

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

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

COMES NOW, the South Dakota Public Utilities Commission Pipeline Safety Program Staff (herein "Staff") by and through its undersigned Staff Attorney, and files this Reply to Montana-Dakota's (herein "MDU") Opposition to Commission Ruling.

Staff is unhappy with MDU's perception of our intent in this docket. Staff did not, in any way, intend to take an adversarial role. We are not assigning fault to any utility, nor are we inflexibly arguing any particular position. Rather, Staff noted a conflict between South Dakota siting laws and the Federal Pipeline Safety regulation. The Commission's transmission pipeline definition is pulled directly from the Federal Pipeline Regulations. The Federal government interprets this issue contrary to the interpretation of the interested utilities. Staff, without the authority to make a formal statutory interpretation, merely needs Commission help to sort the facts and ultimately make a ruling.

Staff has the obligation to present arguments that otherwise would not be presented in this case. The only interveners in this docket are utilities. Staff, therefore, in an attempt to fully air all issues and facts presented arguments opposite to the interested utilities. This docket merely represents Staff's attempt to find the correct answer. This docket is not intended in any way to be interpreted as a Complaint or other type of adversarial proceeding.

Although MDU's filed brief is the first correspondence Staff had with the operator regarding process, it appears it desires more time to express its thoughts to the Commission. Staff does not oppose the request. Assuming the Commission finds Staff is a party in interest and this docket should not be dismissed, Staff proposed the Commission extend its ruling date for another sixty days. Although Staff did not foresee this docket taking on a contested nature, it appears it has. With that being said, Staff appreciates this opportunity to defend itself against the statements made by MDU. I will address four points: (I) Rules 20:10:01:35 – Declaratory Rulings (II) Staff is a party in interest (III) Previous Staff Opinions (IV) Substantive Argument.

I. ARSD 20:10:01:34 and 35 – DECLARATORY RULING

Staff filed its Petition according to the above cited administrative rules. Upon filing Nathan Solem sent Staff's Petition to all Operators and encouraged comments. Additionally, Pipeline Safety Staff advised operators of the filing at the Pipeline Safety workshop held in Rapid City on April 22nd and 23rd. Staff again encouraged participation. Staff in no way attempted to, "preclude any further factual development" of the issues. Nor did Staff ever take the position that, "the Commission should rule on the petition based on that petition alone." In reality, Staff suggested additional comment can be filed and even requested it.

With the intervention of two utilities represented by lawyers, I assumed comments would be filed if counsel saw fit. Rarely in Declaratory rulings does the Commission set a procedural schedule, as the rule itself sets a schedule. ARSD 20:10:01:35 requires a Commission decision within sixty days. I would like to note that this timeframe was changed in 2006. Not long ago the sixty days was only thirty. With that being said, the Petitioner can agree to a longer period of time prior to Commission decision. As the petitioner, Staff agrees to an extension. We were simply never asked for an extension by the interveners. I fail to see how Staff erroneously interpreted the rule. It does not appear to me, much is left up to interpretation. Sixty days is sixty days regardless of whether the interveners filed comments or not. An easy solution, Staff's recommendation is for the Commission to request comments and extend the decision for an additional sixty days.

II. COMMISSION STAFF IS A PARTY IN INTEREST

Commission Staff is a real party in interest. Staff has an interest in public safety and statutory compliance. Pipeline siting has various connections to safety. Additionally, the Pipeline Safety staff is obligated to maintain South Dakota's program consistent with federal expectations. A consistent reading and interpretation of the rules and regulations is, in Staff's opinion, an essential part of its role and duties as pipeline inspectors. Staff argues the operators have not read and interpreted the South Dakota siting statute consistent with federal pipeline safety regulations. Staff asks the Commission to reject MDU's arguments regarding real party in interest. Under its interpretation, only operators could ever seek a Declaratory Ruling. Limiting Staff's ability to utilize a method to seek Commission interpretation simply does not make sense.

III. STAFF OPINIONS ARE NOT BINDING

The differing staff opinions are an example of why this Declaratory ruling is necessary. As a relevant party to this docket, Commission Staff may have an opinion. That opinion is not, however, binding in any way. Just as current commission staff opinion is not binding, neither was previous commission staff. Staff does not dispute whether Martin Bettmann provided an opinion on this matter. Fact is, that opinion was not binding. Counsel at the time for MDU opted not to obtain a Commission Order or any Commission input at the time. Instead, the operator decided to rely on Staff's

opinion. Further, as a side note, the e-mail correspondence between MDU and Martin Bettmann indicates construction started before the MDU asked even staff for its opinion. MDU tries to imply it received the 'ok' from past pipeline staff prior to construction, when in fact it may have already been in violation when a staff opinion was obtained.

