

January 29, 2016

Jeffrey Wiese
Associate Administrator for Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590

Re: Comments regarding the Petition for Reconsideration for CPF No. 4-2013-5027

Dear Mr. Wiese:

I am writing on behalf of Central Arkansas Water (“CAW”) and the 400,000 citizens it serves in Central Arkansas. While CAW strongly believes that PHMSA could and should have done much more in both the Final Order and Compliance Order to achieve on-the-ground pipeline improvements to the Pegasus pipeline (the “Pegasus”) and other similar pipelines, we support the limited remedies that are included in the Final Order and Compliance Order.

Many of the statements set forth in ExxonMobil Pipeline Company’s Petition for Reconsideration (the “Petition”) give us great concern if the Final Order were to be reconsidered. In fact, we believe that the statements made by ExxonMobil Pipeline Company (“ExxonMobil”) in the Petition further demonstrate the inability of the Company to grasp the gravity of the situation and further show its firm reluctance to manage its pipelines in ways necessary to ensure their long-term integrity.

CAW, therefore, respectfully requests that PHMSA deny the Petition and uphold the Final Order, the financial penalties, and the terms of the Compliance Order, even though CAW regards the Compliance Order as inadequate.

Comments in Opposition to the Petition

- 1. Pipeline operators are required to demonstrate that they have properly investigated and integrated all available information into risk assessments (see 49 CFR 195.452(g)).***

In the Petition, ExxonMobil claims, “law neither mandates how operators should determine whether a segment is susceptible to seam failure under the integrity management rules nor does the law dictate a process for operators to follow” (ExxonMobil. “Petition for Reconsideration”. 21 Oct 2015. Page 1). Following this argument, however, ExxonMobil proceeds to cite a process from the Baker report as though it has the force of law and official guidance. In fact, the law is intended to be performance-driven

rather than prescriptive. Regulations related to risk assessment assume that expert technicians will be able to identify and address integrity issues. In this case, however, PHMSA determined that ExxonMobil simply failed to do their job. Any reasonable individual, regardless of expertise in pipeline safety and integrity management, can see that there is a clear history of seam failures on the line as demonstrated by the well-documented failures in 1969, 1991 and 2006. ExxonMobil's refusal to accept these clear indications of a persistent issue within the pipeline should be cited as a violation of accurately determining and evaluating seam failure risk. CAW supports PHMSA's determination of this violation.

2. ExxonMobil appears to believe that a 'bury your head in the sand' approach to integrity management will allow it to evade regulatory violations.

In the Petition, ExxonMobil states, "only if a segment is determined by the operator to be susceptible to seam failure would the operator be obligated to select an assessment capable of testing seam integrity" (*Pet. 2*). This flawed thought process presupposes that ExxonMobil can simply refuse to classify a pipeline at risk and, as a result, avoid all regulations related to regular assessments of that very-real risk. Moreover, it ignores all prior PHMSA Advisory Bulletins on ERW seams that clearly advise pipeline operators to consider LF-ERW pipe as susceptible to seam failure. This statement also ignores the fact the operator lowered its target maximum operating pressure (MOP) after numerous seam failures on the Pegasus in the 2005-2006 hydrotests. Such a deliberate action suggests knowledge of pipeline seam failure susceptibility and specific actions to avoid assessing and truly addressing the risks.

The pipeline safety regulations assume that integrity management experts would use all available information to identify and assess those risks. Failure to identify a real risk in the presence of sufficient information constitutes both a violation of accurate risk identification requirements as well as assessment requirements.

3. ExxonMobil claims that an absence of legislative or agency-approved methodology for determining seam failure susceptibility alleviates it of its responsibility to identify and assess the pipe for all known threats related to seam failure, especially in light of the knowledge gaps related to seam failures on ERW pipe.

Though ExxonMobil does not overtly make the above statement in the Petition, it is clear that the strong focus on a lack of regulatory-approved methodology for determining seam failure susceptibility is key to ExxonMobil's argument that it accurately identified the pipeline as not susceptible to seam failure. Even if sufficient guidance did not exist, the absence of methodology should not alleviate any pipeline operator of its responsibility to identify and assess pipes for risks to the pipeline's integrity.

However, there is a well-documented history of seam failures on the Pegasus that should have led ExxonMobil to classify this pipeline as susceptible to seam failure. PHMSA correctly cites the history of seam failure in the Final Order. Any reasonable person, regardless of technical background, would determine that a pipeline with multiple seam failures from 1969 to 2006 is susceptible to seam failure.

