

PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
WASHINGTON, DC 20590

In the matter of:	§	
	§	
Florida Gas Transmission Company	§	CPF No. 4-2022-032-NOPV
	§	
Respondent	§	
	§	

**STATEMENT OF ISSUES
OF
FLORIDA GAS TRANSMISSION COMPANY
TO
NOTICE OF PROBABLE VIOLATION
AND
PROPOSED CIVIL PENALTY**

Florida Gas Transmission Company (“Respondent”) submits this Statement of Issues pursuant to 49 C.F.R. § 190.211(b) in connection with its request for a hearing pursuant to 49 C.F.R. § 190.208(a)(4).

By letter dated July 22, 2022, the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) issued to Respondent a Notice of Probable Violation and Proposed Civil Penalty (collectively, the “NOPV”), CPF No. 4-2022-032-NOPV, which was received by Respondent via email on the same date. By email of August 3, 2022, Respondent requested an extension of 45 days to respond to the NOPV. By email dated August 17, 2022, former Director, Southwest Region, Mary McDaniel, granted an extension of time to respond until October 5, 2022. By letter of even date herewith, Respondent has requested a hearing in this matter, and this Statement of Issues is served therewith.

BACKGROUND

The subject NOPV relates to an inspection, conducted from September 13, 2020 through September 23, 2021, related to an incident which occurred on September 10, 2020, near Debary, Florida, on Respondent’s Sanford Lateral pipeline.

In the NOPV, PHMSA alleges three violations of the pipeline safety regulations promulgated at 49 C.F.R. Part 192 and proposes to assess civil penalties in connection with the three alleged violations, all pursuant to the procedural and enforcement regulations promulgated at 49 C.F.R. Part 190, Subparts A and B. As to the alleged violations and proposed civil penalties, Respondent herein states its issues.

THE ALLEGED VIOLATIONS

Respondent states below its factual, regulatory and/or legal issues that relate to the alleged violations of the NOPV. The numbered paragraphs below correspond with the numbered Items of the NOPV. Each numbered paragraph begins with a citation to the subject regulation and a summary of the agency's allegations.

1. 49 C.F.R. § 192.619 – Maximum allowable operating pressure: Steel or plastic pipelines.

PHMSA alleges that Respondent failed to establish Maximum Allowable Operating Pressure (MAOP) for its Sanford Lateral in accordance with § 192.619(a)(3). PHMSA specifically alleges that Respondent failed to provide records to substantiate its MAOP determination, including records to substantiate the highest actual operating pressure during the five years prior to MAOP establishment. Further, PHMSA alleges that Respondent submitted an MAOP authorization sheet but failed to submit any operating pressure records. PHMSA also alleges that Respondent performed a post-incident hydrostatic pressure test. PHMSA finally concludes that Respondent failed to establish MAOP for the Sanford Lateral in accordance with § 192.619(a)(3).

Respondent disputes and objects to the allegations stated in the NOPV on the following grounds:

- a. PHMSA has failed to meet its burden of proof that a violation occurred.
- b. The alleged violation is not supported by the evidence in the case file.
- c. The alleged violation is not supported by the relevant facts.
- d. The NOPV fails to adequately make factual findings or to explain, discuss, or analyze the conclusion that Respondent is in violation of the subject regulation in the manner alleged; as such, to find a violation would constitute arbitrary and capricious agency action.
- e. In light of the legislative history and regulatory history, to find a violation as PHMSA alleges would constitute an abuse of discretion.
- f. In light of the legislative history and regulatory history, to find a violation as PHMSA alleges would be in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.
- g. PHMSA includes, among its allegations, post-incident actions of Respondent, which subsequent remedial measures must be excluded from consideration as inadmissible for the purpose of establishing fault and/or supporting a finding of violation.
- h. The content of the PHMSA case file provided to Respondent fails to comply with 49 U.S.C. 60117(b)(1)(C); as a result, Respondent is precluded from access to all relevant facts in the agency's possession and thus is denied a full and fair opportunity to respond to the agency's allegations.

2. 49 C.F.R. § 192.917 – How does an operator identify potential threats to pipeline integrity and use the threat identified in its integrity program?

