

KC/H7

DOCKET NO.

In the Matter of \_\_\_\_\_  
IN THE MATTER OF THE  
APPLICATION OF SOUTH DAKOTA  
INTRASTATE PIPELINE COMPANY TO  
RECOVER ADDITIONAL COSTS

Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
2/15 00	Filed and Docketed;
2/17 00	Weekly Filing;
3/1 00	Petition to Intervene of MDU;
3/20 00	Order granting intervention;
4/24 00	Order and Notice of Hearing;
11/14 00	Transcript of Hearing held 11/9/00;
11/23 00	Brief in Support of Petition;
12/15 00	MDU's Brief;
12/15 00	Commission Staff's Brief;
12/21 00	Reply Brief;
12/22 00	MDU's Reply Brief to Staff's Brief;
1/9 01	Find of Fact and Con of Law; Notice of Entry of Order;
1/9 01	Docket Closed;
1/24 01	Notice of Amendment of Transportation Tariff

RECEIVED

FEB 15 2000

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION )  
OF SOUTH DAKOTA INTRASTATE )  
PIPELINE COMPANY TO AMEND RATE ) PETITION  
SCHEDULE PURSUANT TO ITS AMENDED )  
AND RESTATED TRANSPORTATION )  
AGREEMENT. )

COMES NOW South Dakota Intrastate Pipeline Company, by and through its attorney of record James Robbennolt and petitions the Public Utilities Commission for permission to allow the Utility to increase its transportation fee to its sole customer, Montana-Dakota Utilities from \$2.34/dk to \$2.4067/dk pursuant to Paragraph 8.1 of the Transportation Agreement entered into between South Dakota Intrastate Pipeline Company and Montana Dakota Utilities Company on March 8, 1993. This Petition is also filed pursuant to Paragraph 8.1 of the tariff previously approved by this Commission in File #NG95-008.

Paragraph 8.1 of each of the documents previously cited states "it is agreed, however, that transporter may seek Commission approval of a change in rates, where such change is made necessary by any mandated changes in Federal or State taxes...."

At the time the present rate was established at \$2.34/dk and the tariff approved by the Commission, SDIP's real property taxes as assessed by the Department of Revenue were in the amount of \$216,000.00. Since that date the pipeline has been revalued for property tax purposes from \$11.5 million dollars to \$13.0 million dollars according to the valuations assessed by the State Department of Revenue resulting in an increase in the

**SDIP Petition-2**

real property tax to \$279,000.00. See Exhibit "A" attached hereto and made a part hereof by this reference. The increase in the State real property tax amounts to approximately \$63,000.00 per year when averaged out over the five-year remaining term of the Transportation Agreement.

Additionally, since the execution of the original Transportation Agreement the US Department of Transportation has levied a Federal Safety Inspection Tax which impacts SDIP in the amount of over \$12,000.00 per year. See Exhibit "B" attached hereto and made a part hereof by this reference. Also, the State of South Dakota has enacted a pipeline safety program which requires State inspections of the line which impacts SDIP in the approximate amount of \$200.00 per year.

If the Petition for Amendment is granted, the return on equity realized by SDIP still is less than the 14% return on equity which was approved by the Commission at its hearing on SDIP's Petition for Approval of Transportation Rates, Docket NG95-008, which hearing was held on November 6, 1995.

This Petition is also filed pursuant to SDCL §49-34A-25.

Petitioner respectfully requests that the Commission grant its proposed rate increase.

Dated this 15<sup>th</sup> day of February, 2000.

OLINGER, LOVALD, ROBBENNOLT,  
McCAHREN & REIMERS, P.C.  
117 E. Capitol  
PO Box 66  
Pierre, SD 57501

  
BY: JAMES ROBBENNOLT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15<sup>th</sup> day of February, 2000, he mailed a true and correct copy of the foregoing Petition to

Don Klempel  
Vice President of  
Gas Supply  
Montana-Dakota Utilities  
400 No. 4th Street  
Bismarck ND

and that said mailing was by U. S. mail, first class with postage thereon prepaid and mailed at the U. S. Post Office in Pierre, South Dakota.

  
James Robbennolt

## SOUTH DAKOTA INTRASTATE PIPELINE Co.

## Property taxes paid 1994 through 2000

1994	\$	215,999.50
1995	\$	204,645.77
1996	\$	208,724.88
1997	\$	262,016.94
1998	\$	260,976.82
1999	\$	278,968.30
Total property taxes paid through 2000	\$	1,431,332.21

**South Dakota Intrastate Pipeline Company**

**Real Estate Taxes for 1999**

\*\*All real estate taxes are paid in two equal halves

\*\*1st payment is due in April 2000

\*\*2nd payment is due in October 2000

<u>COUNTY</u>	<u>TOTAL TAX DUE</u>
Edmunds County	\$ 100,548.00
Potter County	\$ 33,412.50
Sully County	\$ 47,907.24
Hughes County	\$ 28,163.74
Waiworth County	\$ 68,936.82
<b>TOTAL REAL ESTATE TAXES DUE</b>	<b>\$ 278,968.30</b>

**South Dakota Intrastate Pipeline Company**

**Real Estate Taxes for 1998**

**\*\*All real estate taxes are paid in two equal halves**

**\*\*1st payment is due in April 1999**

**\*\*2nd payment is due in October 1999**

<u>COUNTY</u>	<u>TOTAL TAX DUE</u>
Edmunds County	\$ 93,108.74
Potter County	\$ 31,104.64
Sully County	\$ 45,588.48
Hughes County	\$ 25,963.82
Walworth County	\$ 65,121.14
<b>TOTAL REAL ESTATE TAXES DUE</b>	<b>\$ 260,886.82</b>

**South Dakota Intrastate Pipeline Company**

**Real Estate Taxes for 1997**

**\*\*All real estate taxes are paid in two equal halves**

**\*\*1st payment is due in April 1998**

**\*\*2nd payment is due in October 1998**

<u>COUNTY</u>	<u>TOTAL TAX DUE</u>
Edmunds County	\$ 94,422.60
Potter County	\$ 30,870.74
Sully County	\$ 44,447.80
Hughes County	\$ 26,151.40
Walworth County	\$ 66,124.40
<b>TOTAL REAL ESTATE TAXES DUE</b>	<b>\$ 262,016.94</b>

**South Dakota Intrastate Pipeline Company**

**Real Estate Taxes for 1996**

**\*\*All real estate taxes are paid in two equal halves**

**\*\*1st payment is due in April 1997**

**\*\*2nd payment is due in October 1997**

<u>COUNTY</u>	<u>TOTAL TAX DUE</u>
Edmunds County	\$ 73,584.06
Potter County	\$ 27,849.40
Sully County	\$ 25,862.16
Hughes County	\$ 22,574.38
Walworth County	\$ 58,854.88
<b>TOTAL REAL ESTATE TAXES DUE</b>	<b>\$ 208,724.88</b>

# South Dakota Intrastate Pipeline Company

## Real Estate Taxes for 1995

\*\*All real estate taxes are paid in two equal halves

\*\*1st payment is due in April 1996

\*\*2nd payment is due in October 1996

<u>COUNTY</u>	<u>TOTAL TAX DUE</u>
Edmunds County	\$ 73,458.06
Potter County	\$ 27,849.40
Sully County	\$ 25,862.16
Hughes County	\$ 22,574.38
Walworth County	\$ 54,901.77
<b>TOTAL REAL ESTATE TAXES DUE</b>	<b>\$ 204,645.77</b>

**South Dakota Intrastate Pipeline Company**

**Real Estate Taxes for 1994**

\*\*All real estate taxes are paid in two equal halves

\*\*1st payment is due in April 1995

\*\*2nd payment is due in October 1995

<u>COUNTY</u>	<u>TOTAL TAX DUE</u>
Edmunds County	\$ 72,785.80
Potter County	\$ 28,063.72
Sully County	\$ 29,892.68
Hughes County	\$ 22,966.50
Walworth County	\$ 62,290.80
<b>TOTAL REAL ESTATE TAXES DUE</b>	<b>\$ 215,999.50</b>



US Department  
of Transportation

Research and  
Special Programs  
Administration

Exhibit

B

400 Seventh Street, S.W.  
Washington, D.C. 20590

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

FY 2000 PIPELINE SAFETY USER FEE ASSESSMENT

Operator ID #: 30024

PRESIDENT  
SOUTH DAKOTA INTRASTATE PIPELINE CO  
1415 N. AIRPORT ROAD  
PIERRE, SD 57501

BILL NUMBER: 20008-120731  
BILL DATE : 12/13/99  
DUE DATE : 01/12/00  
ASSESSMENT : \$ 12,144.94

Section 60301 of Title 49, U.S. Code (formerly §7005 of the Consolidated Omnibus Budget Reconciliation Act of 1985) authorizes the assessment and collection of user fees to fund the pipeline safety program activities conducted under U.S. Code 60101 et seq., by the U.S. Department of Transportation. The above referenced company is being assessed **\$12,144.94** for Fiscal Year 2000. This assessment is based on **\$68.23** per mile applied to the 178 miles of natural gas transmission pipeline reported in service on the annual report for Gas Transmission and Gathering Systems for 1998 (form RSPA F 7100.2-1).

Payments must be made in full.\* Checks are to be made payable to the "Department of Transportation". Annual interest (5%) plus an annual penalty charge (6%) and an administrative fee of \$12.00 per month will be charged for late payment in accordance with 31 U.S.C. 3717. To ensure proper crediting, please refer to the Bill Number on the check and/or return a copy of the bill with your payment.

Mail Payments to : DOT/Pipeline Safety Program  
c/o PNC Bank - Pittsburgh  
Box 640700  
Pittsburgh, PA 15264-0700

Requests for adjustments must be submitted in writing to Lisa Kokoszka, Office of Pipeline Safety, Room 7128, 400 7th Street, S.W., Washington, D.C. 20590. If you have any questions, please contact Ms. Kokoszka by phone (202)366-4554, Fax (202) 366-4566 or E-Mail at [lisa.kokoszka@rspa.dot.gov](mailto:lisa.kokoszka@rspa.dot.gov).

\* Payment may also be made by wire transfer and/or on-line by credit card. See enclosed instructions.

For Accounting Office Use Only:  
Principal: 695172 (GAP)  
Interest : 691435 (GCA)  
Penalty & Admin.: 691099 (GAG)

**South Dakota Public Utilities Commission**  
**WEEKLY FILINGS**  
For the Period of February 10, 2000 through February 16, 2000

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact  
Delaine Kolbo within five business days of this filing.  
Phone: 605-773-3705 Fax: 605-773-3809

**CONSUMER COMPLAINTS**

**CT00-036 In the Matter of the Complaint filed by Fred Prah on behalf of Windows, Inc., DeSmet, South Dakota, against Inacom Communications, Inc. and U S WEST Communications, Inc. Regarding Unauthorized Switching of Services.**

On February 10, 2000, the Commission received a complaint regarding unauthorized switching of service against Inacom Corp. and U S WEST. Windows, Inc. discovered that their phone service had been switched from 6 phone lines with hunting capabilities to the U S WEST Centrex 21 system on December 2, 1999. The complainant alleges Inacom obtained their signature to "verify that US West was the phone carrier for Windows, Inc." not to authorize a change in their telephone service. The complainant is requesting "to see this practice ended by taking away the licenses of the companies misrepresenting themselves in this manner and to prosecute persons representing these companies."

Staff Analyst: Heather Forney  
Staff Attorney: Karen Cremer  
Date Docketed: 02/10/00  
Intervention Date: NA

**CT00-037 In the Matter of the Complaint filed by Cheryl Plucker, Chancellor, South Dakota, against MCI WorldCom Regarding Unauthorized Switching of Services.**

On February 11, 2000, the Commission received a complaint from Cheryl Plucker, Chancellor, South Dakota, against MCI regarding unauthorized switching of services. The complainant alleges that her long distance provider was switched to MCI without her authorization.

Staff Analyst: Keith Senger  
Staff Attorney: Karen Cremer  
Date Docketed: 02/14/2000  
Intervention Date: N/A

**EL00-003 In the Matter of the Filing by Montana-Dakota Utilities Co. for Approval of Waiver of Fuel Clause Rate 58 to Include Arbitration Costs.**

Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., petitions the South Dakota Public Utilities Commission for a waiver of Fuel Clause Rate 58. The waiver is

requested to allow the pass-through, in the fuel cost adjustment, of adjustments which have resulted in savings to retail customers.

Staff Analyst: Michele Farris  
Staff Attorney: Camron Hoseck  
Date Docketed: 02/10/00  
Intervention Date: 03/03/00

**EL00-004 In the Matter of the Filing by Northern States Power Company for Confirmation of Angus C. Anson Combustion Turbine Facility**

Northern States Power Company seeks confirmation from the South Dakota Public Utilities Commission that proposed improvements to the Angus C. Anson Combustion Turbine Facility continues to meet the conditions upon which the permit, as ordered in Docket Number EL91-001 signed on May 18, 1993, was issued.

Staff Analyst: Michele Farris  
Staff Attorney: Camron Hoseck  
Date Docketed: 02/15/00  
Intervention Date: 03/03/00

**GE00-001 In the Matter of the Filing by NorthWestern Public Service Company for Approval of Revised Bill Format.**

Application by NorthWestern Public Service to revise customer bill format and associated accounting form tariffs, to add notice on bills of the change and request for waiver of 30 day notice of change to the public.

Staff Analyst: Dave Jacobson  
Staff Attorney: Karen Cremer  
Date Docketed: 02/10/00  
Intervention Deadline: NA

**NG00-001 In the Matter of the Application of South Dakota Intrastate Pipeline Company to Recover Additional Costs.**

On February 15, 2000, the Public Utilities Commission received a petition from South Dakota Intrastate Pipeline Company (SDIPC) seeking an amendment to its rate schedule to provide for an increase in its transportation charged to its only customer, Montana Dakota Utilities Company. SDIPC proposes to make the change in its rate effective as of April 1, 2000.

Staff Analyst: Heather Forney  
Staff Attorney: Karen Cremer  
Date Docketed: 02/15/00  
Intervention Date: 03/03/00

**TC00-012 In the Matter of the Filing by U S WEST Communications, Inc. for Approval of Revisions to its Exchange and Network Services Tariff.**

On February 10, 2000, U S WEST Communications, Inc. (U S WEST) filed an application for approval of revisions to its exchange and network services tariff. The purpose of the filing is to clarify the meaning of a fully assisted operator call and a partially assisted operator call. Rates will not be increased by this filing.

Staff Analyst: Heather Forney  
Staff Attorney: Camron Hoseck  
Date Docketed: 02/10/00  
Intervention Date: 03/03/00

**TC00-013 In the Matter of the Application of Adelpia Business Solutions Operations, Inc. for a Certificate of Authority to Provide Local Exchange Services in South Dakota.**

Adelpia Business Solutions Operations, Inc. is seeking a Certificate of Authority to provide resold and facilities-based local exchange telecommunication services in South Dakota. Adelpia does not intend to provide service in the territories of rural telecommunication companies.

Staff Analyst: Keith Senger  
Staff Attorney: Camron Hoseck  
Date Docketed: 02/10/00  
Intervention Date: 03/3/00

**TC00-014 In the Matter of the Application of Comm South Companies, Inc. for a Certificate of Authority to Provide Local Exchange Services in South Dakota.**

Comm South Companies, Inc. seeks to provide resold basic local exchange telecommunication services in areas of South Dakota currently served by U S WEST Communications and any other relevant incumbent facilities-based LEC or other authorized local exchange carrier, excluding service areas of rural telephone companies. A majority of the applicant's customers are residential consumers who are unable to obtain local telecommunication services from other local exchange carriers due to credit problems or prior disconnection. Services will include local calling, access to 911 emergency and 800 number services to residential customers on a prepaid basis. Applicant does not permit its customers of its local service to access usage-based services, such as direct-dial long distance calls, collect calls, operator-assisted calls and third-number billed calls.

Staff Analyst: Keith Senger  
Staff Attorney: Camron Hoseck  
Date Docketed: 02/10/00  
Intervention Date: 03/03/00

**TC00-015 In the Matter of the Application of Shared Communications Services, Inc. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.**

Shared Communications Services, Inc. (Shared) seeks a Certificate of Authority to provide resold interexchange telecommunications services. Shared intends to offer interLATA and intraLATA switched message toll service, 800, calling card, directory assistance and operator services throughout South Dakota.

Staff Analyst: Heather Forney  
Staff Attorney: Camron Hoseck  
Date Docketed: 02/14/00  
Intervention Date: 03/03/00

**TC00-016 In the Matter of the Application of TeleDistance, Inc. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.**

Qwest Communications Corporation, LCI International Telecom Corp., Phoenix Network, Inc. and TeleDistance, Inc. all wholly-owned, indirect subsidiaries of Qwest Communications International Inc. (the "Parties") filed a request for a Certificate of Authority for TeleDistance, Inc. to provide resold and facilities-based interexchange telecommunications services throughout South Dakota. TeleDistance, Inc. intends to offer retail and wholesale switched interLATA (and in certain instances intraLATA) long distance services (including direct dialed 1+ service and toll free service), retail and wholesale private line services, frame relay/ATM/IP transmission services, prepaid calling card services and operator services. The Parties also request that the Commission grant a waiver of Administrative Rules of South Dakota Chapter 20:10:34:02:01, governing unauthorized changes in carriers.

Staff Analyst: Michele Farris  
Staff Attorney: Camron Hoseck  
Date Docketed: 02/14/00  
Intervention Date: 03/03/00

**TC00-017 In the Matter of the Application of Pathnet, Inc. for a Certificate of Authority to Provide Local Exchange Services in South Dakota.**

Pathnet, Inc. is seeking a Certificate of Authority to provide resold and facilities-based local exchange telecommunication services in South Dakota. Pathnet intends to provide point to point private line and data services. They do not plan to provide basic local dial tone services to end-users.

Staff Analyst: Keith Senger  
Staff Attorney: Camron Hoseck  
Date Docketed: 02/15/00  
Intervention Date: 03/3/00

**TC00-018 In the Matter of the Application of Pathnet, Inc. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.**

Pathnet, Inc. is seeking a Certificate of Authority to provide resold and facilities-based interexchange telecommunication services in South Dakota. Pathnet intends to provide point to point private line and data services.

Staff Analyst: Keith Senger  
Staff Attorney: Camron Hoseck  
Date Docketed: 02/16/00  
Intervention Date: 03/03/00

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You may subscribe or unsubscribe to the PUC mailing lists at <http://www.state.sd.us/puc/>**

# MONTANA-DAKOTA

UTILITIES CO.

A Division of MDU Resources Group, Inc.

400 North Fourth Street  
Bismarck, ND 58501  
(701) 222-7900

RECEIVED

MAR 01 2000

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

February 28, 2000

Mr. William Bullard  
Executive Director  
South Dakota Public Utilities Commission  
State Capitol Building  
500 East Capitol  
Pierre, SD 57501-5070

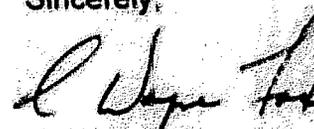
Re: South Dakota Intrastate Pipeline Company  
Docket No. NG00-001

Dear Mr. Bullard:

Enclosed are an original and ten copies of a Petition of Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., to intervene in the above docket.

Please acknowledge receipt by stamping or initialing one duplicate copy of the Petition attached hereto and returning the same in the enclosed, self-addressed, stamped envelope.

Sincerely,



C. Wayne Fox  
Vice President --  
Regulatory Affairs &  
General Services

Enclosures

cc: D. R. Ball  
R. Mulkern  
D. Schulz

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION )  
OF SOUTH DAKOTA INTRASTATE )  
PIPELINE COMPANY TO AMEND RATE )  
SCHEDULE PURSUANT TO ITS AMENDED )  
AND RESTATED TRANSPORTATION )  
AGREEMENT )

Docket No. NG00-001

**PETITION TO INTERVENE OF MONTANA-DAKOTA UTILITIES CO.**

Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (Montana-Dakota), pursuant to SDCL 1-26-17.1 and ARSD 20:10:01:15.02, hereby petitions to intervene in the above-captioned proceeding. In support of its petition, Montana-Dakota respectfully shows the following:

I.

Names, titles and mailing addresses of the persons who should be served with communications concerning this Motion are:

C. Wayne Fox, Vice President-  
Regulatory Affairs & General Services  
Montana-Dakota Utilities Co.  
400 North Fourth Street  
Bismarck, North Dakota 58501

and

Douglas W. Schulz  
Senior Attorney  
Montana-Dakota Utilities Co.  
400 North Fourth Street  
Bismarck, North Dakota 58501

## II.

Montana-Dakota is a Division of MDU Resources Group, Inc., a corporation organized and existing under the laws of the state of Delaware, with its principal place of business located at 400 North Fourth Street, Bismarck, North Dakota 58501. MDU Resources Group, Inc. is authorized to conduct, and is conducting business in the states of South Dakota, Montana, North Dakota, and Wyoming. Montana-Dakota is a public utility engaged in the production, transmission, distribution, and sale of electricity and the distribution and sale of natural gas.

## III.

The South Dakota Public Utilities Commission (Commission) has issued or will issue a Notice of Opportunity to Intervene and Comment in the above-referenced proceeding and allow petitions to intervene to be filed with the Commission.

## IV.

South Dakota Intrastate Pipeline Company (SDIP) is an intrastate pipeline operating and providing transportation services in the State of South Dakota. Montana-Dakota is presently SDIP's only transportation customer and is subject to a Transportation Agreement entered into between SDIP and Montana-Dakota.

## V.

Montana-Dakota has a direct and substantial interest in this proceeding, which may be adversely affected by the Commission's findings and conclusions in this matter. Montana-Dakota avers that it cannot be adequately represented by existing parties, that it has a right to intervene, and that its intervention is in the public interest.

WHEREFORE, Montana-Dakota prays that it be permitted to intervene in the above-referenced proceeding. Montana-Dakota does not request a hearing on the filing, but does desire to be treated as a party with all rights appropriate to that status, including the right to receive all pleadings and evidence, prepare and present evidence, cross-examine, and present argument in support of its interest as they may appear in the event of a hearing.

Respectfully submitted,

MONTANA-DAKOTA UTILITIES CO.,  
A Division of MDU Resources Group, Inc.

By: 

C. Wayne Fox  
Vice President -  
Regulatory Affairs &  
General Services

Dated: February 28<sup>th</sup>, 2000

Douglas W. Schulz  
Senior Attorney  
Montana-Dakota Utilities Co.  
400 North Fourth Street  
Bismarck, North Dakota 58501



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

<b>IN THE MATTER OF THE APPLICATION OF )</b>	<b>ORDER FOR AND NOTICE</b>
<b>SOUTH DAKOTA INTRASTATE PIPELINE )</b>	<b>OF HEARING</b>
<b>COMPANY TO RECOVER ADDITIONAL )</b>	
<b>COSTS )</b>	<b>NG00-001</b>

On February 15, 2000, South Dakota Intrastate Pipeline Company (SDIPC), filed an application with the Public Utilities Commission (Commission) seeking an amendment to its rate schedule. According to its application, SDIPC is seeking an amendment to its rate schedule to provide for an increase in its transportation rate charged to its only customer, Montana-Dakota Utilities Company (MDU). SDIPC proposes to make the change in its rate effective as of April 1, 2000. On March 1, 2000, MDU filed a Petition to Intervene in this docket. The deadline for intervention was March 3, 2000.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-34A, specifically 1-26-17.1, 49-34A-4, 49-34A-6, 49-34A-8, 49-34A-10, 49-34A-11, 49-34A-12, 49-34A-13, 49-34A-13.1, 49-34A-14, 49-34A-16, 49-34A-17, 49-34A-19, 49-34A-21, 49-34A-22, and 49-34A-23. At its regularly scheduled March 14, 2000, meeting, the Commission granted MDU's Petition to Intervene.

A hearing shall be held at 1:00 p.m., on November 9, 2000, in Room 464, State Capitol Building, 500 East Capitol, Pierre, South Dakota. The hearing is open to the public. All persons testifying shall be subject to cross-examination.

The issue at the hearing is whether the Commission shall grant SDIPC's request to amend its rate schedule to provide for an increase in its transportation rate charged to its only customer, MDU.

The hearing shall be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. As a result of this hearing, the Commission shall determine whether it shall grant SDIPC's request to amend its rate schedule to provide for an increase in its transportation rate charged to its only customer, MDU. The Commission's Final Decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED that the hearing shall commence at 1:00 p.m., on November 9, 2000, in Room 464, State Capitol Building, 500 East Capitol, Pierre, South Dakota, on the issue of whether the Commission shall grant SDIPC's request to amend its rate schedule to provide for an increase in its transportation rate charged to its only customer, MDU

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 29<sup>th</sup> day of September, 2000.

<b>CERTIFICATE OF SERVICE</b>	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Helaine Kalbo</u>
Date:	<u>9/29/00</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner

Laska Schoenfelder  
LASKA SCHOENFELDER, Commissioner

1 THE PUBLIC UTILITIES COMMISSION  
2 OF THE STATE OF SOUTH DAKOTA

3 **RECEIVED**

4 NOV 14 2000

5 IN THE MATTER OF THE )  
6 APPLICATION OF SOUTH DAKOTA )  
7 INTRASTATE PIPELINE COMPANY )  
8 TO AMEND RATE SCHEDULE PURSUANT )  
9 TO ITS AMENDED AND RESTATED )  
10 TRANSPORTATION AGREEMENT )

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

NG00-001

11 HEARD BEFORE THE PUBLIC UTILITIES COMMISSION

12 PROCEEDINGS:

November 9, 2000

1:00 P.M.

Room 464, Capitol Building

Pierre, South Dakota

13 PUC COMMISSION:

Jim Burg, Chairman

Pam Nelson, Vice-Chairman

Laska Schoenfelder, Commissioner

14 COMMISSION STAFF

15 PRESENT:

Rolayne Ailts Wiest

Karen Cremer

Greg Rislov

Heather Forney

Sue Cichos

Bill Bullard

16 Reported By:

Lori J. Grode, RRR/BMR

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APPEARANCES:

For SDIPC: James C. Robbennolt  
P.O. Box 66  
Pierre, SD 57501

and present:  
Gordon Woods

For MDU: David A. Gerdes  
P.O. Box 160  
Pierre, SD 57501

and present:  
Don Klempel

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P R O C E E D I N G S

(EXHIBIT NO. 1 AND 2 WERE MARKED FOR IDENTIFICATION.)

CHAIRMAN BURG: I will begin the hearing for Docket NG00-001, In the Matter of the Application of South Dakota Intrastate Pipeline Company to recover additional costs.

The time is approximately 1:05 p.m. The date is November 9, 2000, and the location of the hearing is Room 464, State Capitol, Pierre, South Dakota.

I am Jim Burg, Commission Chairman. Commissioners Laska Schoenfelder and Pam Nelson are also present. I'm presiding over this hearing. This hearing was noticed pursuant to the Commission's Order and the Notice of Hearing issued September 29th, 2000.

The issue at this hearing is whether the Commission shall grant SDIPC's request to amend its rate schedule to provide for an increase in its transportation rate charge to its only customer, MDU.

All parties have the right to be present and to be represented by an attorney. All persons so testifying will be sworn in and subject to cross-examine by the parties. The Commission's final decision may be appealed by the parties to the State Circuit Court and the State Supreme Court.

1           Rolayne Wiest will act as Commission counsel. She  
2 may provide recommended rulings on procedural and  
3 evidentiary matters. The Commission may overrule its  
4 counsel's preliminary rulings throughout the hearing. If  
5 not overruled, the preliminary rulings will become final  
6 rulings.

7           At this time I will turn it over to Rolayne to  
8 conduct the hearing.

9           MS. WIEST: I'll take appearances of the parties.  
10 SDIPC.

11           MR. ROBBENNOLT: Jim Robbennolt from Pierre  
12 appearing on behalf of SDIPC, and I also have Walter Woods  
13 present.

14           MS. WIEST: MDU.

15           MR. GERDES: My name is David Gerdes of May, Adam,  
16 Gerdes & Thompson, Pierre, South Dakota, representing MDU.  
17 And with me are Don Klempel and Rita Mulkern of the  
18 company.

19           MS. WIEST: Staff.

20           MS. CREMER: Karen Cremer for staff with Heather  
21 Forney.

22           MS. WIEST: Are there any motions before we begin?

23           MR. ROBBENNOLT: Petitioner has none.

24           MR. GERDES: None.

25           MS. CREMER: None.

1 MS. WIEST: Any of the parties wish to make any  
2 opening statements before we take testimony of the  
3 witnesses?

4 MR. ROBBENNOLT: Very briefly. SDIP is here today  
5 for the purpose of attempting to secure an increase to its  
6 national gas transportation rates to its only customer,  
7 MDU. We're doing that based upon an increase in the real  
8 estate taxes assessed by the various counties through  
9 which the pipeline owned by the petitioner passes.

