

December 21, 2021

VIA ELECTRONIC MAIL TO:michael.koby@enbridge.com

Mr. Michael Koby
Vice President, U.S. Operations
Enbridge Energy, LP
5400 Westheimer Court
Houston, Texas 77056

Re: CPF No. 3-2020-5009

Dear Mr. Koby:

Enclosed is the Decision on the Petition for Reconsideration issued in the above-referenced case. For the reasons explained therein, the Decision grants your Petition in part, but does not withdraw any findings of violation. When the civil penalty has been paid and the terms of the Compliance Order are completed, as determined by the Director, Central Region, this enforcement action will be closed. 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. Gregory Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. David Stafford, Manager, U.S. Pipeline Compliance, Enbridge Energy, LLC,
david.stafford@enbridge.com
Mr. Darren Hunter, Counsel for Respondent, Hunter Masalski, LLC,
darren@huntermasalski.com

CONFIRMATION OF RECEIPT REQUESTED

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.¹ 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. Repetitious information or arguments will not be considered.² The Associate Administrator may grant or deny, in whole or in part, a petition for reconsideration without further proceedings.

Analysis

Item 1 of the Final Order found that Respondent violated 49 CFR § 195.116(e) by failing to maintain a means for clearly indicating the position of eight valves on its Bay City unit. Specifically, I found the excess discoloration on the eight valve protectors inhibited the ability of personnel to determine the valves' position. In making this finding, I evaluated all of the evidence of record, including the evidence and statements provided in the Respondent's Response and the Region Recommendation.

Respondent argued in its Petition that the following statement in the Final Order represents a factual error: "The Director also noted that PHMSA representatives observed Enbridge personnel remove the valve stem covers during the day to observe the valve position because the smoky discoloration inhibited their view."³ Respondent notes that this fact was first presented in the Region Recommendation, so the statement could not be disputed by the Respondent in its Response. Respondent asserts that Enbridge personnel did not remove the valve stem covers to observe the valve position as stated in the Region Recommendation and Final Order, but instead that Enbridge personnel removed the covers as "part of normal operations" and the removals were "not because of any discoloration."⁴ Respondent also stated the removal of the valve stem covers was consistent with Enbridge's O&M Manual, which sets forth its valve and actuator preventative maintenance procedures.⁵

After reviewing all of the evidence of record, I find it is appropriate to withdraw the statement at issue from the Final Order. While it is not disputed that Enbridge personnel removed the valve covers during the inspection, Respondent asserts it is factually an error to state that the purpose of removing the covers was specifically to observe the position of the valve. There is no evidence presented in the Violation Report or Region Recommendation that supports the statement the covers were removed with the specific purpose of determining the valve position.

¹ 49 C.F.R. § 190.243(a)-(d).

² *Plains All American Pipeline, LP*, CPF No. 5-2009-00118, 2013 WL 5883403, at *3 (August 30, 2013).

³ Final Order, at 3.

⁴ Petition, at 2.

⁵ *Id.*

Because the allegation was introduced in the Region Recommendation and there is no explanation or evidence supporting its veracity in the record, I find it is appropriate to grant Respondent's Petition and to withdraw the disputed statement from the Final Order. The statement is hereby withdrawn.

While withdrawal of the statement is warranted, it is not necessary to issue an Amended Final Order as Respondent has further requested because withdrawal of the sentence does not impact the finding of violation. The Final Order specified other reasons supporting the finding of violation of § 195.116, namely that the valve covers had such significant discoloration that the ability of the personnel to determine the valve position was inhibited. Since the withdrawal of the disputed statement has no impact on any finding of violation, associated compliance item or the civil penalty, it is not necessary to issue an Amended Final Order.

Conclusion

Based upon the foregoing, I am granting the Petition in part and withdrawing the disputed statement. No other amendments to the Final Order are made by this Decision, and the civil penalty of \$98,900 for the violations of is now due. 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 \$98,900 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 United States District Court.

This Decision on Reconsideration is the final administrative action in this proceeding.

December 21, 2021

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued