

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

IN THE MATTER OF THE FILING OF)	DOCKET NO. PS08-001
THE INVESTIGATION OF THE NATURAL)	
GAS INCIDENT OF FEBRUARY 20, 2008,)	REQUEST FOR ACCESS TO
ON MONTANA-DAKOTA UTILITIES CO.'S)	CONFIDENTIAL INFORMATION
SYSTEM IN PIERRE, SOUTH DAKOTA)	

TO: PATRICIA VAN GERPEN, EXECUTIVE SECRETARY

Montana-Dakota Utilities Co. ("Montana-Dakota") requests access to confidential information filed with the Commission, as follows:

1. This is a request for access to confidential information brought by Montana-Dakota pursuant to ARSD 20:10:01:43. Montana-Dakota requests access to the following items listed on the Commission's website under this docket:

- a. SDIP Emergency Procedures Confidential
- b. SDIP Operating and Maintenance Standards Manual Confidential.

2. Montana-Dakota requests access to this information as a party to this proceeding and as a party in this docket charged with responsibility for investigating and remediating the incident forming the subject matter of the docket.

3. Attached hereto as Exhibit A is a copy of an e-mail string which contains a request by the undersigned Montana-Dakota counsel to Jim Robbennolt, counsel for SDIP. The request asks for "a copy of SDIPC's manual (as required by 49 C.F.R. § 192.605, copy attached) of written procedures for conducting operations and maintenance activities and for emergency response as it existed on and before February 20, 2008." The purpose of the request was to respond to Staff's data request.

4. It now becomes apparent that Commission Staff has had an opportunity to review the SDIP emergency procedures manual and the

SDIP Operating and Maintenance Standards Manual. Montana-Dakota has not had that opportunity.

5. Given the fact that Montana-Dakota, as a gas distribution utility, is dependent upon the integrity of SDIP's gas delivery methods in order to discharge its responsibility to its customers, Montana-Dakota has an equal right to assess SDIP's performance and to evaluate Staff's review of that performance.

6. Clearly, the Federal Pipeline Safety Act requires pipeline operators to have and maintain a procedural manual for operations, maintenance and emergencies. 49 C.F.R. § 192.605, a copy of which is attached as Exhibit B. A review of § 192.605 discloses a number of requirements for pipeline operators, including:

- a. Starting up and shutting down the pipeline in a manner to assure operation within maximum allowable operating pressure limits;
- b. Periodic inspection and testing of pressure limiting equipment to determine safe operating condition and adequate capacity; and
- c. Procedures for abnormal operation.

7. Whether or not Staff has withdrawn its data request giving rise to Montana-Dakota's request to review the manual and emergency procedures document, it is submitted that Montana-Dakota is entitled to review those documents to make its own determination as to whether or not SDIP complied with § 192.605 of the Pipeline Safety Act. There has been no showing that SDIP had a manual conforming to the Act, that the manual and emergency procedures conformed to the requirements of the Act or that the emergency procedures were in fact performed in accordance with the manual. The requirements of due process require that Montana-Dakota be entitled to review the same information that was available to Commission Staff.

WHEREFORE Montana-Dakota requests that it be provided access to the confidential information which it previously sought and was denied from SDIP.

Dated this 7th day of October, 2008.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAVID A. GERDES

Attorneys for Montana-Dakota

503 South Pierre Street

P.O. Box 160

Pierre, South Dakota 57501-0160

Telephone: (605)224-8803

Telefax: (605)224-6289

E-mail: dag@magt.com

CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 7th day of October, 2008, he served electronically a true and correct copy of the foregoing Petition to Intervene in the above-captioned action to the following at their last known addresses, to-wit:

Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
patty.vangerpen@state.sd.us

Kara Semmler
Staff Attorney
South Dakota Public Utilities Commission
kara.semmler@state.sd.us

Nathan Solem
Staff Analyst
South Dakota Public Utilities Commission
nathan.solem@state.sd.us

Scott Besmer
Senior Staff Engineer
Montana-Dakota Utilities Co
scott.besmer@mdu.com

Pat Darras
Gas and Utilization Superintendent
Montana-Dakota Utilities Co.
pat.darras@mdu.com

James Robbennolt
Attorney at Law
k derycke@hotmail.com



David A. Gerdes

David A. Gerdes

From: David A. Gerdes
Sent: Friday, September 05, 2008 11:55 AM
To: David A. Gerdes; Kara.Semmler@state.sd.us; k_derycke@hotmail.com
Cc: Nathan.Solem@state.sd.us; 'Anderson, Daryl'; 'Besmer, Scott'; 'Brekke, Bruce'; 'Darras, Patrick'; 'Haider, Dennis'; Kuntz, Dan; 'Morehouse, Frank'; Morman-MDU Bob (Bob.Morman@mdu.com); Skabo-MDU Jay (Jay.Skabo@mdu.com)
Subject: RE: Data Request for MDU in PS08-001

To be clear, MDU is not withdrawing its data request.

