

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

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| IN THE MATTER OF COMMISSION |) | |
| STAFF'S PETITION FOR |) | Petition for Declaratory Ruling |
| DECLARATORY RULING REGARDING |) | |
| FARM TAP CUSTOMERS |) | NG16-014 |
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Staff of the South Dakota Public Utilities Commission petitions the Public Utilities Commission (Commission) to issue a declaratory ruling that resolves the following issues: 1) Does the Commission have jurisdiction over the utility providing natural gas to farm tap customers taking natural gas from the transmission line owned and operated by Northern Natural Gas Company (Northern)? 2) If so, which entity, NorthWestern Corporation dba NorthWestern Energy (NorthWestern) or Northern, if either, is a public utility as defined by SDCL Chapter 49 with respect to these farm tap customers? 3) Finally, are the farm taps in whole or in part subject to state jurisdiction for the purpose of pipeline safety pursuant to SDCL Chapter 49-34B?

In support of its Petition, Staff submits the following information as required by ARSD 20:10:01:34.

1. Statutes in Question

SDCL 49-34A-1(12) defines a public utility as:

Any person operating, maintaining, or controlling in this state equipment or facilities for the purpose of providing gas or electric service to or for the public in whole or in part, in this state. However, the term does not apply to an electric or gas utility owned by a municipality, political subdivision, or agency of the State of South Dakota or any other state or a rural electric cooperative as defined in § 47-21-1 for the purposes of §§ 49-34A-2 to 49-34A-4, inclusive, §§ 49-34A-6 to 49-34A-41, inclusive, and § 49-34A-62. The term, public utility, does apply to a rural electric cooperative which provides gas service.

Staff seeks a declaratory ruling to determine which company, NorthWestern or Northern Natural Gas, if either, is a public utility with respect to farm tap customers in South Dakota.

If, in fact, one of these entities is operating as a public utility in this circumstance, SDCL 49-34A-2.1 mandates that service may not be discontinued to the farm tap customers without first obtaining permission from the Commission. SDCL 49-34A-2.1 provides, in relevant part, that “[n]o public utility may, except in cases of emergency, fail to provide, discontinue, reduce or impair service to a community, or part of a community ... unless permission has been first obtained from the Public Utilities Commission to do so.”

In addition, SDCL 49-34B-4 authorizes the Commission to promulgate safety standards for the intrastate transportation of gas and gas pipeline facilities. SDCL 49-34B-1(7) defines an intrastate pipeline as “any pipeline or that part of a pipeline to which this part applies that is not an interstate pipeline.” Thus, Staff seeks a determination of whether farm taps or any portion thereof are interstate pipelines for the purpose of pipeline safety and inspection.

2. Facts and Circumstances which Give Rise to the Issue

The facts and circumstances which give rise to this Petition are discussed in the attached Memorandum.

3. The Precise Issue to be Answered

Staff respectfully requests the Commission determine which, if any, company is acting as a public utility pursuant to SDCL 49-34A-1(12) and is, therefore, subject to Commission jurisdiction. In addition, Staff respectfully requests the Commission determine whether the farm taps or any portion thereof are subject to the pipeline safety requirements of SDCL 49-34B.

Dated this 9th day of November, 2016.



Kristen N. Edwards
Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501