

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

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

NG16-014

**PETITION FOR REHEARING**

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Pursuant to ARSD 20:10:01:29 and 20:10:01:30:01, Intervenor Northern Natural Gas Company ("Northern") petitions for reconsideration of the Public Utilities Commission of the State of South Dakota's ("PUC") Declaratory Ruling Regarding Farm Taps dated January 24, 2017 ("Declaratory Ruling"). Reconsideration of the Declaratory Ruling should be granted because: (1) the PUC issued the Declaratory Ruling without holding a proper, contested case hearing, which created a multitude of procedural defects; (2) the PUC erroneously concluded that NorthWestern Corporation d/b/a NorthWestern Energy ("NorthWestern") can terminate service to farm tap customers without holding a proper hearing or considering evidence on the issue; and (3) the PUC erred when concluding that the farm tap facilities downstream of the Northern Facilities are not subject to state jurisdiction for the purpose of pipeline safety pursuant to SDCL Ch. 49-34B.

**PROCEDURAL BACKGROUND**

On November 9, 2016, the Staff of the PUC ("Staff") petitioned the PUC for a declaratory ruling addressing three questions. Staff's petition resulted in the opening of a new docket, NG16-014. Along with the petition for declaratory ruling ("the Petition"), Staff submitted a memorandum that describes various alleged facts. Staff did not pre-file testimony or offer any other "evidence" along with the Petition.

On November 21, 2016, Northern petitioned to intervene in this matter. The PUC granted Northern's intervention in an Order Granting Intervention dated November 23, 2016.

The PUC issued an Order For and Notice of Hearing ("Notice of Hearing") dated November 30, 2016. Among other things, the Notice of Hearing scheduled a hearing for December 14, 2016, at 10:00 a.m. in Pierre, South Dakota. According to the Notice of Hearing, "[a]t the hearing, each party will be permitted to present an oral argument." The Notice of Hearing did not state the hearing was adversarial in nature.

A hearing was held December 14, 2016 on the Petition. At the hearing, no testimony was presented, and no evidence was admitted as exhibits. Although the various parties to the docket submitted prehearing briefs with attachments, none of the attachments were offered or accepted as evidence. All parties to the docket presented oral argument during the December 14, 2016, hearing. A transcript of that hearing is attached hereto as Exhibit A. As reflected in the transcript, there is no offer and no ruling on the admissibility of any evidence.

On December 30, 2016, the PUC entered an Order Setting Final Motion Hearing and Decision Date ("December 30, 2016 Order"). In the December 30, 2016 Order, the PUC ruled that the PUC would make its decision on the petition for declaratory judgment during a hearing January 17, 2017. Consistent with the December 30, 2016 Order, the PUC held the January 17, 2017, hearing. A copy of the transcript from this hearing is attached as Exhibit B. Again, no testimony or evidence was presented or received. Instead, after various comments, the commissioners voted on the three questions posed in the Petition.<sup>1</sup>

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<sup>1</sup> The PUC also ruled on three other motions during the January 17, 2017, hearing.

On January 24, 2017, the PUC issued the Declaratory Ruling, which is the PUC's written decision on the Petition. The Declaratory Ruling does not contain any findings of fact or conclusions of law. Northern now petitions for reconsideration of the Declaratory Ruling.

### **STANDARD FOR PETITION FOR REHEARING**

Northern, as a party to this docket, can seek rehearing of the Declaratory Ruling because the PUC has adopted an administrative rule allowing any party to seek rehearing of any matter:

A party to a proceeding before the commission may apply for a rehearing or reconsideration *as to any matter determined by the commission* and specified in the application for the rehearing or reconsideration. The commission may grant reconsideration or rehearing on its own motion or pursuant to a written petition if there appears to be sufficient reason for rehearing or reconsideration.

ARSD 20:10:01:29 (emphasis added). The administrative rule governing the contents of a petition is ARSD 20:10:01:30.01, which states:

An application for a rehearing or reconsideration shall be made only by written petition by a party to the proceeding. The application shall be filed with the commission within 30 days from the issuance of the commission decision or order. An application for rehearing or reconsideration based upon claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the ground of error. An application for rehearing or reconsideration based upon newly discovered evidence, upon facts and circumstances arising subsequent to the hearing, or upon consequences resulting from compliance with the decision or order, shall set forth fully the matters relied upon. The application shall show service on each party to the proceeding.

Invoking ARSD 20:10:01:29 and 20:10:01:30.1, Northern submits this petition for rehearing of the Declaratory Ruling.

### **ARGUMENT**

The PUC should grant rehearing for three independent reasons: (1) the PUC committed multiple procedural errors when issuing the Declaratory Ruling; (2) the PUC erred in ruling NorthWestern could terminate its service to farm tap customers after December 31, 2017,

without holding a proper hearing; and (3) the PUC erred in ruling it lacked pipeline safety jurisdiction over the farm taps.

**I. This Docket and the Declaratory Ruling are Rife with Procedural Deficiencies.**

As an initial matter, the Petition seeking a declaratory ruling pursuant to SDCL 1-26-15 commenced a contested case proceeding. Under the Administrative Procedures Act, an action for a declaratory ruling is a contested case proceeding. Specifically, SDCL 1-26-1(2) defines a contested case:

"Contested case," a proceeding, including rate-making and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing but the term does not include the proceedings relating to rule making other than rate-making, proceedings related to inmate disciplinary matters as defined in § 1-15-20, or student academic proceedings under the jurisdiction of the Board of Regents.

Notably, SDCL 1-26-1(2)'s broad definition of a contested case expressly excludes any "proceeding relating to rule making." In turn, SDCL 1-26-1(8)(b) expressly states that a declaratory ruling is not a "rule" adopted through formal rule making process. By excluding "rule making" but not "declaratory relief" from the definition of contested case, SDCL 1-26-1(2) confirms that declaratory judgment proceedings, including this docket, are a contested case proceeding.

Indeed, the language of the Declaratory Ruling itself confirms this docket is a contested case proceeding. In the portion of the Declaratory Ruling providing notice of entry and advising the parties of their appeal rights, the PUC cites, among other things, SDCL 1-26-32 addressing the procedure for a stay of the Declaratory Ruling. By its plain language, this statute only applies to stays pending appeals from contested case proceedings. *See* SDCL 1-26-32 ("Any agency decision in a contested case is effective ten days after the date of receipt or failure to accept

delivery of the decision by the parties. . . .”). *See also Dale v. Young*, 2015 SD 96, ¶ 6, 873 N.W.2d 72, 74 (stating that statutes are interpreted based upon their plain language).

As a contested case proceeding, there are specific procedural requirements that must be satisfied before ruling on the Petition. Because it failed to treat this docket as a contested case, the PUC committed three procedural errors. First, the PUC failed to provide the proper hearing notice. Second, the PUC issued the Declaratory Ruling without presenting the parties an opportunity to complete discovery or present evidence. Finally, the PUC issued the Declaratory Ruling without issuing the required Findings of Fact and Conclusions of Law.

**1. The Notice of Hearing Violated the Statutory Notice Requirements.**

The notice of hearing on the Petition must contain specific information because the Petition commenced a contested case. SDCL 1-26-17 addresses the contents for a notice of hearing in a contested case proceeding. Among other things, that statute requires the notice to include “[a] statement that the hearing is an adversary proceeding . . . .” SDCL 1-26-17(6). The Notice of Hearing in this case did not contain this disclosure, which in turn affected the entire docket because it was not treated like a contested case.

**2. Parties were Deprived the Right to Discovery and to Present Evidence.**

Second, as a contested case proceeding, the parties to this docket are entitled to discovery and to present evidence at the contested case hearing in this docket. The Legislature has adopted specific statutes authorizing discovery and controlling the admission of evidence in contested case proceedings. *See, e.g.*, SDCL 1-26-19; 1-26-19.1; 1-26-19.2. Moreover, the PUC has adopted administrative rules permitting discovery and governing the admission of evidence. *See, e.g.*, ARSD 20:10:01:01.02; 20:10:01:22:06; 20:10:01:22:07. Administrative rules in South

Dakota are “binding and have the force of law.” *Duffy v. Mortenson*, 497 N.W.2d 437, 439 (S.D. 1993).

In this case, none of the parties were advised they had the ability to engage in discovery. More importantly, the PUC did not advise the parties they could present evidence or testimony at the hearing. Instead, the Notice of Hearing informs the parties they will be allowed to present “oral argument” at the hearing. Consistent with that notice, the PUC proceeded to hear oral argument only without taking any testimony or evidence.

Moreover, the administrative record does not indicate what, if any, evidence was actually admitted in this proceeding. Nothing in the transcript for the December 14, 2016, and January 17, 2017, hearings indicates whether any evidence was considered. Without some indication of what “evidence” was actually admitted, there is no way to determine whether the PUC properly applied the rules of evidence applicable to contested case proceedings. *See* SDCL 1-26-19. Moreover, without a clear record of what “evidence” was actually admitted into the administrative record, the Circuit Court could not perform its appellate responsibilities to determine whether there is substantial evidence to support the PUC’s factual determinations made in the Declaratory Ruling. *See Abild v. Gateway 2000, Inc.*, 547 N.W.2d 556, 558 (S.D. 1996) (stating that clearly erroneous standard of review for agency factual findings inquires “whether there is substantial evidence” to support the findings).

**3. The Declaratory Ruling Violates the Statutory Requirement that the PUC Issue Separately Stated Findings of Fact and Conclusions of Law.**

When ruling on a contested case proceeding, the PUC is statutorily required to enter findings of fact and conclusions of law. Specifically, SDCL 1-26-25 requires a written decision including separately stated findings of fact and conclusions of law:

A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. It may affirm, modify, or nullify action previously taken or may direct the taking of new action within the scope of the notice of hearing. It shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

SDCL 1-26-25 (emphasis added). Written findings of fact and conclusions of law are required so that a court can properly review a PUC decision on appeal. *See Dep't of Public Safety v. Eastman*, 273 N.W.2d 159, 161 (S.D. 1978) (stating that a Court cannot review an agency decision without findings of fact and conclusions of law). In turn, when the PUC fails to enter findings of fact and conclusions of law, the Circuit Court on appeal must remand the matter to the PUC for entry of findings of fact and conclusions of law. *Id.*

Here, the PUC entered the Declaratory Ruling January 24, 2017. The Declaratory Ruling does not, however, contain any findings of fact or conclusions of law. Instead, it simply stated how the PUC voted on each of the three questions. There is no articulation of how the PUC reached those decisions, or how the factual determinations made by the PUC shaped those decisions. Without these findings of fact and conclusions of law, the Declaratory Ruling violates SDCL 1-26-25 and prevents a proper review by the appellate court. As a result, if the Declaratory Ruling is appealed, the Circuit Court will be required to remand for entry of findings of fact and conclusions of law. *See Eastman*, 273 N.W.2d at 161. Rather than waiting for remand from the Circuit Court, the PUC should grant rehearing at this time.

In short, the PUC engaged in a fundamental procedural mistake by failing to treat this docket as a contested case proceeding. This error affected all the procedural aspects of the

docket, including the notice, discovery, presentation of evidence, and written decision. Because the Declaratory Ruling is procedurally defective, the PUC should grant rehearing, properly notice an evidentiary hearing, and issue a proper written decision containing findings of fact and conclusions of law.

**II. The PUC Committed Additional Procedural Error when Deciding NorthWestern can Terminate its Service to Farm Tap Customers After December 31, 2017, Without Accepting Evidence and Holding a Proper Contested Case Hearing.**

As part of the Declaratory Ruling, the PUC apparently<sup>2</sup> concluded that NorthWestern could terminate its provision farm tap services to customers after December 31, 2017.<sup>3</sup> This decision, which was made without any supporting evidence, violates the statutory scheme for terminating a utility's service.

As an initial matter, the PUC concluded in the Declaratory Ruling that NorthWestern is a public utility subject to SDCL Ch. 49-34A. As a public utility, NorthWestern cannot terminate service to any customer without prior permission of the PUC:

No public utility may, except in cases of emergency, fail to provide, discontinue, reduce or impair service to a community, or a part of a community, except for nonpayment of account or violation of rules and regulations, unless permission has been first obtained from the Public Utilities Commission to do so. An intentional violation of this section is a petty offense. Each day's violation is a separate offense.

SDCL 49-34A-2.1. The PUC has adopted specific regulations governing the discontinuance of gas services. ARSD 20:10:20:01 to 20:10:20:11. Among other things, the PUC's regulations specifically state the reasons for which utility service can be discontinued. ARSD 20:10:20:03

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<sup>2</sup> The written Declaratory Ruling does not expressly address whether NorthWestern has an obligation to provide gas utility services to farm tap customers after December 31, 2017. Nevertheless, two commissioners orally stated that NorthWestern could discontinue services after December 31, 2017. (Exhibit B, at pp.15, 20-21). Based upon these oral comments, it is unclear whether the PUC in fact decided NorthWestern could discontinue service. If the PUC did in fact reach this issue, then rehearing is appropriate for the reasons argued in this Petition.

<sup>3</sup> The PUC apparently made this decision even though it was not one of the three questions posed in the Petition.



and 20:10:30:04. Moreover, before terminating the service, the utility must provide notice containing specific information to the customer. *See* ARSD 20:10:20:04.

Here, the PUC apparently authorized NorthWestern to terminate service to farm tap customers without determining if “evidence” supported termination of service under SDCL 49-34A-2.1 or the applicable regulations. As noted above, no evidence was offered or received at the hearings in this docket. Instead, the PUC just concluded that NorthWestern had no contractual obligation to provide farm tap services after December 31, 2017. And, because the PUC never prepared findings of fact or conclusions of law, it cannot be determined how the PUC reached its decision authorizing NorthWestern to terminate utility service or whether that decision complies with the applicable regulations. Procedurally, the decision to terminate service must be made after proper hearing involving the presentation of testimony and evidence, and the PUC should grant rehearing on this issue.

Although it is uncertain without findings of fact and conclusions of law, the PUC apparently concluded that NorthWestern can terminate service to farm tap customers based upon the “term” in the 1987 contract between Northern and Peoples Natural Gas Company (“1987 Agreement”). The PUC also apparently concluded that Peoples Natural Gas Company’s (“Peoples”) obligation to serve farm tap customers will terminate on December 31, 2017, under the 1987 Agreement, and that because it was a subsequent assignee of Peoples’ responsibility,<sup>4</sup> NorthWestern’s obligation to service farm tap customers will similarly terminate on December 31, 2017.

Based upon the record as developed, the PUC cannot determine that Peoples’ (and NorthWestern’s) obligation to serve farm tap customers will terminate on December 31, 2017.

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<sup>4</sup> On rehearing, the evidence will show that there was an intervening entity between Peoples Natural Gas Company and Northern, namely Minnesota Energy Resources Corporation.

Although the 1987 Agreement was attached to briefs, there was no “testimony” about the 1987 Agreement or the relationship between Peoples and Northern. This single agreement was taken out of context as the basis for concluding Peoples’ (and in turn NorthWestern’s) obligations to serve customers will end on December 31, 2017.

Upon rehearing, Northern should be permitted to complete discovery and present evidence regarding whether Peoples’ obligation to farm tap customers was intended to continue past December 31, 2017. Northern believes the evidence, after proper discovery, will show that Peoples assumed the entire obligation to serve the farm tap customers through a 1985 acquisition, and that Minnesota Energy Resources Corporation subsequently assumed all of Peoples’ obligation to serve these farm tap customers, including the obligation to serve those customers after December 31, 2017. Then, Minnesota Energy Resources Corporation, in whole or in part, transferred that obligation to NorthWestern.

Reconsideration is needed because additional discovery is needed on these transactions and relationships. After this discovery is completed, then the PUC should hold a proper hearing and receive evidence. After consideration of this evidence, the PUC can issue a proper decision, including findings of fact and conclusions of law, addressing whether NorthWestern can terminate service to farm tap customers under the applicable statute and regulations.

**III. The Declaratory Ruling’s Decision that the PUC Does Not Have Safety Jurisdiction Over Farm Taps Downstream from the Northern Facilities Should Be Reheard Because There Are Substantial Safety Consequences Arising from Compliance with the Declaratory Ruling.**

The third question posed to the PUC in the Petition was “[A]re the farm taps in whole or in part subject to state jurisdiction for the purpose of pipeline safety pursuant to SDCL Chapter

49-34B.” The PUC correctly ruled with respect to the Northern Facilities<sup>5</sup> when it found: “Northern is a federally regulated interstate pipeline and is not subject to state jurisdiction for the purpose of pipeline safety.” However, the question posed in the Petition inquired whether the PUC has safety jurisdiction “in whole *or in part*” over the farm tap. The Staff’s memorandum accompanying its petition broadly defines “farm tap” as a “pipeline that branches from a transmission or gathering line to deliver gas to a farmer or other landowner.”<sup>6</sup> Thus, this definition of farm tap would include those facilities downstream from the Northern Facilities. As a result, in the Declaratory Ruling, while not expressly addressed, the PUC appears to have decided that it has no jurisdiction over the facilities downstream of the Northern Facilities.<sup>7</sup>

The PUC erred in determining it lacks safety jurisdiction over the pipeline facilities downstream from the Northern Facilities which can consist of thirty miles of farm tap customer-owned pipeline (“Customer-Owned Facilities”). The PUC has jurisdiction to regulate the Customer-Owned Facilities pursuant to SDCL Chapter 49-34B. SDCL 49-34B-4 states the PUC “may...establish safety standards for gas pipeline facilities” which are defined as (1) “new and existing pipelines, rights-of-way, master meter systems, pipeline facilities within this state which transport gas from an interstate pipeline to a direct sales customer within this state purchasing gas for its own consumption” and (2) “any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation.”<sup>8</sup> The

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<sup>5</sup> Northern Facilities refers to the equipment owned, operated, and maintained by Northern, which include the transmission pipeline, tap, riser, valves, meter, regulators and connections to an aboveground 3-way valve downstream of the meter on the farm tap. The 3-way valve and all equipment downstream from that valve are owned by someone other than Northern.

<sup>6</sup> Staff Memorandum dated November 9, 2016 at footnote 1.

<sup>7</sup> Once again, the Declaratory Ruling’s absence of findings of fact and conclusions of law makes it difficult to determine exactly what the PUC decided, and upon what facts it relied in reaching those decisions. For instance, there is no explanation of the how the PUC reached its decision that it does not have pipeline safety jurisdiction downstream from the Northern Facilities. The lack of findings of fact and conclusions of law prevents appellate review and presents an independent, procedural deficiency requiring rehearing for the reasons stated above.

<sup>8</sup> SDCL 49-34B-1(5).

Customer-Owned Facilities are gas pipeline facilities under both definitions of the statute. The Customer-Owned Facilities transport gas from Northern (the interstate pipeline) to the customers' homes or buildings (the direct sales customer). Further, the Customer-Owned Facilities are equipment used in the transportation of gas. Thus, the Commission has the ability to promulgate safety standards for these Customer-Owned Facilities. *See* SDCL 49-34B-4.

Despite the Customer-Owned Facilities satisfying the statutory definition of a gas pipeline facility, the Declaratory Ruling concludes that the PUC lacks pipeline safety jurisdiction over the Customer-Owned Facilities. Due to lack of findings of fact and conclusions of law, it remains uncertain how the PUC reached this conclusion. Implicit in this conclusion is a determination that the Customer-Owned Facilities are not "gas pipeline facilities" as defined in SDCL 49-34B-1(5). Once again, there is no explanation regarding how the PUC reached this conclusion. Rehearing should be granted so the PUC can properly determine whether the Customer-Owned Facilities are "gas pipeline facilities," which would make them subject to the PUC's safety regulatory authority.

By erroneously deciding it lacks pipeline safety jurisdiction over the Customer-Owned Facilities, the Declaratory Ruling creates a regulatory void where no governmental party or agency is regulating the safety of Customer-Owned Facilities. As noted above, the Legislature granted the PUC authority to adopt pipeline safety standards. SDCL 49-34A-4. Exercising this authority, the PUC has adopted regulations governing pipeline safety regulations. These regulations are found in ARSD Ch. 20:10:37. Among other things, the PUC adopted administrative rules providing for the inspection of gas pipeline facilities. ARSD 20:10:37:04. Critically, however, once the Declaratory Ruling indicated the PUC lacked pipeline safety jurisdiction pursuant to SDCL Ch. 49-34B, the PUC's pipeline safety regulations no longer

apply: “This chapter [ARSD Ch. 20:10:37] sets forth the procedures and standards to be used for pipeline safety inspections, the enforcement of pipeline safety standards, and the imposition of civil penalties on pipeline operators for failing to meet the federal pipeline safety standards adopted by SDCL chapter 49-34B. These rules only apply to those pipelines within the jurisdiction of the commission pursuant to SDCL chapter 49-34B.” ARSD 20:10:37:02 (emphasis added). The Declaratory Ruling thus perpetuates a serious public safety concern for the people of South Dakota in that these Customer-Owned Facilities are not currently inspected by any governmental agency to ensure they are designed, constructed, and operated in a safe manner.

The Staff, in its memorandum filed with the Petition, discussed the many safety issues associated with the lines from the Northern Facilities to the farm tap customer:

Since the customer was responsible for installing the service line, this was done either by the customer or by a customer-hired contractor. There are no records of the materials used, exactly where the line is located, and it is unknown how much maintenance has been done on the line. If a leak occurs on a customer’s service line, it may potentially go undetected for months, especially if the customer is not reading his or her meter every month. There is also no periodic leak survey done on the customer’s service line. The most serious implication of an undetected leak, is, of course, an explosion or fire resulting in injury to the customer or others. [footnote omitted]<sup>9</sup>

Notwithstanding these severe safety risks raised by the Staff, the Declaratory Ruling failed to address the safety issues associated with the Customer-Owned Facilities.

On rehearing, the evidence will show that the safety risks are real. The Customer-Owned Facilities connecting the Northern Facilities to the customers’ property for approximately 197 farm tap customers include nearly 30 miles of pipeline. The location of these pipelines is not recorded and is not currently within the state “One-Call” database. Accordingly, the Customer-

Owned Facilities are not located and marked in response to a “One-Call” request. The material and construction methods used to install these pipelines is unknown. The maintenance history of these pipelines is unknown. The leak history of these pipelines is unknown.

As an additional consequence of the Declaratory Ruling concluding the PUC lacked safety jurisdiction, the PUC cannot engage in future rulemaking regarding the safety standards for Customer-Owned Facilities. The South Dakota Legislature has granted the PUC authority under SDCL Chapter 49-34B to promulgate regulations relating to the design, construction and maintenance of gas pipeline facilities, which include by definition, Customer-Owned Facilities. The PUC should exercise that authority to protect the public. Thus, the PUC should grant reconsideration because the Declaratory Ruling will prevent it from initiating steps through rulemaking to ensure appropriate safety standards are adopted and enforced.

Indeed, other states have taken those very steps. South Dakota is not alone in having farm taps. Minnesota and Iowa have farm taps that are connected to Northern’s interstate pipeline system. Minnesota and Iowa regulators have taken responsibility to ensure the safety of the farm tap customers. The Minnesota Public Utilities Commission has approved farm tap inspection programs for the local distribution companies serving the farm taps.<sup>10</sup> In Iowa, Black Hills/Iowa Gas Utility Company (Black Hills) and the Iowa Utilities Board (IUB) have agreed that Black Hills will perform partial leak surveys on certain facilities owned by the farm tap customers in Iowa.<sup>11</sup>

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<sup>9</sup> Staff Memorandum dated November 9, 2016 at p.3. Staff stated, at p.4, that the estimated cost to replace necessary service lines is \$3 million. Once again, none of these statements have “evidentiary support” in the current administrative record because the PUC did not hold a proper contested case.

<sup>10</sup> See *Order Opening Investigation and Requesting Comments*, 1999 WL 33595203 (Minn. P.U.C.); and *Order Accepting Farm-Tap Safety Inspection Programs and Closing Docket No. G-007/M-99-641*, 2000 WL 668943 (Minn. P.U.C.). These orders are attached as Exhibits C and D to the Motion for Judicial Notice filed contemporaneously with this Petition.

<sup>11</sup> Request for Approval of Tariffs that Establish Minimum Safety Standards for Farm Taps As a Condition of Service and Creation of a Mandatory Testing Program; Utility Replacement and Ownership of Customer-Owned

In short, the consequence of compliance with Declaratory Ruling's erroneous conclusion that the PUC lacks safety jurisdiction for Customer-Owned Facilities is that a substantial public safety risk remains unregulated. The PUC should grant rehearing to address this jurisdictional issue after a properly noticed and held contested case involving properly admitted evidence.

### CONCLUSION

For the reasons stated above, the PUC should grant rehearing of the Declaratory Ruling.

Dated: February 17, 2017



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Natural Gas Service Lines; Authorization for Recovery of Replacement Capital Costs; and Request for an Accounting Order to Defer Testing Costs until the Company's Next Rate Case; Iowa Utilities Board, Docket No. SPU-2015-0039 at p.4. This pleading is attached as Exhibit E to the Motion for Judicial Notice filed contemporaneously with this Petition.

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 2 OF THE STATE OF SOUTH DAKOTA  
 3 -----  
 4 IN THE MATTER OF COMMISSION NG16-014  
 5 STAFF'S PETITION FOR DECLARATORY  
 6 RULING REGARDING FARM TAP  
 7 CUSTOMERS  
 8 -----  
 9 Transcript of Proceedings  
 10 December 14, 2016  
 11 -----  
 12 BEFORE THE PUBLIC UTILITIES COMMISSION,  
 13 CHRIS NELSON, CHAIRMAN  
 14 KRISTIE FIGGEN, VICE CHAIRMAN  
 15 GARY HANSON, COMMISSIONER  
 16  
 17 COMMISSION STAFF  
 18 Adam de Hueck, Commission Attorney  
 19 Karen Cremer, Commission Attorney  
 20 Greg Rislav, Staff Advisor  
 21 Patrick Stoffensen, Staff Analyst  
 22 Brittany Mehlhaff, Staff Analyst  
 23  
 24 APPEARANCES  
 25 Kristen Edwards, appearing on behalf of Commission Staff  
 Gregoery Porter and James Talcott, appearing on behalf of  
 Northern Natural Gas  
 Timothy P. Olson, appearing on behalf of NorthWestern  
 Brett Koenecke, appearing on behalf of Montana-Dakota  
 Utilities  
 Reported By Cheri McComsey Wittler, RFR, CRR  
 Precision Reporting, Onida, South Dakota

1 CHAIRMAN NELSON: Good morning. Welcome,  
 2 everybody. We will begin the hearing in Docket NG16-014,  
 3 in the Matter of Commission Staff's Petition for  
 4 Declaratory Ruling Regarding Farm Tap Customers.  
 5 The time is 10:00 a.m. The date is December 14,  
 6 2016. The location of the hearing is the Matthews  
 7 Training Center in the Foss Building, Pierre,  
 8 South Dakota.  
 9 My name is Chris Nelson. I am Commission  
 10 Chairman. With me are Commissioners Fiegen and Hanson.  
 11 I am presiding over this hearing. The hearing  
 12 was noticed pursuant to Commission's Order for and Notice  
 13 of Hearing issued on November 30, 2016.  
 14 The issues at the hearing are, number one,  
 15 whether the Commission has jurisdiction over any utility  
 16 providing natural gas to farm tap customers taking  
 17 natural gas from the transmission line owned and operated  
 18 by Northern Natural Gas Company.  
 19 Number two, if the Commission has jurisdiction,  
 20 which company, NorthWestern Corporation, doing business  
 21 as Northwestern Energy, or Northern Natural Gas Company  
 22 is a public utility as defined by SDCL Chapter 49 with  
 23 respect to these farm tap customers.  
 24 And, number three, are the farm taps in whole or  
 25 in part subject to state jurisdiction for the purpose of

1 TRANSCRIPT OF PROCEEDINGS, held in the  
 2 above-entitled matter, at the Matthews Training Center,  
 3 Foss Building, 523 East Capitol Avenue, Pierre,  
 4 South Dakota, on the 14th day of December, 2016,  
 5 commencing at 10 o'clock a.m.  
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1 pipeline safety pursuant to SDCL 49-34B.  
 2 All parties have the right to be present and to  
 3 be represented by an attorney. These rights and other  
 4 due process rights may be forfeited if not exercised at  
 5 this hearing.  
 6 After the hearing the Commission will consider  
 7 the matter. The Commission will then issue a declaratory  
 8 ruling. As a result of this hearing the Commission will  
 9 make decisions on the issues set forth above. The  
 10 Commission's declaratory ruling may be appealed by the  
 11 parties to the Circuit Court and the Supreme Court as  
 12 provided by law.  
 13 And at this point I'd like to deviate and do  
 14 just a couple of housekeeping type announcements. For  
 15 those -- we really don't have much of an audience today.  
 16 But the Rushmore Network is the public WIFI network. And  
 17 so if you're searching for a network, that's the one you  
 18 want to be on.  
 19 We are live webcasting. Now we are not in our  
 20 normal environment up on fourth floor of the Capitol and  
 21 so we did a little bit of experimenting over whether we  
 22 ought to try to set up our own sound system in here and  
 23 have that feed into the webcast system. That didn't work  
 24 out so well.  
 25 And so what we are relying on are these



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1 microphones in the ceiling that are picking up the  
2 webcast. What they are not doing is obviously amplifying  
3 what we are saying. And so we want to make sure we are,  
4 on our own, speaking loud enough that everybody in the  
5 room can hear what we are saying. But suffice it to say,  
6 I've been told these microphones are very accurate and  
7 will pick up the smallest of sounds so if you have side  
8 bar conversations, make sure it's truly a side bar  
9 conversation, lest it may be webcast for the world to  
10 hear. And they are live all the time. So just beware of  
11 that. We will shut them off during breaks.

12 Cheri Wittler from Precision Reporting will be  
13 transcribing the hearing. Anyone who wishes a transcript  
14 of the hearing should contact Cheri directly at some  
15 point today and make appropriate arrangements.

16 We've got a number of our Staff back here.  
17 Katlyn and Tina will be staffing today, and so if you've  
18 got any needs, let the two in the back know and they will  
19 do everything they can to take care of that.

20 With that, I will now be turning the proceedings  
21 over to Mr. Adam de Hueck, our Commission attorney, who  
22 will act as Hearing Examiner and will conduct the hearing  
23 subject to the Commission's oversight.

24 Mr. de Hueck, the floor is yours.

25 MR. DE HUECK: Thank you, Mr. Chairman.

6

1 Good morning, everyone. With that, we'll begin  
2 with appearance of the parties. And we'll begin with  
3 Staff as the Petitioner.

4 MS. EDWARDS: Kristen Edwards, Counsel for  
5 Staff. With me is Patrick Steffensen, staff analyst, and  
6 Brittany Mehlhaff, staff analyst.

7 MR. DE HUECK: And Northern.

8 MR. PORTER: Greg Porter, Vice President and  
9 General Counsel of Northern Natural Gas, and with me is  
10 Jim Talcott, who is Assistant General Counsel, and  
11 Laura Demman, who is our Vice President of Regulatory  
12 Government Affairs.

13 MR. DE HUECK: NorthWestern.

14 MR. OLSON: Good morning. Tim Olson on behalf  
15 of NorthWestern. With me today is Melissa Baruth from  
16 our DOT Department and Reed McKee, Strategic Development  
17 and Business Development.

18 MR. DE HUECK: Very good.

19 MDU.

20 MR. KOENECKE: Brett Koenecke, the lawyer from  
21 Pierre flying solo for MDU today.

22 MR. DE HUECK: Thank you. At this point we'll  
23 turn to the matter at hand today, and we'll take oral  
24 argument beginning with Commission Staff.

25 (Discussion off the record)

7

1 MS. EDWARDS: Thank you, Mr. de Hueck, all  
2 parties. I am Kristen Edwards for Staff. With me are  
3 Staff Analysts as well as our Pipeline Safety personnel  
4 Bolce Hillmer.

