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VIA E-MAIL AND UPS

January 6, 2011

Mr. Byron E. Coy, P.E.
Director, Eastern Region
Pipeline and Hazardous Materials Safety Administration
Mountain View Office Park
820 Bear Tavern Road, Suite 306
West Trenton, NJ 08628

**RE: Response to Notice of Probable Violation and Proposed Civil Penalty
CPF No. 1-2010-1006**

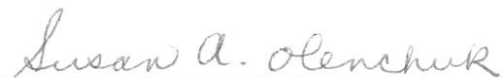
Dear Mr. Coy:

Thank you for your December 6, 2010 letter granting Dominion Transmission Inc.'s ("DTI") request for additional time to respond to the above-referenced Notice of Probable Violation and Proposed Civil Penalty ("Notice"). DTI respectfully submits the enclosed response to the Notice. Please note that DTI's response includes a request for confidential treatment of certain materials contained in PHMSA's case file for this matter.

DTI respectfully requests that PHMSA review the response and reduce the civil penalty.

DTI appreciates the professional manner in which PHMSA has undertaken this case. Please do not hesitate to contact me if you have any questions.

Respectfully submitted,



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CC: Mr. David Hippchen, WVPSC
Ms. Brianne Kurdock, Esq., PHMSA Office of Chief Counsel

Enclosure: Response of Dominion Transmission Inc. to Notice of Probable Violation and Proposed Civil Penalty.

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY**

In the Matter of)	
)	
Dominion Transmission, Inc.,)	CPF No. 1-2010-1006
)	
Respondent.)	
)	

**RESPONSE OF DOMINION TRANSMISSION, INC. TO NOTICE OF PROBABLE
VIOLATION AND PROPOSED CIVIL PENALTY**

**To: Byron E. Coy, P.E.
Director, Eastern Region**

A. Introduction

Pursuant to 49 C.F.R. § 190.209(a)(2) Dominion Transmission Inc. (“DTI”) submits this written response to the alleged violation and proposed civil penalty set out in the Notice of Probable Violation and Proposed Civil Penalty (“Notice”) in the above-captioned matter. DTI does not contest the alleged violation but requests a reduction in the proposed civil penalty. In addition, DTI requests that certain information contained in the PHMSA case file for this matter be given confidential treatment pursuant to the Freedom of Information Act (“FOIA”) (5 U.S.C. § 552(b)). DTI does not request a hearing in connection with this matter.

B. Background

By letter dated October 18, 2010, PHMSA issued the Notice to DTI. The Notice concerned a May 7, 2009 incident in which a DTI contractor struck and ruptured DTI’s TL-286 gas pipeline. There were no injuries, environmental harm or property damage associated with the incident, aside from damage to DTI’s facilities. The pipeline is located in and serves the Racket-Newberne Gas Storage Field, near Cox’s Mill, West Virginia.

On November 15, 2010, pursuant to section IV of the Response Options for Pipeline Operators in Compliance Procedures (“Response Options”) enclosed with the Notice, DTI submitted a timely request for an extension of time to prepare an appropriate response to the Notice. In that same letter, DTI also requested, pursuant to 49 C.F.R. § 190.211(e), all of the

materials in PHMSA's case file, including any materials describing how the amount of the penalty was calculated. By letter dated December 6, 2010, PHMSA granted DTI's request for an extension and provided certain materials from the agency's case file. PHMSA's grant of an extension gave DTI until January 6, 2011, to respond to the Notice. This response is, therefore, timely.

C. DTI Actions Since the 2009 Pipeline Incident

DTI shares PHMSA's commitment to pipeline safety and takes all pipeline incidents seriously. DTI studied the May 7, 2009 incident and quickly took concrete steps to prevent future, similar events. DTI's actions are summarized below and documentation demonstrating these positive changes is attached.

