

March 22, 2023

**VIA ELECTRONIC MAIL TO: kurt.cheremie@kineticallc.com**

Mr. Kurt Cheremie  
Senior Vice President  
Kinetica Partners, LLC  
1001 McKinney Street, Suite 900  
Houston, Texas 77002

**Re: CPF No. 4-2022-007-NOPV**

Dear Mr. Cheremie:

Enclosed is the Decision on the Petition for Reconsideration (Decision) issued in the above-referenced case. For the reasons explained therein, the Decision denies your petition. The penalty payment and compliance order terms remain unchanged from those set forth in the Final Order issued October 19, 2022. This Decision constitutes the final administrative action in this proceeding. Service of this decision by electronic mail is effective upon the date of transmission as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

Enclosure

cc: Mr. Bryan Lethcoe, Director, Southwest Region, Office of Pipeline Safety, PHMSA  
Mr. Bill Prentice, General Counsel, Kinetica Partners, LLC,  
bill.prentice@kineticallc.com

**CONFIRMATION OF RECEIPT REQUESTED**

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

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<b>In the Matter of</b>	)	
	)	
<b>Kinetica Deepwater Express, LLC, a subsidiary of Kinetica Partners, LLC,</b>	)	<b>CPF No. 4-2022-007-NOPV</b>
	)	
<b>Petitioner.</b>	)	
	)	

**DECISION ON PETITION FOR RECONSIDERATION**

From June 21, 2021, through October 18, 2021, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), inspected Kinetica Deepwater Express, LLC’s (KDE) records following an incident that occurred on July 13, 2021, on its pipeline ID 341, El Paso Platform 327-A, in Eugene Island, Louisiana. Kinetica Partners, LLC (Kinetica or Petitioner), the parent company of KDE, owns and operates over 1,800 miles of natural gas transmission and gathering pipelines.<sup>1</sup>

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to KDE, by letter dated February 11, 2022, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that KDE had violated 49 C.F.R. parts 191 and 192, proposed assessing a civil penalty of \$46,600 for the alleged violations, and proposed ordering KDE to take certain measures to correct the alleged violations. The Notice also included an additional warning item pursuant to 49 C.F.R. § 190.205, which warned the operator to correct the probable violation or face possible future enforcement action.

Kinetica, on behalf of KDE, responded to the Notice by letter dated March 25, 2022 (Response).<sup>2</sup> Petitioner contested all of the allegations of violation and offered additional information in response to the Notice. Kinetica did not request a hearing and therefore waived its right to one.

On October 19, 2022, pursuant to 49 U.S.C. §§ 60117 and 60122, and 49 C.F.R. § 190.213, the

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<sup>1</sup> Kinetica Partners, LLC website, Pipeline Safety Portal, *available at* <https://app.smartsheet.com/b/publish?EQBCT=225f8d51ee3041a3827b5f1dfcd39b20> (last accessed February, 22, 2023).

<sup>2</sup> Kinetica Deepwater Express, LLC, Written Response CPF No. 4-2022-007-NOPV, dated March 25, 2022 (Response) (on file with PHMSA).

Associate Administrator for Pipeline Safety issued a Final Order finding that KDE committed the violations as alleged in the Notice (Final Order).<sup>3</sup> The Final Order assessed a civil penalty of \$46,600, pursuant to the authority of 49 U.S.C. § 60122 and 49 C.F.R. § 190.221, and ordered Petitioner to take certain measures to correct certain violations, pursuant to the authority of 49 U.S.C. § 60118 and 49 C.F.R. § 190.217. The Final Order also included the additional warning item pursuant to 49 C.F.R. § 190.205, warning KDE to correct the probable violation or face possible future enforcement action.

On November 4, 2022, Kinetica, on behalf of KDE, filed a Petition for Reconsideration pursuant to 49 C.F.R. § 190.243 (Petition).<sup>4</sup> In its Petition, Kinetica requested reconsideration of Items 3, 4, and 5 of the Final Order, which found violations of 49 C.F.R §§ 191.17(a), 191.29(a)(1) and (b), and 192.717(b)(5), respectively. It did not request reconsideration of the other Items within the Final Order.

## **I. Standard of Review**

Under 49 C.F.R. § 190.243, a respondent may petition the Associate Administrator for reconsideration of a Final Order that has been issued pursuant to § 190.213. Reconsideration is not an appeal or a completely new review of the record.<sup>5</sup> A respondent may ask for correction of an error or, in limited circumstances, may present previously unavailable information. If a respondent requests consideration of additional facts or arguments, the respondent must submit the reasons they were not presented prior to the issuance of the Final Order. The Associate Administrator may grant or deny, in whole or in part, a petition for reconsideration without further proceedings.

