Transcontinental Gas Pipe Line Company, LLC
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September 30, 2021

Robert Burrough
Director, Eastern Region
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
840 Bear Tavern Road, Suite 300
West Trenton, NJ 0862

RE: CPF No. 1-2021-013-NOPV: Operator Response

Dear Mr. Burrough,

Pursuant to the requirements in 49 C.F.R. § 190.208, Transcontinental Gas Pipe Line Company (Transco or the Company) submits the following response to the Notice of Probable Violation and Proposed Civil Penalty (Notice) in the above-captioned proceeding.[1] In the Notice, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS) alleges that Transco committed two probable violations of the federal safety standards for liquefied natural gas (LNG) facilities in 49 C.F.R. Part 193. Specifically, in Item 1 of the Notice, OPS alleged that Transco committed a probable violation of 49 C.F.R. § 193.2521, a regulation that requires LNG operators to maintain certain operating records for a period of not less than five years. In Item 2 of the Notice, OPS alleged that Transco committed a probable violation of § 193.2605(b), a regulation that requires LNG operators to follow one or more manuals of written procedures for the maintenance of components. OPS proposed to issue Transco a warning for Item 1 and to assess a civil penalty of $93,900 for Item 2.

On August 19, 2021, Transco and OPS convened an informal meeting to discuss the allegations in the Notice pursuant to the provisions in Section 108 of the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2020 (2020 PIPES Act). Following the informal meeting, OPS advised Transco that the Regional Director would submit a recommendation for final action supporting a reduction in the civil penalty for Item 2 from $93,900

[1] Transco notes that the response is timely due to previous extensions of the deadlines provided in 49 C.F.R. § 190.208 by the Director of the Eastern Region Office.

to $41,281.92 to account for the minimal gravity of the alleged violation. OPS further advised Transco that the Regional Director's recommendation would state that the warning for Item 1 is not a finding of probable violation and cannot be subject to further adjudication in this proceeding. Based on these assurances, Transco advised OPS that the Company would not contest the allegation in Item 2 or request a hearing before a Presiding Official under 49 C.F.R. § 190.211. Rather, Transco would submit a written explanation supporting a reduction in the civil penalty for Item 2 from $93,900 to $41,281.92. Transco also advised OPS that the Company would provide a response to the allegation of probable violation for Item 1.

Before discussing the Notice in any further detail, Transco wishes to express its appreciation to OPS for participating in the informal meeting process and making a good faith effort to address the Company's concerns. Transco believes that the outcome in this case demonstrates the value of having similar discussions in the future and hopes that OPS continues to work with operators to seek an amicable resolution of enforcement actions consistent with the provisions in Section 108 of the 2020 PIPES Act.

Item # 1: Section 193.2521 Operating Records (Warning Item)

OPS alleged in Item 1 of the Notice that Transco violated § 193.2521 by failing to maintain a record of how personnel responded to indications of abnormal operations. In support of that allegation, OPS stated that Transco did not provide abnormal operating condition (AOC) records for the calendar years 2017 to 2020 during an inspection of the Station 240 LNG Plant that occurred from October 19, 2020, to November 4, 2020. OPS further stated that the Daily Operator Logs for 2017 to 2020 that Transco provided following the inspection did not provide information about indications or responses to AOCs.

While Transco agrees that maintaining necessary operating records is an important part of an LNG operator's compliance obligations, the allegations in the Notice do not establish a probable violation of § 193.2521. Section 193.2521 states, in relevant part, that "[e]ach operator shall maintain a record of results of each inspection, test and investigation required by [the operations requirements in subpart F of 49 C.F.R. Part 193]." Section 193.2521 further states that "[f]or each LNG facility that is designed and constructed after March 31, 2000 the operator shall also maintain related inspection, testing, and investigation records that NFPA-59A-2001 . . . requires." Section 193.2521 provides that "[s]uch records, whether required by this part or NFPA-59A-2001, must be kept for a period of not less than five years." In other words, § 193.2521 establishes a 5-year recordkeeping requirement, and that requirement only applies to inspections, tests, and investigations that are either required by subpart F of 49 C.F.R. Part 193 or, for LNG facilities designed and constructed after March 31, 2000, NFPA-59A-2001.

None of the allegations in the Notice concerns an inspection, test, or investigation that is subject to the recordkeeping requirement in § 193.2521. As to the provisions in subpart F of 49 C.F.R. Part 193, the only regulation that specifically refers to AOCs is § 193.2503(c), and that provision only requires LNG operators to include written procedures in their operating manuals for "[r]ecognizing [AOCs]". Section 193.2503(c) does not require LNG operators to conduct any inspections, tests, or investigations to recognize AOCs. Indeed, the only regulation in subpart F

that even refers to inspections, tests, or investigation is 49 C.F.R. § 193.2515, which requires LNG operators to conduct a failure investigation if an explosion, fire, or LNG leak or spill occurs that results in death or injury requiring hospitalization or property damage exceeding $10,000. An AOC may certainly be associated with one of these events, but nothing in subpart F suggests that an LNG operator needs to conduct a failure investigation to recognize AOCs.

Nor is there any indication that an LNG operator needs to perform any of the other inspections, tests, or investigations referenced in Chapter 11 of NFPA-59A-2001 to recognize AOCs. Like § 193.2503(c), § 11.3.2(7) of NFPA-59A-2001 requires LNG operators to include provisions in their operating procedures for "[d]etermining the existence of any abnormal conditions, and the response to these conditions in the plant," but does not mandate the performance of any specific inspections, tests, or investigations. Moreover, the provisions in Chapter 11 of NFPA-59A-2001 that require LNG operators to perform inspections, tests, or investigations, *e.g.*, Section 11.5.5 of NFPA-59A-2001, which requires LNG operators to perform inspections and tests of control systems, relief devices, and LNG storage tanks at certain specified intervals, or 11.5.6 of NFPA-59A-2001, which requires LNG operators to perform certain inspections for corrosion control purposes, do not involve the types of activities that are ordinarily relevant in recognizing or responding to AOCs.