5 Over the past several months Staff has been  
6 struggling with the issue of what to do to protect the  
7 nearly 200 farm tap customers receiving natural gas  
8 service pursuant to a contract between NorthWestern and  
9 Northern Natural which is set to expire at the end of  
10 2017.

11 It presents a difficult balancing act in trying  
12 to protect customers' access to the gas service they rely  
13 on while also ensuring the safety of natural gas users in  
14 South Dakota.

15 The facts and history behind the farm taps are  
16 detailed in the Memorandum attached to our Petition and  
17 in our Reply Brief.

18 In summary, Northern Natural operates natural  
19 gas transmission service lines in this state. Along  
20 those lines are farm taps which provide natural gas  
21 service for domestic use to end users at retail.

22 I would like to clarify at this point that Staff  
23 is not asking the Commission to do -- to evaluate  
24 discontinuing regulation. What we are asking in part is  
25 whether the Commission ever had jurisdiction to begin

8

1 with. Additionally, we are not asking the Commission in  
2 this Docket to consider whether to allow a regulated  
3 utility service to discontinue service to farm tap users,  
4 as some customers may have been led to believe.

5 Discontinuing service is not at issue in this  
6 Docket. Essentially, all this Docket would do is to  
7 determine if the Commission ever had jurisdiction to  
8 begin with over the company providing service.

9 If the answer is yes, it would be the  
10 responsibility of that company to seek Commission  
11 approval to discontinue service, and that would come in a  
12 different docket, not by a Staff request.

13 The first question is whether the Commission has  
14 jurisdiction over the utility providing natural gas to  
15 farm tap users. In this sense jurisdiction refers to the  
16 Commission's authority to regulate aspects such as rates  
17 and reliability under SDCL 49-34A and, perhaps more  
18 importantly, to require the utility to continue to  
19 provide service unless a request has been made and  
20 granted to discontinue such service.

21 If the answer is no, we need not look any  
22 further into what company is a public utility. It is  
23 imperative, however, to determine what, if any, company  
24 is a utility if the answer is yes so that that company  
25 can determine what steps it would like to take going

1 forward.

2 We endeavored to tackle this confusing and  
3 convoluted Issue in our Memorandum and in our Reply  
4 Brief. The conclusion we came to was that the Agreement  
5 signed in 1985 effectively transferred all obligations  
6 from Northern to Peoples, which was purchased by  
7 UtiliCorp, later known as Aquila. From there we are not  
8 entirely certain what happened to this 1985 contract, but  
9 we do have reason to believe It passed on to MERC when  
10 MERC purchased the assets of Aquila.

11 In what Staff determined to be a parallel but  
12 completely separate string of events, a 30-year contract  
13 for utility services was made in 1987 between Northern  
14 and Peoples. That 30-year contract was assigned as  
15 detailed in our Brief and ultimately assigned to  
16 NorthWestern in 2011 and was in a tariff docket that was  
17 approved by the Commission in NG11-001.

18 It was always understood to have an end date of  
19 December 31, 2017, after that Docket was brought to the  
20 Commission.

21 Because NorthWestern has all of the obligations  
22 and responsibilities of a public utility through 2017,  
23 NorthWestern is a public utility until the end of 2017.  
24 Because of federal law and because they effectively  
25 transferred their responsibilities, Northern is not a

1 public utility.

2 And that federal law I am referring to is FERC  
3 Order 636, which was appealed to the DC Circuit Court in  
4 1996, and that decision is available online, for more  
5 clarification. But it is our understanding through that  
6 Order and subsequent Court Decisions that Northern is  
7 prohibited from providing gas service as a local  
8 distribution company to an end user at a retail.

9 Thus, this is, unfortunately, unclear at this  
10 point if any entity will be serving the 197 customers as  
11 a public utility after the end of this year.

12 We do recognize that our position with respect  
13 to NorthWestern has changed slightly between the initial  
14 filing and our Reply Brief. The positions we took in the  
15 Reply Brief were largely based off of information that we  
16 received through the Briefs of the other parties. After  
17 carefully reviewing this information in the three days or  
18 so we had to do so, it appears that NorthWestern did  
19 contract to control facilities in this state through 2017  
20 and is, therefore, a public utility until the end of  
21 2017.

22 I would note that when we submitted our Reply  
23 Brief we were also working off of the assumption based  
24 upon the depictions submitted by Northern attached to  
25 their Brief that NorthWestern owned the odorizer and the

1 local distribution company three-way valve which would  
2 allow them to shut off natural gas service.

3 However, since we submitted that Reply Brief I'm  
4 no longer quite sure that that's the case, and I think  
5 there's disagreement between the two parties as to  
6 whether or not NorthWestern actually has any ownership of  
7 any of these facilities attached to the farm tap, which  
8 is an important question because as our statute defines  
9 public utility, owning and controlling facilities is a  
10 pivotal element in the determination. So that might be a  
11 question for those companies, and clarification is  
12 something we would greatly appreciate.

13 Regarding the issue of pipeline safety  
14 jurisdiction, as the Commission is aware, its  
15 jurisdiction and responsibility to conduct pipeline  
16 safety inspections differs greatly from its regulatory  
17 authority under 34A, the rate setting authority, as  
18 Boice could attest to we inspect plenty of pipelines that  
19 we don't have rate regulatory jurisdiction over.

20 Pursuant to Chapter 49-34B, the Commission has  
21 safety jurisdiction over intrastate transportation of gas  
22 and gas pipeline facilities. Thus, answering the  
23 question of jurisdiction posed in the first question does  
24 not necessarily answer the jurisdictional question for  
25 the purposes of pipeline safety.

1 When we discuss this issue we are not talking  
2 about the line from the meter to the customer's home.  
3 That is understood to be customer owned and not  
4 jurisdictional, unfortunately, to either the Federal  
5 Government, to PHMSA, or to pipeline safety. Those  
6 lines, it is understood, are not inspected.

7 Our main concern, however, is that someone is  
8 inspecting these farm taps, and it is our impression that  
9 that is not the case and neither PHMSA nor the  
10 South Dakota Public utilities Commission at this point  
11 are inspecting those farm taps.

12 I will just briefly mention the intervenor,  
13 Montana-Dakota Utilities, just to say that we have no  
14 information on the record as to the location, inspection  
15 history, and ownership arrangement and, therefore, none  
16 of our positions taken in this docket should be assumed  
17 to automatically apply to MDU.

18 I would just commend them for taking the  
19 initiative to come forward and be here today and for  
20 always allowing our pipeline safety staff to inspect  
21 their farm taps and make sure they are safe for MDU's  
22 customers.

23 Regrettably, at this point we have likely left  
24 the Commission with more questions than answers, and I  
25 and my fellow Staff members will be available to

1 hopefully answer any questions you might have.  
 2 Thank you.  
 3 MR. DE HUECK: Thank you, Ms. Edwards.  
 4 At this time we're going to go to Commission  
 5 questions and advisor questions.  
 6 CHAIRMAN NELSON: And I do have questions.  
 7 Ms. Edwards, I've got questions for you. And I  
 8 see Mr. Hillmer is here. Is he also available to answer  
 9 questions?  
 10 MS. EDWARDS: Yes, he is.  
 11 CHAIRMAN NELSON: Now let me start with a  
 12 question for you. In your explanation today you talked  
 13 about the fact that the Commission may not have  
 14 jurisdiction in this area. And I ask this question maybe  
 15 more for the listening public than anything, but  
 16 frequently the PUC gets questions about, well, do you  
 17 regulate water service in the state? People think of  
 18 that as a utility type service. And the law doesn't give  
 19 us the authority to regulate or oversee water service.  
 20 And so what I'm hearing you saying is there may  
 21 be a question under the law whether or not we have  
 22 authority in this area also. Is that accurate?  
 23 MS. EDWARDS: That's accurate. These farm taps  
 24 were put into place before we had our regulatory  
 25 jurisdiction, which came about in roughly 1975, 1976, and

1 this isn't something the legislature may have  
 2 contemplated us having jurisdiction over.  
 3 CHAIRMAN NELSON: Thank you. And at this point,  
 4 Mr. Hillmer, if I could ask you some questions.  
 5 In Staff's Brief there was discussion about the  
 6 fact that these farm taps were inspected in 2014. And I  
 7 want to thank Northern for the pictures that you  
 8 submitted as an attachment. Very, very helpful.  
 9 And so, Mr. Hillmer, I want to refer to these  
 10 pictures. In particular this one, the comprehensive  
 11 one.  
 12 Actually let's go to this one. Let's go to the  
 13 wider view.  
 14 MR. HILLMER: Okay.  
 15 CHAIRMAN NELSON: In 2014 how much of the  
 16 facility did you inspect? Was it the blue, the red, the  
 17 yellow, or all of the above?  
 18 MR. KOENECKE: Which exhibit is that,  
 19 Commissioner?  
 20 CHAIRMAN NELSON: Hang on a second. I've got a  
 21 question here as to which exhibit number. I'm going to  
 22 have to look that up.  
 23 MR. RISLOV: Attachment B.  
 24 CHAIRMAN NELSON: Thanks for helping me out.  
 25 I'm sorry, Mr. Hillmer. Go ahead.

1 MR. HILLMER: Actually when we were there we  
 2 would look at everything. It doesn't mean that we have  
 3 jurisdiction over everything. Obviously, we do not have  
 4 jurisdiction over the Inlet on the farm tap.  
 5 We probably would ask the operator to make sure  
 6 that their outlet valve or their three-way valve, as  
 7 they're calling it, is operational. So, I mean, we would  
 8 inspect that. To be honest with you, on these it's more  
 9 of a visual inspection to make sure that coatings and  
 10 everything are good.  
 11 And in 2014 Mary was the one that inspected  
 12 them. I don't know if she asked them to check relief  
 13 settings and stuff like that. I highly doubt it. It was  
 14 probably more of a visual inspection as far as that goes.  
 15 CHAIRMAN NELSON: Did she inspect all 195 of  
 16 these?  
 17 MR. HILLMER: No.  
 18 CHAIRMAN NELSON: Can you tell me how many were  
 19 inspected?  
 20 MR. HILLMER: I do not know, Commissioner  
 21 Nelson, at this time.  
 22 CHAIRMAN NELSON: So then there was some  
 23 discussion about the fact that a request was made to do  
 24 an inspection in 2016. Northern resisted that, as I  
 25 understand, and you all can correct me if I'm wrong

1 later.  
 2 But would it have been true that you would have  
 3 been able to inspect the red portion of this since  
 4 Northern is telling us that they don't control the red  
 5 portion?  
 6 MR. HILLMER: That is true.  
 7 CHAIRMAN NELSON: But you didn't do that; is  
 8 that correct?  
 9 MR. HILLMER: No, we did not.  
 10 If what Northern is saying is true, that is  
 11 correct.  
 12 CHAIRMAN NELSON: Understand. Understand. That  
 13 may be all the questions I have for you. But just hang  
 14 tight.  
 15 And so, Ms. Edwards, there's been some  
 16 discussion in your Briefs about the position the  
 17 Commission took in NG11-001. And there was a hearing on  
 18 March 8, 2011, that from which an Order came out.  
 19 In response to Commission questions at that  
 20 hearing, PUC Staff clearly stated that it would be  
 21 Northern's responsibility to continue to provide gas  
 22 following 2017 to the farm tap customers.  
 23 Is that still Staff's position?  
 24 MS. EDWARDS: I wasn't here in 2011. I'm sorry.  
 25 Thank you, Commissioner. I wasn't here in 2011 so I

1 don't know exactly what went on as far as data requests  
 2 behind the scene. But by responsibility they might have  
 3 interpreted it as responsibility to find a subsidiary or  
 4 another company who could legally not in contradiction to  
 5 FERC Order 636 provide service. Maybe a subsidiary as  
 6 Peoples did originally, but not being here in 2011, I  
 7 can't be sure.

8 I think what Staff was working under the  
 9 assumption was that there would always be a utility  
 10 willing to come forward and do this and that the parties  
 11 had made sure that was the case.

12 CHAIRMAN NELSON: Did you listen to the  
 13 recording of that hearing? Have you listened to that?

14 MS. EDWARDS: I did. It's been a while, but I  
 15 did listen to it.

16 CHAIRMAN NELSON: I just listened to it within  
 17 the last couple of days, and it seemed to me that  
 18 Commission's questions to Staff at that point were pretty  
 19 pointed in that we wanted to be assured of who would  
 20 continue providing this service after 2017, and the clear  
 21 response was from Staff at that point was that it would  
 22 be Northern's responsibility.

23 But I appreciate your clarification at this  
 24 point.

25 If we could go to Staff's Brief, page 6 -- and I

1 should say Staff's Reply Brief. I apologize. Page 6,  
 2 Section B, Paragraph 1. You've made the statement, and  
 3 you reiterated it this morning, that Northwestern Energy  
 4 is a public utility as it relates to the farm taps today.

5 That is your position; correct?

6 MS. EDWARDS: It is. If they have the ability  
 7 to shut off gas service, then by our definition of  
 8 controlling service, if you can shut it off, if you can  
 9 close the valve and shut off gas service, I think it  
 10 would be difficult to argue that you didn't have control  
 11 over gas service to an end user.

12 Also when I looked at the contracts submitted by  
 13 the parties I believe there was a statement in the  
 14 agreement that said Peoples would serve as a public  
 15 utility, and that was assigned to NorthWestern.

16 CHAIRMAN NELSON: So is it your opinion that  
 17 SDCL 49-34A-2.1 applies to Northwestern Energy today?

18 MS. EDWARDS: Yes, it is.

19 CHAIRMAN NELSON: And why would that not apply  
 20 then in 2018 to Northwestern Energy?

21 MS. EDWARDS: There's an argument to be made,  
 22 and it would be the burden of NorthWestern to advance  
 23 that argument that when the Commission approved a tariff  
 24 with an end date that that was understood to be allowing  
 25 them to discontinue service. But that would be

1 NorthWestern's burden.

2 CHAIRMAN NELSON: In Staff's Initial Brief there  
 3 was considerable amount of talk about the yellow portion  
 4 of the line, the line going from the odorizer to the farm  
 5 itself.

6 And forgive me if I'm interpreting this wrong,  
 7 but I got the impression that Staff's position in that  
 8 initial Brief really denigrated the ability of the  
 9 farmer, the customer, to maintain their own line. There  
 10 was considerable question, I think, about whether those  
 11 customers could take care of their own line.

12 And we've heard, since that, significant public  
 13 comment from those customers talking about the thousands  
 14 of dollars that they have invested in upgrading their  
 15 lines, taking care of their lines, doing that type of  
 16 thing.

17 Does any of that public comment that we have  
 18 received since your Initial Brief, does any of that  
 19 change your opinion as to the ability of these farmers to  
 20 take care of their own lines?

21 MS. EDWARDS: I'm certain that some of them are  
 22 maintaining excellent facilities. Some of their  
 23 facilities may be even better than some of our operator's  
 24 facilities. And I'm sure some of them are doing an  
 25 excellent job.

1 But I know in other jurisdictions there have  
 2 been instances where lives have been lost because maybe  
 3 somebody who didn't know where that line was, hit that  
 4 line while they were tilling or putting in tile.

5 And I know we've had consumer issues in the past  
 6 where somebody had a leak for a year and didn't know it  
 7 because they simply don't have the technology at their  
 8 disposal to determine whether or not they're losing gas  
 9 between their tap and where they're receiving it.

10 So if there's one tap out there that's not being  
 11 monitored and not being watched and there's an explosion,  
 12 that's too many. I'm very, very grateful that so many  
 13 consumers are taking such great care of their lines.

14 CHAIRMAN NELSON: So today in your presentation  
 15 you used the word "unfortunately" as it relates to  
 16 whether or not you may have the ability to inspect that  
 17 line. You said unfortunately you don't have the ability  
 18 to inspect that line for safety.

19 So I take it to mean that Staff's position is  
 20 that you wish you did have the ability to inspect that  
 21 line. Is that accurate?

22 MS. EDWARDS: From a resources standpoint it  
 23 would be very difficult to inspect all of those lines,  
 24 but from a safety standpoint and from a taking that  
 25 burden off the customer to know that they don't have a

1 leak or to have some assurance that they don't have a  
2 leak and to help make sure their line is locatable when  
3 they're farming every spring, we would love to be able to  
4 help them out, and to some extent that's regrettable.

5 CHAIRMAN NELSON: Okay. So help me understand  
6 how that differs from the tens of thousands of private  
7 propane lines that are scattered across this state that  
8 are not inspected that customers themselves take  
9 responsibility for.

10 What's the difference? Is there one?

11 MS. EDWARDS: We don't have any jurisdictional  
12 propane in the state so I'd have to ask Boice for sure.

13 CHAIRMAN NELSON: I'm talking about the safety  
14 aspect of it. I mean, you're talking about that we  
15 wished we had the ability to inspect these farmer-owned  
16 lines to maintain and make sure that they are safe.

17 So does that also then carry over to the private  
18 propane lines? I'm just trying to figure out where the  
19 line is here so far as what your position is with regard  
20 to safety.

21 MR. HILLMER: Can I help her answer that  
22 question?

23 CHAIRMAN NELSON: Absolutely.

24 MR. HILLMER: I think the difference here is  
25 that in a propane typically the propane tank's within 50,

1 100 foot of the house. So you're talking about a 50 foot  
2 of downstream line. Where in this circumstance these  
3 farm taps can be a quarter mile, half a mile out in the  
4 middle of a farm field serving this residence.

5 So there's a lot more footage of pipe there that  
6 is not being inspected and a lot more places for things  
7 to go wrong, I guess.

8 CHAIRMAN NELSON: Thank you.

9 Are these meters -- they're self-read monthly or  
10 more often or less often?

11 MS. EDWARDS: My understanding -- and  
12 NorthWestern would probably be the better one to answer  
13 this, but just dealing with consumer issues in the past  
14 is that NorthWestern's going out there once a year and  
15 doing something of a true-up and hoping that the customer  
16 is reading it more accurately and has not always been the  
17 case. But NorthWestern has been going out and trueing it  
18 up once a year.

19 CHAIRMAN NELSON: But it would be the  
20 expectation that the customer's reading it monthly and  
21 self-reporting monthly?

22 MS. EDWARDS: Yes.

23 CHAIRMAN NELSON: So if there is a leak and the  
24 customer is doing as they're supposed to, they should be  
25 able to detect that within 30 days or less? Is that

1 accurate?

2 MS. EDWARDS: If there was a large enough leak,  
3 yes, they should. They would notice a substantial  
4 increase in their gas bill. If it was a small leak,  
5 maybe, maybe not.

6 CHAIRMAN NELSON: Okay. I think that's all the  
7 questions I have for Staff at this point.

8 COMMISSIONER FIEGEN: Yes. I do have a question  
9 of Pipeline Safety Staff.

10 In 2014 it appears that you inspected the farm  
11 taps, which that area now is being considered interstate  
12 according to Northern?

13 MR. HILLMER: I believe that is correct.  
14 They're saying it's nonjurisdictional.

15 COMMISSIONER FIEGEN: So that would be  
16 interstate?

17 MR. HILLMER: Yes.

18 COMMISSIONER FIEGEN: Help me understand as a  
19 Commissioner why that is interstate? Because it's not,  
20 you know, going from state to state. It's coming to a  
21 farm tap.

22 MR. HILLMER: It's kind of -- maybe that's a  
23 question better answered by Northern, but it's coming off  
24 of their interstate line. And to the point of the  
25 valves, I know we inspect other utilities, and some of

1 the other utilities they've basically taken it over to  
2 the valves off of the interstate line so that they own  
3 everything after that. But that's obviously not the  
4 circumstances here.

5 So I don't know how -- you know, I don't know  
6 where -- I think there's a point there where we're trying  
7 to figure out where their jurisdiction, Northern Natural,  
8 ends and where NorthWestern ends, and that's the real  
9 question here.

10 COMMISSIONER FIEGEN: Do you figure that with  
11 PHMSA? I mean, are you working with PHMSA on that?

12 MR. HILLMER: Mary has been in contact with them  
13 quite a bit. She's been in contact with PHMSA and FERC,  
14 and she has not gotten a straight answer one way or the  
15 other.

16 Like the question she posed was if these farm  
17 taps are all jurisdictional, why isn't PHMSA coming out  
18 with a ruling that all farm taps are jurisdictional.  
19 Which they're not at this time.

20 COMMISSIONER FIEGEN: Thank you.

21 COMMISSIONER HANSON: I have one for you as  
22 well, Mr. Hillmer. Thank you.

23 MR. HILLMER: Yes, sir.

24 COMMISSIONER HANSON: I'm assuming you're  
25 concerned about the safety issue with farm taps.



1 MR. HILLMER: That is correct.  
 2 COMMISSIONER HANSON: How many farm taps, if  
 3 any, does the PUC, do you, inspect at the present time?  
 4 MR. HILLMER: I would say there's probably about  
 5 100 of them.  
 6 COMMISSIONER HANSON: And are there challenges  
 7 with those farm taps? Are there safety issues with those  
 8 farm taps that we have run into?  
 9 MR. HILLMER: You've got the same safety issues  
 10 as you would with a border station. You want to make  
 11 sure that their reliefs are set correctly, their regs are  
 12 working properly.  
 13 I mean, it's some of the same exact concerns  
 14 that you would have with a border station in a town. I  
 15 mean, you're checking the same thing.  
 16 COMMISSIONER HANSON: Excuse me. Go ahead.  
 17 MR. HILLMER: And it might be a higher level  
 18 risk because you're coming off of a transmission line  
 19 that's serving, I don't know, 6, 800 pounds, whatever it  
 20 is, and they're cutting it down to 10 pounds. So if that  
 21 reg station isn't working, you're blowing 800 pounds up  
 22 against a residential customer's service, possibly.  
 23 COMMISSIONER HANSON: Have there been some  
 24 challenges that you're aware of in South Dakota with the  
 25 farm taps? Is there a history of challenges?

1 MR. HILLMER: Last year when I was doing an  
 2 audit, I mean, I did find some that were not set  
 3 properly, not where they said they were set. They've got  
 4 to keep a book where each one of them's set. Not  
 5 everyone's set the same.  
 6 So yeah. There are challenges. Or maybe the  
 7 relief isn't popping off where it's supposed to. Yes,  
 8 there are challenges there.  
 9 COMMISSIONER HANSON: Perhaps you've answered  
 10 this in the question with Commissioner Fiegen, but I am  
 11 curious on the farm taps. Is there a requirement from  
 12 PHMSA that you are aware of that farm taps must be  
 13 inspected?  
 14 MR. HILLMER: There's kind of a muddy water  
 15 there.  
 16 PHMSA says yes, we should be inspecting farm  
 17 taps. But then operators are saying that FERC has  
 18 jurisdiction over them; therefore, they're not  
 19 inspectable by PHMSA or us.  
 20 COMMISSIONER HANSON: Who do we take our orders  
 21 from?  
 22 MR. HILLMER: Me as a gas pipeline safety? All  
 23 of you. But PHMSA is my driver, I guess, in the safety  
 24 end of it. That's where I take my orders from.  
 25 COMMISSIONER HANSON: I'm being inclusive when I

1 say "we."  
 2 MS. EDWARDS: Mr. Commissioner, could I add on  
 3 to that?  
 4 COMMISSIONER HANSON: Certainly.  
 5 MS. EDWARDS: Just to clarify, when he said they  
 6 inspect 100 farm taps, many of those are off of  
 7 intrastate transmission lines such as SDIP. So the  
 8 intrastate and interstate jurisdictional issue is not  
 9 present, and it's a lot more clear for Pipeline Safety  
 10 staff.  
 11 COMMISSIONER HANSON: Thank you. I was making  
 12 that assumption, but I appreciate you taking me away from  
 13 the assumption.  
 14 Thank you. Appreciate it.  
 15 I do have questions of Ms. Edwards.  
 16 First of all, and correct me if my premises are  
 17 inaccurate, but from the information that we have here  
 18 and what you've stated today, it's your belief that  
 19 NorthWestern is the utility and it's also your belief  
 20 that that comes under South Dakota Codified Law and it  
 21 must receive PUC permission to withdraw.  
 22 And as I understand from your filings, you  
 23 believe that the Public Utilities Commission has already  
 24 given that permission under NG11-001. Is that a correct  
 25 premise so far?

1 MS. EDWARDS: I certainly believe that there's  
 2 an argument to be made that they did, but it's not a  
 3 clear argument. No.  
 4 COMMISSIONER HANSON: Okay. My question is,  
 5 similar to the Legislature, cannot the PUC subsequent to  
 6 one action make a change in an action that it took, a  
 7 previous action that it took?  
 8 In other words, can we not in a present or  
 9 future docket rule that in NG11-001 that they no longer  
 10 have that permission?  
 11 MS. EDWARDS: Absolutely. The Commission is  
 12 never bound by precedent of past decisions. And I would  
 13 certainly encourage NorthWestern not to rely on an  
 14 assumption that the Commission already made that  
 15 decision. If they feel that's the case, they should  
 16 bring a declaratory ruling to ensure that's the case, and  
 17 that is what the Commission believes.  
 18 COMMISSIONER HANSON: Thank you. And  
 19 argumentative question here.  
 20 The Commission, recognizing that NorthWestern  
 21 Energy is a utility at the present time, can we not rule  
 22 that they are prohibited from shutting off the customers,  
 23 and by that ruling they would continue to be -- because  
 24 excuse me.  
 25 If their position as a public utility ends when

1 they shut off the consumer, if we prohibit them from  
2 shutting off the consumer, do they not continue to be a  
3 public utility?

4 MS. EDWARDS: I guess I don't want to be  
5 argumentative, but that question assumes they have the  
6 ability to turn the valve and shut off and that that's  
7 their obligation. Right now I'm not sure that's the  
8 case.

9 But without that -- barring that assumption, I  
10 would agree with your statement that you have the ability  
11 to force them to continue doing that.

12 COMMISSIONER HANSON: Thank you.  
13 Thank you, Mr. Chairman.

14 MR. DE HUECK: Advisors, are there any  
15 questions?

16 MR. RISLOV: No.

17 MR. DE HUECK: If you don't mind, I had a  
18 question I'd like to ask Ms. Edwards.

19 What type of service do these farm taps fall  
20 into? Is this the retail sale of gas? Is it the  
21 wholesale sale of gas, or is this some other category of  
22 the sale of gas?

23 How do you characterize this sale of gas?

24 MS. EDWARDS: This is the retail sale of gas,  
25 and it's covered by their tariff. I believe Section 1.8?

1 1.1 of NorthWestern's tariff, which establishes  
2 the general rate.

3 MR. DE HUECK: Could you elaborate on why it's  
4 the retail sale? What makes it retail?

5 MS. EDWARDS: Because it's sale of gas to an end  
6 user, would be my position.

7 MR. DE HUECK: With that, we'll turn it over to  
8 Northern and let you make your oral argument.

9 MR. PORTER: Thank you.

10 Good morning. As I said earlier, my name is  
11 Rick Porter. With me is Jim Talcott and Laura Demman.  
12 Appreciate the opportunity.

13 First of all, I notice Ms. Edwards stood. Do  
14 you have a preference whether we stand or sit?

15 Okay. I didn't want to be disrespectful. If  
16 it's okay, I'll sit.

17 Thanks for allowing us the opportunity to  
18 address these issues this morning. Our goal has been and  
19 continues to be to ensure that a common understanding of  
20 what will happen if no one provides utility service to  
21 the 195 or nearly 200 farm tap customers that received  
22 notice their utility service will end as of December 31,  
23 2017.

24 Northern was up here and talked to the  
25 Commissioners and Staff in 2015 and again in 2016. We've

1 also provided quite a bit of information, two Briefs in  
2 this proceeding. We've tried to be as helpful as we can  
3 be in understanding the complexities of the issues. Many  
4 of the issues already discussed here today as far as the  
5 difference between retail and wholesale, first sale of  
6 gas, those are issues that aren't dealt with every day  
7 and are important to fully understand the jurisdictional  
8 lines that are drawn here.

9 We realized early on as we started to deal with  
10 this in South Dakota that there was no common view in  
11 South Dakota regarding the responsibility of service to  
12 farm tap customers, responsibility of utility service to  
13 customers.

14 We believe the historical facts are very  
15 important, and that's what we've tried to bring to the  
16 Commission is the understanding of the history and the  
17 corporate structure that has been in place. We've  
18 repeatedly -- Northern's repeatedly made clear that if  
19 the current utility, NorthWestern, terminates service  
20 effective December 31, 2017, the obligation to provide  
21 utility service does not default to Northern.

22 That is not a point that we're trying to say not  
23 us. We're trying to make sure that everybody understands  
24 the jurisdiction, understands that -- the two agreements  
25 that I'll talk about later, but the two agreements and

1 the importance of those agreements that are part of the  
2 history of farm taps in South Dakota.

3 Our persistence has been driven by our concern  
4 that if awareness is not brought to these issues, farm  
5 tap customers will be without utility service. These are  
6 farm tap customers that have enjoyed the convenience of  
7 natural gas for 50 to 60 years.

8 To allow farm tap service to be discontinued --  
9 and I take Counsel's point that this isn't necessarily  
10 about discontinuation, but we can see what the end path  
11 is. To allow the farm tap service to be discontinued  
12 when there's an existing regulated utility  
13 infrastructure, as we're finding out and we should have  
14 expected, is difficult for farm tap customers to  
15 understand.

16 As a -- this might be a little unconventional,  
17 but what I'm going to do with the time that I have this  
18 morning, I'm going to start with what we recommend and  
19 we, Northern Natural Gas, and then I'll get into the  
20 arguments or the questions that have been raised by  
21 Commission Staff.

22 I tried to as preparing for these comments think  
23 about the complexities of the issues and what would be  
24 most beneficial to the Commission, knowing that a fairly  
25 sizable amount of information has been received, detailed

1 information, in a very short period of time, the Briefs,  
 2 and knowing that a decision on the declaratory ruling  
 3 statute needs to be made quickly. So hopefully starting  
 4 with the recommendation will be helpful.

5 Starting with Northern believes that  
 6 NorthWestern is a public utility now and will remain one  
 7 post-December 31, 2017. NorthWestern should have  
 8 continuing service obligations. And we believe that in  
 9 Docket No. NG11-001 the Commission asked the question to  
 10 Staff, as we've already discussed this morning, about  
 11 what happens after December 31, 2017?

12 I think Chairman mentioned that the reference  
 13 was made that that would be Northern's. We tried to make  
 14 clear we fundamentally disagree with that. We don't  
 15 think the law or the facts support that. I think Staff  
 16 is right to begin to come around on that issue.

17 We do not see anywhere in that Order that it  
 18 says that Northwestern Energy's public utility obligation  
 19 ends. So need to distinguish -- and we'll talk further  
 20 about that, but the distinction between what a public  
 21 utilities obligation is and what an agreement to provide  
 22 service -- as the 1987 Agreement, what that Agreement  
 23 means different than the Northwestern Energy's statutory  
 24 obligations.

25 Okay. So what we recommend is the Commission --

1 since there's a lot of hair on this issue, we recommend  
 2 that the Commission sits down with NorthWestern and works  
 3 out an arrangement that is satisfactory to the  
 4 Commission, satisfactory to NorthWestern, and that allows  
 5 service to continue. The bottom line is we think service  
 6 ought to continue to folks that have had service for 50  
 7 to 60 years.

8 Assuming -- so what would that deal look like?  
 9 It may be -- you may be sitting there -- it may be  
 10 presumptuous, first of all, for me to suggest that the  
 11 Commission and NorthWestern ought to work out a deal.  
 12 And I apologize. I don't mean it that way. But I just  
 13 think that given what I'm going to describe and what we  
 14 see, that's the most practical and probably the best path  
 15 forward.

16 An arrangement would -- of that nature would  
 17 include NorthWestern providing the utility service to the  
 18 farm tap customers. It would also allow NorthWestern to  
 19 recover the costs and earn a fair regulated return for  
 20 doing so. In the same manner that other utilities have  
 21 their operating costs and to the extent they own the  
 22 plant, they have that in their rates as well.

