

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

In the Matter of	)	
	)	
	)	
Gulf South Pipeline Company, LLC	)	
and Texas Gas Transmission, LLC,	)	CPF No. 3-2024-064-NOA
	)	
Respondents.	)	
	)	

**Written Response of
Gulf South Pipeline Company, LLC and Texas Gas Transmission, LLC
to Notice of Amendment**

Pursuant to § 190.206(a) of the regulations of the Pipeline and Hazardous Materials Safety Administration (PHMSA),¹ Gulf South Pipeline Company, LLC (Gulf South) and Texas Gas Transmission, LLC (Texas Gas)² submit a written response (Response) to the Notice of Amendment (NOA) issued on August 15, 2024. On September 4, 2024, PHMSA extended the deadline to October 15, 2024, for submitting a written response.

Gulf South and Texas Gas contest Item 1, Item 2, and Item 3 of the NOA and request that these items be withdrawn because PHMSA has not met its burden of demonstrating that Boardwalk’s procedures are inadequate for safe operations. Gulf South and Texas Gas do not contest Item 4 through Item 11 of the NOA.

Concurrently with this Response, pursuant to 49 C.F.R. § 190.206(a) and § 190.211,³ Gulf South and Texas Gas submit a Request for a Hearing and a Preliminary Statement of Issues. As provided under 49 U.S.C. § 60117(b)(1)(B),⁴ Gulf South and Texas Gas also request an informal meeting to further discuss Item 1, Item 2, and Item 3, and request that the presiding official delay scheduling a hearing to allow the parties sufficient time to convene this meeting.

Gulf South and Texas Gas also reiterate their request for the notes associated with the allegations contained in the NOA. On August 26, 2024, Gulf South and Texas Gas requested the case file for this enforcement proceeding and were provided only its own procedures. Under the Pipeline Safety Act, the case file includes “all agency records pertinent to the matters of fact and

¹ 49 C.F.R. § 190.206(a) (2023).

² Gulf South and Texas Gas are wholly owned operating subsidiaries of Boardwalk Pipelines, L.P. (Boardwalk). Although the NOA refers to “BW Pipelines,” Gulf South and Texas Gas operate separate pipeline systems and have different operator identification numbers (OPID). Gulf South’s OPID is 31728 and Texas Gas’s OPID is 19270. The two companies operate their pipeline systems pursuant to procedures that are maintained by Boardwalk on behalf of multiple Boardwalk-owned pipelines. Boardwalk does not operate any pipeline facility and does not have an OPID.

³ 49 C.F.R. §§ 190.206(a) and 190.211.

⁴ 49 U.S.C. § 60117(b)(1)(B)(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).

law asserted.”⁵ On September 20, 2024, Gulf South and Texas Gas specifically requested the notes associated with the NOA’s allegations. Such notes constitute part of the “agency record.” To date, PHMSA has not responded to the companies’ request. Gulf South and Texas Gas reserve the right to supplement this written response to address any additional issues raised in those materials when PHMSA provides them.

Gulf South and Texas Gas are committed to public safety and operating their pipeline facilities in accordance with PHMSA’s regulations. They look forward to resolving PHMSA’s concerns.

I. Item 1, Item 2, and Item 3 of the NOA Should Be Withdrawn Because PHMSA Has Not Met Its Burden of Demonstrating That Boardwalk’s Procedures Are Inadequate for Safe Operation.

A. PHMSA Bears the Burden of Proving That the Boardwalk Procedures Are Inadequate For Safe Operation.

An NOA is an enforcement proceeding that alleges that an operator’s plans or procedures “are inadequate to assure safe operation of a pipeline facility.”⁶ PHMSA has the burden of proving that the Boardwalk procedures are inadequate for safe operation of the Gulf South and Texas Gas pipeline systems.⁷ 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.”⁸ PHMSA “bears the burden of proof as to all elements of the proposed violation.”⁹ 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.¹⁰

⁵ 49 U.S.C. § 60117(b)(1)(C).

⁶ 49 C.F.R. § 190.206(a); 49 U.S.C. § 60108(a)(2) (2018) (authorizing PHMSA to enforce Part 192 standards if a written plan “is inadequate for safe operation”); *see generally*, Amendment of an Operator’s Plans or Procedures, Final Rule, 56 Fed. Reg. 31,087 (July 9, 1991) (amending PHMSA’s regulations to provide that for enforcement sanctions if PHMSA finds an operator’s plans and procedures to be inadequate).

