

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY**

	)	
In the Matter of	)	
	)	
ANR Pipeline Company,	)	CPF No. 1-2023-047-NOPV
	)	CPF No. 1-2023-046-NOA
Respondent.	)	
	)	

**POST-HEARING BRIEF OF ANR PIPELINE COMPANY
AUGUST 9, 2024**

Table of Contents

I.	Introduction	1
II.	Background	1
A.	Procedural History	1
B.	Summary of OPS Allegations	2
C.	Summary Response and Request for Relief	3
III.	Discussion and Argument	5
A.	The thermal relief devices identified in the NOA and Item 2 of the NOPV are not subject to the inspection, testing, and capacity requirements in sections 192.731, 192.739, and 192.743.	6
1.	The traditional rules of construction make clear that the inspection, testing, and capacity requirements in sections 192.731, 192.739, and 192.743 only apply to MAOP overpressure protection devices.	7
2.	OPS’s arguments for applying the inspection, testing, and capacity requirements in sections 192.731, 192.739, and 192.743 to MAWP overpressure protection devices are entirely unpersuasive.	10
B.	ANR’s procedures and practices for the inspection, testing, and capacity of MAWP overpressure protection devices for pressure vessels comply with the BPVC and sections 192.153 and 192.165.	13
C.	The alleged violation of the line marker requirements in Item 1 of the NOPV should be converted to a warning.	15
IV.	Right to Supplement	16
V.	Conclusion	16

I. Introduction

Pursuant to 49 C.F.R. § 190.211(d), ANR Pipeline Company (ANR or the Company) respectfully submits this Post-Hearing Brief regarding the Notice of Amendment (NOA) and Notice of Probable Violation and Proposed Compliance Order (NOPV) that the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS) issued on October 31, 2023,¹ and December 4, 2023,² respectively, in the above-captioned proceedings.

II. Background

A. Procedural History

These cases began with an OPS inspection that occurred between March 14, 2022, and November 3, 2022, at ANR's pipeline facilities in Mississippi, Tennessee, Arkansas, Louisiana, and Kentucky (Inspection).³ OPS issued the NOA and NOPV following the Inspection, and ANR responded by requesting an informal hearing pursuant to 49 C.F.R. § 190.211 (Hearing).⁴ The Presiding Official subsequently scheduled the Hearing in both cases for July 10, 2024, at the OPS Regional Office in Trenton, New Jersey.⁵

On July 10, 2024, the Presiding Official convened the Hearing as scheduled.⁶ OPS presented its case first, offering testimony primarily from two witnesses: Mr. Mark A. Sacchetti,

¹ *In the Matter of ANR Pipeline Co.*, CPF No. 1-2023-046-NOA, Notice of Amendment (Oct. 31, 2023) (hereinafter, "NOA").

² *In the Matter of TC Energy Corporation.*, CPF No. 1-2023-047-NOPV, Notice of Probable Violation (Dec. 4, 2023) (hereinafter, "NOPV").

³ NOPV at 1; NOA at 1.

⁴ *In the Matter of ANR Pipeline Co.*, CPF No. 1-2023-046-NOA, Response (Nov. 29, 2023); *In the Matter of TC Energy Corporation.*, CPF No. 1-2023-047-NOPV, Response (Jan. 16, 2024). ANR also requested an informal meeting to discuss the NOA and NOPV with OPS. ANR and OPS held an informal meeting in March and April 2024.

⁵ *In the Matter of ANR Pipeline Co.*, CPF No. 1-2023-046-NOA, Scheduling Letter (Jan. 9, 2024); *In the Matter of TC Energy Corporation.*, CPF No. 1-2023-047-NOPV, Scheduling Letter (Mar. 6, 2024).

⁶ Hearing Transcript and Respondent's Errata, (Jul. 10, 2024) (submitted on Aug. 2, 2024) (hereinafter, "Hearing Transcript"). On July 1, 2024, OPS and ANR separately filed pre-hearing submissions pursuant to 49 C.F.R. § 190.211(d).

the OPS employee who conducted the Inspection, and Mr. Gregory Ochs, Director, Central Region, OPS.⁷ ANR then presented its case, offering testimony from four witnesses: Mr. Roger Street, Senior Compliance Specialist, TC Energy; Mr. John P. Swezy, ASME Code Specialist, Becht; Mr. Everett Chatham, Pressure Vessel Group Lead, Becht; and Mrs. Amy Willis, Director of Pipeline Safety Compliance, TC Energy.⁸

At the conclusion of the Hearing, the Presiding Official authorized ANR to file this Post-Hearing Brief by no later than August 9, 2024.⁹

B. Summary of OPS Allegations

In the NOA, OPS alleges that ANR's operation and maintenance (O&M) procedures do not "include provisions for inspecting and testing each pressure relieving device in a compressor station" as required by 49 C.F.R. §§ 192.731, 192.739, and 192.743.¹⁰ As support for that allegation, OPS states that ANR's O&M procedures categorize certain relief devices at compressor stations as being in "non-OPP service". OPS further states that ANR's O&M procedures do not require devices in non-OPP service to be inspected and tested in accordance with the requirements in sections 192.731, 192.739, and 192.743. Citing that alleged inadequacy, OPS directs ANR to revise its O&M procedures and apply the inspection and testing requirements in sections 192.731, 192.739, and 192.743 to each relief device at its compressor stations, including devices in non-OPP service.

