



Dustin Johnson, Chair  
Steve Kolbeck, Vice Chair  
Gary Hanson, Commissioner

## **SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

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May 3, 2010

Mr. Jeffrey Wiese  
Associate Administrator of Pipeline Safety  
US DOT / PHMSA / PHP-01  
1200 New Jersey Ave, SE East Room E22-330  
Washington, DC 20590

Dear Mr. Wiese:

The South Dakota Public Utilities Commission approved a permanent waiver of 49 CFR 192.285 c for Montana-Dakota Utilities natural gas operations in South Dakota. This approval is noted in the attached order in Docket PS10-001. Please accept this letter as the required notification to PHMSA for its 60 day waiver review process.

The required information for a waiver notice is given below:

1. Name, address, and telephone number of applicant.

Scott Besmer, Senior Staff Engineer  
Montana-Dakota Utilities Co.  
400 North 4<sup>th</sup> Street  
Bismarck, ND 58501

Dave Gerdes, Attorney  
May Adam Gerdes & Thompson LLP  
PO Box 160  
Pierre, SD 57501-0160

2. Safety regulation involved: 49 CFR 192.285 c
3. Pipeline facilities involved: All of MDU's natural gas facilities in South Dakota
4. Justification for the waiver: Please see attached Request for Waiver, MDU's clarification, Staff's recommendation for approval and Staff's clarification
5. PUC Order is attached.

If you have any questions, please do not hesitate to contact me.

Sincerely,

*Nathan D. Solem*

Nathan Solem  
Pipeline Safety Program Manager  
605-773-4210  
[nathan.solem@state.sd.us](mailto:nathan.solem@state.sd.us)

CC: Dave Barrett, PHMSA Office of Pipeline Safety, Central Region, 901 Locust St., Suite 462,  
Kansas City, MO 64106, 816-329-3829, [dave.barrett@dot.gov](mailto:dave.barrett@dot.gov)

Leonard Steiner, PHMSA Office of Pipeline Safety, Central Region, 901 Locust St., Suite  
462, Kansas City, MO 64106, 816-329-3813, [Leonard.steiner@dot.gov](mailto:Leonard.steiner@dot.gov)

attachments

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

**IN THE MATTER OF THE FILING BY ) ORDER GRANTING WAIVER  
MONTANA-DAKOTA UTILITIES CO. FOR )  
APPROVAL OF A WAIVER OF 49 C.F.R. ) PS10-001  
SECTIONS 192.285(a)(2) AND 192.285 (c) )  
)**

On March 23, 2010, the Commission received a request for a waiver of 49 C.F.R. Section 192.285(a)(2) and 192.285(c) from Montana-Dakota Utilities Co. (MDU). MDU makes the request according to SDCL 49-34B-24 to allow it to re-qualify its employees by an alternate means of assuring qualifications for persons making joints. On March 29, 2010, Staff recommended approval with conditions. On April 6, 2010, MDU filed an amended Request for Waiver as filed with the Commission.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL 49-34B-24.

At its regularly scheduled meeting on April 20, 2010, the Commission considered this matter. Commission Staff recommended approval of the waiver subject to the following conditions:

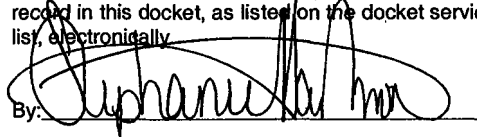
1. A person must be re-qualified under an applicable procedure, at least once each calendar year at intervals not exceeding 15-months, if that person (1) does not make any joints under that procedure in the preceding calendar year; or (2) has one joint or one percent of the joints made, whichever is greater, under that procedure that are found unacceptable by testing under Section 192.513; and
2. The plastic joining requirements must be included within MDU's Operations and Maintenance Manual.

The Commission voted unanimously to approve the Waiver, subject to PHMSA's review and consent and with Staff recommendations. It is therefore

ORDERED, that the request seeking approval of a waiver of C.F.R. Section 192.285(a)(2) and 192.285(c) is hereby granted, subject to PHMSA's review and consent and subject to the following conditions:

1. A person must be re-qualified under an applicable procedure, at least once each calendar year at intervals not exceeding 15-months, if that person (1) does not make any joints under that procedure in the preceding calendar year; or (2) has one joint or one percent of the joints made, whichever is greater, under that procedure that are found unacceptable by testing under Section 192.513; and
2. The plastic joining requirements must be included within MDU's Operations and Maintenance Manual.

