

JUN 16 2010

Mr. David DeVeau
Vice President, General Counsel
Gas Pipeline Operations & Engineering
Kinder Morgan, Inc.
One Allen Center, Suite 1000
500 Dallas Street
Houston, TX 77002

RE: CPF No. 3-2007-5027H

Dear Mr. DeVeau:

I am writing in response to your April 7, 2008 letter, entitled “Petition for Reconsideration.” This Petition was submitted following a March 17, 2008 Post-Hearing Decision (Decision) continuing the Corrective Action Order (CAO) that the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued on September 13, 2007. In the Petition, Kinder Morgan Pipelines (USA), Inc., formerly known as Terasen Pipelines (USA), Inc. as operator of the Platte Pipeline Company (Petitioner or Platte), states that, “[I]t was and remains Platte’s position that a hazardous condition did not exist at the time of the issuance of the CAO.”¹ Petitioner requests that “PHMSA rescind the ‘hazardous’ finding contained in the CAO, either by withdrawing the CAO itself or converting the CAO to a Consent Order.”²

Before responding to your request, I note that your letter presumes that Petitioner has the right to file a petition for reconsideration in this case. However, the Pipeline Safety Laws do not afford you such a right.³ Nonetheless, I will address your concerns as a matter of discretion.

¹ Petition for Reconsideration in the Matter of Terasen Pipelines (USA), Inc. CPF No. 3-2007-5027H.

² *Id* at 2.

³

The authority relied upon in your letter, 49 C.F.R. § 190.215, states, in relevant part, that “[a] respondent may petition the Associate Administrator, OPS for reconsideration of a final order issued under § 190.213.” I note that only “enforcement proceedings commenced under § 190.207”—i.e., those proceedings that “begin[.]” when “a Regional Director . . . serv[es] a notice of probable violation on a person charging that person with a probable violation of 49 U.S.C. 60101 et seq. or any regulation or order issued thereunder”—result in a final order issued under § 190.213. As this proceeding commenced under 49 C.F.R. § 190.233(b) when the Director, Central Region, OPS, served your company with a CAO after he found that Platte Pipeline was a hazardous facility, and I issued my Decision in support of that finding under 49 C.F.R. § 190.233, the right to seek reconsideration under 49 C.F.R. § 190.215 is not applicable.

.

Petitioner supports its contention that no hazardous condition existed by reminding PHMSA of its full cooperation with PHMSA following the September 6, 2007 release. This is an argument that, as Platte states, was also raised in its Request for Hearing submission and in its Post-Hearing Submittal. I thoroughly addressed this in the Decision and Petitioner has not provided any justification for amending it. Furthermore, Petitioner has failed to specify any new evidence or analysis that was not raised at the hearing held on November 9, 2007, or in Petitioner's post-hearing submission. Therefore, there is no basis upon which to reconsider the Decision.

Furthermore, Platte stated that it was filing the petition "solely to preserve Respondent's rights in the event that the parties do not ultimately reach a satisfactory resolution." PHMSA and Platte have since agreed upon a return-to-service plan that has been implemented by the company. Therefore, it appears that Petitioner no longer has an interest in pursuing this Petition for Reconsideration.

After considering all the evidence, I hereby deny Platte's Petition for Reconsideration.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

cc: Mr. David Barrett, Director, Central Region, PHMSA

Robert Hogfoss and Catherine D. Little, Hunton & Williams LLP
Bank of America Plaza, Suite 4100
600 Peachtree Street, NE, Atlanta, GA 30308-2216

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7009 1410 0000 2472 2537]