- *New Procedure:* DTI developed a new procedure for inclusion in its Gas Storage Guidelines, entitled "Section 7.0: Well Work Safety, Encroachments, and Excavations." This procedure requires DTI personnel to go through a specific process to identify and protect any DTI pipelines in the vicinity of any DTI-managed well work in any DTI storage field. (Attached hereto as Attachment A).
- *New Form:* In conjunction with the new procedure described above, DTI developed a new form, entitled "DTI Storage Well Repair/Drilling Notification Form" designed to foster communications between Field Operations and Gas Storage personnel and to identify any issues prior to beginning storage well work. The form includes fields for identifying buried facilities and checking pipeline depth of cover measurements. (Attached hereto as Attachment B).

Although the Notice did not include a proposed compliance order, DTI provides this information to demonstrate its commitment to pipeline safety and its willingness to learn from and make changes in response to incidents. DTI welcomes any questions or comments PHMSA may have on these improvements.

D. Allegation of Violation

DTI does not contest the allegation in Item 1 of the Notice.

E. Proposed Civil Penalty

PHMSA proposed a civil penalty of \$60,000 for Item 1. DTI acknowledges that a pipeline rupture occurred and that a civil penalty is appropriate. However, we respectfully contest the amount of the penalty proposed and request that PHMSA reduce the penalty. Upon review of the case file materials, DTI discovered what appears to be an inadvertent error in the PHMSA Violation Report. Specifically, in the portion of the Violation Report related to the gravity of the alleged violation, box four is checked to indicate that the location of

noncompliance “was in or affected a populated area, an HCA, an HCA ‘could affect’ segment, a road or RR crossing, a plant/station, or similar area.”¹ In the Violation Report, PHMSA explains that the “gravity relates to the seriousness of the probable violation, and includes consideration of whether it posed a significant threat to public safety and protection of the environment and where this threat occurred.”² It appears that PHMSA checked box four due to proximity of the well access road to the incident and on the basis of an associated threat to public safety.

Box four should not have been checked because the incident took place on a road that was not accessible to the public at the time of the incident, and because none of the other factors listed in box four were present at or near the incident location. The well access road is located on private property in a rural, class 1 area and was secured by two locked gates. DTI has attached photographs to this response that demonstrate the rural character of the road.³ DTI has also attached a statement of a DTI employee regarding the existence of the locked gates on the access road and the rural nature of the incident location.⁴ As a result, the threat to public safety was substantially lower than it would have been had the incident occurred on a publicly-accessible road. Due to the remote, private, and secure nature of the road, DTI respectfully contends that, pursuant to 49 C.F.R. § 190.225(a)(1), the portion of the proposed gravity penalty associated with box four should be eliminated.

A reduction in the gravity portion of the penalty is also consistent with PHMSA’s treatment of this assessment criterion in a prior administrative case. In a 2006 Final Order issued to Southern Star Central Gas Pipeline, Inc., PHMSA reduced the civil penalties for two separate violations on the basis of the operator’s showing that a release of gas did not threaten to overpressurize a nearby school’s gas facilities.⁵ In Southern Star, PHMSA reduced the civil penalty for these two violations by \$75,000.⁶ The Southern Star case demonstrates that a reduction in a gravity penalty is appropriate when an operator can show a reduced impact on public safety. In the present matter, because of the rural, non-public character of the well access road at the incident location, the violation had a reduced impact on public safety.

Even if no additional penalty amount was associated with box four, DTI contends, pursuant to 49 C.F.R. § 190.225(b)(2), that justice requires a reduction in the civil penalty due to the remote, private and secure nature of the road at the incident location. The occurrence of the incident in this class 1 area presented a substantially lower threat to public safety than had the incident occurred along a publicly-accessible road.

¹ PHMSA Violation Report at 5.

² *Id.* The Pipeline Safety Laws and Regulations require that PHMSA consider the “nature, circumstances and gravity of the violation, including adverse impact on the environment,” when determining the amount of a civil penalty. 49 U.S.C. § 60122(b)(1)(A); 49 C.F.R. § 190.225(a)(1).

³ Photographs of the well access road are attached hereto as Attachment C.

⁴ The statement of Shawn Miller, DTI Compliance Engineer, is attached hereto as Attachment D.

