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

In the Matter of	)	
	)	CPF No. 5-2023-029-NOPV
AmeriGas Propane, L.P.,	)	
	)	
Respondent.	)	
	)	

PETITION FOR RECONSIDERATION
April 16, 2024

Pursuant to 49 C.F.R. § 190.243(a), AmeriGas Propane, L.P. (AmeriGas or the Company) respectfully seeks reconsideration of the decision on Item Nos. 4, 8, 10, 12, 14, 15, and 18 in the above-referenced Final Order.

I. Procedural Background

On June 22, 2023, the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) issued a Notice of Probable Violation, Proposed Civil Penalty, Proposed Compliance Order (Notice) to AmeriGas related to its liquified petroleum natural gas distribution systems in Maui, Oahu, and the Island of Hawaii, Hawaii including a proposed penalty of $550,100.

On July 24, 2023, AmeriGas filed its response contesting several of the alleged violations including Item Nos. 4, 10, 15, and 18 (the Response, included as Exhibit 1).

On September 22, 2023, AmeriGas filed a supplemental response providing additional evidence of compliance and contesting several of the alleged violations, including for Items 4, 8, 10, 12, 14, 15, and 18 (the Supplemental Response, included as Exhibit 2).

On March 27, 2024, PHMSA issued a Final Order finding that AmeriGas committed 13 violations of 49 C.F.R. Part 192.[1] PHMSA assessed a total civil penalty of $543,400.[2]

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."[3] AmeriGas received the Final Order on March 27, 2024, by e-mail. Therefore, this petition is timely.

II. Summary of Basis for Petition for Reconsideration.

As set out in detail for each Item below, AmeriGas respectfully requests for PHMSA to vacate or reduce the civil penalties in the Final Order based on the evidence provided by AmeriGas in its Response and Supplemental Response and other mitigating factors.

In lieu of requesting a hearing upon receipt of PHMSA's Notice, AmeriGas responded in good faith and provided evidence of compliance in its Response and Supplemental Response prior to issuance of the Final Order. This included an initial 35 pages and additional 46 pages of supporting information, respectively, demonstrating extensive good faith efforts to ensure compliance (e.g., supplemental training, replacement of regulators) and no adverse environmental impacts (i.e., there was no actual release). However, PHMSA only reduced the proposed penalty amount of $550,100 by $6,700, less than 2% of the initial penalty.

At the time of the Final Order, PHMSA admittedly "ha[d] not yet reviewed AmeriGas' submission [referring to its Supplemental Response] to determine whether the evidence of

[1] *In the Matter of AmeriGas Propane, L.P.*, CPF No. 5-2023-029-NOPV, Final Order at 1 (March 27, 2024).
[2] *Id.* at 13.
[3] 49 C.F.R. § 190.243(a).

remedial action complies with the terms of the Proposed Compliance Order terms."[4] Although not required to correct any alleged deficiencies prior to the issuance of a Final Order, AmeriGas proactively set out to address the alleged deficiencies across all systems in advance of the Final Order, documenting the results with confirmed remedial costs of $424,157, yet received no penalty reduction for its good faith effort in attempting to achieve compliance as allowed for under 49 C.F.R. § 190.225(a)(4). AmeriGas believes that its efforts have already addressed all items in the Compliance Order and will resubmit the evidence to PHMSA in accordance with the deadlines set out in the Final Order.

The Supplemental Response not only contained information pertaining to the Compliance Order terms, but also additional evidence in support of the reconsideration items included here which do not appear to be taken into account in the Final Order. In particular, in addition to demonstrating that AmeriGas exercised good faith in order to ensure compliance, AmeriGas believes the information provided demonstrates the alleged violations were not of a willful or grave nature, did not result in adverse impacts to the environment, and demonstrated limited to no culpability on the part of AmeriGas, each factor which PHMSA is required to consider and historically does weigh in favor of reducing civil penalties under 49 C.F.R. §§ 190.225(a)(4)[5], (a)(2),[6] and (a)(1),[7] respectively. AmeriGas respectfully requests that PHMSA reconsider the information included the Supplemental Response in support of dismissing or reducing penalty amounts as described below.

