

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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| <p>IN RE:</p> <p>IOWA ASSOCIATION OF MUNICIPAL UTILITIES, ALLERTON GAS COMPANY, AND CONSUMERS ENERGY COOPERATIVE</p> | <p>DOCKET NO. WRU-07-34</p> |
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**ORDER GRANTING WAIVER**

(Issued November 9, 2007)

On October 8, 2007, the Iowa Association of Municipal Utilities (IAMU), Allerton Gas Company (Allerton), and Consumers Energy Cooperative (Consumers Energy) (collectively, Applicants) filed a joint request with the Utilities Board (Board) for a waiver of the requalification requirements for persons making plastic pipe joints found in 49 CFR 192.285(c). Those requirements have been adopted by the Board in 199 IAC 19.5(2)"a"(2). The joint filing has been identified as Docket No. WRU-07-34. On October 12, 2007, Applicants requested that the Board also grant waivers of subparagraph 19.5(2)"a"(2) to the following municipal gas utilities: Bedford, Bloomfield, Brighton, Brooklyn, Cascade, Cedar Falls, Clearfield, Coon Rapids, Corning, Emmetsburg, Everly, Fairbank, Gilmore City, Graettinger, Guthrie Center, Harlan, Hartley, Hawarden, Lake Park, Lamoni, Lenox, Lineville, Lorimor, Manilla, Manning, Montezuma, Morning Sun, Moulton, Orange City, Osage, Prescott, Preston, Remsen, Rock Rapids, Rolfe, Sabula, Sac City, Sanborn, Sioux Center, Tipton, Titonka, Wall

Lake, Waukee, Wayland, Wellman, West Bend, Whittemore, Winfield, and Woodbine, Iowa (Municipal Utilities).

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 such as Iowa 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.

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 three percent of the joints made under that procedure, whichever is greater, 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 times that are not the most advantageous from a cost and quality perspective. Applicants contend the 12-month retest standard effectively requires Applicants to establish evaluation schedules on an 11-month schedule in order to be certain of completing all requalifications in a timely manner. 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 precede the time when the most plastic joints are made and the testing can be performed by the same qualified testers.

The Board recognizes that the requalification rule can create practical difficulties for utilities. Almost all other areas of the federal standards that require a periodic action provide a window of opportunity during which the action can be performed during the same general time period every year. The Board has recognized and approved a waiver

of the requalification requirements with the same alternate procedure for three rate-regulated natural gas utilities in Docket No. WRU-07-8, In re: MidAmerican Energy Company, Interstate Power and Light Company, and Aquila, Inc., d/b/a Aquila Networks. In that order, the Board indicated that other natural gas utilities in Iowa could face the same or similar problems with the existing requalification requirements as the three rate-regulated utilities. The Board indicated it would consider favorably other waiver requests that demonstrate similar hardships in complying with the existing requalification requirements.

Applicants have described the same problem with the requalification requirements that the Board addressed in Docket No. WRU-07-8. A denial of the waiver would create the same type of hardship on these utilities as it would have for the three rate-regulated utilities. By letter dated July 20, 2007, OPS stated that it did not object to the waiver for the three rate-regulated utilities.

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 employees would still require ten qualifications over ten years with the tests occurring approximately every 12 months. The Board agrees that any legal rights involving the safety of the operations of gas pipelines will be protected by the alternate requalification procedure.

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 and the third waiver requirement is therefore satisfied. The Board agrees. The requirement is satisfied when a federal or state statute that establishes a requirement such as requalification provides for a waiver of the statutory provisions and the waiver is granted pursuant to the approved waiver process. In this instance, the waiver is required to be approved by the Board and OPS.

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 agrees that substantially equal protection of public health, safety, and welfare will be afforded by the proposed alternate procedure.

The alternate procedure proposed by Applicants will require requalification of persons after one joint failure, rather than three as allowed by the rule. This was an additional requirement adopted when waivers similar to the one now requested were granted by OPS in the states of Kansas, Colorado, and Nebraska and for the three rate-regulated utilities in Iowa.

Based upon the satisfaction of the four criteria discussed above, the Board will grant the waiver of 49 CFR 192.285(c) that has been adopted by the Board in 199 IAC 19.5(2)"a"(2). The waiver will be granted to Allerton, Consumers Energy, and the Municipal Utilities. The Board is not granting a waiver to IAMU since it is an organization comprised of municipal utilities and does not own, operate, or maintain

natural gas pipelines. The Board has also adopted the federal natural gas pipeline safety regulations in 199 IAC 10.12(1)"b" and the Board will also grant the Municipal Utilities, Allerton, and Consumers Energy a waiver of the requalification requirements in that rule in this order.

Rule 192 CFR § 192.285(d) requires that each operator establish a method to determine that joining personnel are properly qualified. If a waiver is granted, the Municipal Utilities, Allerton, and Consumers Energy will have to modify their existing requalification schedule and the requirements of each Operating and Maintenance Plan, or other procedural document where this material is contained, to reflect the change in requalification scheduling and the reduction in unacceptable joints allowed.

The 49 Municipal Utilities represent all of the municipal gas utilities in Iowa. IAMU has requested that the waiver apply to all of these utilities even though IAMU has not indicated whether all these utilities have plastic pipe in their systems or employ persons who join plastic pipe. Regardless of whether all of the Municipal Utilities have plastic pipe at this time, the Board will grant the waiver since the utilities could install plastic pipe in the future and granting the waiver will allow all of the Municipal Utilities listed to utilize the more practical joiner requalification requirement.

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.

**IT IS THEREFORE ORDERED:**

1. Allerton Gas Company, Consumers Energy Cooperative, and the 49 Municipal Utilities listed in this order, 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). The waiver will continue in effect for so long as the circumstances supporting the waiver are not changed.

2. Allerton Gas Company, Consumers Energy Cooperative, and the 49 Municipal Utilities listed in this order, shall revise their written procedures to comply with the alternate requalification procedures and the requalification requirement for joint failure as described in this order prior to implementing the provisions of the waiver.

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).

4. The Safety & Engineering section shall send a copy of this order to the U.S. Department of Transportation, Office of Pipeline Safety.

**UTILITIES BOARD**

/s/ John R. Norris

/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 9<sup>th</sup> day of November, 2007.