November 4, 2022

Alan K Mayberry, Assoc. Administrator, Pipeline Safety
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Ave., SE
Washington, DC 20590

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Via Electronic Mail: heather.taylor.ctr.dot.gov;
phmsachiefcounsel@dot.gov

Re: Petition for Reconsideration of CPF No. 4-2022-007-NOPV

Dear Mr. Mayberry:

Kinetica Partners, LLC hereby petitions for reconsideration of the above captioned Order pursuant to the provisions of 49 C.F.R. Section 190.243. While Kinetica firmly believes that it more than adequately addressed its arguments that it was, and is, in compliance with the referenced regulations, despite the erroneous findings in Item 5 of the Order to the contrary, you will note that we have appended additional information in support of our compliance that was not available until just recently. Kinetica's response to the findings in Item 4 includes information that has been available to PHMSA by means of Kinetica's Annual Report, but we include that information again for convenience of reference.

Kinetica specifically petitions for reconsideration of the findings in Item 3, Item 4 and Item 5. We have addressed those items below in the order in which they are found in the Order.

Kinetica's arguments for reconsideration are as follows:

Item 4: The Notice alleged that Kinetica violated 49 C.F.R. §§ 191.29(a)(1) and (b), which states:

> ***§ 191.29 National Pipeline Mapping System.***
>
> *(a) Each operator of a gas transmission pipeline or liquefied natural gas facility must provide the following geospatial data to PHMSA for that pipeline or facility:*
>
> *(1) Geospatial data, attributes, metadata and transmittal letter*

> *appropriate for use in the National Pipeline Mapping System. Acceptable formats and additional information are specified in the NPMS Operator Standards Manual available at www.npms.phmsa.dot.gov or by contracting the PHMSA Geographic Information Systems Manager at (202) 366-4595.*
>
> *(2) ....*
>
> *(b) The information required in paragraph (a) of this section must be submitted each year, on or before March 15, representing assets as of December 31 of the previous year. If no changes have occurred since the previous year's submission, the operator must comply with the guidance provided in the NPMS Operator Standards manual available at www.npms.phmsa.dot.gov or contact the PHMSA Geographic Information Systems Manager at (202) 366-4595.*

The Notice alleged that Respondent violated 49 C.F.R. §§ 191.29(a)(1) and 191.29(b) by failing to submit complete and accurate National Pipeline Mapping System (NPMS) information required by § 191.29(a) on or before March 15 representing its assets as of December 31 of the previous year. Specifically, on April 1, 2016, KDE acquired from ANR Pipeline Company approximately 470.7 miles of offshore pipeline assets located in the Gulf of Mexico and approximately 44.52 miles of onshore pipeline assets. The Notice alleged that since the 2016 acquisition, Respondent has not submitted updates to NPMS to account for these assets.

In its Response, KDE [Kinetica Deepwater Express, LLC an operating subsidiary of Kinetica Partners, LLC] *argued that it submitted the required NPMS information for the pipeline mileage in question under OPID 39519 for calendar years 2016, 2017, 2018, 2019, 2020, and 2021. Respondent provided screenshots from NPMS with its Response.*

After reviewing the additional documentation submitted by Respondent, I find Respondent did not satisfy the requirements of §§ 191.29(a)(1) and 191.29(b). While Respondent filed NPMS information for each calendar year since 2016, these filings were incomplete. Exhibit D in the case file shows the total mileage that KDE submitted to NPMS each year was 261 miles in 2016, 219 miles in 2017, 219 miles in 2018, and 202 miles in 2019, 2020, and 2021. However, these NPMS submissions conflict with KDE's annual reports submissions for those years, wherein Respondent indicated it operated over 400 miles of pipeline each year. Respondent did not provide documentation to support its assertion that it accurately reported its total mileage to NPMS.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. §§ 191.29(a)(1) and 191.29(b) by failing to submit complete and accurate NPMS information required by § 191.29(a) on or before March 15 representing its assets as of December 31 of the previous year.[4]

Kinetica Response:

According to 49 CFR § 191.29 (c), this section does not apply to gathering pipelines. The lines not submitted for KDE were gathering lines, and therefore, should not have been submitted. See attached annual reports and snip below. Kinetica reported KDE transmission lines on each year's NPMS submittal. Kinetica Deepwater Express, LLC owns over 400 miles of pipelines, but approximately half of those lines are gathering lines.

