



U.S. Department  
of Transportation  
**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

August 23, 2023

Mr. Antony M. Davison  
Natural Gas ECO Manager  
Navajo Tribal Utility Authority  
P.O. BOX 170  
FT. Defiance, AZ 86504

Dear Mr. Davison:

In a letter to the Pipeline and Hazardous Materials Safety Administration (PHMSA), dated April 5, 2022, you requested an interpretation of the Federal pipeline safety regulations in 49 Code of Federal Regulations (C.F.R.) Part 192 with respect to the § 192.1(a) scope applicability to your gas pipeline outside of the Navajo Nation borders in the state of New Mexico.

You stated that until recently all Navajo Tribal Utility Authority (NTUA) owned and operated natural gas pipelines have been confined within the Navajo Nation borders. You also stated that with a recent acquisition of a portion of a former Questar Southern Trails Pipeline, NTUA now owns and will soon operate approximately 30-miles of pipeline that is located outside of the Navajo Nation border.

You further stated that PHMSA issued an interpretation to CPN Pipeline Company dated February 5, 2007, which you believe may exclude NTUA from having to comply with the Federal pipeline safety regulations based on the § 192.3 definition of “Person.”<sup>1</sup> You asked if the previously issued interpretation is also applicable to NTUA’s 30 miles of pipeline operated outside of the Navajo Nation borders so that the pipeline would not have to comply with Part 192.

PHMSA’s written clarifications of the Federal pipeline safety regulations are provided in the form of interpretation letters. These letters reflect the Agency’s current application of the regulations to the specific facts presented by the person requesting the clarification. Interpretations are not generally applicable, do not create legally-enforceable rights or obligations, and are provided to help the specific requestor understand how to comply with the regulations.

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<sup>1</sup> See February 5, 2007, Letter to Scott Vickers from Florence L. Hamm, PI-07-015, *available at*: <https://www.phmsa.dot.gov/regulations/title49/interp/PI-07-0105> (hereafter “2007 interpretation”).

Having considered and analyzed your request, PHMSA has concluded that the Pipeline Safety Act (PSA) applies to NTUA's owned or operated facilities outside of the Navajo Nation borders. PHMSA's pipeline safety program is a broadly applicable federal law and nothing in the law or legislative history indicates that pipelines operated by tribes were intended to be excluded from the pipeline safety program. In addition, a tribal owner or tribal operator of a pipeline is subject to PHMSA's jurisdiction pursuant 49 U.S.C. § 60102(a)(2)(A), which broadly states that pipeline safety standards apply to "any or all of the owners or operators of pipeline facilities." To exclude tribal operators would frustrate the purpose of the PSA and Congressional intent for a nationally applicable federal safety program by allowing safety gaps that pose an unreasonable risk to persons, property, and the environment outside the reservation. This interpretation of the PSA is in line with other federal safety and environmental regulatory programs that apply to tribes, as well as the federal hazardous materials transportation laws under which PHMSA regulates hazardous materials.

In your case, NTUA would be operating the former Questar Southern Trails natural gas pipeline, which is outside of the Navajo Nation's borders. Under these specific facts and applying the above analysis, NTUA, as owner and operator of the pipeline, must comply with the 49 CFR Part 192 regulations, pursuant to 49 U.S.C. § 60102(a)(2)(A) and 49 U.S.C. 60118(a).<sup>2</sup>

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

Sincerely,

John A. Gale  
Director, Office of Standards  
and Rulemaking

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<sup>2</sup> With regard to the 2007 interpretation referenced in your request, that interpretation was issued to a pipeline company that was not a tribe and that asked several questions related to the location of its pipeline. The requester did not ask the question presented by NTUA, which is whether a tribe must comply with the PSA. It was unnecessary for PHMSA in 2007 to suggest a view on whether tribal operators are among the entities defined as a "person" under the PSA. Moreover, PHMSA believes the 2007 interpretation was incorrect to state that the PSA does not apply to tribally-operated facilities for the reasons stated above. In addition, depending on its structure, a tribal organization that owns or operates a pipeline may fall under the definition of "person" under 1 U.S.C. § 1 and 49 C.F.R. § 192.3 as a corporation, company, association, or other enumerated business entity. For these reasons, the discussion of tribal operators in the 2007 interpretation is retracted. PHMSA notes further that the agency has a long history of regulating tribally-owned and -operated pipelines and appreciates the cooperation of those operators in our shared goal of pipeline safety.



