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May 12, 2023

Mr. Dustin Hubbard
Director, Western Region
Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
Department of Transportation
12300 W. Dakota Ave., Suite 110
Lakewood, CO 80228

Re: CPF 5-2023-011-NOPV (April 6, 2023)
Beta Response to Notice of Probable Violations

Dear Director Hubbard:

We write on behalf of Beta Operating Company, LLC ("Beta") to respond to the above-referenced Notice of Probable Violations regarding the October 2021 spill event.

Beta shares PHMSA's commitment to ensuring public safety and enhancing pipeline integrity. The record before and after the October 2021 spill shows that Beta takes its regulatory, compliance, and safety obligations seriously. Over many years, Beta operated the San Pedro Bay Pipeline ("Pipeline") safely and consistent with applicable laws and regulations. Beta properly invested in its infrastructure, conducted regular inspections, and kept state and federal regulators up to date. External and in-line inspections of the Pipeline repeatedly showed that Beta maintained the Pipeline in excellent condition.

Unfortunately, on January 25, 2021, two massive container ships dragged their anchors in a "no-anchor" zone across the Pipeline. The anchors damaged and displaced the Pipeline. Yet despite the ships repeatedly crossing the Pipeline's well-known location, nobody informed Beta of these anchor drags. Had the ships, the Coast Guard, or the Marine Exchange (which monitors vessel traffic) notified Beta of the anchor drags, Beta would have inspected the Pipeline via a ROV and made any necessary repairs. No disclosures were made, and months later, on October 1 and October 2, 2021, approximately 588 barrels of oil were released at the point of one of the anchor strikes.

On the night of October 1, 2021, the Beta crew worked diligently and in good faith to troubleshoot what the crew believed were false leak detection alarms. After each leak alarm, crew members acknowledged the alarm, checked the alarm system, turned off the Pipeline, and inspected equipment. The alarm system indicated there was a leak at "mile zero"—*i.e.*, on the platform. As a result, the crew sought to identify a possible leak on the platform, and they inspected pipes, valves, shipping pumps, and meters on the platform. Though the crew could not identify the source of the alarms, they continued their process-of-elimination, good-faith search throughout the night. Once oil was confirmed in the water the morning of October 2, the crew immediately shut down the Pipeline and began notifying the relevant authorities pursuant to Beta's Oil Spill Response Plan ("OSRP").

Instead of deflecting blame to the vessels, Beta immediately went to work as a member of Unified Command (a collaborative response team comprised of Beta employees and government agents) to aid the clean-up. As of March 31, 2023, Beta spent approximately $92.8 million in clean-up efforts, including reimbursement for federal, state, and local clean-up efforts. Further, Beta has accepted responsibility in the areas where Beta fell short the night of October 1, 2021. Beta agreed to plead guilty or no-contest to several state and federal misdemeanor charges. Beta also agreed to pay $12 million in fines to federal and state authorities; paid approximately $3.1 million to 240 claimants under the Oil Pollution Act economic claims process; and reached a $50 million settlement with several putative classes of civil plaintiffs.

Beyond its clean-up and claims-resolution efforts, Beta has shown responsibility in multiple ways. Beta has cooperated with all investigations and agencies interested in learning from this spill, including PHMSA, the National Transportation Safety Board ("NTSB"), the Coast Guard, the Bureau of Safety and Environmental Enforcement ("BSEE"), and various California agencies. Further, Beta used the spill as an opportunity to enhance its procedures, systems, and technology to improve safety and performance. For example, Beta installed a new, state-of-the-art leak detection system and retained a third-party consultant to perform a top-to-bottom review of its existing procedures.

While Beta worked quickly to accept responsibility, the two vessels continued to deny their responsibility for displacing and damaging the Pipeline and for hiding their misconduct. It was not until 17 months after the spill that the vessels agreed to pay Beta $96.5 million for the damages that they caused. In addition, the vessels paid certain insurers tens of millions of dollars and the putative classes of civil plaintiffs an additional $45 million. The $200 million-plus in vessel settlement payments show that the vessels' misconduct caused the spill.

Below, Beta provides additional context about the spill event and Beta's actions before and after it. *See* Part I. In light of the relevant facts and circumstances, Beta contests the alleged violations. *See* Part II. The financial penalty should be withdrawn or substantially reduced because there were no underlying violations, and even if there were, the proposed penalties misapply the required assessment criteria and depart significantly from PHMSA precedent. *See*

Part III. Beta, however, agrees to the proposed compliance conditions, subject to certain clarifications, including that Beta has already implemented some of them. *See* Part IV.

An informal conference is appropriate in the first instance, and Beta believes that PHMSA and Beta can find agreement on the disputed issues. Beta timely files this response to preserve its rights in the event that the parties cannot resolve the matter.[1] Accordingly, PHMSA should delay scheduling any hearing to allow PHMSA and Beta time to convene an informal conference.[2]

Beta appreciates PHMSA's engagement and the opportunity to work productively with PHMSA to address its findings. We look forward to discussing further.

Sincerely,

/s/ Christopher W. Keegan, P.C.

Christopher W. Keegan, P.C.

[1] PHMSA granted Beta's request for a one-week extension of this response from May 5 to May 12, 2023.

[2] Pursuant to 49 C.F.R. § 190.211(b), Beta identifies the following "issues that the respondent intends to raise at the hearing," to the extent one becomes necessary in this proceeding: (1) the factual and legal bases for each of the ten alleged violations (Item Nos. 1-10), and (2) the factual and legal bases of the proposed civil penalties, as well as their reasonableness.