## **II. Analysis**

### **a. Item 3**

The Final Order issued a warning to KDE regarding compliance with 49 C.F.R. § 191.22(c)(2)(iv), which requires each operator of a gas pipeline facility to notify PHMSA of any of the acquisition or divestiture of 50 or more miles of a pipeline or pipeline system subject to Part 192. Specifically, the Notice alleged that KDE failed to file a Type D acquisition notification through the National Registry of Operators for the acquisition of approximately 515 miles of gas transmission pipelines from ANR Pipeline Company no later than 60 days after acquisition. Petitioner argued in its Response that KDE was not at fault for the errors and discrepancies that were made in reporting the divestiture of assets from ANR Pipeline Company to KDE.

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<sup>3</sup> *Kinetica Deepwater Express, LLC*, Final Order, CPF No. 4-2022-007-NOPV (Final Order) (October 19, 2022) (on file with PHMSA).

<sup>4</sup> Petition for Reconsideration of CPF No. 4-2022-007-NOPV, dated November 4, 2022 (Petition) (on file with PHMSA).

<sup>5</sup> 49 C.F.R. § 190.243(a)-(d).

The Final Order noted that, pursuant to § 190.205, PHMSA does not adjudicate warning items to determine whether a probable violation occurred. In its Petition, Kinetica again argued that it did not violate § 191.22(c)(2)(iv) and requested that PHMSA withdraw the warning. However, as explicitly set forth in its regulations, “[a]n adjudication under [§ 190.205] to determine whether a violation occurred is not conducted for warnings.” Accordingly, there is no basis for reconsidering or withdrawing the warning item as alleged in the Notice.

**b. Item 4**

The Final Order found that KDE violated 49 C.F.R. §§ 191.29(a)(1) and 192.29(b), which require each operator of a gas transmission pipeline to provide certain geospatial data to PHMSA. Specifically, the Notice alleged that KDE violated §§ 191.29(a)(1) and 129.29(b) by failing to submit complete and accurate National Pipeline Mapping System (NPMS) information required by § 191.29(a) on or before March 15 representing its assets as of December 31 of the previous year. On April 1, 2016, KDE acquired from ANR Pipeline Company approximately 470.7 miles of offshore pipeline assets located in the Gulf of Mexico and approximately 44.52 miles of onshore pipeline assets. The Notice alleged that since the 2016 acquisition, KDE did not submit updates to NPMS to account for these assets.

In its Response, Petitioner argued that it submitted the required NPMS information for the pipeline mileage in question under OPID 39519 for calendar years 2016, 2017, 2018, 2019, 2020, and 2021. Kinetica provided screenshots from the NPMS website with its Response.

The Final Order determined that KDE did not satisfy the requirements of §§ 191.29(a)(1) and 192.29(b). Exhibit D in the case file showed the total mileage that KDE submitted to NPMS each year was 261 miles in 2016, 219 miles in 2017 and 2018, and 202 miles in 2019 and 2020. However, the Final Order found the reported mileage conflicted with KDE’s annual reports for those years, wherein the company indicated it operated over 400 miles of pipelines in each of the pertinent years.

In its Petition, Kinetica asserted that the lines not reported pursuant to § 192.29 were gathering lines, and thus not subject to the reporting requirements of that section. In support of its assertion, Petitioner submitted copies of its annual reports for calendar years 2016 through 2021. These annual reports show that KDE reported the following pipeline mileage:

Calendar Year	Miles of Steel Transmission Pipeline	Miles of Steel Gathering Pipeline
2016	250.25	255.58
2017	207.63	223.3
2018	216.17	232.4
2019	197.41	212.31
2020	197.34	213.15
2021	197.34	211.83

Petitions for reconsideration provide a vehicle for respondents to submit evidence or arguments not previously available during the proceeding. The Associate Administrator does not consider repetitious information but may consider additional facts or arguments, provided that the respondent submits a valid reason why such information was not presented prior to issuance of the final order. Here, the annual report information, including gathering line mileage, was previously available to the Petitioner and to PHMSA, and in fact was cited by the Associate Administrator in the Final Order. Petitioner failed to present additional facts in this Petition that were not presented prior to the issuance of the Final Order. Petitioner also failed to submit a valid reason for failing to present its specific argument regarding gathering line mileage before the Final Order was issued.

