

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: MIDAMERICAN ENERGY COMPANY, AQUILA, INC., d/b/a AQUILA NETWORKS, and INTERSTATE POWER AND LIGHT COMPANY	DOCKET NO. WRU-07-8
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ORDER GRANTING WAIVER REQUEST

(Issued April 19, 2007)

On March 13, 2007, MidAmerican Energy Company, Aquila, Inc., d/b/a Aquila Networks, and Interstate Power and Light Company (Applicants) filed a joint request with the Utilities Board (Board) to waive the requalification requirements for persons making plastic pipe joints found in 49 CFR 192.285(c), that have been adopted by the Board for Iowa natural gas utilities in 199 IAC 19.5(2)"a"(2). The Board enforces the federal natural gas pipeline safety regulations under a certificate granted by the U.S. Department of Transportation, Office of Pipeline Safety (OPS), pursuant to 49 U.S.C.A. § 60105. A certificated state may grant a waiver of provisions of the federal safety regulations in 49 CFR Part 192; however, pursuant to 49 U.S.C.A. § 60118, the grant must be submitted to OPS for review, and OPS has 60 days to stay the waiver if it finds it objectionable. The joint filing has been identified as Docket No. WRU-07-8.

Applicants point out that qualification requirements for persons making plastic pipe joints are established in 49 CFR 192.285(a) and requalification requirements are established in 49 CFR 192.285(c). Persons must be requalified under an applicable

procedure if, during a 12-month period, the person does not make any joints under that procedure or has three joints or 3 percent of the joints made, whichever is greater, under that procedure that are found to be unacceptable.

Applicants request a waiver of the requirements in 49 CFR 192.285(c) to allow them to requalify their employees under an alternate procedure. Applicants propose that a person requalify at least once each calendar year, but at intervals not exceeding 15 months, and if a person has one joint made under the procedure that is found to be unacceptable by testing under 49 CFR 192.513, that person must requalify under that procedure as an initial qualification. Applicants request the waiver be made permanent, since the requirements for testing will be required for the foreseeable future.

Subrule 199 IAC 1.3 establishes four criteria that must be met by clear and convincing evidence for the Board to grant a waiver. The criteria are: (1) the application of the rule would pose an undue hardship on the person for whom the waiver is requested, (2) the waiver would not prejudice the substantial legal rights of any person, (3) the provisions of the rule are not specifically mandated by statute or another provision of law, and (4) substantial equal protection of public health, safety, and welfare will be afforded by means other than that prescribed in the rule.

Applicants state that compliance with the existing requalification requirements poses an undue hardship by mandating requalification at other than the most advantageous times from a cost and quality perspective. Applicants contend the 12-month retest standard requires Applicants to establish evaluation schedules on an 11-month schedule to account for conflicts due to travel, illness, group size, and vacations.

Over time, completing requalifications under an 11-month schedule will push the requalification date back into the end of the construction season and eventually into the regular construction season. Applicants suggest that their proposed procedure requiring requalification just prior to the construction season provides the highest quality workmanship since requalification will coincide with the time when the most plastic joints are made and the testing can be performed by the same qualified testers.

Applicants state that the waiver, if granted, will not affect the substantial legal rights of any person. The employees making plastic pipe joints will continue to be tested prior to the start of each construction season under Applicants' proposed procedure and the proposed procedure will continue to ensure pipe joiners are properly qualified. Applicants state that although the safety standards are mandated in 49 CFR Part 192, the federal statute contains provisions for requesting a waiver of the safety standards; therefore, a waiver of the requalification standards, approved by the Board and OPS, would not violate any statute or other provision of law.

Applicants state that substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the rule for which the waiver is requested since both the Board and OPS, must approve the waiver. In addition, Applicants contend they are proposing an alternate procedure that meets the safety requirements of the federal regulations and ensures persons making pipe joints are properly qualified.

The Board has reviewed the support for the waiver request and finds that there is clear and convincing evidence that the request for waiver meets the four criteria

established in subrule 1.3. The Board has also adopted the federal natural gas pipeline safety regulations in 199 IAC 10.12(1)"b" and will grant Applicants a waiver of the requalification requirements in that rule in this order.