10 The Transportation Agreement between the parties  
11 at paragraph 8.1 indicates that if there is an increase in  
12 ad valorem taxes during the course or the life of the  
13 contract, that the petitioner is entitled to recover those  
14 increased costs from its only customer, MDU. And  
15 basically that's the only reason we're here today. And  
16 we're going to present evidence in support of that  
17 argument.

18 MS. WIEST: Mr. Gerdes.

19 MR. GERDES: Your Honor, members of the  
20 Commission, on behalf of MDU, as Mr. Robbennolt has said,  
21 this involves SDIPC's request to amend its rate schedule  
22 to provide for an increase in its transportation rate.  
23 The evidence will show that MDU does not object to adding  
24 to the transportation rate that portion of the property  
25 taxes that will relate to the increase over and above that

6  
1 which is now contemplated by the maximum rate of \$2.34 per  
2 dekatherm, which is the current rate under the contract.

3 Our figures will show that this amounts to an  
4 increase of .058 cents per dekatherm and should result in  
5 a new rate of \$2.398. And that will be the scope of our  
6 testimony.

7 It is our position that this involves a rate  
8 making process under the rate making laws of the state of  
9 South Dakota and that whatever rate is determined by the  
10 Commission will be implemented according to and at the  
11 date of the order entered by the Commission.

12 MS. WIEST: Ms. Cremer?

13 MS. CREMER: Staff has nothing.

14 MS. WIEST: Mr. Robbennolt, you may call your  
15 first witness.

16 MR. ROBBENNOLT: Thank you. I call Walter Woods.

17 **WALTER JAMES WOODS,**

18 called as a witness, being first duly sworn,  
19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. ROBBENNOLT:

22 Q. Mr. Woods, could you state your name and address  
23 for the record, please?

24 A. My name is Walter James Woods. My address is 1300  
25 Predmore, P-R-E-D-M-O-R-E, Road, Oakland, Michigan, 48363.

7  
1 Q. And are you presently associated with the  
2 petitioner, which is the South Dakota Intrastate Pipeline?

3 A. I'm the president of the South Dakota Intrastate  
4 Pipeline Company.

5 Q. How long have you held that position?

6 A. Since 1993.

7 Q. Are you basically -- or have been with the company  
8 since its inception back in 1993?

9 A. Yes.

10 Q. And do you recall back in 1993 there was a hearing  
11 held before this Commission to establish the  
12 transportation rate that SDI -- South Dakota Intrastate  
13 Pipeline would receive from Montana-Dakota for  
14 transporting gas through its natural gas pipeline?

15 A. Yes, I do.

16 Q. And do you recall what the rate was established at  
17 at that point?

18 A. The rate in 1993 that I believe was finalized  
19 after all construction costs were in was \$2.00 and I think  
20 something like \$2.256 cents or something like that.

21 Q. No, I'm referring to NG-008.

22 A. 0 --

23 Q. The final.

24 A. I'm sorry, I thought you asked me 1993. I  
25 thought --

1 Q. I'm sorry, I meant 1995.

2 A. Okay. NG95-008, we came back to the Commission to  
3 have the rate increased to the maximum in the contract due  
4 to costs that we had experienced in the two years we were  
5 in operation. And the Public Utility Commission found  
6 that we were correct and gave us the rate of 2.34.

7 Q. And if you would look at Exhibit 1, which is the  
8 petition that has been filed in the present case, at that  
9 time was there a rate of return that the Commission  
10 approved on the investment of the company in its plant and  
11 associated costs?

12 A. Yes, our rate of return is 14 percent, I believe.

13 Q. And that was approved in 95-008 by the Commission?

14 A. That was not an issue in 95-008. It was actually  
15 approved in the original filing, but it was not discussed  
16 nor contested in 95-008.

17 Q. Okay. Now, at that time the value of -- and refer  
18 to Exhibit 1 if you have to. What was the value of the  
19 pipeline for property tax purposes?

20 A. Oh, wait a minute, Exhibit 1.

21 Q. Yeah, it's on the front page.

22 A. Oh, if we look at the third paragraph down on  
23 Exhibit 1, the end of the first sentence, the property tax  
24 was in the amount of \$216,000.

25 Q. What was the assessed valuation of the pipeline

1 back then? Next sentence.

2 A. The assessed valuation was 11.5 million dollars.

3 Q. And are you aware of what the present assessed  
4 valuation of the pipeline is according to the state?

5 A. No, I'm not.

6 Q. Keep reading.

7 A. Keep reading what we wrote?

8 Q. It's four words past it, front page, same  
9 paragraph.

10 A. Oh, is assessed valuation is 13 million dollars.

11 Q. And back in 1993 what was the real estate taxes  
12 assessed against the pipeline? Excuse me, 1994.

13 A. \$216,000.

14 Q. And in 1999 what were the real estate taxes  
15 against the property?

16 A. \$279,000.

17 Q. All right. And so did that -- does that have any  
18 effect upon your rate of return for your investment in the  
19 pipeline?

20 A. If I pay it and don't recover it, it will lower my  
21 rate of return.

22 Q. And as a consequence of the increase in the amount  
23 of real property taxes that the company was required to  
24 pay by the State Department of Revenue, did you do a  
25 calculation as to what you would need to charge MDU to

1 bring your rate of return into compliance with the earlier  
2 tariff?

3 A. Yes. We put in the petition to increase the rate  
4 of return from 2.34, \$2.34 a dekatherm to \$2.467 a  
5 dekatherm.

6 Q. All right.

7 A. However, that included a charge for an FERC  
8 inspection fee, and we later found out that that fee  
9 had -- that fee had been charged since 1986 and we didn't  
10 include it in our original rate, so we had to take it out  
11 of this hearing and we did. The resultant was that we  
12 came up with the rate of approximately \$2.40 dekatherm.

13 Q. And how did you arrive at that calculation? And  
14 if you need look at Exhibit 2, go ahead.

15 A. I'm sorry, I don't have numbers on mine.

16 Q. Right. It would be this document right here.

17 MR. GERDES: Excuse me, Counsel, do you have a  
18 copy of Exhibit 2 for us?

19 MR. ROBBENNOLT: You should already have one,  
20 Dave, but I have one here for you if you need it.

21 CHAIRMAN BURG: Is that what we have as Exhibit A?

22 MR. ROBBENNOLT: I don't believe so, Commissioner.  
23 I think this was something that was generated by Heather.

24 MS. WIEST: Are there copies for the Commission?

25 MR. ROBBENNOLT: Can we take a brief break and

1 I'll go have copies made?

2 MS. WIEST: Okay. Anything else you need copies  
3 of?

4 MR. ROBBENNOLT: Not at this point.

5 (AT THIS TIME A SHORT RECESS WAS TAKEN.)

6 MS. WIEST: Okay. You may continue.

7 MR. ROBBENNOLT: Thank you, Your Honor.

8 Q. Mr. Woods, you now have a copy of Exhibit 2 in  
9 front of you?

10 A. Yes, I do.

11 Q. Is that the method by which you calculated the  
12 proper, or what you felt to be the proper rate given the  
13 increase in the real estate taxes?

14 A. Yes, it is. The 63,000 represents the increase in  
15 the real estate taxes, and the one point -- or the  
16 1,100,000 dekatherms represents the minimal bill volume  
17 that MDU has to pay for.

18 Q. And that minimal bill volume is contained within  
19 the Transportation Agreement that was executed by the  
20 parties back in 1993, is it not?

21 A. Yes, sir.

22 MR. ROBBENNOLT: Okay. I'd offer Exhibits 1 and  
23 2. And I have nothing -- oh, I just --

24 Q. Very briefly, when did you file Exhibit 1, or when  
25 did you cause that to be filed?

1 A. I believe the date was February 15th of 19 -- or  
2 year 2000.

3 Q. Did you ask for a date upon which the proposed  
4 increase should be implemented?

5 A. Yes, sir, I asked for April 1st when our taxes  
6 became due in the state of South Dakota, April 1st, 2000.

7 Q. Okay. And in the past since 1994 have you  
8 followed a practice, or has the company followed a  
9 practice as to how it takes care of its real property tax  
10 obligation?

11 A. You mean how we pay them?

12 Q. Right.

13 A. We've been paying them in accordance with the law  
14 and sometime before April the 30th and sometime before  
15 October 30th.

16 Q. You pay half each time?

17 A. Yes.

18 Q. Okay.

19 MR. ROBBENNOLT: I'd offer Exhibits 1 and 2. And  
20 I have nothing further of this witness.

21 MS. WIEST: Just to clarify, Exhibit 1, is that  
22 the petition?

23 MR. ROBBENNOLT: That's correct, Your Honor.

24 MS. WIEST: With the attachment exhibits?

25 MR. ROBBENNOLT: That's correct.

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MS. WIEST: Is there any objection to Exhibits 1 and 2?

MR. GERDES: No objection.

MS. CREMER: I just would like to clarify that Exhibit 2 is not an exhibit that Heather Forney compiled. It's attached -- I'm not sure where it came from, but I wanted it clear that was not something staff had done.

MS. WIEST: Okay. Exhibits 1 and 2 have been offered and received.

MR. ROBBENOLT: I have nothing further of this witness.

MS. WIEST: Do you have any other witnesses?  
I'm sorry, go ahead, Mr. Gerdes.

CROSS-EXAMINATION

BY MR. GERDES:

Q. Mr. Woods, you indicated that you had asked that this rate increase become effective April 1st. Where is that in your petition?

A. I don't happen to see it in my petition, but that is the date that we requested I know. I'm sorry, I don't see it in the petition, unless it's in one of these letters back here. Did we have a cover letter with this petition, Jim?

MR. ROBBENOLT: I don't recall.

A. Well, I don't see it in here.

1 Q. It's not in the petition; correct?

2 A. No, it isn't.

3 Q. And by stating that, are you suggesting that the  
4 Commission should implement this rate that you're  
5 requesting as of April 1st?

6 A. Yes, sir.

7 Q. And it would be true, would it not, that you would  
8 be asking for a rate that's retroactive if that was  
9 granted?

10 A. No, sir.

11 Q. You wouldn't be retroactive?

12 A. No, sir. I paid the taxes when required by the  
13 state, and I'm entitled to get them back when I pay them.

14 Q. Let me put it this way: As it relates to your  
15 customer, MDU, it would be retroactive, would it not?

16 A. I don't know.

17 Q. Okay. It's true, is it not, that MDU has been  
18 charging its customers for gas based upon the smaller rate  
19 between April 1st and today? That would be the way things  
20 worked, wouldn't it?

21 A. I don't really know what you're charging because I  
22 don't live here.

23 Q. It would be based -- well, look at Exhibit 2 that  
24 you've got there.

25 A. Yes, sir.

1 Q. What does it say at the top? Does it say current  
2 rate per dekatherm \$2.34?

3 A. Yes, sir.

4 Q. That's what you're charging MDU and have been  
5 'till today; right?

6 A. Yes, sir.

7 Q. Okay. And of course that's what MDU has in turn  
8 been charging its customers, wouldn't that be true?

9 A. I don't know.

10 Q. You would expect that, though, wouldn't you?

11 A. Yes, I would.

12 Q. Okay. And so the rate that you want to implement  
13 is \$2.40; correct?

14 A. Yes, sir.

15 Q. That's six cents more?

16 A. Yes, sir.

17 Q. And if you implement that effective April 1st, MDU  
18 will have already charged customers for that gas that they  
19 collected from April until today, would they not?

20 A. I guess I missed part of that. Excuse me, would  
21 you repeat it?

22 Q. Well, there's six cents per dekatherm involved  
23 here that if you were able to collect that rate going back  
24 to April, MDU would in turn have to go back and get it  
25 from their customers, would they not?

1 A. Again, I don't know what MDU would do. I would do  
2 it if I were MDU, but I don't know what you would do.

3 Q. Are you familiar with the proposition that rate  
4 making is supposed to be a prospective as opposed to a  
5 retrospective operation?

6 MS. CREMER: Well, excuse me, that appears to be a  
7 legal argument and I'm not sure that Mr. Woods is  
8 qualified to answer that.

9 MS. WIEST: It does appear to be legal.

10 Q. BY MR. GERDES: Well, Mr. Woods, how long have you  
11 been in the gas business?

12 A. Forty years.

13 Q. How many times have you had rates approved?

14 A. How many times have I?

15 Q. Yeah, by regulators?

16 A. Again, I would like to -- I'm sorry, let me try to  
17 answer the question. I personally have been involved in  
18 rate hearings, it will -- this will be the third time.

19 Q. Okay. Are you familiar with the -- and if you're  
20 not familiar you can say that, too, but are you familiar  
21 with the proposition that rates are charged after they're  
22 approved?

23 A. I'm familiar that a rate is approved, it can be  
24 charged at the time it was approved for. That is if  
25 someone approves a rate two years after you build a

1 pipeline, you can charge that rate when you asked for the  
2 rate.

3 Q. Would you agree with me that a rate is a charge  
4 per unit of measurement for a particular product?

5 A. Normally in pipeline that is what happens, yes.

6 Q. So much per dekatherm?

7 A. Yes, that is correct.

8 (EXHIBIT NO. 3 WAS MARKED FOR IDENTIFICATION.)

9 Q. Mr. Woods, I'll show you what's been marked as  
10 Exhibit 3. Are you looking at Exhibit 3?

11 A. Yes, sir, I am.

12 MR. GERDES: And, for the record, this is an  
13 exhibit prepared for the testimony of Rita Mulkern. And  
14 to save time, could we stipulate that it can be admitted  
15 at this time?

16 MR. ROBBENNOLT: Excuse me, I've got it at the top  
17 of my copy of that. Are you going to go over it as  
18 Mr. Woods's calculation or are you going to --

19 MR. GERDES: No.

20 MR. ROBBENNOLT: -- go over it as staff's  
21 calculation?

22 MR. GERDES: This is not staff's calculation.  
23 This is prepared by MDU.

24 MR. ROBBENNOLT: Okay. Because mine says at the  
25 top, and I didn't write it, it was on the Xerox, it says

1 "as calculated by staff." Oh, never mind. All right.

2 MR. GERDES: It looks a little bit like the one  
3 staff prepared, but this was prepared by Ms. Mulkern.

4 MR. ROBBENOLT: All right. And I will, I'll  
5 agree that it can be admitted.

6 MS. WIEST: Any objection to Exhibit 3 by anyone?

7 MS. CREMER: I have none.

8 MS. WIEST: Exhibit 3 has been offered and  
9 received.

10 Q. Looking at Exhibit 3, Mr. Woods, you would agree  
11 with me that the contract provides for a maximum rate of  
12 \$2.34 per dekatherm for the first ten years of the  
13 contract? Would you agree with that?

14 A. Yes, consistent with other provisions of the  
15 contract, yes.

16 Q. And then the contract in that same paragraph, 8.1,  
17 goes on to say the transporter may seek Commission  
18 approval of a change in rates where such change is made  
19 necessary by mandated charges for state taxes. Would that  
20 be correct?

21 A. Yes.

22 Q. And that's what you're asking for here today?

23 A. Yes.

24 Q. Okay. And then article 8.2 of that same contract  
25 provides for a minimum bill obligation of 1,100,000

1 dekatherms; is that correct?

2 A. Right.

3 Q. And the reason for that minimum bill obligation is  
4 to make sure that you get a certain minimum amount of  
5 money regardless of how much gas is transported through  
6 your pipeline, assuming that it's less than that; right?

7 A. Correct.

8 Q. And would it be true that throughout the entire  
9 lifetime of this contract that the amount of gas that has  
10 been transported has never exceeded that minimal bill  
11 obligation?

12 A. That is also correct.

13 Q. So for our purposes here, we can all agree that  
14 that would be an appropriate guidepost to make our  
15 calculations on?

16 A. No. I think that you have to make -- we -- I  
17 think our rate was based upon the -- we adopted MDU'S  
18 markets as they have presented them to us, and we used  
19 them to do our initial rate. Admittedly, we're not making  
20 it.

21 Q. And this isn't a trick question. You look at your  
22 own Exhibit 2. And you're using that same figure, are you  
23 not?

24 A. Yes, I used it for an illustration to show what  
25 the rate could be.

1 Q. So you don't find fault?

2 A. No, I would not argue about the fact that it's not  
3 the average of the first ten years as were presented to us  
4 in '93.

5 Q. Well, I could maybe shorten it up a little bit.  
6 If you look at the conclusion that's reached on Exhibit 3?

7 A. Yes, I saw it.

8 Q. It's \$2.398; correct?

9 A. Yeah, that's what it says. That's what it  
10 indicates.

11 Q. And would you agree that's essentially the same  
12 figure as yours and yours is just \$2.40 because you  
13 rounded things off?

14 A. If you would agree that mine is essentially the  
15 same as yours.

16 Q. Yeah.

17 A. Okay.

18 Q. You agree that yours is \$2.40 because you rounded  
19 off a little higher?

20 A. Oh, I see, you're saying I used 279 instead of  
21 278,968.

22 Q. Right.

23 A. Yes, I would agree with that.

24 Q. Okay. And so that if you go through all of the  
25 calculations, you get to 2.398 rather than 2.40 is the

1 only point I'm trying to make.

2 A. Yes, sir, that's correct.

3 Q. Okay. Thank you.

4 MR. GERDES: That's all I have. Thank you.

5 MS. WIEST: Ms. Cremer?

6 CHAIRMAN BURG: Can I ask for a question of  
7 clarification at this point? And I'm not sure, it might  
8 have to be on your Exhibit 3. It's a 278,968, does that  
9 include the federal item that they considered also?

10 MR. GERDES: No, it does not.

11 CHAIRMAN BURG: Okay. I just wanted to make sure.

12 MR. GERDES: Federal inspection.

13 CHAIRMAN BURG: Right.

14 MR. GERDES: No.

15 (EXHIBIT NO. 4 WAS MARKED FOR IDENTIFICATION.)

16 CROSS-EXAMINATION

17 BY MS. CREMER:

18 Q. Mr. Woods, I'm going to show you what has been  
19 marked as Exhibit 4. Can you tell us what that is? Would  
20 you agree --

21 A. It looks --

22 Q. Go ahead.

23 A. It looks like a cover letter that went with the  
24 petition that we made for the \$2.4067.

25 MS. CREMER: All right. And I didn't have extra

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copies of that. I thought everybody had a copy of the cover letter. You don't have a copy? I'll have copies of it made.

MR. GERDES: Well, I'll object to receipt of the exhibit because it's apparently intended to supplement the petition. We've been given to believe that the petition was just exactly what we've seen and that is the petition, and now an effort is being made to supplement the petition by something that wasn't part of the petition and was not provided to us, that being part of the petition. We submit that it's irrelevant to the issues in the case.

MS. CREMER: Well, I'm just merely putting it in as what has been officially docketed in the Commission's docket. Staff got a copy of it. You know, like I said, I assumed everybody did. It is in the official Commission docket.

MS. WIEST: MDU wasn't given the letter?

MR. GERDES: No. I've never seen that before.

MS. WIEST: So you're objecting to the admission Mr. Gerdes; is that correct?

MR. GERDES: Yes.

MS. WIEST: The objection is overruled. Exhibit 4 has been admitted.

MS. CREMER: Yes. And once he's done with it, I'll have Mr. Bullard go down and make copies.

1 MS. WIEST: Do you have any other questions?

2 MS. CREMER: I'm done.

3 MS. WIEST: Commissioners, do you have any  
4 questions?

5 CHAIRMAN BURG: I guess it would pertain to that  
6 letter again because the letter does state -- and we did  
7 have a copy of the letter in our files. And the letter  
8 does state South Dakota Intrastate Pipeline Company  
9 proposes to make the changes in its rate effective as of  
10 April 1, 2000.

11 Did you implement that change in your rates?

12 THE WITNESS: No, sir, we didn't.

13 CHAIRMAN BURG: How do you receive your money? Do  
14 you bill MDU for it?

15 THE WITNESS: Yes, sir, we bill them monthly for  
16 the volumes they actually have taken that month.

17 CHAIRMAN BURG: So by saying that Intrastate --  
18 SDIPC proposes to make the change, you did not actually  
19 make the change in the billings as of April 1?

20 THE WITNESS: No, sir.

21 CHAIRMAN BURG: Okay.

22 MS. WIEST: Any other questions?

23 CHAIRMAN BURG: I think that's all.

24 MS. WIEST: Any redirect?

25 MR. ROBBENOLT: No redirect.

1 MS. WIEST: Thank you, Mr. Woods.

2 CHAIRMAN BURG: Maybe I have a procedural one.  
3 How does MDU receive the filing and the other documents?  
4 Is that the job of SDIPC, or do they get it from the  
5 Commission office file, or how does that occur? I'm  
6 trying to figure out why they did not receive that  
7 transmittal letter.

8 MS. CREMER: On the certificate of service it  
9 shows it was sent to Don Klempel, and I'm not sure if I  
10 pronounced that properly. And my assumption is, you know,  
11 that he did receive that.

12 CHAIRMAN BURG: It's sent by whom?

13 MS. CREMER: Jim Robbennolt, or SDIPC's counsel,  
14 and that that was sent to -- it's what we received in our  
15 office and then he shows that he provided service of this  
16 document on Don Klempel.

17 CHAIRMAN BURG: And that's got the same date, but  
18 was it received in conjunction with Exhibit 1?

19 MS. CREMER: Well, ours at the office were.

20 CHAIRMAN BURG: That was what I wanted to know.

21 MS. WIEST: Do you have any other witnesses?

22 MR. ROBBENNOLT: In all fairness --

23 MR. GERDES: Just a minute, so we can clarify the  
24 record. Are you talking about the certificate of service  
25 that says the petition was served on Mr. Klempel? It

1 doesn't say the letter was served on Mr. Klempel.

2 MS. CREMER: I guess what I'm trying to say is  
3 when we received the petition in our office, the cover  
4 letter accompanied it. Whether or not it came that way to  
5 Don Klempel, I don't know. I'm stating the certificate of  
6 service shows it was served on SDIPC.

7 Because of that, I assume office staff did not  
8 then, when you intervened, serve it on you. But I don't  
9 know that. I would have to ask Delaine Kolbo if she then,  
10 when you were granted intervention, then sent a copy of  
11 everything. I don't know.

12 MR. GERDES: You're saying it was served on  
13 Mr. Klempel, and I just want to clarify in the record that  
14 it is the petition, it isn't necessarily the letter.

15 MS. CREMER: I don't know. I don't know. I don't  
16 know that. I don't know if he got the letter in the  
17 petition or just the certificate. I don't know.

18 MR. GERDES: The certificate of service says the  
19 petition was served on Mr. Klempel.

20 MS. CREMER: Yes, but I don't know if the letter  
21 accompanied it.

22 MR. GERDES: Thank you.

23 MR. ROBBENNOLT: If I may address that. I think,  
24 in honesty, probably the letter did not. I think I  
25 probably sent a separate cover letter and because I

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honestly don't remember what happened back in February.  
But I don't -- I don't think I probably would have sent  
him the entire -- I probably would have sent him a  
separate cover letter.

MS. WIEST: Once MDU is granted intervention,  
isn't it up to MDU to ask for anything that's on file with  
the Commission?

Anyway, you have no further witnesses?

MR. ROBBENOLT: We would rest.

MS. WIEST: Mr. Gerdes.

MR. GERDES: May have I have a couple minutes?

MS. WIEST: Go ahead.

MR. GERDES: Your Honor, we'll call Rita Mulkern.

**RITA MULKERN,**

called as a witness, being first duly sworn,  
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GERDES:

Q. Would you state your name, please.

A. My name is Rita Mulkern.

Q. Where do you reside?

A. My business address is 400 North Fourth Street,  
Bismarck, North Dakota, 58501.

Q. What is your occupation?

A. I'm a regulatory analysis manager for

1 Montana-Dakota Utilities.

2 Q. And what training and education have you had to  
3 help you pursue those duties?

4 A. I received a bachelor of arts degree in 1981 with  
5 majors in business administration and economics and a  
6 minor in statistics. I started my employment with  
7 Montana-Dakota in 1981 as a regulatory statistician. In  
8 1986 I became cost of service supervisor for  
9 Montana-Dakota, and in 1999 I reached my present position  
10 of regulatory analysis manager.

11 Q. What does a regulatory analysis manager do at MDU?

12 A. Some of my primary responsibilities are being  
13 responsible for the fuel cost adjustments, for the  
14 purchased gas cost adjustment, gas tracking adjustments  
15 with each state Montana-Dakota operates and also cost of  
16 service studies and other types of studies.

17 Q. And what is your understanding of what the issue  
18 is here today?

19 A. My understanding of the issue is drawn from the  
20 Commission's Order for and Notice of Hearing where it  
21 states that the issue is whether the Commission shall  
22 grant SDIP's request to amend its rate schedule upon an  
23 increase in its transportation rate charged to its only  
24 customer, MDU.

25 Q. And do you agree with Mr. Woods's testimony that

1 typically in the industry a rate is considered to be a  
2 charge per unit such as per dekatherm or per other unit?

3 A. Yes, I would.

4 Q. Okay. And is part of your job calculating rates?

5 A. Yes, it is.

6 Q. Do you have a copy of Exhibit 3 in front of you?

7 A. Yes, I do.

8 Q. Who prepared that exhibit?

9 A. That exhibit was prepared by me.

10 Q. And would you please explain what the exhibit  
11 says?

12 A. Yes, I would. As we state at the top, the  
13 contract article 8.1 states that the maximum rate is \$2.34  
14 per dekatherm for the first ten years of the contract.  
15 And article 8.2 states that there's a minimum bill  
16 obligation which right now is 1,100,000 dekatherms. In  
17 the current rate there is a property tax amount of  
18 \$216,000.

19 If you divide that amount by the 1,100,000  
20 dekatherms, that's the minimum bill obligation. It  
21 equates to 19.6 cents per dekatherm charge included in  
22 total rates or ad valorem property taxes. SDIP said their  
23 current taxes they're paying now are \$278,968.

24 If you divide that amount by the 1,100,000  
25 dekatherm contract billing units, that means that

1 currently what they're -- SDIP is paying in property taxes  
2 is approximately 25.4 per dekatherm, which is there's a  
3 line underneath that about 5.8 cents more than is what is  
4 in today's rates.

5 Q. So what we just determined is that 5.8 cents per  
6 dekatherm is the increase of the taxes that are requested  
7 in the petition over the existing tax rate in the existing  
8 rate; is that correct?

9 A. That's correct, it all rates to the ad valorem, or  
10 property taxes.

11 Q. Please continue.

12 A. At the bottom of the page then we show a  
13 calculation of what the rate would be today. And we start  
14 with the current rate of \$2.34, subtract the existing  
15 amount in the rate of 19.6 cents for property taxes, add  
16 back the current level of 25.4 cents per dekatherm, to  
17 arrive at a rate, a new rate would be \$2.398 per  
18 dekatherm.

19 Q. Now, is this essentially the same rate that  
20 Mr. Woods had in his Exhibit 2?

21 A. It is essentially the same rate. We've rounded it  
22 two, three places after the decimal point.

23 Q. And he apparently rounded it to just two places?

24 A. That's correct.

25 Q. What is your opinion as between Exhibits 2 and 3

1 as to which is the more accurate rate?

2 A. We generally are -- in our bills for our customers  
3 and generally in rate making you carry decimal points more  
4 than just two places. Our tariffs reflect a tariff rate  
5 that goes three places past the decimal point.

6 Q. So are you saying you believe Exhibit 3 is the  
7 more accurate one?

8 A. Yes, I would agree.

9 Q. And for the purpose of this proceeding, would you  
10 accept, then, the rate of \$2.398 for the tax, or, excuse  
11 me, for the transportation rate?

12 A. Yes, we would.

13 Q. Okay. Now, what is your opinion as to when that  
14 rate should become effective?

15 A. That rate should become effective upon an order  
16 from the Commission that it is issuing a final order  
17 saying that that is the correct rate and would be placed  
18 into effect prospectively on that date.

19 Q. In your experience, is it common or even are you  
20 aware of retroactive rates being approved?

21 A. No, I am not. Generally Commission prohibits  
22 retroactive rate making. It's not used. Commission rules  
23 say that a final rate is a final rate and does not change  
24 until the Commission issues a new final order. It does  
25 not allow to go back and charge something that an earlier

1 time period.

2 Q. Does that have anything to do with the fact that  
3 you've already collected your money for the product sold  
4 to your customer?

