

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

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

NG16-014

**PETITION FOR REHEARING**

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

**PROCEDURAL BACKGROUND**

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

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

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

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

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

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

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

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

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

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

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

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

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

### **ARGUMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### CONCLUSION

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

Dated: February 17, 2017



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