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Via E-Mail

May 26, 2011

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**Re: CPF No. 1-2009-1006
Supplement to DTI's Petition for Reconsideration**

Dear Mr. Fred:

Thank you for contacting me to discuss the communications that took place between PHMSA and DTI personnel after DTI submitted its February 23, 2011 Petition for Reconsideration in this matter. DTI appreciates the opportunity you provided to supplement the record in response to additional materials submitted on May 12, 2011, by a PHMSA Inspector.

DTI has reviewed the Inspector's materials and hereby submits the enclosed supplement to the Petition for Reconsideration.

Please contact the undersigned if you have any questions.

Respectfully submitted,

Susan A. Olenchuk
Counsel for Dominion Transmission, Inc.

CC: Ms. Brianne Kurdock, Esq., Attorney Advisor, PHMSA

Enclosure: Supplement to Petition for Reconsideration

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

Dominion Transmission, Inc.

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CPF No. 1-2009-1006

**SUPPLEMENT TO PETITION FOR RECONSIDERATION OF DOMINION
TRANSMISSION, INC.**

I. Introduction

The post-Petition communications that took place in this matter support DTI's Petition for Reconsideration. DTI made a reasonable, good-faith interpretation of the regulation and PHMSA's written guidance. Therefore, no penalty is appropriate for Item 5.

II. PHMSA Inspector's May 12, 2011 Memorandum

On May 12, 2011, a PHMSA Inspector submitted a memorandum to the Presiding Official describing his impression of conversations among PHMSA and DTI personnel that took place between March 1-4, 2011, after PHMSA had received DTI's February 23, 2011 Petition for Reconsideration. The Inspector had reached out to DTI to discuss how the company "numbers its primary and secondary" overpressure devices, and "how that differs from PHMSA's numbering in relation to guidance referenced in the Final Order."

From the e-mail correspondence the Inspector attached to his May 12, 2011 Memorandum, it appears that the Inspector's position is as follows:

- The regulators DTI uses as the first line of over-pressure protection on its LN-16 and LN-24 pipelines at the Stateline Compressor Station are not considered primary over-pressure safety devices. Therefore, the downstream relief valves at these locations are primary, rather than secondary over-pressure safety devices.
- PHMSA's guidance document should have used the term "redundant" rather than "secondary," when referring to over-pressure safety devices that need not meet code requirements.
- Engine shutdown switches can be primary overpressure safety devices.
- Under § 192.195, a "pressure relieving" or "pressure limiting device" is the device that operates if a regulator fails, and therefore, a first line regulator cannot itself be a primary pressure relieving or pressure limiting device.

III. PHMSA Should Grant DTI's February 23, 2011 Petition for Reconsideration

The Inspector's view appears to be that the LN-16 and LN-24 regulators at issue in the Petition ("Regulators") cannot serve as a "primary" "over-pressure safety device" as that term is used in PHMSA's guidance. The Inspector's interpretation is not apparent from the language of either the regulation or PHMSA's guidance. On this basis, PHMSA should withdraw the civil penalty related to Item 5.

Even if PHMSA ultimately determines that the Inspector's interpretation is reasonable, such a determination would represent a new position not evident from the language of the regulations and guidance as written today. That, along with DTI's good faith reading of the guidance and regulations, warrants PHMSA's withdrawal of the civil penalty for Item 5.

The Inspector's explanation why PHMSA's guidance should not be read to allow the Regulators to serve as primary over-pressure safety devices is not apparent from the language of PHMSA's regulations. Section 192.195(a) requires that "each pipeline that is connected to a gas source so that the maximum allowable operating pressure could be exceeded as the result of pressure control failure or some other type of failure, must have pressure relieving or pressure limiting devices..." The Regulators are unquestionably pressure limiting devices, serving to prevent pipeline pressure from exceeding the Maximum Allowable Operating Pressure (MAOP). § 192.201. The regulations neither contain the terms "primary" or "secondary" nor reflect a numbering scheme. DTI, therefore, reasonably interpreted Part 192 regulations and guidance addressing over-pressure protection to mean that the Regulators can serve as primary over-pressure safety devices.

The fact that § 192.195(a) indicates that over-pressure devices are necessary to protect against "pressure control failure or of some other type of failure," does not preclude the Regulators from being reasonably considered primary devices under the guidance as currently written. In fact, while PHMSA's guidance does not define "over-pressure safety device" it does define "overpressure protection" as "the use of a device or equipment installed for the purpose of preventing pressure in a pipe system or other facility from exceeding a predetermined limit."¹ Regulators clearly serve to prevent pressure from exceeding MAOP and therefore they qualify as "overpressure protection." In the absence of a numbering scheme for over-pressure devices in the regulations or more specific definitions in the guidance, it was reasonable also to conclude that the Regulators could be primary "over-pressure safety devices" as that term is used in the guidance for § 192.743.² The civil penalty for this item, therefore, should be withdrawn.

Even if PHMSA determines that the Inspector's interpretation that the Regulators cannot serve as primary over-pressure safety devices is reasonable and correct, the civil penalty for this item should be withdrawn because the Inspector's interpretation is not apparent from the language of either the regulation or the guidance. The suggestion in the Inspector's e-mail that that

¹ PHMSA Staff Manual at 23.

² *Id.* at 132.

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PHMSA's guidance should have used different wording underscores this fact and demonstrates the limitations of the Inspector's interpretation. DTI's interpretation of the regulatory text and the language of the guidance that the Regulators can be a primary "over pressure safety devices" under § 192.743 was reasonable. Had PHMSA wished to describe a different numbering scheme for over-pressure devices for the purpose of its guidance, it could have done so. For these reasons, the civil penalty for this item should be withdrawn.

IV. Conclusion

For the foregoing reasons, DTI respectfully requests that PHMSA grant its Petition for Reconsideration. DTI appreciates the opportunity to supplement the record in this matter to respond to the position of the PHMSA inspector. Finally, DTI again thanks PHMSA for the courteous and professional manner in which it has handled this matter.

Respectfully submitted,



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Dated: May 26, 2011

CC: Ms. Brianne Kurdock, Esq., PHMSA Office of Chief Counsel