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May 22, 2020

Via Email (Allan.Beshore@dot.gov) and Certified Mail

Allan C. Beshore
Director, Central Region, OPS
Pipeline and Hazardous Safety Administration
901 Locust Street, Suite 462
Kansas City, Missouri 64106-2641

Re: CPF 3-2020-5004 Notice of Probable Violation and Proposed Civil Penalty and Compliance Order

Dear Mr. Beshore:

Pursuant to 49 C.F.R. Part 190.208(a)-(b), I make this submission on behalf of Pembina Cochin LLC ("Pembina Cochin") which was formerly known as Kinder Morgan Cochin, LLC ("Kinder Morgan") prior to a transaction that closed on December 16, 2019. Pembina Cochin submits this response to the Notice of Probable Violation ("NOPV") and Proposed Compliance Order CPF 3-2020-5004 issued by the Central Region of the Pipeline and Hazardous Materials Safety Administration ("PHMSA") on March 17, 2020 relating to alleged violations of the Pipeline Safety Regulations at facilities in Kankakee, Illinois and Rodgers, North Dakota (the "Facilities") pursuant to an extension granted by PHMSA until May 22, 2020 to accept or contest the findings.

PHMSA alleges two violations of pipeline safety regulations based on an inspection of the Facilities from June 7, 2016 to October 21, 2016. Item 1 alleges that Kinder Morgan did not pressure test Tank 4 at the Kankakee terminal in accordance with sections 7.3.5[1] and 7.3.6 of API Standard 650 ("Standard 650"). Item 2 alleges that Kinder Morgan did not comply with its written operator qualification program to ensure that individuals performing covered tasks are qualified or supervised by qualified individuals at its Rogers Pump Station. Item 2 further alleges that as a result of allowing an unqualified contractor to perform pig receiver modifications at the Rogers Pump Station on May 6, 2016, a leak occurred the following day. As explained below, Pembina Cochin disagrees with and respectfully requests that PHMSA reconsider the proposed civil penalties and the Proposed Compliance Order.

[1] Section 7.3.5 applies to the inspection of Reinforcing-Plate Welds and appears to be referenced in error.

PHMSA NOPV Item 1:

1. §195.307 Pressure testing aboveground breakout tanks.

(c) For aboveground breakout tanks built to API Std 650 (incorporated by reference, see § 195.3) and first placed in service after October 2, 2000, testing must be in accordance with section 7.3.5 and 7.3.6 of API Standard 650 (incorporated by reference, see §195.3).

PHMSA alleges that Kinder Morgan failed to pressure test Tank 4, in accordance with API Standard 650, section 7.3.5. Kinder Morgan failed to provide evidence that the water level for Tank 4 was filled to the maximum design liquid level as required under API Standard 650, Section 7.3.5

Response to NOPV Item 1:

Cochin respectfully requests that NOPV Item 1, the Proposed Civil Penalty of $28,800 and the requirement in the Proposed Compliance Order be withdrawn because the inspection documentation previously provided to PHMSA demonstrates compliance with API 650 Section 7.3.5 and that Tank 4 was filled to the appropriate liquid level.

PHMSA alleges that "Kinder Morgan's 'Technical Standard for Hydrostatic Testing' record for Kankakee Tank 4 did not show the height of the water … [and] Kinder Morgan Cochin could not produce evidence that the water level for Tank 4 was filled to the maximum design liquid level" consistent with Standard 650. Pembina Cochin agrees that Tank 4 was first placed in service after October 2, 2000 and was in service at the time of the PHMSA field inspection from August 22 to August 26, 2016. Pembina Cochin submits that the documentation available to PHMSA at the time of its inspection provides ample evidence to determine that Tank 4 was in fact filled to the appropriate level to test the structural integrity of the shell in accordance with API 650 Section 7.3.5.

Pembina Cochin respectfully disagrees with the allegation that Tank 4 should have been "filled to the maximum design liquid level." Tank 4 is a coned roof tank with an internal floating roof and the tank was filled in accordance with API 650 Section 7.3.5 (3) which states *"to a level lower than that specified in Subitem 1 or 2 when restricted by overflows, **an internal floating roof**, or other freeboard by agreement between the Purchaser and the Manufacturer* Finally, Pembina Cochin emphasizes that significant mitigation factors exist which render PHMSA's proposed civil penalty of $28,800 and Proposed Compliance Order a disproportionate and ill-suited resolution under the circumstances.

