



Enbridge  
5400 Westheimer Court  
Houston, Texas 77056

**Via Electronic Mail**

January 11, 2021

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

**RE: Texas Eastern Transmission, LP  
CPF 4-2020-018-NOPV  
Request for Settlement Conference and Hearing**

Dear Ms. McDaniel,

Texas Eastern Transmission, LP (TETLP) received the above referenced Notice of Probable Violation (NOPV) and Proposed Civil Penalty issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA) on December 10, 2020. PHMSA issued the NOPV following an August 6, 2020 virtual inspection related to TETLP's March 30, 2020 Operator Registry Notification F-20200330-23823 associated with continuation of work performed on the Colerain Compressor Station during the Ohio Pipeline Energy Network (OPEN) and the Texas Eastern Appalachian Lease (TEAL) construction projects. The NOPV alleges one (1) probable violation of the pipeline safety regulations regarding preconstruction notice (49 C.F.R. § 191.22) and proposes a civil penalty of thirty-six thousand and two hundred dollars (\$36,200).

In light of additional information and explanation provided below, TETLP believes that the NOPV and the associated proposed civil penalty are unwarranted because no violation of 49 C.F.R. § 191.22 exists. As such, TETLP respectfully requests a hearing on the NOPV pursuant to 49 C.F.R. §§ 190.208(a)(4) and 190.211. TETLP believes that the parties can achieve resolution of these issues without resort to a hearing given the nature of the issues involved, however, and respectfully requests that PHMSA delay the scheduling of a hearing to allow the Southwest Region and TETLP sufficient time to convene a settlement meeting. In the interim, TETLP is timely filing this Request for Hearing, Written Response, and Statement of Issues.

## **PHMSA Allegation**

### **1. § 191.22 National Registry of Operators.**

**(c)(1) An operator must notify PHMSA of any of the following events not later than 60 days before the event occurs:**

**(i) Construction of any planned rehabilitations, replacement, modification, upgrade, uprate, or update of a facility, other than a section of line pipe, that costs \$10 million or more....**

TETLP failed to notify PHMSA of the Colerain Compressor Station construction not later than 60 days before the event occurred as required by § 191.22 (c)(1). TETLP notified PHMSA of the Colerain Compressor Station construction (rehabilitation project) through the National Operator Registry (Notification F-20200330-23823) on March 30, 2020. The notification provided an anticipated start date of April 20, 2020, which is 21 days prior to the anticipated start date, rather than the required 60 days.

PHMSA's review of the actual construction documentation found construction activities began on May 19, 2020, which was only 50 days after the notification was filed and still less than the required 60 days required under § 191.22 (c)(1).

## **TETLP Written Response and Statement of Issues**

TETLP respectfully disagrees with PHMSA's alleged violation in this matter because the Company complied with its operator notification obligations well in advance of the 60 day deadline as set forth in its construction notifications submitted in 2014 and 2017.<sup>1</sup> The work associated with TETLP's March 30, 2020 Operator Registry Notification F-20200330-23823 was a continuation of work initiated during the OPEN and TEAL construction projects in which TETLP previously made timely notifications to PHMSA.<sup>2</sup> As such, TETLP had already submitted adequate and timely notice to PHMSA of the planned modifications to the Colerain Compressor Station and associated piping. Thus, even though TETLP mistakenly submitted a supplemental notification to PHMSA on March 30, 2020, it was not legally required by 49 C.F.R. § 191.22(c)(1)(i) and there can be no violation as a matter of law.

### **Preconstruction Notice Obligation (49 C.F.R. § 191.22(c)(1)(i))**

The preconstruction notice regulation at 49 C.F.R. § 191.22(c)(1)(i) is straightforward: *“An operator must notify PHMSA of [construction of any planned rehabilitation, replacement, modification, update, uprate, or update of a facility, other than line pipe, that costs \$10 million or more] not later than 60 days before the event occurs.”* The intent of 49 C.F.R. § 191.22 is to make PHMSA aware of certain construction-related events to have sufficient time to schedule

---

<sup>1</sup> Attachment 1, Form PHMSA F 1000.2, submitted Sep. 26, 2014 (Notification G-5945); Attachment 2, Form PHMSA F 1000.2, submitted Jan. 5, 2017 (Notification F-20170105-13857).