23 I understand that there's the existing rates and  
 24 whether it's rolled in rates or whether, until their next  
 25 rate case, there's regulatory asset and liability,

1 accounting, all of those things would need to be worked  
 2 out. Again, I'm not suggesting that it's an easy,  
 3 straightforward process.

4 The point is a fairer arrangement would make it  
 5 economically worthwhile for NorthWestern. Farm tap  
 6 customers would continue to get gas utility service. The  
 7 public and the Commission could be assured utility  
 8 service is being safely provided by a sophisticated  
 9 utility. And from a customer service perspective there  
 10 would be continuity of service from the existing  
 11 provider.

12 You might ask, along the presumptuous path, who  
 13 are you to come in here and make this recommendation?  
 14 Fair question. Fair question.

15 However, the bottom line is the Commission and  
 16 NorthWestern cannot -- or to the extent they cannot  
 17 reach an agreement, it is likely that service as of  
 18 December 31, 2017, will be terminated. Because the other  
 19 options available to the Commission will be more  
 20 expensive and time-consuming.

21 For instance, as demonstrated in this  
 22 proceeding, in 1985 InterNorth transferred the assets and  
 23 liabilities of Peoples Natural Gas to UtiliCorp. So as  
 24 of 1985 UtiliCorp owned Peoples and owned the obligation  
 25 and the responsibility to provide farm tap service in the

1 State of South Dakota. That's all covered in our Brief.  
 2 There's a diagram in the Brief. I'd refer you to that.

3 So there have been transfers. UtiliCorp  
 4 transferred those assets to different companies after  
 5 1985. They've transferred the Minnesota and South Dakota  
 6 assets, originally transferred that to MERC. They've  
 7 transferred some of the other assets to other utilities.  
 8 So as of 1985 it was all -- Peoples was owned by  
 9 UtiliCorp.

10 If, as Staff suggested at least in its initial  
 11 Brief, Northwestern Energy has no obligation to serve  
 12 after termination, that would mean there are two  
 13 successors that the Commission could look to, and that  
 14 would be Aquila and MERC. So UtiliCorp became Aquila  
 15 through a change in name. Aquila then sold the assets  
 16 and liabilities to MERC. And then MERC and NorthWestern  
 17 entered into the arrangement over the Milbank sale.

18 The point being if a deal is not worked out and  
 19 if the Commission would decide that Northwestern Energy  
 20 doesn't have a utility obligation -- again, we think that  
 21 would not be the right decision, but if that was the  
 22 Commission's decision, the Commission would have a choice  
 23 of pursuing Aquila or MERC or allowing service to be  
 24 discontinued.

25 These aren't great options. Discontinuing



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1 service would deprive service to customers currently  
 2 receiving utility service. And, as I have mentioned,  
 3 they've been receiving service for 50 or 60 years. This  
 4 would do, in our view, a disservice to the public  
 5 interest, the very interest the Commission is obligated  
 6 to uphold.

7 If the Commission decides farm tap customers  
 8 should continue to receive utility service, the only  
 9 option under that circumstance would be to pursue MERC  
 10 and Aquila. That would be a difficult process, I  
 11 believe. MERC and Aquila, to my knowledge, neither of  
 12 which are subject to the Commission's jurisdiction. I  
 13 think that would be an expensive and time-consuming  
 14 effort, the certainty of which would certainly be in  
 15 doubt.

16 So, in summary, Northern would respectfully  
 17 submit that the choices would be, one, find that  
 18 Northwestern Energy is the utility now, which I believe  
 19 there's agreement in the briefing on that, and after  
 20 December 31, 2017, that they continue to be and they have  
 21 the obligation to provide farm tap service --  
 22 utility farm tap service.

23 If that's not the choice the Commission makes,  
 24 then I think the decision -- the best option would be to  
 25 work out an arrangement with Northwestern Energy to

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1 provide that service.

2 There are two important issues, takeaway issues,  
 3 that we hit in our Brief that I would just like to  
 4 summarize. Because they are two -- there are two  
 5 agreements that are important here. One is the 1985  
 6 Agreement that I mentioned between InterNorth and  
 7 UtiliCorp that transferred all the assets and liabilities  
 8 and obligations of Peoples to UtiliCorp.

9 The sale from InterNorth to UtiliCorp expressly  
 10 required UtiliCorp to assume the obligations with regard  
 11 to the farm taps in South Dakota.

12 The second agreement is referred to as the 1987  
 13 Agreement. And that was an agreement between Northern  
 14 and Peoples Natural Gas. It was entered into in 1987 so  
 15 almost two years after the assets and liabilities had  
 16 already transferred.

17 The 1987 Agreement was merely to write down on  
 18 paper what had been a well settled practice between two  
 19 affiliates that were commonly owned for a long time.  
 20 Since 1930. So the guys in the field knew how things  
 21 operated. They knew who provided utility service. And  
 22 they knew who provided the interstate service.

23 After the sale in 1985 it was thought best to  
 24 identify those obligations and to put them down on paper.  
 25 That's the import of the 1987 Agreement.

39

1 Staff in its Reply Brief agreed that the first  
 2 agreement I mentioned, the 1985 Agreement, transferred  
 3 all the assets to Peoples Natural Gas. So there was some  
 4 disagreement. It just from a legal and factual  
 5 perspective, once that liability was transferred to  
 6 UtiliCorp, there's not a legal or any reasonable factual  
 7 point where that reverts to Northern somehow. And that's  
 8 the point that we've been trying to make. I think we've  
 9 made it now and had the opportunity in briefing to do so  
 10 and appreciate that opportunity to do that.

11 The last thing I want to do is just reference --  
 12 or not reference but address, excuse me, the questions  
 13 that have been posed in this proceeding. And those  
 14 questions are does the Commission have jurisdiction over  
 15 the utility providing the farm tap service? Which  
 16 entity, NorthWestern or Northern, is a public utility  
 17 with regard to the farm tap service? And are the farm  
 18 taps subject to state jurisdiction for pipeline safety?

19 The first question is does the Commission have  
 20 jurisdiction over the utility providing the farm tap  
 21 service. As outlined in our briefing, the answer is  
 22 clearly yes. Both NNG, Northern, and Staff agree that  
 23 NorthWestern is a gas utility subject to the Commission's  
 24 exclusive jurisdiction under Section 49-34A.  
 25 NorthWestern Energy operates, maintains, and

40

1 controls equipment for the purpose of providing gas  
 2 service to the public in South Dakota. NorthWestern  
 3 squarely fits this definition of public utility.

4 Chapter 34A-4 of the South Dakota Statutes  
 5 require the Commission -- require the Commission to  
 6 regulate every public utility.

7 The second question is which entity,  
 8 NorthWestern Energy or Northern, is a public utility with  
 9 regard to farm tap customers. The answer is NorthWestern  
 10 Energy is a public utility, as we have discussed.  
 11 Northern is not.

12 There is agreement between Staff, Northern, and  
 13 NorthWestern that Northern is not a public utility.  
 14 NorthWestern Energy is a public utility today, and, as I  
 15 mentioned earlier, we believe will be after December 31,  
 16 2017. However, that's a question that has come up in  
 17 this proceeding.

18 I would ask how can such a large gas and  
 19 electric utility say it's not a gas utility for the  
 20 purpose of serving 195 farm tap customers but it is a  
 21 public utility for the purposes of serving other farm tap  
 22 customers that it had served prior to the MERC contract  
 23 and for the purpose of serving 60 communities and 86,000  
 24 customers in the State of South Dakota?  
 25 Based on the statutory definition of public

1 utility referenced earlier, as well as the size and  
2 extent of Northwestern Energy's South Dakota service  
3 territory, it would be reasonable for this Commission, in  
4 Northern's view, to conclude NorthWestern is a public  
5 utility even after December 31, 2017.

6 As an aside, it is interesting to note the same  
7 1987 Agreement Northwestern Energy is citing to say the  
8 obligation terminates has been partially assigned to MERC  
9 in Minnesota and Black Hills in Iowa. NorthWestern is  
10 the only utility proposing to terminate utility service  
11 to farm tap services -- or to farm taps.

12 All others, including MidAmerican, serve farm  
13 tap customers and will continue to serve farm tap  
14 customers.

15 NorthWestern argues that it only agreed with  
16 MERC to take assignment of farm taps until December 31,  
17 2017. The Commission should not view NorthWestern's  
18 commitment so narrowly. It's important to keep in mind  
19 that NorthWestern was in the process of buying the  
20 Milbank Pipeline from Northern in 2011, but in order to  
21 do so it had to deal with MERC because MERC had service  
22 off of that Milbank line.

23 To take care of MERC and purchase the Milbank  
24 Pipeline from Northern, a deal had to be reached, and it  
25 was. The deal was that MERC would agree to take service

1 from Northwestern Energy, and Northwestern Energy had to  
2 take assignment of the farm tap.

3 Part of the value proposition for NorthWestern  
4 was taking assignment of the farm tap service obligation.  
5 It's not clear in the record where the communications  
6 broke down in the Milbank approval process between MERC  
7 and NorthWestern.

8 I think the Commission asked the right question,  
9 and clearly the wrong answer was provided. But given  
10 this miscommunication, I would submit to you that the  
11 farm tap customers should not lose service because of it.  
12 Farm tap utility service shouldn't be abandoned because  
13 of a misunderstanding.

14 The third question was are the farm taps subject  
15 to state jurisdiction for pipeline safety? Unequivocally  
16 in regard to Northern facilities -- and we've made  
17 reference to the exhibit that we had attached to our  
18 Brief, and that's the purpose that that was provided --  
19 the answer is no. Northern facilities are subject to  
20 state pipeline -- or no Northern facilities subject to  
21 state pipeline safety inspection.

22 Because the Northern facilities are used to  
23 transport natural gas in interstate commerce, does not  
24 involve retail, but in interstate commerce, and the  
25 Northern facilities are regulated by FERC, they are

1 subject to the exclusive safety jurisdiction of PHMSA.

2 Any attempt by the South Dakota Public Utilities  
3 Commission to regulate the Northern facilities -- so  
4 Northern facilities being upstream of what was referred  
5 to as the three-way valve, would be barred by the  
6 United States Constitution and the express provisions of  
7 the Pipeline Safety Act at 49 U.S.C. Section 60104.

8 In summary, the Commission has jurisdiction over  
9 farm tap utility service as well as the utility providing  
10 it. Today that utility is Northwestern Energy.  
11 Northwestern Energy is a public utility. Northern is  
12 not. Northern is subject to the exclusive jurisdiction  
13 of FERC and for pipeline safety for PHMSA. And  
14 Northern's facilities, as I said, are not subject to  
15 state pipeline safety inspection.

16 Let me end by, first of all, again thanking you  
17 for the time and your attention but the time to address  
18 these questions. I appreciate the proceeding being  
19 initiated to allow parties to provide information that at  
20 the end of the day hopefully is helpful in the  
21 Commission's deliberative process.

22 I would like to conclude with what I believe is  
23 a real life question but one which I pose today  
24 rhetorically for your consideration as you deliberate.  
25 Is the public interest being served if on December 31,

1 2017, 195 rural customers that have received gas utility  
2 service on a continuous basis for 50 to 60 years abruptly  
3 lose service, not because of anything they did but  
4 because no South Dakota utility had the obligation to  
5 serve?

6 And, with that, I'd be happy to answer  
7 questions.

8 CHAIRMAN NELSON: And I do have questions.  
9 First of all, I want to thank you for the  
10 considerable amount of time that you spent in your Brief  
11 talking about the history. I think that's key to all of  
12 this.

13 But it also struck me that, for the most part,  
14 in your Briefs history to you all starts in 1985. And I  
15 think the history of this goes back much sooner than  
16 that. So I want to try to fill in some gaps in that  
17 history between really the initiation of building a  
18 pipeline in 1985 and try to fill in some gaps.

19 And so my initial questions are going to revolve  
20 around the easement between Northern and a number of the  
21 landowners. And I'm going to use the one that Staff put  
22 on as an attachment that you all used as an attachment in  
23 your last Brief to us because I think that's  
24 representative.

25 In the first paragraph the easement seeks to

1 find what is being done here, and it talks about a right,  
2 privilege, an easement to construct, maintain, and  
3 operate pipelines and impertinences thereto over and  
4 through the following the described lands.

5 And so you would agree, would you, that that's  
6 what Northern was seeking from the landowners? Is that  
7 correct?

8 MR. PORTER: That is correct.

9 CHAIRMAN NELSON: The second thing that I think  
10 is important in the easement for the history of this is  
11 how long was Northern seeking this right? And in the  
12 second paragraph it spells that out.

13 It says to have and to hold -- that almost  
14 sounds permanent -- so long as such pipelines and  
15 impertinences thereto shall be maintained -- okay.  
16 That's a little bit less than forever -- together with  
17 the right of ingress to and egress from said premise for  
18 the purposes of constructing, inspecting, repairing,  
19 maintaining, and replacing the property of the grantee  
20 located thereon or the removal thereof in whole or in  
21 part.

22 And so would it be accurate that the expectation  
23 is that this easement would last as long as Northern  
24 maintains and operates the pipeline? Is that correct?

25 MR. PORTER: That's correct.

1 CHAIRMAN NELSON: And so then we get to the  
2 third portion of what -- in exchange for this, what could  
3 be a forever commitment on the part of the landowner,  
4 what does the landowner get in return for that?

5 And, obviously, in the first paragraph it talks  
6 about some monetary compensation, and if you're crossing  
7 a quarter section, the landowner got 160 bucks for a  
8 forever commitment.

9 Would you agree?

10 MR. PORTER: Yes.

11 CHAIRMAN NELSON: In the last set of paragraphs  
12 there are some additional compensation or agreements, if  
13 you will, that state as further consideration for this  
14 grant, the grantee herein agrees as follows. Number one,  
15 that it will bury all pipelines laid upon said land to a  
16 sufficient depth so as to not interfere with the  
17 cultivation of soil. Beneficial to both parties,  
18 obviously.

19 Second, that the grantor -- that it will pay to  
20 grantor any damages that may arise to growing crops,  
21 trees, shrubbery, fences, or buildings from the  
22 construction, maintenance, or operation of said  
23 pipelines. Okay. That makes sense. If you damage  
24 something, you're going to compensate for it.

25 Number three, that grantee will make or cause to

1 be made a tap at any gas pipeline constructed by grantee  
2 upon the above-described premises for the purpose of  
3 supplying gas to grantor. And I think we all have an  
4 understanding that the tap you're talking about there,  
5 you're going to make a hole in the pipe and provide  
6 the -- essentially in your picture, the blue portion.

7 Is that accurate?

8 MR. PORTER: Correct.

9 CHAIRMAN NELSON: And then that paragraph ends  
10 with the phrase "and gas to be taken under this provision  
11 shall be measured and furnished to the grantor at the  
12 rates and upon the terms as may be established by grantee  
13 or by any vendee of the grantee from time to time."

14 And so my question coming out of that last  
15 phrase is would you agree that per that language either  
16 Northern or Northern's vendee has a responsibility to  
17 provide gas to the grantor as long as the pipeline is  
18 operational? One of those two parties?

19 Is that correct?

20 MR. PORTER: Yes. Subject to knowing what  
21 furnish gas means.

22 CHAIRMAN NELSON: So let me ask you, what do  
23 you think that means to the farmer that granted the  
24 easement?

25 MR. PORTER: It means they're going to get gas.

1 That's exactly right.

2 That does not mean that Northern is selling the  
3 gas to them. And that's the distinction that I think is  
4 important. We have never sold the gas to the end user in  
5 the State of South Dakota.

6 CHAIRMAN NELSON: Understand. But in this  
7 phrase, this phrase leaves open the possibility of that  
8 or that if Northern chooses not to, that you will have  
9 the responsibility of finding a vendee to do that.

10 Is that accurate?

11 MR. PORTER: I agree with that.

12 CHAIRMAN NELSON: And so the landowner that  
13 signed these easements in the 1950s, would you agree that  
14 it was their expectation that for as long as that  
15 pipeline is operational they will have gas available to  
16 them?

17 MR. PORTER: Commissioner, I don't mean to hedge  
18 that, but I think -- I don't know what was in the  
19 person's mind signing this easement. We've got a lot of  
20 easements. Northern has a lot of easements with what we  
21 refer to as a farm tap provision in it that are not  
22 receiving gas. They've just never asked for it. They've  
23 never asked for a tap.

24 So I don't know what was in a particular  
25 landowner's mind at that time. I would think if they

1 were planning on asking for service, they were looking  
2 for access to the pipeline, and then arrangements would  
3 have to be made for the gas.

4 CHAIRMAN NELSON: And that's fair. I would  
5 agree with that. You can't know what was in each  
6 person's mind 60 years ago.

7 So maybe the last question I've got from the  
8 actual easement is this: Is it correct that it would  
9 violate the easement provisions if neither Northern nor  
10 Northern's vendee continued to provide gas?

11 MR. PORTER: I would say no. I don't think it  
12 does.

13 CHAIRMAN NELSON: And please explain that.

14 MR. PORTER: I will. Thank you.

15 Northern's obligation -- as the law has changed  
16 over time, Northern's obligation is as a interstate  
17 pipeline. We get gas to our farm tap facilities. Farm  
18 tap facilities owned by us. It is somebody else's  
19 responsibility, today Northwestern Energy's, to purchase  
20 the gas, nominate it on our pipeline for receipt, and  
21 then delivery at the delivery point.

22 It's not Northern's responsibility -- should, in  
23 this case, the utility refuse to do that job, it's not  
24 Northern's responsibility under this easement to do  
25 anything other than what it agreed to do, and that is to

1 make a tap available and furnish gas under the  
2 circumstances involved. And that would be somebody's got  
3 to nominate it. Somebody's got to buy it.

4 CHAIRMAN NELSON: Okay. So I understand your  
5 position and what you just said as it relates to Northern  
6 and particularly as it goes back to the FERC Order that  
7 Staff mentioned.

8 But the easement language has an "or" in it. It  
9 says Northern or a vendee of Northern. One or the other.  
10 And you've made the case, I think adequately so, that  
11 it's not Northern. It can't be.

12 But that to me leaves the only other option, and  
13 that is that Northern must have a vendee to provide gas  
14 to the landowner. Is that not correct?

15 MR. PORTER: The language that you're referring  
16 to, if I'm reading it correctly, says at the rates and  
17 upon the terms as may be established by grantee or any  
18 vendee of grantee from time to time.

19 I believe the way I read that provision may be a  
20 little bit different.

21 CHAIRMAN NELSON: Feel free.

22 MR. PORTER: To me what that is saying, it's  
23 referring to the rates and upon the terms that may be  
24 established by the vendee pursuant to somebody earlier  
25 referred to Northwestern's Tariff, Section 1.1. The

1 terms of what that -- and the price of what that's being  
2 provided for is established by vendee.

3 I think the language earlier is what addresses  
4 Northern's obligation to make available.

5 CHAIRMAN NELSON: So is NorthWestern today your  
6 vendee?

7 MR. PORTER: We don't refer to them as a vendee  
8 in normal conversation, but under the language of this  
9 easement, I would say yes.

10 I would say I've never referred to them as a  
11 vendee.

12 CHAIRMAN NELSON: Understand. There's obviously  
13 language in here that we don't use so much anymore. But  
14 going back -- again, going back to the beginning of  
15 history, you would consider them to be your vendee today.

16 And so then I guess maybe the ultimate question  
17 is if they cease to be your vendee, do you have a  
18 responsibility for a replacement vendee under the  
19 language of the easement?

20 MR. PORTER: I do not think Northern Natural has  
21 an obligation to go out and get somebody under the terms  
22 of this easement.

23 CHAIRMAN NELSON: Let's go to your Brief,  
24 your initial Brief, page 5. And the last sentence on  
25 page 5 -- are you with me?

1 MR. PORTER: Not yet, sir.

2 Okay. I'm with you.

3 CHAIRMAN NELSON: Last sentence on page 5,  
4 Although the pipeline easement permitting the pipeline to  
5 be built across the landowner's property was granted to  
6 Northern, Peoples as a separate affiliate of Northern  
7 provided natural gas utility service to farm tap  
8 customers.

9 So my question is was Peoples your vendee per  
10 the language of the easement?

11 MR. PORTER: Yes. Again, I've never thought of  
12 them, but under the language -- the wording in the  
13 easement I would say that they're the vendee.

14 CHAIRMAN NELSON: Okay. So the document that is  
15 missing in all of this proceeding is where is the  
16 document that shows the rights, responsibilities,  
17 obligations, liabilities of Peoples at that point?

18 I mean, obviously Peoples and Northern were  
19 affiliate companies, but there had to be some document  
20 where Northern designated Peoples as the vendee per the  
21 language of the easement and what the rights,  
22 responsibilities, obligations, assets were at that time.  
23 Where is that?

24 MR. PORTER: I am not aware of a document as you  
25 described. What happened over time from the time that





1 Peoples was incorporated in 1930 was two affiliates  
2 worked together. Northern provided interstate  
3 transmission, the interstate service. Peoples provided  
4 the local retail service in Iowa, South Dakota,  
5 Minnesota, Kansas, all the states that Peoples was in.

6 They worked side by side at the town border  
7 stations or at facilities all over our system. They had  
8 a common ultimate owner.

9 I'm not aware of any document that lays out that  
10 a person for Peoples is going to do this and a person for  
11 Northern, the interstate transmission company's, going to  
12 do that. I was not aware of one. The only one I'm aware  
13 of is in 1987 where they went to the effort of laying  
14 that out.

15 We tried to supplement this board with a long  
16 time employee that was manager of the operations at that  
17 time, Keith Peterson. We included his Affidavit to  
18 support the historical practices. But I wish I had a  
19 document I could give you. There just isn't one.

20 CHAIRMAN NELSON: And you didn't bring  
21 Mr. Peterson with you today.

22 MR. PORTER: Did not.

23 CHAIRMAN NELSON: And I appreciate his attempt.  
24 His statements, obviously, were pretty vague that, yeah,  
25 I know, but beyond that they really weren't helpful in

1 answering the question that I want answered.

2 And ultimately we've talked a lot about what the  
3 1985 Agreement, what it transferred, but what I don't  
4 know is what did Peoples actually have to transfer?

5 Okay. Because we don't know what Northern provided to  
6 Peoples. We don't know what that relationship was back  
7 in the 1950s. Okay.

8 MR. PORTER: Just let me try this.

9 CHAIRMAN NELSON: Certainly.

10 MR. PORTER: There are three three- to four-inch  
11 binders that I've come across during this process that  
12 document the InterNorth sale to UtiliCorp. So I didn't  
13 mean to suggest that there weren't any documents. And  
14 they identify assets. They identify easements. They  
15 identify the things that you would expect to see in an  
16 asset purchase agreement.

17 There's normal language of all of Peoples  
18 Natural Gas's assets and liabilities are being purchased.  
19 I just want to make sure -- I didn't mean to mislead you  
20 because there is that kind of documentation, but there is  
21 no document that says Joe that works for Peoples or Mary  
22 that works for Northern is going -- carries out these  
23 functions.

24 CHAIRMAN NELSON: Well, and I appreciate that.  
25 So let me ask a concrete question that may help you

1 understand where I'm trying to fill in. And I'm going to  
2 go back to the very helpful picture.

3 So I understand the blue. And I want to focus  
4 on the red. We've got the three-way valve, and we've got  
5 the odorizing can. Who paid for it initially, and who  
6 installed it?

7 MR. PORTER: Very good question. You asked that  
8 earlier, and it wasn't my time so I appreciate you asking  
9 it again. Not Northern.

10 So, again, I'm not trying to be evasive. We  
11 only know -- Northern only knows up to the end of the  
12 blue. We have all of those facilities on our -- on our  
13 books and records. We've received FERC certification to  
14 construct under our blanket certificate. When we have to  
15 remove a facility we get approval, and we specifically  
16 identify those facilities up to not including the  
17 three-way valve.

18 So the three-way valve which goes down into the  
19 mercaptan tank and then into the service line, we did  
20 identify these pictures the way we did, and it does say  
21 LDC. I believe, frankly, in my review you will see a  
22 mixture. So I'm not trying, again, to -- I'm just trying  
23 to be forthright.

24 Downstream of our facilities, I'm not sure. I  
25 would not -- I'm not qualified to say one way or the

1 other. I know I've seen it both ways.

2 CHAIRMAN NELSON: So just so I'm clear, you  
3 don't know who installed or who paid for the three-way  
4 valve or the odorizer can; is that correct?

5 MR. PORTER: Yeah.

6 CHAIRMAN NELSON: So Northern designated Peoples  
7 as your vendee, but you don't know as your vendee what  
8 they paid for or what they installed; is that correct?

9 MR. PORTER: As I sit here today for Northern  
10 Natural Gas, all those -- let's assume that Peoples did  
11 pay for that. I don't have any records that would  
12 indicate that.

13 CHAIRMAN NELSON: Okay.

14 MR. PORTER: So I don't have any way to verify.  
15 I can verify what Northern's paid for.

16 CHAIRMAN NELSON: Okay. So who owns those two  
17 pieces today?

18 MR. PORTER: I'm sorry. The --

19 CHAIRMAN NELSON: The three-way valve and the  
20 odorizer can.

21 MR. PORTER: That's what I was intending to  
22 address. Not sure. We thought it was as laid out in the  
23 pictures. Somebody could disagree with that and I  
24 wouldn't be able to verify that one way or the other. I  
25 know it is not Northern Natural Gas. So it is either the



1 end user, the farm tap owner, or the regulated utility.  
2 CHAIRMAN NELSON: So we have -- we have a no  
3 man's land. Nobody wants to claim ownership of that. Is  
4 that accurate?

5 MR. PORTER: I believe that's accurate. Again,  
6 I know it's not Northern, but I don't know what the  
7 arrangement was between the utility and the farm tap  
8 owner.

9 CHAIRMAN NELSON: I appreciate your patience  
10 with me answering those questions to get us through  
11 pre-'85. So let's look at the 1985 Agreement.

12 In the first whereas clause, Part B, it says as  
13 part of the sale UtiliCorp is assuming all of Peoples'  
14 rights, duty, liabilities, and obligations in regard to  
15 farm taps along Northern's pipeline system.

16 So is there a document that defines what those  
17 are?

18 I mean, I find it amazing we've got a two-page  
19 agreement to sell an entire company? There's got to be  
20 more.

21 MR. PORTER: Excuse me. No. There are three  
22 volumes of documents.

23 CHAIRMAN NELSON: Those are the three you were  
24 referring to?

25 MR. PORTER: Those are the three volumes.

1 CHAIRMAN NELSON: I'm going to regret asking the  
2 question, but go ahead.

3 MR. PORTER: InterNorth, Inc. selling the assets  
4 and liabilities of Peoples Natural Gas. So selling  
5 Peoples' assets and liabilities to UtiliCorp, Inc.

6 That was a large transaction with assets in six,  
7 seven, eight states from Kansas to Michigan, Minnesota,  
8 South Dakota, Nebraska, Iowa, Missouri.

9 CHAIRMAN NELSON: And in Section A it talks  
10 about the purchasing of the assets of Peoples. So was  
11 the three-way valve and the odorizer part of Peoples'  
12 assets to actually sell?

13 MR. PORTER: Again, sir, I don't -- I don't  
14 know. We don't have the -- I will say this, Chairman:  
15 Looking through those three volumes of documents that  
16 transferred the assets and liabilities, they don't get  
17 down into that level of detail. They don't get down into  
18 three-way valves or mercaptan tanks.

19 CHAIRMAN NELSON: And I can appreciate that.  
20 Obviously, what I'm struggling with is -- and you've said  
21 that Northern didn't install or pay for those.

22 MR. PORTER: Correct.

23 CHAIRMAN NELSON: But I don't have  
24 documentation -- I have your word. I don't have  
25 documentation of that. And so I'm trying to figure out

1 who actually owns those two pieces. And I'm trying to  
2 see the paper trail of from when they were installed to  
3 today and obviously that's -- I'm not going to find that.

4 MR. PORTER: I appreciate what you're asking.  
5 Northern's records -- I want to be clear. We do have  
6 records on what Northern owns and operates, what we have  
7 authority to construct and what we've over time  
8 abandoned. We have a -- we have documentation for that.

9 CHAIRMAN NELSON: Right.

10 MR. PORTER: I can't speak to Peoples or the  
11 utilities after that. I wish I could because I get your  
12 question, and I understand it.

13 CHAIRMAN NELSON: So let's go to 1987 Agreement.  
14 Section 5. "This agreement shall continue from its  
15 effective date first written above to and including  
16 May 31, 2017. Peoples may terminate this agreement  
17 effective any time after May 31, 2017, by providing six  
18 months' prior written notice to Northern."

19 And so it was everybody's understanding who  
20 signed off on this, including Northern, that Peoples  
21 could terminate the farm tap service in 2017; correct?

22 MR. PORTER: As far as I know, sir, everybody's  
23 understanding regarding this agreement as written in  
24 regards to the termination provision.

25 CHAIRMAN NELSON: And so with Northern

1 understanding that in 1987, Northern would have also  
2 understood that if Peoples exercised their option to  
3 cancel in 2017, that that would have left Northern  
4 without a vendee. Is that correct?

5 MR. PORTER: We believe it would have done two  
6 things in regards to the services that are identified  
7 under this 1987 Agreement.

8 There's meter reading. The vendee just from  
9 historical practices and what was transferred to  
10 UtiliCorp, did not have any obligation to read the meter  
11 and give that information to us on a monthly basis.

12 That is -- it makes sense for them to do that  
13 because they need that information anyway, but that would  
14 not be covered, nor would the obligation which is covered  
15 in the '87 Agreement, what do the parties do when a  
16 landowner that has a farm tap provision in their easement  
17 says I want service now and they give us written notice  
18 that they want service. That also needed to be addressed  
19 and is addressed in the '87 Agreement.

20 So those two provisions, if the '87 Agreement  
21 was terminated, those two would be unresolved, would need  
22 to be addressed.

23 CHAIRMAN NELSON: But you would also lose a  
24 vendee that actually provides the gas to the customer;  
25 correct?



1 MR. PORTER: I don't -- no, sir. I think that  
2 they have -- we would lose the vendee under this  
3 contract, but it's their obligation to do those things  
4 under the 1985 Agreement.

5 So I think they're still -- they may be able to  
6 terminate the '87 Agreement, but they can't terminate the  
7 obligation that they took as a result of the corporate  
8 purchase.

9 CHAIRMAN NELSON: In the same agreement, the  
10 '87 Agreement, under Section 1, Performance of Services,  
11 "Northern acknowledges that Peoples shall operate as a  
12 public utility."

13 But when we compare that to the Section 5  
14 termination clause, it appears that Northern acknowledged  
15 that a public utility could terminate service. Is that  
16 accurate?

17 MR. PORTER: No, sir. I don't think it is.

18 CHAIRMAN NELSON: Okay. Yeah.

19 MR. PORTER: I think it's more descriptive in  
20 paragraph 1, saying they're going to operate as a public  
21 utility. The only -- statute, law, is going to define  
22 whether somebody is, in fact, a public utility or not.

23 This agreement nor the -- nor would it change  
24 the status of Northwestern Energy in the transaction with  
25 MERC. It's got to be by statute.

1 CHAIRMAN NELSON: I think that's all the  
2 questions I've got at this point.

3 Thank you.

4 COMMISSIONER FIEGEN: Thank you, Adam.

5 First of all, certainly thank you for coming  
6 here, and thank you for meeting with us, et cetera,  
7 because public interest of farm taps is certainly  
8 important to the Commission and that we continue the  
9 service. Also getting accurate information and not  
10 pointing fingers and et cetera.

11 We just need to figure out this. And if the  
12 Commission can. This might, unfortunately, be a Circuit  
13 Court situation instead of a Commission situation.

14 When I read everything, and as you know there's  
15 lots of information here, I'm amazed that Northern signed  
16 a couple of agreements with distribution companies that  
17 they could actually terminate their service in 2017.  
18 Help me understand why Northern signed those agreements  
19 and then are here today and are baffled that a  
20 distribution company wants to exercise their agreement  
21 that it looks like Northern signed, to me, that they can  
22 terminate the service.