⁷ 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). 49 C.F.R. § 190.213(a)(1). *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); *Golden Pass Pipeline, LLC*, Final Order, CPF No. 4-2008-1017, 2011 WL 1919517, *5 (Mar. 22, 2011) (finding that PHMSA did not meet its burden of proving that its interpretation of regulatory language was correct).

⁸ *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).

⁹ *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).

¹⁰ *See, e.g., ExxonMobil Pipeline Co.*, Final Order, CPF No. 4-2017-527, 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).

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.”¹¹ This burden is carried “only if the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent in its defense.”¹² 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.¹³ If “the evidence is closely balanced,” PHMSA has not met its burden of persuasion and the allegation of violation must be withdrawn.¹⁴

In this proceeding, PHMSA has failed to meet its burden of demonstrating that the procedures referenced in Item 1, Item 2, and Item 3 are inadequate for safe operations. Gulf South and Texas Gas request that these items be withdrawn.

B. Item 1 § 192.113 Longitudinal joint factor (E) for steel pipe.

Under § 192.619(a), an operator is prohibited from operating a steel pipeline segment at a pressure that exceeds a maximum allowable operating pressure (MAOP) that may be determined based on the lowest of four limiting factors. One of those limiting factors is the design pressure of the weakest element in the segment.¹⁵ The formula for determining the design pressure for steel pipe is set forth in § 192.105.¹⁶ One of the input values for the design formula is the longitudinal joint factor, which must be determined in accordance with a table contained in § 192.113(a).¹⁷

The table in § 192.113(a) lists the longitudinal joint factor for various specifications of pipe based on pipe class (*i.e.*, type of longitudinal seam). For most pipe classes, the longitudinal joint factor is 1.00. The table also lists pipe classes called “Other” for which the longitudinal joint factor is less than 1.00.¹⁸ Section 192.113(b) states that “[i]f the type of longitudinal joint cannot be determined, the joint factor to be used must not exceed that designated for ‘Other.’”¹⁹

Using a longitudinal joint factor of less than 1.00 in the pipe design formula has the effect of lowering the MAOP of a pipeline segment. A lower MAOP, in turn, reduces the capacity of the pipeline and restricts the amount of gas that the pipeline segment can transport. Reduced transportation capacity adversely affects service reliability for customers and the ability of the pipeline to meet its firm delivery obligations.

¹¹ *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).

¹² *Butte Pipeline*, 2009 WL 3190794 at *1 (internal citation omitted).

¹³ See *ANR Pipeline*, 2012 WL 7177134 at *3 (withdrawing alleged violation because the “Violation Report contain[ed] no evidence which would rebut ANR’s argument”); *City of Richmond, VA*, Final Order, CPF No. 1-2004-0006, 2006 WL 38225337, *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).

¹⁴ *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).

¹⁵ 49 C.F.R. § 192.619(a)(1).

¹⁶ *Id.* § 192.105(a).

¹⁷ *Id.* § 192.113(a).

¹⁸ *Id.*

¹⁹ *Id.* § 192.113(b).

The NOA alleges that Boardwalk's TVC Guideline procedure "did not provide adequate guidance for selecting a longitudinal joint factor in accordance with the requirements of § 192.113."²⁰ The NOA alleges that Boardwalk's procedure conflicts with § 192.113 because the procedure provides that if "personnel cannot determine seam type but can prove that the seam type cannot be derated, they call it a non-derated seam type with a longitudinal factor of 1.00. However, § 192.113 specifically requires that if the longitudinal seam type cannot be determined, the joint factor must not exceed that designated as 'Other.'"²¹ The NOA states that the Boardwalk procedure must be amended to comply with the requirements of § 192.113.

Gulf South and Texas Gas contest Item 1 because PHMSA has not demonstrated that the procedure in the Boardwalk TVC Guideline is inadequate for safe pipeline operation.

