U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

September 5, 2024

VIA ELECTRONIC MAIL TO: linn.evans@blackhillscorp.com

Linden Evans
President and Chief Executive Officer
Black Hills Energy
7001 Mt. Rushmore Road
P.O. Box 1400
Rapid City, South Dakota 57709

Re: CPF No. 5-2023-033-NOPV

Dear Mr. Evans:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws two of the allegations of violation, makes a finding of violation, and finds that Black Hills Shoshone Pipeline, LLC, d/b/a Black Hills Energy, has completed the actions specified in the Notice of Probable Violation to comply with the pipeline safety regulations. Therefore, this case is now closed. Service of the Final Order by e-mail is effective upon the date of transmission and acknowledgement of receipt as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

ALAN KRAMER MAYBERRY
Digitally signed by ALAN KRAMER MAYBERRY
Date: 2024.08.30 09:34:37 -04'00'

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Dustin B. Hubbard, Director, Western Region, Office of Pipeline Safety, PHMSA
Mr. John Hill, Vice President, Natural Gas System Safety, Black Hills Energy,
john.hill@blackhillscorp.com

Mr. Randy Seman, Director, Gas Control, Black Hills Energy, randy.seman@blackhillscorp.com
Mr. Brian Kretz, Director, Pipeline Safety Compliance, Black Hills Energy, brian.kretz@blackhillscorp.com
Mr. Tom Worley, Manager, Gas Control, Black Hills Energy, tworley@blackhillscorp.com
Mr. Christopher Ledgess, ANLY Gas Control Operations Coordinator, Black Hills Energy, Christopher.ledgess@blackhillscorp.com

CONFIRMATION OF RECEIPT REQUESTED

U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590

In the Matter of	)	
Black Hills Shoshone Pipeline, LLC, d/b/a Black Hills Energy,	)	**CPF No. 5-2023-033-NOPV**
Respondent.	)	

FINAL ORDER

From April 25 through 29, 2022, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), inspected the facilities and records of Black Hills Shoshone Pipeline, LLC's (Shoshone or Respondent) procedures for control room management in Council Bluffs, Iowa. Respondent, d/b/a Black Hills Energy, operates the Shoshone Pipeline that transports natural gas between Montana and Wyoming.[1]

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated July 19, 2023, a Notice of Probable Violation and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Shoshone had committed three violations of 49 C.F.R. Part 192 and proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice also included an additional warning item pursuant to 49 C.F.R. § 190.205, which warned the operator to correct the probable violation or face possible future enforcement action.

Black Hills Energy responded to the Notice by letter dated August 17, 2023 (Response). Respondent contested several of the allegations and offered additional information in response to the Notice. Respondent did not request a hearing and therefore has waived its right to one.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 192, as follows:

[1] Black Hills Energy website, *available at* https://www.blackhillsenergy.com/our-company/transmission/natural-gas-transmission (last accessed August 27, 2024).

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.631(c)(1), which states:

> **§ 192.631 Control room management.**
> (a) . . . .
> (c) *Provide adequate information.* Each operator must provide its controllers with the information, tools, processes and procedures necessary for the controllers to carry out the roles and responsibilities the operator has defined by performing each of the following:
> (1) Implement sections 1, 4, 8, 9, 11.1, and 11.3 of API RP 1165 (incorporated by reference, see § 192.7) whenever a SCADA system is added, expanded or replaced, unless the operator demonstrates that certain provisions of sections 1, 4, 8, 9, 11.1, and 11.3 of API RP 1165 are not practical for the SCADA system used;

The Notice alleged that Respondent violated 49 C.F.R. § 192.631(c)(1) by failing to implement the prescribed sections of API RP 1165 or demonstrate that certain provisions of those sections are not practical for the supervisory control and data acquisition (SCADA) system used. Specifically, the Notice alleged that Shoshone was unable to provide records demonstrating that its SCADA systems were compliant with API RP 1165. The Notice stated that Shoshone has operated two SCADA systems from its Council Bluffs, Iowa, control room (the Legacy Source Gas system commissioned in 2016, and the Legacy Black Hills system commissioned prior to 2009) since 2020, prior to which Shoshone operated two control rooms in Omaha, Nebraska. The Notice alleged that the relocation and consolidation of multiple control rooms to a new facility required Shoshone to conduct an analysis of the new facility to determine if it was an addition, expansion, or replacement of a SCADA system under 49 C.F.R. § 192.631(c)(1).