5 A. Yes, in part. That's one of the reasons I think  
6 they have that you can't go back and tell a customer,  
7 well, April we got charged for April. We want you to make  
8 up now once they've already paid for that gas consumption  
9 and been billed for that.

10 MR. GERDES: That's all I have. Thank you.

11 MS. WIEST: Mr. Robbennolt.

12 MR. ROBBENNOLT: Very briefly, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. ROBBENNOLT:

15 Q. Miss Mulkern, in fact, there are mechanisms  
16 available to allow utilities to go back and recover? For  
17 instance, I know there's an automatic adjustment to your  
18 rates for if the price of the gas that you buy to furnish  
19 to your customers fluctuates, is there not?

20 A. We do have a purchased gas cost adjustment.  
21 However, what we do in that, we change the gas cost  
22 monthly to reflect what we are currently paying for gas  
23 costs. We are not allowed to go back and charge a  
24 customer for a gas cost from six months ago.

25 Q. Okay. And I assume are you familiar with the law

1 governing the PUC here in South Dakota?

2 A. I'm not sure how familiar I am with it.

3 Q. Okay. Specifically, are you familiar with SDCL  
4 49-34A-25, which says in rate cases where there's a  
5 request for a change in rate, that a failure of the  
6 Commission to enter an order in regard thereto shall be  
7 deemed approval? Were you familiar with that statute?

8 A. I have read the statutes. I can't say I'm  
9 extremely familiar with any of them off the top of my  
10 head.

11 MR. ROBBENNOLT: I have no further questions.

12 MS. WIEST: Ms. Cremer?

13 CROSS-EXAMINATION

14 BY MS. CREMER:

15 Q. I was going to ask you about if you agree with me  
16 generally how a PGA works. If I understand it right, gas  
17 costs from the prior month, you look at those adjustments  
18 that are made, you divide that by the dekatherm, you come  
19 up with the rate, and that's the average cost of the  
20 dekatherm.

21 But basically if you were looking at October's  
22 rate, aren't you using August numbers that are calculated  
23 in September that are submitted to the Commission in  
24 October?

25 A. No, that's not correct. For example, when we file

1 a purchased gas cost adjustment, right now we would be  
2 working on one for December. We are working that today,  
3 November, using gas costs as of today.

4 Q. You're not using anything from a prior month?

5 A. The only thing we use from a prior month is to  
6 determine the billing dekatherms. We do use the most  
7 recent 12 months' ended volumes adjusted to reflect normal  
8 weather. Because at today's monthly PGA, we calculated it  
9 on an annual basis every month.

10 Q. What volumes do you base that on?

11 A. The most recent 12 months' ending sales adjusted  
12 for normal weather.

13 Q. Those are prior?

14 A. Those volumes are historical, I would say.

15 Q. All right, certainly. Are you familiar with the  
16 true up payment that MDU makes to SDIPC in approximately  
17 October?

18 A. Yes, I am.

19 Q. Okay. That true up, isn't that based on a prior  
20 year?

21 A. The way that works, we have minimal bill contract  
22 states that we will pay for 1,100,000 dekatherms at \$2.34  
23 each year. Each month SDIP sends us a bill for what we  
24 have transported through the system times the \$2.34.  
25 Every September the difference between for the prior 12

1 months what we have been billed for, or what we have  
2 transported, and the 1.1 million -- 1,100,000 dekatherms,  
3 the difference between that is taken times the \$2.34, and  
4 we get a bill for that amount in September of each year.

5 Q. And so the true up is based on prior. You have to  
6 look at what was actually used versus what you actually  
7 contracted for. So, again, you're looking at prior  
8 numbers; right?

9 A. Excuse me, I think what the contract says is we  
10 will pay for \$1,100,000 dekatherms each year. That's what  
11 the minimal bill concept says.

12 Q. And so when you talked before there would be no  
13 way to recoup -- and if this is what you said. You can't  
14 recoup from your customers -- if the Commission were to  
15 order this effective May 1, you can't recoup that because  
16 they've already paid for gas that they used in May, June,  
17 July, August, and September and October; is that right?

18 A. That's correct. Let me give you another example.

19 Q. Let me finish my question though. Wouldn't you,  
20 in fact, be able to use that same concept of the true up  
21 if the Commission were to order it effective May 1 of  
22 2000? You could figure out what it is -- you could figure  
23 out those real estate taxes that SDIPC owes and put that  
24 into the PGA in say December; and, in fact, you would be  
25 able to recoup that cost if you did that?

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A. In its application or its petition SDIP requested an increase.

Q. Yeah, but that wasn't my question. My question is could you recoup that cost if you did that in that manner?

A. Generally speaking, no.

Q. You couldn't charge your customers -- you couldn't add it up and put it on as a line item on there and run it through the PGA?

A. Not unless the Commission would approve the retroactive rate making. And let me give you an example here.

Q. Actually, I'll let your attorney because you've answered my question. Thank you.

MS. WIEST: Commissioners, any questions?

CHAIRMAN BURG: No.

COMMISSIONER NELSON: I don't have any.

MS. WIEST: Any redirect?

REDIRECT EXAMINATION

BY MR. GERDES:

Q. Would you like to give Ms. Cremer an example?

A. I would like to give an example. This is going to take the same time frame. We have labor costs are a large part of our cost of service. And our union contract is generally effective January 1. So our wage wages go up January 1 of every year.

1           And say we wanted to recover that cost through a  
2 general rate increase as has been filed by SDIP. We would  
3 say we filed on February 15th. And so today we're at the  
4 hearing and we would be asking the Commission to say, yes,  
5 we filed in February and today is the hearing, but we want  
6 you to approve this general rate increase back to January  
7 1 because that's when our wage increases went up. I don't  
8 believe this Commission would allow or has allowed it in  
9 the past.

10           (EXHIBIT NO. 5 WAS MARKED FOR IDENTIFICATION.)

11           MR. GERDES: Just because we've been talking about  
12 it, Your Honor, I would like to put in the record the  
13 contract.

14           MS. WIEST: Is there any objection?

15           MR. ROBBENOLT: No objection.

16           MS. WIEST: Exhibit 5 has been offered and  
17 received.

18           MR. GERDES: Is the contract then received?

19           MS. WIEST: Yes.

20           Q. Just so the record is clear on your testimony, in  
21 your experience, has it ever -- well, let me ask you this  
22 question: Does MDU do business in more than one state?

23           A. Yes, MDU operates in four states: North Dakota,  
24 South Dakota, Wyoming, and Montana.

25           Q. Tell me whether or not it's common or even happens

1 in your experience to have commissions do retroactive rate  
2 making.

3 A. All the commissions that, in my experience, have  
4 prohibited retroactive rate making in the four states that  
5 we serve.

6 MR. GERDES: That's all I have.

7 MS. WIEST: Any further cross?

8 MR. ROBBENOLT: Very briefly.

9 REXCROSS-EXAMINATION

10 BY MR. ROBBENOLT:

11 Q. Ms. Mulkern, was there a time in the past when you  
12 refigured your GPA (sic) on a less than monthly basis?

13 A. Yes. Previously we had, I believe, a quarterly  
14 purchased gas cost adjustment.

15 Q. Quarterly. Was there a time when it was six  
16 months?

17 A. There was also a time when it was six months.

18 Q. Did that necessarily involve some taking what had  
19 gone on in those six months and applying it to the present  
20 factual situation and then having it be paid for after  
21 that?

22 A. The purchased gas cost adjustment is as an  
23 automatic adjustment cost that follows the statutes of the  
24 Commission, and it's set up as a separate tariff on file  
25 and approved by the Commission. And I guess in the past

1 we do do it quarterly or semi-annually.

2 We do -- if I can recall, we would estimate what  
3 gas costs would be for the next six months and charge our  
4 customers that and then do a true up pursuant to our  
5 purchased gas cost cost.

6 MR. ROBBENOLT: I have no further questions.

7 MS. WIEST: Ms. Cremer?

8 RE-CROSS-EXAMINATION

9 BY MS. CREMER:

10 Q. It follows. How do they include the true up in  
11 the PGA?

12 A. The PGA mechanism provides for a true up where  
13 each month we look at what we charged the customers,  
14 compare that to what the actual costs are for that month,  
15 and the difference goes into the balancing account. One  
16 year we take the balance in that the balancing, or that  
17 deferred account and amortize it over the next 12 months  
18 to return that -- either return that amount to customers  
19 or recover that amount from customers.

20 Q. Okay. So if you're using historical numbers and  
21 projected costs for the PGA, didn't you just say you have  
22 over underrecovery then due to actual numbers?

23 A. The over underrecovery is because we have a  
24 purchased gas cost mechanism and approved tariff, and I  
25 believe that's different than this situation where the

1 petition has merely asked for a change in rates. There  
2 has been no request in this petition for an automatic  
3 adjustment clause.

4 Q. Do you understand that the statute referred to  
5 earlier, 25, contemplates the automatic adjustment of ad  
6 valorem taxes?

7 A. I'm aware of that, and I believe it requires a  
8 company to apply for such a mechanism and it has to be a  
9 rate schedule filed with and approved by the Commission.

10 Q. And if MDU underrecovers, how does MDU correct  
11 that?

12 A. Can you be more specific?

13 Q. Well --

14 A. Underrecovers what?

15 Q. On the PGA.

16 A. The difference between what we've recovered from  
17 customers during a month and what they have paid goes into  
18 the balancing account whether it is over or under.

19 Q. And so at the end of the year you just wipe it  
20 clean?

21 A. No. In May of each year we do our true up and we  
22 take whatever the balance in that account is, which has  
23 been going for 12 months. It may be an underrecovery, it  
24 may be an over recovery, and we take that amount and  
25 either give it back or recover it over the next 12 months

1 as a surcharge in the purchased gas cost adjustment.

2 MS. CREMER: Thank you.

3 MS. WIEST: Commissioners, any questions?

4 Any further redirect?

5 MR. GERDES: Just one or two questions.

6 FURTHER REDIRECT EXAMINATION

7 BY MR. GERDES:

8 Q. Are you aware whether or not SDIPC has an approved  
9 tariff for a PGA in South Dakota? Are you aware of one  
10 that SDIPC has?

11 A. An adjustment for?

12 Q. A tariff approved by the Commission permitting  
13 them to or establishing a purchased gas adjustment  
14 procedure.

15 A. No, they don't.

16 Q. Okay. Secondly, does MDU's current approved PGA  
17 filing for South Dakota contemplate or permit a  
18 retroactive charge if the Commission were to approve a  
19 retroactive tax rate as is being requested here?

20 A. I don't know that I can answer that question  
21 because it has never come up before that we would receive  
22 a retroactive payment.

23 Q. So you don't know whether it would or would not.  
24 Is that a fair statement?

25 A. That's correct.

1 MR. GERDES: Thank you.

2 MS. WIEST: Mr. Robbennolt?

3 MR. ROBBENNOLT: Very briefly, Your Honor.

4 FURTHER RECROSS-EXAMINATION

5 BY MR. ROBBENNOLT:

6 Q. And I'm not trying to be obtuse here, but as I  
7 understand it, if you go from say May of 1999 to May of  
8 2000, and based upon your estimated gas cost of gas to  
9 your customers, and you have undercollected for those  
10 customers for that period of time, then you go ahead and  
11 when you do your true up you take into account how much  
12 you were wrong for the previous 12 months and then you  
13 collect that money from your customers over the next 12  
14 months?

15 A. Basically that's correct, however, we do have a  
16 monthly PGA so that we have a good idea, for example,  
17 today of what gas costs are, so what we charge our  
18 customers is reflective of current costs.

19 Q. But your methodology is each May 1st or May 30th  
20 you true it up and then make any corrections that have  
21 occurred over the past 12 months?

22 A. That's correct, we do that through the surcharge.

23 MR. ROBBENNOLT: I have nothing further.

24 MS. WIEST: Ms. Cremer?

25 MS. CREMER: I have nothing.

1 MS. WIEST: Commissioners?

2 CHAIRMAN BURG: I have clarification that I need  
3 that came from before. It was pointed out you're now  
4 paying \$2.34 per dekatherm for 1,100,000 dekatherm; is  
5 that correct?

6 THE WITNESS: That's correct.

7 CHAIRMAN BURG: And is that the actual charge you  
8 have to your customers is also \$2.34?

9 THE WITNESS: That's correct.

10 CHAIRMAN BURG: Well, do you reach 1,100,000  
11 dekatherms sold?

12 THE WITNESS: We have not done so to this date.

13 CHAIRMAN BURG: Are you recovering your costs  
14 then?

15 THE WITNESS: Yes, we are recovering our costs.  
16 We have what we call our integrated gas system where all  
17 the states, we can send gas from any place on the system  
18 to another place. So all gas costs are maybe called  
19 rolled-in gas costs so all customers pay for all of the  
20 pipeline charges that we incur.

21 CHAIRMAN BURG: So you don't actually recover from  
22 the customers on the SDIPC system necessarily from -- all  
23 the costs for SDIPC's system are not necessarily recovered  
24 from the customers of the SDIPC system; is that right?

25 THE WITNESS: That's correct, it's spread out to

1 all of our customers on our system as well as the costs  
2 from the other pipelines again allocated to our South  
3 Dakota East River customers.

4 CHAIRMAN BURG: So I'm having a little bit of  
5 problem with the relevancy of the calculation then that  
6 that's how you recover, you know, is that's how you  
7 recover is by coming up with \$2.14 for -- 2.144 and then  
8 add the tax to that, either before or after, because  
9 you're not actually recovering that.

10 THE WITNESS: Yes, we are. We are charging right  
11 now in our purchased gas cost adjustment reflects \$2.34  
12 per dekatherm for an annual requirement of 1,100,000  
13 dekatherms.

14 CHAIRMAN BURG: Okay. So you're assuming -- the  
15 way you calculate here, you're assuming the customers in  
16 this system use 1,100,000 whether they do or they don't.

17 THE WITNESS: That's right.

18 CHAIRMAN BURG: Okay.

19 MS. WIEST: Any other questions? Any further  
20 redirect? Any other witnesses?

21 MR. GERDES: No, we rest.

22 MS. WIEST: Ms. Cremer.

23 MS. CREMER: Based upon my witness's condition,  
24 can we take a break?

25 (AT THIS TIME A SHORT RECESS WAS TAKEN.)

1 (EXHIBIT NO. 6 WAS MARKED FOR IDENTIFICATION.)

2 MS. WIEST: We'll go back on the record.

3 Ms. Cremer, you may call your first witness.

4 MS. CREMER: Thank you.

5 **HEATHER FORNEY,**

6 called as a witness, being first duly sworn,  
7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MS. CREMER

10 Q. Would you state your name for the record?

11 A. Heather Forney.

12 Q. And by whom are you employed, Heather?

13 A. South Dakota Public Utilities Commission.

14 Q. What do your duties entail?

15 A. I am a utility analyst.

16 Q. And as a utility analyst, what sort of things do  
17 you do for the Commission?

18 A. I work with certificates of authority for utility  
19 telecommunications companies, work with dockets such as  
20 this, look over the fuel adjustment clauses for the  
21 electric companies, general commission.

22 Q. Can you give us a general description of your  
23 education and work experience?

24 A. I graduated from the University of South Dakota  
25 with both my bachelor's and my master's in accounting. I

1 am currently a certified public accountant in accordance  
2 with the South Dakota Board of Accountancy and am a member  
3 of the South Dakota CPA Society. I spent five years  
4 working with McGladrey & Pullen LLP. They're a public  
5 accounting firm, where I was a financial institution  
6 specialist and an auditor specializing in auditing  
7 financial institutions, performing financial compliance  
8 and special project audits of various types of companies.

9 In June of 1998 I worked -- began working for the  
10 Department of Environment and Natural Resources where I  
11 managed their revolving loan fund programs, and then in  
12 August of 1999 I joined the Commission.

13 Q. Are you familiar with Docket NG00-001?

14 A. Yes, I am.

15 Q. And have you sat through all the testimony that  
16 was presented today by SDIPC and MDU?

17 A. Yes, I have.

18 Q. Can you tell us what you did in your analysis of  
19 this docket?

20 A. Well, I obviously read over the petition from  
21 SDIPC. I recalculated, based on the 1995 docket,  
22 recalculated the rates by removing the real estate tax  
23 from the calculation and kind of breaking it out and  
24 working through it separately to determine the maximum  
25 allowable rate at the 14 percent that was allowed in the

1 NG92 docket basically. I've been working with both  
2 companies in attempts to get this settled and negotiated,  
3 including some various calculations on how this would be  
4 implemented.

5 MR. GERDES: Excuse me, I'm going to object to any  
6 testimony that relates to settlement negotiations.

7 MS. CREMER: We were trying to do a time line  
8 chronology.

9 A. Just background stuff. And that's about the  
10 extent of it.

11 Q. Based upon the testimony that has been presented  
12 today, do you have a recommendation for the Commission?

13 A. I do have a recommendation. I think if you look  
14 at what has been labeled Exhibit 6, it's the same type of  
15 calculation that was done by MDU where they determine that  
16 the rate, excluding property taxes, would be 2.144.

17 I would recommend that a rate per dekatherm of  
18 2.144 be implemented and then have a separate tax  
19 adjustment clause and include tax adjustment language in  
20 the tariff so that in the future as the property taxes are  
21 fluctuating, it will be easier to implement instead of  
22 having a flat rate of the 2.398. And then we could come  
23 back in another year to adjust for property taxes, that  
24 sort of thing.

25 I would recommend a May 1 effective date. SDIPC

1 has already made the payments on this. They did ask for  
2 an April 1 effective date. We have been working on this  
3 since February. I believe that the difference between  
4 what MDU has already paid and what the actual property  
5 taxes are, I believe it's possible for MDU to collect that  
6 through their PGA. And I think that's it.

7 MS. CREMER: I would move to admit Exhibit 6.

8 MS. WIEST: Any objection?

9 MR. ROBBENNOLT: No objection.

10 MR. GERDES: No objection.

11 MS. WIEST: If not, it's received.

12 MS. CREMER: That's all the questions I have.

13 MS. WIEST: Mr. Robbennolt?

14 MR. ROBBENNOLT: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. ROBBENNOLT:

17 Q. Ms. Forney, would the automatic adjustment clause  
18 that you were talking about here, would that be similar to  
19 the PGA that we were talking about with the previous  
20 witnesses?

21 A. Somewhat similar. I had given some tax adjustment  
22 clause wording to, I believe, both you and MDU a while  
23 back, just an example of what it was that I was  
24 insinuating so that it was an automatic adjustment.

25 Q. Actually where the costs of gas fluctuates on a

1 regular basis more often than once a year, it would seem  
2 to me that it would be easier to do that with real  
3 property taxes. Because even though they may fluctuate  
4 each year, you know exactly how much of a fluctuation  
5 there's going to be in January after the assessments?

6 A. I don't believe it will be a difficult calculation  
7 at all.

8 Q. And I believe you testified that you thought that  
9 this increase that's asked for in this petition, is it  
10 your opinion that that should be effective the 1st of May  
11 of 2000?

12 A. Yes, it is.

13 Q. And you've heard testimony from Ms. Mulkern to the  
14 effect that MDU would not be able to recover the amount of  
15 the increase between May 1st of 2000 and now even if the  
16 Commission did order it today. Do you have a response for  
17 that?

18 A. Well, I believe that in their PGA it's possible  
19 for them to recover it as they specifically allow for the  
20 cost of gas supplied shall include but not be limited to  
21 demand commodity until storage, gathering, and  
22 transportation charges are incurred. And I think this is  
23 something that could be included in that.

24 Q. That transportation charge is specifically  
25 included in their PGA tariff?

1 A. Yes.

2 MR. ROBBENNOLT: No further question.

3 MS. WIEST: Mr. Gerdes?

4 CROSS-EXAMINATION

5 BY MR. GERDES:

6 Q. Good afternoon. Where is this tax adjustment  
7 clause going to come from that you're recommending?

8 A. Well, this is something that we've worked on  
9 collectively, and it would just be my recommendation that  
10 the companies work to some type of an agreement on the  
11 wording for the tax adjustment clause; that SDIPC would  
12 submit their wording for the tax adjustment clause and  
13 that we could work through that with staff to some type of  
14 a reasonable conclusion.

15 Q. So you don't have one that you recommend right  
16 now?

17 A. I do not have one that I recommend right now. I  
18 had one that I had submitted to both of you at one time  
19 and we have since changed course.

20 Q. Are you recommending a methodology that would be  
21 in effect an amount to a different amount each month based  
22 upon what the taxes are?

23 A. Not at this point, no.

24 Q. That's what you were earlier recommending that,  
25 were you not?

1 A. I thought this was going back to negotiations that  
2 we weren't going to discuss.

3 Q. I understand that, but you were recommending that?  
4 I mean I want to make sure I know what you're recommending  
5 here because --

6 A. At one point -- and this is completely up to you  
7 if you want to bring it up. But at one point both  
8 companies and staff had been communicating via fax in an  
9 attempt to reach a settlement, something that would work  
10 for both companies.

11 Q. Maybe I'm misunderstanding you. A day before  
12 yesterday you recommended a methodology that would amount  
13 to a different amount each month, and I just want to make  
14 sure you are not recommending that.

15 A. No. In an attempt to reach settlement, that was  
16 something I was recommending, but that is not what I am  
17 recommending here.

18 Q. Have you looked at before today the contract  
19 between the parties, which is Exhibit 5?

20 A. Yes, I have.

21 Q. And you'll agree with me that it's a contract that  
22 was agreed upon between the parties. And if you look at  
23 it, it's 21 pages plus three pages of exhibits. Would  
24 that be about right?

25 A. I don't have it in front of me, but that sounds

1 about right.

2 Q. And this is a contract that was negotiated between  
3 the parties in total and adopted and signed by them after  
4 presumably negotiation?

5 A. That's correct.

6 Q. And it was approved by the Commission?

7 A. Yes.

8 Q. Would you agree with me that it would be a  
9 modification of this contract to pull out of the contract  
10 the rate of \$2.34 which is set forth in paragraph 8.1 of  
11 the contract?

12 MS. CREMER: I would just ask that you either show  
13 her that paragraph --

14 THE WITNESS: Please.

15 MR. GERDES: Sure, excuse me.

16 A. The way that the contract reads, it says that the  
17 transportation charge shall not exceed \$2.34 per  
18 dekatherm. It also goes on to say they may seek  
19 Commission approval to change the rates. And I would  
20 emphasize change amount. I'm not an attorney and can't  
21 make an interpretation, the legal interpretation. I would  
22 make the assumption then that the \$2.144 would be the  
23 transportation charge, and the tax adjustment clause would  
24 be one of those change in rates that are allowed due to  
25 mandatory changes in federal or state taxes. That's also

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noted in 8.1.

Q. Well, let's talk about 8.1. The first sentence says that transporters charge for transporting. All of MDD's quantities pursuant to this agreement shall not exceed \$2.34 per dekatherm during the first ten contract years; is that correct?

A. That's correct.

Q. It doesn't say what's tax, what's not tax or anything, does it?

A. No.

Q. So the parties have agreed that that's the amount of money that is going to be charged during the ten years of the contract to transport the commodity; is that correct?

A. That's correct.

Q. All right. And then it goes on to say that the transporter may seek an approval of a change in rates as it relates to the increase in taxes; correct?

A. As a change is made necessary.

Q. I assume that would be an increase, wouldn't you?

A. I would assume to be, yeah.

Q. All right. So doesn't this contract say that the only figure that we're dealing with once you get to the \$2.34 is the increase in taxes?

MS. CREMER: I would object. And I think the

1 contract speaks for itself.

2 MS. WIEST: Sustained.

3 Q. BY MR. GERDES: Would you look at Exhibit 6,  
4 please?

5 A. Yes.

6 Q. That's your exhibit?

7 A. Yes, it is.

8 Q. Are you not proposing to recalculate the \$2.34  
9 figure that's in paragraph 8.1 of the contract?

10 A. I'm proposing to recalculate that the  
11 transportation rate by breaking out the tax portion, yes.

12 Q. Thank you. So you're proposing to change the  
13 contract?

14 A. Again, I'm not an attorney and I don't know that  
15 I'm qualified to state whether I'm changing the contract  
16 or not, but it does say that it shall not exceed \$2.34 for  
17 transportation.

18 Q. Wasn't that the purpose of the '95 docket to  
19 permit SDIPC to go to that maximum?

20 A. I wasn't here in 1995, but having read the order,  
21 it does allow them to go to \$2.34.

22 Q. Which implemented the contract, did it not,  
23 implemented that portion of the contract?

24 MS. CREMER: I would say only if you know you can  
25 answer.

1 A. It allows them to go to the \$2.34, which in  
2 section 8.1 says it shall not exceed.

3 Q. It's true, is it not, that presently SDIPC has no  
4 tax adjustment clause?

5 A. That is correct.

6 Q. It's also true, is it not, that according to  
7 SDIPC's petition, which is Exhibit 1, their taxes  
8 increased back in 1997?

9 A. Yes, they did.

10 Q. Did they file a petition to change the  
11 transportation charge for 8.1, according to your  
12 knowledge, in 1997?

13 A. Not to my knowledge, but, again, that was before I  
14 was in.

15 Q. How about 1998?

16 A. Not to my knowledge.

17 Q. And the taxes were raised then, were they not?

18 A. There was a fluctuation in taxes at that point,  
19 yes.

20 Q. From approximately \$216,000, which is the figure  
21 we've been using here in 1998, \$216,000? And you can look  
22 at the petition if you would like.

23 A. I don't have a copy of that in front of me either.  
24 I gave that away. You're talking about the change from  
25 '96 to '97?

1 Q. From '97 to '98. The figure in 1998 is \$216,000?

2 A. Right.

3 Q. And the figure that we've been using here as a  
4 base to compute from 216,000, is it not?

5 A. Right.

6 Q. So in 1997 and 1998 there was a substantial  
7 increase in taxes and SDIPC made no application to  
8 increase the transportation charge, according to your  
9 knowledge; correct?

10 A. According to my knowledge, they did not.

11 Q. How about in 1999? I see that it went up to  
12 \$279,000. Are you aware of that filing in 1999?

13 A. Well, I believe these are 1999 taxes payable in  
14 2000, and so these are the increases that they're  
15 currently requesting.

16 Q. Okay. When was that figure known?

17 A. I would, based on my discussion with the various  
18 counties, it would have been probably the first part of  
19 February.

20 Q. So there's at least two years here where taxes  
21 went up and SDIPC made no application; correct?

22 A. To my knowledge, they did not.

23 Q. Are you recommending that they retroactively go  
24 back and collect those taxes, too, as a part of this  
25 proceeding?

1 A. No, I'm not.

2 Q. Isn't that the same thing as you're recommending  
3 as it relates to the earlier portion of the 1999 taxes  
4 payable in 2000?

5 A. In their petition, actually in the transmittal  
6 letter to the letter they ask for an April 1  
7 implementation date, and they also filed that petition on  
8 February 15th. To me it's not the same thing, no.

9 Q. It's true, is it not, that if the taxes -- or  
10 excuse me. If you look at the petition, Exhibit 1, SDIPC  
11 is not asking for a tax adjustment rate, would that be  
12 correct?

13 A. That's correct.

14 Q. And, as a matter of fact, they're asking the  
15 Commission to compute the change in rates based upon a  
16 property tax increase in the amount of \$63,000 per year,  
17 would that not be correct? That's on page two of the  
18 petition toward the top.

19 A. Yes, it is.

20 Q. So this is nothing that SDIPC has asked for, this  
21 tax adjustment clause, would that be correct?

22 A. No, that's correct.

23 Q. It would be true, would it not, that using the  
24 rate suggested by MDU in its Exhibit 3, or for that matter  
25 using the rate suggested by SDIPC in its Exhibit 2, that

1 they would recover their taxes through those rates?

2 A. Yes, they would.

3 MR. GERDES: That's all I have. Thank you.

4 MS. WIEST: Commissioners?

5 CHAIRMAN BURG: Following up on that, it's agreed  
6 that 63,000 is a tax increase; is that correct?

7 THE WITNESS: Approximately 63,000, yes.

8 CHAIRMAN BURG: And counsel for MDU just said that  
9 they would recover those at that rate of 2.398 and you  
10 agreed; is that correct?

11 THE WITNESS: If they would break out the tax  
12 portion and run that over a contract year or the  
13 contracted billing units at the 1.1 million, they would  
14 indeed collect the \$63,000.

15 CHAIRMAN BURG: But in order to collect that,  
16 would they have to be -- would it have to be figured from  
17 April 1?

