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

In the Matter of	)	
Beta Offshore,	)	**CPF No. 5-2023-011-NOPV**
Respondent.	)	

PRE-HEARING BRIEF OF BETA OFFSHORE
APRIL 29, 2024

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I. Introduction

Pursuant to 49 C.F.R. § 190.211(d), Beta Operating Company, LLC d/b/a Beta Offshore (Beta or the Company) respectfully submits this pre-hearing brief regarding the Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice) that the Office of Pipeline Safety (OPS or the Agency) issued on April 6, 2023.[1]

The Notice arose from a pipeline accident that occurred on the San Pedro Bay Pipeline (the Pipeline) on October 1, 2021 (the Incident), and OPS's subsequent investigation.[2]

II. Background

A. Statement of Facts

1. The Pipeline

Beta operates the 17-mile Pipeline which ships crude oil from Platform Elly, an offshore oil platform in the San Pedro Bay in Southern California, to Beta Pump Station in Long Beach, California. The Pipeline runs along the seafloor until reaching the Long Beach breakwater, where it is buried. Beta conducts Remotely Operated Vehicle (ROV) and In-Line Inspection tool (ILI) inspections on the schedule set by regulators to assess the integrity of the Pipeline and identify changes in its condition. Beta conducted ILIs in 2007, 2009, 2011, 2013, 2015, 2017, and 2019—more frequently than required by 49 C.F.R. Part 195 and industry standards. ILI assessment results were consistently good and showed no concerns about the Pipeline's condition. In 2020, because of these positive results, the Bureau of Safety and Environmental Enforcement (BSEE), another federal agency that also regulates the Pipeline, approved Beta's transition to a four-year ILI cycle. Beta also conducted either ROV inspections or Side Scan Sonar surveys in even-numbered years (ROVs in 2012, 2014, 2018, and 2020 and Side Scan Sonar surveys in 2010 and 2016). ROV and

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[1] *In the Matter of Amplify Energy Corp.*, CPF No. 5-2023-011-NOPV, Notice (Apr. 6, 2023).
[2] *Id.* at 1-4.

Side Scan Sonar reports showed the Pipeline was in good condition and in its proper location. Beta also conducted weekly line rides, or visual inspections of the Pipeline's right-of-way. Beta also conducts weekly pigging and maintains a chemical program for the Pipeline. Prior to October 2021, the Pipeline had never had a significant leak in its 40-year-plus history.

2. The Anchor Drags

The Pipeline is located in a no-anchorage zone in the San Pedro Bay. The Marine Exchange of Los Angeles-Long Beach Harbor monitors and assigns vessel anchorages. Vessels are required to stay in their designated anchorages while at anchor, and they are not permitted to drag anchors outside of the anchorage zones or near the Pipeline. The Pipeline is marked on nautical charts of the San Pedro Bay. The charts state:

> "CAUTION SUBMARINE PIPELINES AND CABLES. . . . Not all submarine pipelines and submarine cables are required to be buried. . . . Mariners should use extreme caution when operating vessels in depths of water comparable to their draft in areas where pipelines and cables may exist, and when anchoring, dragging, or trawling."

On January 25, 2021, during a storm, two large cargo vessels dragged their anchors outside of their designated anchorages and into the "no-anchor" zone across the Pipeline. The ships' anchors struck the Pipeline, displacing a 4,000-foot portion of the Pipeline up to 105 feet from its original location. The ships did not disclose their anchor drags to Beta, and Beta did not know that the ships had drug their anchors near or in the no-anchorage zone. Had Beta known about the ships' anchor drags, Beta would have suspended operations, deployed an ROV to inspect the Pipeline, detected the Pipeline's displacement and damage, and undertaken remedial actions to prevent a spill from occurring before returning the Pipeline to operation. No disclosures were made to Beta. Months later, on October 1, the leak occurred at the point where one of the anchors damaged the Pipeline.

