

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

PETITION OF THE COMMISSION	)	
PIPELINE SAFETY PROGRAM	)	PS11-001
MANAGER AND STAFF FOR A	)	
DECLARATORY RULING	)	
REGARDING THE PROPER	)	STAFF RESPONSE
CLASSIFICATION OF THE	)	TO NORTHWESTERN
NORTHWESTERN ENERGY	)	ENERGY AND MONTANA
ABERDEEN PIPELINE	)	DAKOTA UTILITIES'
	)	COMMENTS

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The South Dakota Public Utilities Commission Pipeline Safety Program Manager and Staff (herein "Staff") by and through its undersigned Staff Attorney, submit the following *comments in response to those filed by both NorthWestern Energy (herein "NWE") and Montana Dakota Utilities (herein "MDU")*. Staff specifically disagrees, as described in detail below, with several of the arguments made by both parties.

**I. The line at issue is not down-stream from a gas distribution center.**

NWE argued the line at issue is downstream from its distribution center at the Northern Border pipeline tap serving the area. Staff disagrees. Staff understands according 49 CFR 192.3 if the line were downstream from a distribution center it would be, according to the code, classified as distribution. This is simply not the case.

Exhibit 1, a PHMSA interpretation, states a distribution center occurs at a "point where gas enters piping used primarily to deliver gas to customers who purchase it primarily for consumption opposed to those who purchase it for resale." Exhibit 2, also a PHMSA interpretation, states regulation equipment is the key component and beginning of a distribution center. The NWE town border station has several components. One component contains distribution center piping that meets the interpretation in Exhibit 1 and the regulation equipment requirement in Exhibit 2. That distribution center pipeline component is not, however, up-stream from the pipe at issue.

Equally important is the definition of the facility on the opposite end, or the customer end of the pipeline at issue. The primary customers for the new line are large volume customers as defined in Exhibit 4, a PHMSA interpretation. In summary, Exhibit 4 defines a large volume customer as one "with attributes similar to those of a distribution company. Foremost among these attributes are the receipt of similar volumes of gas and the operation of piping facilities common to a distribution company." As a result, the use

of the line is primarily feeding large volume customers or a distribution customer. Again, the distribution center is downstream, not upstream from the pipeline at issue.

The location of the distribution center and its proximity and relationship with the pipeline at issue is easier to visualize through a diagram. Exhibit 3 diagrams the NWE town border station. See NOTE 1 on the diagram. NOTE 1 shows where the line at issue taps into station piping. As the diagram illustrates, the line originates in the town border station after the heater. The line at issue does not “interact” with the regulation of the existing distribution lines. See NOTE 2 on the diagram. NOTE 2 shows the location of regulation equipment serving NOTE 3a and NOTE 3b, the existing distribution lines. NOTE 2, the distribution center serving current distribution lines, is not connected in any way to the pipeline line at issue. The line at issue, beginning at NOTE 1, follows an entirely different path than the lines incorporated into the distribution center at NOTE 2.

The new line has its own separate pressure regulator and valving in the NWE town border station. The distribution center is not upstream and is completely separate from the new line. As a result this line is not, as NWE argues, downstream from a distribution center. As the attached PHMSA interpretations indicate, it is not consequential to the analysis whether the station piping ahead of the new pipeline operates under 20% of SMYS. Rather the line’s primary use and the presence of regulation equipment dictate the existence of a distribution center.

The line at issue is a transmission line as it is not downstream of a distribution center. The distribution center portion of the NWE town boarder station is physically separate and distinct from the pipeline at issue, thus it is impossible for the distribution center to be located upstream.

