



Thomas P. Meissner, Jr.

Senior Vice President,
Chief Operating Officer

January 11, 2013

VIA E-MAIL AND OVERNIGHT MAIL

Debra A. Howland, Executive Director and Secretary
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301-2429



Re: Docket No.: DRM 11-077

Dear Director Howland:

The purpose of this letter is to provide the Commission with an update on the issues previously identified by Northern Utilities, Inc. ("Northern" or "the Company") in this rulemaking docket and express additional concerns that emerged from the technical sessions conducted by the Commission staff after the October 19, 2012 public hearing and the October 26, 2012 written comments. Given that the Commission's current Chapter 500 rules are about to expire, and the Commission will need to act swiftly to ensure continuity of state gas safety regulations, we are providing these additional comments prior to the Staff's issuance of a revised version of its proposed rules. Moreover, due to the importance of the issues discussed below to New Hampshire Public Safety, the Company respectfully suggests that the Commission hold a brief public hearing to consider the positions of industry and staff on these issues prior to the Commission's formal adoption of new Chapter 500 rules and submission of the rules to the Joint Legislative Committee on Administrative Rules.

The Company appreciates that it was given the opportunity to meet with Staff during the technical sessions. Through that process, we were able to gain a better understanding of Staff's reasons for proposing some of the new rules. While the Company and Staff were for the most part able to bridge many differences where they existed, Northern has significant concerns with the proposed rules that would fundamentally change the Company's operator qualification or "OQ" requirements. Currently, the operators in the northeast have adopted OQ programs that are based on a common set of standards developed through the Northeast Gas Association ("NGA"). This commonality ensures that personnel throughout the northeast have common training and skill sets that are necessary to safely operate

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and maintain gas distribution systems. Regionally developed OQ programs also promote efficiency among the operators in the region by allowing them to develop their individual OQ plan from a common regional standard. Most importantly, the regional approach allows an operator faced with a catastrophic event on their system to quickly access mutual aid resources from neighboring operators in the region.

Sections 506.02(t) and 501.01(d) of Staff's proposed rules would disrupt the regionally developed OQ programs that Northern and the other New Hampshire operators have adopted and relied upon for years. If adopted, New Hampshire's operators will have new OQ requirements, which will be unlike the OQ programs used by operators throughout the northeast. These additional OQ requirements will significantly hamper the ability of Northern (and the other New Hampshire gas operators) to obtain mutual aid in the event of an emergency. As a result, customers would likely experience significant delays in getting their service restored, which in turn jeopardizes public safety should an emergency occur during the coldest winter months.

Moreover, the Company does not believe that the added OQ requirements will improve public safety. OQ programs are intended to ensure that gas systems are being operated and maintained by a properly trained work force. The Company is proud that its safety record is exemplary, and incidents caused by human operator error are infrequent (during both 2011 and 2012 we had none). Accordingly, we have significant concern that the new OQ rules will not improve public safety, but rather may have the unintended consequence of hindering the Company's access to mutual aid assistance.

In order to fully explain the Company's concerns, it is important to provide the Commission with an overview of the federal OQ requirements, and how the northeast region cooperatively meets those mandates. The Commission must then consider how mutual aid efforts are coordinated for the gas sector (which is different than the electric industry) and how the proposed OQ rules will affect the Company's ability to rely on mutual aid personnel from neighboring states during emergencies.

The Qualification Process

OQ is a set of regulations promulgated by the U.S. Department of Transportation's Office of Pipeline and Hazardous Materials Safety Administration ("PHMSA") designed to ensure that gas pipeline facilities are constructed, operated and maintained by a qualified work force. The intent of the regulatory framework is to reduce the probability and consequence of incidents caused by human error. Codified at 49 C.F.R., Subpart N, the federal regulations provide the "minimum requirements for operator qualification of individuals performing covered tasks on a pipeline facility." 49 C.F.R. § 192.801(a) (scope). A "covered task" is "an activity, identified by the operator, that:

- (1) Is performed on a pipeline facility;
- (2) Is an operations or maintenance task;
- (3) Is performed as a requirement of this part; and
- (4) Affects the operation or integrity of the pipeline.

Id. § 192.801(b).

Under Subpart N, each operator must “have and follow a written qualification program” that, among other things, (1) identifies the covered tasks on the operator’s system; (2) ensures thorough “evaluation”¹ that individuals performing covered tasks are “qualified;” and (3) provides training, as appropriate, to ensure that individuals performing covered tasks “have the necessary knowledge and skills to perform the tasks in a manner that ensures the safe operation of pipeline facilities.” *Id.* § 192.805 (qualification program).

An individual is “qualified” with respect to a covered task when they have been evaluated and can perform the covered task and recognize and react to “abnormal operating conditions.” *Id.* § 192.803 (definition of qualified).

An abnormal operating condition (“AOC”) is “a condition identified by the operator that may indicate a malfunction of a component or deviation from normal operations that may: (a) Indicate a condition exceeding design limits; or (b) Result in a hazard(s) to persons, property, or the environment.” *Id.* § 192.803 (definition of abnormal operating condition).

For example, under the OQ regulations, before an operator can allow an individual to perform a leakage survey on a distribution system (*i.e.*, a “covered task” under § 192.723), the individual must be qualified through evaluation to ensure that the individual can perform that task on the operator’s system and identify and react to abnormalities in the operation of the system (*i.e.*, an “abnormal operating condition” under § 192.803).

Other examples of covered tasks (which can only be performed by properly qualified personnel) include deactivation of service (§ 192.727), purging of pipelines (§ 192.629) and reactivation of service (§ 192.725).