Furthermore, there is a long history well before the mid 1980's Advisory Bulletins that pre 1970's ERW pipelines are at risk for seam failure. Industry knowledge also indicates that the best technology used

to deal with such ERW threats are high stress hydrostatic tests that occur at pressure levels well above minimum federal pipeline safety standards for “new pipe”.

It is also noteworthy that, despite repeated statements that there is no law or agency-approved methodology to determine seam risk, ExxonMobil’s argument for its determination that the Pegasus is not susceptible to seam failure is based on the results of a single published methodology. It is disingenuous for ExxonMobil to state that “PHMSA rules regarding pre-1970 LF-ERW pipe for liquid pipelines are minimal, vague, and more advisory than prescriptive”(Pet. 4) and then treat the methodology included in the Baker report as an all-encompassing, prescriptive approach to determining seam failure risk. Furthermore, the Baker report methodology is only intended to address the “two primary causes” of seam failure. The Baker methodology is never presented as the sole methodology or an exhaustive approach for determining risk of seam failure. It was and continues to be a responsibility of ExxonMobil to identify and assess risk of seam failure from all causes and failing to do so puts ExxonMobil at risk of being found in violation.

Relying solely on guidance for seam failure susceptibility that only considers two primary causes of seam failure is simply bad judgment and an attempt to avoid responsibility. Saying that a pipeline is not susceptible to seam failure because it does not show one of the two “primary” causes of seam failure is like saying a heart attack caused by an uncommon cause is not really a heart attack. The underlying risk is still present and requires investigation and thorough testing to identify and manage this risk. As demonstrated by PHMSA in the Final Order, there is more than enough evidence to conclude that there were recurring seam failures on the Pegasus that should have led ExxonMobil to classify the pipeline as susceptible to seam failure.

4) ExxonMobil attempts to claim that “unique” pipe characteristics and the use of an unacceptable assessment tool absolve it of responsibility of its integrity management responsibilities.

In both the Petition and in numerous public statements, ExxonMobil has claimed that the piece of pipeline that ruptured in Mayflower was “unique” and was “not capable of reliable detection” (Pet. 6). This statement is, at best, disingenuous.

On April 28, 2012, almost a year before the Mayflower rupture, the “North Line” pipeline belonging to ExxonMobil Pipeline Company ruptured and resulted in an unlawful discharge of at least 2,800 barrels of crude oil near Torbert, Pointe Coupee Parish, Louisiana (the “Torbert rupture”). The Torbert rupture was the result of a 17-foot longitudinal seam failure on low frequency electrical resistance weld pipe made by the same company that manufactured the Pegasus using the same manufacturing process. Not surprisingly, the cause of the Torbert rupture has been attributed to “manufacturing defects,” resulting in “hook cracks.” These are the same causes attributed to the Pegasus rupture in Mayflower, and therefore refute the “uniqueness” claim made by ExxonMobil.

Furthermore, Steve Koetting, a pipeline integrity specialist for ExxonMobil, stated under oath that the in-line tools used by ExxonMobil to test the integrity of its pipelines are not entirely reliable. Therefore, spike hydrostatic testing at minimum pressure equal to or exceeding 90 percent SMYS at all elevations in

the watershed is necessary to assure a pipeline is in good condition before it is returned to service. Mr. Koetting also stated, "We are required to learn from failures to prevent them from happening again in other parts of this system or any other system." ExxonMobil conducted hydrostatic testing of the North Line in the summer of 2012 and found additional defects not previously detected by the in-line tools used to inspect the North Line, a pipe of the same type manufactured by the same company in the same vintage as the Pegasus and subjected to the same inadequate integrity management actions as the Pegasus. These actions on the North Line demonstrate that appropriate hydrostatic testing meeting the parameters set forth above can, indeed, identify and address areas of questionable seam integrity.

However, ExxonMobil continued to operate the Pegasus without additional hydrostatic testing even after the North Line failed 7 times during hydrostatic testing within a 200 mile segment following the Torbert rupture. Not only does this demonstrate the systemic inadequacies of ExxonMobil's integrity management efforts across all of their pipelines, but it also directly refutes the "uniqueness" and the "not capable of reliable detection" argument that ExxonMobil attempts to use in the Petition (Pet. 6).

In the Final Order, PHMSA correctly determined that ExxonMobil had sufficient knowledge and methods at its disposal to address the seam failure risk of its pipelines.

