



Public Service Commission
State of North Dakota

COMMISSIONERS

Susan E. Wefald, President
Kevin Cramer
Tony Clark

Executive Director
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
web: www.nd.gov/psc
e-mail: ndpsc@nd.gov
TTY 800-366-6888 or 711
Fax 701-328-2410
Phone 701-328-2400

February 15, 2008

John Walstad, Code Revisor
Legislative Council
State Capitol
Bismarck, North Dakota 58505

Re: Public Service Commission
Gas Safety
Rulemaking
Case No. GS-06-510

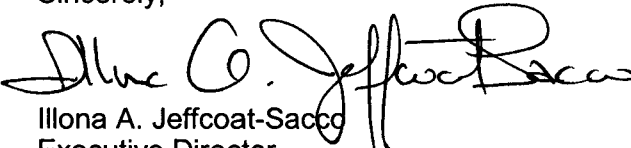
Dear Mr. Walstad:

Enclosed please find a copy of the amendments to Section 69-09-03-02 of the North Dakota Administrative Code concerning gas pipeline safety. The Commission's December 31, 2007 order includes a summary of the comments and the written record of the agency's consideration of all comments. A copy of the order is attached.

By letter dated February 14, 2008 the Attorney General approved the proposed rules as to their legality. On December 31, 2007 the Public Service Commission adopted the rules subject to approval of the Attorney General, and is now submitting the rules for publication in the North Dakota Administrative Code.

Thank you for your attention to this matter.

Sincerely,

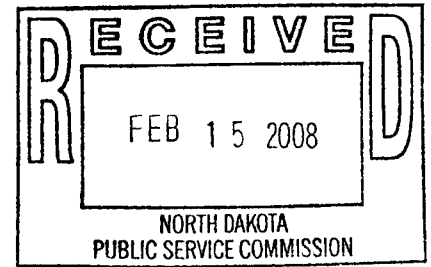

Illona A. Jeffcoat-Sacco
Executive Director

Enclosures



Wayne Stenehjem
ATTORNEY GENERAL

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL
STATE CAPITOL
600 E BOULEVARD AVE DEPT 125
BISMARCK, ND 58505-0040
(701) 328-2210 FAX (701) 328-2226



OPINION

February 14, 2008

Ms. Illona A. Jeffcoat-Sacco
Executive Director
North Dakota Public Service Commission
600 E Boulevard Ave Dept 408
Bismarck, ND 58505-0480

Dear Ms. Jeffcoat-Sacco:

The Office of Attorney General has examined the proposed amendments to N.D.A.C. § 69-09-03-02 concerning gas pipeline safety (Case No. GS-06-510), along with the notice of the proposed rules, the publication of that notice, and the filing of that notice with the Legislative Council. This office has also determined that 1) a written record of the agency's consideration of any comments to the proposed rules was not made because there were no comments, 2) a regulatory analysis was issued, 3) a takings assessment was prepared, 4) a small entity regulatory analysis and an economic impact statement were not prepared because the rules are required by federal law, and 5) the proposed rules are within the agency's statutory authority.

These administrative rules are in compliance with N.D.C.C. ch. 28-32 and are hereby approved as to their legality. Upon final adoption, these rules may be filed with the Legislative Council.

Sincerely,

Wayne Stenehjem
Attorney General

cc: John Walstad, Legislative Council

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Gas Pipeline Safety
Rulemaking**

Case No. GS-06-510

ORDER ADOPTING RULES

December 31, 2007

Appearances

Commissioners Susan Wefald, Kevin Cramer, and Tony Clark.

William Binek, Chief Counsel, as Hearing Officer

Preliminary Statement

On October 3, 2007, the North Dakota Public Service Commission (Commission) issued a formal Notice of Proposed Rulemaking and an Abbreviated Notice proposing to revise section 69-09-03 of the Administrative Code relating to the Commission's Gas Safety Program.

The Commission proposed to adopt by reference the 2006 federal Gas Pipeline Safety rule amendments. Generally, these proposed changes relate to certain integrity management standards for gas transmission lines, a consensus standard to distinguish onshore gathering lines from other gas pipelines and production operations, the establishment of safety rules for certain onshore gathering lines in rural areas, revisions to current rules for certain onshore gathering lines in non-rural areas; and the incorporation by reference all or parts of new editions of voluntary consensus technical standards to enable pipeline operators to utilize current technology, materials, and practices.

