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April 24, 2017

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Alan K. Mayberry
Associate Administrator
Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, SE
East Building, 2nd floor
Washington, DC 20590

Re: CPF No. 4-2014-5028
Centurion Pipeline, LP's Petition for Reconsideration

Dear Mr. Mayberry,

On behalf of Centurion Pipeline, LP, we file an original and two copies of its Petition for Reconsideration and Brief in Support with regard to Items 1-3 and 5-6 of the Final Order in the above-referenced matter.

Should you have any questions or require any additional information, please do not hesitate to contact me.

Sincerely,

Scott Janoe

SJ

cc: phmsachiefcounsel@dot.gov

U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590

In the Matter of	)	
Centurion Pipeline, LP, a subsidiary of Occidental Petroleum Corporation,	)	**CPF No. 4-2014-5028**
Centurion.	)	

PETITION FOR RECONSIDERATION
AND
BRIEF IN SUPPORT

Centurion Pipeline, LP, a subsidiary of Occidental Petroleum Corporation ("Centurion"), through its counsel, hereby submits its Petition for Reconsideration and Brief in Support pursuant to 49 C.F.R. § 190.243.

The Pipeline and Hazardous Materials Safety Administration ("PHMSA") sent Centurion the Final Order for matter CPF No. 4-204-5028 ("Final Order") by letter dated March 30, 2017. Centurion received the Final Order on April 4, 2017.

This Petition for Reconsideration seeks reconsideration by the Associate Administrator for Pipeline Safety of Items 1-3 and 5-6 of the Final Order, on the grounds stated herein. Centurion does not seek reconsideration regarding Item 4 of the Final Order.

PROCEDURAL BACKGROUND

1. Following an inspection of Centurion's facilities and records in Texas, New Mexico and Oklahoma, PHMSA issued to Centurion a Notice of Probable Violation dated November 10, 2014 (the "NOPV"). The NOPV proposed finding that Centurion had committed six violations of 49 C.F.R. Part 195 ("Items 1-6") and proposed a civil penalty of $165,900 for the alleged violations. The NOPV is attached hereto as Exhibit A.

2. Centurion responded to the NOPV by letter dated December 17, 2014 (the "Response"). Centurion contested several allegations in the NOPV and requested a hearing regarding Items 5 and 6. Centurion submitted an additional written response regarding Items 1-3 on April 20, 2015 (the "Supplemental Response"). With respect to Items 5 and 6, a hearing before a Presiding Official from the PHMSA Office of Chief Counsel was held on April 30, 2015.

Centurion provided a post-hearing statement for the record dated June 26, 2015 (the "Closing"). Centurion provided a supplemental post-hearing statement on September 4, 2015 (the "Supplemental Closing"). The Response, Supplemental Response, Closing, and Supplemental Closing are attached hereto as Exhibits B-E.

STANDARD FOR PETITION FOR RECONSIDERATION

3. The standard for a Petition for Reconsideration is set forth in 49 C.F.R. § 190.243, which provides that Centurion may petition the Associate Administrator for reconsideration of a Final Order. Centurion meets the requirements to seek reconsideration of the Final Order. This Petition for Reconsideration is timely, as it was submitted within 20 days after the receipt of the Final Order by Centurion on April 4, 2017.

4. Consistent with 49 C.F.R. § 190.243(b), Centurion is raising additional facts and arguments in the Legal Discussion, including offering additional inspection and testing records. Centurion did not raise those facts and arguments in the responses, hearing or closings because Centurion did not anticipate PHMSA's interpretations on certain legal and factual issues. This reasoning is more fully explained in the Legal Discussion.

5. Centurion will not raise repetitious information or arguments, but will clarify its previously stated positions on Items 1-3 and 5-6. Centurion is concerned that PHMSA misinterpreted and/or misapplied the meaning and intent of its previous statements. Centurion seeks to clarify these statements in the Legal Discussion.

6. Consistent with 49 C.F.R. § 190.243(d), Centurion will provide any additional information that the Associate Administrator may require to resolve this Petition for Reconsideration.

