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SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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April 4, 2012

Patricia Van Gerpen, Director

SD Public Utilities Commission

500 E. Capitol Ave.

Pierre, SD 57501

Re: Pipeline Penalty Discussion Item

Dear Ms. Van Gerpen,

Recent federal legislative changes reflect the attention given to pipeline safety issues across the nation. Along with efforts in public awareness, PHMSA has increased its enforcement measures and enforcement expectations of its state partners. Our most recent audit from PHMSA articulated its position. The inspection results included the following, "PHMSA encourages States to use all enforcement tools available to achieve operator compliance including civil penalties as warranted. PHMSA is encouraging States to adopt civil penalty levels the same as our authority which is \$100,000 for each violation for each day the violation continues except that the maximum civil penalty may not exceed \$1,000,000 for any related series of violations."

Subsequent to our state audit, we were informed PHMSA intends to change its funding and audit criteria. Specifically, state maximum civil penalty levels for pipeline safety violations must have penalty amounts at the \$100,000 per day up to a maximum of \$1,000,000 for a related series of violations. We were advised the change will apply to the scoring of 2012 data provided by states in the 2013 audit certification.

As a result of the anticipated change, the PUC introduced Senate Bill 35 this past legislative session. The bill passed and was signed by the Governor. On July 1, 2012, the civil penalties in SDCL 49-34B-12 will increase to those recommended by PHMSA as listed above. The current statute indicates the penalty may not exceed \$10,000 for each single violation and a series of violations may not exceed \$500,000. While the pipeline safety staff understands PHMSA desires South Dakota to use its increased penalty ability to the fullest extent, we request Commission assistance in applying the increased penalty properly for South Dakota. As the Commission knows, pipeline safety staff uses a "penalty worksheet" to assure consistency in its penalty

recommendations. The worksheet is based off the current maximum penalty. Use of the new maximums will increase staff's recommendation times ten for individual violations and double it for a series. Pipeline safety staff desires to fulfill its obligations under PHMSA consistent with this Commission's preferences. While PHMSA has authority to affect funding through its audit process, management of the pipeline safety program is ultimately up to this Commission.

The pipeline safety staff respectfully requests the Commission provide policy guidance regarding pipeline safety civil penalties in anticipation of the July 1 statute change. We request the Commission consider this request as a discussion item at its May 8, 2012 Commission meeting.

Sincerely,

/s/ Kara Semmler

/s/ Nathan Solem

Kara Semmler

Nathan Solem

Staff Attorney

Pipeline Safety Manager