18 THE WITNESS: The implementation date of May 1  
19 that I suggested by staff is due to the fact that the  
20 payments, the first portion of the tax payments was due  
21 April 30 or April 31st -- April 30th. At that point SDIPC  
22 would have made their first half of the taxes and could  
23 then begin collecting from MDU.

24 CHAIRMAN BURG: But the point I'm getting at is if  
25 they charge 2.398 and it did not become effective until

1       sometime in November or December, they would not recover  
2       \$63,000.

3               THE WITNESS: No, they would not.

4               CHAIRMAN BURG: And, again, this might be a legal  
5       interpretation, but the way I understand the contract, it  
6       says that they would have the right to ask for an  
7       adjustment to collect all the taxes.

8               THE WITNESS: If I interpret the contract  
9       correctly, yes.

10              CHAIRMAN BURG: And so just to repeat, if it did  
11      not figure from April or May, if it were some day later  
12      than that, they would not be able to recover them at the  
13      2.398 left or the 2.40, whichever was used?

14              THE WITNESS: They could collect \$2.40 a  
15      dekatherm, but it's the difference between the \$2.40 and  
16      the 2.34 that they're originally collecting would not make  
17      up for the shortfall of \$63,000.

18              CHAIRMAN BURG: They need 12 months to do that; is  
19      that correct?

20              THE WITNESS: Yes.

21              CHAIRMAN BURG: I mean that's what it's based on  
22      is a 12-month period?

23              THE WITNESS: Yes, or the 1.1 million dekatherms.

24              MS. WIEST: Any other questions from the  
25      Commissioners? When would the automatic adjustment be

**START**

**OF**

**RETAKE**

1 assessed? Monthly? Annually?

2 THE WITNESS: I would probably recommend an annual  
3 because then it's -- they know -- they would know what the  
4 end of January, first part of February what the property  
5 taxes are and that could be then kicked in, put into  
6 effect on a May 1st annual basis.

7 MS. WIEST: Is it your understanding that the  
8 contract is also filed as a tariff?

9 THE WITNESS: I don't believe the actual contract  
10 is a tariff. I went through and read some of the old  
11 transcripts from the '92 and '95 dockets, and if I  
12 understood correctly, the '92 contract was intended to be  
13 filed as a tariff but never was, and then the ninety --  
14 after the '95 docket we have actual separate tariff sheets  
15 that went into effect in '96, so...

16 MS. WIEST: And the tariff sheets reflect what the  
17 contract stated?

18 THE WITNESS: They reflect a billing for  
19 transportation of \$2.34 and then they've got some other  
20 language in it. I have a copy of the actual tariff sheets  
21 if you want.

22 MS. WIEST: I would like to put it in. Does  
23 anybody object to the tariff sheets?

24 MR. GERDES: I have no objection.

25 MR. ROBBENOLT: I have no objection.

1 MS. WIEST: We can mark that as Exhibit 7.

2 MR. GERDES: Before I agree to put them in, I  
3 would like to look at them.

4 MS. WIEST: Sure.

5 (EXHIBIT NO. 7 WAS MARKED FOR IDENTIFICATION.)

6 MS. WIEST: Do you need copies made before we go  
7 on, Mr. Gerdes?

8 MR. GERDES: Yeah. Well, we can sit here and  
9 review it if you like.

10 MS. WIEST: We'll take a short break and have you  
11 look at it.

12 (AT THIS TIME A SHORT RECESS WAS TAKEN.)

13 MS. WIEST: Let's go back on the record.

14 MR. GERDES: May I ask a question for purpose of  
15 foundation?

16 MS. WIEST: Go ahead.

17 MR. GERDES: Has this been approved by the  
18 Commission?

19 THE WITNESS: I believe so. It's in our what I  
20 found to be the SDIP order approving rates and MDU  
21 contracts that we keep in our library.

22 MR. GERDES: We have no objection to it being  
23 introduced.

24 MS. WIEST: Exhibit 7 has been offered and  
25 received.

**END**

**OF**

**RETAKE**

1 MS. WIEST: So, Ms. Forney, when I received this  
2 file, did you treat this as an automatic adjustment  
3 pursuant to a 49-34A-25 filing?

4 THE WITNESS: As in a tax adjustment type clause  
5 situation?

6 MS. WIEST: Right.

7 THE WITNESS: To me, I guess it seemed the  
8 simplest way to handle it because we know that the  
9 property taxes are going to change every year, whether  
10 they would increase or decrease. A tax adjustment  
11 fluctuation through a tax adjustment clause seemed to be  
12 the most simple way to do it

13 MS. WIEST: But this was filed for approval. Does  
14 the Commission ordinarily actually approve when companies  
15 file for automatic adjustment?

16 THE WITNESS: You mean like their normal PGA's or  
17 fuel adjustment clauses?

18 MS. WIEST: Right.

19 THE WITNESS: Those are formally filed with us on  
20 a monthly informational basis and we go through and  
21 calculate.

22 MS. WIEST: And you have to object within ten  
23 days?

24 THE WITNESS: Yes.

25 MS. WIEST: So when you first received this

1 filing, you didn't consider it to be an automatic  
2 adjustment, did you?

3 THE WITNESS: I needed to go through and read it  
4 and do calculations first, yes. So, no, I did not treat  
5 it as an automatic adjustment at that point.

6 MS. WIEST: Now you think it is?

7 THE WITNESS: I think it should be. I think  
8 that's what it should be. I think SDIP should file a tax  
9 adjustment clause and it should be handled that way from  
10 this point forward.

11 MS. WIEST: From this point forward?

12 THE WITNESS: Obviously they couldn't have done  
13 the tax adjustment clause prior to approval from the  
14 Commission.

15 MS. WIEST: But in their petition and their  
16 testimony have they ever asked for automatic tax  
17 adjustment?

18 THE WITNESS: Not in their petition, no.

19 MS. WIEST: And you heard their testimony they did  
20 ask for an automatic?

21 THE WITNESS: No, they did not ask for it, no.

22 MS. WIEST: When you look through the tariff, is  
23 there any language in that tariff that specifically  
24 relates to an automatic adjustment pursuant to 49-34A-25?

25 THE WITNESS: They do not refer to it as separate,

1 no.

2 MS. WIEST: So it would be your understanding  
3 that, for example, when compared to MDU, which does indeed  
4 have a fuel adjustment clause, at this time SDIPC does not  
5 have a tax adjustment clause approved by the Commission;  
6 is that correct?

7 THE WITNESS: No, they don't.

8 MS. WIEST: Thank you. Any other questions from  
9 the Commissioners?

10 CHAIRMAN BURG: Yeah, that prompts a couple. If I  
11 look at what's Exhibit A -- Exhibit A as part of Exhibit  
12 1, I think we're referring to that page; right?

13 THE WITNESS: Where it lists the property taxes  
14 paid in '94 through 2000?

15 CHAIRMAN BURG: Right. Under your proposal it  
16 would have been adjusted downward in 1995, upward a little  
17 bit in '96, upwards to more in '97, '98 would be downward  
18 again. You're saying each of those?

19 THE WITNESS: Yes.

20 CHAIRMAN BURG: I believe this takes a legal  
21 interpretation. I'm not sure how to get it. But out of  
22 the contract, as I read that statement, it says that it is  
23 agreed, however, the transporter may seek Commission  
24 approval of a change in rates where such change is made  
25 necessary by mandated change in federal or state taxes.

1           Would that statement allow the MDU in this case to  
2 require or request adjustments downward if taxes lowered  
3 because we do see both up and down from 1994 on? And  
4 that's why I personally am somewhat intrigued by the  
5 proposal because I think it's the fairest thing to both  
6 sides as to the customers because, in essence, the  
7 customer, MDU, could continue to charge the customer the  
8 same rate; whereas, and not necessarily have to reflect  
9 reduction in taxes to SDIPC. But the customers really  
10 should get the benefit out of that if there is a reduction  
11 in taxes as well, and that's why the automatic adjustment  
12 appeals to me.

13           MS. WIEST: That would be your understanding how  
14 it would work, would that be correct?

15           THE WITNESS: That is as the taxes rise and fall  
16 that would be passed through to.

17           CHAIRMAN BURG: And my interpretation is that  
18 MDU -- under the contract MDU would only -- it only refers  
19 to the transporter, that MDU would not have the authority  
20 to come in and request those to be reduced because that  
21 language is not in there. But under your proposal it  
22 would automatically be reduced or increased, and  
23 presumably that would be reflected in charge to the  
24 consumers as well.

25           THE WITNESS: It would be.

1 CHAIRMAN BURG: Is that your interpretation?

2 THE WITNESS: It would be my assumption that as  
3 the tax adjustment clause would rise and fall, that that  
4 part would also flow through to MDU's customers.

5 CHAIRMAN BURG: And from the standpoint of our  
6 responsibilities, it looks to me like that would be the  
7 fairest thing to happen.

8 MS. WIEST: Any redirect?

9 MS. CREMER: No, I don't.

10 MS. WIEST: Thank you, Ms. Forney.

11 MR. GERDES: May I inquire?

12 MS. CREMER: No, I didn't ask her anything.

13 CHAIRMAN BURG: Probably in light of the fact I  
14 did, he should; right?

15 MS. WIEST: Well, I think it's always problematic  
16 when you have multiple examiners, so go ahead.

17 **RE-CROSS-EXAMINATION**

18 BY MR. GERDES:

19 Q. This tax adjustment clause that you're advocating  
20 which we haven't seen, would you envision that it would  
21 produce a rate under the definition we've been using here  
22 as distinguished from different amounts and different  
23 months?

24 A. It would, as I envision it, be for -- for example,  
25 the 1999 taxes payable in 2000 have been calculated by

1 both MDU and myself to be, you know, the 25.4 cents and  
2 that would be, in effect, in the way I'm envisioning  
3 things from May 1 to April 30th. We would get the new tax  
4 numbers from SDIFC sometime in the end of January, 1st  
5 part of February. We could calculate that based on the  
6 contract billing units of the 1.1 million and that 25.4  
7 cents would then either go up or down per dekatherm and  
8 carry forward for another year.

9 MR. GERDES: Thank you. That's all I have.

10 MS. WIEST: Thank you, Ms. Forney. Any other  
11 witnesses?

12 MS. CREMER: No, I do not.

13 MS. WIEST: Do you have any rebuttal witnesses?

14 MR. ROBBENNOLT: I would re-call Walter Woods for  
15 one question.

16 **WALTER WOODS,**

17 called as a witness, being previously sworn,  
18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. ROBBENNOLT:

21 Q. Mr. Woods, in our original petition in this case,  
22 did we or did we not cite S.D. 49-34A-25, the statute that  
23 deals with the automatic adjustment for ad valorem taxes?

24 A. I really don't know. I guess I'd have to read  
25 what we wrote.

1 Q. Well, we did. We did.

2 A. Well, you're the guy that wrote it, so I assume  
3 you know.

4 Q. And, just for the record, is the -- is SDIP  
5 requesting from the Commission the benefit of that section  
6 of the code that allows for the automatic adjustment for  
7 ad valorem taxes?

8 A. Yes.

9 Q. And that's regardless of whether the taxes go down  
10 or come up?

11 A. Yes, absolutely, even though the contract is  
12 written that it's only that, we are the only ones that can  
13 instigate it. Certainly we would agree with Commissioner  
14 Burg that the fair way is if they go down, we take money  
15 out; if they go up, we get money in.

16 Q. Finally, there was some discussion as to why you  
17 did not apply for reduction pursuant to paragraph 8.1 of  
18 the Transportation Agreement for increases in prior years  
19 when the taxes have gone up.

20 A. Quite frankly, I kind of lost sight of that until  
21 the taxes went up this last year and I was looking at the  
22 budget and wondering since, in my mind, I had had a lower  
23 tax rate. I used to prepare all the budgets myself and I  
24 knew what they were. I've gotten away from preparing  
25 them, and I just review them.



1 8.1, it says it is agreed, however, that transporter may  
2 seek Commission approval of a change in rates where such  
3 change is made necessary by any mandated changes in state  
4 taxes. Correct?

5 A. Yes, sir.

6 Q. Now, that doesn't talk about going back at all.  
7 That's talking about going forward, isn't it?

8 A. Yes, sir. We applied on February 15th, made it  
9 active actually April 1st, but that April 30, I guess, is  
10 the date I paid it.

11 Q. Now, it would be true, is it not, that SDIPC does  
12 not currently have a tariff for a tax adjustment clause?  
13 That's correct, isn't it?

14 A. That is correct, which is why we're having this  
15 meeting today.

16 Q. Well, now your petition doesn't ask for a tax  
17 adjustment clause, does it?

18 A. My petition asks that I be allowed to recover my  
19 taxes for the year when I pay my taxes.

20 Q. Your petition asks for a change in rates, doesn't  
21 it?

22 A. If the change in rates is the way the Commission  
23 decides I should do it, that's what I will do. I just  
24 want to recover my \$63,000.

25 Q. Well, and on that subject, looking at your Exhibit

1 No. 2, which is the \$2.40 per dekatherm minimum bill.

2 A. Yes, sir.

3 Q. You're going to recover your taxes on that within  
4 the next 12 months after that rate is implemented; isn't  
5 that correct?

6 A. I would ask for the rate to be implemented April  
7 1st. Or April 1st it was told it could be implemented May  
8 1st. I asked it to be implemented so I recover my money  
9 after I paid it out. I'll pay it out in April, part of  
10 it, and I won't get that money back until six months later  
11 and then I'll pay again. And I won't get the money back  
12 until six months later.

13 Q. Who told you you could start collecting it May  
14 1st? You just said "I was told".

15 A. I'm sorry, let me rephrase. If I wanted to  
16 collect it April 1st, I don't have to pay it until the  
17 30th.

18 Q. But --

19 A. Actually I could pay it April 1st.

20 Q. But you are -- if you start collecting \$2.40 per  
21 dekatherm on December 1st, 12 months later you would have  
22 received the amount that you paid for taxes; correct?

23 A. If -- I'm sorry, no, I would not because I paid  
24 that money in April and I need to collect that money  
25 starting from the time I pay it onward, not on 12-1

1 because my money has been out there for over seven months  
2 now.

3 Q. And had you made a timely filing, that would have  
4 occurred; right?

5 A. February 15th was a timely filing.

6 Q. How about last year when your taxes were due?

7 A. I told you I missed the last year, and I really am  
8 sorry because I'd just as soon had the money as let you  
9 have it.

10 Q. And you missed it this year?

11 A. I haven't missed it this year yet.

12 MR. GERDES: That's all I have.

13 MS. WIEST: Ms. Cremer?

14 MS. CREMER: We have none.

15 MS. WIEST: Commissioners, any redirect?

16 MR. ROBBENNOLT: I have none. I would rereset.

17 COMMISSIONER NELSON: I have one question. I  
18 guess you believe you couldn't have implemented that tax  
19 after you filed for the increase?

20 THE WITNESS: No, I don't. I guess I don't  
21 believe that. I just didn't because I've been used to  
22 working through the Commission so...

23 COMMISSIONER NELSON: Would you agree that you  
24 could?

25 THE WITNESS: Yes, I would agree that if I had

1 followed statute my lawyer showed me, I could have  
2 implemented it.

3 MS. WIEST: Any other questions?

4 Thank you. Do the parties want to write briefs on  
5 this?

6 MR. GERDES: Yes.

7 MR. ROBBENNOLT: I guess if he gets to, I get to  
8 too.

9 MS. WIEST: Let's go off the record and we'll  
10 discuss a schedule.

11 (DISCUSSION WAS HELD OFF THE RECORD.)

12 MS. WIEST: We'll go back on the record. The  
13 parties agree to the following briefing schedule:  
14 Mr. Robbennolt will file a brief within two weeks from  
15 receipt of the transcript of this hearing. Mr. Gerdes and  
16 staff may file briefs two weeks from the receipt of Mr.  
17 Robbennolt's brief. And Mr. Robbennolt will have an  
18 optional rebuttal brief one week from the receipt of MDU's  
19 or staff's briefs, whichever is later.

20 And then my only other question is whether any of  
21 the parties would like to make any closing statements at  
22 this point?

23 MR. ROBBENNOLT: No.

24 MR. GERDES: I don't think so. We'll do it in  
25 briefs.

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CHAIRMAN BURG: Anything else?

MR. ROBBENOLT: I have nothing.

MS. WIEST: If not, that will close the hearing.

(The hearing concluded at 3:00 p.m.)



BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

RECEIVED

FEB 15 2000

IN THE MATTER OF THE APPLICATION )  
OF SOUTH DAKOTA INTRASTATE )  
PIPELINE COMPANY TO AMEND RATE )  
SCHEDULE PURSUANT TO ITS AMENDED )  
AND RESTATED TRANSPORTATION )  
AGREEMENT. )

PETITION

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

COMES NOW South Dakota Intrastate Pipeline Company, by and through its attorney of record James Robbennolt and petitions the Public Utilities Commission for permission to allow the Utility to increase its transportation fee to its sole customer, Montana-Dakota Utilities from \$2.34/dk to \$2.4067/dk pursuant to Paragraph 8.1 of the Transportation Agreement entered into between South Dakota Intrastate Pipeline Company and Montana Dakota Utilities Company on March 8, 1993. This Petition is also filed pursuant to Paragraph 8.1 of the tariff previously approved by this Commission in File #NG95-008.

Paragraph 8.1 of each of the documents previously cited states "it is agreed, however, that transporter may seek Commission approval of a change in rates, where such change is made necessary by any mandated changes in Federal or State taxes...."

At the time the present rate was established at \$2.34/dk and the tariff approved by the Commission, SDIP's real property taxes as assessed by the Department of Revenue were in the amount of \$216,000.00. Since that date the pipeline has been revalued for property tax purposes from \$11.5 million dollars to \$13.0 million dollars according to the valuations assessed by the State Department of Revenue resulting in an increase in the

EXHIBIT

11-9-00 LG

**SDIP Petition-2**

real property tax to \$279,000.00. See Exhibit "A" attached hereto and made a part hereof by this reference. The increase in the State real property tax amounts to approximately \$63,000.00 per year when averaged out over the five-year remaining term of the Transportation Agreement.

Additionally, since the execution of the original Transportation Agreement the US Department of Transportation has levied a Federal Safety Inspection Tax which impacts SDIP in the amount of over \$12,000.00 per year. See Exhibit "B" attached hereto and made a part hereof by this reference. Also, the State of South Dakota has enacted a pipeline safety program which requires State inspections of the line which impacts SDIP in the approximate amount of \$200.00 per year.

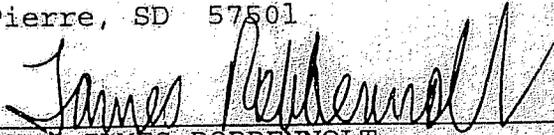
If the Petition for Amendment is granted, the return on equity realized by SDIP still is less than the 14% return on equity which was approved by the Commission at its hearing on SDIP's Petition for Approval of Transportation Rates, Docket NG95-008, which hearing was held on November 6, 1995.

This Petition is also filed pursuant to SDCL §49-34A-25.

Petitioner respectfully requests that the Commission grant its proposed rate increase.

Dated this 15<sup>th</sup> day of February, 2000.

OLINGER, LOVALD, ROBBENNOLT,  
McCAHREN & REIMERS, P.C.  
117 E. Capitol  
PO Box 66  
Pierre, SD 57501

  
BY: JAMES ROBBENNOLT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15<sup>th</sup> day of February, 2000, he mailed a true and correct copy of the foregoing Petition to

Don Klempel  
Vice President of  
Gas Supply  
Montana-Dakota Utilities  
400 No. 4th Street  
Bismarck ND

and that said mailing was by U. S. mail, first class with postage thereon prepaid and mailed at the U. S. Post Office in Pierre, South Dakota.

  
James Robbennolt

## SOUTH DAKOTA INTRASTATE PIPELINE Co.

## Property taxes paid 1994 through 2000

1994	\$	215,999.50
1995	\$	204,645.77
1996	\$	208,724.88
1997	\$	262,016.94
1998	\$	260,976.82
1999	\$	278,968.30
Total property taxes paid through 2000	\$	1,431,332.21

**South Dakota Intrastate Pipeline Company**

**Real Estate Taxes for 1999**

**\*\*All real estate taxes are paid in two equal halves**

**\*\*1st payment is due in April 2000**

**\*\*2nd payment is due in October 2000**

<u>COUNTY</u>	<u>TOTAL TAX DUE</u>
Edmunds County	\$ 100,548.00
Potter County	\$ 33,412.50
Sully County	\$ 47,907.24
Hughes County	\$ 28,163.74
Walworth County	\$ 68,936.82
<b>TOTAL REAL ESTATE TAXES DUE</b>	<b>\$ 278,968.30</b>

**South Dakota Intrastate Pipeline Company**

**Real Estate Taxes for 1998**

**\*\*All real estate taxes are paid in two equal halves**

**\*\*1st payment is due in April 1999**

**\*\*2nd payment is due in October 1999**

<u>COUNTY</u>	<u>TOTAL TAX DUE</u>
Edmunds County	\$ 93,108.74
Potter County	\$ 31,104.64
Sully County	\$ 45,588.48
Hughes County	\$ 25,963.82
Walworth County	\$ 65,121.14
<b>TOTAL REAL ESTATE TAXES DUE</b>	<b>\$ 260,886.82</b>

## South Dakota Intrastate Pipeline Company

### Real Estate Taxes for 1997

\*\*All real estate taxes are paid in two equal halves

\*\*1st payment is due in April 1998

\*\*2nd payment is due in October 1998

<u>COUNTY</u>	<u>TOTAL TAX DUE</u>
Edmunds County	\$ 94,422.60
Potter County	\$ 30,870.74
Sully County	\$ 44,447.80
Hughes County	\$ 26,151.40
Walworth County	\$ 66,124.40
<b>TOTAL REAL ESTATE TAXES DUE</b>	<b>\$ 262,016.94</b>

**South Dakota Intrastate Pipeline Company**

Real Estate Taxes for 1996

\*\*All real estate taxes are paid in two equal halves

\*\*1st payment is due in April 1997

\*\*2nd payment is due in October 1997

<u>COUNTY</u>	<u>TOTAL TAX DUE</u>
Edmunds County	\$ 73,584.06
Potter County	\$ 27,849.40
Sully County	\$ 25,862.16
Hughes County	\$ 22,574.38
Walworth County	\$ 58,854.88
<b>TOTAL REAL ESTATE TAXES DUE</b>	<b>\$ 208,724.88</b>

## South Dakota Intrastate Pipeline Company

### Real Estate Taxes for 1995

\*\*All real estate taxes are paid in two equal halves

\*\*1st payment is due in April 1996

\*\*2nd payment is due in October 1996

<u>COUNTY</u>	<u>TOTAL TAX DUE</u>
Edmunds County	\$ 73,458.06
Potter County	\$ 27,849.40
Sully County	\$ 25,862.16
Hughes County	\$ 22,574.38
Walworth County	\$ 54,901.77
<b>TOTAL REAL ESTATE TAXES DUE</b>	<b>\$ 204,645.77</b>

**South Dakota Intrastate Pipeline Company**

**Real Estate Taxes for 1994**

**\*\*All real estate taxes are paid in two equal halves**

**\*\*1st payment is due in April 1995**

**\*\*2nd payment is due in October 1995**

<u>COUNTY</u>	<u>TOTAL TAX DUE</u>
Edmunds County	\$ 72,785.80
Potter County	\$ 28,063.72
Sully County	\$ 29,892.68
Hughes County	\$ 22,966.50
Walworth County	\$ 62,290.80
<b>TOTAL REAL ESTATE TAXES DUE</b>	<b>\$ 215,999.50</b>



U.S. Department  
of Transportation  
**Research and  
Special Programs  
Administration**

Exhibit

B

400 Seventh Street, S.W.  
Washington, D.C. 20590

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

FY 2000 PIPELINE SAFETY USER FEE ASSESSMENT

Operator ID #: 30024

BILL NUMBER: 20008-120731

BILL DATE : 12/13/99

DUE DATE : 01/12/00

ASSESSMENT : \$ 12,144.94

PRESIDENT

SOUTH DAKOTA INTRASTATE PIPELINE CO.  
1415 N. AIRPORT ROAD  
PIERRE, SD 57501

Section 60301 of Title 49, U.S. Code (formerly §7005 of the Consolidated Omnibus Budget Reconciliation Act of 1985) authorizes the assessment and collection of user fees to fund the pipeline safety program activities conducted under U.S. Code 60101 at seq., by the U.S. Department of Transportation. The above referenced company is being assessed \$12,144.94 for Fiscal Year 2000. This assessment is based on \$68.23 per mile applied to the 178 miles of natural gas transmission pipeline reported in service on the annual report for Gas Transmission and Gathering Systems for 1998 (form RSPA F 7100.2-1).

Payments must be made in full.\* Checks are to be made payable to the "Department of Transportation". Annual interest (5%) plus an annual penalty charge (6%) and an administrative fee of \$12.00 per month will be charged for late payment in accordance with 31 U.S.C. 3717. To ensure proper crediting, please refer to the Bill Number on the check and/or return a copy of the bill with your payment.

Mail Payments to : DOT/Pipeline Safety Program  
c/o PNC Bank - Pittsburgh  
Box 640700  
Pittsburgh, PA 15264-0700

Requests for adjustments must be submitted in writing to Lisa Kokoszka, Office of Pipeline Safety, Room 7128, 400 7th Street, S.W., Washington, D.C. 20590. If you have any questions, please contact Ms. Kokoszka by phone (202)366-4554, Fax (202) 366-4566 or E-Mail at [lisa.kokoszka@rspa.dot.gov](mailto:lisa.kokoszka@rspa.dot.gov).

\* Payment may also be made by wire transfer and/or on-line by credit card. See enclosed instructions.

For Accounting Office Use Only:

Principal: 695172 (GAP)

Interest : 691435 (GCA)

Penalty & Admin.: 691099 (GAG)

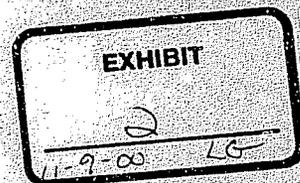
**NG00-001 -SDIPC Tax Adjustment Clause**

**SDIPC Proposal**

Increase rate by an amount equal to the increase in the property taxes for 2000

SDIPC

Current Rate per DKT	\$2.34
Minimum Bill DKT	1,100,000
Minimum Bill Revenue	\$2,574,000.00
Tax Increase Revenue	\$63,000.00
New Revenue Based on Minimum Bill	\$2,637,000.00
New Rate Based on Minimum Bill	\$2.40



**SOUTH DAKOTA INTRASTATE PIPELINE COMPANY  
CALCULATION OF PROPERTY TAX RATE INCREASE  
DOCKET NO. NG00-001**

**Contract:**

Article 8.1 Maximum rate of \$2.34 per dk for the 1st ten years of the contract  
Article 8.2 Minimum bill obligation

SDIP Property taxes in current rates	\$216,000
Contract Billing Units	1,100,000
Amount in current rate for property taxes	\$0.196

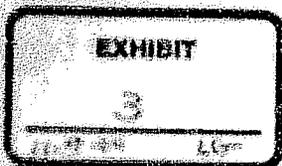
1999 SDIP Property Taxes 1/	\$278,968
Contract Billing Units	1,100,000
Current level of property taxes	\$0.254

Increase per dk	<u>\$0.058</u>
-----------------	----------------

Current Rate	\$2.340
Less: Authorized Taxes	<u>(0.196)</u>
Rate Excluding Property Taxes	2.144

Add: 1999 Property Taxes	<u>0.254</u>
New Rate	<u>\$2.398</u>

1/ Exhibit A of SDIP's Application in Docket No. NG00-001.



LAW OFFICES  
OLINGER, LOVALD, ROBBENNOLT, McCAHREN & REIMERS, P.C.  
117 EAST CAPITOL  
P.O. BOX 66  
PIERRE, SOUTH DAKOTA 57501-0066

RONALD D. OLINGER  
JOHN S. LOVALD  
JAMES ROBBENNOLT  
LEE C. "KIT" McCAHREN  
WADE A. REIMERS

TELEPHONE: 224-8851  
AREA CODE 605  
FAX: 605-224-8269

February 15, 2000

RECEIVED

FEB 15 2000

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Public Utilities Commission  
State Building  
500 E Capitol  
Pierre SD 57501-5070

Re South Dakota Intrastate Pipeline Company  
Rate Increase-Letter of Transmittal

Dear Commission:

Pursuant to ARSD 20:10:13:39 enclosed please find a Petition seeking the Commission's authority for South Dakota Intrastate Pipeline Company to amend its rate schedule to provide for an increase in its transportation charged to its only customer, Montana-Dakota Utilities Company from \$2.34/dk to \$2.4067/dk. Accompanying the Petition are exhibits reflecting recitals stated in the Petition.

