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May 22, 2008

**VIA FEDERAL EXPRESS OVERNIGHT DELIVERY**

COLORADO SPRINGS

Jeffrey D. Wiese  
Associate Administrator for Pipeline Safety  
Pipeline and Hazardous Materials Safety Administration  
Cubical E-22321  
1200 New Jersey Avenue, SE  
Washington DC 20590

DENVER

Re: Belle Fourche Pipeline Company; CPF No. 5-2007-5002

LONDON

Dear Mr. Wiese:

LOS ANGELES

Enclosed please find an original and two copies of Belle Fourche Pipeline Company's Petition for Reconsideration and Request for Stay or for Extension of Time in regard to the above referenced matter.

Very truly yours,

MUNICH

  
Colin G. Harris

CGH/rb

PHOENIX

Enclosures to all parties

SALT LAKE CITY

cc: Chris Hoidal, P.E., Regional Director  
May Chiranand, Esq. Attorney Advisor  
Gerald Davis, P.E.  
Manuel Lojo, Esq.

SAN FRANCISCO

**DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, DC 20590**

_____ )	
<b>In the Matter of</b> )	
)	
<b>Belle Fourche Pipeline Company,</b> )	<b>CPF No. 5-2007-5002<sup>1</sup></b>
<b>Bridger Pipeline Company LLC</b> )	<b>CPF No. 5-2007-5003</b>
<b>Butte Pipeline Company</b> )	<b>CPF No. 5-2007-5008</b>
)	
<b>Respondents</b> )	
_____ )	

**PETITION FOR RECONSIDERATION OF FINAL ORDER**  
**REQUEST FOR STAY OR FOR EXTENSION OF TIME**

Respondent Belle Fourche Pipeline Company (Belle Fourche) hereby respectfully requests reconsideration of the Final Order in CPF No. 5-2007-5002 previously incorrectly referenced and included in CPF No. 5- 2006-5004. and further requests a stay or an extension of time to investigate and address compliance.

1. This matter came before the Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety (OPS) for an informal hearing on August 31, 2007, in Denver, Colorado.

2. The only non-warning probable violation alleged in CPF No. 5-2007-5002 (in "Notice of Probable Violation and Proposed Compliance Order dated February 2, hereinafter "NOPV") was item 1, which claimed that the Sussex pump station had temporary wooden and concrete blocks.<sup>2</sup> The Final Order states that Respondent did not contest this allegation. This is incorrect. Belle Fourche submitted both direct testimony and an affidavit regarding this matter. Specifically, Belle Fourche's live witness, Mr. Robert Stamp, testified that the supports at the Sussex station were repaired after OPS's inspection that identified the issue. Moreover, Mr. Stamp stated in his affidavit, which was introduced into evidence without objection, that "concrete supports have been and are being removed and replaced in a prioritized manner." Stamp Aff. ¶29.

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<sup>1</sup> Although these three proceedings were heard on a consolidated basis, the order was only issued in the indicated docket.

<sup>2</sup> See p.4 of NOPV listing items 2a, 2b, 2c, 3, 4a, 4b (the latter two are nonexistent, there is only item 4), 5, 6, 7, and 8 solely as "Warning Items".

3. The Final Order also claims that Belle Fourche did not contest this item in its post-hearing brief. To the contrary, Belle Fourche did contest item 1 in its Post-Hearing Submittal, at page 14, in open and direct fashion, as follows: “OPS also alleged that Belle Fourche was using temporary blocks as supports at a station. As the testimony demonstrated, this matter has been corrected.” Post-Hearing Submittal at 14.

4. In an enforcement matter, the burden of proof rests with OPS. As the proponent of the underlying NOPV’s, the Agency is clearly responsible for coming forward with proof for each element of the allegations contained therein, and also bears the risk of nonpersuasion as to each of those elements. *See, e.g., In the Matter of Lyon County Landfill*, Docket No. CAA-5-96-011, 2000 EPA ALJ LEXIS 20, at \*21 (April 4, 2000) (attached to the Post-Hearing Submittal). Thus, OPS has both the initial burden of production and the ultimate burden of persuasion as to each allegation in the Order as well as the proposed remedies in the Order. This standard is, moreover, consistent with the standard found in the Administrative Procedure Act (“APA”), which establishes that “[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof” 5 U.S.C. § 556(d). There is no statute changing the burden of proof in this proceeding.

5. The federal courts, too, have held that, in agency enforcement actions, the “burden of establishing a violation of the applicable regulation would be carried by the Government.” *See Getty Oil Co. v. Ruckelshaus*, 467 F.2d 349, 357 (3d Cir. 1972), *cert. denied*, 409 U.S. 1125 (1973) (citing *United States v. Bishop Processing Co.*, 423 F.2d 469 (4<sup>th</sup> Cir. 1970), *cert. denied*, 398 U.S. 904 (1970)).

