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April 29, 2009

Patty Van Gerpen
Executive Director
SD Public Utilities Commission
500 E. Capitol
Pierre, SD 57501

RE: In the Matter of the Adoption of Rules Regarding Pipeline Safety (RM09-001)

Dear Patty:

NorthWestern Corporation, dba NorthWestern Energy, offers the following comments and suggestions regarding the above referenced docket:

I. 20:10:XX:XX. Inspections.

NorthWestern Energy requests that the phrase “routine inspections” be clearly defined in terms of what an operator can expect to be a normal cycle of inspections by staff. This would provide the operator with a clear expectation of when coordination activities will need to begin in preparing for routine inspections by pipeline safety staff. NorthWestern also suggests that a reference in the rules should be included for the Code of Federal Regulations, Title 49, Part 192Forms that are used during a routine inspection. A suggested wording revision in reference to this is:

“Annually the PHMSA Form 2, Standard Inspection Report of Gas Distribution Operator will be used to inspect the operator.”

Included below is a link to federal PHMSA guidelines regarding the Form 2 and its use for routine staff inspections of operator records for your reference:

http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/PHMSA_Form_2_2009.pdf

II. 20:10:XX:XX. Pipeline operator obligations.

NorthWestern is concerned about the possibility of sending pipeline operations and maintenance records outside of company properties and would object to being obligated to do so. Loss of records due to mailing or handling could be very costly to the operator. Records in multiple locations could also hinder an investigation should an incident occur during the request and evaluation. NorthWestern suggests that the inspection of operator pipeline records be conducted

“on site” at the operator’s record storage location unless there is mutual agreement between staff and the operator to view operator records at another location.

III. 20:10:XX:XX. Inspector reporting requirements.

Prior to issuance of post inspection report NorthWestern would suggest the continuance of the intermediate step between staff and operator to verbally discuss observances and violations with the Operator. This step is currently informally completed and provides good dialogue between operator and the pipeline safety inspector prior to issuance of a written report.

Current rule language indicates that if the time frame for remediation needs to be extended it would require Commission approval. It seems that staff can agree to a mutually acceptable extended time frame for remediation without formal Commission approval, as staff is the responsible party for imposing remediation criteria on the operator. As such, Commission approval would not be needed.

IV. 20:10:XX:XX. Pipeline operator inspection response.

This section groups together responses for Notice of Probable Violation and Warning Letter. NorthWestern would like to see these items separated or see additional language similar to the Code of Federal Regulations, Title 49, Part 190 included in this section of the proposed rules. For the Commission’s convenience, a link is included below regarding this federal code for reference purposes:

<http://primis.phmsa.dot.gov/comm/EnforcementProgram.htm>

It is NorthWestern’s opinion based on information from the Code of Federal Regulations, Title 49, Part 190, that the purpose of a Notice of Probable Violation is to state the laws, regulations, or orders which the operator is alleged to have violated and to state the evidence upon which the allegations are based. A Warning Letter notifies the operator of the probable violation and advises that the situation be corrected, or more stringent enforcement action may be taken. Warning Letters are generally reserved for violations that are “administrative” in nature and do not have a significant or immediate safety impact. We believe that further separation and definition of these two action items will make the rules more clear as to how these enforcement options are to be applied and what is expected of the operator in responding to said notices.

NorthWestern also respectfully requests that the rules accommodate an intermediate step allowing the operator to discuss a possible violation with staff prior to requesting a hearing with the Commission for instances where disagreement between staff and the operator exist. In addition, at times the operator may not agree with the report but is willing to do the corrective action. In such instances, the corrective action should be achievable without admitting a violation.

V. 20:10:XX:XX. Inspector’s incident investigation

It is NorthWestern’s opinion that this section as proposed will broaden pipeline safety inspection staff authority beyond what is anticipated, expected or provided for within federal guidelines

governing the Pipeline Safety Program. For example, Connecticut and Michigan have language that relates more closely to our view of what is expected of pipeline safety staff at the state level in meeting its obligations of investigating a pipeline failure or release incident under the federal pipeline safety inspection program. Excerpts of pertinent language from these two states is included below:

Connecticut

Sec. 16-280d. Records, reports and inspection.