South Dakota Intrastate Pipeline Company proposes to make the change in its rate effective as of April 1, 2000.

Copies of the Petition and accompanying exhibits have been sent to Donald Klempel, Vice President of Gas Supply-Montana Dakota Utilities, 400 No. 4th Street, Bismarck, North Dakota 58501. Montana Dakota is South Dakota Pipeline's only customer.

South Dakota Intrastate Pipeline Company proposes to increase its transportation cost to Montana-Dakota Utilities approximately \$0.067/dk on its presently existing pipeline.

Since the original transportation charge was established, the real property taxes assessed by the State of South Dakota against South Dakota Intrastate Pipeline have increased from \$216,000.00 in 1993 to \$279,000.00 in 1999, which dramatic increase was not anticipated when the original rate was secured. Additionally, the United States Department of Transportation has levied a Federal Safety Inspection Tax on the pipeline amounting to over \$12,000.00 per year which was not anticipated or expected to occur. Also, the State of South Dakota has enacted a pipeline safety program requiring State inspections of the line on an annual basis which costs the company approximately \$200.00 per year.

EXHIBIT  
4  
11-9-00 LG

As previously stated, Montana-Dakota Utilities is the only customer of South Dakota Intrastate Pipeline Company and thus will be the only entity directly affected by the proposed change in transportation charge. Based upon past performance, the amount of increase to Montana-Dakota Utilities for transportation of its gas to Pierre and intermediate location will amount to approximately \$75,000.00 per year.

Sincerely,



JAMES ROBBENNOLT  
Attorney at Law

JR/lrd

cc: SDIP

RECEIVED  
DEC 22 1993  
REGISTERED

SOUTH DAKOTA INTRASTATE PIPELINE CO.

AMENDED AND RESTATED

TRANSPORTATION AGREEMENT

WITH

MONTANA-DAKOTA UTILITIES CO.

Dated as of September 1, 1993

EXHIBIT

5  
11-9-00 LG

## AMENDED AND RESTATED TRANSPORTATION AGREEMENT

THIS AMENDED AND RESTATED TRANSPORTATION AGREEMENT (this "Agreement") is made and entered into effective as of September 1, 1993 by and between SOUTH DAKOTA INTRASTATE PIPELINE CO. ("Transporter"), a South Dakota corporation, and Montana Dakota Utilities Co. ("Montana-Dakota"), A Division of MDU Resources Group, Inc., a Delaware corporation.

### WITNESSETH:

WHEREAS, Transporter has received a Certificate of Public Convenience and Necessity from the South Dakota Public Utilities Commission (the "SDPUC") authorizing the construction and operation of the "System" (as hereinafter defined); and

WHEREAS, Montana-Dakota desires to have natural gas transported in the System; and

WHEREAS, Montana-Dakota and Transporter entered into a certain Transportation Agreement, dated March 8, 1993, and a certain Supplemental Agreement, dated March 8, 1993, true, correct and complete copies of which are attached to this Agreement as Exhibit 1; and

WHEREAS, Montana-Dakota and Transporter desire to amend and restate the Transportation Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties do covenant and agree as follows:

### ARTICLE I

1.1 The term "Btu" shall mean one British Thermal Unit.

1.2 The term "Contract Demand" shall mean the aggregate of the maximum daily quantities of gas, expressed in dk per day, which Transporter is obligated to accept for transportation for the account of Montana-Dakota from the points of receipt as set forth in Exhibit A.

1.3 The term "Contract Year" shall mean the twelve month period commencing on the initial in-service delivery date and terminating on the anniversary of the day immediately preceding said initial in-service delivery date and each succeeding twelve month period commencing on each anniversary of said initial in-service delivery date and terminating on the anniversary of the day immediately preceding said initial in-service delivery date, until this Agreement shall have expired or otherwise been terminated in accordance with its terms. For

the purposes of this Agreement, the term "initial in-service delivery date" shall mean September 1, 1993.

1.4 The term "Day" shall mean a period of 24 consecutive hours, ending at 8:00 a. m. Central Time.

1.5 The term "dk" shall mean the quantity of heat energy which is equivalent to 1,000,000 British Thermal Units (BTU). One "dk" of gas means the quantity of gas which contains one dekatherm of heat energy. The total dekatherms are calculated by multiplying the gas volume in Mcf by its total gross heating value, divided by 1,000.

1.6 The term "Equivalent Quantities" shall mean the sum of the quantities of gas measured in dk received by Transporter and delivered for the account of Montana-Dakota at the points of receipt and delivery during any given period of time reduced by the sum of Montana-Dakota's Pro Rata Share of the Unaccounted For Gas and the Line Pack changes resulting from the operations of the System during the same period of time. In the event the ownership of gas lost as a result of an event of force majeure can be reasonably identified, the quantity thereof shall be charged to the owner or owners so identified.

1.7 The term "Gas" shall mean natural gas, unmixed or any mixture of natural and artificial gas.

1.8 The term "Gross Heating Value" shall mean the number of Btus produced by the complete combustion, at a constant pressure, of the amount of gas which would occupy a volume of one (1) cubic foot at a temperature of 60 degrees Fahrenheit on a dry basis and at a pressure of 14.73 psia with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of the gas and air, and when the water formed by combustion has been condensed to the liquid state.

1.9 The term "Maximum Daily Quantity" shall mean the maximum quantity expressed in dk per day that the Transporter is obligated to receive for the account of Montana-Dakota at each point of receipt, as established in Exhibit A.

1.10 The term "Mcf" shall mean 1,000 cubic feet of gas determined in accordance with the measurement base described in Paragraph 3.1 hereof.

1.11 The term "Month" shall mean the period beginning at 8:00 a. m. Central Time on the first day of a calendar month and ending at the same hour on the first day of the next succeeding month.

1.12 The term "Pro Rata Share" shall mean the ratio that the quantity of gas delivered to Transporter by or for the account of Montana-Dakota bears to the total quantity of gas delivered to Transporter by all shippers for transportation in the System during any given period of time.

1.13 The term "SDPUC" shall mean the South Dakota Public Utilities Commission or any commission, agency or other state governmental body succeeding to the powers of such commission.

1.14 The term "shipper" or "shippers" shall mean all parties other than Montana-Dakota transporting gas on Transporter's System.

1.15 The term "System" shall mean the pipeline and related pipeline facilities at the time owned by Transporter.

1.16 The term "Unaccounted For" shall mean the difference between the sum of all input quantities of gas to the System and the sum of all output quantities of gas from the System, which difference shall include but shall not be limited to compressor fuel, and gas used and accounted for in pipeline operations, and gas lost as a result of an event of force majeure, the ownership of which cannot be reasonably identified.

## ARTICLE II

2.1 Obligation to Transport. Commencing with date of initial deliveries hereunder, Transporter shall receive at the points of receipt hereunder for the account of Montana-Dakota all gas which Montana-Dakota may cause to be delivered to it up to Montana-Dakota's Contract Demand as set forth in Exhibit A hereof on a firm basis and continuing for a period of twenty-five (25) years thereafter.

Montana-Dakota may extend this Agreement for five-year periods upon six months written notice to Transporter prior to each termination date.

If no breach, default or other non-performance by Montana-Dakota exists, Montana-Dakota may terminate this Agreement without penalty if Transporter ceases to operate the System for any reason, including without limitation, "force majeure" (as that term is defined in Paragraph 12.2), and said cessation continues for 120 hours. If Montana-Dakota elects to so terminate this Agreement, it shall do so by giving notice to Transporter at any time during the continuation of said cessation and after said 120 hour period. During the continuation of any such cessation, Transporter shall use its best efforts to diagnose and remedy the cause of the cessation and shall provide to a representative of Montana-Dakota access to the site of and information regarding the remediation activities. If, at any time after said cessation has been continuing for twenty-four (24) hours, Transporter is not using its best efforts to diagnose and remedy the cause of the cessation, Montana-Dakota may take such actions as it deems necessary to diagnose and remedy the cause of the cessation, provided that Montana-Dakota and any contractor performing all or any portion of said diagnostic and remediation work maintains appropriate and sufficient insurance, naming Transporter as an additional insured where appropriate, and otherwise acts in a commercially reasonable manner. Transporter will,

promptly upon receipt of invoices or receipts and, where appropriate, mechanics lien waivers, reimburse Montana-Dakota for or pay on Montana-Dakota's behalf the reasonable costs of such actions, including, without limitation, costs of insurance.

**2.2 Maximum Daily Quantities.** Subject to Transporter's prior approval, Montana-Dakota from time to time shall stipulate a Maximum Daily Quantity of gas for delivery at each point of receipt if there is more than one point of receipt, the aggregate of all such stipulated maximum daily quantities at points of receipt not to exceed the Contract Demand. The initial maximum daily quantity for each point of receipt and the Contract Demand shall be set forth in Exhibit A attached hereto. Any updating or other modification of Exhibit A as provided in this Paragraph 2.2 shall not be effective unless and until the updated or modified Exhibit A shall have been duly executed or initialled by both parties, subject to any necessary regulatory approval. Such a revised Exhibit A shall replace the prior Exhibit A and, by this reference, shall become a part of this Agreement. The daily deliveries at any point of receipt may exceed the Maximum Daily Quantity specified for such point of receipt on a temporary basis, provided the System in Transporter's sole judgment can accommodate the excess quantity.

### ARTICLE III

**3.1 Unit of Measurement and Metering Base.** The volumetric measurement base shall be one cubic foot of gas at a pressure base of 14.73 pounds per square inch absolute, at a temperature base of 60°F, and without adjustment for water vapor content.

**3.2 Atmospheric Pressure.** For the purpose of measurement, the absolute atmospheric (barometric) pressure at each measuring station shall be the atmospheric pressure determined by calculations based on the actual elevation above sea level of the meter at the place of measurement, and shall be stated in pounds per square inch, as shown on Exhibit A.

**3.3 Temperature.** The temperature of the gas shall be determined at each point of measurement by means of a properly installed recording thermometer, an indicating thermometer, an electronic temperature measuring device, or a temperature compensating meter of standard manufacture acceptable to both parties.

**3.4 Specific Gravity.** The specific gravity of the gas shall be determined at each point of receipt by one of the following methods:

- (a) By means of a properly installed recording gravitometer of standard manufacture acceptable to both parties.
- (b) If (a) is not considered feasible, then by use of a portable specific gravity balance of standard manufacture, or other standard device acceptable to

both parties and designed for such purpose or use in conjunction with a continuous sampler.

(c) Other methods mutually agreeable to both parties.

**3.5 Measurement Procedures.** Quantities of gas received and delivered hereunder shall be measured in accordance with Procedures contained in ANSI-API 2530, First Edition, AGA Committee Report No. 5, AGA Committee Report No. 7, and AGA Committee Report No. 8, or revisions or amendments thereto.

**3.6 Measuring Equipment.** Unless otherwise agreed upon, Montana-Dakota will cause to be provided, maintained, and operated necessary measuring and regulating stations equipped with flow meters and other necessary measuring equipment by which its quantities of gas delivered from Transporter hereunder shall be determined. Unless otherwise agreed upon, Transporter shall cause to be installed, operated and maintained at its expense a measuring and regulating station or stations equipped with flow meters and other necessary measuring equipment for the measurement of gas delivered to Transporter for the account of Montana-Dakota; such measuring and regulating stations shall be so installed at the receipt point of the System and at other agreeable points. All flow, measuring, testing, and related equipment shall be of standard manufacture and type acceptable to both parties; and the size, type and specifications of such equipment shall also be acceptable to both parties before the same is fabricated and installed. Transporter and Montana-Dakota shall cause the chart on all gas measurement equipment to be changed, or mechanical or electronic indices read, by either Transporter or by Montana-Dakota's representative (where economical) on a daily basis but in no case at intervals of longer than once every eight (8) days; however, all gas measurement charts shall be changed, or indices read as near as practical to the beginning of the first day of each month. Either of the parties may install check measuring equipment, provided that such equipment shall be so installed as not to interfere with operation of the other. Montana-Dakota and Transporter, in the presence of each other, shall have access to all measuring equipment at all reasonable times, but the reading, calibrating, and adjusting thereof shall be done by the owner, unless otherwise agreed upon. Montana-Dakota and Transporter shall have the right to be present at the time of any installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating, or adjusting done in connection with all measuring equipment. The records from such measuring equipment shall remain the property of their owner, but upon request, either party will cause to be submitted to the other records together with calculations therefrom, for inspection, subject to return within 30 days after receipt thereof. Reasonable care shall be exercised in the installation, maintenance and operation of measuring equipment so as to avoid any inaccuracy in the determination of the quantity of gas received and delivered.

**3.6.1 Orifice Meters.** Orifice meters, if used, shall be installed and gas volumes computed, in accordance with ANSI API 2530, First Edition, or revisions or amendments thereto.

**3.6.2 Positive or Turbine Meters.** Positive or turbine meters, if used, shall be of a type acceptable to the Transporter and Montana-Dakota. Turbine meters, if used, shall be installed and gas quantities computed, in accordance with AGA Committee Report No. 7, Measurement of Fuel Gas by Turbine Meters, or revisions or amendments thereto. Such meters may also be equipped with a device for recording the flow rate and/or a device for integrating the product of quantities of gas measured multiplied by the pressure and temperature corrections, and indicating the quantity of gas received or delivered.

**3.6.3 Electronic Flow Computers.** It is recognized that electronic or other types of flow computers have been developed that permit the direct computation of gas flows without the use of charts. If, at any time during the term hereof, a new method or technique is developed with respect to gas measurement or the determination of the factors used in such gas measurement, such new method or technique may be substituted upon mutual agreement thereto by the parties.

**3.7 Calibration and Test of Meters.** The accuracy of all measuring equipment shall be verified by the owner thereof at reasonable intervals, and if requested, in the presence of representatives of the other party hereunder, but neither Montana-Dakota nor Transporter shall be required to verify the accuracy of such equipment more frequently than once in any 90 day period. If either party at any time desires a special test of any measuring equipment, it will promptly notify the other, and the parties shall then cooperate to secure a prompt verification of the accuracy of such equipment. Transportation and related expenses incurred by Montana-Dakota or Transporter involved in the testing of meters shall be borne by the party incurring such expenses.

**3.8 Correction of Metering Errors.** If, upon any test, any measuring equipment is found to be in error, such errors shall be treated in the following manner: If the resultant aggregate error in the computed receipts or deliveries is not more than  $\pm 2\%$ , then previous receipts or deliveries shall be considered accurate. All equipment shall, in any case, be adjusted at the time of test to record to zero error. If, however, the resultant aggregate error in computed receipt or deliveries exceeds  $\pm 2\%$  at a recording corresponding to the average hourly rate of gas flow for the period since the last preceding test, the previous recordings of such equipment shall be corrected to zero error for any period which is known definitely or agreed upon, but in case the period is not known definitely or agreed upon, such correction shall be for a period extending over one-half of the time elapsed since the date of the last test, not exceeding a correction period of 45 days.

**3.9 Failure of Measuring Equipment.** In the event any measuring equipment is out of service, or is found registering inaccurately and the error is not determinable by test, or by previous recording, receipts or deliveries through such equipment shall be estimated:

- (a) By using the registration of any check meter or meters, if installed and accurately registering, or in the absence of (a);

- (b) By correcting the error if the percentage of error is ascertainable by calibration, special test, or mathematical calculation, or in the absence of both (a) and (b) then;
- (c) By estimating the quantity of receipt or delivery based on receipts or deliveries during preceding periods under similar conditions when the measuring equipment was registering accurately.

3.10 Preservation of Records. Montana-Dakota and Transporter shall preserve for a period of at least three years, or such longer period as may be required by public authority, all test data, charts, and other similar records.

#### ARTICLE IV

4.1 Quality Standards of Gas Received by Transporter. Transporter may refuse to accept gas which does not conform to the following Northern Border Pipeline Co. specifications or such specifications as revised from time to time.

4.1.1 The gas shall not contain sand, dust, gums, crude oil, impurities or other objectionable substances which may be injurious to pipelines or may interfere with the transmission of the gas.

4.1.2 The gas shall have a hydrocarbon dew-point less than -5°F at 800 psia, -10°F at 1000 psia, or -18°F at 1100 psia, or such higher dew point approved by Transporter as, without treatment by Transporter, may be compatible with the operating conditions of Transporter's pipeline.

4.1.3 The gas shall not contain more than 0.3 grains of hydrogen sulphide per 100 cubic feet.

4.1.4 The gas shall not contain more than 2 grains of total sulphur per 100 cubic feet.

4.1.5 The gas shall contain not more than three-tenths grains of mercaptan sulphur per 100 cubic feet, or such higher content as, in Transporter's judgment, will not result in deliveries by Transporter to Montana-Dakota of gas containing more than three-tenths grains of mercaptan sulphur per 100 cubic feet.

4.1.6 The gas shall not contain more than two percent by volume of carbon dioxide.

4.1.7 The gas shall not have a water vapor content in excess of four pounds per thousand Mcf.

4.1.8 The gas shall be as free of oxygen as it can be kept through the exercise of all reasonable precautions and shall not in any event contain more than four-tenths of one percent by volume of oxygen.

4.1.9 The gas shall have a gross heating value of not less than 967 Btu per cubic foot.

4.2 Quality Tests. At the point of receipt of Montana-Dakota, Transporter shall cause tests to be made, by approved standard methods in general use in the gas industry, to determine whether the gas conforms to the quality specifications set out in Paragraph 4.1 hereof. Such tests shall be made at such intervals as Transporter may deem reasonable, and at other times, but not more often than once per day, at the request of Montana-Dakota.

4.3 Failure to Conform. If gas delivered by Montana-Dakota does not comply with the quality specifications set out in Paragraph 4.1 hereof, Transporter shall have the right, in addition to all other remedies available to it by law, to refuse to accept any such gas. Transporter may, at its option and upon notice to Montana-Dakota, accept receipt of gas not complying with the quality specifications set out in Paragraph 4.1 herein provided. Transporter, at the expense of Montana-Dakota, may make all changes necessary to bring such gas into compliance with such specifications. No refusal to accept gas in accordance with this Paragraph 4.3 shall reduce Montana-Dakota's minimum quantity transportation obligations under the Agreement.

4.4 Quality Standards of Gas Transported By Transporter. Transporter shall use reasonable diligence to deliver gas for Montana-Dakota which shall meet the quality specifications set out in Paragraph 4.1 hereof, but shall only be obligated to deliver gas of the quality which results from the commingling of the gas received by Transporter from Montana-Dakota and other shippers and, except as Transporter may choose to do so pursuant to Paragraph 4.3 hereof, shall not be required to treat any gas delivered to it by Montana-Dakota.

## ARTICLE V

5.1 Points of Receipt. The initial point or points of receipt hereunder shall be the point or points of connection between the facilities of Transporter and the facilities of Northern Border Pipeline Company at the point or points on the System where Montana-Dakota shall deliver, or cause to be delivered, gas to Transporter for transportation service, set forth in Exhibit A attached hereto. Montana-Dakota may from time to time notify Transporter in writing of its desire for an additional point of receipt and shall furnish in this regard the quantity and other relevant information as requested by Transporter. Upon receipt of such request and all relevant information, Transporter shall determine in its sole discretion whether and to what extent capacity will exist in the System to accommodate the proposed quantities of gas at the desired additional point of receipt, and shall so advise Montana-Dakota within 45 days. If Transporter determines that it will have the capacity to accommodate all or a portion of

Montana-Dakota's gas at the desired additional point of receipt, Transporter shall design the facilities for such connection, and, construct and install the facilities at such additional point of receipt. The establishment of such additional point of receipt shall be at the expense of Transporter. Exhibit A attached hereto shall be amended to add such additional point of receipt. All points of receipt constructed in accordance with this Paragraph 5.1 shall be and shall at all times remain a part of the System and the sole and exclusive property of the Transporter.

5.2 Points of Delivery. The points of delivery hereunder shall be the points of connection between the facilities of Transporter and the facilities of Montana-Dakota, where Transporter shall deliver gas for the account of Montana-Dakota. Such points of delivery are set forth in Exhibit A attached hereto. The establishment of any additional point of delivery at the request of Montana-Dakota shall be at the expense of Montana-Dakota.

## ARTICLE VI

6.1 Schedules. At least five days prior to the first day of each month, Montana-Dakota shall furnish Transporter with a schedule showing by points of receipt and points of delivery the estimated daily quantities of gas it desires Transporter to transport during such month.

6.2 Departures from Schedules. Montana-Dakota shall use its best efforts to give Transporter at least eight hours notice prior to proposed change of a daily quantity from that set forth in the schedule provided for in Paragraph 6.1 hereof. Transporter may waive such notice upon request if, in its judgment, operating conditions permit such waiver. Transporter and Montana-Dakota shall inform each other of any other changes of deliveries immediately upon knowledge thereof.

6.3 Receipt of Gas. Departures from the scheduled deliveries at the points of receipt shall be kept to the minimum permitted by operating conditions, and shall be balanced as soon as practicable.

6.4 Delivery of Gas. Provided that Montana-Dakota shall have delivered such quantities of gas to the System and based upon the daily quantities scheduled, such information as may be available concerning the quantities actually received, and after making adjustments for any prior imbalance in deliveries, Transporter shall daily make delivery, to the extent practicable, of remaining quantities of gas at the points of delivery.

6.5 Hourly Variation. Deliveries shall be made at uniform hourly rates to the extent practicable. Transporter's obligation to deliver shall not exceed 1/16th of Montana-Dakota's maximum daily quantity in any given hour.

**6.6 Adjustments to Equivalent Quantities.** Following receipt of monthly statements, the parties shall adjust the receipts and deliveries of gas, within 60 days, if practicable, in order to balance any excess or deficiency on a thermal equivalent basis in order for Montana-Dakota to receive Equivalent Quantities. In the event the quantities of gas received and to be delivered are not in balance on a thermal equivalent basis at the end of the term thereof, then such balance shall be achieved within 60 days by extending or reducing, as appropriate, receipts or deliveries as applicable at the appropriate point of receipt or point or points of delivery until such balance is achieved or by such other method as is then mutually agreed upon by the parties hereto.

## ARTICLE VII

**7.1 Pressure at the Points of Receipt.** Montana-Dakota shall cause the gas to be delivered at the points of receipt at a pressure sufficient to allow the gas to enter the System; however, Montana-Dakota shall not be required to deliver gas to the Transporter at any point of receipt at a pressure in excess of the minimum pressure specified with respect to each receipt point in Exhibit A.

**7.2 Pressure at Points of Delivery.** Transporter shall deliver gas to each of Montana-Dakota's delivery points at the pressure existing in the Transporter's pipeline; however, Transporter must deliver gas to each point at a pressure not less than the minimum pressure specified with respect to each delivery point in Exhibit A. Transporter, however, shall not be required or permitted to deliver gas at a pressure in excess of the maximum pressure specified for each point of delivery set forth in Exhibit A attached hereto.

## ARTICLE VIII

**8.1 Transportation Charge.** Transporter's charge to Montana-Dakota for transporting all of Montana-Dakota's quantities pursuant to this Agreement shall not exceed \$2.34/dk during the first ten (10) Contract Years. It is agreed, however, that Transporter may seek Commission approval of a change in rates, where such change is made necessary by any mandated changes in federal or state taxes or catastrophic event or series of events which seriously threatens the ability of Transporter to provide safe and adequate gas service to shippers as required by law.

**8.2 Minimum Bill Obligation.** Montana-Dakota shall be obligated to pay for minimum transportation quantities for each Contract Year as set forth below. The minimum transportation quantity obligation provided for in the immediately preceding sentence shall be reduced during each Contract Year by the greater of (a) the minimum quantity obligations for such Contract Year of all other shippers and (b) the actual quantities transported by all other shippers on the System during said Contract Year, in each case only to the extent actually paid for. The

transportation obligation provided for in the first sentence of this Paragraph also shall be reduced during each Contract Year by an amount equal to the product of (i) a fraction, the numerator of which is the number of days, if any, that the System has been inoperative as a result of a "force majeure" and the denominator of which is the actual number of days in said Contract Year multiplied times (ii) the minimum transportation quantity obligation applicable during said Contract Year, as set forth in the chart below. Any adjustment in Montana-Dakota's minimum transportation quantity obligation for any Contract Year as provided in this Paragraph shall be determined and paid for within thirty (30) days following the completion of said Contract Year. Unless the parties expressly agree otherwise, any reduction in the minimum transportation quantity obligation provided for in this Paragraph shall be effected through the year-end reconciliation and shall not reduce Montana-Dakota's monthly payment obligations set forth in Article IX. Montana-Dakota's minimum quantity transportation obligation shall be:

<u>Contract Year</u>	<u>Minimum Transportation Quantity Obligation</u>
1	400,000 dk
2	800,000 dk
3	900,000 dk
4	1,000,000 dk
5-19	1,100,000 dk

8.3 Minimum Quantity Credits. If the quantities transported by the Transporter on its System in any Contract Year during the first five (5) Contract Years are less than the minimum quantities as provided for in Paragraph 8.2, Transporter will credit such quantity shortfall to Montana-Dakota. Such credits shall be applied to Montana-Dakota in subsequent Contract Years when the actual quantities transported by Montana-Dakota and all other shippers exceed the minimum quantity obligation for the particular Contract Year as set forth in Paragraph 8.2. Such credits which are not used in a particular Contract Year shall accumulate for use in subsequent Contract Years.

8.4 Pierre Area Mainline Tap. Transporter agrees to allow Montana-Dakota to provide for a mainline tap consisting of a riser and valve approximately four miles upstream of the Pierre delivery point for the exclusive use of Montana-Dakota to serve customers in the immediate area of the mainline tap and customers between the mainline tap and the Pierre delivery point.

8.5 Initial Delivery. Montana-Dakota's minimum transportation quantity for the first Contract Year is conditioned upon Transporter's System being in service and initial delivery of Montana-Dakota's transportation quantities commencing no later than September 1, 1993, to the towns of Pierre, Mobridge, Gettysburg and Ipswich. Should Transporter fail to meet the September 1, 1993, in-service date, Montana-Dakota's minimum quantity obligation for the first

Contract Year shall be reduced by the following quantities for each day Transporter's in-service date is delayed beyond September 1, 1993:

September 1, 1993 through September 7, 1993	1,000dk/day
September 8, 1993 through September 14, 1993	3,000dk/day
September 15, 1993 through September 30, 1993	8,000dk/day
October 1, 1993 through October 31, 1993	10,000dk/day

Should Montana-Dakota fail to meet the September 1, 1993, in-service date and not be able to receive gas at the delivery points and have substantial mains and services installed in Pierre, Mobridge, Gettysburg and Ipswich, except as provided in Paragraph 8.6, then the above reduction rate will apply to reduce credits, if any, during the first Contract Year.

**8.6 Failure to Serve Towns.** If Montana-Dakota after due diligence fails to serve any of the towns listed on Exhibit B, within the first two Contract Years, because it (1) fails to obtain a franchise to serve the town or (2) another public utility or a municipal utility serves the town, the minimum transportation quantity obligation set forth in Paragraph 8.2 for each Contract Year will be reduced by the amount shown on Exhibit B for the particular town that is not served during the applicable contract years. Transporter and Montana-Dakota agree that the economic feasibility of Montana-Dakota serving most of the towns on Exhibit B is primarily dependent on the location of the delivery point stations (TBS). Therefore, Transporter and Montana-Dakota will select locations for the delivery point stations which are mutually agreed upon.

**8.7 Overruns.** Upon request of Montana-Dakota and at Transporter's option, Transporter may receive and deliver for Montana-Dakota's account, on any day, quantities of gas in excess of Montana-Dakota's Maximum Daily Quantity; however, such quantities shall be received and delivered on a best efforts basis.

**8.8 Nomination and Balancing Tolerances.** In addition to any variations caused by excesses and deficiencies described in Paragraph 6.6, it is recognized that the parties will be unable to control exactly the quantities of gas delivered and accepted hereunder on any day and that deliveries by Montana-Dakota and redeliveries by Transporter may vary above or below the quantities scheduled on any day. Such variations shall be kept to the minimum permitted by operating conditions and shall be balanced as soon as practicable, but in no event shall exceed an allowable daily variation of 20% or 500 dk, whichever is greater, of the scheduled deliveries, and provided further that the cumulative net variations during any month above or below the quantities scheduled shall not exceed 4% or 2000 dk, whichever is greater, of the sum of the scheduled quantities for each day of such month. The parties agree to use their best efforts to correct any such cumulative net variations from scheduled deliveries. Nothing contained in this Paragraph shall affect Montana-Dakota's obligation to pay for gas actually transported.

