



2000 Pennsylvania Avenue NW
Suite 6000
Washington, DC 20006

Susan A. Olenchuk, Partner
202-361-5625
sam@vnf.com

By Email Only

December 19, 2024

Mr. Lawrence E. White
Presiding Official
Office of Chief Counsel
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, S.E.
Washington, DC 20590

Mr. Ryan McClure
Attorney-Advisor, Counsel for Central Region
Office of Chief Counsel
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, S.E.
Washington, DC 20590

**Re: Texas Gas Transmission, LLC, CPF No. 3-2024-048-NOPV
Post-Hearing Brief of Texas Gas Transmission, LLC**

Dear Mr. White and Mr. McClure,

Pursuant to 49 C.F.R. § 190.211(g) and as provided at the hearing convened on November 19, 2024, in this proceeding, Texas Gas Transmission, LLC (Texas Gas) submits its Post-Hearing Brief regarding the Notice of Probable Violation and Proposed Civil Penalty issued by the Office of Pipeline Safety (OPS) on May 21, 2024.

As provided under § 60117(b)(1)(D) of the Pipeline Safety Act,¹ which allows a respondent “to reply to each post-hearing submission of the agency,” Texas Gas reserves the right to respond to OPS’s post-hearing submission.

Please do not hesitate to contact the undersigned if you have any questions.

¹ 49 U.S.C. § 60117(b)(1)(D) (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).

Thank you for your attention on this matter.

Respectfully submitted,

Susan A. Olenchuk

Susan A. Olenchuk
Attorney for Texas Gas Transmission, LLC

Attachments

CC: Ryan McClure, Attorney Advisor, Office of Chief Counsel, PHMSA (Ryan.McClure@DOT.gov)
Mia Petrucci, Law Clerk, Office of Chief Counsel, PHMSA (Mia.Petrucci@DOT.gov)
Michael E. McMahon, General Counsel, Boardwalk Pipelines
(Mike.McMahon@bwpipelines.com)

**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.	)	
	)	

Post-Hearing Brief of Texas Gas Transmission, LLC

Pursuant to § 190.211(g) of the regulations of the Pipeline and Hazardous Materials Safety Administration (PHMSA),¹ and as provided by the Presiding Official at the hearing that was convened on November 19, 2024 in this proceeding, Texas Gas Transmission, LLC (Texas Gas) submits a Post-Hearing Brief regarding the Notice of Probable Violation and Proposed Civil Penalty (Notice) issued by the Office of Pipeline Safety (OPS) on May 21, 2024.

I. Executive Summary

The Notice in this proceeding alleges that Texas Gas did not follow Appendix 4, Step 11, Task 2 of its Integrity Management Manual (IM Manual), which required that Texas Gas make a determination whether to re-grade the data from an in-line inspection (ILI) conducted on Line EIS 18-2 in 2021. Based on that allegation, OPS alleges that Texas Gas violated § 192.907(a).

At the hearing, OPS conceded that Texas Gas made a decision not to re-grade the ILI data, undermining the sole basis for the Notice. Instead, OPS attempted to recharacterize the allegation as a failure by Texas Gas to document its decision. OPS’s attempt to revise the nature of the allegation should be rejected as contradicted by OPS’s Violation Report and Proposed Civil Penalty Worksheet. These documents characterize the allegation as an “Activities” violation, not a “Records” violation. Attempting to recast the allegation as a record-keeping violation also is inconsistent with PHMSA final orders and Enforcement procedures that distinguish between a failure to comply with a substantive regulatory requirement and a failure to maintain records of compliance. If Texas Gas is found to have failed to document its determination, then Texas Gas requests that the proposed civil penalty be recalculated and reduced to reflect a “Records” violation instead of an “Activities” violation, as provided on the Proposed Civil Penalty Worksheet.

If the Notice is not withdrawn, then Texas Gas demonstrates that the evidence in the case file proves both that Texas Gas made a determination as required by Appendix 4, Step 11, Task 2 of its IM Manual and that the determination was supported with documentation. At the hearing, Texas Gas disproved OPS’s allegations that the ILI vendor failed to detect the additional gouges found on the pipeline during the post-inspection excavations and that severe discrepancies or significant variations existed between the ILI data and the field data. Texas Gas demonstrated that

¹ 49 C.F.R. § 190.211(g) (2023).

the excavations *confirmed* the existence of the additional gouges which were visibly apparent on the ILI vendor's data screenshots.

Texas Gas explained that the ILI vendor did not call or report the gouges because they did not meet sizing or attribute reporting parameters, which are limited by the technology of the ILI tool. In addition, an ILI vendor cannot develop an algorithm to identify or call gouges because their irregular volumetric profiles are unrepeatable. Texas Gas explained that it is not possible to grade the performance of the tool with respect to anomalies that the tool cannot identify. OPS did not refute the evidence or Texas Gas's explanations. Nor did OPS explain how re-grading the ILI data would produce a different result. As required by its IM Manual, Texas Gas determined that re-grading the ILI data was not necessary. Texas Gas did not violate § 192.907(a). The Notice and proposed civil penalty should be withdrawn.

II. OPS Has Not Met Its Burden of Demonstrating That Texas Gas Failed to Follow Its IM Manual in Violation of § 192.907(a).