PHMSA makes the following allegations:

- i. That Respondent failed to identify and evaluate all potential threats to each covered pipeline segment in its “natural gas pipeline systems” in accordance with § 192.917(a)(1).
- ii. That Respondent failed to inspect the “covered segments” of the Sanford Lateral for stress corrosion cracking (SCC), did not include the Sanford Lateral as part of its SCC program, and did not consistently evaluate for SCC when the pipeline was exposed.
- iii. That pipe with the same vintage, manufacturing type and coating type as the Sanford Lateral has previously shown high susceptibility to SCC.
- iv. That, despite finding SCC on certain Respondent pipelines with similar characteristics in the immediate vicinity of the Sanford Lateral, Respondent did not include the Sanford Lateral as part of its SCC program but, instead, evaluated for SCC on the Sanford Lateral when the pipe was “exposed or found to be exposed.”
- v. That Respondent’s Life Cycle Management of Surface Breaking Linear Indications Best Practice states that once Respondent determines that a covered segment of pipe is susceptible to SCC, Respondent adds the entire pipeline (covered and non-covered segments) to the SCC program.
- vi. That, had Respondent evaluated for SCC on the covered segments of the Sanford Lateral, Respondent would have been required to add the entire line to the SCC program.
- vii. That, during the inspection, PHMSA examined records showing that certain exposed pipe on the Sanford Lateral was examined for SCC using wet magnetic particles.
- viii. That, in 2018, 24,102 feet of the Sanford Lateral was re-routed, and that Respondent excavated, exposed, sand-blasted and cut into the existing pipeline in four locations.
- ix. That Respondent was unable to produce any records which demonstrated that these “four locations were well-bonded” or records that Respondent conducted SCC examinations using wet magnetic particles on the exposed pipe at any of the four locations.
- x. That Respondent’s failure to inspect the covered segments of the Sanford Lateral for SCC and Respondent’s failure to consistently evaluate for SCC when the line was exposed were causal factors in the incident.

PHMSA finally concludes that Respondent failed to identify and evaluate all potential threats to each covered pipeline segment in its natural gas pipeline systems in accordance with § 192.917(a)(1).

Respondent disputes and objects to the allegations stated in the NOPV on the following grounds:

- a. PHMSA has failed to meet its burden of proof that a violation occurred.
- b. The alleged violation is not supported by the evidence in the case file.
- c. PHMSA misinterprets Respondent's applicable procedures and/or misapplies Respondent's applicable procedures to the facts in evidence.
- d. To find a violation on the basis of the actions of which PHMSA complains would violate the applicable statute of limitations.
- e. PHMSA's allegations are attended with vagueness and ambiguity such that the allegations cannot support a finding of violation, and, as such, to find a violation would be arbitrary and capricious.
- f. The NOPV fails to adequately make factual findings or to explain, discuss, or analyze the conclusion that Respondent is in violation of the subject regulation in the manner alleged.
- g. PHMSA has failed to establish, or indeed to suggest, a rational connection between the facts found and the conclusions reached, and, as such, to find a violation would constitute arbitrary and capricious agency action.
- h. The content of the PHMSA case file provided to Respondent fails to comply with 49 U.S.C. 60117(b)(1)(C); as a result, Respondent is precluded from access to all relevant facts in the agency's possession and thus is denied a full and fair opportunity to respond to the agency's allegations.

3. 49 C.F.R. § 192.937 – What is a continual process of evaluation and assessment to maintain a pipeline's integrity?

PHMSA alleges that Respondent failed to follow ASME/ANSI B31.8S, Section 6.2 in selecting the appropriate internal inspection tools for each covered segment. PHMSA specifically alleges that Respondent's tool runs in 2014 and 2019 were designed to primarily evaluate circumferential defects, rather than axial defects, on the Sanford Lateral.

PHMSA further alleges that, because of higher risks associated with "pre-1970 LF ERW" pipe, an operator must select an assessment method most likely to detect the threats. PHMSA alleges that ASME/ANSI B31.8S, Section 6.2.1(e) states that "Transverse Flux Tool... is more sensitive to axially aligned metal-loss defects." PHMSA alleges that Respondent used a Magnetic Flux Leakage Axial tool in 2014 and 2019 "despite the elevated risk of longitudinal seam failure."