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[4] Final Order at 14.
[5] *See, e.g., In the Matter of Suburban,* Final Order at 5, CPF No. 3-2019-0003 (Dec. 18, 2020); *In the Matter of Enterprise Products Operating, LLC,* Final Order at 5, CPF No. 3-2019-5019 (Feb. 24, 2020).
[6] *See, e.g., In the Matter of BOE Midstream, LLC,* Final Order at 3, CPF No. 3-2021-051-NOPV (Aug. 18, 2022); *In the Matter of Flint Hills Resources, LLC,* Final Order at 8, CPF No. 3-2020-5021 (Aug. 23, 2021); *In the Matter of ExxonMobil Pipeline Company,* Final Order at 38, CPF No. 4-2013-5027 (Oct. 1, 2015).
[7] *See, e.g., In the Matter of Tallgrass Pony Express Pipeline, LLC,* Final Order at 2-3, CPF No. 3-2021-089-NOPV (July 7, 2022); *In the Matter of City of Richmond,* Final Order at 3, CPF No. 1-2011-0001 (Aug. 1, 2012).

III. PHMSA should vacate the civil penalty assessed in Item No. 4.

In the Final Order, PHMSA issued AmeriGas a $75,200 penalty for an alleged violation of 49 C.F.R. § 192.453, stating that AmeriGas "fail[ed] to ensure operation and maintenance of its cathodic protection systems were carried out by a person qualified in corrosion control methods."[8] However, this is not accurate and AmeriGas requests that the penalty be vacated because there was no violation related to training and qualification of technicians performing cathodic protection inspections and maintenance.

At the time of the inspection, the PHMSA inspector (the Inspector) observed AmeriGas technicians, George Kaya and Neal Kasashima, (the Technicians) performing cathodic protection maintenance tasks. The Inspector concluded that the Technicians were not appropriately trained based on the Inspector's observations and belief that the methods the Technicians were using would result in inaccurate pipe-to-soil measurements.[9] AmeriGas disagrees with the Inspector's assessment and has provided documentation that its methods are in accordance with appropriate industry practices developed by the Propane Education and Research Council, which is a leading authority for cathodic protection in the industry.[10]

All individuals who performed cathodic protection testing and maintenance on the Hawaiian Islands, including Mr. Kaya and Mr. Kasashima, underwent qualification training within the five years prior to the PHMSA inspection. AmeriGas' operator qualification program includes extensive training on the Operations and Maintenance (O&M) Manual, including sections on cathodic protection, followed by a skills assessment prior to performing work.[11] The OQ training

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[8] Final Order at 2-3
[9] *Id.* at 3.
[10] Supplemental Response at 41.
[11] Portions of the O&M manual relating to cathodic protection testing were provided in the Supplemental Response at 40.

records for Mr. Kaya, completed in June 2021 and for Mr. Kasashima, completed in April 2022, which include sections on cathodic protection and corrosion protection are re-provided as Exhibit 3. AmeriGas made these operator qualification (OQ) training records available to the Inspector at the time of the inspection, yet despite the evidence of training, the Inspector concluded the Technicians were not qualified based on his own observations and experience. This does not constitute a sufficient basis for a violation.

Additionally, in a good faith effort to demonstrate compliance in accordance with 49 C.F.R. § 190.225(a)(4), following the inspection AmeriGas retrained relevant technicians regarding cathodic protection testing techniques and provided evidence of the additional training in its Response and Supplemental Response.[12]

Even if PHMSA does not agree based on the clear training record for the relevant personnel and the Technicians that they were qualified, the penalty should be significantly reduced because the gravity of the alleged violation was low and it did not and was not likely to result in any harm to public safety or the environment, which PHMSA must consider in penalty calculations under 49 C.F.R. § 190.225(a)(1)). For reference, the alleged cathodic protection potentials measured by the inspector of -1.65 mV using the method he believed accurate were not so far outside "CP potentials less than approximately -1.4 mV [that] are typically considered 'suspect' and should be investigated."[13]

Additionally, even if the Technicians were not performing tasks in accordance with the Inspector's expectations, AmeriGas has no culpability for the alleged violation, which is an

[12] See Response at 22-33; Supplemental Response at 33-41. Only Mr. Kaya was retrained as Mr. Kasashima was no longer employed by AmeriGas at the time of the retraining.
[13] Final Order at 3.

additional factor that must be considered in penalty calculations under 49 C.F.R. § 190.225(a)(2)). As discussed above, AmeriGas ensured relevant personnel and the Technicians were properly trained and thus qualified in accordance with the rule. The fact that the technicians did not perform readings in accordance with the PHMSA inspector's expectation and got different results when monitoring the equipment does not mean that AmeriGas failed to properly train its technicians or that they were not qualified under the standard.