LEGAL DISCUSSION

ITEM 6: IMMEDIATE REPAIR CONDITIONS

7. Item 6 of the NOPV alleged that Centurion violated 49 C.F.R. § 195.452(h)(4) by failing to temporarily reduce operating pressure or shut down a pipeline until repairs of six immediate conditions were completed.

8. Centurion believes that PHMSA misinterpreted Centurion's actions and misapplied the language of the regulation and that Centurion took sufficient measures to comply with 49 C.F.R. § 195.452(h)(4).

9. The cited regulation, 49 C.F.R. § 195.452(h)(4), requires the following steps:

    a. Identify immediate repair conditions.

    b. Make a calculation of the temporary pressure reduction in operating pressure to show the remaining strength of the pipe using a suitable calculation method including, but not limited to, ANSI B31G.

c. Temporarily reduce the operating pressure in accordance with the calculation or shut down the pipeline until the operator completes the repairs. If a suitable calculation method cannot be identified, implement a minimum 20 percent or greater operating pressure reduction.

d. Complete the repairs.

See 49 C.F.R. § 195.452(h)(4)(i).

10. Centurion's actions complied with 49 C.F.R. § 195.452(h)(4) as follows:

    a. Centurion's ILI report identified six locations as dents with metal loss.

    b. Centurion calculated a temporary pressure reduction for the six conditions using the formula in ANSI B31.4.

    c. Centurion's ANSI B31.4 calculations yielded a safe operating pressure that was greater than the operating pressure in use at the time. Therefore the calculations revealed that Centurion did not need to temporarily reduce the operating pressure to a lower pressure than the pressure at which it was already operating.

    d. Centurion completed the repairs.

    See ANSI B31.4 Calculations, attached as Exhibit F.[1] Centurion provided the attached evidence of these calculations in the record, but it appears that this evidence was not considered by PHMSA in the Final Order.

11. Centurion would like to clarify that because of the greater detail provided by using an innovative tool, anomalies were identified that would not have been picked up by older technologies. Hearing Transcript at 156:1-7. These anomalies were found to be *de minimis* mill defects. *Id*. 147:5-20. In fact, two of the conditions were found to meet the API 5L manufacturing tolerance standards for new pipe. *Id*. at 144:1-12. Given the minute nature of these mill defects, it is not surprising that the ANSI B31.4 calculation would yield an operating pressure that was greater than the operating pressure in use at the time. As the rule states, the ANSI B31.4 calculation is to determine "the remaining strength of the pipe." 49 C.F.R. § 195.452(h)(4)(i)(B). Centurion's calculations show that these anomalies were so small that even if one considered them immediate repair conditions, they did not meaningfully affect the strength of the pipe or otherwise warrant a pressure reduction.

12. The preamble of 49 C.F.R. § 195.452(h)(4) shows that PHMSA added the concept of the pressure reduction calculation in a 2002 amendment because it "agree[d] that pressure reductions should be based on an engineering evaluation." 67 Fed. Reg. 1655 (Jan. 14, 2002). PHMSA understood that a temporary pressure reduction should be tailored to the situation at hand and based on an engineering calculation. Centurion performed that

[1] This documentation, which was provided in the record, reflected preliminary calculations. The final calculations revealed acceptable pressure limits even higher than these. As indicated in the pressure logs, at no time did Centurion's operating pressure exceed any of these limits.

calculation and operated its pipeline at a safe operating pressure below the operating pressure yielded by the required calculation. Therefore, Centurion complied with 49 C.F.R. § 195.452(h)(4). To the extent that PHMSA is arguing that the identification of anomalies requires a pressure reduction regardless of these calculations, it is acting contrary to its own guidance in the preamble.

13. PHMSA has not provided any evidence to show that Centurion failed to complete the temporary pressure reduction calculations and take appropriate pressure reduction actions accordingly, in compliance with the requirement. Therefore PHMSA has failed to show by a preponderance of the evidence that Centurion violated 49 C.F.R. § 195.452(h)(4).

