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Attorneys at Law

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BOULDER

March 8, 2007

COLORADO SPRINGS

Chris Hoidal, P.E.
Director, Western Region
Pipeline and Hazardous Materials Safety Administration
12300 W. Dakota Avenue, Suite 110
Lakewood, CO 80228

DENVER

Re: Bridger Pipeline Company LLC's Request for a Hearing;
CPF No. 5-2007-5003

Dear Mr. Hoidal:

LONDON

We are counsel to Bridger Pipeline Company LLC (Bridger) regarding the above-referenced Notice of Probable Violation and Proposed Compliance Order (collectively, the "NPV"). The purpose of this letter is to request an in-person hearing, as set forth in 49 C.F.R. § 190.211, on the NPV, and to provide a statement of the issues we intend to raise at the hearing. Generally, Bridger will raise numerous issues regarding both the NPV and the compliance order requirements set forth therein. Bridger will be represented by undersigned counsel.

LOS ANGELES

MUNICH

The NPV states that the Office of Pipeline Safety (OPS) will not pursue enforcement for the alleged violations constituting the Warning Items (Items 1, 2, 6a, 6b, 7, 8a, 8b, 9, 12 and 13). Therefore, we do not address those items here. However, Bridger does not admit to any of those alleged violations. The Warning Items have been investigated and have been addressed.

SALT LAKE CITY

Bridger has attempted to resolve this matter without the necessity for the filing of this hearing request. In May 2006, Bridger requested a meeting with OPS to address potential resolution of the NPV, prior to the deadline for seeking a hearing. However, OPS declined the invitation to meet.

SAN FRANCISCO

Furthermore, OPS has unnecessarily caused the parties to expend resources regarding this matter. As you know, CPF No. 5-2006-5004 contained allegations as to Bridger Pipeline LLC, (Bridger) but did not include Bridger as a party or make any allegations against Bridger. Instead, all of the allegations (and orders) were directed to Belle Fourche.

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On several occasions dating back to March 2006, we suggested that OPS simply identify the allegations and orders in CPF No. 5-2006-5004 that pertain to Bridger, serve a separate NPV on Bridger containing those allegations and orders, and name Bridger in this separate NPV. Bridger would then respond and we would agree to handling both proceedings on a consolidated basis.

On October 20, Belle Fourche and Bridger received a joint letter regarding CPF No. 5-2006-5004. The letter purported to "clarif[y] the application of" CPF No. 5-2006-5004 to Bridger and requested that Bridger "respond" within thirty days. However, attaching CPF No. 5-2006-5004 to a cover letter and asking Bridger to "respond" did not commence an enforcement action against Bridger.

OPS then sent a letter alleging that Bridger and Belle Fourche "are inextricably linked because they share the same manuals, personnel and resources." You nonetheless invited us to "articulate reasons" for treating the companies separately. On December 26, Bridger submitted a letter and exhibits confirming that Bridger and Belle Fourche are separate companies. On February 7, 2007, Bridger and Belle Fourche were issued separate NPV's, which is the result they have been seeking for approximately one year.

Bridger remains interested in pursuing settlement of this matter, and encourages OPS to agree to a dialogue. We do not believe that such cooperation is forbidden.

As set forth below, Bridger disputes the referenced items in the NPV, and avers that the proposed compliance measures (if not already corrected) are unreasonable, unnecessary and unduly burdensome and punitive, or they do not allow sufficient time to implement. The following list is keyed to the allegations in the February 2, 2007, NPV, CPF No. 5-2007-5003, that provide the material basis for the Proposed Compliance Order. Language from the NPV is in **bold**; our response in regular font:

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3. §195.214 Welding procedures

- (a) Welding must be performed by a qualified welder in accordance with welding procedures qualified under Section 5 of API 1104 or Section IX of the ASME Boiler and Pressure Vessel Code (ibr, see § 195.3). The quality of the test welds used to qualify the welding procedure shall be determined by destructive testing.**
- (b) Each welding procedure must be recorded in detail, including the results of the qualifying tests. This record must be retained and followed whenever the procedure is used.**

Butt and fillet weld procedures used for the Poplar pipeline integrity repairs completed in 2005 were not qualified using destructive testing.

These welding procedures have been qualified by destructive testing methods.

4. §195.230 Welds: Repair or removal of defects.

