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January 26, 2012

Patricia Van Gerpen

SD PUC Executive Director

500 E. Capitol Ave

Pierre, SD 57501

Re: PS11-001

Dear Ms. Van Gerpen,

One of the pipeline safety department staff (herein Staff) goals is to follow the federal code carefully and particularly. Staff believes it is our statutory obligation to do so. Staff and pipeline operators currently disagree regarding the interpretation of one defining code section. As a result, Staff needs direction from the Commission and filed the Petition for a Declaratory Ruling (herein Petition) at issue. The Petition was particular to one pipeline. Specifically, the Petition asked the Commission, "whether the line is properly classified as a transmission line or a distribution line."

The intervening pipeline operators have recently raised a series of questions slightly different than, but related to and arguably necessary to properly answer the question asked in the Petition. NorthWestern's January 25, 2012 filing outlined its issues, questions and the ruling it hopes to obtain from the Commission. Staff agrees answers to the questions raised by NorthWestern will make the Commission's decision regarding this Petition more effective. A more complete answer or series of answers from this commission will make this docket's result useful beyond this particular factual scenario and pipeline. Staff does not believe, however, a rule-making docket is necessary to obtain the answers. Rather Staff suggests the issue before us is a matter of code interpretation thus appropriate for a declaratory ruling. All pipeline operators in this state received notice of the docket and had an opportunity to intervene and participate in the discussion.

Staff joins NorthWestern and respectfully requests a Commission ruling and answer to the following questions:

1) May Section (2) of 49 CFR 192.3 be read in isolation and be the sole determining factor of a transmission line?

Section (2) defines a transmission line as one that operates at a hoop stress of 20% or more of SMYS.

Staff argues now as it did in its previous filings. Staff argues the Federal Code has three sections. Part (2) is no more binding than the other two sections. Current and past practice in South Dakota has been such that this section (2) overrides all other 192.3 sections. When the code was written, the federal regulators considered economics, safety and overall code effect. It is not necessary for this Commission to debate and discuss the merits of law it must enforce.

On January 31, Staff will advocate its position that: Section (2) of 49 CFR 192.3 may not be read in isolation is it only one of three ways to define a transmission line.

2) If Section (2) may be read in isolation the analysis ends. If not, is Section (1) of 49 CFR 192.3 applicable when defining a pipeline that transports gas to a large volume customer?

Section (1) defines a transmission line as one that transports gas from a gathering line or storage facility to alarge volume customer that is not down-stream from a gas distribution center.

Staff argues, because section (2) does not override other parts of 192.3 that this section of the code is relevant and may define a pipeline transporting gas to a large volume customer as a transmission line. This section does define the pipeline at issue in the Petition as a transmission line.

On January 31 Staff will advocate its position that: Section (1) of 49 CFR 192.3 may be applicable when defining a pipeline that transports gas to a large volume customer.

3) Because Section (1) is applicable, various terms in Section (1) must be defined. What is meant by "gathering line" or "storage facility?"

Section (1) defines a transmission line as one that transports gas from a *gathering line* or *storage facility* to a large volume customer.

Staff argues as it did in its reply that the entire network of interstate transmission is considered connected to gathering or storage. Staff relies on a 1977 PHMSA interpretation as the basis of our position. The interpretation is attached hereto as Exhibit 1. It says, "neither ownership of, nor the presence of gas storage fields or gathering lines in the District is determinative of whether the lines operated...in the District are properly classified as transmission lines."

On January 31 Staff will advocate its position that: all transmission lines are considered connected to gathering or storage. As a result, the line at issue transports gas from a gathering line or storage facility.

4) Because Section (1) is applicable, various terms in Section (1) must be defined. What is meant by "large volume customer?"

Section (1) defines a transmission line as one that transports gas from a gathering line or a storage facility to a *large volume customer*.

Staff argues, as it previously has, a large volume customer is one with similar attributes to those of a distribution company. "Foremost among these attributes are the receipt of similar volumes of gas and the operation of piping facilities common to a distribution company." Staff relies on Interpretation 192.3 #13, a 1978 PHMSA Interpretation attached hereto as Exhibit 2 as the basis of its position. The pipeline referenced in the Petition will serve an electric generating facility and a beef processing plant. Staff argues these facilities will use gas in a volume similar to that of a distribution company.

