



Public Service Commission

State of North Dakota

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April 7, 2011

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Jeffrey D. Wiese, Associate Administrator for Pipeline Safety
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, SE
Second Floor, East Building
Washington, DC 20590

Mr. Wiese:

Enclosed is a copy of the North Dakota Public Service Commission's April 6, 2011 Order in its Case No. GS-10-585 granting the request of Montana-Dakota Utilities Co. (MDU) for a waiver of 49 CFR Part 192.285(c). The Commission found that MDU's request for waiver should be approved and that MDU's proposal should be implemented subject to Pipeline and Hazardous Materials Safety Administration concurrence.

MDU operates both an intrastate distribution system and an intrastate transmission system in North Dakota. MDU may be contacted through Mr. Danny Hood, Staff Engineer, 400 North 4th Street, Bismarck ND 58501. MDU's contact phone number is (701)-222-7900.

We understand the waiver granted by the Commission is similar to waiver approved by the States of South Dakota, Wyoming and Montana.

Under current Guidelines for States Participating in the Pipeline Safety Program, PHMSA has 60 days from today's date to respond.

If you have any questions or comments, please contact me at 701-328-4077.

Sincerely,

Patrick Fahn, Director
Compliance and Competitive Markets

c:
Tamie Aberle, MDU
Danny Hood, MDU
Leonard Steiner, State Liaison

13 GS-10-585 Filed: 4/7/2011 Pages: 3
Letter to PHMSA requesting concurrence

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Montana-Dakota Utilities Co.
Waiver of the federal pipeline safety regulations
Application**

Case No. GS-10-585

**ORDER
April 6, 2011**

On September 14, 2010, Montana-Dakota Utilities Co. (MDU) filed an application for a waiver of 49 CFR Part 192.285(c), adopted by reference under North Dakota Administrative Code section 69-09-03-02 relating to the requirements for a person making plastic pipe joints. 49 CFR Part 192.285(a) requires persons making plastic joints be qualified under applicable joining procedures and 49 CFR Part 192.285(c) provides those procedures. 49 CFR Part 192.285(c) requires:

- (c) A person must be requalified under an applicable procedure, if during any 12-month period that person:
 - (1) Does not make any joints under that procedure; or
 - (2) Has 3 joints or 3 percent of the joints made, whichever is greater, under that procedure that are found unacceptable by testing under 49 CFR Part 192.513.

Waivers of pipeline safety federal regulation for Intrastate pipelines may be granted by the state authority subject to federal concurrence as provided for in the United States Department of Transportation's Guideline for States Participating in the Gas Pipeline Safety Program, Chapter 3, Waiver of Federal Regulations, 3.2.2 Intrastate Pipelines. Operators may request a waiver when it is not practical to comply with a regulation of general applicability.

MDU proposes:

- (c) A person must be requalified under an applicable procedure, at least once each calendar year at intervals not exceeding 15 months, if that person:
 - (1) Does not make any joints under that procedure in the preceding calendar year; or
 - (2) Has 1 joint that is found to be unacceptable by testing under 49 CFR Part 192.513.

On February 9, 2011, the Commission issued a Notice of Opportunity for Hearing and Notice of informal Hearing setting March 25, 2011, as the deadline for filing comments and requests for a hearing, and setting March 23, 2011 as the date for the

informal hearing. No comments or requests for the hearing were received. On March 23, 2011 the Commission held the informal hearing to discuss the proposed waiver with representatives of MDU and staff.

MDU contends that, under the regulation of general applicability, they are not able to perform qualification testing at the most advantageous time from a cost and quality perspective. For MDU, the current 12-month retest requirement results in testing about every 11 months which eventually results in requalification testing performed in the middle or the end of the construction season.

MDU asserts that its proposed waiver would allow requalification of plastic joining personnel just prior to the construction season, which would provide for the highest quality of workmanship. Just prior to the construction season is the end of the time period that the fewest plastic joints are made and the beginning of when the most plastic joints are to be made. In addition, testing plastic joining using the same group of testers in the same time frame will result in more consistency in evaluation and less chance that a records error could result in a joint being made by a non-qualified person.

The Commission finds that it is not practical for MDU to comply with the general applicability of 49 CFR Part 192.285(c). The Commission also finds that MDU's proposed waiver is more stringent than the current pipeline safety regulation.

The Commission finds that MDU's request for waiver in this case should be approved and should be implemented.

Order

The Commission orders that Montana-Dakota Utilities Co.'s proposed waiver of the requirement of 49 CFR Part 192.285(c), is GRANTED, subject to Pipeline and Hazardous Materials Safety Administration concurrence.

PUBLIC SERVICE COMMISSION



Kevin Cramer
Commissioner



Tony Clark
Chairman



Brian P. Kalk
Commissioner