



August 9, 2024

CC-2258

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

Reference: CPF 5-2024-014-NOPV

**Subject: Response to a DOT “Notice of Probable Violation and Proposed Civil Penalty”
Concerning Probable Violations of the Pipeline Safety Regulation.**

Dear Mr. Hubbard:

From March 6, 2023 through March 9, 2023, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an onsite inspection of the MSCC/Mojave Gas Pipeline Procedural Manual and our pipeline facility. A result of that inspection was a DOT Notice of Probable Violation and Proposed Civil Penalty notifying Midway Sunset Cogeneration Company (MSCC) that it has committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). Please find attached a copy of “Notice of Probable Violation and Proposed Civil Penalty” CPF 5-2024-0014-NOPV. MSCC’s following plan is numbered in concert with the “Notice of Probable Violation and Proposed Civil Penalty”:

1. Midway failed to follow its written procedures for conducting operations and maintenance activities as required by § 192.605(a). Specifically, the Midway-Sunset Mojave Gas Operation Manual states that the review of the operations and maintenance manual will be conducted annually in July of each calendar year. However, Midway representatives were unable to provide PHMSA inspectors with any records indicating that the O&M manual was reviewed at intervals not exceeding 15 months, but at least once each calendar year, as required by § 192.605(a).

During the inspection, Midway representatives could not produce any records evidencing that the company had performed an annual review or updated its O&M manual for calendar years 2019, 2020, 2021, or 2022. Midway did not have any revision logs from these years or evidence otherwise to demonstrate any revisions were made during this period. Therefore, Midway failed to follow its written procedures as required by § 192.605(a).

Response: MSCC does not contest the findings in Item 1 of this “Notice of Probable Violation and Proposed Civil Penalty”. MSCC has included the following section in its MSCC/Mojave Gas Pipeline O & M Manual Section 100 O & M Manual Objective and in its annual Work Order in the maintenance management system to ensure that all MSCC/Mojave Gas Pipeline Operation, Maintenance, and Emergency procedures are reviewed and approved annually not exceeding 15 months.

Regular review and updates to the procedural manual are conducted by MSCC at intervals not exceeding 15 months, in accordance with regulatory requirements. This ensures that our procedures remain current and reflective of evolving industry best practices and regulatory standards. Moreover, the manual undergoes an annual review to guarantee its continued relevance and effectiveness in guiding our operational activities.

1. To conduct the regular review and updates to the procedural manual as mandated by regulatory requirements, MSCC follows a structured process aimed at ensuring the manual's accuracy, currency, and alignment with industry best practices and regulatory standards. Following is the detailed outline of the review process as reflected on the associated work order in the plant maintenance management system:
 - a. Establishment of Review Team: MSCC designates a review team comprising qualified personnel with expertise in pipeline operations, maintenance, safety, and regulatory compliance. The team is led by the Regulatory Compliance Specialist responsible for overseeing the review process.
 - b. Schedule and Notification: The review team establishes a schedule for the review process, ensuring that it occurs at intervals not exceeding 15 months from the previous review. Notifications are disseminated to relevant stakeholders within MSCC, informing them of the impending review and soliciting their input.

- c. Gather Feedback and Input: The review team collects feedback and input from various sources, including:
 - i. Incident reports and lessons learned from previous operational activities.
 - ii. Feedback from operations personnel involved in day-to-day operations and maintenance.
 - iii. Updates to regulatory requirements and industry best practices.
 - iv. Recommendations from internal audits, inspections, and external assessments.
 - v. Management of change process.
- d. Document Review: Each section of the procedural manual is meticulously reviewed by the team to identify any discrepancies, outdated information, or areas requiring improvement. This includes:
 - i. Cross-referencing procedures with applicable regulatory requirements to ensure compliance.
 - ii. Verifying the accuracy of contact information, emergency response procedures, and escalation protocols.
 - iii. Assessing the clarity and comprehensiveness of instructions provided in the manual.
 - iv. MSCC is to meticulously review and update the fatigue mitigation procedures as required by § 192.631(d).
- e. Identification of Updates: Based on the findings of the review, the team identifies necessary updates, revisions, or additions to the procedural manual. These may include:
 - i. Management of change.
 - ii. Incorporating new procedures or best practices that enhance safety and operational efficiency.
 - iii. Amending existing procedures to address identified deficiencies or accommodate changes in equipment or technology.
 - iv. Updating emergency response plans to reflect lessons learned from recent incidents or changes in regulatory requirements.

