



By Electronic Mail

June 11, 2021

Mr. Dustin Hubbard
Director, Western Region
Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
Department of Transportation
12300 W. Dakota Ave., Suite 110
Lakewood, CO 80228

**Re: CPF 5-2021-022-NOPV
Response, Request for Settlement Conference, and Hearing Request**

Dear Director Hubbard:

On May 12, 2021, Kinder Morgan, Inc. (KMI or Company) received 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). PHMSA issued the NOPV following its investigation of an incident that occurred on a 12-inch El Paso-Tucson (EPT) pipeline owned and operated by KMI's subsidiary SFPP, L.P. (SFPP) on December 13, 2018. The NOPV alleges seven probable violations, three of which are associated with a proposed civil penalty of \$2,231,779 (Items 1-3), three of which are associated PCO obligations (Items 3-5), and two of which are issued as warning items (Items 6-7).

In the spirit of cooperation, but without admission, KMI is willing to accept alleged violations Items 1 and 4-7 and the PCO for Items 4 and 5 (pending any clarifications). More specifically, KMI accepts alleged violation Item 1 as written and the associated proposed civil penalty, and accepts but provides clarifications and explanations in response to alleged violation Items 4-7. KMI contests alleged violations Items 2 and 3 along with the proposed penalty for each of those allegations, and the PCO for Item 3. KMI believes, however, that the issues raised by Items 2 and 3, the proposed penalties, and the PCO for Item 3, are capable of resolution outside of a hearing, and the Company respectfully requests a settlement conference to discuss further. To preserve its rights, KMI is concurrently requesting a hearing on these issues in the event the parties are unable to resolve these matters through settlement, pursuant to 49 C.F.R. §§ 190.208(a)(4) and 190.211.

As explained further below, KMI believes the Agency's allegations with respect to Items 2 and 3 are mischaracterized and that the proposed civil penalties associated with each are excessive under the circumstances. Given that KMI is contesting a limited number of issues which the Company believes are capable of resolution, the Company believes a settlement meeting is appropriate. As such, KMI respectfully requests that PHMSA delay the scheduling of a hearing to allow the PHMSA Western Region and KMI sufficient time to convene a settlement meeting as provided by

Section 108(b)(4)(B) of the Protecting our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2020, codified at 49 U.S.C. § 60117(b)(4)(B), and consistent with PHMSA policy.

In order to preserve its rights in the unlikely event that the parties are unable to resolve the matter through settlement, KMI is timely filing this response to all Items, statement of issues, and request for hearing as to Items 2 and 3 and the associated proposed penalties. In so doing, KMI neither admits nor denies any allegation or conclusion set forth in the NOPV.

Background

By way of background, the EPT pipeline experienced a gasoline release into the “Anthony Drain,” a drainage channel owned by Elephant Butte Irrigation District (EBID) along Three Saints Road near Anthony, New Mexico, on Dec. 13, 2018. The cause of the release was determined to be external corrosion where the pipeline crossed the Anthony Drain.¹ As summarized in the analysis conducted by Exponent, Inc. (Exponent), the direct cause of the incident was external corrosion (underneath tape wrap coating) which had progressed to the point that the remaining wall thickness in the area of corrosion could no longer support the internal pipe pressure.²

In response to the incident, PHMSA issued a Notice of Proposed Safety Order (Notice) to KMI on Dec. 28, 2018 which alleged that continued operation of the pipeline posed an integrity risk and proposed corrective measures to address that risk. KMI did not contest the Notice, proceeded with investigating the incident as required by its own procedures as well as the Notice, and made a number of submissions to PHMSA under the Notice. These submissions included mechanical and metallurgical testing, in-line inspection (ILI) tool runs, field assessments and repairs, surveys of exposed pipeline crossings, preparation of a revised exposed pipe inspection procedure, an updated emergency flow restricting device (EFRD) study, and an initial root cause failure analysis (RCFA) (also prepared pursuant to KMI LO&M Procedure 159). PHMSA issued a Final Safety Order (Safety Order) to KMI on Aug. 8, 2019 which required that KMI undertake the corrective actions outlined in the Notice.