3. The Events of October 1-2, 2021

At approximately 11:00 a.m. on October 1, 2021, Beta began to experience an "upset" condition in the processing equipment on Platform Elly, which involved the inversion of crude oil and produced water in a "knockout vessel" on Platform Elly. Beta's personnel attempted to resolve the upset condition, but the upset resulted in an unusually large amount of water entering the Pipeline, which the crew understood from experience could impact the meter and pressure readings on which the leak detection system relied. As was later determined, at about 4:05 p.m. on October 1, 2021, the Pipeline leaked at the location of one of the January 25, 2021, anchor strikes.[3] At approximately 4:10 p.m. on October 1, 2021, Beta's Leak Detection System ("LDS") issued a leak detection alarm and indicated a leak location at Mile 0, which corresponds to Platform Elly and not the Pipeline. Each subsequent leak detection alarm on October 1 and 2, 2021 indicated a leak location at Mile 0. Based on this Mile 0 reading, Beta's personnel searched multiple times for a leak on Platform Elly throughout the night but were unable to find a leak, because there was no such leak on Platform Elly. This Mile 0 reading—in conjunction with the crew's knowledge of the Pipeline's condition, the large amount of water in the Pipeline following the upset, and the presence of a pig in the Pipeline, among other factors—led Beta's personnel to believe that the LDS alarms were false alarms. Further, Beta's personnel also believed that this leak alarm was false in part because of slack line conditions associated with stopping and starting the Pipeline. Finally, on October 1, Beta received several communication-loss alarms related to communication issues occurring between Platform Elly and Beta Pump Station. Beta's personnel acknowledged

[3] National Transportation Safety Board, MIR-24-01 (Jan. 2, 2024), p. 62-70.

these alarms and were aware of the possibility that these communication issues were contributing to or triggering false leak alarms, as they had in the past. After each leak alarm, the crew turned off the Pipeline and took steps to determine whether the Pipeline might be leaking.

Around 2:30 a.m. on October 2, 2021, Beta's personnel requested that a third party conduct a line ride, in which a boat (here, the *Nicholas L*) travels above the Pipeline's charted right of way, from shore to Platform Elly, in order to determine if there is any indication of an oil spill or other problems. (The vessels' anchor drags had displaced the Pipeline from its charted right of way, but because the vessels failed to tell Beta of the anchor drags, neither Beta nor the crew of the *Nicholas L* knew of the displacement.) After this line ride, the crew of the *Nicholas L* called the platform and indicated no oil was discovered in the water. After the *Nicolas L* gave the all-clear, the crew restarted shipping at about 5:11 a.m. Beta's personnel shut down shipping at 6:04 a.m. At Beta's request, the *Nicholas L* began a second line ride, after sunrise, around 7:00 a.m., traveling from Platform Elly along the Pipeline, toward Beta Pump Station. Around 8:08 a.m., the crew of the *Nicholas L* informed Beta that it had detected indications of an oil spill, and Beta did not resume shipping thereafter and initiated its oil spill response plan.

B. Procedural History

OPS issued the Notice to Beta on April 6, 2023.[4] On May 12, 2023, Beta submitted a timely response, request for an informal conference, and a request for in-person hearing.[5] On July 13, 2023, the Presiding Official scheduled a hearing in this matter.[6] Thereafter, on February 13,

[4] *In the Matter of Amplify Energy Corp.*, CPF No. 5-2023-011-NOPV, Notice (Apr. 6, 2023).
[5] *In the Matter of Amplify Energy Corp.*, CPF No. 5-2023-011-NOPV, Response (May 12, 2023). PHMSA granted Beta's request for a one-week extension from May 5th to May 12th to file the response.
[6] *In the Matter of Amplify Energy Corp.*, CPF No. 5-2023-011-NOPV, Scheduling Letter (July 13, 2023).

2024, counsel for both OPS and Beta jointly requested a continuance of the hearing date.[7] The Presiding Official granted that request and rescheduled the hearing for May 8, 2024.[8]

C. Summary of OPS Allegations

OPS has alleged that Beta committed ten alleged violations of pipeline safety regulations.[9] OPS proposed a civil penalty of $3,389,734 and a Compliance Order and issued a warning item.[10]

D. Summary Response and Request for Relief

Beta has thoroughly reviewed the allegations in the Notice and evaluated its procedures, programs, and records. In the interest of moving forward and not engaging in protracted, fact- and expert-intensive litigation with its regulator, the Company has decided not to contest most of the ten allegations (with the exception of the concerns outlined below). The Company acknowledges that it could improve its procedures and has already submitted several of those modifications to OPS for review.

For these reasons, Beta seeks to limit the hearing to "the factual and legal bases of the proposed civil penalties"[11] and a discussion of several factual clarifications. Specifically, Beta seeks modification of certain instances of violation alleged in Item Nos. 3 and 9, the gravity score for Item No. 4, the use of multipliers in Item No. 3, and the value per point used to calculate all civil penalty items.