- f. Drafting and Approval: The review team collaborates to draft revisions and updates to the procedural manual, ensuring that all changes are accurately documented and clearly communicated. The revised manual is subjected to internal review and approval processes, involving relevant stakeholders, management, and regulatory compliance personnel.
- g. Training and Implementation: Once approved, the updated procedural manual is disseminated to all relevant personnel via the Acknowledgement of Information process, and training sessions are conducted to ensure understanding and adherence to the revised procedures. Any changes in protocols or emergency response procedures are communicated effectively to MSCC personnel.
- h. Annual Review: Documentation of the annual review shall be completed by filling out the associated MSCC maintenance management system work order and control room log book entry.

By adhering to this structured review process, MSCC ensures that its procedural manual remains current, comprehensive, and aligned with regulatory requirements and industry best practices, thereby enhancing the safety and reliability of its pipeline operations.

3. Midway failed to observe surface conditions on the transmission line right-of-way for indications of leaks, construction activity, and other factors affecting safety and operation on its pipeline in a Class 1 location at highway or railroad crossings every 7½ months but at least twice each calendar year as required by § 192.705(b).

Midway representatives provided records that indicated transmission pipeline right-of-way patrols were not conducted in accordance with the regulatory requirement. Midway representatives provided patrolling records for highway and railroad crossings in Class 1 locations for the following dates: June 28, 2019, April 27, 2020, April 13, 2021, and December 21, 2021.

The patrolling records indicate that between June 28, 2019 and April 27, 2020, Midway failed to conduct the required patrol frequency of twice per year and exceeded the 7½ month interval requirement by approximately 2.5 months. Between April 27, 2020 and April 13, 2021, Midway failed to conduct the required patrol frequency of twice per year and exceeded the 7½ month interval requirement by approximately 4 months. Between April 13, 2021 and December 21, 2021, Midway failed to conduct the required patrol frequency of twice per year and exceeded the 7½ month interval requirement by approximately 0.5 months.

Therefore, Midway failed to perform patrols on its pipeline in a Class 1 location at highway or railroad crossings every 7½ months but at least twice each calendar year as required by § 192.705(b).

Response: MSCC formally contests the findings outlined in Item 3 of the "Notice of Probable Violation and Proposed Civil Penalty", but elects to not have a hearing. During the inspection, the MSCC representatives present lacked knowledge of the location of the evidence records concerning the patrolling of the MSCC/Mojave natural gas pipeline. It is pertinent to note that the designated MSCC DOT Coordinator, who had previously left the company, has since returned. This individual has now located the control room log book, which contains legally binding entries that confirm the completion of patrols within the mandated 7½ month intervals. Furthermore, MSCC has conducted a thorough review of its patrolling procedures and has instituted an additional patrol to ensure ongoing compliance with the regulatory requirements. We trust that this information addresses the concerns raised and demonstrates our commitment to maintaining compliance.

The attached MSCC Patrolling Records demonstrate a timeline of the patrol surveys completed by MSCC. Also attached are the MSCC control room log book pages containing the highlighted entries for the completion of the MSCC/Mojave gas pipeline Road Crossing surveys for the missing intervals as listed in Item 3 of the "Notice of Probable Violation and Proposed Civil Penalty."

With respect to items 2 and 4 of the "Notice of Probable Violation and Proposed Civil Penalty", MSCC has reviewed, updated, and implemented procedures to ensure compliance. Copies of the revisions are available to the DOT on request. MSCC embraces the importance of public safety and, therefore, wishes not only to meet the letter of the law but also the overriding intent.

MSCC commends PHMSA OPS representative's professional demeanor during the inspection. It proved an excellent opportunity for MSCC's employees to interact with and learn from a knowledgeable, professional, DOT representative.

Please note, as of February 19, 2024, Lowell Pollema, Aera Energy, has been appointed Executive Director of MSCC replacing Greg Jans as Acting Executive Director.

If you have any questions or comments, please email me at; management@midwaysunset.com or call me at (661)768-3000.

Sincerely,



Greg Jans
Plant Manager

Attachment

cc: File CC-2258 G. Jans M. Williams C. Lahammer
M. Bojorquez G. Davis L. Pollema S. Urias