The rulemaking history confirms that the recordkeeping requirements in §193.2521 do not apply to AOCs. As originally proposed by PHMSA in 1977, the language in the regulation that is currently codified at § 193.2521 would have required operators to "maintain daily records to describe the actual performance of critical components."[2] However, after "[c]ommenters indicated that it would be too onerous and unnecessary to keep a daily record of the operation of each component[,]"[3] PHMSA proposed a modified version of the regulation that would have required operators to "maintain a record describing each abnormal operation of each component and the corrective action taken[.]"[4] By the time PHMSA issued the final rule in 1980, "[t]he proposal to keep a record of each abnormal operation" had been "deleted" from § 193.2521 in its entirety.[5] PHMSA stated that the proposal was "overly broad[,]" and that the agency "intended to cover the subject of collecting information on abnormal operations in future rulemaking."[6] Although revised in certain other respects in subsequent rulemaking proceedings, PHMSA never revisited the notion of extending the recordkeeping requirements in § 193.2521 to AOCs.

In short, the allegation in Item 1 of the Notice is not consistent with the text, structure, or history of the applicable regulations. Contrary to OPS's view, an LNG operator is not required to perform any inspections, tests, or investigations under subpart F of 49 C.F.R. Part 193 or NFPA-59A-2001 in response to an AOC. Nor is the act of responding to an AOC in and of itself an inspection, test, or investigation for purposes of § 193.2503(c). AOC response is simply not the

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[2] LNG Facilities; Federal Safety Standards, Advance Notice of Proposed Rulemaking, 42 Fed. Reg. 20,776, 20798 (Apr. 21, 1977).
[3] LNG Facilities; Federal Safety Standards, Notice of Proposed Rulemaking, 45 Fed. Reg. 9,220, 9,225 (Feb. 11, 1980).
[4] 45 Fed. Reg. at 9,233.
[5] LNG Facilities; Federal Safety Standards, Final Rule, 70,390, 70,394 (Oct. 23, 1980).
[6] *Id.*

type of activity subject to that recordkeeping requirement, particularly one with a 5-year minimum retention period. For these reasons, OPS could not sustain the probable violation alleged in Item 1 of the Notice in a subsequent enforcement proceeding and should not have issued a warning to Transco in the current proceeding.

With that said, Transco would support amending the LNG safety standards in 49 C.F.R. Part 193 to establish a reasonable recordkeeping requirement for AOCs. The applicability of that requirement, content of the required records, and length of the retention period are all issues that should be considered as part of that rulemaking process. Interested stakeholders should also be afforded the opportunity to review and provide comments on any proposal offered by PHMSA. Notice-and-comment rulemaking, not the enforcement process, is the appropriate mechanism for creating new legal obligations that apply to regulated parties, including for recordkeeping purposes. Until the rulemaking process is complete, LNG operators can continue to exercise reasonable discretion in deciding whether to retain AOC records as a best practice or voluntary measure that exceeds the obligations imposed in 49 C.F.R. Part 193 and NFPA-59A-2001.

Item # 2: Section 193.2605(b) - Maintenance Procedures (Civil Penalty)

OPS alleged in Item 2 of the Notice that Transco committed a probable violation of § 193.2605(b) by failing to follow the Company's written procedures for inspecting its structural support system. OPS proposed to assess Transco a civil penalty of $93,900. Transco is respectfully requesting that PHMSA assess a reduced civil penalty of $41,281.92 to account for the minimal gravity of the violation. As explained at the outset of this response, OPS has agreed to submit a Regional Director's recommendation for final action supporting this reduction in the civil penalty assessment.

Transco acknowledges that the Company's written procedures for inspecting the structural support system need to be clarified to address OPS's concerns expressed in the Notice. The concerns arise from a grading or prioritization requirement for annual or 5-year reports. In the preparation of a 2018 5-year report, the Company omitted an express reference to the grading or prioritization of the condition of four of the structural supports. The report simply stated that the "[f]our concrete supports were found to need minor repairs[,]" and that "[a]ll four supports that need repairs were found to have cosmetic issues and are structurally sound." Additionally, the report indicated "there is no immediate need to make repairs and no existing safety or operational issues." Though the report communicated information relevant to assessing the condition of the structural supports, it omitted the grading or prioritization of the conditions. In other words, the report's prioritization omission is akin to a recordkeeping violation.

PHMSA's Pipeline Safety Violation Report directs OPS inspectors to "select the most severe category that applies to any of the instances of the violation except select Category 5 regardless of the location if pipeline safety was minimally affected by all instances of the violation."[7] As pipeline safety was minimally affected in this case, PHMSA should apply Category 5 for this allegation and reduce the point total from 17 points to 1 point. Given the

[7] *In the Matter of Transcontinental Gas Pipeline Co*, CPF No. 1-2021-013-NOPV, Violation Report (June 17, 2021) at 9.

adjustment in the gravity section from 17 to 1 point, PHMSA should also adjust the 'Other Matters as Justice Requires' civil penalty factor. PHMSA explains in its Civil Penalty worksheet that a base gravity of 1 point creates a corresponding supplemental civil penalty of $5,000 for the 'other matters as justice requires' factor. These changes would amount to a total of 23.89 points or $41,281.92.

Transco remains committed to the safe operation of its pipeline system and working with the agency to address its concerns. Please feel free to contact me if you have any questions.

Sincerely,

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