In its Response, Shoshone contested the alleged violation in Item 1, arguing that the consolidation and relocation of its control rooms did not result in an addition, expansion, or replacement of either the Legacy Source Gas or Legacy Black Hills SCADA systems. Shoshone provided a narrative analysis of the consolidation and relocation of its Denver and Papillion Control Centers, respectively, stating that the virtual workstations used for operating the SCADA system at the Denver Control Center were hosted on off-premises servers such that when the Denver Control Center operations were moved to the Fayetteville and Papillion Control Centers, the operators at those facilities remotely accessed the same virtual workstations. Additionally, Shoshone maintained that while the relocation of the Papillion Control Center to the Council Bluffs Control Center in 2020 required the relocation of operations, servers, and workstations, the existing Legacy Source Gas system servers and workstations were replicated on SCADA server infrastructure at the Council Bluffs Control Center. Shoshone also stated that both SCADA systems retained the same SCADA software and configuration, and no changes were made to the SCADA system that met the definition of addition, expansion, or replacement in accordance with its procedure, *Operations & Maintenance 135.6.2. Pipeline SCADA Displays and API RP-1165*.

After consideration of the record and Shoshone's Response to Item 1, I find that the narrative provided by Respondent is sufficient to demonstrate compliance with the control room management requirements under 49 C.F.R. § 192.631(c)(1). Respondent is responsible for

ensuring compliance with the pipeline safety regulations, "which includes sound record keeping. Without this history, an operator will have difficulty determining areas where there are problems that need to be addressed."[2] Additionally, 49 C.F.R. § 192.631(j)(1) requires an operator to maintain records that demonstrate compliance with the control room management requirements for review during an inspection. While Respondent could not produce records demonstrating that it was in compliance with the regulations at the time of the inspection, the information provided in the Response demonstrates that Shoshone was in compliance with the pipeline safety regulations at that time because it had not added, expanded, or replaced a SCADA system, and therefore was not required to implement the prescribed sections of API RP 1165.[3]

Based upon the foregoing, I hereby order that Item 1 be withdrawn. Respondent is warned that failure to maintain records demonstrating compliance may result in potential future enforcement.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.631(c)(4), which states:

> **§ 192.631 Control room management.**
> (a) . . . .
> (c) *Provide adequate information.* Each operator must provide its controllers with the information, tools, processes and procedures necessary for the controllers to carry out the roles and responsibilities the operator has defined by performing each of the following:
> (1) . . . .
> (4) Test any backup SCADA systems at least once each calendar year, but at intervals not to exceed 15 months; and

The Notice alleged that Respondent violated 49 C.F.R. § 192.631(c)(4) by failing to test any backup SCADA systems at least once each calendar year, but at intervals not to exceed 15 months in accordance with 49 C.F.R. § 192.631(c)(4). Specifically, the Notice alleged that Shoshone was unable to provide records of testing its backup SCADA systems for the years 2020 and 2021.

In its Response, Shoshone contested the alleged violation in Item 2, arguing that the testing required by 49 C.F.R. § 192.631(c)(4) was completed for the years 2020 and 2021. Shoshone provided records in its Response showing that backup SCADA system testing was completed in 2020 and 2021.

After a thorough review of the record, I find that the documentation and records submitted by Respondent are sufficient to demonstrate compliance with the backup SCADA system testing requirements under 49 C.F.R. § 192.631(c)(1). As stated above, Respondent is responsible for ensuring compliance with the pipeline safety regulations, including sound record keeping and maintaining records that demonstrate compliance with the control room management requirements. While Respondent could not produce records demonstrating that it was in

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[2] *In the Matter of Ozark Gas Transmission*, Final Order 2-2002-1004, 2003 WL 26473449 at *2 (April 29, 2003).