Within weeks of issuing the Safety Order, PHMSA issued letters of nonacceptance to KMI regarding certain KMI submittals with respect to the exposed pipe surveys, EFRD study, and RCFA. KMI responded to those issues by letter dated Jan. 17, 2020, including an updated EFRD study and an updated RCFA. In the spirit of cooperation, KMI also agreed to undertake further remedial actions that were neither legally nor technically required in order to resolve outstanding issues with PHMSA, including burying additional pipe crossings at two drain pipe locations, remote actuation of certain valves, and installation of pressure transmitter instrumentation upstream and downstream of relevant EFRDs. KMI and the PHMSA Western Region participated in meetings regarding the substance of KMI’s EFRD study and RCFA, and PHMSA issued its approval of KMI’s response on Mar. 12, 2020.

After receiving PHMSA’s Mar. 12, 2020 approval, KMI proceeded to implement the additional remedial actions set forth in its Jan. 17, 2020 response, submitted an updated Remedial Work Plan

¹ KMI’s RCFA at 2.

² Exponent Direct Cause Analysis Report at 74.

in March (approved by PHMSA in May 2020), installed replacement pipe in April 2020, and implemented the recommendations of the updated RCFA. PHMSA approved the Company to return to pre-incident operational pressures on Nov. 16, 2020, and KMI continues to submit quarterly reports to PHMSA under the terms of the Safety Order.

Response to Contested NOPV Items 2 and 3

Item 2

PHMSA Allegation

§ 195.583 What must I do to monitor atmospheric corrosion control?

(a) . . .

(b) During inspections you must give particular attention to pipe at soil-to-air interfaces, under thermal insulation, under disbonded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water.

“During atmospheric corrosion inspections, KMI failed to give particular attention to pipe at soil-to-air interfaces and under disbonded coatings in violation of § 195.583(b). Prior to the Failure, KMI’s Atmospheric Corrosion Inspection procedures, L-O&M 918, *Inspecting for Atmospheric Corrosion*, stated that “[t]he atmospheric corrosion condition of a given site will be visually evaluated and graded ... to determine the nature and severity of corrosion. The three grades used to determine the atmospheric condition will be Good, Fair, and Poor.”

KMI Response and Statement of Issues

As stated in the NOPV, KMI conducted an atmospheric inspection on Jan. 31, 2018, in which the technician observed the visible portion of exposed pipe to be in good condition. This inspection was limited to what was visible to the technician given the overgrowth at the time. As a result, just two months later, KMI conducted another inspection in Mar. 2018 and, at that time, the technician gave “special consideration” as PHMSA acknowledged in the NOPV and as required by 49 C.F.R. § 195.583(b) to the soil-to-air transition zones during that inspection and no disbonded coating was observed. Despite those findings and without any supporting evidence in the record, PHMSA concludes that the soil-to-air interface was not “fully” examined and assumes that the coating was disbonded at the time of this inspection (rather than becoming disbonded sometime after the inspection) or that the disbonded coating was detectible during the atmospheric corrosion inspection.

As noted above, records of the atmospheric inspections that were performed on the exposed pipe indicated that the pipe was in good condition. Further, the incident referenced in this NOPV was not caused by atmospheric corrosion but instead by external corrosion on the bottom side of the pipe underneath tape wrap coating that could not be observable to a corrosion technician conducting atmospheric corrosion inspections. Special consideration was

given to the soil-to-air interface during the Mar. 2018 inspection and neither atmospheric corrosion nor disbanded coating was detected. Nevertheless, in order to be proactive and in keeping with KMI's updated RCFA recommendations and the Company's coordination with PHMSA pursuant to the Safety Order, KMI proceeded to revise its procedure LO&M 918 to provide an improved inspection protocol for tape wrap coatings in areas of above ground or partially buried pipe, including soil-to-air interface. Personnel have been trained to the updated procedures as part of the implementation process.