14. Because Centurion did in fact calculate the temporary reduction in operating pressure in accordance with 49 C.F.R. § 195.452(h)(4), and take the appropriate actions required under the rule based on that calculation, Item 6 should be withdrawn for lack of sufficient evidence. Accordingly, the penalty associated with Item 6 should be eliminated or, at a minimum, reduced.

ITEM 5: DISCOVERY OF CONDITION

15. Item 5 of the NOPV alleged that Centurion violated 49 C.F.R. § 195.452(h)(2) by failing to discover conditions within 180 days after an integrity assessment absent a showing of impracticability.

16. The integrity assessment tool run was completed on December 3, 2011. However, the tool run was declared a failure and the data was declared unusable on December 15, 2011. Affidavit of Steve Appleton, Senior Director, T.D. Williamson, Inc., ¶ 17, attached as Exhibit G ("TDW Affidavit"). This was based on external damage to the tool, abnormal data responses from the tool's sensors, and an initial internal review of the data that showed an insufficient data set. *Id*. at ¶¶ 13-17. On January 27, 2012, only after extensive work by Centurion and its vendor did the vendor determine that the assessment results could be salvaged and sufficient information could be obtained with which to perform an analysis and thereby identify conditions. *Id*. ¶¶ 18-22; Affidavit of Jesse Mitchell, Sr Pipeline Assessment Consultant, Centurion Pipeline L.P., ¶ 5, attached as Exhibit H ("Mitchell Affidavit"). Centurion contends that the 180-day "clock" should start from this point, not from the end date of the tool run. Contrary to PHMSA's conclusion in the Final Order, existing precedent supports this interpretation.

17. In the alternative, Centurion contends that the data issues made it impracticable to complete the analysis within 180 days of the tool run. Centurion believes that it needs to clarify its impracticability argument because it was not fully considered by PHMSA. Centurion believes the impracticability is due to a unique set of circumstances that stems from the use of an innovative multidata-set tool that provides enhanced environmental and safety benefits. As set forth more fully below, Centurion's use of the tool and the events that ensued are the result of Centurion's commitment to being a safe and proactive operator.

A. RELEVANT PRECEDENT THAT SUPPORTS CENTURION'S POSITION WAS MISQUOTED AND MISAPPLIED IN THE FINAL ORDER.

18. The Final Order misquotes and misapplies relevant precedent. PHMSA stated in the Final Order that "Discovery is tied 'to the fact that at the completion of a tool run there are assessment results from which an operator can obtain sufficient information about the condition to determine that [sic] condition presents a potential threat to the integrity of the pipeline.'" Final Order at 9 (citing *In re BP Pipelines (North America) Inc.*, CPF No. 3-2005-5030, 2006 WL 7129217, at *6 (Sept. 6, 2006)). However, the prior decision reads in its entirety, "discovery is not tied solely to the date of the tool run but to the fact that at the completion of a tool run there are assessment results from which an operator can obtain sufficient information." 2006 WL 7129217, at *6 (Sept. 6, 2006)) (emphasis added).

19. The omitted portion of the sentence completely changes the meaning of the precedent. *BP Pipelines* expressly notes that tying the discovery "clock" to a tool run assumes that the completion of the tool run produced usable data to make such determinations. *See id.* It is undisputed that the tool run was initially declared a failure and that extensive work was needed to salvage any usable data from the run. TDW Affidavit, ¶¶ 17-21, attached as Exhibit G. Accordingly, the 180-day discovery period began on the date on which the data was declared usable on January 27, 2012 (*i.e.*, the date when there were "assessment results from which an operator [could] obtain sufficient information"). *See* 2006 WL 7129217, at *6 (Sept. 6, 2006)).

B. THE DATA ISSUES, OVERALL COMPLEXITY AND NOVELTY OF THE TOOL RUN MADE IT IMPRACTICABLE TO DISCOVER CONDITIONS WITHIN 180 DAYS.

20. In the alternative, Centurion seeks reconsideration on the issue of whether it was impracticable to complete the analysis within 180 days.

