

April 3, 2008

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Mr. Chris Hoidal
Director, Western Region
Pipeline and Hazardous Materials Safety Administration
12300 W. Dakota Avenue, Suite 110
Lakewood, Colorado 80228

Re: CPF No. 5-2008-1005
Rupture on WIC Line 124A on November 11, 2006

Dear Mr. Hoidal,

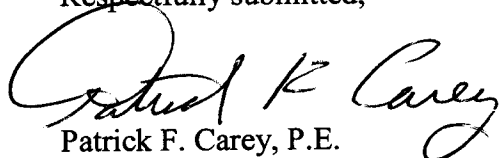
We are in receipt of the Notice of Probable Violation (NOPV) and Proposed Civil Penalty, dated March 4, 2008, and received in the mail on March 6, 2008, in which the Pipeline and Hazardous Materials Safety Administration (PHMSA) asserts certain violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations, Part 192.

The eight proposed violations are alleged to have arisen from a rupture of WIC's Line 124A 36-inch diameter transmission pipeline on November 11, 2006. The rupture occurred when a bulldozer equipped with ripper teeth ruptured the pipeline. The bulldozer was operated by an employee of Associated Contractors, Inc. which was hired by Rockies Express Pipeline, LLC to clear the right of way for its new 42-inch diameter pipeline being installed in parallel proximity to El Paso's existing facilities. Tragically, the operator was killed in the ensuing explosion and fire.

El Paso is writing to request an in-person hearing pursuant to 49 C.F.R. Part 190, Subpart B (§§ 190.201 – 190.237) to contest the allegations, proposed penalty, and the proposed compliance order set forth in the NOPV. A statement of the issues is attached.

El Paso will be represented by counsel at the hearing.

Respectfully submitted,



Patrick F. Carey, P.E.
Director, D.O.T. Compliance Services

cc: Mike Catt, VP, Operations, Western Pipelines
Dan Martin, Sr. VP, Operations

Statement of Issues for Hearing
CPF No. 5-2008-1005
Rupture on WIC Line 124A
November 11, 2006

I. Excessive Penalties

A. The civil penalties set forth in the NOPV exceed the amount permitted by law under 49 CFR §190.223. The eight alleged violations overlap substantively. This has the effect of circumventing 49 CFR §190.223(a), which limits the maximum penalty for “any related series of violations” to \$1,000,000.

For example, NOPV items 4, 6 and 7 are, in essence, restatements of the same alleged violation. Each alleges El Paso violated 49 CFR §§ 192.605 and 192.613 because the Area Manager failed to supervise the line locator’s work. In item 4, the Area Manager is alleged to have failed to “monitor” the line locator’s work. In item 6, the Area Manager is alleged to have failed to “evaluate” the line locator’s work. In item 7, the Area manager is alleged to have failed to “act on” the line locator’s work. The gravamen of each of these items is substantively indistinguishable. Their overlapping nature and cumulative effect runs afoul of 49 CFR 190.233, which limit the total penalty for this related series of violations to no more than \$1,000,000.

There is also a redundancy in NOPV items 2 and 3. Each involves an alleged failure in communication as between El Paso and REX concerning how the existing facilities would be located and marked while REX was constructing its new pipeline parallel to El Paso’s existing facilities.

There is also substantial similarity between NOPV items 7 and 8. Both center on an asserted failure to act on information provided through weekly emailed reports from the line locator.

El Paso respectfully submits that, if the overlapping and redundant theories of violation in the NOPV items were eliminated, the proposed penalty would be significantly reduced.

B. The penalty amounts set forth in the NOPV have not been adjusted appropriately to reflect the considerations set forth in 49 CFR §190.225. Particularly, those amounts do not appear to have taken appropriately into account:

1. *The full nature and circumstances of the violations as required under 49 CFR §190.225 (a) (1).* The penalty amounts do not appropriately reflect the fact that the November 11, 2006 incident revealed a growing threat to existing interstate pipelines nationwide.

2. *The good faith by the respondent in attempting to achieve compliance as required under 49 CFR §190.225 (a) (5).* The penalty amounts do not appropriately reflect the fact that CIG hired a fully qualified inspector to line-locate and mark the existing facilities and to be present full-time during REX's construction.

3. *Other matters as justice may require under 49 CFR §190.225 (b)*
(2). El Paso intends to discuss at the hearing all of its efforts since the November 11, 2006 incident intended to address and counter the growing threat created by parallel pipeline construction activity in close proximity to existing infrastructure. These industry-leading efforts included coordinated outreach with INGAA, FERC and other regulators/stakeholders.

In addition, El Paso respectfully submits that justice requires the penalties appropriately reflect that this rupture occurred as a result of human error by the highly qualified inspector retained by El Paso, and as a result of a confluence of events totally outside of El Paso's control including REX's failures to: (i) develop an appropriate survey using actual locations of existing facilities; (ii) stop the project after the *repeated* and *unplanned* encroachments of El Paso's existing facilities; and (iii) stop work in areas in which no markings were present.

II. Item One of the NOPV

NOPV Item No. 1 alleges a violation of 49 CFR § 605(b) (3), which requires "making construction records, maps, and operating history available to appropriate operating personnel." The NOPV alleges El Paso failed in this regard because its personnel did not provide hard copies relevant alignment sheets to the line locator hired by El Paso. The evidence indicates, however, that El Paso's alignment sheets were "made available" to the line locator at the Cheyenne Station in both hard copy and electronic form. Moreover, the line inspector stated he knew such alignment sheets were available to him. As such, El Paso met its obligations under the regulation to "make available" its alignment sheets to the line locator it hired and is, therefore, not in violation of this aspect of the regulations.

Moreover, it is unclear whether delivery of alignment sheets to the line locator, as suggested by the NOPV, would have been outcome-determinative. The NOPV correctly refers to the line locator's statement that he believed it was unnecessary to have the El Paso alignment sheets in his possession. From there, however, the NOPV incorrectly states that the line locator "had no faith" in those alignment sheets because he thought they would not "accurately depict the location of pipeline installed so long ago." In fact, the line inspector testified that *any* alignment sheets are only useful in generally depicting "the area" in which existing pipelines are located. The line locator further stated that he would not rely on alignment sheets to locate underground pipelines because it is necessary to get on the ground and locate the line using calibrated equipment. Moreover, since the line locator had been a long-time El Paso employee, he already knew "the area" in which to look for the El Paso pipelines, so he did not see a need for the alignment sheets.

In sum, El Paso respectfully submits that it met the regulatory requirement to make the relevant alignment sheets available to the line locator hired to locate and mark the existing facilities.

III. Proposed Compliance Order

El Paso respectfully submits that the Proposed Compliance Order does not appropriately address the unique issues and risks arising from the ever-increasing frequency and density of parallel construction activity along El Paso's network. El Paso looks forward to working closely with PHMSA to fashion terms of a Compliance Order that will focus on this unique and growing threat, which lies at the very heart of the proposed violations.

IV. Conclusion

El Paso requests an in-person hearing. El Paso will be represented by counsel in the requested administrative proceedings. To assist PHMSA, El Paso may present at the requested hearing additional and detailed facts, data, information and arguments related to the issues addressed herein.

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