

Presented by: Illona A. Jeffcoat-Sacco
General Counsel
Public Service Commission

Before: Administrative Rules Committee
Representative Kim Koppelman, Chairman

RE: North Dakota Administrative Code Section 69-09-03-02
PSC Case No. GS-11-79

Date: March 14, 2012

TESTIMONY

Mr. Chairman and committee members, my name is Illona Jeffcoat-Sacco, General Counsel for the North Dakota Public Service Commission. The Commission asked me to testify today regarding the referenced rulemaking proceeding.

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.

- 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 rule change adopts, by reference, changes made to federal pipeline safety regulations in effect as of June 22, 2011.

- 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 June 22, 2011 the North Dakota Public Service Commission issued a formal Notice of Intent to Amend Administrative Rules and Notice of Public Hearing and an abbreviated Notice.

The Abbreviated Notice was published once in 52 official county newspapers the week of July 2 through July 8, 2011. The notice was also

forwarded to the Legislative Council for publication on June 30, 2011, which was at least 30 days prior to the public hearing.

A public hearing was noticed for and held at 10:00 a.m., August 9, 2011. 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 August 19, 2011, 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. The only comments received were of Commission staff and those comments were made at the time of the public hearing.

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.**

No objections, concerns or complaints were received. Other than staff testimony explaining and supporting the proposed rule changes, no comments or testimony were received before, at, or after the hearing. The rules were adopted as proposed. A copy of Staff Testimony is attached as Attachment A.

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.**

The gas safety rule case before you today was combined with a reclamation rulemaking case and the Notice of June 22, 2011 covered both proposals. The total cost for publishing the Notices was \$1,978.68. The cost for legal notice associated with just the gas safety rulemaking proceeding before you today was ½, or \$989.34. 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.**

In order to continue the Commission's role as an agent for the federal pipeline safety program, the change to North Dakota Administrative Code

Section 69-09-03-02 adopts by reference changes made to federal pipeline safety regulations in effect as of June 22, 2011.

The federal/state agreement for North Dakota's Gas Safety Program requires that North Dakota adopt the federal gas safety standards, along with any future amendments to those standards. The initial adoption took place on June 1, 1984, with additional rulemaking proceedings, such as this one, held as necessary to continue to adopt federal amendments to the standards.

A copy of the Commission Order submitting the rules to the Attorney General is attached as Attachment B.

- 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 regulatory analysis was required for the rule because State adoption of a federal standard already in place is not expected to have an impact on the regulated community in excess of \$50,000 and neither the Governor nor any member of the Legislative Assembly requested a regulatory analysis. A statement was prepared. See Attachment C.

- 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 copies.**

A small entities analysis is not required because the changes are required by federal law. A statement was prepared. See Attachment C.

- 9. Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency. If so, please provide copies of a fiscal note.**

The rules impose no impact on state revenues or expenditures. However, if we do not adopt the rules, we could jeopardize our federal funding for the project.

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

No takings assessment was required because the changes do not effect a regulatory taking. A statement was prepared. See Attachment C.

11. **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. If these rules were adopted as emergency (interim final) rules, what steps were taken to make the rules known to persons who can reasonably be expected to have a substantial interest in the rules?**

N/A

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

**CHAPTER 69-09-03
GAS PIPELINE SAFETY**

Section

69-09-03-01

Safety

69-09-03-02

Adoption of Regulations

69-09-03-01. Safety. Gas pipeline facilities used for the intrastate distribution and transmission of gas shall be designed, constructed, and operated to meet the safety standards set forth in regulations of the United States department of transportation adopted in section 69-09-03-02. The commission may require such proof of compliance as it deems necessary.

History: Amended effective July 1, 1986; January 1, 1988.

General Authority: NDCC 28-32-02, 49-02-04

Law Implemented: NDCC 49-02-01.2, 49-02-04

69-09-03-02. Adoption of regulations. The following parts of title 49, Code of Federal Regulations in effect as of ~~August 1, 2009~~ June 22, 2011, are adopted by reference:

1. Part 190 - Department of Transportation Pipeline Safety Enforcement Procedures.
2. Part 191 - Department of Transportation Regulations for Transportation of Natural Gas by Pipeline; Reports of Leaks.
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Safety Standards.
4. Part 199 - Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquids Pipelines.

