

June 19, 2019

Mr. Dan Newton  
Public Works Director  
City of Susanville  
720 South Street  
Susanville, California 96130

**Re: CPF No. 5-2016-0005M**

Dear Mr. Newton:

Enclosed please find the Decision on Reconsideration issued in the above-referenced case. It denies your Petition for Reconsideration. 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: Mr. Dustin Hubbard, Director, Western Region, Office of Pipeline Safety, PHMSA

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	)	
	)	
City of Susanville, California,	)	CPF No. 5-2016-0005M
a municipal corporation,	)	
	)	
Petitioner.	)	
	)	

**DECISION ON RECONSIDERATION**

In a June 1, 2018 Order Directing Amendment (Order), I found that the City of Susanville’s (Susanville) written procedures were inadequate to ensure safe operation of its pipeline system following an inspection by the Office of Pipeline Safety (OPS) of a 6-inch diameter, 10-mile long gas pipeline operated by Susanville.<sup>1</sup> I ordered Susanville to make certain revisions to its procedures to correct these inadequacies.

On June 19, 2018, Susanville submitted a Petition for Reconsideration (Petition) of the Order.<sup>2</sup> The Petition questioned two aspects of the Order and requested that PHMSA reconsider its findings.<sup>3</sup>

Because the evidence of record supports the findings in question, I am denying the Petition and affirming the Order without modification.

**Background**

Following a December 2015 onsite pipeline safety inspection of Respondent’s facilities and records in Susanville, California by OPS, on June 7, 2016, the Director, Western Region, OPS (Director) issued a Notice of Amendment (Notice) to Susanville.<sup>4</sup> In accordance with 49 C.F.R. § 190.206, the Notice alleged certain inadequacies in Respondent’s Operating and Maintenance

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<sup>1</sup> *City of Susanville*, Order Directing Amendment, CPF No. 5-2016-0005M (June 1, 2018).

<sup>2</sup> One-page letter from Mr. Daniel Gibbs, PE, Acting Public Works Director, City of Susanville to Mr. Alan K. Mayberry, Associate Administrator for Pipeline Safety, PHMSA, dated June 19, 2018 (Petition).

<sup>3</sup> *Id.*

<sup>4</sup> Notice of Amendment, CPF No. 5-2016-0005M (June 7, 2016).

Manual and proposed requiring Susanville to amend its procedures to comply with the provisions of 49 C.F.R. Part 192.<sup>5</sup>

Susanville responded to both this Notice and a Notice of Probable Violation and Proposed Compliance Order issued in companion case CPF 5-2016-0004 by letter dated July 12, 2016, as supplemented by letter dated December 29, 2016 (Response). Susanville contested the allegations on legal grounds and requested a hearing. A hearing was subsequently held on January 11, 2017 in Lakewood, Colorado before a PHMSA Presiding Official.

On June 1, 2018, I simultaneously issued a Final Order in a companion case and an Order Directing Amendment (Order) in this case incorporating the finding from the companion case that the pipeline was a transmission line. The Order incorporated the finding in the companion Final Order that the 6-inch diameter pipeline operated by Susanville was properly classified as a transmission line under two different prongs of the regulatory definition of a transmission line, either of which renders it a transmission line, and that Susanville had an obligation to comply with the regulatory requirements for transmission lines.<sup>6</sup> Susanville acknowledged that if the pipeline were determined to be a transmission line, the facts as alleged in the Notice established the cited inadequacies. Accordingly, I found that Susanville's procedures were inadequate as proposed in the Notice and ordered Susanville to amend its procedures for implementing 49 C.F.R. §§ 192.459 and 192.233.

On June 19, 2018, Susanville submitted this Petition requesting reconsideration of the determination that the pipeline was a transmission line.