2021 Annual Report showing amount of transmission and gathering lines:

PART D - MILES OF STEEL PIPE BY CORROSION PROTECTION										
	Steel Cathodically protected		Steel Cathodically unprotected							
	Bare	Coated	Bare	Coated	Cast Iron	Wrought Iron	Plastic	Composite[1]	Other	Total Miles
Transmission										
Onshore	0	47.11	0	0	0	0	0	0	0	47.11
Offshore	0	150.23	0	0	0	0	0	0	0	150.23
Subtotal Transmission	0	197.34	0	0	0	0	0	0	0	197.34
Gathering										
Onshore Type A	0	0	0	0	0	0	0	0	0	0
Onshore Type B	0	0	0	0	0	0	0	0	0	0
Offshore	0	211.83	0	0	0	0	0	0	0	211.83
Subtotal Gathering	0	211.83	0	0	0	0	0	0	0	211.83
Total Miles	0	409.17	0	0	0	0	0	0	0	409.17

In light of the above, Kinetica clearly was, and is, in compliance with the referenced regulations. Kinetica petitions the Associate Administrator to: reconsider the findings in Item 4 which find Kinetica in violation; withdraw them; and, substitute findings that Kinetica was in compliance.

Item 5: The Notice alleged that Kinetica violated 49 C.F.R. § 192.717, which states:

§ 192.717 Transmission lines: Permanent field repair of leaks.

Each permanent field repair of a leak on a transmission line must be made by –

(a) Removing the leak by cutting out and replacing a cylindrical piece of pipe; or

(b) Repairing the leak by one of the following methods:

(1) Install a full encirclement welded split sleeve or appropriate design, unless the transmission line is joined by mechanical couplings and operates at less than 40 percent of SMYS.

(2) If the leak is due to a corrosion pit, install a properly designed bolt- on-leak clamp.

(3) If the leak is due to a corrosion pit and on pipe of not more than 40,000 psi (267 Mpa) SMYS, fillet weld over the pitted area a steel plate patch with rounded corners, of the same or greater thickness than the pipe, and not more than one-half of the diameter of the pipe in size.

(4) If the leak is on a submerged offshore pipeline or submerged

pipeline in inland navigable waters, mechanically apply a full encirclement split sleeve of appropriate design.

(5) Apply a method that reliable engineering tests and analyses show can permanently restore the serviceability of the pipe.

The Notice alleged that Respondent violated 49 C.F.R. § 192.717 by failing to complete a permanent field repair of a leak. Specifically, the Notice alleged that on July 16, 2021, KDE repaired a through-wall pinhole leak with a Belzona Superwrap II composite wrap, and documented it as a "permanent" repair on its Pipeline Repair & Replacement Field Worksheet (Maximo Ticket Number 21-91661) and in its Pipeline Inspection Report (Repair Number BBH-4482). The Notice alleged neither § 192.717 nor KDE's written procedure (in place since July 2020) allows for through-wall leaks to be permanently repaired using composite wraps.

In its Response, Respondent contested the violation and stated that it had not updated its written procedures to account for through-wall defects. Respondent argued that pursuant to 49 C.F.R. § 192.717(b)(5), permanent field repairs of leaks may be made using a method that reliable engineering tests and analyses show can permanently restore the serviceability of the pipe. KDE cited several documents[5] to support its assertion that the regulations allow operators to choose other methods to repair leaks, and it asserted that composite wraps are one such method.

While I agree that Respondent's procedures and 49 C.F.R. § 192.717(b)(5) permit operators to use repair methods not specifically listed in the regulation, the procedures and regulation require that those repair methods must permanently restore the serviceability of the pipe, as shown by reliable engineering tests and analyses. The PHMSA documents Respondent cited in its Response reiterate that an operator's repair method is permitted only when reliable engineering tests and analyses show that it permanently restores serviceability of the pipe. Respondent did not provide or cite to any reliable engineering tests or analyses that show that Belzona wrap permanently restores the serviceability of pipe that has a leak.

Further, in email correspondence, the Southwest Region identified two industry standards which explicitly prohibit the use of composite wraps to permanently repair leaks, including ASME B21-4 (2019) which prohibits the use of composites for repairing leaks for a permanent repair and ASME B31-8 (2018) which prohibits the use of composites for repairing leaks on a line operating over 100 psig. While Respondent is correct that these standards have not been incorporated by reference into part 192, the prohibition on the use of composite wraps to permanently repair leaks in these industry standards is evidence that using such composite wraps does not constitute a method that reliable engineering tests and analyses show can permanently restore the serviceability of the pipe. Further, as mentioned above, Respondent failed to provide any other tests or analyses that show the Belzona Superwrap II composite wrap can permanently restore the serviceability of pipe with a through-wall leak.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R.