Tank 4 Water Meter Readings

Based on its review of these circumstances since receiving the NOPV, Pembina Cochin has learned that Kinder Morgan installed five tanks with the same capacity at the Kankakee terminal and placed them into operation at the same time. As a part of those efforts, Kinder Morgan performed hydrostatic testing on the tanks in sequence. Kinder Morgan first filled one tank, tested it and then withdrew the water to be moved from tank to tank. Tank 4 was the second tank to be tested and received its test water from Tank 2. The Tank 2 test records plainly show the volume and the level of the water in that tank. These records reveal that the water in Tank 2 reached the level of "45'-4", which is the level that PHMSA asserts the water in Tank 4 should have reached.

As noted in the NOPV, Pembina Cochin's records include both data from a water meter measuring the water transferred into Tank 4 from Tank 2 and notations of the associated decrease in water height in Tank 2. Kinder Morgan used the water meter during the filling of Tank 4 to assist in determining the amount of water being put into Tank 4. At the start of the filling process for Tank 4 on July 3, 2014, the meter reading was 146827 gallons. At the conclusion of the filling process for Tank 4, the meter reading was 154664 gallons. Based on the reading from the water meter, roughly 7.8 million gallons ((154664-146827)*1000=7,837,000) of water were pumped into Tank 4 from Tank 2. According to the Strapping Chart for Tank 4, this would put the water fill level over 45 feet. The water fill levels for the other tanks (1, 2, 3 and 5) successfully hydrotested at the Kankakee Tank Farm were between 44' 1"-45' 4".

Tank 4 used to fill Tank 1

Tank 1 at Kankakee was successfully hydrotested with a water fill level of 44'-1". The water in Tank 4 was the source for the water used to fill Tank 1. Both Tank 1 and Tank 4 are 170 feet in diameter and 50 feet high. Water was pumped directly from Tank 4 to Tank 1 with no added water from another source. Further, a successful hydrotest was performed on Tank 2. Water from Tank 2 was then used to fill Tank 4. And Tank 4 water was used to fill Tank 1. Both Tank 2 and Tank 1 had successful hydrotests with water fill levels of 45' 4" and 44' 1" respectively. Tank 4 was in the middle of that sequence and was filled with the same volume of water.

Subsequent Third Party Analysis

After the PHMSA inspection, Kinder Morgan retained an independent engineering firm in March 2017 to determine the minimum fill level required to perform a successful hydrostatic test in accordance with API 653 and API 650. (Attachment #1) The engineering analysis, which was not yet available at the time the inspection concluded in October 2016, determined a minimum water level height of 38' 4.5" would be needed to conduct a successful hydrotest for all of the tanks at Kankakee. The water level in Tank 4 for the hydrotest was greater than the minimum required as determined by the engineering analysis. Pembina Cochin has determined that Kinder Morgan did not share this engineering report with PHMSA.

Although the test documentation did not provide the actual height levels of the water filling Tank 4, using the contemporaneous water meter readings and the water volume balances in the sequence of the other tanks that were hydrotested, there is little question that Tank 4 was filled to the appropriate level and therefore, no basis to dispute that Tank 4 was successfully tested in accordance with API 650 Section 7.3.5 (3). Rather, the records from the testing and the movement of the water plainly provide a basis for PHMSA to conclude that Kinder Morgan correctly conducted the hydrostatic test and rightly determined that Tank 4 was fit for operation.

Pembina Cochin thus respectfully contests Item 1 in the March 17, 2020 NOPV and requests that PHMSA remove this count from the NOPV. If PHMSA declines to remove this count from the NOPV, Pembina Cochin respectfully requests a hearing under 49 C.F.R. § 190.211 to formally dispute these allegations. If such a hearing is held, Pembina Cochin intends to raise at the hearing the issues of whether the hydrostatic testing of Tank 4 was consistent with Standard 650, whether the evidence suggests that Tank 4 has been fit for operations since coming online, and whether the proposed civil penalty and requirements in the Proposed Compliance Order serve to resolve the alleged violation. Because the amount of the proposed civil penalty and the cost of the proposed corrective action—conducting an additional hydrostatic test for Tank 4—is more than $25,000, Pembina Cochin requests an in-person hearing. *See* 49 C.F.R. § 190.211(c).

With respect to the Proposed Compliance Order, redoing the hydrostatic test for Tank 4 would be an extraordinarily onerous requirement. It is disproportionately costly because it will require Pembina Cochin to expend as much as $2 million to perform. Undertaking this test would require that Tank 4 be taken out of service for an extended period of time and would reduce the throughput at this terminal. These expenditures are not necessary in light of the compelling evidence that the hydrostatic testing was done correctly and in compliance with the requirements of API 650. Because there is sufficient evidence to establish that Kinder Morgan properly administered the hydrostatic test on Tank 4 and in order to avoid such consequences for the terminal, Pembina Cochin respectfully asks that PHMSA reconsider the Proposed Compliance Order for Item 1.