OPS makes a similar allegation in Item 2 of the NOPV, stating that ANR violated section 192.731(a) by failing to test and inspect certain relief devices at the intervals specified in sections

⁷ Hearing Transcript at 11-100.

⁸ Hearing Transcript at 101-229.

⁹ Hearing Transcript at 230.

¹⁰ NOA at 1.

192.739(a) and 192.743(a).¹¹ In support of that allegation, OPS asserts that thermal relief devices for pressure vessels are subject to the testing requirements in sections 192.739(a) and 192.743(a) and should not be classified as non-maximum allowable operating pressure (MAOP) valves.¹² OPS proposes a compliance order for this item that would require ANR to inspect and test these relief valves within one year of the Final Order.¹³

Finally, OPS alleges in Item 1 of the NOPV that ANR violated section 192.707(a)(2) by failing to place and maintain line markers as close as practical over each buried transmission line to identify the location of the pipeline and reduce the possibility of damage or interference.¹⁴ OPS proposes a compliance order for this item that would require ANR to evaluate its rights-of-way at the locations identified in the Notice and install line markers in sufficient quantity and placement. OPS proposes 90 days to complete this work.

C. Summary Response and Request for Relief

PHMSA must withdraw the NOA and Item 2 of the NOPV. The thermal relief devices at issue in this proceeding are not subject to the inspection, testing, and capacity requirements in sections 192.731, 192.739, and 192.743. Those requirements only apply to devices that protect a compressor station or pipeline from exceeding MAOP as provided in sections 192.169 and 192.195 through 192.201. None of the thermal relief devices identified in the NOA and NOPV are used for that purpose. Rather, those devices are only used to protect pressure vessels from exceeding maximum allowable working pressure (MAWP) as determined in accordance with Section VIII of the 2007 edition of the ASME Boiler and Pressure Vessel Code (BPVC), the

¹¹ NOPV at 3.

¹² NOPV at 3-4-7.

¹³ NOPV at 7.

¹⁴ NOPV at 2.

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provisions of which are incorporated by reference into sections 192.153 and 192.165. Because the thermal relief devices in question are not used to provide MAOP overpressure protection under sections 192.169 or 192.195 through 192.201, the inspection, testing, and capacity requirements in sections 192.731, 192.739, and 192.743 do not apply as a matter of law.

Nor should those requirements be applied to the thermal relief identified in the NOA and NOPV for a variety of reasons. First, the overpressure protection requirements for pressure vessels in the BPVC and sections 192.153 and 192.165 are incompatible with the overpressure protection requirements for compressor stations and pipelines in sections 192.169 and 192.195 through 192.201. The former are based on the MAWP of the pressure vessel, and the latter are based on the MAOP of the pipeline. MAWP and MAOP are fundamentally different concepts, and those differences prohibit overpressure protection devices for pressure vessels from being treated the same as overpressure protection devices for compressor stations and pipelines under Part 192, including for purposes of the inspection, testing, and capacity requirements in sections 192.731, 192.739, and 192.743.

Thermal relief devices for pressure vessels are also functionally distinct from MAOP overpressure protection devices. The former devices only protect the pressure vessel itself and only when the pressure vessel is isolated from the pipeline. The latter devices protect the entire pipeline, including the pressure vessel, at all other times. Thermal relief devices for pressure vessels serve a very limited purpose and are redundant to the pipeline's primary MAOP overpressure protection devices. These functional differences further demonstrate that the inspection, testing, and capacity requirements in sections 192.731, 192.739, and 192.743 should not apply to thermal relief for pressure vessels.

OPS's evolving view of its own position does so as well. Initially, OPS insisted that the

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requirements in sections 192.731, 192.739, and 192.743 apply to thermal relief devices for pressure vessels without exception, and that the requirements in section 192.201 were not relevant in addressing that question, even though the latter requirements are incorporated by reference into the former regulations. When ANR challenged that position as conflicting with the plain text of the regulations, and presented evidence demonstrating that thermal relief devices for pressure vessels are incapable of complying with the requirements in section 192.201, OPS responded by stating that those requirements would not apply to such devices, either because of agency guidance documents, the rulemaking history, or as a matter of enforcement discretion. OPS's position, in other words, is entirely atextual and premised on regulatory language that either does not exist or which cannot be enforced.