## NAVAJO TRIBAL UTILITY AUTHORITY

AN ENTERPRISE OF THE NAVAJO NATION

April 5, 2022

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

To Whom It May Concern,

I write to you on the suggestion of Jason Montoya, Chief of the New Mexico Pipeline Safety Bureau (NMPSB).

This letter is requesting the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration's Office of Pipeline Safety ("OPS") confirm its prior interpretation that its regulation of "persons" operating pipelines does not extend to Indian tribe owned and operated pipelines.

Navajo Tribal Utility Authority (NTUA) is a wholly owned enterprise of the Navajo Nation, a federally recognized Indian tribe. NTUA exists under the laws of the Navajo Nation and has its principal office in Fort Defiance, Arizona. NTUA was created as a wholly owned enterprise of the Nation by the Navajo Tribal Council in 1959, for the purpose of bringing electric power to a portion of the Navajo Nation. NTUA has since increased its electric services and expanded to provide natural gas and other utility services.

Until recently, all NTUA owned and operated natural gas pipelines have been confined within the Navajo Nation borders. As such, its pipeline facilities have not been subject to Federal or State regulatory oversight. However, with the recent acquisition of a portion the former Questar Southern Trails Pipeline, NTUA now owns and will soon operate approximately 30-miles of pipeline that is located outside of the Navajo Nation border, in the state of New Mexico. This raises question to where the regulatory oversight of this pipeline starts and ends, or if it is even regulated at all since it is owned and operated by NTUA?

After research of various interpretations regarding § 192.3, an interpretation dated February 5, 2007, to Mr. Scott Vickers of CPN Pipeline Company was discovered. The interpretation states in response to one of Mr. Vickers' questions that:

*The answer to your question depends on who is operating the pipeline, not on where the pipeline is located. That is, the pipeline safety regulations in Part 192 apply to a "person" who operates pipeline facilities. The regulations define a person to mean "any individual, firm, joint venture, partnership, corporation, association, State, municipality, cooperative association, or joint stock association, and including any trustee, receiver, assignee, or personal representative thereof."*

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*The definition of a "person" in Part 192 does not include Indian tribes or the BLM (Federal Government). Therefore, the regulations do not apply to Indian tribes or to the BLM, regardless of whether the pipeline facilities are located on or off the Indian or BLM lands. If, however, an independent contractor (or other person) were to operate Indian or BLM pipeline facilities, the contractor would have to meet all the applicable requirements of Part 192 for the regulated segments of the pipeline.*

Through review of this interpretation with the NMPSB, it is understood that the definition of "Person" in Part 192 does not pertain to NTUA since it is a wholly owned enterprise of the Navajo Nation, a federally recognized Indian tribe and therefore relieves all NTUA owned and operated pipelines of any regulatory over site.

While NTUA is fully committed to safe operation of its natural gas facilities, NTUA seeks confirmation of OPS's prior interpretation to clarify the scope of regulations applicable to NTUA's system. Any insight into the matter is appreciated.

Sincerely,



Antony M. Davison  
Natural Gas ECO Manager

**Attachments**

- NTUA Southern Trails Pipeline Map (including Navajo Nation Boundaries)
- PHMSA Interpretation dated February 5, 2007
- NMPSB Email



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety Administration**

400 Seventh Street, S.W.  
Washington, D.C. 20590

**FEB - 5 2007**

Mr. Scott Vickers  
Compliance Manager  
CPN Pipeline Company  
60 River Road  
Rio Vista, CA 94571

Dear Mr. Vickers:

This is in response to your letter of April 15, 2004, renewing your earlier request for an interpretation of 49 CFR 192.1 and 192.3. Your letter concerned the jurisdictional end-point of a lateral pipeline running from a transmission pipeline to an electrical power plant.

In your letter you ask, *"Where would the jurisdiction end at the power plant side of the lateral? Would the jurisdiction end at the property line, fence line, first valve on the property, at the power equipment or other?"*

Assuming the lateral pipeline in question is a transmission line as defined in § 192.3, pipeline safety authority extends to the point where transportation ends, even if this point is on plant property. In many cases, the end-point is where the lateral pipeline enters the plant grounds, usually at a security fence line. If, however, a measurement meter (or other component necessary to control the pressure or safety of the pipeline) is on the plant grounds, the end-point would be the meter (or other component, if the component is downstream of the meter).

