

TESTIMONY

Presented by: John Schuh
General Counsel
Public Service Commission

Before: Administrative Rules Committee
Honorable Bill Devlin, Chairman

RE: N.D. Admin. Code Article 69-10
Testing and Safety
PSC Case No. WM-20-369

N.D. Admin. Code Section 69-09-03-02
Pipeline Safety
PSC Case No. GS-20-370

Date: December 1, 2020

Mr. Chairman and committee members, my name is John Schuh. I am General Counsel for the North Dakota Public Service Commission. The Commission asked me to testify today concerning rules recently promulgated by the Public Service Commission.

Our responses to the questions are presented below with the question restated prior to our response. The Commission's order submitting rules to the Attorney General (Order) and the required analysis are provided and are referenced in response to these questions.

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

The rules did not result from changes made by the legislative assembly.

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.

N.D. Admin. Code Art. 69-10. Testing and Safety – No.

N.D. Admin. Code section 69-09-03-02. Pipeline Safety - The amendment to N.D. Admin. Code Section 69-09-03-02 is related to federal statute. This

amendment adopts by reference the most recent amendments to the pipeline safety regulations adopted by the US Department of Transportation. N.D.C.C. § 49-02-01.2 allows the commission to establish and enforce minimum safety standards for the design, construction, and operation of the facilities that are the subject of the administrative rule.

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.

The rulemaking procedure used, public notice given and the extent of the public hearings are described in the attached Order. The rules were found to be in substantial compliance with N.D.C.C. ch. 28-32 and approved as to their legality by the Attorney General on October 30, 2020.

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.

All written and oral comments, commission consideration, and changes made are discussed in the attached order.

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.

The total cost for publishing notices was \$3,064.64. 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.

Article 69-10 – Testing and Safety

The purpose of the proposed amendments to Article 69-10 is to update and clarify the administrative rules regarding standards for certifying and maintaining commercial weighing and measuring devices. The proposed amendments are not expected to have an impact on the regulated community in excess of \$50,000.

Section 69-09-03-02 – Pipeline Safety

The purpose of this amendment is to adopt 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). This rule change adopts amendments to safety regulations that have been adopted by PHMSA current to August 20, 2020. The proposed change is not expected to have an impact on the regulated community in excess of \$50,000.

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.

Both rule changes and amendments are not expected to impact the regulated community by an amount in excess of fifty thousand dollars. Consequently, no regulatory analysis has been prepared.

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.

None of the proposed rules before you today are expected to impact small entities.

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.

There are no fiscal impacts anticipated from the rule changes.

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

None of the proposed rule changes are expected to have an impact on private real property.

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?

These rules were not adopted as emergency rules under N.D.C.C. § 28-32-03.

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