

**Before the Public Utilities Commission  
of the State of South Dakota**

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**In the Matter of Commission Staff's  
Request for Release of Segment of Pipe  
Involved in February 6, 2018 Incident**

**Docket No. PS18-001**  
**NorthWestern Energy's  
Response to Staff's Request**

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NorthWestern Corporation d/b/a NorthWestern Energy responds to Staff's request for the Commission's approval to release a segment of NorthWestern's pipe involved in a February 6, 2018, incident in Aberdeen, South Dakota. Staff asks the Commission to authorize the release of the pipe to Liberty Mutual Insurance Company for destructive testing.

NorthWestern requests the Commission to deny Staff's request as premature. NorthWestern is the owner of the pipe, and NorthWestern has not requested the Commission's approval to destroy the pipe. NorthWestern is forced to oppose Staff's request because this docket has the cart before the horse.

NorthWestern does not object to testing the pipe pursuant to a mutually agreed upon protocol. However, the parties have not agreed upon that protocol. Liberty previously asked NorthWestern to conduct destructive testing and proposed a protocol, but NorthWestern rejected that request. At that time, NorthWestern and Liberty agreed to a less-invasive visual inspection of the pipe, and Liberty promised to further communicate with NorthWestern if it still desired destructive testing after the visual inspection. NorthWestern has not received any further communication from Liberty concerning destructive testing. Thus, NorthWestern has not considered whether destructive testing is necessary and has not hired an expert to review Liberty's proposed protocol. Instead of further communicating with NorthWestern, Liberty has

attempted to cut NorthWestern out of the process and create a statutory right that does not exist by going directly to Staff with its request.

Liberty has no statutory right to destroy NorthWestern's pipe, and the Commission has no statutory authority to release NorthWestern's pipe to Liberty. Accordingly, the Commission should deny Staff's request.

## **Background**

On February 6, 2018, an explosion and subsequent fire occurred at a house located at 507 North Second Street in Aberdeen, South Dakota. The house was vacant. While no fatalities or injuries occurred, the incident destroyed the house. The pipeline failure investigation report (prepared by Ms. Mary Zanter, Pipeline Safety Program Manager for the Commission, and filed in this docket) noted outside force damage to the pipe as a result of structural movement of a wall of the house and identified a single break of the threads of the pipe at the elbow fitting to the riser pipe connection.

NorthWestern is the owner of the pipe involved in the incident. Liberty insured the house on behalf of the owner and has made claims against NorthWestern for the resulting damages. NorthWestern and Liberty disagree regarding responsibility for the incident.

## **The Commission lacks authority to release the pipe to Liberty or to grant Liberty the right to destroy the pipe.**

Staff requests the Commission's approval to "release" the pipe to Liberty pursuant to SDCL 49-34B-26 to conduct destructive testing. However, that statute does not authorize the Commission to release the pipe to Liberty or to grant Liberty the right to destroy the pipe. As the owner of the pipe, NorthWestern should be the party requesting Commission approval to conduct destructive testing pursuant to an agreed upon protocol, and that protocol should maintain NorthWestern's ownership of its property and not release the pipe to Liberty.

Under the statute, a pipeline operator (or its employee or agent) cannot destroy a pipe involved in an emergency release without first obtaining Commission approval. SDCL 49-34B-26. There is no question that the statute requires *NorthWestern* to receive Commission approval before *NorthWestern* can allow destructive testing to be performed on the pipe.

But the statue does not authorize the Commission to terminate *NorthWestern*'s ownership rights and release *NorthWestern*'s property to a third party; nor does it create a right for any other party to destroy *NorthWestern*'s property. There simply is no such language (or intent) in the statute:

**49-34B-26. Prohibition against disposing of, destroying or altering pipeline involved in emergency release--Violation as felony.** After an emergency release from a pipeline has occurred, no pipeline operator, or its employee or agent, may dispose of, destroy, or alter the part of a pipeline that was involved in the emergency release until approval is granted by the commission. This section does not prevent an operator from taking appropriate action to limit or prevent the further release of gas. The authority of the commission to grant approval may not be delegated.

