

BAKER BOTTS LLP

ONE SHELL PLAZA
910 LOUISIANA
HOUSTON, TEXAS
77002-4995

TEL +1 713.229.1234
FAX +1 713.229.1522
BakerBotts.com

AUSTIN	LONDON
BEIJING	MOSCOW
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April 27, 2017

VIA E-MAIL AND COURIER

Scott Janoe
TEL: 713-229-1553
scott.janoe@bakerbotts.com

Alan K. Mayberry
Associate Administrator
Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, SE
East Building, 2nd floor
Washington, DC 20590

Re: CPF No. 4-2014-5025
Centurion Pipeline L.P.'s Petition for Reconsideration

Dear Mr. Mayberry,

On behalf of Centurion Pipeline L.P., we file an original and two copies of its Petition for Reconsideration and Brief in Support with regard to Items 1 and 2 of the Final Order in the above-referenced matter.

Should you have any questions or require any additional information, please do not hesitate to contact me.

Sincerely,



Scott Janoe

SJ

cc: phmsachiefcounsel@dot.gov

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

In the Matter of)	
)	
Centurion Pipeline L.P.,)	CPF No. 4-2014-5025
 a subsidiary of Occidental)	
 Petroleum Corporation,)	
)	
Centurion.)	

**PETITION FOR RECONSIDERATION
AND
BRIEF IN SUPPORT**

Centurion Pipeline L.P., a subsidiary of Occidental Petroleum Corporation (“Centurion”), through its counsel, hereby submits its Petition for Reconsideration and Brief in Support pursuant to 49 C.F.R. § 190.243.

The Pipeline and Hazardous Materials Safety Administration (“PHMSA”) sent Centurion the Final Order for matter CPF No. 4-204-5025 (“Final Order”) by letter dated March 30, 2017. Centurion received the Final Order on April 7, 2017.

This Petition for Reconsideration seeks reconsideration by the Associate Administrator for Pipeline Safety of Items 1 and 2 of the Final Order, on the grounds stated herein.

PROCEDURAL BACKGROUND

1. Following an inspection of an accident that occurred January 30, 2014 on a pipeline operated by Centurion, PHMSA issued a Notice of Probable Violation dated September 30, 2014 (the “NOPV”). The NOPV proposed finding two violations of 49 C.F.R. Part 195 (“Items 1 and 2”) and a civil penalty of \$165,600 for the alleged violations. The NOPV is attached hereto as Exhibit A.
2. Centurion responded by letter dated October 30, 2014 (the “Response”). Centurion contested several allegations in the NOPV and requested a hearing regarding Items 1 and 2. Centurion submitted additional materials on April 20, 2014. A hearing before a Presiding Official from the PHMSA Office of Chief Counsel was held on April 29, 2015. Centurion provided a post-hearing statement for the record dated June 26, 2015 (the “Closing”). Centurion provided a

supplemental post-hearing statement on August 14, 2015 (the “Supplemental Closing”). The Response, Closing, and Supplemental Closing are attached hereto as Exhibits B-D.

STANDARD FOR PETITION FOR RECONSIDERATION

3. The standard for a Petition for Reconsideration is set forth in 49 C.F.R. § 190.243, which provides that Centurion may petition the Associate Administrator for reconsideration of a Final Order. Centurion meets the requirements to seek reconsideration of the Final Order. This Petition for Reconsideration is timely, as it was submitted within 20 days after the receipt of the Final Order by Centurion on April 7, 2017.
4. Centurion will not raise repetitious information or arguments, but will clarify its previously stated positions on Items 1 and 2. Centurion is concerned that PHMSA may have misinterpreted and/or misapplied the meaning and intent of its previous statements. Centurion seeks to clarify these statements in the Legal Discussion.
5. Consistent with 49 C.F.R. § 190.243(d), Centurion will provide any additional information that the Associate Administrator may require to resolve this Petition for Reconsideration.

