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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE PETITION FOR
DECLARATORY RULING OF THE SOUTH DAKOTA PS11-001
PUBLIC UTILITIES COMMISSION
REGARDING 49 CFR 192.3

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Transcript of Proceedings
January 31, 2012

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BEFORE THE PUBLIC UTILITIES COMMISSION,
CHRIS NELSON, CHAIRMAN
GARY HANSON, COMMISSIONER
KRISTIE FIEGEN, COMMISSIONER

COMMISSION STAFF
John Smith
Kara Semmler
Greg Rislov
Nathan Solem
Joshua Williams
Demaris Axthelm
Joy Irving

APPEARANCES

Brett Koenecke, Montana-Dakota Utilities
Sara Greff Dannen, NorthWestern Energy

Reported By Cheri McComsey Wittler, RPR, CRR

1 APPEARANCES BY TELEPHONE

2 Tami Aberle
3 Darrell Anderson

4 = = = = =

5 TRANSCRIPT OF PROCEEDINGS, held in the
6 above-entitled matter, at the South Dakota State
7 Capitol Building, 500 East Capitol Avenue, Pierre,
8 South Dakota, on the 31st day of January, 2012,
9 commencing at 2:30 p.m.

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1 CHAIRMAN NELSON: We are back on the internet.
2 We have reconvened. We will head into PS11-001, In the
3 Matter of the Petition for a Declaratory Ruling of the
4 South Dakota Public Utilities Commission Regarding
5 49 CFR 192.3. This comes to us from the Staff of the
6 Public Utilities Commission.

7 And, with that, I will turn it over to our
8 Staff, Ms. Semmler.

9 MS. SEMMLER: Thank you, Mr. Chairman. This is
10 Kara Semmler. In Staff's last filing in reply to
11 Northwestern Energy we listed what we see as subparts to
12 the initial request for a declaratory ruling, and those
13 subparts really became clear after discussion with
14 Northwestern Energy. Productive discussion, I'll say.
15 It was time well spent.

16 While it may not be necessary for you today to
17 rule on each of those subparts individually, we just
18 thought it was helpful as it was for us in our discussion
19 with Northwestern Energy, helpful to dissect the issue a
20 bit.

21 We don't believe a rule making is necessary, but
22 we do look for a decision today regarding the
23 interpretation of CFR 192.3 to guide us going forward.
24 And I provided just for ease of reference a big copy of
25 that regulation for you today.

1 Today Staff does stand by all of the filings
2 it's made to date. And Nathan Solem is going to make a
3 presentation regarding some of the high points of Staff's
4 position to date. And we do ask if you'd allow for some
5 limited rebuttal after Northwestern's presentation. So,
6 Nathan.

7 MS. DANNEN: This is Sara Dannen from
8 Northwestern. Just a point of clarification for what
9 we're going to deem as the record here. Just to ensure
10 that we're not -- Northwestern wants to make sure we have
11 a record in this matter in case any party wants to take
12 further action on it. You know, we're wondering if
13 witnesses need to be sworn in.

14 I understand there's a court reporter here
15 taking the testimony down. But if there's some sort of
16 Stipulation that we can all just stipulate to this being
17 the record or if witnesses do need to be, in fact, sworn
18 in and further measures taken.

19 CHAIRMAN NELSON: I think we're okay with
20 keeping it on a more informal basis, and if we need kind
21 of a verbal stipulation to that, Ms. Semmler, would that
22 be acceptable?

23 MS. SEMMLER: Certainly. Staff agrees now as it
24 does in any proceeding before you that this is the
25 record.

1 MS. DANNEN: And Northwestern is fine with that
2 too. We'd love to this keep conversational, but just to
3 make sure this is on the record, this is, in fact, going
4 to be what, in fact, we can take -- we may need -- any
5 party may need to take action from.

6 CHAIRMAN NELSON: Thank you. I appreciate that
7 point of order. With that, Mr. Solem.

8 MR. KOENECKE: Montana-Dakota would agree to the
9 same stipulation. Thank you.

10 CHAIRMAN NELSON: Thank you. Mr. Solem.

11 MR. SOLEM: Thank you. This is Nathan Solem
12 with Staff, and I'd like to take about 15 minutes and
13 give you an overview of Staff's position.

14 First I'm going to give you a brief outline of
15 what I'll be covering in this 15-minute presentation.
16 Classification protocol that PHMSA uses, some
17 definitions, the less than 20 percent SMYS issue, the
18 description of the subject line, application of the
19 transmission definition to the subject line, a definition
20 of a distribution center, some sample diagrams, the two
21 or more large volume customer issue, the issue of
22 construction over 20 percent SMYS.

23 And we got some new information yesterday that
24 we've added to the presentation since it was filed with
25 some diagrams and pictures of the New Mexico case that

1 Staff had filed with a couple of its filings, which are
2 useful for helping clarify our position. And then
3 conclusions and recommendations.

4 So here we go. PHMSA pipe classification
5 protocol. The first step is to apply the gathering
6 definition from 192.3. If the subject pipe is not
7 gathering, then you apply the transmission line
8 definition from 192.3. If it's not transmission, by
9 default then it's distribution. That's what PHMSA
10 teaches its inspectors to do in classifying pipe.

11 Some definitions. Gathering line means a
12 pipeline that transports gas from a current production
13 facility to a transmission line or main. Transmission
14 line means a pipeline, other than a gathering line,
15 that -- and it could be one of these three options:

16 Transports gas from a gathering line or storage
17 facility to a gas distribution center, storage facility,
18 or large volume customer that is not downstream from a
19 gas distribution center.

20 Or it could be, two, operates at a hoop stress
21 of 20 percent or more of SMYS or, 3, transports gas
22 within a storage field. And SMYS again is the specified
23 minimum yield strength in psi of the pipe in question.

24 The less than 20 percent SMYS issue. In Staff's
25 opinion, classifying all pipelines less than 20 percent

1 SMYS as distribution is eliminating two of three
2 definitions of a transmission line. This is more
3 restrictive than federal code and not allowed by our
4 statutes.

5 The pipeline in question is a 6-inch diameter
6 line about 6 miles long that originates at a Northwestern
7 town border station next to Northern Border's interstate
8 transmission line in Aberdeen and terminates at two large
9 volume customers, namely the new electric generating
10 facility and the new beef processing plant.

11 This new line is also connected to
12 Northwestern's main distribution center, but the valve is
13 normally closed. This means that the primary function of
14 the line is to serve the two large volume customers.

15 And a large volume customer is one that is
16 similar in volume to a distribution center or a town, for
17 example. And we'll get into that a little more later.
18 Both end user facilities meet the definition of a large
19 volume customer.

20 If you now apply the gathering line definition,
21 it is not gathering because it does not connect to a
22 production facility.

23 Next, if you apply part 1 of the transmission
24 line definition, a portion of part 1 has been met, namely
25 the presence of large volume customers downstream of this

1 subject pipeline. Next applying part 2 of the
2 transmission line definition, the pipe is less than
3 20 percent SMYS so this definition fails. Likewise,
4 part 3 shows that this pipeline does not transport gas
5 between storage fields so this definition fails.

6 If any one of the three definitions is true, the
7 pipe is transmission. So now we're left to determine if
8 the large volume customers are upstream or downstream of
9 a distribution center to finish the application of the
10 part 1 transmission definition line. I'm sorry.
11 Transmission line definition.

12 I'd now like to demonstrate how the remaining
13 portion of part 1 of the regulation is met. First a
14 distribution center needs to be defined. Although not
15 defined in federal code, PHMSA interpretations use the
16 following definition: A distribution center is a point
17 where gas enters piping used primarily to deliver gas to
18 customers who purchase it for consumption opposed to
19 those who purchase it for resale.

20 I can show you that the large volume customers
21 are not downstream from a distribution center. Several
22 clarifications to this definition are possible from PHMSA
23 interpretations. Large industrial customers are not
24 commonly considered distribution centers in the gas
25 industry per PHMSA Interpretation No. 10.

1 So that means if they're there, they're not part
2 of the distribution center. They're upstream or
3 downstream based on that interpretation.

4 Distribution center has a plural connotation
5 requiring that there be more than one customer. Thus a
6 distribution center cannot serve a single large volume
7 customer, for example. And that's Interpretation 192.3,
8 No. 10.

