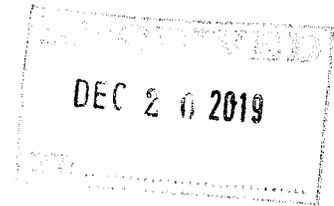




**El Paso Natural Gas
Company, L.L.C.**
a Kinder Morgan company



December 19, 2019

Ms. Mary McDaniel
Director, Southwest Region
Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
8701 S. Gessner,
Suite 630
Houston, Texas 77074

RE: El Paso Natural Gas Company, L.L.C.
CPF No. 4-2019-1010
Written Response and Appeal of Items 2 and 5 and Response to Items 1, 3 and 4

Dear Director McDaniel:

Pursuant to 49 C.F.R. Part 190.208(a)(3), El Paso Natural Gas Company, L.L.C. (EPNG or the Company) submits this written response to the above referenced Notice of Probable Violation (NOPV), Proposed Civil Penalty, and Proposed Compliance Order (PCO) issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA) dated October 1, 2019. The Company is not requesting a Hearing. With this written response and in light of additional information and explanation provided below, EPNG respectfully requests that the Proposed Compliance Order (PCO) associated with NOPV Item 1 be modified, and that one allegation from NOPV Item 2 and all of NOPV Item 5, which were issued as Warning Items, be withdrawn. The Company is not contesting Items 3 and 4 of the NOPV and is concurrently submitting a response on those items.

The Company timely filed two separate Requests for Extension of Time to Respond to the NOPV. PHMSA granted each extension of time to respond to the NOPV, extending the response deadline to January 6, 2020. Accordingly, this submittal is timely.

EPNG Responses to Alleged NOPV Violations

PHMSA NOPV Item 1:

1. §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:

(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 updated according to the requirements in subpart K of this part:

El Paso Natural Gas Company, L.L.C. (EPNG) failed to establish a maximum allowable operating pressure (MAOP) for one segment of the El Paso West North pipeline system in accordance with § 192.619. When deciding the MAOP to operate the MP 64 + 2964 to MP 138 + 2128 segment, EPNG chose to use the highest actual operating pressure the segment had been subjected to during the last 5 years, pursuant to § 192.619(a)(3). EPNG did, however, not have the documentation to support its determination.

EPNG's records show that the MAOP of the segment between MP 64 + 2964 and MP 138 + 2128 was established using the criteria in section 3.3 of EPNG's Operation and Maintenance 201 procedures, which are the same as those in § 192.619(a)(3). EPNG, however, could not provide records showing the highest actual operating pressure that the segment was subjected to during the past 5 years.

EPNG Response to NOPV Item 1:

For NOPV Item 1, EPNG clarifies that it believes that at the time of the PHMSA inspection, EPNG did in fact maintain documentation showing the highest actual operating pressure consistent with 49 C.F.R. §192.619(a)(3). EPNG documented the pre-1970 operating pressure history on the El Paso West North pipeline segment MP 64 + 2964.5 and MP 138 + 2128.1 in the engineering department "Maximum Operating Allowable Operating Pressure Determination" document. *Attachment 1* ("sheet No. 84"), MAOP Determination Record, 24" San Juan Line number 1200. Specifically, the MAOP Determination Record shows that the segment's highest actual operating pressure during the five years proceeding July 1, 1970 was 845 psig through readings taken on January 9, 1970. *Id.*

Nevertheless, despite EPNG's belief that its existing documentation is compliant with the existing regulations, after further discussions with PHMSA, EPNG and PHMSA have agreed

that EPNG will not appeal Item 1 provided that PHMSA changes the language of the PCO in the Final Order and in place of PCO items 1 and 2, include a new PCO Item 1 which reads:

1. Within 30 days of the issuance of the Final Order, with respect to El Paso West North pipeline segment MP 64 + 2964 and MP 138 + 2128, EPNG must begin to 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) as it applies to: 192.127, Records: Pipe Design (records verification), 192.624, Maximum Allowable Operating Pressure Reconfirmation: Onshore Steel Transmission Pipelines (MAOP confirmation), and/or 192.632, Engineering Critical Assessment for Maximum Allowable Operating Pressure Reconfirmation: Onshore Steel Transmission Pipelines and in compliance with the timeframes in the October 1, 2019 rulemaking (effective July 1, 2020), and provide that evaluation to the Director SW Region for review.

EPNG appreciates PHMSA's willingness to discuss the issues and in reliance on the understanding reached between the parties, EPNG is not appealing Item 1 of the NOPV.

PHMSA NOPV Item 2:

2. **§ 191.5 Immediate notice of certain incidents.**
(a) At the earliest practicable moment following discovery, but no later than one hour after confirmed discovery, each operator must give notice in accordance with paragraph (b) of this section of each incident as defined in § 191.3.

