

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

In the Matter of	)	
	)	
	)	
Texas Gas Transmission, LLC,	)	CPF No. 3-2024-048-NOPV
	)	
Respondent.	)	
	)	

**Written Response of Texas Gas Transmission, LLC
To Notice of Probable Violation and Proposed Civil Penalty**

Pursuant to § 190.208(a) of the regulations of the Pipeline and Hazardous Materials Safety Administration (PHMSA),¹ Texas Gas Transmission, LLC (Texas Gas) submits a written response (Response) to the Notice of Probable Violation and Proposed Civil Penalty (Notice) issued on May 21, 2024.² Texas Gas contests the alleged violation and the proposed civil penalty and requests that the Notice be withdrawn.

Concurrently with this written Response, pursuant to 49 C.F.R. § 190.208(a)(4) and § 190.211,³ Texas Gas submits a Request for a Hearing and Preliminary Statement of Issues. As provided under 49 U.S.C. § 60117(b)(1),⁴ Texas Gas also requests an informal meeting to further discuss the alleged violation and proposed civil penalty. Texas Gas requests that the presiding official delay scheduling a hearing to allow the parties sufficient time to convene this meeting.

Texas Gas is committed to public safety and operating its pipeline facilities in accordance with PHMSA’s regulations and takes allegations of non-compliance seriously. Texas Gas looks forward to a resolution of this case.

¹ 49 C.F.R. § 190.208(a) & (b) (2022).

² Texas Gas is a wholly-owned operating subsidiary of Boardwalk Pipelines, LP (Boardwalk).

³ 49 C.F.R. §§ 190.208(a)(4), 190.211.

⁴ 49 U.S.C. § 60117(b)(1) (2018), as amended by The Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020, Pub. L. No. 116-260, div. R, title I, § 108(a)(2), 134 Stat. 2221, 2223 (Dec. 27, 2020).

I. Response of Texas Gas

A. PHMSA Has the Burden of Proving the Alleged Violation.

PHMSA has the burden of proving that Texas Gas violated the pipeline safety regulations.⁵ PHMSA has the “burden of production,” *i.e.*, . . . 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.”⁶ PHMSA “bears the burden of proof as to all elements of the proposed violation.”⁷ To meet its burden of production, PHMSA must present sufficient evidence to sustain an allegation of violation. Where PHMSA does not produce such evidence, the allegation of violation must be withdrawn.⁸

To meet its burden of persuasion, PHMSA “must prove, by a preponderance of the evidence, that the facts necessary to sustain a probable violation actually occurred.”⁹ This burden is carried “only if the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent in its defense.”¹⁰ The respondent prevails under this standard not by conclusively proving compliance, but where its rebuttal evidence is more persuasive than the evidence provided by PHMSA.¹¹ If “the evidence is closely balanced,” PHMSA has not met its burden of persuasion and the allegation of violation must be withdrawn.¹²

⁵ 49 U.S.C. § 60117(b)(1)(F) (2018), as amended by The Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020, Pub. L. No. 116-260, div. R, title I, § 108(a)(2), 134 Stat. 2221, 2223 (Dec. 27, 2020). See 49 C.F.R. § 190.213(a)(1) (2022). See, e.g., *ExxonMobil Pipeline Co.*, Final Order, CPF No. 4-2017-5027, 2019 WL 3734516, **4, 5 (Apr. 3, 2019) (withdrawing allegation because PHMSA’s evidence did not establish a violation).

⁶ *Schaffer v. Weast*, 546 U.S. 49, 56 (2005) (quoting *Dir., Office of Workers’ Comp. Programs, Dep’t of Labor v. Greenwich Collieries*, 512 U.S. 267, 272 (1994)); see also *Butte Pipeline Co.*, Final Order, CPF No. 5-2007-5008, 2009 WL 3190794, *1 (Aug. 17, 2009) (finding that PHMSA may find a violation “only if the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent in its defense.”) (internal citation omitted).

⁷ *ANR Pipeline Co.*, Final Order, CPF No. 3-2011-1011, 2012 WL 7177134, *3 (Dec. 31, 2012) (finding that evidence in violation report was insufficient).

⁸ See, e.g., *ExxonMobil*, 2019 WL 3734516 at **4, 5 (ordering withdrawal of allegations where OPS failed to prove that Respondent engaged in conduct that would constitute a violation).

⁹ *Alyeska Pipeline Serv. Co.*, Decision on Petition for Reconsideration, CPF No. 5-2005-5023, 2009 WL 5538655, *3 (Dec. 16, 2009) (citing *Butte Pipeline*, 2009 WL 3190794 at *1, n.3; *Schaffer*, 546 U.S. at 56-58).

