MAGELLAN
MIDSTREAM PARTNERS, L.P.

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July 27, 2023

Via Electronic Mail to: Gregory.Ochs@dot.gov

Mr. Gregory A. Ochs, Director
Central Region, Pipeline and Hazardous Materials Safety Administration
901 Locust Street, Suite 480
Kansas City, MO 64106

Re: CPF 3-2023-001- NOPV

Dear Mr. Ochs,

On May 8, 2023, Magellan Midstream Partners, L.P. ("Magellan") received a Notice of Probable Violation and Proposed Civil Penalty, CPF 2023-001-NOPV. On June 6, 2023, Magellan requested an extension of time to file its response. The extension was granted pursuant to a letter dated June 7, 2023 moving the due date to file a response to July 21, 2023. On July 20, 2023 an informal settlement conference was held between Magellan and PHMSA at which time both parties agreed to extend a response due date until August 10, 2023. Magellan respectfully submits the following response to the allegations made in CPF 3-2023-001-NOPV.

The NOPV alleges that Magellan committed three probable violations of the pipeline Safety Regulations, Title 49, United States Code ("U.S.C.") as it relates to its control room's response to abnormal operation information indicative of a pipeline release on December 4, 2020. Ultimately, ~487.4 barrels of diesel fuel were released from a pipeline rupture outside the Commerce City Pump Station in Commerce City, Colorado.

Magellan believes that the parties can find agreement on the disputed issues discussed below. To that end, the parties already participated in informal discussions on July 20, 2023, and as a requested deliverable, Magellan submits with this response the July 27, 2023 memo from its environmental consultant, Trevor Gustafson, at Burns & McDonnell. Magellan timely files this response to otherwise preserve it right to a hearing in the event that it becomes necessary. Magellan agrees that the controller's response was not consistent with the training provided to its control room personnel or with Magellan's procedures. However, Magellan respectfully disagrees with multiple penalties being assessed for what it views as one event consisting of improper action in response to SCADA-indicated information indicative of a release, as well as with PHMSA's calculations of the proposed penalties.

As discussed in more detail below, Magellan requests the following:

1. That Item #1 be withdrawn as it is premised on the same act as Item #2 (e.g., re-starting and running the pipeline for seven minutes) in contravention of § 190.223(e),

2. That Items #2 and #3 be combined into one violation as the controller's responses were a continuum of acts of interpreting abnormal operations data during a single event, and

3. That the Gravity scores be modified to "17" instead of "40" as the proposed violation(s) impacted a High Consequence Area ("HCA"), but did not increase the severity of the reportable accident/incident.

For convenience, the proposed violations are listed below:

Item #1: § 195.401 General requirements.

(a) No operator may operate or maintain its pipeline systems at a level of safety lower than that required by this subpart and the procedures it is required to establish under § 195.402(a) of this subpart.

On December 4, 2020, Magellan operated the 6-inch Commerce City to Fountain Terminal pipeline at a level of safety lower than required by part 195 subpart F – Operation & Maintenance when the pipeline was re-started (Restart) after the First Shutdown and ran for approximately seven minutes while discharging diesel fuel into a high consequence area through a rupture in the pipe. Logs of the flow rate at Commerce City showed the flow averaged 763 barrels per hour during the 7 minutes of operation after the Restart. Operating the pipeline from the time of the Restart (5:39 a.m. MST) until the Second Shutdown (5:46 a.m. MST) was also not in accordance with Magellan procedures.

Just prior to the rupture, the pipeline had been operating in steady state with 1,330 psi discharge pressure at Commerce City. After the Restart began at 5:39 am MST, the discharge pressure at Commerce City briefly reached a high of only 146 psi, as shown in a log of recorded pressures. This available information in Magellan's control room indicated that the pipeline was not safe for continued operation after the Restart.

To provide for a controller's prompt and appropriate response to operating conditions, the control room management regulations of §195.446(b) require definition of a controller's authority and responsibility to make decisions, take actions, and communicate with others.

