

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

**IN THE MATTER OF COMMISSION
STAFF'S PETITION FOR DECLARATORY
RULING REGARDING FARM TAP
CUSTOMERS**

DOCKET NO. NG16-014

**NorthWestern Energy's Brief in Response to
Commission Staff's Petition for Declaratory Ruling**

NorthWestern Corporation d/b/a NorthWestern Energy (*NorthWestern Energy*) submits this brief in response to the three issues raised in Commission Staff's petition (*Petition*) for declaratory ruling:

1. Does the South Dakota Public Utilities Commission (the *Commission*) have jurisdiction over the utility providing natural gas to the farm tap customers of Northern Natural Gas Company (*NNG*) who are taking gas from the transmission line owned and operated by NNG?
2. If so, which entity, NorthWestern Energy or NNG, if either, is a public utility as defined by SDCL Chapter 49 with respect to NNG's 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?

NNG recently attempted to redirect its responsibility to its farm tap customers by sending them a letter which places blame on NorthWestern and the Commission for the situation NNG currently finds itself in. The letter, which NNG filed as part of this Docket, ignores the promises NNG made to its farm tap customers in exchange for the easements that allowed NNG to construct a transmission pipeline.

NNG made two promises to these customers. First, NNG promised to provide a tap (*farm tap*) so that the landowners could access the transmission line NNG wanted to build. The NNG letter

clearly communicates that NNG “stands ready and willing to provide the same interstate natural gas transportation service that [it has] provided for decades.” At least NNG’s farm tap customers received that message loud and clear.

However, NNG wasn’t as clear in communicating with its farm tap customers regarding the second promise it made to obtain the necessary easements – namely, to furnish gas to its customers. In fact, NNG completely fails to mention in the letter that it made this second promise. Instead, NNG describes “a long history” of NorthWestern “and its predecessors” providing this service. But NNG knows this isn’t the complete story. NNG does not remind its farm tap customers that the benefits it received from the easements required NNG to provide this service. NNG also does not inform its customers that *it*, in fact, provided this service for well over 30 years. In other words, NNG does not tell its farm tap customers that the “predecessors” with “a long history” include NNG, either directly or through one of its divisions or subsidiaries. Further, NNG’s letter ignores the reality that NorthWestern only recently, in 2011, began providing assistance to NNG with NNG’s farm tap customers and instead embellishes NorthWestern’s involvement “since Northern Natural Gas first constructed the tap.”

As summarized in this brief, NorthWestern’s relationship to NNG with respect to NNG’s farm tap customers is contractual. In 2011, NorthWestern agreed to provide services to NNG to assist NNG with NNG’s farm tap customers until the contractual term expires at the end of 2017. As part of the agreement to provide these services to NNG, NorthWestern did not acquire any property related to NNG’s farm tap customers or their farm taps.

Furnishing gas to NNG’s farm tap customers has been NNG’s responsibility since the 1950s when NNG offered such services in exchange for easements that allowed NNG the benefit of constructing a natural gas transmission line across the property of NNG’s farm tap customers. NNG continues to operate the natural gas transmission line for which it acquired the easements. Unlike NorthWestern’s contractual obligation to assist NNG, which has a specific termination date, NNG’s

responsibility to its farm tap customers continues, along with the benefits of its easement, for as long as NNG's pipe is in the ground. Finally, NorthWestern is not a "public utility" with respect to NNG's farm tap customers because NorthWestern's assistance to NNG lacks many of the key indicia of being a public utility.

NNG's obligations to its farm tap customers

The issues from the Petition arise out of a natural gas transmission line owned and operated by NNG. In the 1950s, NNG wanted to build this line. But NNG couldn't build it without the consent of many landowners to bury the line on their land. To obtain consent of the landowners, NNG agreed to (1) provide the landowner with a farm tap *and* (2) furnish gas to the landowners for use on their premises. In other words, to build the transmission line, NNG promised these landowners that it would serve them as its farm tap customers. For many years, NNG lived up to both of these promises – NNG provided its farm tap customers with both interstate gas transmission and, through NNG's Peoples Natural Gas division, furnished the farm tap customers with gas. Without NNG's promise to provide *both of those services*, the line likely would not have been possible. NNG likely would not have obtained the required easements from its farm tap customers to construct the transmission line. Its pipe never would have gone in the ground.

