U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

April 14, 2023

VIA ELECTRONIC MAIL TO: jhartz@ugies.com

Mr. Joseph Hartz
President
UGI Energy Services, LLC
1 Meridian Boulevard
Wyomissing, Pennsylvania 19610

Re: CPF No. 1-2021-059-NOPV

Dear Mr. Hartz:

Enclosed is the Decision on the Petition for Reconsideration issued in the above-referenced case. For the reasons explained therein, the Decision denies the Petition. PHMSA acknowledges receipt of your payment in full of the penalty by wire transfers in the total amount of $150,100, dated September 12, 2022, November 28, 2022, and December 12, 2022. This enforcement action is now closed. This Decision constitutes the final administrative action in this proceeding. Service of this Decision is made pursuant to 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

ALAN KRAMER MAYBERRY
Digitally signed by ALAN KRAMER MAYBERRY
Date: 2023.03.20 12:46:10 -04'00'

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Robert Borrough, Director, Eastern Region, Office of Pipeline Safety, PHMSA
Mr. Frank H. Markle, Senior Counsel, UGI Corporation, fmarkle@ugies.com
Ms. Brianne Kurdock, Outside Counsel, UGI Corporation, bkurdock@babstcalland.com
Mr. Keith Coyle, Outside Counsel, UGI Corporation, kcoyle@babstcalland.com

CONFIRMATION OF 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	)	
	)	
UGI Energy Services, LLC,	)	**CPF No. 1-2021-059-NOPV**
a subsidiary of UGI Corporation,	)	
	)	
Petitioner.	)	

DECISION ON PETITION FOR RECONSIDERATION

From March 29 to April 21, 2021, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of Title 49 United States Code (U.S.C.) inspected UGI Energy Services' (UGI or Respondent) procedures and records in New Middletown, Ohio.

As a result of the inspection, the Director, Eastern Region, OPS issued to Respondent, by letter dated November 24, 2021, a Notice of Probable Violation and Proposed Civil Penalty (Notice).[1] In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent committed three violations of 49 C.F.R. Part 195 (Items 1, 3, and 5) and proposed assessing a civil penalty of $150,100 for the alleged violations.[2] The Notice also included two additional warning items pursuant to 49 C.F.R. § 190.205 (Items 2 and 4), which warned the operator to correct the probable violations or face possible future enforcement action.

UGI responded to the Notice by letter dated December 22, 2021 (Response).[3] Respondent contested the probable violations and offered additional information in response to the Notice.[4] Respondent did not request a hearing and therefore waived its right to one.

[1] *UGI Energy Services, LLC*, Notice of Probable Violation and Proposed Civil Penalty, CPF No. 1-2021-059-NOPV (November 24, 2021), *available at* https://primis.phmsa.dot.gov/comm/reports/enforce/CaseDetail_cpf_12021059NOPV.html.

[2] *Id*., at 5.

[3] Response to Notice of Probable Violation and Proposed Civil Penalty, dated December 22, 2021, *available at* https://primis.phmsa.dot.gov/comm/reports/enforce/CaseDetail_cpf_12021059NOPV.html.

[4] *Id*.

On July 18, 2022, in accordance with 49 U.S.C. §§ 60117 and 60122 and 49 C.F.R. § 190.213, PHMSA issued a final order finding that Respondent had committed three violations of 49 C.F.R. Part 195 (Items 1, 3, and 5).[5] Item 1 of the Final Order found that Respondent violated § 195.402(a) by failing to maintain relevant parts of its operations and maintenance procedures at appropriate locations, and by failing to review, at intervals not to exceed 15 months but at least once each calendar year, the operating procedures it relied on for 2019 and 2020.[6] Item 3 of the Final Order found that Respondent violated § 195.403(c) by failing to include emergency response supervisor training or verification requirements in its emergency response procedures.[7] Item 5 of the Final Order found that Respondent violated § 195.452(b)(5) by failing to implement and follow its integrity management program (IMP) procedures.[8] The Final Order assessed a total civil penalty of $150,100 for the violations, in accordance with 49 U.S.C. § 60122 and 49 C.F.R. § 190.223.

