

APPENDIX

To the Appellee's Reply Brief

In Response to Briefs of Appellants Northern Natural Gas Company's Opening Brief and Northwestern Energy's Opening Brief

CIV17-71 (32CIV17-000071)

CIV17-83 (32CIV17-000083)

Table of Contents	Ar z1
NG16-014 Declaratory Ruling Regarding Farm Taps	Ar z3
Senate Bill 104	Ar z6
NG16-014 Petition for Declaratory Ruling Regarding Farm Tap Customers	Ar z9
SDCL 1-26-15	Ar z12
SDCL 49-34A-1	Ar z33
SDCL 49-34A-2.1	Ar z15
ARSD 20:10:01:30.01	Ar z16
ARSD 20:10:01:34	Ar z17
ARSD 20:10:01:35	Ar z18
Fifteen Declaratory Rulings Issued by the Commission	
EL02-004	Ar z19
EL06-027	Apx21
EL07-018	Apx23
EL08-020	Apx25
PS08-004	Apx27
OC10-002	Apx29
PS11-001	Apx32
EL12-033	Apx33
EL12-040	Apx34

EL12-057	Apx36
EL13-004	Apx37
EL13-025	Apx39
TC14-008	Apx41
TC15-069	Apx43
NG16-014	Apx45

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

IN THE MATTER OF COMMISSION)	DECLARATORY RULING
STAFF'S PETITION FOR DECLARATORY)	REGARDING FARM TAPS
RULING REGARDING FARM TAP)	
CUSTOMERS)	NG16-014

On November 9, 2016, the South Dakota Public Utilities Commission Staff filed a petition with the South Dakota Public Utilities Commission (Commission) for a declaratory ruling to resolve the following issues: 1) Does the Commission have jurisdiction over any 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) 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?

On November 10, 2016, the Commission electronically transmitted notice of the filing and the intervention deadline of November 21, 2016, to interested individuals and entities on the Commission's PUC Weekly Filings listserv. On November 23, 2016, the Commission issued an Order Granting Intervention, granting intervention to Northern, NorthWestern, and Montana-Dakota Utilities Co. The Commission issued an Order for and Notice of Hearing on November 30, 2016. The hearing was held as scheduled on December 14, 2016, at which time the Commission heard the oral arguments of the parties.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-1-11(5), 49-34A, and 49-34B, and ARSD 20:10:01:34 and 20:10:01:35. The Commission may rely upon any or all of these or other laws of this state in making its determination.

At its regularly scheduled meeting on January 17, 2017, the Commission considered this matter. Having reviewed the filed documents, the transcript of the hearing, and the arguments of the parties; as to whether the Commission has jurisdiction over any utility providing natural gas to farm tap customers taking natural gas from the transmission line owned and operated by Northern, Commissioner Hanson moved to declare that the Commission does have jurisdiction over a utility providing natural gas to farm tap customers taking natural gas from the transmission line owned and operated by Northern. The motion carried 3-0.

As to which entity, NorthWestern or Northern, if either, is a public utility as defined by SDCL Chapter 49 with respect to these farm tap customers, Commissioner Hanson moved to declare that both Northern and NorthWestern are public utilities as defined by SDCL Chapter 49 with respect to these farm tap customers. Commissioner Nelson moved a substitute motion to

declare that NorthWestern is a public utility as defined by SDCL Chapter 49. The motion carried 3-0. Commissioner Hanson moved to declare that Northern has made itself a public utility in the State of South Dakota for the providing of natural gas to the farm tap customers. The motion failed 2-1.

As to whether farm taps in whole or in part are subject to state jurisdiction for the purpose of pipeline safety pursuant to SDCL Chapter 49-34B, Commissioner Nelson moved to declare farm taps in whole or in part, are not subject to state jurisdiction for the purposes of pipeline safety pursuant to SDCL Chapter 49-34B. Motion carried 3-0.

Pursuant to SDCL 49-34A-1(12), a public utility is an entity 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. As explained throughout the proceedings, the Commission finds that NorthWestern operates equipment and facilities for the purpose of providing gas service to or for the public including providing emergency response, filling the odorizers annually, billing monthly, reading the meters annually, locking the taps if needed, and nominating gas for the farm tap customers.

Pursuant to SDCL 49-34B-4, the Commission may establish safety standards for the intrastate transportation of gas and gas pipeline facilities. As presented throughout the proceedings, the Commission finds that Northern is a federally regulated interstate pipeline and is not subject to state jurisdiction for the purpose of pipeline safety.

It is therefore

ORDERED, that the Commission has jurisdiction over utilities providing natural gas to farm tap customers taking natural gas from the transmission line owned and operated by Northern. It is further

ORDERED, that NorthWestern is a public utility as defined by SDCL Chapter 49 with respect to these farm tap customers. It is further

ORDERED, that farm taps in whole or in part are not subject to state jurisdiction for the purpose of pipeline safety pursuant to SDCL Chapter 49-34B.

NOTICE OF ENTRY AND OF RIGHT TO APPEAL

24th PLEASE TAKE NOTICE that this Declaratory Ruling was duly issued and entered on the day of January, 2017. Pursuant to SDCL 1-26-32, this Declaratory Ruling will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties. Pursuant to ARSD 20:10:01:30.01, an application for a rehearing or reconsideration may be made by filing a written petition with the Commission within 30 days from the date of issuance of this Declaratory Ruling; Notice of Entry. Pursuant to SDCL 1-26-31, the parties have the right to appeal this Declaratory Ruling to the appropriate Circuit Court by serving notice of

appeal of this decision to the circuit court within thirty (30) days after the date of service of this Notice of Decision.