EPNG failed to provide immediate notice at the earliest practical moment following discovery (within one hour) of each of the following incidents as defined in §191.3:

The first incident, involving a fire and release of natural gas, occurred at 8:00 am on January 10, 2017, on the L1600 Casa Grande to Wenden pipeline in Arizona. According to EPNG's PHMSA Form F7100.2 (Report No. 20170017), EPNG discovered the incident at 10:00am on January 11, 2017, and reported it to the National Response Center (NRC) at 11:17am. The notification was made one hour and seventeen minutes following the confirmation of the need to report the incident.

For the second incident, on July 9, 2017, at 4:50pm, EPNG notified the NRC of a 3:24pm incident involving the Florida B Station in New Mexico. The incident resulted in the release of 500 MCF of natural gas. The NRC notification was made one hour and twenty-six minutes following discovery.

EPNG Response to NOPV Item 2:

For the reasons explained below, EPNG respectfully requests that PHMSA withdraw the Warning Item cited in the NOPV in regards to the January 11, 2017 incident because EPNG complied with relevant Part 191 incident reporting regulations in place at the time of the incident.

January 11, 2017 Incident Was Timely Reported per §191.5

PHMSA alleges that EPNG was late in reporting its January 11, 2017 incident involving the L1600 Casa Grande to Wenden pipeline in Arizona because the incident was reported within 1 hour and 17 minutes of discovery. At the time of the incident, however, federal regulations did not require incident reporting within one hour of confirmed discovery. The language of the rule at the time of the incident is provided below (49 C.F.R. §191.5(a) (Oct. 1, 2016)):

§ 191.5 Immediate notice of certain incidents.

(a) At the earliest practicable moment following discovery, each operator shall give notice in accordance with paragraph (b) of this section of each incident as defined in § 191.3.

The rule establishing a one-hour reporting requirement was promulgated on January 3, 2017 and became effective on March 24, 2017, after the EPNG incident. 82 Fed. Reg. 7972, 7997 (Jan. 23, 2017) (referencing 49 C.F.R. § 191.5(a)). Prior to this change, federal regulations did not expressly require reporting within an hour.

Based on the timeline set forth in PHMSA's NOPV, EPNG reported the incident at the earliest practicable moment following its discovery, within 1 hour and 17 minutes of discovery. As such, EPNG did not violate the obligations set forth in §191.5(a) that were in effect at the time of the incident, which required reporting "at the earliest practicable moment following discovery."

To the extent that PHMSA is relying on non-binding guidance to support its interpretation of the applicable incident reporting regulations in place during the time of the January 11, 2017 incident, such reliance is prohibited by the Administrative Procedure Act and it is inconsistent with a recent Department of Transportation (DOT) policy memorandum and presidential Executive Order. A recent DOT policy memo provides that modal agencies, such as PHMSA, should "ensure that the law is interpreted and applied according to its text." DOT Memo Review and Clearance of Guidance Documents, p. 3 (Dec. 20, 2018). In addition, the President recently issued Executive Order which "prohibits agencies from enforcing rules they have not made publicly known in advance." Executive Order on Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication (Oct. 9, 2019).

For the above reasons, EPNG requests that PHMSA withdraw the first incident referenced in this Warning Item. Although EPNG believes that there were specific circumstances related to the July 9, 2017 incident that lessen the gravity of the alleged violation, EPNG is not contesting the Warning Item as it regards the July 9, 2017 incident.

PHMSA NOPV Item 3:

3. §192.465 External corrosion control: Monitoring.
--

(a) Each pipeline that is under cathodic protection must be tested 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. 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% of these protected structures, distributed over the entire system must be surveyed each calendar year, with a different 10% checked each subsequent year, so that the entire system is tested in each 10-year period.

EPNG failed 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 met the requirements of § 192.463 for four of its pipeline systems.

EPNG provided records for its annual pipe to soil surveys for calendar years 2016 and 2017 for pipeline systems 1200, 1201, 1204, and 1208. These records showed that EPNG failed to perform the annual surveys on those lines within the required 15 month interval. The survey records showed that the annual survey was carried out between March 8-14, 2016, while the subsequent survey did not occur until July 20-23, 2017, August 17, 2017, and November 29, 2017. In each instance, the 15 month interval was exceeding by a period of one to five months.

For line 1208, this is a repeat violation from CPF 4-2016-1005 Item 4.

EPNG Response to NOPV Item 3:

As a corrective action, EPNG made corrections and improvements to its work management systems known as Maximo and PCS so that Company personnel can easily identify the number of days pending until the "Not to Exceed Date" (NTE dates) for specific test points are reached.

In addition, the EPNG Operating Division 1 will add additional questions to its Corrosion Tech. progression tests (for the Level 2 test) relative to PCS and Maximo to ensure that technicians seeking a progression to a Level 2 Corrosion Tech. have a firm grasp of regulatory requirements and the appropriate data base that drives the compliance due dates for annual cathodic protection surveys.