As for Item 1 of the NOPV, PHMSA has previously acknowledged that the line-of-sight test does not apply in determining if the quantity of line markers is appropriate. Because OPS relied on that test in initiating this enforcement action, and ANR followed its O&M procedures when installing the line markers in question, PHMSA should convert the alleged section 192.707(a)(2) violation to a warning item.

III. Discussion and Argument

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OPS has the burden of proof, presentation, and persuasion in an enforcement proceeding¹⁵ and must satisfy that obligation with respect to each element of an alleged violation.¹⁶ To satisfy its burden of production, OPS must present sufficient evidence to sustain an allegation of violation.¹⁷ To meet its burden of persuasion, OPS must demonstrate that “the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent.”¹⁸ A respondent will prevail under this standard where its rebuttal evidence is more persuasive than the evidence provided by OPS.¹⁹ A respondent will also prevail if OPS fails to provide evidence of an element of the alleged violation, or if the evidence presented is in equipoise or equally balanced.²⁰

A. The thermal relief devices identified in the NOA and Item 2 of the NOPV are not

¹⁵ 49 U.S.C. § 60117(1)(F) (“requir[ing] that the agency have the burden of proof, presentation, and persuasion in any enforcement matter”); see *Schaffer v. West*, 546 U.S. 49, 56 (2005) (explaining that the burden of proof has “historically . . . encompassed two distinct burdens: the burden of production,’ i.e., which party bears the obligation to come forward with the evidence at different points in the proceeding and the ‘burden of persuasion,’ i.e., which party loses if the evidence is closely balanced”) (citing *Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Greenwich Collieries*, 512 U.S. 267, 272 (1994)); see also *In re Bridger Pipeline Co.*, Final Order, CPF No. 5-2007-5003, 2009 WL 7796887, at *1 (D.O.T. Apr. 2, 2009); *In re Air Products and Chemicals, Inc.*, Final Order, CPF No. 4-2013-1001, 2015 WL 6758819, at *3 (D.O.T. Aug. 10, 2015) (PHMSA did not meet its burden of proving a violation when it did not produce “any evidence to support its position”); *In re ExxonMobil Pipeline Co.*, Final Order, CPF No. 5-2013-5007, 2015 WL 780721, at *12 (D.O.T. Jan. 23, 2015) (PHMSA failed to meet its burden of proving that certain measures were required under regulations); *In re So. Star Central Gas Pipeline, Inc.*, Final Order, CPF No. 3-2008-1005, 2011 WL 7006614, at *4 (D.O.T. Oct. 21, 2011) (finding the evidence insufficient to sustain the allegation); *In re Golden Pass Pipeline, LLC*, CPF No. 4-2008-1017, 2011 WL 1919517, at *5 (D.O.T. Mar. 22, 2011) (PHMSA did not meet its burden of proving that its interpretation of regulatory language was correct); *In re Butte Pipeline Co.*, CPF No. 5-2007-5008, 2009 WL 3190794, at *1 (D.O.T. Aug. 17, 2009) (“PHMSA carries the burden of proving the allegations set forth in the Notice, meaning that a violation may be found only if the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent in its defense.”).

¹⁶ *In re ANR Pipeline Co.*, Final Order, CPF No. 3-2011-1011, 2012 WL 7177134, at *3 (D.O.T. Dec. 31, 2012); see also *In re CITGO Pipeline Co.*, Decision on Petition for Reconsideration, CPF No. 4-2007-5010, 2011 WL 7517716, at *5 (D.O.T. Dec. 29, 2011).

¹⁷ See, e.g., *In re EQT Corp.*, Final Order, CPF No. 1-2006-1006, 2010 WL 2228558, at **6-7 (D.O.T. May 13, 2010); *In re Plains Pipeline, L.P.*, Final Order, CPF No. 4-2009-5009, 2011 WL 1919520, at **4-5 (D.O.T. Mar. 15, 2011); *In re Bridger Pipeline Co.*, Decision on Petition for Reconsideration, CPF No. 5-2007-5003 2009, WL 2336991, at *5-6 (D.O.T. June 16, 2009).

¹⁸ *In re Butte Pipeline Co.*, 2009 WL 3190794, at * 1.

¹⁹ *In re ANR Pipeline Co.*, 2012 WL 717134, at *3. In *ANR Pipeline*, PHMSA found that ANR’s “plausible” explanation regarding the discovery of a reportable condition on its pipeline was sufficient to warrant withdrawal of the allegation of violation because the “Violation Report contain[ed] no evidence which would rebut ANR’s argument.”