On August 5, 2022, Respondent filed a Petition for Reconsideration in accordance with 49 C.F.R. § 190.243 (Petition).[9] In its Petition, Respondent requested reconsideration of the civil penalties assessed for Items 1 and 5 of the Final Order.[10] Respondent did not request reconsideration of Item 3 of the Final Order. Subsequent to its filing of the Petition, Respondent remitted payment in full of the assessed civil penalty amount of $151,100. Respondent submitted the payment by three separate installments: wire transfer in the amount of $28,916.17, dated September 12, 2022; wire transfer in the amount of $121,084.00, dated November 25, 2022; and check in the amount of $99.83, dated December 12, 2022.

Standard of Review

Pursuant to 49 C.F.R. § 190.243, a respondent may petition the Associate Administrator for reconsideration of a final order issued under § 190.213. Reconsideration is not an appeal or a completely new review of the record. A respondent may ask for correction of an error or, in limited circumstances, may present previously unavailable information. If a respondent requests consideration of additional facts or arguments, the respondent must submit the reasons they were not presented prior to the issuance of the Final Order. The Associate Administrator may grant or deny, in whole or in part, a petition for reconsideration without further proceedings.

---

[5] UGI Energy Services, LLC, Final Order, CPF No. 1-2021-059-NOPV, 2022 WL 3356556 (July 18, 2022), *also available at* https://primis.phmsa.dot.gov/comm/reports/enforce/CaseDetail_cpf_12021059NOPV.html. The Final Order also included the two warning items.

[6] *Id*., at 2.

[7] *Id*., at 3.

[8] *Id*., at 4.

[9] Petition for Reconsideration of Final Order, dated August 5, 2022 (Petition), *available at* https://primis.phmsa.dot.gov/comm/reports/enforce/CaseDetail_cpf_12021059NOPV.html.

[10] *Id*., at 1.

<u>Discussion</u>

Item 1: The Final Order found that Respondent violated § 195.402(a), which states:

> **§ 195.402 Procedural manual for operations, maintenance, and emergencies.**
> (a) *General*. Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted.

The Final Order determined that UGI violated § 195.402(a) in two respects: by failing to maintain relevant parts of its written procedure at appropriate locations, and by failing to review, at intervals not to exceed 15 months but at least once each calendar year, the operating procedures it relied on for 2019 and 2020. The Final Order withdrew a third allegation that Respondent failed to have procedures prior to commencing operations in 2019.

The Final Order rejected a request by UGI to reduce the penalty amount. UGI had requested a reduction on grounds that the record did not support the third allegation. Although the Final Order withdrew that allegation, the Order rejected UGI's argument to reduce the penalty because it implied the proposed penalty for Item 1 was comprised of three separate penalties reflecting three distinct violations of § 195.402(a). That was not the case. The Final Order explained the proposed civil penalty treated the multiple allegations only as a single violation of § 195.402(a) that occurred during at least two years from August 1, 2019, to April 21, 2021 (or two "instances"). Withdrawing one of the three allegations did not change the fact that UGI violated § 195.402(a) during at least two years. Therefore, the Final Order did not reduce the penalty.

In its Petition, Respondent asserted that PHMSA's rationale for not reducing the penalty after withdrawing part of the violation was arbitrary and an unexplained departure from long-standing practice. In particular, the Petition noted many examples of enforcement actions in which a reduction in the number of instances of a violation resulted in a penalty reduction. The Petition requested that the additional gravity points that factored into the penalty for Item 1 be reduced to reflect the withdrawal of a portion of the violation.

For the same reasons previously articulated, I disagree with Respondent that the Final Order's withdrawal of a portion of the violation warrants a reduction in the penalty for Item 1. The withdrawal of a portion of the violation under Item 1 did not result in a reduction in the number of *instances* of the violation, which were comprised of the two years, 2019 and 2020, that Respondent was in violation from August 1, 2019, to April 21, 2021. As documented in the record, the "Violation Report demonstrates the multiple violations were treated as one violation of § 195.402(a) that lasted two years (or two 'instances')."[11] Notwithstanding the Final Order concluding that Respondent had an operating manual for 2019 and 2020, the other elements of Respondent's violation established an instance of the violation in both 2019 and 2020. In each of these years, Respondent's failures to maintain the manual at appropriate locations and review the manual at intervals not to exceed 15 months but at least each calendar year were sufficient to support a violation of § 195.402.