These responsibilities and authority were mentioned in Magellan's procedures (e.g., Normal operations and Line Monitoring Procedure 9.02 ADM-017) for monitoring and responding to pipeline conditions, including the authority to take actions such as shutdown and isolation of pipelines, or delaying startup of pipelines under their control. Restarting and continuing to run the pipeline for seven minutes after it had ruptured was not an appropriate response to the SCADA-indicated abnormal operating conditions.

As denoted in the written 30-day report (Form PHMSA F 7000.1), Magellan initiated an investigation into whether the controller(s) or control room issues were the cause of, or a contributing factor, to the accident. Magellan determined that the

SCADA and CPM (computational pipeline monitoring) systems were operating and fully functional, and their investigation identified that "incorrect controller action or controller error" had occurred.

Item #2: §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.

Magellan did not follow its procedures for handling abnormal operations when it failed to investigate and correct the cause of abnormal operation between the time of the First Shutdown at 05:17 am MST and prior to the Restart at 05:39 am MST. Section 195.402(d)(1) requires responding to, investigating, and correcting the cause of an increase or decrease in pressure or flow outside normal operating limits. Section 195.402(d)(2) requires checking variations from normal operation after an abnormal operation at sufficient critical locations in the system to determine continued integrity and safe operation.

According to logs of pressure and flow, prior to the time of the rupture at 5:16 a.m., the pipeline was running in a steady state mode with the Commerce City discharge pressure consistently at 1,330 psi while the flow was approximately 843 barrels per hour. At the time of the failure, the SCADA system showed a sharp drop in pressure and a sudden increase in flow rate t the Commerce City pump station, indicating a rupture had occurred.

Magellan failed to follow its Startup and shutdown Procedure 9.02-ADM-002, which required a review of static line conditions for pipeline integrity prior to restarting the line. The procedure further stated that if the static line pressure was not above minimum pressures, then a pressure test was necessary. After the First Shutdown, the Commerce City discharge pressure fell to less than 20 psi while the suction pressure at the Russellville pump station downstream was 0 psi. These low pressures, recorded between the First Shutdown and the Restart, were further indications of a failed pipeline that did not have continued integrity for safe operation.

After the First Shutdown at 5:17 am, the Magellan control room contacted the refinery to ascertain if the supply of diesel fuel to Magellan's pump station had been interrupted. After the refinery reported back to Magellan that there were no issues in the refinery at 5:37 am MST, the Commerce City pump station was started (Restart) by Magellan two minutes later at 5:39 am. Despite this, the Magellan control room staff did not conclude there was an issue (i.e., a pipe rupture on the 6-inch pipeline, as indicated in the SCADA operating data. It was not until 5:48 am MST, after the Second Shutdown at 5:46, that control room staff contacted a local field technician to investigate further at the Commerce City pump station. As such, the cause of the abnormal operation was not adequately investigated by

Magellan, and was not corrected between the time of the first Shutdown and the Restart.

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.

Magellan did not follow its procedures for handling emergencies when it failed to initiate its Code Red Event Procedure 9.02-ADM-011 for approximately 1 hour and 25 minutes after the First Shutdown at 5:17 am MST. Code Red is a term Magellan used for an emergency, including SCADA-indicated pipeline ruptures, and notifications reporting a pipeline fire, or explosion, etc. The Code Red was initiated from the control room at 6:42 am MST.

Section 195.402(e) requires procedures to provide safety when an emergency condition occurs, including a prompt and effective response to an accidental release of hazardous liquid from a pipeline [see § 195.402(e)(2)]. In Magellan's Code Red Event Procedure 9.02-ADM-011, the controller of the console experiencing the emergency event had the role of initiating the procedure, and was to immediately announce "Code Red" within the control room. Other immediate actions included emergency shutdown of the pipeline and closure of valves.