<sup>2</sup> Attachment 2, Form PHMSA F 1000.2 (rev 2019), submitted Mar. 30, 2020 (Notification F-20200330-23823).

reviews of pipeline construction plans and inspections. PHMSA Final Rule, 75 Fed. Reg. 72878, 72889 (Nov. 26, 2010) (“*PHMSA requires advance knowledge of planned construction activities so that it can plan safety inspections and align appropriate inspection resources to conduct these inspections*”). With this purpose in mind, PHMSA declined to provide additional guidance concerning multi-year construction projects and maintained the approach that notification prior to initiation of a project meeting a reporting threshold (dollars or miles) was sufficient for the project “*regardless of how many years over which the project was to be accomplished.*” *Id.*

#### TETLP’s Preconstruction Notifications to PHMSA Regarding the Colerain Compressor Station

TETLP made three different construction notifications to PHMSA concerning the Colerain Compressor Station which relate to two projects. An initial construction notification was submitted to PHMSA on September 26, 2014 regarding the OPEN project. The scope of the OPEN project expressly included the initial construction of the Colerain Compressor Station (with two compressor units) and associated piping as referenced in TETLP’s OPEN construction notification.<sup>3</sup> In relevant part, the notice described the work to be performed in Belmont and Monroe Counties in Ohio and the “[p]refabrication and construction on the Colerain compressor station.”<sup>4</sup>

Subsequent to the initial 2014 notification, the Company provided PHMSA with a construction notification of the TEAL project on January 5, 2017.<sup>5</sup> The TEAL construction project was intended to connect the TETLP mainline system in Monroe County, Ohio using the OPEN pipeline to deliver gas to the NEXUS pipeline. Specifically as set forth in TETLP’s 2017 notification to PHMSA, TEAL consisted of the construction of the following in Ohio: a new compressor station at Salineville, “*pipeline and facility modifications to the Colerain Compressor Station,*” and approximately 4.5 miles of pipeline loops and other piping modifications at various locations.<sup>6</sup> The project was scheduled to be implemented in two phases, with phase one to be completed by November 1, 2017 and phase two to be completed by November 1, 2018. In general and as set forth in the notification to PHMSA, the pipeline and piping modifications were scheduled to occur during phase one and the compressor station construction for additional horsepower installations at Salineville and Colerain were scheduled to occur during phase two. Specific to the Colerain Compressor Station, the work included installation of a new third compressor unit.

---

<sup>3</sup> See Attachment 1, Form PHMSA F 1000.2, submitted September 26, 2014 (Notification G-5945).

<sup>4</sup> *Id.* Notably, TETLP provided PHMSA with a presentation of the OPEN project that detailed the scope and locations involved in the project.

<sup>5</sup> See Attachment 2, Form PHMSA F 1000.2, submitted January 5, 2017 (Notification F-20170105-13857).

<sup>6</sup> *Id.* (emphasis added). While TETLP’s project notification included modifications at the Colerain and Salineville Compressor Stations, it inadvertently neglected to identify the counties in which the Colerain Compressor Station and Salineville Compressor Station are located (Belmont County, Ohio and Columbiana County, Ohio respectively).

TETLP temporarily halted construction activities at times in 2018, 2019, and 2020 to address and mitigate subsidence issues in discrete locations on both the OPEN and the TEAL projects. In 2020, TETLP modified the mitigation plan which resulted in creating a new work order (WO) to capture the associated costs. The creation of the new WO inadvertently triggered TETLP's internal PHMSA notification process,<sup>7</sup> even though this was a continuation of the OPEN and TEAL construction projects for which notifications were already submitted. As a result and amidst the onset of the COVID-19 pandemic, TETLP mistakenly made the March 30, 2020 notification to PHMSA regarding mitigation work for the Colerain Compressor Station.<sup>8</sup> As TETLP mitigated the subsidence, costs for the Colerain Compressor Station compressor units 1 and 2 were charged to OPEN. The costs associated with subsidence mitigation for the Colerain Compressor Station unit 3 was charged to TEAL.

#### TETLP's Preconstruction Notice was Adequate and Timely

TETLP provided PHMSA with both adequate and timely notification of the relevant construction and modification activities regarding the Colerain Compressor Station. PHMSA regulation 49 C.F.R. § 191.22(c)(1)(i) requires at least 60 days advance notice of certain construction projects in order to have sufficient time to review and perform inspections as needed. The requirement is only that notice be submitted within 60 days in advance of the beginning of construction for the project at issue. No further notification was required for the relevant rehabilitation and modification activities at the Colerain Compressor Station that occurred in 2020.

As a practical matter for big construction projects like the OPEN and TEAL projects, notice may be submitted years in advance of completion of certain activities included within the scope of the notification. PHMSA recognized this reality in its rulemaking preamble by declining to impose an annual notification obligation and noting that an initial notification for a project that lasted multiple years was sufficient, as noted above. In addition, the scope of projects may out of necessity change as operators respond to various construction delays, project modifications, and as other contingencies arise in the course of a major construction project.

