



U.S. Department  
of Transportation

**Research and  
Special Programs  
Administration**

400 Seventh Street, S.W.  
Washington, D.C. 20590

**JAN - 8 2003**

Mr. David Butler  
General Counsel  
Public Service Commission of South Carolina  
Columbia, South Carolina 29210

Dear Mr. Butler:

The Office of Pipeline Safety (OPS) has reviewed the Order dated November 4, 2002 and granted by the Public Service Commission of South Carolina. The Order approves Ameresco Palmetto, Inc.'s request for waiver of 49 CFR Part 192.59 and Part 192.63. Ameresco Palmetto, Inc. requested a waiver of Part 192.59 to operate approximately 5,000 feet of 12 inch diameter PE 100 plastic pipe which is not recognized by ASTM D2513. Ameresco Palmetto, Inc. also requested a waiver of Part 192.63 because PE 100 pipe is not marked according to the ASTM D2513 standards. The PE 100 plastic pipe is made of DOW DGDA - 2490 resin and made to the International Organization for Standardization (ISO) 4437 standard. The 5,000 feet of pipe, already installed in a landfill near Greer, S.C., will operate as an intrastate transmission pipeline and is part of a nine mile pipeline project in Spartanburg County, SC.

Your waiver states that SCS Engineering and Ameresco demonstrated that the pipe made from the DOW DGDA - 2490 resin satisfied the testing standards for ISO PE 100 pipe and ASTM PE 3408 pipe, making the pipe eligible for marking as ASTM PE 3408 pipe.

The Commission has concluded that the pipe Ameresco Palmetto, Inc. installed provides an equivalent level of safety to that provided by 49 CFR Part 192.59 and Part 192.63. In addition, the Order establishes certain additional random sampling, testing, and reporting requirements. We have no objection to the Commission's Order.

Sincerely,

Stacey L. Gerard  
Associate Administrator  
for Pipeline Safety

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## The Public Service Commission State of South Carolina

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November 4, 2002

Ms. Stacey L. Gerard  
Associate Administrator,  
Office of Pipeline Safety,  
Research and Special Programs  
Administration,  
U. S. Department of Transportation  
400 Seventh St., S. W.  
Room 7128  
Washington, D. C. 20590

(ATTENTION: Richard Huriaux)

RE: APPROVAL OF WAIVER REQUEST OF 49 CFR PART 192.59 AND  
PART 192.63

Dear Ms. Gerard:

Please see attached original Ameresco Palmetto, Inc.'s request for waiver of 49 CFR Part 192.59 and Part 192.63 and subsequent Commission Order No. 2002-273 for the Public Service Commission of South Carolina's approval of same waiver request. These documents are presented for your review and consideration.

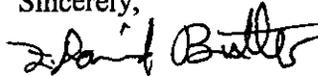
The Commission action will allow the Operator to utilize some 5000 feet of 12" O. D. HDPE pipe already installed on a landfill project near Greer, S. C. The pipe is made from Dow DGDA-2490 resin and extruded into a PE 100 classification. Ameresco Palmetto, Inc. requested the waiver of Part 192.59 because the PE 100 pipe is not recognized by ASTM standards as referenced in 49 CFR and also waiver of Part 192.63 because the pipe is not marked according to the ASTM standards. As you can see in the Order, the Commission has granted approval of the waiver request but with added stipulations to help ensure the safe operation of the pipeline in the future. We request that your Office also approve the above referenced request for waiver.

The Operator, Ameresco Palmetto, Inc., has secured the services of SCS Engineers, Inc., to design and oversee the installation of the pipeline for this project. The Commission staff has met with representatives from SCS as well as Ameresco Palmetto to discuss and finalize the list of stipulations incorporated in the agreement contained in the Commission Order. It is our position that given the performance characteristics of the PE 100 pipe, the marking requirements of Part 192.63 should be addressed in the operation of the pipeline; thus, the basis for most of the stipulations within the agreement.

