



## Florida Gas Transmission Company

A Southern Union/El Paso Affiliate

5444 Westheimer Road  
Houston, TX 77056-5306

P.O. Box 4967  
Houston, TX 77210-4967  
713.989.7000

*Via eFiling and Certified Mail – Return Receipt Requested*

March 26, 2010

Ms. Linda Daugherty  
Director, Southern Region  
Department of Transportation  
Pipeline and Hazardous Materials Safety Administration  
Office of Pipeline Safety  
233 Peachtree Street (Suite 600)  
Atlanta, GA 30303

### **RE: Notice of Probable Violation and Proposed Civil Penalty, CPF 2-2010-1004**

Dear Ms. Daugherty:

By notice dated February 23, 2010, received February 26, 2010, the Pipeline and Hazardous Materials Safety Administration ("PHMSA") alleges Florida Gas Transmission Company ("FGT") committed certain probable violations of the Pipeline Safety Regulations codified in Title 49, Code of Federal Regulations Parts 192 and 199 ("NOPV").

FGT requests the dismissal of all matters set forth in the NOPV. If PHMSA declines this request, FGT requests a hearing on these items. Responses to the allegations are set forth below.

#### Allegation Numbers 2 and 3.

PHMSA alleges FGT failed to conduct drug and alcohol tests on two of four pipeline gas controllers who PHMSA claims may have contributed to the accident. A violation of the cited sections did not occur and FGT requests that PHMSA withdraw or dismiss these two items. It was well within FGT's discretion, and completely reasonable for FGT to believe, that the controllers did not contribute to the accident. Therefore no testing was required for drugs and/or alcohol.

FGT staffs two gas controllers per twelve hour shift. Because the incident happened just prior to the shift change, the night controllers who were present when the incident occurred were drug tested and the day controllers, who were not present at the time, were not tested. The allegations read as if all four of the controllers, the two night controllers going off shift and the two day

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controllers coming on shift, were present at the time the incident actually occurred and FGT chose not to test two of the four controllers. The allegations assume incorrect facts. FGT did not conduct alcohol or drug testing of the day controllers because they were not present at the time the incident occurred.

The night controllers turned over control to the day shift and left before FGT received enough information to confirm that an incident had in fact occurred to FGT's pipeline. After it was determined that an incident had occurred, the night controllers were drug tested; however, too much time had elapsed to obtain a valid alcohol test.

Neither of the cited code sections §199.105 (b) [Drug testing] and §199.225 (a) (1) [Alcohol Testing] require a test if the operator determines that the actions of the employee could not have contributed to the accident using the best information available. The day controllers who began their shift after the accident occurred could not have contributed to the incident. PHMSA acknowledges in allegation number 5 that the incident occurred during the night controllers' shift. No alarm sounded during the night controllers' shift; therefore they could not have contributed to the accident either.

The FGT Gas Control Log shows that a call from Martin County Fire and Rescue regarding the incident was taken by the night controllers and they responded by promptly calling out field personnel at 4:52 am Central Time, within 3 minutes of the time of the call. FGT has no reason to believe that the actions of the night controllers contributed to this incident.

Assuming any penalty is appropriate, which it is not, the proposed penalty is excessive.

Allegation Number 4.

FGT can demonstrate that FGT performed the repair work and had the necessary documentation to confirm adequacy of the repair. In addition FGT has identified records, including notes from an inspector, at the time the pipe was installed in 2004. Further, FGT has enhanced its recordkeeping process by employing an electronic database that is reviewed by a technical specialist. Assuming any penalty is appropriate, which it is not, the proposed penalty is excessive.

FGT is requesting the dismissal of the claims relative to all allegations and the termination and closure of this matter. If PHMSA declines this request, FGT requests a hearing on these items. The principal issues to be raised at hearing are listed in this letter. In the event of such hearing, FGT anticipates being represented by counsel.

Sincerely,



Eric J. Amundsen  
Vice President – Technical Services

Attachment:  
February 23, 2010 PHMSA Letter (CPF 2-2010-1004)