PHMSA does not, however, maintain any regulatory requirement that notice be updated, supplemented or revised as construction proceeds. Further, TETLP is unaware of any PHMSA interpretation, Advisory Bulletin or other guidance – including the Agency's own instructions to the preconstruction notification form PHMSA F 1000.2 – that explicitly requires that an operator make supplemental notifications after an operator makes the initial notification in accordance with

---

<sup>7</sup> TETLP maintains procedures that outline the steps the Company takes to comply with PHMSA's construction notification obligations. Attachment 4, TETLP SOP 5-2170, *Operator ID & PHMSA Notifications*. In particular, Section 5 governs the data gathering that TETLP undertakes in connection with a project notification. In Section 5.1.3, it specifies that projects exceeding \$10MM are compiled for review and evaluation of whether the preconstruction notification obligation is triggered.

<sup>8</sup> See Attachment 3, Form PHMSA F 1000.2 (rev 2019), submitted March 30, 2020 (Notification F-20200330-23823).

in 49 C.F.R. § 191.22(c)(1). PHMSA itself acknowledges this in its pipeline safety violation report by considering the work described in the 2017 and 2020 notices. Further, there is no authority that supports a violation much less a civil penalty for “over reporting.”

Without any basis in law or fact and despite the clear explanation included in TETLP’s prior notices, however, PHMSA alleges in its pipeline safety violation report that the 2017 notice did not encompass the work at issue and is silent on the 2014 notice. As to the 2017 notice, PHMSA attempts to distinguish the work for two reasons: (1) the physical location of the work was not the same because even though the 2017 notification expressly referenced work on the Colerain Compressor Station in Ohio, it neglected to reference the county in which the compressor station is physically located and (2) if the 2017 notification had included such work (which is expressly referenced), there would not have been a reason to file the 2020 notice. The Agency is familiar with the Colerain Compressor Station located in the Colerain Township of Belmont County, Ohio through TETLP’s notification, presentations, and discussions with PHMSA regarding the 2014 OPEN project, which included the construction of the new station. Further, TETLP notified PHMSA in 2017 of the planned modification and rehabilitation work at this same Ohio Colerain Compressor Station that would be performed as part of the TEAL project.

Simply because TETLP mistakenly submitted a notification on March 30, 2020 that was a continuation of existing construction project work on the Colerain Compressor Station – for which had already TETLP timely notified PHMSA – does not mean that the 2020 notification was legally required to be submitted or that a new 60 day clock for the relevant activities described in the notice was triggered. It is well settled that PHMSA bears the burden of proving allegations that an operator violated the pipeline safety regulations in an NOPV.<sup>9</sup> PHMSA has not met its burden here. TETLP complied with its pre-construction notification obligations under 49 C.F.R. § 191.22 as clearly demonstrated in the terms of its notifications to PHMSA for the OPEN and TEAL projects. Since PHMSA’s investigation of the 2020 notice, TETLP is considering process improvements to ensure that similar inadvertent notifications are not mistakenly submitted. Over notifying the Agency about continuation of work covered under a prior timely notification, however, does not establish a violation of PHMSA regulations.

### Summary

For the reasons stated above, there is no basis in either law or fact for PHMSA’s issuance of a NOPV and proposed civil penalty in this instance. TETLP therefore respectfully requests that PHMSA withdraw the alleged violation and the proposed civil penalty in their entirety, or alternatively issue a Warning Letter. As stated above, TETLP believes that these issues are capable of resolution without resort to a hearing, and respectfully requests a settlement meeting for that purpose. In the event that agreement on this matter cannot be reached in a settlement meeting, however, TETLP requests a hearing under 49 C.F.R. § 190.211.

---

<sup>9</sup> In re Inland Corp, PHMSA Final Order, CPF No. 1-2017-5003, at 3, 2018 WL 2229383 (D.O.T. Mar. 7, 2018) (finding that "OPS bears the burden of proof in demonstrating that an operator violated the pipeline safety regulations" and that "OPS did not carry its burden.").

TETLP takes its pipeline safety compliance very seriously. To that end, TETLP is committed to continual process improvement of its safety processes and associated documentation and the Company is reviewing its procedures further to identify any necessary adjustments. Further, the Company appreciates the Agency's consideration of its request for a settlement meeting and delay in scheduling a hearing until the parties have had an opportunity to meet to discuss the underlying NOPV.

Please call me at (713) 627-5008 if you have any questions or to schedule a settlement conference.

Sincerely,



Nathan Atanu  
Manager, Operational Compliance

#### Attachments

1. Form PHMSA F 1000.2, submitted Sep. 26, 2014 (Notification G-5945).
2. Form PHMSA F 1000.2, submitted Jan. 5, 2017 (Notification F-20170105-13857).
3. Form PHMSA F 1000.2 (rev 2019), submitted Mar. 30, 2020 (Notification F-20200330-23823).
4. TETLP SOP 5-2170, *Operator ID & PHMSA Notifications*.