Operator Qualification in the Northeast

Here in the Northeast, the NGA convened gas industry stakeholders, including operators, contractors and regulators, and developed a region-specific OQ program.² Other regional and national trade groups have developed similar plans,³ and PHMSA acknowledges the benefits of these collaboratively developed OQ programs. While each operator is still required to comply with the federal OQ requirements imposed by Subpart N, a regionally formulated OQ program provides operators in the region with an OQ template that can be easily supplemented and tailored to each operator’s individual system. These regional templates allow the operators to efficiently comply with federal OQ requirements, promote consistency in OQ across the region, and facilitate adoption of “best practices” among utilities.

¹ Evaluation is essentially a process documented by the operator to determine that an individual is able to perform a covered task, such as through written or oral examination or visual observation. *See id.* § 192.803 (definition of evaluation).

² In fact, the NGA’s program is more stringent than federal code requires. Section 192.801(b) only requires operators to identify covered tasks for maintenance and operations tasks, but the NGA’s program also includes covered tasks for construction.

³ *E.g.*, Midwest Energy Association, American Public Gas Association.

The NGA's OQ program identifies 84 separate covered tasks,⁴ including the performance of gas leakage surveys (Covered Task #18), investigating leak/odor complaints (#20), purging a pipeline into service (#32), restoring service (#45), joining plastic and non-plastic pipe (#49, #50) and installation of customer meters and regulators (#72).

As for AOCs, the NGA recognizes eight that apply to natural gas systems:⁵ (1) Over Pressure,⁶ (2) Under/No Pressure,⁷ (3) Unintentional Ignition,⁸ (4) Explosion,⁹ (5) Component Failure,¹⁰ (6) Damage to Facility,¹¹ (7) Improper Odorization,¹² and (8) Escaping/Blowing Gas.¹³ These eight AOCs, which comprise NGA Covered Task #70, are applicable to all covered tasks. Like nearly every operator in the northeast, Northern has adopted the NGA written OQ program, and supplemented it where appropriate. Specifically, the Company's OQ plan adopts all of the NGA's natural gas-related covered tasks,¹⁴ and has added an additional covered task for "live insertion" of plastic pipe. In addition, the Company recognizes the eight abnormal operating conditions identified by the NGA.

⁴ The NGA's outline of covered tasks can be found at: <http://www.northeastgas.org/index.php/training-a-qualification/operator-qualification>.

⁵ The NGA recognizes two additional AOCs for LP-air systems which do not apply to Northern's system.

⁶ Over Pressure: When the pressure in the distribution/transmission main or service being worked on has exceeded the Maximum Allowable Operating Pressure ("MAOP") for that system.

⁷ Under/No Pressure: When the pressure of the distribution main or service being worked on has fallen below a point where the system facilities can no longer function properly or there is no gas pressure whatsoever in the system.

⁸ Unintentional Ignition: The accidental, unplanned, or inadvertent introduction of a process or mechanism (such as electric spark) which results in the combustion of a fuel mixture.

⁹ Explosion: The bursting of a building or container as a result of the development of internal pressure beyond the confinement capability of the building or container. An explosion can result from the detonation of a fuel air mixture within a confined space.

¹⁰ Component Failure: A cessation of proper functioning or performance of a pipe or fitting used to contain, transport or control the flow of natural gas in a gas main or gas service.

¹¹ Damage to Facility: Injury or harm to gas facilities (*e.g.*, mains, services, regulators, meters, etc.) that directly impairs the appearance, value, usefulness, soundness, etc. of the facility.

¹² Improper Odorization: Natural gas entering the distribution system must be odorized. The intensity of the odorization must be such that the gas is readily detectable at concentrations of 1% gas in air in New Hampshire and Maine and 0.15% gas in air in Massachusetts. Acceptable odorant levels are verified by using a special instrument (*e.g.*, an Odorometer).

¹³ Escaping/Blowing Gas: A release of natural gas from a facility (*e.g.*, main, service, regulator, relief valve). The release may be due to a regulator venting gas to atmosphere indicating a potential problem with the regulator.

¹⁴ Note that NGA covered tasks 73-83 are specifically for LP-air plants, and Northern does not operate any of those facilities in New Hampshire.

Overview of Mutual Aid in the Natural Gas Industry

The Commission is familiar with the concept of mutual aid. When a utility is confronted with an emergency situation, other operators in the region (and sometimes from outside the region) send available personnel to the utility that is in need.

In the Northeast, these mutual aid efforts for gas operators are coordinated by the NGA. The NGA maintains a database of all of the personnel in the Northeast who are qualified to perform covered tasks under the NGA plan. The NGA acts as a clearing house, matching the needs of a requesting utility to the personnel who are qualified and available to provide emergency assistance.

For example, if an excavator caused damage to a major pipeline that required shutting off service to 5,000 customers, the Company would have to perform a series of covered tasks to repair the damage and restore service. These include isolating the damaged portion of the system using isolation valves; turning off and locking out all 5,000 customers' individual services; purging the gas from the damaged portion of the system; performing the repair; re-pressurizing the system with gas; and unlocking, turning on and relighting all 5,000 customers. Under that scenario, the Company would contact the NGA with a request for mutual aid, describing the covered tasks for which the mutual aid personnel would need to be qualified (*e.g.*, gas leakage surveys (#18), patrolling & inspecting (#19), restoring service (#45), and installation of customer meters & regulators (#72). The NGA would then coordinate the deployment of personnel who are qualified in the covered tasks that the Company requested. The operator providing mutual aid personnel would forward to the Company copies of Operator Qualification records for the personnel deployed so Northern could confirm that the personnel, in fact, have been qualified under a NGA-complaint plan that also meets Northern's plan requirements. Upon the arrival of these pre-qualified personnel, the Company would perform a short orientation and safety briefing and the mutual aid personnel would be dispatched into the field.

