

April 30, 2009

BY: E-Filing

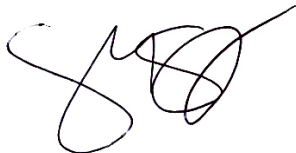
Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

In Re: Adoption of Rules Regarding Pipeline Safety
Docket No. RM09-001

Dear Ms. Van Gerpen:

Please find attached the Statement of Position of MidAmerican Energy Company for E-Filing in the above-captioned matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Suzan M. Stewart', with a stylized, cursive script.

Suzan M. Stewart

Att.

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

IN THE MATTER OF THE ADOPTION)	
OF RULES REGARDING)	DOCKET NO. RM09-001
PIPELINE SAFETY)	

STATEMENT OF POSITION OF MIDAMERICAN ENERGY COMPANY

COMES NOW, MIDAMERICAN ENERGY COMPANY (“MidAmerican”), and for its Statement of Position on the proposed pipeline safety rules set for comment by the South Dakota Public Utilities Commission (“Commission”) by Order dated March 31, 2009, submits as follows:

1. MidAmerican is a pipeline operator as defined in SDCL 49-34B, and owns and operates natural gas transmission and distribution pipelines in the State of South Dakota. As such, it will be affected by any rules adopted by the Commission in this proceeding.

2. MidAmerican submitted informal comments earlier in this process and as a result provides limited comments on the proposed rules. MidAmerican appreciates the effort of the Commission to obtain early input. MidAmerican’s comments focus on the following aspects of the proposed rules:

- The need to build into the rules opportunities for interaction between the pipeline operator and the inspector before a matter goes to the Commission.
- The need to add flexibility so that inspections and incident investigations can be thoroughly reviewed and analyzed before final determinations are made.
- The scope of incident investigations should be consistent with the inspector’s delegated authority.

MidAmerican will identify below each proposed rule on which it has comments.

3. **Inspections.** Staff's comment indicates that this rule is intended to address when a pipeline operator can expect to be inspected. Yet the rule only states that inspections are to be "periodic," which could range from daily to annually. In addition, the possibility of a periodic "spot check" is referenced. MidAmerican recognizes that the inspector has, and needs, the authority to stop at a pipeline operator's establishment at any time with or without notice to obtain records or property, but it may be appropriate to add a definition of the customary intervals of periodic inspections to avoid interference with routine business and to define just what may be involved in a spot check as opposed to a periodic inspection.

4. **Inspector reporting requirements.** The inspection report sets a completion time frame for remedial measures. The proposed rule provides that any extensions to that time frame are to be approved by the Commission. Extensions to the time frame should not be singled out for Commission action. Instead, completion time should be addressed along with other issues in the pipeline operator's inspection response. This will build additional flexibility into the process.

5. **Pipeline operator inspection response.** There should be another procedural step added to the review of inspection responses. As Staff appropriately recognizes, it is important for the rules to provide for an organized dialogue between the inspector and the pipeline operators, and this dialogue may well result in mutually agreeable revisions to the inspection report. However, there is no time specifically built into the schedule for this informal dialogue, although it appears from response alternative (2) of the proposed rule that there may be such dialogue at the option of the operator and pursuant exclusively to the inspector's time frames. It is appropriate to provide a clear

timeline for dialogue between the operator and the inspector in all cases to provide for possible resolution at the inspector level without Commission involvement.

Furthermore, the proposed response to a warning is not clear. A warning results from a first time violation or a potential probable violation, and requires corrective action within a given time frame. The appropriate response to a warning is not mentioned in any of the three response alternatives, although procedurally it appears that an operator should have the right to dispute a warning.

Finally, there may be circumstances where a pipeline operator does not agree with the inspector's interpretation, but is willing to take the recommended corrective measure and pay the civil penalty. The operator should not be required to admit the violation to close the issue, but should simply be permitted to agree to it without further dialogue and pay any fine.

MidAmerican suggests amending the rule as follows to address these concerns:

20:10:XX:XX. Pipeline operator inspection response. Upon receipt of a written notice of probable violation or warning, the pipeline operator shall respond to the inspector within 30 days. In preparing its response, the pipeline operator may communicate with the inspector as necessary. Upon reasonable request, the response period may be extended at the discretion of the inspector. The inspector shall review the pipeline operator's response and shall issue a final inspection report to the pipeline operator within 20 days of receipt of the operator's response. The operator shall respond to the final inspection report of the inspector in any one of the following ways:

(1) Admit to the probable violation and agree to the proposed civil penalty or corrective action, or both, if they exist. Civil penalties shall be subject to commission approval;

(2) Respond to the probable violation and agree to the proposed civil penalty or corrective action, or both, if they exist. Civil penalties shall be subject to commission approval

~~(2) A written dispute of the reported probable violations, at which time the pipeline operator may request a hearing before the commission if the dispute cannot be resolved with the inspector; or~~

(3) A written dispute of all or any of the reported probable violations, proposed civil penalty or proposed corrective action, or both, at which time the pipeline operator may request a hearing before the commission.

(4) A pipeline operator shall use the procedures set forth in this rule and have the options set forth in (1) through (3) above to respond to a warning.