IV. PHMSA should reduce the civil penalty assessed in Item No. 8.

In the Final Order, PHMSA issued AmeriGas a $35,700 penalty for an alleged violation of 49 C.F.R. § 192.481(a), stating that AmeriGas "fail[ed] to complete atmospheric corrosion inspections at the required interval for two of its systems."[14] However, AmeriGas was able to produce records of the inspection for one of the systems and believes the other system was similarly inspected, but is simply missing the documentation. Accordingly, AmeriGas requests the penalty be reduced to no more than $8,900.

During the inspection and in its responses to PHMSA, AmeriGas explained that from 2019 to 2021, it transitioned to a new electronic work order system for assigning and completing operations and maintenance tasks. During the transition, some hard copy documentation may not have been retained; however, the inspections were assigned and completed regardless. In support of this, AmeriGas provided inspection documentation in the form of a customer acknowledgement of service receipt for one of the alleged missed inspection violations at the Coconut Grove system in Maui, which was conducted on December 8, 2020.[15] Although the documentation is not in the form of an inspection checklist, AmeriGas' electronic records clearly indicate the alleged missing

[14] *Id.* at 6.
[15] Supplemental Response at 42.

2020 inspection for Coconut Grove was completed. There is no requirement that specific forms be completed or hard copies retained, only that the inspections be performed on a certain frequency, which they were.[16]

The same inspection was performed at the appropriate interval for the Wahiawa Town Center system in Oahu, but AmeriGas does not have records in support of it due the work order system transition. For consideration, the two inspection records that were available and provided for the Wahiawa Town Center were 78 months apart,[17] which if split by a third inspection for which the record is missing would meet the 39-month interval requirement. Additionally, an inspection of this site conducted by PHMSA in November 2019 did not identify a violation, which indicates the hard-copy records for a 2017 inspection were likely available and produced at that time.

At a maximum, this is a recordkeeping violation which is typically associated with a lower penalty than active failure violations. Additionally, the gravity of the alleged offense was low and the alleged violation did not and would not result in any harm to public safety or the environment, which must be considered in penalty calculations under 49 C.F.R. § 190.225(a)(1)).

V. PHMSA should reduce the civil penalty assessed in Item No. 10.

In the Final Order, PHMSA issued AmeriGas a $162,300 penalty for an alleged violation of 49 C.F.R. § 192.619(a)(1), stating that AmeriGas "operat[ed] a segment of steel or plastic pipeline at a pressure that exceeds a [maximum allowable operating pressure] MAOP" in five instances.[18] AmeriGas requests the penalty be significantly reduced based on mitigating factors.

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[16] 49 C.F.R. § 192.481(a).
[17] Final Order at 7.
[18] *Id.*

As an initial matter, AmeriGas was able to provide documentation that the MAOP reading for one of the five alleged instances, at the Ewa Point Marketplace system in Oahu, was incorrect due to a faulty pounds per square inch (PSI)) gauge.[19] PHMSA acknowledged the evidence and agreed that the alleged violation only occurred in four instances, yet only reduced the penalty by $6,300, from $168,600 to $162,300.[20] At a minimum, AmeriGas requests that 1/5 of the penalty be dismissed as PHMSA concedes one of the five alleged violations did not occur, for a maximum penalty amount of $134,880.

AmeriGas requests that the penalty be further reduced because the gravity of the alleged violation was significantly low and did not and would not result in any harm to public safety or the environment, which must be considered in penalty calculations under 49 C.F.R. § 190.225(a)(1). Specifically, the MAOP for the four systems was 10 PSI and the PSIs measured were between 12 PSI and 14 PSI. For comparison, the 2 to 4 PSI difference is similar to the force needed to press lightly on a balloon without popping it. Additionally, any overpressure of the regulators at issue would have been diverted to a relief device and did not pose an actual hazard of higher pressures to downstream customers.