LEGAL DISCUSSION

OVERVIEW OF FACTS

6. Items 1 and 2 in the NOPV stem from an incident that occurred on January 30, 2014, in which an excavator working for Kinder Morgan struck Centurion’s eight-inch Snyder-to-Post pipeline. Final Order at 5; Hearing Transcript at 7:17-7:18, attached as Exhibit E.
7. The line strike resulted in the release of approximately 475 barrels of crude oil from Centurion’s pipeline. Hearing Transcript at 207:24. Centurion immediately responded to the release and reported it to the Texas Railroad Commission. *Id.* at 192:9; Centurion H-8 Report to the Texas Railroad Commission, attached as Exhibit F. Centurion successfully recovered the released material and remediated the soil. Hearing Transcript at 143:8-143:13; Closing at 4; Centurion H-8 Report to the Texas Railroad Commission.
8. Centurion conducted an extensive internal review of the incident, determining that its employees had acted in accordance with applicable regulations and procedures and that the root causes of the line strike were the unavailability of information about an unmapped Kinder Morgan pipeline of identical size and manufacture (eight-inch steel) directly above the Centurion pipeline and Kinder Morgan’s failure to identify or mark its pipeline. *See* Centurion’s Internal Review Meeting Reports at 4-5, attached as Exhibit G.

ITEM 2: TEMPORARY MARKINGS

9. Item 2 of the NOPV alleged that Centurion violated 49 C.F.R. § 195.442(c)(5) by failing to provide accurate temporary markings of the eight-inch pipeline on November 12, 2013¹ and January 30, 2014.

CENTURION PROPERLY MARKED ITS PIPELINE AND COMPLIED WITH BOTH REGULATORY AND INDUSTRY STANDARDS.

10. Centurion has a robust integrity management and damage prevention program that uses multiple tools to identify the location of its pipelines and to take precautions against various threats that could cause damage to its pipelines. This program includes, among other things: GIS and Delorme mapping systems that use shapefile information from Centurion's pipelines; extensive employee training and certification programs for pipeline location and spotting methods and procedures; and state of the art pipeline location equipment. Hearing Transcript at 137:23-139:12, 146:20-146:23.
11. In addition, Centurion takes precautions to identify potential threats even before a one call notification comes in, including: regular inspections of river and creek crossings to ensure that pipe is not exposed following rain events; participation in local county meetings with emergency responders and citizens to make them aware of the presence of Centurion's pipelines; aerial patrols and surveillance approximately 50 times per year to look for excavation activities; ground patrols for threat monitoring if construction activity is in the area of a Centurion pipeline; and monitoring of USGS earthquake reports in areas of seismicity. *Id.* at 139:16-142:1.
12. Under 49 C.F.R. § 195.442(c)(5), temporary markings identifying existing pipelines are required "in the area of excavation activity." Relevant PHMSA guidance on pipeline mapping and marking does not clarify any further requirements for markings other than the markings should be "accurate and clear." PHMSA Advisory Bulletin, ADB-02-03, 67 Fed. Reg. 40769 (June 13, 2002). Industry standards such as the Common Ground Alliance ("CGA") Best Practices Guide provide a PHMSA-accepted framework for the marking of pipelines. *Id.* at 40770 ("Operators are also encouraged to collaborate with the Common Ground Alliance"). The CGA Best Practices require each operator to mark its facilities in the vicinity of an excavation with a unique identifier. Common Ground Best Practices Guide, Appendix B Ch. 4, at 5, attached as Exhibit H. Centurion complied with these relevant regulatory and industry standards and guidance. Kinder Morgan did not.
13. Centurion's pipeline mapping and marking system was successful and in compliance with PHMSA regulations, and Centurion's temporary markings were also accurate and clear. It is

¹ Centurion responded to multiple one-call notifications regarding this proposed excavation, as it was postponed. Hearing Transcript at 13:10-13:13. Centurion's original markings at the site corresponded to a six-inch pipeline owned by Kinder Morgan, not the eight-inch pipeline that was struck. *Id.* at 167:17-169:25. Upon excavating the pipeline and identifying it as a six-inch pipeline, Centurion searched for and marked the area of its eight-inch pipeline. *Id.* at 170:3-171:16. This six-inch pipeline also had not been marked by Kinder Morgan, leading to the initial confusion. *Id.* at 168:7-168:18. As of the time of the excavation activities, Centurion's eight-inch pipeline was clearly and properly marked. *Id.* at 198:12-198:13 ("he marked the area of excavation end-to-end.").

undisputed that Centurion's temporary markings were not only "in the area of" the excavation activity, but were "right above" its pipeline.

Mr. Tryon: ... is there a flag right above the strike location?

Mr. Cunningham: Yes.

