

LEGISLATIVE COUNCIL
ADMINISTRATIVE RULES COMMITTEE

March 12, 2008

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

Mr. Chairman and committee members, my name is Alan Moch, Director of the Commission's Testing and Safety Division. I am here to respond to questions posed 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 October 3, 2007, the North Dakota Public Service 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 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 as required by North Dakota Century Code Chapter 28-32. 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 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.

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.**

Legal notices associated with this rulemaking proceeding cost \$524.13. 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. 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. The Commission agrees that broadening the application of direct assessment standards will enhance public confidence in the use of direct assessment to assure pipeline safety.
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. The Commission agrees 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.

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. The proposed rules are not expected to have an impact on the regulatory community in excess of \$50,000. A copy is included.

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 Statement on Small Entity Regulatory Analysis was prepared. A copy is 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. A copy is 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, that completes my testimony. I would be happy to respond to any questions that your committee might have.

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.