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PETITION FOR RECONSIDERATION REGARDING CPF 3-2021-059-NOPV

Mr. Allan K. Mayberry
Associate Director, Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, SE East Building, 2nd Floor
Washington, DC 20590

September 19, 2022

CPF 3-2021-059-NOPV

Dear Mr. Mayberry,

On August 30th 2022, Dakota Midstream, LLC received a Final Order from your office regarding our Notice of Probable Violation relating to a series of PHMSA inspections that were conducted on our jurisdictional crude oil pipeline located in North Dakota, between the dates of March and May of 2021.

Pursuant to 49 C.F.R. § 190.243, please find below Dakota Midstream's Petition for Reconsideration in regards to the civil penalties assessed in relation to the above-referenced case. Dakota Midstream is requesting a reduction to the civil penalties assessed based upon our prompt efforts to rectify Item #4 in the Notice of Probable Violation as outlined in the Proposed Compliance Order issued by the Central Office on March 21st, 2022.

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY
ADMINISTRATION
OFFICE OF PIPELINE SAFETY**

CPF No. **3-2021-059-NOPV**

PETITION FOR RECONSIDERATION
SEPTEMBER 19th, 2022

Submitted by Dakota Midstream, LLC

Pursuant to 49 C.F.R. § 190.243(a), Dakota Midstream, LLC (Dakota Midstream or the Company) respectfully seeks reconsideration of the civil penalties assessed in the Final Order.

I. Procedural Background

On December 30th, 2021, the Pipeline and Hazardous Materials Safety Administration issued a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order' (Notice) to Dakota Midstream. On January 13th, 2022, Dakota Midstream responded to the Notice by requesting the case files and civil penalty worksheet associated with the above-referenced case. On January 13th, 2022, the Central Office submitted the case file and January 18th, 2022, the Central Region office civil penalty worksheet pertaining to this case. On January 30th, 2022 Dakota Midstream submitted a reply responding to the Notice of Probable Violation. The Central Region office issued a reply responding to our letter on February 24th, 2022 requesting financial information detailing our inability to pay, to which Dakota Midstream responded on March 4th, 2022 with a clarification letter stating that our request for a reduction in the proposed civil penalties was predicated on our status as a Small Business under the North American Industry Classification System Codes (NAICS), not our inability to pay the proposed civil penalties. On March 9th, 2022, Dakota Midstream received a letter from the desk of Ryan McClure requesting the most recent audited financial statements for consideration prior to the issuance of the Final Order. Dakota Midstream responded on March 18th, 2022 with its financial summary for the years 2020 and 2021. Immediately following our submittal of this information, the Central Region office issued their Regional Recommendation on

March 21, 2022. Upon receipt of this Regional Recommendation and based upon the correspondence with the Central Region office up to this point, Dakota Midstream took steps to begin remediation of the Issues noted in the Regional Recommendation and Proposed Compliance Order, inclusive of Item #4 of the Notice of Probable Violation. In accordance with our understanding of the procedural requirements up to that point, Dakota Midstream issued a status update on June 20th, 2022 which included the work being performed in relation to the Proposed Compliance Order to correct the deficiencies identified relating to Item #4 in the Notice of Probable Violation.

On August 30th, 2022, PHMSA issued a Final Order finding that Dakota Midstream violated several sections of 49 C.F.R 195, assessed civil penalties related to these violations, and issued a Compliance Order requiring Dakota Midstream to take certain actions. It should be noted that Item #4 in the Notice of Probable Violation was removed from the scope of the violations.

In accordance with § 190.243(a), a petition for reconsideration of a Final Order must be “received no later than 20 days after receipt of the order by the respondent.” Dakota Midstream received the Final Order on August 30th, 2022. Therefore, this petition is timely.

II. Petition For Reduction in Civil Penalties Associated With the Final Order Issued by PHMSA

In the Proposed Compliance Order issued by the Central Region office on December 30th, 2021, the following remedial requirements were proposed to ensure the compliance of Dakota Midstream with the pipeline safety regulations in regards to Item #4 of the Notice of Probable Violation:

- A. In regard to item number 4 of the Notice pertaining to welding of supports and braces to pipe that will be operated at a pressure of more than 100 psig, Dakota Midstream must remove all welded supports from the line located within the Spackler Tank Facility. Dakota Midstream must submit a progress update to the Central Region Director with 90 days of the Final order and documentation of completed work within 180 days of the Final Order.*

What followed were several items of correspondence in which Dakota Midstream urged the Central Region office to reconsider their position on Item #4 based upon the fact that none of the supports were in areas where our pipeline operated at over 100 psig as the Spackler Tank Facility is an atmospheric tank battery. The Central Region office responded to our letters by amending the Proposed Compliance order to allow for us to submit “documentation of the removal of welded supports on pipelines with MOPs above 100 psig”. Based upon our correspondence with the Central Region office and auditors up to that point, Dakota Midstream immediately began taking steps to adhere to this Proposed

Compliance Order by developing a construction scope of work associated with the items in the Proposed Compliance Order (including Item #4) and beginning the work necessary to correct this particular alleged violation within 6 months of the issuance of the Proposed Compliance Order. In accordance with our understanding of the procedural requirements, we submitted a status update to the Central Region office and auditors within 90 days of our receipt of the Proposed Compliance Order, to which we received no response. As of the date that we received the Final Order from PHMSA, Dakota Midstream had spent \$113,495 correcting the alleged violation outlined in Item #4 of the Notice of Probable Violation in order to provide adequate documentation of the removal of these welded pipe supports from the Spackler Tank Facility. This Final Order removed Item #4 from the scope of the corrective action, which in essence rendered Dakota Midstream's efforts to correct this alleged violation up to that point null and void.

We humbly petition that the total civil penalties assessed in connection with this Final Order be reduced by a percentage commensurate with the amount that Dakota Midstream has spent to correct the alleged violation outlined in Item #4 of the Notice of Probable Violation. 49 C.F.R § 190.225 (4) states that the "Associate Administrator will consider any good faith effort by the respondent in attempting to achieve compliance". Dakota Midstream has a demonstrated history throughout this audit process of working quickly to correct any issues of non-compliance that were found by the field auditors and our work to remediate the welded pipe supports in the Spackler Tank Facility was no different.

Dakota Midstream appreciates the opportunity to work with your office and the PHMSA personnel involved in this matter.

If you have any questions or comments, please feel free to contact me directly at (972) 742-7677 or by email at kristopher@dakota-midstream.com

Sincerely,



Kristopher C. Coe, P.E.
Director, Engineer & Development

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