Statement of Commissioner Joseph R. Fogarty

In Re: Amendment of Part 67 of the Commission's Rules

I strongly endorse the order of the Joint Board in which we seek comment on questions developed by the Joint Board staff as well as comment on the staff proposal for a five-year phase-out of customer premises equipment (CPE) and AT&T's plan for the revision of the separations process. By obtaining comment on the broad range of issues contained in both the staff and AT&T proposals, the Joint Board should be able to proceed much more expeditiously and with greater direction than it has been able to do thus far.

Unfortunately, this rapid progress may be hampered by the Federal Communications Commission's failure to recognize the infeasibility of the March 1, 1982 CPE deregulation date established in the *Second Computer Inquiry*, 77 FCC 2d 384 (1980). I agree with Commissioners Edward Larkin and Edward Burke that the time has come for the Commission to realize the impracticality of the March 1982 deadline and to take appropriate action to begin to plan for the orderly deregulation of CPE. It was to this end that on March 11, 1981, in a Memorandum to Chairman Lee, I proposed the formation of a task force whose task would be to develop proposals for a uniform strategy regarding the implementation of the *Computer II* decisions and other recent FCC orders. This task force would operate under the auspices of the FCC Office of Plans and Policy and the Common Carrier Bureau and be aided by an experienced consultant with the broad historical perspective so lacking in many of our deliberations.

So far, no action has been taken on my proposal. Our policy is still in disarray. I again urge the Commission to promptly form a planning task force. The quandary faced by the Joint Board in this proceeding demonstrates the urgent need for this group to develop a coherent policy. Both the Joint Board and the states have the right to receive the direction that such a policy would give. The Commission cannot afford to delay any longer.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS-69; Notice 1]

Transportation of Natural and Other Gas and Hazardous Liquids by Pipeline; Line Markers at Navigable Waterways

AGENCY: Materials Transportation Bureau (MTB).

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: This notice invites comments on the problem of interference with underwater pipeline crossings of navigable waterways, the benefits of installing line markers at these crossings, and the size of markers to be used. Comments received may result in publication of another notice proposing specific changes to existing line marking rules, with further opportunity for public comment.

EFFECTIVE DATE: Interested persons are invited to submit written comments on this notice before August 6, 1981. Late filed comments will be considered so far as practicable. All interested persons must sumit as part of their written comments all the material that they consider relevant to any statement of fact made by them.

ADDRESS: Communications should be sent to the Dockets Branch, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590. All comments and docket materials may be reviewed in the Dockets Branch, Room 8426, between the hours of 8:30 a.m. to 5:00 p.m. each working day.

FOR FURTHER INFORMATION CONTACT: Ralph T. Simmons, 202-426-2392 regarding the content of this notice, or the Dockets Branch, 202-426-3148, regarding copies of this notice or other information in the docket.

SUPPLEMENTARY INFORMATION:

Background

MTB is reviewing the requirements of §§ 192.707 and 195.410 that line markers be installed at underwater pipeline crossings of navigable waterways. The review is being conducted in accordance with Executive Order 12291 as part of MTB's program to review existing regulations and revoke or revise those that are not achieving their intended purpose.

Markers historically have been installed by pipeline companies at the shorelines of underwater crossings of navigable waterways, and this practice became mandatory for gas pipeline under § 192.707 and for interstate liquid pipelines under § 195.410. The waterway crossings are marked to notify persons conducting marine activities (e.g., pile driving, anchoring, or dredging from a barge or land-based equipment) of the presence of an underwater pipeline, and, thus, to reduce th likelihood of interference with the pipeline. For this reason, markers are required to bear the words "Do Not Anchor or Dredge."

Two problems are apparent with the current rules. First, the term "navigable waterway" is not defined in the rules, and while MTB has applied the Coast Guard's interpretation of this term (33 CFR Part 2), this interpretation may be broader than in reasonably necessary to assure safe pipeline crossings. As a result, the current rules may require markers where there is little or no susceptibility to damage from marine activities, for example, at minor stream crossings which have no vessel traffic and where dredging is unlikely to occur.