III. Discussion and Argument

A. PHMSA Must Remove One Instance from its Civil Penalty Calculation for Item No. 3.

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[7] Email to Mr. Lawrence White dated Feb. 13, 2024.
[8] *In the Matter of Amplify Energy Corp.*, CPF No. 5-2023-011-NOPV, Rescheduling Letter (Feb. 20, 2024).
[9] Notice, at 5-17.
[10] *Id.* at 20-23.
[11] Response, at 3.

In Item No. 3, the Agency alleged that Beta had failed to follow its manual for conducting normal operations. OPS cited five separate instances of this violation including a failure to follow Procedure 1.01 (Reporting and Control of Accidents)(Instance #3). For Instance #3, OPS alleged that Beta has failed to follow Procedure 1.01 by allowing its contractor to ultimately report the Incident. Beta's procedure does not preclude the use of a contractor to make the NRC report. It merely lists two Beta employees, the PL Supervisor and HS&E Supervisor, who are responsible for the documentation and reporting of pipeline accidents.[12] While those employees are ultimately responsible that this obligation is completed, the text of the procedure does not support the position that only these two individuals can make the report. Relying on a third-party specialist was sensible, efficient, and allowed senior offshore personnel to focus on immediate response activities.

OPS also noted in Instance #3 that according to that procedure, Beta was required to contact the National Response Center (NRC) "[a]t the earliest practicable moment following the discovery, and not later than 1 hour following the time of such confirmed discovery..."[13] OPS alleged in the Notice that Beta failed to report the Incident to the NRC within the timeframe set forth in Procedure 1.01 and included this instance of violation in its calculation of the penalty for Item No. 3. OPS proposed a $1,526,800 civil penalty for Item No. 3.

OPS also covered the same reporting obligation in Item No. 1 of the Notice. In Item No. 1, OPS alleged that Beta had failed to notify the NRC "at the earliest practicable moment following discovery, but no later than one hour after confirmed discovery" of the failure.[14] OPS proposed a $50,200 civil penalty for that alleged violation. OPS cannot and should not issue two different

[12] Violation Report, Exhibit S (Procedure 1.01) at 1.
[13] Notice, at 8 (citing Beta Procedure 1.01 at 1-2); *See also,* Violation Report, Exhibit S.
[14] Notice, at 4.

penalties for the same conduct. PHMSA often uses the test laid out in *Blockburger v. U.S.*[15] to determine if there are two offenses or just one.[16] In that case, the Supreme Court held that "Where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of an additional fact which the other does not."[17] In a 2019 PHMSA enforcement case, the agency acknowledged that one instance of an alleged violation of an operator's qualifications program must be withdrawn because a separate violation of procedural requirements in Sec. 195.402 was duplicative and relied on the same underlying facts, so that the second allegation was essentially a summary of the earlier item.[18] Here, Item No. 1 and Instance # 3 in Item No. 3 both cover the act of reporting an accident to the NRC within the required time. For these reasons, Beta requests that PHMSA remove Instance #3 from Item #3 of the Notice and recalculate the proposed civil penalty accordingly. *See* Attachment 3.

B. PHMSA Must Remove Five Instances from the Civil Penalty Calculation in Item No. 9.

In Item #9, PHMSA alleged that Beta "failed to ensure a thorough evaluation that individuals performing covered tasks were qualified."[19] Specifically, PHMSA alleged that Beta could not demonstrate that certain controllers had received the required training. The Agency

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[15] *Blockburger v. U.S.*, 284 U.S. 299, 304 (1932).

[16] *See In the Matter of Colorado Interstate Gas*, CPF No. 5-2008-1005, at 12.; *In the Matter of Enbridge Energy Partners, L.P.*, CPF No. 3-2008-5011, 2010 WL 6531629 (Aug. 17, 2010); *In the Matter of Williams Gas Pipeline Co.*, CPF No. 5-2009-1003, 2010 WL 6539190 (Oct. 14, 2010) *In the Matter of Columbia Gulf Transmission Co.*, CPF No. 4-2009-1005, 2011 WL 1919519 (Mar. 21, 2011); *In the Matter of Kinder Morgan Liquids Terminals LLC*, CPF No. 1-2011-5001, 2012 WL 6184429 (Oct. 17, 2012); *In the Matter of Sunoco Logistics Partners, LP*, CPF No. 4-2016-5022, 2019 WL 7943676 (Dec. 9, 2019); *In the Matter of ExxonMobil Pipeline Co.*, CPF No. 5-2013-5007, 2015 WL 780721 (Jan. 23, 2015); *In the Matter of ExxonMobil Pipeline Co.*, CPF No. 4-2013-5027, 2015 WL 7175715 (Oct. 1, 2015).