The Department of Public Utility Control shall require any person that owns any pipeline facilities or that engages in the transportation of gas or maintains pipeline facilities within the state to maintain such records, make such reports and provide such inspections as are required by the federal act or by any regulation adopted by the department pursuant to subsection (b) or (c) of section 16-280b. If the department investigates an accident involving such a pipeline facility, the operator of the facility shall make available to the department all records and information that pertain to the accident, including, but not limited to, integrity management plans or test results, and shall afford all reasonable assistance to the department in the investigation of the accident. *The department may require the filing of such information as is necessary to determine compliance with applicable standards and regulations. (emphasis added)*

Michigan

483.155 Records and reports; inspection. Sec. 5.

Any person who engages in the transportation of gas or who owns or operates pipeline facilities shall establish and maintain such records, make such reports and *provide such information as the commission may reasonably require to enable it to determine whether the person has acted or is acting in compliance with the standards established pursuant to this act.* Upon the request of an officer, employee or agent of the commission, the person shall permit the commission or person authorized by it to inspect his books, papers, records and other relevant documents to determine whether the person has acted or is acting in compliance with the standards established pursuant to this act. *(emphasis added)*

In NorthWestern's interpretation of the federal pipeline safety program guidelines, the pipeline safety inspector's role during an investigation is to determine if the operator complied with applicable statutes, standards, and rules. The pipeline safety inspector is not given the responsibility of determining cause of a pipeline failure or release. The civil court process is the appropriate venue for determining cause of failure and the responsible party for that failure. If further criminal or punitive action is needed in relation to a party that is found to be responsible for a pipeline failure incident, that will be determined through the court system. The Commission has existing authority to deal with situations where it finds that an operator did not fulfill its compliance obligations under the federal pipeline safety program. If the Commission determines through findings presented by the pipeline safety inspector investigation report that the operator did not follow the applicable pipeline safety program rules, guidelines, or statutes, it can then take appropriate punitive actions for those violations.

NorthWestern requests that the Commission be cautious in its review and deliberation over proposed language in this section giving the pipeline safety inspector authority to take ownership of and conduct independent laboratory tests on failed pipe or equipment that may be related to a failure or release incident. When the equipment or pipe involved in a reportable incident is removed from an operator's possession and tested, it then becomes the responsibility of the possessing party to maintain the evidence for any and all future civil court proceedings. Thus, putting an unnecessary burden and exposure to the Commission if pipeline safety inspection staff takes possession. Once evidence is compromised, it can never be restored to its original state thereby running the risk of hampering or prohibiting an operator's ability to defend itself during court actions and possibly involving the Commission in the civil process.

NorthWestern also requests that language be included in this section that would require staff to meet with the operator prior to issuing a public report or posting a draft report on a public website. Normal procedure followed at the federal level accommodates a meeting between investigators and the operator prior to issuance of public findings via a pipeline failure or release incident report. A preliminary meeting such as this allows both parties to fully understand incident events, operator responses to staff data requests, or information sought by staff from the operator thereby eliminating the possibility of inaccurate information being included in a findings report. It would seem reasonable and prudent for the same procedure to be used in South Dakota to help avoid instances where misinformation could be released to the public, of confusing the public when corrected findings must be filed, or eliminating the possibility of errant report findings making their way into a civil proceeding.

VI. 20:10:XX:XX. Pipeline operator incident reporting requirements.

NorthWestern respectfully suggests that the two-hour operator notification requirement following discovery of a failure or release incident to the Commission be removed. In part, SDCL 49-34B-4 provides:

The commission may, by rules promulgated pursuant to chapter 1-26, establish safety standards, *but not more stringent than federal safety standards as provided by § 49-34B-3*, for the intrastate transportation of gas and gas pipeline facilities. (*emphasis added*)

Federal Code CFR 191.5 requires notification "At the earliest practicable moment following discovery...". In NorthWestern's opinion, the two-hour notification requirement as included in this rulemaking draft document would be more stringent than current federal standards.

One general, overall comment from NorthWestern relates to any requirements related to a number of days to accomplish a task or notification. Is it staff's proposal that the number of days be calendar days or business days? NorthWestern respectfully suggests that the rules be based on business days as impacts from weekends or holidays can make it difficult to meet timelines as defined in the rules.

NorthWestern Energy appreciates this opportunity to offer its observations in response to staff's proposed rules regarding the Pipeline Safety Inspection Program and related duties. We also wish to extend our appreciation to staff for their diligence in working with us and other SD natural gas pipeline operators in attempting to accommodate all perspectives in drafting the rules

now under consideration. NorthWestern Energy looks forward to working with the Commission, staff and other interested parties in completing this rulemaking proceeding.

Sincerely,

A handwritten signature in cursive script that reads "Pamela A. Bonrud".

Pamela A. Bonrud
Director – SD/NE Government and Regulatory Affairs

CC: Melissa Baruth – NorthWestern Energy
Bleau LaFave – NorthWestern Energy
Sara Dannen – NorthWestern Energy