

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

In re Montana-Dakota Utilities Co.’s Application for a Waiver to the Requirements of 49 C.F.R. § 192.285(c)	Docket N2010.9.95  August 13, 2024
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**Default Order 7962 on Termination of Special Permit**

1. On July 9, 2024, Montana-Dakota Utilities Co. (“MDU”) filed a Request of Reversal of Waiver of 49 C.F.R. 192.285(c) (“Request”) with the Montana Public Service Commission (“Commission”).
2. On July 19, 2024, the Commission issued a Notice of Filing and Opportunity to Comment, setting August 7, 2024, as the deadline for interested parties to file comments. The Commission received no comments.
3. For the reasons discussed below, MDU’s Request is granted.

**Discussion**

4. 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.

5. 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).

6. In 2010, the Commission granted MDU a special permit that deviated from federal pipeline safety rules in 49 C.F.R. § 192.285(c) ("Special Permit"). Notice of Commission Action 1 (Nov. 9, 2010). In its Request, MDU requests that the Commission terminate the Special Permit, asserting the conditions in the Special Permit are no longer necessary due to changes in 49 C.F.R. § 192.285(c). Request 1.

7. The Special Permit modified the requirements in 49 C.F.R. § 192.285(c) by extending the required timelines for MDU to qualify its employees to make plastic pipe joints. Notice of Commission Action 1 (Nov. 9, 2010). The Commission imposed other conditions in the permit, however, 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 qualify its employees to make plastic pipe joints each calendar year not exceeding 12 months. *See Pipeline Safety: Miscellaneous Changes to Pipeline Safety Regulations*, 80 Fed. Reg. 12762, 12766 (Mar. 11, 2015) (amending

49 C.F.R. 192.285). In 2015, those federal standards were updated to require a pipeline operator to qualify its employees to make plastic pipe joints each calendar year not exceeding 15 months. 49 C.F.R. § 192.285(c) (2024): *see* Request 1 (citing 80 Fed. Reg. 12762).

9. MDU's practice of qualifying its employees once each calendar year not exceeding 15 months as required by the Special Permit, is now consistent with federal pipeline safety standards. Therefore, the Special Permit is unnecessary because the updated requirements in 49 C.F.R. § 192.285(c) allow for the same timeline to qualify employees making plastic pipe joints as the requirements in the Special Permit. Even with the termination of the Special Permit, MDU will be subjected to regulations consistent with pipeline safety.

### **Order**

10. MDU's Request is GRANTED.

11. The special permit conditions granted in the Commission's November 9, 2010 Notice of Commission Action are terminated.

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

DONE and DATED August 13, 2024, by the Montana Public Service Commission through delegation to staff.

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 August 13, 2024, a true and accurate copy of the foregoing document was served by email to the following:

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Commission Orders

By: /s/ Tarin Slayton

Tarin Slayton

Montana Public Service Commission