It is the intent of the Pipeline Safety Program of the Public Service Commission of South Carolina to regulate Operators of pipeline systems in the state according to the most prudent practices possible, within the jurisdiction allowable by The Federal Pipeline Safety regulations and the Commission Rules and Regulations Governing Gas Systems.

If you require any further information regarding this matter, please do not hesitate to call on us. I can be reached at (803)896-5100. Thank you in advance for your consideration of this matter.

Sincerely,



David Butler  
General Counsel

cc: Chairman Mignon L. Clyburn  
Gary Walsh  
Wayne Burdett  
Brent Sires  
Vernon L. Gainey ✓  
Carl Morse  
David DeBruhl  
Fred Joyner

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2002-271-G - ORDER NO. 2002-753

OCTOBER 25, 2002

IN RE: Application of SCS Engineers on behalf of ) ORDER APPROVING  
Ameresco Palmetto, Inc. for Waiver of 49 ) WAIVER AGREEMENT  
Code of Federal Regulations 192.59, "Plastic )  
Pipe" and 192.63, "Marking Requirements." )

This matter comes before the Public Service Commission of South Carolina (the Commission) on a request from the Commission Staff (the Staff) for approval of an agreement between the Staff, SCS Engineers (SCS) and Ameresco Palmetto, LLC (Ameresco) in a pipeline safety matter. Because of the reasoning as stated below, we approve the agreement.

On or about August 2, 2002, SCS Engineers filed with this Commission, on behalf of Ameresco and its parent company Ameresco, Inc., a document seeking approval of the installation of approximately 5,000 feet of pipe, tested pursuant to International Organization Standardization (ISO) standards, and herein referred to as PE100 pipe, in a gas pipeline approximately nine miles in length and connecting a landfill, owned and operated by Waste Management, Inc. (WMI), with a manufacturing facility owned and operated by BMW Manufacturing Corp. (BMW), all located in Spartanburg County, South Carolina. The pipe in question was manufactured by Quail Piping Products, Inc., utilizing Dow DGDA-2490 HDPE resin. At the time of the filing, the document seeking approval was in the form of a waiver request, wherein SCS sought waiver of 49 CFR

192.59, "Plastic Pipe," and 192.63, "Marking Requirements." This Commission has adopted these Federal gas pipeline safety regulations as the law of the State of South Carolina pursuant to S.C. Code Ann. Section 58-5-970 (1976) and 26 Code Regs. 103-490 (Supp. 2001).

The first regulation, 49 CFR 192.59, "Plastic Pipe," states the standard for plastic pipe that may be used in gas pipelines. The regulation states:

- (a) New plastic pipe is qualified for use under this part if:
  - (1) It is manufactured in accordance with a listed specification; and
  - (2) It is resistant to chemicals with which contact may be anticipated.

The specification listed under this regulation is the American Society for Testing and Materials (ASTM) standard, not the ISO standard under which the pipe in the present case was manufactured.

The second regulation, 49 CFR 192.63, "Marking Requirements," states:

- (a) Except as provided in paragraph (d) of this section, each valve, fitting, length of pipe, and other components must be marked—
  - (1) As prescribed in the specification or standard to which it was manufactured, except that thermoplastic fittings must be marked accordance with ASTM D 2513; or
  - (2) To indicate size, material, manufacturer, pressure rating, and temperature rating, and as appropriate, type, grade, and model.

The pipe in the present case was not marked "ASTM D-2513," but was marked "PE 100." Pipe marked with the "ASTM D-2513" mark is commonly known as PE 3408 pipe.

Two instances of non-compliance with Commission and Federal pipeline safety regulations were therefore alleged at the beginning of this case. The agreement, however, shows that, ultimately, after the review of various materials, and consultation with

outside parties and with SCS and Ameresco, the Staff became convinced that the pipe under consideration in the present case, which was tested under the ISO standard, was ultimately compliant with 49 CFR 192.59, in that the ISO testing standard was broad enough to include the criteria of the required ASTM standard. However, the remaining regulation, 49 CFR 192.63, was still problematic, in that the pipe at issue was still marked "PE 100" instead of with the required marking "ASTM D-2513." The Agreement reflects that the Staff, SCS, and Ameresco all now agree that 49 CFR 192.63, the marking requirement, should now be waived for the PE 100 pipe installed in this project, and that the PE 100 pipe installed may remain in place and constitute a part of the project pipeline, subject to certain conditions.