PHMSA finally concludes that Respondent failed to follow ASME/ANSI B31.8S, Section 6.2 in selecting appropriate internal inspection tools for each covered segment in accordance with § 192.937(c)(1).

Respondent disputes and objects to the allegations stated in the NOPV on the following grounds:

- a. PHMSA misinterprets and/or misapplies the applicable regulatory standard, and, therefore, its allegations are technically incorrect and unfounded.
- b. PHMSA asserts a violation in part based upon actions which occurred in 2014, greater than five years prior to the issuance of the NOPV, and, as such, consideration of said actions would violate the statute of limitations and, therefore, all references to said actions should be excluded from consideration.
- c. PHMSA has failed to meet its burden of proof that a violation occurred.
- d. The alleged violation is not supported by the evidence in the case file.
- e. The NOPV fails to adequately make factual findings or to explain, discuss, or analyze the conclusion that Respondent is in violation of the subject regulation in the manner alleged.
- f. PHMSA has failed to establish, or indeed to suggest, a rational connection between the facts found and the conclusions reached, and, as such, to find a violation would constitute arbitrary and capricious agency action.
- g. The content of the PHMSA case file provided to Respondent fails to comply with 49 U.S.C. 60117(b)(1)(C); as a result, Respondent is precluded from access to all relevant facts in the agency's possession and thus is denied a full and fair opportunity to respond to the agency's allegations.

THE PROPOSED CIVIL PENALTIES

PHMSA proposes a total of \$834,400 in civil penalties in connection with alleged violation Item 1, Item 2, and Item 3, as to each of which Respondent states the following issues:

1. As to the proposed civil penalties for Item 1, Item 2, and Item 3, PHMSA has failed to make available to the public, as required by the Administrative Procedure Act, the methods or procedures by which PHMSA determines the amount of proposed civil penalties and the amounts eventually assessed, a denial of Respondent's right of due process, and thus, the proposed civil penalties should be withdrawn in their entirety.
2. As to the proposed civil penalties for Item 1, Item 2, and Item 3, respectively, the NOPV and the underlying Pipeline Safety Violation Report fail to establish a sufficient evidentiary basis for, or adequate discussion, explanation or analysis of, the penalty assessment considerations of 49 C.F.R. § 190.225 in support of the proposed civil penalties, and, thus, Respondent has no reasonable opportunity to prepare an adequate defense to contest any of the proposed civil penalties. On those grounds the proposed civil penalties should be withdrawn in their entirety.
3. As to the proposed civil penalty for Item 1, the alleged violation goes to the absence of a record, not to a failure to perform an activity. On this ground, the proposed civil penalty should be withdrawn in its entirety, or, in the alternative, reduced accordingly.

4. As to the proposed civil penalties for Item 2 and Item 3, respectively, Respondent objects to the magnitude of the proposed penalties as: unreasonable; disproportional to any of the penalty assessment considerations of 49 C.F.R. § 190.225; unsupported by sufficient evidence, or any analysis, that applies the penalty assessment considerations; arbitrary, capricious or otherwise not in accordance with law; and an abuse of discretion. On those grounds the proposed civil penalties should be withdrawn in their entirety.
5. As to each proposed civil penalty for Item 2 and Item 3, respectively, to the extent that the related alleged violation is not supported by substantial evidence, a rational connection between facts found and conclusions drawn, regulation, or law, such proposed civil penalty may not be imposed and must be withdrawn in its entirety.
6. As to the proposed civil penalty for Item 3, Respondent objects to the inclusion of the 2014 tool run as an “instance of violation” given that 2014 is greater than five years prior to the issuance of this NOPV and, therefore, the 2014 tool run cannot be considered in the calculation of any civil penalties for Item 3.

CONCLUSION

At the hearing in this matter, Respondent intends to bring forth evidence in the form of documents and/or witness testimony, as well as to examine the evidence in the PHMSA case file and any PHMSA witnesses. Respondent also will present its arguments in support of the issues stated heretofore. Respondent reserves the right to amend and supplement this Statement of Issues at or before the hearing.

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September 30, 2022



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