



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

1200 New Jersey Ave, S.E.
Washington, D.C. 20590

SEP 06 2016

Mr. Frank M. Murray
General Manager
King-Murray Company Operating LLC
29760 Hillbrook Street
Livonia, MI 48152

Dear Mr. Murray:

In an April 1, 2016, letter to the Pipeline and Hazardous Materials Safety Administration, (PHMSA), you requested an interpretation of PHMSA regulations to be used in ongoing litigation. You stated King-Murray Operating Company, LLC (“King-Murray”) is the defendant in a lawsuit brought by Florida Power and Light Company (“FPL”) in the U.S. District Court for the Southern District of Florida. You further stated FPL is seeking an order to require King-Murray to turn over training records and that King-Murray has brought counterclaims. In addition, you stated King-Murray believes that under PHMSA regulations and the rules of the Florida Public Services Commission King-Murray is required to retain these records. You asked for a “written or verbal opinion from PHMSA upon which King-Murray can rely upon for clarification of the regulations in the Case.”

On April 12, 2016, PHMSA received a letter from Charles L. Schlumberger, counsel for FPL and NextEra Energy Pipeline Services, LLC (“NEPS”). Mr. Schlumberger requested that PHMSA refrain from providing the opinion you requested. Alternatively, he requested he be able to respond on behalf of FPL and NEPS should PHMSA decide to “move forward” on your request.

PHMSA interprets your request for a “written or verbal opinion from PHMSA upon which King-Murray can rely upon for clarification of the regulations in the Case” as a request for a PHMSA employee to provide expert testimony in the ongoing litigation between King-Murray and FPL. However, 49 C.F.R. § 9.9(c) prohibits any DOT employee from testifying in legal proceedings between private litigants “as an expert or opinion witness with regard to any matter arising out of the employee’s official duties or functions of the Department.” *See also* 49 C.F.R. § 9.3 (defining “testimony” as “any written or oral statement by a witness”). Accordingly, PHMSA cannot grant your request at this time.



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Should you have any questions, please contact Aaron Glaser, an Attorney-Advisor in my office, at (202) 366-6318 or aaron.glaser@dot.gov.

Sincerely,

A handwritten signature in black ink that reads "Teresa A. Gonsalves". The signature is fluid and cursive, with the first name being the most prominent.

Teresa A. Gonsalves
Chief Counsel

cc: Charles L. Schlumberger, Senior Litigation Counsel, Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida, 33408-0420



KING-MURRAY COMPANY OPERATING LLC

Fuel Infrastructure Operations & Maintenance

PHYSICAL ADDRESS:
29760 HILLBROOK ST
LIVONIA, MI 48152

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April 1, 2016

Mr. Wayne T. Lemoi
National Safety Coordinator
U.S. Department of Transportation
PHMSA
233 Peachtree Street NE, Suite 600
Atlanta, Georgia 30303
Via e-mail: wayne.lemoi@dot.gov

Re: Operator Qualification Records

Mr. Lemoi,

King-Murray Operating Company, LLC ("King-Murray"), OPID 38917, is providing operations and maintenance services as a contractor for NRG Energy's Osceola Pipeline in Florida. Until October 2015, King-Murray provided pipeline operations and maintenance services as a contractor for Florida Power and Light Company ("FPL"), at which time FPL allegedly terminated King-Murray's contract and had FPL's affiliate company Nextera Energy Pipeline Services LLC ("Nextera") begin performing the operations and maintenance services.

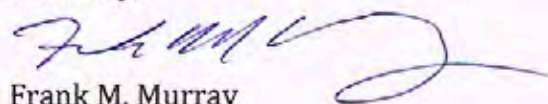
FPL has sought an injunction against King-Murray in the US District Court, Southern Florida, West Palm Beach Division in Case Number 9:16-cv-80259-DMM ("Case") in order to take possession of all of King-Murray Operator Qualification Training Records. King-Murray has counter-sued FPL to retain its training records, as well as for violation of affiliate rules, breach of contract, fraud, negligence, conspiracy and other infractions. These are training and qualification records for King-Murray personnel that perform work on the NRG owned pipeline and previously performed work on the FPL owned facilities. Attached is an example of information that King-Murray has provided to FPL and is willing to provide to FPL, however, FPL has declared that this is insufficient even though FPL accepts similar reports from other contractors.

