

**NOTICE OF PROBABLE VIOLATION  
and  
PROPOSED COMPLIANCE ORDER**

**VIA ELECTRONIC MAIL TO MR. JOHN HILL:**

July 19, 2023

Mr. John Hill  
VP of Natural Gas System Safety  
Black Hills Energy  
7001 Mt. Rushmore Road  
PO Box 1400  
Rapid City, SD 57709

**CPF 5-2023-033-NOPV**

Dear Mr. Hill:

From April 25 through 29, 2022, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code, inspected Black Hills Shoshone Pipeline, LLC (Black Hills) procedures for control room management in Council Bluffs, Iowa.

As a result of the inspection, it is alleged that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected and the probable violations are:

**1. § 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; ...**

Black Hills failed to implement the required sections of API RP 1165 set forth in § 192.631(c)(1) and/or failed to demonstrate that certain provisions of those sections are not practical for the SCADA system used. During the inspection, Black Hills was unable to present records to establish that the SCADA systems were compliant with API RP 1165<sup>1</sup>. Black Hills began pipeline control room operations at the Council Bluffs, Iowa facility in July 2020. Prior to beginning control room operations to Council Bluffs, Black Hills operated two control rooms in Omaha, Nebraska. Black Hills operates two SCADA systems from the control room in Council Bluffs, Iowa, the legacy Source Gas system commissioned in 2016 and the legacy Black Hills system commissioned prior to 2009. The relocation and consolidation of multiple control rooms to a new facility required an analysis of the new facilities to determine if the new facilities were additions, expansions or replacements of a SCADA system under § 192.631(c)(1).

**2. § 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; ...**

Black Hills failed to complete the required test of any backup SCADA systems at least once each calendar year, but at intervals not to exceed 15 months. Black Hills was unable to present the test records for 2020 & 2021.

**3. § 192.631 Control room management.**

**(a) ...**

**(h) *Training.* Each operator must establish a controller training program and review the training program content to identify potential improvements at least once each calendar year, but at intervals not to exceed 15 months. An operator's program must provide for training each controller to carry out the roles and**

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<sup>1</sup> See 49 C.F.R. § 192.631(j)(1) (requiring operators to maintain for review during inspection records that demonstrate compliance with the requirements of this section).

**responsibilities defined by the operator. In addition, the training program must include the following elements: ...**

In 2021, Black Hills failed to complete the required training program review of the training program content to identify potential improvements at least once each calendar year, but at intervals not to exceed 15 months. The training program was reviewed in 2019 and 2020 at the required intervals, but not in 2021.

**4. § 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; ...**

Black Hills failed to present records to demonstrate a point-to-point verification after annual maintenance activities, like-for-like replacements and calibrations of field instrumentation, valve operations and other field initiated activities that affect control room operations<sup>2</sup>.

Additionally, Black Hills failed to maintain records documenting on-the-job training provided to controllers by Black Hills staff. In practice Black Hills has developed and implemented a new controller training program that is more in depth with computer based training, reading of individual system description manuals, 1to1 training on the console and exams.

Proposed Compliance Order

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$257,664 per violation per day the violation persists, up to a maximum of \$2,576,627 for a related series of violations. For violation occurring on or after March 21, 2022 and before January 6, 2023, the maximum penalty may not exceed \$239,142 per violation per day the violation persists, up to a maximum of \$2,391,412 for a related series of violations. For violation occurring on or after May 3, 2021 and before March 21, 2022, the maximum penalty may not exceed \$225,134 per violation per day the violation persists, up to a maximum of \$2,251,334 for a related series of violations. For violation occurring on or after January 11, 2021 and before May 3, 2021, the maximum penalty may not exceed \$222,504 per violation per day the violation persists, up to a maximum of \$2,225,034 for a related series of violations. For violation occurring on or after July 31, 2019 and before January 11, 2021, the maximum penalty may not exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022.

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<sup>2</sup> See 49 C.F.R. § 192.631(c)(2) Conduct a point-to-point verification between SCADA displays and related field equipment when field equipment is added or moved and when other changes that affect pipeline safety are made to field equipment or SCADA displays;

We have reviewed the circumstances and supporting documents involved in this case, and have decided not to propose a civil penalty assessment at this time.

With respect to items 1, 2 and 4 pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Black Hills Shoshone Pipeline, LLC. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

#### Warning Items

With respect to item 3 we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct these items. Failure to do so may result in additional enforcement action.

#### Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b).

Following your receipt of this Notice, you have 30 days to respond as described in the enclosed *Response Options*. If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. The Region Director may extend the period for responding upon a written request timely submitted demonstrating good cause for an extension.

In your correspondence on this matter, please refer to **CPF 5-2023-033-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Dustin Hubbard  
Director, Western Region, Office of Pipeline Safety  
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*  
*Response Options for Pipeline Operators in Enforcement Proceedings*

cc: PHP-60 Compliance Registry  
PHP-500 J. Dunphy (#22-239213)  
Randy Seman, Director Gas Control – Randy.Seman@blackhillscorp.com

## PROPOSED COMPLIANCE ORDER

Pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Black Hills Shoshone Pipeline, LLC a Compliance Order incorporating the following remedial requirements to ensure the compliance of Black Hills Shoshone Pipeline, LLC (Black Hills) with the pipeline safety regulations:

- A. In regard to Item 1 of the Notice, Black Hills must conduct and document an evaluation of each SCADA system operated under Black Hills Corporation Operations & Maintenance Procedure 135 for compliance with the requisite sections of API RP 1165 within **30** days of receipt of the Final Order. Black Hills must present to PHMSA the evaluation and a plan for correcting any deficiencies identified through its evaluation of the SCADA systems within **90** days of receipt of the Final Order.
- B. In regard to Item 2 of the Notice, Black Hills must submit the 2022 records of the required test of any backup SCADA systems within **30** days of receipt of the Final Order.
- C. In regard to Item 4 of the Notice, Black Hills must amend its Operations and Maintenance procedures to require point to point verifications for all field initiated activities that affect control room operations within **30** days of receipt of the Final Order. Black Hills must conduct a forensic analysis of all field operations and maintenance records for the years 2018-2022, inclusive, for all pipelines controlled from the Council Bluffs control room to determine if point-to-point verifications were conducted with the control room within **90** days of receipt of the Final Order. Black Hills must present to PHMSA the forensic analysis and the amended procedures within **120** days of receipt of the Final Order.
- D. It is requested (not mandated) that Black Hills maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Dustin Hubbard, Director, Western Region, Pipeline and Hazardous Materials Safety Administration. 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.