23 MR. PORTER: The words of the 1987 Agreement are  
24 what they are. And they can terminate that. We don't  
25 dispute that one bit.

1 We do -- we also believe that because the 1985  
2 transfer of the obligation to provide service, utility  
3 service, to farm tap customers, that even if they should  
4 under the terms of the '87 Agreement terminate it, that  
5 doesn't take away their obligation to serve.

6 COMMISSIONER FIEGEN: And that's your opinion,  
7 of course. Not maybe everybody's opinion but certainly  
8 yours.

9 MR. PORTER: If I may, I mean, it's also the  
10 effect of the corporate -- the 1985, the legal effect of  
11 the transfer of obligations and liabilities to UtiliCorp.

12 COMMISSIONER FIEGEN: In the 1985 -- if I  
13 remember right, in the 1985 Agreement that you signed,  
14 though, couldn't you at any time -- there was a certain  
15 date that you could actually pull away that vendorship  
16 distribution to those customers? You could terminate the  
17 agreement?

18 MR. PORTER: The 1987 Agreement allows Northern  
19 to --

20 COMMISSIONER FIEGEN: Terminate until '88 it  
21 was. Like July something of '88.

22 MR. PORTER: I think that's -- I can give you  
23 that answer.

24 COMMISSIONER FIEGEN: Something like that.

25 MR. PORTER: It says Northern may terminate this

1 agreement effective any time after July 20, 1988.

2 COMMISSIONER FIEGEN: Well, my husband's  
3 birthday. Good job.

4 MR. PORTER: Well, happy birthday to your  
5 husband.

6 COMMISSIONER FIEGEN: There has certainly been  
7 lots of discussion with the farm tap customers from  
8 NorthWestern and from Northern Natural Gas. It appears  
9 that when I look at -- when we met you, you had a -- you  
10 had a farm tap line, and it looks like so many of your  
11 customers are in MidAmerican's territory.

12 Do you know out of those 195 customers that  
13 you're talking about now -- and it looked like it was  
14 206 when I met you maybe, but it must have went down to  
15 195. How many of those are MidAmerican territory?

16 MR. PORTER: I'm not sure of where -- are you  
17 talking from an electric perspective? I didn't  
18 understand -- I'm a little confused by the terminology  
19 because I didn't think gas distribution companies had  
20 service territories.

21 COMMISSIONER FIEGEN: Well, okay. You're right.  
22 They don't have service territories. But their trucks  
23 might be closer than other trucks because that  
24 distribution company may actually be serving that  
25 community.

1 MR. PORTER: Uh-huh. I understand what you're  
2 saying.

3 I don't know. I would guess down in the  
4 southeast corner I believe that's a MidAmerican area --

5 COMMISSIONER FIEGEN: Have you talked to  
6 MidAmerican? I mean, that is actually -- you guys have  
7 at least a little bloodline relationship.

8 MR. PORTER: With MidAmerican?

9 COMMISSIONER FIEGEN: Yes.

10 MR. PORTER: No, I have not.

11 COMMISSIONER FIEGEN: Actually your parent  
12 company has.

13 MR. PORTER: That's right.

14 COMMISSIONER FIEGEN: And you guys have not  
15 talked to MidAmerican about providing farm tap service to  
16 South Dakota customers, although they're a distribution  
17 company and they might serve areas that are relatively to  
18 these farm taps?

19 And I understand there's no service territory,  
20 but they're relatively close. You guys have not talked  
21 to MidAmerican?

22 MR. PORTER: I have not. I don't know if  
23 there's been -- certainly our owner knows that this issue  
24 is going on. I'm not aware of discussions. It is not  
25 something that they've probably given a lot of thought to

1 since it's not an issue. It's not their issue. And  
2 they're plenty happy dealing with their own issues let  
3 alone Northern's. And we don't see it as our obligation.

4 It's a good question. It might be worth  
5 talking about. But as far as I'm aware, nothing.

6 COMMISSIONER FIEGEN: Have you had the  
7 opportunity to talk to MERC?

8 MR. PORTER: We have talked -- certainly we have  
9 talked to MERC in regards to farm taps in Minnesota. And  
10 those discussions are ongoing. They have the same issues  
11 that NorthWestern -- same agreement, 1987 Agreement, that  
12 they're looking at and the same 1985 Agreement.

13 We have sent them the Briefs in this proceeding  
14 so they would have them and so that they would know our  
15 arguments and what we believe is going on. So, yes, we  
16 have had discussions in that regard.

17 COMMISSIONER FIEGEN: You talked about -- in  
18 your oral argument you talked about other farm taps that  
19 you deal with in other states like Iowa, et cetera.  
20 Several, several states. And you pretty much have said  
21 that this is new that a distribution company would  
22 terminate -- is that what you said? Something like that,  
23 Greg?

24 MR. PORTER: Not remembering exactly what you're  
25 referring to, but I would say that we have never had this

1 issue with a LDC, a local distribution company, saying  
2 they're no longer -- you know, maybe the homeowner moves  
3 and they don't need the tap with abandoned farm taps  
4 that -- FERC jurisdictional facilities would abandon  
5 that.

6 So I just want to be clear. We've done that,  
7 but we've never had an issue where a regulating utility  
8 has just walked away and told us that they're not going  
9 to provide service.

10 COMMISSIONER FIEGEN: And when you talk about  
11 that, it appears that that was part of that Milbank  
12 exchange when they bought the Milbank Pipeline. This was  
13 part of the deal. Somebody used the word "deal" today.

14 MR. PORTER: I did.

15 COMMISSIONER FIEGEN: That they would provide  
16 service from whatever, 2011 to 2017. Which is not  
17 longstanding. I mean, that's very brief when you look at  
18 your history of service to farm taps in South Dakota.

19 But when you talk about other states are you  
20 talking about apples to apples when you're talking about  
21 companies that have bought pipeline and then you gave  
22 them like a -- or somebody gave them a five-year -- not  
23 you, but MERC gave them a five-year deal to provide  
24 service. Is that the same thing or --

25 MR. PORTER: In the State of South Dakota,

1 Minnesota, Iowa. I'm not sure about Michigan. But at  
2 least those states that I mentioned were all states  
3 served by Peoples Natural Gas, that Peoples Natural Gas  
4 had service responsibilities to.

5 And they're also states that Northern's  
6 Interstate pipeline goes through. So certainly as  
7 UtiliCorp that acquired all the assets and liabilities in  
8 all the states, they've sold them off to maybe three  
9 different companies now.

10 So Black Hills owns the Iowa facilities. MERC  
11 owns the Minnesota facilities. They did own -- or have  
12 obligations to the South Dakota farm tap customers until  
13 the transfer to NorthWestern. I think I mentioned Iowa  
14 was Black Hills.

15 Does that answer your question?

16 COMMISSIONER FIEGEN: So then like Black Hills,  
17 when they bought some of the Iowa lines --

18 MR. PORTER: Uh-huh.

19 COMMISSIONER FIEGEN: -- they also have the  
20 opportunity to terminate service in 2017?

21 MR. PORTER: They do. And they have a  
22 proceeding that is ongoing right now in front of the  
23 Iowa Utilities Board that where Black Hills has  
24 proposed -- not perfectly familiar with it, but has  
25 proposed an inspection program where they would inspect

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1 the farm tap from Northern's jurisdictional facilities to  
2 the farm tap owner's facilities.

3 They would look at that line. They would  
4 inspect it. If it was not in -- if it didn't meet  
5 standards, it would replace it. And this filing before  
6 the utilities board then addresses, obviously, the cost  
7 recovery of doing so.

8 So that is an ongoing proceeding right now in  
9 front of the Iowa Utilities Board. Over time there's  
10 been, and I cite in our Brief, one instance where  
11 Black Hills has been before the Iowa Utilities Board.  
12 The Iowa Utilities Board has exercised jurisdiction over  
13 farm tap services.

14 We've had that discussion. They know that the  
15 obligation is within their public utility jurisdiction to  
16 regulate. So they have stepped up to that, and now  
17 they're in the process of establishing what a Black Hills  
18 program, if you will, will look like to be able to  
19 handle -- post-December 31, 2017, will be able to  
20 transition long term.

21 COMMISSIONER FIEGEN: Thank you. That was  
22 helpful.

23 Also you saw the filing of our pipeline safety  
24 manager on safety. Safety is always a concern.

25 It appears that your company filed -- I don't

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1 know if it was with PHMSA or FERC. I think it was with  
2 PHMSA -- a distribution report. Can you help me  
3 understand that?

4 MR. PORTER: The report or why --

5 COMMISSIONER FIEGEN: Why was it a distribution  
6 report? Why was it a distribution report?

7 MR. PORTER: Good question. And we do not look  
8 at facilities downstream of ours. So the three-way valve  
9 downstream, those are not our facilities.

10 PHMSA -- we called up PHMSA and said, hey. How  
11 do you want us to handle it? It's not our facilities.  
12 They said file a distribution form. So that's what we've  
13 been doing.

14 COMMISSIONER FIEGEN: Huh. That makes us all  
15 very confused, you know.

16 MR. PORTER: Why is that?

17 COMMISSIONER FIEGEN: Because -- yeah.  
18 Interstate, intrastate, distribution transmission, all of  
19 that. So that gets to be kind of confusing when PHMSA  
20 looks like -- I don't know if they changed their mind on  
21 some things or --

22 MR. PORTER: Yeah. I can't tell you,  
23 Commissioner, what's in PHMSA's mind as far as why they  
24 wanted us to use that particular forum. But I do know  
25 what the Pipeline Safety Act from a legal perspective --

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1 FERC jurisdictional facilities subject to PHMSA, I know  
2 what facilities those are, and that's everything, if you  
3 will, upstream of the three-way valve.

4 So how PHMSA -- and trying to work with them on  
5 a day-to-day basis, how they want us to -- we just  
6 oblige.

7 COMMISSIONER FIEGEN: All right. And I think  
8 we're all working with all of that.

9 Mr. de Hueck, those are my questions for now.  
10 (Discussion off the record)

11 MR. DE HUECK: Commissioner Hanson.

12 COMMISSIONER HANSON: Thank you. Good  
13 afternoon -- good morning still, I guess.

14 MR. PORTER: It is for a few more minutes. Good  
15 morning.

16 COMMISSIONER HANSON: I'm going to be asking  
17 questions on three documents that you filed with us.  
18 Those three are a May 6 letter that's shown as Exhibit A  
19 that was sent to Mary Zanter from Mr. Talcott. The  
20 second is a letter that was sent November 23. And that  
21 was created -- I'm not sure who created it, but it was  
22 sent by -- how do you pronounce your last name?

23 MR. TALCOTT: Talcott.

24 MS. DEMMAN: Demman.

25 COMMISSIONER HANSON: Thank you. Was sent by

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1 Ms. Demman. Rickie Mork.

2 (Discussion off the record)

3 COMMISSIONER HANSON: I believe the portion I  
4 ended with that you probably missed was the letter was  
5 prepared to be sent to a Rickie Mork.

6 The third instrument is a November 3 -- dated  
7 November 3, and it was sent to Chairman Nelson from  
8 Ms. Demman as well.

9 First of all, on the May 6 letter, the letter  
10 was in response to and refers to an e-mail from  
11 Mary Zanter. And that e-mail -- do we have a copy of  
12 that e-mail?

13 MR. TALCOTT: I can't remember whether we made  
14 it part of the record or not.

15 COMMISSIONER HANSON: I don't believe I've read  
16 that e-mail, but I was just curious.

17 MR. TALCOTT: We did provide a couple of e-mail  
18 strings, and I don't know how far back they went.

19 COMMISSIONER HANSON: Thank you.

20 Mr. Talcott, I read somewhere years ago where at  
21 least a third of all -- if not 40 percent of all e-mails  
22 are misinterpreted by the fact that we're reading  
23 something that someone's writing quickly, and sometimes  
24 we misinterpret their attitude.

25 From your response, though, it appears that

1 you've found the e-mail to be too aggressive? Is that --  
 2 MR. TALCOTT: I wouldn't say too aggressive.  
 3 The discord that goes back between -- discourse that goes  
 4 back between Northern and SD PUC Safety Staff goes all  
 5 the way back to 2012. And we've had a number of e-mails  
 6 and correspondence over this issue number three today,  
 7 and that is what jurisdiction does the Commission Safety  
 8 Staff have over the Northern assets.

9 And I don't have the April 26 e-mail in front of  
 10 me. I don't know if I brought it with me. But, as I  
 11 recall, the tenor of the e-mail was that someone in the  
 12 SD PUC Safety department was threatening enforcement  
 13 action against Northern. And the whole purpose for this  
 14 discourse was to lay out our position that the Commission  
 15 does not have safety jurisdiction over Northern's assets  
 16 and so could not issue an enforcement letter.

17 COMMISSIONER HANSON: Thank you.

18 In your response you stated in the first  
 19 sentence -- and I won't read the entire sentence. You  
 20 referred to the letter. You state that Mary Zanter  
 21 requested from Northern a copy from Northern to its  
 22 customers in South Dakota regarding, and then you cite.

23 However, it does not appear that you provided  
 24 that letter. You basically argue in your response not to  
 25 provide that letter. Is that accurate?

1 MR. TALCOTT: I think that's accurate. In the  
 2 background, as I recall it, I don't remember the back and  
 3 forth regarding 49 CFR 192.16. I didn't prepare for that  
 4 today. I was more prepared to talk about interstate  
 5 facilities and that.

6 The letter, as I understand it, my recollection  
 7 of 49 CFR 192.16 is a letter that that regulation  
 8 requires go out to end users. And I think that --  
 9 subject to check, I think the purpose of the regulation  
 10 is to let customers know downstream of certain assets  
 11 that do transport gas and are inspected and maintained  
 12 versus assets that transport gas downstream that may not  
 13 necessarily be inspected and maintained by whoever is  
 14 sending the letter -- whoever is required to send the  
 15 letter on this regulation.

16 It's to notify the customers downstream that --  
 17 and in this context here that we're talking about, it  
 18 would be the service line. It would be the facilities  
 19 from the three-way valve to the house. My recollection  
 20 is the purpose of this 49 CFR 192.16 is to let people  
 21 know downstream that that service line is not being  
 22 inspected by whoever sends the letter.

23 That's my understanding of the regulation. And  
 24 the back and forth between myself and Safety Staff was,  
 25 first, that, with all due respect, the safety Staff of

1 the Commission does not have jurisdiction to require  
 2 Northern to send that letter.

3 The bottom line is I think with respect to --  
 4 and I don't know if this is universal across all states  
 5 and across all farm taps, but my best understanding is  
 6 it's not Northern that sends out that letter with respect  
 7 to farm taps.

8 My understanding is that -- I don't know if it's  
 9 universal, but my understanding is the letter that's  
 10 required by this regulation is actually sent by the  
 11 person providing service to those people, which would be  
 12 MERC, Peoples Natural Gas, Northwest Public Service.  
 13 That's a big explanation.

14 COMMISSIONER HANSON: Yes. I was looking for a  
 15 yes or no, but I appreciate it. Thank you.

16 So, yes or no, was there a letter sent? You've  
 17 placed the foundation, an explanation of why a letter may  
 18 not have been sent. However, was a letter sent?

19 MR. TALCOTT: To the best of my knowledge, in  
 20 the State of South Dakota a letter was not sent by  
 21 Northern to farm tap end users as a result of this  
 22 regulation.

23 COMMISSIONER HANSON: Ms. Demman, is that your  
 24 understanding as well?

25 MS. DEMMAN: I have no different knowledge than

1 Mr. Talcott on that issue. Yes, it's my understanding.

2 COMMISSIONER HANSON: The November 23 letter --  
 3 or at least the letter that was sent to us on November 23  
 4 and addressed to Rick Mork, as it was filed with some  
 5 other information before us at that time, Ms. Demman, is  
 6 that a copy of that letter?

7 MS. DEMMAN: Yes. That's a -- one of the  
 8 letters that was sent to customers. It was a mail merge,  
 9 and so we gave you one as an example of one letter.

10 COMMISSIONER HANSON: Might have to speak just a  
 11 smidge louder.

12 MS. DEMMAN: Yes. That was one of the letters  
 13 that was sent. It was a copy of the same letter that  
 14 went to 195 customers, and it was a mail merge so we gave  
 15 you one to -- addressed to Mr. Mork.

16 COMMISSIONER HANSON: So this is dated  
 17 November 23 because you sent it to us on November 23; is  
 18 that correct?

19 MS. DEMMAN: Because we sent it on -- to the  
 20 customers and to you.

21 COMMISSIONER HANSON: You also sent it to the  
 22 customers on November 23?

23 MS. DEMMAN: We did.

24 COMMISSIONER HANSON: To your knowledge, was  
 25 there any letter prior to this one sent to customers?

1 MS. DEMMAN: Not by Northern Natural Gas.  
 2 COMMISSIONER HANSON: Okay. Curiosity,  
 3 Mr. Talcott. In the first sentence again on the May 6  
 4 letter you stated that Ms. Zanter had requested a letter.  
 5 That letter you referred to sent from Northern to its  
 6 customers in South Dakota.  
 7 So do you regard those 100 plus to be your  
 8 customers?  
 9 MR. TALCOTT: No, sir.  
 10 COMMISSIONER HANSON: Because you state from  
 11 Northern to its customers in South Dakota.  
 12 MR. TALCOTT: I didn't put quotes on it, but I  
 13 believe to the best of my knowledge I was paraphrasing  
 14 the inquiry that came from Mary. Our customers are the  
 15 shippers that have a contract with us under our FERC  
 16 tariff to transport gas to the custody transfer point at  
 17 a farm tap, which is immediately before the three-way  
 18 valve.  
 19 COMMISSIONER HANSON: Thank you.  
 20 There's been a significant amount of discussion  
 21 and writing pertaining to who's on first here. And in  
 22 regards to whether FERC or PHMSA's regulating who where.  
 23 In my experiences, oftentimes I find that there  
 24 are more than one Fed department that feels that they're  
 25 in charge. Is that possibly the case here, where FERC

1 and PHMSA both have regulation responsibilities?  
 2 MR. TALCOTT: Absolutely. There's no -- in our  
 3 opinion there's no doubt about that.  
 4 COMMISSIONER HANSON: And is not the PUC  
 5 required to engage in those activities that are required  
 6 of us by PHMSA in regard to regulation and interaction in  
 7 this case with Northern?  
 8 MR. TALCOTT: If I understand your question  
 9 carefully, I don't agree. The Federal Energy Regulatory  
 10 Commission has exclusive jurisdiction over Northern with  
 11 regard to matters that are dealt with in the Natural Gas  
 12 Act. By federal statute, by the same token, PHMSA has  
 13 exclusive jurisdiction over the safety operation of  
 14 Northern's assets.  
 15 And as we've outlined in our Briefs and then I  
 16 think in the subsequent letter that we filed yesterday,  
 17 by virtue of the Pipeline Safety Act, it expressly says  
 18 that states may not -- may not regulate the safety  
 19 aspects of interstate pipelines.  
 20 And we've demonstrated that we are an interstate  
 21 pipeline by virtue of the fact that we transport gas in  
 22 interstate commerce, and the facilities for which the gas  
 23 is transported to Northwest at these farm taps, those  
 24 facilities are regulated by FERC. It's a two-prong  
 25 question in the Pipeline Safety Act statute, very clearly

1 answered that, yes, we are an interstate pipeline  
 2 regulated by PHMSA.  
 3 COMMISSIONER HANSON: So if you are an  
 4 interstate pipeline regulated by PHMSA and the farm taps  
 5 are under FERC -- is that what you're saying?  
 6 MR. TALCOTT: The rate regulation is FERC, and  
 7 the safety regulation of the Northern facilities as we  
 8 characterize them and describe them is under the safety  
 9 jurisdiction of PHMSA.  
 10 COMMISSIONER HANSON: So is PHMSA examining  
 11 those farm taps?  
 12 MR. TALCOTT: They have the exclusive  
 13 jurisdiction to. My understanding of their attention or  
 14 inspection of farm tap facilities is inconsistent across  
 15 Northern's pipeline system.  
 16 There are different areas of PHMSA. There's a  
 17 regional office in Kansas City. There's a regional  
 18 office in Texas. I don't know where the Northern region  
 19 is off the top of my head. Different PHMSA inspectors go  
 20 out for different parts of the Northern system, and  
 21 they're not necessarily consistent.  
 22 I know that in talking with Northern's Pipeline  
 23 Safety personnel in preparation for this meeting, I know  
 24 for a fact that on some of the audits the farm tap  
 25 facilities are, in fact, inspected by PHMSA inspectors.

1 I can't say that it's consistent across the system.  
 2 But the fact -- if it is a fact that PHMSA  
 3 inspectors do not go out and during a routine inspection  
 4 don't go out and inspect each of the farm taps, that does  
 5 not defer them to state jurisdiction.  
 6 COMMISSIONER HANSON: I understand that. It's a  
 7 curiosity with me. Because PHMSA, my familiarity with  
 8 PHMSA is that they are extremely anal and that they are  
 9 first on the scene to condemn if a state has not dotted  
 10 every I and done everything perfectly. So it would  
 11 surprise me if they are not examining the farm taps.  
 12 And are you aware of how often, the frequency,  
 13 in South Dakota?  
 14 MR. TALCOTT: I am not, sir.  
 15 COMMISSIONER HANSON: The November 3 letter,  
 16 Ms. Demman, you state in the second paragraph at the end  
 17 of the paragraph that "The impediment to continue the  
 18 farm tap service is that no utility has stepped in to  
 19 provide the retail distribution service NorthWestern  
 20 plans to abandon."  
 21 I understand, however, during the discussion  
 22 here that Northern has not made an effort to find another  
 23 operator. Is that correct?  
 24 MS. DEMMAN: That's correct.  
 25 COMMISSIONER HANSON: Well, if that is the



1 Impediment, I have to ask why not.

2 MS. DEMMAN: Well, as Mr. Porter said, you know,  
3 our view is that NorthWestern is currently the public  
4 utility providing service. And it seems that it makes  
5 the most sense for them to continue providing service to  
6 the customers who they're currently billing and providing  
7 services to.

8 And so we have not considered that some other --  
9 that it's our obligation to provide some other utility to  
10 do that.

11 COMMISSIONER HANSON: Well, if you don't feel  
12 it's your obligation legally, morally don't you have an  
13 obligation?

14 MS. DEMMAN: We feel we had a moral obligation  
15 to raise this to the Commission and to bring it to your  
16 attention because we're concerned about continuity of  
17 service to the farm tap customers. And we believe  
18 NorthWestern is in the best position to continue to do  
19 that.

20 COMMISSIONER HANSON: So you have a distributor  
21 of your product who's notified you that they're not going  
22 to distribute your product anymore, but as a company you  
23 feel that you'll just not serve those customers anymore?

24 MR. PORTER: Let me, Commissioner, address that  
25 if I may. When you say your product, first off, the

1 natural gas is not Northern's. We are the highway that  
2 transports.

3 COMMISSIONER HANSON: I understand that.

4 MR. PORTER: Okay. So when the gas is  
5 purchased, we will transport it. We will provide the  
6 service that we're set up to and that we do provide and  
7 provide reliably.

8 So if somebody nominates it, goes out, finds the  
9 gas, and nominates on our system, we'll provide that  
10 service.

11 COMMISSIONER HANSON: I understand that. And  
12 you stated that Northern does not have an obligation to  
13 pursue a vendor. And you are obviously speaking from a  
14 legal aspect.

15 But I'll ask you the same question. Don't you  
16 believe that you have a moral responsibility?

17 MR. PORTER: No, sir.

18 COMMISSIONER HANSON: None whatsoever?

19 MR. PORTER: Our obligation is to raise it to  
20 this Commission. Moral obligation, if that's what we're  
21 talking about, is to raise it to this Commission so that  
22 they can make a determination, since it's in our belief  
23 under this Commission's jurisdiction under South Dakota  
24 Law that the Commission can make appropriate decisions  
25 regarding the continuation or discontinuation of that

1 service.

2 COMMISSIONER HANSON: Both of your statements  
3 are interesting from the standpoint of the letter that  
4 was sent November 23. You say you have an obligation to  
5 raise it and to have this forum apparently, and yet the  
6 letter that was sent on November 23 is then inflammatory  
7 and misleading because you state in the letter on page 2  
8 "Why would the South Dakota Public Utilities Commission  
9 allow discontinuance of my utility service?"

10 You're placing this in front of those consumers  
11 as if why in the world would the Public Utilities  
12 Commission be doing this? And yet now you're sitting  
13 here saying that that is something that you wanted to see  
14 done.

15 You state "Does the South Dakota Public  
16 Utilities Commission believe the longstanding service to  
17 farm tap customers is outdated or somehow inappropriate?"  
18 You have five different statements that you could have  
19 answered for those folks and explained to them of why  
20 we're having this, instead of alarming them.

21 For instance, the fourth statement, "If  
22 Northwestern Energy no longer serves my farm tap, who  
23 should I call to investigate possible leaks or respond to  
24 emergencies?" Well, there wouldn't be any leaks. There  
25 wouldn't be any emergencies if no one was serving them.

1 So you're alarming them to all of these issues, but now  
2 you're sitting here saying you have no moral obligation  
3 whatsoever and you have no legal obligation but yet  
4 you're inciting these consumers. And you're misleading  
5 them as to the purpose of this meeting.

6 I'll let you respond in a second.

7 If you look at the first page, the second  
8 paragraph, "The Commission is evaluating whether it  
9 should discontinue regulation of farm tap service after  
10 doing so for decades." And I probably should read that  
11 entire paragraph prior to that because it all builds on  
12 a -- on footings and on the foundation of trying to  
13 incite those consumers. And I found it offensive.

14 If you'd like to respond, you may.

15 MR. PORTER: Yes, I would, and Laura may as  
16 well.

17 First of all, in regards to you finding it  
18 offensive, I apologize on behalf of the company. That is  
19 not the purpose or the intent of the communication. The  
20 purpose and intent of the communication, we had for  
21 months and actually over a year been reaching out to this  
22 Commission and to Staff trying to talk through issues.

23 Northwestern Energy sent a letter out to its  
24 customers that we thought was very unbalanced and very  
25 one sided. So we thought it was appropriate to send the

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1 easement holders a letter regarding what we see as the  
2 status, if you will, or the nature of ongoing service.  
3 And we tried to pose some questions that we  
4 think are fair questions. And the intention was not to  
5 incite anything. It was to make sure they were aware of  
6 both sides. And we tried to point those issues out to  
7 them. Not trying to incite anything or offend anybody,  
8 but we did believe that a direct communication was  
9 appropriate.  
10 And given the feedback that we're receiving and  
11 the calls that we received, we think it hit that mark.  
12 COMMISSIONER HANSON: Hit what mark?  
13 MR. PORTER: Hit the goal of encouraging the  
14 customers to know what's going on and if they're  
15 interested or if they're concerned, to get involved.  
16 COMMISSIONER HANSON: The mark of informing them  
17 of what was taking place could have been done by, for  
18 instance, the three issues that were brought up at the  
19 beginning of this meeting for the purposes of this  
20 meeting regarding who has jurisdiction.  
21 There are certain things in this letter that one  
22 could construe could have been written far better. And  
23 as you read this letter, I'm sure you would agree with  
24 me. And there are items in this letter that should have  
25 been left out.

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1 MR. PORTER: I haven't looked at the -- I'll  
2 directly respond, and then, Laura, please do.  
3 I haven't looked at the letter to see what we  
4 could have done better or anything. But if I read it,  
5 I'm -- I can't read a document but think I could do  
6 better than what I did the previous time. So I would  
7 agree with your statement to the extent that do we think  
8 we could do better knowing what we know now? Yeah. I  
9 think we probably could.  
10 COMMISSIONER HANSON: Well, if your intent as  
11 you stated was to -- I'll use the word "arouse" instead  
12 of incite, but I believe it incited people. If that was  
13 your intent, to get action from them, then certainly this  
14 type of a letter with misleading statements and  
15 inflammatory statements certainly would accomplish that.  
16 However, if your first goal, as you said, was to  
17 inform the people, it was very lacking in that respect.  
18 Thank you, Mr. de Hueck.  
19 CHAIRMAN NELSON: I have a follow up. One  
20 follow up.  
21 In response to one of Commissioner Fiegen's  
22 questions, Mr. Porter, you talked about the 1985  
23 Agreement where Peoples transfer "the obligation to  
24 serve."  
25 Where I'm still struggling is -- and correct me

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1 If I'm wrong, but we don't have anywhere in the record of  
2 this proceeding that Peoples actually had that obligation  
3 in order to transfer. Is that correct?  
4 MR. PORTER: No. I think there is evidence.  
5 And I think the evidence is in the Affidavit, the sworn  
6 Affidavit that we provided to point out what those --  
7 what the services were being provided prior to the sale  
8 in 1985 and that those very same services were being  
9 provided after 1985.  
10 CHAIRMAN NELSON: Thank you.  
11 MR. DE HUECK: Mr. Rislov, do you have any  
12 questions?  
13 MR. RISLOV: I may have one or two.  
14 Mr. Porter, do you have something that describes  
15 what your definition of termination of service means,  
16 something more expansive than what's in that agreement?  
17 MR. PORTER: What agreement are you referring  
18 to, sir?  
19 MR. RISLOV: Well, the '87 Agreement, the  
20 agreement that appeared when NorthWestern took over for  
21 MERC where you talk about termination of service at a  
22 certain date.  
23 I know we're getting into -- deep in the  
24 legalities, but, as I read it, a layperson, it seems to  
25 me termination of service means termination of service.

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1 And I think your explanation to the Commissioners is  
2 something -- you have it saying something different than  
3 that. You have it conditional termination, yet they  
4 still have to provide all the services, and I find that  
5 confusing.  
6 Do you have something that would explain that,  
7 and was that presented to NorthWestern at that time you  
8 signed that agreement or you approved them taking over  
9 service?  
10 MR. PORTER: A couple of issues there, if I may.  
11 First of all, the 1987 Agreement has termination  
12 in there. That can terminate. It doesn't impact the  
13 obligations to serve that were transferred two years  
14 prior in 1985.  
15 So I encourage everyone to look at those two  
16 things differently. They overlap, but termination of the  
17 '87 Agreement does not dilute, minimize, or eliminate the  
18 obligation that was transferred in 1985.  
19 MR. RISLOV: So if I can put this in ordinary  
20 language terms, not attorney terms, was NorthWestern  
21 aware of what you thought termination of service meant?  
22 Were they in agreement with that? Do you have any idea?  
23 Because it appears today they don't agree.  
24 MR. PORTER: I do not have any idea, and I do  
25 agree with you that it doesn't -- I mean, today it seems

1 like there was not agreement. That was a transaction  
2 between MERC and NorthWestern. We were not involved with  
3 that transaction, other than consent to the assignment of  
4 that agreement.

5 MR. RISLOV: But you were involved with  
6 UtiliCorp, and the same language was in the UtiliCorp  
7 agreement in 1987. Was UtiliCorp aware of that?

8 MR. PORTER: I'm not sure I understand your  
9 question.

10 MR. RISLOV: The same language UtiliCorp --  
11 that they could terminate service. And I think it said  
12 May 31, 2017.

13 Were they aware of your interpretation.

14 MR. PORTER: Oh, I'm sure they were, yes. I  
15 mean, yeah. The '87 Agreement was entered into between  
16 Northern and UtiliCorp. UtiliCorp, pursuant to the 1985  
17 Agreement and all the states, the tariffs that they had  
18 on file with the states that regulated them, they knew  
19 what their obligations were. Entered into the 1987  
20 Agreement to memorialize those obligations.

21 As that agreement terminates it does not change  
22 the obligation that --

23 MR. RISLOV: I understand that's what you think.  
24 I'm wondering what UtiliCorp thought.

25 MR. PORTER: I can't answer what UtiliCorp

1 thought other than what I just said.