Dated at Pierre, South Dakota, this 24th day of January, 2017.

<p align="center">CERTIFICATE OF SERVICE</p> <p>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, electronically or by mail.</p> <p>By: <u>Adam Detbeck</u></p> <p>Date: <u>1/24/17</u></p> <p align="center">(OFFICIAL SEAL)</p>

BY ORDER OF THE COMMISSION:

Kristie Fiegen

KRISTIE FIEGEN, Chairperson

Gary Hanson

GARY HANSON, Commissioner

Chris Nelson

CHRIS NELSON, Commissioner

AN ACT

ENTITLED, An Act to protect certain easement holders and rural customers from shutoffs by certain energy companies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That the code be amended by adding a NEW SECTION to read:

Terms used in this Act mean:

- (1) "Farm tap," a natural gas piping connection to an interstate or intrastate transmission pipeline, that is made available to a farm tap customer;
- (2) "Farm tap customer," a person who receives natural gas through a farm tap distribution system;
- (3) "Farm tap distribution system," a customer owned pipeline system that extends from an interstate or intrastate transmission pipeline to deliver natural gas to a farm tap customer; and
- (4) "Farm tap service provider," any third party provider of farm tap distribution system services to:
 - (a) A farm tap customer; or
 - (b) An interstate or intrastate natural gas transmission pipeline holding one or more farm tap easements.

Section 2. That chapter 43-13 be amended by adding a NEW SECTION to read:

A farm tap easement is an easement for the location, construction, operation or maintenance of a pipeline which includes, as part of the consideration for the easement, the provision of natural gas to and for the use of the grantor through a direct connection to the pipeline. In any court action seeking enforcement of a farm tap easement, a prevailing grantor or successor to a grantor of a farm tap easement may receive specific performance as a portion of the remedy from the farm tap

easement grantee or its successor.

Section 3. That the code be amended by adding a NEW SECTION to read:

The farm tap customer is responsible for the safety and reliability of the farm tap distribution system, unless the farm tap customer has contracted with or transferred ownership of his farm tap distribution system to a farm tap service provider pursuant to a written agreement which expressly transfers the responsibility for the safety and reliability of the farm tap distribution system to the farm tap service provider.

Section 4. That the code be amended by adding a NEW SECTION to read:

The farm tap service provider is not liable for damages related to or arising out of a farm tap or a farm tap distribution system, unless the damages are solely caused by the negligence of the farm tap service provider.

Section 5. That § 49-7A-15 be amended to read:

49-7A-15. Any person owning or operating underground facilities, including a farm tap customer owning a farm tap distribution system, which serves third parties or which crosses a property line or is located in a public highway shall register with the one call notification system as an operator pursuant to chapter 49-7A.

An Act to protect certain easement holders and rural customers from shutoffs by certain energy companies.

I certify that the attached Act
originated in the

SENATE as Bill No. 104

Kay Johnson
Secretary of the Senate

Matthew D. ...
President of the Senate

Attest:

Kay Johnson
Secretary of the Senate

Neil Hilg
Speaker of the House

Attest:

Chloe Krivlen
Chief Clerk

Senate Bill No. 104
File No. _____
Chapter No. _____

Received at this Executive Office
this 10 day of March,
20 17 at 10:00 A M.

By Judy Swartz
for the Governor

The attached Act is hereby
approved this 13th day of
March, A.D., 2017

Dennis Daugard
Governor

STATE OF SOUTH DAKOTA,

SS.

Office of the Secretary of State

Filed March 13, 2017
at 330 o'clock P M.

Secretary of State

By Travis Bray
Asst. Secretary of State

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

IN THE MATTER OF COMMISSION)	
STAFF'S PETITION FOR	)	Petition for Declaratory Ruling
DECLARATORY RULING REGARDING)	
FARM TAP CUSTOMERS	)	NG16-014
)	
)	
)	

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, North Western 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.

A handwritten signature in cursive script, appearing to read "Kristen N. Edwards", is written over a horizontal line.

Kristen N. Edwards

Staff Attorney

South Dakota Public Utilities Commission

500 East Capitol

Pierre, SD 57501

1-26-15. Declaratory rulings by agencies. Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. No inmate as defined in § 1-15-20.1 may petition an agency for a declaratory ruling on the applicability of statutory provisions, rules, or orders of the agency. Rulings disposing of petitions have the same status as agency decisions or orders in contested cases. A copy of all such rulings shall be filed with the director for publication in the Administrative Rules of South Dakota.

Source: SL 1966, ch 159, § 8; SL 1979, ch 8, § 3; SL 1989, ch 16, § 12; SL 1990, ch 20, § 3; SL 1993, ch 19, § 8; SL 1995, ch 8, § 13; SL 1999, ch 6, § 3.

49-34A-1. Definition of terms. Terms used in this chapter mean:

- (1) "Assigned service area," the geographical area in which the boundaries are established as provided in §§ 49-34A-42 to 49-34A-44, inclusive, and 49-34A-48 to 49-34A-59, inclusive;
- (2) "Commission," the South Dakota Public Utilities Commission;
- (3) "Customer," any person contracting for or purchasing gas or electric service from a utility;
- (4) "Depreciated original cost," the cost of property to the person first devoting it to public service, less the depreciation reserve, which includes accumulated depreciation charges calculated on a straight-line method and based upon the estimated service life of the property together with other items normally accounted for in the depreciation reserve, and does not include any good will or going concern value, nor does it include certificate value in excess of payments made or costs incurred in the initial acquisition thereof;
- (5) "Electric line," any line for conducting electric energy at a design voltage of twenty-five thousand volts phase to phase or less and used for distributing electric energy directly to customers;
- (6) "Electric service," electric service furnished to a customer for ultimate consumption, but not including wholesale electric service furnished by an electric utility to another electric utility for resale;
- (7) "Electric utility," any person operating, maintaining, or controlling in this state, equipment or facilities for providing electric service to or for the public including facilities owned by a municipality;
- (8) "Gas service," retail sale of natural gas or manufactured gas distributed through a pipeline to fifty or more customers or the sale of transportation services by an intrastate natural gas pipeline;
- (9) "Gas utility," any person operating, maintaining, or controlling in this state equipment or facilities for providing gas service to or for the public;
- (9A) "Intrastate natural gas pipeline," any natural gas pipeline located entirely within the state that transports gas from a receipt point to one or more locations for customers other than the pipeline operator. However, the term does not apply if there is only one customer and the customer is a wholly-owned subsidiary of the pipeline operator, the customer is the parent company of the pipeline operator, or the customer and the pipeline operator are wholly-owned subsidiaries of the same parent company. Further, the term does not apply to natural gas lines and appurtenant facilities used to gather gas from natural gas production facilities or sites and move the gas to an interconnecting transportation pipeline system;
- (10) "Municipality," any incorporated town or city in South Dakota;
- (11) "Person," a natural person, a partnership, a private corporation, a public corporation, a limited liability company, a municipality, an association, a cooperative whether incorporated or not, a joint stock association, a business trust, any of the federal, state and local governments, including any of their political subdivisions, agencies and instrumentalities, or two or more persons having joint or common interest;
- (12) "Public utility," 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;

(13) "Rate," any compensation, charge and classification, or any of them demanded, observed, charged, or collected by any public utility for any service and any rules, regulations, practices, or contracts affecting any such compensation, charge or classification;

(14) "Securities," stock and stock certificates or other evidence of interest or ownership, and bonds, notes or other evidence of indebtedness.

Source: SL 1965, ch 254, § 1; SDCL § 49-41-1; SL 1970, ch 261, § 1; SL 1975, ch 283, § 1; SL 1976, ch 296, §§ 1 to 6; SL 1977, ch 391; SL 1987, ch 354, § 2; SL 1990, ch 374; SL 1991, ch 386, § 1; SL 1994, ch 349, § 6; SL 1996, ch 273, §§ 1, 2; SL 2015, ch 231, § 1.

49-34A-2.1. Refusal of service without permission of commission prohibited--Exceptions--
Violation as petty offense--Separate offenses. 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.

Source: SL 1976, ch 296, § 7; SL 1983, ch 15, § 139.

20:10:01:30.01. Application for rehearing or reconsideration. 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.

Source: 2 SDR 56, effective February 2, 1976; transferred from § 20:10:14:39, 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 25 SDR 89, effective December 27, 1998; 33 SDR 107, effective December 26, 2006.

General Authority: SDCL 49-1-11(4).

Law Implemented: SDCL 49-1-11(4), 49-34A-61.1.

20:10:01:34. Petition for declaratory ruling. Any person wishing the commission to issue its ruling as to the applicability to that person of any statutory provision or rule or order of the commission may file with the commission a petition for declaratory ruling. The petition shall contain the following:

- (1) The state statute or commission rule or order in question;
 - (2) The facts and circumstances which give rise to the issue to be answered by the commission;
- and
- (3) The precise issue to be answered by the commission's declaratory ruling.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 33 SDR 107, effective December 26, 2006.

General Authority: SDCL 49-1-11(5).

Law Implemented: SDCL 1-26-15, 49-1-11(5).

20:10:01:35. Commission action on petition. Upon receipt of the petition for declaratory ruling, the commission may request from petitioner further information as may be required for the issuance of its ruling. Unless the petitioner agrees to a longer period of time, the commission shall issue its declaratory ruling within 60 days after the filing of the petition or within 60 days following the receipt of further requested information.

Source: SL 1975, ch 16, § 1; 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 33 SDR 107, effective December 26, 2006.

General Authority: SDCL 49-1-11(5).

Law Implemented: SDCL 1-26-15, 49-1-11(5).

Declaratory Ruling: The Public Utilities Commission has filed a declaratory ruling with the Legislative Research Council in the matter of the petition of West River Electric Association, Inc. for a ruling regarding service territory rights concerning Black Hills Power, Inc. and West River Electric Association, Inc. The Commission declared that the provision of electric service by Black Hills Power, Inc. to a certain portion of the Rapid City Waste Treatment Facility violated SDCL 49-34A-42 by rendering electric service at retail within the territory of West River Electric Association, Inc. Declaratory Ruling EL02-003 dated September 24, 2002. The commission's Declaratory Ruling EL02-003 was reversed by the South Dakota Supreme Court in *In re West River Elec. Ass'n. Inc.*, 2004 SD 11, 675 N.W. 2d 222, Util. L. Rep. P 26,872.

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

IN THE MATTER OF THE PETITION FOR) DECLARATORY RULING OF THE CITY OF) BERESFORD ON WHETHER A PROPOSED) TRANSMISSION LINE MEETS THE) DEFINITION OF SDCL 49-41B-2.1)	DECLARATORY RULING EL02-004
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On March 18, 2002, the South Dakota Public Utilities Commission (Commission) received a Petition for Declaratory Ruling from the City of Beresford, South Dakota (City). According to the Petition, the City is proposing to construct a new 115 kV electric transmission line. The City plans to deliver electrical energy to its customers using this new transmission line and new municipal substation. Based on the March 26, 2002, revised filing, the proposed new transmission line will be installed on private property for approximately ½ mile south of the Western substation within an existing easement, and Lincoln County Pleasant Township public ROW on 295th Street and 471st Avenue. Currently, the City of Beresford occupies the west ROW of 471st Avenue with a 12.47 kV distribution line. It is proposed that the new transmission line will be built along the west ROW with the distribution line underbuilt on the new transmission structures. Based on the figures submitted with the revised filing, the transmission structures on 295th Street and 471st Avenue will be placed one foot inside the ROW line (on public ROW). The City of Beresford has existing easements to accommodate the overhang of the transmission and distribution conductors along the entire route of the line. The City asked that a determination be made as to whether or not the proposed project falls within the SDCL 49-41B-2.1 definition of a transmission line and associated facility, thereby requiring a SDPUC permit.

