including the segment from the Blackwell

to See Station. *Letter from P. Schwiering (RRMS) to R. Seeley (Sep. 21, 2012)* (requesting a jurisdictional determination); *Letter from R. Seeley (PHMSA) to P. Schwiering (RRMS) (Feb. 7, 2013)* (responding to the Company's request for a determination) (attached as Appendix A, Exhibit to NOPV Item 2).

Since that time, the Company has endeavored to comply with 49 C.F.R. Part 195 regulations. Further, the Company constructed a new pipeline segment which became operational in March of 2016, and took steps to idle, purge, and displace the 8" Blackwell to See pipeline with nitrogen in early 2016. The idled pipeline continues to be under cathodic protection and RRMS routinely performs right of way patrols, among other maintenance requirements. Although RRMS has no current plans to reactivate the pipeline, if that should change, RRMS will conduct a pre-service hydrostatic test in compliance with Company procedures.

Response to NOPV Allegations and Proposed Civil Penalty

PHMSA regulations require that the Agency consider a variety of factors in assessing a civil penalty including: the nature, circumstances and gravity of the violation, including adverse impact on the environment, degree of culpability, and good faith in attempting to achieve compliance, among others. *49 C.F.R. Part 190.225; 49 U.S.C. 60122(b)*. In addition, PHMSA may consider "other matters as justice may require." *Id.*

The Company regrets that the April 2, 2014 accident occurred. RRMS has made good faith efforts to comply with the regulations, however, and in response to the accident, the Company timely reported it to the National Response Center and to PHMSA, immediately investigated, identified non-compliances and implemented corrective actions. In addition, the impact of the release on the environment and the public were minimal: there was no impact to public safety, no impact to wildlife or waters, and the release was limited to soil confined to RRMS's right-of-way, the large majority of which (more than 96%) was recovered during the response phase. Further, the pipeline segment at issue did not become regulated by PHMSA until recently in 2013 and is no longer operational.

The NOPV and the PSVR fail to account for the above penalty mitigating factors. The penalties under Items 1, 2, and 3 are excessive in that they approach, meet and even exceed the statutory maximum under 49 C.F.R. Part 190.223 (*i.e.*, "not to exceed \$200,000 for each violation for each day the violation continues"). As detailed below, RRMS respectfully requests that PHMSA reduce the civil penalty associated with the NOPV in consideration of the "circumstances" of the violation, "culpability" and "good faith" on the part of the Company in discovering, identifying and correcting these non-compliance issues, and "other matters as justice may require" (including that the pipeline did not become federally regulated until 2013 and is no longer operational). In addition, the Company requests that Item 4, issued as a Warning Item, not be considered a repeat violation in future enforcement due to the fact that the pipeline only recently became jurisdictional in 2013 and is currently inactive and idled.

1. **NOPV ITEM 1 (Proposed Civil Penalty \$164,100)**

PHMSA NOPV:

195.401 Procedural manual for operations, maintenance, and emergencies.

- (a) **General.** Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies.

The operator failed to follow procedure, Lockout/Tagout (LOTO) standard Chapter 26, while performing maintenance work to install a new pipe segment on the Blackwell to See 8" pipeline by using unauthorized locks.

Rose Rock's LOTO procedure, Chapter 26 Section 4b states "*The locks/tags shall be standardized throughout the facility and are the only authorized method used for lockout/tagout of energy sources. These locks and tags shall not be used for any purpose other than equipment isolation.*" The standardized LOTO locks are the only locks authorized for the LOTO of energy sources, and they are not used for any purpose other than equipment isolation. The technician responsible for LOTO of the facility prior to the maintenance work did not use the correct locks during the LOTO process.

In addition, LOTO procedure Chapter 26 – Responsibilities 6 states "*Supervisors shall ensure that this standard is implemented and enforced. When required, the corporate environment, health and safety department will provide technical assistance.*" As a result of their failure to follow their own procedure, the Maintenance Supervisor overseeing the replacement activities did not confirm the status of the valve, and when attempting to restart the system they did so against a closed valve resulting in an overpressure and rupture of the line.

RRMS ITEM 1 RESPONSE:

RRMS acknowledges that not all aspects of the Company's LOTO procedure were followed. That said, the Company requests that PHMSA reduce the civil penalty associated with Item 1 in consideration of RRMS's good faith in complying with the regulation and the fact that RRMS discovered, reported and corrected the violation before PHMSA learned of it.

