

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

In The Matter of the Request by)	Docket No. PS10-_____
Montana-Dakota Utilities Co. for)	
a waiver from 49 C.F.R. § 192.285(a)(2))	REQUEST FOR WAIVER
and 49 C.F.R. § 192.285(c))	

COMES NOW Montana-Dakota Utilities Co. ("Montana-Dakota") by its undersigned attorneys and respectfully requests a permanent waiver from 49 C.F.R. § 192.285(a)(2) and 49 C.F.R. § 192.285(c). In support of its request, Montana-Dakota states as follows:

1. Montana-Dakota is a public utility providing electric and natural gas utility services in certain South Dakota communities in its service territory.

2. 49 C.F.R § 192 consists of federal safety standards for the transportation of natural gas by pipeline.

3. 49 C.F.R. § 192.285(a) requires persons making plastic joints be qualified under applicable joining procedures. 49 C.F.R. § 192.285(c) further requires that:

A person must be requalified under an applicable procedure, if during any 12-month period that person: (1) Does not make any joints under that procedure; or (2) has 3 joints or 3 percent of the joints made, whichever is greater, under that procedure that are found unacceptable by testing under 192.513.

4. Montana-Dakota requests a waiver of 49 C.F.R. § 192.285(c), to allow it to requalify its employees by an alternate means of assuring qualifications for persons making joints. Montana-Dakota proposes the following procedure:

- A person must be requalified under an applicable procedure at least once per calendar year, but at intervals not exceeding 15 months.
- In addition, if a joiner has 1 joint under the procedure that is found to be unacceptable by testing under

49 C.F.R. 192.513, that person must requalify under that procedure as an initial qualification.

5. Montana-Dakota requests a permanent waiver since the requirements for testing will be required for the foreseeable future.

6. Application of this rule poses an undue hardship on Montana-Dakota. Montana-Dakota will not be able to perform the tests at the most advantageous time from a cost and quality perspective. The current 12-month retest requirement will result in testing about every 11 months which will eventually result in testing being performed in the middle of the construction season or at the end of the construction season.

7. Approval of the waiver will not prejudice the legal rights of any person since employees making plastic joints will continue to be tested prior to the start of each construction season. Approval of the waiver would still require ten qualifications of a person over ten years with the test occurring every 12 months.

8. 49 C.F.R. § 192 contains provisions for requesting a waiver of pipeline safety provisions. Therefore, the rule subject to this petition for waiver is not specifically mandated by statute or another provision of law.

9. Approval of this request for waiver will result in superior safety compared to what can be achieved under the current requirements of 49 C.F.R. § 19.285(c).

10. Montana-Dakota believes that requalification of plastic joining personnel just prior to the construction season provides the highest quality workmanship. It is at the end of the time period that fewest plastic joints are made and the beginning of the time when the most joints will be made.

11. Because of scheduling considerations, travel, illness, group size and vacations, qualification is a longer process and can take up to a month. The existing 12-month provision requires Montana-Dakota to establish evaluation schedules on an 11-month basis to account for these scheduling conflicts. Completing requalifications on an 11-month schedule ratchets back the requalification date, putting the requalifications into the end of the construction season and eventually during the construction season.

12. Montana-Dakota submits that annual testing provides the most accurate and consistent means of promoting joint quality. To comply with the current 12-month requirement and be able to continue testing just prior to the

construction season, Montana-Dakota could no longer use a small group of testers but would have to use several qualification teams and conduct several make-up sessions to accommodate for vacation and illnesses. This would result in less consistency in evaluation and more administrative costs.

13. The U.S. Department of Transportation has already recognized the negative implication of following a “not to exceed 12 month” requirement. Other similar joining qualification requirements have established schedules that allow the operator more flexibility in establishing schedules that don’t ratchet schedules into the construction season. As an example, 192.229(d)(1) sets the qualification of welders to “within the preceding 15 calendar months, but at least once each calendar year.”

14. By testing plastic joints using the same group of testers in the same time frame, there is less chance that a records error would result in a joint being made by a non-qualified person. In this proposal, there is general knowledge of when qualification is required as well as knowledge obtained by a records review. This redundancy knowledge will result in less opportunity for error.

15. The granting of this request for waiver would be consistent with other waivers of the 49 C.F.R. § 192.285(c) scheduling requirements that have been granted by other state regulatory commissions in other jurisdictions after appropriate state and federal reviews of safety impacts. Of specific note is that the South Dakota Public Utilities Commission previously granted a request for waiver from 49 C.F.R. § 192.285 (c) to MidAmerican Energy in its order issued January 7, 2008 in Docket PS07-003, and a comparable request for waiver to NorthWestern Corporation in its order of July 2, 2008 in Docket PS08-002.

16. Approval of this request for waiver will enable Montana-Dakota to ultimately employ the same testing schedule in all of its operating areas, thereby promoting administrative efficiency and a proper allocation of resources.

17. Montana-Dakota is not aware of any persons who may be adversely impacted by the granting of this request for waiver. Montana-Dakota welcomes the opportunity to respond to any questions concerning this request.

Wherefore Montana-Dakota respectfully requests that the South Dakota Public Utilities Commission grant a permanent waiver of 49 C.F.R. § 192.285(a)(2) and 49 C.F.R. § 192.285(c).

Respectfully submitted this 23rd day of March, 2010.

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