**II. Staff’s proposed change in pipeline classifications is consistent with the federal pipeline safety code. Following the code does not increase risk nor stifle economic development.**

When the pipeline safety inspection program was statutorily created, the legislature adopted parts 191, 192, 193 and 199 of the Code of Federal Regulations (herein “Federal Code”). SDCL 49-34B-3. This Commission may establish safety standards pursuant to those Federal Code sections. Relevant to this discussion is 49 CFR 192 which contains minimum safety standards for both distribution and transmission lines. The standards may not, however, be “more stringent than federal safety standards.” SDCL 49-34B-4. The Federal Code determined transmission lines, with the added safety and maintenance requirements, that operate at or above 20% SMYS are safe. Both NWE and MDU urge the Commission to ignore the Federal Code and adopt a safety standard more restrictive. This Commission should not rule this pipeline is distribution based on the “safer”

arguments proposed by NWE and MDU. If the Commission rules that a distribution classification is best because then, the pipeline is restricted to operate at less than 20% SMYS, and as a result is safer the Commission will have exceeded its authority under its own statutes. That is simply not what the Federal Code says and is in fact more restrictive than the Federal Code in violation of SDCL 49-34B-4.

If a pipeline meets the transmission line definition, it should be classified as such with the additional required maintenance providing an offset for any increased risk as outlined in Federal Code. Although it is true an incident on a line operating above 20% SMYS could be more severe, Federal Code allows transmission lines to operate above 20 % SMYS and there are intrastate transmission lines in South Dakota doing so.

NWE also argues if the Commission interprets the Federal Code as staff does, projects of this nature will no longer be feasible. As a result NWE argues, economic growth in South Dakota could be affected. Staff is not aware of detailed economics regarding transmission line versus distribution line construction, maintenance and operation. The economics of regulation for distribution and transmission lines were considered on a national level, however, when 49 CFR 192 was developed. Economic consequences are also considered when a new code section is considered by the federal regulatory authority (or PHMSA). As regulators charged with the enforcement of the adopted Federal Code sections, proper application of the code is our goal. The cost and economic impact considerations have already been made by those who wrote and passed the federal regulations.

### **III. Portions of the relevant code section cannot be read in isolation.**

NWE seems to argue the Commission should look to one part of the transmission line definition in isolation. NWE believes simply because the line operates at a hoop stress of less than 20% of SMYS that it is distribution. 49 CFR 192.3 (2). NWE's comments suggest all transmission lines generally operate at over 20 % SMYS. While this is often true, under 49 CFR 192.3 it is possible for a transmission line to operate under 20 % SMYS. Parts (1) and (3) of the code definition would be unnecessary if the only qualification was over 20 % SMYS (part 2). Other parts of the definition cannot be ignored.

In fact, as mentioned in Staff's petition, the pipeline siting rules offer an exception for lines under 20 % SMYS. Operators may build transmission lines under 20% SMYS to save the siting costs. Operators state the siting process cost is approximately the same as additional pipe wall thickness to stay under 20 % SMYS. Some operators prefer to spend money on thicker pipe.

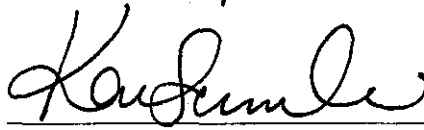
49-CFR 192.3(1) defines a transmission line as one that: "transports gas from a gathering line or storage facility to a gas distribution center, storage facility or large volume customer that is not upstream from a gas distribution center."

In its initial petition Staff offered a PHMSA interpretation (Exhibit 5 attached) stating the entire network of interstate transmission is considered connected to gathering or storage. As a result this line at issue, connected to an interstate transmission line fits this transmission line definition section. The line transports gas from "gathering or storage" to a large volume end customer. Furthermore, as previously discussed the end user, large volume customer, is comparable to a distribution center. Also as previously discussed, the line is not downstream from a distribution center. This code section defines the line as transmission.

#### **IV. Conclusion**

Staff understands its recommendation is a change from past practice. Nationally, however, there is significantly more scrutiny on both pipeline operators and state pipeline safety departments. Our state enforcement role is a serious responsibility and must be carried out according to the Federal Code. The State of South Dakota is simply not free to design its own safety standards according to our beliefs. Rather, we must strictly enforce the federal pipeline safety code. Staff maintains the proper application of 49 CFR 192.3 dictates the pipeline at issue should be classified as a transmission line.

Signed and dated this 6<sup>th</sup> day of January, 2012



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