

June 27, 2019

Mr. Dan Newton
Public Works Director
City of Susanville
720 South Street
Susanville, California 96130

Re: CPF No. 5-2016-0004

Dear Mr. Newton:

Enclosed please find the Decision on Reconsideration issued in the above-referenced case. It denies your Petition for Reconsideration. Service of the Decision by certified mail is deemed effective upon the date of mailing, or as otherwise 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. Dustin Hubbard, Director, Western Region, Office of Pipeline Safety, PHMSA

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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

In the Matter of)

City of Susanville, California,)
a municipal corporation,)

Petitioner.)

CPF No. 5-2016-0004

DECISION ON RECONSIDERATION

In a June 1, 2018 Final Order, I found that the City of Susanville (Susanville) had committed one violation of 49 C.F.R. Part 191 and three violations of Part 192 following an inspection by the Office of Pipeline Safety (OPS) of a 6-inch diameter, 10-mile long gas pipeline operated by Susanville.¹ I ordered Susanville to take certain measures to correct these four violations and issued a warning for four other probable violations.

On June 19, 2018, Susanville submitted a Petition for Reconsideration (Petition) of the Final Order.² The Petition questioned three aspects of the Final Order and requested that PHMSA reconsider its findings.³

Because the evidence of record supports the findings in question, I am denying the Petition and affirming the Final Order without modification.

Background

Following a December 2015 onsite pipeline safety inspection of Respondent's facilities and records in Susanville, California by OPS, on June 7, 2016, the Director, Western Region, OPS (Director) issued a Notice of Probable Violation and Proposed Compliance Order (Notice) to Susanville, which also included a warning.⁴ In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Susanville had committed one violation of 49 C.F.R. Part 191, seven

¹ *City of Susanville*, Final Order, CPF No. 5-2016-0004 (June 1, 2018) (Final Order).

² One-page letter from Mr. Daniel Gibbs, PE, Acting Public Works Director, City of Susanville to Mr. Alan K. Mayberry, Associate Administrator for Pipeline Safety, PHMSA, dated June 19, 2018 (Petition).

³ *Id.*

⁴ Notice of Probable Violation and Proposed Compliance Order, CPF No. 5-2016-0004 (June 7, 2016).

violations of Part 192, proposed ordering Susanville to take certain measures to correct four of the alleged violations and that a warning be issued for four other probable violations.⁵

Susanville responded to the Notice by letter dated July 12, 2016, as supplemented by letter dated December 29, 2016. Susanville contested the allegations and requested a hearing. A hearing was subsequently held on January 11, 2017, in Lakewood, Colorado before a PHMSA Presiding Official.

On June 1, 2018, I issued a Final Order that sustained all four of the findings of violation proposed in the Notice. Specifically, I found that the 6-inch diameter pipeline operated by Susanville was properly classified as a transmission line under two different prongs of the regulatory definition of a transmission line, either of which renders it a transmission line, and that Susanville had an obligation to comply with the regulatory requirements for transmission lines. Susanville acknowledged that if the pipeline were determined to be a transmission line, the facts as alleged in the Notice established the cited violations. Accordingly, I found that Petitioner had violated §§ 191.17(a), 192.907(a), 192.611(d), and 192.805 as alleged in the Notice, ordered Susanville to take certain measures to correct these four violations, and issued a warning for four other probable violations.

On June 19, 2018, Susanville submitted this Petition requesting reconsideration of the Final Order's determination that the pipeline was properly classified as a transmission line.

Standard of Review

Under 49 C.F.R. § 190.243, a respondent is afforded the right to petition the Associate Administrator for reconsideration of a final order. However, that right is not an appeal or an opportunity to seek a de novo review of the record.⁶ It is a venue for presenting the Associate Administrator with information that was not previously available or requesting that any errors in the final order be corrected. Requests for consideration of additional facts or arguments must be supported by a statement of reasons as to why those facts or arguments were not presented prior to the issuance of the final order. Repetitious information or arguments will not be considered.

Analysis

In its Petition, Susanville raised three issues for reconsideration relating to the determination that the 6-inch diameter, 10-mile pipeline it operates is properly classified as a transmission line. First, Susanville contends that it did not have the opportunity to address the relevance of the regulatory term "large volume customer" in the proceeding. Second, Susanville expressed the concern that a 2016 Notice of Proposed Rulemaking (NPRM) raised by Susanville in its

⁵ OPS simultaneously issued a Notice of Amendment (NOA) proposing to require Susanville to amend certain of its written operating and maintenance procedures. Notice of Amendment, CPF No. 5-2016-0005M (June 7, 2016). An Order Directing Amendment for that proceeding was issued simultaneously with the Final Order for which Susanville also filed a Petition for Reconsideration. A Decision on Reconsideration for that Petition is being issued simultaneously with this decision.

⁶ 49 C.F.R. § 190.243(a)-(d).