A. The Notice Should Be Withdrawn Because at the Hearing OPS Contradicted the Allegation in the Notice by Conceding That Texas Gas Made a Determination Not to Re-Grade the ILI Data.

Section 192.907(a) of PHMSA's regulations requires that an operator of a gas transmission pipeline segment subject to 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.² The sole allegation in the Notice is that Texas Gas violated § 192.907(a) by allegedly not following Appendix 4, Step 11, Task 2 of the IM Manual after Texas conducted an ILI assessment on its EIS 18-2 pipeline segment.³

In support of this allegation, the Notice asserts 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."⁴ The Notice asserts that "significant gouges" that were not detected by the ILI vendor were found at wheel counts 33387.19, 142597.88 and 420933.73. The Notice asserts that "[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 re-grade the anomalies and re-submit the data."⁵ 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).⁶

² *Id.* § 192.907(a).

³ Notice at 2. The November 10, 2021 version of Boardwalk's "Gas and Liquids Integrity Management Program" is included in OPS's Violation Report, Exhibit 1 (Integrity Management Program (IMP)_11102021). The relevant excerpt is attached hereto as Attachment A.

⁴ Notice at 2.

⁵ *Id.*

⁶ *Id.*

The Notice proposes a civil penalty of \$50,200.⁷ The Notice does not propose a compliance order requiring Texas Gas to take any corrective action.

The sole allegation in the Notice is that Texas Gas failed to make a decision whether to regrade the ILI data as required under its IM Manual. At the hearing, OPS conceded that Texas Gas actually *did* make a decision to not re-grade the ILI data:

Mr. McClure: According to Texas Gas Transmission's procedures, in your opinion, was Texas Gas Transmission required by their procedures to then make a decision about whether the vendor should regrade?

Ms. McKean: Yes.

Mr. McClure: Texas Gas Transmission decided not to regrade the vendor's data after finding the additional anomalies in the field, correct?

Ms. McKean: Correct.⁸

This concession contradicts the Notice's allegation that Texas Gas did not follow Appendix 4, Step 11, Task 2 of the IM Manual which required it to make a determination whether to re-grade the data. On this basis alone, the Notice and proposed civil penalty should be withdrawn.

At the hearing, OPS attempted to recast the allegation in the Notice as a failure by Texas Gas to document its decision not to re-grade the ILI data.⁹ OPS referenced multiple sections of the IM Manual¹⁰ and § 192.947¹¹ of PHMSA's regulations, neither of which were mentioned in the Notice.

OPS's attempt to shift the allegation in the Notice from a failure to follow a procedure in violation of § 192.907(a) to a failure to maintain IM documentation in violation of IM Manual record-keeping provisions and § 192.947 should be rejected as inconsistent with the case file and a violation with PHMSA policy. The Violation Report and the Proposed Civil Penalty Worksheet both make clear that the alleged violation involves an "Activities" allegation, not a "Records" allegation.¹² OPS's attempted revision also is contrary to PHMSA final orders¹³ and PHMSA's

⁷ *Id.* at 3

⁸ Texas Gas Transmission, LLC, Hearing Transcript (Tr.) Tr. 40:10-19 (Nov. 19, 2024). *See also* Tr. 11:22 to 12:1 (statement of Mr. McClure) ("Texas Gas did not document the rationale behind its decision"), Tr. 15:15-16 (statement of Mr. Ochs) ("they didn't document why they would not need further review.").

⁹ *E.g.*, Tr. at 11:17 to 12:1 (statement by Mr. McClure) ("Texas Gas Transmission is required by its procedures to maintain documentation of its compliance with Subpart O of Part 192, and our questioning will show that there were significant data discrepancies representing a need to make a decision whether to regrade the ILI data, that Texas Gas did not document the rationale behind its decision."); Tr. at 15:13-22 to 16:1-16 (statement of Mr. Ochs) ("[t]he allegation is they did not document their process of why the gouges that were found that were not in the ILI Report – they didn't document why they would not need further review.").

¹⁰ Tr. at 48:1 to 50:1 (statements of Ms. McKean) (referring to multiple sections of the IM Manual).

¹¹ Tr. at 16:2-16 (statement of Mr. Ochs); Tr. at 49:2-9 (statement of Ms. McKean); Tr. at 94:1-6 (statement of Mr. McClure).

¹² Violation Report at 7; Proposed Civil Penalty Worksheet (assessing "3" points based on the characterization of the allegation as an "Activities" violation, rather than a "Records" violation that would have been assigned "1" point.)

¹³ *El Paso Natural Gas Co.*, Final Order, CPF No. 5-2015-1008, 2017 WL 3049149, *6 (June 16, 2017) (distinguishing between failure to maintain full records of odorization and the failure to odorize, and stating that OPS

Pipeline Safety Enforcement Procedures which distinguish between an alleged violation of a substantive regulation and an alleged failure to maintain records demonstrating compliance with a regulation.¹⁴ PHMSA's Pipeline Safety Enforcement Procedures also provide that each item of notice of probable violation alleges a violation of one regulation.¹⁵

The allegation in the Notice is that Texas Gas failed to follow Appendix 4, Step 11, Task 2 of the Boardwalk IM Manual. The Notice does not allege a violation of any other provision of the IM Manual and does not allege a violation of any other regulation. At the hearing, OPS conceded that Texas Gas did, in fact, make a decision not to re-grade the ILI data and attempted to recharacterize the allegation as a failure to document that decision.¹⁶

Based on OPS's concession, Texas Gas requests that the Presiding Official find that Texas Gas did not fail to follow Appendix 4, Step 11, Task 2 of the IM Manual and did not violate § 192.907(a). Texas Gas requests that the Presiding Official reject OPS's attempt to recharacterize the allegations in this proceeding as a record-keeping violation and withdraw the Notice and the proposed civil penalty.

