



December 8, 2017

U.S. Certified Mail and Fax (713-272-2831)

Frank Causey, Acting Director Southwest Region
PHMSA Pipeline Safety
8701 S. Gessner Dr.
Suite 630
Houston, TX 77074

**Re: CCPS Transportation, L.L.C. ("Enbridge")
CPF 4-2017-5037
Response to NOPV - Request for Hearing/Request for Case File**

Dear Mr. Causey:

On behalf of CCPS Transportation, L.L.C. ("Enbridge"), we are responding to the Notice of Probable Violation ("NOPV"), Proposed Civil Penalty, and Proposed Compliance Order (collectively, the "Notice") issued by the Southwest Region of the Pipeline and Hazardous Materials Safety Administration ("PHMSA") on November 7, 2017, in Docket No. CPF 4-2017-5037. Please note that CCPS Transportation, LLC is the parent of Enbridge Pipelines (FSP), LLC, which is the owner of the Flanagan South Pipeline ("FSP"), but CCPS Transportation, LLC was not involved in the FSP project. Enbridge received the Notice on November 9, 2017, and PHMSA confirmed that the deadline to respond is December 11, 2017.

In accordance with 49 C.F.R. §§ 190.208 and 190.211, Enbridge requests a hearing to contest the allegations in the Notice, including that it violated 49 C.F.R. §§ 190.213 and 195.202, the proposed civil penalty and the proposed Compliance Order.

Enbridge requests PHMSA's Case File in accordance with section 190.209.

Background

The FSP is a 36-inch interstate crude oil pipeline that originates in Flanagan, Illinois and terminates in Cushing, Oklahoma. The line went into service in December 2014.

Prior to construction, Enbridge followed its technical standards and specifications to procure the steel pipe. Enbridge's standards and specifications were set forth in a document titled "Submerged-Arc-Welded Steel Pipe Specification Supplementary to API 5L," known as Enbridge Equipment Specification ("EES") 103 - (2010). Enbridge procured the pipe for the FSP project pursuant to EES103 - (2010), and approved certain deviations consistent with its

internal deviation guidelines set forth in its Technical Standards Deviation Request (“TSDR”) Guide (September 11, 2011).

The deviation process for the FSP project took place over a period of time and went through rigorous review before all deviations were approved. The TSDR for the FSP project was created on October 24, 2012 and closed on May 6, 2013. Enbridge procured the pipe from Evraz Inc. NA (“Evraz”), and worked closely with Evraz to ensure that the pipe met all specifications, with the approved deviations. Enbridge’s initial purchase orders with Evraz’s three pipe mills were as follows: Regina, SK, Canada on October 29, 2012, Camrose, AB, Canada on December 27, 2012, and Portland, OR, United States on May 21, 2013. Enbridge submitted multiple revisions to the purchase orders consistent with the specifications and the approved deviations. The pipe met or exceeded all API 5L specifications. Enbridge began construction of the FSP on August 7, 2013.

PHMSA conducted an inspection of the FSP project during the pre-construction and construction phases (CPF-4-2014-5005). As part of PHMSA’s inspection, representatives from PHMSA’s Southwest and Central Regions, Enbridge and Evraz met at Evraz’s Portland pipe mill on August 8, 2013, to inspect the steel pipe at issue and the manufacturing process. Representatives from PHMSA’s Southwest Region, Enbridge and Evraz had a follow-up meeting at Evraz’s offices in Houston on August 29, 2013, to discuss compliance with the specifications, including the approved deviations. Following this meeting, PHMSA issued a Request for Information to Enbridge, dated September 25, 2013, seeking specific technical information, including but not limited to, the manufacturing specifications of the steel and the pipe, the welding procedures used by the pipe manufacturer and the technical justifications to support any deviations from the specifications. Enbridge submitted its response on November 15, 2013, providing all technical details that PHMSA requested.

PHMSA issued an NOPV in CPF-4-2014-5005 on April 8, 2014, and an amended NOPV on April 21, 2014. Enbridge responded to the NOPV on May 9, 2014, and submitted a supplemental response on May 16, 2014. PHMSA sent Enbridge an email dated August 26, 2014, stating that “[t]here are still some areas that we don’t feel provided any additional justification.” Enbridge responded on August 27, 2014, stating that “Enbridge remains committed to working expeditiously with PHMSA to address any gaps in justification that are outstanding from our May 16 submission. This work can commence immediately upon receiving feedback on the areas in question.” PHMSA did not respond to Enbridge’s August 27, 2014 email. PHMSA issued its Final Order on October 8, 2015, finding Enbridge in violation of section 195.202. Enbridge submitted a letter to PHMSA dated December 1, 2015, responding to the requirements set forth in the Final Order.