On January 31 Staff will advocate its position that: a facility with similar volume usage of gas as a distribution company is a large volume customer. As a result the line at issue serves a large volume customer.

5) Because Section (1) is applicable, various terms in Section (1) must be defined. What is meant by "a gas distribution center?"

Section (1) defines a transmission line as one that transports gas from a gathering line or a storage facility to a large volume customer that is not down-stream from a *gas distribution center*.

Staff argues a distribution center is a point where gas enters piping used primarily to deliver gas to a group of customers, except large volume customers, who purchase it for consumption. Staff relies on several PHMSA opinions in composing its position. The term is not defined in the federal code. Staff agrees with NorthWestern, that states have the discretion to define what constitutes a distribution center.

Interpretation 192.3 #13 attached hereto as Exhibit 3 explains a distribution center is a point where gas enters piping used primarily to deliver gas to customers who purchase it for consumption. Interpretation 192.3 #10 attached hereto as Exhibit 4, then distinguish large volume customers. The interpretation explains large volume customers are not "customers who purchase it for consumption" thus excluding them from the definition of a "distribution center" as it pertains to 49 CFR 192.3. The opinion explains that "distribution center" has a plural connotation. Large volume customers are distinct customers, not a group.

On January 31 Staff will advocate its position that: a gas distribution center is created at a point where gas enters piping used primarily to deliver gas to a group of customers, except large volume customers, who purchase it for consumption. As a result the line at issue is a transmission line. Also as a result, unless a large volume a customer is downstream from a group of consumption customers, the pipeline leading to it should always be classified as transmission.

Staff appreciates the help from interveners to fully vet; step by step what questions should be answered. The preceding list of questions will clarify this Commission's preference regarding pipeline classification in questionable circumstances going forward. With that said, Staff believes NorthWestern inserted four "red herring" arguments in its filing.

First, NorthWestern listed two South Dakota situations as "past approved practices." Those situations are listed as "Freeman/AMPI" and "Crooks." The Freeman/AMPI situation was not reviewed by the Commission. As a result no Commission Order exists. Rather, a previous PUC employee made a unilateral decision. The decision made in 2007 is not binding on this Commission. The "Crooks" situation, also not reviewed by this Commission, has a unique history with unique facts that made settlement possible. The situation does not have any binding nor persuasive relation to this Petition.

Second, it appears NorthWestern will argue service to more than one large volume customer changes the analysis. Based on interpretation 192.3 # 45, Point # 2, attached hereto as Exhibit 5, staff disagrees. As the interpretation explains, the fact two or more large volume customers are served by the same line is irrelevant. The line is still transmission. The lack of a plural in the definition "large volume customer" does not change the analysis.

Third, the states cited by NorthWestern (Missouri, Ohio and Washington) all have a number of state statutes more restrictive than federal code. As a result, these states are not representative of the statutory directive we must follow. South Dakota cannot enforce pipeline safety more strictly than the federal code.

Finally, NorthWestern's cover letter suggests "benefit" should be considered regarding the classification of the pipeline. In fact, NorthWestern is exactly correct when it writes, "Staff offers no evidence that the proposed change to the past practices used on South Dakota would provide any benefit..." Not only do we offer no evidence, but we don't believe a consideration of "benefit" is relevant nor is it appropriate to the discussion. This debate is about federal code interpretation, not benefit.

In summary, Staff seeks a Commission ruling that: To determine whether to classify a pipeline as a transmission line or distribution line, Section (2) of 49 CFR 192.3 may not be read in isolation. Section (2) is one of three ways to define a transmission line.

As a result, Section (1) of 49 CFR 192.3 is applicable when defining a pipeline that transports gas to a large volume customer. To understand the terms used in that section, we ask the Commission to find, (i) all transmission lines are considered connected to gathering or storage, and (ii) a facility with similar volume usage of gas as a distribution company is a large volume customer and (iv) a gas distribution center is created at a point where gas enters piping used primarily to deliver gas to a group of customers, except large load customers, who purchase it for consumption.

As a result, the line at issue: is considered to transports gas from a gathering line or storage facility, serves a large volume customer and is a transmission line. Attached please find the presentation Nathan Solem will make at the January 31, 2012 Commission meeting.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kara Semmler".

Kara Semmler