9 Now the start of the distribution center is
10 where the downstream pipe is mains and services. When
11 you're looking at these definitions you always look at
12 what's happening downstream. So downstream from the --
13 from a set of regulators on a distribution center you
14 have mains and services. And if those lines -- if that's
15 the type of lines you have present, then it's a
16 distribution center.

17 Since the term distribution center is not
18 defined in code, Staff agrees with the Interveners that
19 South Dakota can define this term.

20 Now I'm going to give you our proposed
21 definition based on my preceding comments. We'd propose
22 that South Dakota adopt this definition: A distribution
23 center is a point where gas enters the pipeline used
24 primarily to deliver gas to customers, except large
25 volume customers who purchase it for consumption as

1 opposed to resale.

2 And, again, the reason for the exception and the
3 pointed delivery to a large industrial customer is not
4 commonly considered a distribution center. Large volume
5 customers are either upstream or downstream of a
6 distribution center and not part of it.

7 So the result is unless a large volume customer
8 is downstream from a group of customers that use gas
9 primarily for consumption, the line delivering gas to the
10 large volume customer is transmission.

11 At this point we need to go into confidential
12 session because I have a proprietary diagram I'm going to
13 show now.

14 CHAIRMAN NELSON: And it appears to me that
15 everybody in the room is okay. And do we have anybody on
16 the phone yet?

17 MS. AXTHELM: I think Tami Aberle possibly.

18 CHAIRMAN NELSON: Tami, are you on the phone?

19 MS. ABERLE: Yes, we are, Mr. Chairman.

20 CHAIRMAN NELSON: Is there anybody else on the
21 phone now at this point?

22 MS. AXTHELM: We'll have to go off the web and
23 come back.

24 CHAIRMAN NELSON: But the recording continues;
25 correct?

1 MS. AXTHELM: Right. I'll record here.

2 CHAIRMAN NELSON: We're going to go off the
3 internet. The internet is turned off. You may proceed
4 with the confidential portion of your presentation.

5 [REDACTED]

6 [REDACTED]

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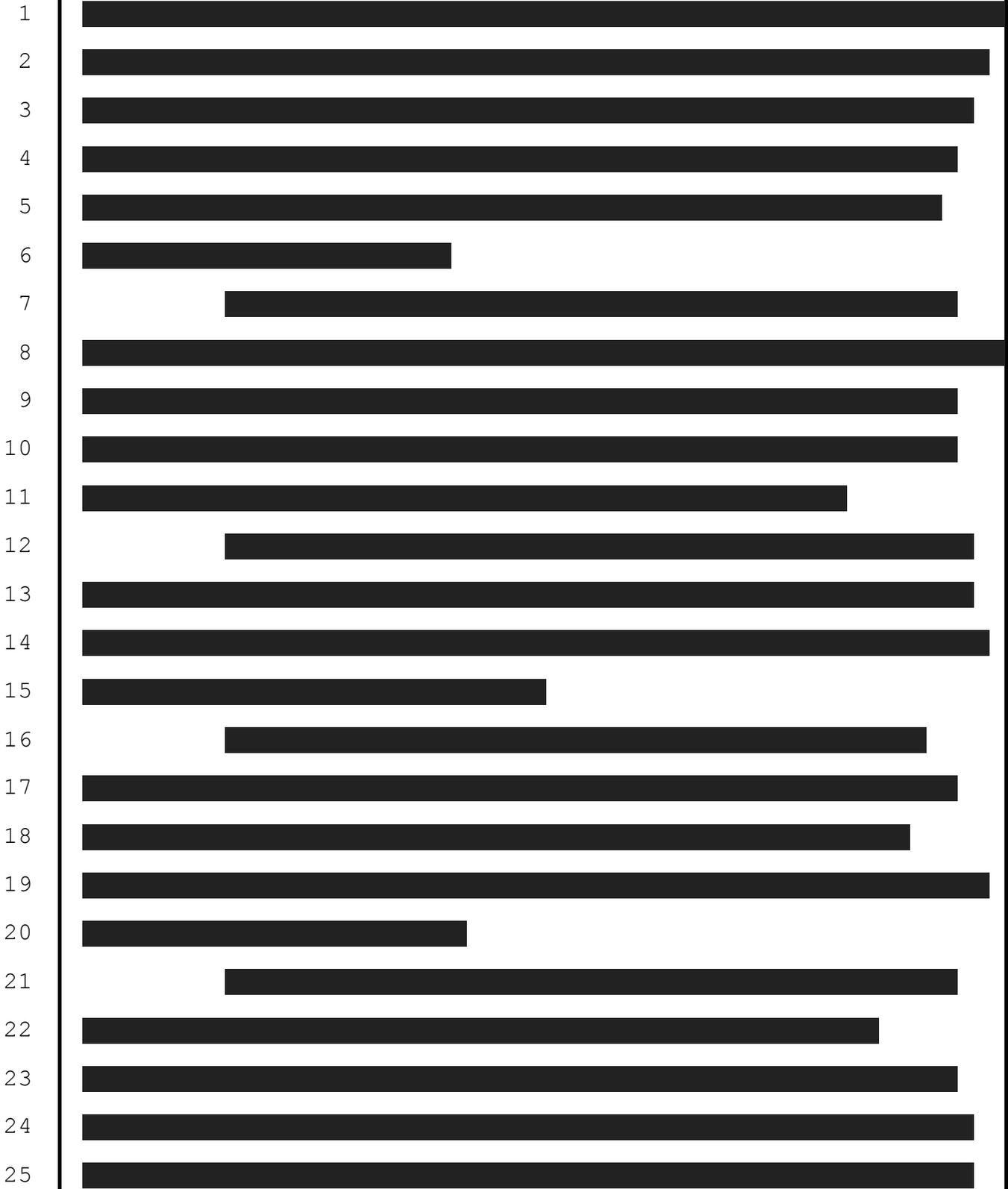
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[REDACTED]

CHAIRMAN NELSON: For the record we are back on the internet.

MR. SOLEM: Operators will build lines over 20 percent SMYS. In Staff's opinion, the Commission should not rule that all lines under 20 percent SMYS are distribution because they're safer or because they have to be odorized, because they have thicker wall pipe, any of those things. That does not follow the definitions in federal code in 192.3.

Also I've had at least two operators in the state tell me in the past that they will still build under 20 percent SMYS because they'd rather put the money into thicker pipe than the costs associated with the siting regulations that are involved if they build over 20 percent SMYS.

Here's the first diagram of the New Mexico pipelines. This is the Animas Power Plant. This is the Bluff View Power Plant. The New Mexico Commission and the -- and PHMSA said that this line, the Farmington

1 Power Plant line that feeds those to large volume
2 customers, is a transmission line, not a distribution
3 line.

4 So in Staff's opinion, this is identical to the
5 situation we have here with two large volume customers on
6 that line.

7 Shall I move on or --

8 CHAIRMAN NELSON: You may.

9 MR. SOLEM: Okay. The next diagram shows a
10 Clovis transmission, the Tucumcari main line, the Cannon
11 main line, the Clovis distribution, also part of the
12 interpretation on the New Mexico pipelines.

13 What you have here is the Clovis transmission
14 line feeding the Tucumcari line and the Cannon line and
15 also this Clovis distribution. The title transfer of gas
16 takes place back here. The same company owns everything
17 downstream here.

18 Yet these lines were classified by the New
19 Mexico Commission and PHMSA as transmission. And I
20 suspect they did so because they applied what was in --
21 we found in the interpretations that said that the
22 downstream lines don't have any service lines. They're
23 not -- in the case of these two transmission lines so
24 they're not distribution. Whereas, down here you have
25 service lines and mains so that's distribution.

1 Here's a picture of the border station. You can
2 see up here is the line to the Clovis distribution.
3 Here's the Clovis main line. Here's the Tucumcari line.
4 Shows all of these lines in the same border station.
5 Very similar in how the Northwestern town border station
6 is structured. If you consider the new line to be
7 transmission, it would be very similar.

8 And with that, Staff recommends that the
9 Commission rule the subject pipeline is transmission. We
10 recommend that the Commission adopt Staff's proposed
11 definition of a distribution center. And if the
12 Commission feels that the subject pipeline is
13 distribution, the basis should be a determination that
14 the large volume customers are downstream of a
15 distribution center and not because the pipe is less than
16 20 percent SMYS.

