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May 4, 2023

Sent via Email:
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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

Subject: CPF 5-2023-025-NOPV (April 6, 2023) Beta Response to Notice of Probable Violation

Dear Director Hubbard:

Beta Operating Company, LLC ("Beta") writes to respond to the above-referenced Notice of Probable Violation regarding PHMSA's August 31 - September 3, 2021 inspection. The notice alleges three probable violations and proposes four compliance conditions and a $58,400 penalty.

Beta appreciates the opportunity to work with PHMSA as Beta continues to improve its integrity management programs. Beta shares PHMSA's commitment to ensuring public safety and enhancing pipeline integrity. In the spirit of cooperation, Beta accepts a majority of the compliance conditions. As explained below, Beta contests the alleged violations, the proposed civil penalty, and some of the compliance conditions associated with Item 2.

Given the modest number of issues, Beta believes an informal conference is appropriate, and Beta believes that PHMSA and Beta can come to a common understanding about the issues. Accordingly, PHMSA should delay scheduling any hearing to allow PHMSA and Beta sufficient time to convene an informal conference. To preserve its rights in the unlikely event that the parties cannot resolve the matter, Beta timely files this response. (Beta will respond to CPF 5-2023-011-NOPV under separate cover.)

Beta appreciates the opportunity to work productively with PHMSA to address its findings.

<u>Response to NOPV Item 1</u>

Beta understands the importance of analyzing available information about the integrity of the San Pedro Bay Pipeline ("Pipeline). Beta agrees with PHMSA that an operator's ability to integrate and analyze data from many sources facilitates proactive integrity management. At the time of PHMSA's audit, Beta was cognizant of the new data elements in § 195.452(g)(1)-(4). Contrary to page 4 of the Violation Report, Beta believed it was in compliance because Beta had all of the required information in its IMP assessment spreadsheets and related electronic files. In the course of the audit, Beta came to appreciate the auditor's expectation that all of the data elements should be organized in a single location. Beta is therefore working with EverLine, a consultant, to reorganize Beta's analysis of the § 195.452(g)(1)-(4) data elements to better align with the auditor's expectations and preferred formatting. In light of the relevant circumstances, however, a violation is unwarranted.

<u>Response to NOPV Item 2</u>

Beta contests any violation regarding Item 2.

The Notice states: "Beta Offshore failed to take annual CP readings for three consecutive years in four specific locations on its pipeline that is coated in concrete. During the inspection, Beta Offshore informed PHMSA that the test points were paved over during a construction project in the Long Beach Dock (footnote omitted). However, Beta Offshore failed to reinstall or establish new test points in the appropriate area(s) to ensure that the pipeline had adequate CP."

Beta has a long history of successful cathodic protection ("CP") testing on the Pipeline. Annually, Beta works with Farwest Corrosion Control Company to test the Pipeline's CP by doing rectifier inspections, potential readings, and current readings of shunts. Throughout the history of the onshore portion of the Pipeline, the CP system has performed to a level that provides sufficient protection of the Pipeline. When levels have shown signs of anode depletion, additional anodes and/or new anode beds have been installed. Further, across its entire length, the Pipeline has approximately twice the ETS location test points needed to adequately survey the protection. Some sites, like those cited by PHMSA within the Long Beach Container Terminal facility, were added when incidental exposure of the Pipeline occurred during construction projects. Additionally, from 2007 to 2019, Beta performed an ILI every other year (at least twice as frequently as the industry standard). Third-party analysis of these ILIs showed the Pipeline to be in excellent condition, and in light of those results, BSEE approved a four-year ILI cycle beginning in 2019.

Beta acknowledges that two test points were paved over during third-party port construction projects in 2011 and 2020. However, neither site was part of the original as-builts for required CP; rather, they were subsequently installed when those areas of the Pipeline were exposed during construction projects. Further, as part of the 2011 project, Beta had to re-locate a section of the Pipeline and casing. As part of that relocation, Beta established new CP test points at both ends of the construction project. There is approximately 1,500 feet between the two new test points. The distance between those two test points is sufficient to assess the CP of that portion of the Pipeline. Further, Farwest has confirmed that all test stations indicated pipe to soil (P/S) potentials (vs. a calibrated copper-copper sulfate reference cell) that were more negative than required to meet the NACE/AMPP SP0169-2013 standard of -850 mV for the buried piping. The recorded P/S instant off (polarized) potentials ranged between -931 and -1801mV with an average of -1146mV. Based upon the recorded P/S potentials at all the available CP test stations, there was no indication of low potentials along the Pipeline. Even if the spacing between active test stations may be somewhat greater than in the past, the consistently negative (more negative than -850mV) P/S potentials indicate stable overall P/S potential profile over the entire Pipeline. With all recorded potentials meeting and exceeding the AMPP/NACE (SP0169-2013) CP criteria, Farwest considers it unlikely that there is any active external corrosion of the Pipeline. Moreover, a January 2023 smart pig of the Pipeline reported that the Pipeline was in excellent condition. And further demonstrating the Pipeline's excellent condition, during a December 19, 2022 hydrotest, the Pipeline successfully held above 2,220 psig for a period of 15 minutes with no pressure deviations.

In conclusion, there is no need to re-establish the paved-over test points to assess the Pipeline, and Beta contests any regulatory violation associated therewith.

Response to NOPV Item 3:

The Notice states, "Although Beta Offshore personnel conducted rectifier readings at the correct intervals, they failed to ensure that the readings were accurate. Specifically, Beta Offshore personnel did not use a meter to verify gauge readings; instead, they only documented what the gauge indicated on the rectifier."