"Superstorm Sandy" provides the most recent real-world example of how the mutual aid system works regionally in the gas industry. Within 12 hours of receiving notification that New Jersey Natural Gas ("NJNG") needed mutual aid assistance, Northern's parent, Until, had crews on the road headed for New Jersey. Based on the covered tasks identified by NJNG, we sent four distribution crews and 13 service technicians to New Jersey. Within **two hours** of our personnel arriving in New Jersey they were briefed and ready for deployment performing leak surveys, replacing gas regulators, replacing meters, relighting customers and performing other covered tasks. The ability to quickly deploy mutual aid personnel and have them in the field productively assisting in the emergency effort is directly attributable to the common OQ standards that have been regionally adopted through the NGA.

If there were no NGA standards, or if NJNG did not participate in the NGA program, the mutual aid response would have been delayed significantly. Personnel who had not been previously qualified on NJNG's system would have been required, by federal law, to undergo training and evaluation on covered tasks and abnormal operating conditions before they could work on NJNG's system. That qualification process for the mutual aid personnel would take days, and it would have consumed NJNG resources that could have been deployed to work directly on the

system restoration (instead of training, testing and qualifying mutual aid personnel for work on NJNG's system). Restoring service to customers would have been unnecessarily delayed, public safety may have been jeopardized, and customers would have been justifiably irate.

The havoc wreaked by Superstorm Sandy in New York City further underscores how regulatory parochialism can impede restoration efforts. Attachment A is a transcript of a report that aired recently on National Public Radio. As the report explains, the City of New York has its own licensing requirement for electricians. When Superstorm Sandy caused widespread flooding of the City with saltwater, it was necessary to replace electrical panels and wiring in many buildings. The electric utility refused to restore service until a licensed electrician certified that necessary repairs to the building's electrical system had been performed. Because only City-licensed electricians were authorized to make that certification, many customers waited for weeks for service to be restored. Capable electricians from neighboring counties, who lack licensing by the City, were prohibited from making the necessary certification and getting power restored more quickly.

The Staff's proposed rules concerning OQ plans (506.02(t)) and welder qualifications (501.01(d)) would impose unique regulatory requirements on New Hampshire operators. When an event occurs that requires mutual aid assistance, New Hampshire customers could experience significant and unnecessary delays in the restoration of their gas service if these rules are adopted, much like the electric customers recently experienced in New York City.

Proposed Section 506.02(t)—OQ Plans.

Section 506.02(t), as proposed by Staff, would enact a new Operator Qualification plans requirement:

(5) Operator Qualification plans shall list all covered tasks and include specific abnormal operating conditions for each task. All operator qualifications covered tasks shall be cross referenced with applicable construction standards or specifications or applicable operation and maintenance activities including emergency response.

(Emphasis added.)

Under the proposed rule, New Hampshire would require operators to develop AOCs for each covered task. This would be a substantial departure from the NGA plan which has been widely adopted throughout the region. If adopted, this Rule would require the Company to train, test and qualify all mutual aid personnel on loan from other operators before they would be able to perform any work on the Company's system. Unlike the Unitil personnel who were able to work on NJNG's system within **hours** of arrival in New Jersey, mutual aid personnel deployed to New Hampshire would not be able to commence work until they had completed the necessary training and testing on New Hampshire's "unique" OQ requirements—a process that would take **days** to complete.¹⁵

¹⁵ Under the Company's OQ plan, an individual must wait at least 48 hours after training on a covered task before being tested on that task. This period between training and testing was implemented by the

Moreover, the Company does not believe that the proposed rule will result in improved safety. As discussed above, the purpose of an OQ program is to reduce human error as the cause of pipeline safety issues through the establishment of a qualified workforce. While human error can never be completely eliminated, Northern takes great pride in the quality and efficacy of our training and qualification programs and we experience few incidents that are caused by human error. In fact, during 2011 and 2012 there were no incidents caused by human error. The proposed rule is designed to fix a problem that simply does not exist. Rather than improve public safety, the proposed rule has the potential to reduce public safety because New Hampshire operators will be hamstrung in their ability to swiftly deploy mutual aid personnel. The proposed rule will also result in significant cost increases for the Company because it will have to develop the new OQ program, and then completely redesign its training and qualification programs to implement the new OQ requirements. Rather than spending ratepayer money to fix a problem that does not exist, these dollars would be much better spent managing risks on the Company's distribution system that have been identified through the federally-mandated integrity management planning process.

For these reasons, the Company recommends a two pronged approach. First, the Company proposes the following alternative language to Rule 506.02(t), which would allow the Company to maintain its current use of an NGA-based OQ plan:

Operator Qualification plans shall list all covered tasks. All Operator qualifications covered tasks shall be cross referenced with applicable construction standards or specifications or applicable operation and maintenance activities including emergency response.

Second, to the extent the Commission has continued concerns over the adequacy of the NGA's OQ plan, the Company will work with the Commission to present the Commission's concerns to the NGA for consideration. The NGA regional plan is re-evaluated annually and, since its inception in October 2000, the program has been revised and improved eight times, demonstrating a philosophy of continuous evaluation and improvement. The Company believes that the NGA will consider the Commission's concerns and ensure that they are given proper consideration by the regional stakeholders.

Proposed Section 506.01(d)—Destructive Testing -- Welding.

