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DEC 31 2015

December 30, 2015

Mr. Allan C. Beshore
Director, Central Region
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety
Administration
Office of Pipeline Safety
901 Locust Street, Suite 462
Kansas City, Missouri 64106-2641

Via Email: Allan.Beshore@dot.gov
Via FedEx: 775317140225

Re: CPF No. 3-2015-5009
Ohio River Valley Pipeline, LLC
Notice of Probable Violation and Proposed Compliance Order
Request for Hearing

Dear Mr. Beshore:

This letter serves a request for a hearing in response to the referenced Notice of Probable Violation and Proposed Compliance Order dated November 2, 2015 (the "NOPV"). By letters dated November 2, 2015 and December 10, 2015, you granted an extension of time to respond until January 2, 2016.

Ohio River Valley Pipeline, LLC ("Respondent"), pursuant to 49 C.F.R. §§ 190.208(b)(4) and 190.211, hereby requests a hearing in the referenced case. Enclosed herewith please find Respondent's Statement of Issues which it submits pursuant to 49 C.F.R. § 190.211(b). Respondent will be represented by the undersigned counsel at the hearing. On the basis that the cost to implement the proposed corrective action would exceed $25,000, pursuant to 49 C.F.R. § 190.211(c), Respondent requests that an in-person hearing be held at the Central Region office in Kansas City, Missouri.

Thank you for your attention to this matter.

Sincerely,

Vince Murchison

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PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
WASHINGTON, DC 20590

In the matter of:	§	
	§	
Ohio River Valley Pipeline, LLC	§	CPF No. 3-2015-5009
	§	
Respondent	§	
	§	

STATEMENT OF ISSUES
OF
OHIO RIVER VALLEY PIPELINE, LLC
TO
NOTICE OF PROBABLE VIOLATION
AND
PROPOSED COMPLIANCE ORDER

Ohio River Valley Pipeline, LLC ("Respondent") submits this Statement of Issues pursuant to 49 C.F.R. § 190.211(b) in connection with its request for a hearing pursuant to 49 C.F.R. § 190.208(b)(4).

By letter dated November 2, 2015, the Pipeline and Hazardous Materials Safety Administration Office of Pipeline Safety ("OPS") issued to Respondent a Notice of Probable Violation and Proposed Compliance Order (collectively, the "NOPV"), CPF No. 3-2015-5009. By letters dated November 30, 2015 and December 10, 2015, the Director, Central Region, OPS, granted an extension of time to respond to the NOPV and directed that Respondent respond on or before January 2, 2016. By separate writing, Respondent has requested a hearing in this matter, and this Statement of Issues is served therewith.

BACKGROUND

This matter results from an OPS inspection of facilities and records of Respondent at Nashport, Ohio.

In the NOPV, OPS alleges violations of certain of the pipeline safety regulations promulgated at 49 C.F.R. Part 195 ("Part 195") and proposes to order actions to bring Respondent into compliance with said regulations, all pursuant to the procedural and enforcement regulations promulgated at 49 C.F.R. Part 190, Subparts A and B, as to each and all of which Respondent states its issues.

THE ALLEGED VIOLATIONS

Respondent sets out below its factual, legal and regulatory issues that relate to the allegations of the NOPV. The paragraphs below are numbered to correspond with the numbered Items of the NOPV. Each paragraph begins with a citation to the subject regulation and a summary of the allegations.

1. Item 1. 49 C.F.R. § 195.49 Annual Report: "[R]espondent's previous annual reports were submitted on the premise of the pipeline being a covered regulated rural gathering line. PHMSA has determined that your pipeline does not meet the definition of a gathering line per 49 CFR 195.2 and is, therefore, a covered pipeline under 195.1(a)(3). Annual reports must accurately reflect the status of the pipeline as a hazardous liquid pipeline subject to the scope of all Subparts of 49 CFR 195."

   Respondent disputes and objects to the allegations stated in Item 1 of the NOPV, in that:

   1.1. The NOPV contains no statement of the evidence upon which its allegations are based, contrary to the requirements of 49 C.F.R. § 190.207(b)(1).

   1.2. NOPV Item 1 states no facts and no discussion or analysis in support of the conclusion that Respondent's pipeline is subject to 49 C.F.R. Part 195 and, conversely, that Respondent's pipeline is not a rural regulated gathering line pursuant to 49 C.F.R. § 195.11.

