

SEP 22 2009

U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, DC 20590

_____	)	
<b>In the Matter of</b>	)	
	)	
<b>Magellan Pipeline Company, L.L.C.,</b>	)	<b>CPF No. 3-2008-5007</b>
	)	
<b>Respondent.</b>	)	
_____	)	

**CONSENT AGREEMENT**

On June 23, 2008, the Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation, issued to Magellan Pipeline Company, L.L.C. (Respondent) a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order. The Notice alleged that Respondent had committed violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$784,000 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

On July 23, 2008, Respondent submitted a request for an informal hearing in response to the Notice. The hearing was held on March 24, 2009 in Kansas City, Missouri. Following the hearing, Respondent and PHMSA engaged in good faith settlement discussions resulting in this Consent Agreement.

Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and that entry of this Consent Agreement is the most appropriate means of resolving the Notice, pursuant to 49 C.F.R. Part 190, without adjudication of any issue of fact or law, and upon consent and agreement of Respondent and PHMSA (“the Parties”), the Parties agree as follows:

**I. General Provisions**

1. Respondent acknowledges that as operator of the pipeline, Respondent and its pipeline system are subject to the jurisdiction of the Federal pipeline safety laws, 49 U.S.C. 60101 *et seq.*, and the regulations and administrative orders issued thereunder. For purposes of this Consent Agreement, Respondent acknowledges that it received proper notice of PHMSA’s action in this proceeding and that the Notice states claims

upon which relief may be granted pursuant to 49 U.S.C. 60101 *et seq.* and the regulations and orders issued thereunder.

2. Respondent agrees that the facts are as alleged in each Notice item and establish non-compliance with the regulations as alleged in the Notice, and acknowledges that each cited item may be considered by PHMSA to be a prior offense in any future PHMSA enforcement action. This Consent Agreement does not constitute a finding of violation of any Federal law or regulation and therefore may not be used in any civil proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of the violation of any law, rule, regulation or requirement, except in a proceeding to enforce the provisions of this agreement or in future PHMSA enforcement actions.

3. After Respondent returns this signed agreement, PHMSA's representative will present it to the Associate Administrator for Pipeline Safety recommending that the Associate Administrator adopt the terms of this agreement by issuing an administrative order (Consent Order) incorporating the terms of this Consent Agreement. The terms of this agreement constitute an offer of settlement until accepted by the Associate Administrator.

4. Respondent consents to the issuance of the Consent Order, and hereby waives any further procedural requirements with respect to its issuance. Respondent waives all rights to contest the adequacy of notice, or the validity of the Consent Order or this Consent Agreement, including all rights to administrative or judicial hearings or appeals.

5. This Consent Agreement shall apply to and be binding upon PHMSA, and upon Respondent, its officers, directors, and employees, and its successors, assigns, or other entities or persons otherwise bound by law. Respondent agrees to provide a copy of this agreement and any incorporated work plans and schedules to all of Respondent's officers, employees, and agents whose duties might reasonably include compliance with this agreement.

6. For all transfers of ownership or operating responsibility of Respondent's pipeline, Respondent must provide a copy of this Consent Agreement to the prospective transferee at least 30 days prior to such transfer and simultaneously provide written notice of the prospective transfer to the PHMSA Regional Director who issued the Notice.

7. This Consent Agreement constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this agreement, and the Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this agreement, except that the terms of this agreement may be construed by reference to the Notice.

8. Nothing in this Consent Agreement affects or relieves Respondent of its

responsibility to comply with all applicable requirements of the Federal pipeline safety laws, 49 U.S.C. § 60101 *et seq.*, and the regulations and orders issued thereunder. Nothing in this agreement alters PHMSA's right of access, entry, inspection, and information gathering or PHMSA's authority to bring enforcement actions against Respondent pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law.

9. This Consent Agreement does not waive or modify any Federal, State, or local laws or regulations that are applicable to Respondent's pipeline systems. This agreement is not a permit, or a modification of any permit, under any Federal, State, or local laws or regulations. Respondent remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits.

10. This Consent Agreement does not create rights in, or grant any cause of action to, any third party not party to this agreement. The U.S. Department of Transportation is not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent or its officers, employees, or agents carrying out the work required by this agreement. The U.S. Department of Transportation, its officers, employees, agents, and representatives are not liable for any cause of action arising from any acts or omissions of Respondent or its contractors in carrying out any work required by this agreement.

## **II. Payment of Civil Penalty**

11. Within thirty (30) days of issuance of the Consent Order, Respondent agrees to pay a civil penalty of Six Hundred and Four Thousand, Two Hundred and Eighty Dollars (\$604,280) assessed by PHMSA to the United States to settle the Notice.

12. Respondent will make payment by FedWire Electronic Funds Transfer ("EFT") to the U.S. Treasury at the Federal Reserve Bank in New York ("TREAS NYC"), Receiver ABA No. 021030004 according to the terms and instructions to be provided to Respondent following execution of this Consent Agreement. The payment will reference the PHMSA's Beneficial Agency Location Code ("BNF=/ALC-69-14-0001") and the assigned case number (CPF 3-2008-5007), and specify that the payment is for civil penalties assessed by PHMSA pursuant to 49 U.S.C. 60101 *et seq.*. Any questions concerning the wire transfer may be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, OK 73125; (405) 954-8893.

13. At the time of payment, Respondent agrees to simultaneously send written notice of payment and a copy of any transmittal documentation to:

Ivan A. Huntoon  
Director, Central Region  
Pipeline and Hazardous Materials Safety Administration  
901 Locust Street, Suite 462

Kansas City, MO 64106

Rod Dyck  
Director of Enforcement  
Pipeline and Hazardous Materials Safety Administration  
1200 New Jersey Avenue, SE, Room E24-302  
Washington, DC 20590

14. Failure to pay the \$604,280 within 30 days of the date the Consent Order is issued will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a United States District Court.