Dated at Pierre, South Dakota, this 30<sup>th</sup> day of April, 2010.

<b>CERTIFICATE OF SERVICE</b>
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.
By: 
Date: <u>04/30/10</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

  
DUSTIN M. JOHNSON, Chairman

  
STEVE KOLBECK, Commissioner

  
GARY HANSON, Commissioner



Dustin Johnson, Chair  
Steve Kolbeck, Vice Chair  
Gary Hanson, Commissioner

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April 20, 2010

Ms. Patricia Van Gerpen, Executive Director  
SD Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501

RE: PS10-001 Clarification

Dear Ms. Van Gerpen:

In order to clear up any confusion that may have occurred, I would like to outline specific language for the proposed waiver. The waiver language, if approved by the Commission and the Pipeline and Hazardous Materials Safety Administration (PHMSA), would be in effect for MDU.

49 CFR, Section 192.285(c) as currently written is stated below:

“A person must be requalified under an applicable procedure, if during any 12-month period that person:

- (1) Does not make any joints under that procedure; or
- (2) Has 3 joints or 3 percent of the joints made, whichever is greater, under that procedure that are found unacceptable by testing under §192.513.”

Based on a review of the pipeline safety regulations (and the information included in the initial Staff Recommendation), I recommend the following permanent waiver of §192.285(c) be approved for MDU:

A person must be requalified under an applicable procedure, at least once each calendar year at intervals not exceeding 15-months, if that person:

- (1) Does not make any joints under that procedure in the preceding calendar year; or
- (2) Has 1 joint or 1 percent of the joints made, whichever is greater, under that procedure that are found unacceptable by testing under §192.513.

If the waiver is approved by PHMSA, these plastic joining requirements must be included within MDU's Operations and Maintenance (O&M) manual.

Sincerely,

Stacy Splittstoesser, P.E.  
Pipeline Safety Engineer/Utility Analyst  
SD Public Utilities Commission



Dustin Johnson, Chair  
Steve Kolbeck, Vice Chair  
Gary Hanson, Commissioner

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March 29, 2010

Ms. Patricia Van Gerpen  
SD PUC Executive Director  
500 E. Capitol Ave  
Pierre, SD 57501

Re: PS10-001

Dear Ms. Van Gerpen:

Enclosed for filing is Stacy Splittstoesser's review and recommendation regarding MDU's waiver request in the above referenced docket. Ms. Splittstoesser recommends approval with two specific conditions. Staff will place this item on a commission agenda at a future date after MDU has time to review this filing and the intervention time has passed. Thank you.

Sincerely,

Kara Semmler

cc. Mr. Dave Gerdes

STAFF RECOMMENDATION  
TO  
THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE FILING BY MONTANA-DAKOTA UTILITIES COMPANY,  
FOR APPROVAL OF WAIVER

DOCKET PS10 – 001

On March 23, 2010, Montana-Dakota Utilities (MDU) filed a request for a permanent waiver of 49 CFR, Part 192.285(c). Specifically, MDU requests a permanent waiver of 49 CFR, Part 192.285(c) to allow it to requalify persons making plastic joints at least once each calendar year at intervals not exceeding 15 months. Currently, 49 CFR, Part 192.285(c) requires all persons making plastic joints to be requalified during any 12 month period if that person does not make any joints under a specific joining procedure or has three joints or three percent of the field joints made (whichever is greater) that are found unacceptable during testing. The waiver would allow MDU an additional three months to requalify its employees that perform joining on its plastic pipelines.