²⁰ *In re Alyeska Pipeline Serv. Co.*, 2009 WL 5538655 at * 3, (quoting *Schaeffer*, 546 U.S. at 56). Cf. *In re Buckeye Partners, LP*, CPF No. 1-2009-5002, 2012 WL 3144486, at *7 (D.O.T. May 30, 2012) (where neither party “present[s] sufficient proof to prove its position,” the violation must be withdrawn because PHMSA bears the burden).

subject to the inspection, testing, and capacity requirements in sections 192.731, 192.739, and 192.743.

The allegations in the NOA and Item 2 of the NOPV turn on the proper application of several regulations in 49 C.F.R. Part 192. Those regulations include (1) section 192.731, which prescribes requirements for the inspection and testing of relief devices at compressor stations; (2) section 192.739, which prescribes requirements for the inspection and testing of pressure limiting stations, relief devices, and pressure regulating stations; (3) section 192.743, which prescribes requirements for the capacity of pressure relief devices at pressure limiting stations and pressure regulating stations; and (4) section 192.201, which prescribes capacity requirements for pressure relieving stations and pressure limiting stations and is incorporated by reference into sections 192.731, 192.739, and 192.743. Other relevant regulations include (1) section 192.169, which requires compressor stations to have MAOP overpressure protection devices; (2) section 192.195, which prescribes general and additional requirements for MAOP overpressure protection devices; and (3) section 192.199, which establishes requirements for the design of pressure relief and limiting devices.²¹

1. The traditional rules of construction make clear that the inspection, testing, and capacity requirements in sections 192.731, 192.739, and 192.743 only apply to MAOP overpressure protection devices.

As the U.S. Supreme Court has explained, “all [of] the ‘traditional tools’ of construction” apply—and “must [be] exhaust[ed]”—in interpreting the meaning of a regulation.²² Moreover, if the traditional tools reveal that “there is only one reasonable construction of a regulation”, that

²¹ See Hearing Transcript at 101-229; TC Energy Informal Hearing Presentation, CPF No. 1-2023-046-NOA, CPF No. 1-2023-047-NOPV, 1-93 (Jul. 10, 2024) (hereinafter “Hearing Presentation”).

²² *Kisor v. Wilkie*, 139 S.Ct. 2,400, 2,415 (2019); see also *Texas v. United States Env’t Prot. Agency*, 91 F.4th 280, 295 (5th Cir. 2024).

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meaning “must [be] give[n] . . . effect.”²³ For to do otherwise “would ‘permit the agency, under the guise of interpreting a regulation, to create de facto a new regulation.’”²⁴ In this case, the traditional tools of construction make clear that the inspection, testing, and capacity requirements in sections 192.731, 192.739, and 192.743 only apply to relief devices that protect a compressor station or pipeline from exceeding MAOP under section 192.169 and sections 192.195 through 192.201.²⁵

Starting with the text, sections 192.731, 192.739, and 192.743 expressly incorporate the requirements in section 192.201(a) by reference.²⁶ Section 192.201 is the last in a series of regulations that addresses the installation, design, and capacity of relief devices that provide MAOP overpressure protection.²⁷ By explicitly referencing section 192.201(a), the plain text of the regulations supports the conclusion that the requirements in sections 192.731, 192.739, and 192.743 only apply to relief devices that prevent a compressor station or pipeline from exceeding MAOP.²⁸ Section 192.739(b)’s explicit reference to the MAOP requirements in 49 C.F.R. § 192.619(c) does so as well.²⁹

Other regulations in Part 192 support the foregoing construction. Section 192.169(a), for example, includes specific requirements for the use of “pressure relief or other suitable protective devices” at compressor stations.³⁰ Like section 192.739(b), section 192.169(a) refers to MAOP in

²³ *Kisor v. Wilkie*, 139 S.Ct. at 2,415.

²⁴ *Id.* (citing *Christensen*, 529 U.S. at 588, 120 S.Ct. 1,655).

²⁵ See Hearing Transcript at 101-229; Hearing Presentation at 1-93.

²⁶ See Hearing Transcript at 102-171; Hearing Presentation at 3, 4, 10, 27, 39-40, 76-82. Section 192.201(a) is directly incorporated by reference into sections 192.739 and 192.743. Section 192.201(a) is also incorporated by reference into section 192.731(a) by virtue of the latter regulation’s incorporation of the requirements in sections 192.739 and 192.743 by reference.

²⁷ See Hearing Transcript at 102-171; Hearing Presentation at 3, 4, 10, 27, 39-40, 76-82.

²⁸ See Hearing Transcript at 102-171; Hearing Presentation at 3, 4, 10, 27, 39-40, 76-82.

²⁹ 49 C.F.R. § 192.739 (prescribing control or relief limits for steel pipelines with an MAOP established under the grandfather clause in 49 C.F.R. § 192.619(c))

³⁰ See Hearing Transcript at 102-171; Hearing presentation at 4, 8, 10, 40-42, 47, 56, 89.