The Boardwalk TVC Guideline describes the rules, assumptions, and procedures that Gulf South and Texas Gas should apply to determine whether documentation for a pipeline segment satisfies PHMSA's traceable, verifiable, and complete (TVC) standard. The Boardwalk TVC Guideline sets forth a system for the continuous review of documents, records, and data to ensure accuracy and efficiency and describes a process for identifying and documenting TVC records that are acceptable for confirming the MAOPs of pipeline segments across the pipeline systems.²²

The Boardwalk TVC Guideline includes a procedure that applies to circumstances where Gulf South and Texas Gas do not know the specific type of a longitudinal seam for a particular pipeline segment, but enough documented information is available to determine with certainty that the seam type has a longitudinal joint factor of not less than "1.00."²³

For example, during the 1960s and 1970s, A.O. Smith Corporation (A.O. Smith) manufactured only two kinds of pipe: electric flash-welded pipe (EFW) and double submerged-arc welded pipe (DSAW).²⁴ Section 192.113(a) lists the longitudinal joint factor for both seam types as 1.00.²⁵ Gulf South and Texas Gas have identified pipe in their systems where documented information establishes that the pipe was manufactured by A.O. Smith during this time period. The documentation, however, contains an either incomplete description of the pipe seam (*i.e.*, "electric weld") or is silent regarding the seam. For these pipeline segments, Gulf South and Texas Gas may not know whether the pipe is EFW or DSAW, but they know that the longitudinal joint factor is 1.00 based on the table in § 192.113(a) listing the longitudinal joint factor for both seam types as "1.00." Because the longitudinal seam type of such pipe is known to be either EFW or

²⁰ NOA at 2.

²¹ *Id.*

²² Boardwalk Pipelines, TVC Guideline, 6 (June 16, 2023) (Attached hereto as Attachment 1).

²³ *Id.* at 14-17.

²⁴ The sources of this information are Rosenfeld, M.J., P.E., Kiefner & Associates, Inc., "Joint Efficiency Factors for A.O. Smith Line Pipe," (A Kiefner White Paper, Dec. 2012) (<https://kiefner.wpenginepowered.com/wp-content/uploads/2023/12/Joint-Efficiency-Factors-for-A-O-Smith-Line-Pipe.pdf>); and Kiefner, J.F. and Clark, E.B., *History of Line Pipe Manufacturing in North America*, 5-1, 8-5, C-5 (The American Society of Mechanical Engineers 1996). Published in 1996 and written with the support of the American Society of Mechanical Engineers (ASME) the purpose of *History of Line Pipe Manufacturing in North America* is to "provide pipeline operators with historical data on line pipe, so that they will be able to operate their pipelines, particularly the older ones, with greater confidence in their safety and reliability." *Id.* at A-1. This book is an important reference historical tool for pipeline operators seeking to ascertain information about older line pipe in their systems.

²⁵ 49 C.F.R. § 192.113(a).

DSAW and the longitudinal joint factor for both seam types is 1.00, the Boardwalk TVC Guideline allows Gulf South and Texas Gas to classify this pipe segment as having a “non-derated” seam type.²⁶

Treating these pipeline segments as “non-derated” and using a longitudinal joint factor of 1.00 for purposes of calculating MAOP does not mean that Gulf South and Texas Gas cease efforts to confirm the seam type. For a segment listed as having a “non-derated” seam, Gulf South and Texas Gas continue to obtain information about the specific seam type when possible because such information is important for identifying manufacturing and other threats associated with vintage pipe.²⁷ In addition, Gulf South and Texas Gas include factors in their risk analysis programs to treat pipeline segments with “non-derated” seam types conservatively and elevate the risk result.

Boardwalk’s TVC Guideline provides adequate guidance for selecting a longitudinal joint factor in accordance with § 192.113 and is not inadequate to ensure safe operations. The procedure accommodates circumstances where Gulf South and Texas Gas can determine with certainty the longitudinal joint factor of a pipeline segment based on other information known about the pipeline segment. The procedure also provides extensive information and specific guidance regarding pipe with certain seam types that must be derated.²⁸ Only when those seam types can be ruled out based on other known information about the pipeline segment are Gulf South and Texas Gas permitted to classify a seam as “non-derated.”

Requiring use of a longitudinal joint factor of less than 1.00 in the pipe design formula will result in Gulf South and Texas Gas being forced to reduce the MAOP of affected pipeline segments. Reducing MAOP will create service reliability issues for the customers of Gulf South and Texas Gas, many of which are small towns and communities where the pipeline is the sole supplier of natural gas. Reducing MAOPs of affected pipeline segments also would compromise the ability of Gulf South and Texas Gas to meet firm delivery obligations. Such an outcome has adverse human, safety, contractual, and economic impacts.