Copies of these regulations may be obtained from:

Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

History: Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999; August 1, 2000; January 1, 2002; November 1, 2003; May 1, 2005; July 1, 2006; April 1, 2008; January 1, 2010; April 1, 2012.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

**Attachment
A**

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Gas Pipeline Safety
Rulemaking**

Case No. GS-11-79

PUBLIC SERVICE COMMISSION STAFF TESTIMONY

August 9, 2011

I am Patrick Fahn, Director of the Compliance and Competitive Markets Division with the Public Service Commission.

The proposed change to North Dakota Administrative Code Section 69-09-03-02 adopts, by reference, changes made to federal pipeline safety regulations and in effect as of June 22, 2011.

The Commission acts as agent for the U.S. Department of Transportation, Pipeline and Hazardous Materials Administration (PHMSA) by entering into a federal/state agreement and receives federal funding for the enforcement of minimum gas pipeline safety standards on all gas distribution and intrastate transmission facilities within North Dakota. While all gas distribution and intrastate transmission facilities within North Dakota are required to comply with the federal minimum pipeline safety standards regardless of the state adoption of those standards, as a PHMSA agent, the state must be able to enforce the standards.

The federal/state agreement requires that North Dakota adopt the federal gas safety standards, along with any future amendments to those standards. The initial adoption took place on June 1, 1984, with additional rulemaking

proceedings, such as this one, held annually if necessary, to continue to adopt federal amendments to the standards. A summary of federal standards amended and effective from August 1, 2009 through June 22, 2011 is attached to this testimony.

All gas distribution and intrastate transmission facilities within North Dakota are required to comply with the federal minimum pipeline safety standards regardless of the state adoption of the federal standards. Therefore, there is no additional impact on the regulated community as a result of state adoption of the standards.

North Dakota Public Service Commission
2011 Proposed Gas Pipeline Safety Amendments
GS-11-79

Rule Summary

June 22, 2011

49 CFR Part 190

49 CFR Part 190 – Federal Register Cite 74 FR 62503 (Amendment Number 15) - This final rule corrects editorial errors, makes minor changes in the regulatory text, reflects changes in governing laws, and improves the clarity of certain provisions in the pipeline safety regulations. This rule is intended to enhance the accuracy and reduce misunderstandings of the specified regulations. The amendments contained in this rule are non-substantive changes.

Effective Date of final rule: January 29, 2010.

49 CFR Part 192

49 CFR Part 192 – Federal Register Cite 74 FR 2889 (Amendment Number 109) - 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.

Effective Date of final rule: February 17, 2009.

49 CFR Part 192 - Federal Register Cite 74 FR 17099 (Amendment Number 110) – This direct 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.

Effective Date of final rule: April 14, 2009.

49 CFR Part 192 - Federal Register Cite 74 FR 62503 (Amendment Number 111) – This final rule corrects editorial errors, makes minor changes in the regulatory text, reflects changes in governing laws, and improves the clarity of certain provisions in the pipeline safety regulations. This rule is intended to enhance the accuracy and reduce misunderstandings of the specified regulations. The amendments contained in this rule are non-substantive changes.

Effective Date of final rule: January 29, 2010.

49 CFR Part 192 - Federal Register Cite 74 FR 63310 (Amendment Number 112) – PHMSA is amending the Federal pipeline safety regulations to address human factors and other aspects of control room management for pipelines where controllers use supervisory control and data acquisition (SCADA) systems. Under the final rule, affected pipeline operators must define the roles and responsibilities of controllers and provide controllers with the necessary information, training, and processes to fulfill these responsibilities. Operators must also implement methods to prevent controller fatigue. The final rule further requires operators to manage SCADA alarms, assure control room considerations are taken into account when changing pipeline equipment or configurations, and review reportable incidents or accidents to determine whether control room actions contributed to the event.

Hazardous liquid and gas pipelines are often monitored in a control room by controllers using computer-based equipment, such as a SCADA system, that records and displays operational information about the pipeline system, such as pressures, flow rates, and valve positions. Some SCADA systems are used by controllers to operate pipeline equipment, while, in other cases, controllers may dispatch other personnel to operate equipment in the field. These monitoring and control actions, whether via SCADA system commands or direction to field personnel, are a principal means of managing pipeline operation.

This rule improves opportunities to reduce risk through more effective control of pipelines. It further requires the statutorily mandated human factors management. These regulations will enhance pipeline safety by coupling strengthened control room management with improved controller training and fatigue management.

