

Presented by: Alan Moch
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Public Service Commission

Before: Administrative Rules Committee
Senator Jerry Klein, Chairman

RE: N.D. Admin. Code § 69-09-03 (Gas Pipeline Safety)

Date: December 10, 2009

TESTIMONY

Mr. Chairman and committee members, my name is Alan Moch, Director of the Commission's Testing and Safety Division. The Commission would like to testify today concerning our recent gas pipeline safety rulemaking proceedings.

The response to the questions posed to us by the Legislative Council's staff are presented below. In each case, the question is restated prior to our response. The rules in question involve natural gas pipeline safety.

- 1. Whether the rules resulted from statutory changes made by the Legislative Assembly.**

No

- 2. Whether the rules are related to any federal statute or regulation. If so, please indicate whether the rules are mandated by federal law or explain any options your agency had in adopting the rules.**

Yes. The Gas Pipeline Safety Federal rules adopted by reference will amend and update the state gas pipeline safety regulations fulfilling one of the requirements of the federal/state gas pipeline safety agreement, and facilitating enforcement of those regulations at the state level.

- 3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.**

On August 12, 2009, the North Dakota Public Service Commission issued a formal Notice of Intent to Amend Administrative Rules and Notice of Public Hearing, proposing to revise section 69-09-03 of the Administrative Code relating to the Commission's Gas Safety Program, along with the Abbreviated Notice. The Abbreviated Notice was published once in all 52 official county newspapers the week of August 20 through August 26, 2009. The notices were also forwarded to the Legislative Council for publication at least 30 days in advance of the hearing as required by North Dakota Century Code Chapter 28-32. A public hearing on the proposed rule changes was noticed for and held at 10:00 a.m. September 16, 2009. The hearing was held in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The Commission allowed, after the conclusion of the rulemaking hearing, a comment period until September 26, 2009, during which data, views, or oral arguments concerning the proposed rulemaking could be received by the Commission and made a part of the rulemaking record to be considered by the Commission.

- 4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.**

Other than staff testimony explaining the proposed rule changes, no comments or testimony were received before, at, or after the hearing. The rules were adopted as proposed.

- 5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.**

This rulemaking was combined with a reclamation rule case and the Notice covered both proposals. The total cost for publishing the Notices was \$1,887.60. The cost for the legal notice associated with this

rulemaking proceeding only was \$943.80. Other than staff time, no other significant costs were incurred.

6. An explanation of the subject matter of the rules and the reasons for adopting those rules.

The proposed changes are intended to incorporate into state rules changes in federal rules that must also apply to the state program. These are:

1. **49 CFR Part 192 - Amendment No. FR 20055** - This final rule requires operators to use design and construction features in new and replaced gas transmission pipelines to reduce the risk of internal corrosion and related pipeline failures. This is accomplished by reducing the potential for accumulation of liquids and facilitating operation and maintenance practices that address internal corrosion.
2. **49 CFR Part 192 - Amendment No. 104** – This final rule amends the existing integrity management regulations for both hazardous liquid and natural gas transmission pipelines. The modifications include changing the notification requirements for operators of hazardous liquid and natural gas pipelines; and repealing a requirement for gas operators to notify local authorities. This action is intended to improve pipeline safety by clarifying the integrity management regulations and providing operators with increased flexibility in implementing their integrity management (IM) programs.
3. **49 CFR Part 192 - Amendment No. 105** – This final rule relaxes regulatory requirements governing public awareness programs conducted by operators of master meter systems and certain operators of petroleum gas systems. These operators typically manage property and incidentally provide gas service to customers located on the property. The change provides a less burdensome means for these operators to satisfy public awareness needs.
4. **49 CFR Part 192 - Amendment No. 106** – This final rule adopts, with minor modifications, an interim final rule issued by PHMSA on March 28, 2008, conforming PHMSA's administrative procedures with the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 by establishing the procedures PHMSA will follow for issuing safety orders and handling requests for special permits,

including emergency special permits. The rule also notifies operators about electronic docket information availability; updates addresses for filing reports, telephone numbers, and routing symbols; and clarifies the time period for processing requests for written interpretations of the regulations. This final rule makes minor amendments and technical corrections to the regulatory text in response to written public comments received after issuance of the interim final rule.

