



Kinder Morgan
Utopia LLC

a Kinder Morgan operated company

June 23, 2021

U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Gregory A. Ochs
Director, Central Region, OPS
901 Locust Street, Suite 480
Kansas City, MO 64106

Re: CPF 3-2021-042-NOPV

Dear Director Ochs:

On May 24, 2021, Kinder Morgan Utopia LLC (KM Utopia or the 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 or the Agency). PHMSA issued the NOPV following an inspection of KM Utopia's pipeline system in Ohio and Michigan. After inspecting these systems, PHMSA provided a post-inspection written preliminary finding report on December 19, 2019 (Post Inspection Report) to which Utopia provided written responses and additional documents to address the Agency's concerns. The NOPV alleges four probable violations, two of which are listed as warning items (Items 1 and 3), one of which is associated with a proposed civil penalty of \$17,200 (Item 2), and the remaining of which is associated with PCO obligations (Item 4). KM Utopia is timely filing this response to the NOPV pursuant to 49 C.F.R. § 190.208(a)(3).

In the spirit of cooperation, KM Utopia is willing to accept, without admission, alleged violations Items 1 and 4 and the PCO obligations associated with Item 4. KM Utopia contests Item 2, however, including the associated proposed civil penalty, and Item 3. As explained further below, because the Company has all of the relevant records that were identified in Item 2, it respectfully requests that PHMSA reduce this alleged violation to a warning item without a penalty. With respect to Item 3, KM Utopia believes that this alleged violation is based on a misunderstanding of the Company's procedures and requests that PHMSA withdraw the alleged warning item because no violation occurred.

For convenience, PHMSA's alleged violations are restated below in full and KM Utopia's responses are provided thereafter.



PHMSA NOPV Item 1

§ 195.49 Annual report.

Each operator must annually complete and submit DOT Form PHMSA F 7000-1.1 for each type of hazardous liquid pipeline facility operated at the end of the previous year. An operator must submit the annual report by June 15 each year, except that for the 2010 reporting year the report must be submitted by August 15, 2011. A separate report is required for crude oil, HVL (including anhydrous ammonia), petroleum products, carbon dioxide pipelines, and fuel grade ethanol pipelines. For each state a pipeline traverses, an operator must separately complete those sections on the form requiring information to be reported for each state.

KM Utopia failed to submit an annual report in 2019 with accurate HCA-related mileage as required by § 195.49 and the DOT Form PHMSA F 7000-1.1 instructions. The pipeline was operational in 2018. The initial annual report filed with PHMSA on June 10, 2019, indicated 0 miles of HCA-related pipeline in Ohio. However, documents provided by KM Utopia during the inspection indicated HCA-related mileage in Ohio (“2017 Utopia HVL HCA & EFRD Analysis” and “2017 KMEP Utopia HCA Results”).

Further, the revised 2019 annual report (submitted for 2018 assets), filed with PHMSA on February 5, 2020, reported no commercially navigable river crossing mileage yet the pipeline crosses the Detroit River, which is a commercially navigable river.

PHMSA recognizes that, after the inspection, KM Utopia corrected and amended its HCA mileage in its annual report. However, at the time of the inspection, KM Utopia had failed to accurately identify its HCA mileage. Moreover, KM Utopia still failed to correctly identify the Detroit River as a commercially navigable water crossing even in its revised submittal.

Therefore, KM Utopia failed to comply with the DOT Form PHMSA F 7000-1.1 instructions as required under § 195.49.

Response to PHMSA NOPV Item 1:

KM Utopia does not contest this alleged violation. KM Utopia regrets the error in reporting with respect to the high consequence area (HCA) mileage in Ohio and, as recognized by PHMSA, the Company corrected and amended the 2018 annual report to properly include this mileage. To address PHMSA’s concern related to the Detroit River, KM Utopia also



updated the commercially navigable waterway HCA mileage for Michigan in its 2020 annual report, submitted to PHMSA on June 15, 2021, and submitted supplemental reports to PHMSA for 2018 and 2019 on June 16, 2021 that included the updated mileage.

PHMSA NOPV Item 2.

§ 195.310 Records.

(a) A record must be made of each pressure test required by this subpart, and the record of the latest test must be retained as long as the facility tested is in use.