8.9 Towns Served. Upon request, Montana-Dakota will submit to Transporter photocopies of franchises it has been awarded to provide natural gas to any particular municipality through the System.

## ARTICLE IX

9.1 Billing. On or before the 15th day of each month, Transporter shall render to Montana-Dakota a statement of the total amount of gas delivered by Transporter to Montana-Dakota at the points of receipt hereunder during the preceding month and the amount due. When information necessary for billing purposes is in the control of Montana-Dakota, Montana-Dakota shall furnish such information to Transporter on or before the 10th day of the month.

Montana-Dakota and Transporter shall have the right to examine at reasonable times, books, records, and charts of the other to the extent necessary to verify the accuracy of any statement, charge, or computation made under or pursuant to any of the provisions hereof.

9.2 Payment. Montana-Dakota shall pay Transporter at its general office or at such other address as Transporter shall designate on or before the 25th day of the month, the amount due for the preceding month.

If presentation of a bill by Transporter is delayed after the 15th day of the month, then the time of payment shall be extended accordingly unless Montana-Dakota is responsible for such delay.

Should Montana-Dakota fail to pay all or any portion of any bill as herein provided when such amount is due, interest on the unpaid portion of the bill shall occur at a rate (which in no event shall be higher than the maximum rate permitted by applicable law) equal to the prime rate plus one percent (1%). As used in this Agreement, the term "prime rate" shall mean the rate publicly announced from time to time by Chase Manhattan Bank as its "prime," "base," "reference" or similar rate, whether or not such rate is the rate actually charged by Chase Manhattan Bank to a particular borrower or group of borrowers. If such failure to pay continues for 30 days after payment is due, Transporter, in addition to any other remedy it may have hereunder, after application to and authorization by the governmental authority having jurisdiction, may suspend further delivery of gas until such amount is paid; provided, however, that if Montana-Dakota in good faith shall dispute the amount of any such bill or part thereof and shall pay to Transporter such amounts as it concedes to be correct and, at any time thereafter within 30 days of a demand made by Transporter, shall furnish a good and sufficient surety bond in an amount and with surety satisfactory to Transporter, guaranteeing payment to Transporter of the amount ultimately found due upon such bills after a final determination which may be reached either by agreement or judgment of the courts, as may be the case, then Transporter shall not be entitled to suspend further delivery of gas unless and until default be made in the conditions of such bond.

9.3 Adjustment of Billing Errors. Subject to the provisions of Paragraph 3.9 hereof, if it shall be found that at any time or times Montana-Dakota has been overcharged or undercharged in any form whatsoever under the provisions hereof and, in the case of an overcharge, Montana-Dakota shall have actually paid the bill containing such overcharge, then within 30 days after the final determination of such overcharge or undercharge, the appropriate party shall pay to the other party the amount of said overcharge or undercharge, net of any other amounts then payable hereunder. In the event an error is discovered in the amount billed in any statement rendered by Transporter, such error shall be adjusted within 30 days of the determination thereof provided that claim therefor shall have been made within one (1) year from the date of such statement. If the parties are unable to agree on the adjustment of any claimed error, any resort by either of the parties to legal procedure, either at law, in equity, or otherwise, shall be commenced within 15 months after the supposed cause of action is alleged to have arisen, or shall thereafter be forever barred.

#### ARTICLE X

10.1 Responsibility for Gas. As between the parties hereto, Montana-Dakota shall be in exclusive control and possession of the gas until such has been delivered to Transporter at the points of receipt and after such gas has been redelivered to or for the account of Montana-Dakota by Transporter at the points of delivery. Transporter shall be in exclusive control and possession of such gas while same is in the System between the points of receipt and the points of delivery. The party which shall be in exclusive control and possession of such gas shall be responsible for all injury or damage caused thereby.

#### ARTICLE XI

11.1 Warranty. Montana-Dakota warrants for itself, its successors and assigns, that it will have at the time of delivery of gas for transportation hereunder good title or the good right to deliver such gas. Transporter warrants for itself, its successors and assigns, that it will at the time of delivery to others of the gas transported hereunder have good right to deliver such gas to others. Montana-Dakota warrants for itself, its successors and assigns, that the gas it delivers hereunder shall be free and clear of all liens, encumbrances and claims whatsoever, that it will indemnify Transporter and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of any adverse claims of any and all persons to said gas and/or to royalties, taxes, license fees or charges thereon which are applicable to such delivery of gas and that it will indemnify Transporter and save it harmless from all taxes or assessments which may be levied and assessed upon such delivery and which are by law payable by, and the obligation of, the party receiving such delivery.

## ARTICLE XII

12.1 Force Majeure. If by reason of force majeure either party hereto is rendered unable, wholly or in part, to carry out its obligations under this Agreement, and if such party gives notice and reasonably full particulars of such force majeure in writing or by facsimile or telephone to the other as soon as possible after the occurrence of the cause relied on, the party giving such notice, so far as and to the extent that it is affected by such force majeure, shall not be liable in damages during the continuance of any inability so caused, provided such cause shall so far as possible be remedied with all reasonable dispatch; provided, however, that such force majeure affecting the performance hereunder by either Montana-Dakota or Transporter shall not relieve such party of liability in the event of its own concurring negligence or in the event of its own failure to use due diligence to remedy the situation and to remove the cause in an adequate manner and with all reasonable dispatch; provided further, that no such causes affecting such performance shall relieve either party from its obligations to make payments as determined hereunder or entitle either party to exercise any right to offset against any such payment obligation; provided further that nothing contained in this sentence is intended to deprive either party of any other right or remedy, including, without limitation, any right to sue for contract damages, that it might otherwise have under applicable law. Without limiting the foregoing, except as expressly provided in Section 8.2 of this Agreement, no cessation of operation of the System (by force majeure or otherwise) or other act or omission of Transporter shall reduce Montana-Dakota's minimum bill or minimum transportation quantity payment obligations provided for in this Agreement.

12.2 Definition. The term "force majeure" as used herein shall mean acts of God, strikes, lockouts, or other industrial disturbances; acts of a public enemy, wars, blockades, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts; arrests and restraints of the government, either federal or state, civil or military, civil disturbances; shutdowns for purposes of necessary repairs, relocation, or construction of facilities; breakage or accident to machinery or lines of pipe; the necessity for testing (as required by governmental authority or as deemed necessary by repairs or alterations to machinery or lines of pipe); failure of surface equipment or pipelines; accidents, breakdowns, inability of either party hereto to obtain necessary material, supplies, or permits, or labor to perform or comply with an obligation or condition of this Agreement, rights of way, and any other causes, whether of the kind herein enumerated or otherwise, which are not reasonably in the control of the party claiming suspension. It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of an opposing party when such course is inadvisable in the discretion of the party having the difficulty.

## ARTICLE XIII

13.1 Notice of Interruption. Transporter shall at all times attempt to operate, or cause to be operated, its pipeline system in a manner designed to make possible, as nearly as practicable, continuous receipt of gas from, and delivery of gas to, Montana-Dakota in the respective quantities provided for in this Transportation Agreement. If an interruption or curtailment of such receipt and/or delivery shall become necessary, Transporter shall at once notify Montana-Dakota by facsimile or telephone or other prompt means of communication of the nature, extent and probable duration of such interruption or curtailment and of the quantity of gas which Transporter estimates it will be able to receive from and deliver to Montana-Dakota during the period of interruption or curtailment, and shall give like notice of the cessation of such interruption or curtailment.

13.2 Allocation of Reduced Capacity. If the effective capacity of all or a portion of Transporter's pipeline is reduced as a result of force majeure, repairs, maintenance or any other cause, whether similar or dissimilar, and some curtailment of the quantity of gas to be received from shippers under their transportation agreements is required as a result, the reduced capacity shall, during the period of curtailment, be allocated proportionately, according to their respective Maximum Daily Quantities, among those shippers whose gas must be received or delivered at or transported through, the affected facilities.

13.3 Scheduling of Receipts and Deliveries. Transporter shall schedule all quantities tendered under all services performed by Transporter in sequence as follows:

First, to Transporter's firm transportation shippers, under Rate Schedule T-1 by date of Agreement.

Second, to other Rate Schedules that may be approved, in the order of priority as may be approved by the SDPUC or other regulatory bodies with jurisdiction.

## ARTICLE XIV

14.1 Notices. Except as herein otherwise provided, any notice, request, demand, statement, bill, or payment provided for in this Agreement, or any notice which either party may desire to give to the other, shall be in writing and shall be considered as duly delivered when mailed by registered or certified mail return receipt requested to the Post Office Address of the parties hereto as follows:

**TRANSPORTER:**

South Dakota Intrastate Pipeline Co.  
P. O. Box 34  
Pierre, South Dakota 55701

**MONTANA-DAKOTA UTILITIES CO.:**

Montana-Dakota Utilities Co.  
400 North Fourth Street  
Bismarck, ND 58501

ATTN.: Gas Supply Department

or such other address as either of the parties hereunder shall designate by formal written notice. Routine communications including monthly statements and payments, shall be considered as duly delivered when mailed by either registered, certified or ordinary mail.

**ARTICLE XV**

15.1 **Waivers.** No waiver by either Montana-Dakota or Transporter of any one or more defaults in the performance of any provision hereunder shall operate or be construed as a waiver of any future default or defaults, whether of a like or a different character.

**ARTICLE XVI**

16.1 **Regulations.** This Agreement, and all terms and provisions contained herein, and the respective obligations of the parties hereunder are subject to valid laws, orders, rules and regulations of duly constituted authorities having jurisdiction.

**ARTICLE XVII**

17.1 **Assignments.** Any company which shall succeed by purchase, merger, or consolidation to the properties, substantially as an entirety, of Montana-Dakota, or of

Transporter, as the case may be, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this Agreement; and either of the parties may assign or pledge this Agreement under the provisions of any mortgage, deed of trust, indenture or similar instrument which it has executed or may execute hereafter covering substantially all of its properties; otherwise neither of the parties shall assign this Agreement or any of its rights hereunder unless it first shall have obtained the consent thereto in writing of the other party, provided further, however, that neither of the parties shall be released from its obligations hereunder without the consent of the other.

## ARTICLE XVIII

**18.1 Applicable Law.** This Agreement shall be governed by and interpreted in accordance with laws of the state of South Dakota.

**18.2 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

**18.3 Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

**18.4 Line Pack.** Prior to the initial in-service delivery date that natural gas begins flowing on Transporter's System, Transporter will purge the line and provide line pack quantities to a stabilized pressure of 400 psig. Line pack quantities above those initially provided by Transporter shall be provided by Montana-Dakota and by other shippers on a pro-rata basis based on Contract Demand of all parties and normal operating pressure of Transporter's pipeline.

**18.5 Right of First Refusal.** Except as provided in Section 18.6, in consideration of this Agreement, it is agreed by Transporter and Montana-Dakota that should Transporter desire to sell Transporter's System, or any part thereof, and finds a Purchaser, or purchasers, who are ready, able, and willing to purchase the System, or part thereof, Montana-Dakota shall have the first option to purchase the System or part thereof that Transporter desires to sell for the amount of any bona fide offer made by any third party, or parties. The first option of Montana-Dakota to buy Transporter's System or part thereof shall extend for a period of thirty days after notice of such bona fide offer has been communicated in writing to Montana-Dakota by Transporter. If such option to purchase is not exercised by Montana-Dakota within the thirty day period, then Transporter may sell its System or part thereof to such third party or parties.

**18.6 Financing.** Anything else contained in this Agreement to the contrary notwithstanding:

(a) Transporter may assign this Agreement to one or more senior lenders as collateral security. Transporter shall, immediately upon receipt from any such lender of a notice of default, provide to Montana-Dakota a copy of such notice;

(b) in lieu of the right of first refusal provided to Montana-Dakota in Section 18.5, if any such senior lender(s) desires to exercise its right under such a collateral assignment to sell or cause the sale of Transporter's interest hereunder in a private or public sale, then not less than thirty (30) days before the scheduled date for any public sale and before privately offering to sell or soliciting offers to purchase the Transporter's interest under this Agreement, said lender(s) shall provide to Montana-Dakota a thirty (30) day "right of first offer" period during which it shall negotiate exclusively and in good faith with Montana-Dakota for the sale of Transporter's interest hereunder. If, during said exclusive period, said lender(s) and Montana-Dakota do not reach a definitive agreement providing for the sale of such interest to Montana-Dakota with a closing within fifteen (15) days after the expiration of said exclusive period, said lender(s) may conduct and consummate any private or public sale or take any other actions to dispose of said interest free of any rights of Montana-Dakota other than the right to bid at any such public sale; and

(c) any buyer at any such public or private sale, including, without limitation, any one or more of said senior lenders, shall be conclusively presumed to have assumed all of the obligations of the Transporter under this Agreement. Said assumption shall occur automatically and without any further writing or other action by any person or entity and shall be effective simultaneously with the consummation of such sale. Any such buyer shall, upon request by Montana-Dakota, confirm such assumption in writing.

18.7 Regulatory Limitation. The parties acknowledge that the System is a gas pipeline that currently is an intrastate pipeline, the ownership and operation of which is subject to the laws of the State of South Dakota, including, without limitation, regulation by the SDPUC and the regulations promulgated by the SDPUC and that the System may, from time to time, also be subject to the laws of the United States. Accordingly, the parties respective obligations under the Agreement shall be subject to any applicable limitations and restrictions, including, without limitation, requirements for consent or approval, of applicable regulatory authorities and as may otherwise exist under applicable law and shall not be construed to require any party to engage in conduct in violation of any such regulatory requirements.

## ARTICLE XIX

19.1 Effectiveness. If and to the extent that provisions of this Agreement that represent amendments and modifications to the Transportation Agreement require approval of the SDPUC, the effectiveness of such provisions is expressly subject to the condition that the SDPUC issue such approval. Upon issuance of such approval, said provisions shall become effective as of the date of this Agreement. Nothing contained in this Agreement shall affect the Supplemental Agreement described in the recitals to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in several counterparts by its duly authorized officer.

SOUTH DAKOTA INTRASTATE  
PIPELINE COMPANY

By: Walter J. Woods  
Walter J. Woods President and  
Chief Executive Officer

MONTANA-DAKOTA UTILITIES CO., A  
Division of MDU Resources Group, Inc.

By: Joseph R. Trachsel  
Its: Joe R. Trachsel

ATTEST:

By: Douglas W. Schulz  
Douglas W. Schulz  
Assistant Secretary

**EXHIBIT 1**

## SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT made and entered into as of the 8<sup>th</sup> day of March, 1993, by and between SOUTH DAKOTA INTRASTATE PIPELINE CO. (Transporter), and MONTANA-DAKOTA UTILITIES CO. (Montana-Dakota), A Division of MDU Resources Group, Inc.

WHEREAS, Transporter and Montana-Dakota entered into a Transportation Agreement dated March 8, 1993 (Transportation Agreement), and desire to further clarify the Agreement, Transporter and Montana-Dakota agree as follows:

1. The in-service date of Transporter's pipeline, as referred to in Paragraph 8.5 of the Transportation Agreement, is the date when pipeline quality gas is provided to Montana-Dakota at the following towns:
  1. Pierre
  2. Gettysburg
  3. Mobridge
  4. Ipswich
2. Pipeline operating pressures during the first Contract Year may have to be kept near the minimum pressures set forth in Exhibit A of the Transportation Agreement to provide optimum operating conditions. Transporter and Montana-Dakota will coordinate their efforts in this regard.
3. Transporter will provide Montana-Dakota access to a flow/pressure data port at the Receipt Point adjacent to Northern Border Pipeline Co.'s C.S. #9 station.
4. Montana-Dakota shall have the right to have a representative on location during the welding, installation and hydrostatic testing of Transporter's pipeline.
5. Transporter will odorize the gas at the Receipt Point set forth in the Transportation Agreement. Montana-Dakota will provide information to Transporter concerning the gas odorization level necessary to provide the acceptable odorant levels to Montana-Dakota's customers. Transporter and Montana-Dakota may have to negotiate an odorization fee if facility costs exceed the estimated costs already provided to the South Dakota Public Utilities Commission.

WHEREFORE, Transporter and Montana-Dakota have entered into this Supplemental Agreement as of the date and year above written.

SOUTH DAKOTA INTRASTATE PIPELINE CO.

By: Walter J. Woods  
Walter J. Woods  
President and Chief Executive  
Officer

MONTANA-DAKOTA UTILITIES CO.  
A Division of MDU Resources Group, Inc.

By: Joseph R. Maichel  
Joseph R. Maichel  
President and Chief Executive  
Officer

Aut

**SOUTH DAKOTA INTRASTATE PIPELINE COMPANY  
CALCULATION OF PROPERTY TAX RATE INCREASE  
DOCKET NO. NG00-001**

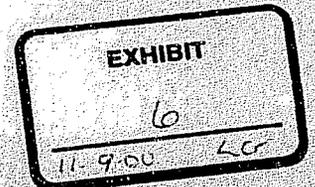
**Contract:**

Article 8.1 Maximum rate of \$2.34 per dk for the 1st ten years of the contract  
Article 8.2 Minimum bill obligation

SDIP Property taxes in initial rate 1/	\$216,000
Authorized Billing Units 2/	1,100,000
Amount in authorized rate for property taxes	\$0.196

Current Rate	\$2.340
Less: Authorized Taxes	<u>(0.196)</u>
Rate Excluding Property Taxes	2.144

- 1/ Workpaper (RLK-5) from testimony presented in docket NG95-008  
2/ Section 8.2 of Amended Agreement dated 09/01/93



TARIFF SCHEDULES  
Applicable to  
Natural Gas Transportation Service  
of  
South Dakota Intrastate Pipeline Company  
105 South Euclid Avenue Suite E  
Pierre, SD 57501

EXHIBIT

7

11-9-00 UG

STATE OF SOUTH DAKOTA  
GAS RATE SCHEDULE

South Dakota Intrastate Pipeline Company  
105 South Euclid Avenue Suite E  
Pierre, SD 57501

SD P.U.C. Section No. 1  
Original Sheet No. 1

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Date Filed March 28, 1996

Effective Date: April 9, 1996

Issued By: Lisa A. Murphy, Vice President-Chief Financial Officer

STATE OF SOUTH DAKOTA  
GAS RATE SCHEDULE

South Dakota Intrastate Pipeline Company  
103 South Euclid Avenue Suite E  
Pierre, SD 57501

SD P.U.C. Section No. 2  
Original Sheet No. 1

PRELIMINARY STATEMENT

South Dakota Intrastate Pipeline Company transports natural gas within the state of South Dakota. The pipeline is located within the counties of:

Edmunds  
Walworth

Potter  
Sully

Hughes

TYPES AND CLASSES OF SERVICES

The Company transports natural gas. Where economically feasible the Company will extend its service to new customers.

The following symbols shall be used in rate filings with the Public Utilities Commission:

- (C) To signify changed listing, rule or condition which may affect rates or charges.
- (D) To signify discontinued material, including listing, rate, rule or condition.
- (I) To signify increase.
- (L) To signify material relocated from or to another part of tariff schedules with no change in text, rate, rule or condition.
- (N) To signify new material including listing, rate, rule or condition.
- (R) To signify reduction.
- (T) To signify change in wording of text but no change in rate, rule or condition.

Date Filed: March 28, 1996

Effective Date: April 9, 1996

Issued By: Lisa A. Murphy, Vice President-Chief Financial Officer

STATE OF SOUTH DAKOTA  
GAS RATE SCHEDULE

South Dakota Intrastate Pipeline Company  
105 South Euclid Avenue Suite E  
Pierre, SD 57501

SD P.U.C. Section No. 3  
Original Sheet No. 1

TRANSPORTATION SERVICE Rate 1

Transportation rate is \$2.34 per dekatherm.

Date Filed: March 14, 1996

Effective Date: April 9, 1996

Issued By: Lisa A. Murphy, Vice President-Chief Financial Officer

STATE OF SOUTH DAKOTA  
GAS RATE SCHEDULE

South Dakota Intrastate Pipeline Company  
105 South Euclid Avenue Suite E  
Pierre, SD 57501

SD P.U.C. Section No. 4  
Original Sheet No. 1

LIST OF CONTRACTS WITH DEVIATIONS

South Dakota Intrastate Pipeline Company provides transportation service to Montana-Dakota Utilities Co. pursuant to a Transportation Agreement dated September 1, 1993. All terms and conditions of this transportation service are in accordance with the Transportation Agreement.

Date Filed: March 28, 1996

Effective Date: April 9, 1996

Issued By: Lisa A. Murphy, Vice President-Chief Financial Officer

STATE OF SOUTH DAKOTA  
GAS RATE SCHEDULE

South Dakota Intrastate Pipeline Company  
105 South Euclid Avenue Suite E  
Pierre, SD 57501

SD P.U.C. Section No. 5  
Original Sheet No. 1

RULES

I. QUALITY STANDARDS OF GAS RECEIVED BY SD INTRASTATE PIPELINE CO.

South Dakota Intrastate Pipeline Company may refuse to accept gas which does not conform to the following Northern Border Pipeline Co. specifications or such specifications as revised from time to time. These specifications are:

- a) The gas shall not contain sand, dust, gums, crude oil, impurities or other objectional substances at a level which may be injurious to pipelines or may interfere with the transmission of gas.
- b) The gas shall have a hydrocarbon dew-point less than -5 degrees Fahrenheit at 800 psia, -10 degrees Fahrenheit at 1000 psia, or -18 degrees Fahrenheit at 1100 psia, or such higher dew-point approved by the Company as, without treatment by the Company, may be compatible with the operating conditions of the Company's pipeline.
- c) The gas shall not contain more than 0.3 grains of hydrogen sulphide per 100 cubic feet.
- d) The gas shall not contain more than 2 grains of total sulphur per 100 cubic feet.
- e) The gas shall contain not more than three-tenths grains of mercaptan sulphur per 100 cubic feet, or such higher content as, in the Company's judgement, would result in deliveries by the Company to customers of gas containing more than three-tenths grains of mercaptan sulphur per 100 cubic feet.
- f) The gas shall not contain more than two percent by volume of carbon dioxide.
- g) The gas shall not have a water vapor content in excess of four pounds per thousand Mcf, unless the shipper delivers gas to the Company at a higher water vapor content.
- h) The gas shall be as free of oxygen as it can be kept through the exercise of all reasonable precautions and shall not in any event contain more than four-tenths of one percent by volume of oxygen.
- i) The gas shall have a gross heating value of not less than 967 Btu per cubic foot.

Date Filed: March 28, 1996

Effective Date: April 9, 1996

Issued By: Lisa A. Murphy, Vice President-Chief Financial Officer

STATE OF SOUTH DAKOTA  
GAS RATE SCHEDULE

South Dakota Intrastate Pipeline Company  
105 South Euclid Avenue Suite E  
Pierre, SD 57501

SD P.U.C. Section No. 5  
Original Sheet No. 2

2. Quality Tests. At the point of receipt of customers, the Company shall cause tests to be made, by approved standard methods in general use in the gas industry, to determine whether the gas conforms to the quality specifications set out in paragraph one of this section. Such tests shall be made at such intervals as the Company may deem reasonable, and at other times, but not more often than once per day, at the request of the customers.
3. Failure to Conform. If gas delivered by the customers does not comply with the quality specifications set out in paragraph one of this section hereof, the Company shall have the right, in addition to all other remedies available to it by law, to refuse to accept any such gas. The Company may, at its option and upon notice to its customers, accept receipt of gas not complying with the quality specifications set out in paragraph one of this section herein provided. The Company, at the expense of the customers, may make all changes necessary to bring such gas into compliance with such specifications. No refusal to accept gas in accordance with this paragraph three shall reduce the customer's minimum quantity obligations.
4. Quality Standards of Gas Transported By the Company. The Company shall use reasonable diligence to deliver gas for its customers which shall meet the quality specifications set out in paragraph one of this section hereof, but shall only be obligated to deliver gas of the quality which results from the commingling of the gas received by the Company from its customers except as the Company may choose to do so pursuant to paragraph three hereof, shall not be required to treat any gas delivered to it by its customers.
5. Measurement Procedures. Quantities of gas received and delivered shall be measured in accordance with Procedures contained in ANSI-API 2530, First Edition, AGA Committee Report No. 5, AGA Committee Report No. 7, and AGA Committee Report No. 8, or revisions or amendments thereto.
6. Measurement Unit for Billing Purposes. The measurement unit for billing purposes shall be in dekatherms (dkt's).
7. Billing. The Company will bill each customer on a monthly basis. The customer shall have the right to examine at reasonable times, books, records, and charts of the Company to the extent necessary to verify the accuracy of any statement, charge, or computation made.

Date Filed: March 28, 1996

Effective Date: April 9, 1996

Issued By: Lisa A. Murphy, Vice President-Chief Financial Officer

STATE OF SOUTH DAKOTA  
GAS RATE SCHEDULE

South Dakota Intrastate Pipeline Company  
105 South Euclid Avenue Suite E  
Pierre, SD 57501

SD P.U.C. Section No. 5  
Original Sheet No. 3

8. Force Majeure. If by reason of force majeure the Company is rendered unable, wholly or in part, to carry out its transportation obligations, and if the Company gives notice and reasonable particulars of such force majeure in writing or by facsimile or telephone to the customer as soon as possible after the occurrence of the cause relied on, the Company shall not be liable in damages during the continuance of any inability to transport natural gas. Such causes or contingencies affecting the performance by the Company, shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and within reasonable dispatch.

8.1 Definition. The term "force majeure" shall mean acts of God, strikes, lockouts, or other industrial disturbances; acts of a public enemy, wars, blockades, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of the government, either federal or state, civil or military, civil disturbances; shutdowns for purposes of necessary repairs, relocation, or construction of facilities; breakage or accident to machinery or lines of pipe; the necessity for testing (as required by governmental authority or as deemed necessary by repairs or alterations to machinery or lines of pipe); failure of surface equipment or pipelines; accidents, breakdowns, inability to obtain necessary material, supplies, or permits, or labor to perform or comply with obligations, rights of way, and any other causes, whether of the kind herein enumerated or otherwise, which are not reasonably in control of the Company.

Date Filed: March 28, 1996

Effective Date: April 9, 1996

Issued By: Lisa A. Murphy, Vice President-Chief Financial Officer

STATE OF SOUTH DAKOTA  
GAS RATE SCHEDULE

South Dakota Intrastate Pipeline Company  
105 South Euclid Avenue Suite E  
Pierre, SD 57501

SD P.U.C. Section No. 6  
Original Sheet No. 1

SAMPLE FORMS

Standard Customer Bill Form:

**INVOICE**

#

Date:

South Dakota Intrastate Pipeline Company  
105 South Euclid Avenue Suite E  
Pierre, SD 57501  
(605) 224-0949 Fax: (605) 224-1559

Attention:

From: Lisa A. Murphy  
Vice President/CFO  
South Dakota Intrastate Pipeline Company

Transportation of Natural Gas

Period:

Remit: \$

Terms: Due By

Amount Transported (in dkt's):  
Transportation Charge (per dkt):

Total Due: \$

Previous Balance: \$  
Payment: (\$ )

Remit Payment to:

First Trust National Association  
Cash Wire: ABA #091-000-022

For Further Credit to:

First Trust National Association  
Account #180121167365  
Corporate Trust  
Internal Account #47399917  
Attention: Kathe Barrett

Reference: South Dakota Pipeline  
Account #33-317400

Date Filed: March 28, 1996

Effective Date: April 9, 1996

Issued By: Lisa A. Murphy, Vice President-Chief Financial Officer

LAW OFFICES  
OLINGER, LOVALD, ROBBENNOLT, McCAHREN & REIMERS, P.C.  
117 EAST CAPITOL  
P.O. BOX 66

PIERRE, SOUTH DAKOTA 57501-0066

RONALD D. OLINGER  
JOHN S. LOVALD  
JAMES ROBBENNOLT  
LEE C. "KIT" McCAHREN  
WADE A. REIMERS

TELEPHONE: 224-8851  
AREA CODE 605  
FAX: 605-224-8269

November 27, 2000

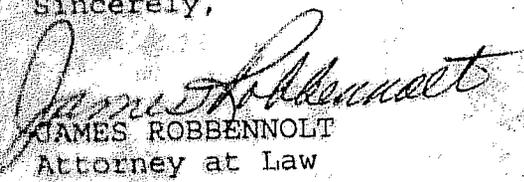
Public Utilities Commission  
500 E Capitol  
Pierre SD 57501

Re: In the Matter of the Application of SDIP to Amend Rate Schedule  
Pursuant to its Amended and Restated Transportation Agreement  
NGU0-001

Dear Commission:

Enclosed please find an original and ten (10) copies of the Brief regarding the above-entitled matter.

