

TESTIMONY

Presented by: Patrick Fahn
Director, Public Utilities Division
Public Service Commission

Before: Administrative Rules Committee
The Honorable Bill Devlin, Chairman

RE: Gas Pipeline Safety – Case No. GS-15-187 – Section 69-09-03-02

Date: September 13, 2016

Mr. Chairman and committee members, my name is Patrick Fahn. I am the Director of the Public Utilities Division with the North Dakota Public Service Commission. The Commission asked me to provide this testimony today concerning rules recently promulgated by the Public Service Commission. Please see page number 219 of the October 2016, North Dakota Administrative Code, Supplement 362 for our proposed rule.

The purpose of this testimony is to describe the proposed administrative rule changes pertaining to pipeline safety. Under North Dakota Administrative Code chapter 69-09-03, the Commission adopts by reference the most recent amendments to pipeline safety regulations adopted by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA).

For gas pipeline safety, this proposed rule change adopts, by reference, amendments to safety regulations that have been adopted by PHMSA since November 6, 2014, current to December 31, 2015.

For hazardous liquids pipeline safety, the Public Service Commission currently has statutory authority but hasn't initiated a hazardous liquids safety program agreement with PHMSA. With Legislative budget approval, the Commission could implement a hazardous liquids safety program in the future and therefore is continuing to adopt updated PHMSA hazardous liquids pipeline safety rules.

A description of PHMSA rule amendments since November 6, 2014, current to December 31, 2015 is attached.

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.

Ans: 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.

Ans: Yes

The purpose of this rulemaking is to adopt, by reference in state administrative rule, the most recent amendments to pipeline safety regulations adopted by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA). For gas pipeline safety and hazardous liquids pipeline safety, this rule change adopts amendments to safety regulations that have been adopted by PHMSA since November 6, 2014, current to December 31, 2015. For hazardous liquids pipeline safety, this rule change also adopts PHMSA rules related to response plans for oil pipeline. Regarding hazardous liquids pipelines, the Public Service Commission currently has statutory authority concerning pipeline safety but hasn't initiated a safety program agreement with PHMSA.

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.

Ans:

The Abbreviated Notice was published once in all county newspapers between January 13 and January 18, 2016. The notices were also forwarded to the Legislative Council for publication at least 30 days in advance of the hearing. A public hearing was noticed for and held at 10:00 a.m., February 18, 2016. 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 February 29, 2016, 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.

Commission staff testified at the hearing. On March 9, 2016, the Commission adopted an Order Submitting Rules to Attorney General for an opinion on legality. The Attorney General approved the rules by letter dated April 25, 2016.

The Commission then adopted the rules changes on May 18, 2016.

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.

Ans:

No comments other than staff testimony were received and the Commission agreed with the rules as originally 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.

Ans:

This rulemaking case was combined with a rulemaking case for the Reclamation Division of the Public Service Commission and the Notice of January 5, 2016 covered both proposals. The cost for publishing the combined notice was \$3,732. 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.

Ans:

The purpose of this rulemaking is to adopt, by reference in state administrative rule, the most recent amendments to pipeline safety regulations adopted by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA). For gas pipeline safety and hazardous liquids pipeline safety, this rule change adopts amendments to safety regulations that have been adopted by PHMSA since November 6, 2014, current to December 31, 2015. For hazardous liquids pipeline safety, this rule change also adopts PHMSA rules related to response plans for oil pipeline. Regarding hazardous liquids pipelines, the Public Service Commission currently has statutory authority concerning pipeline safety but hasn't initiated a safety program agreement with PHMSA.

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.

Ans:

The proposed rule changes are not expected to have an impact on the regulated community in excess of fifty thousand dollars and there have been no requests for any regulatory analyses. Consequently, no regulatory analysis was required. A statement to this effect was prepared and a copy is attached.

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 copies.

Ans:

The proposed rule changes are not expected to have an adverse effect on small entities. A statement to this effect was prepared and a copy is attached.

9. Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency. If so, please provide copies of a fiscal note.

Ans: Yes

A fiscal note was prepared and a copy is attached.

10. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. Please provide a copy if one was prepared.

Ans:

The proposed rule changes would not limit the use of private real property and would not result in a taking or regulatory taking. A statement to this effect was prepared and a copy is attached.