[17] 284 U.S. at 304.

[18] *In the Matter of Sunoco Logistics Partners, LP*, CPF No. 4-2016-5022, Corrected Final Order at 18-19 (Dec. 9, 2019).

[19] Notice, at 16.

included 13 instances of violation in the Civil Penalty Worksheet for this item.[20] The Violation Report does not explain how the Agency settled on 13.[21] Beta can only assume that the 13 instances were calculated by using the number of employees and the number of years of missing training. OPS alleged that Rick Armstrong had not received training on the CRM01 procedure for 2014, 2016, or 2019, and Alex Ortiz had not received training on the CRM01 in 2017 and on AOCs in 2012 and 2017.

Beta has reviewed its records and provides documentation (*See* Attachment 1) that training on CRM01 for Rick Armstrong did occur during the years cited. Beta also provides documentation that Alex Ortiz received training on CRM01 in 2017 and on AOCs in 2012 and 2017. Therefore, Beta seeks removal of 6 of the 13 instances representing 3 years of training for two employees. *See* Attachment 3.

C. PHMSA Must Reduce the Gravity Score Assigned to Item No. 4.

In Item #4, OPS alleged that Beta did not follow its control room management procedures by failing to complete a shift change form and document a deviation from controller schedules, a review of the alarm management plan, and an evaluation of points taken off scan. While these records are important in demonstrating compliance with the pipeline safety regulations, any alleged gap in paper records did not contribute to the severity of the Incident. OPS alleged that these recordkeeping inadequacies "increased the severity of a reportable accident/incident" and applied an increased gravity score of 40 points for this item.[22] OPS does not and cannot support this assertion. For these reasons, PHMSA must reduce the gravity score for Item No. 4 to 17 points. This reduction also eliminates the 2x and 5x multipliers that PHMSA added on page 2 of

[20] Amplify Energy Corp, Civil Penalty Worksheet, dated Mar. 29, 2023.
[21] The only reference to 13 instances of violation is on page 85 of the Violation Report ("Enter the Number of Instances of the Violation").
[22] *See* page 2 of the Civil Penalty Worksheet (Attachment 3).

the Civil Penalty Worksheet.[23] Beta requests that PHMSA recalculate the proposed civil penalty accordingly. *See* Attachment 3.

D. PHMSA Must Recalculate the Multipliers Used in Item No. 3.

The application of multipliers in this case represents a $2.6 million increase in the proposed civil penalty in this matter.[24] Therefore, it is absolutely critical that the Agency's penalty calculations are supported by evidence in the record and are consistent with, appropriate, and fair under the penalty assessment criteria in 49 U.S.C. § 60122(b) and 49 C.F.R. § 190.225.

1. The Agency has not provided any evidence supporting the use of the 5x multiplier.

OPS applied two separate multipliers in Item No. 3. These multipliers are noted in the Civil Penalty Worksheet, but there no discussion of the Agency's determination of why these multipliers were appropriate. Beta can assume that OPS used a 2x multiplier due to the fact a reportable accident occurred. It appears that OPS also applied a 5x multiplier due to the quantity of product released. Beta assumes that OPS is using the 588-barrel amount cited in the Notice and Violation Report and asserting that the full amount was released in water. However, OPS has failed to establish that (a) 588 barrels were indeed released *and* not recovered, and (b) that Beta bears the responsibility for the full 588-barrel release. Instead, the Agency is taking a strict liability approach to the penalty in this case by increasing the base penalty by $763,420 without any further evidence or analysis. Congress has not authorized a strict liability scheme for the Pipeline Safety Act.[25] It is also well-established that OPS must present sufficient evidence to sustain not only an

[23] PHMSA adds multipliers to alleged violations that have a base gravity of 40 or more points. *See* page 2 of the Civil Penalty Worksheet (Attachment 3).