You also ask, *"If the power plant is on BLM lands or Indian lands does it change where the jurisdiction would end?"*

The answer to your question depends on who is operating the pipeline, not on where the pipeline is located. That is, the pipeline safety regulations in Part 192 apply to a "person" who operates pipeline facilities. The regulations define a person to mean *"any individual, firm, joint venture, partnership, corporation, association, State, municipality, cooperative association, or joint stock association, and including any trustee, receiver, assignee, or personal representative thereof."*

The definition of a "person" in Part 192 does not include Indian tribes or the BLM (Federal Government). Therefore, the regulations do not apply to Indian tribes or to the BLM, regardless of whether the pipeline facilities are located on or off the Indian or BLM lands. If, however, an independent contractor (or other person) were to operate Indian or BLM pipeline facilities, the contractor would have to meet all the applicable requirements of Part 192 for the regulated segments of the pipeline.

Finally, you asked, "*Where can I find statutes, regulations, or interpretation letters to support the answer to question number one and number two?*"

PHMSA has a public web site (<http://www.phmsa.dot.gov>) with links to the Federal pipeline safety laws, regulations and interpretations.

If I can further assist you with this, or any other pipeline regulatory matter, please contact me at (202) 366-4595.

Sincerely,



Florence L. Hamn  
Director, Office of Regulations

## Antony Davison

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**From:** Montoya, Jason N, PRC <JasonN.Montoya@state.nm.us>  
**Sent:** Tuesday, March 29, 2022 11:06 AM  
**To:** Antony Davison; Stanovcak, James, PRC  
**Cc:** Walter W. Haase; Melissa Segay; Judy Chavez  
**Subject:** RE: [EXTERNAL] NTUA Introduction Meeting: Southern Trails Pipeline acquisition

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This will be put on hold per my previous email and, if necessary, scheduled for a later date but based on the interpretation the pipeline would be non-jurisdictional.

*Jason N. Montoya, P.E.*  
Pipeline Safety Bureau Chief

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**From:** Antony Davison <AntonyD@ntua.com>  
**Sent:** Tuesday, March 29, 2022 8:52 AM  
**To:** Stanovcak, James, PRC <James.Stanovcak@state.nm.us>  
**Cc:** Montoya, Jason N, PRC <JasonN.Montoya@state.nm.us>; Walter W. Haase <walterh@ntua.com>; Melissa Segay <MelissaSe@ntua.com>; Judy Chavez <judyc@ntua.com>  
**Subject:** RE: [EXTERNAL] NTUA Introduction Meeting: Southern Trails Pipeline acquisition

Yes, that will work. Can you provide some details on the inspection and the inspection guide or protocol that will be used in the inspection? We would like to prepare the documentation in advance.

- Antony

**From:** Stanovcak, James, PRC <[James.Stanovcak@state.nm.us](mailto:James.Stanovcak@state.nm.us)>  
**Sent:** Tuesday, March 22, 2022 4:55 PM  
**To:** Antony Davison <[AntonyD@ntua.com](mailto:AntonyD@ntua.com)>  
**Cc:** Montoya, Jason N, PRC <[JasonN.Montoya@state.nm.us](mailto:JasonN.Montoya@state.nm.us)>  
**Subject:** RE: [EXTERNAL] NTUA Introduction Meeting: Southern Trails Pipeline acquisition

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Hello Antony,  
We would like to schedule an inspection of your pipeline beginning May 10<sup>th</sup> through May 13<sup>th</sup>  
If that week doesn't work for you, we can schedule it later in the year.  
Please let me know if we can put this on our official calendar.

Thanks

**From:** Antony Davison <[AntonyD@ntua.com](mailto:AntonyD@ntua.com)>  
**Sent:** Monday, March 7, 2022 5:53 PM  
**To:** Montoya, Jason N, PRC <[JasonN.Montoya@state.nm.us](mailto:JasonN.Montoya@state.nm.us)>  
**Cc:** Stanovcak, James, PRC <[James.Stanovcak@state.nm.us](mailto:James.Stanovcak@state.nm.us)>; Melissa Segay <[MelissaSe@ntua.com](mailto:MelissaSe@ntua.com)>; Judy Chavez <[judyc@ntua.com](mailto:judyc@ntua.com)>; Heather Clah <[heatherc@ntua.com](mailto:heatherc@ntua.com)>; Walter W. Haase <[walterh@ntua.com](mailto:walterh@ntua.com)>; Glenn Steiger <[glenns@ntua.com](mailto:glenns@ntua.com)>  
**Subject:** RE: [EXTERNAL] NTUA Introduction Meeting: Southern Trails Pipeline acquisition

Jason,

Thank you for the reply. Will the PSB initiate the scheduling of the inspection you reference? If so, can you provide some tentative dates and a schedule? This will help us plan ahead to ensure efficient use of everyone's time.