5. **49 CFR Part 192 - Amendment No. 107** – This final rule amends the existing pipeline safety regulations to prescribe safety requirements for the operation of certain gas transmission pipelines at pressures based on higher operating stress levels. The result is an increase of maximum allowable operating pressure (MAOP) over that currently allowed in the regulations. Improvements in pipeline technology assessment methodology, maintenance practices, and management processes over the past twenty-five years have significantly reduced the risk of failure in pipelines and necessitate updating the standards that govern the MAOP. This rule will generate significant public benefits by reducing the number and consequences of potential incidents and boosting the potential capacity and efficiency of pipeline infrastructure, while promoting rigorous life-cycle maintenance and investment in improved pipe technology.
6. **49 CFR Part 192 - Amendment No. 108** – This final rule amends the design factor and design pressure limits for natural gas pipelines made from new Polyamide-11 (PA-11) thermoplastic pipe. Together, these two changes in the regulations allow pipeline operators to operate certain pipelines constructed of new PA-11 pipe at higher operating pressures than is currently allowed for other plastic pipe materials.
7. **49 CFR Part 192 – Amendment No. 109** - This final rule incorporates by reference the most recent editions of API Specification 5L “Specification for Line Pipe” and API 1104 “Welding of Pipelines and Related Facilities.” The purpose of this update is to enable pipeline operators to utilize current technology, materials, and practices to help maintain a high level of safety relative to their pipeline operations. PHMSA is not eliminating the use of the current referenced standards but simply allowing the additional use of these new standards. PHMSA may in the future

propose to eliminate the incorporation of the existing referenced standards.

8. **49 CFR Part 199 - Amendment No. 24** – This final rule conforms PHMSA's administrative procedures with the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act) by establishing the procedures PHMSA will follow in issuing safety orders and handling requests for special permits, including emergency special permits. This interim final rule also notifies operators about electronic docket information availability; updates addresses, telephone numbers, and routing symbols; and clarifies the time period for processing requests for written interpretations of the regulations. This interim final rule does not impose any new operating, maintenance, or other substantive requirements on pipeline owners or operators.

7. **Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether that regulatory analysis was issued. Please provide a copy.**

No. A Statement on Regulatory Analysis and Takings Assessment was prepared for the proposed rules (copy included). The proposed rules are not expected to have an impact on the regulatory community in excess of \$50,000.

8. **Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide a copy.**

No. A Small Entity Regulatory Analysis is not required because the proposed amendments to existing rules are mandated by federal law. See No. 7 (copy included).

9. **Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. Please provide a copy if one was prepared.**

Yes. See No. 7 (copy included).

10. **If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03, provide the statutory grounds from that**

section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules.

These rules were not adopted as emergency rules.

Mr. Chairman, this completes my testimony. I would be happy to respond to any questions the committee might have.

State of North Dakota

Public service Commission

**Public Service Commission
Gas Pipeline Safety
Rulemaking**

Case No. GS-09-67

Amended Statement on Regulatory Analysis and Takings Assessment

29 July, 2009

The purpose of the 2009 Gas Pipeline Safety rule amendments, enacted by the federal government and to be adopted by reference into state administrative rule, consist of the following: requires operators to use design and construction features in new and replaced gas transmission pipelines to reduce the risk of internal corrosion and related pipeline failures; amends the notification requirements in existing integrity management regulations for both hazardous liquid and natural gas transmission pipelines; relaxes regulatory requirements governing public awareness programs conducted by operators of master meter systems and certain operators of petroleum gas systems; adopts, with minor modifications, an interim final rule issued by PHMSA on March 28, 2008, conforming PHMSA's administrative procedures with the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006; amends the existing pipeline safety regulations to prescribe safety requirements for the operation of certain gas transmission pipelines at pressures based on higher operating stress levels; and, incorporates by reference the most recent editions of API Specification 5L "Specification for Line Pipe" and API 1104 "Welding of Pipelines and Related Facilities."

Regulatory Analysis

North Dakota Century Code Section 28-32-08 requires an agency to prepare a regulatory analysis if the proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars. The analysis must contain:

- a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
- b. Description of the probable impact, including economic impact, of the proposed rule;
- c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and
- d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.

Individuals within this State who may be affected by these proposed federal amendments consists of both intrastate and interstate hazardous liquid and natural gas operators.

None of the above proposed federal amendments is expected to have an impact on the State's regulated community in excess of fifty thousand dollars.

Any costs associated with the enforcement of the above proposed federal amendments will be taken from the Commission's ongoing gas pipeline safety budget with little or no affect upon that budget.

The Commission acts as agent for the U.S. Department of Transportation, PHMSA, in the enforcement of the minimum gas pipeline safety standards on all gas distribution and intrastate transmission facilities within the State. This is accomplished by entering into a 601055(a) Title 49 agreement with the U.S. Department of Transportation which requires North Dakota to adopt all of the Federal gas safety standards, along with any future amendments to those standards. This rulemaking is a part of that ongoing agreement.

Takings Assessment

North Dakota Century Code Section 28-32-09(1) requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. The assessment must:

- a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
- b. Clearly and specifically identify the purpose of the proposed rule.
- c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
- d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
- e. Identify the source of payment within the agency's budget for any compensation that may be ordered.
- f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

None of the above proposed federal amendments will result in a regulatory taking.

The purpose of the proposed federal amendments are stated above.

We do not expect any impact on private property owners as a result of the proposed federal amendments. The proposed rules should not limit the use of private property.

The proposed amendments will not limit the use of private real property and estimated compensation costs will be zero.

Small Entity Regulatory Analysis

This regulatory analysis is not required under Chapter 28-32-08.1, N.D.C.C. because the proposed amendments to existing rules are mandated by federal law.