IV. ARGUMENTS IN FAVOR OF DISALLOWING MAOP TO EXCEED OUR SITING LIMITS

As Staff properly assumed, the operators are adequately represented to effectively and properly defend their position. As a result, Staff will again present the available arguments in favor of disallowing MAOP to exceed our siting maximum. Staff acknowledges MDU's argument that SDCL 49-41B-2.1 has an "operational standard" rather than a "design standard." Transmission line siting has a design standard. If the legislature wanted the design standard they would have written the pipeline siting rule the same. Rather than the design standard, however, the legislature used a definition consistent with PHMSA's transmission definition. The language in SDCL 49-41B-2.1, the siting statute, is pulled directly from the federal government's definition of "transmission line." The legislature apparently intended to remain consistent with the Federal Government. Staff proposes a definition of "operate," the key word in this debate, consistent with the federal government's definition.

A. Dictionary Interpretation of "Operate"

The online dictionary definition of operate is "to work, perform, or function, as a machine does" Staff interprets this to mean it can work, perform and function over its entire applicable range of operating conditions. In this case, the machine can operate up to its maximum allowable operating pressure (MAOP) as prescribed by PHMSA and the applicable design standards. The pipeline, MDU brought into question was built and complied with the PHMSA standards such that its MAOP is above 20% of SMYS. Any pipelines above 20% of SMYS require a siting permit from the PUC. This pipeline does not have a siting permit. It therefore must "operate" under 20% of SMYS. Currently, however, the machine or pipeline at issue, may operate over 20% of SMYS.

Staff believes it is proper to restrict the operator's MAOP to less than 20% of SMYS. Staff does not read in the siting statute where intention is measured or determined. Staff has no reason to dispute that MDU has no "intention" to push the pipeline up to its MAOP. Why then Staff questions, does the company so violently oppose Staff's question to the Commission? Staff has not stated pipelines of this nature should not be built without a siting permit and does not allege any company is out of compliance with siting statutes. Rather, Staff argues the pipeline's MAOP (or the pipeline's operating capacity) should simply be restricted to be proper within all boundaries. PUC siting statutes are just one such boundary. By requiring this pipeline lower its MAOP to less than 20% (which should not be a problem if they never intend to operate at 20% of SMYS) the pipeline is without question in compliance with all jurisdictions and all regulations.

B. PHMSA Code Interpretation

PHMSA regulations impose various integrity management obligations on jurisdictional pipelines. Some of those standards hinge on operating pressure. Because pipelines can operate up to their MAOP, PHMSA has taken the position in a formal interpretation that integrity must be assured up to that point. PHMSA requires integrity management be managed up to the pipeline MAOP. PHMSA does not consider the pipeline operator's intent. To remain consistent with PHMSA, as it appears the legislature intended to do, this Commission should consider pressures up to the MAOP when it determines what "operate" means in the context of our statutes.

C. Safety Standards

Aside from integrity management through PHMSA, there are various safety standards that hinge on operating pressures. Our current pipeline safety staff interprets operating pressure to mean MAOP. As an example, the welds on a pipeline that operates at a hoop stress of 20% or more of SMYS must be nondestructively tested in accordance with 193.243. The PUC pipeline inspectors look for compliance with this standard at regularly scheduled inspections. A pipeline currently jurisdictional to the PUC's pipeline program has a MAOP well over 20% but an actual operating pressure less than 20% of SYMS. If MDU's interpretation of "operate" were strictly followed, the welding tests would not be required on the example pipeline. Consistent with Staff's position in this case, however, our pipeline safety staff required the added weld testing. Staff interprets operate to mean MAOP. Again, as PHMSA has officially ruled, a pipeline can be operated up to its MAOP, therefore all integrity management and safety precautions must be maintained up to that maximum operating pressure. Staff does not want to see reduced safety standards merely because the pipeline operator promises not to "operate" at a particular level.

D. Pipeline Siting Example


In a recent case, current Staff required a pipeline to reduce its MAOP within the siting boundaries to be consistent with the fact the line was built without a permit and its operating pressure was within the bounds of the siting statute. The pipeline did not object as it did not "intend" to operate at 20% or more of SMYS. This example occurred prior to knowledge of the MDU case. Clearly, Staff needs an interpretation to provide consistency across the state.

V. CONCLUSION

In conclusion, Staff intends for this docket to be a search for the correct and best answer to a legal question. It appears, based on its comments, MDU prefers additional time to express its opinions. Commission Staff as the petitioner first asks the

Commission to find it is an interested party, and second to extend the Commission decision date for an additional sixty days. Finally, to the merits of the case, Staff argues it is important that South Dakota remain consistent with federal regulations in this area. PHMSA, the Federal organization charged with enforcement of the federal regulation has specifically interpreted "operate" to include all pressure up to the pipelines legally operational pressure. The MAOP is the pipeline's legally operational pressure. To remedy the issue, Staff believes non-sited pipelines' MAOP should be restricted to less than 20% of SMYS.

Signed and dated this 8th day of June, 2009



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