

MAY ADAM

— Since 1881 —

WWW.MAYADAM.NET

ROBERT B. ANDERSON
TIMOTHY M. ENGEL
MICHAEL F. SHAW
BRETT KOENECKE
JUSTIN L. BELL
DOUGLAS A. ABRAHAM
TERRA M. LARSON
CODY L. HONEYWELL

March 23, 2021

WARREN W. MAY 1920-2018
THOMAS C. ADAM 1935-2019
BRENT A. WILBUR 1949-2006

TELEPHONE
605 224-8803
FAX
605 224-6289
E-MAIL
brett@mayadam.net

SD Public Utilities Commission
Attn: Patricia VanGerpen
Patty.vangerpen@state.sd.us

RE: Rule Making RM19-001

Dear Mrs. VanGerpen:

MidAmerican Energy, NorthWestern Energy and Montana Dakota Utilities (“The Parties”) offer the following comments with respect to the Commission’s proposed rule 20:10:37:10. I’ll be at the hearing to discuss this further with the Commissioners.

The Parties propose the following language in lieu of the one-hour requirement and the addition of a definition for the term, “confirmed discovery”:

20:10:37:10. Pipeline operator's incident reporting requirements. As soon as reasonably possible, ~~but no later than one hour after notifying the National Response Center, following discovery~~ after confirmed discovery of an incident, the pipeline operator shall notify the commission by phone of any incident on the pipeline system owned or operated by the pipeline operator. The notification shall include the identity of the pipeline operator, the time and location of the incident, whether there are ascertainable fatalities, personal injuries requiring inpatient hospitalization, or property damage, or both, and any other significant facts and public dangers relevant to the incident. This reporting requirement does not relieve the pipeline operator of the federal reporting requirements as found in the Code of Federal Regulations, Title 49, Part 191 as of July 1, 2009 2021. This reporting requirement requires personal notification to an inspector. Inspector contact information shall be provided by the commission.

The proposed language will allow the Commission to remain in alignment with federal code but also take into consideration the other obligations of the utility within the first hour of an incident.

The parties further propose to add the definition of confirmed discovery to South Dakota Administrative rule 20:10:37:01:

MAY, ADAM, GERDES & THOMPSON LLP
503 SOUTH PIERRE STREET • P.O. BOX 160
PIERRE, SOUTH DAKOTA 57501-0160

March 23, 2021

Recipient

Page | 2

“Confirmed Discover” means when it can be reasonably determined, based on information available to the operator at the time a reportable event has occurred, even if only based on a preliminary evaluation.”

Current Proposed rule 20:10:37:10 proposes an additional requirement on pipeline operators to notify the commission, by phone, of any incident on the pipeline system owned or operated by the pipeline operator no later than one hour following the discovery of an incident. The prior rule did not provide a timeframe by which an operator was required to notify the commission; rather the operator was required to notify the commission as soon as reasonably possible. The commission states this proposed change is to update the pipeline safety rules to reflect current federal law.

An operator is required pursuant to 49 C.F.R. § 191.3 to notify the National Response Center (“NRC”) within one hour of confirmed discovery. After an operator has provided notice to the NRC, a notice is provided to the state agency that the event occurred and that NRC was notified. An operator is often working rapidly and diligently for the first hour to send personnel to the site, secure it and any persons and also gather the facts necessary to report the information as accurately as possible to the NRC and the Commission. Though the Commission’s apparent intention is to mirror the federal code, this proposal puts an additional reporting requirement on operators within the first hour of confirmed discovery. Due to the amount of travel and work that must be started and completed in the first hour, adding an additional reporting requirement will likely further strain resources that are already stretched thin, without a corresponding benefit in all cases.

Additionally, the proposed rule requires notice “following discovery of an incident” whereas 49 C.F.R. § 191.3, requires notice after “confirmed discovery.” Confirmed discovery is defined as “when it can be reasonably determined, based on information available to the operator at the time a reportable event has occurred, even if only based on a preliminary evaluation.” The parties proposal here would act to create consistency between the federal rules and the commission rules, adding a definition for confirmed discovery in South Dakota Administrative rule 20:10:37:01 that reflects the definition provided in 49 C.F.R. § 191.3.

Thank you for your consideration of these comments.

Very truly yours,

MAY, ADAM, GERDES & THOMPSON LLP



BRETT KOENECKE