Dave Gerdes; dag@magt.com
May Adam Gerdes & Thompson LLP
PO Box 160; 503 South Pierre Street
Pierre, SD 57501-0160
605/224-8803; fax 605/224-6289

From: David A. Gerdes
Sent: Friday, September 05, 2008 11:50 AM
To: 'Kara.Semmler@state.sd.us'; k_derycke@hotmail.com
Cc: Nathan.Solem@state.sd.us; 'Anderson, Daryl'; 'Besmer, Scott'; 'Brekke, Bruce'; 'Darras, Patrick'; 'Haider, Dennis'; 'Kuntz, Dan'; 'Morehouse, Frank'; 'Morman-MDU Bob (Bob.Morman@mdu.com)'; 'Skabo-MDU Jay (Jay.Skabo@mdu.com)'
Subject: RE: Data Request for MDU in PS08-001

MDU believes the facts support a code violation and a review of the manual would clarify that issue. MDU does not agree that no violation occurred. It seems to me that we are better off resolving this now than dumping it in the Commission's lap, only to have the Commissioners ask us to resolve the issue.

Dave Gerdes; dag@magt.com
May Adam Gerdes & Thompson LLP
PO Box 160; 503 South Pierre Street
Pierre, SD 57501-0160
605/224-8803; fax 605/224-6289

From: Kara.Semmler@state.sd.us [mailto:Kara.Semmler@state.sd.us]
Sent: Friday, September 05, 2008 11:45 AM
To: David A. Gerdes; k_derycke@hotmail.com
Cc: Nathan.Solem@state.sd.us
Subject: RE: Data Request for MDU in PS08-001

Gentlemen -

Staff's late data request to Montana Dakota was a result of the following language in its response to Staff's report:

"Montana-Dakota believes SDIP violated industry standards and safe practices..."

The data request was intended to identify whether MDU believed any of the violations were code violations over which we have jurisdiction.

It appears from Mr. Gerdes' recent request to SDIP for its manual, that MDU is not currently aware of any such violation.

Staff hereby withdraws its request for such information as additional investigation was not the intent.

Thank you,

Kara Semmler

-----Original Message-----

From: David A. Gerdes [mailto:dag@MAGT.COM]
Sent: Thursday, September 04, 2008 3:18 PM
To: Robbenolt Law Office
Cc: Semmler, Kara
Subject: FW: Data Request for MDU in PS08-001

Jim, please produce not later than September 15, 2008, at the office of the undersigned, a copy of SDIPC's manual (as required by 49 CFR s 192.605, copy attached) of written procedures for conducting operations and maintenance activities and for emergency response as it existed on and before February 20, 2008. Montana Dakota requests this information in order to respond to Staff's data request set forth below.

Dave Gerdes; dag@magt.com
May Adam Gerdes & Thompson LLP
PO Box 160; 503 South Pierre Street
Pierre, SD 57501-0160
605/224-8803; fax 605/224-6289

From: Kara.Semmler@state.sd.us [mailto:Kara.Semmler@state.sd.us]
Sent: Tuesday, September 02, 2008 4:52 PM
To: David A. Gerdes
Cc: Nathan.Solem@state.sd.us
Subject: FW: Data Request for MDU in PS08-001

Dave -

In preparation for the September 23rd commission meeting is it possible for your client to answer the question below?

I understand we are late in the game for a data request----but want to fully understand both party's arguments before the meeting.

thank you.

Kara Semmler

-----Original Message-----

From: Solem, Nathan
Sent: Tuesday, September 02, 2008 4:27 PM
To: Semmler, Kara
Subject: Data Request for MDU in PS08-001

1. MDU states on page 9 of its response to Staff's report that it believes SDIP violated industry standards. Does MDU believe that any part of 49 CFR 191 and 192 were violated by SDIP? If yes, please provide specifics.

Nathan Solem

Utility Analyst/Acting Pipeline Safety Program Manager
South Dakota Public Utilities Commission
500 E. Capitol Avenue
Pierre, SD 57501-5070
605-773-4210 direct

605-222-3410 cell
866-757-6031 fax

Effective: [See Text Amendments]

Code of Federal Regulations Currentness

Title 49. Transportation

Subtitle B. Other Regulations Relating to Transportation

Chapter I. Pipeline and Hazardous Materials Safety Administration, Department of Transportation (Refs & Annos)

Subchapter D. Pipeline Safety

Part 192. Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards (Refs & Annos)

Subpart L. Operations

§ 192.605 Procedural manual for operations, maintenance, and emergencies.