For the above reasons, I reject the Petition and affirm the finding in the Final Order that the withdrawn portion of the violation does not warrant a reduction in the proposed civil penalty. Accordingly, I affirm the assessed civil penalty of $61,100 for violation of § 195.402(a).

Item 5: The Final Order found that Respondent violated § 195.452(b)(5), which states:

> **§ 195.452 Pipeline integrity management in high consequence areas.**
> (a) . . . .
> (b) *What program and practices must operators use to manage pipeline integrity?* Each operator of a pipeline covered by this section must:
> (1) . . . .
> (5) Implement and follow the program.

The Final Order determined that UGI violated § 195.452(b)(5) by failing to implement and follow its IMP procedures that required conducting annual program effectiveness reviews.[12] Respondent did not provide any records of such effectiveness reviews for 2019 and 2020. Therefore, the Final Order assessed a civil penalty of $61,100 for the two years (two instances) of the violation.

The Final Order rejected a request by UGI to reduce Item 5 from two instances of violation to one instance. Respondent claimed that because Section 9.4 of its procedures requires an effectiveness review "annually," UGI had one year from the moment of it taking ownership of the pipeline on August 1, 2019, to conduct the effectiveness review. UGI admitted that it did not perform an effectiveness review in its first year of ownership (August 1, 2019, to August 1, 2020) but stated that it had performed a review in March 2021, which satisfied the requirement for its second year of ownership (August 1, 2020, to August 1, 2021).

The Final Order rejected this argument and offered two pieces of evidence in support of its finding that the "annual" reviews, as established by UGI's procedures, meant once per calendar year. First, it noted a plain reading definition of "annual" as "occurring or happening every year or once a year."[13] Second, it noted that within Respondent's own IMP procedures, including in Sections 8.1.1, 8.4, 9.1.1, and 9.4, intervals of one year were distinguished as "12 months" as opposed to "annually." The Final Order further noted that even if Respondent's procedures meant a 12-month interval, there would be no justification to reduce the penalty because

---

[11] UGI Energy Services, LLC, Final Order CPF No. 1-2021-059-NOPV, *supra* note 5, at 5.

[12] See § 195.452(k) (requiring an operator's IMP include methods to measure the program's effectiveness)

[13] "Annual" Definition, https://www merriam-webster.com/dictionary/annual (last accessed January 26, 2023).

Respondent had no record of the prior operator's review to demonstrate when that interval would have started. The Final Order rejected the notion that Respondent's acquisition of the pipeline would have "restarted" such an interval. Therefore, the Final Order did not reduce the penalty.

In its Petition, UGI repeated that the penalty should be reduced and asserted several new arguments for a reduction. First, the Petition argued that requiring UGI to complete an effectiveness review in calendar year 2019 was impractical because it only took ownership of the pipeline in August 2019, and that UGI would not have been allowed under the regulations to claim that its one-year interval started with the most recent effectiveness review of the prior owner of the pipeline. Second, the Petition argued that UGI's understanding of "annual" as referring to a 12-month interval is supported by a dictionary definition, and that PHMSA is not entitled to deference for its interpretation of UGI's procedures.[14] Third, the Petition also noted that Part 195 mentions calendar year deadlines at many points but does not refer to those calendar year deadlines as annual. Fourth, the Petition alleged that the agency's interpretation of "annual" as referring to each calendar year was not explained in § 195.452 or relevant guidance, meaning that Respondent did not have fair notice of the requirement. Thus, the Petition requested a reduction of the penalty under Item 5 to one instance of violation of § 195.452.