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articulating the pressure that is being protected by these devices.³¹ And like section 192.201, section 192.169(a) requires that such devices have “sufficient capacity and sensitivity to ensure that the [MAOP] of the station piping and equipment is not exceeded by” a prescribed amount.³² The specific MAOP overpressure protection requirements for compressor stations in section 192.169 are consistent with the conclusion that the requirements in sections 192.731, 192.739, and 192.743 only apply to such devices.

The regulations in Part 192 for the design, fabrication, and testing of pressure vessels point in the same direction.³³ Those requirements are prescribed in sections 192.153 and 192.165, both of which incorporate the provisions in Section VIII of the BPVC by reference.³⁴ Unlike sections 192.169 and 192.195 through 192.201, the BPVC does not address relief devices that protect the MAOP of a compressor station or pipeline.³⁵ The BPVC only addresses relief devices that protect the MAWP of the pressure vessel itself.³⁶ And unlike section 192.201(a), the provisions of which are incorporated by reference into 192.731, 192.739, and 192.743, the BPVC does not require relief devices to have the capacity or be set to relieve at MAOP.³⁷ The BPVC only requires that relief devices have the capacity and be set to relieve at the MAWP of the pressure vessel.³⁸ The requirements in Part 192 for pressure vessels provide further support for the result that is obvious from the plain text, *i.e.*, that the inspection, testing, and capacity requirements in sections 192.731, 192.739, and 192.743 only apply to relief devices that provide MAOP overpressure protection for

³¹ See Hearing Transcript at 102-171; Hearing presentation at 4, 8, 10, 40-42, 47, 56, 89.

³² See Hearing Transcript at 102-171; Hearing presentation at 4, 8, 10, 40-42, 47, 56, 89.

³³ See Hearing Transcript at 102-219; Hearing Presentation at 4, 7-93.

³⁴ See Hearing Transcript at 102-219; Hearing Presentation at 4, 7-93.

³⁵ See Hearing Transcript at 102-219; Hearing Presentation at 4, 7-93.

³⁶ See Hearing Transcript at 102-219; Hearing Presentation at 4, 7-93.

³⁷ See Hearing Transcript at 102-219; Hearing Presentation at 4, 7-93.

³⁸ See Hearing Transcript at 102-219; Hearing Presentation at 4, 7-93.

compressor stations and pipelines under section 192.169 and sections 192.195 through 192.201.

The purpose of the relevant regulations supports that conclusion, too. MAOP overpressure protection devices perform a critical safety function for the entire pipeline system.³⁹ Pipelines that exceed MAOP are more likely to fail or rupture, which is why sections 192.169 and 192.195 through 192.201 prescribe detailed requirements for installing, designing, and determining the capacity of MAOP overpressure protection devices. It is also why sections 192.731, 192.739, and 192.743 prescribe detailed requirements for inspecting, testing, and determining the capacity of these devices on an annual basis. Thermal relief devices for pressure vessels serve a far more limited purpose.⁴⁰ They are only used to prevent the pressure vessel from exceeding MAWP and only perform that function when the pressure vessel is isolated from the pipeline.⁴¹ The MAOP overpressure protection devices for the pipeline protect the pressure vessel at all other times.⁴² Because thermal relief devices are not a primary form of overpressure protection, either for the pressure vessel itself or the broader pipeline system, there is no reason to apply the inspection, testing, and capacity requirements in sections 192.731, 192.739, and 192.743 to those devices.

2. OPS's arguments for applying the inspection, testing, and capacity requirements in sections 192.731, 192.739, and 192.743 to MAWP overpressure protection devices are entirely unpersuasive.

OPS's arguments for applying sections 192.731, 192.739, and 192.743 to thermal relief devices for pressure vessels are nothing more than an unlawful effort to create a de facto set of new regulations.⁴³ OPS's view on the applicability of the regulations to different types of overpressure protection devices proves the point. OPS acknowledges that the inspection, testing,

³⁹ See Hearing Transcript at 102-219; Hearing Presentation at 29-31, 47, 56.

⁴⁰ See Hearing Transcript at 102-219; Hearing Presentation at 15, 33, 39-41, 69, 93.

⁴¹ See Hearing Transcript at 102-219; Hearing Presentation at 15, 33, 39-41, 69, 93.

⁴² See Hearing Transcript at 102-219; Hearing Presentation at 29-31, 47, 54, 56.

⁴³ *Kisor v. Wilkie*, 139 S.Ct. at 2,415.