The Staff's proposed Section 506.01(d)(1) provides:

Utilities shall ensure that welders performing welding work on utility pipeline facilities are qualified, as follows:

1. No utility shall permit a welder to make any pipeline weld unless the welder has qualified by destructive testing within 27 months, but at least

NGA at the request of regulators who expressed concern that testing was being performed immediately after training and was not ensuring that the testing process was sufficient to evaluate the individual's knowledge and ability to perform the covered task.

once every 2 calendar years in accordance with 49 C.F.R. §192.7 and Appendix C to Part 192.

As discussed in Northern's October 26 Comments at pages 11-12, under the federal code a welder is qualified indefinitely to weld on pipelines after a single destructive test (in accordance with API 1104), and then maintains on-going qualification status by having welds tested by X-Ray at least twice each calendar year at intervals not exceeding 7-½ months.

Northern believes that welding of pipelines requires industry specific training and knowledge, but also requires physical ability (*e.g.*, good eyesight, sufficient hand-eye coordination, etc.). Recognizing that a welder's physical condition could change and/or deteriorate over time, Northern has adopted a standard developed by the NGA that requires all welders (contractor and in-house) to perform a destructive test at intervals not exceeding 60 months, which significantly exceeds the federal code requirement of a single destructive test. This 60-month period is reasonable and strikes an appropriate balance between: (1) ensuring that welders are qualified and physically capable of performing acceptable pipeline welds; and (2) the cost to qualify each welder with destructive testing, estimated at \$5,000 - \$9,000 per test.

Commission Staff has proposed in the new rules a destructive test at intervals not to exceed 27 months. Based on the Company's actual experience with welders, and the standards adopted in New England and other regions, it believes that Staff's proposed 27 month destructive testing requirement is unnecessarily short, would not provide any measurable improvement in pipeline safety, would unnecessarily take New Hampshire out of step with regional welder qualifications, and could result in unintended negative consequences to safety.

As Northern's October 26 Comments state, the Company relies heavily on outside contractors who are qualified to weld on all of its New Hampshire distribution facilities in emergency and non-emergency maintenance and construction activities. The cost for qualifying the contractors is essentially socialized among the operators in the region who retain and "share" these contractors to weld on their systems pursuant to the NGA destructive testing standards.

If the proposed rule is adopted, New Hampshire will have a different welder qualification requirement than the rest of the Northeast region. Welders working in New Hampshire will be forced to have expensive destructive welding tests performed more than twice as frequently as the regional norm (27 months vs. 60 months). In the best case, those added costs will be passed on to the New Hampshire operators. In the worst case, the welding contractors will withdraw from New Hampshire due to the added expense and effort needed to qualify under New Hampshire's 27-month requalification requirement. In fact, the Company has been told by a couple of its welding contractors that they would likely withdraw from New Hampshire if the new rule is enacted and focus their business operations in other states in the region that conform to the NGA 60-month standard.

Finally, similar to the proposed OQ rule discussed above, the proposed rule concerning destructive testing of welds will limit the pool of qualified welders who will be available to provide mutual aid assistance to the Company in an emergency situation.

Given: (1) the high cost of destructive testing qualifications for each welder, (2) the lack of data demonstrating that 27-month destructive testing intervals are necessary to ensure that satisfactory welds are being performed, (3) the Company's experience that a 27-month period is not necessary, and (4) the potential harmful affects the rule may have on obtaining mutual aid during a catastrophic event, the Company recommends that the proposed rule be modified as follows:

No welder shall make any pipeline weld unless the welder has qualified by destructive testing within the preceding 60 months in accordance with 49 C.F.R. § 192.227.

Again, if the Commission continues to have concerns that a shorter interval for destructive testing is necessary to protect public safety, then Northern will work with the Commission to bring its concerns to the NGA Welding committee for consideration by the Northeast region.

Waivers of OQ Requirements Are Not a Viable Solution

During the technical sessions the Company discussed its concerns about the harmful effects to mutual aid efforts that would likely occur if New Hampshire were to depart from the NGA's standards. It was suggested at that time, as well as in Liberty's December 14 supplemental written comments, that the OQ requirements could be "waived" by Commission Staff if they presented an impediment to mutual aid. The Company has two concerns with that approach.

First, an emergency is not the time to be waiving OQ requirements. The whole purpose of OQ is to ensure that a qualified work force is available to work on the Company's system. If the NGA's OQ program is insufficiently stringent in Staff's views for day-to-day operations, why would the NGA's program be acceptable in an emergency situation? Waiving OQ requirements during an emergency simply is not a good solution to the mutual aid problem that will arise from the Staff's proposed rule.

Second, in addition to the improvidence of abandoning OQ in emergency situations, the Company believes that the waiver process would introduce unnecessary delay into the emergency response effort. Assuming the proposed rule becomes law and the Company adopts a new OQ plan consistent with the Commission's new rule, that OQ plan is the Company's plan for purposes of federal regulation. *See* 49 C.F.R. § 192.805 (mandating operator qualification program). Importantly, federal law requires the utility to qualify all personnel on the utility's OQ plan before allowing them to perform covered tasks on the Company's system. *Id.* Waiver of these federal regulations is governed by 49 U.S.C. § 60118(c)(2) (Emergency Waivers).