KM Utopia failed to have pressure test records for PHMSA Unit 84290 and KM Utopia pipeline segments 1b and 2ab, as required by § 195.310. Under § 195.310(a), each operator must make a record of each pressure test, and retain that record for as long as the facility is in use. Section 195.310(b) identifies what the operator must include in the required record. The record must include:

- (1) The pressure recording charts;
- (2) Test instrument calibration data;
- (3) The name of the operator, the name of the person responsible for making the test, and the name of the test company used, if any;
- (4) The date and time of the test;
- (5) The minimum test pressure;
- (6) The test medium;
- (7) A description of the facility tested and the test apparatus;
- (8) An explanation of any pressure discontinuities, including test failures, that appear on the pressure recording charts;
- (9) Where elevation differences in the section under test exceed 100 feet (30 meters), a profile of the pipeline that shows the elevation and test sites over the entire length of the test section; and
- (10) Temperature of the test medium or pipe during the test period.

PHMSA reviewed the hydrostatic test records for the KM Utopia Pipeline segment 1b (Station 980+00 to 2207+04) and segment 2ab (Station 2207+04 to 3522+00) and determined that these records did not contain the required information. The temperature recorder calibration certificates and associated records were missing for segment 1b and the pressure recorder calibration certificates and associated records were missing for segment 2ab.



Further, KM Utopia's records titled, "Hydrotest Test Report" for KM Utopia segments 1a, 1b, 2ab, 2c, 2d, 2e1, and 2e2 were incomplete. The records did not identify in the data fields titled, "Description of Test Apparatus", the serial numbers of the deadweight tester, pressure and temperature chart recorder, as outlined on the form, and as required by KM Utopia's procedure L-O&M1600 Section 8.1e. KM Utopia's records for segments 2c, 2d, 2e1, and 2e2 indicated the use of a pressure recorder, but the operator did not provide the corresponding pressure calibration records (3613 recorder). Without confirmation of how KM Utopia configured this pressure recorder in the description of the test apparatus, PHMSA cannot confirm that KM Utopia used the 3613 pressure recording equipment only as a backup piece of pressure recording equipment.

Response to PHMSA NOPV Item 2:

KM Utopia contests PHMSA's allegations in Item 2 because the Company maintained the relevant pressure testing documentation at the time of the inspection, except for one document that the pressure testing vendor inadvertently did not provide. The relevant hydrotest documents are summarized in Attachment A and then included in Attachments B-H. At the time of the inspection, KM Utopia maintained pressure recorder calibration certificates for segment 2ab, see Attachment D, and corresponding pressure calibration records (3613 recorder) related to segments 2c, 2d, 2e1, and 2e2, see Attachments E, F, G and H. Additionally, KM Utopia's records provide the serial numbers of the deadweight tester, pressure and temperature chart recorder for segments 1a, 1b, 2ab, 2c, 2d, 2e1, and 2e2. Although this information was not included on KM Utopia's Hydrostatic Test Report form, this information is included in attached documents. See Attachments B, C, D, E, F, G, and H. These records comply with the requirements of 49 C.F.R. § 195.310 and are attached to this response for the Agency's review. Any failure to provide these records to PHMSA during the inspection was inadvertent.

In its Post Inspection Report, PHMSA identified issues with the records relevant to segment 1b, but the Agency did not specifically identify deficiencies relevant to other pipeline segments. Instead, PHMSA only generally referenced the Hydrostatic Test Reports and noted that some of the records may have been missing calibration certificates. In an effort to address PHMSA's concern, KM Utopia provided records pertaining to segment 1b and offered to make additional official hydrotest records available for PHMSA's review. If PHMSA had more specifically identified concerns with the records provided, KM Utopia would have been able to demonstrate how a majority of the requested information was contained in records either already provided to the Agency or in KM Utopia's possession.

With respect to segment 1b, KM Utopia provided what it believed to be the full set of documents requested by the Agency in the Post Inspection Report. It was not until after



receiving the NOPV that KM Utopia discovered that the pressure testing vendor did not include the temperature recorder calibration certificate for segment 1b in the documentation provided to the Company. KM Utopia has since obtained a copy of this record, which is attached to the response. See Attachment C at 13.