- (a) Each weld that is unacceptable under §195.228 must be removed or repaired. Except for welds on an offshore pipeline being installed from a pipe lay vessel, a weld must be removed if it has a crack that is more than 8 percent of the weld length.**
- (b) Each weld that is repaired must have the defect removed down to sound metal and the segment to be repaired must be preheated if conditions exist which would adversely affect the quality of the weld repair. After repair, the segment of the weld that was repaired must be inspected to ensure its acceptability.**

Records show that weld number XR 11 made during a short segment replacement project on the Poplar pipeline was rejected for a pinhole. There is no record that this weld was repaired and re-inspected. This weld XR 11 is not the same weld XR 11 that was part of the 17,000 foot repair project on the Poplar Pipeline.

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This allegation is vague and ambiguous. In addition, 49 C.F.R. § 195.230 requires the removal or repair of each weld that is “unacceptable” under § 195.228. However, § 195.228 does not state that a “pinhole” is “unacceptable” under Section 9 of API 1104, an external standard referred to by § 195.228. The pinhole in XR 11 was in a top layer. The on-site representative, Lance Wineteer, will testify that it was the ordinary practice to grind down and repair such superficial pinhole flaws at the time of the inspection, and that the failure to record such a procedure for weld XR 11 most likely is the result of a clerical error. Bridger will also present evidence about proper and consistent interpretation of the radiography reports prepared by T&K.

Locating the specific XR 11 weld would require extensive excavation in numerous locations. Without a clearly documented violation of the standards for welds, locating and excavating the weld concerning a superficial flaw is unnecessary and excessive, and not in accordance with industry practice. Further, due process requires fair notice of the law before imposing liability. Under the fair notice doctrine, a defendant cannot be held liable unless an agency proves that its interpretation of a regulation was ascertainably certain from the regulatory language and other public statements of the agency, or has otherwise been directly or authoritatively communicated to the defendant prior to the challenged activity. OPS has not provided fair notice of its interpretation of this regulation, and consequently it would violate due process to hold any party liable under that interpretation.

Further, even if a violation existed, a grant of jurisdiction to require remedial measures is not an absolute duty to do so under any circumstances. Balancing the equities and the risks, and taking into consideration a cost-benefit assessment, we believe that any corrective action is unnecessary or excessive.

5. §195.402 Procedural manual for operations, maintenance, and emergencies.

(c) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following to provide safety during maintenance and normal operations:

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(1) Making construction records, maps, and operating history available as necessary for safe operation and maintenance.

Alignment sheets reviewed in Glendive for the Poplar pipeline have been redlined to reflect new crossings and other changes. BPL reported that this set of alignment sheets are the only updated copy for the Poplar pipeline.

Alignment sheets have been disseminated and Bridger is engaged in an ongoing process of updating.

10. §195.422 Pipeline Repairs.

(a) Each operator shall, in repairing its pipeline systems, insure that the repairs are made in a safe manner and are made so as to prevent damage to persons or property.

None of the several type B repair sleeves installed on the Poplar pipeline in 2005 were NDTed at the sleeve to pipe fillet welds. Operator's records do not appear to indicate if these welds were visually examined. Industry practice has been to use some type of NDT inspection of all sleeve to pipe fillet welds to insure that repairs are made in a safe manner to prevent damage to persons or property during or after repairs.

All welds were inspected. In addition, the basis for this violation apparently is the belief that nondestructive testing of all sleeve to pipe fillet welds is "industry practice." However, 49 C.F.R. § 195.422(a) merely requires that "Each operator shall, in repairing its pipeline systems, insure that the repairs are made in a safe manner and are made so as to prevent damage to persons or property." Nowhere does the NPV cite to any relevant definition of "industry practice", and we do not believe that 49 C.F.R. § 195.422 requires such extensive nondestructive testing in order to ensure that repairs are made in a "safe manner". ASME B31.4, the relevant professional code governing pipeline transportation systems, does not call for 50% of sleeve welds to be

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nondestructively tested, and Section 451.6.3 of that code allows for "other methods" along with a visual inspection. Bridger chose to hydrotest the pipe.

In light of the successful hydrotest, and with no evidence that standard industry practice was not followed, there is no violation. Even if a violation existed, a grant of jurisdiction to require remedial measures is not an absolute duty to do so under any circumstances. Balancing the equities and the risks, and taking into consideration a cost-benefit assessment, we believe that any corrective action is unnecessary or excessive.