17 That concludes my presentation.

18 CHAIRMAN NELSON: Thank you. I think we'll hold
19 questions until after Northwestern has made their
20 presentation.

21 Go ahead.

22 MS. DANNEN: Thank you, Chairman Nelson.

23 On behalf of Northwestern we have Bleau LaFave
24 to do a similar presentation as to what Mr. Solem just
25 presented, and we have Mr. LaFave and Melissa Baruth, our

1 DOT coordinator, available for questions.

2 CHAIRMAN NELSON: Very good.

3 MR. BLEAU LAFAVE: Good afternoon. I'm
4 Bleau LaFave with Northwestern Energy. I'd like to take
5 a moment to thank the Commission for the extension. I
6 agree with Staff. It was very beneficial for both of us
7 and for MDU to sit down, go through and make sure we
8 clearly understand what we're looking at here.

9 The decision we'll be going through this
10 afternoon is not a small one. I'll go through some of
11 the details and what effects they will have on the
12 facilities of South Dakota. And we want to make sure
13 whatever we do, we do in the right manner and we move
14 forward accordingly.

15 Northwestern and Staff both agree that the
16 Aberdeen pipeline that was under review was classified
17 correctly under the current practices of South Dakota.
18 So we just want to get on the record that we're in
19 agreement that the pipeline was classified correctly,
20 according to those standards. Staff is bringing forward
21 a new interpretation for a particular evaluation of this
22 pipeline.

23 And also proposing that that new interpretation
24 would go forward. And I will explain some possible
25 issues with this just being a go-forward rule.

1 I'll have to figure out how to get everything
2 working here. The other thing as I go through the
3 presentation, there's a lot of subject matter here. If
4 you do have questions as I go through it, I definitely
5 would appreciate questions as we go through it if you
6 have questions or comments. Because I want to make sure
7 we're clear on what we're addressing.

8 As you've seen earlier, this is about the
9 definition of a transmission line in 192. Nathan went
10 through earlier the definition and the specifics to that,
11 and this is how it's listed in 192.

12 The first part of it is a transmission line
13 transports gas from a gathering line or a storage
14 facility to a gas distribution center, storage facility,
15 or large volume customer that is not downstream from a
16 gas distribution center. Two, it operates a hoop stress
17 of less than 20 percent or more SMYS or transports gas
18 within a storage field.

19 Northwestern believes the past practices of the
20 utilities in South Dakota are in line with this
21 particular definition. Especially if you read it for
22 what is consistent for what is actually there in the
23 verbiage.

24 There are different interpretations, and Staff
25 is asking how to interpret this. And PHMSA has offered

1 their interpretations of this particular rule for
2 specific cases in specific locations, taking into account
3 the state statutes.

4 These are specific interpretations. They
5 even -- if you go out for an interpretation with PHMSA,
6 you will see a disclaimer that pops up, and they will say
7 they're specific to that circumstance. They can be used
8 as guidance, but they're specific.

9 And as Nathan, you know, has described, you
10 know, defined terms in 192 are under the state
11 jurisdiction to define. And we get a little bit more
12 into that a little bit later.

13 As we look at this particular definition, we
14 start off with gas from a gathering line or a storage
15 facility. So we start off first from a gathering line to
16 a distribution center, a storage facility, or a large
17 volume customer or from a storage facility to a
18 distribution center, storage facility, or large volume
19 customer. That's what's in the definition.

20 Our past practice and our current interpretation
21 go through -- we do not exclusively use the 20 percent
22 SMYS. What we've done is we went through No. 1 and
23 No. 3, and by the specific description that's in the
24 definition that's in 192, they don't apply.

25 Just looking at this first section, transport

1 gas from a gathering line and storage facility.
2 Currently in South Dakota there are no storage facilities
3 or gathering lines connected to our systems.
4 Northwestern is not connected to any storage facilities
5 or gathering lines. And there is a debate about that,
6 and I'll get into that in a little more detail.

7 And, third, you know, transporting gas within
8 storage fields. There are no storage fields in
9 South Dakota so there is no pipelines transferring
10 between the two. So we looked at 1 and 3. They just
11 don't apply. So we fell in No. 2.

12 The arguments to that come in two-fold. If you
13 go through the interpretations, they're provided by
14 Nathan and there's several others out there that have
15 different twists on how you would look at things, the
16 first argument or the major argument is continuation.
17 You're connected to a transmission line so, therefore,
18 you're just continuing on.

19 This argument says -- and I can understand this
20 argument if I'm the transmission company, if I'm Northern
21 Natural and I'm extending my transmission system because
22 I've crossed many state lines. I'm connected to a well
23 head or market point someplace where there's some storage
24 and I'm extending my line to a large volume customer or
25 I'm extending my lines to a distribution center. There

1 is an argument for that to be a transmission. And I
2 believe that's what's described in 192.

3 But what that continuation does not take into
4 account is the point of transfer beyond what that
5 transmission line does when the second company comes in.
6 So when we have a point of transfer like with Northern
7 Natural to Northwestern there's a change in custody of
8 the pipeline -- of the pipeline and the gas. There
9 often is a difference in construction. There's
10 different -- there's a different characteristics of that
11 pipeline. And one of them could be it's less than
12 20 percent SMYS.

13 There is also a change in purpose. Northwestern
14 serves customers throughout the state, and our purpose on
15 all our pipelines is to distribute to the end user, the
16 consumers. And those consumers are both residential and
17 large volume customers. They are consumers. We have no
18 large customers that are passing the gas on to somebody
19 else. They are consumers.

20 The second argument that can be brought against
21 our interpretation would be the transmission line as a
22 storage facility. Nathan talked about that. There are a
23 couple interpretations out there that say a transmission
24 line can be a storage facility. And it depends on who's
25 looking at it. Maybe you get something in agreement with

1 that.

2 But if we look at the definition in 192.3 PHMSA
3 defines -- our code defines for us what a transmission
4 facility is. It doesn't say that it's a storage
5 facility. If it thought it was a storage facility, it
6 would put a little note, another number under there, and
7 also a storage facility. It's not in there.

8 As we go through this -- because of our
9 interpretation, where we did use all three of them we
10 have had a couple of documented examples. We're not
11 using these examples specifically. We just wanted to
12 show the Commission that there were a couple of
13 documented samples there was communication between Staff
14 and the company utilizing these definitions, that this is
15 how we treated them.

16 Mostly they are conversations and we understand
17 the rules of thumb and we go forward with the practice.
18 But we just wanted to show there are a couple of examples
19 out there that did utilize the past practice that we
20 have.

21 You know, as we talk about whether or not states
22 have rights -- and Nathan did refer that, you know, when
23 they're not defined in 192, it is one of the Commission's
24 responsibilities or can be one of the Commission's
25 responsibilities to fill in some of those gaps in order

1 to fill in some of those definitions.

2 And in our research we went out and researched
3 at least three states that have different definitions of
4 what a -- either a distribution center is, what a
5 transmission line is. And these are just examples.
6 They're not necessarily similar to what we are going to
7 go through following -- coming up shortly. But these are
8 different examples.

9 And if you think about it, there may be more out
10 there. It's a little hard to find these references
11 because using South Dakota as an example, until we go
12 through this, we really wouldn't have had a docketed item
13 that we could point to and say this is how they're doing
14 it. So there may be more out there, but these are three
15 that we definitely came up with.

16 So as we go through, one of the questions is,
17 and you heard Nathan say earlier, you know, can
18 South Dakota choose to define these terms and can it be
19 more stringent, can it be less stringent?

20 Well, according to 192, there's an FAQ out
21 there, which is number 206, which references the state's
22 ability -- in the answer for the FAQ it references the
23 state's ability to apply standards more restrictive than
24 federal rules.

25 Now if we then balance that against

1 South Dakota, we do have a law in South Dakota that does
2 not allow stricter requirements than federal rules. So
3 those two offset and say that we need to maintain those
4 rules. But does defining an undefined term in code make
5 something strict or less strict?

6 For Northwestern's point of view we're just
7 defining the term. Then we will categorize the pipelines
8 in the appropriate categories, and we will apply the
9 appropriate standards. We're not making it strict or
10 less strict by defining these terms.

11 As we go through this -- and, you know, from
12 this point I'm going to start talking about, okay, if we
13 change our past practices. But one of the points I'd
14 like to make out is Northwestern definitely believes that
15 our past practices are in accord with the current rules
16 as defined and as currently written.

17 But if we go down the path that the transmission
18 lines are storage facilities or that the continuation is
19 in effect for transmission, we will need to define some
20 additional terms. Nathan offered up a definition for a
21 distribution center. We will also offer up a definition
22 for distribution center.