Recognizing both obligations, on April 1, 1987, NNG entered into an agreement (*Agreement*, attached as **Exhibit A** to this Brief) with its own subsidiary, Peoples Natural Gas Company (*Peoples*), to provide the local services to NNG's farm tap customers. As part of the Agreement, NNG paid Peoples (its own subsidiary) nearly \$2 million to perform services on behalf of NNG for 30 years until 2017. It is unknown why NNG chose to limit the Agreement to

a 30-year term when there is no such limitations on the easements NNG received from its farm tap customers.

Through various corporate machinations, NNG ultimately exited the local natural gas distribution business. As NNG likes to remind us, today it is in the business of providing interstate natural gas transmission service and “stands ready” to provide that (*and only that*) service to NNG’s farm tap customers. NNG also stands ready to continue to enjoy the benefits of its easements that provide access for its transmission line. But NNG appears to be unwilling to live up to *both* of the obligations it agreed to when it was seeking to carve up the property of its farm tap customers and construct its interstate transmission line.

Despite NNG’s current interstate-only protests, NNG understands its obligations to its farm tap customers arising from the easements. Why else would NNG continue to enter into long-term agreements to have others assist it with providing service to farm tap customers *on its behalf*?

As it was exiting the local natural gas distribution business, NNG ensured that the service its subsidiary Peoples provided to its farm tap customers in the Agreement would continue to be provided by the successor to Peoples – Minnesota Energy Resources Company (*MERC*). Then, on June 1, 2011, NNG again acknowledged its obligations to its farm tap customers when it signed a partial assignment of agreement (*Assignment*, attached as **Exhibit B** to this Brief), in which it agreed to allow MERC to partially assign its obligations under the Agreement to NorthWestern.

NNG has understood its obligations to its farm tap customers all along. Yet, it has not made arrangements to continue its required service to its farm tap customers beyond the 2017 term of the Agreement. NNG has done nothing to fulfill its promises to its customers going

forward and instead is seeking to lay the blame for its lack of action on NorthWestern and the Commission, all while continuing to enjoy the benefits of its easements.

NorthWestern's contractual role assisting with NNG's farm tap customers

NorthWestern is currently assisting NNG with providing services to NNG's farm tap customers pursuant to the Agreement and the Assignment. The assistance NorthWestern is providing is purely for contracted services. As part of that contract, NorthWestern did not acquire any of the property or infrastructure related to NNG's farm tap customers, and NorthWestern does not own any of that property or infrastructure today.

NorthWestern's contractual obligation originated in 2011 when NorthWestern acquired an entirely separate pipeline (*Milbank Pipeline*) from NNG (*See Commission Docket NG11-001*). As a condition of agreeing to the Milbank Pipeline acquisition, MERC required NorthWestern to assist NNG with providing services pursuant to the Agreement to NNG's farm tap customers (even though NNG's farm tap customers are unrelated to the Milbank Pipeline). Conspicuously, when consenting to the Assignment, NNG did not require NorthWestern to continue such assistance beyond 2017 as a condition of the Milbank Pipeline acquisition.

The Commission approved NorthWestern's acquisition of the Milbank Pipeline on March 11, 2011, pursuant to its Final Decision and Order in NG11-001. Notably, the Commission's Order included approval of the December 31, 2017, termination of NorthWestern's contractual commitment to assist NNG with serving NNG's farm tap customers.

Consistent with the Final Decision and Order and pursuant to the Agreement and the Assignment, NorthWestern provided notice to NNG on November 15, 2016, that NorthWestern would be terminating its obligations under the Agreement effective December 31, 2017, in

accordance with the Agreement's terms. NorthWestern filed a copy of such notice in this proceeding.

