

July 22, 2020

**VIA ELECTRONIC MAIL TO: joe\_mclaughlin@kindermorgan.com**

Mr. Joseph E. McLaughlin  
Vice President of Operations  
Kinder Morgan, Inc.  
1001 Louisiana Street, Suite 1000  
Houston, Texas 77002

**Re: CPF No. 4-2019-1010**

Dear Mr. McLaughlin:

Enclosed please find the Final Order issued in the above-referenced case to your subsidiary, El Paso Natural Gas Company, LLC. It makes findings of violation and assesses a civil penalty of \$45,900. This is to acknowledge receipt of payment of the full penalty amount, by wire transfer, dated November 4, 2019. When the terms of the compliance order have been completed, as determined by the Director, Southwest Region, Office of Pipeline Safety, PHMSA, this enforcement action will be closed. Service of the Final Order by electronic mail is effective upon the date of transmission as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

Enclosure

cc: Ms. Mary McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA  
Mr. Steven Kean, Chief Executive Officer, Kinder Morgan, [steve\\_kean@kindermorgan.com](mailto:steve_kean@kindermorgan.com)  
Ms. Jessica Toll, Assistant General Counsel, Kinder Morgan, [jessica\\_toll@kindermorgan.com](mailto:jessica_toll@kindermorgan.com)  
Mr. Jamie Hernandez, Director - Engineering, Codes and Compliance, Kinder Morgan,  
[jamie\\_hernandez@kindermorgan.com](mailto:jamie_hernandez@kindermorgan.com)

Ms. Catherine Little, Counsel, Troutman Sanders, LLP, catherine.little@troutman.com  
Ms. Annie Cook, Counsel, Troutman Sanders, LLP, annie.cook@troutman.com

CONFIRMATION OF RECEIPT REQUESTED

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

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<b>In the Matter of</b>	)		
	)		
<b>El Paso Natural Gas Company, LLC, a subsidiary of Kinder Morgan, Inc.,</b>	)	)	<b>CPF No. 4-2019-1010</b>
	)		
<b>Respondent.</b>	)		
	)		

**FINAL ORDER**

From January 16, 2018, through July 19, 2019, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS) and Arizona Corporation Commission, pursuant to Chapter 601 of 49 United States Code, conducted an on-site pipeline safety inspection of the facilities and records of El Paso Natural Gas Company, LLC’s (EPNG or Respondent) West North pipeline system in Texas, Oklahoma, New Mexico, and Arizona. EPNG is a subsidiary of Kinder Morgan, Inc.<sup>1</sup> The EPNG system is an approximately 10,140-mile pipeline system that transports natural gas from the San Juan, Permian, and Anadarko basins to California, Arizona, Nevada, New Mexico, Oklahoma, Texas, and northern Mexico.<sup>2</sup>

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated October 1, 2019, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice), which also included warnings pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that EPNG had violated 49 C.F.R. §§ 192.619(a)(3) and 192.465(a), and proposed assessing a civil penalty of \$45,900 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations. The warning items required no further action, but warned the operator to correct the probable violations or face possible future enforcement action.

EPNG requested and received two extensions of time to respond to the Notice. EPNG responded to the Notice by letter dated December 19, 2019 (Response). The company did not contest the allegation of § 192.619(a)(3), but provided additional information in response to the Notice and requested that the proposed compliance order be modified. The company did not contest the

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<sup>1</sup> Kinder Morgan, Inc. website, *available at* [https://www.kindermorgan.com/pages/business/gas\\_pipelines/west/EPNG\\_MP/default.aspx](https://www.kindermorgan.com/pages/business/gas_pipelines/west/EPNG_MP/default.aspx) (last accessed July 7, 2020).

<sup>2</sup> *Id.*

allegation of § 192.465(a) and paid the proposed civil penalty. Respondent did not request a hearing and therefore has waived its right to one.

**FINDINGS OF VIOLATION**

The Notice alleged that Respondent violated 49 C.F.R. Part 192, as follows:

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 192.619(a)(3), which states:

**§ 192.619 Maximum allowable operating pressure: Steel or plastic pipelines.**

(a) No person may operate a segment of steel or plastic pipeline at a pressure that exceeds a maximum allowable operating pressure determined under paragraph (c) or (d) of this section, or the lowest of the following:

(1) ....