23 We also will need to take a look at the
24 definition of large customers. Because these two are key
25 if you start pulling into play No. 1 of the definition

1 for transmission lines.

2 So what we have when we look at this particular
3 scenario is we start out equalizing the transmission line
4 to a storage facility. And we have a transmission line
5 going to a distribution center, feeding the storage
6 field, and feeding a large customer. But if we're going
7 to comply with the definition in 192.3, the interstate
8 transmission line is actually a storage facility. So
9 that's what you're having to leap to if you're going to
10 accept this definition.

11 We just want to reiterate that, you know,
12 according to OPS -- here's another example. This is in
13 Department 192 under their TIMP filing, which is a
14 Transmission Integrity Management Plan. FAQ 190, which
15 was the question asked whether the states have the
16 ability to define distribution centers.

17 And OPS responded themselves. A distribution
18 center's not defined in the federal pipeline safety
19 regulations. State definitions can vary. OPS recognizes
20 the actions of each state in defining what constitutes a
21 distribution center.

22 So as we look at a distribution center, what
23 constitutes a distribution center, a couple of things
24 that we want to look at. Just what Northwestern is
25 proposing here is -- and I'm going to go through this

1 distribution center -- or this definition in detail just
2 to make sure everybody understands what we're proposing.
3 Because there's the ands, the ors, and we want to make
4 sure everybody has that clear and we'll talk about a
5 couple of items.

6 But starting off with a distribution center is a
7 point of custody of transfer between a transmission
8 pipeline and the distribution company or must contain
9 pressure controlling devices that regulate below a
10 transmission delivery pressure.

11 Again, the custody transfer goes back to the
12 point of the purpose of that pipeline, the purpose of the
13 gas, has changed. The transmission company that's
14 transporting gas purposely is transporting gas for
15 resale. When it comes to a distribution company we are
16 transporting gas to distribute for consumption. So
17 there's a clear distinction between the two.

18 The or, which could be the second decision or
19 the second option, must contain pressure controlling
20 devices that regulate below transmission delivery. The
21 reason why that's critical is we've now changed the
22 characteristics of that pipeline.

23 Maybe there wasn't a transfer in custody. For
24 instance, Northwestern does have a transmission line and
25 we're going downstream from it. In order to define a

1 point at which we now move into a distribution, we've
2 changed the characteristics of that transmission line by
3 lowering the pressure of the regulation and conditioning
4 the gas.

5 And those are two conditions that are either/or,
6 but they both must meet the following two conditions:
7 The following two conditions are must be under 20 percent
8 SMYS, which is number 2 in the definition of a
9 transmission line. And, 3, a point where gas enters
10 piping used primarily to deliver gas for consumers to
11 purchase it for consumption as opposed to those who
12 purchase it for resale.

13 And, again, that's pulling in the idea and I
14 believe Staff used it in the Crooks Docket and I believe
15 I've seen it in their filings recently where the purpose
16 of that end consumption are two things that can help
17 identify what a distribution center is.

18 The one exception to this definition -- there
19 are a couple of differences between what Staff proposes.
20 And one of the major differences is the exception for
21 large customers. And this exception -- going back to the
22 continuation argument with Northern Natural, if I'm a
23 transmission pipeline, I can kind of see why that
24 continuation makes sense and why 192 is written that they
25 added a large customer.

1 And that addition of large customer in 192 was
2 added in 1994. It wasn't there originally, but they
3 added it to it. They added it, and our position is is
4 they added that to address interstate transmission
5 serving individual customers like power plants off their
6 line that are significant and that's just a continuation
7 of their line.

8 But using the distribution center definition
9 like what we have above, there is a custody change, the
10 purpose of the line changed, and we're serving large
11 customers as end users. Those are the end users after
12 that point. So we believe the large customers that are
13 downstream -- we agree they are downstream from a
14 distribution center -- are connected to a distribution
15 line.

16 So specifically as we talk about Aberdeen, at
17 that tap and if you can remember the drawing -- I don't
18 have it particularly here. We have a tap that's coming
19 off an interstate pipeline. At that tap there's a
20 custody of transfer. There's a meter.

21 Then there is regular -- or first there is a
22 heater. We're actually heating the gas because we have
23 regulators at that station that are cutting the gas so
24 far that it will ice up regulators if we don't cut the
25 gas. We've changed the characteristics at that point or

1 even the custody point from what was in the transmission
2 line. We've started a new point. And I'll get into a
3 little bit more of that when we talk about large customer
4 definitions.

5 But for this particular -- in Aberdeen first we
6 have the meter transfer point. We are heating the gas.
7 We're regulating it. And we have conditioned that gas,
8 and the pipeline and the equipment are below 20 percent
9 SMYS. To me we're well within the definitions of a
10 distribution center or end distribution pipeline.

11 The next piece that we have is large volume
12 customers, which is also used in 192. The first -- the
13 question I always have with this -- and like I said
14 earlier, I can see where PHMSA went with interstate
15 transmission pipelines connecting to single large
16 customers, where the definition for large customers came
17 in.

18 But I still have the fundamental question.
19 PHMSA's programs are for safety. How does who I connect
20 to at the end of that pipeline change the safety of that
21 pipeline? And I just kind of throw that out as food for
22 thought.

23 The definition of a large -- Nathan went into a
24 couple different comments about the definition of a large
25 customer. And one of the concerns we have -- and there's

1 actually a lot of debate both about distribution centers
2 and large customer. One of the reasons why you don't see
3 a final rule on this is the industry doesn't agree how
4 these two things should be defined. I mean, just they're
5 not there yet.

6 For the large customers the obvious question is
7 how big is a large customer? I mean, a large customer to
8 South Dakota is a whole lot bigger than a large customer
9 to Texas. Because when you talk about some of the large
10 manufacturing plants in Texas they're bigger than usage
11 in South Dakota by far. One customer. So that's your
12 first question when you define large customer.

13 The second question is -- and provided in the
14 definitions and some of the interpretations is they have
15 similar facilities to the distribution center. They
16 don't define similar facilities, but it has similar
17 facilities. You know, what is a similar facility?

18 Your house has a meter on it, and distribution
19 runs to all the different appliances and a regulator's on
20 it. It's similar to a distribution system. If you
21 graduate that up to a large -- small business, they're
22 going to have different appliances, maybe even going to
23 separate buildings on their site. And now does that get
24 you into a large customer? Or is a large customer based
25 on again going back to usage? They're really hard to

1 define, which is one of the reasons why they're not
2 defined in 192.

3 And the second point going through -- and just
4 for clarification, you know, as we look at that
5 definition in 192 of a -- it is singular. It says large
6 volume customer. And, again, I think they're
7 contemplating when interstate pipelines drop a lateral
8 off to pick up a large volume customer.

9 If we're going to interpret that code literally,
10 it doesn't say plural. There's no apostrophe for Ses.
11 It's large volume customer.

12 So if you go down the path where you're going to
13 say, well, it meant plural, large volume customers, but,
14 you know, if you've got a group, then it could be a
15 distribution center. So say I have two large volume
16 customers. You know, in this example Staff is saying
17 that, no, that's still a transmission line.

18 What if I have four? What if I have five? At
19 what point does feeding that system become a distribution
20 center? In my opinion it would be two. Anything above
21 one, large volume customer.

22 And this is kind of the last slide before we go
23 into some of the examples. And we'll go through the --
24 the examples will go fairly quickly. There's a couple
25 we'll spend a little more time on. But for the most part

1 we'll go through fairly quickly.

2 As we went into this docket, we wanted to make
3 sure that people understood, first of all, 192.3 if you
4 literal read it, it has something there. We're talking
5 about an interpretation of things that are undefined.

6 As we talked about interpretation, because the
7 states have the right to choose how it's interpreted, we
8 also feel the tradeoffs, the benefits, and risks also
9 need to be addressed or at least considered. This has
10 some significant impacts.

11 Just to start off with, you know, as we look at
12 the list -- and this is not an exhaustive list. These
13 are some common examples, and I'll go down through them a
14 little bit.

15 Odorization is not required under 192 for
16 certain transmission lines. A lot of the lines under
17 Staff's purview would be qualified -- that would qualify
18 now as a transmission line would not require odoring
19 because they don't require odoring in class 1 and 2
20 locations.