§ 192.717 by failing to complete a permanent field repair of a leak.

Kinetica Response:

Kinetica strongly disagrees with the conclusions reached in the fourth full paragraph on page 5 of the Notice, which states: *"While Respondent is correct that these standards have not been incorporated by reference into part 192, the prohibition on the use of composite wraps to permanently repair leaks in these industry standards is evidence that using such composite wraps does not constitute a method that reliable engineering tests and analyses show can permanently restore the serviceability of the pipe."*

Kinetica did provide reliable engineering analyses showing that composite wraps do provide a method to permanently restore the serviceability of the pipe. Kinetica relied upon these analyses in its own compliance analysis from which Kinetica concluded that: throughout the industry, permanent field repairs on leaking pipelines are being completed using composite wraps. Additional supporting analysis by a professional engineer ("PE") who reviewed and approved Kinetica's repair design (which previously had been approved by Kinetica's in-house PE) and affixed his stamp has just recently become available. It is attached for your further consideration, see the attached file BBH 4482 Design.PDF.

In light of the above, Kinetica clearly was and is in compliance with the referenced regulations. Kinetica petitions the Associate Administrator to: reconsider the findings in Item 4 which find Kinetica in violation; to withdraw them; and, then substitute findings that Kinetica was in compliance.

Item 3: The Notice observed that: *"With respect to Item 3, the Notice alleged a probable violation of Part 191, but identified it as a warning item pursuant to § 190.205.*

The warning was as follows:

> *49 C.F.R. § 191.22(c)(2)(iv)* ***(Item 3)*** *– Respondent's alleged failure to file a Type D acquisition notification through the National Registry of Operators for the acquisition of approximately 515 miles of gas transmission pipelines from ANR Pipeline Company no later than 60 days following acquisition.*

Kinetica Response:

In an earlier response on this matter, Kinetica provided additional information regarding this Item, and argued that it had not violated § 191.22(c)(2)(iv).

Kinetica petitions the Associate Administrator reconsider the following finding in the next-to-the last full paragraph on page 8 of the order

> *Under § 190.205, PHMSA does not adjudicate warning items to determine whether a probable violation occurred. If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.*

Kinetica strongly disagrees with the above proposed disposition of Item 3. Kinetica conclusively showed that it was not probable that it had, but in fact that it had not, violated 49 C.F.R. § 191.22(c)(2)(iv) and that, therefore, a warning was not appropriate. The only appropriate resolution is this circumstance is to withdraw the warning as inappropriately given, rather than leaving it on the record to adversely affect the disposition of subsequent issues just by its very existence on the record. Unless the warning is withdrawn, Kinetica will have been unjustly suspected of being out of compliance, which will result in an inference that will most certainly redound to Kinetica's detriment in future interactions with PHMSA. Whether you call it an adjudication of this issue or merely the correction of an error, the only appropriate and fair remedy is to withdraw the warning.

In addition, Kinetica followed PHMSA personnel's guidance in the preparation and submittal of the original notification to PHMSA when it acquired certain of these assets from ANR. At that time, Kinetica discussed with PHMSA personnel the fact that ANR had failed to file the appropriate submittals to transfer the assets to TC Offshore when ANR spun down those assets as part of ANR's formation of TC Offshore. Kinetica acquired TC Offshore and renamed it Kinetica Deepwater Express, LLC in April of 2016. Kinetica made this inquiry to PHMSA as part of its good faith efforts to cure ANR's oversight and remain in compliance with PHMSA regulations. Kinetica followed the PHMSA personnel's guidance at the time and was justified in relying on that guidance when it subsequently determined that it was in compliance after doing so.

In consideration of the information and arguments set forth above, Kinetica petitions for reconsideration of the findings in Item 3, Item 4 and Item 5 by the Associate Administrator and that the alternative findings requested by Kinetica be issued.

Kinetica appreciates your time and attention to this matter.

Regards,

Bill Prentice

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On Behalf of:

_Kurt Cheramie, Sr. Vice President, Kinetica Partners, LLC

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Kinetica Partners, LLC and its subsidiary Kinetica Deepwater Express, LLC