

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

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| <b>IN THE MATTER OF COMMISSION )</b>      | <b>DECLARATORY RULING</b>  |
| <b>STAFF'S PETITION FOR DECLARATORY )</b> | <b>REGARDING FARM TAPS</b> |
| <b>RULING REGARDING FARM TAP )</b>        |                            |
| <b>CUSTOMERS )</b>                        | <b>NG16-014</b>            |

On November 9, 2016, the South Dakota Public Utilities Commission Staff filed a petition with the South Dakota Public Utilities Commission (Commission) for a declaratory ruling to resolve the following issues: 1) Does the Commission have jurisdiction over any utility providing natural gas to farm tap customers taking natural gas from the transmission line owned and operated by Northern Natural Gas Company (Northern)? 2) If so, which entity, NorthWestern Corporation dba NorthWestern Energy (NorthWestern) or Northern, if either, is a public utility as defined by SDCL Chapter 49 with respect to these farm tap customers? 3) Are the farm taps in whole or in part subject to state jurisdiction for the purpose of pipeline safety pursuant to SDCL Chapter 49-34B?

On November 10, 2016, the Commission electronically transmitted notice of the filing and the intervention deadline of November 21, 2016, to interested individuals and entities on the Commission's PUC Weekly Filings listserv. On November 23, 2016, the Commission issued an Order Granting Intervention, granting intervention to Northern, NorthWestern, and Montana-Dakota Utilities Co. The Commission issued an Order for and Notice of Hearing on November 30, 2016. The hearing was held as scheduled on December 14, 2016, at which time the Commission heard the oral arguments of the parties.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-1-11(5), 49-34A, and 49-34B, and ARSD 20:10:01:34 and 20:10:01:35. The Commission may rely upon any or all of these or other laws of this state in making its determination.

At its regularly scheduled meeting on January 17, 2017, the Commission considered this matter. Having reviewed the filed documents, the transcript of the hearing, and the arguments of the parties; as to whether the Commission has jurisdiction over any utility providing natural gas to farm tap customers taking natural gas from the transmission line owned and operated by Northern, Commissioner Hanson moved to declare that the Commission does have jurisdiction over a utility providing natural gas to farm tap customers taking natural gas from the transmission line owned and operated by Northern. The motion carried 3-0.

As to which entity, NorthWestern or Northern, if either, is a public utility as defined by SDCL Chapter 49 with respect to these farm tap customers, Commissioner Hanson moved to declare that both Northern and NorthWestern are public utilities as defined by SDCL Chapter 49 with respect to these farm tap customers. Commissioner Nelson moved a substitute motion to

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declare that NorthWestern is a public utility as defined by SDCL Chapter 49. The motion carried 3-0. Commissioner Hanson moved to declare that Northern has made itself a public utility in the State of South Dakota for the providing of natural gas to the farm tap customers. The motion failed 2-1.

As to whether farm taps in whole or in part are subject to state jurisdiction for the purpose of pipeline safety pursuant to SDCL Chapter 49-34B, Commissioner Nelson moved to declare farm taps in whole or in part, are not subject to state jurisdiction for the purposes of pipeline safety pursuant to SDCL Chapter 49-34B. Motion carried 3-0.

Pursuant to SDCL 49-34A-1(12), a public utility is an entity operating, maintaining, or controlling in this state equipment or facilities for the purpose of providing gas or electric service to or for the public in whole or in part, in this state. As explained throughout the proceedings, the Commission finds that NorthWestern operates equipment and facilities for the purpose of providing gas service to or for the public including providing emergency response, filling the odorizers annually, billing monthly, reading the meters annually, locking the taps if needed, and nominating gas for the farm tap customers.

Pursuant to SDCL 49-34B-4, the Commission may establish safety standards for the intrastate transportation of gas and gas pipeline facilities. As presented throughout the proceedings, the Commission finds that Northern is a federally regulated interstate pipeline and is not subject to state jurisdiction for the purpose of pipeline safety.

It is therefore

ORDERED, that the Commission has jurisdiction over utilities providing natural gas to farm tap customers taking natural gas from the transmission line owned and operated by Northern. It is further

ORDERED, that NorthWestern is a public utility as defined by SDCL Chapter 49 with respect to these farm tap customers. It is further

ORDERED, that farm taps in whole or in part are not subject to state jurisdiction for the purpose of pipeline safety pursuant to SDCL Chapter 49-34B.

#### NOTICE OF ENTRY AND OF RIGHT TO APPEAL

PLEASE TAKE NOTICE that this Declaratory Ruling was duly issued and entered on the 24<sup>th</sup> day of January, 2017. Pursuant to SDCL 1-26-32, this Declaratory Ruling will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties. Pursuant to ARSD 20:10:01:30.01, an application for a rehearing or reconsideration may be made by filing a written petition with the Commission within 30 days from the date of issuance of this Declaratory Ruling; Notice of Entry. Pursuant to SDCL 1-26-31, the parties have the right to appeal this Declaratory Ruling to the appropriate Circuit Court by serving notice of

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appeal of this decision to the circuit court within thirty (30) days after the date of service of this Notice of Decision.

Dated at Pierre, South Dakota, this 24<sup>th</sup> day of January, 2017.

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| <b>CERTIFICATE OF SERVICE</b>   |
| The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail. |
| By: <u>Adam Detrick</u>   |
| Date: <u>1/24/17</u>  |
| (OFFICIAL SEAL)   |

BY ORDER OF THE COMMISSION:

Kristie Fiegen

KRISTIE FIEGEN, Chairperson

Gary Hanson

GARY HANSON, Commissioner

Chris Nelson

CHRIS NELSON, Commissioner

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