21 And odoring is an expense. I mean, and if we
22 have additional expenses because of transmission lines
23 through some of the surveying that you need to do,
24 through some of the other recordkeeping that you need to
25 do that in order for us to keep costs level for our

1 customers we may have to offset some of that stuff.

2 And I have personally done a lot of estimating
3 for distribution lines and worked with our transmission
4 group in Montana. Their costs are higher. So we're not
5 going to be offsetting to try to maintain costs. We're
6 going to offset to try to control our increases.

7 Safety. You know, odorization just as an
8 example for safety. If you have a line odorized,
9 obviously anybody within near shot you smell that sour
10 egg problem, you immediately recognize the problem. If
11 you take that odorization away, then you don't -- you
12 won't notice it personally, unless you see vegetation
13 that are dying.

14 There are patrol surveys that companies do and
15 we're trained to do that you can visually see it, but the
16 normal customer is not going to notice those type of --
17 so just an example of one of the safety things that may
18 be taken away.

19 Just a description on the TIMP most of the
20 pipelines that would probably be hit by this change would
21 not have HCAs on them or very few. The HCAs is where a
22 lot of the additional work under the TIMP program happens
23 and most of these pipelines -- or a large section of
24 these pipelines would not be covered under HCA. So you
25 would lose that benefit there.

1 Along with TIMP, a lot of the reclassification
2 of pipelines became an issue in the last few years when
3 the Transmission Integrity Pipeline Management Program
4 came in effect because they saw there was an additional
5 benefit to having the Transmission Integrity Management
6 Pipeline Program over a distribution line under the old
7 program.

8 Since then PHMSA has introduced and put into
9 effect distribution integrity management program. So
10 that differential has gone away, and I would expect that
11 a lot of the classification discussions will probably go
12 away with it in the future.

13 The other concern that I wanted to bring up as
14 we go into this, obviously we're talking about when you
15 build the transmission line there are costs. There are
16 increased costs building a transmission line versus
17 distribution. There are some offsets for it, as Nathan
18 mentioned.

19 One of the offsets is we can put pipe in. So we
20 pay for weight -- we pay for steel by weight. That cost
21 could bring some of the costs down to offset some of the
22 other costs that we need to do to build a transmission
23 pipeline.

24 But those costs -- also as we go through this
25 you'll also see increased maintenance costs. And with

1 those two costs some of those projects and the
2 feasibilities for those projects will come into question.
3 I do a lot of feasibility work for Northwestern, and I
4 can tell you just based on some comparisons that some of
5 the projects we've done recently probably won't go.

6 One of the rates that we have within
7 Northwestern is the revenue at a current rate, the
8 current tariff rate, has to at least compensate for O&M,
9 A&G, and taxes. And then a rate can be structured around
10 recovery of the asset costs, which we have come before
11 this Commission several times with a deferred rate.

12 But if those projects can't cover those costs
13 under the tariff, the current tariff, they don't go.
14 Because we will never be able to recoup those costs from
15 those customers. So there is other effects along with
16 that.

17 And the additional effect that we would have at
18 Northwestern, we right now just estimate -- and granted
19 this is an estimate. We have to go through and evaluate
20 our lines -- this would affect approximately 340 miles of
21 our system. In that effect, we're not equipped for that.
22 We're going to have to create a department. Or we're
23 going to contract or we're going to have Montana come in
24 and help us manage those assets so it will be additional
25 costs for Northwestern.

1 And I'm not saying that as a decision point.
2 I'm saying that because this is an interpretation issue.
3 It's something to consider.

4 The next few slides we go through you've seen
5 the keys. The red is transmission. Green is
6 distribution. X is a transfer point.

7 Just as an example of these interpretations,
8 you've had a chance for review of these. This particular
9 one we're in agreement with, the past practices and the
10 proposed interpretation. But just as an example, as we
11 look from left to right we have the interstate
12 transmission line. There's a meter. R is for reg. The
13 X is the transfer point. The pipelines that we were
14 talking about classifying will either be in red or green.
15 R is a regulator. And C is customers.

16 And the different points -- you can see in this
17 particular example the entire line was designed to be
18 less than 20 percent SMYS. So that's the general setup
19 of most of these slides.

20 What we did was we sat down with Nathan and went
21 through several different variations and tried to capture
22 as much as we can so we can get a clearer understanding
23 on this going forward.

24 And to that point, one of the things that I
25 didn't touch on earlier is 192 is fairly specific on

1 which sections of the code are retroactive and which are
2 not. The definitions are in the section of code which
3 are retroactive. In other words, if we change a
4 definition here and it -- it applies to all lines. It
5 does not apply to a go-forward basis.

6 We're always taught, it's actually listed in
7 192.13, but the short acronym for that is AMILK, which is
8 Section A and then M-I-L-K. And then recently they've
9 added Section O. So it's AMILK O is what they always
10 teach you when you go to class. Those are retroactive.

11 So our concern or another consideration is, you
12 know, whatever decision we make here does apply to other
13 lines, which is the reason I was talking about other
14 issues. We also have a concern with liability because if
15 I have one line which is very similar to another line but
16 they're classified two separate ways and something
17 happens, that creates another level of liability for the
18 utility.

19 Going down here again, we're in agreement. This
20 is the first slide where we start talking. And what
21 you'll notice is a pattern is we're in agreement on
22 classifications with almost every slide with the
23 exception that, Nathan, I don't know if you would agree
24 with this or not, but when we introduce large customers
25 then it changes.

1 MR. SOLEM: That's correct.

2 MR. BLEAU LAFAVE: Okay. As we go through this,
3 as you can see, this is the setup. And this is similar
4 to Aberdeen with the exception of there's two large
5 customers on this pipeline. So this is similar in
6 concept.

7 The one thing that came out as we went through
8 this is the previous slide is identical, with the
9 exception it doesn't have a large customer. We have a
10 large customer. Now all the sudden it's a transmission
11 line.

12 I'm not -- from my perspective looking at it
13 from a safety standpoint, I guess I don't -- our position
14 is we wouldn't -- we don't agree with that. I don't know
15 why the large customer would change the characteristics
16 of that pipeline.

17 If the pipeline is still below 20 percent SMYS,
18 if it is regulated -- and I'm just talking about the
19 difference between this one and this one -- they're
20 both -- transfer points the same. They're both
21 regulated. They're both below 20 percent SMYS. I have a
22 large customer. The definition changes.

23 As you go through you'll see something
24 similar -- in cases again where there are no large
25 customers we are in agreement where the large customers

1 are then we deviate.

2 So with that, Northwestern requests that the
3 Commission find that the Aberdeen line was properly
4 classified as a distribution line through the literal
5 interpretation that we've used as a past practice.

6 We also request that the Commission affirm that
7 the past practice is adequate for determining the
8 classification of a transmission line. If the Commission
9 goes down a path to where we will need to be defining a
10 distribution center -- and we could do that either way --
11 we would also recommend that you utilize the definition
12 for the distribution center that Northwestern has offered
13 as a proposal.

14 We just -- just like to reiterate that this is a
15 big item. It is a big change for Northwestern and the
16 other utilities in the state, and we'd like to make sure
17 that you take your time, whatever time necessary to look
18 at this and make your decision. Thank you very much for
19 your time.

20 CHAIRMAN NELSON: Thank you, Bleau. Appreciate
21 that.

22 Staff, any rebuttal?

23 Oh, MDU. I apologize. I've forgotten you twice
24 in the same day. This is not good.

25 MR. KOENECKE: Doesn't bode well for our

1 relationship. Just teasing, Commissioner. Thank you
2 very much.

3 Brett Koenecke for MDU. I think Tami has some
4 comments, and I'll turn it over at this time.

5 Go ahead, Tami.

6 MS. ABERLE: Chairman, if you will, I would like
7 to turn it over to Darrell Anderson, our gas distribution
8 manager.

9 CHAIRMAN NELSON: Go ahead.

10 MR. ANDERSON: Yeah. This is Darrell Anderson
11 again with Montana-Dakota Utilities. They were excellent
12 presentations. I guess I learned a little bit about code
13 today too in looking at these changes in definition
14 across several states.

15 MDU's statement is that we support
16 Northwestern's presentation point. We certainly
17 understand the Commission has the right to redefine the
18 code or to look at interpretation of the code in changes
19 in how it affects South Dakota.

20 We support a careful review of the decision that
21 could change the South Dakota historic definition in this
22 case in code. And these changes could redefine -- or the
23 redefinition of these codes within 192 could have
24 significant redefinition of facilities at MDU. I guess I
25 really don't know how it would impact us and have a

1 quantity of that right now, but it could have significant
2 impact.