[24] PHMSA proposed a total base civil penalty of $740,703.60 and then increased the civil penalty to $3,389,734 by applying multipliers. This is akin to punitive damages.

[25] *ExxonMobil Pipeline Co. v. U.S. Dep't of Transp., 867 F.3d 564, 577-78 (5th Cir. 2017)* ("The fact that the [a] release occurred, while regrettable, does not necessarily mean that [the operator did not] abide by the pipeline integrity regulations in considering the appropriate risk factors. If it did, then an operator that experiences a seam-

allegation of violation, but also the amount of the civil penalty.[26] In this case, OPS has not produced any evidence demonstrating that all of the 588 barrels should be attributed to Beta and that the 5x multiplier is appropriate. By failing to undertake this analysis, OPS has, in effect, created a strict liability scheme in which any violation that affects the volume of a release automatically results in a significant 5x multiplier for spills in excess of 500 barrels. Therefore, OPS has not satisfied the burden of proof for this civil penalty[27] and must remove the 5x multiplier from the Item No. 3 calculation.

2. PHMSA Should Apply Mitigating Factors for Item No. 3

Although no barrel-based multiplier is appropriate here, if OPS proceeds with a multiplier in Item No. 3 for barrels spilled, the Agency should apply mitigating factors. In the civil penalty worksheet, OPS acknowledges that a lower multiplier is appropriate if mitigating factors are identified.[28] It is well-documented that the Incident was not caused by Beta. It was caused by the anchor dragging incidents of cargo ships who did not report their anchor-dragging over the

related pipeline leak on its pipeline system could never escape liability under pipeline integrity regulations, thus nullifying the regulations and creating a strict liability regime that Congress has not authorized. [. . .] The unfortunate fact of the matter is that, despite adherence to safety guidelines and regulations, oil spills still do occur.").

[26] *See e.g.*, *In re EQT Corp.*, Final Order, CPF No. 1-2006-1006, 2010 WL 2228558, at **6-7 (D.O.T. May 13, 2010); *In re Plains Pipeline, L.P.*, Final Order, CPF No. 4-2009-5009, 2011 WL 1919520, at **4-5 (D.O.T. Mar. 15, 2011); *In re Bridger Pipeline Co.*, Decision on Petition for Reconsideration, CPF No. 5-2007-5003 2009, WL 2336991, at *5-6 (D.O.T. June 16, 2009).

[27] OPS has the burden of proof in a pipeline safety enforcement proceeding to demonstrate that a violation occurred. *See In re Air Products and Chemicals, Inc.*, Final Order, CPF No. 4-2013-1001, 2015 WL 6758819, at *3 (D.O.T. Aug. 10, 2015) (PHMSA did not meet its burden of proving a violation when it did not produce "any evidence to support its position"); *In re ExxonMobil Pipeline Co.*, Final Order, CPF No. 5-2013-5007, 2015 WL 780721, at *12 (D.O.T. Jan. 23, 2015) (PHMSA failed to meet burden of proving that certain measures were required under regulations); *In re So. Star Central Gas Pipeline, Inc.*, Final Order, CPF No. 3-2008-1005, 2011 WL 7006614, at *4 (D.O.T. Oct. 21, 2011) (finding the evidence insufficient to sustain the allegation); *In re Golden Pass Pipeline, LLC*, CPF No. 4-2008-1017, 2011 WL 1919517, at *5 (D.O.T. Mar. 22, 2011) (PHMSA did not meet its burden of proving that its interpretation of regulatory language was correct); *In re Butte Pipeline Co.*, CPF No. 5-2007-5008, 2009 WL 3190794, at *1 (D.O.T. 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.").

[28] Civil Penalty Worksheet, at 2.

Pipeline.[29] This lack of culpability for the Incident should be reflected as a mitigating factor in the proposed civil penalty, particularly one that is increased five-fold for the amount spilled. Moreover, Beta worked quickly to clean up the spill, minimizing its environmental impact. Beta, the Coast Guard, and the California Department of Fish and Wildlife established a Unified Command, which operated 24/7 with support from various other entities to minimize the impact from the spill. Beta funded and provided thorough support to the Unified Command, which included the reopening of all previously closed fisheries on November 30, 2021,[30] and designated all shoreline segments as returned to their original condition on December 27, 2021.[31] If PHMSA pursues a barrel-based penalty increase, Beta respectfully requests that the Agency reduce the multiplier for barrels spilled from 5x to 3x to acknowledge the lack of culpability for the release and effective mitigation of environmental impacts. *See* Attachment 3.

