

[REDACTED]

July 3, 2013

Mr. Jeffrey D. Wiese
Associate Administrator
Office of Pipeline Safety, PHMSA
1200 New Jersey Avenue, SE
East Building, 2nd Floor
Washington D.C. 20590

Re: CPF No. 3-2011-1014, Petition for Reconsideration

Dear Mr. Wiese:

Please find enclosed three (3) copies of MV Purchasing and KPC Pipelines joint petition for reconsiderations of the Final Order in cause CPF No. 3-2011-1014.

Thank you for your consideration.

Sincerely,



Lee Bullock
President of KPC Pipeline, LLC

Enclosure

C: Office of Chief Counsel, PHMSA (w/ enclosure)
PostRock Energy Corporation (w/ enclosure)

**JOINT PETITION FOR RECONSIDERATION
OF MV PURCHASING, LLC AND KPC PIPELINE, LLC
(CPF No. 3-2011-1014)**

Introduction

MV Purchasing, LLC (“MV”) received the June 10, 2013 Final Order issued in this matter via certified mail on June 17, 2013. Therefore, this Joint Petition is timely. Although KPC Pipeline, LLC (“KPC”) is not named in the Final Order and has not been served with it, KPC received actual notice of the Order and deems itself served. Because KPC, not MV, owns and operates the interstate gas pipeline at issue (the “Pipeline”), KPC is the party in interest and should be substituted for MV. MV and KPC are referred to collectively as “Respondents,” and individually as MV or KPC.

Statement of the Issues

Respondents object to the Final Order and respectfully request that PHMSA reconsider it. The issues presented are whether:

- (i) MV is a proper party to this proceeding;
- (ii) the Associate Administrator properly applied the mitigating factors set forth in 49 CFR §190.225; and
- (iii) the proposed civil penalty should be reduced in light of the mitigating factors.

Proposition I

MV is Not a Proper Party to This Proceeding and Should be Removed From the Final Order.

This proceeding was commenced on September 16, 2011 by PHMSA’s issuance of its Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order (the “Notice”). The Notice was correctly issued to PostRock KPC Pipeline, LLC (“PostRock KPC”), the legal entity which, at that time, owned and operated the Pipeline.

PostRock KPC is a Delaware limited liability company. At the time of the Notice, PostRock KPC’s sole member was PostRock Energy Services Corporation (“PESC”), a Delaware corporation. On or about September 26, 2012, MV Pipelines, LLC purchased all of the limited liability membership units of PostRock KPC from PESC. Thereafter, MV Pipelines changed the entity’s name from “PostRock KPC Pipeline, LLC” to “KPC Pipeline, LLC” (*See*, tariff filing submitted to FERC on November 29, 2012).¹ Hence, the entity which owned and

¹ To access KPC’s letter to FERC and the tariff filing, go to <http://www.gasnom.com/ip/kpc/>. In the Final Order, the Administrator states: “In late 2012, the Pipeline was sold and is now operated by MV Purchasing, LLC...” (Order, at p. 1). This statement is inaccurate. As noted above, PostRock KPC as a

operated the Pipeline during the times pertinent to the Notice continues to exist and to own and operate the Pipeline today. It has simply changed its name to KPC Pipeline, LLC. Therefore, MV should be removed from the Final Order and KPC should be substituted in its place as the correct party in interest.

Proposition II

Applying the Mitigating Factors in 49 C.F.R. §199.225 Would Reduce the Proposed Civil Penalty.

The regulation governing the imposition of a civil penalty, 49 C.F.R. §199.225, contains both mandatory factors which *must* be considered, and permissive factors which *may* be considered, in setting a penalty amount:

- (a) The Associate Administrator, OPS shall consider:
 - (1) The nature, circumstances and gravity of the violation, including adverse impact on the environment;
 - (2) The degree of the respondent's culpability;
 - (3) The respondent's history of prior offenses;
 - (4) The respondent's ability to pay;
 - (5) Any good faith by the respondent in attempting to achieve compliance;
 - (6) The effect on the respondent's ability to continue in business; and

- (b) The Associate Administrator, OPS may consider:
 - (1) The economic benefit gained from violation, if readily ascertainable, without any reduction because of subsequent damages; and
 - (2) Such other matters as justice may require.

The Associate Administrator recognized that any decision to impose a civil penalty is guided by the factors set forth above (Order, at pp. 4-5), but the Order is devoid of any indication that he actually *applied* the factors. Rather, the justification for the penalty and their amounts appears to rest solely on the fact that “Respondent did not contest the allegation.” (Order, at p. 5). Indeed, respondent self-reported several of the issues it discovered, so would have no basis to contest certain allegations.²

For example, §190.225(a)(1) mandates that the Associate Administrator consider “the nature, circumstances and gravity of the violation, including adverse impact on the environment.” The three numbered violations listed in the Order (Item Nos. 1, 3 and 4) for which a penalty is imposed all concern the *potential* for external corrosion to a pipeline. The Associate Administrator notes that the reason for these regulations is that corrosion “can cause failures and injuries to people and the environment.” (Order, at p. 5). However, the Order fails to

legal entity-- not just the pipeline owned and operated by the entity--was acquired; and the purchaser was MV Pipelines, LLC *not* MV Purchasing, LLC.