(3) The highest actual operating pressure to which the segment was subjected during the 5 years preceding the applicable date in the second column. This pressure restriction applies unless the segment was tested according to the requirements in paragraph (a)(2) of this section after the applicable date in the third column or the segment was uprated according to the requirements in subpart K of this part:

Pipeline segment	Pressure date	Test date
— Onshore gathering line that first became subject to this part (other than §192.612) after April 13, 2006	March 15, 2006, or date line becomes subject to this part, whichever is later	5 years preceding applicable date in second column.
— Onshore transmission line that was a gathering line not subject to this part before March 15, 2006		
Offshore gathering lines	July 1, 1976	July 1, 1971.
All other pipelines	July 1, 1970	July 1, 1965.

The Notice alleged that Respondent violated 49 C.F.R. § 192.619(a)(3) by failing to establish a maximum allowable operating pressure (MAOP) for its MP 64+ 2964 to MP 138+ 2128 segment (the Segment). Specifically, the Notice alleged that EPNG did not have records to support its MAOP determination. The Notice alleged that EPNG’s records stated that the MAOP of the Segment was established using criteria in Section 3.3. of EPNG’s *Operation and Maintenance Procedures 201*, which adopted the requirements of § 192.619(a)(3). Yet, the Notice alleged EPNG could not provide records showing the highest actual operating pressure the Segment was subjected to during the five years preceding July 1, 1970, to support its MAOP determination in accordance with § 192.619(a)(3).<sup>3</sup>

<sup>3</sup> The Notice mistakenly alleges that EPNG could not provide records showing the highest actual operating pressure that the Segment was subjected to during the *past five years*, instead of the five years preceding the applicable date of July 1, 1970.

In its Response, EPNG contended that it believed it had documents demonstrating compliance with § 192.619(a)(3) at the time of the inspection, but stated that it was not contesting the alleged violation. EPNG did request that the compliance order be modified, which is discussed below. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.619(a)(3) by failing to have documentation to support its MAOP determination for the Segment.

**Item 3:** The Notice alleged that Respondent violated 49 C.F.R. § 192.465(a), which states:

**§ 192.465 External corrosion control: Monitoring.**

(a) Each pipeline that is under cathodic protection must be tested at least one each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of § 192.463. However, if tests at those intervals are impractical for separately protected short sections of mains or transmission lines, not in excess of 100 feet (30 meters), or separately protected service lines, these pipelines may be surveyed on a sampling basis. At least 10 percent of these protected structures, distributed over the entire system must be surveyed each calendar year, with a different 10 percent checked each subsequent year, so that the entire system is tested in each 10-year period.

The Notice alleged that Respondent violated 49 C.F.R. § 192.465(a) by failing to test each pipeline that is under cathodic protection at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of § 192.463 for four of its pipeline systems.<sup>4</sup> Specifically, the Notice alleged that EPNG's records for its annual pipe-to-soil surveys for calendar years 2016 and 2017, for pipeline systems 1200, 1201, 1204, and 1208, showed that EPNG exceeded the 15-month testing interval by a period of one to five months. The Notice alleged further, that for pipeline system 1209, this is a repeat violation from a Final Order issued to Respondent on December 29, 2016 (CPF No. 4-2016-1005, Item 4).

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.465(a) by failing to test each pipeline that is under cathodic protection at least once each calendar year, but with intervals not

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<sup>4</sup> § 192.463 External corrosion control: Cathodic protection.

(a) Each cathodic protection system required by this subpart must provide a level of cathodic protection that complies with one or more of the applicable criteria contained in appendix D of this part. If none of these criteria is applicable, the cathodic protection system must provide a level of cathodic protection at least equal to that provided by compliance with one or more of these criteria.

(b) If amphoteric metals are included in a buried or submerged pipeline containing a metal of different anodic potential—

(1) The amphoteric metals must be electrically isolated from the remainder of the pipeline and cathodically protected; or

(2) The entire buried or submerged pipeline must be cathodically protected at a cathodic potential that meets the requirements of appendix D of this part for amphoteric metals.

(c) The amount of cathodic protection must be controlled so as not to damage the protective coating or the pipe.

exceeding 15 months, to determine whether the cathodic protection meets the requirements of § 192.463 for four of its pipeline systems.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

### **ASSESSMENT OF PENALTY**

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.<sup>5</sup> In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$45,900 for the violation of § 192.465(a) cited above.