3. PHMSA Has Miscalculated the Multipliers Creating a Compounding Effect.

The Agency states its intention to apply a 5x and 2x (*i.e.*, 7x) multiplier in the worksheet for both Item Nos. 3 and 4 but the math reflects a 10x multiplier. In the Civil Penalty Worksheet, OPS notes that it will apply the "base penalty x consequence factor multiplier(s)".[32] However, when the Agency applied these multipliers, it did not just multiply the base penalty by the consequence factor, the Agency also multiplied the two subtotals creating a compounding effect. For example, the proposed base penalty in Item No. 3 was $152,684. PHMSA doubled that figure to account for the reportable accident ($305,368). Instead of returning to the base penalty, the

[29] *See* NTSB Press Release dated Dec. 5, 2023 ("NTSB investigators determined that the oil leak…resulted from an anchor strike on the pipeline that occurred eight months earlier, when anchors from the container ships Beijing and MSC Danjit dragged and contacted the pipeline…").

[30] *See* November 20 Briefing, United Command Update 20, S. Call Spill Response, at https://socalspillresponse.com/update-20-fisheries-reopen-65-of-affected-shorelines-meet-spill-response-end-points/

[31] *See* February 2 Briefing; United Command Update 21, S. Cal. Spill Response, at https://socalspillresponse.com/update-21-unified-command-concludes-cleanup-operations-of-orange-and-san-diego-county-beaches/

[32] *Id.*

Agency then took the new subtotal ($305,368), and multiplied the newly created subtotal by five to reflect a multiplier for the amount of product released. The result is a total of $1,526,840 <u>which is a 10x increase from the base penalty of $152,684</u>. The Agency should have applied each multiplier individually ($152,684 x 2) + ($152,684 x 5) and then added, not multiplied, the subtotals.

The same error occurred in the calculation of the proposed civil penalty for Item No. 4. If PHMSA rejects Beta's request to reduce the gravity for Item No. 4, as discussed on page 7, then the math in Item No. 4 will also need to be corrected. The proposed base penalty in Item No. 4 was $122,892. PHMSA doubled that figure to account for the reportable accident. The Agency then took the new subtotal, instead of returning to the base penalty, and multiplied the newly created subtotal by five to reflect a multiplier for the amount of product released. The result is a total of $1,228,900 <u>which is a 10x increase from the base penalty of $122,892</u>. The Agency should have applied each multiplier individually ($122,892 x 2) + ($122,892 x 5) and then added, not multiplied, the subtotals.

The Agency has no support in the case file for increasing the base penalty ten-fold. Given the recognition in the Civil Penalty Worksheet that only multipliers of 2x and 5x[33] are appropriate for each item, PHMSA must redo its calculation. Beta respectfully requests a recalculation for Item Nos. 3 and 4. *See* Attachment 3.

E. PHMSA Must Recalculate the Civil Penalties Proposed in this Case to Reflect the Correct Value Per Point.

In calculating the proposed civil penalty in this matter, PHMSA erroneously applied its value per point used in calendar year 2023 enforcement cases. The allegations in the Notice are

[33] As discussed above, Beta asserts that 5x is not reasonable and the multiplier should be 3x.

based on activities that occurred on October 1, 2021, or earlier. PHMSA conducted the inspection between October 3-22, 2021.[34] During that time period, PHMSA used a value of $1,440 per point to calculate civil penalties in cases.[35] However, OPS did not issue the Notice to Beta until two years after the Incident and applied the 2023 value per point of $1,862 to calculate the proposed civil penalty.[36] PHMSA consistently states in its Notices of Probable Violation that the statutory civil penalty cap in effect *when the violation occurred* is the cap that applies in individual cases.[37] The Agency acknowledges that it does not have the discretion to apply the statutory maximums in effect when the enforcement case is ultimately issued. Instead, the Agency routinely applies the statutory maximum in effect when the violation occurred. In fact, OPS recognized this point and applied the 2021 statutory maximum to Item No. 2 in this case.[38] OPS should take the same position when applying its Civil Penalty Summary. The Agency should use the value per point in effect *when the violation occurred*, not the value established years later. Since the $1,862 value did not go into effect until January 23, 2023 (479 days after the Incident), it should not be applied retroactively to alleged violations occurring in 2021.