Hearing Transcript at 174:12-174:14; *See also* Snyder Pipe Photo, attached as Exhibit I. Therefore Centurion complied with 49 C.F.R. § 195.442(c)(5).

BUT FOR THE UNFORESEEABLE EXISTENCE OF A THIRD-PARTY PIPELINE AND THEIR EXCAVATOR'S FAILURE TO COMPLY WITH TEXAS LAW, NO LINE STRIKE WOULD HAVE OCCURRED.

14. Even though it is undisputed that Centurion marked the area "right above" its pipeline, PHMSA concluded that Centurion "did not mark its own pipeline, but rather marked an unidentified pipeline operated by another company." Final Order at 6. PHMSA's logic is not only inconsistent with the regulatory requirement, but creates an impossible standard for compliance. There was no way Centurion could have known that Kinder Morgan had installed an identical eight-inch steel pipeline immediately above its pipeline. Hearing Transcript at 199:6-199:13 ("We had no way of knowing that these other two lines were there until the day of the excavation"). The newer pipeline was not identified on any database available to operators and Kinder Morgan -- the very same company that commissioned the new excavation -- did not mark it in the field. *Id.* at 7:17-7:18, 32:19-32:25. Confirmatory digs on-site during the planned excavation showed that the pipeline was of the same size and design as the expected Centurion pipeline. *Id.* at 184:24-184:25. But by PHMSA's reasoning, this is not enough. An operator would have to continue looking for more pipelines even after finding a pipeline that was the right size, and made of the right material, located in the right place.

15. But for the existence of Kinder Morgan's unmapped and unidentified pipeline, Centurion's markers would have allowed the excavator to locate Centurion's pipeline without issue. In fact, the third-party excavator would have uncovered the Centurion pipeline had the third-party excavator not encountered the unmarked pipeline, but instead continued to dig deeper.

Mr. Tryon: ... the strike location is directly under the Kinder Morgan 8-inch?

Mr. Cunningham: Right.

Hearing Transcript at 178:21-178:24.

16. To find a violation in this instance would impose a strict liability standard upon Centurion. PHMSA does not have the statutory or regulatory authority to impose strict liability upon pipeline operators. *See FDA v. Brown & Williamson Tobacco Corp*, 529 U.S. 120, 125 (2000) ("Regardless of how serious the problem an administrative agency seeks to address . . . it may not exercise its authority in a manner that is inconsistent with the administrative structure that Congress enacted into law.").

17. In addition, the excavator did not comply with Texas requirements for excavation within a tolerance zone. *See* 16 Tex. Admin. Code § 18.10(b) ("When excavation is to take place

within the specified tolerance zone, an excavator shall exercise such reasonable care as may be necessary to prevent damage to any underground pipeline in or near the excavation area.”). At the hearing, PHMSA suggested that these tolerance zone requirements did not apply because Centurion field personnel incorrectly assumed that Kinder Morgan’s unmarked pipeline was Centurion’s eight-inch pipeline. Hearing Transcript at 200:14-200:18 (“the tolerance zone sort of goes away because it’s already been exposed”). This is incorrect as a matter of law. Nothing in the Texas program waives an excavator’s obligation to adhere to the tolerance zone requirements. The Texas requirements allow “mechanical methods or technical methods [other than hand digging or hand tools] that may be developed may be used with the approval of the underground pipeline operator.” 16 Tex. Admin. Code § 18.10(b). However, the excavator in this instance did not receive approval from Centurion or Kinder Morgan to use a mechanical tool. Instead, the excavator “all of a sudden he starts chopping under the lines to tunnel these -- to make his tunnel. That’s when the strike occurred.” Hearing Transcript at 189:22-189:25. The Final Order appears to rely on PHMSA’s misstatement of the law and the facts and does not account for the excavator’s culpability in its penalty assessment. Final Order 6-7.

ITEM 2 CONCLUSION

18. Centurion complied with 49 C.F.R. § 195.442(c)(5) and the line strike only resulted from Kinder Morgan’s failure to properly map and mark its own pipeline.

Mr. White: Then why was it a surprise? If you correctly marked it, why was it a surprise to everyone of this extra 8-inch line? If that was your intent to mark it, why was it a big surprise to everyone on the site that it was there?

Mr. Cunningham: That’s a good question, Larry. It should not have been, right? . . . Kinder Morgan should have been there. They should have put their flags on the ground.