On March 21, 2002, the Commission electronically transmitted notice of the filing and the intervention deadline of March 27, 2002. No petitions to intervene or comments were filed. On March 28, 2002, at its regularly scheduled meeting, the Commission considered the matter. Commission Staff recommended that the Commission find that the proposed project does not meet the definition of a transmission line and associated facility and therefore is not subject to the Commission's siting jurisdiction. The Commission finds that it has jurisdiction over this matter pursuant to SDCL 49-41B, specifically, 49-41B-2.1(2) which states that a 115 kV transmission line is subject to the Commission's siting jurisdiction "if more than one mile in length of the transmission line does not follow section lines, property lines, roads, highways or railroads, or is not reconstruction or modification of existing transmission lines and existing associated facilities located on abandoned railroad rights-of-way. . . ." The Commission finds that the proposed project does not meet the definition of a transmission line and associated facility and therefore is not subject to the Commission's siting jurisdiction. It is therefore

ORDERED, that the City's proposed 115 kV transmission line is exempt from the Commission's siting jurisdiction because less than one mile is outside of the existing public right of way.

Dated at Pierre, South Dakota, this 4th day of April, 2002.

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 first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Arlaine Kelbo

Date: 4/5/02

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Robert K. Sahr
ROBERT K. SAHR, Commissioner

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

IN THE MATTER OF THE PETITION FOR	)	DECLARATORY RULING
DECLARATORY RULING OF TATANKA WIND	)	REGARDING JURISDICTION
POWER, L.L.C. REGARDING A PROPOSED)	
WIND POWER FACILITY IN MCPHERSON	)	EL06-027
COUNTY, SOUTH DAKOTA)	

On October 26, 2006, the Public Utilities Commission (Commission) received a Petition for Declaratory Ruling from Tatanka Wind Power, L.L.C (Tatanka). In its Petition, Tatanka stated that it is proposing to build "the Tatanka Wind Farm, which will consist of up to 120 wind-powered generators to yield a net capacity of up to 180 MWs. As presently envisioned, the South Dakota portion of the project will consist of approximately 90 MWs of generating capacity with approximately 60 turbine sites within the state." The 1.5 MW generators will be "interconnected by both a fiber communications system and an underground 34.5 kV electrical power collection system within the wind farm." On November 8, 2006, Tatanka submitted an Amendment to Petition for Declaratory Ruling. The Amendment provided additional information about the proposed project including additional information regarding the 230 kV line which will run 1200 feet within South Dakota.

In its Petition, Tatanka requested that the Commission issue a Declaratory Ruling regarding the following issues:

- a. Does a wind energy facility, as defined by SDCL 49-41B-2(12) subjecting the facility to overall permit requirements of SDCL 49-41B and ARSD 20:10:22, require only consideration by the South Dakota Public Utilities Commission of the total MW produced as determined by adding the name plate power generation capabilities of each wind turbine located only within the geographic boundaries of the State of South Dakota?
- b. Does the term facility, as defined in SDCL 49-41B-2(6), include only such facilities located within the geographic boundaries of the State of South Dakota?
- c. Does the Commission have jurisdiction over the South Dakota portion of the project as presented here by Tatanka?

On November 2, 2006, the Commission electronically transmitted notice of the filing and the intervention deadline of November 20, 2006, to interested individuals and entities. No parties filed to intervene.

On November 17, 2006, Tatanka submitted a letter asking that the hearing on the Petition be held at the December 6, 2006, Commission meeting. The Commission had originally intended to consider the Petition at its November 28, 2006, meeting. On November 20, 2006, the Commission Staff filed its Brief Regarding Jurisdiction.

At its December 6, 2006, meeting, the Commission considered this matter. The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-41B, specifically SDCL 49-41B-1 and SDCL 1-26-15. At the meeting, representatives of Tatanka explained the project and answered questions. Both Tatanka and Commission Staff asserted that the Commission did not have jurisdiction over the project, including the 230 kV transmission line. With respect to the transmission line, Staff noted that the transmission line is less than one mile and therefore does not fall under the Commission's siting jurisdiction over transmission facilities as defined in SDCL 49-41B-2.1(2).

After listening to the arguments presented by Tatanka and Staff, the Commission voted to find that it does not have jurisdiction over the Tatanka Wind Farm based on the description of the project as contained in the Petition and Amendment to Petition. The Commission finds that a wind energy facility as defined by SDCL 49-41B-2(12) is limited to the total megawatts produced as determined by adding the name plate power generation capabilities of each wind turbine located only within the geographic boundaries of South Dakota. Based on the description of the project, only 90 MWs will be generated within South Dakota. In order for the Commission to have siting jurisdiction, a wind energy facility must be "designed for or capable of generation of one hundred megawatts or more of electricity." SDCL 49-41B-1(12). In addition, the Commission finds that it does not have siting jurisdiction over the 230 kV transmission line because it is less than one mile in length. See SDCL 49-41B-2.1(2). It is therefore

ORDERED, that the Commission finds that it does not have siting jurisdiction over the Tatanka Wind Project based on the description of the project contained in the Petition and Amendment to Petition.