This is not the first time that NorthWestern has agreed to provide such services on behalf of others pursuant to a contract with a limited term. In fact, NorthWestern's assistance to NNG with its farm tap customers is similar to the assistance NorthWestern previously provided to the cities of Humboldt, Crooks, and Garretson pursuant to natural gas distribution services agreements. Although the agreements with those cities did not cover services identical to those NorthWestern is providing to NNG with respect to NNG's farm tap customers, there are similarities. For instance, NorthWestern contractually agreed to provide the annual inspection and maintenance of the applicable odorizer receptacles for these parties. NorthWestern also acts as a first responder for NNG and acted as a backup first responder for the cities.

As the Commission is aware, NorthWestern ultimately discontinued its assistance to these cities after several years. As with NNG, NorthWestern had a contractual obligation to these cities with a limited term. When the term expired, so too did NorthWestern's contractual obligations.

NNG knows NorthWestern's assistance began a short time ago in 2011 with the acquisition of the unrelated Milbank Pipeline and that NorthWestern's assistance was for a contractually limited duration. NNG knows that NorthWestern had nothing to do with NNG's farm tap customers prior to the Milbank Pipeline acquisition. However, NNG chose to deliver embellishments to its farm tap customers when NNG indicated in the letter that NorthWestern had "a long history" of serving natural gas to NNG's farm tap customers and that NorthWestern "and its predecessors, have provided utility service to your farm tap since Northern Natural Gas first constructed the tap."

It is unknown why NNG used these embellishments in its communication to its farm tap customers or why it used the generic term “predecessors” to obscure the fact that it and its subsidiary Peoples previously furnished gas to NNG’s farm tap customers. NorthWestern only contracted to provide service to NNG with respect to NNG’s farm tap customers. NorthWestern did not acquire any property or infrastructure concerning the farm taps as part of the contract.

NorthWestern is not a public utility with respect to NNG’s farm tap customers

A gas utility is “any person operating, maintaining, or controlling in this state equipment or facilities for providing gas service to or for *the public*.” SDCL 49-34A-1(9). A public utility, by statute, provides “gas or electric service to or for the public in whole or in part, in [South Dakota].” SDCL 49-34A-1(12). A hallmark of service to the public is that any member of the public has a right to and may demand service. *See, Krenning v. Heart Mountain Irr. Dist.* 200 P.3d 774, 782 (Wyo. 2009) (“a public utility is ‘open to the use and service of all members of the public who may require it’”), *quoting* 73B C.J.S. *Public Utilities* § 2 (2008): *Pennsylvania v. Lafferty*, 233 A.2d 256, 260 (Penn. 1967) (“a public utility holds itself out to the public generally and may not refuse legitimate demand for service”).

NNG’s farm tap service is not available to the public. The only customers that can be an NNG farm tap customer are those persons that own land subject to an easement in favor of NNG, which was granted in exchange for NNG’s agreement to provide farm tap service for use on that land.

In addition, NorthWestern is not providing gas service “to or for the public” by assisting NNG with providing the services NNG agreed to provide to its farm tap customers in exchange for the easements. NorthWestern, through the Assignment, only undertook to perform certain functions for NNG that previously were performed by NNG, then Peoples, then MERC. The

Agreement restricts to whom NorthWestern could provide service. NorthWestern could not permit a member of the public, even one who owned property along the pipeline to install a new tap into NNG's pipeline. No one, other than a person approved by NNG, may receive farm tap service pursuant to the Agreement and Assignment.

A public utility has many characteristics or criteria defined by statute. However, NorthWestern's assistance to NNG in serving NNG's farm tap customers fails to meet several of those characteristics/criteria. NNG, through the Agreement and Assignment controls the services that NorthWestern provides on NNG's behalf. The Agreement, in its Exhibit 1, limited NNG's subsidiary, Peoples, to providing 12 services. The Assignment further limited NorthWestern to providing only 10 of the 12 services that Peoples/MERC provided. These services do not include all of the rights and obligations of a public utility and prevent NorthWestern from acting as a public utility serving NNG's farm tap customers. Moreover, unlike a public utility, NorthWestern does not own any of the infrastructure that is used in connection with these farm taps. Either NNG or NNG's farm tap customers owns the related infrastructure.