¹⁰ *Butte Pipeline*, 2009 WL 3190794 at *1 (internal citation omitted).

¹¹ See *ANR Pipeline*, 2012 WL 7177134 at *3 (finding Respondent’s plausible explanation sufficient to warrant withdrawal of the allegation of violation because the “Violation Report contain[ed] no evidence which would rebut ANR’s argument.”); see also *City of Richmond, VA*, Final Order, CPF No. 1-2004-0006, 2006 WL 3825337, *4 (Jan. 12, 2006) (stating that the Respondent does not have the burden of proving compliance, rather, OPS has the burden of proving the violation).

¹² *Alyeska Pipeline*, 2009 WL 5538655 at *3 (quoting *Schaffer*, 546 U.S. at 56). Cf. *Buckeye Partners, LP*, Final Order, CPF No. 1-2009-5002, 2012 WL 3144486, *7 (May 30, 2012) (where neither party “present[s] sufficient proof to prove its position,” the violation must be withdrawn because PHMSA bears the burden).

B. PHMSA Has Not Met Its Burden of Demonstrating That Texas Gas Did Not Follow Its Integrity Management Procedures.

1. Alleged Violation of § 192.907(a).

Section 192.907(a) of PHMSA's regulations requires that an operator of a gas transmission pipeline segment that is subject to integrity management (IM) requirements "develop and follow a written integrity management program" that addresses the required IM program elements and the risks on each covered pipeline segment.¹³

The Notice alleges that Texas Gas did not follow its IM Program Procedure Manual (IM Manual), in particular the requirements of Appendix 4, Step 11, Task 2 after conducting an in-line inspection (ILI) on the EIS 18-2 pipeline segment, Highway 61 to Weaver Road, located near Clarksdale, Mississippi.¹⁴ Specifically, the Notice alleges that Texas Gas did not determine "whether the anomalies discovered by field personnel during integrity assessment digs, but not detected by the ILI vendor, constituted a need for the ILI vendor to re-grade the anomalies and re-submit the data."¹⁵

The Notice asserts that the 2021 ILI assessment records indicate that during integrity assessment digs conducted after the ILI was completed, "significant gouges" not detected by the ILI vendor were found at wheel counts 33387.19, 142597.88 and 420933.73. The Notice asserts that, in response to PHMSA's April 11, 2024 Request for Specific Information, Texas Gas stated that "No regrade was warranted for this assessment. In each mentioned anomaly there was a geometric anomaly and volumetric anomaly that directly corresponded to the as-found and was not previously called in calendar year 2014. Please see the 2021 ILI Summary (attached) for additional details on page 6. Additionally, the vendor provided a unity plot after Texas Gas shared results indicating the tool performed as expected."¹⁶

The Notice acknowledges that "the unity plot reflected the original anomalies identified by the ILI vendor and illustrates data caliber," but alleges that Texas Gas "failed to consider the additional gouges identified by the field personnel" found at the dig locations that were not identified by the ILI vendor. According to the Notice "[b]ecause of the presence of several additional field identified gouges, indicating severe discrepancies with the data, [Texas Gas's] procedure required [Texas Gas] to make a determination of whether these anomalies constituted a need for the ILI vendor to regrade the anomalies and re-submit the data."¹⁷ The Notice alleges that, "[b]y not addressing the actual anomaly and the predicted attributes as described in their IMP Appendix 4," Texas Gas failed to follow its procedure in violation of § 192.907(a).¹⁸

¹³ 49 C.F.R. § 192.907(a).

¹⁴ Notice at 2. The November 10, 2021 version of Boardwalk's "Gas and Liquids Integrity Management Program" is included in PHMSA's Violation Report as Exhibit H. PHMSA Violation Report, CFP 3-2024-048-NOPV, Exhibit H. Relevant excerpts are attached hereto as Attachment 1.

¹⁵ Notice at 2.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

The Notice proposes that PHMSA assess a civil penalty of \$50,200. The Notice does not propose a compliance order requiring Texas Gas to take any corrective action.

2. The Evidence Demonstrates That Texas Gas Followed Its IM Manual Procedures.

Texas Gas requests that the alleged violation and proposed civil penalty be withdrawn because the allegation is contradicted by the evidence in the case file. The evidence demonstrates that, in accordance with the IM Manual, Texas Gas determined that re-grading the anomalies was not needed. PHMSA has failed to meet its burden of proving a violation of § 192.907(a).

The IM Manual states the following with respect to re-grading anomalies after an ILI tool run:

If the field data significantly varies with the vendor data regarding location and anomaly attributes, the MGR ILI Technology & Analytics will have to decide whether the vendor should resubmit the data. Severe discrepancies between the actual anomaly and the predicted attributes can be indicative of the data caliber in the entire report.