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and capacity requirements in sections 192.731, 192.739, and 192.743 apply to MAOP overpressure protection devices, and that those devices must comply with the capacity and operating set point requirements in section 192.201(a). OPS also insists that the requirements in sections 192.731, 192.739, and 192.743 apply to MAWP overpressure protection devices without exception⁴⁴—except, of course, for the exceptions that are necessary to avoid the absurd results that follow from its own position.⁴⁵

OPS says, for example, that MAWP overpressure protection devices for pressure vessels are not subject to the capacity and operating set point requirements in section 192.201(a), even though those requirements are incorporated by reference into sections 192.731, 192.739, and 192.743.⁴⁶ OPS's support for that unwritten exception—which is necessary because thermal relief devices for pressure vessels are incapable of complying with the capacity and operating set point requirements in section 192.201(a)—are guidance documents, the rulemaking history, and exercises of enforcement discretion.⁴⁷ In other words, OPS's response to being confronted with evidence that its interpretation imposes an impossible compliance obligation is not to revisit the merits of that position.⁴⁸ It is to rely on atextual sources of authority to rewrite the regulation.⁴⁹ If those are the rules of construction that apply to Part 192, one wonders why OPS even bothers to issue regulations at all.⁵⁰

Prior PHMSA precedent undermines OPS's position in this case as well. For example,

⁴⁴ Hearing Transcript at 42 (“This code section says each pressure relieving device without exception other than the pressure disc must be inspected in accordance with these other two sections that it refers to.”).

⁴⁵ See Hearing Transcript at 81-89, 169-171, 192-194, 229.

⁴⁶ See Hearing Transcript at 81-89, 169-171, 192-194, 229.

⁴⁷ See Hearing Transcript at 81-89, 169-171, 192-194, 229.

⁴⁸ See Hearing Transcript at 81-89, 169-171, 192-194, 229.

⁴⁹ See Hearing Transcript at 81-89, 169-171, 192-194, 229.

⁵⁰ See Hearing Transcript at 81-89, 169-171, 192-194, 229; see also *Univ. of Texas M.D. Anderson Cancer Ctr. v. United States Dep't of Health & Hum. Servs.*, 985 F.3d 472, 478-479 (5th Cir. 2021) (rejecting agency's construction of a regulation).

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PHMSA has said that the requirements in sections 192.739 do not apply to relief devices that only protect end-use equipment,⁵¹ and that the requirements in sections 192.739 and 192.743 do not apply to back-up or secondary overpressure protection devices.⁵² Indeed, PHMSA previously withdrew an alleged violation of section 192.731 in a case brought against another TC Energy entity because the device in question only provided secondary or back-up overpressure protection for a compressor station.⁵³ Thermal relief devices for pressure vessels fit easily within these prior PHMSA precedents, *i.e.*, they only protect a particular piece of end-use equipment and are secondary to the primary MAOP overpressure protection devices for the pipeline. The requirements in sections 192.731, 192.739, and 192.743 should not apply here for the same reasons.⁵⁴

⁵¹ PHMSA Letter of Interpretation to Martin Schwoeble, PI-04-0101 (Jan. 22, 2004).

⁵² *In the Matter of Dominion Transmission, Inc.*, CPF No. 1-2009-1006, Final Order (Dec. 30, 2010) at 5-6. In this case, PHMSA concluded that a fuel gas bypass relief valve, personally operated by company employees, was a secondary form of protection not covered by the testing and inspection requirements of section 192.739. In a subsequent decision on reconsideration, PHMSA clarified that where a second “monitor” regulator, pilot-operated shutoff valve, or high-pressure shutdown switch existed, these additional relief valves were not subject to sections 192.731, 192.739, or 192.743. *In the Matter of Dominion Transmission, Inc.*, CPF No. 1-2009-1006, Decision (Oct. 13, 2011) at 4.

⁵³ *In the Matter of Great Lakes Gas Transmission*, CPF No. 3-2019-1003 (Jan. 25, 2021) at 3. OPS’s attempt to distinguish this case as involving section 192.731(c), rather than section 192.731(a), is entirely unpersuasive. *See* Hearing Transcript at 162-163. There is nothing in the text of section 192.731 to suggest that back-up or secondary devices should be treated differently under these two provisions. Nor has OPS offered any explanation or evidence that would support such differential treatment. *See, e.g., Univ. of Texas M.D. Anderson Cancer Ctr. v. United States Dep’t of Health & Hum. Servs.*, 985 F.3d 472, 479-480 (5th Cir. 2021) (noting that “one of the most remarkable aspects of the [administrative law judge’s] order is its insistence that the Government can arbitrarily and capriciously enforce . . . rules against some covered entities and not others” and explaining that such a position violates “a bedrock principle of administrative law that an agency must ‘treat like cases alike’”); *Lilliputian Sys., Inc. v. PHMSA*, 741 F.3d 1309, 1313 (D.C. Cir. 2014) (“As a general matter, an agency cannot treat similarly situated entities differently unless it support[s] th[e] disparate treatment with a reasoned explanation and substantial evidence in the record.” (citation and quotation marks omitted)).