Effective Date of final rule: February 1, 2010. **Compliance Date:** An operator must develop control room management procedures by August 1, 2011 and implement the procedures by February 1, 2012. **Incorporation by Reference Date:** The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of February 1, 2010.

49 CFR Part 192 - Federal Register Cite 74 FR 63905 (Amendment No. 113) – PHMSA is amending the Federal Pipeline Safety Regulations to require operators of gas distribution pipelines to develop and implement integrity management (IM) programs. The purpose of these programs is to enhance safety by identifying and reducing pipeline integrity risks. The IM programs required by this rule are similar to those required for gas transmission pipelines, but tailored to reflect the differences in and among distribution pipelines. Based on the required risk assessments and enhanced controls, the rule also allows for risk-based adjustment of prescribed intervals for leak detection surveys and other fixed-interval requirements in the agency's existing regulations for gas distribution pipelines. To further minimize regulatory burdens, the rule establishes simpler requirements for master meter and small liquefied petroleum gas (LPG) operators, reflecting the relatively lower risk of these small pipelines.

In accordance with Federal law, the rule also requires operators to install excess flow valves on new and replaced residential service lines, subject to feasibility criteria outlined in the rule.

This final rule addresses statutory mandates and recommendations from the DOT's Office of the Inspector General (OIG) and stakeholder groups.

Effective Date of final rule: February 2, 2010.

49 CFR Part 192 - Federal Register Cite 75 FR 48593 (Amendment Number 114) – PHMSA is amending the Federal pipeline safety regulations to incorporate by reference all or parts of 40 new editions of voluntary consensus technical standards. This action allows pipeline operators to use current technologies, improved materials, and updated industry and management practices. Additionally, PHMSA is clarifying certain regulatory provisions and making several editorial corrections. These amendments do not require pipeline operators to take on any significant new pipeline safety initiatives.

Effective Date of final rule: October 1, 2010.

49 CFR Part 192 - Federal Register Cite 75 FR 72877 (Amendment Number 115) – This final rule revises the Pipeline Safety Regulations to improve the reliability and utility of data collections from operators of natural gas pipelines, hazardous liquid pipelines, and liquefied natural gas (LNG) facilities. These revisions will enhance PHMSA's ability to understand, measure, and assess the performance of individual operators and industry as a whole; integrate pipeline safety data to allow a more thorough, rigorous, and comprehensive understanding and assessment of risk; and expand and simplify existing electronic reporting by operators. These revisions will improve both the data and the analyses PHMSA and others rely on to make critical, safety-related decisions, and will facilitate both PHMSA's and states' allocation of pipeline safety program inspection and other resources based on a more accurate accounting of risk.

Effective Date of final rule: January 1, 2011.

49 CFR Part 192 - Federal Register Cite 76 FR 5494 (Amendment No. 116) – This final rule is an amendment to PHMSA's regulations involving DIMP. This final rule revises the pipeline safety regulations to clarify the types of pipeline fittings involved in the compression coupling failure information collection; changes the term "compression coupling" to "mechanical fitting," aligns a threat category with the annual report; and clarifies the Excess Flow Valve (EFV) metric to be reported by operators of gas systems. This rule also announces the OMB approval of the revised Distribution Annual Report and a new Mechanical Fitting Failure Report. Finally, this rulemaking clarifies the key dates for the collection and submission of the new Mechanical Fitting Failure Report.

Effective Date of final rule: April 4, 2011.

49 CFR Part 199 - Federal Register Cite 74 FR 2889 (Amendment Number 25) – 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.

Effective Date of final rule: February 17, 2009.

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
2011 Gas Pipeline Safety Rules
Rulemaking**

Case No. GS-11-79

ORDER SUBMITTING RULES TO ATTORNEY GENERAL

September 20, 2011

Appearances

Commissioners Tony Clark, Brian P. Kalk, and Kevin Cramer

Preliminary Statement

On June 22, 2011, the North Dakota Public Service Commission (Commission) issued a formal Notice of Proposed Rulemaking and an Abbreviated Notice proposing to revise Articles 69-09 of the Administrative Code. The proposed amendments relate to the adoption by reference of federal gas safety requirements.

In summary, in order to continue the Commission's role as an agent for the federal pipeline safety program, the proposed change to the North Dakota Administrative Code Section 69-09-03-02 adopts by reference changes made to federal pipeline safety regulations since February 17, 2009. The proposed amendment will not have an incremental impact on the regulated community in excess of \$50,000.

