

September 16, 2019

Mr. Alan S. Armstrong
President and Chief Executive Officer
Williams Partners, LP
One Williams Center
Tulsa, Oklahoma 74172

Re: CPF No. 4-2016-1008

Dear Mr. Armstrong:

Enclosed please find the Decision on the Petition for Reconsideration filed by Transcontinental Gas Pipe Line Company, LLC, a subsidiary of Williams Partners, LP. This Decision does not modify the supporting explanation for the findings associated with Item 1. This enforcement action closes automatically upon receipt of payment. 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,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Ms. Mary McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. John F. Jakuback, Kean Miller, LLP, II City Plaza, 400 Convention Street, Suite 700,
Baton Rouge, Louisiana 70802
Ms. Stephanie Timmermeyer, Vice President of Safety and Regulatory Compliance,
Williams Partners
Mr. Mark Cluff, Vice President of Safety and Operational Discipline, Williams Partners

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)

Transcontinental Gas Pipe Line Company, LLC,)
a subsidiary of Williams Partners, LP,)

Petitioner.)

CPF No. 4-2016-1008

DECISION ON PETITION FOR RECONSIDERATION

In a December 20, 2018 Final Order¹, I found that Transcontinental Gas Pipe Line Company, LLC, a consolidated entity of Williams Partners, LP (Transco or Petitioner), committed various violations of 49 C.F.R. Part 192. Transco was assessed a civil penalty of \$1,400,000, and ordered to take certain corrective actions to address the violations. This case arose out of an explosion at Respondent's Station 62 Facility in Gibson, Louisiana that killed four men and injured two others.

On January 11, 2019, Transco submitted a Petition for Reconsideration (Petition)² of the Final Order. Even though the Final Order withdrew Item 1 of the Notice of Probable Violation, the Petition requested that a paragraph discussing this allegation be removed from the Final Order.

Given that there is no legal or factual basis for this request, I am denying the Petition and affirming the Final Order without modification.

Background

From October 8, 2015, through May 26, 2016, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), investigated the accident. OPS also inspected Transco's procedures and records.

As a result of the investigation, the Director, Southwest Region, OPS (Director), issued a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice) to

¹ *Transco*, Final Order, CPF No. 4-2016-1006 (December 20, 2018).

² Petition for Reconsideration of Transcontinental Gas Pipeline Company, LLC, dated January 11, 2019 (Petition).

Transco.³ In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Transco failed to accurately report the incident in a timely manner, in violation of 49 C.F.R. § 191.5, committed various violations of 49 C.F.R. Part 192, proposed assessing a civil penalty of \$1,600,000, and proposed ordering Petitioner to take certain corrective actions to address the alleged violations.

Williams Partners, LP, on behalf of Transco, responded to the Notice by letter dated August 25, 2016. Williams contested one of the allegations and the associated civil penalty, asked for a withdrawal of the compliance order, and requested an informal meeting to discuss a consent order. Petitioner also requested an in-person hearing, if a compromise settlement could not be reached.⁴

A hearing was subsequently held on July 14, 2017, in Houston, Texas, with an attorney from the Office of Chief Counsel, PHMSA, presiding. After the hearing, Petitioner provided a post-hearing statement for the record by letter dated August 14, 2017. The Southwest Region also submitted a post-hearing statement for the record by letter dated August 15, 2017. Pursuant to § 190.209(b)(7), the Director submitted a written evaluation of Petitioner's arguments on December 28, 2017.

On December 20, 2018, pursuant to 49 C.F.R. § 190.213, PHMSA issued a Final Order⁵ in this matter. The Final Order withdrew one alleged violation of 49 C.F.R. § 191.5 (Item 1), but found that Transco committed the remainder of the alleged violations of 49 C.F.R. §§ 192.751(b) (Item 2), 192.605 (Items 3 and 5), and 192.805 (Item 4). The Final Order found that Transco satisfied the proposed compliance order and assessed a civil penalty of \$1,400,000. The Final Order also stated that these findings of violation would be considered prior offenses in any subsequent enforcement action taken against Transco.

On January 11, 2019, Transco filed a timely Petition for Reconsideration (Petition) pursuant to 49 C.F.R. § 190.243. Transco did not seek reconsideration of the findings or the assessed civil penalty. Instead, Transco requested a revision of the supporting explanation for the withdrawal of Item 1. Under § 190.243(c), the filing of a petition stays the payment of the assessed civil penalty. However, unless the Associate Administrator otherwise provides, it does not stay any required corrective action.

On January 30, 2019, OPS submitted a Region Response to the Petition (Response), and on February 7, 2019, Transco filed a Motion to Strike Southwest Region's Response or, in the

³ Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice), C.P.F. 4-2016-1008 (July 29, 2016) (available at https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420161008/420161008_NOPV%20PCP%20PCO_07292016.pdf)

⁴ Williams Response to Notice, (August 25, 2016) (on file with PHMSA).

⁵ *In the Matter of Transcontinental Gas Pipe Line Company, LLC*, Final Order, C.P.F. No. 4-2016-1008, December 20, 2018 (Final Order).

alternative, a Reply to the Response (Reply). This Decision was made without consideration of either the Response or the Reply.

Standard of Review

Pursuant to 49 C.F.R. § 190.243, an operator may petition the Associate Administrator for reconsideration of a final order issued under § 190.213.

§ 190.243 Petitions for reconsideration.