For all of these reasons, KMI does not believe that PHMSA has a basis in law or fact to support this violation or the proposed penalty. As such, the Company respectfully requests that the allegation and the associated penalty for Item 2 be withdrawn.

Item 3

PHMSA Allegation

§ 195.452 Pipeline integrity management in high consequence areas.

(a) . . .

(g) *What is an information analysis?* In periodically evaluating the integrity of each pipeline segment (paragraph (j) of this section), an operator must analyze all available information about the integrity of the entire pipeline and the consequences of a failure. This information includes:

(1) ...

(2) Data gathered through the integrity assessment required under this section;

(3) Data gathered in conjunction with other inspections, tests, surveillance and patrols required by this Part, including, corrosion control monitoring and cathodic protection surveys; ...

“KMI failed to periodically evaluate the integrity of each pipeline segment by analyzing all available information about the integrity of the entire pipeline and the consequences of a failure, including data gathered through integrity assessments and data gathered in conjunction with other inspections, tests, surveillance and patrols required by Part 195. KMI acknowledged that it had failed to gather and integrate all available information about the integrity of the SFPP 12-inch EPT Pipeline from various operational departments of the company including Integrity, Corrosion Control, Engineering, and Operations.”

KMI Response and Statement of Issues

PHMSA's allegation mischaracterizes the facts, is overreaching, and is not supported by fact or law. While KMI acknowledged in its RCFA that “[i]nformation regarding the Anthony Drain site had not been transferred/shared amongst all relevant documents,”³ that statement is not an acknowledgement by KMI that it “failed to gather and integrate all available information

³ KMI's RCFA at 9.

about the integrity of the SFPP 12-inch EPT Pipeline.” To the contrary, KMI has developed an integrity management program that complies with 49 C.F.R. § 195.452 and under which the Company strives to continually improve. The regulations do not specify that an operator analyze the “broadest possible range” of data as suggested by PHMSA, but as part of its program, the Company gathers, analyzes, and integrates the data specified at 49 C.F.R. § 195.452(g). Although the 2008 CIS Report indicated portions of the pipeline were exposed, data integration was not a causal or contributing factor to the release.

KMI conducted an atmospheric inspection on January 31, 2018 which indicated that the portion of the exposed pipeline that technician could see was in good condition. This inspection was limited given the overgrowth. For that reason, KMI conducted another inspection in March of 2018, as PHMSA acknowledged, where the technician gave “special consideration” as required by 49 C.F.R. § 195.583(b) to the soil-to-air transition zones and he did not observe any disbonded coating. PHMSA nevertheless concludes that the soil-to-air interface was not “fully” examined and assumes that the coating was disbonded at the time of this inspection (rather than becoming disbonded sometime after the inspection) or that the disbonded coating was detectible during the atmospheric corrosion inspection.

With respect to available ILI data, the 2015 ILI information indicating 17% metal loss noted in the NOPV did not impair the integrity of the pipeline and, thus, did not meet any further assessment or remediation criteria under 49 C.F.R. § 195.452(h)(4) or KMI’s internal procedure L-O&M 925.⁴ The regulations require investigation of anomalies that could impair the integrity of the pipeline. Not every anomaly has this potential. If a safe operating pressure is calculated that is higher than the maximum operation pressure (MOP), a metal loss anomaly does not impair the integrity of the pipeline.⁵ As reported in the 2015 ILI Report, the safe operating pressure of 1189 psi exceeded the MOP of the pipeline (1104 psi). As such, this anomaly did not require further assessment or remediation.

Atmospheric corrosion inspections are required on exposed portions of a pipeline, not the portions that are buried. The pipeline failure was not, however, caused by atmospheric corrosion. Rather, it was confirmed by Exponent’s direct causal analysis and subsequent RCFAs (conducted by KMI and supplemented by DNV) that the failure was caused by external corrosion on the bottom side of the pipe that was not observable to the corrosion technician and the “bottom of the pipe was likely in contact with the soil during its service life.”⁶ The Exponent direct cause analysis stated that the observed external corrosion was likely caused by rain and/or surface water ingress through breaches in the tape wrap coating. Moreover, records of the Mar. 2018 atmospheric corrosion inspection that was performed on the exposed pipe documented that the pipe coating was in good condition, therefore indicating that the atmospheric corrosion grade was likewise “good.”

