

**DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA**

<p>In re NorthWestern Energy’s Request for Removal of Special Permit of 49 CFR § 192.481(a)</p>	<p>Docket 2023.08.078 February 9, 2024</p>
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Order 7934 on Termination of Special Permit

1. On August 25, 2023, NorthWestern Energy (“NorthWestern”) filed with the Montana Public Service Commission (“Commission”) its Request for Removal of Special Permit of 49 C.F.R. § 192.481(a) (“Request”).

2. On December 15, 2023, the Commission issued a Notice of Request and Opportunity to Comment, setting a January 2, 2024 deadline for interested parties to file comments. To date, the Commission has not received any comments. The Commission considers NorthWestern’s Request uncontested and grants NorthWestern’s request for the reasons discussed below.

Discussion

3. The Commission has the authority to grant a special permit waiving compliance with federal pipeline safety regulations set forth in 49 C.F.R. Part 192 if it determines the waiver is not inconsistent with pipeline safety. 49 U.S.C. § 60118(c)(1) authorizes the Secretary of Transportation to waive compliance with any part of an applicable standard prescribed under 49 U.S.C. § 60101 et seq. if the Secretary determines that the waiver is not inconsistent with pipeline safety. If a certification under 49 U.S.C. § 60105 is in effect, a State authority may waive compliance with a safety standard to which the certification applies in the same way and to the same extent the Secretary of Transportation may do so. 49 U.S.C. § 60118(d). Federal regulations contain standards prescribed under 49 U.S.C. § 60101 et seq. See “Authority” references for 49 C.F.R. Part 192. The Commission has a

2024 certification under 49 U.S.C. § 60105 that applies, among other things, to enforcement of the pipeline safety regulations set forth in 49 C.F.R. Part 192. A copy of the certification is available for inspection at the Commission's office at 1701 Prospect Avenue in Helena, Montana. Additionally, the Commission has specifically adopted and incorporated by reference 49 CFR Part 192. *See* Mont. Admin. R. 38.5.2202. The Commission therefore has authority to issue a compliance waiver for the standards set forth in 49 C.F.R. Part 192 if it determines the waiver is not inconsistent with pipeline safety.

4. Inherent in the Commission's ability to grant a special permit is the ability to terminate a special permit, when doing so is consistent with federal pipeline safety standards. *See* 49 U.S.C. §§ 60118(a)(1), (c)(1)(A), (d). Upon the Commission's decision to terminate a special permit, the Commission notifies the U.S. Department of Transportation, Pipeline, and Hazardous Materials Safety Administration ("PHMSA") of its decision. *See In re the Petition of Energy West Montana, Inc., to Terminate PA12 Special Permit*, Dkt. 2020.02.024, Amended Notice of Comm'n Action 1–2, Ex. A (Dec. 3, 2020).

5. NorthWestern's Request asks for the removal of specific special permit conditions modifying the requirements of 49 CFR § 192.481(a) and all other conditions, imposed by the Commission in Docket D2008.11.133 ("Special Permit"). Request 1. NorthWestern asserts that its practices are now consistent with 49 C.F.R. § 192.481(a), rendering the Special Permit unnecessary. Request 2.

6. The Special Permit modified the requirements in 49 C.F.R. § 192.481(a) by extending the required timelines for NorthWestern to perform atmospheric corrosion control inspection and reporting. *In re NorthWestern Energy's Request for a Specific Special Permit to the Requirements of 49 C.F.R. § 192.481*, Dkt. D2008.11.133, Notice of Commission Action, 1–3 (Dec. 3, 2008). The Special Permit also aligned the timing of NorthWestern's distribution leakage surveys with its atmospheric corrosion inspection. *Id.* at 2-3.¹

¹ The Special Permit required NorthWestern to perform both distribution leakage surveys and atmospheric corrosion inspection at least every four calendar years, not exceeding 51 months.

7. The primary purpose of the Special Permit was to extend the time for NorthWestern's performance of atmospheric corrosion inspection of its pipelines from every three years to every four years. *Id.* at 1–2. Although the Commission imposed other conditions in the permit, those conditions were imposed to “ensure an equivalent level of pipeline safety.” *Id.* at 2.

8. When the Special Permit was granted, federal regulations required a pipeline operator to perform atmospheric corrosion inspections at least once every three years. 49 C.F.R. § 192.481(a) (2003). In 2021, those federal standards were updated to require atmospheric corrosion inspections at least once every five years. 49 C.F.R. § 192.481(a) (2021).

9. NorthWestern's practice of performing atmospheric corrosion inspections at least once every four calendar years not exceeding 51 months, is now consistent with federal pipeline safety standards. Therefore, the Special Permit is unnecessary because the updated atmospheric corrosion inspection requirements in 49 C.F.R. § 192.481(a) allow for a longer time for inspection than the requirements in the Special Permit. Even with the termination of the Special Permit, NorthWestern will be subjected to regulations consistent with pipeline safety.

Order

10. NorthWestern's Request is GRANTED.

11. The special permit conditions granted in *In re NorthWestern Energy's Request for a Specific Special Permit to the Requirements of 49 C.F.R. § 192.481*, Dkt. D2008.11.133, Notice of Commission Action (Dec. 3, 2008) are terminated.

12. Commission staff is directed to notify PHMSA of the issuance of this Order.

DONE and DATED February 6, 2024, by the Montana Public Service Commission by a vote of 5 to 0.

JAMES BROWN, President
JENNIFER FIELDER, Vice President

TONY O'DONNELL, Commissioner
RANDALL PINOCCI, Commissioner
DR. ANNIE BUKACEK, Commissioner

CERTIFICATE OF SERVICE

I certify that on the 9th day of February, 2024, a true and accurate copy of the foregoing document was served by email to the following:

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EMAIL LIST(S):
Notification of NorthWestern Energy Filings
Commission Orders

By: /s/ Tarin Slayton
Tarin Slayton
Montana Public Service Commission