The second problem involves the size of line marking signs that must be installed. The rules for gas pipelines require that signs be visible and legible from vessels that could interfere with the pipeline. At wide crossings of lakes or rivers, extremely large signs must be used to ensure visibility (not to mention legibility) from any channel that lies far from shore. Of course, as the crossings get wider, so must the signs be larger, until a point of impracticality or strong environmental objection is reached. While the rules for liquid pipelines are not as definite, similar compliance problems obviously exist. At the same time, if large signs are not installed at wide crossings, then portions of these crossings that may be the ones most susceptible to damage would go unprotected by warning signs.

The Technical Pipeline Safety Standards Committee has on two occasions considered the need for line markers at navigable waterway crossings. At a meeting on December 5, 1978, the Committee recommended that the term "navigable waterway" be narrowly defined to avoid having to install markers where they would be of little benefit. Although the Committee did not propose a definition, it believes that current standards now require markers at water crossings where there may be little or no likelihood of damage to pipelines.

The Technical Committee also recommended that markers not be required at waterways where channel boundaries are marked by aids to navigation and the Corps of Engineers maintains charts which show utility crossings. The U.S. Coast Guard requires pilots of vessels to have available, on the vessel, current copies of these charts, and the Committee reasoned that markers are not needed to prevent pipeline damage where channels are well marked and charts showing utility crossings are available to pilots and dredging contractors. Further, the proposal was intended to practically eliminate the burden of having to install billboard-size signs that are large enough to be seen and read from river channels that are long distances from shore.

In a later meeting on June 17, 1980, the Committee again informally discussed the need for line markers at navigable waterway crossings. Although no

recommendations were made, many members doubted whether significant safety benefits are derived from markers at waterway crossings in view of the apparently low potential for accidents and quationable effectiveness of markers in preventing accidents. One member of the Committee pointed out that signs are useless in times of fog and other times when they can't be seen (e.g., at night), and, thus, they are only a part-time solution to the problem.

MTB has received waiver petitions from Tennessee Gas Pipeline Company (79–3W), East Tennessee Natural Gas (79–5W), Midwestern Gas Transmission (79–4W), and the Northern Natural Gas Company (80–1W). The petitioners requested that MTB grant them a waiver from compliance with the provisions of § 192.707(a) for all of their pipeline crossings of rivers, streams, and inland waters which do not have either of the following characteristics: (1) U.S. Coast Guard aids to navigation; or (2) regularly scheduled commercial traffic.

The petitioners stated that since MTB's regulations do not define the meaning of navigable waters, and since new laws and Court rulings have extended the meaning of "navigable waterways" to "any head waters capable to floating a canoe, bateaux, or log," markers are required on thousands of pipeline crossings of streams and tributaries where there is no possibility of damage from anchors or dredging. (It should be noted that a permit for dredging in navigable waterways must be obtained from the Corps of engineers, and obstructions to dredging (such as pipelines) are noted on the permit.)

Tennessee Gas Pipeline Company stated that it would cost them in excess of $8,000,000 to install signs at all navigable water crossings on their system. East Tennessee estimated their cost as at least $600,000.

Because these petitions for waiver do not relate to unique circumstances and they raise issues germane to all regulated pipeline companis, MTB is considering them as part of this rulemaking.

Another petitioner (P–10), the Interstate Natural Gas Association of America, has requested that MTB amend Part 192 to establish a definition of "navigable waterways" that would limit the installation of markers to waterways that have either Coast Guard aids to navigation or vessel traffic that could damage the pipeline. This request is consistent with the waiver petitions discussed above, in that markers would be required only where there is potential for anchor damage. However, it is somewhat at odds with the Technical Committee's view that marking would be of little benefit where channels are marked and Corps of Engineers' charts showing utility crossings are available. Also, the proposal seemingly disregards the potential problem of damage from dredging or other sources not connected with an existing main channel.

The petitioner goes on to recommend that a maximum letter size of 12 inches be adopted to limit the size of signs that must now be installed to ensure visibility from channels on wide river crossings. While these markers might guard against near-shore activities, no steps were recommended to guard against damage from faraway vessels on wide crossings.