Finally, NorthWestern has never professed to serve the public along NNG's pipeline. NorthWestern is a public utility in several areas, but NWE has limited its operation as a public utility to those areas in which it has an obligation to serve. A utility may limit the territory in which it operates. *See, Crawford v. City of Billings*, 297 P.2d 292, 295 (Mont. 1956) ("It is not to be denied that a privately owned utility may limit the territory it professes to serve").

NorthWestern has no statutory obligation to provide public utility services to NNG's farm tap customers. However, NNG has a contractual obligation to serve its farm tap customers as long as its pipe is in their ground. NorthWestern, on the other hand, has a contractual obligation to serve NNG until December 31, 2017.

Accordingly, NorthWestern requests that the Commission recognize that NorthWestern is not a "public utility" with regard to the assistance it is providing NNG with NNG's farm tap customers.

Dated at Sioux Falls, South Dakota, December 7, 2016.

**NORTHWESTERN CORPORATION,
d/b/a NORTHWESTERN ENERGY**



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CERTIFICATE OF SERVICE

I the undersigned hereby certify that on the December 7, 2016, a true and correct copy of the foregoing *NorthWestern Energy's Brief in Response to Commission Staff's Petition for Declaratory Ruling*, was served upon the following by electronic mail:

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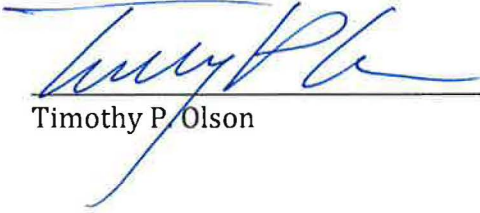
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**NORTHWESTERN CORPORATION,
d/b/a NORTHWESTERN ENERGY**



Timothy P. Olson

AGREEMENT

THIS AGREEMENT is made and entered into as of the 1st day of April, 1987 by and between Northern Natural Gas Company, a Division of Enron Corp. ("Northern") and Peoples Natural Gas Company, Division of UtiliCorp United Inc. ("Peoples").

WITNESSETH:

WHEREAS, Northern is engaged in the transmission of natural gas in and through the states of Iowa, Minnesota, Nebraska, Kansas, South Dakota and Michigan, among others; and

WHEREAS, Peoples is primarily engaged in the business of furnishing natural gas service at retail to approximately 300,000 customers located in the states of Iowa, Minnesota, Nebraska, Kansas, Michigan, South Dakota and Colorado; and

WHEREAS, Peoples presently provides natural gas service to various right-of-way grantors and other end users along Northern's transmission and gathering lines; and

WHEREAS, the parties estimate there are approximately 7,500 small volume, residential, irrigation and crop dryer farm tap customers and right-of-way grantor customers presently served by Peoples, and

WHEREAS, Northern has requested Peoples to perform certain services for Northern in connection with the natural gas sales to said existing and future customers, and Peoples has agreed to provide the services on behalf of Northern.

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual covenants and agreements hereinafter contained, Northern and Peoples, subject to the terms and conditions hereinafter set forth, hereby agree as follows:

1. Performance of Services.

Peoples shall operate as a public utility and provide the services herein described and as are set forth on the attached Exhibit 1, to Peoples' existing small volume, residential, irrigation and crop dryer farm tap customers and to those new right-of-way grantor customers as may be designated by Northern, located within the below-described service territory.

2. Manner and Time of Performance.

Peoples shall perform the services specified in Exhibit 1 at the intervals set forth therein and with the degree of skill, care, and diligence with which Peoples has performed the same or similar services in the past. Changes in procedures shall be allowed to the extent necessary to comply with any existing, new or amended state or federal regulations.