Dated at Pierre, South Dakota, this 28th day of December, 2006.

<p align="center">CERTIFICATE OF SERVICE</p> <p>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.</p> <p>By: <u>Melaine Kolbe</u></p> <p>Date: <u>12/29/06</u></p> <p align="center">(OFFICIAL SEAL)</p>
--

BY ORDER OF THE COMMISSION:

Dustin M. Johnson
DUSTIN M. JOHNSON, Chairman

Gary Hanson
GARY HANSON, Commissioner

Steve Kolbeck
STEVE KOLBECK, Commissioner

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

IN THE MATTER OF THE REQUEST FOR A)	DECLARATORY RULING
DECLARATORY RULING BY PPM ENERGY,)	REGARDING JURISDICTION
INC. REGARDING THE SITING OF WIND)	
POWER FACILITIES)	EL07-018

On May 16, 2007, PPM Energy, Inc. (PPM) filed a request for a declaratory ruling as to whether PPM is required to have a siting permit per SDCL chapter 49-41B from the Commission for its proposed Buffalo Ridge I Project in Brookings County.

On May 17, 2007, the Commission electronically transmitted notice of the filing and the intervention deadline of May 31, 2007, to interested individuals and entities. No parties filed to intervene.

On October 5, 2007, PPM updated its filing and the description of its wind projects and filed a Brief in Support of Application. According to the brief and attached affidavit, PPM is currently developing the 55 MW MinnDakota Project in Brookings County which will become commercially operable in 2007. PPM plans on developing 50.4 MW for the proposed Buffalo Ridge I Project. On October 29, 2007, the Commission Staff filed its Brief Regarding Jurisdiction.

At its November 6, 2007, meeting, the Commission considered this matter. The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-41B and SDCL 1-26-15. At the meeting, representatives of PPM explained the projects and answered questions. Both PPM and Commission Staff asserted that the Commission did not have jurisdiction over the projects.

After listening to the arguments presented by PPM and Staff, the Commission voted that the two projects are separate projects and, therefore, no siting permit is required for the Buffalo Ridge I Project.

Under SDCL 49-41B-2(12), the definition of a wind energy facility is as follows:

"Wind energy facility," a new facility, or facility expansion, consisting of a commonly managed integrated system of towers, wind turbine generators with blades, power collection systems, and electric interconnection systems, that converts wind movement into electricity and that is designed for or capable of generation of one hundred megawatts or more of electricity. A wind energy facility expansion includes the addition of new wind turbines, designed for or capable of generating twenty-five megawatts or more of electricity, which are to be managed in common and integrated with existing turbines and the combined megawatt capability of the existing and new turbines is one hundred megawatts or more of electricity. The number of megawatts generated by a wind energy facility is determined by adding the nameplate power generation capability of each wind turbine.

The MinnDakota Wind Project is a 150 MW project, with 54 of the MW located in South Dakota. It has a permit from Brookings County for 99 MW. The MinnDakota Wind Project is expected to be operational in 2007. The Buffalo Ridge I Project has a 55 MW conditional use permit from the Brookings County Commission with a planned development of 50.4 MW. Construction

should be completed in 2008. Both MinnDakota Wind and Buffalo Ridge I are limited liability companies that are owned by PPM Energy, Inc. The projects are intended to be operated and maintained by PPM Technical Services, LLC. The projects have separate financing and the electrical output will be sold to different purchasers under separate agreements. The projects will share an interconnection agreement.

Although the projects are both located in Brookings County, the projects will be located at different sites and separated by two miles. The two projects will also be separately metered. The projects will have separate and dedicated collection and feeder lines. Three feeders from the MinnDakota project will connect to Xcel Energy's Yankee substation. One feeder from Buffalo Ridge will connect to the same substation. The two projects will not be electrically integrated within the substation. The projects will share transmission line poles using separate electrical circuits.

In order for the Commission to have siting jurisdiction, a wind energy facility must be "designed for or capable of generation of one hundred megawatts or more of electricity." SDCL 49-41B-1(12). In addition, the facilities must be commonly managed and integrated. The Commission finds that the two projects are not commonly managed and integrated. The Commission finds that the two projects are not integrated given that the projects are separated by two miles, are separately metered, will have separate and dedicated collection and feeder lines, and will not be electrically integrated within the substation. Thus, based on the record presented to the Commission, the Commission finds that the projects are not "commonly managed and integrated" as required by the statute. It is therefore

ORDERED, that the Commission finds that it does not have siting jurisdiction over the PPM Wind Projects based on the description of the projects as set forth by PPM.

Dated at Pierre, South Dakota, this 16th day of November, 2007.

<p align="center">CERTIFICATE OF SERVICE</p> <p>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, electronically.</p> <p>By: <u>Debra Kolbo</u></p> <p>Date: <u>11/16/07</u></p> <p align="center">(OFFICIAL SEAL)</p>
--

BY ORDER OF THE COMMISSION:

Dustin M. Johnson
DUSTIN M. JOHNSON, Chairman *dk*

Gary Hanson
GARY HANSON, Commissioner

Steve Kolbeck
STEVE KOLBECK, Commissioner

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

IN THE MATTER OF THE PETITION OF EAST)	DECLARATORY RULING
RIVER ELECTRIC POWER COOPERATIVE,)	
INC. FOR A DECLARATORY RULING ON 115)	EL08-020
KV TRANSMISSION LINE DESIGN)	

On July 7, 2008, East River Electric Power Cooperative, Inc. (East River) filed a request for a declaratory ruling as to whether East River is required to have a siting permit per SDCL 49-41B from the South Dakota Public Utilities Commission (Commission) for a proposed 115 kV Transmission Line. Specifically, East River requests a ruling on whether a 115 kV transmission line generally running parallel to the road right-of-way and designed to site the poles in two locations, i.e., on the private side and on the public side alongside the road right-of-way line, with the poles located to generally touch the road right-of-way, meets the standard of following section lines, property lines, roads, highways or railroads contained in SDCL 49-41B-2.1(2). East River recently filed applications for two such lines: EL08-010 and EL08-016.

