

November 10, 2016

Darrell Nitschke, Executive Director  
North Dakota Public Service Commission  
State Capitol Building, Dept. 408  
600 East Boulevard  
Bismarck, ND 59505-0480

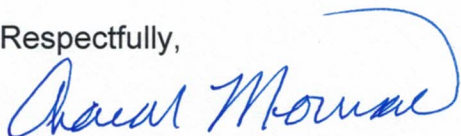
RE: Public Service Commission  
Montana-Dakota Utilities, Co.  
Pipeline Safety Cases

GS-15-705  
GS-15-711

Dear Mr. Nitschke:

Montana-Dakota Utilities, Co. and PSC Advocacy Staff submit for Commission  
decision the attached Consent Agreement.

Respectfully,



Aaron Morman  
Gas Pipeline Safety Program Manager  
North Dakota Public Service Commission

- 6 GS-15-711 Filed 11/10/2016 Pages: 8  
Revised Consent Agreement  
Public Service Commission Advocacy Staff / Montana Dakota Utilities  
Aaron Morman & Patrick Darras
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Revised Consent Agreement  
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**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

Public Service Commission	)	
Montana-Dakota Utilities Co.	)	GS-15-705
Pipeline Safety Case	)	GS-15-711

**CONSENT AGREEMENT**

**Preliminary Statement**

This Consent Agreement is entered into by and between Montana-Dakota Utilities, Co., a division of MDU Resources Group, Inc. ("MDU") and Public Service Commission Advocacy Staff ("Staff") (together, the "Parties") for resolution of Docket Nos. GS-15-705 ("Badlands Region Audit") and GS-15-711 ("Heartland Region Audit").

Badlands Region Audit: On August 11, 2015, the Public Service Commission Staff Gas Pipeline Safety Inspector, Aaron Morman (Inspector), conducted a standard records audit of the gas pipeline safety records for the natural gas distribution system operated by the MDU Badlands Region.

As a result of the audit, two probable violations of the pipeline safety regulations were identified. On October 30, 2015, Staff issued a Notice of Probable Violation (NOPV) alleging the following:

*Probable Violation 1:* MDU did not check and service Key Isolation Valve #17, the use of which may be necessary for the safe operation of the distribution system, within 15 months, but at least once each calendar year as required by 49 CFR § 192.747(a).

*Probable Violation 2:* MDU did not take prompt remedial action to correct valve #17 that was found inoperable or designate an alternative valve as required by 49 CFR § 192.747(b). Key Isolation Valve #17 was inoperable for at least 358 days.

See Notice of Probable Violation, October 30, 2015.

Heartland Region Audit: On September 19, 2015, the Inspector conducted a second standard records audit of the gas pipeline safety records for the natural gas distribution system operated by the MDU Heartland Region.

As a result of the audit, one probable violation of the gas pipeline safety regulations was identified. On November 2, 2015, Staff issued a NOPV alleging the following:

*Probable Violation 1:* MDU did not check and service Key Isolation Valve #637, the use of which may be necessary for the safe operation of the distribution system, within 15 months, but at least once each calendar year as required by 49 CFR § 192.747(a).

See Notice of Probable Violation, November 2, 2015. The probable violations identified above are collectively referred to herein as the "NOPVs".

MDU disputes the NOPVs and responded on November 25, 2015 contesting the allegations of the NOPVs with a written explanation and information that MDU believed demonstrated there were alternative means to isolate their systems and that the safety of their distribution systems was not compromised due to Valve #17 and Valve #637 being found inoperable. MDU requested an informal hearing. A meeting between MDU and the Staff took place on December 28, 2015 to discuss the NOPVs.