11. 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. If these rules were adopted as emergency

(interim final) rules, what steps were taken to make the rules known to persons who can reasonably be expected to have a substantial interest in the rules?

Ans: N/A

Mr. Chairman, this completes my testimony. I would be happy to respond to any questions the committee might have.

OCTOBER 2016

CHAPTER 69-09-03

69-09-03-02. Adoption of regulations.

The following parts of title 49, Code of Federal Regulations in effect as of ~~November 6, 2014~~ December 31, 2015, are adopted by reference:

1. Part 190 - Pipeline Safety Programs and Rulemaking Procedures.
2. Part 191 - Transportation of Natural Gas and Other Gas by Pipeline, Annual Reports, Incident Reports, and Safety-Related Condition Reports.
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.
4. Part 194 - Response Plans for Onshore Oil Pipelines
- 4.5. Part 195 - Transportation of Hazardous Liquids by Pipeline.
- 5.6. Part 199 - Drug and Alcohol Testing.

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; January 1, 2010; April 1, 2012; April 1, 2015; October 1, 2016.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

GS-15-187 Pipeline Safety Rulemaking

Adoption of Title 49 Code of Federal Regulations Part 194 – Response Plans for Onshore Oil Pipelines

SUMMARY: In its last Pipeline Safety Rulemaking (Case No. GS-14-761), the Commission adopted 49 CFR Part 195 -- Transportation of Hazardous Liquids by Pipeline by reference. The Commission now realizes that, implementation of a hazardous liquids pipeline safety program requires that 49 CFR Part 194 also be adopted. Part 194 contains requirements for oil spill response plans to reduce the environmental impact of oil discharged from onshore oil pipelines.

Summary of Amendments to the Code of Federal Regulations after November 6, 2014 through December 31, 2015

Federal Register 60 FR 12762: amendment to various sections of 49 CFR 191 – Transportation of Natural and Other Gas by Pipeline: Annual Reports Incident Reports, and Safety-Related Condition Reports

PHMSA SUMMARY: Amended the pipeline safety regulations to make miscellaneous changes that update and clarify certain regulatory requirements. These amendments address several subject matter areas including the performance of post-construction inspections, leak surveys of Type B onshore gas gathering lines, qualifying plastic pipe joiners, regulation of ethanol, transportation of pipe, filing of offshore pipeline condition reports, and calculation of pressure reductions for hazardous liquid pipeline anomalies.

PHMSA (Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation)

Federal Register 80 FR 163: amendment to several sections of 49 CFR 192 – Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards

PHMSA SUMMARY: Amended the Federal pipeline safety regulations to incorporate by reference new, updated or reaffirmed editions of the voluntary consensus standards that are applicable to pipelines subject to the requirements of the Federal pipeline safety regulations.

Voluntary consensus standards are technical standards developed or adopted by domestic and international organizations. These organizations use agreed-upon

procedures to update and revise their published standards every three to five years to reflect modern technology and best technical practices.

Federal Register 80 FR 12762: amendment to several sections of 49 CFR 192 – Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards

PHMSA SUMMARY: Amended the pipeline safety regulations to make miscellaneous changes that update and clarify certain regulatory requirements. These amendments address several subject matter areas including the performance of post-construction inspections, leak surveys of Type B onshore gas gathering lines, qualifying plastic pipe joiners, regulation of ethanol, transportation of pipe, filing of offshore pipeline condition reports, and calculation of pressure reductions for hazardous liquid pipeline anomalies.

Federal Register 80 FR 168: amendment to various sections of 49 CFR 195 – Transportation of Hazardous Liquids by Pipeline

PHMSA SUMMARY: Amended the Federal pipeline safety regulations to incorporate by reference new, updated or reaffirmed editions of the voluntary consensus standards that are applicable to pipelines subject to the requirements of the Federal pipeline safety regulations.

Federal Register 80 FR 12752: amendment to various sections of 49 CFR 195 – Transportation of Hazardous Liquids by Pipeline

PHMSA SUMMARY: Amended the pipeline safety regulations to make miscellaneous changes that update and clarify certain regulatory requirements. These amendments address several subject matter areas including the performance of post-construction inspections, leak surveys of Type B onshore gas gathering lines, qualifying plastic pipe joiners, regulation of ethanol, transportation of pipe, filing of offshore pipeline condition reports, and calculation of pressure reductions for hazardous liquid pipeline anomalies.

