



December 7, 2020

Via: Certified Mail

Mary L. McDaniel, P.E.
Director, Southwest, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
8701 S. Gessner, Suite 630
Houston, TX 77074

CPF 4-2020-006-NOPV

Dear Director McDaniel:

Thank you for providing Tristate an opportunity to respond to the proposed violations (CPF 4-2020-006-NOPV). Tristate elects to contest the allegations without a hearing. Tristate does not contest the first three probable violations and divides the fourth violation into three subparts.

A. The NOPV alleges “Tristate failed to notify PHMSA of significant modifications to OQ program after the Administrator had verified that it complied with § 192.805. Specifically, Tristate failed to notify PHMSA of any acquisition changes to its OQ plan due to its acquisition of Gulf South pipeline on May 1, 2019.”

We contend that there were no changes to the OQ program as a result of the acquisition.

A merger/acquisition in itself is not a change to the OQ program. Section 192.805 provides the requirements of an OQ program including, generally, task identification, evaluation methods, observation of non-qualified individuals, communication of covered tasks, and loss of qualification. Utilizing the full list of OQ requirements, a merger/acquisition alone would not alter the OQ program. It can be further reasoned that the intent of 192.805(a)(i) is to notify the regulating agency of a modification to the program so that the agency is aware that the program may no longer comply with the code. A merger/acquisition alone would not alter the OQ program such that it no longer complies with the requirements in 192.805.

We agree that changes to the merger/acquisition section of the OQ would create a significant modification to the OQ program, but we contend Tristate has not made any change to Section 4.1, which covers the training requirements during a merger or acquisition.

Further, we would like to support our interpretation that a merger and/or acquisition change is unlike a merger and/or acquisition itself.

First, in PHMSA’s advisory bulletin, ADB-09-03, the list of “significant” modifications includes all subjects directly related to the OQ program and how it is implemented. An acquisition of additional pipeline facilities is not directly related to how the program is implemented. For example, an acquisition would not alter evaluation intervals, span of control ratios, evaluation methods, or any similar procedure. Additionally, the provisional word “changes” after mergers and/or acquisitions suggest there must be a change to how the program is implemented during a merger and/or acquisition.

Second, PHMSA’s OQ Enforcement Guidance suggests an OQ Program should have a procedure for mergers and/or acquisitions. Under the Enforcement Guidance’s Examples of a Probable Violation or Inadequate Procedures §192.805(b) #34, P. 17: “The written program does not include a process for ensuring operator qualification, evaluations, and performance of covered tasks during the merger with or acquisition of other entities.” Following that this is a procedural requirement, any change to this procedure would be a change to the OQ program.

Finally, 191.22(c)(2)(iv) National Registry of Pipeline and LNG operators covers the notification for acquisitions of 50 or more miles of pipe. An interpretation that any merger and/or acquisition would trigger a notification to PHMSA under the OQ program conflicts with 191.22(c)(2)(iv). Further, an interpretation that a merger and/or acquisition of 50 or more miles of pipe requires a notification under the OQ program would cause a regulatory redundancy.

B. The NOPV also alleges “Tristate did not review and update its OQ program after the acquisition of Gulf South pipeline or make any changes to the program.”

We contend the acquisition of Gulf South pipeline did not trigger any regulatory requirement of a review and update of the program.

ADB-09-03 advises operators to conduct reviews of the OQ program in conjunction with the reviews of the O&M program. Tristate has conducted these annual reviews. After reviewing 192.805, ABD-09-03, and the PHMSA OQ Enforcement Guidance, we can find no requirement, enforceable or not, to review and update the OQ program based on an acquisition of pipeline facilities.

C. The NOPV alleges “Tristate did not list merger and/or acquisition changes in Section 5.1.1 of its OQ program as a significant modification that would warrant notification to PHMSA.”

We contend Section 5.1.1 of the OQ program covers communication of change within Tristate and its contractors and does not place any requirement on notification to PHMSA.

Section 5.1 introduces the Communication of Change section and adequately describes the applicability of the section to individuals performing Covered Tasks. Section 5 is not an appropriate place to include notification to PHMSA.

Additionally, we contend Section 1.5.2 currently satisfies the regulatory requirements of Notification to PHMSA under 192.805(i) and any addition of examples of significant changes would be a suggested change, not a required change.

Section 1.5.2 states, "...when significant changes are made to this plan, Tristate will notify the Office of Pipeline Safety or the participating state pipeline safety office, as appropriate, of those changes... significant means any change that could reasonably be expected to put the adequacy of this program in question."

Section 1.5.2 is the appropriate section to list mergers and acquisition changes, among the other examples of Significant listed in ADB-09-03. However, any request to list the examples of Significant should be a suggested change because advisory bulletins are advisory in nature and are not enforceable as rules of law.

While we contend our OQ plan as written complies with 192.805(i), we believe listing the examples of Significant would improve the program as a whole. Therefore, we suggest revising Section 1.5.2 as follows:

"For purposes of this notification, significant means any change that could reasonably be expected to put the adequacy of this program in question. Examples include: increasing evaluation intervals, increasing span of control ratios, eliminating covered tasks, mergers and/or acquisition changes, evaluation method changes such as written vs. observations, and wholesale changes made to OQ plan."

Thank you for your time in reviewing this matter.

Sincerely,



Mark Oliver
EVP – Operations

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