

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

In the Matter of)

Texas Gas Transmission, LLC,)

Respondent.)

CPF No. 3-2024-062-NOPV

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

Pursuant to § 190.208 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, Proposed Civil Penalty and Proposed Compliance Order (Notice) issued on November 21, 2024. Texas Gas contests the alleged violation, the proposed civil penalty and proposed compliance order. Texas Gas requests that the Notice be withdrawn.

Concurrently with this written Response, pursuant to 49 C.F.R. § 190.208 and § 190.211,² Texas Gas is submitting a Request for a Hearing and Preliminary Statement of Issues. As provided under 49 U.S.C. § 60117(b)(1),³ 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 (2023).

² *Id.* §§ 190.208, 190.211.

³ 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); 49 C.F.R. § 190.213(a)(1).

I. Response of Texas Gas

A. PHMSA Has Not Met Its Burden of Demonstrating That Texas Gas Violated § 192.745(b).

PHMSA has the burden of proving that Texas Gas violated § 192.745(b).⁴ 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.”⁵ PHMSA “bears the burden of proof as to all elements of the proposed violation.”⁶ 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.⁷ OPS also bears the burden of proving that the proposed civil penalty and proposed compliance order are appropriate remedies.⁸

Section 192.745(a) states that “each transmission line valve that might be required during an emergency must be inspected and partially operated at intervals not exceeding 15 months . . .”⁹ Section 192.745(b) requires that an operator “take prompt remedial action to correct any valve found inoperable, unless the operator designates an alternative valve.”¹⁰

The Notice alleges that Texas Gas “failed to take effective remedial action regarding the operability of block valve MLS 63-5” as required under §192.745(b).¹¹ Referring to three Texas Gas work orders, the Notice notes that “a hand pump designed to enable manual actuation of the MLS 63-5 valve was not in working condition and was unable to close the valve at the time of [Texas Gas’s] 2021, 2022, 2023 annual inspections, despite at least one repair attempt.”¹² The Notice acknowledges that the valve can be operated remotely by the control room, but states that

⁴ 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) (2023).

⁵ *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).

⁶ *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).

⁷ *See, e.g., ExxonMobil Pipeline Co.*, Final Order, CPF No. 4-2017-5027, 2019 WL 3734516, **4, 5 (Apr. 3, 2019) (ordering withdrawal of allegations where OPS failed to prove that Respondent engaged in conduct that would constitute a violation), *Air Prods. & Chems., Inc.*, Final Order, CPF No. 4-2013-1001, 2015 WL 6758819, *3 (Aug. 10, 2015) (withdrawing alleged violation because PHMSA did not produce “any evidence to support its position”); *ExxonMobil Pipeline Co.*, Final Order, CPF No. 5-2013-5007, 2015 WL 780721, *12 (Jan. 23, 2015) (finding that PHMSA failed to meet burden of proving that certain measures were required under regulations).

⁸ *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).

⁹ 49 C.F.R. § 192.745(a).

¹⁰ *Id.* § 192.745(b).

¹¹ Notice at 1.

¹² *Id.*

“the persistently inoperable state of the hand pump posed the potential to create a situation where field personnel would be unable to stop the flow of gas if control room telemetry was interrupted.”¹³

The Notice proposes a civil penalty of \$50,200.¹⁴ The Notice also proposes a compliance order that would require that Texas Gas “execute a permanent repair or other corrective action that renders emergency valve MLS 63-5 manually operable, and provide documentation of the repair or other corrective action to the” Central Region Director within 90 days of receipt of the Final Order.¹⁵

PHMSA has not met its burden of proving that Texas Gas violated § 192.745(b) because valve MLS 63-5 is not inoperable as claimed in the Notice. Texas Gas can operate the valve without the hand pump either locally using the actuator or remotely from the gas control room. The disabled hand pump does not affect operation of the valve. This valve is safely and reliably operated and tested locally and remotely by the actuator mounted on the valve. The hand pump is merely a third option for operating and testing. PHMSA’s regulations do not require that an Emergency valve have a third method of operation. For this reason, the allegation that the outstanding work orders for repair of the hand pump constitute a violation of § 192.745(b) has no legal support. In addition, there is no factual or legal basis for the proposed compliance order which would require that Texas Gas permanently repair the valve to ensure “manual operations.”

Texas Gas requests that the Notice, the proposed civil penalty, and proposed compliance order be withdrawn.