⁵⁴ OPS relies heavily on a 2018 letter of interpretation issued to the Michigan Public Service Commission (MPSC) to support its position in this case. PHMSA Letter of Interpretation to Mr. David J. Chislea, PI-18-0010 (Oct. 4, 2018). ANR notes that OPS did not provide any analysis of the text, structure, purpose, or history of the relevant regulations in that interpretation. Nor did OPS address any of the numerous authorities that the MPSC cited in its original request, including agency guidance and enforcement cases dating back to 1977. Finally, OPS did not follow or even acknowledge that interpretation in deciding *In the Matter of Great Lakes Gas Transmission*, CPF No. 3-2019-1003 (Jan. 25, 2021) at 3. No deference should be afforded to OPS’s 2018 interpretation in these circumstances. *See, e.g., Kisior v. Wilkie*, 139 S.Ct. at 2,417-2,418.

Finally, OPS's position seeks to impose significant new compliance burdens outside the context of a notice-and-comment rulemaking proceeding. ANR presented evidence at the Hearing demonstrating that the additional cost of performing annual inspections of MAWP overpressure protection devices would be approximately \$462,805 per year, and that these inspections would increase methane emissions.⁵⁵ ANR also presented evidence demonstrating that the additional inspections would expose personnel to unnecessary risk and result in further unquantified impacts and expenses, particularly if MAWP overpressure protection devices are subject to the same capacity and operating pressure limitations that apply to MAOP overpressure protection devices.⁵⁶ OPS cannot pretend that these new burdens do not exist by hiding behind guidance documents, statements in the rulemaking history, or exercises of enforcement discretion.

B. ANR's procedures and practices for the inspection, testing, and capacity of MAWP overpressure protection devices for pressure vessels comply with the BPVC and sections 192.153 and 192.165.

The requirements in Part 192 for the design, fabrication, and testing of pressure vessels are prescribed in sections 192.153 and 192.165.⁵⁷ Both of the latter regulations incorporate the provisions in Section VIII of the BPVC by reference, including the overpressure protection requirements in paragraphs UG-125 through UG-137.⁵⁸ As explained in these paragraphs, the BPVC requires pressure vessels to have relief devices and provides further requirements for the selection, certification, and installation of these devices.⁵⁹ The MAWP of the pressure vessel is used in determining the capacity and operating set points for overpressure protection devices under

⁵⁵ See Hearing Transcript at 156-158; Hearing Presentation at 84-86.

⁵⁶ See Hearing Transcript at 156-158; Hearing Presentation at 84-86.

⁵⁷ See Hearing Transcript at 101-219; Hearing Presentation at 12-27, 32-47.

⁵⁸ See Hearing Transcript at 105-162, 177-186; Hearing Presentation at 12-27, 32-47.

⁵⁹ See Hearing Transcript at 177-186; Hearing Presentation at 12-27.

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DRAFT

the BPVC.⁶⁰

While not addressed in the BPVC, other recognized and generally accepted industry standards provide guidance for determining the appropriate interval for inspecting and testing overpressure protection devices for pressure vessels.⁶¹ One standard that is commonly applied for these purposes is the National Board Inspection Code (NBIC), Part 4, Section 3.⁶² Another is API Recommended Practice 576, Inspection of Pressure-relieving Devices, paragraph 6.⁶³ Neither of these standards require overpressure protection devices to be inspected and tested on an annual basis. Rather, as ANR's two expert witnesses, Mr. John Swezy and Mr. Everett Chatham, testified at the Hearing, inspections and testing of thermal relief devices on pressure vessels occur on a three-year cycle or even longer depending on the nature of the service under the NBIC and API 576.⁶⁴

ANR's O&M procedures require thermal relief devices for pressure vessels to be inspected and tested at 3-year intervals.⁶⁵ Mr. Swezy and Mr. Chatham both testified that the 3-year interval in ANR's O&M procedures was safe and consistent with generally accepted industry standards and practices, including the provisions in the NBIC and API 576.⁶⁶ OPS did not offer any rebuttal testimony on that point.⁶⁷ Accordingly, the unrebutted evidence of record demonstrates that ANR's O&M procedures comply with the requirements in sections 192.153 and 192.165 and the provisions in in Section VIII of the BPVC.

⁶⁰ See Hearing Transcript at 177-186, 200-202; Hearing Presentation at 12-27.

⁶¹ See Hearing Transcript at 186-200; 213-217.

⁶² See Hearing Transcript at 186-200. ANR included excerpts from the 2021 edition of the NBIC in its pre-hearing disclosures.

⁶³ See Hearing Transcript at 213-217. ANR included copies of the First, Second, and Fourth editions of API 576 in its pre-hearing disclosures.

⁶⁴ See Hearing Transcript at 186-200; 213-217.

⁶⁵ See Hearing Presentation at 42-47.

⁶⁶ See Hearing Transcript at 200, 202-203, 218.

⁶⁷ See Hearing Transcript at 173-219.