21. The December 3, 2011 tool run was declared a failure on December 15, 2011. *See* TDW Affidavit, ¶ 17, attached as Exhibit G. It was not until January 27, 2012, that the data from the tool run was officially declared usable. *Id.* at ¶ 22. Below is a chart of the steps taken from December 2011 - January 2012 to salvage usable assessment results from the corrupted data:

12/1/2011	Tool run launched
12/3/2011	Tool run ended
12/4/2011-12/7/2011	Machine code files downloaded and transcoded
12/7/2011	Vendor provided computer screen capture of data it said was abnormal and unreliable
12/7/2011-12/12/2011	Vendor continued internal review of data
12/15/2011	Vendor provided the raw data and a blank database recorded by the tool and declared the ILI run failed

12/15/2011-12/20/2011	Centurion used software to review the data and attempt to determine whether there was salvageable raw data
12/20/2011	Vendor sent Centurion a presentation to explain why the run had been declared a failed run
12/20/2011	Centurion sent vendor a message suggesting that software might improve the data display
12/21/2011	Vendor sent a response showing that the software did not change the data display issues
week of 1/2/2012	Meeting between Centurion and vendor during which Centurion requested vendor to continue to look at the impaired data and determine if any analysis could be performed
1/11/2012	Conversation with vendor during which vendor discussed its analysis of whether there was usable data from the run
1/23/2012	Vendor contacted Centurion to discuss the data quality, Centurion made request to vendor to proceed with data analysis, and agreement reached that sufficient data could be salvaged from the MDS tool to enable vendor to begin grading the data
1/27/2012	Vendor confirmed that no other issues had been identified and agreed to proceed with data analysis and grading of the data
6/18/2012	Centurion received prefatory database to analyze
7/11/2012	Centurion completed analysis of database
7/25/2012	180 days from 1/27/2012, the date in which data from tool run was declared usable
8/31/2012	Final report received from vendor

Id. ¶¶ 12-22; Mitchell Affidavit, ¶ 5, attached as Exhibit H; Centurion Work Journal, attached as Exhibit I.

22. Once the data was declared usable on January 27, 2012, Centurion did not receive a preliminary database to analyze until June 18, 2012. *See* Centurion Work Journal, attached as Exhibit I. This vendor delay was unforeseeable because this was "one of the very first runs of TDW's new MDS tool in a 16" diameter configuration, and the longest run of the MDS tool run with the SMFL component to date." TDW Affidavit, ¶ 11, attached as Exhibit G. "This 150 mile MDS run recorded the largest sensor data file in TDW's history (up to this time)." *Id*. ¶ 12. Centurion did not anticipate the length of time that the vendor would take to grade the data. Centurion worked as quickly as possible on the voluminous multi-data set, but did not complete the analysis until July 11, 2012, 23 days later. *See* Centurion Work Journal, attached as Exhibit I. This 23-day turnaround involved a herculean effort by Centurion's employees to examine a complex and voluminous database. This effort was completed even though Centurion did not receive the final report from TDW until August 31, 2012. *See* TDW Affidavit, ¶ 23, attached as Exhibit G.

23. The initial 55-day delay in obtaining usable assessment results, combined with an almost five month vendor delay in providing data to analyze, demonstrates that the 180 day deadline was impracticable. This is not a scenario in which vendor delay could have been anticipated, prevented or curtailed. *See In re ExxonMobil Pipeline Company*, CPF No. 4-2013-5027 2015 WL 7175715 at *20 (October 1, 2015) ("generally it is not an impracticability where the vendor delay could have been anticipated ahead of time, or where there was some action by the operator that contributed to the delay."). Centurion was not aware that the vendor would need additional time or effort to grade the data. The vendor took much longer than expected to produce a final report on the tool run. Once faced with these issues, Centurion's efforts minimized delay by identifying potential conditions within a 23-day period, before the vendor issued the final report.

C. THE IMPRACTICABILITY IS DUE TO THE INNOVATIVE USE OF A SOPHISTICATED TOOL AS PART OF CENTURION'S ROBUST AND PROACTIVE SAFETY PROGRAM.