2 MR. RISLOV: I think that's all I have.

3 MR. DE HUECK: I have one quick question.

4 MR. PORTER: Yes, sir.

5 MR. DE HUECK: Mr. Porter, I found your  
6 discussion with Chairman Nelson about the express terms  
7 of the easement very interesting. And whether or not  
8 Northern has an obligation to provide a vendee under the  
9 terms of the easement.

10 My question is to you has that issue ever been  
11 litigated?

12 MR. PORTER: Not with Northern Natural or any  
13 proceeding that I'm aware of.

14 Whether the term "vendee" has been litigated in  
15 any jurisdiction, I'm not sure. But not regarding  
16 Northern.

17 MR. DE HUECK: And then just very quickly, I  
18 want to make sure I'm following you here.

19 Termination of the '87 does not dilute the '85  
20 Agreement; correct?

21 MR. PORTER: Yes, sir.

22 MR. DE HUECK: But the '85 Agreement can dilute  
23 the express language of the easement, no problem.

24 MR. PORTER: I'm not sure I understand your -- I  
25 think there's a point there, but I wouldn't say that it

1 dilutes the language of the easement.

2 MR. DE HUECK: Okay. Thank you.

3 With that, we'll recess? We'll reconvene at  
4 1:30.

5 (A lunch break is taken)

6 MR. DE HUECK: Good afternoon, everyone. I will  
7 call the hearing back to order in NG16-014. Again, my  
8 name is Adam de Hueck, and I'm the Hearing Examiner  
9 today.

10 But before we proceed any farther with oral  
11 argument, we do have a matter of housekeeping to take  
12 care of.

13 Northern had made a Motion to Accept a  
14 Supplemental Brief, and now I'll turn it over to Chris.

15 CHAIRMAN NELSON: I would move to grant  
16 Northern's Motion for Leave to File Supplemental Brief  
17 and Supplemental Brief of Northern Natural Gas Company.

18 Discussion on the Motion?

19 COMMISSIONER HANSON: Second.

20 CHAIRMAN NELSON: Discussion on the Motion.

21 Hearing none, all those in favor will vote aye.

22 Those opposed, nay.

23 Commissioner Hanson.

24 COMMISSIONER HANSON: Aye.

25 CHAIRMAN NELSON: Commissioner Fiegen.

1 COMMISSIONER FIEGEN: Fiegen votes aye.

2 CHAIRMAN NELSON: Nelson votes aye. The Motion  
3 carries. The Motion is granted.

4 With that, I'll turn it back to Mr. de Hueck.

5 MR. DE HUECK: Before moving on with  
6 NorthWestern's oral argument, I'd like to ask the  
7 Commissioners if they have any further questions for  
8 Northern.

9 COMMISSIONER FIEGEN: I just have a clarifying  
10 question, Mr. de Hueck, for Northern if I may ask.

11 You talked a lot about obligation of service.

12 And we asked you about the -- the termination of service.

13 So we talked about termination of service, and what I  
14 thought I heard you said is, yes, they can terminate  
15 their service according to those agreements that were  
16 signed. But the obligation of service is still there.

17 And I heard different places where the  
18 obligation of service. So could you clarify to me who  
19 the obligation of service is to or who has the obligation  
20 of service? Although they can terminate an agreement,  
21 who has the obligation of service?

22 MR. PORTER: Yeah. That's a good question.

23 Thank you.

24 COMMISSIONER FIEGEN: And I know you've answered  
25 it. I just need it clarified again.



1 MR. PORTER: That's fair. The 1987 Agreement --  
 2 let me say it this way. The 1987 Agreement does not  
 3 affect the obligation and liabilities that were assumed  
 4 by UtiliCorp.  
 5 So to the extent you find that the obligation to  
 6 provide utility service to farm tap customers was  
 7 transferred from InterNorth to UtiliCorp, that obligation  
 8 is with UtiliCorp and its successors, regardless of the  
 9 '87 Agreement or any other agreement. Unless it was  
 10 further transferred.  
 11 COMMISSIONER FIEGEN: So successors as?  
 12 MR. PORTER: Successors would be from UtiliCorp,  
 13 Peoples, so the same company, went to change the name to  
 14 Aquila. So same entity yet. Then to MERC. Some of it  
 15 went to other utilities that aren't in your jurisdiction.  
 16 But relevant to this proceeding, would have been  
 17 to MERC because MERC took Minnesota and the South Dakota  
 18 properties.  
 19 And then the question is NorthWestern. What did  
 20 they -- what did they assume in regards to the '87  
 21 Agreement.  
 22 Somebody in their briefing asked of those  
 23 original obligations, that obligation to serve utility --  
 24 utility service to farm taps, was that transferred to  
 25 NorthWestern?

1 I don't know. We don't have any of those  
 2 documents. We don't see those documents. That is  
 3 between the successors of I guess at that point Aquila.  
 4 So we don't know what the transaction between Aquila and  
 5 MERC or between MERC and NorthWestern.  
 6 COMMISSIONER FIEGEN: So you're telling me the  
 7 obligation of service, you have really no idea where that  
 8 lies?  
 9 MR. PORTER: I've got an idea, but I don't  
 10 have --  
 11 COMMISSIONER FIEGEN: A legal.  
 12 MR. PORTER: Yes. I know it's not Northern. I  
 13 know InterNorth transferred that to UtiliCorp. After  
 14 UtiliCorp I think it was Staff that said in their Reply  
 15 Brief it is not -- we don't have those documents.  
 16 So UtiliCorp, Aquila to MERC, those aren't in  
 17 the record. And the MERC, as far as I know, the MERC to  
 18 NorthWestern, to the extent that obligation was  
 19 transferred, is not in the record.  
 20 COMMISSIONER FIEGEN: Okay. And so then the  
 21 obligation of service doesn't appear that legally we  
 22 actually know for sure. According to your testimony  
 23 today, we don't really know for sure where that is at.  
 24 And Northern, of course, isn't obligated to be a  
 25 distribution company, but some may differ on your

1 obligation to find a vendor.  
 2 MR. PORTER: Somebody may have a view on that.  
 3 I don't know what that argument would be so it's hard to  
 4 address. I don't think their -- personally I don't see  
 5 that, but I don't know what that argument would be.  
 6 In regards to the obligation, we know that it  
 7 went from -- it was at Aquila and went to MERC. To what  
 8 extent it went to MERC, we don't know. We know they  
 9 filed tariffs with the Commission to provide that service  
 10 to the farm tap customers. They were acting as if they  
 11 had the obligation. But, again, I don't know what the  
 12 documents said.  
 13 COMMISSIONER FIEGEN: But remind me, Mr. Porter,  
 14 in your agreements didn't you have to approve all those  
 15 agreements?  
 16 MR. PORTER: No.  
 17 COMMISSIONER FIEGEN: Okay.  
 18 MR. PORTER: Excuse me. For assignment of the  
 19 1987 Agreement Northern, had to approve that assignment.  
 20 But I'm not talking about the '87 Agreement. I'm talking  
 21 about the responsibility that was transferred in 1985.  
 22 That was transferred through an acquisition of the assets  
 23 and liabilities.  
 24 There's not another obligation to further  
 25 transfer that, UtiliCorp to further transfer that, unless

1 they sign the agreement. But they can sell those assets  
 2 and sell those liabilities, and that's what happened  
 3 here. So there's no obligation for UtiliCorp or Aquila  
 4 to come to Northern -- it wouldn't have been Northern.  
 5 It would have been InterNorth, to get approved.  
 6 COMMISSIONER FIEGEN: Okay. Thank you.  
 7 COMMISSIONER HANSON: I have one. Excuse me.  
 8 Forgive me if this has already been asked and answered.  
 9 If NorthWestern wanted to serve additional  
 10 customers along the line, do you know what Northern's  
 11 position would be from a standpoint of allowing them to  
 12 serve additional customers? Would you provide the same  
 13 services that you are presently to NorthWestern so they  
 14 could provide those services?  
 15 MR. PORTER: I think I'm with you on the  
 16 question. Along our line? So if a new --  
 17 COMMISSIONER HANSON: Well, presently you're  
 18 serving up to that point that we discussed and clarified  
 19 to a number of customers, and NorthWestern is providing  
 20 services to those customers presently.  
 21 If additional farmers, ranchers, or communities  
 22 were interested in having that same service provided by  
 23 you, by another provider, would you be willing -- or do  
 24 you know whether or not you'd be willing to provide  
 25 those? I suspect you would from your history, but I'm

1 just curious.

2 MR. PORTER: Good question.

3 To the extent a easement grantor has a farm tap  
4 provision in their easement and they ask for a tap, we  
5 will provide that tap. We've got an obligation to  
6 furnish the tap. We will do that, as long as there is a  
7 utility to provide -- or somebody to provide the utility  
8 service.

9 Northern would not do that, but Northern would  
10 get the gas to the -- through its facilities, Northern  
11 facilities.

12 COMMISSIONER HANSON: So you're saying in a  
13 situation where there's an existing easement and existing  
14 line as opposed to building additional transmission  
15 systems.

16 MR. PORTER: Yes. Northern generally is not  
17 agreeing -- and I can't say it categorically, but we no  
18 longer include farm tap provisions as a general rule in  
19 our easements.

20 COMMISSIONER HANSON: Okay. I just wanted that  
21 clarified. Thank you.

22 Thank you.

23 MR. DE HUECK: With that, NorthWestern, you may  
24 proceed.

25 MR. OLSON: Thank you. Tim Olson on behalf of

1 NorthWestern. Thank you, Commissioners, for this  
2 opportunity.

3 When this landed on my desk I first asked the  
4 question why is there a service to these customers? And  
5 that points all the way back to the 1950s and those  
6 easements.

7 Northern obtained those easements in exchange  
8 for their agreements. And this was discussed earlier so  
9 I don't need to go into depth on this, but those  
10 agreements involved providing access via a farm tap and  
11 furnishing gas, either by directly grantee, Northern, or  
12 indirectly by grantee. And it is in those shoes that --  
13 those vendee of grantee shoes that NorthWestern sits  
14 today.

15 If we would not have acquired that Milbank  
16 Pipeline, we would not be in front of the Commission  
17 today. We would not have an obligation to publicly serve  
18 these customers. We have a contractual obligation to  
19 serve those customers through the end of 2017.

20 But our role began in 2001 -- 2011, excuse me,  
21 when we acquired the unrelated Milbank Pipeline. A  
22 condition of that transaction was that we provide  
23 assistance to Northern for a limited duration with  
24 Northern's farm tap customers. Our agreement is with  
25 Northern. Our agreement is not with the farm tap

1 customers.

2 When we negotiated that acquisition of the  
3 Milbank Pipeline we were very explicit that we were  
4 willing to undertake those service obligations through  
5 the end of 2017. That limitation was documented as part  
6 of that transaction. It was reviewed and adopted as part  
7 of this Commission's Docket in NG11-001.

8 I also want to point out that in that  
9 acquisition of those Milbank Pipeline assets NorthWestern  
10 did not acquire any of the assets of the farm tap  
11 customers that are a part of this docket. We don't  
12 operate any of those equipment or facilities. For the  
13 most part we don't even know where the bulk of those  
14 facilities are.

15 We know where the farm tap is, and we know where  
16 it enters the ground. But after those facilities enter  
17 the ground, we do not know where the bulk of them are.

18 We do provide a number of services pursuant to  
19 the 1987 Agreement that's been discussed, and the  
20 assignment of a portion of those services to us. We fill  
21 the odorant receptacle every year. We bill Northern's  
22 farm tap customers on a monthly basis. We read the meter  
23 once a year, and, as has been discussed earlier, the farm  
24 tap customer is required to read it on a monthly basis.

25 When that doesn't happen we estimate usage based on prior

1 usage.

2 We also are a first call responder for the farm  
3 tap customers. If they believe there is a problem with  
4 their service, we are called to determine what that  
5 problem is. But if we discover the problem, a leak or  
6 something else, we cannot fix it. We cannot address it.  
7 It's either the customer's responsibility, the farm tap  
8 customer's responsibility if it's on their line, or it's  
9 Northern's responsibility if it's part of the farm tap.

10 There are -- there's a distinction that I think  
11 has been weaving its way through the discussion today,  
12 and that is the direct responsibility to serve and the  
13 indirect responsibility to serve. And when we look at  
14 that 1985 Agreement and the responsibilities that Peoples  
15 sold as part of that -- or that Northern sold, those  
16 are -- those are the vendee responsibilities that left.

17 And what we haven't talked about on the 1985  
18 Agreement are what Northern retained. And in the second  
19 Paragraph, B, of that agreement it said the  
20 responsibilities that "prior to closing were Northern's  
21 responsibility shall be Northern's responsibility after  
22 closing."

23 The 1985 Agreement did not change the 1950s  
24 easements. In fact, the 1985 Agreement specifically  
25 maintained those responsibilities.

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1 One of the customers filed comments in these  
 2 proceedings. David and Deanna Brouwer. They own land  
 3 subject to the easement. And I believe their comments  
 4 amply summarized the roles that Northern and NorthWestern  
 5 are filling in this -- with this service.  
 6 And I quote "No matter how you define the  
 7 entities in this case, what has occurred here is a  
 8 contract in which Northern in exchange for land easements  
 9 has agreed to provide natural gas via a farm tap." The  
 10 Brouwers continued, "I would consider NorthWestern's part  
 11 in this situation as that of a subcontractor of Northern.  
 12 Ultimately it is Northern's responsibility to provide  
 13 service to the current farm tap customers. That can  
 14 continue to be done with renegotiation of NorthWestern's  
 15 contract or by finding another subcontractor to provide  
 16 this service. In the past Northern has formed its own  
 17 subcontractor to provide this service, and that certainly  
 18 could be an option once again at this time. I would say  
 19 that the current contract that NorthWestern has with  
 20 Northern is just that, a contract that was made in 1987  
 21 that is due to be renegotiated at this time."  
 22 We have reached out to Northern in an attempt to  
 23 renegotiate the terms of this agreement which expire at  
 24 the end of next year. To this point we have not been  
 25 able to get Northern to come to the negotiation table.

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1 They have refused. I don't understand that, given their  
 2 obligations in the easements to continue to provide a  
 3 vendee for this gas, but that is what's happened here.  
 4 To suggest, as they did earlier, that  
 5 NorthWestern is just abandoning this service and walking  
 6 away without doing anything is not accurate.  
 7 I understand and can appreciate that the way  
 8 Northern is organized today, they cannot directly provide  
 9 the gas to the customers. But that doesn't change the  
 10 promises they made in the easements. They can still find  
 11 a vendee, a subcontractor, another party to provide that  
 12 service.  
 13 With that, I'll be happy to answer questions  
 14 from the Commission.  
 15 CHAIRMAN NELSON: And I do have some questions.  
 16 Thank you.  
 17 And I think you answered this question at the  
 18 outset, but I'm going to ask it again just to be clear.  
 19 Does NorthWestern Energy consider itself to be Northern's  
 20 vendee per the easement language?  
 21 MR. OLSON: Yes. We do. The reason I say that  
 22 is we entered into this service arrangement pursuant to a  
 23 contract. That contract -- we were assigned  
 24 responsibilities under a contract. That contract is with  
 25 Northern.

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1 CHAIRMAN NELSON: Earlier with Staff I made  
 2 reference to the March 8, 2011, hearing in which we  
 3 approved an Order in NG11-001. And in that hearing  
 4 NorthWestern upon Commissioner questioning clearly stated  
 5 that it believed it was Northern's responsibility to  
 6 continue to serve customers with gas after 2017.  
 7 And so my question is was it your -- was it  
 8 NorthWestern's clear understanding back in 2011 that come  
 9 2017 that was going to -- responsibility was going to  
 10 shift back to Northern? Is that correct?  
 11 MR. OLSON: That is correct. We made that, our  
 12 belief there, very explicit as part of the negotiations  
 13 for that transaction.  
 14 CHAIRMAN NELSON: And, in fact, that's what you  
 15 clearly conveyed to the Commission; correct?  
 16 MR. OLSON: That is correct.  
 17 CHAIRMAN NELSON: Is it still NorthWestern's  
 18 position that Northern has that obligation after 2017?  
 19 MR. OLSON: Yes.  
 20 CHAIRMAN NELSON: If you would pull out Staff's  
 21 Reply Brief, I want to ask just a few questions from  
 22 that. And if we go to page 6, Staff Reply Brief page 6,  
 23 Section B, first paragraph. Staff makes a statement that  
 24 "NorthWestern is a public utility only through 2017," as  
 25 it relates to these farm taps.

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1 Do you agree with that statement?  
 2 MR. OLSON: I don't agree with that statement.  
 3 I personally find it a very difficult question to answer.  
 4 We have some hallmarks of a public utility, and we have  
 5 some hallmarks of not being a public utility with respect  
 6 to these farm tap customers.  
 7 We don't own any of these assets. We don't know  
 8 where the assets are. We cannot fix issues with respect  
 9 to these assets. But, on the other hand, the Order  
 10 approved a rate for these, although it was simply  
 11 adopting the rate that MERC used with respect to these  
 12 customers.  
 13 So I don't agree with Staff's position, but I  
 14 also don't disagree with it so I'm being very unhelpful  
 15 to the Commission.  
 16 CHAIRMAN NELSON: Well, that's helpful. But  
 17 thank you for your candor. I appreciate that.  
 18 Moving to page 5 of that same Brief, the first  
 19 paragraph, Staff does a nice job of laying out what in  
 20 their mind is a quandary. And I'm wondering if you would  
 21 be willing to, you know, provide your insight.  
 22 Apparently in the '87 Agreement Peoples was able to close  
 23 Northern's inlet valve for nonpayment of bills.  
 24 Presumably that obligation would have followed all the  
 25 way down the line to you folks.

1 But it's Staff's understanding that you don't  
2 believe that's the case. So enlighten us on that,  
3 please.

4 MR. OLSON: Well, let's -- if I may direct the  
5 Commission and the other participants here to the picture  
6 of the farm tap. And I can attempt to walk us through  
7 that.

8 I would state today that the farm tap inlet  
9 valve on the blue side of the diagram in the lower  
10 left-hand corner is something that NorthWestern does not  
11 touch.

12 On the other side of the diagram, the three-way  
13 valve which the customer owns, if there were to be a  
14 failure to pay, that is the valve that we would turn.

15 Now many of the farm tap services are not as  
16 pretty as this one. They've been out in the fields for  
17 years. And so sometimes in situations we've come across  
18 those valves that -- customer-owned valves that we don't  
19 care to touch because of what might happen. In those  
20 situations we have to contact Northern to deal with the  
21 other valve.

22 CHAIRMAN NELSON: So fair to say that you've had  
23 to shut some of these off; is that correct?

24 MR. OLSON: Yes.

25 CHAIRMAN NELSON: And when you say that they're

1 not all as pretty as this, obviously this one has been  
2 very recently painted and does look very, very nice. But  
3 I can imagine that prior to it didn't look nearly as nice  
4 as this does.

5 We're going to have just a little bit of  
6 interruption, but we'll keep going.

7 So you made the statement that you believe the  
8 three-way valve belongs to the customer?

9 MR. OLSON: Yes.

10 CHAIRMAN NELSON: So how did the ownership of  
11 that -- does the customer also own the can?

12 MR. OLSON: Yes.

13 CHAIRMAN NELSON: So how did the ownership of  
14 that valve and can transfer from Peoples to the customer?

15 MR. OLSON: I have a document here that is not  
16 part of the record. And I recognize that. But it is the  
17 Peoples Natural Gas Construction Manual. And this is  
18 something that we have handed out to some of the farm tap  
19 customers.

20 MS. BARUTH: I just had it as record from MERC.  
21 It was given to me by MERC as record.

22 MR. OLSON: Thank you.

23 It defines the customer fuel line as the piping  
24 system from the meter outlet to the outermost wall of the  
25 customer's building structure. And the meter outlet, I

1 don't know if it's on the second picture or not. It's  
2 right at the meter there.

3 CHAIRMAN NELSON: Right. And so that's from a  
4 Peoples document; correct?

5 MR. OLSON: That is from a Peoples document.

6 MS. BARUTH: When I was given this document by  
7 MERC I was told this is a document they use to tell  
8 customers how to comply with building a service. And so  
9 this is a document that Peoples, we believe -- we don't  
10 know that for a fact. We believe Peoples gave to  
11 customers to tell them what they needed to put into the  
12 ground for specifications.

13 MR. OLSON: If I may continue with that,  
14 included in those specifications are a series of  
15 components, including the three-way valve, the farm tap  
16 wick odorizer, et cetera.

17 And I would also remind the Commission that when  
18 we entered the picture here we did not acquire any of  
19 these assets. Our only relation here is pursuant to that  
20 1987 Agreement, a portion of which was assigned to us.  
21 We don't have any of these assets on our books. We are  
22 not depreciating any of these assets. We can't. We  
23 don't own them.

24 CHAIRMAN NELSON: Well, and I think this begins  
25 to maybe clear up what had been muddled in my mind

1 because we've had earlier discussion about we don't know  
2 who ultimately or initially paid for that three-way valve  
3 or can. But what -- apparently Peoples in this document  
4 is claiming that the customers did. And then that's also  
5 your understanding.

6 MR. OLSON: That is our understanding, yes.

7 CHAIRMAN NELSON: And so on this picture instead  
8 of three colors, there should only be two colors. The  
9 red should be yellow; correct?

10 MR. OLSON: We believe that is inaccurate as  
11 depicted.

12 CHAIRMAN NELSON: Northern referred to a letter  
13 that apparently they believe NorthWestern sent to all of  
14 these farm tap customers. Is that in the record?

15 MR. OLSON: Yes, it is.

16 CHAIRMAN NELSON: Can you refer me to --

17 MR. OLSON: It is very near the top of the  
18 docket. November 14, 2016, Northwestern Energy Sample  
19 Letter.

20 CHAIRMAN NELSON: Perfect. That's all the  
21 questions I've got at the moment.

22 Thank you.

23 MR. DE HUECK: Commissioner Fiegen.

24 COMMISSIONER FIEGEN: I do not have any  
25 questions at this point.

1 MR. DE HUECK: Commissioner Hanson.  
 2 COMMISSIONER HANSON: Neither do I. Thank you.  
 3 MR. DE HUECK: That means we've concluded our  
 4 first round of oral argument.  
 5 I'm sorry, Brett. I forgot about you over  
 6 there. You're so quiet.  
 7 MR. KOENECKE: Quite okay, Adam.  
 8 Originally this docket started out looking like  
 9 a general broad question of what were the rights and  
 10 responsibilities of people providing farm tap service.  
 11 MDU resources has an interest and provides farm taps  
 12 through Williston Basin and also through its regulated  
 13 utility, and so it felt like something MDU should show up  
 14 and be a part of. So I'm glad I'm here. It was a  
 15 broader question.  
 16 It seems after this question like it's a much  
 17 more narrow dispute than it was originally held out to  
 18 be. So I might or might not file a brief. But since  
 19 I've got the microphone for a couple of minutes, I would  
 20 say, you know, it doesn't feel to me like farm taps meet  
 21 the definition of a public utility, of gas utility, if  
 22 you look at the statutes.  
 23 The service isn't held out to the general  
 24 public. It's held out to only those people who have an  
 25 ability to have a farm tap in the first place. Somebody

1 who's got a pipe through the ground.  
 2 And so it looks to me like the obligation to  
 3 serve comes from the easement document. That's where the  
 4 obligation is found in that paragraph 3 as I'm reading  
 5 that. And it doesn't feel to me like the Commission has  
 6 authority to regulate those documents. That's a Circuit  
 7 Court matter. That's a real estate transaction.  
 8 So be that as it may, it seems like a -- it  
 9 seems like it's ripe for an action in Circuit Court and  
 10 maybe a breach of contract and sort it out there. Is the  
 11 contract breached without the provision of that service  
 12 found in No. 3? And, if so, is specific performance a  
 13 remedy? Can the court order one of the parties to follow  
 14 through on its agreement?  
 15 So that's my two cents worth on that. Like I  
 16 said, I might or might not file a brief depending on  
 17 where this goes. This really feels like a very specific  
 18 incident going on and not a broader question like it was  
 19 framed up to start. So we'll see where it goes, but I  
 20 sat here long enough to think I could at least offer that  
 21 much up.  
 22 MR. DE HUECK: Are there any questions for  
 23 Mr. Koenecke?  
 24 CHAIRMAN NELSON: For the only time in my life,  
 25 no.

1 MR. DE HUECK: Any other Commissioners?  
 2 So, with that, we've now finished our first  
 3 round of oral argument. And what I think we're going to  
 4 do is start back from the beginning starting with Staff.  
 5 I wanted to call it a chance for a rebuttal, but  
 6 it seems like we're more at concluding remarks too. So  
 7 interpret that how you want to, and you may begin.  
 8 MS. EDWARDS: Thank you, Mr. de Hueck,  
 9 Commissioners. One thing that I would note is that if  
 10 the 1987 Agreement was merely to clarify the 1985  
 11 Agreement as it's been portrayed, it seems odd to me that  
 12 a large sum of money, even by today's standards, would  
 13 have changed hands in a clarification transaction.  
 14 It's also concerning to Staff that while all  
 15 parties seem to agree that there is a moral obligation to  
 16 the customers, no company stepped forward to warn the  
 17 customers until Staff filed their hand by forcing the --  
 18 or by filing the Docket.  
 19 I'm not entirely certain of what all  
 20 communications have transpired, but if other letters have  
 21 been sent out by either party prior to the filing of this  
 22 docket or subsequent to the filing of this docket, it  
 23 would be interesting to have those filed in the record to  
 24 see what else customers have been told.  
 25 The Commission also asked of Northern how many

1 of the 197 customers are in MidAmerican's service area.  
 2 I would point out that while MidAmerican's service area,  
 3 unlike an electric territory, is not a territory, it is  
 4 detailed in their tariff -- in Section 2 of the tariff we  
 5 do discuss what communities they serve.  
 6 I don't know where all the 197 farm taps are,  
 7 but I do know of the contacts that we've gotten that are  
 8 filed in the docket from consumers. They appear to be --  
 9 those consumers do appear to be down there in that  
 10 Yankton Gayville area, which is specified in  
 11 MidAmerican's tariff. Unlike --  
 12 Northern says they haven't reached out to  
 13 MidAmerican. Staff did, did make that attempt. It  
 14 wasn't a successful attempt.  
 15 We've also reached out to several other  
 16 companies and other jurisdictions. Northern stated  
 17 that -- or suggested that it might be a good idea for  
 18 Staff to work with NorthWestern to come to a workable  
 19 solution like they have in other states. And we have  
 20 explored that. We have worked exhaustively to do that.  
 21 And we have reached out to the Kansas  
 22 Commission. We've reached out to Alliant Energy,  
 23 Black Hills. We've had extensive discussions with  
 24 Black Hills. How are they making this work in their  
 25 areas? What ideas could we take and implement here?



1 And, unfortunately, with our rate structures  
 2 here and the way we have to look out for NorthWestern's  
 3 other ratepayers to make sure that they're not  
 4 subsidizing anything, we don't have that same opportunity  
 5 that the Iowa Utilities Board has been presented with  
 6 where Black Hills Energy was -- or the other customers  
 7 were somehow structured to where it wouldn't be  
 8 inherently unfair for those, in their case, 1,500  
 9 customers to spread the cost of buying the system.

10 And when they say that the Iowa Utilities Board  
 11 has exercised jurisdiction, it's my understanding that  
 12 Black Hills Energy is actually buying that line and is  
 13 going to control that customer line. And, I mean, other  
 14 analysts, Ms. Mehlhaff and Mr. Thurber, have had these  
 15 discussions with Black Hills and might know a lot more  
 16 about that, but the jurisdictional question there is very  
 17 clear because Black Hills Energy in Iowa and potentially  
 18 Nebraska and Kansas, depending on how things play out, is  
 19 going to own everything that is in red or yellow in those  
 20 states.

21 Beyond that, I don't think I have anything else  
 22 to add, other than that I don't know if she's on the  
 23 phone now, but our Pipeline Safety Manager, Mary Zanter,  
 24 was going to make herself available for any questions  
 25 since she was the one that did the 2014 inspection and

1 had those discussions with Northern.

2 Thank you.

3 MR. DE HUECK: Commission questions.

4 CHAIRMAN NELSON: Just a couple. First a  
 5 statement and then a question.

6 I appreciate what you have just said now, kind  
 7 of illuminating for all of us the efforts that Staff has  
 8 gone through to try to resolve this, short of having to  
 9 go through this proceeding and whatever may emanate from  
 10 that. So I appreciate that.

11 The sole question I've got, Ms. Edwards, I spent  
 12 a great deal of time earlier going through the Easement  
 13 Agreement between landowners and Northern. I did that  
 14 because I wanted to understand clearly the history of  
 15 that.

16 But is it correct and your understanding that  
 17 this Commission does not have the authority under state  
 18 law to adjudicate issues revolving around easements and  
 19 easement rights?

20 MS. EDWARDS: It absolutely is. And that's  
 21 something that we are very forthright with landowners  
 22 about in our siting dockets that we have. That's an  
 23 accurate statement. Yes.

24 CHAIRMAN NELSON: Thank you.

25 MR. DE HUECK: Any other questions?

1 COMMISSIONER FIEGEN: I do not.

2 COMMISSIONER HANSON: No.

3 MR. DE HUECK: With that, the floor is  
 4 Northern's.

5 MR. PORTER: Thank you. Just a few comments.  
 6 One in regards to Northwestern Energy's on the  
 7 facilities. As far as the three-way valve and the  
 8 odorant tank, I believe the record will be -- is clear,  
 9 but I just want to clarify.

10 What Mr. Olson said is not inconsistent with  
 11 what our view is either. We know what we own. We don't  
 12 know who owns down. I think there's a combination.  
 13 Mr. Olson says pursuant to a document that I've never  
 14 looked at, the Peoples construction documents -- that  
 15 might be the farm tap owners. Grant you that. Don't  
 16 know. So I just wanted to clarify that.

17 What is interesting is we're talking about  
 18 jurisdictional issues, and it's come up a few times.  
 19 Both NorthWestern and before NorthWestern MERC had  
 20 tariffs on file with the Commission to provide service to  
 21 these farm tap customers.

22 It seems odd for a nonjurisdictional service to  
 23 be subject to tariffs that are on file with the  
 24 Commission. It seems that the Commission has exercised  
 25 jurisdiction over the area, required tariffs to be placed

1 on file, and the regulated entities have complied with  
 2 that.

3 So based on the history of activity, it is -- it  
 4 seems clear to Northern that it's a jurisdictional  
 5 activity and one in which the Commission has exercised  
 6 authority over.

7 There's been quite a bit of discussion on the  
 8 '85 and the '87 Agreements. And I think that's  
 9 appropriate. I think that's where focus ought to be. An  
 10 opinion was offered on what the easements -- what the  
 11 obligation is under the easement. And the easement says  
 12 what it does.

13 However, to say that that is controlling,  
 14 eliminates -- poof -- the '85 Agreement where the  
 15 obligations to provide specific services that we provided  
 16 evidence on that indicate what was provided before the  
 17 '85 Agreement and what was provided after the '85  
 18 Agreement just is making null and void that '85 Agreement  
 19 to say that those obligations did not transfer.

20 And I think that from a transactional  
 21 perspective those obligations did transfer. They  
 22 transferred to UtiliCorp. They are with UtiliCorp or one  
 23 of UtiliCorp's successors.

24 Just check my notes here.

25 There was a comment made regarding the 1985

1 Agreement not changing the easement. And I wanted to  
2 affirm that. The '85 Agreement transferred the  
3 obligations and how those obligations were being  
4 handled -- transferred those to UtiliCorp. The language  
5 in the easement is the same, but it has to be read in the  
6 context of who was providing those -- who was fulfilling  
7 those obligations and who acquired them. It doesn't  
8 change the language of the easement.