3 CHAIRMAN NELSON: Thank you. Anything further?

4 MR. KOENECKE: I don't believe so, Commissioner.
5 Thank you.

6 CHAIRMAN NELSON: Okay. Thank you.

7 Now, Staff. Any rebuttal?

8 MS. SEMMLER: Thank you, Mr. Chairman. This is
9 Kara Semmler with just a few clarification remarks.

10 We appreciate that Northwestern did ask also for
11 approval of what we've been talking about today as a
12 current practice or historic practice because that has
13 not ever been heard or approved by this Commission. So I
14 just want to remind us all of that, that it's not an
15 approved practice.

16 I would also point the Commission to Staff's
17 point No. 3 on its recent filing. There was some
18 discussion about, you know, the terms "gathering line"
19 and "storage facility" and what their meanings are. And
20 Staff made its argument in its recent filing, and I won't
21 repeat that.

22 We aren't arguing today that defining the terms
23 within the code makes it more restrictive, thus,
24 something we can't do. Rather, we're arguing -- we argue
25 that to change the code to look at one code section in

1 isolation is more restrictive. I just wanted to clarify
2 that point.

3 Also to clarify that a group of large volume
4 customers does not make a distribution center. We argue
5 that large volume customers are an all out exception to
6 the term "distribution center."

7 My final point is that -- the retroactive
8 application of this. There are some portions of the
9 federal code that do retroactively apply to pipelines
10 that were in existence before the code was passed.
11 However, I don't think PHMSA intended for PUC declaratory
12 rulings to have any retroactive effect. And that's not
13 what Staff is asking for today.

14 Nathan.

15 MR. SOLEM: When I took inspector training they
16 went to great lengths to explain to us how the economics
17 when these code -- when code was put into effect how the
18 economics were considered in the comments from the
19 operators and all other stakeholders at the time,
20 transmission versus distribution, and that as inspectors
21 what our job to do now is to enforce the code, that the
22 economic considerations have already been considered, as
23 we put in one of our filings. I just wanted to refresh
24 your memory on that.

25 That's all I have. Thanks.

1 CHAIRMAN NELSON: Thank you. Questions from the
2 Commission?

3 Well, I have questions. I'm going to start with
4 Northwestern. And, Bleau, I will just say as a side
5 comment when you said the distribution center has not
6 been defined because the industry can't agree, boy, that
7 doesn't give me much comfort, does it?

8 The question I've got for you is Staff has
9 talked about and had some new slides today talking about
10 the New Mexico situation and making that analogous to
11 what they see is this situation. Distinguish that. You
12 know, apparently you're disagreeing with that.
13 Distinguish that if you could.

14 MR. BLEAU LAFAVE: From my thoughts there would
15 be two different points. One, again, this is a very
16 specific situation. I don't know how big those customers
17 are. I don't know what they have for distribution
18 systems behind them. I don't know how that state defined
19 a distribution center.

20 You know, as the interpretations go, they would
21 have to consider what that state has defined certain
22 items as. And in New Mexico they must have defined them
23 specifically enough to where they could make that
24 interpretation. I don't know specifically.

25 But as far as it relates to this particular

1 situation or the Aberdeen center, it very well could be
2 similar. But from an engineering standpoint I don't
3 agree with it. Because the lines themselves are designed
4 to be -- are designed below 20 percent SMYS. They are
5 designed in that category, and the characteristics change
6 on what you do for maintenance and what you do for
7 capitalization as you go through code as you increase
8 that SMYS level.

9 So although I understand and if they made that
10 determination in New Mexico, I mean, that's where they're
11 at, but from the point from South Dakota and from a point
12 of, again, going back to the fundamental question how
13 does who's connected to this pipeline change the safety
14 of that pipeline, I don't agree with it.

15 CHAIRMAN NELSON: Thank you. The other couple
16 questions I've got would be for Nathan.

17 I thought I heard you say -- and correct me if
18 I'm wrong -- that if a large volume customer is
19 downstream from a group of customers, then the line is
20 distribution.

21 MR. SOLEM: Correct. That's Staff's proposed
22 definition of a distribution center. A distribution
23 center is like a group of houses that are being fed or
24 commercial customers, but large industrial customers like
25 these are accepted from the distribution center

1 definitions that we found in the PHMSA interpretations.

2 CHAIRMAN NELSON: Okay. I think maybe the only
3 other question I've got for Mr. Solem, would it be
4 possible for you to bring the confidential slide back up
5 on the screen. And the questions I've got I don't think
6 any of your verbal answers will be confidential so I
7 don't know that we need to go off the internet.

8 Because I'm going to take just a little bit of
9 liberty here because if I can point to what I want to ask
10 you, I think this will help you answer my question.

11 If I'm understanding you correctly, if this pipe
12 were connected here, then it would clearly be a
13 distribution line; is that correct?

14 MR. SOLEM: Correct.

15 CHAIRMAN NELSON: And because it goes through
16 its own regulator, your contention is it's transmission.

17 MR. SOLEM: Because it's connected ahead of
18 those distribution regulators to stationed piping, not
19 piping that's clearly designated distribution, I feel
20 that it's transmission.

21 CHAIRMAN NELSON: I think that's the only
22 question I've got. Thank you.

23 Questions from the other Commissioners?

24 MR. RISLOV: I just have one. It would be for
25 both Mr. LaFave and for Nathan. And I'll go to

1 Mr. LaFave first, if I could.

2 Are you of the belief -- and I got this after
3 listening to you that perhaps you are. So correct me if
4 I'm wrong. Are you of the belief that the large customer
5 definition came primarily because of perhaps a
6 transmission company bypassed a distribution system
7 directly serving what you called a very large customer?

8 MR. BLEAU LAFAVE: I would say bypass or hitting
9 of convenience, yes. I mean, natural gas systems don't
10 have territories. So if a pipeline goes by a large
11 customer and they drop a line to serve them, it's not
12 really considered a bypass. But in -- yes. I would say
13 that that would be true.

14 MR. RISLOV: And to Nathan I would have that
15 same question.

16 MR. SOLEM: I found nothing in reviewing the
17 interpretations that indicated that when I was reviewing
18 this. That it was designed for interstate transmission.

19 CHAIRMAN NELSON: Okay. Commissioner Fiegen.

20 COMMISSIONER FIEGEN: This is certainly a hard
21 and technical case or a docket that we have in front of
22 us. I just have some clarifying questions because I
23 don't know if I heard right. And then I looked at the
24 presentation earlier, and then I was confused again.

25 There are no gathering lines or storage

1 facilities in South Dakota.

2 MR. BLEAU LAFAVE: That's correct. With --

3 COMMISSIONER FIEGEN: With Northwestern because
4 there are some out west.

5 MR. BLEAU LAFAVE: With the caveat that
6 transmission lines are not storage facilities.

7 COMMISSIONER FIEGEN: And so, Staff, you would
8 disagree with that because?

9 MR. SOLEM: Well, let me make two points about
10 this. The first is there are gathering lines. They're
11 nonjurisdictional out in Harding County. There's four of
12 them.

13 COMMISSIONER FIEGEN: But not Northwestern.
14 Right.

15 MR. SOLEM: Not Northwestern.

16 COMMISSIONER FIEGEN: Right. We have them out
17 west, but they're not on Northwestern's pipe --

18 MR. BLEAU LAFAVE: Correct.

19 MR. SOLEM: The point I was trying to make, I
20 showed you one slide that came from inspector training
21 materials very current from PHMSA where they are still
22 holding and teaching inspectors that interstate
23 transmission lines are storage facilities. That's going
24 on right now.

25 COMMISSIONER FIEGEN: The other question I have

1 is the -- I can't quite understand, and if I call it
2 grandfathered in or whatever or moving forward or being
3 retroactive, do you believe it will be retroactive and
4 Staff does not?

5 MR. BLEAU LAFAVE: We do believe that it would
6 be retroactive. Plus we would end up with a liability
7 issue because we'd have similar lines classified
8 differently.

9 MS. SEMMLER: I do not believe it will be
10 retroactive, but I appreciate the liability concern.

11 COMMISSIONER FIEGEN: Wow. Lots to go over.

12 COMMISSIONER HANSON: Mr. Chair.

13 CHAIRMAN NELSON: Commissioner Hanson.

14 COMMISSIONER HANSON: If I could piggyback on
15 Commissioner Fiegen's last question.

16 Ms. Semmler, would it not -- when we're talking
17 about grandfathering and potential to change the
18 situation, would it not set a precedent of some sort by
19 which future and certainly thereby existing situations
20 would all apply?