Under Section 60118(c)(2)(A), PHMSA must perform a brief investigation to determine whether the requested waiver is in the public interest, not inconsistent with pipeline safety, and necessary to address an actual emergency involving pipeline transportation. In the recent case of Superstorm Sandy, it took PHMSA five days to perform its review and grant a request for waiver under Section 60118(c)(2)(A). PHMSA's wavier, which is Attachment B for convenience, responded to a request by Kinder Morgan Liquid Terminals ("KMLT") for a waiver of the OQ requirements that apply to hazardous liquids transported by pipeline, 49 C.F.R. § 195.505. KMLT operates gasoline storage terminals in Perth Amboy and Cateret, New Jersey, and their operations were being conducted manually because the SCADA systems at both facilities were

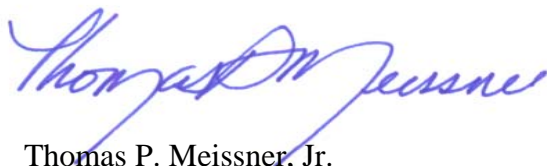
destroyed by Sandy. The terminals were operating at about 50% throughput, and the Governors of New York and New Jersey, and the Mayor of New York City each offered the resources of their offices to assist in increasing the flow of gasoline from KMLT's facilities to area gas stations.

Notwithstanding the highly publicized gasoline shortages in New York and New Jersey, and the political attention that it justifiably was given, the simple fact remains that it took PHMSA a number of days to grant KMLT's requested waiver. Even assuming PHMSA would act with the same dispatch on an event in New Hampshire affecting far fewer people than Superstorm Sandy, mutual aid would still be delayed for days.

As for Liberty's suggestion that the Commission waive these federal OQ requirements, Section 60118(c)(2)(B) does allow state agencies, like the New Hampshire Commission that have a Section 60105(a) certification from PMHSA, to waive compliance with safety standards to which the certification applies. But under that federal statute "the [state] authority must give the Secretary written notice of the wavier at least 60 days before its effective date." (Emphasis added.) Federal law does not grant the States independent waiver authority that allows the States to afford utilities in their jurisdiction immediate relief from federal OQ mandates. Rather, PHMSA requires at least 60 days notice prior to the effective date of any proposed waiver. This 60 day notice period effectively renders the state-granted wavier useless in an emergency situation where the utility needs to promptly restore gas service to its customers.

For all of these reasons, Northern respectfully requests that the Commission not adopt Sections 506.02(t) and 501.01(d) of the Staff's proposed rules. Rather, the Company requests that the Commission adopt alternative language as proposed in this letter, and that the Commission convene a brief public hearing for the purpose of addressing these very important mutual aid and public safety issues.

Respectfully,

A handwritten signature in blue ink, reading "Thomas P. Meissner, Jr.", is positioned above the printed name and title.

Thomas P. Meissner, Jr.
Senior Vice President,
Chief Operating Officer

Attachments
cc: Service List

N.Y. Electrician Shortage Hampers Sandy Recovery

by JOEL ROSE

November 29, 2012

text size A A A

Nearly a month after Sandy, thousands of New Yorkers still don't have electricity because they're waiting for an electrician to repair and certify wiring that was damaged by flooding. Some local officials have called on City Hall to allow electricians certified outside the city to work there until the crisis abates, but the city hasn't budged.

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DAVID GREENE, HOST:

It's been a month since Sandy made landfall in the northeast. For millions in that big storm's path, life is returning to normal - not for tens of thousands of people in New York City who still, still don't have electricity or heat. Many of them are waiting for an electrician to come to repair or certify wiring that was damaged by all the flooding. But as NPR's Joel Rose reports, there aren't enough electricians to go around.

JOEL ROSE, BYLINE: If you drive through the Rockaways in Queens, it seems like there's an electrician in a cargo van parked on every block.

SERGE NAZAIRE: There's a lot of people that's still out there that doesn't have electricity in their basement. They don't have their borders(ph) on.

ROSE: Serge Nazaire is eating lunch behind the wheel of his van between jobs. Nazaire left his house at 7 a.m. and says he won't get home until after 11 p.m. tonight. He says it's been like this every day since the storm hit.

NAZAIRE: I could easily say, oh, my wife misses me at home and it's 10 o'clock at night and I'm going home. I don't care you don't have heat. But that's not what I do. They tell me, oh, we need heat tonight, especially now that it's going to start to get cold.

ROSE: Thousands of New Yorkers can't get their heat back because their power is still out. That's only adding to the demand for electricians. Salt water flooded into thousands of basements across Queens, Brooklyn and Staten Island, meaning that many of those basements need new wiring and new panel boxes before the local utility can turn the power back on safely. And all that work needs to be done or certified by electricians licensed by New York City.

LESLIE MAHONEY: This is a nightmare to get any electrician, even for houses that were not

under the water. Some people are paying \$500, \$1,000.

ROSE: Leslie Mahoney owns a building near the beach in the Rockaways. She got her regular electrician to restore power to her third floor. But Mahoney's cousin in Staten Island hasn't been so lucky.

MAHONEY: The house took no water. She still has to find an electrician to look at this panel. And the hunt for an electrician is unbelievable.

JONATHAN GASKA: People are suffering. They just can't get electricians.

ROSE: Jonathan Gaska is the district manager for Community Board 14 in Queens, which includes the Rockaways. Gaska says he's gotten complaints from constituents who've been told it could be two to three weeks before an electrician can get to their job.

GASKA: Their house is in good shape. All they need is electric work done. And it'll be Christmas, and they may or may not have electric back.

ROSE: After the storm, New York City launched a program called Rapid Repairs to connect people in need with licensed contractors. Gaska wants the city to go a step further by allowing electricians licensed in neighboring counties to work in New York City.

GASKA: The city's absolutely correct to not let, you know, some shoemaker come in and say he's an electrician and do it. The issue is there are experienced electricians in other counties that could do this work, clearly. And it would make it twice as fast, if not three times as fast, to get people back.