Response and during the hearing was not sufficiently considered in support of its arguments. Third, Susanville questioned whether the location where its large volume customers were connected to the pipeline may constitute a connection or branch that would warrant changing the transmission line classification to distribution line for the portion of the pipeline extending between that location and the Susanville City Gate station. I will discuss each in turn.

With respect to the first issue, Susanville contends that it did not have the opportunity to address the relevance of the regulatory term “large volume customer” in the proceeding. As discussed during the hearing, however, this term is a significant aspect of the applicability of the definition of a transmission line in a scenario where one or more large volume customers are present. I reached the following conclusions in the Final Order as to how the large volume customer provision impacted the classification of the pipeline:

The terms Distribution line and Transmission line are defined in 49 C.F.R. § 192.3 as follows:

Distribution line means a pipeline other than a gathering or transmission line.

Transmission line means a pipeline, other than a gathering line, that: (1) Transports gas from a gathering line or storage facility to a distribution center, storage facility, or large volume customer that is not down-stream from a distribution center; (2) operates at a hoop stress of 20 percent or more of SMYS; or (3) transports gas within a storage field.

Note: A large volume customer may receive similar volumes of gas as a distribution center, and includes factories, power plants, and institutional users of gas.

A pipeline meets the regulatory definition of a transmission line if meets any one of the three prongs set forth in the definition. OPS contended that the pipeline was a transmission line because it met two of the three prongs. OPS stated that the pipeline met the first prong in that it transported gas to a large volume customer that is not down-stream from a distribution center, and met the second prong in that it operates at a hoop stress of 20 percent or more of specified minimum yield strength (SMYS). Susanville disagreed with OPS and argued that neither of the two prongs OPS pointed to were met. In making my determination, I will apply these two prongs of the definition to Susanville’s pipeline separately.

First Prong. The first prong involves a determination on whether the pipeline transports gas to a large volume customer that is not down-stream from a distribution center.

The line serves a power plant and a state correctional facility upstream of the City Gate. It is well settled that lateral pipelines that extend from

another transmission line to a large volume customer or distribution center such as a town gate station are transmission lines.⁷ The transmission line definition explicitly states that large volume customers include power plants and institutional users of gas.⁸ Respondent further argued that it does not consider the power plant and correctional facility as customers because they do not purchase gas from the City of Susanville. Although Respondent does not sell gas to its large volume customers, it sells a service to them. Specifically, Respondent is paid to transport gas from the Tuscarora Pipeline Company to the prison and power plant. Therefore, the prison and the power plant are customers of the City of Susanville.⁹

Petitioner and OPS had a thorough exchange concerning the transmission line definition including the large volume customer aspect of the definition. Nothing impeded Susanville from making its arguments in this area in the course of the proceeding and it did so.¹⁰ Moreover, Susanville did not take the opportunity to use its Petition to provide any factual information or legal arguments bearing on the definition that it believes it did not provide at an earlier stage of this proceeding.

With respect to the second issue, Susanville expressed the concern that the 2016 NPRM raised by Susanville in its Response and during the hearing was not sufficiently considered in support of its arguments. Susanville raised this NPRM in connection with the applicability of the term “distribution center” which is not defined in the regulations (notably, the NPRM has not become a Final Rule). The Final Order discussed this portion of the NPRM in the following manner:

Susanville also argued that the power plant and the correctional facility were downstream of a “distribution center” which, if correct, would negate a transmission line designation under this prong of the definition. Section 192.3 does not contain a definition of a distribution center, but the term is generally understood to mean the point where an incoming gas pipeline branches into a lower pressure network of distribution lines that provide gas service to customers.¹¹ Respondent further argued that it believed its position was supported by a Notice of Proposed Rulemaking (NPRM) issued by PHMSA in 2016 that proposed adding a definition of distribution

⁷ See, e.g., *Southern Star Central Gas Pipeline, Inc.*, Final Order, CPF No. 3-2008-1005 (Oct. 21, 2011).

⁸ In a prior PHMSA Letter of Interpretation, the agency stated that “. . . the maintenance and operating requirements for a pipeline supplying a power plant are consistent with other transmission pipelines, not service lines in a distribution system. PHMSA Interpretation No. 09-0022 (Mar. 8, 2010).

⁹ During the hearing, Respondent also noted that the definition of transmission line uses the singular term “large volume customer,” while its line serves two large volume customers. However, the rules of regulatory construction at § 192.15(b)(1) state that “in this part, words importing the singular include the plural.”

¹⁰ Letters from Mr. Dan Newton, PE, to Mr. Larry White, Presiding Official, PHMSA, and Mr. Chris Hoidal, Director, Western Region, PHMSA, dated December 29, 2016 and February 21, 2017.