MDU and Staff engaged in good faith settlement discussions resulting in this Consent Agreement. Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and that an order approving this Consent Agreement is the most appropriate means of resolving the NOPVs, pursuant to North Dakota Administrative Code § 69-09-03-02 and 49 C.F.R. § 190.219, without

adjudication of any issue of fact or law, and upon consent and agreement of the parties, the following is agreed upon:

## **I. GENERAL PROVISIONS**

1. MDU agrees and understands that this Consent Agreement is subject to approval of the North Dakota Public Service Commission.
2. MDU acknowledges that MDU and its pipeline system are subject to the jurisdiction of the North Dakota Public Service Commission and the laws, rules and administrative orders issued thereunder. For purposes of this Consent Agreement, MDU acknowledges that it received proper notice in this proceeding and that the NOPVs state claims upon which relief may be granted pursuant to North Dakota Century Code § 49-02-01.2 and 49 CFR § 190.
3. MDU agrees to complete the actions specified in Section II and pay the civil penalty as set forth in Section III of this Consent Agreement as a complete and final settlement of the allegations set forth in the NOPVs.
4. MDU consents to the filing of this Consent Agreement and an Order Adopting this Consent Agreement (Order) and hereby waives any further procedural requirements with respect to its issuance. Subject to the Order approving this Consent Agreement, MDU understands and agrees to waive all rights to contest the NOPV, the right to be represented by legal counsel, the right to present evidence and arguments to the Commission, the right to cross examine witnesses, or contest the validity of this Consent Agreement and the Order Adopting this Consent Agreement, including all rights to administrative or judicial hearings or appeals. By agreeing to this Consent

Agreement, and subject to the Order Adopting this Consent Agreement, MDU waives all of those rights in their entirety.

5. This Consent Agreement shall apply to and be binding upon MDU and its successors and assigns. MDU agrees to provide a copy of this Consent Agreement and the Order Adopting this Consent Order to all of MDU's officers, employees and agents whose duties might reasonably include compliance with this Consent Agreement.

6. This Consent Agreement constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Agreement, and the Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Agreement, except that the terms of this Consent Agreement may be construed by reference to the NOPVs. Nothing in this Consent Agreement shall constitute an admission of fact or law by any party.

7. Nothing in this Consent Agreement affects or relieves MDU of its responsibility to comply with all applicable requirements of pipeline safety laws, rules and orders issued thereunder. Except with respect to the NOPVs which are being resolved by this Consent Agreement, nothing herein alters the Commission's authority to bring enforcement actions against MDU pursuant to pipeline safety laws, rules and orders issued.

## **II: Work to be Performed**

MDU shall make revisions to its Operations and Maintenance Plan to identify

and document the alternate gas shut-off methods to be used when key isolation valves or isolation methods normally used to isolate portions of their distribution systems are found to be inoperable. The revisions to MDU's Operations and Maintenance Plan to be made are specifically described on the attached Exhibit A and must be implemented and effective by MDU no later than January 15, 2017.

### **III: Civil Penalties**

8. The Commission has the authority to assess a civil penalty for violation of a rule or order of the Commission, not to exceed \$200,000 for each violation for each day that the violation continues, except that the maximum penalty may not exceed \$2,000,000 for any related series of violations. See N.D. Admin. Code § 49-07-05.1.

9. In determining the amount of a civil penalty under this part, the program manager shall consider the appropriateness of the penalty to the size of the business of the person charged, the nature, circumstances and gravity of the violation, the degree of culpability, any history of prior violations, the effect on the respondent's ability to continue in business, the good faith of the person charged in attempting to achieve compliance after notification of a violation, and such matters as justice may require. See N.D.C.C. § 49-07-05.1.

10. MDU agrees to remit a \$9,160 civil penalty, payable to the North Dakota Public Service Commission, within ten business days of service of an Order approving the Consent Agreement.

### **IV: Effective Date**

11. The "Effective Date" as used herein is the Order date of the Commission.

**V: Ratification**

12. The parties' undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind such party to this document.

13. The Parties hereby agree to all conditions and terms of this Consent Agreement.

**For MDU:**



Patrick Darras  
Vice President – Operations Montana-Dakota Utilities, Co.

Date: 11/10/16

**For PSC Staff:**



Aaron Morman  
Program Manager  
PSC Staff

Date: \_\_\_\_\_

## **EXHIBIT A**

**MDU Gas Distribution Standards System Operation & Maintenance Plan (O&M Plan)  
Section 9, page 21, 2(e) shall be amended and restated as follows:**

If Sectionalizing or Emergency valves cannot be fixed or cleared with a prompt remedial action, an alternate valve or valves, or alternate method to sectionalize, will be designated to isolate a desired area of the system. This designation shall be documented.