ROSE: But city hall hasn't budged. It insists that city-licensed electricians have to do the work or certify it in order to ensure that it's done safely and up to code. Back in the Rockaways, Serge Nazaire says it might speed things up if electricians from neighboring Nassau County could work in New York City. But he says that wouldn't be fair.

NAZAIRE: Because we can't go into Nassau and work over there, and they got problems, too. Oceanside and all these places, you know, I mean, it's in disarray, and we can't go over there and work. So what sense does it make for them to come over here and work?

ROSE: Besides, Nazaire says the wait for an electrician might be overstated. Nazaire says his company can be there in a couple of days, not weeks.

NAZAIRE: Triple T Electric, call us. There you go.

ROSE: Joe Rose, NPR News, New York.

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Hal Edwards

New Yorkers have voted themselves layer upon layer of bureaucracy for decades. Well, now you're reaping a little of what you've sown over time. Live with the consequences. Own it! Stop your obnoxious whining! Winter is still weeks away. Look at your calendar.

Scott File

This is a case of regulations getting in the way of common sense and a sense of community. Plenty of licensed electricians in Suffolk County could be in both Nassau County and NYC.

Tom Wagner

When we in Virginia have a power failure from ice storms or hurricanes, and we have them all the time, we welcome help from anywhere. When my community lost power due to hurricane Isabel, my power was restored by a crew from Arkansas,



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

Mr. Carlos T. Munguia
Kinder Morgan Liquids Terminals LLC
8500 W 68th Street
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1200 New Jersey Avenue SE
Washington, DC 20590

Docket No. PHMSA-2012-0303

Dear Mr. Munguia:

On November 15, 2012, the Kinder Morgan Liquid Terminals (KMLT) wrote to the Pipeline and Hazardous Materials Safety Administration (PHMSA) requesting an Emergency Special Permit to waive compliance from certain hazardous liquids requirements of 49 CFR Part 195, for the operation of two terminals (Perth Amboy and Carteret) in Perth Amboy and Carteret, New Jersey¹. The waiver of these requirements would allow for increased manpower to increase the output of product to near normal levels considering the damage from the recent storm and the hardship endured in this area.

PHMSA is granting this Emergency Special Permit (enclosed) which waives compliance from 49 CFR § 195.505(c) for the above mentioned hazardous liquid facilities in Perth Amboy and Carteret, New Jersey.

PHMSA grants this emergency special permit based on the findings set forth in the enclosed "Emergency Special Permit Analysis and Findings" document. This document can be read in its entirety in Docket No. PHMSA-2012-0303, in the Federal Docket Management System (FDMS) located on the Internet at www.Regulations.gov.

My staff would be pleased to discuss this Emergency Special Permit or any other regulatory matter with you. Please contact Byron Coy, Regional Director, PHMSA Eastern Region, 609-989-2180, for technical matters pertaining to this Emergency Special Permit, or John Gale, Director of Standards and Rulemaking, 202-366-0434, on regulatory matters.

Sincerely,

Jeffrey D. Wiese
Associate Administrator for Pipeline Safety

Enclosure: Emergency Special Permit
Emergency Special Permit Analysis and Findings

¹ Additional letter was sent November 16, 2012 by KMLT as an addendum to their original request.

U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION (PHMSA)
EMERGENCY SPECIAL PERMIT
ANALYSIS AND FINDINGS

Emergency Special Permit Information:

Docket Number: PHMSA-2012-0303
Pipeline Operator: Kinder Morgan Liquids Terminals LLC
Date Requested: October 15, 2012
Code Section(s): 49 CFR § 195.505(c)

Purpose:

The Pipeline and Hazardous Materials Safety Administration (PHMSA) provides this information to describe the facts of the subject Emergency Special Permit application (application) submitted by Kinder Morgan Liquid Terminals (KMLT). Its purpose is to present the engineering/safety analysis of the application, and to make findings regarding the merit of the requested Emergency Special Permit, whether it should be granted, and if so, under what conditions.

Pipeline System Affected:

This Emergency Special Permit request involves two hazardous liquid terminals in Perth Amboy and Carteret, New Jersey:

- Perth Amboy (NY Harbor), NJ Terminal;
 - Size - 80 Acres
 - Storage Capacity - 3,543,388 barrels
 - Number of tanks - 113
- Carteret (NY Harbor), NJ Terminal;
 - Size – 197 Acres
 - Total Storage Capacity – 7,833,080 barrels
 - Number of Tanks - 280

Docket Number: PHMSA-2012-0303

Emergency Special Permit Request:

On November 15, 2012, KMLT submitted an application to PHMSA for an Emergency Special Permit seeking temporary relief from the Federal pipeline safety regulations in 49 CFR §§ 195.505(c), for the manual operation of the terminals with non-qualified personnel under direction and not under observation of a qualified individual, of the KMLT Perth Amboy and Carteret Terminals¹. KMLT stated that due to the severe damage caused by super storm Sandy, the SCADA systems for the two terminals had been completely destroyed, and the tank gauging systems sustained damage. According to KMLT, this damage has caused both terminals to be operated with intensive manual intervention. An Emergency Special Permit, if granted, would allow KMLT to operate the facilities at the Perth Amboy and Carteret Terminals, in manual petroleum operation with personnel that are not qualified according to Part 195 Subpart G. These personnel will however, receive site-specific training, and already have background operational knowledge to similar facilities. These individuals would be under the direction of qualified personnel, but would not be directly observed by qualified individuals. The Federal pipeline safety regulations in 49 CFR §§ 195.505(c) require hazardous liquid pipeline operators to qualify individuals operating or performing maintenance on a hazardous liquid pipeline facility to meet minimum requirements for qualification. Any individual that is not qualified, while under training, shall be directed and observed by a qualified individual on that covered task. An Emergency Special Permit will allow KMLT to continue to operate each terminal with the use of individuals performing covered task under direction, and not under observation of qualified personnel.