Federal Register 80 FR 168: amendment to 49 CFR 199.11

PHMSA SUMMARY: Amended the Federal pipeline safety regulations to incorporate by reference new, updated or reaffirmed editions of the voluntary consensus standards that are applicable to pipelines subject to the requirements of the Federal pipeline safety regulations.

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Gas Pipeline Safety
Rulemaking**

Case No. GS-15-187

**Statement Regarding
Regulatory Analysis, Small Entity Analysis and Impact, and
Takings Assessment**

January 5, 2016

The purpose of this rulemaking is to adopt, by reference in state administrative rule, the most recent amendments to pipeline safety regulations adopted by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA).

For gas pipeline safety, this rule change adopts amendments to safety regulations that have been adopted by PHMSA since November 6, 2014, current to December 31, 2015. A summary/explanation of the specific changes to be adopted by reference for pipeline safety is attached.

For Title 49 Code of Federal Regulations Part 194 – Response Plans for Onshore Oil Pipelines, the Public Service Commission currently has statutory authority concerning pipeline safety of hazardous liquids pipelines, but hasn't initiated that safety program agreement with PHMSA. In order to implement such a program, the Public Service Commission must adopt all pipeline safety rules adopted by PHMSA. The Commission is proposing to adopt all PHMSA regulations for hazardous liquids pipeline safety in effect as of December 31, 2015, including adoption of Part 194.

Regulatory Analysis

N.D.C.C. § 28-32-08 requires an agency to prepare a regulatory analysis if the rule is expected to have an impact on the regulated community in excess of fifty thousand dollars, or if one is requested as provided in the law. The law provides, in part:

2. The regulatory 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. A 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.

North Dakota system operators subject to Commission jurisdiction who may be affected by the federal regulations proposed to be adopted by reference for the state gas pipeline safety program include intrastate natural gas transmission pipeline operators, intrastate natural gas distribution system operators, and certain natural gas gathering system operators. North Dakota system operators subject to Commission jurisdiction who may be affected by the federal regulations proposed to be adopted by reference for the state hazardous liquids pipeline safety program include intrastate hazardous liquids transmission system operators and certain intrastate hazardous liquids gathering system operators.

The Commission acts as agent for the United States 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 a 601055(a) Title 49 agreement with the United States 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.

The intrastate natural gas transmission pipeline operators and intrastate natural gas distribution system operators must comply with the federal amendments and therefore were impacted financially as a result of PHMSA's adoption of the amendments. Adoption of these amendments for the state gas pipeline safety program will have no additional impact on the regulated community.

A regulatory analysis has not been requested, and the proposal is not expected to impact the regulated community by an amount in excess of fifty thousand dollars (\$50,000.00). Consequently, no regulatory analysis has been prepared.

Small Entity Regulatory Analysis

N.D.C.C. § 28-32-08.1 requires that before adoption of any proposed rule, the adopting agency prepare a regulatory analysis in which the agency considers options to minimize adverse impact on small entities. The law provides, in part:

2. . . . The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:

- a. Establishment of less stringent compliance or reporting requirements for small entities;
- b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;
- c. Consolidation or simplification of compliance or reporting requirements for small entities;
- d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and
- e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

A small entity regulatory analysis and an economic impact statement are not required because the proposed amendments to existing rule for both the natural gas and hazardous liquids pipeline systems are mandated by federal law.

Takings Assessment

N.D.C.C. § 28-32-09 requires an entity to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. The law provides, in part:

The proposed rules should not limit the use of private property so a takings assessment has not been made.

FISCAL NOTE

18 March 2016

Adoption of the proposed rules is not expected to have any impact on State expenditures or revenues.

However, because the North Dakota Gas Safety Program is administered pursuant to a grant from the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA), failure to adopt the rules could negatively impact the general fund.

In 2014, the grant reimbursed the state for 80% of the estimated budget, but the percentage reimbursed can be reduced for failure to adopt the required standards in a timely manner. Failure to adopt the standards could reduce the reimbursement to the general fund by approximately two percent of the 80%, or approximately \$6,300.