Statement of Issues

Enbridge intends to address the following issues at the hearing, and reserves the right to amend and supplement the issues prior to the hearing.

1. At all relevant times, Enbridge operated in compliance with section 195.202 related to the FSP.
 - a. Enbridge's standards and specifications, pertaining to the manufacture of API 5L Submerged-Arc-Welded ("SAW") pipe, are set forth in EES103 – (2010), which was in effect at the time the pipe was ordered from the pipe manufacturer, Evraz.
 - i. Enbridge complied with EES103 – (2010) for the FSP project, with the approved deviations.
 - ii. EES103 – (2010) specifically provides that "[a]ny and all deviations from this Specification shall be brought to the attention of the Company in writing for resolution prior to final acceptance." Enbridge is therefore expressly permitted to deviate from its standards and specifications. Enbridge's deviation guidelines are set forth in a separate document, and Enbridge is not required to reference the specific deviation guidelines in EES103 – (2010). Indeed, Enbridge's deviation approval guidelines are designed as an internal tool and are not intended for the manufacturer.
 - b. Enbridge's deviation guidelines are set forth in its TSDR Guide dated September 11, 2011, which was in effect at the time the pipe was ordered from the manufacturer. The TSDR process was fully implemented for this pipe order for the FSP project.
 - i. Enbridge complied with the deviation process set forth in the TSDR to obtain deviations from EES103 – (2010) for the FSP project.
 - ii. Enbridge provided technical justifications for each deviation from EES103 – (2010) for the FSP project.
 - iii. With the approved deviations, the pipe met or exceeded the specifications of API 5L. Therefore, the approved deviations in no way compromised the minimum standards of API 5L or the integrity of the pipe.
 - iv. A "deviation" from the standards and specifications set forth in EES103 – (2010) is the same as a "waiver" from the standards and specifications set forth in EES103 – (2010).
2. Enbridge complied with PHMSA's Final Order issued on October 8, 2015 in CPF-4-2014-5005 and, therefore, complied with section 190.213.

- a. Consistent with the requirements of the Compliance Order section of the Final Order issued on October 8, 2015, Enbridge submitted a letter to PHMSA dated December 1, 2015, including multiple attachments.
 - b. In the Final Order in CPF-4-2014-5005, PHMSA expressly stated that “the crux of the issue is not whether technical justifications requested by PHMSA were or were not adequate but whether CCPS has and followed a written process for waiving its own specifications.”
 - c. Indeed, in the Final Order, PHMSA did not identify specific deficiencies with Enbridge’s technical justifications to support each deviation. PHMSA also did not identify specific deficiencies with the technical justifications in the NOPV in CPF-4-2014-5005, and did not identify any deficiencies in the pending NOPV.
 - d. The December 1, 2015 submission demonstrated that Enbridge followed a written process for deviating from its specifications. Enbridge also identified and reiterated the technical justifications to support each deviation.
 - e. As an exhibit to its December 1, 2015 submission, Enbridge provided its updated deviation process, titled: Technical Standards Deviation Request, and numbered: EP-ES-07-P-0002 – (2015). The deviation process set forth in EP-ES-07-P-0002 – (2015) is more detailed than the TSDR process that was in effect at the time the pipe was ordered from the manufacturer in the pending matter.
 - f. PHMSA had not communicated with Enbridge regarding the December 1, 2015 submission until it issued the NOPV dated November 7, 2017.
 - i. If PHMSA believed that Enbridge’s December 1, 2015 submission was inadequate or incomplete, Enbridge would have been happy to provide additional information or arrange a meeting to address any of PHMSA’s questions or concerns.
 - ii. As a result of PHMSA’s failure to communicate with Enbridge since the December 1, 2015 submission, Enbridge reasonably and in good faith believed that it had complied with the Final Order.
3. Enbridge amended its technical standards and specifications set forth in EES103 – (2010).
- a. Enbridge created extraordinarily stringent standards and specifications in EES103 – (2010) to push pipe manufacturers to manufacture pipe that meets specifications well above and beyond the minimum specifications

set forth in API 5L. Enbridge recognized that it would potentially have to deviate from EES103 – (2010). Furthermore, Enbridge understood that pipe manufacturers may potentially be unable to comply with Enbridge's stringent specifications, but Enbridge felt it was better to adopt such strict standards to help drive improvement, with the understanding that deviations may be approved.

