



Public Service Commission  
State of North Dakota

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Brian P. Kalk  
Kevin Cramer

Executive Secretary  
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21 November 2011

Mr. John Walstad  
Code Revisor  
North Dakota Legislative Council  
State Capitol  
600 East Boulevard, 2<sup>nd</sup> Floor  
Bismarck, ND 58505-0360

RE: Gas Safety Rulemaking  
Case No. GS-11-79

Dear Mr. Walstad:

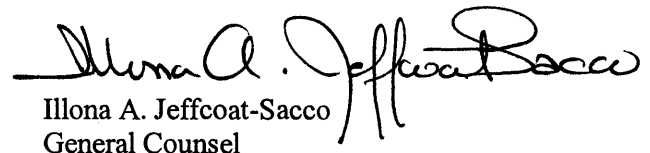
Enclosed for publication in the North Dakota Administrative Code please find a copy of amendments to N.D. Admin. Code section 69-09-03-02 relating to Gas Pipeline Safety.

In support of this filing, enclosed please find copies of:

- 10 November 2011 Public Service Commission Motion with the amendments as adopted and approved;
- Letter from the Attorney General dated 24 October 2011 approving the proposed rules as to legality;
- The Public Service Commission's 20 September 2011 Order Submitting Rules to Attorney General, which includes a summary of all comments and is the written record of the agency's consideration of all comments for the captioned cases;
- Comments - The only comments filed were those of Commission staff and were received at the hearing; and
- The amendments originally proposed. Note – There was no change to the rules between the proposed and adoption.

Thank you for your attention to this matter.

Best regards,

  
Illona A. Jeffcoat-Sacco  
General Counsel

attachments

21 **GS-11-79** Filed: 11/21/2011 Pages: 10  
**Letter to Legislative Council enclosing rules for  
publication**

Public Service Commission

APPROVED

DATE: 11-10-11

Ⓜ

**MOTION**

**November 10, 2011**

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

**Case No. GS-11-79**

Having been approved by the Attorney General, I move the Commission adopt the proposed amendments to North Dakota Administrative Code Section 69-09-03-02, and forward the rules to the Legislative Council for publication, Case No. GS-11-79, 2011 Gas Pipeline Safety Rules, Rulemaking.

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, 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.

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



Wayne Stenejem  
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  
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OPINION

**RECEIVED**

October 24, 2011

OCT 24 2011

**PUBLIC SERVICE COMMISSION**

Ms. Ilona A. Jeffcoat-Sacco  
General Counsel  
Public Service Commission  
600 E Boulevard Ave Dept 408  
Bismarck, ND 58508-0480

Dear Ms. Jeffcoat-Sacco:

The Office of Attorney General has examined the proposed amendment to N.D.A.C. § 69-09-03-02 concerning federal gas pipeline safety regulations (Case No. GS-11-79), 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 made, 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 Stenejem  
Attorney General

eee/vkk

cc: John Walstad, Legislative Council

**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, 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.

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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  
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.

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.
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