B. OPS Has the Burden of Proving That Texas Gas Failed to Follow Its IM Manual.

If the Notice is not withdrawn on the basis that OPS conceded that Texas Gas made a decision not to regrade the ILI data, then Texas Gas alternatively demonstrates below that OPS failed to meet its burden of demonstrating that Texas Gas did not follow Appendix 4, Step 11, Task 2 of the IM Manual.

OPS has the burden of proving that Texas Gas did not follow Appendix 4, Step 11, Task 2 of the IM Manual in violation of § 192.907(a).¹⁷ OPS 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.”¹⁸ To meet its

had not alleged a record-keeping violation); *Permian Express Partners*, Final Order, CPF No. 4-2022-040-NOPV, 2023 WL 4998828, *3 & n.6 (June 30, 2023) (distinguishing between alleged failure to maintain records of atmospheric corrosion inspection of a tank and failure to remediate atmospheric corrosion).

¹⁴ PHMSA, Pipeline Safety Enforcement Procedures at 27 (Dec. 5, 2024)

<https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2024-12/Section-4-Administrative-Enforcement-Processes-12-05-2024.pdf> (stating that “[i]f the violation is for the substantive violation, a separate probable violation for records should not be issued.”).

¹⁵ *Id.* at 25.

¹⁶ Even the Notice's recitation of Texas Gas's response to OPS's March 21, 2024 Request for Specific Information (RFSI) implicitly acknowledges that Texas Gas made a determination. Notice at 2 (reciting Texas Gas's response which stated “No regrade was warranted for this assessment.”)

¹⁷ 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). 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).

¹⁸ *Schaeffer 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) (“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.”) (internal citation omitted).

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.¹⁹

Meeting its burden of persuasion requires that PHMSA “prove, by a preponderance of the evidence, that the facts necessary to sustain a probable violation actually occurred.”²⁰ This burden is carried “only if the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent in its defense.”²¹ A respondent will prevail under this standard not by conclusively proving compliance, but where its rebuttal evidence is more persuasive than the evidence provided by PHMSA.²² If “the evidence is closely balanced,” PHMSA has not met its burden of persuasion and the allegation of violation must be withdrawn.²³

OPS also bears the burden of proving that the proposed civil penalty is appropriate.²⁴

OPS has not satisfied its burden of proving that Texas Gas did not follow Appendix 4, Step 11, Task 2 of the IM Manual or that Texas Gas violated § 192.907(a). Texas Gas requests that the Notice and the proposed civil penalty be withdrawn.

C. Texas Gas Made a Determination Not to Re-Grade the ILI Data.

In 2021, Texas Gas ran an MFL-A/Caliper ILI on the EIS 18-2 pipeline segment, Highway 61 to Weaver Road, located near Clarksdale, Mississippi. The purpose of the ILI tool was to assess the integrity of the EIS 18-2 pipeline, portions of which lie in high consequence areas (HCA).²⁵

¹⁹ *Tennessee Gas Pipeline Co.*, Final Order, CPF No. 1-2018-1001, 2019 WL 7943664, **4, 5 (Nov. 14, 2019) (withdrawing alleged violation because OPS did not prove a violation of the regulation); *ANR Pipeline Co.*, Final Order, CPF No. 3-2011-1011, 2012 WL 7177134, *3 (Dec. 31, 2012) (withdrawing the allegation of violation because the “Violation Report contain[ed] no evidence which would rebut ANR’s argument.”).

²⁰ *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; *Schaeffer*, 546 U.S. at 56-58).

²¹ *Butte Pipeline*, 2009 WL 3190794 at *1 (internal citation omitted).

²² See, e.g., *Kinder Morgan, Inc.*, Final Order, CPF No. 5-2023-003-NOPV, at 7 (Nov. 18, 2024), [https://primis.phmsa.dot.gov/enforcement-documents/52023003NOPV/52023003NOPV_Final%20Order_11182024_\(22-236099\).pdf](https://primis.phmsa.dot.gov/enforcement-documents/52023003NOPV/52023003NOPV_Final%20Order_11182024_(22-236099).pdf) (withdrawing allegation where OPS did not refute Respondent’s evidence); (withdrawing allegation where OPS did not refute Respondent’s evidence); *ANR Pipeline*, 2012 WL 7177134 at *3 (withdrawing 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).

²³ *Alyeska Pipeline*, 2009 WL 5538655 at *3 (quoting *Schaeffer*, 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).

²⁴ See e.g., *Slusser v. Commodity Futures Trading Comm’n*, 210 F.3d 783, 787-88 (7th Cir. 2000); *Gimbel v. Commodity Futures Trading Comm’n*, 872 F.2d 196, 201 (7th Cir. 1989); *Premex, Inc. v. Commodity Futures Trading Comm’n*, 785 F.2d 1403, 1408-09 (9th Cir. 1986); *Bosma v. U.S. Dep’t. of Agriculture*, 754 F.2d 804, 810 (9th Cir. 1985).