Having considered the arguments, I disagree with the Petition that a reduction in the penalty is warranted. First, the fact that UGI took ownership of the pipeline in August 2019 does not relieve it of its regulatory obligations. PHMSA has previously rejected the argument that "compliance with inspection intervals and record keeping requirements is somehow waived by a change in ownership or operating responsibility."[15] Operators "that newly acquire pipeline systems are responsible for ensuring that such systems are maintained in full compliance with the pipeline safety regulations."[16]

Respondent's claim that it could not have relied upon TC Energy's previous reviews is misplaced. PHMSA has previously reminded operators that "successor operators are responsible for obtaining records from previous owners to demonstrate ongoing compliance with periodic inspection and maintenance requirements," and "operators may need to fully audit new assets and immediately carry out required inspections."[17] Since UGI could not produce any record that the prior operator had conducted an effectiveness review, in order to ensure the pipeline was in compliance with the applicable procedures and regulations, UGI should have initiated a review immediately, but certainly within the calendar year as required. While the Petition suggested four months was not enough time to evaluate the effectiveness of the procedures, UGI failed to

---

[14] Another definition offered at *id* is "covering the period of one year."

[15] *In the Matter of Sunoco Pipeline, L.P., Respondent.*, Final Order, CPF No. 4-2007-5040, 2010 WL 5761108, at *19 (December 16, 2010).

[16] *In the Matter of Buckeye Partners, L.P., Respondent.*, Final Order, CPF No. 3-2008-5004, 2011 WL 1919514, at *4 (March 10, 2011). *See also* 49 U.S.C. § 60118(a) (requiring the operator of a pipeline to comply with the applicable safety standards, including carrying out a plan for inspection and maintenance) and 49 C.F.R. § 195.401(a) (prohibiting an operator from operating or maintaining its pipeline systems at a level of safety lower than that required by this subpart and the procedures it is required to establish under § 195.402(a) of this subpart).

[17] *Id*.

sufficiently explain how that was the case. To the contrary, given UGI had no record of any prior effectiveness review of the IMP within the past year as required by the applicable procedures, it was critical to the safety of the high consequences areas that UGI review the effectiveness of the IMP rather than waiting more than 19 months. As PHMSA has noted, operators that acquire pipeline systems must ensure that such systems are in full compliance with the pipeline safety regulations at all times, and operators are not relieved of that obligation solely because of an operatorship transfer.[18]

Second, having further considered the competing dictionary definitions that have been proffered, I find the dictionary definitions do not provide definitive support on either side of the argument as to whether "annual" as utilized in Respondent's procedures meant calendar year or a 12-month period. Rather, I find the more meaningful insight into the meaning of "annual" as documented in the record, in the context of UGI's own procedures, which distinguished between "annual" and intervals of 12 months.

Third, the Petition's argument concerning the meaning of "annual" within Part 195 is similarly unpersuasive. Section 195.452 concerns an operator's following of its own procedures. As the Final Order established, the meaning of "annual" within UGI's procedures was distinguished from an interval of 12 months, and that context guides PHMSA's interpretation of UGI's procedures.

Fourth, the Petition is correct that fair notice requires the agency to have stated with reasonable certainty what is meant by the standards it has promulgated; however, the Petition's fair notice argument is inapplicable. In this proceeding, the issue raised by UGI did not concern how to interpret a standard promulgated by PHMSA, but instead how to interpret *UGI's procedures*. Because there is no question that § 195.452(b)(5) requires pipelines operators to follow their IMP, there is no fair notice issue here.[19]

For the above reasons, I reject the Petition and affirm the finding in the Final Order that Respondent is not entitled to a reduction in the proposed civil penalty. Accordingly, I affirm the assessed civil penalty of $61,100 for violation of § 195.452(b)(5).

Conclusion

For the reasons stated above, the Petition for Reconsideration is denied. I affirm Item 1 of the Final Order, including the assessed penalty of $61,100, and I affirm Item 5 of the Final Order, including the assessed penalty of $61,100. PHMSA acknowledges receipt of your payment in full of the penalty assessed for Items 1, 3, and 5 of the Final Order by wire transfers in the total amount of $150,100, dated September 12, 2022, November 28, 2022, and December 12, 2022.

---

[18] *Id*.

[19] PHMSA has previously declined a fair notice challenge to allegations that an operator did not follow its own procedures. See *In the Matter of Tallgrass Energy Partners, LP, Respondent*, Final Order, CPF No. 3-2020-1008, 2021 WL 4055256 (July 2, 2021).

This Decision on Reconsideration is the final administrative action in this proceeding.

ALAN KRAMER MAYBERRY
Digitally signed by ALAN KRAMER MAYBERRY
Date: 2023.03.20 12:45:31 -04'00'

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

April 14, 2023

Date Issued