At the time of the inspection, PHMSA noted that the alleged incomplete hydrostatic test records only “minimally affected [safety] because the hydrostatic test records had at least one pressure chart recorder that had a calibration certificate.” See Pipeline Safety Violation Report at 14. Given that PHMSA recognized that this alleged violation only had a minimal impact on safety and that KM Utopia had all but one of the required records in its possession at the time of the inspection and has since obtained the information that was inadvertently not included in the documentation provided to the Company by a third party vendor, KM Utopia requests that PHMSA reduce this alleged violation to a warning item without a penalty.

KM Utopia believes that the discrepancies at issue in the NOPV allegation should have been issued as a warning item and that the Agency has not appropriately considered the statutory and regulatory civil penalty factors required by the Pipeline Safety Act and 49 C.F.R. Part 190 to issue a penalty. Specifically, the penalty factors of nature, gravity, and other matters as justice do not support a penalty because: (1) this is an alleged recordkeeping violation; (2) where pipeline safety and integrity was not affected; (3) the documents existed at the time of the inspection; (4) all but one of the documents were in KM Utopia’s possession at that time of the inspection; (5) the Post Inspection Report did not expressly identify all of the alleged deficiencies cited in the NOPV; and (6) all of the documents, including the one inadvertently missing document, are being provided with this response. KM Utopia made a good faith effort to respond to PHMSA’s inspection inquiries and Post Inspection Report and to provide all of the relevant documents to the Agency. Based on this good faith effort and the minimal impact on pipeline safety and integrity, KM Utopia requests that PHMSA withdraw this Item.

PHMSA NOPV Item 3.

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(a) General. Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies...

KM Utopia did not follow its written procedures, as required under § 195.402(a), by failing to conduct the 2018 annual review under L-O&M-003 titled “Procedure Review” and its Emergency Response Plan. Specifically, Kinder Morgan’s procedure L-O&M-



003 states in Section 2 Scope, "This procedure outlines the process for the review of the operations and maintenance, abnormal operations, and emergency procedures. Starting in Calendar year 2018, this annual review process will include site specific procedures." Under KM Utopia's procedures, the operator was to begin the annual review process in 2018.

KM Utopia's Emergency Response Plan, "Kinder Morgan Utopia LLC/LTD Pipeline" (Emergency Response Plan) states in Section 1.4, Plan Review and Update Procedures, that KM Utopia must review the plan once each calendar year, at intervals not to exceed 15 months. The Emergency Response Plan was created in October 2017 and the Utopia Pipeline system became operational in January 2018.

PHMSA requested all versions of the Emergency Response Plan from 2017, to 2019, including any revision logs. KM Utopia's revision log for the Emergency Response plan, as well as other responses from Kinder Morgan, did not include any documentation that the operator conducted a review of the Emergency Response Plan in 2018, as required by KM Utopia's procedures.

Response to PHMSA NOPV Item 3:

KM Utopia contests this alleged violation. PHMSA's alleged violation mischaracterizes the requirements of KM Utopia's L-O&M 003 procedure and the requirements of 49 C.F.R. § 195.402. KM Utopia's L-O&M 003 procedure provides that, "starting in 2018," KM Utopia will begin to implement an annual review of its procedures that will occur during "each calendar year, not to exceed 15 months." By starting its annual review process in 2018, when the KM Utopia pipelines at issue were placed into service, KM Utopia's review of its procedure would not be due to be completed until 2019 – the same year that KM Utopia properly conducted its annual review as required by its procedures.

Moreover, the KM Utopia's procedures at issue, much like the federal pipeline safety operation and maintenance regulations, do not apply to a pipeline system until that pipeline becomes operational. See 49 C.F.R. § 195.402(a) ("This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence[.]") (emphasis added); see also 49 C.F.R. § 195.0 ("This part prescribes safety standards and reporting requirements for pipeline facilities used in the transportation of hazardous liquids[.]").

In this instance, KM Utopia created an Emergency Response Plan in 2017 as a proactive measure, but it did not begin operating its pipeline system until January 2018. An



effectiveness review in 2018 would be a meaningless exercise and contrary to the intent of the regulation if Kinder Morgan evaluated a procedure that had not yet been implemented or that had just been implemented. KM Utopia's obligation under L-O&M 003 procedure, which provides for an annual review that is to be conducted at intervals not to exceed 15 months, began on the date that the pipeline became operational and a review of its procedures was not required until 2019. PHMSA does not dispute that KM Utopia properly conducted a review of its procedures in 2019.