MDU requests the waiver for the following reasons:

- MDU currently automatically requalifies all persons making plastic joints every year to ensure it is in compliance with 192.285(c). MDU argues it can not perform the requalification tests at the most advantageous time from a cost and quality perspective.
- The current 12 month retest requirement MDU utilizes requires it establish requalification testing schedules on an 11 month basis to account for scheduling conflicts due to travel, illness, vacations, and group size.
- As a result of the current 12 month retest requirement, MDU must test approximately every 11 months. Eventually, this schedule will result in testing performed during construction season.
- If that results, MDU would have to use several qualification teams and conduct several make-up sessions to accommodate for scheduling conflicts. MDU argues this will result in less consistency in requalification testing results and increased administrative costs.
- The granting of this waiver would be consistent with past waivers granted by the SD Public Utilities Commission for MidAmerican Energy (PS07-003) and NorthWestern Energy (PS08-002).

Based on a review of the pipeline safety regulations, I recommend the permanent waiver be approved with the following conditions:

1. If a person has one field joint found unacceptable during field testing required by 49 CFR, Part 192.513, that person must requalify under the specific procedure used to make the unacceptable field joint prior to performing that procedure again. MDU proposed this condition, which is more stringent than the current pipeline safety regulation that requires a person to be requalified if three joints or three percent of the field joints made (whichever is greater) are found unacceptable during testing.

2. These plastic joining requirements must be included within MDU's Operations and Maintenance (O&M) manual. I propose this condition to ensure current and future pipeline safety inspectors are aware of the change implemented for the plastic pipe joining requirements.

In my opinion the proposed permanent waiver request with the above conditions, is consistent with pipeline safety according to South Dakota Codified Law 49-34B-24.

Stacy Splittstoesser, P.E.  
Pipeline Safety Engineer/Utility Analyst  
South Dakota Public Utilities Commission

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

RE: **REQUEST BY MONTANA-DAKOTA UTILITIES CO. FOR A WAIVER**  
Docket PS10-001  
Our file: 0069

Dear Mrs. Van Gerpen:

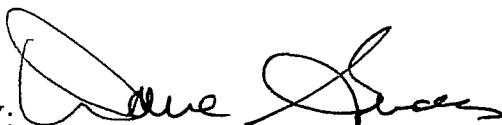
I write this letter as attorney for and on behalf of Montana-Dakota Utilities Co. ("Montana-Dakota") in the above-entitled docket.

Please be advised that Montana-Dakota withdraws the first bullet point in its Request for Waiver as filed with the Commission. It is Montana-Dakota's intention that requalification be governed by 49 C.F.R. § 192.285(c), that is, that persons making a joint within a 12-month period are not required to requalify and are considered to be qualified for the next period. Secondly, Montana-Dakota agrees with the language utilized by Analyst Stacy Splittstoesser in paragraphs 1 and 2 of her written recommendation to the Commission on file in this matter.

As so amended, Montana-Dakota requests that the Commission grant the waiver.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

cc: Kara Semmler (via e-mail)  
Stacy Splittstoesser (via e-mail)  
Scott Bessmer  
Tamie Aberle



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

In The Matter of the Request by	)	Docket No. PS10-_____
Montana-Dakota Utilities Co. for	)	
a waiver from 49 C.F.R. § 192.285(a)(2)	)	<b>REQUEST FOR WAIVER</b>
and 49 C.F.R. § 192.285(c)	)	

COMES NOW Montana-Dakota Utilities Co. ("Montana-Dakota") by its undersigned attorneys and respectfully requests a permanent waiver from 49 C.F.R. § 192.285(a)(2) and 49 C.F.R. § 192.285(c). In support of its request, Montana-Dakota states as follows:

1. Montana-Dakota is a public utility providing electric and natural gas utility services in certain South Dakota communities in its service territory.

2. 49 C.F.R § 192 consists of federal safety standards for the transportation of natural gas by pipeline.

3. 49 C.F.R. § 192.285(a) requires persons making plastic joints be qualified under applicable joining procedures. 49 C.F.R. § 192.285(c) further requires that:

A person must be requalified under an applicable procedure, if during any 12-month period that person: (1) Does not make any joints under that procedure; or (2) has 3 joints or 3 percent of the joints made, whichever is greater, under that procedure that are found unacceptable by testing under 192.513.