Per the written 30-day report (Form PHMSA F 7000.1) submitted by Magellan, "CPM leak detection system or SCADA-based information (such as alarm(s), alert(s), event(s), and/or volume calculations)" was how the pipeline accident was identified. At multiple times on the morning of December 4, 2020, sufficient information was available in Magellan's control room to initiate a Code Red emergency. The pipe failure at 5:16 am MST exhibited characteristics of a rupture in the SCADA system, including a sudden loss of pressure accompanied by increased flow rate. At 5:43 am MST it was observed in the control room that pressures and flows were not rising after the Restart. After the Second Shutdown at 5:46 am MST, pressures at Commerce City dropped again. At 6:19 am MST, the refinery contacted the Magellan control room and reported a possible leak on Magellan's pipeline. At 6:32 am MST, the refinery called the Magellan control room to report that spilled product was located at the fence line with diesel fuel on the road at 56th Avenue. At 6:40 am MST a Magellan technician called the control room to report that the spill was from Magellan's pipeline, and the controller initiated the Code Red Event procedure at 6:42 am MST. In summary, Magellan did not initiate an emergency response promptly in accordance with its Code Red Event Procedure.

DISCUSSION #1 – MAGELLAN ASSERTS THAT ITEM #1 IS PREMISED ON THE SAME ACT AS ITEM #2 AND SHOULD BE WITHDRAWN AS DUPLICATIVE, IN CONTRAVENTION OF §190.223(e)

49 CFR §190.223(e) states "Separate penalties for violating a regulation prescribed under this subchapter and for violating an order issued under §§ 190.206, 190.213, 190.233, or 190.239 may not be imposed under this section if both violations are based on the same act."

Although Items #1 and #2 are couched differently, they are both premised on the same act of re-starting the line and running it for seven minutes before shutting it down again. Item #1 approaches it from a general safety standard under 49 CFR §195.401(a) and expressly discusses the re-start and 2nd shutdown while Item #2 is more nuanced and approaches it from not following Magellan's written procedures for normal operations and maintenance activities and handling abnormal operations and emergencies. Regardless, the procedures that were not followed in Item #2 are exactly what allowed the very same act (i.e., re-starting the line and running it for seven minutes before shutting it down again) discussed in Item #1.

Since Items #1 and #2 are based on the same act, Magellan respectfully requests that Item #1 be withdrawn.

DISCUSSION #2 – MAGELLAN ASSERTS THAT ITEMS #2 AND #3 SHOULD BE COMBINED INTO ONE VIOLATION AS THEY ARE BOTH RELATED TO NOT FOLLOWING ABNORMAL OPERATIONS AND EMERGENCY PROCEDURES AND INVOLVE INTERTWINED FACTS AND ACTS IN A CONTINUUM DURING THE DURATION OF A SINGLE EVENT.

While Item #2 focuses on the Re-start and Item #3 focuses on the delayed commencement of its emergency response, both acts involve not following Magellan's procedures as they relate to abnormal operations and emergency events. Therefore, Magellan respectfully requests that Items #2 and #3 be combined into one violation as those two proposed violations were a continuum of actions interpreting SCADA data indicative of a pipeline release.

DISCUSSION #3 - MAGELLAN CONTESTS THE FORMULATION OF THE PROPOSED CIVIL PENALTY(IES) AND ASSERTS THAT THE GRAVITY SCORES SHOULD BE MODIFIED TO "17" INSTEAD OF "40" TO REFLECT THAT THE PROPOSED VIOLATION(S) IMPACTED AN HCA, BUT DID NOT INCREASE THE SEVERITY OF THE REPORTABLE ACCIDENT/INCIDENT.

Within the Proposed Civil Penalty Worksheet under "Gravity", PHMSA proposed a score of 40 Points for each of the proposed violations which reflects that "The violation increased the severity of a reportable accident/incident (as defined in 195.50)". As discussed below and in the Burns and McDonnell Memo, the facts support a reduced "Gravity" score of 17 points reflecting that "The violation occurred within an HCA or 'could affect' HCA". Magellan does not contest that the accident occurred within an HCA or "could affect" HCA. However, the proposed violations did not increase the severity of the reportable accident. Magellan asserts that this reduced "Gravity" score should be applied to any remaining proposed violation penalty calculation(s).

First, the proposed violations did not increase the severity of a reportable accident/incident (as defined in 195.50) because no supplemental criteria were met based upon the additional volume of

product released due to the Restart or the delayed commencement of its emergency response. Based upon the following details:

195.50 – Reporting Accidents

(a) Explosion or fire not intentionally set by operator
- The proposed violations did not result in an explosion or fire

(b) Release of 5 gallons or more of hazardous liquid
- The proposed violations did not change the reporting requirement of 5 gallons or more being released from the pipeline

(c) Death of any person
- The proposed violations did not result in a death of any person

(d) Personal injury necessitating hospitalization
- The proposed violations did not result in an injury necessitating hospitalization

(e) Estimated property damage… exceeding $50,000
- The proposed violations did not change the reporting requirement of estimated property damage exceeding $50,000

Secondly, no new consequence materialized in the PHMSA F 7000.1 Accident Report details due to the proposed violations based upon the following details:

- **The proposed violations do not change the nature of the accident** - The release occurred regardless of the controller actions
- **Part A #12, 13, 15, 16, 17** – The proposed violations did not result in a fatality, injuries requiring hospitalization, an ignition or explosion of the commodity, or evacuation of general public
- **Part D #1, #2, #3, #4, #5** – The proposed violations did not result in wildlife impact, or impact to a WOTUS, or increase the environmental consequences to the soil or groundwater
- The only potential environmental consequence is to groundwater directly at the rupture site to which the additional barrels released had no impact
- Additional barrels released due to the proposed violations were contained and recovered during the response efforts in the heavily industrialized area
- **Part D #6, #7** – The proposed violations did not change the impact to a High Consequence Area

Thirdly, the initial release volume before the restart is 398.4 barrels. The 7-minute restart allowed an additional ~89 barrels to be released (7 minutes x 763 bph flow) for a total release volume of ~487.4 barrels. Accordingly, within the Proposed Civil Penalty Worksheet the proposed violations did not change the severity category within PHMSA's release volume criteria for severity (i.e., the release volume with or without the violations is still within the severity of 238 bbls to <500 bbls category).

Lastly, Magellan asserts that the proposed violations had no material impact on the environmental consequences to the site. The site has operated as a refinery for 90+ years, and the adjacent areas are also heavily industrialized, including a railyard, concrete crushing plant, and a wastewater treatment plant. Magellan contacted the environmental consultant that was onsite and helped with

the response and remediation of the December 4, 2020 release to get his opinion as to whether the additional 89 barrels released or the lapse in time between the initial shutdown and the initiation of the emergency response increased the severity of the environmental impacts at the site. Please find attached, Burns and McDonnell Memo, dated July 27, 2023 from Trevor Gustafson at Burns and McDonnell addressing those issues. As discussed in more detail in its memo, Burns and McDonnell concludes that neither the additional release volume of 89 barrels or the delayed commencement of its emergency response had any material impact on the severity of environmental consequences at the site.

For the above-mentioned reasons, Magellan asserts that the proposed violations did not increase the severity of the reportable accident.

SUMMARY

Magellan regrets that the release occurred, but submits that the facts, applicable laws, and penalty policy require that Item #1 be withdrawn, suggest that Items #2 and #3 should be combined into one violation, and the gravity score in the Proposed Civil Penalty Worksheet be reduced from "40" to "17".

Magellan appreciates the opportunity to respond and proactively work through the proposed violations with PHMSA in an effort to make the hearing unnecessary. If a hearing is necessary, Magellan will be represented by in house counsel, R. Daniel Scroggins, and possibly outside counsel. If you have any questions or need additional information, please contact me by phone at (918) 574-7073 or e-mail at mark.materna@magellanlp.com to discuss.

Sincerely,

Mark Materna
Director, Pipeline Integrity

Cc: Jason Smith, Vice President, Asset Integrity, Magellan
Danny Scroggins, Senior Legal Attorney, Magellan
Ryan McClure, Attorney Advisor, Pipeline Safety Division
David Barrett, Ops. Supervisor, PHMSA Central Region