

DECEMBER 5, 2013

Mr. Terry W. Carter, CEO
PostRock Energy Corporation
210 Park Ave #2750
Oklahoma City, Oklahoma 73102

Mr. Gary Navarro, President
MV Purchasing, LLC
8301 East 21st Street, Suite 370
Wichita, Kansas 67206

Re: CPF No. 3-2011-1014

Gentlemen:

Enclosed please find the Decision on Petitions for Reconsideration issued in the above-referenced case. It grants the Petition for Reconsideration, in part, to the extent that PostRock Energy Corporation requests to be removed as a party to this proceeding is granted. Further, the joint petition filed by MV Purchasing and KPC Pipeline, LLC is granted, in part, and denied in part. MV Purchasing's petition for dismissal from the proceeding is granted. However, the request for a reduction of the civil penalties is denied. The Decision upholds the findings of violation and the civil penalty set forth in the Final Order. 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,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Ms. Linda Daugherty, Central Region Director, OPS

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)	
)	
PostRock KPC Pipeline, LLC,)	CPF No. 3-2011-1014
now known as KPC Pipeline, LLC,)	
)	
Respondent.)	
)	

DECISION ON PETITIONS FOR RECONSIDERATION

On June 10, 2013, pursuant to 49 U.S.C. § 60122 and 49 C.F.R. § 190.213, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), issued a Final Order in this proceeding, finding that PostRock Energy Corporation (PostRock Energy) committed various violations of the Pipeline Safety Regulations in 49 C.F.R. Part 192. The Final Order assessed a civil penalty of \$65,000 and specified actions that needed to be taken by MV Purchasing, LLC (MV Purchasing), the current owner of the pipeline system, to comply with the Pipeline Safety Regulations.

By letters dated June 28, 2013, and July 3, 2013, PostRock Energy and MV Purchasing, in concert with KPC Pipeline, LLC (KPC), respectively, submitted separate Petitions for Reconsideration. PostRock Energy requested reconsideration of its inclusion as a named party in the Final Order. MV Purchasing and KPC's joint petition (Joint Petition) requested reconsideration of whether: 1) MV Purchasing was a properly named party; 2) the Associate Administrator properly applied the penalty mitigation factors set forth in 49 C.F.R. § 190.225; and 3) the proposed civil penalty should be reduced in light of the mitigating factors.

Pursuant to 49 C.F.R. § 190.215, a respondent may petition the Associate Administrator for reconsideration of a final order. Reconsideration is not a right to appeal or to seek a de novo review of the record. It is an opportunity to present the Associate Administrator with previously unavailable information or to request that any errors in the Final Order be corrected. A respondent must submit a valid reason why such information was not presented prior to issuance of the Final Order. The Associate Administrator may grant or deny, in whole or in part, a petition for reconsideration without further proceedings, or may request additional information, data, and comment as deemed appropriate.

I. Background

PHMSA issued a Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order (“Notice”) in this proceeding on August 23, 2011. The Notice was issued to PostRock KPC Pipeline, LLC (PostRock KPC).¹ PHMSA received response letters from both PostRock KPC and PostRock Energy.² After the Notice was issued but prior to the date of the Final Order, MV Purchasing, by letter dated November 12, 2012, informed PHMSA that it had purchased PostRock KPC in September 2012. Accordingly, PHMSA issued the Final Order on June 10, 2013, to PostRock Energy, directing that PostRock Energy pay a civil penalty of \$65,000 and requesting that MV Pipelines, as the new owner, to perform the necessary actions set forth in the Proposed Compliance Order.

II. PostRock Energy’s Petition

In its Petition, PostRock Energy argues that it is not a proper party to the proceeding and should be removed entirely from the Final Order. It asserts that at the time of the Notice, PostRock KPC’s sole member was PostRock Energy Services Corporation (PESC), a wholly-owned subsidiary of PostRock Energy, but that at no time did PostRock Energy or PESC own or operate the pipeline. On the contrary, PostRock Energy represents that, at all relevant times, PostRock KPC has been a separate legal entity and has therefore been the only real party in interest in this proceeding.³ Once PostRock KPC was purchased by MV Pipelines, the entity’s name was simply changed from “PostRock KPC Pipeline, LLC” to “KPC Pipeline, LLC.”

PHMSA issued the Final Order to both PostRock Energy, the putative parent of PostRock KPC, and MV Purchasing, the new owner, due to the 2012 sale of PostRock KPC’s membership units to MV Purchasing. However, based upon the new information provided by PostRock Energy in its Petition about the legal status of PostRock KPC, now operating under its new name of KPC Pipeline, LLC, I find that the Final Order in this proceeding should be issued solely to the new operating entity, KPC Pipeline, LLC, instead of the two previously-named companies.