Beta understood 49 C.F.R. § 195.573(c) to require only that rectifiers be checked "[a]t least six times each calendar year, but with intervals not exceeding 2 ½ months." Beta complied with that regulation, as written, and did the required testing. Indeed, Beta checked the readings twice as often as required. Beta further ensured there was redundancy in both rectifier cabinets, as Beta had both an amp meter and volt meter that correlated with one another; if one is off, or malfunctions, the volt meter reading will be unaffected, and vice versa. If there were an issue with a CP anode bed, the rectifier readings will reflect this. Further, neither Beta nor Farwest has identified an issue regarding the accuracy of the rectifier readings.

At the time of PHMSA's audit, Beta did not understand that PHMSA expected Beta to hire a trained technician from NACE or AMPP to perform electrical checks of the rectifier. Beta now understands that is PHMSA's expectation, and in the spirit of cooperation, Beta will comply with this expectation going forward. In light of the relevant circumstances, however, a violation is unwarranted.

Proposed Civil Penalty

PHMSA proposed a civil penalty of $58,400 for Item 2. PHMSA should withdraw this proposed penalty because no violation occurred or exists, as explained above. Even if a violation occurred (and one did not), PHMSA should withdraw or reduce the proposed penalty because it does not accurately reflect the mandatory statutory and regulatory assessment criteria, including the nature and circumstances of the violation, history of prior violations, Beta's good faith in attempting to comply, and "other matters that justice requires." *See* 49 U.S.C. § 60122(b); 49 C.F.R. § 190.225. Beta has a long history of successful CP testing and reporting to PHMSA. This is not a repeat violation. Indeed, until last month, PHMSA had not initiated any Enforcement Actions against Beta for more than a decade. From 2006 to March 2023, Beta received only two warning letters (one in 2008 related to the inspection of main line valves and the pressure setting on two thermal relief values, and one in 2010 regarding the entry of drug and alcohol testing results into the Management Information System). Further, Beta acted in good faith by bringing the paved-over issue to PHMSA's attention during the inspection, as noted on page 6 of the Violation Report.[1] Finally, Beta did not gain any economic benefit from the alleged violation, andthe purported violation had no impact on the environment. As a result, PHSMA should withdraw the proposed penalty.

<u>Proposed Compliance Order</u>

PHMSA proposes four compliance conditions. As part of its commitment to continual improvement to its policies, procedures, and practices, Beta accepts the first, third, and fourth conditions. Beta contests, in part, PHMSA's second proposed condition.

PHMSA's Propose Compliance Condition A: "In regard to Item 1 . . . Beta Offshore must develop and implement a written procedure that incorporates these new data elements into its information analysis . . . and submit the procedure to PHMSA within 180 days of receipt of the Final Order."

Beta's Response: Beta accepts this condition. Beta is working with EverLine to reorganize Beta's analysis of the § 195.452(g)(1)-(4) data elements to better align with the auditor's expectations and preferred formatting.

PHMSA's Proposed Compliance Condition B: "In regard to Item 2 . . . : (1) Beta Offshore shall reinstall or establish new test points in at least two of the four previous test lead locations to ensure that the pipeline has adequate CP within 360 days of receipt of the Final Order; (2) Beta shall remove the test point locations from their annual survey that are no longer accessible and add the two new locations they will establish within 360 days of receipt of the Final Order; (3) Beta Offshore must conduct a close interval survey (CIS) of the entire onshore portion of the San Pedro Bay Pipeline at a minimum three foot spacing to verify that adequate CP has been maintained on the pipeline within 180 days of receipt of the Final Order; and (4) Beta Offshore must provide to the Director, Western Region, a copy of all test results from the CIS within 60 days of completing the CIS."

Beta's Response: Beta contests, in part, this proposed compliance condition. Beta agrees to remove from its annual survey the test point locations that are no longer accessible. It is, however, unnecessary to reinstall or establish new test points at any of the paved-over locations. The other testing that Beta is able to perform—including Stations Sta. 73+00 and Sta. 92+00—are sufficient to assess the Pipeline's cathodic protection. Further, even if reestablishing test points would marginally improve Beta's cathodic protection assessments, the expense and

[1] Accordingly, Part E5 on page 7 of the Violation Report should be revised to more accurately reflect the operator's involvement in the disclosure of the purported violation.

disruption of the necessary engineering, permitting, and construction work would be significant and outweigh any benefits. Similarly, it is unnecessary and impracticable to require a CIS of the entire onshore portion of the Pipeline at a minimum three-foot spacings. A CIS of the Pipeline is impactable because it is almost entirely paved over; such a survey would require boring up to 4,000 holes throughout the Port. Those costs, construction risks, and disruption to the Port are unnecessary, particularly for a Pipeline that has never had an issue related to poor cathodic protection. Further, Beta is performing an interrupt survey in August 2023.

PHMSA's Proposed Compliance Condition C: "In regard to Item 3 . . . , Beta Offshore must establish and submit to PHMSA a procedure and process for performing electrical checks of the rectifier with a trained technician from NACE or AMPP within 90 days of receipt of the Final Order."

Beta's Response: Beta accepts this condition and will comply with it.

PHMSA's Proposed Compliance Condition D: "It is requested (not mandated) that Beta Offshore maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Dustin Hubbard . . . . It is requested that these costs be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure."

Beta's Response: Beta accepts this condition and will comply with it, subject to further discussion with PHMSA regarding the contested portions of the second compliance condition.

<u>Conclusion</u>

Beta takes its commitment to pipeline safety compliance seriously. To that end, Beta accepts most of the compliance conditions. Beta requests that PHMSA withdraw the violations, the proposed penalty, and the challenged compliance conditions associated with Item 2.

We look forward to discussing these issues at your convenience.

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