



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Avenue SE
Washington DC 20590

SEP 10 2018

Mr. Richard S. Novak
Pierce Atwood
100 Summer Street
Boston, MA 02110

Dear Mr. Novak:

In a letter to the Pipeline and Hazardous Materials Safety Administration ("PHMSA") dated January 31, 2017, you requested an interpretation of 49 CFR Part 195. You specifically requested an interpretation regarding the applicability of § 195.1 to a Calpine Fore River Energy Center LLC ("CFREC" or "Calpine") fuel oil pipeline.

You described the Calpine pipeline as follows:

The pipeline at issue is a single purpose oil line approximately 1,800 feet in length, which supplies Calpine's Tank 36 located at the Fore River Station. Fore River Station is a 730MW gas-fired generation plant operated by CFREC on land bordering the tidal Fore River on the western border of Weymouth, Massachusetts. Tank 36 and the CFREC Pipe support dual fuel operation at Fore River Station. Dual Fuel operation is infrequent.

Immediately across the Fore River Station is an oil terminal ("Sprague Terminal") operated by Sprague Resources LP ("Sprague"). The Sprague Terminal is on the eastern edge of Quincy, Massachusetts, also bordering Fore River. The CFREC Pipe begins at a flange located on the Sprague Terminal site in Quincy, enters a bedrock tunnel (owned by CFREC) under the Fore River land, reemerges on the Weymouth side, and then proceeds across CFREC property to Tank 36, where the CFREC Pipe terminates. At no point does the CFREC Pipe interconnect with any other pipelines. It is owned and controlled by CFREC from the flange in the Sprague terminal to consumption at Calpine's Tank 36.

Also, in a February 14, 2017, email, you provided PHMSA with drawings of the pipeline and the following additional information:

CFREC staff was able to provide 18 drawings by pdf ... with the oil line highlighted in yellow ... You can see the oil line beginning in the Sprague terminal, entering the Quincy headhouse, going under the Fore River (in a 6-foot underground tunnel owned by Calpine, which we call the "BECO Tunnel"), exiting the BECO Tunnel via the Weymouth headhouse, and then crossing under the state highway to "L.C. Lot C" (the site of the Fore River Station), headed towards the day tank.

You ask whether this single-purpose intrastate pipeline would be regulated by the Federal pipeline safety regulations since the pipeline is not "in or affecting interstate or foreign commerce" within the scope of Part 195.

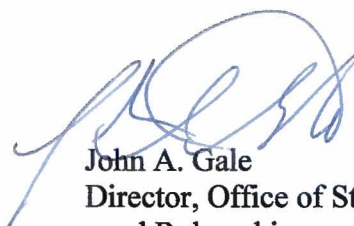
Pursuant to its authority under the Pipeline Safety Act, 49 U.S.C. chapter 601, PHMSA establishes safety standards in Part 195 for pipeline facilities and the transportation of hazardous liquids or carbon dioxide associated with those facilities in or affecting interstate or foreign commerce. The Pipeline Safety Act, and thereby the regulations in Part 195, extend to pipeline facilities, whether intrastate or interstate. *See, e.g., Five Flags Pipe Line Co. v. U.S. Dep't of Transp.*, No. CIV. A. 89-0119 JGP, 1992 WL 78773 (D.D.C. Apr. 1, 1992). The oil pipeline at issue is an intrastate pipeline in or affecting interstate or foreign commerce within the scope of the Pipeline Safety Act and Part 195. The oil pipeline transports the commodity from the Sprague oil terminal, under the Fore River through an underground tunnel, and crosses under the state highway to the day tank.

Although intrastate pipeline facilities may not be regulated by PHMSA in a state that submits an annual certification to regulate those facilities, Massachusetts does not regulate or enforce safety standards and practices for intrastate hazardous liquid pipeline facilities. Accordingly, PHMSA enforces the Federal hazardous liquid pipeline safety regulations for intrastate pipelines in Massachusetts, including the pipeline at issue here.

Furthermore, the oil pipeline is subject to the Clean Water Act as amended by the Oil Pollution Act of 1990 (33 U.S.C. § 1321) and an oil spill response plan is required to be submitted to PHMSA. An operator of a pipeline for which a response plan is required may not handle, store or transport oil in that pipeline unless the operator has submitted a response plan meeting the requirements of 49 CFR Part 194.

If we can be of further assistance, please contact Tewabe Asebe at 202-366-5523.

Sincerely,

A handwritten signature in blue ink, appearing to read "John A. Gale", is written over a horizontal line.

John A. Gale
Director, Office of Standards
and Rulemaking

FEB 06 2017

PIERCE ATWOOD

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January 31, 2017

Office of Pipeline Safety (PHP-30), PHMSA
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington DC 20590-0001

RE: Calpine Fore River Energy Center LLC ("CFREC") – PHMSA inquiry re: back up fuel oil line

Dear Sir or Madam:

I am writing on behalf of CFREC ("Calpine") to obtain a written regulatory interpretation pursuant to 49 C.F.R. §190.11 regarding potential U.S. Department of Transportation's ("USDOT") 49 CFR §195.1 jurisdiction over a purely intrastate hazardous liquid pipeline.

We understand that, pursuant to 49 C.F.R. §195.1(a), USDOT's Pipeline and Hazardous Materials Safety Administration ("PHMSA") regulations "cover" the transportation of hazardous liquids in or affecting interstate or foreign commerce.

The pipeline at issue ("CFREC Pipe") is a single purpose oil line approximately 1,800 feet in length, which supplies Calpine's Tank 36 located at the Fore River Station. Fore River Station is a 730MW gas-fired generation plant operated by CFREC on land bordering the tidal Fore River on the western border of Weymouth, Massachusetts. Tank 36 and the CFREC Pipe support dual fuel operation at Fore River Station. Dual Fuel operation is infrequent.

Immediately across the Fore River from Fore River Station is an oil terminal ("Sprague Terminal") operated by Sprague Resources LP ("Sprague"). The Sprague Terminal is on the eastern edge of Quincy, Massachusetts, also bordering Fore River. The CFREC Pipe begins at a flange located on the Sprague Terminal site in Quincy, enters a bedrock tunnel (owned by CFREC) under the Fore River land, reemerges on the Weymouth side, and then proceeds across CFREC property to Tank 36, where the CFREC Pipe terminates. At no point does the CFREC Pipe interconnect with any other pipelines. It is owned and controlled by CFREC from the flange in the Sprague terminal to consumption at Calpine's Tank 36.

Based on the foregoing facts, we believe that this single-purpose intrastate pipeline is not "in or affecting interstate or foreign commerce" such that it would be "covered" by PHMSA regulations.

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We appreciate your regulatory interpretation on the matter, and would be glad to provide further detail if you have questions.

Your attention to this matter is very much appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard S. Novak". The signature is fluid and cursive, with the first name "Richard" and last name "Novak" clearly legible, and "S." in the middle.

Richard S. Novak

cc: Lisa A. Gilbreath