3. Service Territory.

During the entire term of this Agreement, Peoples agrees to provide public utility service to those small volume, residential, irrigation and crop dryer farm tap customers and right-of-way grantor customers presently served by Peoples (subject to Peoples' deposit and payment requirements, other applicable state tariffs and regulations and any presently existing contracts), located within the counties as set forth on Exhibit 2, or any other counties presently served by Peoples.

Peoples further agrees to serve all Northern right-of-way grantors (including successors and assignees of such right-of-way grantors) designated by Northern who may hereafter request gas service and who are located within a county in which Peoples provides gas service at the time such initial request is made (said service to be provided subject to Peoples' deposit, payment requirements and line extension policy, other applicable state tariffs and any presently existing contracts). Peoples' obligation to provide public utility service for any such new right-of-way grantor customer shall continue during the entire term of this Agreement.

Peoples shall, with respect to said customers, act as a public utility under the laws of the state in which such customers are located.

4. Compensation.

In consideration of the performance by Peoples of the services set forth in Exhibit 1 and the obligation assumed by Peoples in paragraph 3 hereof, Northern agrees to pay Peoples the sum of \$150,000 per month for twelve (12) consecutive months, commencing with a payment on August 20, 1987 and ending with a payment on July 20, 1988.

5. Term.

This Agreement shall continue from its effective date first written above to and including May 31, 2017[✓] and from month to month thereafter. Peoples may terminate this Agreement effective at any time after May 31, 2017 by providing six (6) months' prior written notice to Northern. Northern may

terminate this Agreement effective at any time after July 20, 1988 by providing six (6) months' prior written notice to Peoples.

6. Assignment.

This Agreement is not assignable by either party without the written consent of the other, which consent shall not be unreasonably withheld.

7. Indemnification.

Northern and Peoples each assume full responsibility and liability for the maintenance and operation of their respective properties and shall indemnify and save harmless the other party from all liability and expense on account of any and all damages, claims or actions, including injury to and death of persons, arising from any act or accident in connection with the installation, presence, maintenance and operation of the property and equipment of the indemnifying party, where such damage, injury or death is due to the negligence of the indemnifying party, and such negligence is the proximate cause of such damage, injury or death.

Northern shall not be liable to Peoples for its failure to deliver gas, and Peoples shall not be liable to Northern for its failure to receive gas, when such failure on the part of either shall be due to accident to or breakage of Northern's or Peoples' pipelines, machinery or equipment, caused by fires, floods, storms, weather conditions, strikes, riots, legal interferences, acts of God or public enemy, shutdowns for

necessary repairs and maintenance, or, without limitation by enumeration, any other cause beyond the reasonable control of the party failing to deliver or receive gas, as the case may be, provided such party shall promptly and diligently take such action as may be necessary and practicable under the then existing circumstances to remove the cause of failure and resume the delivery or receipt of gas, as the case may be; provided, however, that neither Northern nor Peoples shall be relieved of liability to the other for any damages or expense caused or contributed to by its own negligence when such negligence on its part shall be the proximate cause of its failure to deliver or receive gas, as the case may be.

Northern shall not be liable for its failure to deliver gas when such failure shall be due to depletion of supply of gas at its source.

Peoples' obligations hereunder with respect to the affected customers shall be suspended during any period of time during which Northern claims force majeure under this paragraph 7.

8. Governing Law.

This Agreement shall be conducted in accordance with, and all disputes hereunder shall be governed by, the laws of the State of Nebraska.

9. Regulation

The respective rights and obligations of the parties hereto are subject to all valid legislation with respect to the subject matter hereof, to the approved present and future tariff

provisions of the parties hereto and to all valid present and future orders, rules and regulations of duly constituted authorities having jurisdiction.

