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South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501
Sent by e-mail

COMMENTS IN RE: DOCKET #NG 16-01 4, PETITION FOR A DECLARATORY RULING REGARDING FARM TAP CUSTOMERS

Dear Commissioners:

These comments are submitted on behalf of a number of my constituents in South Dakota Senate District 17 (Clay and Turner Counties). These residents are farm tap customers who will be significantly impacted by the Commission's decision regarding farm taps.

It appears that the PUC staff may believe that NorthWestern Energy may have already been given permission to shut off these farm taps as a result of the PUC decision in Docket NG11-001. I hope that is not true because none of these farm tap customers were a party to those proceedings; none of them were given notice of those proceedings and none of them were given an opportunity to appear and defend their interests at that time. I would also point out that these farm tap customers were not given notice of these proceedings until after the time for intervention was past.

I don't think that there is any question but that these farm customers have an absolute legal right to continue to receive natural gas through their farm taps. These farm tap customers (or their predecessors in title) granted easements to Northern Natural Gas Company (Northern) in consideration of the promised gas service by Northern. Apparently Northern was unable or unwilling to purchase these South Dakota property owners' easement rights outright so instead of paying for the easements, Northern offered a farm tap and perpetual service as consideration to the landowners to provide a perpetual easement. As I understand it, the landowners were responsible for paying for the initial connection and any repairs, while Northern was responsible for the meter. The easements which I have examined contain the following language:

That grantee, upon written application by the grantor, will make, or cause to be made, a tap in any gas pipe line constructed by grantee upon the above described premises for the purpose of supplying gas to grantor, for domestic purposes only and not for re-sale, and for use upon the above described premises only. All connections required, shall be furnished and paid for by Grantor with the exception of the meter, which is to be furnished and owned by the Grantee. Said tap will be provided by grantee from a convenient point on its main line or some lateral as the grantee may determine, and gas to be taken under this provision shall be measured and furnished to the grantor at the rates and upon the terms as may be established by grantee, or by any vendee of grantee, from time to time.


Northern obtained a significant benefit from these transactions because they were able to finance the acquisition of approximately 200 easements across valuable farmland using the promise of future services, rather than present capital. Northern occupies these easements every single day and benefits from them. Certainly if Northern reneges on its agreements to furnish natural gas by means of these farm taps, which agreements were the consideration for the easements, that places in question the validity of the easements. In fact, Northern admits in their initial brief that they have an obligation to provide taps under the easements.

Northern Natural Gas has the right to engage whatever service provider they deem appropriate if they cannot or do not wish to service these accounts directly. However, Northern has the ultimate obligation to keep this farm tap service active as required by the easements. Whether they contract with Peoples, UtiliCorp, Aquila Inc. , MERC, or NorthWestern Energy it was still Northern's obligation. None of the farm tap customers were party to those assignments or transfers, none of them consented to the agreements and most of them were probably unaware of the agreements. This appears to be a fight between Northern and NorthWestern Energy. It is so unfair to place these 200 farm tap customers, who are mostly small farmers, in the middle of what appears to be a disagreement between two large corporations. Northern, and NorthWestern Energy, both have large incomes, large amounts of assets, and large legal departments while these farm tap customers have none of those. The farm tap customers should not have to face the possibility of losing their utility service due to this dispute between two large corporations.

It is fundamentally unfair to require these farm tap customers to bear the expense of retrofitting existing systems to run on alternate fuels. In addition, a number of these farm tap customers have made significant expenditures in reliance upon the guarantees which they received when they granted the easements and their belief that they would continue to receive natural gas. This includes new equipment, new gas lines, new furnaces, appliances etc. In some of these cases the farm tap customers were urged by NorthWestern to upgrade their lines and equipment. It is fundamentally unfair for the servicer to urge farm tap customers to pay to upgrade their lines and equipment, and then ask the PUC to allow them to disconnect those customers

We are requesting that the PUC protect the rights of these farm tap customers and deny any effort to disconnect their natural gas service.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arthur L. Rusch".

Senator Arthur L. Rusch
South Dakota State Senate
District 17

Cc: Senator Ernie Otten
Representative David Anderson