On August 25, 2008, the Commission received a Request for Extension from East River. On August 28, 2008, the Commission received Staff's Response to East River's Petition for Declaratory Ruling. At its ad hoc meeting of August 28, 2008, the Commission granted the Request for Extension.

The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-41B. At its September 9, 2008, meeting, the Commission considered this matter. East River presented additional information on its request for a declaratory ruling. Staff recommended that for a transmission line that runs parallel to section lines, roads or highways for more than a mile on private land, that the word "follows" means that the transmission line must be located in close proximity to the outer edge of the public right-of-way. Staff also recommended that when siting a transmission line to follow a property line that the applicant be required to prove that the construction of a 115 kV transmission line that is not placed on the property line will not pose a threat of serious injury to the social and economic condition of inhabitants in the siting area. Following the presentation, the Commission voted unanimously to find that the Commission does not have siting authority of the 115 kV line in question and with regard to SDCL 49-41B-2.1(2), the word follows means that the line is in close proximity to the outer edge of the public right-of-way. It is therefore

ORDERED, that the Commission finds that it does not have siting authority of the 115 kV line in question and with regard to SDCL 49-41B-2.1(2), the word follows means that the line is in close proximity to the outer edge of the public right-of-way.

Dated at Pierre, South Dakota, this 15th day of September, 2008.

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, electronically.

By: *Julaine Kaelo*

Date: 9/16/08

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Chairman

Steve Kolbeck
STEVE KOLBECK, Commissioner

Dustin M. Johnson
DUSTIN M. JOHNSON, Commissioner

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF)	DECLARATORY RULING
COMMISSION PIPELINE SAFETY PROGRAM)	REGARDING JURISDICTION
MANAGER FOR A DECLARATORY RULING)	
ON JURISDICTION OF LOW INCOME)	PS08-004
HOUSING PROPANE SYSTEM)	

On October 28, 2008, the Public Utilities Commission (Commission) received a Petition for Declaratory Ruling (Petition) from Commission Staff (Staff) regarding jurisdiction over the Burke Housing Authority low income housing propane system. In its Petition, Staff stated the following:

The Burke Housing Authority herein (the "facility") is a non-profit elderly and low income housing unit in Burke, South Dakota. Residents must undergo an application process prior to acceptance as a resident at the facility. After acceptance, the applicant is provided a housing unit. The housing units are set up in sets of four individual units under one roof. There are 23 individual residential units as well as one community room. Heat for the units is provided by propane heaters that each serve two units. Units do not have individual heating units.

The resident pays a set fee for his or her rent. The rent paid by the resident includes all utilities, upkeep and maintenance used at the facility. The rent paid by the resident is either 30% of his or her income or a set rate. The "percentage of income rent" is set by US Housing and Urban Development. If a resident is above a particular income rate he or she must pay the flat rate, also set by US Housing and Urban Development.

The facility makes an annual application to US Housing and Urban Development to recoup its utility expenses through a subsidy. The application is based on a three year average consumption and the estimated rate of the utility (inclusive of water, sewer, gas and electricity). At the end of the year US Housing and Urban Development calculates actual consumption and actual cost. After expiration of the three year estimate period, the cumulative calculations are evaluated. The facility keeps 75% of unused money if it over estimated its costs or usage and thus collected more government subsidy than necessary. If, however, the facility exceeds its estimate, US Housing and Urban Development pays only 25% of the overage and the facility covers the remaining overage. At no time, however, may the facility increase its rent. The facility may only collect the rent set by US Housing and Urban Development.

The facility has paid the program fees set in SDCL 49-34B and been considered part of the South Dakota pipeline safety program since at least 1997. While inspecting the facility this year, however, one of the pipeline safety program inspectors questioned whether the facility falls within the pipeline safety program's jurisdiction and now looks to the Commission for assistance.

In its Petition, Staff requested that the Commission issue a decision regarding the following issue:

Is a propane gas delivery system, where heat is provided to two units from each furnace, units do not have individual furnaces and the costs thereof are paid through a government subsidy, and where user rents cannot be modified based on actual cost, a master meter system according to SDCL 49-34B-1(10) and thus within the jurisdiction of this Commission?

On October 30, 2008, the Commission electronically transmitted notice of the filing and the intervention deadline of November 28, 2008, to interested individuals and entities. No parties filed to intervene.

At its regularly scheduled meeting of December 9, 2008, the Commission considered this matter. After listening to comments presented by Staff, the Commission voted unanimously to find that it does not have jurisdiction over the Burke Housing Authority low income housing propane system. It is therefore

ORDERED, that the Commission finds that it does not have jurisdiction over the Burke Housing Authority low income housing propane system.

Dated at Pierre, South Dakota, this 16th day of December, 2008.

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, electronically.