**Item 3:** The Notice proposed a civil penalty of \$45,900 for Respondent's violation of 49 C.F.R. § 192.465(a), for failing to test each pipeline that is under cathodic protection at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of § 192.463 for four of its pipeline systems. EPNG neither contested the allegation nor presented any evidence or argument justifying a reduction in or elimination of the proposed penalty.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$45,900** for violation of 49 C.F.R. § 192.465(a). The full civil penalty amount was paid by wire transfer on November 4, 2019.

### **COMPLIANCE ORDER**

The Notice proposed a compliance order with respect to Item 1 for violation of 49 C.F.R. § 192.619(a)(3). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601.

With regard to the violation of § 192.619(a)(3) (Item 1), the Notice proposed to require that Respondent submit records showing the highest operating pressure to which the pipeline segment was operated during the five years preceding July 1, 1970. EPNG requested that the compliance terms be modified to permit Respondent to evaluate the applicability of recently issued pipeline safety regulations to ensure compliance with MAOP and recordkeeping standards. The new

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<sup>5</sup> These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

regulations, titled “Pipeline Safety: Safety of Gas Transmission Pipelines: MAOP Reconfirmation, Expansion of Assessment Requirements, and Other Related Amendments,” were promulgated by PHMSA on October 1, 2019 (84 FR 52180). In her recommendation for final action submitted pursuant to § 190.209(b)(7), the Regional Director agreed that it would be appropriate to modify the proposed compliance terms in order to allow EPNG to come into compliance with newly promulgated regulations concerning MAOP and recordkeeping.

Therefore, the Compliance Order is modified as set forth below.

Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 192.619(a)(3) (**Item 1**), Respondent must evaluate the applicability of *Pipeline Safety: Safety of Gas Transmission Pipelines: MAOP Reconfirmation, Expansion of Assessment Requirements, and Other Related Amendments*, (84 FR 52180, Oct. 1, 2019) to the El Paso West North pipeline segment, MP 64 + 2964 and MP 138 + 2128.
2. EPNG must specifically evaluate the applicability of § 192.127, Records: Pipe Design (records verification); § 192.624, Maximum Allowable Operating Pressure Reconfirmation: Onshore Steel Transmission Pipelines (MAOP confirmation); § 192.632, Engineering Critical Assessment for Maximum Allowable Operating Pressure Reconfirmation: Onshore Steel Transmission Pipelines; and compliance timeframes in the October 1, 2019 rulemaking (effective July 1, 2020).
3. EPNG must provide its evaluation to the Director, Southwest Region for review within 30 days of the issuance of the Final Order.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

It is requested (not mandated) that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. It is requested that these costs be reported in two categories: (1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and (2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (49 C.F.R. § 190.223), for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

**WARNING ITEMS**

With respect to Items 2, 4, and 5, the Notice alleged probable violations of Parts 191 and 192, but identified them as warning items pursuant to § 190.205. The warnings were for:

49 C.F.R. § 191.5(a) (**Item 2**) — Respondent's alleged failure to provide immediate notice at the earliest practical moment following discovery, but no later than one hour after confirmed discovery, of two incidents as defined in § 191.3.

49 C.F.R. § 192.739(a)(3) (**Item 4**) — Respondent's alleged failure to correctly set the relief point on the relief device at Window Rock station, to control or relieve at the correct pressure, as required by § 192.201(a).

49 C.F.R. § 192.605(a) (**Item 5**) — Respondent's alleged failure to follow its procedures to accurately record all required data on its form for annual on-site rectifier inspection in 12 instances.

Pursuant to § 190.205, Respondent may submit a response to a warning, but is not required to. In addition, according to that regulation, an adjudication is not conducted for warnings to determine if a violation occurred. With regard to Item 2, EPNG requested the withdrawal of one of the referenced incidents because the regulatory requirements for § 191.5 were not in effect until after the incident occurred. Regarding Item 5, EPNG averred that it followed its procedures and that its procedures did not require the use or completion of the Impressed Current Rectifier and Anode Inspection Forms. Respondent's position on Items 2 and 5 is noted for the record, but as indicated above, under § 190.205, PHMSA does not adjudicate warning items to determine whether a probable violation occurred. If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2<sup>nd</sup> Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address, no later than 20 days after receipt of service of this Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

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

July 22, 2020

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Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

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Date Issued