- b. The current standards and specifications are set forth in EES103 – (2013), and went into effect on November 29, 2013. The technical standards in EES103 – (2013) exceed the requirements set forth in API 5L.
4. PHMSA's reliance on the "Lakehead Plan" to support its position that Enbridge should not have deviated from EES103 – (2010) is without merit. The "Lakehead Plan" was originally dated August 3, 2012, and revised effective January 25, 2013. Under the "Lakehead Plan," Enbridge created the MP Pipe Mill Prequalification Procedure and the MP Line Pipe Quality Protocol, both of which were submitted to and accepted by PHMSA to satisfy the "Lakehead Plan" initiative. Both of these procedures allow Enbridge to deviate from its pipe specifications, so long as any deviations are above and beyond API 5L and/or project-specific requirements agreed to by Enbridge and the pipe manufacturer. The MP Line Pipe Quality Protocol specifically permits the use of the deviation process to define special conditions or deviations from the pipe specifications set forth in the Purchase Order.
5. PHMSA's proposed penalty of \$50,100 is not justified in that Enbridge operated in compliance with the regulations, and is not reasonable in that PHMSA did not properly take into account the assessment considerations set forth in section 190.225, including but not limited to Enbridge's good faith.
6. PHMSA's proposed Compliance Order is not justified and not reasonable.
 - a. At the hearing, Enbridge will address the pipe procurement process, including the internal procedures for procuring pipe pursuant to its technical standards and specifications, and approving deviations from those technical standards and specifications. Enbridge will also seek to address specific concerns that PHMSA identifies regarding the technical justifications that Enbridge provided to support each approved deviation.
 - b. Enbridge will also provide documentation in its possession to support each deviation. Enbridge, however, may not have maintained supporting documents and drafts. Furthermore, Enbridge updated its email retention capabilities and several people are no longer with the Company since Enbridge ordered the pipe for the FSP project approximately five years ago. PHMSA also failed to notify Enbridge since its December 1, 2015

submission of any alleged deficiencies. Therefore, certain documentation may no longer exist.

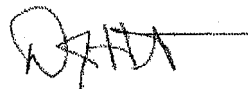
- c. PHMSA's mandate for Enbridge to perform integrity assessments every three years far exceeds the regulatory requirements set forth in Part 195, is unnecessary, overly burdensome, economically unreasonable and potentially technically infeasible given the limited availability of the different types of ILI tools.
 - i. Enbridge provided technical justifications for each deviation, including that each deviation met or exceeded the specifications set forth in API 5L.
 - ii. PHMSA recognizes that API 5L is the minimum standard. Because it is undisputed that the pipe exceeds API 5L standards, there is no regulatory basis under Part 195 to require Enbridge to perform integrity assessments for the entire FSP every three years. This is particularly true given that PHMSA stated in its Final Order in CPF-4-2014-5005 that "the crux of the issue is not whether technical justifications requested by PHMSA were or were not adequate but whether CCPS has and followed a written process for waiving its own specifications."

Conclusion

Enbridge places the safety of the general public, its employees, the environment, and the pipeline system as its foremost priority. Enbridge will not compromise safety. In this case, Enbridge adhered to its standards and specifications, including approved deviations, when it procured the pipe for the FSP project. All deviations from the standards and specifications were thoroughly vetted based on the requirements of the FSP project and met or exceeded the requirements of API 5L. Enbridge will provide supporting documentation prior to the hearing in accordance with section 190.211. Enbridge looks forward to addressing each issue at the hearing.

Should you have any questions or require any additional information or supporting documentation, please do not hesitate to call me at (312) 447-2818 or email me at darren.hunter@r3law.com.

Sincerely,



Darren J. Hunter

Cc: Jennifer Fry, Esq.
Dave Stafford, Manager, U.S. Pipeline Compliance