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March 13, 2007

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

COLORADO SPRINGS

Re: Butte Pipeline Company's Request for a Hearing;  
CPF No. 5-2007-5008

DENVER

Dear Mr. Hoidal:

LONDON

We are counsel to Butte Pipeline Company (Butte) 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, Butte will raise numerous issues regarding both the NPV and the compliance order requirements set forth therein. Butte 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 1a, 1b, 2, 3b, and 6). Therefore, we do not address those items here. However, Butte does not admit to any of those alleged violations. The Warning Items have been investigated and have been addressed.

SALT LAKE CITY

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

SAN FRANCISCO

As set forth below, Butte 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 8, 2007, NPV, CPF No. 5-2007-5008, 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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**4. §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.**

**Of the several "Type B" repair sleeves installed on the Butte pipeline in 2004, only two were non-destructively tested (NDT) 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 and 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 nondestructively tested, and Section 451.6.3 of that code allows for "other methods" along with a visual inspection. Butte 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.

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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.

**5. §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.**

**Butte PL 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 Butte pipeline. Pressure transmitters that send pressure data to 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. Butte denies the allegation that the "pressure transmitters" are "part of the pressure control system" as defined in the regulations. Butte 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

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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.

**7. §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:**

<b>If the pipeline is located:</b>	<b>Then the frequency of inspection is:</b>
<b>Onshore</b>	<b>At least once every 3 calendar years, but with intervals not exceeding 39 months.</b>
<b>Offshore</b>	<b>At least once each calendar year, but with intervals not exceeding 15 months.</b>

**(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.**

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

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The above characterization is inaccurate, and Butte 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.

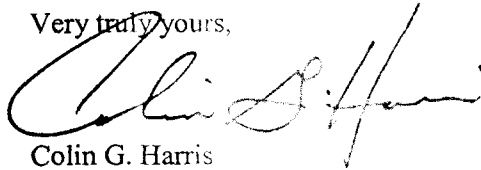
In addition to the foregoing specific responses, Butte's investigation of this matter is continuing and it reserves the right to amend this notice for purposes of asserting additional defenses. Further, the matters in dispute may necessitate testimony regarding industry standards and practices, and Butte 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 hearings regarding CPF No. 5-2007-5002 (regarding Red Fourche) and CPF No. 5-2007-5003 (regarding Bridger Pipeline). We request at least four months prior notice of any hearing date. In addition, we request, to the extent not already provided, PHMSA (including OPH) case files for this matter, including internal notes, emails, and meeting minutes.

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

Very truly yours,



Colin G. Harris

CHG/rb

cc May Chiranand, Esq.  
Manuel Tojo, Esq.