²⁵ 49 C.F.R. § 192.903. None of the excavations performed on EIS 18-2, including the excavations at the three wheel counts listed in the Notice, were located in an HCA. See OPS Violation Report at 10 of 15 (“Violation was not located in an HCA per their system maps.”) & Exhibit 1 (2021 ILI Summary – EIS-2 Highway 61 to Weaver Rd. – Final – 05132021.pdf) at 2-4 (showing that none of the digs were in an HCA). This Exhibit 1 document is hereinafter referred

Threats that Texas Gas was seeking to assess were internal and external metal loss and any kind of interacting threat.²⁶

Magnetic flux leakage (MFL) ILI tools use magnets to magnetize a pipeline's ferrous pipe wall. Sensors located between magnetic poles measure the magnetic field strength along the pipe. A defect in the pipe wall will cause the magnetic field to deviate or "leak." The ILI tool detects those deviations and measures the leakage. ILI vendors use algorithms to identify the nature of the defect and to ascertain its width, length, and depth.

"Detecting" an anomaly and "identifying" an anomaly are two different things. While an ILI tool may be able to detect an anomaly, the ILI tool may not be able to identify the nature of the anomaly. As explained by Texas Gas at the hearing:

Tool specifications have POD, which is probability of detection, and POI, which is probability of identification. So there is a difference between the two. Detection is you can see the magnetic flux deviate. The amplitudes will change in the data. That doesn't necessarily mean that the ILI tool can identify what that deviation in the flux is. So there are specific tool specifications where an anomaly has to be, not only a certain depth, but also a certain length and width in order for the tool to properly identify.²⁷

MFL ILI tool technology also has limitations with respect to the ability of the tool to identify and size metal loss caused by gouges, as opposed to metal loss caused by corrosion or dents. As explained by Texas Gas at the hearing, an ILI vendor's algorithm for an ILI tool is developed based on natural-forming corrosion.²⁸ Vendors are able to develop algorithms for naturally-forming corrosion because corrosion presents with consistent physical characteristics across pipelines. The ILI vendor is better able to determine the depth of a corrosion defect based on its length and width.

This is not the case for metal loss caused by gouges because they have irregular volumetric profiles. As Texas Gas explained at the hearing:

No vendor in the world can have a specification on gouges, because we don't know what hit the pipe. We don't know if it was a tooth in a backhoe, a shovel, . . . somebody banging a fence post on it. We don't know. There's so many different sharp edges that you can't create an algorithm for just anything . . . So gouges have irregular shapes. Because they have irregular shapes, you can't funnel that into an algorithm. You may be able to see that you have some metal loss. There's no way to determine how deep it is. . . . Gouges are just not repeatable.²⁹

to as the "Completed Integrity Assessment Excavation Summary (2021 ILI)" and is attached hereto as Attachment B. *See also* OPS's Proposed Civil Penalty Worksheet which shows that, under the "Gravity" assessment criteria, OPS assigned a point value of "7" which corresponds to "[t]he violation occurred NOT within an HCA." (Attached hereto as Attachment C).

²⁶ Tr. at 57: 9-11 (statement of Mr. Preuit).

²⁷ Tr. at 61:19 to 62:8 (statement of Mr. Preuit).

²⁸ Tr. at 87:12-15 (statement of Mr. Preuit).

²⁹ Tr. at 87:16 to 88:6; 17 (statement of Mr. Preuit).

An MFL ILI tool can detect and identify gouges that meet specified size and depth criteria. The non-reported indications here, however, did not satisfy established parameters. Therefore, they were not identified anomalies by the ILI vendor. Additionally, grading specifications are limited due to the irregular and unpredictable nature of gouges, preventing the vendor from using gouge information to regrade the log.

For the May 2021 ILI tool run on EIS 18-2, 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.³⁰ Texas Gas's reporting threshold for metal loss was 15 percent and the reporting threshold for dents was 1 percent. The reporting threshold for dents with metal loss, which are interacting threats, were subject to no threshold, *i.e.*, the vendor would report all indications of such threats. The ILI vendor would report detected defects that met the specified threshold and that could be identified.

The ILI vendor identified 15 anomalies that satisfied Texas Gas's reporting parameters. As part of its final report, the ILI vendor provided Texas Gas a "dig sheet" for each identified anomaly.³¹ Each dig sheet described the anomaly called by the ILI vendor, including the type of feature, the dimensions of the feature, and its location and orientation on the pipeline. The second page of each dig sheet is a document called a data "screenshot" which shows the location of the anomaly called by the ILI vendor, marked by a box.

The data screenshot also shows other features that were detected by the ILI because they caused a deviation in the magnetic flux. These detected features were not identified because they did not meet sizing or attribute reporting parameters which are limited by the technology of the MFL ILI tool. The gouges were not associated with a significant dent, and they lacked attributes needed for the ILI tool to identify and size.

