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SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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August 24, 2007

Patricia Van Gerpen
Executive Director
SD Public Utilities Commission
500 East Capitol
Pierre, SD 57501

VIA ELECTRONIC FILING

Re: Docket PS07-002

Dear Ms. Van Gerpen:

Per Commission Order, Staff composed and submitted a copy of its proposed Scope of Services for the necessary expert testing in the above referenced docket to all parties. Staff was ordered, before contracting with an expert, to allow five days for review and then upon agreement of all parties regarding the scope of testing, contract with an expert.

It is apparent from party reaction to Staff's proposed Scope of Services, agreement is impossible. Staff now requests the Commission allow Staff to enter into an expert testing contract according to our testing scope with particular conditions designed to protect the interests of interveners.

SDCL 49-34B establishes the South Dakota pipeline safety authority. Staff believes SDCL 49-34B-27 gives this Commission authority to carry out necessary steps to enforce responsibilities enclosed in the chapter. Specifically, the Commission may "conduct investigations, make reports, issue subpoenas, conduct hearings, require the production of relevant documents and records, take depositions, and conduct research, testing, development, demonstration, and training activities." Due to the pipeline incident, extent of damage, and Staff's obligations under SDCL 49-34B it must report whether the operator's behavior was related to the pipe failure. As submitted to the Commission, all previous investigation has been inconclusive. Staff finds it necessary to utilize its statutory authority to conduct a formal, scientific investigation. Staff's goal is to determine whether NorthWestern, the pipeline operator, followed all pipeline safety standards. To do such testing, and make such determination, Staff must contract for outside expert assistance. Staff believes the testing, as a result of interstate gas pipeline safety obligations, is chargeable back to NorthWestern per SDCL 49-34B-17. Finally, SDCL 49-34B-26 requires NorthWestern seek Commission

approval before it disposes of, destroys, or alters the pipe section at issue. SDCL 39-34B-26 gives this Commission authority to control the subject pipeline section until necessary Commission tests are complete.

Staff understands and respects that all interveners have an interest to protect and preserve for possible future litigation. Staff therefore agreed to submit to interveners the scope of testing services it foresaw utilizing throughout the testing process. The scope of services was intended to be broad, identifying Staff's goals and expectations. Staff does not intend to dictate what particular tests must be performed. Staff argues such dictation is impossible. Particular tests may prove necessary based upon expert opinion as the process begins. Furthermore, Staff does not desire to dictate how an expert metallurgist shall perform his or her job. It appears, from intervener and party discussion, other parties desire a menu of specific tests, and then desire the opportunity to object or modify the specific tests as they see fit. Staff has assured from the beginning, its expert will be required to work with other experts.

Due to the differing opinions, Staff believes that intervener interests must be protected. Staff proposes and requests the following:

The ability to enter into a contract with Mr. Michael Rosenfeld of Kiefner and Associates, Inc., 585 Scherers Ct., Worthington, OH, under the following conditions:

- i) Staff will arrange a conference call wherein Mr. Rosenfeld and all interveners and party experts discuss and hopefully agree upon a testing protocol with particular attention given to destructive testing issues. If agreement results, tests shall commence.
- ii) Mr. Rosenfeld shall not, however, perform any test or procedure requested by an intervener that may compromise the PUC's testing.
- iii) Nor shall Mr. Rosenfeld be required to do a test he finds unnecessary if destructive testing issues do not preclude the intervener from performing the test outside the PUC's testing and inspection process.

In the event agreement cannot be reached among all experts, Staff believes the Commission has authority to commence with tests necessary to determine whether the operator complied with all pipeline safety regulations. If discussion results in disagreement, in addition to condition ii) and iii) above, the expert shall be required to perform specific tests requested by an intervener expert that would otherwise be precluded due to destructive testing.

Staff does not doubt that the parties will desire tests above any beyond what the PUC finds necessary. The PUC's jurisdiction in this docket extends only so far as the pipeline operator. The interveners have a variety of property and other civil interests to protect. Other interests outside this jurisdiction must certainly be preserved, yet should not dictate the PUC process unnecessarily. Staff believes

to allow all experts a presence and further to allow all experts access to the test process and results, interveners can draw independent conclusions and are protected adequately within the PUC process. Beyond the PUC process, all tests with a restricted window of opportunity shall be allowed, thus protecting any testing interests not within the bounds of the PUC's jurisdiction.

Thank you for considering Staff's request in light of the party's inability to stipulate to a testing plan.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kara Semmler". The signature is fluid and cursive, with the first name "Kara" being more prominent and the last name "Semmler" following in a similar style.

Kara Semmler