

**Before the  
U.S. Department of Transportation  
Pipeline and Hazardous Materials Safety Administration  
Office of Pipeline Safety  
Washington, D.C.**

In the Matter of	)	
	)	
Texas Eastern Transmission, LP	)	CPF No. 4-2021-034-NOPV
	)	Notice of Probable Violation
Respondent.	)	
	)	

**Request for Hearing, Statement of Issues, and Response to NOPV**

**I. Introduction**

The Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) issued a Notice of Probable Violation (NOPV), proposed civil penalty, and proposed compliance order to Texas Eastern Transmission, LP (TETLP or the Company) on December 21, 2021. TETLP is a subsidiary of Spectra Energy Partners LP, which is a wholly owned subsidiary of Enbridge Inc. (Enbridge). The NOPV alleged two (2) violations of the Part 192 regulations under 49 C.F.R. §§ 192.613 (continuing surveillance) and 192.705 (patrolling), proposed a total civil penalty of \$640,300 for both items, and proposed a compliance order associated with one (1) of the allegations. PHMSA extended the time to respond to the NOPV to February 21, 2022 and therefore this response is timely.

The NOPV was issued following an investigation regarding two (2) reportable pipeline incidents on the TETLP system that occurred on August 1, 2019 near Danville, Kentucky on Line 15 and on May 4, 2020 in Fleming County near Hillsboro, Kentucky on Line 10. TETLP is committed to ensuring pipeline safety, continual improvement, and working with PHMSA toward those goals. Toward that end, TETLP has cooperated with PHMSA and other agencies in responding to and investigating the incidents, including the National Transportation Safety Board (NTSB), and the Company continues to incorporate relevant lessons learned.

As part of this overall commitment, TETLP is filing this response to request an in-person hearing to address the factual and legal issues in NOPV Item 1 under 49 C.F.R. § 192.613 and the associated proposed civil penalty of \$552,900 pursuant to 49 C.F.R. §§ 190.208 and 190.211. In the spirit of cooperation and without admission of law or fact, TETLP is not contesting NOPV Item 2 or the associated proposed compliance order. At a hearing, TETLP will be represented by inhouse counsel as well as outside counsel with Troutman Pepper.

## II. Background

Recent pipeline incidents have highlighted the threat of land movement to pipelines, particularly in certain portions of the eastern United States. Given that certain of its subsidiary pipeline systems are located in eastern Appalachia, Enbridge (and TETLP) have been actively working to identify and manage the threat of geohazards for some time. During the time period relevant to PHMSA's NOPV, TETLP was implementing a framework of fourteen (14) standard operating procedures (SOPs) with provisions applicable to the identification and evaluation of geohazards. In 2018, Enbridge (and TETLP) engaged a third party geohazard expert (BGC Engineering USA, Inc.) to assist in developing a geohazard site inventory, conducting field inspections, and other data gathering activities along relevant portions of its system.

With the goal of continuous learning and improvement, these efforts were intensified and expanded to address lessons learned from a January 21, 2019 land movement incident in Noble County, Ohio, on the TETLP pipeline system. After the Noble County incident, Enbridge (and TETLP) actively worked to develop a more robust program and approach with dedicated procedures related to the management of geohazards, which included a gap analysis and focus on the analysis of strain and risk classification of geohazard sites as well as mitigation measures. In addition to its work on programmatic changes, TETLP was, with the assistance of additional third party experts in LiDAR (LASER), geohazards (BGC, Geosyntec), and strain (SSD, Inc.): (1) actively collecting and integrating additional geohazard data, (2) refining tiered risk classification criteria, (3) performing field visits and site assessments based on that data, (4) installing strain gauges and other monitoring instruments, and (5) mitigating appropriate identified geohazard sites on its system based on the information available at the time. To assist with leading the geohazard program, further development of new procedures, and field work, TETLP secured a geoscientist from BGC from April 2019 to December 2019, until such time as the Company could hire a qualified Geohazard Program Supervisor. By the end of 2019, TETLP had conducted 777 field inspections on Lines 10, 15, and 25 to assess geohazard risks and implemented strain mitigation where warranted.