Sincerely,

  
JAMES ROBBENNOLT  
Attorney at Law

JR/lrd

enclosures

cc: David Gerdes  
Karen Cremer

**RECEIVED**

NOV 28 2000

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION ) NG00-001  
OF SOUTH DAKOTA INTRASTATE )  
PIPELINE COMPANY TO AMEND RATE ) BRIEF IN SUPPORT  
SCHEDULE PURSUANT TO ITS AMENDED ) OF PETITION  
AND RESTATED TRANSPORTATION )  
AGREEMENT. )

The Petitioner above named, South Dakota Intrastate Pipeline Company offers the following in support of its Petition to allow the utility to increase its transportation fee to its sole customer, Montana Dakota Utilities.

In Docket #NG95-008, the Commission approved the Transportation Agreement entered into by SDIP and MDU. That agreement was entered as Exhibit 5 at the time of hearing on this Petition, which hearing was conducted on November 9, 2000. The Transportation Agreement provides that SDIP shall be entitled to charge a transportation fee to MDU in a maximum amount of \$2.34 per dk for Montana Dakota's use of SDIP's pipeline to transport gas from the Northern Borders pipeline near Mina, South Dakota to MDU's various customer locations. This rate was established in NG95-008 based upon several factors, including real estate taxes assessed against the land by the five counties through which the line traverses. SDIP's total real estate tax liability is calculated by the South Dakota Department of Revenue pursuant to a statutory formula which had previously been enacted. In 1995 the assessed value of the SDIP pipeline was set at \$11,500,000.00.

As established at the hearing herein on November 9, 2000, the

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NOV 28 2000

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

1999, real estate tax liability of the Petitioner was \$278,968.30, an increase of \$62,968.31 over 1994. (See Exhibit B to Petition) Also, it was established at the time of the hearing that the present value of the pipeline for purposes of real estate taxation assessments is \$13,500,000.00. The transportation rate which this Commission has authorized SDIP to charge MDU still remains at \$2.34.

The Transportation Agreement contains language requiring MDU, SDIP's sole customer, to pay for transporting 1.1 million dk per year whether MDU's customers consume that amount of gas or not. To date, MDU has never met the minimum take requirement contained in Exhibit 5, which has the affect of limiting SDIP's ability to achieve Commission approved rate of return on its investment.

At the time of the hearing upon the Petition to increase the amount which SDIP is allowed to charge MDU, three witnesses appeared; Walter J. Woods appeared on behalf of the Petitioner, Rita Mulkern a regulatory analyst for MDU appeared on behalf of MDU and Heather Forney, staff utility analyst was called to describe her review of the requested transportation rate increase. It is submitted that all three witnesses arrived at the conclusion that the increase in real estate taxes between 1994 and 1999 resulted in essentially identical transportation cost increases as reflected by Exhibit 2, 3 and 6 which are each witnesses calculations as to the effect of the increased real estate tax upon SDIP's overall tariff. Mr. Woods' testimony indicated that he felt a \$.06 per dk increase was necessary as reflected on Exhibit 2; Ms. Mulkern testified that

her calculations called for an increase in the transportation charge of \$.058 cents per dk (Exhibit 3); and Ms. Forney's calculations reflected the same numbers as the other two witnesses except she did not compute the increased amount necessary to cover the increase in real estate taxes between 1994 and 1999.

Essentially all three witnesses who testified at the hearing on the Petition utilized the same methodology in arriving at their figures. Each witness basically isolated the authorized taxes contained in the present rate structure which amount to \$.196, deducted it from the current transportation rate of \$2.34 and arrived at the figure of \$2.144 as the non-real estate tax transportation tariff. Mr. Woods and Ms. Mulkern then calculated the different amount of increase necessary to square the real estate tax portion of the transportation fee with Ms. Mulkern arriving at .058 cents per dk in view of the increase in real estate taxes and Mr. Woods coming up with \$.06.

SDIP applied for the increase by means of Petition dated February 15, 2000. The Petition was filed shortly after SDIP learned the amount of 1999 real estate tax assessment from the various counties through which the line passes. This Petition was served on Montana Dakota Utility on February 15, 2000 by mail and by cover letter to the Commission, SDIP requested that the new rate be implemented effective April 1, 2000. The reason SDIP requested the April 1 effective date has to do with the historical practice of SDIP whereby one-half its annual real estate tax obligation is paid in late April of each year with the remaining half being paid

in late October pursuant to statute.

Upon the filing of the Petition, Commission staff requested time to analyze the facts involved underlying the request for an increase in the transportation tariff. Staff conducted an informal conference in August of 2000 to determine the positions of the parties and at that time it was decided to set the matter for hearing before the Commission.

During her testimony before the Commission Heather Forney recommended that the real estate taxes be isolated from the remainder of the transportation charge and be treated as a separate line item in SDIP's bills to its only customer, MDU. Pursuant to SDCL 49-34A-56, SDIP is allowed to request an automatic ad valorem tax adjustment clause to enable it to account for annual fluctuations in the amount of real property tax assessed by Department of Revenue. Ms. Forney recommended that the clause, if adopted by the Commission, be made effective as of May 1, 2000, the date upon which SDIP has traditionally paid the first half of its real estate taxes. In its Petition SDIP did not specifically request an automatic ad valorem tax adjustment clause, but the Petition does cite SDCL 49-34A-56 the statute providing for the granting of just such a clause.

Mr. Woods, in his rebuttal testimony, stated that SDIP desires such a clause to be implemented as an addendum to its Petition, Exhibit 5. A suggested form for such an addendum is attached to this brief and incorporated herein by this reference.

## ARGUMENTS AND AUTHORITIES

It is respectfully submitted that when all the dust settled following the hearing on SDIP's Petition on November 9, 2000, there is only one issue that remains essentially undecided. The parties agree to within .002 of a cent as to the increase in the transportation rate necessary to place SDIP in essentially an identical position with regard to its tariff as it was back in NG95-008. SDIP will accept the figure submitted by Ms. Mulkern of \$.058 per dk to reflect SDIP's 1999 real estate tax obligation which would result in a total transportation rate of \$2.398 per dk total charge.

MDU asserted at the time of the hearing, and Ms. Mulkern testified that if the Commission would order the new rate effective as of May 1, 2000 the Commission would be effectively engaging in retroactive rate regulation which is normally avoided by utility regulators.

SDIP submits that should the Commission allow SDIP to implement an ad valorem tax adjustment clause to be utilized in future years and order that the adjustment clause become effective as of May 1, 2000, this would not constitute retroactive rate making. In fact, there was testimony during the course of the hearing before the Commission to do so would be no different than the gas price adjustment clause presently in MDU's tariff, which gas price adjustment tariff specifically mentions transportation costs as a variable to be considered in their truing up of their actual cost of gas on an annual basis. The methodology utilized by

MDU to calculate its monthly gas prices would be simpler with real estate taxes which are a known amount as of late January or early February of each year and then do not fluctuate during the course of the subsequent year unlike natural gas prices.

Several courts have considered cases involving allegations of retroactive rate making. In the case of The Town of Norwood, Mass. v. FERC, 53 F.3rd 77 (CaDC 1995) the court was considering the request of an electric utility company who wanted to change its tariff to account for post retirement employee benefits (mainly medical benefits) changes whereby the utility was changing from a cash basis to an accrual basis to account for benefits it expected to pay in the future to current employees. The FERC argued that retroactive rate making would prohibit it from authorizing or requiring a utility to adjust current rates to make up for past errors in projection, or in other words, adjust future rates to recoup past losses. The Court rejected this argument and indicated that the change over in accounting methods did not assess future utility rates based upon past losses, it merely affected the timing of collection of the dollars and not the amounts and therefore was not retroactive rate making.

Similarly in the case of G.T.E. Florida Insurance v. Clark, 668 So.2d 971 (Fla. 1996) an electrical utility was denied recovery of certain expenses by the public service commission. The utility appealed to the courts and nine months later the Supreme Court of Florida ruled that the public service commission was in error and reversed their decision. The court also ruled that the utility

company could surcharge customers retroactive to the initial decision of the Commission denying the relief requested by the utility, but could only surcharge those customers who were active customers during the nine months in question. The Court went on to state that it was not retroactively rate making and that the recovery of costs expended and not recovered because of the erroneous commission order was a valid exercise of the Court's discretion. It is submitted that the factual scenario present in the Florida case is very similar to that presented by the facts in this case since SDIP did request the rate increase in February of 2000.

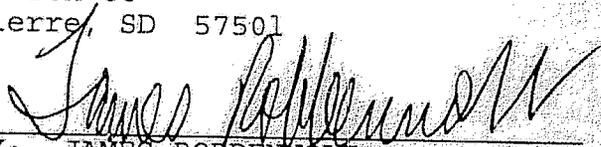
As previously stated, at the time of the Commission's hearing in this docket, approximately nine months had elapsed since the Petition was filed. The increase in tariff could easily be recouped by MDU by means of a line item surcharge on its bills to the customers, as Ms Forney testified. Even MDU seems to agree that a rate increase is in order due to the increase in the real estate taxes and the figures submitted by MDU are almost identical to the figures submitted by SDIP.

#### CONCLUSION

Based upon the foregoing SDIP respectfully requests an Order granting its rate increase as set forth in its Petition and based upon the evidence entered by the parties at the time of the hearing on said Petition, including the implementation of an ad valorem tax adjustment clause effective May 1, 2000, in some form.

Dated this 27<sup>th</sup> day of November, 2000.

OLINGER, LOVALD, ROBBENNOLT,  
McCAHREN & REIMERS, P.C.  
117 E. Capitol  
PO Box 66  
Pierre, SD 57501

  
BY: JAMES ROBBENNOLT

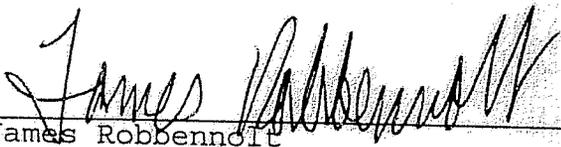
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 28<sup>th</sup> day of November, 2000, he mailed a true and correct copy of the foregoing Brief to

David A. Gerdes  
Attorney for MDU  
PO Box 160  
Pierre, SD 57501

Karen Cremer  
Attorney for PUC  
500 E Capitol  
Pierre SD 57501

and that said mailing was by U. S. mail, first class with postage thereon prepaid and mailed at the U. S. Post Office in Pierre, South Dakota.

  
James Robbenolt

#### AD VALOREM TAX ADJUSTMENT CLAUSE

This rate constitutes an ad valorem tax adjustment and specifies the procedures to be utilized by South Dakota Intrastate Pipeline Company to recover from its customers actual South Dakota jurisdictional ad valorem taxes paid to various taxing authorities.

On or before May 1st of each year, South Dakota Intrastate Pipeline Company will determine the actual annual South Dakota jurisdictional ad valorem taxes to be recovered. The annual amount shall be divided by twelve to derive a monthly collection of ad valorem taxes over the subsequent twelve months. In the case of multiple customers, the monthly collection shall be prorated to customers based on dekatherms transported during the preceding month. Any true up necessary to avoid under or over recovery of ad valorem taxes shall be made in the twelfth month of the adjustment.

South Dakota Intrastate Pipeline shall report monthly to the South Dakota Public Utilities Commission taxes actually recovered from each customer.

Billings submitted for recovery of ad valorem taxes shall be in accordance with South Dakota Intrastate Pipeline's rules as found in Section 5 of this tariff.

LAW OFFICES  
MAY, ADAM, GERDES & THOMPSON LLP

503 SOUTH PIERRE STREET  
P. O. BOX 160

PIERRE, SOUTH DAKOTA 57501-0160

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KARL GOLDSMITH 1985-1986  
THOMAS C. ADAM  
DAVID A. GERDES  
CHARLES M. THOMPSON  
ROBERT B. ANDERSON  
BRENT A. WILBUR  
TIMOTHY M. ENGEL  
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NEIL FULTON

December 5, 2000

OF COUNSEL:  
WARREN W. MAY

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605 224-8803  
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605 224-6289

E-MAIL  
dag@magt.com

Rolayne Ailts Wiest  
Special Assistant Attorney General  
S.D. Public Utilities Commission  
State Capitol  
500 East Capitol Avenue  
Pierre, South Dakota 57501-5070

RE: MDU; SDIPC APPLICATION TO AMEND ITS RATE SCHEDULE  
Docket NG00-01  
Our file: 0069

Dear Rolayne:

SDIPC's brief was served by mailing on November 28. As I understand it, we each have 14 days from receipt within which to file our brief. I received it on December 1, because I was out of town on November 29 and 30. I calculate that our brief is due on or before December 15.

Therefore, unless I hear to the contrary from you, I will plan on having the brief in the Commission's hands on or before December 15.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG: mw 

cc: Jim Robbennolt

cc/enc: Don Ball

Rita Mulkern

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DEC 06 2000

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

## MAY, ADAM, GERDES &amp; THOMPSON LLP

503 SOUTH PIERRE STREET

P. O. BOX 160

PIERRE, SOUTH DAKOTA 57501-0160

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 ROBERT B. ANDERSON  
 BRENT A. WILBUR  
 TIMOTHY M. ENGEL  
 MICHAEL T. SHAW  
 NEIL FULTON

December 15, 2000

OF COUNSEL  
 WARREN W. MAY

TELEPHONE  
 605 224-8803  
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 dag@magt.com

HAND DELIVERED**RECEIVED**

DEC 15 2000

Mr. William Bullard, Jr.  
 Executive Director  
 South Dakota Public Utilities Commission  
 State Capitol  
 500 East Capitol  
 Pierre, South Dakota 57501-5070

**SOUTH DAKOTA PUBLIC  
 UTILITIES COMMISSION**

RE: MDU; SOUTH DAKOTA INTRASTATE PIPELINE COMPANY RATE INCREASE  
 Docket NG00-001  
 Our file: 0069

Dear Bill:

Enclosed are original and ten copies of MDU's brief in this docket. Please file the enclosure.

With a copy of this letter, I am sending a copy of the brief to SDIPC counsel, Jim Robbennolt.

Yours truly,

MAY, ADAM, GERDES &amp; THOMPSON LLP

BY: 

DAG:mw

Enclosures

cc/enc: Jim Robbennolt  
 Don Ball

DEC 15 2000

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

IN THE MATTER OF THE APPLICATION	)	NG00-001
OF SOUTH DAKOTA INTRASTATE	)	
PIPELINE COMPANY TO AMEND RATE	)	
SCHEDULE PURSUANT TO ITS AMENDED	)	<b>MDU'S BRIEF</b>
AND RESTATED TRANSPORTATION	)	
AGREEMENT.	)	

Montana-Dakota Utilities Co. ("MDU") submits this brief in response to the brief filed by South Dakota Intrastate Pipeline Company ("SDIPC") and in support of MDU's position in this docket.

In its petition, Exhibit 1, SDIPC ". . . petitions the Public Utilities Commission for permission to allow the utility to increase its transportation fee to its sole customer, Montana-Dakota Utilities from \$2.34/dk to \$2.4067/dk pursuant to Paragraph 8.1 of the transportation agreement entered into between [the parties] on March 8, 1993." The petition goes on to quote paragraph 8.1 of the contract between the parties permitting SDIPC to seek Commission approval ". . . of a change in rates, where such change is made necessary by any mandated changes in federal or state taxes . . ." SDIPC's current tariff was admitted into evidence as Exhibit 7.

The petition asks for a change in rates to be effective upon order of the Commission, and not at any earlier time. Neither the contract nor SDIPC's tariff constitutes a rate schedule ". . . containing provisions for automatic adjustment of charges for public utility service in direct relation to changes in . . . ad

valorem taxes paid ... ." SDCL § 49-34A-25. The petition makes no attempt to provide a mechanism contemplated by SDCL § 49-34A-25. Also, no workable mechanism was offered at hearing by SDIPC, which has the burden of proof.

The contract between the parties was approved in Docket NG95-008 by the Commission. It is a detailed, 21-page document with certain attached exhibits which was negotiated between the parties and approved by the Commission. Paragraph 8.1 of that contract provides for a maximum rate of \$2.34 per dekatherm. The only exception to the rate cap is changes in federal or state taxes. Note the agreement as approved by the Commission permits SDIPC to seek Commission approval to change rates, it does not contemplate a tax adjustment clause, nor does it permit implementation of a rate change before Commission approval.

As stated in SDIPC's brief, page 5, "SDIP will accept the figure submitted by Ms. Mulkern of \$.058 per dk to reflect SDIP's 1999 real estate tax obligation which would result in a total transportation rate of \$2.398 per dk total charge." Given this concession by SDIPC, the rate would appear to be agreed upon.

Staff witness Heather Forney has suggested breaking taxes out of the \$2.34 rate cap, rather than following the methodology of both SDIPC and MDU in simply calculating the increase in rates. As stated above, the contract contemplates the methodology adopted by SDIPC and MDU in calculating their rates as set forth on Exhibits 2 and 3.

Two issues remain. First, the issue of retroactive rate making and, second, the suggestion of staff witness Forney that a separate tax adjustment clause be implemented.

#### THE TAX ADJUSTMENT CLAUSE

As has been pointed out earlier, the tax adjustment clause is not contemplated by the contract between the parties and approved by the Commission. Paragraph 8.1 of the contract clearly authorizes SDIPC to seek Commission approval for a change in rates as such changes may be necessary. The contract as negotiated and agreed upon between the parties, and as approved by the Commission, does not contemplate a tax adjustment clause. Furthermore, although staff witness Forney recommends a tax adjustment clause, she has not recommended any specific structure or language.

If a tax adjustment clause is to be utilized, the proposal submitted by SDIPC as an attachment to its brief is unacceptable for at least the following reasons:

1. The proposal does not adequately set forth a formula from which the rate can be effectively calculated on an annual basis. A comprehensive Commission approved tax adjustment clause is necessary to clarify gray areas and avoid the necessity for the parties to come back to the Commission in the future on this subject.
2. The clause suggested by SDIPC simply calls for the monthly payment of 1/12th of the ad valorem taxes, rather

than providing a methodology from which a rate can be determined. SDIPC's proposal is useless in constructing a rate. MDU's proposal is attached as Exhibit A and provides an objective mechanism for constructing a rate.

3. For reasons hereafter discussed, the proposal now contemplates a retroactive rate. The actual due dates for SDIPC's tax payments are April 30 and October 31. A September 1 date for future years would have the advantage of splitting the difference between these two dates, as well as representing the anniversary date of the contract between the parties. Any other date, with reference to the contract year, would complicate the administration of the annual rate adjustment and simply set up a formula for conflict in the future.

Notwithstanding that neither the petition nor the contract contemplate a tax adjustment clause, MDU is willing to work with SDIPC and staff to come up with a workable proposal. This endeavor, however, should not be part of this docket. If the parties are able to work out an acceptable clause to be effective in 2001, it could be submitted to the Commission by agreement of the parties for approval.

#### RETROACTIVE RATE MAKING

SDIPC's tax liability to the State of South Dakota for ad valorem taxes as of the due date of this brief, December 15,

2000, will have been almost completely discharged. Yet, SDIPC advocates that it should be able to retroactively charge \$2.398 per dekatherm from April 1, 2000. Staff witness Forney recommends a May 1, 2000 effective date. As to forward-looking rates, these taxes are past expenses, not present expenses, and clearly constitute retroactive rate making. Furthermore, such rates are not contemplated by paragraph 8.1 of the Commission approved contract between the parties. MDU has already sold the gas to which this increased rate would apply. Its customers should not be retroactively charged for SDIPC's unapproved taxes--this is the fundamental reason for the prohibition against retroactive ratemaking.

In State ex rel SD Electric Consumers vs. Northwestern Public Service Company, 265 NW2d 882 (SD 1978), our Supreme Court stated that ". . . rate making is prospective in nature." This means modified rates can be charged and collected only after they are approved.

The cases cited in SDIPC's brief do not support its argument that backdating a rate increase would not constitute retroactive rate making under the facts of this case. In the GTE Florida, Incorporated, case cited by SDIPC, 668 So2d 971 (Fla. 1996), the Supreme Court of Florida stated:

We also reject the contention that GTE's requested surcharge constitutes retroactive rate making. This is not a case where a new rate is requested and then applied retroactively. The surcharge we sanction is implemented to allow GTE to recover costs already expended that

should have been lawfully recoverable in PSC's [Public Service Commission's] first order.

GTE was permitted to implement a surcharge, which did not constitute retroactive rate making, because the court had earlier reversed a PSC order denying GTE recovery of certain costs simply because those expenditures involved purchases from GTE affiliates. The PSC delayed nine months in implementing this decision, and only permitted recovery of the disputed expenses on a prospective basis after the delayed implementation of the appellate court's earlier decision. The court stated that the ". . . issue in this cause is whether GTE should be able to recover its expenses, erroneously denied in the first instance, for the period between May 27, 1993, and May 3, 1995." The court simply permitted GTE to recover these costs from the date they were approved by the court.

Similarly, the Town of Norwood case also does not support SDIPC's position. The correct citation for this case, contrary to the citation in SDICP's brief, is 53 F3d 377 (CA DC 1995). The case involved rate making treatment of post retirement benefits of company employees, which had historically been reported on a cash basis for both accounting and rate making purposes. In 1990 the Financial Accounting Standards Board ("FASB") instructed companies to switch to accrual accounting for these benefits. New England Power requested a raise in its rates based in part on the switch to accrual accounting mandated by FASB, and the Town of Norwood

challenged the approval of the accrual treatment for rate making purposes. The court explained:

The retroactive rate making doctrine prohibits the Commission from authorizing or requiring a utility to adjust current rates to make up for past errors in projections. If a utility includes an estimate of certain costs in its rates and subsequently finds out that the estimate was too low, it cannot adjust future rates to "recoup past losses." [citations omitted] As detailed below, however, the transition obligation does not run afoul of the retroactive rate making proscription, because NEP [New England Power] has not shifted any costs that it tried but failed to collect in the past: it always planned to collect these costs from future ratepayers, the only shift is timing within the future. This court has upheld a transition provision much the same as the one at issue here against charges of retroactive rate making on the grounds that the "past" costs collected during the transition were costs that the utility had always planned to charge to future ratepayers. (emphasis in original) 53 F3d at 381.

\* \* \*

Thus, it is permissible for a company to defer collection of certain charges until the point at which they become ascertainable, so long as the ratepayers have notice that the charges will be collected in the future. It is not, however, permissible for a company to devise a formula intended to estimate actual charges - to serve as a proxy for actual charges - and then go back and collect any shortfall caused by imperfections in that proxy. (emphasis in original) *Id.* at 384.

The distinction between both of the foregoing cases and the instant case is that they involved charges which, in regulatory contemplation, were already approved to be collected from the ratepayers. On the other hand, in this case the 1999 taxes payable in 2000 have not yet been approved by the Commission as a "... change in rates ..." contemplated by paragraph 8.1 of the contract,

anymore than the taxes for 1997 or 1998 were approved (and admitted by SDIPC not to be candidates for approval).

This case is more akin to State of North Carolina ex rel. Utilities Commission; Carolina Power & Light Company, Applicant, vs. Thornberg, 353 SE2d 413 (CA, N.C. 1987). In that case the court of appeals of North Carolina held that the Utilities Commission was not authorized to permit Carolina Power & Light ("CP&L") to recoup past under-recoveries of fuel costs under a statute which authorizes the commission to consider the actual recovery of fuel costs incurred by the utility during a test period. The question stated by the court was whether the General Assembly modified the judicially-adopted rule prohibiting retroactive rate making so as to authorize the Utilities Commission to employ an experience modification factor ("EMF") in connection with an electric utility's fuel charge adjustment proceedings. The EMF was used to provide for a "true-up" of the utility's past over-recoveries or under-recoveries of fuel costs. The court held in the negative, stating, among other things:

In its Order, the Commission utilized an EMF in order to allow CP&L to recoup past under-recoveries of fuel costs. Such true-up procedures have traditionally been prohibited in North Carolina because they constitute retroactive rate making. In Utilities Comm. vs. Edmisten, Atty. General, 291 N.C. 451, 232 S.E.2d 184 (1977), the Supreme Court stated: "Prospective rate making to recover unexpected past expense, or to refund expected past expense which did not materialize, is as improper as is retroactive rate making." [citation omitted] This is because "[s]uch rate making throws the burden of such past expenses upon different customers who use the service for different purposes than did the

customers for whose service the expense was incurred." [citation omitted] *Id.* at 485, 486.

In this case, SDIPC is not entitled to implement a rate until it is approved. The rate is prospective. Not only is this proposition supported by a strong line of appellate cases, including our supreme court, but it is also supported by state statute. SDCL § 49-34A-21 provides that rates shall be fixed by order of the Commission, which rates shall be observed until changed as provided by Chapter 49-34A. Likewise the contract supports this conclusion, because it requires a "... change in rates ..." before SDIPC can collect increased taxes.

Rather than filing a rate schedule for approval as provided in SDCL § 49-34A-12, SDIPC chose to petition for Commission approval to implement a rate. The rate thus cannot go into effect until the Commission has approved it. SDIPC chose its remedy and must accept the result of that choice. The rate can only be implemented upon its approval by the Commission.

#### CONCLUSION

Under the evidence SDIPC is entitled to collect a new transportation rate of \$2.398 per dk upon order of the Commission. While MDU believes the question of a tax adjustment clause is not properly before the Commission in this docket, it would work with staff and SDIPC to fashion a clause acceptable to the parties for future use. Such a clause must be so drafted as to create a rate

when it is properly applied. The \$2.398 per dk cannot be collected by SDIPC retroactively.

Dated this 15<sup>th</sup> day of December, 2000.

MAY, ADAM, GERDES & THOMPSON LLP

BY   
Attorneys for Montana-Dakota  
Utilities Co.

503 South Pierre Street  
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CERTIFICATE OF SERVICE

David A. Gerdes, of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 15<sup>th</sup> day of December, 2000, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at his last known address, to-wit:

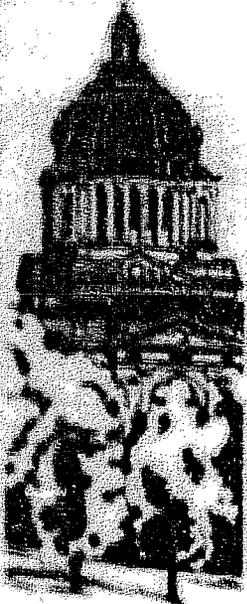
James Robbennolt  
Olinger, Lovald, Robbennolt,  
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117 East Capitol  
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Pierre, South Dakota 57501-0066

  
David A. Gerdes

AD VALOREM TAX ADJUSTMENT CLAUSE

This rate constitutes an ad valorem tax adjustment and specifies the procedures to be utilized by South Dakota Intrastate Pipeline Company to recover from its customers actual South Dakota jurisdictional ad valorem taxes paid to various taxing authorities.

On or before July 1 of each year, South Dakota Intrastate Pipeline Company will file with the Commission for an adjustment to its rate(s) to reflect the actual annual South Dakota jurisdictional ad valorem taxes to be recovered. Such adjustment shall be stated in cents per dk based on annual billing determinants of 1,100,000 dk pursuant to Paragraph 8.2 of the contract. The unit rate so calculated shall be compared to the base ad valorem tax amount per dk included in Commission authorized rates (19.6 cents per dk), and the difference, positive or negative, shall be added to or deducted from the current Commission authorized rate of \$2.34 per dk. Such changes shall be effective on September 1 of each year.



# South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

December 15, 2000

Mr. James Robbennolt  
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Re: In the Matter of the Application of South  
Dakota Intrastate Pipeline Company to  
Recover Additional Costs

Dear Counsel:

Enclosed each of you will find a copy of Commission Staff's Brief with reference  
the above captioned matter. This is intended as service upon you by mail.

Very truly yours,

Karen E. Cremer  
Staff Attorney

KEC:dk  
Enc.

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Leslie Schumacher  
Commissioner

William Dillard Jr.  
Executive Director

Harlan Best  
Marion C. Borkman  
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Lore Healy  
Mary Healy  
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Lisa Hull  
Steve Jacobson  
Jennifer Kirk  
Bob Koehn  
Debbie Kuster  
Charles Lund  
Gregory A. Miller  
Kath Senger  
Roberta Sibley

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

<b>IN THE MATTER OF THE APPLICATION OF</b>	)	<b>COMMISSION STAFF'S</b>
<b>SOUTH DAKOTA INTRASTATE PIPELINE</b>	)	<b>BRIEF</b>
<b>COMPANY TO RECOVER ADDITIONAL</b>	)	
<b>COSTS</b>	)	<b>NG00-001</b>

This brief is filed pursuant to an agreed briefing schedule in the above-captioned matter.