In 2021, Texas Gas began excavating the anomalies called by the ILI vendor. Before conducting the excavations, Texas Gas discussed the ILI results, including the deviations reflected in the data screenshots, with the ILI vendor. The vendor informed Texas Gas of the other indications that would be found on the pipeline.³² Texas Gas first excavated and remediated the two immediate conditions.³³ In early 2022, Texas Gas excavated and remediated the other thirteen anomalies.³⁴ Before each excavation, field personnel were provided the dig sheet and data

³⁰ Entegra UHR MFL/Caliper/IMU Final Report: Boardwalk Pipeline Partners, EIS 18-2 HWY 61 to Weaver Rd, at 4, (July 22, 2021). *See* Violation Report, Exhibit 1 (EIS 18-2 HWY 61 to Weaver Rd – Final Report_11042021.pdf) Relevant excerpts are attached hereto as Attachment D.

³¹ These dig sheets were provided to OPS on April 11, 2024 in response to OPS's March 21, 2024 RFSI. *See* Email of Ms. Tina Baker, Manager, Compliance Services, Texas Gas Transmission, to Mr. Greg Ochs, PHMSA. Ms. Baker's transmittal forwarded an email of Mr. Micheal Preuit which contained the subject line "FW: *Corrected* 2021 ILI Results: EIS 18-2TT HWY 61 to Weaver Rd." Attached to Mr. Preuit's email were the dig sheets provided by the ILI vendor for all 15 of the called anomalies. The email transmittals and the dig sheets are attached hereto as Attachment E.

³² Tr. at 56:18-20; Tr. at 71:17 to 72:14 (statements of Ms. Olenchuk and Mr. Preuit).

³³ Attachment B at 3, 4. Contrary to statements by OPS at the hearing (Tr. at 20:12-13), these excavations were not located on a covered pipeline segment, *i.e.*, they were not in an HCA.

³⁴ Attachment B at 2-4.

screenshot generated by the ILI vendor.³⁵ Field personnel documented the details of each excavation on Pipe Evaluation Information Forms.³⁶ Field personnel documented and confirmed the dimensions of each called anomaly as well as the other features that had been detected in the data screenshots but not called by the ILI vendor.

At wheel count 33387.19, the called anomaly reported on the ILI vendor's dig sheet was a dent (1.1%) with volumetric deviation in the pipe wall.³⁷ In the data screenshot, a small box marks the location of the anomaly.³⁸ The Pipe Evaluation Information form confirmed that the anomaly was a (1.5%) deviation in the pipe wall with gouging.³⁹ The dig packet contains multiple photographs showing the boundaries of the dent marked by a circle drawn on the pipeline surface.⁴⁰ The gouge was confirmed to be located in the dent.⁴¹ Field personnel also confirmed the existence of seven other unrelated gouges⁴² that had been detected on the data screenshots but that were not called because they did not meet the width and length requirements of the ILI tool.⁴³ None of these gouges was associated with the dent. On January 27, 2022, Texas Gas performed a repair by installing a 32" Blue Star half-sole steel sleeve and coated the pipeline with SPC-2888.

At wheel count 142597.88, the called anomaly reported on the ILI vendor's dig sheet was a dent (1.7%) with metal loss.⁴⁴ In the data screenshot, the identified called anomaly is visible in the box.⁴⁵ Multiple photographs in the dig packet shows a circle drawn on the pipe outlining the boundaries of the dent, with a gouge apparent within the dent.⁴⁶ The Pipe Evaluation Information form confirmed a 0.8% deformation (dent) with a gouge.⁴⁷ In addition, field personnel confirmed the existence of other gouges unrelated to the dent that were detected on the data screenshot.⁴⁸ These were not called because they did not meet the width and length requirements of the ILI tool.⁴⁹ On February 4, 2022, Texas Gas performed a repair by installing a 2-foot long Blue Star half-sole steel sleeve and coated the pipeline with SPC-2888.

³⁵ Tr. at 63:1-5; 64:12-13. These data screenshots are included in each dig packet. Violation Report, Exhibit 1 (33387-19_Completed_07192023.pdf at 5-6; 14297-88_Completed_07192023.pdf at 5-6; and 420933.73_Completed_07192023.pdf at 5-6).

³⁶ Violation Report, Exhibit 1 (33387-19_Completed_07192023.pdf at 10-15; 14297-88_Completed_07192023.pdf at 10-15; 420933.73_Completed_07192023.pdf at 10-15).

³⁷ Violation Report, Exhibit 1 (33387-19_Completed_07192023.pdf at 5).

³⁸ *Id.* at 6; *see also* Attachment B at 2.

³⁹ Violation Report, Exhibit 1 (33387-19_Completed_07192023.pdf at 12) (*see* Pipeline Evaluation Information, Form #6000-10, page 3 of 3). The Form reflects the "Dent length, width and depth" as 3.75" x 4" x 264 mils deep (264 mils = 0.264 inches). Divide this depth by the diameter of the pipeline ($0.264"/18" = 0.0146$) to get 1.46% deviation in the pipe wall.

⁴⁰ Violation Report Exhibit 1 (33387-19_Completed_07192023.pdf at 29-31, 34).

⁴¹ Tr. at 65:8-19; 66:18 to 67:1 (statements of Mr. Preuit).

⁴² Violation Report Exhibit 1 (33387-19_Completed_07192023.pdf at 26, 29-36).

⁴³ Tr. at 68:15-22 to 69:1-6 (statement of Mr. Preuit).