4. Montana-Dakota requests a waiver of 49 C.F.R. § 192.285(c), to allow it to requalify its employees by an alternate means of assuring qualifications for persons making joints. Montana-Dakota proposes the following procedure:

- A person must be requalified under an applicable procedure at least once per calendar year, but at intervals not exceeding 15 months.
- In addition, if a joiner has 1 joint under the procedure that is found to be unacceptable by testing under

49 C.F.R. 192.513, that person must requalify under that procedure as an initial qualification.

5. Montana-Dakota requests a permanent waiver since the requirements for testing will be required for the foreseeable future.

6. Application of this rule poses an undue hardship on Montana-Dakota. Montana-Dakota will not be able to perform the tests at the most advantageous time from a cost and quality perspective. The current 12-month retest requirement will result in testing about every 11 months which will eventually result in testing being performed in the middle of the construction season or at the end of the construction season.

7. Approval of the waiver will not prejudice the legal rights of any person since employees making plastic joints will continue to be tested prior to the start of each construction season. Approval of the waiver would still require ten qualifications of a person over ten years with the test occurring every 12 months.

8. 49 C.F.R. § 192 contains provisions for requesting a waiver of pipeline safety provisions. Therefore, the rule subject to this petition for waiver is not specifically mandated by statute or another provision of law.

9. Approval of this request for waiver will result in superior safety compared to what can be achieved under the current requirements of 49 C.F.R. § 19.285(c).

10. Montana-Dakota believes that requalification of plastic joining personnel just prior to the construction season provides the highest quality workmanship. It is at the end of the time period that fewest plastic joints are made and the beginning of the time when the most joints will be made.

11. Because of scheduling considerations, travel, illness, group size and vacations, qualification is a longer process and can take up to a month. The existing 12-month provision requires Montana-Dakota to establish evaluation schedules on an 11-month basis to account for these scheduling conflicts. Completing requalifications on an 11-month schedule ratchets back the requalification date, putting the requalifications into the end of the construction season and eventually during the construction season.

12. Montana-Dakota submits that annual testing provides the most accurate and consistent means of promoting joint quality. To comply with the current 12-month requirement and be able to continue testing just prior to the

construction season, Montana-Dakota could no longer use a small group of testers but would have to use several qualification teams and conduct several make-up sessions to accommodate for vacation and illnesses. This would result in less consistency in evaluation and more administrative costs.

13. The U.S. Department of Transportation has already recognized the negative implication of following a “not to exceed 12 month” requirement. Other similar joining qualification requirements have established schedules that allow the operator more flexibility in establishing schedules that don’t ratchet schedules into the construction season. As an example, 192.229(d)(1) sets the qualification of welders to “within the preceding 15 calendar months, but at least once each calendar year.”

14. By testing plastic joints using the same group of testers in the same time frame, there is less chance that a records error would result in a joint being made by a non-qualified person. In this proposal, there is general knowledge of when qualification is required as well as knowledge obtained by a records review. This redundancy knowledge will result in less opportunity for error.

15. The granting of this request for waiver would be consistent with other waivers of the 49 C.F.R. § 192.285(c) scheduling requirements that have been granted by other state regulatory commissions in other jurisdictions after appropriate state and federal reviews of safety impacts. Of specific note is that the South Dakota Public Utilities Commission previously granted a request for waiver from 49 C.F.R. § 192.285 (c) to MidAmerican Energy in its order issued January 7, 2008 in Docket PS07-003, and a comparable request for waiver to NorthWestern Corporation in its order of July 2, 2008 in Docket PS08-002.

16. Approval of this request for waiver will enable Montana-Dakota to ultimately employ the same testing schedule in all of its operating areas, thereby promoting administrative efficiency and a proper allocation of resources.

17. Montana-Dakota is not aware of any persons who may be adversely impacted by the granting of this request for waiver. Montana-Dakota welcomes the opportunity to respond to any questions concerning this request.

Wherefore Montana-Dakota respectfully requests that the South Dakota Public Utilities Commission grant a permanent waiver of 49 C.F.R. § 192.285(a)(2) and 49 C.F.R. § 192.285(c).

Respectfully submitted this 23<sup>rd</sup> day of March, 2010.

MAY, ADAM, GERDES & THOMPSON LLP

BY:   
DAVID A. GERDES  
Attorneys for Montana-Dakota  
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