

N.D.A.G. Letter to Yochim (May 26, 1992)

May 26, 1992

The Honorable James C. Yockim
North Dakota State Senator
1123 Second Avenue East
Williston, ND 58801

Dear Senator Yockim:

Thank you for your December 12, 1991, letter in which you inquired: 1) whether a natural gas pipeline gathering and transportation system is a centralized storage facility in which production from wells with diverse ownership is commingled within the meaning of N.D.C.C. § 38-08-20 if the production is separately measured by sales meter at each well or group of wells with common ownership prior to being commingled with other production; and 2) whether the Public Service Commission has authority to test sales meters under the general authority granted to it in N.D.C.C. § 64-02-13.

For the reasons set forth below, it is my opinion that: 1) a natural gas pipeline gathering and transportation system is not a centralized storage facility in which production from wells with diverse ownership is commingled within the meaning of N.D.C.C. § 38-08-20 if the production is separately measured by a sales meter at each well or group of wells with common ownership prior to being commingled with other production; and 2) the Public Service Commission has the authority to test sales meters under the general authority granted to it by N.D.C.C. § 64-02-13.

N.D.C.C. § 64-02-15.1 requires the Public Service Commission to randomly test and certify the accuracy of meters used to measure oil and gas production under N.D.C.C. § 38-08-20. The oil and gas meters referred to in N.D.C.C. § 38-08-20 are meters used to measure production from two or more oil or gas wells with diverse ownership when the production from those wells is commingled in a centralized storage facility.

A centralized storage facility is generally thought of as a facility where production from two or more wells is piped for the purpose of separating oil, water, and gas. Oil can be stored in the facility until it is transported off the premises. The gas is not stored in the facility but flows out of the facility into a pipeline. If wells producing into a centralized storage facility have diverse ownership, the production from each well must be measured by meters or by some other method approved by the Industrial Commission. N.D.C.C. § 38-08-20.

Production that leaves a centralized storage facility is also measured by meters. The meters that measure production prior to its entering a centralized storage facility are generally known as allocation meters. The meters used to measure production out of a

centralized storage facility are generally known as sales meters. A lease automatic custody transfer (LACT) meter is a type of sales meter. Sales meters are those meters upon which sales to a gas or oil purchaser are based. In some situations, with respect to gas, the centralized storage facility is bypassed and the gas from two or more wells with diverse ownership, after individually being measured by an allocation meter, is commingled in a pipeline. After commingling, the gas is again measured by a sales meter as the gas continues to flow through the pipeline.

In both of these situations, i.e., where gas from two or more wells with diverse ownership is commingled in a centralized storage facility or in a pipeline prior to being measured by a sales meter, the allocation of gas back to each individual well is effected through a reconciliation of the volume sold through the sales meter with either (1) the sum of volumes metered at each well or (2) if not metered, the volume measured at each well by some other method approved by the Industrial Commission.

Where production flows directly from an individual well into a pipeline, the production is measured by a sales meter and there is no allocation back to individual wells because the production is not commingled with production from any other well prior to being measured by a sales meter. Where production from a group of wells with common ownership is commingled and then measured by a sales meter prior to entering a pipeline with production from other wells with diverse ownership, there is also no allocation back to individual wells. Because the ownership is common and the production is measured by a sales meter prior to being commingled with production from wells with diverse ownership, such allocation is not necessary.

N.D.C.C. §§ 38-08-20 and 64-02-15.1 were enacted by the 1985 Legislative Assembly. Testimony was given at the hearing on this legislation that sales meters are generally more accurate than the meters used to allocate production back to individual wells. Hearing on S. 2455 before the House Comm. on Natural Resources, 49th ND Leg. (February 7 and March 8, 1985) (testimony of Doug O'Neil, Williston Petroleum Engineer). Although a centralized storage facility is generally thought of as the facility described above, the purpose of the legislation was to ensure that when oil or gas production from two or more wells with diverse ownership was commingled it was accurately measured prior to commingling in order to correctly allocate amounts back to each individual well. Consequently, N.D.C.C. §§ 38-08-20 and 64-02-15.1 require the Public Service Commission to test oil meters and gas meters when those meters are used to allocate back production from wells with diverse ownership and that production is commingled either in a centralized storage facility or a natural gas pipeline gathering and transportation system prior to being metered by a sales meter. It is my opinion that a centralized storage facility does not include a natural gas pipeline gathering and transportation system in which production from wells with diverse ownership is commingled within the meaning of N.D.C.C. § 38-08-20 if the production is separately measured by a sales meter at each well or group of wells with common ownership prior to being commingled with other production.

With regard to your second question, N.D.C.C. § 64-02-13 provides in part that "[t]he commission may test or calibrate weighing or measuring devices annually." Weighing or measuring device is defined in N.D.C.C. § 64-02-01 as "any scale, weight, measure, instrument, or device used or offered for use for weighing or measuring in commerce." "Commerce" is "[t]he exchange of goods, productions, or property of any kind; the buying, selling, and exchanging of articles." BLACK'S LAW DICTIONARY 244 (5th ed. 1979). Thus, the Public Service Commission has general supervision over all weighing or measuring devices used in commerce and authority to test or calibrate such weighing or measuring devices. This includes the meters the Commission has a mandatory duty to test pursuant to N.D.C.C. § 64-02-15.1 in addition to all other gas meters if those meters are used in commerce.

N.D.C.C. § 38-08-04(1)(e) and (h) provide the Industrial Commission with authority to require that "production from wells be separated into gaseous and liquid hydrocarbons, and that each be accurately measured by such means and upon such standards as may be prescribed by the commission," and to require "[m]etering or other measuring of oil, gas, or product in pipelines, gathering systems, barge terminals, loading racks, refineries, or other places."

The authority granted to each of these agencies does not present a conflict but can be described as concurrent jurisdiction. It is therefore my opinion that the Public Service Commission has authority to test gas meters or sales meters used in commerce under the general authority granted to it in N.D.C.C. § 64-02-13.

Since confusion sometimes results when two agencies have jurisdiction over the same subject matter, the legislature may wish to consider legislation clarifying the responsibilities of the Public Service Commission and the Industrial Commission regarding their respective testing and monitoring of oil and gas meters.

Sincerely,

Nicholas J. Spaeth

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