Public Hearing

A public hearing on the proposed rule changes was noticed for and held at 1:00 p.m. November 26, 2007. The hearing was held in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The Abbreviated Notice was published once in all official county newspapers. The notices were also forwarded to the Legislative Council for publication at least 30 days in advance of the hearing.

The Commission allowed, after the conclusion of the rulemaking hearing, a comment period until December 6, 2007, 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 and the only testimony received at the hearing were those of Commission staff. Staff testified that the proposed changes were 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. 101** - Under federal regulations governing integrity management of gas transmission lines, if an operator uses direct assessment to evaluate corrosion risks, it must carry out the direct assessment according to existing federal corrosion standards. The new federal rule broadens the application of federal assessment requirements by prescribing similar standards operators must meet when they use direct assessment on certain other onshore gas, hazardous liquid, and carbon dioxide pipelines. We agree that broadening the application of direct assessment standards will enhance public confidence in the use of direct assessment to assure pipeline safety, and we agree.
2. **49 CFR Part 192 - Amendment No. 102** - This rule adopts a consensus standard to distinguish onshore gathering lines from other gas pipelines and production operations. In addition, it establishes safety rules for certain onshore gathering lines in rural areas and revises current rules for certain onshore gathering lines in non-rural areas. Operators will now use a new risk-based approach to determine which onshore gathering lines are subject to federal gas pipeline safety rules and which of these rules the lines must meet. We agree that this action will reduce disagreements over classifications of onshore gathering lines, increase public confidence in the safety of onshore gathering lines, and provide safety rules consistent with the risks of onshore gathering lines.
3. **49 CFR Part 192 - Amendment No. 103** - This rule updates the pipeline safety regulations to incorporate by reference all or parts of new editions of voluntary consensus technical standards. State rules should reflect these updates because they enable pipeline operators to utilize current technology, materials, and practices.


Order

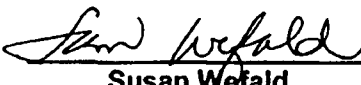
The Commission orders:


1. The proposed changes to Section 69-09-03 of the North Dakota Administrative Code, as attached to and made a part of this order, are adopted contingent upon approval by the Attorney General;

2. The proposed rules, as attached to and made a part of this order, shall be submitted to the Attorney General for an opinion as to legality.

PUBLIC SERVICE COMMISSION


Tony Clark
Commissioner


Susan Wefald
President


Kevin Cramer
Commissioner

GAS SAFETY PROPOSED RULES FOR 2006

69-09-03-02. Adoption of regulations. The following parts of title 49, Code of Federal Regulations in effect as of ~~October 1, 2005~~ December 31, 2006, 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 Gas 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.

General Authority: NDCC 28-32-02
Law Implemented: NDCC 49-02-01.2

State of North Dakota

Public Service Commission

**Public Service Commission
Gas Pipeline Safety
Rulemaking**

Case No. GS-06-510

Statement on Regulatory Analysis and Takings Assessment

December 27, 2006

The purpose of the 2006 Gas Pipeline Safety rule amendments, enacted by the federal government and to be adopted by reference into state administrative rule, consist of the following: prescribes similar standards as the current standards governing integrity management of gas transmission lines that operators must meet when they use direct assessment on certain other onshore gas, hazardous liquid, and carbon dioxide pipelines; adopts a consensus standard to distinguish onshore gathering lines from other gas pipelines and production operations, and establishes safety rules for certain onshore gathering lines in rural areas and revises current rules for certain onshore gathering lines in non-rural areas; and, updates the pipeline safety regulations to incorporate by reference all or parts of new editions of voluntary consensus technical standards to enable pipeline operators to utilize current technology, materials, and practices.

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 natural gas operators.

None of the above proposed federal amendments are 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 have any affect on takings.

The purpose of the proposed federal amendments are clearly stated above

We do not expect any impact on private property owners as a result of the proposed federal amendments.

We do not expect the proposed federal amendments to constitute a taking; therefore, there should be no cost to the state.

Subsection e. is not applicable because the proposed federal amendments will not limit the use of private real property.

Subsection f. is not applicable because the proposed federal amendments will not limit the use of private real property.