In return for Staff's agreement to the waiver, if the agreement is approved by this Commission, SCS and/or Ameresco agree to a number of testing conditions and marking requirements, as outlined in the written agreement. These include performance of a leakage detection survey at least once each calendar year. Further, among other things, above-ground pipeline markers will be installed and maintained, which will be monitored at least four times per calendar year. Accurate mapping will be maintained. Further, physical specimens of the pipe will be removed at least once every three calendar years and evaluated for deterioration or other flaws which would compromise the pipe's integrity or hamper its performance.

The agreement also provides for submission to this Commission of all actions, record-keeping, and other information required once a year. We would note that the agreement allows us to nullify the provisions of the agreement, if the Staff informs us and

we determine that there has been a failure to comply with the listed conditions. Further, if the agreement is nullified by this Commission, the Commission may require that the portion of pipeline which is PE 100 be removed from service and replaced with ASTM D2513 PE 3408 pipe material.

Finally, the agreement allows for elimination of the sampling requirement should the ISO standard be accepted as meeting ASTM requirements or the ISO tested pipe is otherwise approved for use in gas pipelines. Also, all conditions will be eliminated if the U.S. Department of Transportation (USDOT) recognizes PE 100 pipe as meeting the ASTM D2513 requirements, or otherwise approves its use in gas pipelines, and, as a consequence, the markings presently on the project pipe are deemed acceptable by USDOT. We would note parenthetically that any action by this Commission in approving the requested waiver and agreement is also reviewable by USDOT separately, which makes its own determination as to the propriety of the requested waiver.

We have examined the Waiver Agreement in this case and hereby approve it, pursuant to the reasoning stated *infra*. (This approved agreement is attached hereto as Order Exhibit 1.) This approval pertains solely to the time, place, and circumstances described in said agreement. This approval shall relate only to the facts and circumstances presented by the specific agreement, and this Order shall not be precedential for any future situations that may occur. Each gas pipeline safety matter must be examined on its own merits. Accordingly, any other attempt by anyone to use the described pipe under any circumstances other than those described by the specific agreement considered herein shall be considered out of compliance with pipeline safety

regulations, unless otherwise determined by this Commission at a later date, or unless the applicable regulations are modified by the USDOT.

We would note that we may waive provisions of our regulations pursuant to Commission Regulation 103-401(3), which states that “In any case where compliance with any of these rules and regulations introduces unusual difficulty, such rules or regulations may be waived by the Commission upon a finding by the Commission that such waiver is in the public interest.”

We do believe that compliance with the marking provision found in 49 CFR 192.63, as adopted for the State of South Carolina by Commission Regulation 103-490, presents unusual difficulty in the present case. Some 5,000 feet of the improperly marked pipe have been laid in the ground on the BMW project. Arguably, SCS and Ameresco would either have to remove the pipe from the ground, or else agree to suitable conditions as suggested by the Commission Staff before a waiver of the marking provision would be acceptable. In the present agreement, a number of testing and marking conditions as described above are imposed on SCS and Ameresco for the present project which we believe are in the public interest. Thus, we hold that the waiver of the marking requirement in this instance is justified. (Again, this holding is subject to review and separate determination by the USDOT.)

The agreement is approved as executed, and the requested waiver is granted.

OCTOBER 25, 2002

PAGE 6

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This Order shall remain in full force and effect until further Order of the Commission.

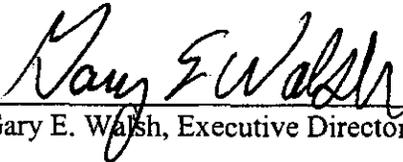
BY ORDER OF THE COMMISSION:



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Mignon L. Clyburn, Chairman

ATTEST:



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Gary E. Walsh, Executive Director

(SEAL)