[3] *See e.g.*, *In the Matter of Enable Mississippi River Transmission, LLC,* Decision on Petition for Reconsideration 4-2022-047-NOPV, 2023 WL 3122253 (April 21, 2023).

compliance with the regulations at the time of the inspection, the documentation and records provided in its Response demonstrates that Shoshone was in compliance with the pipeline safety regulations at that time because it had records demonstrating that it tested its backup SCADA systems for 2020 and 2021.[4]

Based upon the foregoing, I hereby order that Item 2 be withdrawn. Respondent is warned that failure to maintain records demonstrating compliance may result in potential future enforcement.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 192.631(j)(1), which states:

> **§ 192.631 Control room management.**
> (a) . . . .
> (j) *Compliance and deviations.* An operator must maintain for review during inspection:
> (1) Records that demonstrate compliance with the requirements of this section; and

The Notice alleged that Respondent violated 49 C.F.R. § 192.631(j)(1) by failing to provide records demonstrating point-to-point verification after annual maintenance activities, like-for-like replacements and calibration of field instrumentation, valve operations and other field-initiated activities that affect control room operations in accordance with 49 C.F.R. § 192.631(c)(2). The Notice also alleged that Respondent failed to maintain records documenting on-the-job training provided to controllers by Shoshone employees, but that in practice, Shoshone had developed and implemented a new controller training program that is more in depth with computer-based training, reading of individual system description manuals, one-to-one training on consoles, and exams.

In its Response, Shoshone did not contest the alleged violation in Item 4 but clarified that point-to-point verifications are completed when changes are made within the SCADA configuration based on the work done in the field. Respondent provided further information explaining that when activities are completed in the field that do not require changes to the SCADA configuration, check-outs are done with Gas Control without documenting the validation of specific points in the Gas Control logs. Respondent indicated that a new log has been implemented to capture field-initiated point-to-point activities with Gas Control. Respondent also stated in its Response that on-the-job training activities have been implemented with documentation requirements.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.631(j)(1) by failing to maintain records documenting compliance with the point-to-point verification requirements under 49 C.F.R. § 192.631(c)(2).

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

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[4] *Id.*

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1, 2, and 4 in the Notice for violations of 49 C.F.R. §§ 192.631(c)(1), 192.631(c)(4), and 192.631(j)(1), respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. As discussed above, Items 1 and 2 have been withdrawn. Therefore, the compliance terms proposed in the Notice for those Item are not included in this Order. The Director indicates that Respondent has taken the following actions specified in the proposed compliance order:

> 1. With respect to the violation of § 192.631(j)(1) (**Item 4**), Respondent has revised its procedures to document field-initiated point-to-point verification with Gas Control, trained its field personnel managers to ensure that field-initiated activities are point-to-point verified, and submitted to the Direct a forensic analysis of point-to-point verifications for the years 2018 through 2022.

Accordingly, I find that compliance has been achieved with respect to this violation. Therefore, the compliance terms proposed in the Notice are not included in this Order.

WARNING ITEM

With respect to Item 3, the Notice alleged a probable violation of Part 192, but identified it as a warning item pursuant to § 190.205. The warning was for:

> 49 C.F.R. § 192.631(h) **(Item 3) ─** Respondent's alleged failure to complete the required training program content review to identify potential improvements at least once each calendar year, but at intervals not to exceed 15 months, for the year 2021.

Shoshone presented information in its Response showing that it rewrote its training program in 2021 as part of its annual review and considered the new training program the record of its 2021 review. If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. The written petition must be received no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

ALAN KRAMER MAYBERRY

Digitally signed by ALAN KRAMER MAYBERRY
Date: 2024.08.30 09:33:54 -04'00'

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

September 5, 2024
Date Issued