Specific to the Fleming County incident site, TETLP had in 2018 identified the geohazard risk through the process of assessing its system for geohazard threats. Shortly after the Noble County incident, TETLP completed helicopter flyovers of its entire system, including the Fleming County geohazard site in January 2019, which did not identify any immediate issues of concern. In June 2019, TETLP performed an in-line inspection with an inertial measurement unit tool to analyze and compare the historical strain data related to the site. The following month, in July 2019, TETLP performed a field visit and ground inspection of the geohazard site and observed right of way erosion control work being performed at the site but was not aware of the exact nature or magnitude of the work done. The inspection and subsequent assessment of strain demand confirmed TETLP's approach of continued monitoring and plan for future stress relief. When additional strain growth was identified on September 23, 2019, TETLP performed an assessment of the available data in October 2019 which confirmed there was no urgent action required and affirmed the approach of continued monitoring and planned installation of site instrumentation in 2020. As a follow-up in February 2020, TETLP convened a multidisciplinary meeting with various subject matter experts, including BGC, regarding the Fleming County incident site and to determine the scope of work of the planned instrumentation and mitigation. After that meeting, BGC was collecting more information to inform and finalize the scope of mitigation work at the

site, which included the installation of strain gauges and drainage measures that would provide additional information about the site.

Recognizing the need to develop industry best practices to manage landslide hazards and driven by lessons learned from the Noble County incident, Enbridge (and TETLP) initiated a joint industry project (JIP) through the Interstate Natural Gas Association of America (INGAA) in February 2019.<sup>1</sup> From the outset, Enbridge (including TETLP) has been a lead sponsor and key participant in the JIP effort focused on the development of guidance and a framework for operators to use in the development and implementation of landslide hazard management programs. The JIP issued internal guidelines in April 2020, which were further refined and published for the pipeline industry in August 2020.

On September 4, 2019, TETLP decided to adopt and adapt where appropriate the geohazard program utilized by Enbridge's Liquids Pipeline business unit, in lieu of other procedures that were in development. TETLP met with PHMSA and the Ohio Public Utilities Commission in October 2019 to provide an update on the Noble County incident lessons learned, which included discussion of the new geohazard management program and providing the new procedures for review and comment. With PHMSA's feedback from that meeting, TETLP worked to finalize and publish its new procedures, a majority of which the Company was already implementing in the field, on May 4, 2020, the same day of the Fleming County, Kentucky incident. At this time, Enbridge, and TETLP through Enbridge, was also actively engaged in finalizing the JIP industry guidelines for management of landslide hazards.

### III. Response to NOPV Item 1 (49 C.F.R. § 192.613)

#### A. PHMSA Allegation

##### **§ 192.613 Continuing surveillance.**

**(a) Each operator shall have a procedure for continuing surveillance of its facilities to determine and take appropriate action concerning changes in class location, failures, leakage history, corrosion, substantial changes in cathodic protection requirements, and other unusual operating and maintenance conditions.**

**(b) If a segment of pipeline is determined to be in unsatisfactory condition but no immediate hazard exists, the operator shall initiate a program to recondition or phase out the segment involved, or, if the segment cannot be reconditioned or phased out, reduce the maximum allowable operating pressure in accordance with § 192.619 (a) and (b).**

TETLP failed to initiate a program to recondition, phase out, or reduce the maximum allowable operating pressure for segments of its pipeline systems subject to an unsatisfactory condition, specifically the adverse effects of geohazards. TETLP

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<sup>1</sup> These efforts were preceded by benchmarking and a JIP through INGAA which identified the need for more specific management of geohazards.

operates pipelines in areas across the United States that are subject to geohazards. During the inspection, PHMSA examined TETLP's methodology for managing its unusual operating conditions specific to the danger geohazards posed to over 2,000 miles of TETLP's pipeline system from the gulf coastal plains of Mississippi, northeast to the Appalachian range in Pennsylvania.

PHMSA's examination of TETLP's methodology revealed that prior to the May 4, 2020 incident, TETLP had not developed a program, to include comprehensive written procedures, for continuing surveillance of the pipeline system concerning other unusual operating and maintenance conditions relevant to geohazards.