24. The impracticability of meeting the 180-day deadline stems from Centurion's use of state of the art technology in its pipeline integrity program. "The MDS tool was cutting edge technology and offered the ability to obtain data from 5 different sensors in one ILI run." *See* TDW Affidavit, ¶ 9, attached as Exhibit G. Moreover, the tool run was the first of its kind. *Id*. ¶ 11.

25. Centurion chose to use this innovative tool, which was double the cost of existing technology, because it allowed Centurion to know more about the condition of the pipe. Hearing Transcript at 33:18-22, attached as Exhibit J. Specifically, the "ability to see longitudinal defects or longitudinal damage such as third-party damage along the pipe as well as defects along the long seam were the primary motivators that caused us to step up to this latest technology." *Id*. at 42:12-16.

26. Under PHMSA FAQ 4.13, Centurion could have discarded the data as a failed run on December 15, 2011. This would have entitled Centurion to another nine-month interval in which to perform a new tool run and another 180 days after that to identify conditions. PHMSA FAQ 4:13; Hearing Transcript at 105:18-25, attached as Exhibit J. Had Centurion done so, it would have had until March 9, 2013 to complete this effort. Instead, Centurion pushed to complete its analysis on July 11, 2012. Centurion should not be punished for taking the more safety-conscious and proactive approach.

27. There is no evidence of Centurion's unwillingness to comply. There is also no evidence that Centurion's actions have endangered human health or the environment. Rather, the record shows that Centurion has a commitment to pipeline safety and integrity and will take steps to carry out that commitment -- even when given the option to choose a less burdensome and costly path. To find a violation in this instance would not only disincentivize the use of innovative technology, but also disincentivize operators from taking proactive measures to analyze data and more quickly identify potential pipeline integrity issues.

D. SUMMARY

28. Because PHMSA misapplied relevant precedent and failed to provide sufficient evidence to prove a violation, and in the alternative Centurion has demonstrated that the 180-day discovery deadline under 49 C.F.R. § 195.452(h)(2) was impracticable, Item 5 should be withdrawn. Accordingly, the penalty associated with Item 5 should be eliminated or, at a minimum, reduced.

ITEM 3: ULTRASONIC THICKNESS INSPECTIONS

29. Item 3 of the NOPV alleged that Centurion violated 49 C.F.R. § 195.432(b) by failing to perform Ultrasonic Thickness ("UT") measurements within five years for breakout tanks 6688, 6965, 6948 and 2722 as required by API Standard 653 because corrosion rates were unknown.

30. The Final Order misinterpreted API Standard 653 by confusing Sections 6.3.3.2.a and 6.3.3.2.b of the standard. Centurion presented unrefuted evidence of measured, known corrosion rates for each tank. Accordingly, Centurion's tanks were subject to the longer interval for UT testing in 6.3.3.2.b, not the five-year interval for tanks with unknown corrosion rates in 6.3.3.2.a. These known corrosion rates were not based on a similar service assessment -- a tool used for estimating corrosion rates under 6.3.3.2.a -- but on as much as 60 years of actual, measured thickness data from each tank. Accordingly, Centurion's UT inspection program was not only up to date, it actually far exceeded program requirements.

31. These tanks have a known corrosion rate. Centurion knows the corrosion rate of the tanks because Centurion has been tracking the tanks' corrosion rates for decades. For each of these tanks, Centurion has data that shows Actual Wall Thickness, which when compared over time provide known corrosion rates. *See* Supplemental Response at 10, attached as Exhibit C; Supplemental Closing at 6, attached as Exhibit E. Accordingly, Centurion's tanks are not required to undergo UT inspections every five years.

32. API Standard 653 Section 6.3.3.2 imposes different requirements based on whether corrosion rates are known or unknown:

    a. Section 6.3.3.2.a states, "When the corrosion rate is not known, the maximum interval shall be five years. Corrosion rates may be estimated from tanks in similar service based on thickness measurements taken at an interval not exceeding five years."

    b. Section 6.3.3.2.b states, "When the corrosion rates is known, the maximum interval shall be the smaller of *RCA/2N* years . . . or 15 years."[2]

    API Standard 653 (emphasis added). Centurion would like to clarify that corrosion rates were *known*, so Section 6.3.3.2.b applied. Section 6.3.3.2.a did not apply.