In continually assessing the integrity of the EPT pipeline, KMI integrated available data regarding the integrity of its pipeline consistent with 49 C.F.R. § 195.452(g) and its procedures.

⁴ KMI L-O&M 925.3.2.3.2 requires KMI to list and remediate anomalies > 40%.

⁵ See ASME/ANSI B31G.

⁶ Exponent Span and Soil Analysis Report at 2.

KMI is unaware of any reasonably obtainable data which could have shown a need for increased assessment of the EPT pipeline or which could have predicted this incident.

Further, KMI's initial and supplemental RCFA identified basic causes associated with the incident. None of these root causes relates to integrity management data integration or risk analysis. In relevant part, one of the basic root causes was identified as "inadequate communication/information" and specifically the "inadequate transfer of information between processes/organization units." Identification of the failure to fully disseminate observations regarding deterioration of tape wrap in certain locations and potentially exposed portions of the pipeline is not equivalent to the failure to integrate available and relevant data in an operator's integrity management program. Further, the 2018 inspection did not detect any atmospheric corrosion, deterioration of tape wrap, or disbonded coating. In short, there was no information to transfer. This release was not caused by atmospheric corrosion, any deterioration of the tape wrap notwithstanding.

The Company nevertheless took steps to prevent similar occurrences in the future in accordance with the supplemental RCFA, including updating procedures, incorporating results of inspections and surveys into a centralized, documented list that is loaded into KMI's GIS system, referred to as PODS, so that all other operational departments have access to and awareness of that information. Further, all above ground exposed pipe locations are included in the Company's Cathodic Protection Data Management system such that coating and the pipe soil-to-air interface are inspected, remediated as appropriate, and documented.

Despite both the applicable law and the facts as presented above, PHMSA proposes the full statutory maximum for "any related series of violations" for this one alleged violation, in the amount of \$2,132,679.00, as well as a PCO obligation to conduct annual interim reviews of its data integration program. For the reasons set forth above, including the mischaracterization of the alleged violation, the fact that integrity management data integration was not a basic root cause of the incident, and considering the steps the Company has since taken to address the identification of inadequate transfer of information as one of several causal factors, there does not appear to be a basis in fact or law for either the alleged violation, the proposed penalty, or the associated PCO obligation. As such, KMI requests that the allegation, the associated proposed penalty, and PCO obligation for Item 3 be withdrawn.

Response to Uncontested NOPV Items

KMI is not contesting NOPV Items 1 and 4-7, and although the Company neither admits nor denies the underlying allegations, KMI has already taken measures to address them. As noted above, KMI accepts Item 1 as is, but provides additional explanations and clarifications on the remaining Items as set forth below.

Item 4

PHMSA Allegation

§ 195.446 Control room management.

(a) . . .

(c) *Provide adequate information.* Each operator must provide its controllers with the information, tools, processes and procedures necessary for the controllers to carry out the roles and responsibilities the operator has defined by performing the following: ...

“KMI failed to provide its controllers with the information, tools, processes and procedures necessary for the controllers to carry out the roles and responsibilities KMI defined for abnormal and emergency operation. Specifically, KMI’s controller had inadequate information to recognize this event as a pipeline failure and instead responded to the Failure only as an abnormal operating condition (AOC). The pipeline did not have pressure indications along the pipeline at the lowest elevations, including the Mesilla Valley, the Anthony Drain (Failure site), and in close proximity to the Rio Grande River. Without having pressure indications closer to the lowest elevation points on the pipeline and because of the significant differences in elevations between the existing sensor locations, the controller did not have adequate information to determine whether the pipeline was leaking or had failed at the lower elevations.”