PHMSA NOPV Item 2:

2. §195.505 Qualification Program. Each operator shall have and follow a written qualification program. The program shall include provisions to:

(b) Ensure through evaluation that individuals performing covered tasks are qualified;

PHMSA alleges that Cochin failed to follow its written operator qualification program to ensure through evaluation that individuals performing covered tasks are qualified. Cochin's Operator Qualification program for Facilities Subject to DOT Parts 192 and 195, Section 3.2, "KM (Cochin) employees and contractors performing covered tasks are OQ-qualified by evaluating their knowledge, skill and ability. On most tasks, this is accomplished by using a knowledge test and skill evaluation." PHMSA alleges that Cochin's records showed that Cochin utilized contractors to perform the pig receiver modifications at the Rogers Pump Station on May 6, 2016. On May 7, 2016, a leak occurred at the Rogers Pump Station.

Cochin failed to produce any records to demonstrate that the contractor employee or contractor supervisor were qualified to perform the required Cochin covered task "104.14, General Pipeline Repair – Component Replacement."

In addition, after reviewing the incident investigation summary and further email correspondence between PHMSA and Cochin, Cochin confirmed the contractor's employee was not qualified.

Cochin Response to PHMSA Item 2:

Pembina Cochin concedes that the evidence currently available to it does not demonstrate that the contractor employee that conducted this work was qualified at the time or that this individual was directed and observed in their work by a qualified person. It does appear that this person had been qualified in a number of areas but that Kinder Morgan had mistakenly concluded that he was qualified for the work in question.

Pembina Cochin nevertheless respectfully contests the proposed civil penalty for Item 2 in the March 17, 2020 NOPV and requests that PHMSA withdraw or reduce the proposed civil penalty. Pembina Cochin asks PHMSA to reconsider the proposed civil penalty in light of the limited amount of condensate released and the immediate and comprehensive response by Kinder Morgan. In this instance, less than 1.5 bbl of condensate was released, it never left the property, and all of the released material was recaptured. The area where the release occurred is not a high consequence area and there was no loss of natural resources or long-term impacts to the environment. A small fraction of a barrel (2%) of condensate reached the groundwater and Kinder Morgan installed monitoring wells to ensure that no impacted groundwater left the area beneath the property. Kinder Morgan responded immediately and

comprehensively to the release and ultimately excavated between 500 and 600 cubic yards of soils, treated them and then managed them in accordance with the directions of the state agency overseeing the response. Kinder Morgan incurred $280,000 in expenses in containing and remediating this release.

In light of these circumstances, Pembina Cochin respectfully submits that Kinder Morgan's failure to demonstrate that the contractor employee was OQ qualified for the covered task is more appropriately categorized under the Gravity considerations as "Pipeline safety or integrity was minimally affected", at 3 points, instead of "The violation was a causal factor in the accident", at 40 points. Further, this is not a repeat violation and pipeline safety was minimally affected. For all the reasons set out above, Cochin respectfully requests that the PCP be reduced to Total Points of 37, calculated to a Base Civil Penalty of $25,920, and a total PCP of $51,840.

Pembina Cochin thus respectfully asks PHMSA to reconsider or reduce the potential civil penalty for the reasons more fully set forth above. If PHMSA declines to reduce the amount of the penalty in the NOPV, Pembina Cochin respectfully requests a hearing under 49 C.F.R. § 190.211 to formally dispute the proposed civil penalty. If such a hearing is held, Pembina Cochin reserves its right to raise at the hearing the issues of whether the individual performing the work at issue was qualified or supervised by qualified personnel and whether the proposed civil penalty and requirements in the Proposed Compliance Order serve to resolve the alleged violation. Because the cost of the proposed civil penalty is more than $25,000, Pembina Cochin requests an in-person hearing. *See* 49 C.F.R. § 190.211(c).

Conclusion

Based on this above information, we are hopeful that PHMSA will agree with our position and withdraw NOPV Item 1 in the NOPV and the Proposed Compliance Order and withdraw or reduce the penalty for Item 2. In the alternative, Pembina Cochin respectfully requests a hearing in which we can present our arguments pursuant to 49 C.F.R. § 190.211 and ask that you reconsider the proposed civil penalties and Proposed Compliance Order.

Out of an abundance of caution, Pembina Cochin has already paid monies to PHMSA for application to the proposed civil penalties. To the extent these proposed penalties are withdrawn or reduced, Pembina Cochin asks that the funds be returned or applied to future PHMSA permitting or other fees.

Pembina Cochin appreciates your consideration of our Response to the Notice of Probable Violation and Proposed Penalties and Compliance Order. Please feel free to contact me with any questions regarding this Response.

Sincerely,

George C. Hopkins

cc: Cassia Prentice via e-mail
Scott Seibert via e-mail