State of North Dakota

Public Service Commission

**Public Service Commission
Gas Pipeline Safety
Rulemaking**

Case No. GS-06-510

Statement on Small Entity Regulatory Analysis

December 15, 2006

The purpose of the 2006 Gas Pipeline Safety rule amendments, enacted by the federal government and to be adopted by reference into state administrative rule, consist of the following: prescribes similar standards as the current standards governing integrity management of gas transmission lines that operators must meet when they use direct assessment on certain other onshore gas, hazardous liquid, and carbon dioxide pipelines; adopts a consensus standard to distinguish onshore gathering lines from other gas pipelines and production operations, and establishes safety rules for certain onshore gathering lines in rural areas and revises current rules for certain onshore gathering lines in non-rural areas; and, updates the pipeline safety regulations to incorporate by reference all or parts of new editions of voluntary consensus technical standards to enable pipeline operators to utilize current technology, materials, and practices.

Although this small entity 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, we do not believe that these proposed rules will have an adverse regulatory affect on any small entity. On the contrary, all of the above amendments contribute to an increase in public safety.

**TESTIMONY OF ALAN MOCH
BEFORE THE PUBLIC SERVICE COMMISSION
Case No. GS-06-510
Gas Pipeline Safety Rulemaking**

November 26, 2007

Good afternoon! My name is Alan Moch. I am employed by the Public Service Commission as Director of its Testing and Safety Division. I am also designated as one of the State's two Gas Pipeline Safety Inspectors.

The North Dakota Public Service Commission participates in, and receives some funding from the Federal/State Gas Pipeline Safety Program. The Commission acts as agent for the U.S. 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 an 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. The initial adoption took place on June 1, 1984, with additional rulemaking proceedings, such as this, held annually, if necessary, to continue to amend the standards. The rules offered here today come to the Commission as Final Rules from the U.S. Department of Transportation, Pipeline and Hazardous Material Safety Administration's Office of Pipeline Safety rulemaking proceedings.

The 2006 Gas Pipeline Safety rule amendments enacted by the federal government and to be adopted by reference into state administrative rule, consist of the following changes to the federal gas safety standards:

49 CFR Part 192 - Amendment No. 101 - Under current regulations governing integrity management of gas transmission lines, if an operator uses direct assessment to evaluate corrosion risks, it must carry out the direct assessment according to PHMSA standards. In response to a statutory directive, this Final Rule prescribes similar standards operators must meet when they use direct assessment on certain other onshore gas, hazardous liquid, and carbon dioxide pipelines. PHMSA believes broader application of direct assessment standards will enhance public confidence in the use of direct assessment to assure pipeline safety. This Final Rule took effect on November 25, 2005.

49 CFR Part 192 - Amendment No. 102 – This action adopts a consensus standard to distinguish onshore gathering lines from other gas pipelines and production operations. In addition, it establishes safety rules for certain onshore gathering lines in rural areas and revises current rules for certain onshore gathering lines in non-rural areas. Operators will use a new risk-based approach to determine which onshore gathering lines are subject to PHMSA's gas pipeline safety rules and which of these rules the lines must meet. PHMSA intends this action to reduce disagreements over classifications of onshore gathering lines, increase public confidence in the safety of onshore gathering lines, and provide safety rules consistent with the risks of onshore gathering lines. This final rule took effect on April 14, 2006.

49 CFR Part 192 - Amendment No. 103 – This final rule updates the pipeline safety regulations to incorporate by reference all or parts of new editions of voluntary consensus technical standards to enable pipeline operators to utilize current technology, materials, and practices. This final rule took effect on July 10, 2006.

Since the adoption of the above Amendments is mandated by Federal law, no Regulatory Analysis, Takings Assessment, or Small Entity Regulatory Analysis is required for this rule adoption. However, a Regulatory Analysis Statement and Takings Assessment, and a Small Entity Regulatory Analysis was prepared and submitted on December 15, 2006, for this gas pipeline safety rulemaking proceeding. A preliminary analysis of the Amendments, as outlined above, showed that the impact to the State's regulated community would be less than \$50,000, and have no affect on takings.

The Commission has not received any written comments concerning this proceeding.

This concludes my testimony. I would be happy to answer any questions on the above rules at this time.