9 And I think that's all I have. I appreciate  
10 your time.

11 MR. DE HUECK: Any further questions for  
12 Northern Natural Gas?

13 Commissioner Fiegen.

14 COMMISSIONER FIEGEN: NorthWestern talked a  
15 little bit about asking Northern to come to the table to  
16 negotiate. Were you part of those discussions or --

17 MR. PORTER: I was not.

18 COMMISSIONER FIEGEN: Those requests.

19 MR. PORTER: I'm not sure there have been those  
20 discussions.

21 COMMISSIONER FIEGEN: The requests to come to  
22 the table?

23 MR. PORTER: I'm not sure what that means.

24 We've had conversations. Our commercial groups have had  
25 discussions regarding this docket about what's going to

1 happen on December 31, 2017. It's your obligation. No,  
2 it's your obligation. We've had those discussions.

3 COMMISSIONER FIEGEN: But no negotiations type  
4 of discussion?

5 MR. PORTER: There's nothing that I would call  
6 negotiations, no.

7 COMMISSIONER FIEGEN: Okay. Also we talk a lot  
8 about the Commission's Order and the discussion at a  
9 hearing in 2011, the Natural Gas 11-001.

10 MR. PORTER: Uh-huh.

11 COMMISSIONER FIEGEN: Did you intervene in that  
12 docket?

13 MR. PORTER: Not that I'm aware of.

14 COMMISSIONER FIEGEN: And why was that?

15 MR. PORTER: I can't speak specifically. I  
16 don't know. But we very rarely intervene. And this is  
17 the first one I remember in a long, long time that we've  
18 intervened in.

19 COMMISSIONER FIEGEN: And you have a Government  
20 Affairs Department; correct?

21 MR. PORTER: We certainly do.

22 COMMISSIONER FIEGEN: That certainly could have  
23 intervened in the 2011 docket?

24 MR. PORTER: We could have, but I don't know  
25 what the reason would have been. We had an agreement.

1 I'm not sure -- I mean, Northwestern Energy is a customer  
2 of ours. We don't, as a practice, intervene in our  
3 utility's matters -- or customers' matters unless they  
4 invite us to.

5 Because once we intervene, we're subject to  
6 discovery and subject to questions, and we would much  
7 rather have -- just from a customer relations perspective  
8 we'd rather -- utilities need to manage that.

9 COMMISSIONER FIEGEN: Did you listen to the  
10 hearing at all or read the Order?

11 MR. PORTER: No, ma'am.

12 COMMISSIONER FIEGEN: Were you aware that the  
13 Public Utilities Commission Staff -- and I certainly  
14 appreciate Ms. Edwards explaining to the Commission today  
15 how the Commission Staff has tried to work with different  
16 entities to address this issue.

17 Have you been aware of those discussions, or did  
18 you know the Staff was working on those?

19 MR. PORTER: I do not know the extent. I knew  
20 Ms. Edwards and I have had a couple discussions, two,  
21 three discussions. We've brought up to the Commission  
22 and to the Commission Staff the fact that the ongoing --  
23 the proceedings ongoing in Iowa. So yes. I knew that  
24 they had had that conversation.

25 I had also talked to the General Counsel of the

1 Iowa Utilities Board, and I knew that they had been  
2 called. So I knew at a very high level that there had  
3 been some interaction. I have no information regarding  
4 the substance of those discussions.

5 COMMISSIONER FIEGEN: Were you aware that they  
6 have visited with MidAmerican?

7 MR. PORTER: I was not aware of that.

8 Let me say, if Ms. Edwards told me that, I don't  
9 remember. So no. As I sit here, I was not aware of  
10 that.

11 COMMISSIONER FIEGEN: So we did get a copy in  
12 the docket, the letter that you sent to the customers  
13 that Commissioner Hanson has certainly asked you a lot of  
14 questions about. It certainly surprised me when I got  
15 that letter in my Inbox also.

16 Have you sent other letters to customers, or is  
17 this it, the only letter you have sent?

18 MR. PORTER: First of all, they're easement  
19 holders. They're not -- we would not consider those  
20 customers.

21 COMMISSIONER FIEGEN: Tomato tomahto.

22 MR. PORTER: It's important in a sense that we  
23 communicate with our customers all the time.

24 COMMISSIONER FIEGEN: Correct.

25 MR. PORTER: Laura.

1 MS. DEMMAN: We sent a letter recently, which is  
 2 dated December 9, where we invited customers to meetings  
 3 that we have scheduled in Madison and Beresford to answer  
 4 any questions that they may have for Northern.  
 5 COMMISSIONER FIEGEN: Madison and Beresford?  
 6 MS. DEMMAN: Yes.  
 7 COMMISSIONER FIEGEN: So have you asked other  
 8 people to participate so the communication is balanced?  
 9 MS. DEMMAN: We have encouraged customers to  
 10 participate so that their views can be known.  
 11 COMMISSIONER FIEGEN: How about other like Staff  
 12 or NorthWestern or -- have you invited them to  
 13 participate?  
 14 MS. DEMMAN: They are participating.  
 15 COMMISSIONER FIEGEN: Okay. So they're going to  
 16 participate at the Madison and Beresford?  
 17 MS. DEMMAN: I'm sorry. At that meeting. No.  
 18 We sent an invitation to the customers, to the farm tap  
 19 landowners, to answer any questions that they may have.  
 20 COMMISSIONER FIEGEN: And so the Staff has not  
 21 been invited?  
 22 MS. DEMMAN: I didn't copy the Staff on that.  
 23 MR. PORTER: I don't believe they have.  
 24 COMMISSIONER FIEGEN: Okay. So -- okay.  
 25 So my last question on jurisdiction. And it

1 sounds like Mr. Porter certainly believes the Public  
 2 Utilities Commission has jurisdiction. I don't know if  
 3 that's true or not, but I do -- this is what I feel, just  
 4 as one Commissioner, that our farm tap customers in  
 5 South Dakota will have to spend their financial resources  
 6 possibly to litigate this in Circuit Court because I  
 7 believe we don't have jurisdiction possibly over all the  
 8 issues that our farm tap customers will have concerns  
 9 about.  
 10 So they will have to use their financial  
 11 resources possibly to deal with an easement contract and  
 12 to ask possibly Northern to live up to their easement  
 13 contract. So that will be in Circuit Court and the  
 14 financial resources of the farm tap customers.  
 15 That's it.  
 16 MR. DE HUECK: Mr. Rislov.  
 17 MR. RISLOV: Mr. Porter, you brought it up this  
 18 morning, and now Ms. Edwards brought it up today.  
 19 But in comparison of what could happen in  
 20 South Dakota with Iowa and other states, do you realize  
 21 that the regulatory circumstances among all these states  
 22 may be entirely different and may impact customers in  
 23 entirely different ways with regard to cost versus  
 24 benefit?  
 25 MR. PORTER: Absolutely realize that --

1 MR. RISLOV: So they're maybe not an apples to  
 2 apples comparison to compare South Dakota to Iowa?  
 3 MR. PORTER: Sir, I didn't mean to say because  
 4 Iowa was doing something, South Dakota had to or vice  
 5 versa.  
 6 What I was saying is that there are potential  
 7 solutions out there that ought to be looked at and  
 8 pursued. Whether South Dakota or Iowa is pursuing one, I  
 9 100 percent agree with you, that may not fit for  
 10 South Dakota, if that's the question.  
 11 MR. RISLOV: And we've gone a little bit into  
 12 the tariff, and you mentioned the tariffing and whether  
 13 or not that indicated jurisdiction.  
 14 Do you know if this Commission ever approved  
 15 MERC's tariff?  
 16 MR. PORTER: In regards to farm taps?  
 17 MR. RISLOV: Yes.  
 18 MR. PORTER: It was on file. Yes.  
 19 MR. RISLOV: Did the Commission approve it?  
 20 MR. PORTER: I'm not sure. It was on file and  
 21 was replaced by -- you're making a distinction that I'm  
 22 not aware of.  
 23 MR. RISLOV: Honestly, I'm not either. It was  
 24 handled by another employee, but it may have well been  
 25 they were filed simply for informational purposes.

1 Would you be surprised that there was discussion  
 2 during the 1980s and confusion over exactly what  
 3 jurisdiction we did have with regard to those farm tap  
 4 customers? Would that surprise you?  
 5 MR. PORTER: I would not be surprised about  
 6 that.  
 7 MR. RISLOV: That's all I have. Thank you.  
 8 CHAIRMAN NELSON: Just one follow up.  
 9 You made mention of meetings that you're going  
 10 to be conducting in I think you said Beresford and  
 11 Madison for the easement grantors.  
 12 Would South Dakota PUC Staff be welcome to  
 13 attend those meetings?  
 14 MS. DEMMAN: Yes. Yes, they would.  
 15 CHAIRMAN NELSON: Thank you.  
 16 MR. DE HUECK: I had a quick follow up to this  
 17 question probably belongs in Circuit Court, as  
 18 Mr. Koenecke explained. And it goes back to whether  
 19 Northern Natural Gas has an obligation to secure a vendee  
 20 for these farm tap customers.  
 21 And I understand there was a corporate  
 22 transaction in 1985 where Northern Natural Gas relieved  
 23 that burden that they were carrying by doing a corporate  
 24 transaction and selling that obligation to another  
 25 company to continue the service.



1 My question is were the easement holders at this  
2 corporate transaction when you sold the duty to have  
3 service provided?

4 Where were the easement holders? Don't they  
5 have a stake in ensuring their easement isn't altered in  
6 a significant way?

7 MR. PORTER: Easement holders would have, I  
8 believe, an interest if their easement was altered or  
9 amended, one. Two, I don't think they were. They were  
10 transferred from -- excuse me. They weren't even -- the  
11 easements weren't transferred.

12 The same entity that owned -- that had entered  
13 into the easements as we have discussed prior to 1985,  
14 the easements that were entered into by Northern Natural  
15 are held today by Northern Natural.

16 What was transferred was the utility service  
17 that through historical practices had developed and  
18 Peoples Natural Gas had provided -- from the beginning  
19 had provided that utility service. Northern Natural  
20 never did. Peoples provided that service.

21 That was transferred. It does not impact a word  
22 of the easement. So I think the easement is unaffected.

23 MR. DE HUECK: Thank you.

24 Anything else?

25 With that, we'll move to NorthWestern.

1 MR. OLSON: Thank you, Mr. de Hueck.  
2 So if the easement is not affected by that  
3 transfer, then evidently there still is an obligation by  
4 Northern to provide a vendee of grantee in this  
5 situation.

6 And what has perplexed me throughout this  
7 process is if, as Northern alleges, they gave up all of  
8 those obligations in 1985 in that corporate transaction,  
9 why are they here today?

10 Why are they entering an agreement in 1987 to  
11 have others provide those services on their behalf? Why  
12 are they consenting to the assignment in 2011 to have  
13 others provide those services on their behalf?

14 I think the answer -- the answer to me is clear.  
15 They understand their obligations under those easements,  
16 and they're trying to make other people perform those  
17 obligations on their behalf.

18 We took a fair amount of flack based on their  
19 November 23 letter. NorthWestern Energy and its  
20 predecessors have provided utility service to your farm  
21 tap since Northern Natural Gas first constructed the tap.  
22 That is so inaccurate. NorthWestern did not enter this  
23 picture until 2011.

24 The carefully crafted words "and its  
25 predecessors" suggest a link between NorthWestern and the

1 servicers prior to that. It's ironic that the servicers  
2 prior to that were Northern's at the very beginning. But  
3 that was obscured in this letter.

4 And if Northern was willing to provide a copy of  
5 this letter to us, I can only imagine what the December 9  
6 letter might say since they haven't been willing to  
7 provide that copy.

8 Thank you.

9 MR. DE HUECK: And, Mr. Koenecke -- or are there  
10 any questions for NorthWestern? I'm sorry.

11 Mr. Koenecke.

12 MR. KOENECKE: Thanks, Mr. de Hueck. I  
13 appreciate that. I'll try to be brief.

14 I wasn't trying to intimate that Northern would  
15 be able to somehow simply escape liability for their  
16 agreements under the easement in Circuit Court by saying  
17 that somebody else now has the responsibility.

18 I guess I want to make clear that it seems to me  
19 like it would be their obligation to third party in  
20 somebody who they think now has that.

21 And so thinking about that caused me to look at  
22 the '85 and the '87 Agreements, and I found it curious.  
23 The reliance on the '85 Agreement seems to be somewhat  
24 complete, that all of this was transferred in '85.

25 Well, if it was all transferred in '85, why is

1 there an '87 Agreement? Why did you come back two years  
2 later and do another agreement transferring these  
3 responsibilities? It seems like there must have been  
4 something reserved in '85 and then transferred in '87.

5 And if the argument is that all of these rights  
6 and responsibilities are transferred to somebody else,  
7 why is there an end date in the '87 Agreement?

8 Those are questions that I think a Circuit Court  
9 is teed up to resolve. It would be helpful for anybody  
10 in your situation to have taken testimony. I think that  
11 would have probably helped here today, taken testimony  
12 from witnesses and have documents admitted.

13 You know, hindsight's 20/20. But there are  
14 certainly questions here to be resolved, and I wouldn't  
15 want anybody to think they can't be resolved.

16 I will follow up by saying I don't think the  
17 Commission has jurisdiction over farm taps. I do not  
18 think that is a public utility or a gas utility under the  
19 definitions in the code. But no one should think that  
20 the customers have no remedy because I think they  
21 certainly have a good argument to put forth.

22 Thank you.

23 MR. DE HUECK: Well, at this point I'd like to  
24 invite any individuals who might be listening on the  
25 phone or attending the webcast to continue submitting

1 written comments into the record.  
 2 And I'll ask the Commissioners if there's  
 3 anything else we need to cover with respect to this  
 4 hearing.  
 5 CHAIRMAN NELSON: Well, I guess I do want to  
 6 make a final statement. But before I do that, I'm  
 7 looking at fellow Commissioners.  
 8 Do we want to request any final briefs? Or are  
 9 we good with what's on the record thus far?  
 10 COMMISSIONER HANSON: I'm comfortable.  
 11 COMMISSIONER FIEGEN: I'm opposite of him.  
 12 Surprise, surprise.  
 13 CHAIRMAN NELSON: And I'm really uncomfortable  
 14 right now.  
 15 No. Actually I'm comfortable also, but I will  
 16 defer. If one Commissioner would like to have those, I  
 17 think timing is the issue. My presumption is that we  
 18 would make a decision probably at our January 3 meeting.  
 19 And I'm looking at Ms. Edwards. Is our timing  
 20 okay if we make a decision at our January 3 meeting?  
 21 MS. EDWARDS: Well, under the Administrative  
 22 Rule, if the Commission asks for more information, I  
 23 think that 60 days is somewhat told. So --  
 24 CHAIRMAN NELSON: Well, I personally don't want  
 25 to push it past that because we are not going to be the

1 final arbiter of this, and so I want to give as much time  
 2 as possible for folks to move down the line if needed.  
 3 MS. EDWARDS: I have no objection to preparing a  
 4 brief by -- or prior to January 3 to give you guys time  
 5 to read and will comply with that order if you wish.  
 6 COMMISSIONER FIEGEN: Mr. Chairman, I recant. I  
 7 will not need a brief.  
 8 CHAIRMAN NELSON: Are you sure?  
 9 COMMISSIONER FIEGEN: Yes.  
 10 CHAIRMAN NELSON: Okay. Then that resolves that  
 11 question.  
 12 I guess the only statement that I would make --  
 13 first of all, I appreciate all four of the parties coming  
 14 here and enduring our questions and putting your  
 15 positions out in front of us.  
 16 We have all, over the last three or four weeks,  
 17 had the opportunity to read the comments of the people  
 18 that really matter here.  
 19 I know you all have business interests and  
 20 shareholders you have to respond to to make prudent  
 21 business decisions. But there are 195 South Dakotans  
 22 that for 60 years have relied upon this service. It's  
 23 part of their business. It's part of their home. It's  
 24 how they stay warm. And we've heard from those people.  
 25 And I dearly wish that we had the authority

1 today to wave the magic wand and solve this problem for  
 2 those folks today. But I think we probably don't. At  
 3 least not today.  
 4 And so if I could leave one thought with all of  
 5 you is go home and wrestle with this. Is it right for  
 6 either of your companies to walk away from this? Or is  
 7 the right thing to do to come together and find an  
 8 agreement that works for everybody and keeps 195  
 9 South Dakotans in the position that they've enjoyed for  
 10 60 years and through no fault of their own find  
 11 themselves having to deal with this issue today.  
 12 That's all.  
 13 MR. DE HUECK: Anything else?  
 14 COMMISSIONER FIEGEN: I'm just thankful that  
 15 everybody came. I'm certainly thankful for all the  
 16 comments that the farm tap participants have sent to us.  
 17 It certainly enlightens us.  
 18 As a Commission, we all look at the public  
 19 interest, and just like Commissioner Nelson has said, we  
 20 want to ensure those people continue to get service in  
 21 the future.  
 22 We don't know where that will be, and that may  
 23 be a decision in the Circuit Court. We do not know that  
 24 today. And we'll make a decision soon.  
 25 MR. DE HUECK: Commissioner Hanson.

1 COMMISSIONER HANSON: Nothing. Thank you.  
 2 MR. DE HUECK: With that, the hearing in  
 3 NG16-014 is adjourned. Thank you.  
 4 (The hearing is concluded)  
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1 STATE OF SOUTH DAKOTA)  
2 :SS CERTIFICATE  
3 COUNTY OF SULLY )  
4

5 I, CHERI MCCOMSEY WITTLER, a Registered  
6 Professional Reporter, Certified Realtime Reporter and  
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed  
9 shorthand reporter, I took in shorthand the proceedings  
10 had in the above-entitled matter on the 14th day of  
11 December, 2016, and that the attached is a true and  
12 correct transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 2nd day of  
14 January, 2017.  
15  
16  
17

18 \_\_\_\_\_  
19 Cheri McComsey Wittler,  
20 Notary Public and  
21 Registered Professional Reporter  
22 Certified Realtime Reporter  
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2 OF THE STATE OF SOUTH DAKOTA

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4 IN THE MATTER OF COMMISSION NG16-014  
5 STAFF'S PETITION FOR DECLARATORY  
6 RULING REGARDING FARM TAP  
7 CUSTOMERS  
8 -----

9 Transcript of Proceedings  
10 January 17, 2017  
11 -----

12 BEFORE THE PUBLIC UTILITIES COMMISSION,  
13 KRISTIE FIEGEN, CHAIRMAN (telephonically)  
14 GARY HANSON, VICE CHAIRMAN  
15 CHRIS NELSON, COMMISSIONER

16 COMMISSION STAFF  
17 Adam de Hueck, Commission Attorney  
18 Karen Cremer, Commission Attorney  
19 Greg Rislov, Staff Advisor  
20 Patrick Steffensen, Staff Analyst  
21 Brittany Mehlhoff, Staff Analyst  
22 Joseph Rozac, Staff Analyst  
23 Eric Paulson, Staff Analyst  
24 Mary Santez  
25 Katlyn Gustafson

26 APPEARANCES  
27 Kristen Edwards, appearing on behalf of Commission Staff  
28 Gregory Porter, appearing on behalf of  
29 Northern Natural Gas (telephonically)  
30 Timothy P. Olson, appearing on behalf of NorthWestern  
31 Brett Koenecke, appearing on behalf of Montana-Dakota  
32 Utilities  
33 Reported By Cheri McComsey Wittler, RPR, CRR  
34 Precision Reporting, Onida, South Dakota

1 COMMISSIONER HANSON: NG16-014, In the Matter of  
2 Commission Staff's Petition For a Declaratory Ruling  
3 Regarding Farm Tap Customers.

4 We have a number of questions before us. I  
5 counted six. And we have a variety of letters going to  
6 legislators and other folks over the past couple of  
7 weeks. A lot of information going back and forth. So  
8 I'm going to state what I believe to be the questions,  
9 and then I will listen to all of the parties to find out  
10 if I am correct as to those questions.

11 Question 1, 2, and 3 are part of the original  
12 Staff's Request for a Declaratory Ruling. One would be  
13 does the Commission have jurisdiction? Two, if so, which  
14 entity is a public utility? Three, are the farm taps in  
15 whole or in part subject to state jurisdiction?  
16 Understanding I'm not reading the entire question.

17 Four would be Northern Natural Gas Company filed  
18 a Motion to Reopen the Record, take Judicial Notice, and  
19 Correct the Record. Five would be staff filed a Motion  
20 for Judicial Notice. And six would be the Request for  
21 Deferral.

22 Are there any other questions on this docket  
23 before the Commission that any of the parties are aware  
24 of?  
25 Thank you. If not, it would be my suggestion to

1 TRANSCRIPT OF PROCEEDINGS, held in the  
2 above-entitled matter, at the Matthew Training Center,  
3 Foss Building, 523 East Capitol Avenue, Pierre,  
4 South Dakota, on the 17th day of January, 2017,  
5 commencing at 1:40 p.m.

1 take the sixth question first, the Request for Deferral,  
2 because that needs to be decided before we go to the  
3 others. Two would be -- this is presumptuous, that the  
4 Request for Deferral is denied. Second would be Staff  
5 filed a Motion for Judicial Notice, which really needs to  
6 be decided prior to the others. And number four would be  
7 Northern Natural -- excuse me. Third would be the fourth  
8 question that I stated, Northern Natural Gas Company  
9 filed a Motion to Reopen the Record, Take Judicial  
10 Notice, and Correct the Record. And then the next three  
11 questions would be the original first three questions.

12 Is there any concern with taking them in that  
13 order?

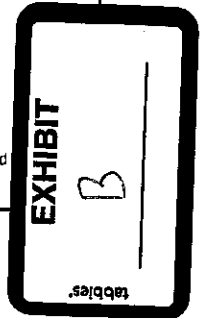
14 MR. OLSON: No.

15 COMMISSIONER HANSON: Hearing none, then the  
16 questions pending before the Commission are those that I  
17 stated. The first is the Request for Deferral.

18 Do the Commissioners have any questions that  
19 they wish to ask at this juncture on the Request for  
20 Deferral?

21 Hearing none, I will move that the Request for  
22 Deferral be denied.

23 Speaking to that motion, I believe that  
24 deferring it doesn't accomplish anything. We either need  
25 to take this matter under hand or we just prolong it.



1 And so I -- as simple as that, I've moved to defer.  
 2 Any discussion on the --  
 3 COMMISSIONER NELSON: Move to deny.  
 4 COMMISSIONER HANSON: Excuse me. I move to deny  
 5 the Request for Deferral.  
 6 Any further discussion on the motion?  
 7 COMMISSIONER NELSON: Mr. Chairman, I intend to  
 8 support your motion, but I want to maybe talk just a  
 9 little bit about why I think we need to move forward with  
 10 this.  
 11 And I'm going to be pretty blunt, and that's the  
 12 fact that regardless of what we do, this obviously is  
 13 going to be litigated. It's got to go through Circuit  
 14 Court. It will probably end up in the Supreme Court.  
 15 And if at the end of that day the ruling ends up  
 16 adverse to the folks that have granted these easements,  
 17 those folks are going to have to make arrangements to get  
 18 a new fuel supply and finance it and all of those types  
 19 of things within the next 11 and a half months. And  
 20 that's a very, very short time frame for all of those  
 21 things to be accomplished.  
 22 And I think it behooves us to make our decisions  
 23 today so that the rest of this can play out as it needs  
 24 to.  
 25 The second thing that I would say is the

1 legislature is meeting, and we have no idea whether there  
 2 will be some attempted legislative action regarding this  
 3 particular matter. And so in order to give time for any  
 4 of that to play out, based on what we decide today, I  
 5 think it is very prudent for us to move forward.  
 6 COMMISSIONER HANSON: Thank you.  
 7 Any further discussion?  
 8 Hearing none, Commissioner Nelson.  
 9 COMMISSIONER NELSON: Aye.  
 10 COMMISSIONER HANSON: Commissioner Fiegen.  
 11 COMMISSIONER FIEGEN: Fiegen votes Aye.  
 12 COMMISSIONER HANSON: Hanson votes Aye. The  
 13 motion carries.  
 14 The second question before the Commission is  
 15 that staff filed a Motion for Judicial Notice.  
 16 Is there a motion or discussion on Staff's  
 17 Motion for Judicial Notice?  
 18 COMMISSIONER NELSON: I will move to grant the  
 19 motion, Staff's Motion for Judicial Notice.  
 20 COMMISSIONER HANSON: Thank you.  
 21 Discussion on the motion?  
 22 Hearing none, Commissioner Nelson.  
 23 COMMISSIONER NELSON: Aye.  
 24 COMMISSIONER HANSON: Commissioner Fiegen.  
 25 COMMISSIONER FIEGEN: Fiegen votes aye.

1 COMMISSIONER HANSON: Hanson votes aye. The  
 2 motion carries.  
 3 The third question before the Commission today  
 4 is Northern Natural Gas Company filed a Motion to Reopen  
 5 the Record, Take Judicial Notice, and Correct the Record.  
 6 Is there a discussion or a motion on that  
 7 question?  
 8 COMMISSIONER NELSON: Go ahead.  
 9 COMMISSIONER HANSON: In NG16-014 the question  
 10 of Northern Natural Gas Company filed a Motion to Reopen  
 11 the Record, Take Judicial Notice, and Correct the Record,  
 12 I move that the Commission deny their motion.  
 13 Discussion on that motion. I think that  
 14 Ms. Edwards filed an excellent rebuttal to that paper --  
 15 to those three items making one motion, and I would refer  
 16 anyone to that particular paper from the standpoint of  
 17 the arguments that I would make, that I cannot make them  
 18 more succinct than what she did and more articulate than  
 19 what was in that Brief.  
 20 Any further discussion on the question?  
 21 Commissioner Nelson.  
 22 COMMISSIONER NELSON: I'm going to support your  
 23 Motion to Deny. And a lot of the motion revolves around  
 24 the answers to the questions that Commissioners asked in  
 25 that 2011 hearing when we asked specific questions of

1 both Staff and NorthWestern about whose responsibility it  
 2 was to continue to serve if we granted the motion to  
 3 allow NorthWestern to cease serving at the end of 2017.  
 4 And both of those parties clearly answered that  
 5 it was Northern's responsibility going forward. And I  
 6 asked some questions about that when we had our hearing  
 7 this year and I've thought through that a lot and there  
 8 was, frankly, a little bit of point of frustration on my  
 9 part as a Commissioner wondering did we get the wrong  
 10 answer back in 2011.  
 11 But as I've looked at it and dug through it,  
 12 frankly, I think we got the right answer from both  
 13 parties, both from Staff and from NorthWestern. And  
 14 based on that conclusion, I see no reason to open that  
 15 issue once again.  
 16 COMMISSIONER HANSON: Thank you.  
 17 Any further discussion on the motion?  
 18 Hearing none, Commissioner Nelson.  
 19 COMMISSIONER NELSON: Aye.  
 20 COMMISSIONER HANSON: Commissioner Fiegen.  
 21 COMMISSIONER FIEGEN: Fiegen votes aye.  
 22 COMMISSIONER HANSON: Hanson votes aye. The  
 23 motion carries.  
 24 That brings us to the question does the  
 25 Commission have jurisdiction over the utility providing

1 natural gas to farm tap customers taking natural gas from  
 2 the transmission line owned and operated by Northern  
 3 Natural Gas Company?  
 4 Is there a discussion or a motion on that  
 5 question?  
 6 I will make the motion in NG16-014 that the  
 7 Commission does have jurisdiction over the utility  
 8 providing natural gas to farm tap customers taking  
 9 natural gas from the transmission line owned and operated  
 10 by Northern Natural Gas Company.  
 11 Certainly there's a lot of discussion that can  
 12 take place surrounding this, but I would ask who else  
 13 would have responsibility other than the Commission at  
 14 this juncture?  
 15 Obviously the courts will have their say, but I  
 16 think it's very important that we recognize that one of  
 17 these entities, if not both, have a responsibility and  
 18 that the Commission does have jurisdiction over the  
 19 utility as stated in 49-34A-1 and other areas of SDCL.  
 20 I'm trying to make my remarks brief on these  
 21 items. There's certainly a lot more that can be  
 22 discussed.  
 23 I'll open it for further discussion at this  
 24 juncture. Is there any further discussion?  
 25 Hearing none, on the question, Commissioner

1 Nelson.  
 2 COMMISSIONER NELSON: Aye.  
 3 COMMISSIONER HANSON: Commissioner Fiegen.  
 4 COMMISSIONER FIEGEN: Fiegen votes aye.  
 5 COMMISSIONER HANSON: Hanson votes aye. The  
 6 motion carries.  
 7 The second question in NG16-014, which entity,  
 8 NorthWestern Corporation doing business as NorthWestern  
 9 Energy or Northern Natural Gas Company, if either, or  
 10 both, is a public utility as defined by SDCL Chapter 49  
 11 with respect to these farm tap customers?  
 12 Is there a discussion or a motion?  
 13 I will move in NG16-014 that Northern Natural  
 14 Gas Company is a public utility as defined by  
 15 SDCL Chapter 49 with respect to these farm tap customers.  
 16 Discussion on the motion.  
 17 This is where we get into a great deal of -- so  
 18 to speak, in the weeds and trying to ascertain the  
 19 particulars. I turn to looking at certainly Northern is  
 20 a interstate gas pipeline company in some respects.  
 21 However, when they operate a line that is dedicated as a  
 22 distribution line in the State of South Dakota, even if  
 23 they are regulated by PHMSA and PHMSA has in any way  
 24 intimated or through their rulings required that Northern  
 25 is an intrastate pipeline, when they operate a

1 distribution system and they can turn on and turn off  
 2 taps in the State of South Dakota then they become a  
 3 public utility within the State of South Dakota.  
 4 Regardless of whether they're supposed to be or not, they  
 5 are one.  
 6 Additionally, when one looks at the definition  
 7 of terms in 49-34A-1.3 it states that a customer is any  
 8 person contracting for or purchasing gas or electric  
 9 service from the utility. And certainly the farm tap  
 10 customers contracted for gas service from Northern.  
 11 Regardless of whether or not it states in Northern's  
 12 Briefs and Easement that it is a taking of gas, that it  
 13 gives the farm tap customer the right to take gas, the  
 14 fact is that within that Easement it also states that  
 15 the -- it states that Northern may charge rates for the  
 16 gas that is taken.  
 17 And in no way would anyone interpreting a  
 18 contract of that nature would think that there was any  
 19 other way that a consumer, a farm family, would obtain  
 20 gas other than through a pipeline and pay for that gas.  
 21 So taking is an interesting term, but it cannot be used  
 22 to hide the fact that the Easement is a written  
 23 contractual agreement between the farm family and  
 24 Northern Natural and that the definition of terms for the  
 25 State of South Dakota states that a customer is any

1 person contracted for gas purpose.  
 2 And clearly the Easement is a contract that  
 3 provides that the farm family is allowing the Easement  
 4 and that is their consideration in the contract, and the  
 5 consideration by Northern is to provide gas to the farm  
 6 family.  
 7 Additionally, laws are interpreted on behalf of  
 8 the party that did not write the contract. Ambiguities  
 9 are interpreted to the benefit of those who did not write  
 10 the contract. And in this instance you have Northern  
 11 Natural which wrote easements for the purpose of  
 12 obtaining an easement and by simply saying taking of gas  
 13 does not excuse them from the fact that they did enter  
 14 into a contract so that the customer may purchase the gas  
 15 and receive the gas and they stated that they had the  
 16 right in the Easement at the rates and upon the terms as  
 17 may be established by the grantee or by any vendee of  
 18 grantee from time to time.  
 19 So the consumers must purchase the gas. There's  
 20 no free gas and, therefore, no taking. The actions of  
 21 the parties prove that the gas is being purchased over  
 22 the life of that contract thus far.  
 23 I have a number of other arguments that I would  
 24 use at this time to go over; however, I feel I've  
 25 explained it enough. There's a variety of other areas to

1 touch upon. I will acquiescent to my fellow  
2 Commissioners at this time to hear any additional  
3 discussion.