Hearing Transcript at 198:19-199:4. By no fault of its own, Centurion has been both inconvenienced by this outage and forced to incur significant repair and response costs.

19. Because the evidence is not sufficient to prove a violation of 49 C.F.R. § 195.442(c)(5), and instead indicates compliance with the requirement, Item 2 should be withdrawn for lack of sufficient evidence. Accordingly, the penalty for Item 2 should be eliminated or, at a minimum, reduced.

ITEM 1: MAPS AND RECORDS

20. Item 1 of the NOPV alleged that Centurion violated 49 C.F.R. § 195.404(a) by failing to maintain current maps of its eight-inch Snyder-to-Post crude pipeline.

CENTURION’S MAPS WERE ACCURATE AND COMPLIED WITH BOTH REGULATORY AND INDUSTRY STANDARDS.

21. Centurion’s robust integrity management program involves continual updating of mapping using the latest technology. Centurion’s maps are created using metered information from an

internal inspection tool merged with legacy source material and a spatial GIS database. Hearing Transcript at 86:4-87:8. This information is then given to field technicians who identify discrepancies as they are working in the field. *Id.* at 86:15-86:18. This collaborative approach is able to utilize field personnel, integrity engineers and GIS technicians to create an intelligent alignment sheet that includes risk-based information for Centurion's integrity management program. *Id.* at 87:9-87:15. For example, Centurion's map system includes subdivision and population information around its pipeline. *Id.* at 88:1-88:2. This allows Centurion's maps to not only be accurate, but part of a highly collaborative risk-based approach to integrity management. *Id.* at 88:3-88:8. These methods have resulted in Centurion being recognized as an example to the industry. Hearing Transcript at 86:21-86:23 ("The Centurion system . . . inspired me to write an article for Oil and Gas Journal").

22. Through this sophisticated system, Centurion maintained accurate and current maps in compliance with 49 C.F.R. § 195.404(a). This standard does not require or expect maps to be exactly accurate. PHMSA Advisory Bulletin, ADB-02-03, 67 Fed. Reg. 40769 (June 13, 2002); Hearing Transcript at 30:4-30:5. In fact, this is precisely why there is a one-call system pursuant to which an operator marks pipelines prior to excavation activities.
23. It is undisputed that Centurion's eight-inch Snyder-to-Post crude pipeline was accurately depicted on Centurion's map. Centurion's map depicted the eight-inch pipeline within eight feet. Centurion's expert confirmed during his hearing testimony that Centurion's maps were within acceptable industry standards for accuracy. Hearing Transcript at 97:5-97:7 ("in terms of [] sub-meter accuracy, you're not getting any better than that"). The fact that the third-party excavator was able to locate Centurion's pipeline is also evidence that Centurion's map was accurate.
24. Centurion disputes that the six-inch unregulated pipeline was inaccurately depicted. The location of the six-inch unregulated pipeline was off by approximately 150 feet on Centurion's map. Centurion's industry expert testified during the hearing that 150 feet is within the acceptable accuracy tolerance for an unregulated gathering line for the industry. Hearing Transcript at 98:20-98:24 ("150 feet is within the realm of an acceptable accuracy tolerance for a nonregulated gathering asset"). Moreover, the third-party excavation activities would have been an acceptable opportunity in which to update Centurion's map under PHMSA Guidance ADB-02-03. *See* ADB-02-03, 67 Fed. Reg. 40769; Hearing Transcript at 137:16-137:20; Closing at 10.

BUT FOR THE UNFORESEEABLE EXISTENCE OF A THIRD-PARTY PIPELINE, NO LINE STRIKE WOULD HAVE OCCURRED.

25. The only reason that there was damage to Centurion's pipeline during third-party excavation activities was the presence of unmapped pipelines that were not available on any mapping or information systems available to PHMSA-regulated operators. Hearing Transcript at 32:19-32:25. This fact was unforeseeable. Due to the five separate one-call tickets that were issued by this third-party excavator, Centurion's personnel had been out to the site several times. *Id.* at 13:10-13:13. There was no evidence during any of these visits that indicated the presence of Kinder Morgan's pipelines. *Id.* at 159:25-160:14 ("There were never in all of these five tickets any new flags placed. The only flags standing were the two lines of

Centurion flags at the excavation site. . . Nobody was working, nobody else was there.”). Centurion had no reason to know that Kinder Morgan’s pipeline was located over Centurion’s pipeline at the excavation site because Kinder Morgan failed to mark its pipelines in the area of excavation and the pipeline was not identified on mapping or information systems. *Id.* at 32:19-32:25, 199:6-199:13.