KMI Response

In further demonstration of the Company’s willingness to cooperate with PHMSA, KMI has elected to not contest this Item, without admission. The Company believes certain clarifications are warranted, however. In its allegation, PHMSA states that the “controller did not have adequate information through instrumentation to know that product was leaking out of the pipeline” and to suggest that “additional instrumentation” was necessary to “aid in timely detection of a leak.” While KMI agreed to install additional pressure transmitters on the pipeline in coordination with PHMSA through the implementation of the Safety Order, the Company notes that the failure to have such pressure transmitters is not a violation of the requirements under 49 C.F.R. § 195.446(c) as alleged by PHMSA. KMI’s control management program complied with all five requirements of 49 C.F.R. § 195.446(c) (set forth below):

- (1) Implement API RP 1165 (incorporated by reference, see §195.3) whenever a SCADA system is added, expanded or replaced, unless the operator demonstrates that certain provisions of API RP 1165 are not practical for the SCADA system used;
- (2) Conduct a point-to-point verification between SCADA displays and related field equipment when field equipment is added or moved and when other changes that affect pipeline safety are made to field equipment or SCADA displays;

- (3) Test and verify an internal communication plan to provide adequate means for manual operation of the pipeline safely, at least once each calendar year, but at intervals not to exceed 15 months;
- (4) Test any backup SCADA systems at least once each calendar year, but at intervals not to exceed 15 months; and
- (5) Implement section 5 of API RP 1168 (incorporated by reference, see §195.3) to establish procedures for when a different controller assumes responsibility, including the content of information to be exchanged.

Item 5

PHMSA Allegation

§ 195.452 Pipeline integrity management in high consequence areas.

(a) . . .

(i) *What preventive and mitigative measures must an operator take to protect the high consequence area?*

(1) . .

(4) *Emergency Flow Restricting Devices (EFRD).* If an operator determines that an EFRD is needed on a pipeline segment to protect a high consequence area in the event of a hazardous liquid pipeline release, an operator must install the EFRD. In making this determination, an operator must, at least, consider the following factors—the swiftness of leak detection and pipeline shutdown capabilities, the type of commodity carried, the rate of potential leakage, the volume that can be released, topography or pipeline profile, the potential for ignition, proximity to power sources, location of nearest response personnel, specific terrain between the pipeline segment and the high consequence area, and benefits expected by reducing the spill size.

“In determining whether an EFRD was needed to protect an HCA in the event of a release, KMI failed to properly consider several factors set forth in § 195.452(i)(4). Specifically, KMI failed to properly evaluate the following factors: 1) the swiftness of leak detection and the pipeline shutdown capabilities; and 2) the volume that could be released. This resulted in KMI conducting its EFRD analysis based on incorrect data.”

KMI Response

The EFRD analysis that KMI performed prior and subsequent to the incident is technically justified and fully complies with 49 C.F.R. § 195.452(i)(4), which requires that EFRDs be installed "if an operator determines that an EFRD is needed [...] to protect a [HCA]" in the event of a release (emphasis added). As reflected in the NOPV itself, KMI identified an inadvertent discrepancy in the valve classifications on its own accord, six months prior to the incident, and was proactively correcting the misclassifications prior to the incident.

KMI updated its EFRD analysis on two different occasions in conjunction with the Safety Order. First, in its Apr. 26, 2019 submission, KMI considered the consequences of releases and benefits that would be provided by valve installation or automation, including in EBID canals, laterals, and drainage facilities surrounding the EPT 12-inch pipeline, consistent with PHMSA regulations and Company procedures. Following receipt of PHMSA's nonacceptance letter and in light of the Company's incident investigation, KMI considered the factors again in an updated EFRD analysis submitted on Jan. 17, 2020, further confirming the accuracy of the shutdown and isolation times in its analysis.

In keeping with the Company's commitment to preventative and mitigative measures, KMI automated its Mesa Block Valve as a result of its Apr. 26, 2019 EFRD analysis. Moreover, in continued cooperation with PHMSA under the Safety Order and in response to a request by PHMSA, KMI agreed to remotely actuate two additional valves (including relocation of one valve) and install pressure transmitter instrumentation upstream and downstream of relevant EFRDs.