By: Delaine Kolbo

Date: 12/17/08

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Chairman

Steve Kolbeck
STEVE KOLBECK, Commissioner

Dustin M. Johnson
DUSTIN M. JOHNSON, Commissioner

BEFORE THE ONE CALL BOARD OF THE STATE OF SOUTH DAKOTA

**IN THE MATTER OF THE PETITION)
OF SOUTH DAKOTA ASSOCIATION) DECLARATORY RULING
OF RUAL WATER SYSTEMS FOR A)
DECLARATORY RULING)**

On May 19, 2010, the South Dakota Association of Rural Water Systems (the "Association") filed a Petition for a Declaratory Ruling pursuant to SDCL 1-26-15 and ARSD 20:25:03:11. The Association presented two clarification questions relative to SDCL 49-7A-8.

49-7A-8. Location of underground facilities--Marking. An operator shall, upon receipt of the notice, advise the excavator of the location of underground facilities in the proposed excavation area by marking the location of the facilities with stakes, flags, paint, or other clearly identifiable marking within eighteen inches horizontally from the exterior sides of the underground facilities. The board shall promulgate rules, pursuant to chapter 1-26, to establish the response time for operators to mark the underground facilities. The response time shall be no later than forty-eight hours after the receipt of the notice, excluding Saturdays, Sundays, and legal holidays of the state or the excavation start time provided by the excavator, whichever is later. The response time may be less than forty-eight hours for emergency or subsequent inquiries to the original locate request and may be longer than forty-eight hours for nonexcavation requests. Excavators shall maintain a minimum horizontal clearance of eighteen inches between a marked underground facility and the cutting edge of any mechanical equipment. If excavation is required within eighteen inches, horizontally, the excavator shall expose the facility with hand tools or noninvasive methods approved pursuant to rule and shall protect and support the facility prior to further excavation with mechanical equipment.

The first question was, "Regardless of depth of an underground facility, is it a violation of SDCL 49-7A-8 to bury an underground facility within eighteen inches horizontally on either side from the markings of another underground facility if hand tools or other noninvasive tools are not used?" The second issue was whether, "South Dakota statutes and administrative rules allow rural water systems to mark the outside edge of the pipe in two places and mark with spray paint or flags the center of the pipe in order to ensure an excavator maintains a minimum horizontal clearance of eighteen inches from the markings on both sides of the outside edge?"

The Association agreed to waive ARSD 20:25:01:12 which requires the Board to issue its ruling within 120 days. The Board has jurisdiction over this matter pursuant to SDCL Chapter 49-7A. At its September 29, 2010 meeting, the South Dakota One Call Board

(the "Board") considered both questions. The Association presented testimony and exhibits relative to its Petition.

- I. Regardless of depth of an underground facility, is it a violation of SDCL 49-7A-8 to bury an underground facility within eighteen inches horizontally on either side from the markings of another underground facility if hand tools or other noninvasive tools are not used?

The questionable statute does not specifically address where an underground facility can be buried and the Board does not desire to rule regarding the burial of facilities. With that said, the Board agrees the statute specifically addresses excavation procedures and such procedures are not dependent on facility depth. The Board further agrees excavation is necessary when burying an underground facility and if other facilities are present and marked, hand tools or other noninvasive tools must be used, within eighteen inches horizontally on either side from the markings, prior to exposure of the existing facility.

The Board, therefore, answered this question in the affirmative. Regardless of depth, it is a violation of SDCL 49-7A-8 to bury an underground facility within eighteen inches horizontally on either side from the markings of an existing underground facility if the existing facility is not first exposed with hand tools or other board approved noninvasive method.

- II. Do South Dakota statutes and administrative rules allow rural water systems to mark the outside edge of the pipe and mark with spray paint or flags the center of the pipe in order to ensure an excavator maintains a minimum horizontal clearance of eighteen inches from the markings on both sides of the outside edge?

The second question goes to proper facility marking. The only statutory requirement is that facilities be marked, "with stakes, flags, paint, or other clearly identifiable marking within eighteen inches horizontally from the exterior sides of the underground facilities." Neither the statute nor rule requires the area between the exterior sides of an underground facility be marked. The Board agrees, however, it is prudent to do so and certainly an operator may make any such a mark to most clearly communicate the location of its underground facilities. Again, the Board answers this question in the affirmative. It is therefore

ORDERED, regardless of depth, it is a violation of SDCL 49-7A-8 to bury an underground facility within eighteen inches horizontally on either side from the markings of an existing underground facility if the existing facility is not first exposed with hand tools or other board approved noninvasive method. It is

FURTHER ORDERED, although it is not required, South Dakota statutes and administrative rules allow a facility operator to mark the outside edge of its facility and further mark with spray paint or flags the center of the pipe in order to ensure an

excavator maintains a minimum horizontal clearance of eighteen inches from the markings on both sides of the outside edge

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, electronically.

By: [Signature]

Date: 10/7/2010

BY ORDER OF THE ONE CALL BOARD:

[Signature] 10/7/2010
Bleau LaFave, Chairman (Date)

[Signature] 10/7/2010
Larry Janes, Executive Director (Date)

CERTIFICATE OF SERVICE

I hereby certify that copies of the Declaratory Ruling were electronically served on the following on the 19th day of October, 2010.

MR ROBERT RITER, JR.
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r.riter@riterlaw.com

MR DENNIS DAVIS
EXECUTIVE DIRECTOR
SOUTH DAKOTA ASSOCIATION OF RURAL WATER SYSTEMS
205 W CENTER STREET
PO BOX 287
MADISON SD 57042
dndavis@sdaarws.com

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

**IN THE MATTER OF THE PETITION FOR)
DECLARATORY RULING OF THE SOUTH)
DAKOTA PUBLIC UTILITIES COMMISSION)
REGARDING 49 CFR 192.3)**

DECLARATORY RULING

PS11-001

On November 18, 2011, the Pipeline Safety Manager of the Public Utilities Commission (Commission) and Commission Staff (Staff) filed a petition for a declaratory ruling from the Commission. Specifically, Staff questions whether a NorthWestern Energy (NWE) natural gas line should be classified as a transmission line or a distribution line.