Analysis:

Background: In accordance with 49 USC § 60118(c)(2), PHMSA may grant an application for an Emergency Special Permit without notice and comment or hearing, if the Associate Administrator determines that such action is in the public interest, is not inconsistent with pipeline safety, and is necessary to address an actual or impending emergency involving pipeline

¹ Additional letter was sent November 16, 2012 by KMLT as an addendum to their original request.

transportation. For purposes of this section, an emergency event may be local, regional, or national in scope and includes significant fuel supply disruptions and natural or manmade disasters such as hurricanes, floods, earthquakes, terrorist acts, biological outbreaks, releases of dangerous radiological, chemical, or biological materials, war-related activities, or other similar events. PHMSA will determine on a case-by-case basis what duration is necessary to address the emergency. However, as required by statute, no Emergency Special Permit may be issued for a period of more than 60 days. Each Emergency Special Permit will automatically expire on the date specified in the permit. Emergency Special Permits may be renewed upon application to PHMSA only after notice and opportunity for a hearing on the renewal.

Justification for Handling as an Emergency Special Permit:

This Emergency Special Permit will allow KMLT at the Perth Amboy and Carteret Terminals, to operate the facilities in manual petroleum operation with personnel that are not qualified according to 195 Subpart G.

In its follow up request letter dated November 16, 2012, KMLT provided the following information to PHMSA concerning the reduction of throughput capacity of both terminals:

“Due to the above mentioned manual operation at both facilities our throughput is down as we are using up to six operators for what was normally performed by two. Currently we are running at 50% below normal capacity at both Carteret and Perth Amboy. In order to increase our rates we need to use additional personnel to perform the manual tank gauging, take pressure readings, attend relief devices, and start and stop pumps. Per Subpart G, Operator Qualification, these tasks are required to be performed by an OQ qualified employee, or performed by employees who are directed and observed by an OQ qualified employee”.

KMLT has received multiple inquiries from the offices of Governors, Andrew M. Cuomo of New York, and Christopher J. Christie (New Jersey), and Mayor Michael R. Bloomberg of New York, requesting updates on how we can provide additional throughput to increase the flow of product to area gas stations. They have asked KMLT company representatives what their offices can do for KML T to make this happen. Their

Docket Number: PHMSA-2012-0303

offices have already requested that the Environment Protection Agency and the New Jersey Department of Environment Protection to waive air quality permit requirements, and the requests were granted.

With the requirement that all non-qualified individuals be directed by control room or onsite qualified individual during performance of covered tasks in the manual operation of Perth Amboy and Carteret, while not under observation, the granted Emergency Special Permit will be consistent with pipeline compliance.

Compliance History – 2010 through 2012: PHMSA has reviewed enforcement actions for KMLT from 2010 through 2012. Below is a listing of PHMSA closed enforcement matters of all types in all PHMSA Regions for KMLT (Operator ID 26041) from 2007 through 2012:

- Letters - of Concern or Warning - one (1) matter
- Notices – of Amendment or of Probable Violation – two (2) matters

Collected Civil Penalties - \$425,000

Based upon KMLT's enforcement history with respect to Part 195, PHMSA concludes that KMLT's past enforcement history is not in conflict with this Emergency Special Permit.

Findings:

Based on the information submitted by KMLT and PHMSA's analysis of the technical, operational, and safety issues, and given the conditions that will be imposed, PHMSA finds that granting this Emergency Special Permit to KMLT to operate with directed non-qualified personnel at the Perth Amboy and Carteret terminals is not inconsistent with pipeline safety.

NOV 20 2012

Completed in Washington DC on: _____

Prepared by: PHMSA Engineering and Research Division

Docket Number: PHMSA-2012-0303



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

NOV 20 2012

1200 New Jersey Avenue SE
Washington, DC 20590

EMERGENCY SPECIAL PERMIT

Docket Number: PHMSA-2012-0303
Pipeline Operator: Kinder Morgan Liquids Terminals LLC
Date Requested: November 15, 2012
Code Section(s): 49 CFR § 195.505(c)

Grant of Special Permit:

By this order, pursuant to 49 USC § 60118(c)(2), the Pipeline and Hazardous Materials Safety Administration (PHMSA) grants this emergency special permit, subject to the terms and conditions set forth below, to Kinder Morgan Liquid Terminals (KMLT), operator of the Perth Amboy and Carteret NJ Terminals, waiving compliance from 49 Code of Federal Regulations (CFR) § 195.505(c) for the operation of two terminals in Perth Amboy and Carteret, New Jersey as described below.

PHMSA's action is based on the findings set forth in the "*Emergency Special Permit Analysis and Findings*" document, which can be read in its entirety in Docket No. PHMSA-2012-0303 in the Federal Docket Management System (FDMS) located on the internet at www.Regulations.gov.

