

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

IN THE MATTER OF THE	)	
PETITION OF THE COMMISSION	)	PS09-002
PIPELINE SAFETY PROGRAM	)	
MANAGER FOR DECLARATORY	)	
RULING REGARDING WHETHER	)	
A PIPELINE OPERATOR'S	)	<b>MONTANA-DAKOTA'S</b>
DOCUMENTED MAXIMUM	)	<b>OPPOSITION TO</b>
ALLOWABLE OPERATING	)	<b>COMMISSION RULING</b>
PRESSURE CAN EXCEED THE	)	
LIMITS IN SDCL 49-41B-2.1	)	
WITHOUT A SITING PERMIT	)	

COMES NOW Montana-Dakota Utilities Company ("Montana-Dakota") and states its opposition to the Commission entering a declaratory ruling at this time in this docket, as follows:

1. The Pipeline Safety entry in the Commission's agenda for June 9, 2009, dealing with this docket states the question to be addressed by the Commission as: "TODAY, how shall the Commission Rule of (*sic*, on) the Petition for Declaratory Ruling?" It is submitted that the Petition is based upon an erroneous interpretation of the operative language of the statute, and in any event is not ripe for decision of the ultimate question presented by the Petition. No procedural schedule has been established, no facts have been established and the question has not been briefed by the parties. Further, the petition is not brought by the real party in interest.

2. Staff apparently has adopted a literal reading of ARSD 20:10:01:35 to preclude any further factual development of an admittedly one-sided petition by taking the position that the Commission should rule on the petition based on that petition alone. Under the rule Staff could, of course, suggest that the Commission request comments and evidence from the affected industry, or the Commission can do so of its own accord. At this point if the Commission makes its decision based on the petition alone, the ruling will affect an entire industry in the state without any involvement by that industry.

3. Additionally, the petition should be dismissed because the petitioner is not a real party in interest under ARSD 20:10:01:34. The jurisdiction of the Commission to entertain a petition for declaratory ruling is limited by that rule to a petition from "[a]ny person . . . as to the applicability to

that person of any statutory provision or rule or order of the commission . . . (emphasis supplied).” The real party in interest here is the operator or owner of the pipeline.

4. As to the merits of the petition, the standard against which the Commission’s jurisdiction can be invoked is an operational standard, not a design standard. The statute referenced by Staff is SDCL § 49-41B-2.1, which reads in its entirety as follows:

49-41B-2.1. Transmission facility defined. For the purposes of this chapter, a transmission facility is:

(1) An electric transmission line and associated facilities with a design of two hundred fifty kilovolts or more;

(2) An electric transmission line and associated facilities with a design of one hundred fifteen to two hundred fifty kilovolts, if more than one mile in length of the transmission line does not follow section lines, property lines, roads, highways or railroads, or is not reconstruction or modification of existing transmission lines and existing associated facilities located on abandoned railroad rights-of-way; or

(3) A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, or liquid hydrocarbon products, excluding any gas or liquid transmission lines or associated facilities which meet any of the following criteria:

(a) Lines or facilities that are used exclusively for distribution or gathering;

(b) 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 as of January 1, 2007, or plastic pipe and associated facilities which operate at less than fifty percent of the design pressure as determined by the formula specified in 49 CFR 192.121 as of January 1, 2007; or

(c) Pipe which has nominal diameter under four inches and not more than one mile of the entire line is constructed outside of public right-of-way.

**Source:** SL 1994, ch 358, § 1; SL 2007, ch 274, § 1.

In order for a facility to come within the Commission's jurisdiction, that facility must come within the foregoing definition. The facility defined by the Petition for Declaratory Ruling does not come within the Commission's jurisdiction. Specifically, the Commission's jurisdiction is excluded as to "[s]teel pipe and associated facilities operated at a hoop stress of less than twenty percent of specified minimum yield strength . . . ." Thus, the siting statute excludes any facility, regardless of design maximum allowable operating pressure, which is operated at a less than 20 percent of specified minimum yield strength. Again, Staff is confusing an operational standard with a design standard. The Commission has siting jurisdiction only if the facility is intended for operation in excess of 20 percent of specified minimum yield strength.

5. The Petition says that the ". . . pipeline operator at issue suggests a retroactive siting application as a possibility if it desires to operate over 20% SMYS." Then the Petition goes on to suggest that this is the opportunity for a retroactive siting application. Attached as Exhibit A is the letter upon which this conclusion is apparently based. However, a balanced reading of the text of the letter does not support a conclusion that the owner ever considers operating the facility in excess of 20 percent of specified minimum yield strength. The letter from the operator, not the owner which would make such a decision, states as follows:

We have not, nor do we anticipate operating this line above 20% SMYS. If the pipeline owner ever contemplated operating above 860 psig in the future, a siting permit to operate above 20% SMYS would be sought from the South Dakota State Public Utilities Commission. The regulators at the supply point are set to limit the operating pressure to 850 psig.

Note that the letter points out that "additional regulation" was installed to maintain proper operating pressure.

6. The Pipeline Safety Program Manager on Commission Staff at the time the pipeline was constructed was Martin Bettman. Attached as Exhibit B is the relevant portion of an e-mail string wherein Mr. Bettman states:

I talked to our Staff attorney and based on the latest clarification on the information on the proposed design and operation of this pipeline, you will not need a siting permit. Please keep me informed of any changes in the proposed construction schedule.

