

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

VIA ELECTRONIC MAIL TO: gjans@midwaysunset.com

March 4, 2024

Mr. Greg Jans
Executive Director
Midway Sunset Generation Company
3466 W. Crocker Springs Road
Fellows, CA 93224-0457

CPF 5-2024-009-NOPV

Dear Mr. Jans:

From October 11 through 14, 2022, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code, inspected Midway Sunset Generation (Midway) company's procedures for control room management in Fellows, California.

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 item inspected and the probable violations are:

1. § 192.631 Control room management.

(a) *General.*

(1) This section applies to each operator of a pipeline facility with a controller working in a control room who monitors and controls all or part of a pipeline facility through a SCADA system. Each operator must have and follow written control room management procedures that implement the requirements of this

section, except that for each control room where an operator's activities are limited to either or both of:

- (i) Distribution with less than 250,000 services, or**
- (ii) Transmission without a compressor station, the operator must have and follow written procedures that implement only paragraphs (d) (regarding fatigue), (i) (regarding compliance validation), and (j) (regarding compliance and deviations) of this section.**

Midway failed to have and follow written control room management (CRM) procedures that implement the requirements of § 192.631(a)(1)(ii). Specifically, the Midway pipeline operations manual does not contain written procedures that address fatigue, compliance validation compliance and deviations as is required by § 192.631(d), § 192.631(i), and § 192.631(j)¹.

Accordingly, Midway is in violation of § 192.631(a)(1)(ii).

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$266,015 per violation per day the violation persists, up to a maximum of \$2,660,135 for a related series of violations. For violation occurring on or after January 6, 2023 and before December 28, 2023, the maximum penalty may not 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

¹ § 192.631 Control room management.

(d) *Fatigue mitigation.* Each operator must implement the following methods to reduce the risk associated with controller fatigue that could inhibit a controller's ability to carry out the roles and responsibilities the operator has defined:

- (1) Establish shift lengths and schedule rotations that provide controllers off-duty time sufficient to achieve eight hours of continuous sleep;
- (2) Educate controllers and supervisors in fatigue mitigation strategies and how off-duty activities contribute to fatigue;
- (3) Train controllers and supervisors to recognize the effects of fatigue; and
- (4) Establish a maximum limit on controller hours-of-service, which may provide for an emergency deviation from the maximum limit if necessary for the safe operation of a pipeline facility.

(i) *Compliance validation.* Upon request, operators must submit their procedures to PHMSA or, in the case of an intrastate pipeline facility regulated by a State, to the appropriate State agency.

(j) *Compliance and deviations.* An operator must maintain for review during inspection:

- (1) Records that demonstrate compliance with the requirements of this section; and
- (2) Documentation to demonstrate that any deviation from the procedures required by this section was necessary for the safe operation of a pipeline facility.

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.

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.

Proposed Compliance Order

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

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. All material you submit in response to this enforcement action may be 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 5-2024-009-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Dustin Hubbard
Director, Western Region
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 (#22-239217)
Corey Lahammer, Plant Supervisor – Maintenance, clahammer@midwaysunset.com

PROPOSED COMPLIANCE ORDER

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

- A. In regard to Item 1 of the Notice pertaining to Midway's failure to have and follow written control room management procedures that implement the requirements of § 192.631(a)(1)(ii). Midway must amend its procedures within **60** days of receipt of the Final Order to include policies and procedures to 1) include procedures implementing the requirements of § 192.631(d); 2) include procedures implementing the requirements of § 192.631(i); and (3) include procedures implementing the requirements of § 192.631(j).
- B. It is requested (not mandated) that Midway 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.