Review Determination

So far, MTB's review had determined the following: First, although markers have been traditionally, and now mandatorily, placed at waterway crossings to warn persons of the presence of underwater pipelines, there is no empirical information available to demonstrate whether and under what conditions markers are effective in reducing the frequency of accidents. Indeed, such information would be extremely difficult and costly to obtain. Also, considering that (1) markers are visible only part of the time, and (2) markers of reasonable size are not readily distinguishable from distant channels (as on lakes), markers may be expected to have only limited effectiveness at best.

Secondly, although the frequency of accidents is unknown, the consequences of accidents that have occurred have not been severe in terms of deaths and injuries. From 1970 through 1979, there were 26 accidents reported on gas pipeline crossings caused by marine activities, resulting in no deaths and 3 injuries (occurring in one incident). Between 1968 and 1977, there were only 16 marine-activity related accidents on liquid pipelines, and no deaths or injuries were reported. [MTB's statistics do not tell whether these accidents occurred in spite of line markers, or how many, if any, accidents were avoided due to properly marked crossings.]

Finally, even in the absence of a complete cost study, the information supplied by Tennessee Gas shows that compliance with the existing requirements for water crossings that might be classed as navigable is very costly for the industry.

Given this combination of high costs to achieve potentially minor benefits and regulations that may be unreasonable to apply in every instance and probably have only limited effectiveness, clearly some rule change is in order. MTB is considering either deletion of the requirements to mark waterway crossings or revision so that only those crossings are marked where there is a reasonable relation between cost and potential benefit.

Alternatives

MTB has identified the following alternatives to consider in deciding what, if any, rulemaking action is to be taken.

1. Continue the present rules that line markers be placed at all crossings of waterways capable of floating a canoe, bateaux, or log, in a size large enough to be discerned from vessels in a channel.

2. Require line markers only at crossings of rivers or other bodies of water which carry potentially damaging vessels or where channel dredging and commercial dredging (such as oyster shell dredging) is commonly performed, but place a reasonable limit on the size of signs. This alternative might exempt waterways where channels are marked by aids to navigation and the Corps of Engineers maintains utility crossing maps from the requirement that markers be noticeable from channels.

3. Require all future underwater pipelines and the replacement of any existing underwater pipelines to be placed deep enough underneath the waterway bed to avoid foreseeable potential damage (rather than being dredged or bridged and layed on or near the existing bed of the waterway). In this case, existing pipeline crossings would be marked according to alternative 1,2, 4, or 5.

4. Revoke the present requirements for line markers at navigable waterways. In this case, safety would be regulated by other existing DOT requirements, such as depth of burial, by "one-call" damage prevention programs, or by Coast Guard and Corps of Engineer requirements discussed above.

5. Use lights or buoys for line markers in place of signs; or use a combination of lights, buoys, and signs.

Cost/Benefits

Where MTB does not have sufficient information about the first alternative to make a firm estimate of the cost to industry of installing line markers at all navigable waterway crossings not now marked, using the information contained in the petitions of Tennessee Gas Pipeline Company and East Tennessee. MTB estimates that it would cost industry approximately $100,000,000 if the first alternative is adopted.

Even though the majority of reported accidents involving underwater pipelines has occurred in areas where line markers are required, it cannot be

concluded from this information whether or to what extent markers are effective in preventing accidents. It seems reasonable, however, that little, if any, benefits would be achieved by continuing to require line markers in areas where there is little possibility of pipelines being damaged by marine activities.

The second alternative would essentially amount to maintaining the stutus quo from a compliance standpoint, since, at present, most line markers are placed at such locations. Therefore, there would be little, if any, cost impact to industry if markers were required only in areas of identifiable potential damage. MTB does not have any information that indicates that there would be any decrease in benefits from so restricting the present requirements. More significant, however, MTB lacks information to demonstrate the potential benefits of marking, and speculative benefits may not justify even the restricted marking requirement proposed by alternative number two.

As for the third alterntive, MTB expects the cost of installing pipelines deeper under river beds than currently required would far exceed the cost of installing and maintaining line markers. While this alternative would have the benefit of a higher level of protection against damage, it is speculative whether a higher level is needed as a general rule or, moreover, whether even the protection afforded by markers is needed.