4 Commissioners Fiegen or Nelson.

5 COMMISSIONER NELSON: If I might, I'm  
6 reluctantly not able to support your motion.

7 I guess I'd just say a couple of things. You've  
8 relied heavily upon the definition of customers. I  
9 understand that. But when the easements were written  
10 that definition didn't exist. The statute came into play  
11 after that.

12 And I think in a hearing it's clearly  
13 demonstrated that Northern is regulated entirely at the  
14 federal level. I mean, whether we like it or not, I  
15 think our jurisdiction, if we had any, has been usurped  
16 by the Feds, and I'm not sure that we as the Commission  
17 have any jurisdiction left there.

18 COMMISSIONER HANSON: Any further discussion?

19 COMMISSIONER FIEGEN: Mr. Chairman.

20 COMMISSIONER HANSON: Yes.

21 COMMISSIONER FIEGEN: Very interesting  
22 discussion today that we're having. When I look at  
23 public utility, and, you know, we look at it so many  
24 times in so many different ways, I look at retail sales  
25 and 49-34A, Subsection 1.8 it talks about retail sales.

1 And when I look at that it looks like NorthWestern would  
2 be the public utility.

3 Although there are so many issues with these  
4 farm taps and the citizens in the state that have been  
5 impacted, I believe most of these issues are going to be  
6 litigated in Circuit Court, unfortunately. And it's a  
7 shame that our citizens have to spend their money -- hard  
8 working citizens have to spend their money to take these  
9 issues to court, but I don't believe the PUC has  
10 jurisdiction certainly over the easements or the  
11 contracts or the agreements.

12 And, unfortunately, FERC became involved since  
13 1952. And when I look at FERC jurisdiction, if this was  
14 a vote in 1952, I believe I would be with Commissioner  
15 Hanson. Since it's not 1952, I will be probably  
16 supporting a substitute amendment talking about the  
17 public utility of NorthWestern.

18 Thank you.

19 COMMISSIONER HANSON: Thank you.

20 I'll continue then. I know that someone has a  
21 motion, but I'll continue with some of the other items  
22 that I was going to talk about.

23 The fact is that NorthWestern Energy is, in my  
24 opinion, a public utility. Obviously, they are.

25 However, that does not preclude Northern from being a

1 public utility as well.

2 Additionally, these arrangements may have been  
3 entered into before our regulatory laws were placed in  
4 effect. That does not preclude the PUC from regulating  
5 the practice once the law or regulation is passed and  
6 takes effect.

7 Additionally, I think it's imperative that we  
8 keep our powder dry, so to speak, because if this is  
9 litigated and the Court decides that we do have authority  
10 over Northern, then it's -- then we are placed in a  
11 situation where we have stated that we are not, and that  
12 makes it challenging for us.

13 There's a host of issues here. NorthWestern  
14 Energy may be a public utility, but they don't have any  
15 responsibility after December 31 of this year. And we  
16 can state that they're a public utility, but the grantee  
17 in this instance has the ability to turn off the farm tap  
18 customers.

19 And it behooves us to recognize that a company  
20 that has a distribution system in South Dakota that has  
21 the ability to turn on and off the tap to the consumer,  
22 albeit that they also are attached to their own  
23 interstate line, the fact is they have a distribution  
24 system in South Dakota.

25 They have farm taps that are not being examined

1 by PHMSA or by our own pipeline group. And they're  
2 basically, through all of the information that we have  
3 received, abdicating all responsibility to provide  
4 services to the farm tap customers. And we are the only  
5 ones left to protect the farm tap customers, except for  
6 the farm tap customers having to go through a  
7 considerable expense on a lawsuit.

8 That lawsuit will probably take place regardless  
9 of what our decision is. But, as I say, it behooves us  
10 to maintain that position to protect our own Public  
11 Utilities Commission's integrity.

12 So I'd ask for you to reconsider the motion that  
13 you are considering making.

14 COMMISSIONER FIEGEN: Mr. Chairman, are you  
15 looking at -- so you're looking at making both of those  
16 utilities a public utility, not just Northern Natural  
17 Gas?

18 COMMISSIONER HANSON: There's no question that  
19 NorthWestern Energy is a utility. But that utility has  
20 the ability to walk away from this agreement -- or this  
21 arrangement that they have with the farm tap customers.

22 And if we give Northern Natural that ability to  
23 step away, then we're saying that our farm tap customers  
24 are being provided gas and paying for gas by a company  
25 that's no longer responsible to provide them anything.



1 And, yes, I am saying both of them are a  
2 utility, to answer your question.

3 COMMISSIONER FIEGEN: Thank you.

4 COMMISSIONER HANSON: Any further discussion?

5 COMMISSIONER NELSON: Mr. Chair, I'm going to  
6 move a substitute motion to find that NorthWestern Energy  
7 is a public utility as defined by SDCL Chapter 49.

8 COMMISSIONER HANSON: That's an interesting  
9 motion. Do you wish to speak to it?

10 COMMISSIONER NELSON: If I might.

11 COMMISSIONER HANSON: Please.

12 COMMISSIONER NELSON: As I have stated, as much  
13 as we might want to find that Northern Natural Gas is a  
14 public utility so they would fall underneath our statutes  
15 and underneath our jurisdiction, legally I just don't  
16 think that it's there. I don't think we can do that. I  
17 don't think we've got the ability or the jurisdiction to  
18 do that.

19 So let me spend a little bit of time -- and  
20 obviously I wrestle with this question, is NorthWestern a  
21 public utility. And I've spent a lot of time wrestling  
22 with this, and ultimately came to the determination that  
23 based on the language in our statute, they are, in fact,  
24 a public utility.

25 And when you look at the definition of public

1 utility and you pick it apart it talks about a person. A  
2 person's a corporation. There is no question  
3 NorthWestern is a corporation. They are a person for  
4 that purpose.

5 It talks about operating, maintaining, or  
6 controlling in the state equipment or facilities.  
7 There's no question NorthWestern does all of that in this  
8 state.

9 The definition talks about doing it for the  
10 public in whole or in part. There is no question that in  
11 this case it is in part. Not public in whole, but it is  
12 in part.

13 NorthWestern will meet that definition of public  
14 utility not only today in 2017, but they're going to meet  
15 it in 2018. They are a public utility in the State of  
16 South Dakota.

17 What does change between 2017 and 2018 for this  
18 public utility is the fact that at the end of 2017 they  
19 will cease being Northern's vendee. Unless some miracle  
20 takes place, they will cease to be Northern's vendee.

21 Now because I believe NorthWestern is, in fact,  
22 a public utility, that means that SDCL 49-34A-2.1  
23 applies. And that section of state law says that a  
24 public utility cannot cease service without permission  
25 from the Public Utilities Commission. And I think that

1 statute's put in for a reason. It's to provide  
2 protection so that public utilities can't just abandon  
3 customers.

4 Now the unfortunate part of that is -- and  
5 Commissioner Hanson delved into this in our previous  
6 hearing. The unfortunate part of that is that in  
7 Docket NG11-001 this Commission did, in fact, grant  
8 NorthWestern the ability to cease providing that public  
9 utilities service at the end of 2017.

10 And, as I have already mentioned, you know, so  
11 why on earth did the Commission do that back in 2011?  
12 What on earth were we thinking?

13 Well, we asked and we did our due diligence and  
14 we asked the question to both Staff and NorthWestern  
15 whose responsibility is it following 2017 to make sure  
16 that our farm tap customers continue receiving service?  
17 And both of them clearly said it is clearly Northern's  
18 responsibility.

19 Let me speak to that for just a moment. And  
20 what I'm about to say doesn't impact on the decision to  
21 make NorthWestern a public utility. But I think it's  
22 important that folks know where I'm coming from.

23 As anybody that listened to the public hearing  
24 that we did, you know that I spent a great amount of time  
25 asking Northern questions about the Easement itself. And

1 in the responses to those questions it was acknowledged  
2 that Northern has the ability -- the requirement to  
3 either serve or have a vendee, and today that vendee is  
4 NorthWestern. Just because the calendar flips from 2017  
5 to 2018 doesn't mean that Northern's responsibility to  
6 have a vendee goes away.

7 And, ultimately, I think that question is going  
8 to be litigated in Circuit Court. Because that is a  
9 contractual relationship between the folks -- the good  
10 landowners that allowed their land to be used for that  
11 pipeline back in the '50s said, yeah, we're willing to do  
12 our part. Bring this infrastructure into the state.

13 They did their part, and in return for that they  
14 were given a promise in that Easement that natural gas  
15 would be available to them. Not just some hole in a  
16 pipe, but they would actually have natural gas to heat  
17 their houses and run grain dryers and heat their barns,  
18 et cetera.

19 So, ultimately, that easement contractual  
20 relationship is going to be litigated in the court system  
21 in this state. And just like I don't think we have the  
22 jurisdiction to find Northern to be a public utility, we  
23 also don't have the jurisdiction to deal with the  
24 easement arrangements. I wish we did, but we don't.

25 And so for those reasons, I believe that in this

1 case NorthWestern is, in fact, a public utility.  
 2 COMMISSIONER HANSON: Thank you.  
 3 If I may address that, as I stated earlier, I  
 4 believe NorthWestern Energy is a utility. I have no --  
 5 as a matter of fact, I refer to the same subsections that  
 6 you referred to in your discussion.  
 7 However, they also have the right to close down  
 8 on December 31 of this year and walk away. And that  
 9 provides that in my estimation that Northern becomes a  
 10 utility because they have the ability at that point,  
 11 whether they serve or don't serve.  
 12 So on December 31, 2017, when NorthWestern turns  
 13 off gas with our permission, then we have, in essence,  
 14 allowed Northern, if we don't treat Northern as a public  
 15 utility, to shut off the gas to all of these farm taps.  
 16 And I know that will be litigated, but I don't want that  
 17 as a crutch for us.  
 18 Your motion's interesting because it states that  
 19 NorthWestern -- it's a substitute motion. It states that  
 20 NorthWestern Corporation is a utility, which I don't have  
 21 any problem with. You did not state in your motion that  
 22 Northern is not a public utility, which was my motion,  
 23 which I would then render again if -- and I assume your  
 24 motion will pass. Then we'll deal with my motion all  
 25 over again.

1 COMMISSIONER NELSON: And that's fair.  
 2 COMMISSIONER HANSON: Commissioner Fiegen, did  
 3 you have anything you wish to add?  
 4 COMMISSIONER FIEGEN: No.  
 5 COMMISSIONER HANSON: Thank you.  
 6 Commissioner Nelson, did you have anything  
 7 further?  
 8 COMMISSIONER NELSON: I don't think so.  
 9 COMMISSIONER HANSON: Thank you.  
 10 Then the question being on Commissioner Nelson's  
 11 substitute motion stating that NorthWestern Corporation  
 12 doing business as NorthWestern Energy is a public  
 13 utility, and the vote is those in favor vote aye; those  
 14 opposed, nay.  
 15 Commissioner Nelson.  
 16 COMMISSIONER NELSON: Aye.  
 17 COMMISSIONER HANSON: Commissioner Fiegen.  
 18 COMMISSIONER FIEGEN: Fiegen votes aye.  
 19 COMMISSIONER HANSON: Hanson votes aye. The  
 20 motion carries.  
 21 I move at this time in NG16-014 that the  
 22 Commission find that Northern Natural Gas has made itself  
 23 a -- by its actions made itself a public utility in the  
 24 State of South Dakota for the providing of natural gas to  
 25 the farm tap customers.

1 Discussion on that motion.  
 2 I won't go over the arguments that I went over  
 3 previously. I just believe that it's imperative for us  
 4 to protect the farm tap customers. I feel like we're  
 5 abandoning them if we don't provide that Northern is a  
 6 natural gas purveyor in South Dakota by their actions, by  
 7 their contractual relationships, and if this needs to go  
 8 to court to be decided, then let the court decide that,  
 9 but let's not have us abandon this and leave the farm tap  
 10 customers without that protection.  
 11 Any further discussion on the motion?  
 12 COMMISSIONER NELSON: Can we take a five-minute  
 13 recess?  
 14 COMMISSIONER HANSON: There's a request for a  
 15 five-minute recess. And that's fine.  
 16 COMMISSIONER NELSON: Thank you.  
 17 (A short recess is taken)  
 18 COMMISSIONER HANSON: I'm going to reconvene the  
 19 meeting, and Commissioner Nelson has asked to ask some  
 20 questions of some other parties.  
 21 Commissioner Nelson, you have the floor.  
 22 COMMISSIONER NELSON: Thank you.  
 23 I'd like to ask a singular question, and I'd  
 24 like to ask all three parties -- and, MDU, you can bounce  
 25 out of this. The three active parties to answer this

1 question if you can. And I'll start with Northern.  
 2 You've heard Commissioner Hanson's motion.  
 3 You've heard me talk about my hesitancy because I think  
 4 we're trumped by federal law. And I'd like to know, is  
 5 there a specific federal law or FERC order that clearly  
 6 removes our jurisdiction from being able to find Northern  
 7 as a public utility?  
 8 And, Mr. Porter, I'll let you take the first  
 9 shot at it.  
 10 MR. PORTER: Thank you, Chairman.  
 11 Yeah. I would say it's the Natural Gas Act,  
 12 1938 Act, that made -- put Federal Power Commission and  
 13 the Federal Energy Regulatory Commission as the --  
 14 First off, can you hear me okay?  
 15 COMMISSIONER NELSON: Yes.  
 16 MR. PORTER: Okay. The Federal Energy  
 17 Regulatory Commission, under the Natural Gas Act, has  
 18 exclusive jurisdiction of interstate natural gas sales,  
 19 transmission. And so anything that is transmitted or  
 20 sold in interstate commerce is subject to the Federal  
 21 Energy Regulatory Commission's exclusive jurisdiction.  
 22 So I would say that that is the law that --  
 23 there's a long series of cases that support interstate  
 24 pipelines which are natural gas companies under the  
 25 Natural Gas Act -- defined as natural gas companies under

1 the Natural Gas Act, are under exclusive jurisdiction of  
 2 the Federal Energy Regulatory Commission in regard to the  
 3 interstate transmission of natural gas.  
 4 COMMISSIONER NELSON: Thank you. I appreciate  
 5 that.  
 6 I'll go to NorthWestern. Same question.  
 7 MR. OLSON: Thank you. Tim Olson, senior  
 8 corporate counsel and corporate secretary for  
 9 NorthWestern.  
 10 I wouldn't disagree with Mr. Porter, but I would  
 11 add that I believe it is a choice of the structure that  
 12 they have chosen. And I will take NorthWestern, for  
 13 example.  
 14 In Nebraska and Montana we have transmission  
 15 pipelines. We also are a local distribution company.  
 16 And so it is an option in a way that a company has  
 17 structured itself. It is not a prohibition.  
 18 COMMISSIONER NELSON: Thank you.  
 19 And Staff.  
 20 MS. EDWARDS: Thank you. I would have to agree  
 21 with both parties that Order 636 would preclude them from  
 22 being both interstate transmission and a local  
 23 distribution company under the same entity.  
 24 I know that case was litigated in -- or that  
 25 order was litigated in 1996, but I don't have that case

1 with me so I can't look it up and see what the decision  
 2 was off the top of my head. But I do know that other  
 3 companies have structured themselves to make it work.  
 4 NorthWestern.  
 5 COMMISSIONER NELSON: Okay. Thank you.  
 6 That's all the questions that I've got.  
 7 Mr. Chairman, if I might continue.  
 8 COMMISSIONER HANSON: Please.  
 9 COMMISSIONER NELSON: So I was curious about the  
 10 federal law question, but at the end of the day it comes  
 11 back to our state law. And I've spent -- and I  
 12 appreciate the opportunity for recess. I spent a little  
 13 bit more time looking at our state law.  
 14 And you all heard me spend a lot of time  
 15 stepping through the definition of public utility. And a  
 16 part of that definition talks about providing gas  
 17 service. A public utility is providing gas service.  
 18 So we look at the definition of gas service in  
 19 Sub 8, and it talks about by an intrastate natural gas  
 20 pipeline. And we move down to Sub 9A, and we've got a  
 21 definition of intrastate natural gas pipeline. And I  
 22 don't think Northern meets the definition of intrastate  
 23 natural gas pipeline.  
 24 And so, Mr. Chairman, while I appreciate your  
 25 argument and I appreciate your desire to do whatever we

1 can to help the folks out there, legally I don't think we  
 2 can do that as it relates to Northern in this setting.  
 3 COMMISSIONER HANSON: Thank you, Commissioner  
 4 Nelson. I appreciate the question you asked of the three  
 5 parties. I'd bring everyone's attention to the response  
 6 by Mr. Porter.  
 7 Mr. Porter, in essence -- well, he flat out said  
 8 and reiterated that the Feds have exclusive authority of  
 9 interstate transmission of natural gas. And we are not  
 10 talking about interstate transmission of natural gas. We  
 11 are talking about the distribution of natural gas in a  
 12 line to a farm tap that they had -- that they required to  
 13 be constructed so that they could provide to a consumer  
 14 at what they call rates and upon terms as may be  
 15 established by them or their vendee from time to time.  
 16 So when they talk about and he reiterated  
 17 exclusive control of interstate transmission, if Northern  
 18 is acting as a public utility in South Dakota by having a  
 19 distribution line to a farm tap that they required to be  
 20 constructed, then they have, in essence, made themselves  
 21 a public utility in South Dakota.  
 22 Rightly or wrongly, whether they should have or  
 23 should not have, they did that. And if Northern did not  
 24 believe they had a responsibility to provide gas, then  
 25 they would not have gone through the process even one

1 time to provide gas to the consumers.  
 2 However, they went through it several times in  
 3 the contractual relationships that they made and they  
 4 went through the process of making certain that farm taps  
 5 were constructed so that those folks would receive the  
 6 gas and they entered into a contractual relationship with  
 7 those farm tap customers to assure those farm tap  
 8 customers that they would be provided gas by Northern  
 9 Natural.  
 10 So I think by his words alone he has shown --  
 11 and by the actions of Northern over an extended period of  
 12 time, a protracted period of time, they have shown that  
 13 they are, in fact, a public utility in South Dakota.  
 14 So I don't think -- well, any further  
 15 discussion?  
 16 Commissioner Fiegen?  
 17 COMMISSIONER FIEGEN: No. It's very -- you  
 18 know, this is a very hard decision because we want to  
 19 make sure we protect our farm taps. And, unfortunately,  
 20 I believe a lot of their issues will be in Circuit Court.  
 21 Northern Natural Gas has always looked at  
 22 vendees from people -- and now most recently just the  
 23 last couple of years NorthWestern Public Service. But I  
 24 want to vote that Northern Natural Gas is a public  
 25 utility, but I just can't get there today.

1 Thank you.  
 2 COMMISSIONER HANSON: Thank you very much.  
 3 Any further discussion?  
 4 On the question -- does anyone need to have the  
 5 question repeated? I don't think so.  
 6 Commissioner Nelson.  
 7 COMMISSIONER NELSON: Nay.  
 8 COMMISSIONER HANSON: Commissioner Fiegen.  
 9 COMMISSIONER FIEGEN: Fiegen votes nay.  
 10 COMMISSIONER HANSON: Hanson votes aye. The  
 11 motion is lost.  
 12 Is there any further business on this docket to  
 13 come before us at this time?  
 14 COMMISSIONER NELSON: Yes. Question number  
 15 three.  
 16 COMMISSIONER HANSON: Commissioner Nelson, are  
 17 you going to make a motion?  
 18 COMMISSIONER NELSON: I am.  
 19 As relates to NG16-014, the third question,  
 20 which is are farm taps in whole or in part subject to  
 21 state jurisdiction for the purposes of pipeline safety  
 22 pursuant to SDCL Chapter 49-34B, I move that we find that  
 23 they are not subject to state jurisdiction.  
 24 COMMISSIONER HANSON: Discussion on the motion.  
 25 COMMISSIONER NELSON: We had during the hearing

1 what I thought was a fascinating discussion, an  
 2 illumination to me of the hardware that's involved in a  
 3 farm tap and talking about where that demarcation line is  
 4 and, more importantly, who owns what pieces of the  
 5 puzzle.  
 6 And it became very clear to me that Northern  
 7 owns the pieces of the puzzle up to the three-way valve,  
 8 and the landowner owns the rest of it. It also became  
 9 clear in that hearing that Northern is -- for their  
 10 pipeline safety is regulated by PHMSA, and so that's not  
 11 our deal.  
 12 But perhaps more importantly is the portion of  
 13 the line after the three-way valve and after that is  
 14 owned by the landowner. I find nothing in our state law  
 15 that gives us the authority to go out there and be  
 16 inspecting private property, private lines. If the  
 17 legislature had intended that, they would have said it.  
 18 Similarly, I don't believe that we go out and  
 19 inspect master metering on natural gas situations where  
 20 those are private lines on private property. And so  
 21 while I certainly don't minimize the importance of making  
 22 sure that those lines are safe, I think it's also  
 23 important that we understand clearly how far the  
 24 legislature has intended state jurisdiction to go. And I  
 25 don't believe it goes past the three-way valve.

1 And so that obviously begs the question, if  
 2 there are issues beyond that three-way valve in the  
 3 customer owned line, how do those gets resolved? And  
 4 that's the customer's responsibility.  
 5 Just like my propane tank. If I've got a  
 6 problem with my propane line, it's not somebody else's  
 7 job to fix it. It's my job to either find a contractor  
 8 or somebody else to fix it. Same with these particular  
 9 lines.  
 10 COMMISSIONER HANSON: Thank you.  
 11 Any further discussion on the motion?  
 12 On the motion, Commissioner Nelson.  
 13 COMMISSIONER NELSON: Aye.  
 14 COMMISSIONER HANSON: Commissioner Fiegen.  
 15 COMMISSIONER FIEGEN: Fiegen votes aye.  
 16 COMMISSIONER HANSON: Hanson votes aye. Motion  
 17 carries.  
 18 Any further business on NG16-014?  
 19 COMMISSIONER NELSON: Might I make just a  
 20 statement?  
 21 COMMISSIONER HANSON: Get it off your chest?  
 22 Sure.  
 23 COMMISSIONER NELSON: And I make this statement  
 24 not for my fellow Commissioners or staff or anybody here,  
 25 but this is basically a statement to the 195 folks that

1 are affected by this.  
 2 We've made the determinations today that we were  
 3 asked by Staff to make. Whether or not any of our  
 4 determinations end up being litigated, time will tell,  
 5 and we will deal with that if, in fact, they are.  
 6 But, more importantly, as I have studied the  
 7 easement that you all and your forefathers made to grant  
 8 pipeline -- the opportunity to come across this state, I  
 9 am absolutely convinced that Northern has a  
 10 responsibility to find a vendee to continue providing  
 11 this service at the end of 2017. I think that is  
 12 absolutely guaranteed in those easements.  
 13 The unfortunate part of that is this Public  
 14 Utilities Commission does not have the authority to  
 15 enforce that. It's outside of our jurisdiction. And I  
 16 believe probably unless Northern steps up to the plate  
 17 and does what is the right thing, your only option is to  
 18 go through Circuit Court to enforce the rights that I  
 19 believe that you have under your easement.  
 20 And so, with that, I just wanted to make that  
 21 very, very clear to the 195 folks out there, that that, I  
 22 believe, is going to be your avenue to continue receiving  
 23 gas service.  
 24 Thank you, Mr. Chairman.  
 25 COMMISSIONER HANSON: You're welcome.

1 Commissioner Fiegen, did you have anything to  
2 add?

3 COMMISSIONER FIEGEN: No, Mr. Chairman.  
4 (The proceedings are concluded at 2:33 p.m.)  
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1 STATE OF SOUTH DAKOTA)  
2 :SS CERTIFICATE  
3 COUNTY OF SULLY )  
4

5 I, CHERI MCCOMSEY WITTLER, a Registered  
6 Professional Reporter, Certified Realtime Reporter and  
7 Notary Public in and for the State of South Dakota:  
8 DO HEREBY CERTIFY that as the duly-appointed  
9 shorthand reporter, I took in shorthand the proceedings  
10 had in the above-entitled matter on the 17th day of  
11 January, 2017, and that the attached is a true and  
12 correct transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 18th day  
14 of January, 2017.  
15  
16  
17

18 \_\_\_\_\_  
19 Cheri McComsey Wittler,  
20 Notary Public and  
21 Registered Professional Reporter  
22 Certified Realtime Reporter  
23  
24  
25



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

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

NG16-014


**MOTION FOR JUDICIAL NOTICE**

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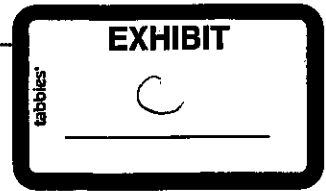
Pursuant SDCL 1-29-19 and 19-19-203, Intervenor Northern Natural Gas Company ("Northern"), through its attorneys, moves that the Public Utilities Commission of the State of South Dakota's ("PUC") take judicial notice of the documents attached to this motion as Exhibits C, D, and E, which were all filed in the following cited dockets before the Minnesota Public Utilities Commission and the Iowa Utilities Board:

1. Order Opening Investigation and Requesting Comments, Docket No. G-999/CI-99-1365, 1999 WL 33595203 (Minn. P.U.C. 1999), a copy of which is attached as Exhibit C;
2. Order Accepting Farm-Tap Safety Inspection Programs and Closing, Docket No. G-999/CI-999-1365, G-007/M-99-641, 2000 WL 668943 (Minn. P.U.C. 2000), a copy of which is attached as Exhibit D.
3. Request for Approval of Tariffs that Establish Minimum Safety Standards for Farm Taps As a Condition of Service and Creation of a Mandatory Testing Program; Utility Replacement and Ownership of Customer-Owned Natural Gas Service Lines; Authorization for Recovery of Replacement Capital Costs; and Request for an Accounting Order to Defer Testing Costs until the Company's Next Rate Case; Iowa Utilities Board, Docket No. SPU-2015-0039, a copy of which is attached Exhibit E.

Dated: February 17, 2017

A handwritten signature in black ink, appearing to read "Tom Welk" followed by a large circular flourish, positioned above a horizontal line.

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1999 WL 33595203 (Minn.P.U.C.)  
Slip Copy

In the Matter of an Investigation into Safety and Inspection Programs for Customer-Owned Natural Gas Lines

Docket No. G-999/CI-99-1365

Minnesota Public Utilities Commission

October 6, 1999

Before: Garvey, Jacobs, Johnson, Koppendrayner, and Scott, Commissioners

BY THE COMMISSION:

**ORDER OPENING INVESTIGATION AND REQUESTING COMMENTS**

**PROCEDURAL HISTORY**

\*1 On September 23, 1999 the Commission received a report from an informal inter-agency work group on farm tap safety issues. "Farm taps" are privately owned natural gas lines running from interstate pipelines to individual homes and businesses. The work group included staff members from the Commission, the Department of Commerce (formerly the Department of Public Service), and the Office of Pipeline Safety, a division of the Department of Public Safety.

The report summarized recent consumer farm tap complaints and set forth the findings of a statewide survey on farm tap issues conducted by the Minnesota Office of Pipeline Safety. It also presented that Office's recommendations for improving farm-tap safety, most of which would impose new duties on Minnesota's natural gas utilities.

**FINDINGS AND CONCLUSIONS**

1. Historical Background

"Farm taps" are customer-owned natural gas distribution lines running from the interstate pipeline through the customer's property to the customer's home or business. Most of these lines were constructed at the same time as the major interstate pipeline, some 40-60 years ago. Northern Natural Gas Company, which owned the pipeline, allowed rural landowners to tap in to it, in return for easements allowing Northern to run the main pipeline below their land.

Over time, as land ownership changed, some farm tap lines were forgotten, and some fell into disrepair. Few, if any, were maintained as well as the distribution lines owned by the natural gas distribution companies.

Concerns about farm tap safety led Peoples Natural Gas Company, the public utility serving most of Minnesota's farm tap customers, to file a tariff to clarify its farm tap responsibilities. The final tariff, approved by the Commission in 1993, required the Company to provide consumer education on farm tap safety, to inspect all farm tap lines in its service area at regular intervals, and to offer financing to farm tap customers whose lines the Company repaired.

2. Recent Developments

In November 1998 an informal inter-agency work group came together to pool their expertise to address farm tap safety issues, which subsequently included several consumer complaints about farm tap service. The agencies represented were the Commission, the Department of Commerce (formerly the Department of Public Service), and the Office of Pipeline

Safety. The efforts of the work group resolved the consumer complaints and resulted in the Regulatory Staff Briefing Paper discussed above, titled "Farm Tap Line Safety Inspection Programs," dated July 29, 1999.

In May of 1999, Northern Minnesota Utilities, the utility with the second-largest number of farm tap customers (approximately 55), filed a proposal to adopt a farm tap safety and inspection program similar to Peoples'. At its September 23, 1999 meeting, the Commission decided to defer action on the company's filing until it had decided whether to require such programs from all natural gas public utilities serving farm tap customers.

\*2 3. Investigation Opened

The Office of Pipeline Safety has urged the Commission to expand the farm tap safety program that Peoples Natural Gas Company adopted in 1993 and to require all Minnesota utilities serving farm tap customers to adopt similar programs. The Commission finds that the public interest requires it to open an investigation into farm tap safety issues under Minn. Stat. § 216B.14. All natural gas public utilities will be parties to this investigation.

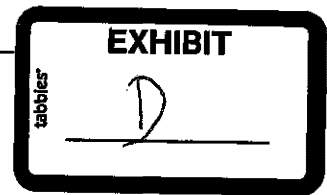
The Commission invites comments on the Regulatory Staff Briefing Paper, which will be served with this Order, and specifically requests comments on the costs of implementing the individual recommendations of the Office of Pipeline Safety. The Commission delegates to the Executive Secretary the authority to identify other issues for comment and to set comment periods.

The Commission will so order.

**ORDER**

1. The Commission hereby initiates an investigation under Minn. Stat. § 216B.14 to determine whether it should require all Minnesota natural gas public utilities serving farm tap customers to develop farm tap safety, inspection, and consumer education programs .
2. All Minnesota natural gas public utilities are parties to this proceeding.
3. The Commission requests comments on the Regulatory Staff Briefing Paper on farm tap line safety inspection programs, which is served with this Order, including comments on the costs of implementing the individual recommendations of the Office of Pipeline Safety.
4. The Commission delegates to the Executive Secretary the authority to identify other issues for comment and to set comment periods.
5. This Order shall become effective immediately.





2000 WL 668943 (Minn.P.U.C.)  
Slip Copy

Re Safety and Inspection Programs for Customer-Owned Natural Gas Lines

Docket No. G-999/CI-99-1365

Docket No. G-007/M-99-641

Minnesota Public Utilities Commission

March 16, 2000

Before Scott, chairman and Garvey, Jacobs, Johnson and Koppendray, commissioners.

BY THE COMMISSION:

***ORDER ACCEPTING FARM-TAP SAFETY INSPECTION  
PROGRAMS AND CLOSING DOCKET NO. G-007/M-99-641***

***PROCEDURAL HISTORY***

In an order issued by the Commission on February 17, 1998,<sup>1</sup> the Commission set forth certain requirements for Peoples' farm-tap safety inspection program including requiring Peoples to continue its farm tap inspection program as previously ordered by the Commission but allowing the routine inspection interval to be five years, requiring information brochures to new and continuing farm-tap customers, requiring annual reports on the farm-tap inspection program as well as a five year report and directing Peoples to defer costs of the farm-tap inspection program for review in its next general rate case.

<sup>1</sup> In the Matter of Peoples Natural Gas Company's Request to Establish a Tariff for Repairing and Replacing Farm Tap Lines, docket number G-011/M-91-989.

On May 4, 1999, Northern Minnesota Utilities (NMU), a division of Utilicorp United, Inc. (Utilicorp), filed an application to implement a farm-tap safety inspection program. This was assigned docket number G-007/M-99-641.