[2] As stated in Centurion's Supplemental Closing, Centurion's *RCA/2N* calculation varies from 50 years to infinity. Supplemental Closing at 6, attached as Exhibit E. Therefore the 15-year inspection interval is applicable. PHMSA has not refuted the applicability of the 15-year inspection interval.

33. The Final Order stated that "Centurion did not provide any evidence that it had calculated corrosion rates or estimated corrosion rates from tanks in similar service based on thickness measurements." Final Order at 11 (emphasis added). This statement assumes that Centurion was required to comply with or was otherwise using the similar service methodology in Section 6.3.3.2.a. Section 6.3.3.2.a simply does not apply. Centurion therefore seeks reconsideration of the evidence provided to show that it complied with the applicable provision, Section 6.3.3.2.b.

34. The Actual Wall Thickness of tanks 6688, 6965, 6948 and 2722 has been measured consistently over the past six decades that the tanks have been in service. *See* Supplemental Response at 10, attached as Exhibit C. Centurion's inspection methodology measures and records multiple UT readings for each steel plate course of the tank. *See* API 653 Internal Inspection Report for Tank 6688 at 22-24; API 653 Internal Inspection Report for Tank 6965 at 21-23; API 653 Internal Inspection Report for Tank 6948 at 31-34; API 653 Internal Inspection Report for Tank 2722 at 29-32, attached as Exhibit K.[3] Readings are from the bottom, middle and top of each steel plate course. Readings taken in the same area from one inspection to the next are compared with past and historical tank records to provide an accurate indication of the corrosion rate on each course.[4] Centurion's calculation method is consistent with API Standard 653 Section 6.3.3.1, which states that "[e]xternal, ultrasonic thickness measurements of the shell can be a means of determining a rate of uniform general corrosion while the tank is in service."

35. Centurion not only meets but exceeds the regulatory requirement. Centurion conducts external inspections on a more frequent basis rather than utilizing the maximum 15 year interval that would be allowed under 6.3.3.2b.

36. PHMSA has not cited any evidence to show that Centurion's method was inconsistent with API Standard 653, Section 6.3.3.2.b. The Final Order merely asserts that "using Minimum Wall Thickness was invalid" without any analysis of why it is invalid or what was needed for a valid calculation. Final Order at 5. PHMSA's conclusory statement of invalidity is not sufficient to demonstrate a violation of the standard. Therefore, PHMSA has not shown by a preponderance of the evidence that Centurion violated 49 C.F.R. § 195.432(b).

37. Because Centurion sufficiently calculated corrosion rates in accordance with API Standard 653, Item 3 should be withdrawn for lack of sufficient evidence. Accordingly, the penalty associated with tank 6965 should be eliminated or, at a minimum, reduced.

[3] The shell readings for Tanks 6965 and 2722 were previously included in the record. Centurion described the shell readings for Tanks 6688 and 6948 in the record, but inadvertently did not include the table results of those readings in the record. Therefore Centurion is supplementing the record with the full API 653 Inspection Reports that contain the 2007 shell readings for Tank 6688 and the 2008 shell readings for Tank 6948.

[4] Centurion concedes that it does not have records of calculated corrosion rates. *See* Supplemental Response at 10, attached as Exhibit C. Centurion has estimated these rates in the past based on engineering experience. *Id*. To do so, Centurion compared the results of the measured thicknesses over time and because the rates have been very low remains confident that its tanks are not experiencing signs of corrosion. Starting in 2013, Centurion began showing these calculations in its reports. *See* Supplemental Response, Appx. A, attached as Exhibit C. This does not change the fact that the tanks have known, measured corrosion rates based on unrefuted empirical data.

ITEM 2: EXTERNAL INSPECTIONS

38. Item 2 of the NOPV alleged that Centurion violated 49 C.F.R. § 195.402(b) by failing to conduct External Inspections of four breakout tanks within the required five-year interval according to API Standard 653.

