

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

PETITION OF THE COMMISSION)	
PIPELINE SAFETY PROGRAM)	PS09-
MANAGER FOR DECLARATORY)	
RULING REGARDING WHETHER A)	
PIPELINE OPERATOR'S)	
DOCUMENTED MAXIMUM)	
ALLOWABLE OPERATING)	
PRESSURE CAN EXCEED THE LIMITS)	
IN SDCL 49-41B-2.1 WITHOUT A)	
SITING PERMIT)	

COMES NOW, the South Dakota Public Utilities Commission (herein "Commission") Pipeline Safety Program Manager (herein "the Program Manager") by and through its undersigned Staff Attorney, and files this Petition for Declaratory Ruling.

I. APPLICABLE LAW

The Commission's siting statute excludes steel pipe and associated facilities operated at a hoop stress of "less than twenty percent of specified minimum yield strength as defined by 49 CFR 192.3" and "plastic pipe and associated facilities which operate at less than fifty percent of the design pressure as determined by 49 CFR 192.121". SDCL 49-41B-2.1. Pipeline Safety regulations enforced by the PUC also considers the Maximum Allowable Operating Pressure in 49 CFR 192.619 and 621. The federal regulations restrict the Maximum Allowable Operating Pressure based on pipeline design.

Maximum Allowable Operating Pressure (herein "MAOP") is defined as, "the maximum pressure at which a pipeline may be operated under this part." 49 CFR 192.3. Specified Minimum Yield Strength (herein "SMYS") is defined as, "the yield strength specified as a minimum in that specification" or when the specification is unknown or unlisted it is, "the yield strength determined accordance with 192.107(b)." 49 CFR 192.3.

II. FACTS

Through the course of regular pipeline inspections the Program Manager was made aware of a jurisdictional natural gas pipeline installed with a MAOP allowed by part 192.619 and 192.621 for 1440 psig thus exceeding 20% SMYS. The pipeline is not sited under SDCL 49-41B-2.1 and has been in operation for several years under the PUC's pipeline safety jurisdiction. Although the pipeline was designed with more than 20% SMYS, it is currently being operated at a pressure of 860 psig thus below 20% SMYS. The pipeline operator desires to keep its documented MAOP above 20% SMYS.

This question of South Dakota statutory interpretation involves corresponding issues of federal law and jurisdiction. To complicate the issue, the PUC's siting policies must be contemplated. The following items are not in dispute:

- (i) The PUC siting statute excepts steel pipes and facilities operated at a hoop stress of less than 20% of SYMS.
- (ii) The PUC siting statute does not list any MAOP limit.
- (iii) The pipe at issue is steel and is currently operated at less than 20% SMYS.
- (iv) The pipe at issue is capable, however, of operation at over 20% SMYS and has a documented MAOP over 20% SMYS.
- (v) The pipe operator at issue intentionally designed the pipe to meet PHMSA standards to operate the pipe over 20% SMYS.
- (vi) The pipe operator at issue assures pipeline safety staff it will apply for a siting permit if it desires to operate the pipe over 20% SMYS.

III. ISSUE

Does the PUC siting statute SDCL 49-41b-2.1 allow a pipe design and thus its MAOP to exceed 20% SMYS if it is operated under 20% SMYS?

IV. ARGUMENT TO DISALLOW A MAOP ABOVE 20% SMYS

The pipeline operator at issue suggests a retroactive siting application as a possibility if it desires to operate over 20% SMYS. The Program Manager questions the effectiveness of a siting application when infrastructure is already in the ground. In the case of a retroactive siting application facilities are already designed and built thus, leaving the PUC with very little discretion or decision making authority. In the Pipeline Safety Manager's opinion siting cannot go backwards. SDCL 49-41B-4 states "no utility may begin construction of a facility in the state...without first having obtained a permit." It seems statutorily inappropriate for a siting filing after the facility is built. It follows then, the MAOP should remain consistent with the PUC's siting statute. Practically speaking, pipeline pressure simply cannot exceed 20% SMYS as a siting docket cannot, after the facility has been built, be filed.

If ordered to lower its MAOP for consistency with PUC siting statutes, the operator can raise it at a later time. Although Staff does not believe it is likely, it is possible for siting jurisdiction to change, thus increasing the 20% SMYS exception for steel pipe siting. In that case, the operator can, through a PHMSA process, raise its MAOP to operate at a higher pressure.

It is inappropriate for the operator to reserve the right or protect the ability to increase its pressure above 20% SMYS. The pipe does not have a siting permit, and pipeline staff argues it cannot obtain a permit at this time. Without, therefore, the option to operate at 20% SMYS or more, the Program Manager argues the operator should set its maximum allowable operating pressure to less than 20% SMYS. It is reasonable that SDCL 49-41B-2.1 does not contemplate a MAOP. For purposes of the statute less than 20% SMYS is the maximum allowable operating pressure without a siting permit. To operate at or above 20% SMYS simply requires a siting permit.

Finally, this legal question was contemplated earlier this year by a different pipeline operator. After discussion with the Program Manager and an understanding of his position the Operator agreed and lowered its MAOP to comply with the 20% SMYS maximum in the PUC siting statute. Clearly differing interpretations exist and for a consistent application of the law a Commission decision on this matter is necessary.

V. ARGUMENT TO ALLOW A MAOP ABOVE 20% SMYS SO LONG AS ACTUAL OPERATING PRESSURE REMAINS 20% SMYS OR LESS

The Statute, as the Operator argues, specifically states the pipe and associated facilities shall be “operated at a hoop stress of less than twenty percent of specified minimum yield strength...” SDCL 49-41B-2.1. To read this statute very literally, the applicant has complied. No harm results if the pipe keeps records to prove compliance and makes them available to the commission at any time.

VI. CONCLUSION

The Program Manager respectfully requests a Commission decision regarding whether a pipeline is permitted to maintain MAOP in excess of 20% SMYS when to increase pipeline pressure above 20% SMYS would violate SDCL 49-41B-2.1

Signed and dated this 20th day of April, 2009



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