⁴⁴ Violation Report Exhibit 1 (142597.88_Completed_07192023.pdf at 5).

⁴⁵ *Id.* at 6; *see also* Attachment B at 3.

⁴⁶ Violation Report Exhibit 1 (142597.88_Completed_07192023.pdf at 23, 25, 27).

⁴⁷ *Id.* at 12 (Pipeline Evaluation Information, Form #6000-10, page 3 of 3). The Form reflects the "Dent length, width and depth" as 11.1" x 7.25" x 137 mils deep (137 mils = 0.137"). Divide this depth by the diameter of the pipeline ($0.137"/18" = 0.0076$) to get a 0.8% deformation (dent).

⁴⁸ Violation Report Exhibit 1 (142597.88_Completed_07192023.pdf at 25, 26, 28-32).

⁴⁹ Tr. at 76:1-9 (statement of Mr. Preuit).

At wheel count 420933.73, the called anomaly reported on the ILI vendor's dig sheet was a 0.6% geometric variation with volumetric variation.⁵⁰ In the data screenshot, the identified anomaly is bounded by a box.⁵¹ Multiple photographs show the called anomaly marked with a circle.⁵² Gouging within the deformation also is apparent in the photographs. The Pipe Evaluation Information form confirmed a 0.7% deformation (dent) with shallow gouging at 10 mils.⁵³ In addition, field personnel confirmed other unrelated gouging that had been visible on the data screenshot.⁵⁴ These were not called because their size was not sufficient for grading by the ILI tool.⁵⁵ On February 10, 2022, Texas Gas performed a repair with a 34" Blue Star Half-Sole Steel Sleeve and coated the pipeline with SPC-2888.

Appendix 4, Step 2, Task 2 of the Boardwalk IM Manual addresses whether, based on the location and attributes of anomalies found during assessment excavations, the data generated by the ILI tool should be resubmitted to the ILI vendor for re-grading. The IM Manual states the following:

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 4-9 shall be repeated.⁵⁶

For each called anomaly on EIS 18-2, the documentation established that there were no discrepancies between the anomalies' attributes predicted by the ILI tool and the attributes confirmed in the field. The accuracy of the ILI data also was verified in a unity plot.⁵⁷ In addition to verifying the attributes and locations of the called anomalies at all three wheel counts, field personnel confirmed and documented the existence of other unrelated gouges that had been detected by the ILI, but not identified or reported by the ILI vendor because they did not meet sizing or attribute reporting parameters of the ILI tool. In addition, Texas Gas conferred with the ILI vendor and requested a review of the ILI data for similar deviations or amplitudes, even if below reporting specifications. The ILI vendor reported that there were none.⁵⁸

⁵⁰ Violation Report Exhibit 1 (420933.73_Completed_07192023.pdf at 5); *see also* Attachment B at 4.

⁵¹ Violation Report Exhibit 1 (420933.73_Completed_07192023.pdf at 6).

⁵² *Id.* at 25, 26.

⁵³ *Id.* at 12 (Pipeline Evaluation Information, Form #6000-10, page 3 of 3). The Form reflects the "Dent length, width and depth" as 5.25" x 5.75" x 128 mils deep (128 mils = 0.128"). Divide this depth by the diameter of the pipeline (0.128"/18" = 0.0071) to get a 0.7% deformation (dent).

⁵⁴ Violation Report Exhibit 1 (420933.73_Completed_07192023.pdf at 27-30).

⁵⁵ Tr. at 78:18-20 (statement of Mr. Preuit).

⁵⁶ Attachment A. Violation Report, Exhibit 1 (Integrity Management Program (IMP)_11102021.pdf) at p. 28 of 32.

⁵⁷ Attachment B at 5. The Notice concedes that the unity plot verified the caliber of the ILI data. Notice at 2 ("The original anomalies identified by the ILI vendor were included in the above-mentioned unity plot which illustrates data caliber.").

⁵⁸ Tr. at 72:15 to 73:3 (statement of Mr. Preuit).

Re-grading ILI data is needed when an anomaly meeting sizing specifications and reporting parameters is found on the pipeline but was not properly identified or graded by the ILI tool. In such circumstances, the data is resubmitted to the vendor so that it can be run through the vendor's algorithm again to determine if an issue exists that would explain why the anomaly was not identified or graded appropriately. As explained at the hearing, it is not possible to grade the performance of the tool with respect to anomalies that the tool cannot identify.⁵⁹

For the ILI tool run on EIS 18-2, Texas Gas determined that re-grading the anomalies was not necessary, would not have changed the results of the ILI, and would not have revealed any additional anomalies in the pipeline.

D. The Allegations in the Notice Are Disproved by the Evidence.

OPS has not satisfied its burden of proving that Texas Gas did not follow Appendix 4, Step 11, Task 2 of the IM Manual because the evidence disproves the assertions in the Notice.