ExxonMobil's statement that it is impossible to "reliably detect" segments of pipelines that are at risk of seam failure is extremely troubling for a wide range of reasons. First, this statement demonstrates the lack of understanding or willingness to use sufficient hydrostatic testing to adequately test pipe that has a heightened risk profile for seam failure susceptibility by virtue of its type, age, manufacturer, and testing history. Second, and perhaps most concerning to CAW, the statement suggests the cavalier attitude with which ExxonMobil seeks to operate its pipelines. If ExxonMobil truly believes that risks that lead to such catastrophic failures as in Mayflower and Tolbert are "not capable of reliable detection", then how can they in good conscience seek to return these pipes to service? Is not doing so simply a roll of the dice where ExxonMobil bets their profits against the substantial damage to the property, environment, economy, and quality of life in Central Arkansas and other areas where these flawed pipelines operate?

It is clear that ExxonMobil cannot provide assurances that another "unique" section of pipe is not located anywhere along the Pegasus or within any of its other pipeline systems. ExxonMobil implies, without any basis whatsoever, that they do not expect to find pipe of similar characteristics anywhere else, despite the fact that their own expert uses the phrase "not frequently seen", implying that, while uncommon, these characteristics can be found elsewhere. Nevertheless, ExxonMobil uses this "uniqueness" claim to suggest that they should not be subject to regulations related to integrity management testing for pipelines susceptible to seam failure in the Petition. Would the public be adequately protected if a food manufacturer was allowed to claim that contamination of one package of food was "unique" and unlikely to occur in any of their other products, despite having been made in the same location under the same conditions as the affected product? Why should the public not be similarly protected from flawed pipelines with a demonstrated history of seam failure and heightened risk profile by virtue of the fact that it has the same characteristics of failed pipe? We support PHMSA's determination that, despite the "uniqueness" and "undetectability" arguments of ExxonMobil, the

Pegasus should have been found to be susceptible to seam failure and that ExxonMobil violated regulations by not identifying this fact and not sufficiently testing it for seam failure.

5) ExxonMobil claims that because there is limited information, the regulators should not be able to act when they find that a company made a serious error in judgment and threat identification.

This assertion by ExxonMobil is both shocking and flies in the face of all best practices regarding pipeline safety. In light of limited information, pipeline safety should err on the side of conservatism and caution, not unfettered operation of a pipeline of questionable integrity. ExxonMobil cites a study stating that “gaps remain both in the understanding of the failure process, and in quantifying the effectiveness of current schemes and technology to manage the ERW pipeline network” (Pet. 9) and suggests that because of these “gaps” that any regulatory action is arbitrary.

In fact, the assertion here is that there is a myriad of important and unanswered questions regarding this type of pipe, particularly those that relate to the product this particular pipe is carrying. If this is in fact true, CAW again asks why should an unproven pipe with questionable failure record prone to rupture even be considered for a return to service? Rather than attempt to make excuses for inaction, ExxonMobil should invest in enhancing its integrity management plans to address these questions, identify those pipelines at risk for seam failure, and make appropriate changes for the safety and welfare of the public as PHMSA required in its Final Order and Compliance Order.

6) ExxonMobil mischaracterizes the operational history of the Pegasus Pipeline in an attempt to downplay the significance of the Mayflower failure and ignore the lengthy failure history of the pipeline.

In the Petition, ExxonMobil states that the Pegasus “operated for more than 60 years without a similar incident” to the Mayflower rupture (Pet. 9). This statement is grossly misleading.

In fact, the Pegasus was used to transport light crude oil and refined petroleum products from the Texas Gulf Coast to locations within the mid-western United States for approximately 55 years from the late 1940’s to 2002. The Pegasus was purged and idled with nitrogen in December 2002. Prior to this time period, numerous seam failures occurred during hydrostatic testing in 1969 and in 1991. While an in-service rupture did not occur during this timeframe, there was adequate evidence that seam failure was a very real threat to the pipeline’s integrity.

When the pipeline was restarted in 2006, the flow of the pipeline was reversed, the operating pressure was increased, and the pipeline was used, for the first time, to transport diluted Wabasca heavy crude oil (a type of diluted bitumen) in the opposite direction - from the Midwestern United States to the Texas Gulf Coast. Prior to the restart, ExxonMobil again conducted hydrostatic testing. After four seam failures occurred during the earliest test sections, Exxon lowered the test pressures for the remaining test sections in an apparent attempt to minimize any further test ruptures. Despite this apparent attempt to compromise the integrity of the test, the Pegasus experienced seven additional ruptures, two of which occurred in the Lake Maumelle watershed. Once it was restarted, the Pegasus operated

for only 7 years under its current operational conditions before the disastrous spill in Mayflower occurred. At best, the only argument that ExxonMobil can accurately make regarding length of service is that the Pegasus operated for only 7 years while carrying diluted bitumen before its first in-service rupture. If the Pegasus is restarted or any similar pipelines are operated under ExxonMobil's current integrity management plan without modification as PHMSA required in the Final Order and Compliance Order (which, again, CAW regards as woefully inadequate), it is just a matter of time until another in-service rupture occurs, hopefully outside of a drinking water watershed.

7) ExxonMobil attempts to avoid regulation by inappropriately using a contract with an outside vendor as a legal shield from regulation.

ExxonMobil claims in the Petition that there is no law or regulation that specifies the maximum length of an in-line inspection tool run and that, as a result, they are at the mercy of the tool vendor for regulatory compliance (Pet. 17). ExxonMobil's argument that the tool vendor is to blame for not meeting the required regulatory timeframe for taking action on pipeline repairs is nothing but finger pointing to try and avoid responsibility. ExxonMobil is essentially arguing that because there is no law prohibiting long tool runs that make regulatory compliance impossible, then there is no ability for the regulatory agency to take action when a Company violates the timeline standards established in the regulations. The regulations, however, are clear that the pipeline operator is responsible for ensuring compliance with the regulations. In fact, API RP-1163 regarding the use of ILI tools, places the responsibility for verification of ILI tool vendor claims, including tool technical capabilities and tool tolerances, squarely on the pipeline operator. Furthermore, under 49 C.F.R. 195.10, the pipeline operator is responsible for its pipeline and cannot contract out these obligations and responsibilities.

It should be noted that ExxonMobil indicated that it demanded the reports from the tool vendor. However, ExxonMobil did not indicate that it took advantage of contractual penalties and/or legal action to compel the tool vendor's compliance with the agreed-upon timeframe in the contract, despite being required by regulation to meet certain timetables.

If ExxonMobil's argument is allowed to stand, pipeline operators would be able to negotiate ludicrous commitments in contracts with full knowledge that there the operator will not take meaningful action to hold the tool vendor to the regulatory deadline, allowing the operator to hide behind the shield of a "bargained for contract". Such an outcome would be entirely unacceptable and would circumvent the entire purpose of regular assessment and repairs of pipelines for safety purposes. In contrast, pipeline operators should be expected to negotiate a contract that can reasonably meet the regulatory deadlines and has all power in a "bargained for contract" to assign penalties and fees resulting from missed deadlines to the vendor or to establish a process where the company can sue a vendor for damages and/or information if critical deadlines were not reached. It is not the responsibility of PHMSA or the public to monitor these contracts and ensure that the company negotiates a contract in their best interest. It is however, the responsibility of PHMSA to ensure that the company complies with the required regulatory timeframe and to enforce compliance actions if the company does not comply, regardless of any finger pointing or other excuse that a company may offer. PHMSA acted correctly in this instance and this penalty and violation should be upheld.

8) ExxonMobil claims that it has been deprived of an opportunity to present a complete defense when the public has been deprived of the opportunity to participate in any way.

CAW was shocked of the audacity of ExxonMobil's statement that "PHMSA's failure to provide the Hearing Officer's recommended decision deprives the Respondent of the opportunity to present a complete defense" (Pet. 23), when CAW and the public have been completely deprived of the opportunity to participate in any portion of the proceeding. While CAW continues to feel strongly that the public should be afforded an opportunity to review and validate the safety and enforcement actions of the public entity tasked with protecting life, property, and the environment from spills caused by oil pipelines, we stand by PHMSA's current process of not providing a recommended decision to ExxonMobil or any pipeline operator in a similar situation.

If ExxonMobil were to review and influence the initial recommendation or modify the final decision based on information contained within the recommended decision, the public would have even less information to review when examining the actions of PHMSA. Allowing ExxonMobil or other operators to influence the final decision based on information in the recommended decision would simply undermine the impartiality of the process and would cast a shadow of distrust and skepticism over the entire independent process.

Conclusion to Opposition of Petition

CAW reaffirms its belief that the PHMSA *could* and *should* have done more in the Final Order and Compliance Order to achieve improvement to the Pegasus and similar pipelines, though it does support the limited remedies offered by these Orders.

Given the statements discussed above, it is clear that ExxonMobil does not appreciate nor accept the gravity of the Pegasus situation and its future implications to the life, property and environments surrounding this pipeline. Therefore, CAW respectfully requests the PHMSA deny the Petition for Reconsideration by ExxonMobil and uphold the Final Order, including financial penalties, and terms within the Compliance Order.

Sincerely,



CENTRAL ARKANSAS WATER

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