Summary of Request:

By letter dated November 15, 2012, the Kinder Morgan Liquid Terminals (KMLT) wrote to the

Pipeline and Hazardous Materials Safety Administration (PHMSA), requesting an Emergency Special Permit for certain provisions of Federal Safety Regulations at the Perth Amboy and Carteret Terminals¹. KMLT stated that due to the severe damage caused by super storm Sandy, the SCADA systems for the two terminals had been completely destroyed, as well as damage to the tank gauging systems. According to KMLT, this damage has caused both terminals to be operated with intensive manual intervention. In normal operating conditions, it takes two personnel, who are qualified under KMLT's Operator Qualification program, to operate the terminal through coordination with the SCADA system and remote tank gauging. While in this manual petroleum operation, KMLT estimates that it will take between six to eight personnel to attain full capacity operation per terminal, per shift. Due to the damage caused by Sandy, the Carteret and Perth Amboy terminals are operating at 50% capacity. If granted, the Emergency Special Permit would allow KMLT, to operate the at the Perth Amboy and Carteret Terminals facilities in manual petroleum operation with personnel that are not qualified to Part 195 Subpart G. These personnel will however, receive site-specific training, and already have background operational knowledge to similar facilities. These individuals would be under the direction of qualified personnel, but would not be directly observed by qualified individuals.

Emergency Special Permit Qualification of Pipeline Personnel:

KMLT Carteret and Perth Amboy, New Jersey

PHMSA waives compliance from 49 CFR § 195.505(c) for the operation of the terminals in Perth Amboy and Carteret, New Jersey. The Federal pipeline safety regulations in 49 CFR § 195.505(c), require hazardous liquid pipeline operators to qualify individuals operating

¹ Additional letter was sent November 16, 2012 by KMLT as an addendum to their original request.

or performing maintenance on a hazardous liquid pipeline facility to meet minimum requirements for qualification. Any individual under training that is not qualified shall be directed and observed by a qualified individual on that covered task.

This Emergency Special Permit allows KMLT to continue to operate each terminal with the use of non-qualified individuals performing covered task under direction, and not under observation of qualified personnel.

Conditions:

PHMSA grants this Emergency Special Permit subject to the following conditions applicable to the Carteret and Perth Amboy Terminals which must be implemented by KMLT prior to increasing throughput capacity on both terminals:

- 1) KMLT must operate both terminals with at a minimum of one qualified individual in the control room, and one qualified individual onsite within the tank or valve manifold areas at each terminal. Non-qualified individuals will take direction from the control room or the onsite qualified individuals for operation;
- 2) Non-qualified individuals will be required to perform one complete shift of shadowing an onsite qualified individual before being allowed to operate under direction without observation;
- 3) Documentation of compliance with all the conditions of this Emergency Special Permit must be kept in compliance to §195.507;

- 4) Prior to using the non-qualified personnel to operate the terminals, a senior executive officer, vice president or higher, of KMLT must certify in writing the following:
 - a) The Perth Amboy and Carteret terminals meet the conditions described in this emergency special permit,
 - b) The written manual of O&M procedures for the KMLT pipeline has been updated to include all additional requirements of this special permit; and that
 - c) KMLT has implemented all conditions as required by this emergency special permit.

Limitations:

PHMSA grants this Emergency Special Permit subject to the following limitations:

- 1) This Emergency Special Permit shall expire on January 20, 2013, or upon completion of repairs and resumption of SCADA system and remote tank gauging operations, whichever is earlier.
- 2) PHMSA has the sole authority to make all determinations on whether KMLT has complied with the specified conditions of this emergency special permit.
- 3) PHMSA may revoke, suspend or modify this Emergency Special Permit based on any finding listed in 49 CFR § 190.341(h)(1) and require KMLT to comply with the regulatory requirements in 49 CFR § 195.505(c). As provided in 49 U.S.C. Chapter 601, PHMSA may also issue an enforcement action for failure to comply with this Order.

- 4) Should PHMSA revoke, suspend or modify this Emergency Special Permit based on any finding listed in 49 CFR § 190.341(h)(1), PHMSA will notify KMLT in writing of the proposed action and provide KMLT an opportunity to show cause why the action should not be taken. In accordance with 49 C.F.R. § 190.341(h)(3), if necessary to avoid the risk of significant harm to persons, property, or the environment, PHMSA will not give advance notice and will declare the proposed action (revocation, suspension, or modification) immediately effective.
- 5) The terms and conditions of any corrective action order, compliance order or other order applicable to a pipeline facility covered by this Emergency Special Permit will take precedence over the terms of this Emergency Special Permit in accordance with 49 CFR § 190.341(h)(4).
- 6) If KMLT sells, merges, transfers, or otherwise disposes of the assets known as the Perth Amboy and Carteret terminals, KMLT must provide PHMSA with written notice of the transfer within 30 days of the consummation date. In the event of such transfer, PHMSA reserves the right to revoke, suspend, or modify the permit if the transfer constitutes a material change in conditions or circumstances pursuant to 49 CFR § 190.341(h)(1)(ii) or any other circumstances listed under 49 CFR § 190.341(h)(1).
- 7) PHMSA grants this Emergency Special Permit for the period set forth in Item 1 above. If KMLT elects to seek renewal of this emergency special permit, KMLT must submit a full Emergency Special Permit application to the PHMSA Associate Administrator with copies to

the Regional Director, PHMSA Eastern Region. In accordance with 49 USC 60118(c)(2), PHMSA would be required to provide notice and opportunity to comment in considering any request for renewal. Any request for a renewal of this Emergency Special Permit must include a summary report of compliance of Conditions 1 through 4 above and must demonstrate that the Emergency Special Permit is still consistent with pipeline safety. PHMSA may seek additional information from KMLT prior to granting any request for renewal.

This Emergency Special Permit to Kinder Morgan Liquids Terminals Expires on January 20, 2013

AUTHORITY: 49 U.S.C. 60118 (c)(1) and 49 CFR § 1.53.

Issued in Washington, DC on NOV 20 2012.



Jeffrey D. Wiese
Associate Administrator for Pipeline Safety