EPNG paid the penalty on November 4, 2019 by wire transfer.

PHMSA NOPV Item 4:

4. §192.739- Pressure limiting and regulating stations: Inspection and testing.

(a) Each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment must be subjected at intervals not exceeding 15 months, but at least once each calendar year, to inspections and tests to determine that it is-

(3) Except as provided in paragraph (b) of this section, set to control or relieve at the correct pressure consistent with the pressure limits of §192.201(a);

EPNG failed to correctly set the relief point on the relief device in order to control or relieve at the correct pressure as required by § 192.201(a) at the Window Rock station. PHMSA reviewed EPNG's May 12, 2016, record that showed that the relief setting was set at 1000 psi, which is higher than the pressure limits set forth in 49 CFR §192.201(a). EPNG corrected the setting on January 19, 2017, to the correct set pressure of 900 psi.

EPNG Response to NOPV Item 4:

EPNG acknowledges that it discovered prior to the PHMSA inspection that it had incorrectly set the relief point on the relief device at the Window Rock station and that the relief point was corrected on January 19, 2017, prior to the PHMSA inspection. EPNG is not contesting the alleged violation.

PHMSA NOPV Item 5:

5. §192.605 Procedural manual for operations, maintenance, and emergencies.

(3)¹ 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. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least one each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

EPNG failed to follow its procedures to accurately record all required data on its annual on-site rectifier inspection in twelve instances.

EPNG's Operations and Maintenance procedures 903 (External Corrosion Control for Buried or Submerged Pipelines) and CorrBP-004 (Rectifier and Anode Bed Guide) require the completion of all the required information on its form to document its annual on-site rectifier inspections for twelve inspections. Records reviewed from various inspections carried out in 2017 were missing required information, including the nearest pipe to soil readings, AC volts/amps, anode readings, and some other required data.

EPNG Response to NOPV Item 5:

EPNG respectfully requests that PHMSA withdraw this Warning Item because it did, in fact, follow its procedures that were in effect during the 2017 rectifier checks at issue in the NOPV. Attachment 2, O&M Procedure 903 (effective Apr. 1, 2017); Attachment 3, O&M Procedure 903 (effective Aug. 1, 2017). Those procedures did not require use or completion of the Impressed Current Rectifier and Anode Inspection Forms. EPNG operations personnel checked the rectifiers and went above and beyond what was required by the procedures in place at that time

¹ The correct regulation is 49 C.F.R. § 192.605(a).

by using Impressed Current Rectifier and Anode Inspection Forms to document the check. Neither use nor completion of the form in its entirety was, however, required by the PHMSA regulations nor the EPNG procedures. Further, the form refers to an Inspection & Maintenance (I&M), I-1130.00, in EPNG's work order system known as Maximo. That work order also did not require use of the form. Thus, it was not required by PHMSA regulations.

Well after the rectifier checks at issue in NOPV Item 5, EPNG elected in 2018 to revise its O&M Procedure to include the CorrBP-004 Rectifier and Anode Bed Inspection Guide and to require use of the Form. *Attachment 4*, O&M Procedure 903 Excerpts (effective Sep. 1, 2018). EPNG later determined that the documentation requirement did not add value and so the current version of the procedure does not require documentation using the Impressed Current Rectifier and Anode Inspection Form.

Thus, the Company's O&M procedures in 2017 did not include a requirement to complete Impressed Current Rectifier and Anode Inspection Forms.² For these reasons, EPNG respectfully requests that PHMSA withdraw this Warning Item because no violation of Company O&M procedures or PHMSA regulation § 192.605(a) took place.

Conclusion

For the reasons set forth above and for other reasons as justice may require, EPNG respectfully requests that the PCO provision related to Item 1 be modified as agreed by the parties. EPNG respectfully requests that part of NOPV Warning Item 2 and NOPV Warning Item 5 in its entirety be withdrawn because no violations of the relevant pipeline safety regulations occurred. EPNG appreciates PHMSA's consideration of this Written Response and in resolving the issues presented in this matter. If you have further questions, please feel free to contact me at (713) 369-9847 or joe_mclaughlin@kindermorgan.com or you can contact Jaime Hernandez, Director of Engineering at (713) 369-9443 or Jaime_hernandez@kindermorgan.com.

Sincerely,


Joseph E. McLaughlin
Vice President of Operations

Attachments

cc:
Jaime Hernandez, Director, Engineering
Jessica Toll, Assistant General Counsel
Catherine Little, Troutman Sanders
Annie Cook, Troutman Sanders

² Even though it was not required, some of the information that PHMSA alleged was missing information from Form CPS 227 - milepost and station location information - was in fact included in the Form. *PHMSA Pipeline Safety Violation Report*, p. 33.