C. The alleged violation of the line marker requirements in Item 1 of the NOPV should be converted to a warning.

OPS alleged that ANR had violated section 192.707(a)(2) by not placing line markers “wherever necessary to identify the location of the transmission line.”⁶⁸ OPS’s cited evidence was limited to field observations occurring between September 19, 2022, and September 30, 2022. In the Notice and Violation Report, OPS stated that its inspector was “unable to observe or ascertain the approximate location of the pipeline facilities by way of pipeline markers” at Inspection Unit #s 2002, 1062, and 1052.⁶⁹ The evidence was limited to pictures and the inspector’s statement that he did not see any line markers where he was standing⁷⁰ and no pipeline markers were “visible through uncultivated lands or at the tree lines where it may be practical to mark the line of sight of the pipelines to aid [the] existing damage prevention program.”⁷¹

OPS has alleged a violation of section 192.707(a)(2) as a result of the application of the line-of-sight test. PHMSA previously withdrew a series of enforcement cases that relied on a line-of-sight test several years ago.⁷² In so doing, PHMSA acknowledged that a line-of-sight test was not expressly required by regulation and would create confusion among operators.⁷³ PHMSA acknowledged in those cases that while some operators employed a line-of-sight test to install line

⁶⁸ NOPV at 2.

⁶⁹ NOPV at 2-3. OPS also stated in the NOPV and Violation Report that “[s]pecific instances of failure for ANR to place pipeline markers as described by § 192.707(d) were noted...” NOPV at 2. While OPS explained in a footnote that section 192.707(d) lays out the requirements for the content on a line marker (name of product transported, size of letters, etc.), OPS did not list section 192.707(d) in the probable violations. Therefore, the reference to section 192.707(d) should be ignored.

⁷⁰ Violation Report at 5.

⁷¹ Violation Report at 5 (emphasis added).

⁷² *In the Matter of Enterprise Products Operating, LLC*, CPF No. 4-2007-5015, Final Order (Dec. 2, 2009) at 9; *In the Matter of BP Pipelines (North America), Inc.*, CPF No. 4-2007-5003, Final Order (July 19, 2010) at 9; *In the Matter of Kinder Morgan CO2 Company*, CPF No. 4-2006-5003, Final Order (Oct. 12, 2010) at 2. *In the Matter of CITGO Petroleum Corp.*, CPF No. 4-2007-5010, Final Order (Apr. 14, 2011) at 5.

⁷³ *Id.*

markers, others did not.⁷⁴ PHMSA has also determined that “the regulations for line marking do not establish a uniform distance between markers along every pipeline.”⁷⁵ The regulations allow operators to have flexibility to mark their pipelines as long as the selected placement is sufficient to identify the location of the pipeline.⁷⁶

ANR has line markers at Inspection Unit #s 2002, 1062, and 1052. Several are depicted in OPS’s pictures in the Violation Report.⁷⁷ These line markers were installed at public roadways and where the pipeline enters the fenced area in accordance with ANR’s O&M procedures. ANR consistently reviews the placement of its line markers as part of right-of-way maintenance and clearing projects. As part of this process, ANR installed additional line markers at these unit #s prior to the issuance of the NOPV. ANR requests that PHMSA withdraw Item 1 and convert this allegation to a warning recognizing that there is flexibility in placing line markers, the Company immediately installed additional line markers after the inspection, and the fact that the Agency has issued warnings and not violations in similar cases.⁷⁸

IV. Right to Supplement

ANR reserves the right to supplement its positions based on any arguments discussed at the hearing or provided by OPS in this case.

V. Conclusion

⁷⁴ *Id.* See also Part 195 Operations and Maintenance Enforcement Guidance, <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/regulatory-compliance/pipeline/enforcement/5781/o-m-enforcement-guidance-part-195-7-21-2017.pdf> at 49 (citing *In the Matter of Kinder Morgan CO2 Company*, CPF No. 4-2006-5003, Final Order (Oct. 12, 2010), for the proposition that the line marker requirements in 49 C.F.R. § 195.410 do not need to satisfy the line-of-sight test).

⁷⁵ *In the Matter of El Paso Natural Gas Co., LLC*, CPF No. 5-2013-1012 (Apr. 3, 2015) citing *Magellan Pipeline Co., LP*, CPF No. 4-2012-5010 (Sept. 2, 2014).

⁷⁶ *In the Matter of El Paso Natural Gas Co., LLC*, CPF No. 5-2013-1012 (Apr. 3, 2015) at 4.

⁷⁷ See Violation Report, Exhibit A (pages 1-4).

⁷⁸ See *Texas Eastern*, CPF No. 4-2012-1009 (Dec. 21, 2012).

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Based on the foregoing, ANR respectfully requests a withdrawal of the Notice of Amendment and Item 2 of the Notice of Probable Violation, and conversion of Item 1 of the NOPV to a warning.

Respectfully submitted this 9th day of August, 2024



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