The Notice alleges that the ILI vendor did not detect the additional gouges that were found on the pipeline during the excavations at the three wheel count locations.⁶⁰ This allegation is not correct. The data screenshots provided by the ILI vendor present clear undisputed visual evidence that the tool detected deviations in the magnetic flux and demonstrate that the tool detected the additional gouges.⁶¹ These data screenshots were provided to field personnel before they excavated and exposed the pipeline.⁶² These data screenshots also had been provided to OPS as part of Texas Gas's response to OPS's April 11, 2024 Request for Specific Information.⁶³

In addition, at the hearing OPS asserted multiple times that the ILI vendor failed to "call out" or "report" the gouges that were found on the pipeline during excavations.⁶⁴ OPS alleged that this meant that the "field data varied significantly from the ILI vendor data"⁶⁵ and demonstrated "severe discrepancies" in the ILI data.⁶⁶ These allegations also are disproved by the evidence.

Texas Gas explained at the hearing that the reason the additional gouges found at the three excavation sites were not "called" by the vendor is that they could not be identified because they did not meet the sizing or attribute reporting parameters which are limited by the technology of the ILI tool. Texas Gas also explained that the ILI vendor does not re-grade metal loss anomalies caused by gouges because their irregular volumetric profiles are not repeatable.⁶⁷ While the

⁵⁹ Tr. at 90:15-22 (statement of Mr. Preuit).

⁶⁰ Notice at 2.

⁶¹ Violation Report, Exhibit 1 (33387-19_Completed_07192023.pdf at 6; 14297-88_Completed_07192023.pdf at 6; 420933.73_Completed_07192023.pdf at 6); Tr. at 62:1-4; 63:1-14; 74:5-11; 78:9-20 (statements of Mr. Preuit).

⁶² Tr. at 63:1-5 (statement of Mr. Preuit); Tr. at 64:10-14 (statements of Ms. Olenchuk and Mr. Preuit). Violation Report, Exhibit 1 (33387-19_Completed_07192023.pdf at 5-6; 14297-88_Completed_07192023.pdf at 5-6; 420933.73_Completed_07192023.pdf at 5-6).

⁶³ Attachment E. The data screenshots for the wheel counts at issue in this proceeding are found on pages 7-8, 11-12, and 23-24.

⁶⁴ See generally, Tr. at 30-36 (statements of Ms. McKean).

⁶⁵ Tr. at 11:10-11; 40:5-9 (statements of Mr. McClure and Ms. McKean).

⁶⁶ Notice at 2.

⁶⁷ Tr. at 87:16-22 to 88:6; 17 (statements of Mr. Preuit).

vendor can *detect* gouges because they cause a deviation in the magnetic flux, the vendor is unable to develop an algorithm to *identify* or *call* gouges, specifically if they lack length, width, or depth attributes required for grading specifications.⁶⁸ Texas Gas provided an explanation for each wheel count. For the gouges at wheel counts 33387.19 and 142597.88, Texas Gas explained that they were not called because they did not meet the width and length requirements of the ILI tool.⁶⁹ The gouges at wheel count 420933.73 were not called because their size was not sufficient for grading by the ILI tool.⁷⁰ These gouges were not “missed” by the ILI tool. The claims that the ILI vendor did not detect the additional gouges and that the field data varied significantly from the ILI data and contained severe discrepancies lacks evidentiary support.

At the hearing, OPS did not refute this evidence or Texas Gas’s explanations. OPS also did not explain how re-grading the ILI data would produce a different result, especially when the gouges could not be re-graded because of their size and attributes and given the limitations of the tool technology. The fact that OPS does not agree with Texas Gas’s determination that a re-grade was not necessary does not mean that Texas Gas did not follow its procedure requiring a determination. The United States Appeals Court for the Fifth Circuit has previously rejected PHMSA’s outcome argument.⁷¹ OPS’s suggestion that re-grading the data could have identified other anomalies or gouges on the pipeline⁷² is speculative, lacks evidentiary support and fails to acknowledge the limitations of the ILI tool. Texas Gas had previously requested the ILI Vendor to review the data for additional similar indications in the data and the vendor found none.

The evidence establishes that Texas Gas made a determination that re-grading the ILI data was not necessary and disproves the allegation that Texas Gas did not follow the requirement in Appendix 4, Step 11, Task 2 of its IM Manual to make that determination. Texas Gas did not violate § 192.907(a).

Multiple documents not only prove that Texas Gas made the determination required under Appendix 4, Step 11, Task 2 of the IM Manual, but also prove that the decision was sound. Those documents include the dig sheets which described the attributes and locations of the called anomalies,⁷³ the data screenshots showing how the additional gouges caused deviations in the magnetic flux,⁷⁴ the Pipe Evaluation Information forms documenting the attributes of the called anomalies and verifying the existence of the additional gouges that had been indicated on the data screenshots,⁷⁵ and the photographs of the excavated pipeline showing the called anomalies and the

⁶⁸ Tr. at 62:5-8; 63:17-22 to 64:1-9; Tr. at 76:1-9; Tr. 78:18-20 (statements of Mr. Preuit).

⁶⁹ Tr. at 68:15-22 to 69:1-6; Tr. at 76:1-9 (statement of Mr. Preuit).

⁷⁰ Tr. at 78:18-20 (statement of Mr. Preuit).

⁷¹ *ExxonMobil Pipeline Co., v. United States Dep’t of Transp.*, 867 F.3d 564, 574 (5th Cir. 2017) (finding that the pipeline operator had complied with a regulation’s requirement to consider specified risk factors and rejecting PHMSA’s argument that consideration of those factors mandated a specific outcome).

⁷² Tr. at 12:8-10; Tr. at 51:8-12 (statements of Ms. McKean).

