

August 9, 2021

VIA ELECTRONIC MAIL TO: marko@tsmidstream.com

Mr. Mark Oliver
Executive Vice President of Operations
Tristate NLA, LLC
9901 Valley Ranch Pkwy E, Suite 2000
Irving, Texas 75063

Re: CPF No. 4-2020-006-NOPV

Dear Mr. Oliver:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws the single allegation of violation in the Notice of Probable Violation issued on September 30, 2020 (Notice). It further contains three warning items as described in the Notice, which require no further action by Tristate NLA, LLC. Accordingly, this case is now closed. Service of the Final Order by electronic mail is effective upon the date of transmission as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Ms. Mary McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Ms. Amy Guidry, General Counsel and Executive Vice President, Tristate NLA, LLC,
amyg@tsmidstream.com
Ms. Tonja Holmes, Contract/Regulatory Manager, Tristate NLA, LLC,
tonjah@tsmidstream.com

CONFIRMATION OF RECEIPT REQUESTED

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

In the Matter of

Tristate NLA, LLC,

Respondent.

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) **CPF No. 4-2020-006-NOPV**
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FINAL ORDER

During the period of March 6, 2020 through July 23, 2020, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of Tristate NLA, LLC (Tristate or Respondent) in Texas and Louisiana. The facilities inspected consist of approximately 8.8 miles of regulated interstate gas gathering pipelines in Texas and Louisiana.¹

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated September 30, 2020, a Notice of Probable Violation and Proposed Compliance Order (Notice), which also included warnings pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Tristate had committed a violation of 49 C.F.R. § 192.805 and proposed ordering Respondent to take certain measures to correct the alleged violation. Three warning items required no further action, but warned the operator to correct the probable violations or face possible future enforcement action.

After requesting and receiving an extension of time to respond, Tristate responded to the Notice by letter dated December 7, 2020 (Response). The company contested the alleged violation, and requested that the proposed compliance order be withdrawn. Respondent did not request a hearing and therefore has waived its right to one.

WITHDRAWAL OF ALLEGATION

The Notice alleged that Respondent violated 49 C.F.R. Part 192, as follows:

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 192.805(i), which states:

¹ Pipeline Violation Safety Report, at 1 (on file with PHMSA).

§ 192.805 Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

(a)

(i) After December 16, 2004, notify the Administrator or a state agency participating under 49 U.S.C. Chapter 601 if the operator significantly modifies the program after the administrator or state agency has verified that it complies with this section. Notifications to PHMSA may be submitted by electronic mail to *InformationResourcesManager@dot.gov*, or by mail to ATTN: Information Resources Manager DOT/PHMSA/OPS, East Building, 2nd Floor, E22-321, New Jersey Avenue SE., Washington, DC 20590.

The Notice alleged that Respondent violated 49 C.F.R. § 192.805(i) by failing to notify PHMSA of significant modifications to its operator qualification (OQ) program after PHMSA had verified that it complied with § 192.805. Specifically, Tristate failed to notify PHMSA of changes to its OQ plan that resulted from its acquisition of Gulf South pipeline on May 1, 2019.

In its Response, Tristate contested the allegation and divided its argument into three parts. First, Tristate contended that there were no changes to the OQ program as a result of the acquisition. Specifically, Tristate argued that § 192.805 provides the requirements of an OQ program, and that utilizing the full list of OQ requirements, a merger/acquisition (M&A) alone would not alter the OQ program. Further, Tristate reasoned that the intent of § 192.805(a)(i) is to notify the regulating agency of a modification to the program so that the agency is aware that the program may no longer comply with the code. An M&A alone would not alter the OQ program such that it no longer complies with the requirements in § 192.805.

While Tristate agreed that changes to the M&A section of the OQ plan would create a significant modification to the OQ program, Tristate contended that it has not made any change to Section 4.1, which covers the training requirements during an M&A.

Tristate further argued that an M&A change is unlike an M&A itself. Specifically, Tristate reasoned that in PHMSA's advisory bulletin, ADB-09-03, the list of "significant" modifications includes all subjects directly related to the OQ program and how it is implemented, and that an acquisition of additional pipeline facilities is not directly related to how the program is implemented. Additionally, PHMSA's OQ Enforcement Guidance suggests an OQ program should have a procedure for M&A. Finally, § 191.22(c)(2)(iv) covers the notification for acquisitions of 50 or more miles of pipe, and that a finding that an M&A of 50 or more miles of pipe requires a notification under the OQ program would cause a regulatory redundancy.

Second, Tristate contended that the acquisition of Gulf South pipeline did not trigger any regulatory requirement for a review and update of the OQ program. Specifically, ADB-09-03 advises operators to conduct reviews of the OQ program in conjunction with the reviews of the operations and maintenance (O&M) program, which Tristate has conducted annually.

Third, Tristate contended that Section 5.1.1 of its OQ program covers communication of change within Tristate and its contractors, and does not place any requirement on notification to PHMSA. Specifically, Section 5.1 introduces the Communication of Change section and adequately describes the applicability of the section to individuals performing Covered Tasks, and therefore, is not an appropriate place to include notification to PHMSA. Instead, Tristate explains that Section 1.5.2 currently satisfies the regulatory requirements of Notification to PHMSA under § 192.805(i) and any addition of examples of significant changes would be a suggested change, not a required change. Specifically, Section 1.5.2 states, "...when significant changes are made to this plan, Tristate will notify the Office of Pipeline Safety or the participating state pipeline safety office, as appropriate, of those changes...significant means any change that could reasonably be expected to put the adequacy of this program in question."

Having reviewed the Response, I find that Tristate's arguments have merit and the allegation of violation alleged in the Notice should be withdrawn. It should be noted that on March 17, 2021, subsequent to the issuance of the Notice, Tristate submitted to PHMSA revised procedures for its OQ program that included M&A changes pursuant to § 192.805(i).

Accordingly, after considering Tristate's Response, I find that the M&A at issue in this case did not result in changes to Tristate's OQ program, and thus did not require notification under the regulation cited. Based upon the foregoing, I hereby order that the alleged violation of § 192.805(i) and associated proposed compliance order be withdrawn.

WARNING ITEMS

With respect to Items 1, 2, and 3, the Notice alleged probable violations of Parts 191 and 192, but identified them as warning items pursuant to § 190.205. The warnings were for:

49 C.F.R. § 191.17 (**Item 1**) — Respondent's alleged failure to submit DOT Form PHMSA 7100.2-1 for calendar year 2019 for its gas gathering system as required by March 15, 2020. Tristate submitted the required annual report on April 20, 2020 (36 days late);

49 C.F.R. § 191.22 (**Item 2**) — Respondent's alleged failure to file a Type D, acquisition notification, to the National Registry of Pipeline and LNG operators for approximately 100.47 miles of a gas transmission pipeline purchased from Gulf South no later than 60 days following acquisition in accordance with § 191.22(c)(2)(iv). Tristate submitted its Type D acquisition notice 196 days later than required by the time frame specified in § 191.22(c)(2)(iv); and

49 C.F.R. § 192.615 (**Item 3**) — Respondent's alleged failure to establish and maintain liaisons with all appropriate emergency responders and other public officials in accordance with § 192.615(c)(2). Tristate is required to learn the responsibility and resources of each government organization that may respond to a gas pipeline emergency and acquaint the public officials with Tristate's ability to respond to a gas pipeline emergency as it traverses Caddo Parish, Louisiana and Panola County, Texas.

If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

August 9, 2021

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued