

MAY 5 2010

Mr. Brian Newton
President and Chief Executive Officer
Golden Valley Electric Association
PO Box 71249
Fairbanks, AK 99707-1249

Re: CPF No. 5-2007-5034

Dear Mr. Newton:

Enclosed please find the Decision on Reconsideration issued in the above-referenced case. It denies your Petition for Reconsideration and affirms the Final Order without modification. Service of the Decision by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Chris Hoidal, Director, Western Region, PHMSA

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 1160 0001 0043 9344]

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

In the Matter of)

Golden Valley Electric)
Association,)

Petitioner.)

CPF No. 5-2007-5034

DECISION ON RECONSIDERATION

In a September 1, 2009 Final Order, I found that Golden Valley Electric Association (GVEA or Petitioner) had failed to submit a timely written response to a September 12, 2007 Notice of Probable Violation and Proposed Civil Penalty (Notice). On that basis, I further found that the company had waived its right to contest the allegations in the Notice, that it had committed both of the probable violations, and that it should be assessed a \$20,000 civil penalty.

On September 11, 2009, GVEA submitted a Petition for Reconsideration (Petition). In its Petition, the company states that its failure to initially respond to the Notice was the result of a clerical error, and that it was not made fully aware of this proceeding until April 21, 2008, the date of another Office of Pipeline Safety (OPS) inspection. Petitioner also states that the civil penalty assessed in the Final Order should be reduced for several reasons.

Having fully considered the record in this matter, I find that GVEA has not presented any persuasive factual or legal basis in support of reconsideration. I am, therefore, denying this Petition and affirming the September 1, 2009 Final Order without modification.

I. Discussion

The Pipeline Safety Regulations permit the filing of a petition for reconsideration of a final order. However, this is not a right of appeal or to seek a de novo review of the record.¹ Rather, reconsideration is an opportunity to present the agency with previously unavailable information and, if appropriate, to request that any errors in the final order be corrected. That is why the

¹ 49 C.F.R. § 190.215(a)-(e).

Associate Administrator does not consider repetitious information or arguments on reconsideration. It is also why a petitioner must provide a valid reason for consideration of facts or arguments that were not raised on its behalf in a timely manner.

Petitioner states that its failure to submit a written response within 30 days of receiving the Notice was the result of a clerical error. I am willing to assume, for purposes of this proceeding, that such an error might constitute good cause for failing to comply with that requirement. However, GVEA also neglected to submit a response after receiving actual notice of this proceeding during the April 2008 OPS inspection, and I am not willing to assume that a failure to comply with our procedural requirements should be excused under such circumstances.

The Pipeline Safety Regulations state that a “[f]ailure of the respondent to respond” to a Notice in a timely manner “constitutes a waiver of the right to contest the allegations in the notice of probable violation and authorizes the Associate Administrator, OPS, without further notice to the respondent, to find facts to be as alleged in the notice of probable violation and to issue a final order under §190.213.”² In this case, GVEA did not submit a timely response and has not shown that its failure should be excused for good cause. Accordingly, I find that there is no basis for reconsideration of the \$20,000 civil penalty assessed in the Final Order.

RELIEF DENIED

Based on the information provided in the Petition, a review of the relevant portions of the record, and for the reasons stated above, I am denying this Petition and affirming the Final Order without modification.

This Decision is the final administrative action in this proceeding.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued

² 49 C.F.R. § 190.209(c).