PHMSA has not met its burden of proving that the Boardwalk TVC Guideline is inadequate for safe pipeline operation and Item 1 should be withdrawn.²⁹

**C. Item 2 § 192.607 Verification of Pipeline Material Properties and Attributes:
Onshore steel transmission pipelines**

Section 192.607(c) requires that

“[i]f an operator does not have traceable, verifiable, and complete records required by [§ 192.607(b)], the operator must develop and implement procedures for

²⁶ Attachment 1 at 15-17.

²⁷ Attachment 1 at 14.

²⁸ Attachment 1 at 15-17.

²⁹ *ExxonMobil*, 2019 WL 3734516 at **4, 5 (withdrawing allegations where OPS failed to prove that Respondent engaged in conduct that would constitute a violation); *ExxonMobil*, 2015 WL 780721 at *12 (finding that PHMSA failed to meet burden of proving that certain measures were required under regulations); *Butte Pipeline*, 2009 WL 3190794 at *1 (“a violation may be found only if the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent in its defense.”).

conducting nondestructive or destructive tests, examinations, and assessments in order to verify the material properties of aboveground line pipe and components, and of buried line pipe and components when excavations occur at the following opportunities: Anomaly direct examinations, *in situ* evaluations, repairs, remediations, maintenance, and excavations that are associated with replacements or relocations of pipeline segments that are removed from service.³⁰

This provision allows operators to obtain information about pipe material and attributes on an opportunistic basis when the pipeline is excavated and exposed for the reasons described in the regulation.

The NOA alleges that the procedure in Chapter 16 of Boardwalk's written Integrity Management Plan (IM Plan) addressing the opportunistic acquisition of pipe material property information does not provide adequate guidance for implementing § 192.607(c). As described in the NOA, Boardwalk's IM Plan defines the term "opportunistic" as "A line excavation where no less than a total of 30 days are available to plan material verification activities, non-destructive testing equipment and technicians are available, and it is safe to access the excavation to perform the testing."³¹ The NOA alleges that § 192.607(c) requires that an operator obtain the material properties for above ground and below ground pipe when certain excavations occur and "does not allow operators to complete such activities at arbitrary times, such as 'when 30 days are available.'"³² The NOA would require that the IM Plan be amended to comply with § 192.607(c).

Gulf South and Texas Gas contest Item 2 and request that it be withdrawn because PHMSA has not satisfied its burden of demonstrating that Boardwalk's IM Plan is inadequate for safe pipeline operations.³³

Excavating a pipeline segment is a significant undertaking that requires Gulf South and Texas Gas to coordinate qualified company and contractor personnel, secure necessary construction and testing equipment, and if necessary, obtain local approvals and equipment. If the pipeline segment to be excavated requires *in situ* nondestructive evaluation (NDE) in order to obtain pipe material or attribute data, Gulf South and Texas Gas must schedule their outside vendor and notify them of the type of testing that is needed. If an excavation will involve cutting out a portion of the pipe for repairs or replacement, Gulf South and Texas Gas must evacuate the pipeline segment of gas, notify customers of the outage, and possibly provide a temporary gas supply. For these reasons, a vast majority of pipeline excavations on the systems of Gulf South and Texas Gas are scheduled months or over a year in advance. The "30-day" opportunistic provision in the Boardwalk IM Plan does not apply to these scheduled excavations.

Not all excavations provide the opportunity to perform the testing required to obtain pipe material and attribute information about a pipeline segment because, in some circumstances, Gulf

³⁰ 49 C.F.R. § 192.607(c).

³¹ NOA at 3.

³² *Id.*

³³ *Golden Pass*, 2011 WL 1919517 at *5 (finding that PHMSA did not meet its burden of proving that its interpretation of regulatory language was correct); *Butte Pipeline*, 2009 WL 3190794 at *1 ("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).