Public Hearing and Comments

The Abbreviated Notice was published once in all 52 official county newspapers the week of July 2 through July 8, 2011. The Notice of Intent to Amend Administrative Rules and Notice of Public Hearing and proposed rules were also sent to those identified as interested or affected parties. The notices were forwarded on June 30, 2011, to the Legislative Council for publication.

A public hearing on the proposed rule changes was noticed for and held at 10:00 a.m. August 09, 2011. The hearing was held in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota. No one other than commission staff appeared at the hearing on this proposed rule. Commission staff testified at the hearing in support of the proposed rule.

The Commission allowed, after the conclusion of the rulemaking hearing, a comment period until August 19, 2011, 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.

The only written comments filed were received at the hearing and were those of Commission staff.

Discussion

Staff prepared and filed a statement regarding the required regulatory analysis, takings assessment, and small entity regulatory analysis.

Staff testified at the hearing that the proposed changes are intended to incorporate into state rules changes in federal rules that must also apply to the state gas pipeline safety program, and summarized these required changes.

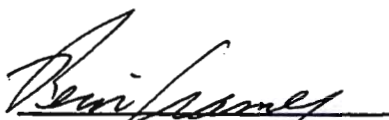
No other comments were received and no changes are being made to the rules as originally proposed.

Order

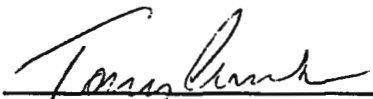
The Commission orders:

The proposed changes to Sections 69-09-03-02 of the North Dakota Administrative Code, as attached to and made a part of this order, be submitted to the Attorney General for an opinion that the rules are approved as to legality.

PUBLIC SERVICE COMMISSION



Kevin Cramer
Commissioner



Tony Clark
Chairman



Brian P. Kalk
Commissioner

PROPOSED RULE

69-09-03-02. Adoption of regulations. The following parts of title 49, Code of Federal Regulations in effect as of ~~August 1, 2000~~ June 22, 2011 are adopted by reference:

1. Part 190 - Department of Transportation Pipeline Safety Enforcement Procedures.
2. Part 191 - Department of Transportation Regulations for Transportation of Natural Gas by Pipeline; Reports of Leaks.
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Safety Standards.
4. Part 199 - Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquids Pipelines.

Copies of these regulations may be obtained from:

Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

History: Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999; August 1, 2000; January 1, 2002; November 1, 2003; May 1, 2005; July 1, 2006; April 1, 2008.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
2011 Gas Pipeline Safety
Rulemaking**

Case No. GS-11-79

**Statement on Regulatory Analysis, Small Entity Analysis and Takings
Assessment**

June 22, 2011

The purpose of this rulemaking is to adopt, by reference in state administrative rule, the most recent amendments to pipeline safety regulations adopted by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration. A summary/ explanation of the specific changes to be adopted by reference is attached.

Regulatory Analysis

N.D.C.C. § 28-32-08 requires an agency to prepare a regulatory analysis if the rule is expected to have an impact on the regulated community in excess of fifty thousand dollars. The law provides, in part:

2. The regulatory 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. A 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.

North Dakota individuals subject to Commission jurisdiction who may be affected by the federal amendments proposed to be adopted by reference for the state

gas pipeline safety program include intrastate natural gas transmission pipeline operators and intrastate natural gas distribution system operators.

The Commission acts as agent for the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (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 United States 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.

The intrastate natural gas transmission pipeline operators and intrastate natural gas distribution system operators must comply with the federal amendments and therefore were impacted in excess of fifty thousand dollars when PHMSA adopted the amendments. Consequently, adoption of these amendments for the state gas pipeline safety program will have no additional impact on the regulated community.

Small Entity Regulatory Analysis

N.D.C.C. § 28-32-08.1 requires that before adoption of any proposed rule, the adopting agency prepare a regulatory analysis in which the agency considers options to minimize adverse impact on small entities. The law provides, in part:

2. . . . The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:
 - a. Establishment of less stringent compliance or reporting requirements for small entities;
 - b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;
 - c. Consolidation or simplification of compliance or reporting requirements for small entities;
 - d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and
 - e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

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.

Takings Assessment

N.D.C.C. § 28-32-09 requires an entity to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. The law provides, in part:

1. . . . The agency's 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 is 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.