Additionally, there was no culpability because AmeriGas was not aware that the valves were operating outside of specification, which must be considered in penalty calculations under 49 C.F.R. § 190.225(a)(2). Once made aware, AmeriGas promptly addressed and replaced the components in a good faith effort to demonstrate compliance in accordance with 49 C.F.R. § 190.225(a)(4).[21] In additional to addressing the regulators identified by PHMSA, AmeriGas

[19] Response at 12.
[20] Final Order at 8 and 12.
[21] Supplemental Response at 11-30.

initiated a special project to verify inlet pressures for all systems on the islands and replaced regulators accordingly as part of the $424,157 remedial effort mentioned above.

VI. PHMSA should reconsider the civil penalty assessed in Item No. 12.

In the Final Order, PHMSA issued AmeriGas a $83,400 penalty for an alleged violation of 49 C.F.R. § 192.723(b)(1), stating that AmeriGas "fail[ed] to conduct leak surveys on three separate systems in business districts at intervals not exceeding 15 months."[22] However, AmeriGas produced records of the inspection for two of the three systems and believes the other system was similarly inspected, although the documentation has not yet been located due to the work order system transition. Accordingly, AmeriGas requests the penalty be reduced to no more than $27,500, a third of the initial penalty.

As discussed above, AmeriGas underwent a transition in its work order system between 2019 and 2021 and was not able to provide documentation of all surveys at the time of the PHMSA inspection. However, subsequently and prior to the Final Order, AmeriGas provided documentation from its work order system for the two alleged violation instances for the 2020 surveys at the Shops at Wailea and Tosei systems in Maui.[23] Although the documentation is not in the form of an inspection checklist, AmeriGas' electronic records clearly indicate the alleged missing 2020 surveys were completed. There is no requirement that specific forms be completed or hard copies retained, only that the inspections be performed on a certain frequency, which they were in this case.[24]

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[22] Final Order at 8.

[23] Supplemental Response at 43-44; For the avoidance confusion, the date in the "PartnerTimeZone" field is the date the work order system was accessed for the records. The date the inspection was performed is found in the "Description" field towards the bottom of the work order.

[24] 49 C.F.R. § 192.723(b).

The same inspection was performed at the appropriate interval for the Shops at Mauna Lani system in Hawaii, but AmeriGas does not have records in support of it due the work order system transition. At a maximum this is a recordkeeping violation which is typically associated with a lower penalty than active failure violations. Additionally, the gravity of the alleged offense was low and the alleged violation did not and was not likely to result in any harm to public safety or the environment, which must be considered in penalty calculations under 49 C.F.R. § 190.225(a)(1)).

VII. PHMSA should reduce the civil penalty assessed in Item No. 14.

In the Final Order, PHMSA issued AmeriGas a $72,600 penalty for an alleged violation of 49 C.F.R. § 192.739(a)(2), stating that AmeriGas "fail[ed] to correct deficiencies identified during the inspection of the regulating equipment at the Shops at Wailea system."[25] Although AmeriGas did not contest this violation, AmeriGas promptly corrected the deficiency within a month of receiving the Notice in July 2023.[26] AmeriGas requests that PHMSA reduce the penalty based on its good faith in attempting to achieve compliance, which must be considered in penalty calculations under 190.225(a)(4).

VIII. PHMSA should vacate the civil penalty assessed in Item No. 15.

In the Final Order, PHMSA issued AmeriGas a $35,700 penalty for an alleged violation of 49 C.F.R. § 192.747(a), stating that AmeriGas "fail[ed] to inspect or record the inspection of valves that might be needed in an emergency annually at intervals not to exceed 15 months." However, AmeriGas was able to produce documentation of all of the alleged missing inspection records for

[25] Final Order at 9.
[26] Response at 16; Supplemental Response at 31.

the three systems cited and requests that the penalty be vacated because there was no violation of the valve maintenance requirement.