South and Texas Gas must excavate a pipeline segment on only a few hours or a few days' notice. These unscheduled excavations are usually required to address a pipeline emergency or an immediate repair condition. These excavations must be conducted on short notice and coordinating qualified personnel and deploying excavation equipment present practical and logistical challenges. In what are often urgent circumstances, there may not be sufficient time to ascertain whether the pipeline segment is subject to the pipe material verification requirement or which data needs to be obtained. Even if this information is known, securing additional qualified vendor personnel to perform NDE is usually not feasible because of the unavailability of personnel and testing equipment within such a short period of time. Finally, these types of unscheduled excavations can present heightened safety or operational concerns and may involve circumstances where gas service has been disrupted and restoring gas flow is a priority.

All of these logistical, practical, and technology challenges are magnified if the kind of pipe material and attribute data that needs to be obtained requires a cut-out sample of pipe. Importantly, if a repair already requires that a section of pipe be cut out, Gulf South and Texas Gas will perform needed testing to obtain pipe material and attribute information. However, if the emergency or immediate repair does not require removing a section of the pipe, Gulf South and Texas Gas generally avoid performing a cut-out solely for the purpose of obtaining pipe material information. Disrupting service to customers, such as power plants and small communities, has serious operational, economic, contractual, environmental, and safety implications and is avoided unless absolutely necessary.

The 30-day provision in Boardwalk's IM Plan recognizes that, because of the challenges associated with marshalling resources to perform unscheduled excavations, they usually do not present opportunities to perform NDE or destructive testing to obtain pipe material and attribute data. The 30-day provision means that an opportunity to obtain pipe material and attribute information during an excavation does not exist unless personnel are able to secure the equipment and technicians necessary for testing within 30 days *and* it is determined that testing is safe for pipeline personnel, the public and pipeline operations.

The 30-day provision is consistent with the regulatory history of the final rule which contemplated circumstances that do not present opportunities to obtain pipe material information under § 192.607(c). During the Gas Pipeline Advisory Committee's (GPAC) consideration of the proposed rule, a GPAC member raised the concern that obtaining pipe material information on an opportunistic basis would not always be possible.

Mr. Kern: We should make sure that there are certain types of excavations you may do under an emergency situation or small keyhole technology that it may not be possible to do that. So we have to make sure that somebody doesn't view that as a violation and say that we've done it.³⁴

³⁴ PHMSA, Transcript of Gas Pipeline Advisory Committee at 63-64 (Dec. 14, 2017), https://primis-meetings.phmsa.dot.gov/archive/GPAC_MEETING_TRANSCRIPT_12-14-2017.pdf. (statement of Mr. Michael Kern, National Grid).

The PHMSA representative responded:

Mr. Nanney: We're very aware that we do not want sampling to get in the way of doing emergency operations, doing one calls, things such as that. And that will be – would be addressed in any type of rule language that came out because we're of the same opinion that he is, is that you don't let getting a sample for the sake of getting a sample to get in the way of what you need to do. So I just wanted to make that clear.³⁵

The 30-day provision contained in Boardwalk's IM Plan reasonably accommodates the circumstances that were contemplated during the GPAC discussion and the logistical, operational, and technical challenges associated with unscheduled excavations. The 30-day provision does not apply to excavations and repairs that are scheduled in advance which comprise most excavations on the Gulf South and Texas Gas systems. In those circumstances, adequate time is available to ascertain whether the pipe segment being excavated requires pipe material verification, the specific pipe data that is needed, whether NDE or destructive testing is appropriate, and to schedule appropriate personnel and equipment. In addition, the 30-day provision is not relevant if an unscheduled excavation will already require cutting out the pipeline. For all other unscheduled excavations, the provision establishes reasonable parameters for determining when NDE or cutting out the pipe will not be performed because it is not possible or "opportunistic" given the circumstances.

Without this or a similar provision, Gulf South and Texas Gas could be required to either leave an excavation site open for days or weeks or longer until a vendor can schedule a crew to perform the NDE or re-excavate the site at a later date and re-expose the pipeline to conduct further examination. Gulf South and Texas Gas also could be forced to perform a pipeline cut-out that would not otherwise be necessary for safety or operational reasons and that could create safety risks and adversely affect operations and gas service. Such outcomes are not reasonable or consistent with pipeline safety and are not required by § 192.607(c).