   1.3. Respondent's pipeline is a gathering line due to the fact that it is 8-5/8^{ths} inches or less nominal outside diameter and moves petroleum "from a production facility."

   1.4. Certain segments of Respondent's pipeline are regulated rural gathering line due to the fact that those segments meet the criteria stated in 49 C.F.R. § 195.11(a); the remainder of Respondent's pipeline is unregulated rural gathering line.

   1.5. OPS has failed to meet its burden of proof that a violation occurred.

   1.6. Given that the regulated segments of Respondent's pipeline are regulated rural gathering line, and given that the NOPV alleges no violation of 49 C.F.R. § 195.11, Respondent was and remains in full compliance with the applicable regulations of Part 195.

2. Item 2. 49 C.F.R. § 195.402 Procedural manual for operations, maintenance, and emergencies: "[R]espondent's procedures in place at the time of inspection were inadequate because they were limited to the safety requirements required by 195.11(b)," and "did not address all of the regulatory requirements of Subpart F."

   Respondent disputes and objects to the allegations stated in Item 2 of the NOPV, in that:

   2.1. Respondent incorporates by reference into its objections to this Item 2 the objections to Item 1 numbered 1.1 through 1.5, same as if fully set forth herein.

   2.2. Given that the regulated segments of Respondent's pipeline are regulated rural gathering line, Respondent is not required to develop and implement a complete O&M manual under 49 C.F.R. § 402.

2.3. Given that the regulated segments of Respondent's pipeline are regulated rural gathering line, and given that the NOPV alleges no violation of 49 C.F.R. § 195.11, Respondent was and remains in full compliance with the applicable regulations of Part 195.

3. Item 3. 49 C.F.R. § 195.452 Pipeline integrity management in high consequence areas: "There was not a written integrity management program in place. [Respondent's] pipeline system was operated as a gathering line and not operating under the framework of an integrity management program."

3.1. Respondent incorporates by reference into its objections to this Item 3 the objections to Item 1 numbered 1.1 through 1.5, same as if fully set forth herein.

3.2. Given that the regulated segments of Respondent's pipeline are regulated rural gathering line, Respondent is not required to develop and implement an integrity management program under 49 C.F.R. § 195.452.

3.3. Given that the regulated segments of Respondent's pipeline are regulated rural gathering line, and given that the NOPV alleges no violation of 49 C.F.R. § 195.11, Respondent was and remains in full compliance with the applicable regulations of Part 195.

THE PROPOSED COMPLIANCE ORDER

1. Item 1 of the Proposed Compliance Order directs that Respondent "submit a corrected Annual Report to PHMSA."

Respondent disputes and objects to such proposed compliance action, in that:

1.1. A Proposed Compliance Order cannot be imposed absent "reason to believe" that Respondent is engaging in conduct that violates the PSA or Part 195, and, absent proof of a violation, OPS has not demonstrated "reason to believe"; therefore, OPS has failed to satisfy the regulatory precedent to the imposition of a compliance order as required by 49 C.F.R. 190.217.

1.2. Given that the regulated segments of Respondent's pipeline are regulated rural gathering line, the annual reports heretofore submitted comply fully with 49 C.F.R. § 195.49, and, thus, in the absence of a violation, a compliance order cannot be sustained.

1.3. OPS has neither proffered any evidence, made any factual findings, nor provided any explanation, discussion or analysis of the manner in which the nature of the alleged violations, or the public interest, warrant issuance of the proposed compliance order as required by 49 C.F.R. 190.217.

1.4. In the alternative to the foregoing, Item 1 of the Proposed Compliance Order is vague and ambiguous in that it fails to identify for which year or years a "corrected Annual Report" should be submitted.

2. Item 2 of the Proposed Compliance Order directs that Respondent "develop a comprehensive set of written O&M procedures in accordance with 195.402 and furnish a copy of the manual to the Director, Central Region, OPS, for review."

Respondent disputes and objects to such proposed compliance action, in that:

2.1. A Proposed Compliance Order cannot be imposed absent "reason to believe" that Respondent is engaging in conduct that violates the PSA or Part 195, and, absent proof of a violation, OPS has not demonstrated "reason to believe"; therefore, OPS has failed to satisfy the regulatory precedent to the imposition of a compliance order as required by 49 C.F.R. 190.217.