⁵ See *In the matter of Southern Star Central Gas Pipeline, Inc.*, Final Order, CPF No. 3-2005-1015, 2006 WL 3825330, at 2-3 (Apr. 26, 2006).

⁶ *Id.*

A penalty reduction is also appropriate in light of the safety distinction between pipelines near public versus non-public roads that is reflected more broadly in PHMSA's regulations. For example, the regulations for line markers for mains and transmission lines require markers at "each crossing of a *public* road..." (emphasis added).⁷ This distinction is also reflected in the regulations for the design factor for steel pipe. This regulation allows operators to use a 0.72 design factor in class 1 locations, unless the pipeline "crosses the right of way of an unimproved *public* road..." (emphasis added), in which case a more conservative design factor must be used.⁸ These regulations demonstrate that PHMSA has recognized the need for greater safety protections for pipelines in areas accessible to the public. DTI requests that PHMSA recognize that distinction in this case by reducing the penalty, in light of the assessment criteria at 49 C.F.R. § 190.225(a)(1) and (b)(2), and on the basis that the incident took place in a rural, class 1 area to which the public does not have access.

On the foregoing bases, DTI respectfully requests that PHMSA reduce the civil penalty in this matter. Because PHMSA has not provided DTI with access to the method, policy, work papers or any other explanation of how PHMSA calculated a proposed penalty of \$60,000 we are not in a position to request the amount of the reduction. Nonetheless, DTI contends that a significant but reasonable penalty reduction is appropriate.

F. Request for Confidential Treatment Pursuant to 5 U.S.C. § 552(b).

Pursuant to FOIA, 5 U.S.C. § 552(b)(2006), and section V of the Response Options, DTI hereby requests confidential treatment of certain information contained within the PHMSA Violation Report. Specifically, DTI requests confidential treatment, pursuant to FOIA Exemption 7(F) (5 U.S.C. § 552(b)(7)(F)), of the Global Positioning System ("GPS") coordinates, maps, and a satellite image contained throughout the Violation Report, attached exhibits and other case file documents.⁹ These materials provide a highly accurate description of the location of DTI's pipeline facilities. The scale of the GPS coordinates, in particular, is more accurate than what PHMSA provides, pursuant to its security policy, on the National Pipeline Mapping System ("NPMS") website.¹⁰ Also, one of the maps is a PHMSA document marked "For Official Use Only."¹¹ The presence of this highly accurate pipeline location information in

⁷ 49 C.F.R. § 192.707(a)(1).

⁸ 49 C.F.R. § 192.111(a) and (b)(1).

⁹ The GPS coordinates, maps and satellite image are contained in the following documents:
October 15, 2010 PHMSA Violation Report;
June 5, 2009 Incident Report (attached as Exhibit A 3 to Violation Report and separately attached as Appendix 3 to Pipeline Failure Investigation Report);
November 19, 2009 Pipeline Failure Investigation Report, Activity ID 128532; and
Incident Location Maps and Satellite Photograph (attached as Appendix 1 to Pipeline Failure Investigation Report).

¹⁰ See <https://www.npms.phmsa.dot.gov/PublicViewer/> (last accessed January 3, 2011).

¹¹ November 19, 2009 Pipeline Failure Investigation Report, Appendix 1 – Maps – Incident Location.

the public domain is a security risk. DTI also request confidential treatment, on the basis of Exemptions 6 and 7(c) (5 U.S.C. § 552(b)(6) and (b)(7)(C)), of mobile phone numbers for DTI contractors that are listed in the case file materials.¹² Pursuant to section V of the Response Options, DTI understands that PHMSA will consult with DTI before providing these materials in response to a request or otherwise making them publicly available.

DTI also respectfully requests that PHMSA refrain from posting the Violation Report and the Pipeline Failure Investigation Report to the agency's publicly accessible website. None of these materials were prepared with the context necessary to fully explain the incident and PHMSA's and DTI's respective responses to it. As a result, DTI believes that the public posting of these documents could be misleading and prejudicial to DTI.

Respectfully submitted,



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Dated: January 6, 2011

¹² The phone numbers for DTI contractors are contained in the November 19, 2009 Pipeline Failure Investigation Report.