**FACTS**

On February 15, 2000, South Dakota Intrastate Pipeline Company (SDIPC) filed a Petition to amend its rate schedule to provide for an increase in its transportation fee charged to its only customer, Montana-Dakota Utilities Company (MDU). Exhibit 1. SDIPC filed pursuant to SDCL 49-34A-25 and ARSD 20:10:13:39. Exhibit 1. On March 1, 2000, MDU filed a Petition to Intervene which was granted by the Commission at its regularly scheduled meeting held on March 14, 2000.

Commission Staff reviewed the Petition filed by SDIPC and determined that the initial petition sought to recover given expenses, some of which could be included in an automatic adjustment clause and some of which could not be included. It was unclear to Commission Staff whether SDIPC was requesting to recover the increased expenses solely through a general rate increase type proceeding or through a combination of a general rate proceeding and an automatic adjustment pursuant to SDCL 49-34A-25. Following discussions between Commission Staff and SDIPC, SDIPC agreed to attempt to recover only those expenses includable in an automatic adjustment clause in order to avoid a general rate case proceeding at that time. TR. 45-46, 49-50, 61, 62.

The matter was heard before the Commission on November 9, 2000. At the hearing, SDIPC requested the following: (1) an increase in its transportation fee from \$2.34/dk to \$2.40/dk which covers the increase in its real estate taxes for calendar year 1999, payable in 2000; (2) an effective date of April 1, 2000; and, (3) a tax adjustment clause to be added to its currently filed tariffs. TR. 11, 12, 67; Exhibit 2, 4.

At the November 9, 2000, hearing, MDU proposed a transportation rate of \$2.398/dk. Exhibit 3. MDU also argued that the transportation rate should become effective upon final Commission order. TR. 30.

Commission Staff testified that the proper charge for the transportation rate is \$2.144/dk. Exhibit 6. Commission Staff further testified that SDIPC should have a separate charge to MDU for the real estate taxes and include tax adjustment language in the tariff. TR. 46. This [procedure] would more accurately reflect fluctuating property taxes as SDIPC would annually adjust the line item charge based on actual real estate assessments by the counties. The procedure recommended by Commission Staff is similar to that used in purchased gas adjustment tariffs. TR. 47, 51.

Commission Staff also recommended an effective date of May 1, 2000, for the 1999 real estate taxes. May 1 would also be the effective date for every year thereafter. TR. 46-47.

### **ARGUMENTS AND AUTHORITIES**

In its brief filed with the Commission dated November 28, 2000, SDIPC has agreed to a transportation rate of \$2.398/dk as proposed by MDU. Commission Staff would submit that the proper transportation rate should be \$2.144/dk; the ad valorem tax portion of the transportation rate should be a separate line item charge that would change annually only

if the real estate taxes change; that the tax adjustment clause language should be placed in SDIPC's tariff, and an effective date for the adjustment be May 1, 2000, and every May 1st thereafter. Each of these recommendations are addressed below.

In Docket NG95-008, the Commission ordered that the transportation rate could not exceed \$2.34/dk. Under Commission Staff's proposal, the \$2.144/dk would not exceed that amount.

SDIPC's petition was filed pursuant to SDCL 49-34A-25, set forth below. That section clearly permits a public utility to file rate schedules containing provisions for the automatic adjustment of ad valorem taxes. SDIPC has requested that it be permitted to file such a tariff with a tax adjustment clause. TR. 67. To arrive at the current overall cost recovery rate of \$2.398, the current ad valorem tax adjustment would be \$0.254 per dekatherm. TR. 29.

**§ 49-34A-25. Automatic adjustment of rates for changes in energy, fuel and gas costs, ad valorem taxes paid or commission approved fuel incentives - Revised rate schedule filed by utility - Filing of bond if commission orders - Order of commission - Appeal.**

The commission shall permit a public utility to file rate schedules containing provisions for the automatic adjustment of charges for public utility service in direct relation to changes in wholesale rates for energy delivered, the delivered costs of fuel used in generation of electricity, the delivered cost of gas, ad valorem taxes paid, or commission approved fuel incentives. The amended rate schedules shall be filed with the commission on or before the effective date of the change in costs, and if the commission determines that the revised rate schedule is in error, the commission may within ten days of receipt thereof require by order the public utility to file a bond or other security upon such terms and conditions as the commission may require and for such purposes as contained in §§ 49-34A-17 and 49-34A-22. Such rates may go into effect on the date of the change in costs subject to the above refund provisions. Failure of the commission to enter an order in regard thereto shall be deemed approval. The public utility may appeal such order pursuant to and in accordance with § 49-34A-62.

The question then remains as to when the adjustment can become effective. The general rule of law is that Commissions are prohibited from retroactive ratemaking, that a Commission is prohibited from authorizing or requiring a utility to adjust current rates to make up for past errors in projections. Town of Norwood, Mass. v. FERC, 53 F.3rd 377 (D.C. Cir. 1995). In the Town of Norwood case, the electric utility requested a rate increase based in part on a switch from cash basis to accrual basis accounting for postretirement benefits other than pensions. The court found that the transition obligation did not run afoul of the retroactive ratemaking proscription because the utility had not shifted any costs that it tried but failed to collect in the past; it *always* planned to collect these costs from future ratepayers, the only shift is timing within the future. *Id.* at 381, emphasis included.

In the case before the Commission MDU is claiming that a May 1, 2000, effective date would be retroactive ratemaking. This is not a fair characterization of Commission Staff's recommendation for 2 reasons. First, MDU knows that SDIPC *always intended* collect the real estate taxes it was assessed by the counties and such knowledge by MDU put them on notice that the real estate portion of the rate was subject to later revision.

Second, while Commission Staff would agree that the effective date of a rate change cannot be made retroactive in general rate change proceedings filed pursuant to SDCL 49-34A-12 or ARSD 20:10:13:24, this filing was made pursuant to SDCL 49-34A-25. Automatic adjustment clause filings are specifically addressed by SDCL 49-34A-25, which details the effective date of such filings. In this case where SDIPC filed pursuant to SDCL 49-34A-25 and not the general rate change proceedings, the law regarding which statute

takes precedence is clear. "When the question is which of two enactments the legislature intended to apply to a particular situation, terms of a statute relating to a particular subject will prevail over general terms of another statute." U.S. West Communications, Inc. v. Public Utilities Comm'n, 505 N.W.2d 115, 122-23 (S.D. 1993) (citations omitted). Therefore the Commission should apply SDCL 49-34A-25 to determine that this is not retroactive ratemaking.

As the initial petition of the applicant included a request for recovery pursuant to SDCL 49-34A-25, the effective date of those expenses automatically recoverable is dictated by this statute. Unfortunately, the revision to the petition, to be solely an automatic adjustment recovery filing, was not submitted formally and that date is not recalled by the parties. The applicant requested an effective date of April 1, 2000. Commission Staff recommended an effective date of May 1, which pursuant to SDCL 49-34A-25 is associated with "the date of the change in costs." The statute does not make a distinction between an initial filing for an adjustment mechanism and the periodic recalculation of an adjustment pursuant to an approved mechanism. Certainly an applicant needs to initially file a request for recovery pursuant to SDCL 49-34A-25 before recovery of eligible costs could begin.

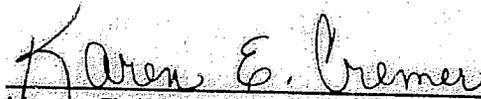
Although SDIPC has not attempted to collect the new ad valorem tax recovery from MDU, it informally indicated to Commission Staff that it intended to request such recovery back to April 1, 2000, once the Commission decided on the appropriate rate of recovery. MDU itself, through its Purchased Gas Cost Surcharge Adjustment, at times collects costs unrecovered from prior periods as do almost all companies regulated by the Commission.

Even though these costs are recovered through an already approved mechanism, SDCL 49-34A-25 makes no distinction between an initially filed adjustment clause and the results of an ongoing approved clause.

### CONCLUSION

It is Commission Staff's position that SDIPC's Petition is a request for an adjustment clause as it pertains to SDIPC's ad valorem taxes. The Petition was filed pursuant to SDCL 49-34A-25 and SDIPC's request was for the benefit of that section of the code that allows for the automatic adjustment for ad valorem taxes. It is Commission Staff's position that a May 1, 2000, effective date would not be retroactive ratemaking as it was filed pursuant to SDCL 49-34A-25.

Dated this 15th day of December, 2000.



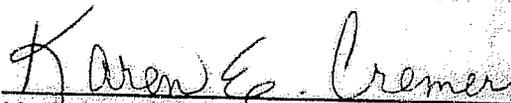
Karen E. Cremer  
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### CERTIFICATE OF SERVICE

I hereby certify that copies of Commission Staff's Brief were served on the following by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the address shown below on this the 15th day of December, 2000.

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December 21, 2000

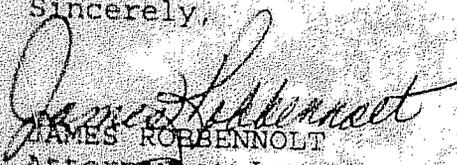
Public Utilities Commission  
500 E Capitol  
Pierre SD 57501

Re: In the Matter of the Application of SDIP to Amend Rate Schedule  
Pursuant to its Amended and Restated Transportation Agreement  
NG00-001

Dear Commission:

Enclosed please find an original and ten (10) copies of the Reply  
Brief regarding the above-entitled matter.

Sincerely,



JAMES ROBBENNOLT  
Attorney at Law

JR/lrd

enclosures

cc: David Gerdes  
Karen Cremer  
Walter Woods  
Gordon Woods

**RECEIVED**

DEC 21 2000

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION ) NG00-001  
OF SOUTH DAKOTA INTRASTATE )  
PIPELINE COMPANY TO AMEND RATE ) REPLY BRIEF  
SCHEDULE PURSUANT TO ITS AMENDED )  
AND RESTATED TRANSPORTATION )  
AGREEMENT. )

The Petitioner respectfully submits the following in response to the Brief of Montana Dakota Utilities Company (MDU) previously filed herein:

In response to MDU's assertions concerning the applicability of SDCL §49-34A-25, the automatic rate adjustment clause, it does not appear that MDU is seriously arguing that such a clause would be inappropriate with regard to the filing, but that MDU only disagrees with the effective date each year upon which the tax adjustment is to be implemented. Petitioner respectfully submits that the methodology utilized in calculating the increase necessary based upon the 1999 Real Property Tax Assessment was virtually identical with all the witnesses who testified at the hearing herein including Rita Mulkern who testified on behalf of MDU. The Real Property Tax Assessment is particularly susceptible to the automatic adjustment since the amount of the tax owed is known shortly after January 1st of each year and remains constant for the remainder of the year and is not subject to fluctuations within that time period, as is the price of natural gas to MDU. MDU surcharges its customers for fluctuations in the price of gas on a monthly basis which has the effect of making the actual billings to

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SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

MDU's customers fluctuate accordingly. It is respectfully submitted that the automatic adjustment provision lends itself more efficiently to the real estate tax statutory scheme than MDU's own cost of gas adjustment.

MDU suggests that September 1st of each year would be a logical date for the annual adjustment to take effect. As Walter Woods testified at the time of the hearing herein, historically SDIP pays one half of its real property taxes on or before May 1st of each year and the other half immediately prior to November 1st of each year. (TR 12) Logic would seem to dictate that the Petitioner should be allowed to begin recovering the cost of the tax as soon as possible after the 1st payment is made. Therefore, SDIP has agreed with Staff's proposal of May 1st as the effective date for rate adjustment each year.

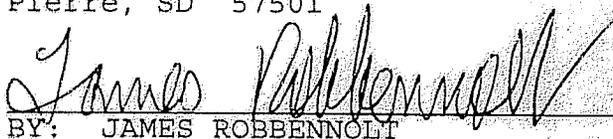
The second issue addressed in MDU's Brief, retroactive rate making, is not a valid issue as presented by the facts in this case. First of all, the Petitioner did not know the amount of its 1999 tax assessment until sometime after January 1, 2000 since the Department of Revenue does not assess the taxes until after the 1st of the year following the tax year to which the taxes apply. Petitioner then promptly filed its request with the Commission for an adjustment to the transportation fee to offset the increase in the real estate taxes to be paid in the year 2000. In its cover letter to the Commission, the Petitioner requested that the issue be resolved by April 1, 2000 since its first real estate tax payment would be due on April 30, 2000. In that context, the

Petitioner was not at the time the request was filed required to expend any tax payments. Clearly at the time the petition was filed the increase was prospective in nature and not retroactive. MDU has been aware of SDIP's proposed increase since February 2000 when it was given notice of the Petitioner's request at the time the original petition was filed. MDU could hardly claim surprise at this point, especially in view of the fact that MDU's witness, Rita Mulkern, essentially agreed entirely with the assessment of SDIP with regard to the increase in transportation rate necessary to offset the increase in the real estate taxes. Under the circumstances the relief requested does not amount to retroactive rate making. MDU had notice of the requested increase and, further, had notice of the amount being so requested.

Petitioner respectfully requests that the Commission allow it to implement the automatic tax adjustment clause in the form proposed by the Petitioner, which form was attached to the Petitioner's original Brief herein, as well as the increase in transportation rate as requested, which increase was necessitated by the increase in the real estate taxes assessed against the Petitioner's natural gas pipeline.

Dated this 21<sup>st</sup> day of December, 2000.

OLINGER, LOVALD, ROBBENNOLT,  
McCAHREN & REIMERS, P.C.  
117 E. Capitol  
PO Box 66  
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BY: JAMES ROBBENNOLT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 21<sup>st</sup> day of December, 2000, he mailed a true and correct copy of the foregoing Reply Brief to

David A. Gerdes  
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and that said mailing was by U. S. mail, first class with postage thereon prepaid and mailed at the U. S. Post Office in Pierre, South Dakota.

  
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**HAND DELIVERED**

Mr. William Bullard, Jr.  
Executive Director  
South Dakota Public Utilities Commission  
State Capitol  
500 East Capitol  
Pierre, South Dakota 57501-5070

RE: MDU; SOUTH DAKOTA INTRASTATE PIPELINE COMPANY RATE INCREASE  
Docket NG00-001  
Our file: 0069

Dear Bill:

Enclosed are original and ten copies of MDU's brief in this docket. Please file the enclosure.

With a copy of this letter, I am sending a copy of the brief to staff counsel, Karen Cremer.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

Enclosures

cc/enc: Karen Cremer  
Jim Robbennolt  
Don Ball

**RECEIVED**

DEC 22 2000

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

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

IN THE MATTER OF THE APPLICATION	)	NG00-001
OF SOUTH DAKOTA INTRASTATE	)	
PIPELINE COMPANY TO AMEND RATE	)	
SCHEDULE PURSUANT TO ITS AMENDED	)	<b>MDU'S REPLY BRIEF</b>
AND RESTATED TRANSPORTATION	)	<b>TO STAFF'S BRIEF</b>
AGREEMENT.	)	

Montana-Dakota Utilities Co. ("MDU") files this brief in response to the brief of Commission Staff ("Staff") which for the most part supports the position of South Dakota Intrastate Pipeline Company ("SDIPC") in this docket. The brief is filed pursuant to the briefing schedule established by the Commission at the hearing in this matter on November 9, 2000.

Staff takes the position that SDIPC's filing is pursuant to SDCL § 49-34A-25, and that to approve the increased rates retroactively would not constitute retroactive rate making because of the pass-through nature of the statute. The Staff further contends that, contrary to the contract between the parties, all taxes should be backed out of the transportation rate. Staff further contends that SDIPC "always" (Staff brief, page 4) intended to collect its real estate taxes, and that the backdated date for the increased rate would thus not constitute retroactive rate making under the Norwood case.

AUTOMATIC RATE ADJUSTMENT STATUTE

After stating that it seeks ". . . permission to allow the Utility to increase its transportation fee to its sole customer

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UTILITIES COMMISSION

[NDU] . . . ,” the petition as an afterthought and as the last item in the petition states that “[t]his Petition is also filed pursuant to SDCL § 49-34A-25.” In context the reference to SDCL § 49-34A-25 is an afterthought. Further, the reference to the statute clearly does not request automatic adjustment treatment for the filing, because the petition in at least two places asks for Commission approval to change the rates. This makes sense, because the contract between the parties, approved by the Commission, requires SDIPC to seek Commission approval to change the rates.

The Commission cannot now unilaterally change a contract between the parties. Holding that the PUC is not a court, and cannot exercise purely judicial functions, in Petition of Northwestern Public Service Company, 1997 SD 35, 560 NW2d 925, the South Dakota Supreme Court quoted with approval from Williams Electric Coop. vs. Montana-Dakota Util. Co., 79 NW2d 508 (ND 1956), as follows:

As a general rule administrative agencies, boards, and commissions cannot consider, or adjudicate, contractual rights and obligations between the parties. Hence they cannot pass on the validity of, or enforce, nor can administrative agencies, boards, or commissions change or annul contracts, except where they have been granted power by organic or valid statute enactment to do so. Id. at 517.

The PUC has authority to interpret its own contracts. It cannot unilaterally change contracts between private parties, unless given specific statutory authority to do so. In the NG95-008 docket the Commission approved the contract. Thus, the contract, until

changed, governs both the relationship between the contracting the parties and the Commission's ability to address the relationship between the parties until the contract is changed. In order for the contract to be changed, the Commission must act. Thus, as stated in MDU's initial brief, the contract requires a change in rates before SDIPC can collect increased taxes. The Commission cannot change the rates until it enters an order to do so.

Additionally, SDIPC's filing, that is, its petition, does not take a form which satisfies the requirements of SDCL § 49-34A-25. As argued in MDU's initial brief, it does not contain ". . . provisions for automatic adjustment of charges for public utility service in direct relation to changes in . . . ad valorem taxes paid . . . ." SDCL § 49-34A-25. The petition makes no attempt to provide a workable mechanism to permit the calculation of a rate.

Further, SDCL § 49-34A-25 permits a public utility to file a special kind of rate schedule, that is, one containing provisions for the automatic adjustment of charges for public utility service in direct relation to ad valorem taxes paid, among other things. As such, it is not a filing separate from all other rate filings, but a special kind of rate filing contemplated by SDCL § 49-34A-12. By its very terms, SDIPC's filing is a petition for Commission approval to implement a rate; it is not a rate filing contemplated by SDCL § 49-34A-12.

### THE MODIFIED TRANSPORTATION RATE

The authority cited in the previous section also applies to staff's contention that all taxes should be backed out of the transportation rate and that the transportation rate should be \$2.144/dk, with the ad valorem tax portion of the transportation rate handled by a tax adjustment clause. Although MDU has agreed to work with Staff and SDIPC on an appropriate tax adjustment clause, neither Staff nor SDIPC have proposed a workable tax adjustment clause, as discussed in MDU's original brief. Furthermore, such a request was not part of SDIPC's request. Again, the petition asks for an approval of a change in rates. If something else is to be done, it should be done in a separate docket.

Staff makes the disingenuous argument that in NG95-008 the Commission ordered the transportation rate not to exceed \$2.34/dk, and that under Staff's proposal, its rate would not exceed that amount. In that docket the Commission approved the contract. The contract rate, \$2.34 per dekatherm included a tax component. Staff would now eliminate that tax component and put it in another category. This would constitute a unilateral modification of the contract previously approved by the Commission, and would thus be illegal under the authority cited above. The same taxes that were in the \$2.34 rate are still present, and putting them in another category does not change that fact.

The contract permits the \$2.34 rate to be exceeded **only** as necessary by mandated changes in state taxes. Until that provision of the contract is changed, it remains the law applicable to the Commission's consideration of this case.

#### APPROVAL OF TAX AMOUNT

At page 4 of its brief, Staff argues that MDU knew that SDIPC always intended to collect the real estate taxes it was assessed. That's true (in the limited sense that MDU knew SDIPC **could** apply for an increase), but the significant thing in the Town of Norwood case, as well as other cases cited by MDU in its brief, is whether the taxes were approved by the Commission for collection. Here, they were not. The Town of Norwood case holds that the charges had been approved for collection prior to the surcharge, which is why the customers "always" knew the utility would collect them. These increased taxes have not been approved for collection, even though MDU may have known SDIPC could apply for permission to collect the taxes. The logical extension of Staff's argument would suggest that the taxes for 1997 and 1998 would likewise be collectable, which even SDIPC does not contend. Mr. Woods admits that he missed filing for previous years taxes, and by implication, cannot collect them. Tr., pp. 70 and 71. That same principle applies here. Until the increased rate for increased taxes is approved by the Commission the taxes cannot be collected as part of SDIPC's rates. As MDU's authorities in its initial brief indicate, new rates are

forward looking. The rate constructed from the 1999 taxes payable in 2000 would be a new rate, because the collection of these taxes had not yet been approved by the Commission.

MDU always knew that SDIPC could apply to collect for additional taxes. But under the contract, which is presently SDIPC's tariff, the taxes could not be collected until after they were approved by the Commission.

#### CONCLUSION

Staff's proposal would illegally modify the contract between the parties. Further, it would constitute retroactive rate making. MDU reiterates that it is willing to work with the parties to construct a tax adjustment clause for next years taxes. However, the taxes due in 2000 are now an item of past expense, and not collectible.

Dated this 22<sup>d</sup> day of December, 2000.

MAY, ADAM, GERDES & THOMPSON LLP

  
BY Adam Gerdes  
Attorney for Montana-Dakota Utilities Co.  
503 South Pierre Street  
P.O. Box 160  
Pierre, South Dakota 57501-0160  
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CERTIFICATE OF SERVICE

David A. Gerdes, of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 22<sup>nd</sup> day of December, 2000, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

Karen Cremer  
Staff Attorney  
SD Public Utilities Commission  
500 East Capitol  
Pierre, South Dakota 57501

James Robbennolt  
Olinger, Lovald, Robbennolt,  
McCahren & Reimers  
117 East Capitol  
P.O. Box 66  
Pierre, South Dakota 57501-0066

  
David A. Gerdes

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

<b>IN THE MATTER OF THE APPLICATION OF )</b>	<b>FINDINGS OF FACT AND</b>
<b>SOUTH DAKOTA INTRASTATE PIPELINE )</b>	<b>CONCLUSIONS OF LAW;</b>
<b>COMPANY TO RECOVER ADDITIONAL )</b>	<b>NOTICE OF ENTRY OF</b>
<b>COSTS )</b>	<b>ORDER</b>
<b>)</b>	<b>NG00-001</b>

On February 15, 2000, South Dakota Intrastate Pipeline Company (SDIPC), filed an application with the Public Utilities Commission (Commission) seeking an amendment to its rate schedule. According to its application, SDIPC was seeking an amendment to its rate schedule to provide for an increase in its transportation rate charged to its only customer, Montana-Dakota Utilities Company (MDU). In its letter of transmittal, SDIPC proposed to make the change in its rate effective as of April 1, 2000.

On March 1, 2000, MDU filed a Petition to Intervene in this docket. The deadline for intervention was March 3, 2000. At its regularly scheduled March 14, 2000, meeting, the Commission granted MDU's Petition to Intervene.

A hearing was held as scheduled at 1:00 p.m., on November 9, 2000, in Room 464, State Capitol Building, 500 East Capitol, Pierre, South Dakota. The issue at the hearing was whether the Commission should grant SDIPC's request to amend its rate schedule to provide for an increase in its transportation rate charged to its only customer, MDU. Following the hearing, the parties submitted briefs.

At its January 4, 2001, meeting, the Commission considered this matter. The Commission voted unanimously to approve the increase in the transportation rate to \$2.398 per dekatherm (dk) but not to make the rate retroactive.

Based on the evidence of record, the Commission makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. On February 15, 2000, SDIPC filed an application with the Commission seeking an amendment to its rate schedule. Exhibit 1. According to its application, SDIPC was seeking permission from the Commission to allow SDIPC to increase its transportation rate, charged to its only customer, MDU, from \$2.34 per dk to \$2.4067 per dk pursuant to Paragraph 8.1 of the Transportation Agreement entered into between SDIPC and MDU on March 8, 1993. *Id.* at 1.
2. According to the letter of transmittal, SDIPC proposed to make the change in its rate effective as of April 1, 2000. Exhibit 4. SDIPC did not file any tariff sheets with its petition. See Exhibit 1. SDIPC never implemented the increase in rates. TR. at 23.
3. Pursuant to the Transportation Agreement entered into between SDIPC and MDU, the transportation rate was not to exceed \$2.34 per dk during the first ten years of the contract. Exhibit 5 at 11 (§ 8.1). However, SDIPC was allowed to seek Commission approval of a change in rates where such change is made necessary by any mandated changes in federal or state taxes. . . . *Id.*

4. At the hearing, MDU and SDIPC agreed that the new transportation rate should be \$2.398 per dk. TR. at 20-21, 30. The increase in the rate was due to an increase in property taxes. TR. at 9. SDIPC's current transportation rate of \$2.34 reflected property taxes in the amount of \$216,000.00. TR. at 9; Exhibit 3. By 1999, SDIPC's property taxes had increased to \$278,968.00. *Id.*

5. SDIPC requested that the increase be effective on April 1, 2000. TR. at 14; Exhibit 4. MDU requested that the increase not be effective until the Commission approves the new rate. TR. at 30. MDU stated it could not recover the increase retroactively through its fuel clause unless the Commission would approve the recovery as retroactive ratemaking. TR. at 35.

6. The witness for Commission Staff, Heather Forney, recommended that the Commission approve a transportation rate that excluded property taxes and then have a separate tax adjustment clause that could be adjusted for the fluctuating property taxes. TR. at 46; Exhibit 6. She recommended an effective date of May 1, 2000. TR. at 46. She believed MDU could recover the increase from its customers if SDIPC were allowed to have its increase effective on May 1, 2000. TR. at 48.

7. SDIPC does not currently have a tax adjustment clause. TR. at 54. SDIPC proposed tax adjustment clause language after the hearing and attached the proposed language to its brief. SDIPC Brief, filed November 28, 2000.

8. The Commission finds that SDIPC filed its proposed increase as an increase in its transportation rate. Exhibits 1, 2. SDIPC never filed any tariff sheets reflecting its proposed increase with an April 1, 2000, effective date and did not seek to implement the proposed increase pending Commission approval. See SDCL 49-34A-12, 49-34A-14 (a utility may put rates into effect after thirty days' notice by filing new schedules, unless the schedule of rates is suspended by the Commission.) The Commission may not retroactively approve the rate back to May 1, 2000. By not filing proposed tariff sheets with an effective date, SDIPC gave up its ability to attempt to place the rates into effect prior to Commission approval. In addition, if SDIPC had intended to file for treatment of its increase in taxes as a tax adjustment clause, it should have filed tariff sheets to that effect in order to put the Commission and the parties on notice that SDIPC was requesting a tax adjustment clause.

9. The Commission approves the transportation rate of \$2.398 per dk. TR. at 20-21, 30. SDIPC may implement the increased rate after the issuance of this order.

#### CONCLUSIONS OF LAW

1. The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-34A, specifically 1-26-17.1, 49-34A-4, 49-34A-6, 49-34A-8, 49-34A-10, 49-34A-11, 49-34A-12, 49-34A-13, 49-34A-13.1, 49-34A-14, 49-34A-16, 49-34A-17, 49-34A-19, 49-34A-21, 49-34A-22, and 49-34A-23.

2. The Commission finds that SDIPC filed its proposed increase as an increase in its transportation rate. Exhibits 1, 2. SDIPC never filed any tariff sheets reflecting its proposed increase with an April 1, 2000, effective date and did not seek to implement the proposed increase pending Commission approval. See SDCL 49-34A-12, 49-34A-14 (a utility may put rates into effect after thirty days' notice by filing new schedules, unless the schedule of rates is suspended by the Commission.) The Commission may not retroactively approve the rate back to May 1, 2000. By not filing proposed tariff sheets with an effective date, SDIPC gave up its ability to attempt to place the rates into effect prior to Commission approval. In addition, if SDIPC had intended to file for treatment of its increase in

taxes as a tax adjustment clause, it should have filed tariff sheets to that effect in order to put the Commission and the parties on notice that SDIPC was requesting a tax adjustment clause.

3. The Commission approves the transportation rate of \$2,398 per dk. TR. at 20-21, 30. SDIPC may implement the increased rate after the issuance of this order.

It is therefore

ORDERED, that the transportation rate of \$2,398 per dk is approved and SDIPC may implement the increased rate after the issuance of this order.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 9th day of January, 2001. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 9th day of January, 2001.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By	<u>Melanie Kelbo</u>
Date	<u>1/9/01</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner

Laska Schoenfelder  
LASKA SCHOENFELDER, Commissioner