Applicants have shown that complying with the existing requirement for requalification based upon a 12-month period will ultimately force them to perform requalification after the construction season and, eventually, during the construction season. This would place an undue hardship on Applicants by requiring them to hire additional personnel and adjust their construction schedule to accommodate the requalification process. Use of the existing 12-month standard would also reduce Applicants' ability to ensure consistency in the testing and record keeping for requalification.

The hardships described by Applicants result from attempting to requalify all joiners within 12 months of their last qualification. Preferably, Applicants would attempt to do all requalification testing outside of the construction season, however, the 12-month standard forces testing to occur earlier every year until testing would no longer fall in the off season. The compressed time frame for requalification requires more testers and qualification teams and equipment and makes it more difficult to do make-up tests for persons who could not make the regular testing due to vacation or illness. Compliance with the existing 12-month standard adds to the complexity and expense of Applicants' requalification program.

In numerous other areas of the regulations, including requalification of welders, OPS has provided for more flexible scheduling of activities (for example, once each

calendar year at intervals not exceeding 15 months) and to prevent earlier and earlier compliance deadlines. Similar waivers have been granted by the applicable state authorities in Kansas, Colorado, and Nebraska and OPS has not objected to the granting of these waivers.

The Board has been presented with no evidence that the granting of the waiver, with the adoption of the alternate procedure proposed by Applicants, will prejudice the substantial legal rights of any person. Although the requalification standards are mandated by federal regulations, 49 U.S.C.A. § 60118 provides for a waiver of those regulations with OPS approval. Since federal statutes provide a waiver procedure, this criterion is met.

Substantially equal protection of public health, safety, and welfare will be afforded by the alternative procedure proposed by Applicants. The requalification standard as it currently exists creates practical and administrative difficulties that can be alleviated by the use of a longer window, the 15-month interval. This interval is similar to intervals provided for in other federal natural gas safety regulations and requalification of joiners before the construction season will better ensure safety standards are complied with consistently.

In addition, Applicants propose to require requalification of persons after one joint failure, rather than three as allowed by the existing requirements. This requirement was adopted when waivers were granted by Kansas, Colorado, and Nebraska. Even though defective joints typically fail some time after installation and testing, as stress over time causes defects to gradually enlarge, the more stringent standard of only one failure

provides more safety protection than the three-failure standard in the existing regulations.

The Board will grant the waiver request with the requirement that Applicants implement the alternative procedure described in this order. Granting applicants a waiver of the requalification standards will require them, pursuant to 192 CFR 192.285(d), to modify their existing requalification schedule and the requirements of their Operating and Maintenance Plan, or other procedural documents where this material is contained, to implement the alternate procedure. The Board will require that Applicants file a copy of those procedures with the Board.

The waiver of 49 CFR 192.285(c) will not become effective until it has been reviewed by OPS. OPS will either approve the waiver, stay the waiver, or if 60 days lapse without action by OPS, the waiver becomes effective pursuant to 49 U.S.C.A. § 60118(d). The Board will send a copy of this order to OPS.

The Board understands that other natural gas utilities in Iowa may face the same or similar problems with the existing requalification requirements. The Board will consider favorably other waiver requests that demonstrate similar hardships in complying with the existing requirements.

IT IS THEREFORE ORDERED:

1. MidAmerican Energy Company, Aquila, Inc., d/b/a Aquila Networks, and Interstate Power and Light Company are granted a waiver of the requalification requirements in 199 IAC 10.12(1)"b," 19.5(2)"a"(2), and 49 CFR 192.285(c).

2. MidAmerican Energy Company, Aquila, Inc., d/b/a Aquila Networks, and Interstate Power and Light Company shall establish alternate requalification procedures as described in this order and file a copy of those procedures with the Board within 30 days of adoption.

3. The waiver granted in this order shall not become effective until review of the waiver has been performed by the U.S. Department of Transportation, Office of Pipeline Safety, pursuant to 49 U.S.C.A. § 60118(d).

UTILITIES BOARD

/s/ John R. Norris

/s/ Curtis W. Stamp

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Krista K. Tanner

Dated at Des Moines, Iowa, this 19th day of April, 2007.