² Self-reporting of violations should be encouraged, not discouraged through the imposition of discretionary civil penalties.

mention that the subject regulations (§§ 192.465(d), 192.481(a) and 192.479(a)) concern long-term monitoring and prevention rather than acute conditions which pose a more immediate hazard.

Here, there were no failures, and no injuries to persons, property or the environment. In fact, the vast majority of the Pipeline is located in remote, rural areas with very low-density population, and, therefore, poses little risk in most cases. In fact, in the Violation Report prepared by PHMSA's own investigator, as to each of the violations in Item 1, 3 and 4, under the section describing the gravity³ of the violation, the investigator concluded that "pipeline integrity or safe operation minimally affected." This factor militates in favor of a lower or no civil penalty.

Section 190.225(a)(2) requires the Administrator to consider the "degree of the respondent's culpability." Concerning Item No. 1, it is undisputed that seven of the twelve deficiencies relate to a period of time *before* KPC owned and operated the Pipeline.⁴ At the time of PHMSA's inspection, only four of the test station deficiencies had not been corrected, but by December 1, 2011, those four had also been corrected. Likewise, Item No. 3 covers a period of time before and after KPC became the owner and operator of the Pipeline.

While KPC does not seek to avoid *all* for the deficiencies, the above facts are pertinent to the issue of Respondent's *culpability*. When fairly considered, they should result in some mitigation of the fine imposed.

It does not appear that the Associate Administrator considered the fact that KPC is not a habitual violator (§199.225(a)(3)), nor was Respondent's good faith in attempting to achieve compliance considered (§199.225(a)(5)). As noted above, concerning Item No. 1, KPC corrected eight of the twelve test stations *before* PHMSA's inspection, and corrected the remaining four *before* receiving the Notice of Probable Violation. Regarding Item No. 3, prior to submitting its response to the Notice of Probable Violation, KPC purchased new software (SmartPipe from The Compliance Group) at considerable cost to enable it to better comply with regulatory monitoring duties. In addition, Respondent completed an entire inspection of the Pipeline for exposed pipe and *self-reported* a total of 204 locations requiring corrective action. Respondent submitted a schedule, which was approved by PHMSA, for completing all remedial work and has since complied with that schedule. And concerning Item No. 4, Respondent remediated the four exposed pipe locations identified in the Notice of Probable Violation within one month of receiving the Notice.

Perhaps most importantly, after receiving the Notice of Probable Violation, KPC contacted the Central Region Director and requested an in-person meeting. Three representatives of KPC traveled to Kansas City to meet with Messrs. Warren Miller and Gabe Hodill at PHMSA's offices on December 6, 2011. At that meeting, the parties agreed to a plan of action regarding each item contained in the Notice of Probable Violation. The results of that

³ The Violation Report defines "gravity" as relating to "the seriousness of the probable violation, and includes consideration of whether it posed a significant threat to public safety and protection of the environment and where this threat occurred.

⁴ KPC acquired the entity which owned the Pipeline in late 2007.

meeting were commemorated by KPC's letter dated December 21, 2011 (a copy of which is attached as Exhibit "A"). KPC has fully complied with that plan of action.⁵

The "good faith in attempting to achieve compliance" factor of §199.225(a)(5) should not only be applied to the pre-violation period. KPC's proactive approach in self-reporting and correcting deficiencies identified by the PHMSA inspector, and the cooperation and corporate commitment demonstrated in remedying those deficiencies may be considered in determining the amount of civil penalty. *See* 199.225(b)(2). And, finally, the fact that KPC did not profit from the subject violations may also be considered in determining a fair penalty. §199.225(b)(1).

Conclusion

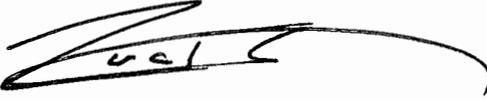
For all the above reasons, Respondents respectfully requests that:

- (a) MV Purchasing, LLC be removed from the Final Order and from any further proceedings; and
- (b) KPC Pipeline, LLC be replaced for MV Purchasing, LLC as the party in interest in this proceeding; and
- (c) the Final Order entered June 10, 2013 be reconsidered in light of the above standards and amended by reducing the civil penalty from \$65,000 to a lesser amount or zero.

Respectfully submitted,

MV Pipelines, LLC

By: _____


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⁵ Even though Item Nos. 2 and 5 in the Notice of Probable Violation were not included in the civil penalty, it should be noted that correction of those Items was included in the December 21, 2011 plan of action and have been or are being satisfied by KPC pursuant thereto.