Item 6 (Warning Item)

PHMSA Allegation

§ 195.452 Pipeline integrity management in high consequence areas.

(a) . . .

(j) *What is a continual process of evaluation and assessment to maintain a pipeline's integrity?*

(1) . . .

(2) ***Evaluation.*** An operator must conduct a periodic evaluation as frequently as needed to assure pipeline integrity. An operator must base the frequency of evaluation on risk factors specific to its pipeline, including the factors specified in paragraph (e) of this section. The evaluation must consider the results of the baseline and periodic integrity assessments, information analysis (paragraph (g) of this section), and decisions about remediation, and preventive and mitigative actions (paragraphs (h) and (i) of this section).

“Prior to the release, KMI failed to conduct a periodic evaluation as frequently as needed to assure pipeline integrity. Specifically, KMI failed to base the frequency of the inspection interval for its LS 17-18 El Paso to Deming pipeline segment on several risk factors set forth in § 195.452(e), including operating stress level, pipe size, manufacturing information, and coating type. KMI's risk analysis for this segment failed to properly consider 1) an operating pressure at a relatively high SMYS level; 2) pipe wall thickness (0.188 inch; low safety margin to withstand rupture should metal loss occur); and 3) type and quality of pipe coating (disbonded coating could result in accelerated external corrosion).⁴⁰ These risk factors should have prompted KMI to establish a shorter inspection interval for this pipeline segment because they indicated a likelihood of enhanced corrosion growth rates. In its

updated RCFA, KMI acknowledged that one of the basic causes of the Failure was the company's failure to inspect the line on a shorter interval."

KMI Response

To respond to the facts presented by PHMSA in this Warning Item, KMI agreed in its Jan. 17, 2020 submittal that the ILI intervals should be more frequent than 5 years given (1) the accelerated growth rate that was discovered post-incident at the Anthony Drain, and (2) both KMI's initial and updated RCFA included this as a recommendation. Based on the information known to KMI prior to the incident, however, the Company could not have known that a shorter interval was warranted. Records of the atmospheric inspections that were performed on the exposed pipe indicated that the pipe was in good condition and the incident addressed by this NOPV was not caused by atmospheric corrosion. As explained above, the direct cause of the incident was external corrosion on the bottom side of the pipe that could not be observable to a corrosion technician.

In accordance with the findings and recommendations in the RCFA's and as acknowledged by PHMSA in the NOPV, KMI has since initiated a program to reduce ILI assessment intervals on pipelines with a nominal wall thickness (NWT) of value $<.200$ " to a maximum three year period.

Item 7 (Warning Item)

PHMSA Allegation

§ 195.452 Pipeline integrity management in high consequence areas.

(a) . . .

(i) *What preventive and mitigative measures must an operator take to protect the high consequence area?*

(1) . . .

(3) ***Leak detection.*** An operator must have a means to detect leaks on its pipeline system. An operator must evaluate the capability of its leak detection means and modify, as necessary, to protect the high consequence area. An operator's evaluation must, at least, consider, the following factors—length and size of the pipeline, type of product carried, the pipeline's proximity to the high consequence area, the swiftness of leak detection, location of nearest response personnel, leak history, and risk assessment results.

"KMI failed to properly evaluate the capability of its leak detection means and modify it, as necessary, to protect high consequence areas in violation of §195.452(i)(3). Specifically, in March 2014, KMI prepared a Leak Detection Analysis (LDA) addressing the factors set forth in §195.452(i)(3). In evaluating the swiftness of leak detection, the company noted that "given a leak size of 50%, KM has the ability to detect/shut down the LS-17-18 El Paso to Deming pipeline in 5 minutes and the ability to isolate it in 10 minutes." The combined time

of 15 minutes to detect and isolate a leak, however, was based only on the closure of emergency flow restricting devices (EFRDs). The LDA did not account for the closure of manually-operated valves that were present on the line and can take considerably longer to close.”