- Antony

**From:** Montoya, Jason N, PRC <[JasonN.Montoya@state.nm.us](mailto:JasonN.Montoya@state.nm.us)>  
**Sent:** Monday, March 7, 2022 5:33 PM  
**To:** Antony Davison <[AntonyD@ntua.com](mailto:AntonyD@ntua.com)>  
**Cc:** Stanovcak, James, PRC <[James.Stanovcak@state.nm.us](mailto:James.Stanovcak@state.nm.us)>; Melissa Segay <[MelissaSe@ntua.com](mailto:MelissaSe@ntua.com)>; Judy Chavez <[judyc@ntua.com](mailto:judyc@ntua.com)>; Heather Clah <[heatherc@ntua.com](mailto:heatherc@ntua.com)>  
**Subject:** RE: [EXTERNAL] NTUA Introduction Meeting: Southern Trails Pipeline acquisition

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Good evening Antony.

Your email below is a good summary of our discussion. As noted, the PSB highly recommends a standard inspection be conducted in the near future to ensure NTUA's plans and procedures will be sufficient prior to taking over operations of the pipeline. It would be a great dialogue to have so all parties will establish a benchmark and understanding moving forward.

Thanks.

*Jason N. Montoya, P.E.*  
Pipeline Safety Bureau Chief

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**From:** Antony Davison <[AntonyD@ntua.com](mailto:AntonyD@ntua.com)>  
**Sent:** Wednesday, March 2, 2022 8:20 PM  
**To:** Montoya, Jason N, PRC <[JasonN.Montoya@state.nm.us](mailto:JasonN.Montoya@state.nm.us)>  
**Cc:** Melissa Segay <[MelissaSe@ntua.com](mailto:MelissaSe@ntua.com)>; Judy Chavez <[judyc@ntua.com](mailto:judyc@ntua.com)>; Heather Clah <[heatherc@ntua.com](mailto:heatherc@ntua.com)>  
**Subject:** [EXTERNAL] NTUA Introduction Meeting: Southern Trails Pipeline acquisition

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Hi Jason,

It was great to meet with you in a virtual setting today. I felt we had a very productive discussion and I want to follow it up with an email that memorializes summary to help guide future discussion.

Today, we discussed that the New Mexico Pipeline Regulatory Commission (Commission) has been involved with PHMSA and the NTUA throughout the acquisition process of the Southern Trails Pipeline (STP). The acquisition consists of approximately 30-miles of jurisdictional, 20-inch diameter steel pipe that originates at the outside of the Harvest Midstream production facility and extends to the eastern boarder of the Navajo Nation where jurisdiction stops. The pipeline continues east, across the Navajo Nation crossing into Arizona and Utah, to its termination point located at Grey Mountain. NTUA officially took ownership of the STP as of November 2021, however Dominion has continued to maintain responsibility for compliance and operation of the pipeline in accordance with the their O&M procedures during the transition period of 1-year. The transition period is set to expire in November 2022 and NTUA will then take full responsibility for operation and compliance of the line.

With the completion of the acquisition of ownership, and in preparation for the end of the transition, NTUA has filed for and received a new OPID (40324) under PHMSA as distribution operator. NTUA has intended to operate the pipeline as distribution since negotiations began on the acquisition some 5-years ago, however there seems to be some uncertainty to the official determination on classification of the pipeline. You explained that the pipeline may meet one of the three requirements that will classify it as transmission, however an interpretation from PHMSA might be required to make a final determination. You suggested that I provide you a justification on why I feel that the line does not meet the criteria for transmission classification and provide you that as a basis for discussion. I will begin work on that in preparation for future discussion.

You also mentioned that a visit from the Commission, that includes a standard comprehensive audit, will help ensure that compliance maintained on the pipeline throughout the transition and ensure NTUA has the required programs in place that will be necessary to be a compliance operator prior to commencing operations. I welcome that idea and I certainly look forward to an email from you on this, so that we can work out the details and I can include the Dominion team.

As I am sure you are aware, there are still many more topics to cover to ensure NTUA is ready to operate the STP in full compliance of all Federal and State regulations by next November that we could not cram into this initial one-hour meeting. I look forward to hearing back from you soon and working with the Commission to cover the remaining items. I am optimistic of a very successful relationship between the NTUA and the New Mexico Pipeline Regulatory Commission as NTUA continues the safe operation of the STP pipeline for the benefit of the Navajo Nation.

*Antony Davison*

Natural Gas ECO Manager

Navajo Tribal Utility Authority

Office: 928-729-4655

Email: [antonyd@ntua.com](mailto:antonyd@ntua.com)