21 MS. SEMMLER: I believe it definitely sets a
22 precedent which we're hoping to receive today regarding
23 all future pipelines.

24 Those that are built, however, were built as the
25 company has described under historical or current

1 interpretation. And we agree as Bleau talked in his
2 presentation, they're not out of compliance right now.
3 We're not making that argument. And the current lines
4 that are built under the "historic interpretation" aren't
5 necessarily out of compliance right now. We're seeking a
6 determination today moving into the future.

7 With that being said, Northwestern has
8 articulated that those lines that are similar could be a
9 liability issue. I do appreciate that concern. And
10 internally that would be something that the company would
11 definitely have to work out.

12 COMMISSIONER HANSON: It troubles me that we
13 would have basically two -- by grandfathering in we'd
14 have two completely different sets of situations, and it
15 really complicates things for me.

16 Let me ask this question: In contract law
17 contracts are always interpreted to the benefit of the
18 party that did not write the contract. And in this
19 situation when we're talking about plural and singular
20 it's quite obvious within the writings that it states
21 a -- it doesn't just say -- wherever it is. It doesn't
22 just say large volume customer. It states a large volume
23 customer.

24 And in that particular situation I've never
25 known the feds to be short of ink or paper or bits or

1 bytes or whatever, and I would think they'd certainly be
2 capable of -- if that's what they meant, for all of the
3 attorneys that they have to go over issues and the length
4 of their rules and regulations that they would -- if they
5 meant to be plural, they would have made it plural.

6 So help me with that. Because I -- it really
7 seems to be singular to me.

8 MS. SEMMLER: And I don't think they were short
9 of paper. There are several interpretations out there
10 that do indicate that when there are two large volume
11 customers on the line it doesn't change the
12 classification.

13 So I think the decisions and the interpretations
14 made by PHMSA have indicated that is not consequential
15 whether there are one or two large volume customers. And
16 the diagrams that Nathan showed regarding the New Mexico
17 decision, in fact, there's two large volume customers on
18 that line.

19 COMMISSIONER HANSON: Thank you.

20 Thank you, Mr. Chairman.

21 CHAIRMAN NELSON: Any further questions?

22 Mr. Smith.

23 MR. SMITH: Bleau, looking at your first
24 diagram -- or at your diagrams, is it the first diagram
25 on there that -- there's two of them. Is that -- is that

1 the representation of the current situation or --

2 MR. BLEAU LAFAVE: I believe you're talking --
3 if you're talking about the slide that has -- it should
4 have Aberdeen, South Dakota interpretation. It should
5 have Aberdeen at the top with an asterisk.

6 MR. SMITH: Yes.

7 COMMISSIONER FIEGEN: Can we bring that up?

8 MS. AXTHELM: Yes.

9 MR. BLEAU LAFAVE: This one.

10 MR. SMITH: Yeah. Is that reflective -- again,
11 we're missing one thing on there. And maybe there's
12 another one closer. And that would be -- on there I only
13 see one "large volume customer."

14 MR. BLEAU LAFAVE: Right. And, as I explained,
15 this would be representative if there were two. It would
16 be also similar to this one except for you'd have to add
17 a connection to the distribution system.

18 MR. SMITH: Okay. And back to the one with the
19 distribution system on there -- and this is the situation
20 we have. And I -- I may -- and I guess I could direct
21 this to Nathan too, but is the -- down below, I mean, is
22 that what we're talking about is -- what is that?
23 Aberdeen at the far end there?

24 MR. BLEAU LAFAVE: Yeah. I don't know which one
25 you want to use, the top or bottom one.

1 MR. SMITH: Either one.

2 MR. SOLEM: This would be Northern Border. They
3 meter their gas.

4 MR. SMITH: Right.

5 MR. BLEAU LAFAVE: There's a transfer point,
6 which is the valve.

7 MR. SMITH: And is that the custody and title --

8 MR. BLEAU LAFAVE: That is the custody, title
9 transfer. And then in between the regulator we have the
10 heater where we condition the gas. And then we will go
11 through the regulation.

12 And then from there we drop down, and we would
13 drop and serve one large volume customer, a second large
14 volume customer, and then there would be a regulator to
15 go to the distribution system.

16 MR. SMITH: Okay. And maybe I didn't hear it
17 correctly. Nathan said that that distribution center,
18 you know, the Aberdeen area, that that would largely be
19 valved off? Is that accurate or not?

20 MR. BLEAU LAFAVE: At that time it would depend
21 on loaded need. At this time we would probably keep
22 it -- talking to the engineers, they would probably keep
23 it closed, but if and when the load arises -- probably a
24 little off the subject, but we had problem with west end
25 pressure at one point in time where we were starting to

1 be concerned about it.

2 We lost an account on that side of town so we no
3 longer have that problem. But it's not too far in the
4 distant future we'll have that problem because all of the
5 gas in Aberdeen is served from the south and southeast.
6 So bringing a line to the southwest is beneficial.

7 MR. SMITH: Okay. Okay. Thanks. And I had
8 maybe a couple more questions, and I'm getting tired so
9 I've got to think of what they were.

10 The initials you used with Cheri that she had
11 troubling hearing was that A&G?

12 MR. BLEAU LAFAVE: Yes.

13 MR. SMITH: What does that refer to? Again we
14 were talking --

15 MR. BLEAU LAFAVE: My mind's blank. What's A&G?
16 Admin and general?

17 MR. SMITH: I couldn't tell if you said A&G or
18 A&D. I didn't know if you meant amortization and
19 depreciation.

20 MR. BLEAU LAFAVE: No.

21 MR. SMITH: Admin, we're talking.

22 MR. BLEAU LAFAVE: Typically when we model for
23 expansion projects we want to make sure that we have a
24 component in there for maintenance. Obviously we want to
25 cover those lines. There's always A&G associated with

1 any maintenance that's done. So it's a function of that,
2 and there's property taxes. So those are the big items
3 you cover when you do feasibility.

4 MR. SMITH: Okay. Transmission you made the
5 statement about odorization is not generally required
6 with transmission. When is it required?

7 MR. BLEAU LAFAVE: Odorization specifically --

8 UNIDENTIFIED SPEAKER: Class 3 and 4.

9 MR. BLEAU LAFAVE: Is it always, though? Is it
10 always Class 3 and class 4?

11 MR. SOLEM: I'd have to look it up. I don't
12 remember.

13 MR. BLEAU LAFAVE: It's either always Class 3
14 and Class 4 or it has to be odorized or you do something
15 else. I don't remember if there's an "or" in there or
16 not. Transmission I'm not up on total transmission
17 requirements.

18 MR. SMITH: Okay. When do we hit -- again,
19 maybe this is more for Nathan because he -- but when do
20 we hit Class 3?

21 MR. BLEAU LAFAVE: 46 customers a mile.

22 MR. SMITH: What does that translate into? What
23 are we talking about? I mean, for me as a regular schmoe
24 here, you know, when do we hit that point? Is it in
25 ranchette land in Sioux Falls, or is it -- are we in town

1 when we --

2 MR. BLEAU LAFAVE: You can hit -- if you go by
3 subdivisions, you will. You know, if a main goes by a
4 subdivision, you can get close where you start counting.

5 I don't know. I don't know exactly how to
6 relate it. But you have to have -- the rule is 220 yards
7 off the pipeline either direction for any linear mile.
8 So it just slides. So if you have 46 homes within that
9 footprint, then it becomes a class location.

10 And, as an example, if you went by -- you know,
11 if you just go by a normal rural road with the houses
12 speckled, you're never going to get there. If you go by
13 a subdivision that goes off to the north but you're going
14 to capture a few houses, you're not going to get there.
15 If you go by a trailer court that has them stacked in,
16 you're going to get there quickly. Or if you go through
17 a street where there's houses all the way around an
18 intersection, you'll probably get there fairly quickly,
19 as an example.

20 MR. SMITH: Yeah. Do you know in this
21 particular case if it were classified as a transmission
22 line, do we enter the domain where the transmission, if
23 it were transmission, would it still have to be odorized?

24 MR. BLEAU LAFAVE: Yes. Because I believe --
25 well, I can't tell you that for sure because I don't know

1 what the requirements are. But I believe there will be
2 one section because it does go by a trailer park. There
3 will be one section that would possibly be classified as
4 an HCA.