#### Standard of Review

Under 49 C.F.R. § 190.243, a respondent is afforded the right to petition the Associate Administrator for reconsideration of an order directing amendment. However, that right is not an appeal or an opportunity to seek a de novo review of the record.<sup>7</sup> It is a venue for presenting the Associate Administrator with information that was not previously available or requesting that any errors in the order be corrected. Requests for consideration of additional facts or arguments must be supported by a statement of reasons as to why those facts or arguments were not presented prior to the issuance of the order. Repetitious information or arguments will not be considered.

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<sup>5</sup> OPS simultaneously issued a Notice of Probable Violation and Proposed Compliance Order proposing to find that Susanville committed several violations of 49 C.F.R. Part 192. Notice of Probable Violation and Proposed Compliance Order, CPF No. 5-2016-0004 (June 7, 2016). A Final Order for that proceeding was issued simultaneously with the Order Directing Amendment for which Susanville also filed a Petition for Reconsideration. A Decision on Reconsideration for that Petition is being issued simultaneously with this decision.

<sup>6</sup> *City of Susanville*, Final Order, CPF No. 5-2016-0004 (June 1, 2018) at 2-5 (Final Order).

<sup>7</sup> 49 C.F.R. § 190.243(a)-(d).

## Analysis

In its Petition, Susanville raised two issues for reconsideration relating to the determination (more fully explained in the companion case Final Order) that the 6-inch diameter, 10-mile pipeline it operates is properly classified as a transmission line. First, Susanville expressed the concern that a 2016 Notice of Proposed Rulemaking (NPRM) raised by Susanville in its Response and during the hearing was not sufficiently considered in support of its arguments. Second, Susanville questioned whether the location where its large volume customers were connected to the pipeline may constitute a connection or branch that would warrant changing the transmission line classification to distribution line for the portion of the pipeline extending between that location and the Susanville City Gate station. I will discuss each in turn.

With respect to the first issue, Susanville expressed the concern that the 2016 NPRM raised by Susanville in its Response and during the hearing was not sufficiently considered in support of its arguments. Susanville raised this NPRM in connection with the applicability of the term “distribution center” which is not defined in the regulations (notably, the NPRM has not become a Final Rule). The companion Final Order discussed this portion of the NPRM in the following manner:

Susanville also argued that the power plant and the correctional facility were downstream of a “distribution center” which, if correct, would negate a transmission line designation under this prong of the definition. Section 192.3 does not contain a definition of a distribution center, but the term is generally understood to mean the point where an incoming gas pipeline branches into a lower pressure network of distribution lines that provide gas service to customers.<sup>8</sup> Respondent further argued that it believed its position was supported by a Notice of Proposed Rulemaking (NPRM) issued by PHMSA in 2016 that proposed adding a definition of distribution center to § 192.3.<sup>9</sup> This NPRM proposed defining a distribution center as a location where “gas volumes are either metered or have pressure or volume reductions prior to delivery to customers.” However, this proposed definition appears to refer to typical gas utility customers such as homes and businesses because it did not use the term large volume customers. The proposition that the word “customers” in this proposed definition of “distribution center” should include large volume customers would be inconsistent with the longstanding regulatory definition of “transmission line” which expressly includes lines serving large volume customers. In any event this NPRM has not become a final rule. In this instance, the location where a network of distribution lines that serves as the distribution center delivering gas service to customers is the Susanville City Gate station

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<sup>8</sup> Letter from Edward J. Ondak, Director, Office of Pipeline Safety, to David Sinclair, Vice President of Operations, Enstar Natural Gas Company, CPF No. 58014W, 1998 WL 35166442 (Aug. 21, 1998).

<sup>9</sup> *Pipeline Safety: Safety of Gas Transmission and Gathering Lines*, (81 Fed. Reg. 20807). This NPRM has not become a final rule.

at the downstream end of the 10-mile segment. Therefore, Respondent's pipeline serves two large volume customers that are not downstream from a distribution center and the first prong is met.