The fourth alternative would delete the present requirements for line markers at waterways, and, depending on the reaction of industry, could eliminate the cost of installing and maintaining line markers at waterway crossings or have no effect on the current costs of marking. The benefit of this alternative cannot be accurately assessed since the benefits of the current rule are unknown or speculative. If it is assumed that some markers are beneficial, their removal would have a negative impact, perhaps greater than the savings in cost. If it is assumed, however, that in the absence of a Federal rule, most pipeline companies would voluntarily maintain line markers in critical areas where most benefits may exist, revocation of the current rule would have little, if any, negative impact on current benefits. On the other hand if markers have little or no benefits, their removal would not cause a decrease in benefits while saving maintenance and replacement costs.

As for the fifth alternative, MTB does not have any information about the effectiveness, cost, or benefit of marking a crossing by means other than shore-side signs.

Request for information

To help MTB decide which alternative to choose, interested persons are invited to participate in this rulemaking by answering the following questions and submitting any substantiating information:

1. Under what circumstances, if any, does the potential for interference with underwater gas or liquid pipeline crossings constitute a threat to public safety?

2. If there is a threat to public safety—

(a) How should the crossings where a threat exists be defined? (e.g., crossings might be defined as all pipelines at all waterways, or only highly volatile liquid pipelines at crossings subject to commercial vessel traffic.)

(b) Considering the several types of activities that cause damages, are shore-side line marking signs an effective way to protect crossings against the threat of interference? If so, what evidence is there to demonstrate their effectiveness (or non-effectiveness)? If signs are not effective, would the alternative of buoys or lights be effective?

(c) Should line markers (signs, buoys, or lights) be required even though any one or a combination of protective measures other than markers are in effect; specifically, deeper burial, operator participation in a "one-call" or similar type of damage prevention program, regulation of dredging by the Corps of Engineers, or pilots' use of Corps of Engineers' charts? What would be the impact if existing markers were removed?

(d) Assuming that the largeness of a line marking sign sets a practical limit on its usefulness—

(i) How far from shore should a sign be recognizable by shape and color?

(ii) How far from shore should a sign be legible?

(iii) Should the recognition and legibility distances be based on the naked eye or the use of binoculars?

(e) If a threat to public safety exists on a portion of a crossing that lies beyond the practical limits of sign recognition, how should this portion of the crossing be protected? If this threat were the only one on the crossing, should shore-side signs be installed, nonetheless? If so, what size signs should be used and what benefits would they have?

(f) What would be the cost of installing individual signs of different sizes and their maintenance cost, if alternative one is adopted? If alternative two is adopted?

3. In the absence of a regulation, would line markers be voluntarily installed or maintained? If so, where and why?

4. Which of the alternatives suggested by MTB would have potential benefits to society that outweigh the potential costs? Are there other alternatives not suggested by MTB? If so, what are they and what would be their costs and benefits?

5. What would be a reasonable estimate of cost for a typical incident of damage to an underwater pipeline, including any costs that might occur from pollution or environmental damage?

(49 U.S.C. 1672; Sec. 203, Pub. L. 96-129, 93 Stat. 1004 (49 U.S.C. 2002); 49 CFR 1.53, Appendix A of Part 1 and Appendix A of Part 106)

Issued in Washington, D.C., on June 17, 1981.

Melvin A. Judah,

Acting Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

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INTERSTATE COMMERCE COMMISSION

49 CFR 1201

[Docket No. 36988]

Alternative Methods of Accounting for Railroad Track Structures

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Interstate Commerce Commission proposes to change its method of accounting for track structure from Retirement-Replacement-Betterment (RRB) to ratable depreciation accounting. The objectives in changing methods of accounting for track are to improve reporting of the loss in service potential resulting from the use of track assets, to improve the quality of reported earnings through better matching of revenues and expenses and to make financial reports comparable with other industries.

DATE: Written responses and accompanying data should be filed with the Commission on or before August 6, 1981.

ADDRESS: An original and 10 copies, if possible, of any comments should be sent to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr. (202) 275-7448.