As I understand it you intend to begin clearing the ROW and stringing pipe tomorrow with welding to begin next Monday. When will the welders be qualified or has that happened already?

This message clearly indicates that Mr. Bettman was informed of what went forward and he had no concerns about it.

7. Staff's petition assumes a jurisdiction which the Commission does not have. Until a pipeline is both designed and operated above the limits set forth in its statute, the Commission has no jurisdiction. To view the situation any other way would impose a heavy workload indeed upon the Commission, or any other regulatory body, if it was obligated to rule on theoretical situations which are not within the statutory jurisdiction of the regulatory agency.

#### CONCLUSION

Staff's Petition should be denied. The petition is not brought by the real party in interest and does not fully discuss the policy, law and facts relevant to the issue. On the merits of the petition, it assumes a set of circumstances for Commission jurisdiction which do not exist. The issue contemplated by the Petition is theoretical at best. The standard set forth in the statute is an operational standard, and so long as the pipeline facilities are operated within this standard the design of the facility is irrelevant.

WHEREFORE, Montana-Dakota prays that the Petition be dismissed; or in the alternative, that the Commission set a procedural schedule for the development of evidence and briefs, to permit the question to be fully developed for decision by the Commission.

Dated this 5<sup>th</sup> day of June, 2009.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

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CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 5<sup>th</sup> day of June, 2009, he served electronically a true and correct copy of the foregoing Opposition to Commission Ruling in the above-captioned action to the following at their last known addresses, to-wit:

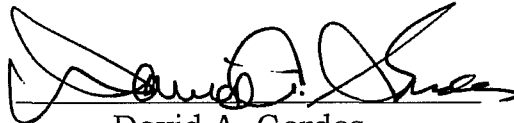
Patricia Van Gerpen  
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Nathan Solem  
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Sara Dannen  
Northwestern Energy  
[sara.dannen@northwestern.com](mailto:sara.dannen@northwestern.com)

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

David A. Gerdes



# MONTANA-DAKOTA UTILITIES CO.

*A Division of MDU Resources Group, Inc.*

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Gas Superintendent  
Dakota Heartland Region  
PO Box 1457  
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o-701-224-5814  
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e-ron.blum@mdu.com

April 10, 2009

Mr. Nathan Solem, Acting Pipeline Safety Program Manager  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501-5070

In reference to: Pipeline Inspection Report of South Dakota Heartland Region 3-9-09

Dear Mr. Solem:

The South Dakota siting statute, 49-41B-2.1., requires a permit for natural gas pipelines operating above 20% SMYS. The pipeline in question is the property of Heartland Grain Fuels of Aberdeen, SD and is operated under contract by Montana-Dakota Utilities Company of Bismarck, ND.

We have reviewed the installation records for the pipeline and determined that the MAOP allowed by part 192.619 and 192.620 for design, materials and testing of the pipeline in question is 1440 psig, exceeding 20% SMYS. Although the pipeline was designed and constructed for an MAOP of 1440, an engineering decision was made during the project to limit the operating pressure to under 860 psig, which is below 20% SMYS for the pipeline in question, negating the South Dakota siting application requirements. Additional regulation was installed to maintain an operating pressure below 860 psig or 20% SMYS.

We have not, nor do we anticipate operating this line above 20% SMYS. If the pipeline owner ever contemplated operating above 860 psig in the future, a siting permit to operate above 20% SMYS would be sought from the South Dakota State Public Utilities Commission. The regulators at the supply point are set to limit the operating pressure to 850 psig.

Sincerely,

Ron E. Blum, PE  
Gas Superintendent

Cc: Pat Darras, office  
Jay Skabo, office  
Bruce Brekke, office  
Scot Besmer, office  
Daryl Anderson, office  
Bill Paulsen, Heartland Grain Fuels

FYI

-----Original Message-----

From: Morehouse, Frank  
Sent: Monday, April 09, 2007 10:23 AM  
To: Ball, Don  
Subject: FW: Heartland Grain Pipeline

Don,

We have a full green light from South Dakota Staff this morning - no siting permit required for the Heartland Grains unregulated line.

K. Frank Morehouse  
Vice President of Operations  
Montana-Dakota Utilities Co.

(701) 222-7605

-----Original Message-----

From: Brown, Gene  
Sent: Monday, April 09, 2007 9:44 AM  
To: Lee, Doug; Yexley, David; Morehouse, Frank  
Subject: FW: Heartland Grain Pipeline

FYI

-----Original Message-----

From: Martin.Bettmann@state.sd.us [mailto:Martin.Bettmann@state.sd.us]  
Sent: Monday, April 09, 2007 08:35  
To: Brown, Gene  
Subject: Heartland Grain Pipeline

Gene,

I talked to our Staff attorney and based on the latest clarification on the information on the proposed design and operation of this pipeline, you will not need a siting permit.

Please keep me in formed of any changes in the proposed construction schedule. As I understand it you intend to begin clearing the ROW and stringing pipe tomorrow with

welding to begin next Monday. When will the welders be qualif. d or has that happened already?

Martin

**EXHIBIT B**