PHMSA's decision to apply the 2023 value per point in this case is impactful. Using the 2023 value per point increases the total civil penalty by more than $200,000. Beta requests a recalculation of the proposed civil penalty using $1,440, the correct value per point. *See* Attachment 3.

F. Beta Requests that PHMSA Make Several Factual Corrections to the Record.

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[34] Notice, at 1; *See also*, Violation Report, at 2.

[35] Starting on February 7, 2020, PHMSA applied a value per point of $1,440. Thereafter, on January 28, 2022, PHMSA began applying a value per point of $1,728. *See* Civil Penalty Guidance dated Feb. 7, 2020, and January 28, 2020; *See also,* numerous Civil Penalty Worksheets created for 2021 enforcement cases.

[36] *See* Civil Penalty Worksheet dated March 29, 2023. PHMSA moved to a value per point of $1,862 on Jan. 23, 2023.

[37] *See* Notice, at 17.

[38] Civil Penalty Worksheet, Item No. 2, at 2.

In the Notice, OPS makes certain factual statements that do not accurately depict Beta's procedures, programs, or the Company's response to the Incident. Beta provides the following clarifications and requests that the final order issued in the matter includes these corrections.

1. The Number of Leak Alarms Received

OPS incorrectly asserts in the Notice that Beta received 83 leak alarms during the course of the Incident.[39] In fact, as the federal government has already stipulated and found, Beta received 8 leak alarms. OPS calculated 83 leak alarms by incorrectly conflating two tags from the ATMOS leak detection system Beta used at the time of the Incident: 14_ALM_Atmos_Leak_Detected and 10_ALM_Leak_Detect_From_Atmos. However, only 14_ALM_Atmos_Leak_Detected indicates that a potential leak has been detected on the Pipeline. This alarm sounded nine times on October 1–2, 2021, but one of those alarms sounded at a time when the Pipeline's shipping pumps had already been turned off (around 10:33 p.m. on October 1). The other tag that PHMSA improperly included in its calculation of total leak alarms received–10_ALM_Leak_Detect_From_Atmos – has a different purpose. It is an ongoing signal of potential leaks, or leak signals. The differences in language and purpose of the leak alarm tags are shown in Attachment 4. [40]

PHMSA has not provided evidence or analysis to support its position that 83 leak alarms occurred. PHMSA has only introduced raw SCADA data into the record and has made no effort to distinguish between the meaning of different kinds of tags within that data. [41]

Two other federal agencies who have investigated the Incident, the U.S. Department of Justice and the National Transportation Safety Board, correctly distinguished between the leak

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[39] Notice at 2, 6, & 8.
[40] Attachment 4.
[41] See Exhibit C to Violation Report.

alarm tags, and either stipulated or found that Beta received 8 leak alarms during the Incident.[42] Therefore, Beta requests that the final order in this matter state that the Company received 8 leak alarms during the Incident. Inconsistency in findings among different Federal agencies creates ambiguity that could create public confusion.

IV. Right to Supplement

Beta reserves the right to supplement its positions based on any arguments discussed at the hearing or provided by OPS in this case.

V. Conclusion

Based on the foregoing, Beta respectfully requests that PHMSA reduce the proposed civil penalty to $1,111,886 in this case. This figure reflects the correct value per point, a withdrawal of a single instance in Item No. 3 and five instances in Item No. 9, a correction to the gravity score in Item No. 4 and the subsequent removal of the multipliers, and adding the multipliers in Item No. 3 instead of compounding them. *See* Attachment 3. Beta also respectfully requests that PHMSA not include items A, B(1-3), C, and D of the Proposed Compliance Order in the Final Order if OPS deems those items complete.

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[42] Plea Agreement for the San Pedro Bay Pipeline Company at Exhibit 2, pp. 4:1-7:19, *United States v. Amplify Energy Co.*, No. CR 21-226 (C.D. Cal. Aug. 26, 2022) (Discussion of each leak alarm that occurred during the Incident); National Transportation Safety Board, MIR-24-01 (Jan. 2, 2024), p. 7 (timeline of Incident showing the 8 leak alarms), p. 78 ("From the afternoon of October 1 to the early morning on October 2, the controllers received eight leak alarms.").

Respectfully submitted this 29th day of April, 2024

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