6. OPS cannot avoid its burden of proof by lying in the weeds, hoping that the defendant fails to persuade in the manner OPS would like it to. OPS has the burden, not the Respondent. Here, Belle Fourche made available in person, and by affidavit, the very person responsible for making the repairs at issue. OPS chose not to cross-examine Mr. Stamp regarding item 1, and specifically did not ask him any questions about the nature or extent of repairs at the Sussex station.

7. The Final Order claims that, as a result of a “typographical error” the NPOV did not include a Proposed Compliance Order regarding compliance with 49 C.F.R. § 195.583. OPS claims that Belle Fourche nonetheless “availed itself of the opportunity to contest the allegation.” On this supposed basis, the Final Order found Belle Fourche in violation of 49 C.F.R. § 195.583, and subject to a compliance order, even though the NPOV was, by OPS’s admission, mistaken.

8. Belle Fourche disputes that this issue was a subject of the Proposed Compliance Order or that it was part of the Hearing. A NOPV for an enforcement proceeding must include a [s]tatement of the . . . regulations . . . which the respondent is alleged to have violated . . .” 49 C.F.R. §190.207. The NOPV for CPF No. 2006-5004 alleged that 49 C.F.R. § 195.583 was a warning item that did not commence an enforcement proceeding.

9. Further, while the regulations provide that OPS may amend a NPOV, OPS has never sought to amend CPF NO. 2006-5004 to include the alleged violation of 49 C.F.R. § 195.583 in the enforcement case as a Proposed Compliance Order. Moreover, OPS provides no

evidence to support its assertion that Belle Fourche somehow “availed of itself of the opportunity to contest the allegation” (or what this even means), and in any case the issue is not what Belle Fourche did, but whether OPS moved to and was granted the right to amend its pleading. Neither occurred. To allow it to do so now would be a violation of Belle Fourche’s due process rights, arbitrary and capricious, and contrary to law.

10. Belle Fourche’s understanding of the claims at issue is reflected in both the Stamp Affidavit and in the Post-Hearing Brief. Those documents carefully address the issue of compliance with 49 C.F.R. § 195.583 in the context of co-Respondents Butte Pipeline Company and Bridger Pipeline Company LLC, but not Belle Fourche. The reason, of course, is that the NOPV against Belle Fourche did not allege a violation of 49 C.F.R. § 195.583 (other than as a warning item) and therefore it was not part of the hearing.

11. For the record, Belle Fourche is troubled by the apparent finding in the NPOV that the only relevant or reliable evidence to defend against liability is “documentation.” OPS’s regulations provide that “statements” and “testimony” constitute relevant evidence. 49 C.F.R. §190.211(f). The Federal Rules of Evidence allow for the admission of any evidence, provided it is relevant. F.R.E. 402. OPS directs us to nothing that suggests “documentation” is the only or the best evidence. In the consolidated hearing, Belle Fourche provided direct testimony of Bob Stamp to testify about compliance with 49 C.F.R. § 195.583, based on his personal knowledge, and submitted his affidavit on the same point. Stamp Aff. ¶¶28-30. The affidavit was introduced into evidence at the hearing, and Mr. Stamp was made available for questioning. To our recollection, OPS again declined to cross-examine Mr. Stamp, or to present any evidence of its own, other than a general reference to an inspection report covering inspections which occurred more than two years prior to the hearing. OPS never subpoenaed any records. To allow OPS to prevail because Respondent did not spoon-feed OPS some unarticulated form of “documentation” that Respondent can only guess at would turn the burden of proof on its head.

**REQUEST FOR STAY OR FOR EXTENSION OF TIME**

12. Belle Fourche believes that this case presents unique circumstances, created by OPS, that have the potential to severely prejudice Belle Fourche. To compel Belle Fourche to comply with a compliance order that is based on a claim that was never even pled, let alone litigated, would be manifestly unjust. Therefore, Belle Fourche requests that the compliance order be stayed pending a decision on this Motion for Reconsideration.

13. In the alternative, at a minimum, Belle Fourche should be given at least 120 days to investigate and address the issue of compliance with 49 C.F.R. § 195.583, rather than the 60 allowed in the Final Order.

14. Dated this 22<sup>d</sup> day of May, 2008.

Respectfully submitted,

HOLME ROBERTS & OWEN LLP

 for Colin G. Harris

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Attorneys for Respondents,

Belle Fourche Pipeline Company

Bridger Pipeline Company LLC, and

Butte Pipeline Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22nd day of May 2008, a true and correct copy of the foregoing Petition for Reconsideration was served via Federal Express Overnight Delivery as follows:

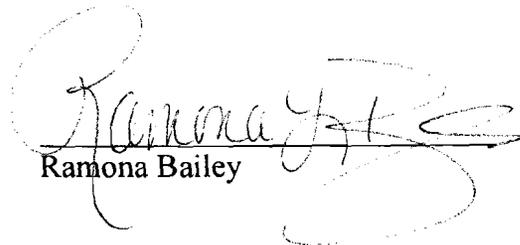
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and by U.S. mail, postage prepaid, to the following:

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