King-Murray is vigorously defending the action brought against it. King-Murray believes that it must retain those Operator Qualifications for the personnel that were trained by King-Murray, both present and former King-Murray personnel since King-Murray is still providing services for NRG Energy and must retain its records for a minimum five-year period as specified in FPSC Rule 25-12 and 49 CFR Part 192.807 and 49 CFR Part 195.507 for services provided to FPL.

FPL's latest filing in the Case and arguments before the US District Court, leads King-Murray to believe that FPL and Nextera are suing King-Murray for possession of its operator qualification records because FPL and Nextera did not train or qualify their personnel, some of which were former King-Murray personnel, when FPL and Nextera began operations of the FPL owned facilities in October 2015. Rather than train their new employees, FPL and Nextera are presently relying solely upon the personnel's work history with King-Murray Operating in violation of the OQ requirements contained in 49 CFR Part 192.809. King-Murray has provided FPL with a summary of qualifications for each of King-Murray's current and former employees, listing the person, the covered tasks and the date upon which the qualification will expire.

King-Murray is requesting clarification and affirmation that as an operator providing operations and maintenance services to an owner that it must retain these records or be in violation of FPSC Rule 25-12 and 49 CFR Part 192. King-Murray has informed FPL that it would make its records available to PHMSA or other regulatory agency for inspection during an audit if requested. A written or verbal opinion from PHMSA upon which King-Murray can rely upon for clarification of the regulations in the Case on or before April 18, 2016 would be greatly appreciated.

