

PUBLIC SERVICE COMMISSION

Memorandum

TO: Commissioners Clark, Kalk and Cramer
FROM: Mark Gruman *MG*
CC: Patrick Fahn
DATE: March 2, 2012
SUBJECT: MDU Request for Jurisdictional Determination for Natural Gas Pipelines
PU-12-65

On February 12, 2012 Montana-Dakota Utilities Co., (MDU) requested that the Commission conduct a jurisdictional determination, pursuant to N.D. Admin. Code Chapter 69-06-02.1, concerning four gas pipeline segments they are intending upon constructing for the purpose of serving an end-use retail natural gas customer. The four proposed pipeline segments are described as follows:

1. Approximately 3 miles of 6-inch plastic pipe from a new town border station to be located near WBIB's transmission line serving the Garden Creek Processing plant east of Watford City, North Dakota (Watford City Fill Station);
2. Approximately 1 mile of 6-inch plastic pipe from a new town border station to be located near WBIP's transmission line near Alexander, North Dakota (Alexander Fill Station);
3. Approximately 7 miles of 6-inch plastic pipe beginning from a 12-inch distribution loop line MDU will be installing in 2012, located near the junction of Highway 2/85 and County Road 6 to a location where Highway 2 North of Williston curves to the East (13 Mile Corner Station);
4. Approximately 1 to 3 mile(s) of 4 or 6-inch plastic pipe from a new town border station located near WBIP's transmission line near Ray, North Dakota (R & T Fill Station).

MDU indicates that the four proposed pipeline segments will be comprised of plastic pipe between 4 to 6 inches in diameter and be operated at 92 psig. Additionally, MDU estimates the volume in the proposed pipeline segments to range between 24,500 dk and 29,000 dk per month.

A "transmission facility" is defined as "[a] gas or liquid transmission line ... designed for or capable of transporting ... gas, liquid hydrocarbons [or] liquid hydrocarbon products N.D.C.C. § 49-22-03(12). "An oil or gas pipeline gathering system" is not a transmission facility. *Id.* "[A] gathering system includes ... pipelines and associated facilities used to collect gas from the well to the gas processing facility at which end-use consumer-quality gas is produced, with or without the addition of odorant". *Id.*

MDU advocates that the four proposed pipeline segments qualify as a gathering system pursuant, in part, to a June 4, 1985 Commission policy (1985 policy) indicating that “farm tap pipelines” are non-jurisdictional under Chapter 49-22 of the North Dakota Century Code. Quoting from the 1985 policy “These systems, farm tap pipelines, distribution systems and return fuel lines transport gas ... are used for shorter distances at lower pressures and lesser volumes [and] generally receive gas from transmission lines for consumption by the end user”.

MDU cited *Capital Electric Cooperative, Inc. v. Public Service Commission*, 534 N.W.2d 587 (ND 1995) in furtherance of their position. Specifically, quoting *Horst v. Guy*, 219 N.W.2d 153, 159 (N.D. 1974) in his concurring opinion in *Capital*, Justice Sandstrom states:

“We have often held that in construing a statute of doubtful meaning the court will give weight to the long-continued, practical construction placed thereon by the officers charged with the duty of executing and applying the statute”.

Because the proposed gas lines will be comprised of plastic pipe, possess a diameter of between 4 and 6 inches, and operate at a significantly lower pressure (92 psig) than what the Commission historically deems to be transmission lines¹, it is my position that the four proposed pipeline segments qualify as a gathering system and therefore fall outside our siting authority.

¹ Past transmission lines sited by the Public Service Commission include: (1) The Hiland 8-Inch Nat. Gas Main & Lateral Pipeline, Case No. PU-10-555, 5.1 miles in length, 8 inch steel diameter, max allowable operating pressure (MAOP) 1440 psig; and the (2) Whiting Oil and Gas Corporation 6-inch Natural Gas Line, Case No. PU-08-843, 16 miles in length, 6 inch steel diameter, MAOP 720 psig.