39. Centurion does not seek reconsideration regarding Item 2 of the Final Order for tanks 6688, 6948 and 2722. Centurion seeks reconsideration regarding Item 2 of the Final Order for tank 6965. Specifically, Centurion seeks reconsideration of the discrete legal issue of whether Centurion complied with API Standard 653 when it performed the required External Inspection of Tank 6965 within five calendar years.

40. API Standard 653 requires external inspections of in-service tanks every five "years." It does not say "every five 365-day period," or "every 1,825 days." The standard uses the colloquial term "year." Both commentary from the API Committee that developed the standard and legal precedent support the proposition that the term "year" may be fairly and properly understood to mean a calendar year for compliance purposes. *See* Supplemental Response at 8-9, Appx. B, attached as Exhibit C; Supplemental Closing at 4, attached as Exhibit E.

41. Centurion provided evidence of the API 653 Committee's interpretation that a five calendar year interval is permissible. *See* Supplemental Response, Appx. B, attached as Exhibit C. PHMSA did not refute this evidence. The Committee's interpretation is consistent with the canons of statutory and regulatory interpretation, under which the term "year" is considered to have the ordinary meaning of "calendar year" absent an indication to the contrary in a statute or rule. *See FDIC v. Meyer*, 510 U.S. 471, 476 (1994) ("In the absence of such a definition, we construe a statutory term in accordance with its ordinary or natural meaning."); *Department of Labor v. Gardner*, 882 F.2d 67, 71 (3rd Cir. 1989) (citing Black's Law Dictionary 1448 (5th ed. 1979) ("in the absence of any statutory or regulatory definition, the words '1 year' should be given their ordinary meaning . . . 'a calendar year is generally intended,'"). Neither PHMSA's enabling statutes, nor its regulation define the term "year." *See* 49 U.S.C. § 60101 (Definitions) (Not including a definition of the term "year"); 49 C.F.R. § 195.2 (Definitions) (Not including a definition of the term "year").

42. PHMSA's only basis for its contention that API Standard 653 requires External Inspections every five 365-day periods is the *Enbridge* decision cited in the Final Order. Final Order at 4. In that decision, the operator voluntarily changed its procedure prior to issuance of the Final Order. *In re Enbridge Pipelines (Ozark), L.L.C.*, CPF 4-2010-5008, Item 1, 2010 WL 6531638 (Aug. 17, 2010). Accordingly, the issue of External Inspection intervals was not properly before PHMSA in the *Enbridge* Final Order. *See id*. PHMSA cannot rely on *dicta* noting the voluntary action of an operator as a definitive interpretation of the standard. Nor does this prior ruling point to a statutory or regulatory definition or basis for PHMSA's preferred interpretation. Moreover, PHMSA did not offer any evidentiary basis for its interpretation of API Standard 653 and did not refute Centurion's evidence concerning the API Committee's interpretation. At most, PHMSA's interpretation is a litigation position that is not entitled to deference. *Bowen v. Georgetown University Hosp.*, 488 U.S. 204, 213 (1988).

43. Because PHMSA has improperly interpreted API Standard 653, Item 2 should be withdrawn with respect to tank 6965. Accordingly, the penalty associated with tank 6965 should be eliminated or, at a minimum, reduced.

ITEM 1: ROUTINE IN-SERVICE INSPECTIONS

44. Item 1 of the NOPV alleged that Centurion violated 49 C.F.R. § 195.432(b) by failing to conduct monthly Routine In-Service Inspections of breakout tanks 6832 and 6833. PHMSA reached this conclusion based solely on gaps in Centurion's inspection records. For tanks 6832 and 6833, Centurion was missing inspection records for January 2010 - April 2011 and August 2011.

45. In retrospect, Centurion did not provide a sufficiently detailed explanation of the evidence provided to show that Centurion complied with the cited requirement and conducted monthly visual inspections of the tanks. In addition, PHMSA misinterpreted the evidence provided by Centurion. Standing alone, evidence of missing records is not proof that an inspection was not performed -- only that a record was not kept. Centurion has a robust PHMSA inspection program as well as other compliance inspection programs that look for similar issues. Moreover, these tanks are co-located with tanks for which Centurion has records of Routine In-service Inspections during the relevant months. Taken as a whole, and as explained in more detail below, the preponderance of the evidence supports the conclusion that Centurion conducted all required monthly Routine In-Service Inspections but failed to maintain adequate records of inspections for Tanks 6832 and 6833.