This section may not be construed to prevent the excavation and removal from the ground of a pipeline or part of a pipeline if the pipeline is not intentionally altered in a manner that prevents or hinders a determination of the cause of the emergency release. A person who knowingly violates the provisions of this section, or who denies the commission access to the pipeline for the purposes of inspection, is guilty of a Class 5 felony.

The statute speaks of the pipeline operator, its employee, and its agent. Liberty is none of those. Liberty should have renewed its destructive testing request with *NorthWestern*. By going directly to Staff with its request, Liberty is attempting to create a right that does not exist, which may prejudice *NorthWestern* in future litigation or resolution of this matter with Liberty. That is not the purpose of this statute.

Again, *NorthWestern* does not object to testing the pipe. At the appropriate time, following an agreed upon protocol and subject to prior Commission approval, *NorthWestern*

will cause the appropriate tests of the pipe to be conducted. At all times, however, that agreed upon protocol will maintain NorthWestern's ownership of the pipe and will not release it to Liberty.

The Commission should protect NorthWestern's ownership rights in the pipe and deny Staff's request to release the pipe to Liberty for destruction. No statutory authority exists to grant Staff's request.

**Destructive testing is premature absent an agreed upon testing protocol.**

Even assuming the statute permits the Commission to authorize Liberty to perform destructive testing, such relief is premature without an agreed upon testing protocol. NorthWestern and Liberty have not agreed upon a destructive testing protocol. Instead, Liberty circumvented any discussion with NorthWestern about the protocol and went directly to Commission Staff. Thus, NorthWestern has not had an adequate opportunity to review the protocol with an expert, much less agree to the protocol's terms.

Previously, Liberty requested destructive testing of the pipe, and NorthWestern rejected that request. But, at that time, Liberty and NorthWestern agreed to conduct a microscopic visual examination of the pipe pursuant to a mutually acceptable protocol, with concurrence from Commission Staff. Liberty also promised to inform NorthWestern if it continued to desire destructive testing following that visual examination. Since examining the pipe, Liberty has shared photos of the examination with NorthWestern, but has not (a) disclosed the results of that examination to NorthWestern, (b) informed NorthWestern that it desired to conduct any additional testing on the pipe, or (c) articulated what additional testing is likely to reveal.

In NorthWestern's experience, the parties involved in an incident such as this one typically negotiate a testing protocol, with assistance from each party's experts and advisors, so

that the evidentiary record is appropriately created and preserved to the satisfaction of all parties. That is exactly what happened when Liberty wanted to visually examine the pipe. However, since that visual examination, Liberty has not informed NorthWestern of its renewed desire to conduct destructive testing. Instead, Liberty appears to have proceeded directly to Commission Staff in an effort to obtain Commission approval of the pipe's destruction. Northwestern only learned of Liberty's renewed request to conduct destructive testing with Staff's request to initiate this docket.

In short, NorthWestern believes Liberty is proposing an ill-defined fishing expedition in the hope of finding something that will enable it to pursue a claim against NorthWestern. In any event, NorthWestern should be given the time and opportunity to hire a metallurgist to review and comment on Liberty's proposed destructive testing protocol. NorthWestern currently is maintaining the pipe in safekeeping.

Without the parties' agreement on the proper destructive testing protocol, any request for approval to destroy the pipe is premature and should be denied.

## Conclusion

For the reasons stated in this response, NorthWestern requests the Commission to deny Staff's request. NorthWestern, as the owner of the pipe, has not requested approval to destroy the pipe. The statute that requires NorthWestern to obtain such prior approval does not authorize the Commission to release NorthWestern's property to a third party or to grant another party the right to destroy NorthWestern's property. Destructive testing is premature absent an agreed upon protocol, and the Commission lacks authority to grant Staff's request.

Dated at Sioux Falls, South Dakota, September 14, 2018.

**NORTHWESTERN CORPORATION,  
d/b/a NORTHWESTERN ENERGY**



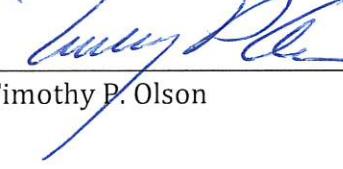
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### **Certificate of Service**

I hereby certify that on September 14, 2018, a true and correct copy of *NorthWestern Energy's Response to Staff's Request*, was served upon the service list on the following page.

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d/b/a NORTHWESTERN ENERGY**

  
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