¹¹ Letter from Edward J. Ondak, Director, Office of Pipeline Safety, to David Sinclair, Vice President of Operations, Enstar Natural Gas Company, CPF No. 58014W, 1998 WL 35166442 (Aug. 21, 1998).

center to § 192.3.¹² This NPRM proposed defining a distribution center as a location where “gas volumes are either metered or have pressure or volume reductions prior to delivery to customers.” However, this proposed definition appears to refer to typical gas utility customers such as homes and businesses because it did not use the term large volume customers. The proposition that the word “customers” in this proposed definition of “distribution center” should include large volume customers would be inconsistent with the longstanding regulatory definition of “transmission line” which expressly includes lines serving large volume customers. In any event this NPRM has not become a final rule. In this instance, the location where a network of distribution lines that serves as the distribution center delivering gas service to customers is the Susanville City Gate station at the downstream end of the 10-mile segment. Therefore, Respondent’s pipeline serves two large volume customers that are not downstream from a distribution center and the first prong is met.

Susanville also raised the NPRM in connection with arguing whether the established maximum allowable operating pressure (MAOP), not the current actual operating pressure, is used for regulatory classification purposes. The Final Order discussed this portion of the NPRM in the following manner:

Prior PHMSA pipeline enforcement proceedings and interpretations make it clear that the established MAOP, not the current actual operating pressure, is used for regulatory classification purposes.¹³ For example, PHMSA issued an Interpretation Letter stating that a pipeline that delivered gas to a large volume customer qualified as a transmission line despite the fact that the pipeline actually operated at less than 20% of SMYS.¹⁴ If actual operating pressure could be used, there would be nothing stopping an operator from easily configuring its line to raise the pressure as high as the established MAOP at times and lower it at other times causing uncertainty in the classification and affecting the applicability of various maintenance requirements. Thus, for purposes of classification as a line that operates above or below 20 percent SMYS, operators must use the established MAOP for the pipeline when determining the hoop stress. If an operator wants to de-rate or lower its MAOP for whatever reason, it would need to be done in a permanent manner reflected in its written procedures and design plans.

With regard to Respondent’s argument that its position was supported by the NPRM issued by PHMSA in 2016, the preamble reveals that the impetus

¹² *Pipeline Safety: Safety of Gas Transmission and Gathering Lines*, (81 Fed. Reg. 20807). This NPRM has not become a final rule.

¹³ See, e.g., *Breitbart Energy Partners, LP*, Final Order, CPF No. 5-2009-0008 (Apr. 2, 2012).

¹⁴ PHMSA Interp. No. 01-0102 (Feb. 15, 2001).

for proposing a change to the Transmission line definition was to address the demarcation between transmission and gathering lines, not between transmission and distribution lines.¹⁵ While the NPRM was silent on the reason for this particular proposed change to this prong (*i.e.*, replacing “operates at...” with the term MAOP), if anything the absence of discussion implies that this was a clarification to existing policy and practice as opposed to being needed to drive a significant change in behavior. Therefore, Respondent’s pipeline operates at a hoop stress above 20 percent SMYS for purposes of classification and the second prong in the definition of transmission line is met.

The Petition does not provide any explanation or argument as to what, if anything, about the analysis in the Final Order of the NPRM content was erroneous. I fully considered Susanville’s arguments citing the NPRM and found them unpersuasive for the reasons stated in the Final Order. There is nothing in the Petition that would warrant a change in this conclusion. If a future rulemaking proceeding in this area becomes final and takes effect, Susanville can subsequently request that OPS review the classification of its pipeline under that future regulation. Like any enforcement case, however, I must decide this case under the existing regulations.

With respect to the third issue, Susanville questioned whether the location where its large volume customers were connected to the pipeline may constitute a connection or branch that would warrant changing the transmission line classification to distribution line for the portion of the pipeline extending between that location and the Susanville City Gate station. Presumably, Susanville is conceding that the portion of the 10-mile pipeline upstream of the large volume customers is a transmission line, but would argue that this does not mean the portion downstream of that point could not be a distribution line. Susanville, however, did not present facts in its Petition that would establish that the location where the large volume customers received gas was a distribution center. Even if Susanville had attempted to do so, this argument would presumably be negated by the second prong of the definition of a transmission line which involves a determination on whether the pipeline operates at a hoop stress of 20 percent or more of specified minimum yield strength (SMYS).¹⁶ The established MAOP of the pipeline currently applies to its entire length. Susanville did not provide any documentation or evidence that it has taken any steps to permanently de-rate the MAOP of the portion of the pipeline downstream from the large volume customers during the proceeding or in connection with its Petition.

¹⁵ *Pipeline Safety: Safety of Gas Transmission and Gathering Lines*, (81 Fed. Reg. 20807). This NPRM has not become a final rule.

¹⁶ Final Order at 4-5.

RELIEF DENIED

Based on the information provided in the Petition, a review of the record, and for the reasons stated above, I am affirming the Final Order without modification.

This Decision is the final administrative action in this proceeding.

June 27, 2019

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued