

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of  
  
MCCAIN FOODS USA, INC.,  
  
Petitioner,  
  
Seeking Exemption from Provisions of 49  
C.F.R. § 192

DOCKET PG-220767  
  
ORDER 01  
  
DENYING PETITION FOR  
EXEMPTION

**BACKGROUND**

- 1 On October 19, 2022, McCain Foods USA, Inc. (McCain or Company) filed with the Washington Utilities and Transportation Commission (Commission) a petition (Petition) seeking exemption from Title 49 Code of Federal Regulations (C.F.R.) § 192.59(a)(1), 49 C.F.R. §192.59(d), and 49 C.F.R. § 192.63(a), setting manufacturing standards, material requirements, and required markings for polyethylene pipe used in natural gas pipelines.<sup>1</sup>
- 2 In 2019, McCain Foods began design and construction of a new potato processing facility and wastewater treatment plant in Othello, WA. The treatment plant has a covered anaerobic lagoon to capture the biogas (65 percent methane) from the treatment plant. The gas is conveyed approximately 3,000 feet via a 12-inch-high density polyethylene (HDPE) pipeline (Othello Pipeline) to their new potato processing facility just east of N. Broadway Avenue. The biogas will be burned in the boiler to produce steam. In transit, the Othello Pipeline crosses the following properties not under the control of McCain Foods:
- The South Columbia Irrigation Canal (land is owned by McCain but under control of the irrigation district);
  - The Burlington Northern Santa Fe Railroad (two tracks)
  - The city of Othello’s North Broadway Ave right-of-way.
- 3 The Othello Pipeline was constructed in 2021. McCain did not consult the Commission on potential jurisdictional issues until the line was almost completed. After consultation with the Commission and inspections of the site, Commission staff (Staff) determined that the line falls under Commission jurisdiction because it crosses property not under the control of McCain Foods. Thus, McCain was engaged in the transportation of a

---

<sup>1</sup> Washington Administrative Code (WAC) 480-93-999 adopts reference sections of Title 49 C.F.R., including Part 192.

hazardous gas for interstate commerce<sup>2</sup> and Minimum Pipeline Safety Standards of 49 CFR 192 and WAC 480-93 apply.<sup>3</sup>

4 The requirements of 49 CFR 192.59(a)(1) state that new plastic pipe must be manufactured in accordance with a specification listed in Subpart B, in this case ASTM D2513. The pipe used for the Othello Pipeline was manufactured according to ASTM D3035, intended for use in the transport of water, municipal sewage, industrial process liquids, effluents, and slurries.<sup>4</sup> 49 C.F.R. 192.59(d) prohibits the use of rework/regrind material. The manufacturer indicated that they used rework material in the fabrication process for the pipe used in the Othello Pipeline. Regrind material is pipe material which does not fall within acceptable specifications following extrusion at the time of manufacture that can be reused if it meets certain specifications.<sup>5</sup> 49 C.F.R. 192.63(a) requires pipe to be marked as indicated in ASTM D2513.<sup>6</sup> ASTM D2513 specifies a yellow stripe marking for plastic pipe. The pipe used in the Othello Pipeline does not have a yellow stripe.

5 In its Petition, McCain asserts that the pipe used substantially meets the material properties required by ASTM D2513, and states that denial of the requested exemptions would require the Othello Pipeline to be placed out of service, causing a significant operational hindrance to the Company.

6 Staff has inspected the Othello Pipeline and reviewed the Petition and recommends that the Commission deny the requested exemptions. The safety standards required by the relevant provisions are established by the Pipeline and Hazardous Materials Safety Administration (PHMSA) and are set for the benefit of public safety. Staff believes meeting minimum pipeline safety standards is not an undue hardship on McCain. All similarly situated operators of hazardous gas pipelines must meet these criteria. Staff further states that it has additional concerns regarding the construction of the Othello

---

<sup>2</sup> 49 CFR 192.3 Definitions, Transportation and PHMSA Interpretations

<sup>3</sup> For the purpose of making a determination on the waiver issues before it, the Commission finds that it maintain jurisdiction over the pipe in question; however the Commission is waiting for an interpretation of this issue before PHMSA, which will provide greater clarity on our jurisdiction.

<sup>4</sup> ASTM D3035-21 Standard Specification for Polyethylene (PE) Plastic Pipe Based on Controlled Outside Diameter abstract, paragraph 1.

<sup>5</sup> 49 CFR Part 192 Amendment 192-119, Federal Register Volume 80 Number 2 (Monday, January 5, 2015). Rules and Regulations Pages 168-188, Supplementary Information, II Summary Review of Standard and Amendments, B. Standards Not Incorporated

<sup>6</sup> ASTM D2513-18a Section 7 Marking

Pipeline not related to requested exemptions, but related to the overall safety of the installation.

### DISCUSSION

7 We deny the Company's Petition for exemption from 49 C.F.R. §192.59(a)(1), 49 C.F.R. §192.59(d), and 49 C.F.R. § 192.63(a). PHMSA is the agency tasked with ascertaining the minimum pipeline manufacturing requirements to protect the public from the risks associated with transporting natural gas and hazardous liquids via underground pipelines. The Commission has adopted by reference those standards set out in 49 C.F.R. §192 in their entirety as the appropriate standards for biogas pipeline construction. Under WAC 480-07-110(1), the Commission may grant an exemption from any of its rules if doing so is consistent with the public interest, the purposes underlying regulation, and applicable statutes. We find that the Petition fails to meet this standard for the reasons discussed below.

8 First, McCain argues that the exemption is necessary to prevent substantial hardship for the Company. We find that meeting minimum standards for constructing regulated pipeline could only be a substantial hardship in extreme circumstances not presented here. The potential hardship of replacing a 3,000 foot pipeline with pipe that meets the minimum standards does not outweigh the risk of potential failure of the pipeline because it was constructed with inferior materials.

9 Second, McCain argues that the pipeline used in construction of the Othello Pipeline substantially meets the material properties required by ASTM D2513. PHMSA has determined the required minimum manufacturing and material standards for biogas pipeline, and we have adopted those standards. The pipe used in construction of the Othello Pipeline does not meet those standards. We do not find it appropriate to second guess the expertise of PHMSA in establishing the safety standards and decline to allow an exemption in this case.

10 Lastly, installing pipeline without the required yellow line markings, and without a trace wire, creates a potential future hazard by making it more difficult for future excavators to locate and identify the pipeline. This increases the likelihood of a future damage event, and is therefore not in the public interest.

11 We note that our jurisdiction to regulate the standards of the pipe ends at the fence line of property controlled by McCain. This is similar to other industrial user pipelines which have processes inside the fence line which are not necessarily tied to regulated gas systems. This means that the portion of the Othello Pipeline on McCain property is not

subject to regulation by the Commission and it would not need to meet minimum standards of 49 CFR 192 and WAC 480-93.

**FINDINGS AND CONCLUSIONS**

- 12 (1) The Commission is an agency of the State of Washington vested by statute with the authority to adopt and enforce rules for gas pipeline safety.
- 13 (2) The portion of the Othello Pipeline extending beyond McCain property is subject to Commission jurisdiction.
- 14 (3) On October 19, 2022, McCain filed a Petition with the Commission seeking exemption from 49 C.F.R. § 192.59(a)(1), 49 C.F.R. § 192.59(d), and 49 C.F.R. § 192.63(a), which the Commission adopted by reference in WAC 480-93-999.
- 15 (4) This matter came before the Commission at its regularly scheduled meeting on March 9, 2023.
- 16 (7) After reviewing McCain's Petition filed in Docket PG-220767 on October 19, 2022, and giving due consideration to all relevant matters and for good cause shown, the Commission finds that the Petition should be denied.

**ORDER**

**THE COMMISSION ORDERS:**

- 17 (1) McCain Foods USA, Inc.'s Petition for Exemption from provisions of 49 C.F.R. § 192 is denied.

- 18 (2) The Commission retains jurisdiction over the subject matter and McCain Foods USA, Inc. to effectuate the provisions of this Order.

DATED at Lacey, Washington, and effective March 10, 2023.

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

MILTON H. DOUMIT, Commissioner