Even considering the evidence and arguments provided in the Petition, I find that the Final Order correctly concluded Petitioner did not comply with § 192.29. The evidence provided with the Response and Petition shows the mileage KDE reported to PHMSA pursuant to §§ 191.29(a)(1) and 129.29(b) conflicts with the mileage of steel transmission pipeline it reported to PHMSA in its 2016 through 2020 annual reports even when the gathering line mileage is excluded. Petitioner's argument regarding the gathering line mileage does not negate the veracity of the underlying finding of violation—that KDE did not accurately report its pipeline mileage in accordance with § 192.29. Accordingly, I find no basis for withdrawing the finding of violation of §§ 191.29(a)(1) and 192.29(b).

**c. Item 5**

The Final Order found that KDE violated 49 C.F.R. § 192.717(b)(5) by failing to complete a permanent field repair of a leak. Specifically, the Notice alleged that on July 16, 2021, KDE repaired a through-wall pinhole leak with a Belzona Superwrap II composite wrap, and documented it as a “permanent” repair on its Pipeline Repair & Replacement Field Worksheet (Maximo Ticket Number 21-91661) and in its Pipeline Inspection Report (Repair Number BBH-4482). The Notice alleged neither § 192.717 nor KDE's written procedures allow for through-wall leaks to be permanently repaired using composite wraps.

In response to the Notice, Petitioner argued that pursuant to § 192.717(b)(5), permanent field repairs of leaks may be made using a method that reliable engineering tests and analyses show can permanently restore serviceability of the pipe. It also stated that it had not updated its written procedures to account for through-wall defects. Kinetica cited several documents<sup>6</sup> in its Response to support its assertion that the regulations allow operators to choose other methods to repair leaks, and it asserted that composite wraps are one such method.

The Final Order determined that KDE violated § 191.717 by failing to perform the leak repair with a method that is shown by reliable engineering tests and analyses to permanently restore serviceability of the pipe. In reaching this determination, the Final Order stated that Petitioner did not provide or cite to any reliable engineering tests or analyses that show Belzona Superwrap II composite wrap permanently restores serviceability of a pipe that has a leak.

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<sup>6</sup> 64 Fed. Reg. 69660 (Dec. 14, 1999); PHMSA Letter of Interpretation (November 18, 2010); Email from PHMSA Southwest Region.

With its Petition, Kinetica attached three product specification sheets from 2015, 2016, and 2019, four design and repair procedure documents prepared in October 2017, July 2021, May 2022, and October 2022, and a prequalification testing document from 2018, all pertaining to Belzona Superwrap II composite wrap.<sup>7</sup> All of these records pre-date PHMSA's issuance of the Final Order. Petitioner did not provide these documents with its Response, nor did it provide a reason why it did not present such information prior to PHMSA's issuance of the Final Order. In its Petition, Kinetica noted that a professional engineer recently reviewed the design and repair procedure document that was initially prepared in July 2021. Petitioner argued these documents show "that composite wraps do provide a method to permanently restore serviceability of the pipe."

After considering the evidence submitted with the Petition, I find the information therein actually belies Petitioner's argument that composite wraps permanently restore serviceability of pipe. The design and repair procedure prepared in October 2017, titled "Belzona SuperWrap II," states through-wall defects can continue to grow after implementation of the repair. Further, the ASME and ISO standards cited in this document state that the composite wrap repair has a maximum service life of 20 years. The document submitted by the Petitioner that included an engineer's review of a procedure does not dispute these facts. The evidence included with the Petition supports the finding in the Final Order that repairs with composite wrap do not constitute permanent repairs.<sup>8</sup> Accordingly, I find no basis for withdrawing the finding of violation of § 192.717(b)(5).

### **III. Conclusion**

Based on the information provided in the Petition, a review of the record, and for the reasons stated above, I affirm the Final Order, the Assessment of Penalty, and Compliance Order without modification.

Payment of the civil penalty must be made within 20 days of service of this Decision. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$46,600 civil penalty 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

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<sup>7</sup> See Petition for Reconsideration of CPF No. 4-2022-007-NOPV, dated November 4, 2022 (Petition) (on file with PHMSA), Attachments Belzona 1981 Product Specification Sheet, Belzona 1982 Product Specification Sheet, Belzona 1983 Product Specification Sheet, BBH 4570 Design 05272022, BBH 4671 Design 10182022, BBH 4482 Design 11072022, Belzona SuperWrap Packet II 10312017, and Belzona Superwrap II System Testing 04042018.

<sup>8</sup> *Temporary Repair and Permanent Repair Frequently Asked Questions*, PHMSA, November 2, 2022 available at <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2022-11/PHMSA%20Temporary-Permanent%20Repair%20FAQs.pdf> (stating that temporary repairs are those that have limited effective life and must be replaced by a repair that can restore permanent serviceability and safe operation).

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 district court of the United States.

This Decision is the final administrative action in this proceeding.

March 22, 2023

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Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

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Date Issued