As discussed above, AmeriGas underwent a transition in its work order system between 2019 and 2021 and was not able to provide documentation of all surveys at the time of the PHMSA inspection. However, AmeriGas has since and prior to the Final Order provided documentation for the three alleged violation instances, specifically for (1) the 2019 inspection at the Coconut Grove system in Maui, (2) the 2020 inspection at Tosei system in Maui, and (3) the 2021 inspection at Residences of Laule-a System in Hawaii. For the first instance, AmeriGas provided inspection documentation at Coconut Grove in 2019 in its Response,[27] which PHMSA recognized but only reduced the initial penalty by $400 in response.[28] For the other two alleged violation instances, AmeriGas provided inspection documentation from its electronic work order system for a 2019 and 2020 inspection of the Tosei system and a 2021 inspection of the Residences of Laule-a system.[29] Although the documentation is not in the form of an inspection checklist, AmeriGas' electronic records clearly indicate the alleged missing inspections were completed. There is no requirement that specific forms or worksheets be completed or that hard copies be retained, only that the inspections be performed on a certain frequency, which they were.[30] Accordingly, the penalty should be vacated in its entirety.

IX. PHMSA should vacate the civil penalty assessed in Item No. 18.

In the Final Order, PHMSA issued AmeriGas a $39,400 penalty for an alleged violation of 49 C.F.R. § 192.805, stating that AmeriGas "fail[ed] to ensure through evaluation that individuals

[27] Response at 16-17 and 35.
[28] Final Order at 8-9.
[29] Supplemental Response at 44-46; For the avoidance confusion, the date in the "PartnerTimeZone" field is the date the work order system was accessed for the records. The date the inspection was performed is found in the "Description" field towards the bottom of the work order.
[30] 49 C.F.R. § 192.747(a).

performing covered tasks were qualified to recognize and react to abnormal operating conditions (AOC), which is a requirement to be qualified under 192.803."[31] The individuals at issue are the same Technicians as discussed in Item 4, Mr. Kaya and Mr. Kasashima. As stated above, OQ training records were made available to the Inspector at the time of the inspection and are reproduced here as Exhibit 3, yet despite the evidence of training, the Inspector concluded the technicians were not qualified based on the Inspector's own impressions and experience. This does not constitute a sufficient basis for a violation, and the civil penalty for this item should therefore be vacated.

The regulation in 49 C.F.R. § 192.805 requires that "each operator shall have and follow a written qualification program" and that the program contains provision to ensure through evaluation that individuals are qualified. AmeriGas complies with this requirement and as discussed above, has implemented a written qualification operator qualification program that includes extensive training on the O&M Manual, including sections on corrosion control and Readily Detectable Level (RDL) and Threshold Detectable Level (TDL), followed by a skills assessment prior to performing work.[32]

Additionally, in a good faith effort to demonstrate compliance in accordance with 49 C.F.R. § 190.225(a)(4), following the inspection AmeriGas retrained technicians regarding corrosion control and RDL and TDL and provided evidence of the additional training in its Response and Supplemental Response.[33]

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[31] Final Order at 10.
[32] Response at 20-21.
[33] See Response at 22-33; Supplemental Response at 33-41. Only Mr. Kaya was retrained as Mr. Kasashima was no longer employed by AmeriGas at the time of the retraining.

Even if PHMSA does not agree based on the clear training record for the technicians that they were qualified, the penalty should be significantly reduced because the alleged violation did not and was not likely to result in any harm to public safety or the environment, which must be considered in penalty calculations under 49 C.F.R. § 190.225(a)(1)). Additionally, even if the technicians were unable to answer the PHMSA inspector's questions regarding RDL and TDL, AmeriGas has no culpability for the alleged violation, which is an additional factor that must be considered in penalty calculations under 49 C.F.R. § 190.225(a)(2). As discussed above, AmeriGas has an extensive written qualification program that includes evaluation and skills assessment in accordance with the rule.

X. Conclusion

Based on the foregoing, AmeriGas respectfully requests that PHMSA reconsider its decision in the Final Order by vacating or reducing the civil penalties assessed for Item Nos. 4, 8, 10, 12, 14, 15, and 18, as described above.

Respectfully submitted this 16th day of April, 2024

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