

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

IN THE MATTER OF COMMISSION)	
STAFF'S PETITION FOR)	Staff's Response to Motions for
DECLARATORY RULING REGARDING)	Rehearing and Reconsideration
FARM TAP CUSTOMERS)	
)	NG16-014
)	

Staff takes no position on the Motion for Rehearing filed by Northern Natural Gas.

NorthWestern Energy filed a Petition for Reconsideration of Declaratory Ruling. Likewise, Staff does not take a position as to whether the Commission should reconsider its prior ruling.

However, Staff takes issue with NorthWestern's blanket statement that the Commission does not have jurisdiction over contractual matters. While NorthWestern is correct that the Commission does not have jurisdiction over *easements*, it is not accurate to state that any utility service arising from a contractual agreement is outside the scope of the Commission's jurisdiction. To the contrary, every utility service could be described as arising pursuant to a contract, whose terms are approved by the Commission when it approves rates and tariffs. Moreover, every contract with deviations must be approved by the Commission. SDCL 49-34A-8.3.

NorthWestern cites to *Medic-Call, Inc. v. Public Service Commission*, to support its position. *Medic-Call, Inc.*, 24 Utah 2d 273, 470 P.2d 258 (1970). It is worth noting that this case predates the establishment of this Commission's regulatory powers for both ratemaking and pipeline safety. NorthWestern movant bases its reliance on *Medic-Call* on the fact that the court in that case determined that the service was not a public utility service, but merely a contractual arrangement and contractual arrangements cannot be converted to establish the company as a public utility. *Id.* However, that court did not rely solely on the fact that the service was contractual. The court also relied on the fact that the service "does not have the elements of a

public utility.” *Id.* at 277. Thus, if one were to apply the holding in *Medic-Call* to the circumstances of the farm taps docket, the first factor is concurrent, but it is not clear that the service does not have the elements of a public utility.

While Staff refrains from opining on the merits of NorthWestern’s Motion, it is important to clarify that certain types of contracts do fall within the jurisdiction of this Commission. Merely relying on the face that a service is provided pursuant to a contract as determinative of jurisdiction would establish a dangerous precedent.

Dated this 7th day of March, 2017.



Kristen N. Edwards
Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501
Phone (605)773-3201
Kristen.edwards@state.sd.us