⁷³ Attachment E at 7-8, 11-12, and 23-24. The dig sheets for the excavations at issue in this proceeding are in Exhibit 1 of the Violation Report (33387-19_Completed_07192023.pdf at 5; 14297-88_Completed_07192023.pdf at 5; and 420933.73_Completed_07192023.pdf at 5).

⁷⁴ Attachment E at 7-8, 11-12, and 23-24. The data screenshots for the excavations at issue in this proceeding are in Exhibit 1 of the Violation Report (33387-19_Completed_07192023.pdf at 6; 14297-88_Completed_07192023.pdf at 6; and 420933.73_Completed_07192023.pdf at 6).

⁷⁵ Violation Report, Exhibit 1 (33387-19_Completed_07192023.pdf at 12; 14297-88_Completed_07192023.pdf at 12; and 420933.73_Completed_07192023.pdf at 12).

additional gouges.⁷⁶ All of this documentation is contained in the dig packets for each excavation which are included in the Violation Report.⁷⁷ The accuracy of the ILI tool also is confirmed by a unity plot. The Completed Integrity Assessment Excavation Summary (2021 ILI) that Texas Gas prepared to close out the paper work on the 2021 ILI tool run reflected a distillation of all the information contained in this documentation.⁷⁸

OPS has not proven with a preponderance of evidence the facts necessary to establish that Texas Gas did not follow Appendix 4, Step 11, Task 2 of the IM Manual which required Texas Gas to make a determination whether re-grading the ILI data was necessary.⁷⁹ OPS has not demonstrated that Texas Gas violated § 192.907(a). OPS also has not proven that Texas Gas failed to document its determination that re-grading the ILI was not necessary. Texas Gas has persuasively demonstrated that OPS's factual claims are incorrect and unsupported by evidence that OPS did not refute. The evidence in this proceeding is not closely balanced.⁸⁰ OPS has failed to satisfy both its burden of production and burden of persuasion. The Notice and proposed civil penalty should be withdrawn.⁸¹

Finally, OPS has the burden of demonstrating that a proposed civil penalty is appropriate.⁸² If Texas Gas is found to have failed to document its determination that re-grading the ILI data was not needed, as alleged under OPS's new interpretation of the Notice, then Texas Gas requests that the proposed civil penalty be recalculated and reduced. Currently, the civil penalty assessment factor assesses a point value of "3" for the "Nature" criteria. This point value corresponds to an "Activities" allegation. If this proceeding is recharacterized as a record-keeping violation, the point value under "Nature" should be reduced to "1" and the proposed civil penalty should be reduced accordingly.

⁷⁶ Violation Report, Exhibit 1 (33387-19_Completed_07192023.pdf at 25, 26, 29-32, 34-36; 14297-88_Completed_07192023.pdf at 23, 25-32; 420933.73_Completed_07192023.pdf at 25, 27-30).

⁷⁷ Violation Report, Exhibit 1 (33387-19_Completed_07192023.pdf; 14297-88_Completed_07192023.pdf; 420933.73_Completed_07192023.pdf).

⁷⁸ Tr. at 92:13-22 (statement of Mr. Preuit).

⁷⁹ *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; *Schaeffer*, 546 U.S. at 56-58).

⁸⁰ *Alyeska Pipeline*, 2009 WL 5538655 at *3 (quoting *Schaeffer*, 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).

⁸¹ See *Kinder Morgan, Inc.*, Final Order, CPF No. 5-2023-003-NOPV at 7 (withdrawing allegation where OPS did not refute Respondent's evidence); *ANR Pipeline*, 2012 WL 7177134 at *3 (withdrawing the allegation because the "Violation Report contain[ed] no evidence which would rebut ANR's argument.")

⁸² See e.g., *Slusser v. Commodity Futures Trading Comm'n*, 210 F.3d 783, 787-88 (7th Cir. 2000); *Gimbel v. Commodity Futures Trading Comm'n*, 872 F.2d 196, 201 (7th Cir. 1989); *Premex, Inc. v. Commodity Futures Trading Comm'n*, 785 F.2d 1403, 1408-09 (9th Cir. 1986); *Bosma v. U.S. Dep't. of Agriculture*, 754 F.2d 804, 810 (9th Cir. 1985).

III. Conclusion

Texas Gas requests that the Notice and proposed civil penalty be withdrawn because OPS has conceded that Texas Gas made the determination it was required to make under Appendix 4, Step 11, Task 2 of the Boardwalk IM Manual. Texas Gas did not violate § 192.907(a).

If the Notice is not withdrawn on this basis, Texas Gas requests that the Notice and proposed civil penalty be withdrawn because OPS has failed to meet its burden of proving that Texas Gas failed to follow Appendix 4, Step 11, Task 2 of its IM Manual or that Texas Gas violated § 192.907(a). OPS also has failed to demonstrate that Texas Gas's determination lacked supporting documentation.

If Texas Gas is found to have failed to adequately document its determination that re-grading the ILI was not necessary, then Texas Gas requests that the civil penalty be recalculated to reflect a "Records" violation instead of an "Activities" violation.

Respectfully submitted,

Susan A. Olenchuk

Susan A. Olenchuk
Van Ness Feldman, LLP
Attorney for Texas Gas Transmission, LLC

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