PHMSA has not met its burden of demonstrating that the 30-day provision contained in the Boardwalk IM Plan is either inconsistent with § 192.607(c) or inadequate for safe operations.³⁶ The provision reasonably accommodates those limited circumstances where opportunistically obtaining pipe material data is not safe or feasible. Gulf South and Texas Gas request that Item 2 be withdrawn.

D. Item 3 § 192.607 Verification of Pipeline Material Properties and Attributes: Onshore steel transmission pipelines

Section 192.607(a) requires that "[w]herever required by this part, operators of onshore steel transmission pipelines must document and verify material properties and attributes in

³⁵ *Id.* at 66. (statement of Mr. Steve Nanney, PHMSA Staff).

³⁶ *ExxonMobil*, 2015 WL 780721 at *12 (finding that PHMSA failed to meet burden of proving that certain measures were required under regulations); *Golden Pass*, 2011 WL 1919517 at *5 (finding that PHMSA did not meet its burden of proving that its interpretation of regulatory language was correct).

accordance with this section.”³⁷ Section 192.607(e) states that “[t]o verify material properties and attributes for a population of multiple, comparable segments of pipe without traceable, verifiable, and complete records, an operator may use a sampling program in accordance with” specified requirements.³⁸ Section 192.607(e)(1) through (5) describe the sampling requirements. Section 192.607(e)(4) states that if test results identify line pipe with properties that are not consistent with available information, existing expectations, or assumed properties, then the operator must establish an expanded sampling program.³⁹

The NOA alleges that Chapter 16 of Boardwalk’s IM plan is inadequate because procedures for expanding sampling are not consistent with § 192.607(e)(4). In particular, the NOA states:

Specifically, [the Boardwalk IM Plan] Chapter 16, section 4.3, “Incorporating ILI to Delineate Populations,” needs either a cross reference to section 4.6, “Inconsistencies in Measured Properties and Attributes,” or be incorporated into section 4.6. This is due to the fact that these sections have duplicative requirements of the Manager of Pipeline Safety (or designee) to document the discrepancies between ILI and existing records. However, the IMP should also address how the sampling plan will be expanded to address findings that reveal material properties that are not consistent with all available information, or existing expectations, or assumed material properties used in pipeline operations and maintenance in the past as required by § 192.607(e)(4). Boardwalk must amend its written procedures to comply with the requirements of §§ 192.607(e)(4) and 192.605(b)(1).⁴⁰

Boardwalk contests Item 3 and requests that it be withdrawn because PHMSA has not satisfied its burden of demonstrating that the procedure is inadequate for safe operations. In particular, PHMSA has not demonstrated that a sampling program, let alone an expanded sampling program, is required under § 192.607(e).

Section 192.607(e) states that to “verify material properties and attributes for a population of multiple, comparable segments of pipe without traceable, verifiable, and complete records, an operator *may* use a sampling program.”⁴¹ The word “may” is a permissive word that does not create a required action. PHMSA’s rules of regulatory construction make this clear. Section 192.15 states the word “May” means “is permitted to” or “is authorized to.”⁴² By contrast, the word “Shall” is “used in the mandatory and imperative sense.”⁴³

Applying PHMSA’s rules of construction means that, because § 192.607(e) states that an operator *may* use a sampling program, an operator has the option to implement a sampling program but is not required to do so. Because using a sampling program under § 192.607(e) is optional,

³⁷ *Id.* § 192.607(a).

³⁸ *Id.* § 192.607(e).

³⁹ *Id.* § 192.607(d)(4).

⁴⁰ NOA at 3.

⁴¹ 49 C.F.R. § 192.607(e) (italics added).

⁴² *Id.* § 192.15(a).

⁴³ *Id.*

PHMSA has not demonstrated that Boardwalk's IM Plan is inadequate for safe pipeline operation.⁴⁴ Gulf South and Texas Gas request that PHMSA withdraw Item 3 of the NOA.

II. Conclusion

For the reasons set forth above, Gulf South and Texas Gas request that Item 1, Item 2, and Item 3 of the NOA be withdrawn.

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

October 15, 2024

⁴⁴ *ExxonMobil*, 2015 WL 780721 at *12 (finding that PHMSA failed to meet burden of proving that certain measures were required under regulations); *Golden Pass*, 2011 WL 1919517 at *5 (finding that PHMSA did not meet its burden of proving that its interpretation of regulatory language was correct).