Upon request, TETLP provided several procedures that, according to TETLP, together served as its Standard Operating Procedure intended to cover and address geohazard management for its pipeline systems. These were a combination of legacy procedures that were in affect prior to the May 4, 2020 incident and current procedures. However, whether considered individually or collectively, PHMSA found the 14 procedures presented at the time of the inspection failed to provide personnel with adequate guidance for detection, monitoring for changes, and appropriate actions needed to mitigate the hazardous effects from the ongoing threat of geohazards. Additionally, PHMSA's examination revealed that TETLP had been aware that a significant portion of its pipeline system was susceptible to the adverse effects of geohazards. For example, TETLP experienced an in-service failure on Line 10 located in Noble County, Ohio, in January 2019, due to a landslide. The investigation into this January 2019 failure found several deficient areas in the management of geohazards leading up to the failure. This incident occurred prior to the two incidents that are the subject of the Second Amended CAO (CPF 2-2019-1002H). In 2018, TETLP identified the eventual site of the Fleming County, Kentucky failure as having a higher probability of being affected by a landslide. Therefore, despite having this knowledge of the impact of geohazards on its pipeline, TETLP continued to operate its pipelines without initiating a program to recondition, phase out, or reduce the maximum allowable operating pressure for segments of its pipeline systems subject to the geohazards, which resulted in a second serious incident on May 4, 2020.

## **B. TETLP Response**

TETLP believes that NOPV Item 1 should be withdrawn as a matter of fact and law. TETLP had procedures in place during the relevant time period to address the threat of geohazards on its system based on available information and discretion provided under 49 C.F.R. § 192.613. In keeping with the goal of continual improvement, TETLP was in the process of developing new dedicated procedures and a more robust program to incorporate lessons learned across the system and in light of the Noble County incident, in coordination with PHMSA and third party experts. Further, TETLP was moving forward with implementation of lessons learned before it finalized and formally published its new procedures. Specifically, the Company was actively addressing the threat of geohazards on its system and the Fleming County site, through data collection and integration, field assessments, monitoring, and mitigation where appropriate based on the available information. Through all of these actions, TETLP was in compliance with 49 C.F.R. § 192.613

and the recommendations included in the only PHMSA guidance provided to date related to the threat of geohazards.

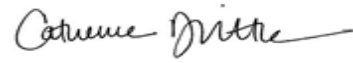
#### **IV. Statement of Issues**

- A. Whether based on the facts and applicable law, PHMSA has met its burden to prove by a preponderance of the evidence that TETLP did not comply with 49 C.F.R. § 192.613 for the period of time in question (June 20, 2019 to May 4, 2020).
  - 1. Whether TETLP had a procedure for continuing surveillance of the pipeline system concerning other unusual operating and maintenance conditions relevant to geohazards.
  - 2. Whether TETLP had initiated a program to recondition, phase out, or reduce the maximum allowable operating pressure for segments of its pipeline systems subject to the effects of geohazards.
- B. Whether NOPV Item 1 is consistent the Agency's goal of continuous learning and improvement.
- C. Whether PHMSA provided due process and fair notice, as required by the U.S. Constitution and the Administrative Procedure Act, in issuing an alleged violation of 49 C.F.R. § 192.613 based on the facts and the applicable law.
- D. Whether the Pipeline Safety Act, 49 U.S.C. § 60101 et seq., authorizes a finding of liability simply because an incident occurred.
- E. Whether the proposed civil penalty of \$552,900 associated with NOPV Item 1 should be withdrawn or reduced to accurately reflect the statutory and regulatory penalty assessment criteria required under 49 U.S.C. § 60122(b) and 49 C.F.R. § 190.225.

#### **V. Summary and Request for Relief**

For all of the reasons identified above, and in consideration of other matters as justice may require, TETLP respectfully requests that NOPV Item 1 and the associated penalty be withdrawn, or significantly reduced. In advance of the requested hearing, and pursuant to 49 C.F.R. § 190.209, TETLP requests a copy of the complete case file in this matter to the extent there are any documents in addition to the Pipeline Safety Violation Report, related exhibits, and the Proposed Civil Penalty Calculation Worksheet which have already been provided to TETLP upon its previous request.

Respectfully submitted,



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