5 MR. SMITH: Okay. And is that then a service
6 line center, that trailer park?

7 MR. BLEAU LAFAVE: That trailer park is served
8 off the distribution.

9 MR. SMITH: Off the current system?

10 MR. BLEAU LAFAVE: Yeah.

11 MR. SMITH: Okay. I think I'm getting about to
12 the end of my questions here. I think so, Mr. Chairman.
13 Thank you.

14 And, again, I certainly would appreciate hearing
15 Nathan's thoughts on any of that too. So thank you.

16 CHAIRMAN NELSON: Any further questions from the
17 Commissioners?

18 Any further comments from Staff?

19 MR. SOLEM: We were trying to get an answer real
20 quick here on the odorization requirements. Do you have
21 it there, Josh?

22 MR. WILLIAMS: Yes, I do.

23 CHAIRMAN NELSON: Go ahead, Josh.

24 MR. WILLIAMS: It's 192.625, Part D. There are
25 some exceptions here. But after December 31, 1976

1 combustible gas in a transmission line in a Class 3 or 4
2 location must comply with the requirements of Paragraph A
3 of this section, unless: At least 50 percent of the
4 length of the line downstream from that location is in a
5 Class 1 or Class 2 location, the line transports gas to
6 any of the following facilities which receive gas without
7 an odorant from that line before May 5, 1975, an
8 underground storage field, a gas processing plant, a gas
9 dehydration plant, or an industrial plant using gas in a
10 process where the presence of an odorant, A, makes the
11 end product unfit for the purpose it was intended,
12 reduces the activity of the catalyst, or reduces the
13 percentage of the completion of a chemical reaction.

14 In the case of a lateral line which transports
15 gas to a distribution center, at least 50 percent of the
16 length of that line is in a Class 1 or Class 2 location
17 or the combustible gas is hydrogen intended for the use
18 as a feedstock in a manufacturing process.

19 CHAIRMAN NELSON: Okay.

20 Mr. Smith, go ahead.

21 MR. SMITH: And this one may be your question
22 here, Nathan, but can I just ask you both here at the
23 same time?

24 In terms of this Clovis line and the Farmington
25 line cases, are those both situations like this where we

1 have a transfer of title or custody in those situations?
2 Do we know that? Do we know that?

3 MR. WILLIAMS: Yeah. Actually the transfer of
4 title actually happens upstream of the -- of the
5 regulator station where those lines are connected. The
6 Clovis line itself is actually owned by New Mexico Gas
7 Company, as are all the other lines in question within
8 this interpretation.

9 So, in other words, title transfer was not
10 relevant in PHMSA's opinion to the classification of
11 these lines as transmission or distribution.

12 MR. BLEAU LAFAVE: May I have a question?

13 CHAIRMAN NELSON: Certainly.

14 MR. BLEAU LAFAVE: Do we know if that line is
15 connected to anything else? Because one of the
16 interpretations is that it also is connected to another
17 transmission line.

18 MR. WILLIAMS: There are two transfer points.
19 There's one to the south and one to the east. The one to
20 the east has a -- Texaco border station. And the one to
21 the south is the Portalis city gate. And both of
22 those -- so there's two interstate transmission lines
23 feeding this system.

24 And the Clovis line basically interconnects
25 between both of those. And that's why the Clovis line

1 was previously -- had already been deemed as
2 transmission.

3 MR. BLEAU LAFAVE: I was going to say, one of
4 the circumstances with that one -- and, again, it goes
5 back to the specifics of interpretations. Any time you
6 tie two interstate transmission lines together you're
7 going to have a really hard time classifying that as a
8 distribution line. Because you can do merchant sales on
9 it.

10 CHAIRMAN NELSON: Thank you. Any further
11 questions?

12 Commissioner Hanson.

13 COMMISSIONER HANSON: Thank you, Mr. Chairman.
14 Nathan, using the example that's before us right now on
15 the screen, the -- what's titled South Dakota
16 Interpretation-Aberdeen, if you look at the line on the
17 bottom, if two more large volume customers were added
18 between the Rs, where would you interpret the
19 distribution line to start?

20 MR. SOLEM: I would interpret the start at the
21 regulator that's next to the distribution center where
22 the green line starts. It wouldn't change anything.

23 COMMISSIONER HANSON: Okay. So if two more
24 large volume customers were added, it would remain at --
25 the schematic colors would remain the same, according to

1 what you're saying?

2 MR. SOLEM: Yes. That's what we've seen in the
3 PHMSA interpretations we've found.

4 COMMISSIONER HANSON: Okay. Thank you. Thank
5 you, Mr. Chair.

6 CHAIRMAN NELSON: Other questions?

7 Seeing none, is there a motion?

8 COMMISSIONER HANSON: Mr. Chairman, at the
9 beginning of the -- just for discussion purposes, I don't
10 have a motion right now. I had -- this is one of the
11 failings I guess that I have. I had read all the
12 materials and thought that I had reached -- well, I had
13 reached a conclusion prior to coming up here.

14 And in listening to the presentations, the
15 questions, and digesting all over again the information,
16 I think that the parties, Northwestern, have presented
17 some pretty compelling arguments. And it's unsettling
18 for me to support the motion that I brought up here to
19 support.

20 So I, in fact, am now prepared to support the
21 motions that they have shown on their last slide, which I
22 do not have with me. So I just present that as my -- for
23 discussion purposes. And I'll listen to my comrades here
24 to hear what you two have to say.

25 If you want me to articulate why, yeah, that's

1 fine too, but I'll leave it at that.

2 CHAIRMAN NELSON: Well, let me -- maybe to move
3 this along, let me say, first of all, I appreciate Staff
4 raising this question. You know, a lot of times we will
5 get into a -- you know, a situation where we do the same
6 thing for a lot of years and nobody ever asks why. And
7 so I appreciate the fact that you asked why.

8 And you've obviously done a lot of work digging
9 into this so that we can all try to understand, you know,
10 what the precedents are, what the situation is, and what
11 we need to do going forward. And I know obviously the
12 companies have spent a lot of time responding to that and
13 trying to educate us in this area.

14 That said, I would move that in PS11-001 that we
15 issue a declaratory ruling regarding 49 CFR 192.3 that in
16 the matter of this particular line we find that this is a
17 distribution line because it is downstream from a
18 distribution center.

19 My rationale for that is very -- frankly, for me
20 it's very simple. And it goes back to the confidential
21 slide that we had up on the screen. And understand that
22 Staff feels that if that goes through a second regulator,
23 it's transmission. And in my mind that whole facility is
24 essentially a distribution center.

25 Whether there's one regulator or two regulators,

1 I can't see that making a difference in whether or not
2 it's a distribution center. And in my mind it is, the
3 entire facility, and, therefore, this line coming off of
4 that is a distribution line.

5 Further discussion?

6 Commissioner Hanson?

7 COMMISSIONER HANSON: No. I don't have -- oh,
8 you're calling for the role?

9 CHAIRMAN NELSON: No. Discussion.

10 COMMISSIONER HANSON: No. I don't have any
11 further discussion. I appreciate your analogy.

12 CHAIRMAN NELSON: Discussion?

13 COMMISSIONER FIEGEN: First of all, I want to
14 thank the Staff and Northwestern and MDU for coming
15 forward and really presenting us with some technical
16 issues. And it's been very hard to study.

17 And I would love, of course, to take this under
18 advisement but I pretty much know where I'm going and I
19 know our other two Commissioners, I think, are ready to
20 vote. But thank you so much for your time.

21 CHAIRMAN NELSON: Seeing no further discussion,
22 we will take a vote on the motion. All those in favor
23 vote aye.

24 Commissioner Hanson.

25 COMMISSIONER HANSON: Aye.

1 CHAIRMAN NELSON: Commissioner Fiegen.

2 COMMISSIONER FIEGEN: Fiegen votes aye.

3 CHAIRMAN NELSON: And Commissioner Nelson votes
4 aye. The motion carries.

5 And, again, I thank you for the immense amount
6 of work you've put into this.

7 (The proceeding is concluded at 5 o'clock p.m.)

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1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

3 COUNTY OF SULLY)

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5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter, Certified Realtime Reporter and
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 31st day of
11 January, 2012, and that the attached is a true and
12 correct transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 28th day of
14 February, 2012.

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Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter
Certified Realtime Reporter

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