6. **Pipeline Operator Incident Reporting Requirements.** MidAmerican is concerned with the inflexible two hour incident reporting requirement after discovery. While the definition of “incident” will limit the types of events that must be reported, it will still not be possible to always tell whether a particular event will be an “incident” within two hours. Property damage in the amount of \$50,000 may not be immediately discernable. For example, a customer’s vehicle could sustain damage of \$40,000 while only minor damage to the regulator station would meet the \$50,000 damage threshold. A person could require hospitalization long after an incident occurs, without any reason for the pipeline operator to know of the occurrence. If this reporting requirement is retained, MidAmerican asks for clarification that the “discovery” period is tolled when the pipeline operator becomes aware that the event meets the criteria of an “incident.” In addition, MidAmerican asks the Commission to specifically authorize retraction of a report so that after reporting and further investigation a report can be withdrawn without triggering further Commission investigation. In an incident, the pipeline operator’s priority should be to make the system safe, not to worry whether an event meets reporting thresholds.

To take into consideration all of the peculiarities of particular incidents that could make reporting in two hours troublesome, MidAmerican recommends using the phrase “as soon as practical” in place of “not later than two hours” in the final rule.

7. **Inspector’s incident investigation.** MidAmerican is concerned that the “comprehensive independent investigation” called for under this rule not expand beyond the delegated authority of the inspector. When an inspector conducts an incident investigation, the scope of the inspector’s concern is whether a pipeline operator violated federal pipeline safety requirements. Other authorities, such as the State Fire Marshal,

are responsible for investigation of the other aspects of an incident involving a pipeline. MidAmerican recommends the description of the scope of the inspector's incident investigation tie back to this authority.

MidAmerican is also concerned that the rules require **all** incidents to be docketed with the Commission. Whether a pipeline operator was involved or whether there was a violation of pipeline safety requirements may not be an issue in all incidents. The Commission could delegate its authority to the inspector to resolve incidents, reserving docketing for only those incidents that are major or disputed. The Commission can fulfill its oversight obligations by receiving reports from the inspector on closed incidents.

MidAmerican notes that the investigation may include issuance of a subpoena. To be consistent with the authority granted to the Commission in SDCL 49-34B, MidAmerican suggests that the rule be modified as provided below to ensure that there is no confusion that any party but the Commission is deemed authorized to issue subpoenas.

MidAmerican also suggests the ten day period for response to inspector discovery requests be extended to ten **business** days. Some of the requested information and items, such as lab tests, may be difficult to obtain in a ten-day period shortened by up to four non-working days.

Finally, there is no requirement in this rule for the inspector's incident report to be provided to the operator prior to going to the Commission, although once the incident report has been issued and docketed by the Commission, the operator must respond in 30 days or the incident report is deemed admitted.

The following red-line contains MidAmerican's recommended changes to this proposed rule:

20:10:XX:XX. Inspector's incident investigation. ~~Every incident shall be docketed with the commission by an inspector upon initiation of an investigation.~~ An incident investigation shall ~~determine whether the operator's actions were in compliance with the standards established pursuant to this act and shall~~ be conducted by an inspector and may include, but is not limited to, pipeline operator personnel interviews, the inspection of failed equipment or pipe, the issuance of a subpoena ~~by the Commission~~ for failed equipment or pipe relating to the incident for independent preservation, order independent laboratory tests of failed pipe or equipment, view related documents, and take other ~~reasonable~~ investigatory measures as needed to complete a comprehensive independent investigation. The pipeline operator has ten ~~business~~ days to respond to inspector requests for information. Disputes shall be resolved by the commission.

As soon as reasonably possible after all information has been gathered and the investigation concludes, an inspector shall ~~prepare file~~ an incident report to summarize the investigation and report on findings. The inspector's report shall be ~~provided to the pipeline operator for review. The pipeline operator shall have ten (10) business days to review the inspector's report and provide comments to the inspector. After review by the pipeline operator, the inspector may deem the incident closed or file its report~~ with the commission. An incident docket shall conclude upon the commission's acceptance or rejection of the inspector's report and determination of what pipeline violations occurred, if any, what corrective actions shall be required, if any, and what civil penalties are appropriate, if any.

8. **Pipeline operator obligations upon completion of the inspector's incident report.** MidAmerican suggests that this proposed rule be amended to require that the incident report be sent to the pipeline operator's authorized representative, by certified mail, return receipt requested, with the 30 day response time tolled from the date of receipt to ensure protection of the operator's due process rights.

9. **Change in ownership.** MidAmerican suggests that that pipeline operators have 30 days to make this report instead of 10 working days.

10. **Notice Requirements for transmission line construction.** The notice of new construction requirements under this rule are not clear. The rule as drafted and proposed appears to require notification to the inspector of new or relocated transmission lines. However, Staff has described this rule as requiring notice for all transmission and for **distribution** facilities of over one mile in length. If Staff is correctly stating the proposal MidAmerican asks the Commission to consider the quantity of notices that will

be received for new subdivisions and other projects with gas distribution main of one mile or more. MidAmerican asks the Commission to clarify that notice is only needed for transmission pipelines.

WHEREFORE, MidAmerican Energy Company respectfully requests the South Dakota Public Utilities Commission consider these comments as it adopts final rules in this proceeding.

DATED this 30th day of April 2009.

Respectfully submitted,
MidAmerican Energy Company

By: _____


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