Susanville also raised the NPRM in connection with arguing whether the established maximum allowable operating pressure (MAOP), not the current actual operating pressure, is used for regulatory classification purposes. The Final Order discussed this portion of the NPRM in the following manner:

Prior PHMSA pipeline enforcement proceedings and interpretations make it clear that the established MAOP, not the current actual operating pressure, is used for regulatory classification purposes.<sup>10</sup> For example, PHMSA issued an Interpretation Letter stating that a pipeline that delivered gas to a large volume customer qualified as a transmission line despite the fact that the pipeline actually operated at less than 20% of SMYS.<sup>11</sup> If actual operating pressure could be used, there would be nothing stopping an operator from easily configuring its line to raise the pressure as high as the established MAOP at times and lower it at other times causing uncertainty in the classification and affecting the applicability of various maintenance requirements. Thus, for purposes of classification as a line that operates above or below 20 percent SMYS, operators must use the established MAOP for the pipeline when determining the hoop stress. If an operator wants to de-rate or lower its MAOP for whatever reason, it would need to be done in a permanent manner reflected in its written procedures and design plans.

With regard to Respondent's argument that its position was supported by the NPRM issued by PHMSA in 2016, the preamble reveals that the impetus for proposing a change to the Transmission line definition was to address the demarcation between transmission and gathering lines, not between transmission and distribution lines.<sup>12</sup> While the NPRM was silent on the reason for this particular proposed change to this prong (*i.e.*, replacing "operates at..." with the term MAOP), if anything the absence of discussion implies that this was a clarification to existing policy and practice as opposed to being needed to drive a significant change in behavior. Therefore, Respondent's pipeline operates at a hoop stress above 20 percent SMYS for purposes of classification and the second prong in the definition of transmission line is met.

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<sup>10</sup> See, e.g., *Breitbart Energy Partners, LP*, Final Order, CPF No. 5-2009-0008 (Apr. 2, 2012).

<sup>11</sup> PHMSA Interp. No. 01-0102 (Feb. 15, 2001).

<sup>12</sup> *Pipeline Safety: Safety of Gas Transmission and Gathering Lines*, (81 Fed. Reg. 20807). This NPRM has not become a final rule.

The Petition does not provide any explanation or argument as to what, if anything, about the analysis in the Final Order of the NPRM content was erroneous. I fully considered Susanville's arguments citing the NPRM and found them unpersuasive for the reasons stated in the Final Order. There is nothing in the Petition that would warrant a change in this conclusion. If a future rulemaking proceeding in this area becomes final and takes effect, Susanville can subsequently request that OPS review the classification of its pipeline under that future regulation. Like any enforcement case, however, I must decide this case under the existing regulations.

With respect to the second issue, Susanville questioned whether the location where its large volume customers were connected to the pipeline may constitute a connection or branch that would warrant changing the transmission line classification to distribution line for the portion of the pipeline extending between that location and the Susanville City Gate station. Presumably, Susanville is conceding that the portion of the 10-mile pipeline upstream of the large volume customers is a transmission line, but would argue that this does not mean the portion downstream of that point could not be a distribution line. Susanville, however, did not present facts in its Petition that would establish that the location where the large volume customers received gas was a distribution center. Even if Susanville had attempted to do so, this argument would presumably be negated by the second prong of the definition of a transmission line which involves a determination on whether the pipeline operates at a hoop stress of 20 percent or more of specified minimum yield strength (SMYS). The established MAOP of the pipeline currently applies to its entire length.<sup>13</sup> Susanville did not provide any documentation or evidence that it has taken any steps to permanently de-rate the MAOP of the portion of the pipeline downstream from the large volume customers during the proceeding or in connection with its Petition.

### **RELIEF DENIED**

Based on the information provided in the Petition, a review of the record, and for the reasons stated above, I am affirming the Order without modification.

This Decision is the final administrative action in this proceeding.

June 19, 2019

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Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

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Date Issued

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<sup>13</sup> Final Order at 4-5.