15. Respondent agrees that the total amount of the payment specified in paragraph 11 will not be deductible by Respondent or any of its affiliates for purposes of Federal taxes.

### **III. Compliance Measures**

16. Within 90 days following the issuance of the Consent Order, Respondent agrees to perform all actions set forth in Proposed Compliance Order enclosed with the Notice which is hereby incorporated into this Consent Agreement. Respondent will revise the work plan required by Item 2 of the Proposed Compliance Order as necessary to incorporate new information it obtains during the remedial activities performed under the work plan. Respondent will submit any such plan revisions to the Regional Director for prior approval. The Regional Director may approve work plan elements incrementally.

17. Respondent agrees to submit quarterly reports to the Regional Director that: (1) include all available data and results of any testing and evaluations performed pursuant to the Proposed Compliance Order; and (2) describe the progress of the repairs or other remedial actions being undertaken. The first quarterly report for the period from July 2009 through September 2009 is due by October 31, 2009.

18. Respondent agrees to maintain documentation of the costs associated with implementation of the Proposed Compliance Order. Respondent will include in each quarterly report it submits pursuant to paragraph 17, the to-date total costs associated with: (1) testing, evaluations and information analysis; (2) revisions of procedures and additional monitoring and inspections; and (3) physical changes to pipeline infrastructure, including repairs, replacements and other modifications.

19. The Regional Director may grant an extension of time for Respondent to complete any of the work to be performed if Respondent submits a timely written request demonstrating good cause for an extension.

#### **IV. Review and Approval Process**

20. With respect to any submission under Section III of this Consent Agreement that requires the approval of the Regional Director, the Director may: (a) approve, in whole or in part, the submission, (b) approve the submission on specified conditions, (c) disapprove, in whole or in part, the submission, or (d) any combination of the foregoing. If the Regional Director approves, approves in part, or approves with conditions, Respondent will take all action as approved by the Director, subject to Respondent's right to invoke the dispute resolution procedures in Section V with respect to any conditions the Director identifies. If the Director disapproves all or any portion of the submission, the Director will provide Respondent with a written notice of the deficiencies. Respondent will correct all deficiencies within the time specified by the Director and resubmit it for approval.

#### **V. Dispute Resolution**

21. The Regional Director and Respondent will informally attempt to resolve any disputes arising under this Consent Agreement. If Respondent and the Regional Director are unable to informally resolve the dispute within 15 days, Respondent may request in writing, within 10 days, a written determination resolving the dispute from the Associate Administrator for Pipeline Safety providing all information that Respondent believes is relevant to the dispute. If the request is submitted as provided herein, the Associate Administrator will issue a final determination in writing. The existence of a dispute and PHMSA's consideration of matters placed in dispute will not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this agreement during the pendency of the dispute resolution process except as agreed by the Regional Director or the Associate Administrator in writing.

#### **VI. Enforcement**

22. This Consent Agreement, as adopted by the Consent Order, is subject to all enforcement authorities available to PHMSA under 49 U.S.C. § 60101 *et seq.* and 49 C.F.R. Part 190, including administrative civil penalties under § 60122 of up to \$100,000 per violation for each day the violation continues, if PHMSA determines that Respondent is not proceeding according to the terms of the agreement, determinations made by the Regional Director, or if appealed, decisions of the Associate Administrator. All work plans and associated schedules set forth or referenced in Section III will be automatically incorporated into this Consent Agreement and are enforceable in the same manner.

#### **VII. Record Keeping and Information Disclosure**

23. Respondent agrees to maintain records demonstrating compliance with all requirements of this Consent Agreement for a period of at least five years following completion of all work to be performed. For any reports, plans, or other deliverables

required to be submitted to PHMSA pursuant to this Consent Agreement, Respondent may assert a claim of business confidentiality or other protections applicable to the release of information by PHMSA, covering part or all of the information required to be submitted to PHMSA pursuant to this agreement in accordance with 49 C.F.R. Part 7. Respondent must mark the claim of confidentiality in writing on each page, and include a statement specifying the grounds for each claim of confidentiality. PHMSA determines release of any information submitted pursuant to this Consent Agreement in accordance with 49 C.F.R. Part 7, the Freedom of Information Act, 5 U.S.C. § 552, DOT and/or PHMSA policies, and other applicable regulations and Executive Orders.

### **VIII. Effective Date**

24. The “Effective Date” as used herein is the date on which this Consent Agreement has been signed by both Respondent and PHMSA.

### **IX. Modification**

25. The terms of this Consent Agreement may be modified by mutual agreement of the parties. Such modifications must be in writing and signed by both parties.

### **X. Termination**

26. This Consent Agreement terminates upon payment of the amount set forth in Section II and the completion of all terms set forth in Section III (Compliance Measures) as determined by the Director, Central Region. Respondent may request written confirmation from PHMSA when this agreement is terminated. To the extent ongoing monitoring is required, PHMSA may terminate this agreement with respect to all other requirements with the exception of such monitoring. Nothing in this agreement prevents Respondent from completing any of the obligations earlier than the deadlines provided for in this Agreement.

### **XI. Ratification**

27. The Parties undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind such party to this document.

28. The Parties hereby agree to all conditions and terms of this Consent Agreement:

For PHMSA:

For Respondent:

\_\_\_\_\_  
Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

\_\_\_\_\_  
Rick A. Olson  
Senior Vice President,  
Operations & Technical Services

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date