B. Valve MLS 63-5 Is Not Inoperable and Can Be Operated Manually.

Section 192.745(b) requires that an operator “take prompt remedial action to correct any valve found to be inoperable.” Texas Gas requests that the Notice be withdrawn because valve MLS 63-5 is not inoperable. The valve is designed to be operated by any one of three different methods. Field personnel can operate the valve locally using either handles (*i.e.*, actuator) located at the base of the valve or by using a hand pump located at the top of the valve.¹⁶ The third method of operating MLS 63-5 is to operate the actuator remotely by the gas control room. Each of these methods of operating MLS 63-5 are separate and independent of each other.

The Notice states that “a hand pump designed to enable manual actuation of the MLS 63-5 valve was not in working condition and was unable to close the valve at the time of [Texas Gas’s] 2021, 2022, and 2023 annual inspections.”¹⁷ This statement reflects a misunderstanding about how the MLS 63-5 valve is manually operated. The hand pump is not used to enable “manual actuation” of the MLS 63-5 valve. The hand pump at the top of the valve and the actuator (the handles) at the bottom of the valve¹⁸ operate the valve independently of each other. The fact that

¹³ *Id.* at 2.

¹⁴ *Id.*

¹⁵ *Id.* at 4.

¹⁶ Attachment A hereto is a photograph of the MLS 63-5 valve, showing the hand pump and the handles (actuator).

¹⁷ Notice at 1.

¹⁸ Attachment A.

the hand pump is not operational does not affect the ability of field personnel to locally operate the valve. In fact, the actuator, whether locally or remotely operated, is the method of operating the MLS 63-5 valve.

Texas Gas's records demonstrate that, during annual inspections performed in 2021, 2022, and 2023, the MLS 63-5 valve was inspected and operated as required under § 192.745(a).¹⁹ These inspections demonstrate that the MLS 63-5 valve is operable. In addition, the valve can be operated remotely by gas control. The fact that the hand pump was not "in working condition" and cannot be used to close the valve does not render the valve inoperable. Section 192.745 does not require that Texas Gas use the hand pump to manually operate the valve during inspections.

Texas Gas's outstanding work orders for the repair of the hand pump also do not constitute a violation of § 192.745(b). The disabled hand pump does not affect Texas Gas's ability to operate the valve locally or via gas control. No regulation requires that Texas Gas repair equipment not necessary for operating a valve, especially when the valve can be operated using either of two other methods.

Finally, the Notice's statement that the "persistently inoperable state of the hand pump posed the potential to create a situation where field personnel would be unable to stop the flow of gas if control room telemetry was interrupted,"²⁰ should be rejected as speculative and entirely devoid of evidentiary support.²¹ Nothing in the Notice or Violation Report supports this claim. The statement also is inaccurate because the actuator can be operated locally.

PHMSA has failed to satisfy its burden of proving that Texas Gas "failed to take effective remedial action regarding the operability of block valve MLS 63-5" in violation of § 192.745(b). PHMSA has failed to establish that the MLS 63-5 valve is inoperable which is a fact essential to the proving the alleged violation.²² Texas Gas has demonstrated above that the MLS 63-5 valve is not inoperable because the actuator can be operated either locally by field personnel or remotely by gas control. The disabled hand pump and outstanding work orders for repairing the hand pump do not establish a violation of § 192.745(b).²³

The proposed compliance order would require that Texas Gas "execute a permanent repair or other corrective action that renders emergency valve MLS 63-5 manually operable, and provide documentation of the repair or other corrective action to the" Central Region Director within 90 days of receipt of the Final Order.²⁴ The proposed compliance order disregards the fact that the

¹⁹ Texas Gas's annual DOT Emergency Valve Inspection Reports for 2021, 2022, and 2023 are attached hereto as Attachment B.

²⁰ Notice at 2.

²¹ *Id.* at 2.

²² *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), *Air Prods. & Chems.*, 2015 WL 6758819 at *3 (withdrawing alleged violation because PHMSA did not produce "any evidence to support its position" and thereby did not meet its burden of proof).

²³ *ExxonMobil*, 2015 WL 780721 at *12 (finding that PHMSA failed to meet burden of proving that certain measures were required under regulations).

²⁴ Notice at 4.

MLS 63-5 valve already is manually operable because the actuator can be operated locally. There is no factual or legal basis for the proposed compliance order.

Texas Gas requests that the Notice, proposed civil penalty and proposed compliance order be withdrawn as both factually and legally unsupported.

II. Conclusion

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

Respectfully submitted,

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

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

December 19, 2024