26. But for the existence of Kinder Morgan’s pipelines, Centurion’s pipelines would have been properly identified following the one-call pursuant to standard operating and industry procedures.

PHMSA’S POSITIONAL/RELATIVE TEST FOR ACCURACY IS WITHOUT BASIS AND NOT ENTITLED TO DEFERENCE.

27. PHMSA alleges that Centurion’s maps violated 49 C.F.R. § 195.404(a) based on a novel “positional” or “relative” accuracy test. This test reasons that even though a regulated pipeline is accurately depicted on a map, if another unregulated pipeline is inaccurately depicted on the map then the map as a whole is inaccurate due to the “relative” or “positional” accuracy of the regulated and unregulated pipelines. Hearing Transcript at 116:4 (“the NOPV . . . gives you the issue that was noted as the inaccuracy [sic] was the positional relationship between the two lines”); Final Order at 4. This test is not in the language of the regulations or PHMSA guidance. Indeed, there does not appear to be any precedent for this test. PHMSA has incorporated a completely new requirement into 49 C.F.R. § 195.404(a), thereby engaging in rulemaking without going through a required notice and comment procedure. *See* 5 U.S.C. § 553.
28. PHMSA’s reliance on the positional/relative accuracy test is part of a shift by PHMSA to change its allegations because Centurion showed that its temporary markings were in fact accurate. The Final Order incorrectly states that Centurion’s “map depicted the eight-inch pipeline in the wrong place.” Final Order at 4. PHMSA clarifies later in the Final Order that it meant “the map incorrectly depicted the eight-inch pipeline in relation to the six-inch unregulated pipeline.” *Id.* (emphasis added). This shift in allegations represents a litigation position rather than an agency interpretation of the regulatory standard. As such, PHMSA’s positional/relative accuracy test is not entitled to deference and is an inappropriate basis on which to find a violation of regulatory standards. *Bowen v. Georgetown University Hosp.*, 488 U.S. 204, 213 (1988).
29. Centurion cannot find and PHMSA does not provide any evidence showing that its positional/relative accuracy test is the recognized standard for compliance under 49 C.F.R. § 195.404(a). Moreover, an unregulated pipeline cannot cause a violation under the requirements. PHMSA appears to indicate that the unregulated pipeline is in the same category as “utilities” and is therefore contemplated in the language of the regulatory requirement. Final Order at 4. However, PHMSA does not provide a definition of “utility” and the six-inch pipeline does not meet any relevant definition of “utility.” *See* 16 USC § 824(e); 16 USC § 796(22)-(23). Instead, the unregulated pipeline meets PHMSA’s regulatory definition of “gathering line,” a term that is not included in Section 195.404(a). *See* 49 C.F.R. §§ 195.2, 195.404(a).

ITEM 1 CONCLUSION

30. Centurion has demonstrated that its maps were current and accurate at the time of the line strike in compliance with 49 C.F.R. § 195.404(a). PHMSA has not set forth any evidence showing that Centurion's regulated *or* unregulated pipelines were inaccurately depicted under PHMSA's standards. In addition, PHMSA has not cited any basis for its assertion that it may allege a violation based on a positional/relative accuracy standard. Because PHMSA has not set forth evidence sufficient to prove a violation of 49 C.F.R. § 195.404(a), and instead indicates compliance with the requirement, Item 1 should be withdrawn for lack of sufficient evidence. Accordingly, the penalty for Item 1 should be eliminated or, at a minimum, reduced.

CONCLUSION

31. For the foregoing reasons, Centurion Pipeline L.P. respectfully requests that the Associate Administrator grant its Petition for Reconsideration, withdraw Items 1 and 2 of the Final Order, and eliminate, or at a minimum reduce, the penalties associated with Items 1 and 2 of the Final Order.

April 27, 2017

Respectfully Submitted,
Counsel for Centurion Pipeline L.P.

_____/s/_____
Scott Janoe
Kim Tuthill White
Baker Botts LLP
910 Louisiana Street
Houston, Texas 77002

Cc: phmsachiefcounsel@dot.gov