The company will determine whether this constitutes a need for the ILI vendor to re-grade all anomalies. If re-grading required, Steps 4-6 shall be repeated.¹⁹

In May 2021, Texas Gas ran an MFL-A/Caliper ILI tool on the EIS 18-2 pipeline segment, Highway 61 to Weaver Road. As required by the IM Manual,²⁰ Texas Gas established anomaly criteria setting forth minimum requirements for feature detection and reporting. These anomaly criteria are reflected in the ILI vendor's Final Report as Boardwalk's reporting parameters.²¹

Based on these reporting parameters, the ILI vendor identified 15 anomalies, two of which were remediated as immediate conditions. In early 2022, Texas Gas excavated and remediated the thirteen other anomalies.²² Field excavations verified the accuracy of the ILI vendor's as-called data regarding the location and attributes of each anomaly. Texas Gas identified no discrepancies between the actual anomaly and the predicted attributes, and no questions or issues were raised related to the caliber of the data. At three of the dig locations (wheel counts 33387, 142597.88, and 420933.73), other unrelated gouges were identified.²³ These additional gouges did not meet the tool reporting parameters due to the sizing or attributes associated with the feature.

¹⁹ IM Manual, App. 4, Step 2, Task 2: Anomaly Criteria (*see* Attachment 1) (*see* Violation Report, Exhibit H).

²⁰ *Id.* (*see* Violation Report, Exhibit H).

²¹ Entegra UHR MFL/Caliper/IMU Final Report: Boardwalk Pipeline Partners, EIS 18-2 HWY 61 to Weaver Rd, at 4, (July 22, 2021). Relevant excerpts are attached hereto as Attachment 2. (*see* Violation Report, Exhibit Q).

²² Boardwalk Pipelines, Completed Integrity Assessment Excavation Summary, re 2021 In-Line Inspection EIS 18-2 Highway 61 to Weaver Road, at 2, 3, & 4 (Attached hereto as Attachment 3) (*see* Violation Report, Exhibit B).

²³ Attachment 3 at 6 (*see also* Violation Report, Exhibit B).

Following the excavations, Texas Gas completed a “Post Excavation Summary” (Excavation Summary) for the 2021 ILI.²⁴ The Excavation Summary stated that Boardwalk’s ILI Technology & Analytics group completed the final review of the post excavation assessments and that “results have been reviewed and consideration applied to the subject integrity assessment.”²⁵ The Excavation Summary stated that fifteen anomaly excavations were reviewed. The Excavation Summary determined that the anomalies met the vendor grading specifications and that results were submitted to the vendor for feedback. On October 31, 2022, the vendor provided unity plots “proving results” of the ILI tool. Texas Gas determined that a re-grade of the anomalies was not warranted and that no further action was required for this assessment interval.²⁶

The Excavation Summary demonstrates that, as required by the IM Manual, Texas Gas “determined” that requiring the ILI vendor to re-grade the anomalies was not necessary. This determination was based on field data verifying that the vendor’s as-called data regarding the location and attributes of each anomaly was within specification between the actual anomalies and the predicted attributes. As acknowledged in the Notice, the unity plots “illustrate” the caliber of the data. The Excavation Summary proves that Texas Gas followed the IM Manual and did not violate § 192.907(a).

Contrary to assertions in the Notice, the other gouges identified during field excavations do not require a re-grading of the anomalies. The ILI vendor did not report these gouges because they did not meet sizing or attribute reporting parameters, which are limited by the tool technology. They also would not have been reported if the anomalies had been re-graded because of technology limitations. The existence of these gouges does not undermine the validity of the ILI results. PHMSA’s assertion that these gouges were “significant” and represented “severe discrepancies with the data” is completely unsupported by any evaluation criteria, analysis or evidence.

The Excavation Summary documents Texas Gas’s compliance with the IM Manual and proves that Texas Gas did not violate § 192.907(a). PHMSA has failed to “prove, by a preponderance of the evidence, that the facts necessary to sustain a probable violation actually occurred,”²⁷ or that Texas Gas engaged in conduct that would constitute a violation.²⁸ The Notice and proposed civil penalty must be withdrawn.²⁹

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Alyeska Pipeline*, 2009 WL 5538655 at *3 (quoting *Schaffer*, 546 U.S. at 56).

²⁸ *ExxonMobil*, 2019 WL 3734516 at **4, 5.

²⁹ *Id.*

II. Conclusion

For the reasons set forth above, Texas Gas requests that PHMSA withdraw the Notice and proposed civil penalty.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tony G. Rizk", with a stylized flourish extending to the right.

Tony G. Rizk, P.E.
VP, Technical Services
Boardwalk Pipelines

June 18, 2024