46. During its inspection, PHMSA asked for and received four years of inspection records for 26 total tanks. Out of these 1,248 monthly records, only 34 (or 2.7%) were found to be missing.

47. Tank 6832 was missing records for January 2010 - April 2011 and August 2011. Tanks 6719 and 6871 are located at the same facility, 467 and 925 feet respectively from Tank 6832. Both were subject to a Routine In-Service Inspection in each of the months for which Centurion is missing records for Tank 6832. In addition, all three tanks -- 6832, 6719 and 6871 -- were subject to the following periodic inspections during the relevant time period: environmental, health and safety ("EHS") reviews, monthly tank gauging, and mixer and thief hatch checks. During these other inspections, Centurion performed and documented visual inspections on Tank 6832 that were essentially identical to those required by API Standard 653. Centurion has provided supplemental records to show that these additional inspections were performed monthly during the relevant time period. *See* Wasson Tanks Inspection Records, attached as Exhibit L.

48. Tank 6833 was missing records for January 2010 - April 2011 and August 2011. Tanks 6834 and 6830 are located at the same facility, 345 and 830 feet from Tank 6833 respectively. Both were subject to a Routine In-Service Inspection in each of the months for which Centurion is missing records for Tank 6833. In addition, all three tanks -- 6832, 6719 and 6871 -- were subject to the following periodic inspections during the relevant time period: EHS reviews, monthly tank gauging, and mixer and thief hatch checks. During these other inspections, Centurion performed and documented visual inspections on Tank 6833 that were essentially identical to those required by API Standard 653. Centurion has provided

supplemental records to show that these additional inspections were performed monthly during the relevant time period. *See* Wasson Tanks Inspection Records, attached as Exhibit L.

49. Centurion previously provided the following evidence to show that it conducted the required monthly visual inspections of breakout tanks:

    a. Centurion's Liquid Operations Manual, procedure P-195.432, Inspection of In-Service Breakout Tanks, which states that the frequency for Routine In-service inspection is monthly.

    b. Centurion's form entitled Monthly Inspection of In-service Breakout Tanks Form F-195.432(b)M.

50. PHMSA reasons that the existence of these forms and procedures is evidence that Centurion did not perform monthly inspections. Final Order at 2. There is no question that these tanks were subject to monthly inspection requirements and that these documents note these requirements. However, they are not evidence of a failure to perform such inspections. They are evidence that Centurion has a robust, systematic approach to PHMSA inspections. With such a written program in place, it seems less likely to conclude that Centurion failed to perform inspections of tanks at facilities where it performed identical PHMSA inspections on nearby tanks than it does to conclude that Centurion has misplaced a handful of records. Centurion is concerned that it may have failed to keep its records in order, but does not believe that the evidence supports PHMSA's claim that it failed to conduct the inspections themselves.[5] In the alternative, Centurion contends that the additional inspections performed on the tanks are sufficient to meet PHMSA inspection requirements.

51. Because the PHMSA-cited evidence is not sufficient to prove a violation of 49 C.F.R. § 195.432(b), and the totality of the evidence suggests compliance with the requirement, Item 1 should be withdrawn for lack of sufficient evidence. Accordingly, the penalty for Item 1 should be eliminated or, at a minimum, reduced.

CONCLUSION

52. For the foregoing reasons, Centurion Pipeline LP respectfully requests that the Associate Administrator grant its Petition for Reconsideration of Items 1-3 and 5-6 of the Final Order.

April 24, 2017

Respectfully Submitted,
Counsel for Centurion Pipeline LP

[5] Centurion notes that PHMSA has not asserted a claim for failure to keep inspection records and believes that any such claim is barred by the applicable statute of limitations. *See* 28 U.S.C. § 2462.

/s/

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