Contrary to the statements in PHMSA's PSVR, RRMS reported that the accident was caused by non-compliance with its LOTO procedure and took immediate actions to address and correct the non-compliance prior to PHMSA learning of the violation. *See PHMSA PSVR, Item 1, Part E6, Circumstances p. 8* (selecting that "PHMSA [...] discovered the violation." instead of "self-reported by the operator..."); *PHMSA PSVR, Item 1, Part E8, Culpability p. 10* (selecting "The operator failed to take appropriate action to comply with a requirement that was clearly applicable" instead of "after the operator found the non-

compliance, the operator took documented action to address the cause ...”). The Company’s good faith efforts to comply with the procedure are evidenced by pre-planning completion of the required LOTO forms. *Appendix A, Exhibits to Response 1, Lockout/Tagout Forms (Apr. 1-2, 2014)*. In addition, the Company’s documented corrective actions include: (1) ‘Lessons Learned’ meeting on April 2, 2014; (2) LOTO forms dated April 3, 2014 as part of the pre-planning for the repair; and (3) follow up LOTO refresher training conducted on April 17, 2014. *Appendix A, Exhibits to Response 1, RRMS 7000-1 Report (May 1, 2014); RRMS Lessoned Learned (Apr. 2, 2014); Lockout/Tagout Forms (Apr. 3, 2014); RRMS Refresher Training (Apr. 17, 2014)*.

Therefore, RRMS respectfully requests that PHMSA reduce the penalty in consideration of RRMS’s efforts to comply with the regulation and the fact that Company (not PHMSA) discovered the violation and took actions to correct the issue before PHMSA learned about it (as those facts relate to penalty mitigation for “circumstances,” “culpability,” and “good faith”).

2. NOPV ITEM 2 (Proposed Civil Penalty \$236,100)

PHMSA NOPV:

195.428 Overpressure safety devices and overfill protection systems

- (a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, or in the case of pipelines used to carry highly volatile liquids, at intervals not to exceed 7½ months, but at least twice each calendar year, inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.**

Rose Rock failed to inspect and maintain their pressure transmitters in accordance with 195.428 and their written procedures, O&M manual – 3.1 Annual Overpressure Protection Device Inspection, which requires “Each pressure switch will be inspected once each calendar year, not to exceed 15 months, as follows to determine operational integrity. This inspection shall be recorded on forms included in the Appendix of this manual.”

Rose Rock did not have any records for any prior inspection of the transmitter. Rose Rock began inspections following the accident.

On April 2, 2014, while performing maintenance on the Blackwell station, the pressure transmitter located at Blackwell Junction was inoperable and no pressure alarm was received to SCADA to indicate exceedance of the 780 MOP. The operator indicated that the pressure transmitter was out of calibration and caused the failure of the transmitter.

This probable violation is a repeat violation of CPF 3-2013-5028 Item 3.

RRMS ITEM 2 RESPONSE:

RRMS does not contest that, after PHMSA deemed this portion of the pipeline to be jurisdictional, the Company did not conduct an annual inspection of the pressure transmitter at issue for the calendar year of 2013. The Company requests, however, that PHMSA reduce the penalty for Item 2 to reflect that RRMS only missed one inspection cycle under 49 C.F.R. Part 195.428 and that it discovered and corrected the non-compliance before PHMSA learned of it. In addition, RRMS wishes to clarify that the maximum operating pressure (MOP) of the Blackwell to See 8" pipeline, which is no longer in active service, was 720 psig (not 780 psig as indicated in PHMSA's NOPV), with a maximum allowable surge pressure of 792 psig.

Because this pipeline segment became PHMSA-jurisdictional on February 7, 2013, the line segment had only been operating under PHMSA jurisdiction for a period of 14 months prior to the accident. As such, RRMS only missed 1 inspection cycle under Part 195.428 in contrast to the PSVR which states that it missed inspections over a number of years. *PHMSA PSVR, Item 2, Culpability, Part E6, p. 15*. In addition, PHMSA's PSVR fails to recognize that the Company discovered the violation on April 3, 2014, when it checked the pressure transmitter at Blackwell Junction following the incident. *Id.* RRMS discovered that the pressure transmitter was not working properly, replaced it and conducted a point to point verification. *Appendix A, Exhibits to Response 2, Pressure Transmitter Inspection (Apr. 4, 2014)*. The next day, April 4, 2014, the Company tested it again when the line was back up and running to ensure the system functioned as designed and the pumps upstream of Blackwell Junction shut down. *Appendix A, Exhibits to Response 2, RRMS SCADA Point to Point (Apr. 3-4, 2014)*. PHMSA did not conduct its inspection until September 2014.

