

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE FILING )	DOCKET PS09-001
OF THE INVESTIGATION OF THE )	
NATURAL GAS INCIDENT OF )	<b>MONTANA-DAKOTA'S</b>
MARCH 14, 2009, ON )	<b>OPPOSITION TO MIDWEST</b>
MONTANA- DAKOTA UTILITIES )	<b>CLUTCH AND MIDWEST FAMILY</b>
CO.'S SYSTEM IN RAPID CITY, )	<b>PETITION TO INTERVENE AND</b>
SOUTH DAKOTA )	<b>REQUEST TO TEST GAS LINE</b>

COMES NOW Montana-Dakota Utilities Co. ("Montana-Dakota") and states its opposition to the petition of Midwest Clutch and Auto Repair ("Midwest Clutch") and its insurer Midwest Family Mutual Insurance Company ("Midwest Family"), as follows:

1. Petitioners' Petition to Intervene should be denied because they do not meet the criteria for intervention stated in ARSD 20:10:01:15.05. Specifically, Petitioners are not entitled to intervene on statutory grounds. Further, Petitioners have not identified an interest in the outcome of the proceeding whereby they will be bound or affected either favorably or adversely by any action of this Commission in this docket. This docket arises by virtue of the Commission's opening a pipeline safety docket under SDCL Ch. 49-34B. Under the specific terms of that statute such a proceeding is brought in the interest of public safety involving an incident occurring within its jurisdiction in compliance with the Federal Safety Standards adopted by the Code of Federal Regulations. SDCL § 49-34B-3. The Chapter does not confer jurisdiction upon the Commission to adjudicate claims between private parties.

2. In addition to the absence of jurisdiction under SDCL § 49-34B-1, no other statute confers jurisdiction upon the Commission to adjudicate damage claims involving gas incidents. The Pipeline Safety Statutes are confined to enforcement actions involving safety issues brought by the Commission in the interest of the public against pipeline operators. The South Dakota Supreme Court has concluded that the Commission is not a court and cannot exercise purely judicial functions. In the Matter of Northwestern Public Service Company, 560 NW2d 925, 1997 SD 35, citing Application of Dakota Transportation, Inc., 67 SD 221, 291 NW 589, 594 (1940). Although no formal claim has yet been filed against Montana-Dakota, if brought it must be brought

in a trial court with appropriate civil jurisdiction which would have jurisdiction over such a claim.

3. The pipe in question has already been tested in the ground with the participation of Petitioners. Petitioners have been provided copies of the results of those tests. The pipe has since been removed and has been placed in storage under the joint custody of Petitioners and Montana-Dakota. Access to the pipe can be easily obtained by arriving at an appropriate protocol for inspection and testing between the parties. The Commission has released the pipe to the parties

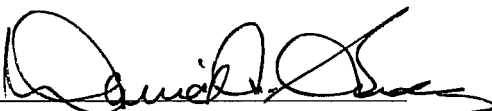
4. Any enforcement action which the Commission would or could take in this docket with reference to the pipe in its current condition would have no bearing upon the claims existing between the parties. The pipe has been stored without a controlled environment under conditions that do not replicate the condition of the pipe in the ground at the time of the incident.

5. At this point, Montana-Dakota has received no formal claim from Petitioners. In any event, Petitioners have no standing to request status in this enforcement proceeding.

WHEREFORE, Montana-Dakota prays that the Commission deny the Petition for Intervention and, in any event, deny the request to test the gas line.

Dated this 18<sup>th</sup> day of September, 2009.

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#### CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 18<sup>th</sup> day of September, 2009, he electronically filed and served a true and correct copy of the foregoing Opposition in the above-captioned action to the following, to-wit:

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A handwritten signature in black ink, appearing to read "David A. Gerdes", written over a horizontal line.

David A. Gerdes