On July 29, 1999, a Regulatory Staff Briefing paper, on the subject of Farm-Tap Line Safety Inspection Programs, was prepared by staff members from the Commission, the Department of Commerce (formerly the Department of Public Service), and the Minnesota Office of Pipeline Safety, a division of the Department of Public Safety. The report summarized recent consumer farm tap complaints and set forth the findings of a statewide survey on farm tap issues conducted by the Minnesota Office of Pipeline Safety (MnOPS). It also presented that Office's recommendations for improving farm-tap safety, most of which would impose new duties on Minnesota's natural gas utilities.

On October 6, 1999, in docket number G-999/CI-99-1365, the Commission issued an ORDER OPENING INVESTIGATION AND REQUESTING COMMENTS. This order initiated an investigation into farm-tap safety and inspection programs and solicited comments from all natural gas public utilities on the Regulatory Staff Briefing Paper of July 29, 1999.

On November 23, 1999 Northern States Power Company (NSP) submitted initial comments.

On November 24, 1999 reply comments were submitted by Great Plains Natural Gas Co.(GPNG), Reliant Energy/Minnegasco (REM), and jointly by the Minnesota Department of Commerce (the Department) and the Minnesota Office of Pipeline Safety (MnOPS).

On November 24, 1999 Joint Comments were submitted by the MnOPS, the Department, Peoples Natural Gas Company (Peoples) and Northern Minnesota Utilities (NMU).

On December 7, 1999 reply comments to NSP were submitted by the Department.

On December 7, 1999 NSP submitted reply comments.

On February 10, 2000 the matter was heard by the Commission.

## ***FINDINGS AND CONCLUSIONS***

### ***Historical Background***

Farm-taps, of which there are approximately 2400 in Minnesota, are customer owned natural gas lines running from the interstate pipeline through the customer's property to the customer's home or business. Most of these lines were constructed at the same time as the major interstate pipeline, 40 to 60 years ago. Northern Natural Gas Company, which owned the pipeline, allowed rural landowners to tap into the pipeline in return for easements allowing Northern to run the main pipeline below their land. The landowners agreed to install the piping required from the pipeline tap to the point of use. Landowners had discretion as to the piping materials and installation techniques used and numerous farm taps were improperly installed. In most cases, facility maps were not recorded showing the location of farm-tap piping. Over time, land ownership changed, some farm tap lines were forgotten and some fell into disrepair. Few, if any, were maintained as well as the distribution lines owned by the natural gas distribution companies.

In the early 1990's concerns about farm-tap safety led Peoples, the public utility serving most of Minnesota's farm-tap customers, to file a tariff to clarify its farm tap responsibilities. On May 25, 1993, the Commission approved a final tariff which required Peoples to provide consumer education on farm-tap safety, to inspect all farm lines in its service area at regular intervals and to offer financing to farm-tap customers whose lines were repaired by Peoples. Annual reports filed with the Commission by Peoples for the calendar years 1994, 1995 and 1996 indicated that for that three year period 2,316 farm-taps had been inspected, with gas leaks being found on 18 percent of the taps.

In a February 17, 1998 ORDER PERMITTING COMPANY TO CONTINUE DEFERRED ACCOUNTING, in docket number G-011/M-91-989, the Commission set forth standards for Peoples farm-tap safety inspection program. The Commission authorized or required Peoples to:

- continue the farm-tap inspection program required by previous Commission orders in this docket;
- change the routine farm-tap inspection period from three to five years;
- continue to send farm-tap safety and informational brochures to new farm tap customers before they take service and to all existing farm-tap customers annually;
- file for review, a revised version of its farm-tap safety and information brochure;
- continue to file annual reports on its farm-tap safety program on or before April 1, of each year;
- within 90 days of the end of each five-year inspection cycle and in each general rate case, file with the Commission, the Department and MNOPS a five year report including cumulative results of the inspection program and any recommendations for future improvements; and

- continue deferring the costs of the farm-tap inspection program for review in its next general rate case.

A survey by the MnOPS indicated that there were approximately 110 other farm-tap customers in Minnesota being served by NMU, Minnegasco, Great Plains Energy Co. and the City of Hibbing.

In its October 6, 1999 ORDER OPENING INVESTIGATION AND REQUESTING COMMENTS the Commission initiated an investigation under Minn. Stat. § 216B.14 to determine whether it should require all Minnesota natural gas public utilities serving farm-tap customers to develop farm-tap safety, inspection and consumer education programs. The results of that investigation and the resulting Commission actions are addressed herein.

## *II. Position of the Parties*

### *A. MnOPS Comments Regarding Peoples' Program*

The MnOPS set forth 15 recommended guidelines for making farm-tap safety inspections. People's current farm-tap inspection program fell short of the MnOPS guidelines by limiting the program to facilities within 100 yards of the landowner's service, not requiring the installation of cathodic protection equipment that would allow annual testing for corrosion, not mapping any part of the farm-tap lines either on or off the public ROW, and not providing pertinent information to GSOC.

### *B. Utilicorp/Peoples/NMU*

Cost estimates by Peoples to expand their inspection program to include a safety evaluation and leak survey of all lines located in fields or other areas 100 yards beyond farmsteads, install cathodic protection at all farm-tap locations and develop maps for all fuel lines for location information to GSOC would be approximately \$1.5 million.

On May 4, 1999, NMU filed its own farm-tap safety inspection program which was identical to the program approved by the Commission for Peoples in the early 1990's. This was assigned docket number G007/M-99-641.

### *C. Joint Agreement Negotiated between MnOPS, the Department, and Utilicorp*

In an agreement between MnOPS, the Department and Utilicorp, filed with the Commission on November 24, 1999, Utilicorp, on behalf of both Peoples and NMU, agreed to locate and map all farm-tap lines located in the public Right-of-Way (ROW), provide location information to Gopher State One Call (GSOC), and be available to locate the lines as needed on the public ROW. This mapping will be completed in three years. Utilicorp also agreed to provide all farm-tap owners additional information about the importance of cathodic protection and to continue its existing inspection program of odorant testing on 10 percent of the farm lines inspected each year. It was agreed that costs for these additional services could be deferred until the next rate case for each of these Companies.

### *D. Joint Agreement Negotiated between MnOPS, the Department and Great Plains Natural Gas (GPNG)*

GPNG's farm-tap safety inspection program treats their 33 customers with farm-taps in the same manner as their customers served by their regulated natural gas distribution system. Their program meets the safety inspection criteria recommended by MnOPS. GPNG agreed to file an annual farm-tap safety report indicating continuing compliance and reporting any significant items.

### *E. Joint Agreement Negotiated between MnOPS, the Department and Reliant Energy/Minnegasco (REM)*

REM's current farm-tap safety inspection program complies with 12 out of the 15 safety recommendations of MnOPS. REM has agreed to upgrade their mapping records for incorporation into GSOC and to incorporate all of their farm-taps into their annual equipment maintenance plan. REM further agreed to file an annual compliance report.

#### *F. Comments of Northern States Power (NSP)*

NSP stated that it has no customer-owned farm-tap facilities, in part because it replaced preexisting customer-owned lines with NSP-owned service lines. NSP supports the voluntary farm-tap inspection programs offered by the local gas distribution companies (LDCs). NSP's concern is that a decision by the Commission to require an LDC to provide inspection and maintenance on facilities that it does not own, with no fee to the beneficiary customers, could set a troubling precedent for other customer-owned gas systems, such as those in college, corporate, industrial or resort complexes.

NSP suggested actions the Commission could take to encourage existing farm-tap customers to take service over LDC-owned lines or to discourage construction of new farm-taps. These actions included allowing farm-tap customers to pay the higher cost of their non-standard facilities over time and/or through higher rates, encouraging LDCs to offer operation and maintenance services on customer-owned systems for a fee, and encouraging the Energy Issues Intervention Office of the Department to petition the Federal Energy Regulatory Commission (FERC) to establish strict criteria for the approval of new farm-taps.

#### *G. The Department*

The Department and the MnOPS support the adoption of the negotiated agreements between these agencies and the respective utilities.

#### *III. Commission Action*

The Commission finds that the negotiated agreements between the Department, MnOPS and Utilicorp expanding People's farm-tap safety inspection program to include:

- agreement to map on the public ROW;
- provide the public ROW mapping information and locating information to GSOC;
- provide all farm-tap customers information about the importance of cathodic protection;
- allow the costs of implementing these programs to be deferred to the Company's next rate case are reasonable and necessary expansions to the farm-tap safety program previously adopted by this Commission and will be approved.

For these same reasons, the adoption by NMU of the Peoples Farm-tap safety inspection program, including the additions set forth above, will be approved.

Similarly, the Commission notes that GPNG's existing safety program treats the Company's 33 farm-tap customers in the same manner as the remainder of their customers served by their regulated natural gas distribution system. The safety program meets all safety criteria recommended by the MnOPS. GPNG agreed to file an annual farm-tap safety report indicating continued compliance. The Commission will approve this program.

The farm-tap safety inspection plan of REM complied with 12 out of 15 safety recommendations of MnOPS and REM has agreed to upgrade their mapping for incorporation into GSOC and to incorporate all of their farm-taps into their annual equipment maintenance plan. REM has also agreed to file an annual compliance report verifying continued operation of its farm-tap safety inspection program. The Commission will approve this program.

The Commission has previously recognized that farm-tap customers, as owners of their farm-tap lines, should be held financially responsible for the repair and maintenance of these lines. The Commission continues to encourage local distribution companies to offer operating and maintenance services to farm-tap customers for a fee. Peoples and NMU already offer this service for a non-regulated fee. The Commission encourages local distribution companies to file rates and tariffs which properly reflect the costs to serve farm-tap customers, including any higher costs attributable to the operation of long and geographically isolated farm-tap services. The Commission further encourages working with FERC to establish a strict criteria for approval and construction of all new farm-taps.

**ORDER**

**1. The Commission approves the expansion of Peoples farm-tap inspection program, as agreed to by the Department, MnOPS and Utilicorp, to include: a) mapping on the public ROW, b) providing public ROW mapping information and locating information to GSOC, c) providing information to all farm-tap customers about the importance of cathodic protection, and d) allowing the costs of implementing these programs to be deferred until the Company's next rate case.**

**2. The Commission approves the adoption by NMU of the Peoples farm-tap program as agreed to by the Department, MnOPS and Utilicorp.**

**3. Docket No. G007/M-99-641, In the Matter of Northern Minnesota Utilities Application to Implement a Farm-Tap Safety Inspection Program, shall be closed.**

**4. The Commission approves the farm-tap safety inspection program of GPNG as agreed to by the Department, MnOPS and GPNG.**

**5. The Commission approves the farm-tap safety inspection program of REM as agreed to by the Department, MnOPS and REM.**

**6. The Commission encourages the LDCs to continue to offer operating and maintenance services to farm-tap customers for a fee and file rates and tariffs which appropriately reflect the costs to serve farm-tap customers, including any higher costs attributable to operating long and isolated farm-tap services. The Commission encourages working with PERC to establish strict criteria for approval and construction of all new farm-taps.**

**7. This Order shall become effective immediately.**

This document can be made available in alternative formats (*i.e.*, large print or audio tape) by calling (651) 297-4596 (voice), (651) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).



STATE OF IOWA  
DEPARTMENT OF COMMERCE  
BEFORE THE IOWA UTILITIES BOARD

IN RE:

REQUEST FOR APPROVAL OF TARIFFS THAT ESTABLISH MINIMUM SAFETY STANDARDS FOR FARM TAPS AS A CONDITION OF SERVICE AND CREATION OF A MANDATORY TESTING PROGRAM; UTILITY REPLACEMENT AND OWNERSHIP OF CUSTOMER-OWNED NATURAL GAS SERVICE LINES; AUTHORIZATION FOR RECOVERY OF REPLACEMENT CAPITAL COSTS; AND REQUEST FOR AN ACCOUNTING ORDER TO DEFER TESTING COSTS UNTIL THE COMPANY'S NEXT GENERAL RATE CASE

DOCKET NO. \_\_\_\_\_

**REQUEST FOR APPROVAL OF TARIFF AND OTHER RELIEF**

**I. Background**

A "farm tap" is an outlet off an interstate pipeline, consisting of a riser and valve. The interstate pipeline also normally owns above ground assets above the riser, including several pressure regulators to reduce high pipeline pressure to a lower distribution pressure, and a measurement meter. The end use customer, often the landowner, normally owns all assets downstream of the pipeline tap assets, including a device to inject odorant (mercaptan) into the natural gas stream, and the fuel line to the premise or facilities where another regulator reduces the pressure and the natural gas is consumed.



Farm taps were often granted by interstate pipelines to land owners in return for an easement prior to construction of the pipeline.

The uses of natural gas flowing through farm taps vary, including space heating of homes and other buildings, grain drying, fuel for irrigation engines, heating of poultry and farm animal enclosures, and other purposes.

Black Hills Energy (hereinafter "BHE," "Black Hills," or "the Company") normally owns no assets at the site of farm taps, but does provide services to Northern Natural Gas pursuant to a 1987 farm tap services agreement. The terms of that agreement are summarized below.

In addition to the service obligations in the 1987 agreement, BHE's responsibilities related to farm tap service vary by state, depending on the safety standards and regulatory rules. These responsibilities are described below.

## **II. Origin of Farm Taps**

Peoples Natural Gas, a legacy or predecessor operator of BHE's operations in Iowa, was at one time a division of InterNorth, responsible for distribution services from Texas to Minnesota. Northern Natural Gas was InterNorth's interstate pipeline operator. The distribution and transmission functions of InterNorth were segregated by FERC Order 636. In 1987, Peoples Natural Gas and Northern Natural Gas executed a Farm Tap Services Agreement that moved the sales function for NNG's farm taps to PNG (and

subsequently to BHE). Although other utilities in Iowa serve a small number of farm taps, BHE serves the vast majority of farm taps in Iowa.

### **III. Farm Tap Services Agreement**

On April 1, 1987, Northern Natural Gas Company and Peoples Natural Gas Company ("PNG") executed an agreement which obligated PNG to provide the following services: (1) respond to farm tap gas leaks; (2) respond as a third party contractor to customer needs related to appliance purchase or service, fuel line or irrigation equipment, sales of materials and consultation on installation and repair of customer facilities; (3) service farm tap odorizers and check delivery pressure; (4) record meter readings, bill customer and collect accounts; (5) lock or read farm tap customer meters at NNG's request; (6) respond to customer requests for appliance relights; (7) total, report and account to NNG for total volumes delivered; (8) initiate requests for new farm tap sales facilities and revisions, and for terminations and removals; and (9) comply with all state regulations. The agreement terminates on May 31, 2017.

In 1987, PNG served 7,500 residential, small volume, irrigation and crop dryer farm tap customers and right-of-way grantor customers across the NNG system. BHE now serves approximately 1,558 farm tap customers in Iowa.

### **IV. Changes in Safety Standards Changed BHE's Service Requirements**

Safety standards have changed in Iowa since the NNG-PNG agreement was executed. In 2007, IUB Staff issued an Advisory on Farm Tap odorometer tests, concluding that

testing 10% of the taps annually did not meet the definition of “periodic” as was intended by PHMSA Sec. 192.625. In 2008, BHE management agreed:

- BHE would continue to perform odorometer tests on 10 percent of farm tap customers annually;
- BHE would use best efforts to perform, on 20 percent of farm tap customer fuel lines annually, a partial leak survey on the first 100 yards from any building or riser toward the tap;
- BHE would add two staff positions to perform this work;
- When conducting a partial leak survey at each farm tap, a “best effort” shall be made in obtaining an odorometer test, and literature concerning customer fuel line responsibilities and safety would be left with or for the customer;
- Whether a leak is found or not on the customer fuel line, the technician will leave a note describing the work that was completed along with what was found at the location and a suggested remedy;
- Each partial leak survey completed on a farm tap customer fuel line shall be recorded on an “Iowa Farm Tap Customer Fuel Line Partial Leak Survey” Form; and
- Odorometer test results shall be analyzed annually by local supervision, identifying any odorization trends of farm tap customer fuel lines.

This process change included customer appointments scheduled prior to the leak survey and odorometer tests to determine which buildings have natural gas; where lines

run; whether the customer knows the age, size or type of line; whether there have been any changes since the line was installed; and whether the customer has suspicions about the quality of their fuel line. The changes also resulted in additional documents being left with the customer, including an inspection report, fuel line safety information, and hazardous condition letter when appropriate. BHE agreed to summarize the results of these tests and problems corrected in an annual report to IUB Safety Staff. BHE has performed these tests since 2008. After seven years of testing, BHE management has concluded there are no available records on customer owned lines to establish the age of pipe or material, the type of material the fuel lines are made of, the location of or maps of customer owned fuel lines, the maximum allowable operating pressure of customer owned fuel lines, cathodic protection records, repair or damage records, maintenance records, or extension or changes to the fuel lines. In addition, BHE management estimates over 90 percent of the lines are not locatable for excavation safety due to lack of tracer wires, and almost all of current farm tap customers have very limited knowledge about these lines. BHE's odorometer testing has confirmed that odorization of gas is evident. BHE management believes leak surveys have value and can identify potential hazards, but Company technicians do not know where to survey when a line is not locatable. Most importantly, leaks have been found on pipe materials that did not meet codes or standards.



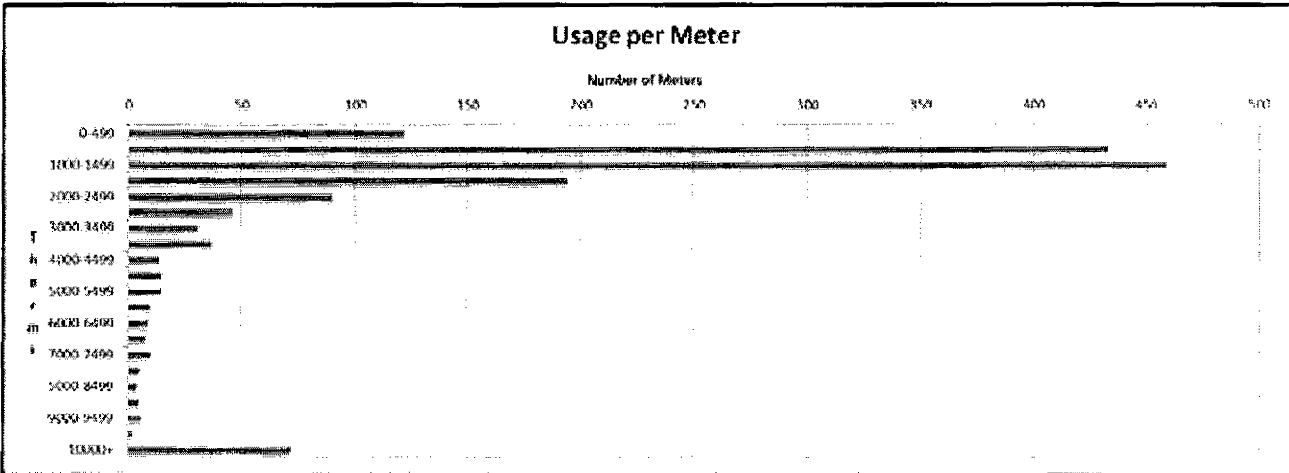
**V. Black Hills Iowa Farm Taps**

The table below shows the number of farm tap customers at year-end 2012-14 with associated annual natural gas usage and margin revenue:

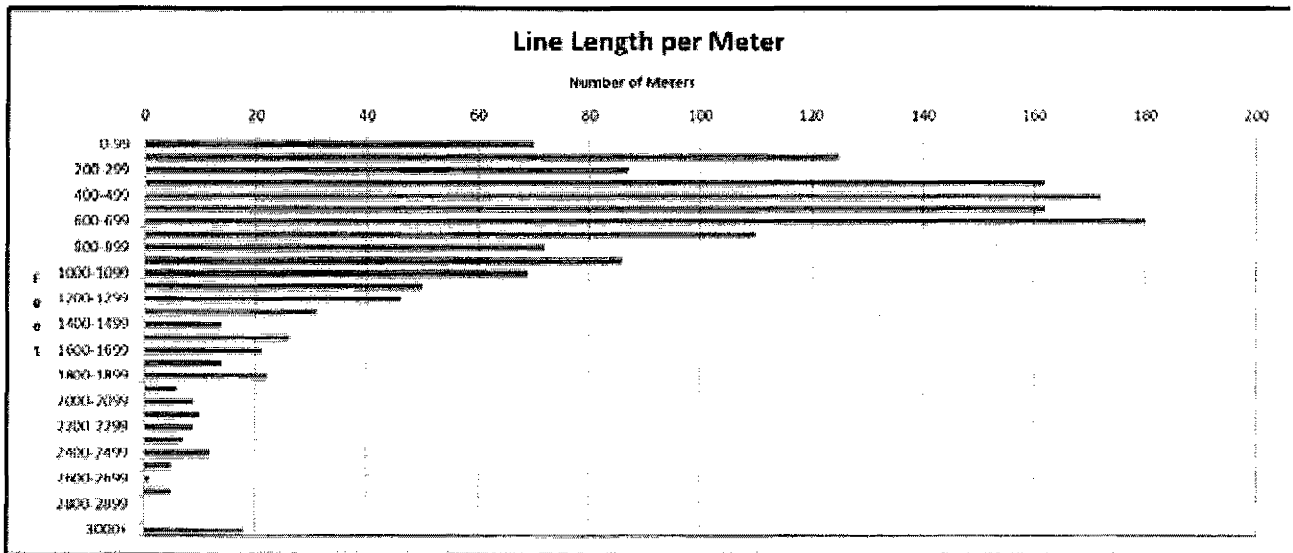
	2012	2013	2014
Year-end Customers	1,546	1,549	1,558
Volumes (Actual, Th)	5,002,579	7,159,054	6,526,595
Margin Revenue (\$000s)	\$718,079	\$867,614	\$871,698

All of these customers are sales customers; no farm tap customers receive transportation service. The annual usage for these customers varies from four (4) to over 600,000 Therms. Most of these customers use natural gas service for space heating, and some take natural gas for grain drying and other commercial uses.

The chart below shows the frequency distribution for customer usage per meter:



Customer owned fuel lines range in length from a few yards to over a mile. The chart below shows a frequency distribution for line lengths:



BHE's farm tap customers are spread across the state in locations that mirror the location of NNG's lines. Exhibit 1 provides a map of the NNG pipeline system in the states of Iowa, Nebraska and Kansas showing the location of BHE farm tap customers.

BHE's farm tap customers do not have the same conditions of service or rights and responsibilities as town plant customers. For example, Black Hills tariff Sheets 30-33 address conditions under which service can be refused or discontinued, including nonpayment of bills, dangerous conditions found on a customer's premises, misuse of service, reselling natural gas, noncompliance, fraud, tampering with Company property, etc. Since BHE does not own property at farm tap locations, the Company cannot

always gain access to inspect facilities or perform required safety testing<sup>1</sup>. The location and condition of customer owned fuel lines is usually unknown, creating a potential hazard for Black Hills employees, customers and the general public.

BHE's farm tap leak testing process differs from its town plant customers. BHE performs odorometer and leak survey testing on all farm taps at least every five years; town plant customers do not have this requirement. Despite the testing, the lack of tracer wires on most customer owned fuel lines makes it difficult to locate and inspect these lines, which are made of unknown materials, have no safety records have not, in most cases, met any current material code or standard.

Farm taps present unique challenges and are therefore often difficult to serve.

Examples of these challenges include rural locations that impact response times and lack of technical support, unknown fuel line location and line marking challenges, unknown fuel line construction materials and unknown safety risks, tap locations in road ditches or farm fields, and summer/winter access difficulties.

As part of this application, Black Hills seeks to treat farm tap customers the same as all other BHE utility customers.

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<sup>1</sup> Occasionally, farm tap customers refuse to allow BHE technicians to enter their property to perform required testing. BHE cannot currently cite a tariff or regulation that requires access or safety testing as a condition of service.

## **VI. Issues**

Black Hills management believes now is the time to address and resolve the following issues related to farm taps:

- Different safety standards exist for town plant and farm tap customers;
- Customer owned fuel lines often have unknown ages and condition, and cannot always be located with traditional tools due to lack of tracer wires;
- Iowa ONE CALL does not represent this type of underground infrastructure (no one is notified to locate this kind of line);
- Lack of known material location and construction standards creates risk for BHE employees, customers, third party excavators and the general public;
- The original right-of-way grantors who granted an easement to NNG many years ago have likely passed on, and land parcels have in some cases been subdivided, so customer owned fuel lines sometimes pass through property that is not owned by BHE's customer, creating access issues;
- Changes to Federal and State safety inspection standards have increased the work and cost to serve these customers;
- Black Hills Energy believes abandonment of farm taps and conversion to propane is not appropriate. Farm tap customers have contributed to rate base for decades through general service rates. The loss of these customers and lower sales volumes implies spreading remaining costs

over a smaller pool of customers, which would result in higher rates for remaining ratepayers in the next rate case<sup>2</sup>.

## **VII. Black Hills Proposals**

BHE has considered solutions to the issues described above, including a Minnesota line replacement program established in the early 1990s. BHE management believes it is critically important assure all customer owned fuel lines meet applicable safety standards. BHE proposes the following plan and new tariff sheets attached as Exhibit 2 in both redline and clean form:

- Section 1 of the proposed tariff establishes conditions of service that require all farm tap customer owned fuel lines must comply with state and federal safety standards, the Conditions for New Service - Rural and Agricultural Service to Right-of-Way Grantors found on Sheet 59, and a mandatory testing program to establish a maximum allowable operating pressure. BHE would not be authorized to serve farm tap customers unless these standards and conditions are met, and the lines pass inspection tests every five years.
- Section 2 mandates the safety testing that Black Hills currently performs on farm taps, as agreed to with IUB Staff in 2008.
- Section 3 authorizes a line replacement program for those fuel lines that do not pass the safety test mandated in Section 2.

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<sup>2</sup> Black Hills estimates the loss of approximately 1,558 Iowa farm tap customers would result in \$871,000 of lost margin, based on 2014 data. If this lost revenue was allocated over all General Service customers, this would equate to a \$0.48 per month increase for the class.



- Section 4 establishes both Company and Customer liability for Customer owned yard line or fuel line.

BHE has considered an optional line replacement program, where farm tap customers would have the option to hire approved third party contractors to replace the line. This approach is similar to the Minnesota replacement program authorized in the early 1990s, where landowners continue to own the fuel lines and the utility or other contractors may rebuild the lines. BHE is concerned that this approach merely prolongs the safety issues, so the same concerns noted above will exist in the future. BHE believes the better solution is for the Company to replace and own lines that fail MAOP tests. Because of public safety risks associated with this service arrangement, BHE will strongly consider discontinuing service to tap customers unless the Company can test and own the service lines and establish and maintain maintenance and construction records to better ensure public safety.

BHE estimates the annual cost to perform pressure tests on approximately 275 farm taps annually will be about \$140,000<sup>3</sup>. BHE proposes to hold these costs in a regulatory asset account until the company's next rate case, at which time it will request inclusion of the costs in the test year cost of service.

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<sup>3</sup> \$500.00 per inspection. The estimate includes the costs of two technicians and a vehicle for four hours – one hour to drive to the premise, two hours to perform tests, and one hour to return from the appointment.

BHE proposes and requests approval to include line replacement capital costs as an additional type of eligible investment under the current investment tracker rule. This approach would allow BHE to earn a return on and return of these capital investments until the next case, reducing regulatory lag on the investments. BHE estimates the cost of replacing all these lines is currently about \$12 million, assuming 1.2 million feet of serve line at a replacement cost of \$10 per lineal foot.

In the Company's next rate case, BHE proposes to include these investments in rate base and assign approximately one half of the associated revenue requirement to the general system, and the remaining costs would be assigned to the farm tap customers whose lines are replaced. BHE proposes to segregate farm tap customers in a separate class and allocate the capital costs of the line replacements as follows:

The plant related to the first 1000 feet of service line replaced would be allocated to all customer classes, except Super Large Volume, using the general plant allocation factor. Black Hills estimates the monthly customer impact on General Service customers will be about \$.03 for the first year of replacements, assuming \$1 million of replacement capital.

The remaining plant would be borne by the farm tap customers that have lines replaced, and their customer charges would be increased to reflect the length of service line replaced. Black Hills proposes to increase farm tap customer charges slightly for every 500' of service line replaced. For example, BHE estimates tap customers with a 1500' line would experience a modest \$.25 per month higher customer charge. Customers

with longer lines would have a higher customer charge, so the customers with longest service lines would contribute more to retain service.

BHE has attempted to balance interests with this proposal. Some of the replacement cost will be borne by the general system customers, and this is appropriate, since farm tap customers have contributed to statewide capital additions for many years. Farm tap customers will bear a portion of the costs if their line replacement is over 1000 feet in length. Black Hills also shares a portion of the costs until the next rate case, because the return allowed on investment tracker assets is less than the Company's weighted average cost of capital.

#### **VIII. Alternatives to the BHE Proposal**

BHE has considered numerous alternatives to the proposal, including terminating or extending the NNG contract, and a testing program with optional line replacements. Terminating the NNG agreement would reduce safety and rural response time challenges, reduce litigation risks and simplify rural staffing, but it would result in a loss of about \$871,000 in annual margin, accelerate the need for a rate case, and result in higher rates for all customers. Most importantly, this action would probably result in a loss of natural gas service for approximately 1,558 rural customers. BHE management believes this is not an acceptable outcome<sup>4</sup>. Extending the NNG farm tap services contract would allow BHE to continue to serve these customers, but it would not

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<sup>4</sup> Black Hills estimates the loss of approximately 1,558 Iowa farm tap customers would result in \$871,000 of lost margin, based on 2014 data. If this lost revenue was allocated over all General Service customers, this would equate to a \$0.48 per month increase for the class.

address the safety risks of customer owned lines or the increasing costs related to changing safety standards. BHE believes the most important issue here is improving safety of these lines, so other alternatives provide a superior solution. BHE has also considered the creation of farm tap inspection and safety standards with continued customer ownership of the service lines. This approach would reduce some safety and litigation risks, and the costs of line replacements would continue to be borne by the landowner. However, under this approach, BHE would still not know the condition of the line after replacement. After significant analysis, BHE has concluded the best solution is the proposal described herein.

#### **IX. NNG Farm Tap Abandonments**

Northern Natural Gas informed BHE in 2015 that it would abandon its "A Line" through Kansas, Nebraska and Iowa and upgrade its "B, C and D Lines." As a result of this capital improvement plan, 188 customers in three states (135 in Iowa, 41 in Nebraska and 10 in Kansas) were scheduled to lose farm taps, unless BHE could arrange to serve the customers off existing taps or BHE-owned facilities. In late October of 2015, NNG informed BHE that their capital replacement plan has been delayed and no abandonments are scheduled at this time.

#### **X. Conclusion**

BHE respectfully requests that the Board:

- Approve tariff to establish rights and responsibilities of farm tap customers;

- Establish a safety testing program;
- Establish a line replacement program for lines that do not meet safety standards;
- Authorize inclusion of the capital replacement investments as eligible investments in the Company's investment tracker mechanism;
- Issue an accounting order to allow recovery of testing costs in the Company's next rate case;
- Authorize inclusion of the capital investments in rate base in the Company's next rate case; and
- Issue any waivers from IUB rules the Board deems appropriate.

Dated this 24<sup>th</sup> day of November, 2015.

Respectfully submitted,

**Black Hills/Iowa Gas Utility Company, LLC  
d/b/a Black Hills Energy**

By /s/ Adam Buhrman

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

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

NG16-014

**CERTIFICATE OF SERVICE**

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I, Jason R. Sutton, do hereby certify that I am a member of the law firm of Boyce Law Firm, LLP, attorneys for Northern Natural Gas Company and that on the 17<sup>th</sup> day of February, 2017 a true and correct copy of the (1) Petition for Rehearing; (2) Motion for Judicial Notice; and this Certificate of Service was served via email to the following addresses listed:

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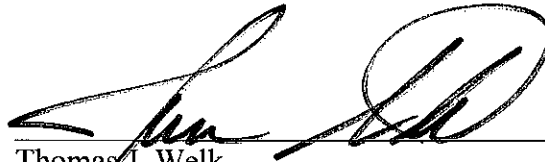
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