For those reasons, RRMS asks that PHMSA reduce the civil penalty for Item 2 to take into account RRMS's efforts to comply with the regulation and the fact that Company discovered the violation and took actions to correct the issue prior to any involvement of the Agency. All of these facts should mitigate the penalty for "circumstances," "culpability," and "good faith."

3. NOPV ITEM 3 (Proposed Civil Penalty \$200,000)

PHMSA NOPV:

195.406 Maximum operating pressure.

- (b) **No operator may permit the pressure in a pipeline during surges or other variations from normal operations to exceed 110 percent of the operating pressure limit established under paragraph (a) of this section. Each operator must provide adequate controls and protective equipment to control the pressure within this limit.**

Rose Rock failed to provide adequate controls and protective equipment to control the pressure to less than 110% of operating pressure. On April 2, 2014, the operator's pipeline operating pressure exceeded 110 percent of the Maximum Operating Pressure (MOP). The MOP of the pipeline is 780 psig and the line ruptured at 1160 psig when the operator attempted to start the line against a close/locked valve.

This probable violation is a repeat violation of CPF 3-2013-5028 Item 2.

RRMS ITEM 3 RESPONSE:

RRMS does not contest that the MOP of the pipeline was exceeded as a result of the incident. That said, the Company respectfully requests that PHMSA reconsider the civil penalty associated with this item because the statutory maximum penalty is not supported by the underlying penalty considerations and the factual basis for the Item is arguably duplicative of Items 1 and 2. Further, as noted above the MOP of the Blackwell to See 8" pipeline, which is no longer operational, was 720 psig (not 780 psig).

As with the Company's responses to Items 1 and 3, PHMSA's PSVR does not acknowledge that the Company discovered and reported this violation to PHMSA prior to the Agency's involvement. *PHMSA PSVR, Item 3, Part E6-Circumstances, p. 23* (indicating that PHMSA discovered the violation). RRMS expressly reported in its initial 7000-1 submission that the MOP of the pipeline was exceeded by more than 110% and the pressure that was reached at the accident site. *Appendix A, Exhibits to Response 3, 7000-1 Report (May 1, 2014)*.

For the reasons set forth above, RRMS respectfully requests that PHMSA reduce the civil penalty for Item 3.

4. NOPV Item 4 (Warning Item)

PHMSA NOPV:

195.404 Maps and Records.

- (a) Each operator shall maintain current maps and records of its pipeline systems that include at least the following information;**
 - (4) The diameter, grade, type and nominal wall thickness of all pipe.**

Rose Rock did not have complete records documenting the Grade of the See to Blackwell 8" Information provided on the DOT 7000.2 indicates that Rose Rock had recorded the See to Blackwell 8" pipeline as a Grade B pipeline with a wall thickness of .250 in and a SMYS of 35,000. After requests for information to support the Grade selection were made, Rose Rock changed the information on the form to record the SMYS as 24,000. There were no records available to support

the use of the 35,000 as the SMYS. It is clear that the Blackwell to See 8" pipeline was operating with an MOP established with an unconfirmed or supported Grade of pipe.

RRMS ITEM 4 RESPONSE:

While this NOPV item was issued as a Warning Item without an associated penalty or proposed compliance order, RRMS requests that PHMSA withhold from considering this a violation in subsequent enforcement proceedings because the pipeline was not federally regulated until 2013 and is currently idled and inactive.

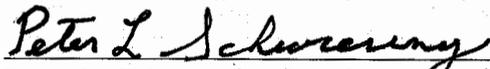
Summary

For all of the reasons above, RRMS respectfully requests that PHMSA reduce the proposed civil penalty in accordance with the penalty factors set forth in the Pipeline Safety Act and PHMSA regulations. *49 U.S.C. § 60122(b); 49 C.F.R. Part 190.225*. These include the "circumstances" of the violations, the "culpability" and "good faith" of RRMS in complying with the regulations, addressing the violations that it discovered following the incident and in cooperating with PHMSA, and other matters as justice may require.

RRMS shares PHMSA's commitment to pipeline safety and the Company is optimistic that these issues can be resolved amicably.

Sincerely,

Rose Rock Midstream, L.P.
By: Rose Rock Midstream GP, LLC
Its General Partner



Peter L. Schwiering, Chief Operating Officer