2.2. Given that the regulated segments of Respondent's pipeline are regulated rural gathering line, Respondent's procedures for operations, maintenance and emergencies fully comply with 49 C.F.R. § 195.11(b), and, thus, in the absence of a violation, a compliance order cannot be sustained.

2.3. OPS has neither proffered any evidence, made any factual findings, nor provided any explanation, discussion or analysis of the manner in which the nature of the alleged violations, or the public interest, warrant issuance of the proposed compliance order; *see* 49 C.F.R. 190.217.

3. Item 3 of the Proposed Compliance Order directs that Respondent "establish an integrity management plan in accordance with 195.452 and furnish to the Director, Central Region, OPS, an outline of the framework of the plan, including the identification of HCA's, and schedule of any baseline assessment for covered segments."

   Respondent disputes and objects to such proposed compliance action, in that:

   3.1. A Proposed Compliance Order cannot be imposed absent "reason to believe" that Respondent is engaging in conduct that violates the PSA or Part 195, and, absent proof of a violation, OPS has not demonstrated "reason to believe"; therefore, OPS has failed to satisfy the regulatory precedent to the imposition of a compliance order as required by C.F.R. 190.217.

   3.2. Given that the regulated segments of Respondent's pipeline are regulated rural gathering line, Respondent's procedures for operations, maintenance and emergencies fully comply with 49 C.F.R. § 195.11(b), and, thus, in the absence of a violation, a compliance order cannot be sustained.

   3.3. OPS has neither proffered any evidence, made any factual findings, nor provided any explanation, discussion or analysis of the manner in which the nature of the alleged violations, or the public interest, warrant issuance of the proposed compliance order; *see* 49 C.F.R. 190.217.

4. Item 4 of the Proposed Compliance Order directs that Respondent complete proposed compliance action Items 1, 2, and 3 "within 120 days of the issuance of a Final Order."

   In the alternative to the foregoing objections to the bases of proposed compliance action Items 1 through 3, in the event Respondent's pipeline is found not to be a regulated rural gathering line but is proven to be a pipeline subject to all of Part 195, Respondent disputes and objects to the time limitation imposed upon such proposed compliance actions, in that:

   4.1. Application of the 120-day time limitation to the proposed compliance actions has no basis in fact; is not supported by any engineering analysis or assessment; and fails to consider the pipeline location, pipe specifications, the nature of the petroleum moved, information gathering requirements, resource and equipment and materials procurement timing, or other factors which would require a greater time to

implement; in sum, the 120-day time limitation would preclude a thoughtful and orderly implementation of the full suite of Part 195 requirements, all of which would be arbitrary and capricious.

4.2. Application of the 120-day time limitation to Item 2 of the Proposed Compliance Order would be arbitrary and capricious in that it fails to take into account the time necessary to implement certain programs and actions required in a complete O&M manual, including but not limited to employee training (e.g., operator qualification, emergency response, and control room management), development of control room management procedures (49 C.F.R. § 195.402(c)(14), and conducting liaison with appropriate public officials (49 C.F.R. § 195.402(c)(12); rather, Item 2 would, immediately upon the passage of 120 days, render Respondent in violation of the Part 195 pipeline safety regulations.

4.3. Application of the 120-day time limitation to Item 3 of the Proposed Compliance Order would be arbitrary and capricious in that it fails to take into account the time necessary to implement certain elements of an integrity management program pursuant to 49 C.F.R. § 195.452, including but not limited to the following:

4.3.1. 49 C.F.R. § 195.452(c) does not contemplate the situation where an operating pipeline immediately is thrust into the compliance framework of an integrity management program, in that 49 C.F.R. § 452(c)(1) has no provision for the timing of a baseline assessment.

4.3.2. 120 days is insufficient time to identify and assimilate risk factors for establishing an assessment schedule pursuant to 49 C.F.R. § 195.452(e)

4.3.3. 120 days is insufficient time to perform an information analysis pursuant to 49 C.F.R. § 195.452(g).

4.3.4. 120 days is insufficient time to identify and implement preventive and mitigative measures pursuant to 49 C.F.R. § 195.452(i).

CONCLUSION

At the hearing in this matter, Respondent intends to bring forth evidence in the form of documents and/or witness testimony, as well as to present its arguments, in support of the issues

stated heretofore. Respondent reserves the right to supplement this Statement of Issues at or before the hearing.

COUNSEL FOR RESPONDENT
OHIO RIVER VALLEY PIPELINE, LLC

December 30, 2015

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