(a) General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

(b) Maintenance and normal operations. The manual required by paragraph (a) of this section must include procedures for the following, if applicable, to provide safety during maintenance and operations.

(1) Operating, maintaining, and repairing the pipeline in accordance with each of the requirements of this subpart and subpart M of this part.

(2) Controlling corrosion in accordance with the operations and maintenance requirements of subpart I of this part.

(3) Making construction records, maps, and operating history available to appropriate operating personnel.

(4) Gathering of data needed for reporting incidents under Part 191 of this chapter in a timely and effective manner.

(5) Starting up and shutting down any part of the pipeline in a manner designed to assure operation within the MAOP limits prescribed by this part, plus the build-up allowed for operation of pressure-limiting and control devices.

(6) Maintaining compressor stations, including provisions for isolating units or sections of pipe and for purging before returning to service.

(7) Starting, operating and shutting down gas compressor units.

(8) Periodically reviewing the work done by operator personnel to determine the effectiveness, and ad-

equacy of the procedures used in normal operation and maintenance and modifying the procedures when deficiencies are found.

(9) Taking adequate precautions in excavated trenches to protect personnel from the hazards of unsafe accumulations of vapor or gas, and making available when needed at the excavation, emergency rescue equipment, including a breathing apparatus and, a rescue harness and line.

(10) Systematic and routine testing and inspection of pipe-type or bottle-type holders including--

(i) Provision for detecting external corrosion before the strength of the container has been impaired;

(ii) Periodic sampling and testing of gas in storage to determine the dew point of vapors contained in the stored gas which, if condensed, might cause internal corrosion or interfere with the safe operation of the storage plant; and

(iii) Periodic inspection and testing of pressure limiting equipment to determine that it is in safe operating condition and has adequate capacity.

(11) Responding promptly to a report of a gas odor inside or near a building, unless the operator's emergency procedures under § 192.615(a)(3) specifically apply to these reports.

(c) Abnormal operation. For transmission lines, the manual required by paragraph (a) of this section must include procedures for the following to provide safety when operating design limits have been exceeded:

(1) Responding to, investigating, and correcting the cause of:

(i) Unintended closure of valves or shutdowns;

(ii) Increase or decrease in pressure or flow rate outside normal operating limits;

(iii) Loss of communications;

(iv) Operation of any safety device; and

(v) Any other foreseeable malfunction of a component, deviation from normal operation, or personnel error, which may result in a hazard to persons or property.

(2) Checking variations from normal operation after abnormal operation has ended at sufficient critical locations in the system to determine continued integrity and safe operation.

(3) Notifying responsible operator personnel when notice of an abnormal operation is received.

(4) Periodically reviewing the response of operator personnel to determine the effectiveness of the procedures controlling abnormal operation and taking corrective action where deficiencies are found.

(5) The requirements of this paragraph (c) do not apply to natural gas distribution operators that are operating transmission lines in connection with their distribution system.

(d) Safety-related condition reports. The manual required by paragraph (a) of this section must include instruc-

49 C.F.R. § 192.605

tions enabling personnel who perform operation and maintenance activities to recognize conditions that potentially may be safety-related conditions that are subject to the reporting requirements of § 191.23 of this subchapter.

(e) Surveillance, emergency response, and accident investigation. The procedures required by §§ 192.613(a), 192.615, and 192.617 must be included in the manual required by paragraph (a) of this section.

53 FR 24950, July 1, 1998; 53 FR 26560, July 13, 1988; 59 FR 6584, Feb. 11, 1994; Amdt. 192-71A, 60 FR 14381, March 17, 1995; Amdt. 192-93, 68 FR 53901, Sept. 15, 2003]

SOURCE: 35 FR 13257, Aug. 19, 1970; 52 FR 32800, Aug. 31, 1987; 53 FR 1635, Jan. 21, 1988; Amdt. 192-73, 60 FR 14650, March 20, 1995; Amdt. 192-3, 60 FR 41828, Aug. 14, 1995; Amdt. 192-75, 61 FR 18516, April 26, 1996; 61 FR 38403, July 24, 1996, unless otherwise noted.

AUTHORITY: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

49 C. F. R. § 192.605, 49 CFR § 192.605

Current through August 28, 2008; 73 FR 50731

Copr. © 2008 Thomson Reuters/West

END OF DOCUMENT

© 2008 Thomson Reuters/West. No Claim to Orig. US Gov. Works.