(a) A respondent may petition the Associate Administrator for reconsideration of an order directing amendment of plans or procedures issued under § 190.206, a final order issued under § 190.213, or a safety order issued under § 190.239. The written petition must be received no later than 20 days after receipt of the order by the respondent. A copy of the petition must be provided to the Chief Counsel of the Pipeline and Hazardous Materials Safety Administration, East Building, 2nd Floor, Mail Stop E26-105, 1200 New Jersey Ave. SE., Washington, DC 20590 or by email to phmsachiefcounsel@dot.gov. Petitions received after that time will not be considered. The petition must contain a brief statement of the complaint and an explanation as to why the order should be reconsidered.

(b) If the respondent requests the consideration of additional facts or arguments, the respondent must submit the reasons why they were not presented prior to issuance of the final order.

(c) The filing of a petition under this section stays the payment of any civil penalty assessed. However, unless the Associate Administrator otherwise provides, the order, including any required corrective action, is not stayed.

(d) The Associate Administrator may grant or deny, in whole or in part, any petition for reconsideration without further proceedings. If the Associate Administrator reconsiders an order under this section, a final decision on reconsideration may be issued without further proceedings, or, in the alternative, additional information, data, and comment may be requested by the Associate Administrator, as deemed appropriate.

(e) It is the policy of the Associate Administrator to expeditiously issue notice of the action taken on a petition for reconsideration. In cases where a substantial delay is expected, notice of that fact and the date by which it is expected that action will be taken is provided to the respondent upon request and whenever practicable.

(f) If the Associate Administrator reconsiders an order under this section, the decision on reconsideration is the final administrative action on that enforcement proceeding.

(g) Any application for judicial review must be filed no later than 89 days after the issuance of the decision in accordance with 49 U.S.C. 60119(a).

(h) Judicial review of agency action under 49 U.S.C. 60119(a) will apply the standards of review established in 5 U.S.C. 706.

Analysis

Transco's petition does not seek reconsideration of any findings or assessed civil penalties. Rather, Transco requests a revision of the supporting explanation for the finding associated with Item 1, which was withdrawn. Specifically, Transco objects to a paragraph (the "Paragraph") that discusses an alleged statement from Williams' employee Shane Frasier (the "Statement") that was contained in the Violation Report. Transco argues that the Paragraph is purely dicta and has no bearing on the ultimate determination of whether a violation of Item 1 occurred. Transco also argues that the Statement appears to have been completely disregarded by the Associate Administrator in reaching his decision. Moreover, Transco asserts that the Statement is inflammatory because it erroneously suggests that Williams' management knowingly hindered the release of information during the emergency response effort. For those reasons, the Petition requests that the Paragraph be stricken from the Final Order.

Pursuant to 49 C.F.R. § 190.213, a final order from the Associate Administrator must include a statement of findings and determinations on all material issues, including a determination as to whether each alleged violation has been proved.⁶ To be legally sufficient, the final order must be well-reasoned and explain its finding with more than a "conclusory statement."⁷ As the Supreme Court stated in *Motor Vehicle Manufacturers Association v. State Farm Auto Mutual Insurance Co.*, "the agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'"⁸

The very first sentence of the Paragraph at issue states, "[t]his issue can only be decided by weighing the probity of the witness testimony, both at the time of the accident and at the hearing." (emphasis added). The Paragraph then describes the competing claims as to the timing and sequence of events that occurred after the incident on October 8, 2015. The Paragraph presents the evidence provided by **both** parties (emphasis added), including alleged statements attributed to Williams' employees immediately following the accident and the written affidavits that were submitted at the Hearing. The Paragraph also notes that the OPS investigator who authored the Violation Report, Molly Atkins, was not available to testify at the hearing. The Final Order weighs the evidence before concluding that there is insufficient evidence to support a finding that Transco failed to give immediate notice of the number of injuries and fatalities. The Paragraph that the Petitioner seeks to strike contains the key facts that support the decision to withdraw Item 1.

The Petition also argues that the Paragraph contains an inflammatory statement that erroneously suggests that Williams' management knowingly hindered the release of information. However, the Paragraph discusses the *allegations* made against Transco, the evidence OPS collected during its investigation, and the evidence submitted by both parties in preparation for and during the hearing. Importantly, the Final Order specifically notes that Transco denied the allegation that it

⁶ 49 C.F.R. § 190.213(a)(1).

⁷ *Allied-Signal, Inc. v. Nuclear Reg. Comm'n*, 988 F.2d 146,152 (D.C. Cir. 1993).

⁸ 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 US 156, 168 (1962)).

withheld any information about the incident and that Transco stated it submitted all information known to it at the time.⁹ As explained above, the Paragraph describes the evidence that provides a rational connection between the facts found and the decision to withdraw Item 1. It is well within the authority of the decision maker to explain how it reached its decision to withdraw the violation and associated penalty. For these reasons, the Petition is denied.

Conclusion

Based on a review of the record and the information provided in the Petition, I hereby deny the Petition and affirm the Final Order without modification, for the reasons set forth above.

Payment of the \$1,400,000 civil penalty assessed in the Final Order is now due and must be made within 20 days of service of this Decision. The payment instructions were set forth in detail in the Final Order. Failure to pay the \$1,400,000 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 United States District Court.

This Decision constitutes final agency action taken by PHMSA in the enforcement proceeding. The terms and conditions of this Decision are effective upon service in accordance with 49 C.F.R. § 190.5.

September 16, 2019

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued

⁹ Final Order, page 2.