III. Joint Petition

In the Joint Petition, MV Purchasing and KPC (jointly, Petitioners) request reconsideration of whether:

1. MV Purchasing is a proper party to this proceeding;
2. the Associate Administrator properly applied the mitigating factors set forth in 49 C.F.R. § 190.225; and
3. the proposed civil penalty should be reduced in light of the mitigating factors.

¹ While the Notice was issued to PostRock KPC Pipeline, LLC, the Final Order was issued to PostRock Energy and MV Purchasing.

² At the time the Final Order was issued, PHMSA was under the impression that PostRock KPC was a wholly-owned subsidiary of PostRock Energy.

³ PostRock Energy’s Petition, at 1-2.

Issue 1: This issue has already been discussed above as part of PostRock Energy's Petition. As discussed above, I find that KPC is the proper party in this proceeding.

Issue 2: Petitioners argue that the Associate Administrator failed to consider the mandatory factors provided in 49 C.F.R. § 199.225(a) in assessing the penalties; therefore, it deserves a reduction of the civil penalties imposed in the Final Order.

Petitioners assert that the Associate Administrator failed to consider that the violations of §§ 192.465(d), 192.481(a) and 192.479(a) concern long-term monitoring and prevention, rather than acute conditions posing a more immediate hazard. Petitioners point to the fact that there were no pipeline failures, and no injuries to persons, property or the environment arising out of the violations. I have reviewed the record and find that the civil penalty proposed in the Notice and documented in the Violation Report already took into account that there were no pipeline failures or injuries to persons, property or the environment.

Additionally, Petitioners reiterate that for Item 1, seven of the twelve deficiencies relate to a period of time before KPC owned and operated the pipeline. In addition, the violations in Item 3 occurred both before and after KPC became the owner and operator of the pipeline. Petitioners suggest that while KPC does not seek to avoid liability for all the instances of noncompliance, the fact that some of them occurred prior to KPC's ownership of the line should serve to mitigate a portion of the penalty. This argument, however, was raised in the Response and considered in the issuance of the Final Order and no new information has been provided; therefore, I will not address this issue here.⁴

Petitioners also point to the fact that KPC is not "a habitual violator." Again, as noted in the Violation Report, KPC's compliance history was already taken into account in the proposed penalty. One prior case against KPC PostRock, involving two violations, was considered and used in calculating the proposed penalty. There is no indication that these prior violations prompted PHMSA to consider PostRock KPC "a habitual violator", but prior violations are generally considered in assessing all civil penalties.⁵

Finally, as part of their good faith argument, Petitioners argue that KPC corrected all of the deficiencies enumerated in Item 1 of the Notice either before PHMSA's inspection or before the Notice was issued. They further assert that for Item 3, KPC purchased new software to better comply with regulatory monitoring duties and completed an entire inspection of the pipeline for exposed pipe. It also submitted a schedule to PHMSA for completing all remedial work as a result of that inspection and has since completed that schedule and remediated the four exposed pipe locations identified in the Notice within a month of receiving the Notice.

Petitioners argue that these good faith actions, taken both before and after the issuance of the Notice, should serve as an additional basis to reduce the proposed penalty. I disagree. In determining a penalty reduction based on good faith, the agency does not look at what an

⁴ Final Order at 5.

⁵ Violation Report at 23.

operator does after a violation has occurred, but instead considers “if the operator’s interpretation of the requirement was reasonable and the operator had a credible belief that its approach to achieving compliance was faithful to its duty to meet the regulatory obligation.”⁶ In this case, there is no indication that PostRock KPC based its actions, even prior to the PHMSA inspection, on a reasonable or credible belief that it was complying with the regulation. Moreover, the agency expects any reasonable operator to take preventative measures post-violation to ensure that a violation does not occur again in the future. Therefore, I do not find Respondent’s arguments persuasive that its actions warrant mitigation of the proposed penalty.

IV. Conclusion

Based on a review of the record and for the reasons stated above, PostRock Energy’s request to be removed as a party to this proceeding is granted. I further grant, in part, and deny, in part, the Joint Petition. MV Purchasing’s petition for dismissal from the proceeding is granted. However, the request for mitigation of the civil penalties assessed in the Final Order for violations of §§ 192.465(d) (Item 1) and 192.481(a) (Item 3) is denied.

Payment of the civil penalty of \$65,000 is now due and must be made within 20 days of service. 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 (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$65,000 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 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.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued

⁶ Violation Report at 6.