10. Notices.

Any notices, requests, comments, demands or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered by registered or certified mail or telecopy with all postage or charges prepaid, to either party at the place designated below unless changed in writing:

- a) To Northern: Northern Natural Gas Company
2223 Dodge Street
Omaha, Nebraska 68102
Attention: Vice President, Marketing
Telecopy No.: 402-633-4279
- b) To Peoples: Peoples Natural Gas Company
1815 Capitol Avenue
Omaha, Nebraska 68102
Attention: Vice President, Operations
Telecopy No.: 402-221-2089

11. Waiver.

No waiver by either party of any term or breach of this Agreement shall be construed as a waiver of any other term or breach hereof or of the same or similar term or breach on any other occasion.

12. Amendment.

No modification or amendment of this Agreement shall be binding upon either party unless made in writing and signed by both parties.

Northern Natural Gas Company
Division of Enron Corp.

Peoples Natural Gas Company,
Division of UtiliCorp United
Inc.

By: [Signature]
Title: Vice President

By: [Signature]
Title: Vice President

Attest: [Signature]
Title: Assistant Secretary

Attest: [Signature]
Title: Assistant Secretary

/C2

EXHIBIT 1

SERVICE TO BE PERFORMED BY
PEOPLES

PEOPLES SHALL:

1. Respond to any reported gas leak on any portion of a farm tap customer's setting or service system, and may shut in customer service by closing Northern's inlet valve if such action is deemed appropriate. If Peoples finds a condition upstream of the delivery point which warrants immediate action, Peoples may close Northern's valve to negate the flow of gas and notify Northern of such action.
- √ 2. Respond as a third party contractor to customers' needs related to appliance purchase or service, fuel line or irrigation equipment. Also, sell materials to retail natural gas customers and serve as a consultant on installation and repair of customers' facilities.
3. Service farm-tap odorizers and check delivery pressure as necessary to comply with state or federal regulations.
4. Deliver, retrieve and record customer meter read cards, bill customers, and collect farm-tap accounts.
5. At Peoples' discretion in accordance with sound collection practices, read irrigation and grain dryer customer meters monthly during their operating season.
6. Read all other meters at least annually.
7. On request of Northern, lock or read farm tap customer meters.
8. Respond to customer requests for appliance relights.
9. Total, report and account to Northern for total volumes delivered.

EXHIBIT 1

Continued

10. Initiate requests for new farm tap sales facilities, revisions to existing facilities and/or termination and removal of sales facilities including all From 79-1740A's and Form 79-5062's.
11. At Peoples' discretion, close Northern's inlet valve when said action is deemed appropriate by Peoples for safety or for nonpayment of bills.
12. Comply with any and all state regulations with regard to service to the farm-tap customers.

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EXHIBIT 2

LIST OF COUNTIES WHERE PEOPLES OPERATES

MINNESOTA

Anoka	McLeod
Benton	Meeker
Blue Earth	Morrison
Brown	Mower
Carlton	Nobles
Carver	Olmsted
Chisago	Pine
Cottonwood	Pipestone
Crow Wing	Pope
Dakota	Ramsey
Dodge	Redwood
Douglas	Rice
Faribault	Rock
Fillmore	Scott
Freeborn	Sherburne
Goodhue	Sibley
Hennepin	Stearns
Houston	Steele
Isanti	Stevens
Itasca	St. Louis
Jackson	Swift
Kanabec	Todd
Kandiyohi	Wabasha
Lac Qui Parle	Waseca
Lake	Washington
LeSueur	Winona
Lyon	Wright
Martin	Yellow Medicine

IOWA

Adair	Hamilton
Adams	Hancock
Allamakee	Hardin
Benton	Harrison
Blackhawk	Howard
Boone	Humboldt
Bremer	Jackson
Buchanan	Jasper
Buena Vista	Jones
Butler	Lyon
Calhoun	Marshall
Cass	Mills
Carroll	Mitchell
Cedar	Monona
Cherokee	O'Brien
Chickasaw	Osceola
Clay	Palo Alto
Clayton	Plymouth
Clinton	Pocahontas
Crawford	Polk
Dallas	Pottawattamie
Delaware	Sac
Dickinson	Shelby
Dubuque	Sioux
Emmett	Story
Fayette	Tama
Floyd	Webster
Franklin	Winnebago
Fremont	Winneshiek
Greene	Woodbury
Grundy	Worth
Guthrie	Wright

