



Chris Nelson, Chair  
Kristie Fiegen, Vice Chair  
Gary Hanson, Commissioner

## **SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

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January 25, 2012

Patricia Van Gerpen

SD PUC Executive Director

500 E. Capitol Ave

Pierre, SD 57501

Re: PS11-003

Dear Ms. Van Gerpen,

On January 23, 2012 Montana-Dakota Utilities (MDU) filed a reply to Staff's initial filings. While MDU admits it failed to completely implement the federal "messaging requirement" it believes, because of its partial compliance, that the recommended \$800 penalty is too high. MDU goes on to suggest as an alternative, the penalty could be used toward public outreach. Staff appreciates MDU's suggestion regarding an alternate to the collection of a penalty.

This Commission does not have a history of dockets of this type to rely on in this matter. Rather, the Commission is, through the dockets before it today, beginning to establish how it wishes to proceed regarding pipeline compliance issues. While Staff believes it is important to maintain consistency, it is not opposed to MDU's suggested alternative to the collection of a penalty. If a penalty is collected, we must "deposit it in the state treasury" as SDCL 49-34B-12 dictates. As an alternative to collection of a penalty, however, Staff believes the Commission could accept MDU's offer to dedicate funds as described. MDU's recommendation could be an effective way to both incent compliance and to support public outreach.

While Staff does not oppose MDU's offer, it does not believe Staff's recommended \$800 is excessive and stands by its recommendation. In fact, the recommendation could have been much higher. The inspection showed four separate pipeline safety messages were not delivered for three consecutive years. Technically, each failed message delivery could be considered a separate violation for twelve violations. As a result, the current recommendation could be multiplied by twelve to \$9,600. Staff clearly chose not to do so, and does not recommend the Commission do so.

If the Commission chooses to accept MDU's offer to dedicate funds to outreach in lieu of a penalty, Staff recommends the following conditions:

- The funds to be spent in South Dakota only and towards outreach to non-customer residents in MDU's distribution pipeline system specifically for compliance with API RP 1162 Table 2.2-1 OR the funds be spend in South Dakota towards additional general public outreach beyond compliance with APR RP 1162 Table 2.2-1.
- The funds are to be spent by June 30, 2012.
- Any funds not spent by the end of June will be assessed as a penalty.
- Documentation on the disbursement of the funds to be provided to the Pipeline Safety Staff by July 31, 2012.
- The funds shall not be recoverable through rates.

We appreciate the discussion and this opportunity to obtain guidance from the Commission regarding pipeline compliance penalties. Staff will be available on January 31, 2012 to answer any questions.

Sincerely,

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

Kara Semmler