Finally, due process requires fair notice of the law before imposing liability. Under the fair notice doctrine, a defendant cannot be held liable unless an agency proves that its interpretation of a regulation was ascertainably certain from the regulatory language and other public statements of the agency, or has otherwise been directly or authoritatively communicated to the defendant prior to the challenged activity. OPS has not provided fair notice of its "industry standard" interpretation of this regulation, and consequently it would violate due process to hold any party liable under that interpretation.

11. §195.428 Overpressure safety devices and overfill protection systems.

(a) Except as provided in paragraph (b) of this section, each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, or in the case of pipelines used to carry highly volatile liquids, at intervals not to exceed 7 ½ months, but at least twice each calendar year, inspect and test each pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to determine that it is functioning properly, is in good mechanical condition, and is adequate from the standpoint of capacity and reliability of operation for the service in which it is used.

BPL does not, once each calendar year not to exceed 15 months, test or calibrate pressure transducers that transmit data to the SCADA center on the Poplar pipeline. Pressure transmitters that send pressure data to

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manned SCADA centers are part of the pressure control system and as such must be tested once each calendar year not to exceed 15 months.

The current owner/operator is completely separate and distinct from the previous operator, and therefore is not responsible for any failures by the latter. Bridger denies the allegation that the "pressure transmitters" are "part of the pressure control system" as defined in the regulations. Bridger currently tests and calibrates its overpressure safety devices. Further, due process requires fair notice of the law before imposing liability. Under the fair notice doctrine, a defendant cannot be held liable unless an agency proves that its interpretation of a regulation was ascertainably certain from the regulatory language and other public statements of the agency, or has otherwise been directly or authoritatively communicated to the defendant prior to the challenged activity. OPS has not provided fair notice of its interpretation of this regulation, and consequently it would violate due process to hold any party liable under that interpretation. Even if a violation existed, a grant of jurisdiction to require remedial measures is not an absolute duty to do so under any circumstances. Balancing the equities and the risks, and taking into consideration a cost-benefit assessment, we believe that any corrective action is unnecessary or excessive.

14. §195.583 What must I do to monitor atmospheric corrosion control?

(a) You must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion, as follows:

**If the pipeline is located:
Onshore**

**Then the frequency of inspection is:
At least once every 3 calendar years,
but with intervals not exceeding 39
months.**

Offshore

**At least once each calendar year, but
with intervals not exceeding 15 months.**

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- (b) During inspections you must give particular attention to pipe at soil-to-air interfaces, under thermal insulation, under disbanded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water.**
- (c) If you find atmospheric corrosion during an inspection, you must provide protection against corrosion as required by Sec. 195.581.**

BPL has not completed or documented any of their atmospheric corrosion inspections. BPL has no plan for examining those pipe surfaces that are in contact with concrete saddles.

The above characterization is inaccurate, and Bridger will provide evidence of the atmospheric corrosion protection measures it has undertaken. Even if a violation existed, a grant of jurisdiction to require remedial measures is not an absolute duty to do so under any circumstances. Balancing the equities and the risks, and taking into consideration a cost benefit assessment, we believe that any corrective action is unnecessary or excessive, and that the time for compliance is unrealistic.

In addition to the foregoing specific responses, Bridger's investigation of this matter is continuing and it reserves the right to amend this notice for purposes of asserting additional defenses. Further, the matters in dispute may necessitate testimony regarding industry standards and practices, and Bridger reserves the right to rely on expert testimony regarding such standards and practices as to each and every regulation at issue in this matter.

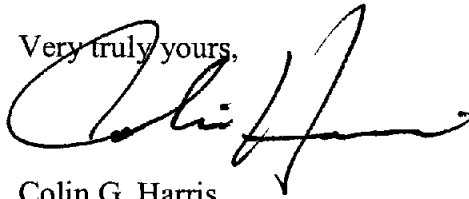
We suggest Denver, Colorado, as a suitable location for the in-person hearing. We propose that the hearing be consolidated with the hearing regarding CPF No. 5-2007-5002 (regarding Belle Fourche). We request at least four months prior notice of any hearing date. In addition, we request, to the extent not already provided, PHMSA (including OPS)'s case file for this matter, including internal notes, emails, and memoranda.

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Please do not hesitate to contact me at the below address.

Very truly yours,

A handwritten signature in black ink, appearing to read "Colin G. Harris". The signature is fluid and cursive, with a large initial "C" and "H".

Colin G. Harris

CHG/rb

cc May Chiranand, Esq.
Manuel Lojo, Esq.