NEBRASKA

Burt

Butler

Cass

Colfax

Cuming

Dakota

Dixon

Dodge

Douglas

Fillmore

Gage

Jefferson

Johnson

Lancaster

Nemaha

Otoe

Pawnee

Platte

Polk

Richardson

Saline

Sarpy

Saunders

Thurston

Washington

Wayne

KANSAS

Barber
Barton
Cheyenne
Cloud
Edwards
Ellsworth
Finney
Ford
Grant
Gray
Harper
Harvey
Haskell
Hodgeman
Kearney
Kingman

Kiowa
Lincoln
McPherson
Meade
Morton
Ottawa
Pawnee
Reno
Rice
Rush
Sedgwick
Seward
Sherman
Stafford
Stevens
Wallace
Washington

MICHIGAN

Marquette

SOUTH DAKOTA

Beadle
Brookings
Clark
Clay
Hamlin
Hanson
Kingsbury
Lake
Lincoln

McCook
Minnehaha
Miner
Moody
Pocahontas
Spink
Turner
Union
Yankton

PARTIAL ASSIGNMENT OF AGREEMENT

Northern Natural Gas Company ("Northern") and Minnesota Energy Resources Corporation ("MERC," successor in interest to Peoples Natural Gas Company, Division of UtiliCorp United Inc.) are parties to an Agreement dated April 1, 1987, under which MERC performs certain services (as identified in Exhibit 1 of the Agreement) for Northern in connection with natural gas sales to customers located in several counties in the States of Kansas, Michigan and South Dakota (the "Agreement").

Pursuant to Section 6 of the Agreement, MERC ("Assignor") requests Northern's written consent to assignment of the portion of the Agreement pertinent to services that MERC provides to customers located in the South Dakota counties identified in Exhibit 2 of the Agreement, and MERC hereby notifies Northern that it wishes to assign a portion of its rights and obligations under the Agreement to NorthWestern Energy ("Assignee"), as further described below. Subject to Assignee's written acceptance of this Partial Assignment of Agreement, as indicated by its signature below, and Northern's consent to this Partial Assignment of Agreement, as indicated by its signature below, the assignment shall be effective as of June 1, 2011.

Assignee hereby agrees to this Partial Assignment of Agreement and agrees, as of the effective date hereof, to assume and perform all of the responsibilities of Assignor under the Agreement with respect to the customers located in the state of South Dakota; provided that Assignee shall not be assuming or responsible for any of the obligations set forth in paragraph 2 (concerning appliance purchase or service, fuel line or irrigation equipment) of Exhibit 1 of the Agreement; provided, further, that Assignee shall not be assuming or responsible for the obligation to check delivery pressure as set forth in paragraph 3 of Exhibit 1 to the Agreement. This Partial Assignment of Agreement does not release Assignor with respect to any rights that Northern may have by reason of Assignor's past performance under the Agreement. This Partial Assignment of Agreement does not release Assignor with respect to any rights that Northern may have under the Agreement for services to customers outside of South Dakota. Except as expressly modified by this Partial Assignment of Agreement, the terms and conditions of the Agreement shall remain in full force and effect.

If Assignee and Northern do not each sign this Partial Assignment of Agreement, then this Partial Assignment of Agreement shall be void and of no effect.

Minnesota Energy Resources Corporation
(Assignor)

By: *[Signature]*
Name: CHARLES CROWINGER
Title: PRESIDENT
Date: 5/18/11

NorthWestern Energy
(Assignee)

By: *[Signature]*
Name: Curt Pohl
Title: Vice President
Retail Operations
Date: 5-17-11

Consented to this 19 day of May, 2011

Northern Natural Gas Company

By: *[Signature]*
Name: ROYCE A. RAMSAY
U.P. OPERATIONS