Given that KM Utopia properly conducted a review of its procedures, including its Emergency Response Plan, in 2019, as provided in L-O&M 003, PHMSA has failed to demonstrate that KM Utopia violated 49 C.F.R. § 195.402. As such, KM Utopia requests that PHMSA withdraw this alleged violation.

PHMSA NOPV Item 4.

§ 195.412 Inspection of rights-of-way and crossings under navigable waters.

(a) Each operator shall, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each pipeline right-of-way. Methods of inspection include walking, driving, flying or other appropriate means of traversing the right-of-way.

KM Utopia failed to use appropriate methods to inspect the surface conditions on or adjacent to each pipeline right-of-way as required by § 195.412(a).

PHMSA reviewed information regarding Kinder Morgan's aerial patrols including the stretch of canopy near Ridge Road and Strasburg Bolivar Road located in PHMSA Unit 84290. The operator responded to PHMSA that this area is considered Protected Wilderness Tract and no clearing is allowed. The operator did not provide any records indicating it employed any other appropriate methods to inspect the surface conditions on or adjacent to the pipeline right-of-way.

In addition, PHMSA inspectors walked portions of the right-of-way and observed conditions for the following locations associated PHMSA Unit 89739:

- At Sandusky River crossing, tree canopy and/or vegetation was overgrown.
- At Wolfe Creek crossing, (near MBV 153), tree canopy and/or vegetation was overgrown.
- At Muskellunge Creek, tree canopy and/or vegetation was overgrown.



- At the Rock Quarry (near the marker that still referenced Plains Pipeline at the time of the inspection), vegetation was overgrown.
- The rail road crossing near Mile Post 169.1, vegetation was overgrown.
- Kieswetter Rd (west), tree canopy and/or vegetation was overgrown near 1031 Kieswetter Rd in Holland, Ohio.
- At Oak Valley Rd, tree canopy and/or vegetation was overgrown.
- At Willow Pond Blvd, tree canopy and/or vegetation was overgrown near 87 Willow Pond Blvd in Sylvania, Ohio.

Kinder Morgan did not provide records for PHMSA Unit 89739 (KM UTOPIA - OH EDS), applicable to the locations noted above, that indicated the operator used any other inspection methods beyond aerial patrol to inspect the surface conditions on or adjacent to the pipeline right-of-way. Therefore, the operator failed to comply with the requirements of § 195.412(a).

Response to PHMSA NOPV Item 4:

KM Utopia does not contest this violation. In accordance with the PCO associated with Item 4, KM Utopia will submit a plan within 30 days from the date of receipt of the Final Order to address the identified locations and will implement that plan within 120 days of receipt of the Final Order.

KM Utopia is fully committed to safety and appreciates the opportunity to respond to this NOPV. Consistent with its commitment to safety, KM Utopia has agreed to accept, without admission, the alleged violations in Items 1 and 4, including the PCO obligations associated with Item 4. KM Utopia contests the alleged violations in Items 2 and 3. With respect to Item 2, KM Utopia has provided the Agency with a copy of the relevant records – which were in the Company's possession at the time of the inspection with one exception. In light of these records, the Company requests that PHMSA reduce the alleged violation to a warning item with no civil penalty. With respect to Item 3, PHMSA has failed to demonstrate the alleged violation because KM Utopia did conduct an annual review as required by its internal procedures and PHMSA regulations. As such, the Company requests that PHMSA withdraw this alleged violation.

The Company appreciates the Agency's consideration of this response and KM Utopia's requests therein. If you have any questions or concerns related to this response, or if



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further discussion on these issues would be helpful, please feel free to contact Jaime Hernandez by phone (713-369-9443) or email (Jaime.Hernandez@kindermorgan.com).

Sincerely,

A handwritten signature in blue ink that reads "Kenneth W. Grubb".

Kenneth W. Grubb
Chief Operating Officer
Natural Gas Pipelines

/jt

cc: Quintin Frazier
Jaime Hernandez

Attachments