Sincerely,



Frank M. Murray
General Manager

Attachment

Cc: Mr. Rick Moses, FPSC, Bureau of Safety Chief RMoses@PSC.STATE.FL.US

Course Type	Certificate Description	Certificate	Score Date	Expiration Date	User Name	Employee Id
TNG	195-0000 Documentation & Reporting	MEA1363	8/13/14	8/12/17	Zeiszler, Mike	9
TNG	195-0060 (CT60) e-TNG General Abnormal Operating Conditions	MEA1485	8/13/14	8/12/17	Zeiszler, Mike	9
KNT	195-0060 (CT60) KNT General Abnormal Operating Conditions	MEA1484	8/13/14	8/12/17	Zeiszler, Mike	9
KNT & TNG	195-0060 CT-60 General Abnormal Operating Conditions	MEA11862	8/13/14	8/12/17	Zeiszler, Mike	9
KNT	195-0403 Corrosion Monitoring - Internal	MEA1243	11/7/14	11/6/17	Zeiszler, Mike	9
TNG	195-0403 Corrosion Monitoring - Internal	MEA1358	11/7/14	11/6/17	Zeiszler, Mike	9
TNG	195-0404 Prevention of Atmospheric Corrosion	MEA1359	12/15/14	12/14/17	Zeiszler, Mike	9
KNT	195-0405 MEASURE Wall Thickness Of Pipe	MEA1245	12/16/14	12/15/17	Zeiszler, Mike	9
TNG	195-0405 MEASURE Wall Thickness Of Pipe	MEA1360	12/16/14	12/15/17	Zeiszler, Mike	9
KNT	195-0406 Inspect Internal Pipe Surfaces	MEA1246	12/16/14	12/15/17	Zeiszler, Mike	9
TNG	195-0406 Inspect Internal Pipe Surfaces	MEA1361	12/16/14	12/15/17	Zeiszler, Mike	9
PEF	195-0407 Application & Repair of External Coatings	MEA1198	11/13/14	11/12/17	Zeiszler, Mike	9
KNT	195-0407 Application & Repair of External Coatings	MEA1247	8/15/14	8/14/17	Zeiszler, Mike	9
TNG	195-0407 Application & Repair of External Coatings	MEA1362	8/15/14	8/14/17	Zeiszler, Mike	9
TNG	195-0501 Cathodic Protection Systems: Rectifier Maintenance And Repair	MEA1364	1/16/15	1/15/18	Zeiszler, Mike	9
KNT	195-0501 Cathodic Protection: Rectifier Maintenance And Repair	MEA1248	1/16/15	1/15/18	Zeiszler, Mike	9
KNT	195-0503 Cathodic Protection Systems	MEA1249	1/19/15	1/18/18	Zeiszler, Mike	9
TNG	195-0503 Cathodic Protection Systems: Maintain Test Leads	MEA1365	1/19/15	1/18/18	Zeiszler, Mike	9
TNG	195-0505 Cathodic Protection Systems: Inspect Cathodic Protection Rectifier	MEA1366	11/6/14	11/5/17	Zeiszler, Mike	9
KNT	195-0505 Cathodic Protection Systems: Inspect Rectifier	MEA1250	11/6/14	11/5/17	Zeiszler, Mike	9
TNG	195-0515 Cathodic Protection Systems: Conduct Cathodic Protect. Remediation	MEA1369	1/14/15	1/13/18	Zeiszler, Mike	9
KNT	195-0515 Cathodic Protection Systems: Conduct Cathodic Protection Remediation	MEA1253	1/14/15	1/13/18	Zeiszler, Mike	9
KNT	195-0721 CT-0721 KNT Joining of Pipe: Threaded Joints	MEA11859	1/19/15	1/18/18	Zeiszler, Mike	9
KNT	195-0804 Inspection After Excavation Activities & Leak Survey After Blasting	MEA1255	5/11/15	5/10/18	Zeiszler, Mike	9
TNG	195-0804 Inspection After Excavation Activities & Leak Survey After Blasting	MEA1371	5/5/15	5/4/18	Zeiszler, Mike	9
PEF	195-0808 Inspect Buried Pipe When Exposed	MEA1209	1/30/15	1/29/18	Zeiszler, Mike	9
KNT	195-0808 Inspect Buried Pipe When Exposed	MEA1258	11/19/14	11/18/17	Zeiszler, Mike	9
TNG	195-0808 Inspect Buried Pipe When Exposed	MEA1374	11/19/14	11/18/17	Zeiszler, Mike	9
PEF	195-0809 Inspect, Test and Calibrate Overfill Protective Devices	MEA1210	1/30/15	1/29/18	Zeiszler, Mike	9
KNT	195-0809 Inspect, Test and Calibrate Overfill Protective Devices	MEA1259	11/7/14	11/6/17	Zeiszler, Mike	9
TNG	195-0809 Inspect, Test and Calibrate Overfill Protective Devices	MEA1375	11/7/14	11/6/17	Zeiszler, Mike	9
PEF	195-1301 Conduct Pressure Test	MEA1215	1/31/15	1/30/18	Zeiszler, Mike	9
KNT	195-1301 Conduct Pressure Test	MEA1264	11/7/14	11/6/17	Zeiszler, Mike	9
TNG	195-1301 Conduct Pressure Test	MEA1380	11/7/14	11/6/17	Zeiszler, Mike	9
PEF	195-1402BF Backfilling a Trench Following Maintenance	MEA1217	11/20/14	11/19/17	Zeiszler, Mike	9
KNT	195-1402BF Backfilling a Trench Following Maintenance	MEA1266	11/19/14	11/18/17	Zeiszler, Mike	9
TNG	195-1402BF Backfilling a Trench Following Maintenance	MEA1382	11/19/14	11/18/17	Zeiszler, Mike	9
PEF	195-1414PS Operations of a Pipeline System (Pipeline)	MEA1223	1/30/15	1/29/18	Zeiszler, Mike	9
KNT	195-1414PS Operations of a Pipeline System (Pipeline)	MEA1272	1/30/15	1/29/18	Zeiszler, Mike	9
TNG	195-1414PS Operations of a Pipeline System (Pipeline)	MEA1388	1/30/15	1/29/18	Zeiszler, Mike	9
PEF	195-1806 Inspect, Test and Calibrate Pressure Limiting Devices	MEA1233	1/29/15	1/28/18	Zeiszler, Mike	9
KNT	195-1806 Inspect, Test and Calibrate Pressure Limiting Devices	MEA1282	11/7/14	11/6/17	Zeiszler, Mike	9
TNG	195-1806 Inspect, Test and Calibrate Pressure Limiting Devices	MEA1398	11/7/14	11/6/17	Zeiszler, Mike	9
PEF	195-1807 Inspect, Test and Calibrate Pressure Switches and Transmitters	MEA1234	1/31/15	1/30/18	Zeiszler, Mike	9
KNT	195-1807 Inspect, Test and Calibrate Pressure Switches and Transmitters	MEA1283	10/27/14	10/26/17	Zeiszler, Mike	9
TNG	195-1807 Inspect, Test and Calibrate Pressure Switches and Transmitters	MEA1399	10/27/14	10/26/17	Zeiszler, Mike	9
KNT	195-1808 Programmable Logic Controllers	MEA1284	11/6/14	11/5/17	Zeiszler, Mike	9
TNG	195-1808 Programmable Logic Controllers	MEA1400	11/6/14	11/5/17	Zeiszler, Mike	9