KMI Response

While KMI is not contesting this Warning Item, and as stated above neither admits nor denies the allegations, KMI believes that its leak detection analysis was compliant with 49 C.F.R. § 195.452(i)(4) and Company procedures as detailed in its response to PHMSA’s request for specific information, dated Feb. 14, 2020. In particular, and as emphasized in KMI’s Feb. 14, 2020 response, the Company takes a conservative approach to leak detection because the Company’s HCA analysis, risk analysis, EFRD analysis and leak detection analysis do not take any credit for a perceived benefit provided by proximity to response personnel. The Company only takes credit for remote operated valves in calculating the potential worse case discharge.

Proposed Civil Penalty

PHMSA has proposed a civil penalty for Items 1 (\$46,600), 2 (\$52,500) and 3 (\$2,132,679). As noted above, without admission, KMI accepts the proposed civil penalty for Item 1. KMI respectfully requests that the proposed civil penalty for Items 2 and 3 be withdrawn, however, because no violation exists and further because the proposed penalties do not align with the statutory and regulatory penalty factors that PHMSA is required to consider. In particular, the proposed penalty for Item 3 represents the statutory maximum for “any related series of violations” under 49 C.F.R. § 190.233(a). KMI believes the proposed penalty for Item 3 is excessive for several reasons, not the least of which is that it is unwarranted for PHMSA to apply the statutory maximum for any related series of violation to a single alleged violation. In particular, PHMSA’s proposed civil penalty for Item 3 as set forth in the Agency’s Proposed Civil Penalty Worksheet does not accurately reflect the relevant statutory and regulatory penalty factors, including but not limited to the nature, circumstances and gravity of the violation, degree of culpability, good faith and other matters as justice may require.

Proposed Compliance Order

PHMSA proposes three remedial actions in its PCO in connection with Items 3, 4 and 5. As noted above, KMI contests the proposed remedial action for Item 3. KMI is willing to accept the obligations for Item 4 and 5 in an effort to resolve this matter in a cooperative manner, however, with potentially some minor revisions for clarity.

Summary

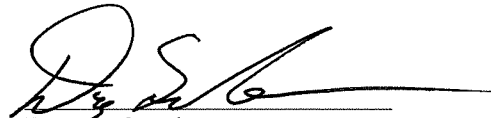
KMI takes its commitment to pipeline safety compliance seriously. To that end, and without admitting to the allegations in the NOPV, KMI has elected not to contest NOPV Items 1 and 4-7. The Company has already taken actions to address all seven alleged violations through implementation of its Safety Order obligations, including RCFA recommendations, as described

above. In addition, KMI is accepting the PCO obligations associated with Items 4 and 5, and the Company appreciates the opportunity to coordinate with PHMSA as the Company works to continually review and improve its integrity management and control room programs and processes. Further, KMI is accepting the proposed penalty for Item 1.

For all of the reasons identified above and in consideration of other matters as justice may require, KMI is contesting NOPV Items 2 and 3 and respectfully requests that PHMSA withdraw the violations, associated proposed penalties, and PCO for Item 3. That said, KMI believes that these issues are capable of resolution without resort to a hearing and the Company respectfully requests a settlement meeting for that purpose. In the event that agreement on this matter cannot be reached in a settlement meeting, however, KMI is concurrently requesting a hearing under 49 C.F.R. § 190.211 to preserve its rights.

KMI 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 NOPV Items 2 and 3 and the associated proposed penalties and PCO obligation. Please contact KMI's Director – Engineering: Codes and Standards Jaime Hernandez should you have any questions at (713) 369-9443.

Sincerely,



Dax A. Sanders
President of Products Pipelines
Kinder Morgan, Inc.

cc: Mr. Jaime Hernandez, Director – Engineering: Codes and Standards, KMI
Ms. Mary Clair Lyons, Assistant General Counsel, KMI
Ms. Catherine Little, Troutman Pepper, LLP