On November 24, 2011, the Commission electronically transmitted notice of the filing and the intervention deadline of December 9, 2011, to interested individuals and entities. On November 23, 2011, NWE filed a Petition to Intervene. On December 6, 2011 its petition was granted. On December, 23, 2011, Montana-Dakota Utilities filed a Petition to Intervene. On January 3, 2012, its petition was granted. On January 13, 2012, NWE filed a Motion for an Extension of Time. The Motion was granted at the regularly scheduled January 17, 2012, Commission meeting. On January 25, 2012 NWE filed additional information, and on January 26, 2012, Staff replied.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-34B. At its regularly scheduled meeting of January 17, 2012, the Commission considered the Petition for Declaratory Ruling. Pipeline Safety Staff advocated, based on its understanding of a "distribution center," that the line is properly classified as a transmission line. Both interveners argued that the line is properly classified as a distribution line. The Commission did not specifically rule regarding the precise definition of a "distribution center." The Commission voted unanimously, however, to find (i) that the border station facility in this case, where custody and title to the gas passed to the retail distribution utility and which provided the pressure reduction, regulation, and odorization for all lines served by the facility for service to end-use retail customers and not for resale, was a distribution center, and (ii) that the line at issue is accordingly properly classified as distribution because the large volume customer served by the line is downstream from a distribution center. It is therefore

ORDERED, that the line at issue shall be classified as a distribution line.

Dated at Pierre, South Dakota, this 8th day of February, 2012.

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, electronically.

By: [Signature]

Date: 2-8-12

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

[Signature: Chris Nelson]
CHRIS NELSON, Chairman

[Signature: Kristie Fiegen]
KRISTIE FIEGEN, Commissioner

[Signature: Gary Hanson]
GARY HANSON, Commissioner

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

**IN THE MATTER OF THE REQUEST FOR A
DECLARATORY RULING BY DREAM DESIGN
INTERNATIONAL, INC. REGARDING THE
APPLICATION OF ARSD § 20:10:26:04(2) TO A
RESIDENTIAL COMPLEX INTENDED TO
HOUSE SCHOOL OF MINES STUDENTS**

**DECLARATORY ORDER
REGARDING NOTICE OF
EXCEPTION**

EL12-033

On April 25, 2012, the Public Utilities Commission (Commission) received a filing by Dream Designs, Inc. (DDI) requesting a declaratory ruling that DDI has correctly interpreted an exception to individual metering requirements under ARSD 20:10:26:04(2). DDI is in the process of constructing a 34-unit residential complex intended to house students of the South Dakota School of Mines and Technology and requests a declaratory ruling to verify that it has properly interpreted the Administrative Rules of South Dakota (ARSD) and that it may provide master metering in order to allow the students to make one payment for all services and utilities.

On April 26, 2012, the Commission electronically transmitted notice of the filing and the intervention deadline of May 11, 2012, to interested individuals and entities. No petitions to intervene or comments were filed. The Commission finds that it has jurisdiction over this matter pursuant to SDCL 49-34A-4, 49-34A-27 and ARSD 20:10:26:03 and ARSD 20:10:26:04.

At its regularly scheduled meeting on May 22, 2012, the Commission considered this matter. Commission Staff recommended that the Commission find that DDI has correctly interpreted the exception to individual metering requirements set forth in ARSD 20:10:26:04(2) and that this exception applies to the DDI's residential complex which can qualify as a dormitory or residential facility of strictly transient nature. The Commission unanimously voted to find that DDI has correctly interpreted the rules applicable to individual metering requirements and that an exception applies to the planned residential complex. It is therefore

ORDERED, that Dream Designs, Inc. has correctly interpreted that the exception found in ARSD 20:10:26:04(2) to individual metering requirements applies to the planned 34-unit residential complex located in Rapid City, SD.

Dated at Pierre, South Dakota, this 24th day of May, 2012.

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, electronically.

By: [Signature]

Date: May 24, 2012

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

[Signature]
CHRIS NELSON, Chairman

[Signature]
KRISTIE FIEGEN, Commissioner

[Signature]
GARY HANSON, Commissioner

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

IN THE MATTER OF THE REQUEST FOR A) DECLARATORY RULING REGARDING THE) ELECTRIC SERVICE TERRITORY BOUNDARY) BETWEEN NORTHWESTERN ENERGY AND) CODINGTON-CLARK ELECTRIC COOPERATIVE,) INC.)	DECLARATORY RULING REGARDING TERRITORY BOUNDARY EL12-040
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On May 25, 2012, the South Dakota Public Utilities Commission (Commission) received a Petition for Declaratory Ruling and supporting Exhibits and Affidavit (Petition) from NorthWestern Corporation d/b/a NorthWestern Energy (NWE) requesting that the Commission define the electric service rights territorial boundary between NWE and Codington-Clark Electric Cooperative, Inc. (Codington) in Section 3, T116N, R52W, Codington County, South Dakota (Section 3). The Petition asserts that the boundary lies on the southern boundary of Government Lots 1 and 2 in Section 3 and that its assigned territory therefore encompasses the entirety of Government Lots 1 and 2 in Section 3. On June 29, 2012, Codington filed a Resistance of Codington-Clark Electric Cooperative to Petition and supporting Affidavit and Exhibit. On July 3, 2012, the city of Watertown (Watertown) filed a letter in opposition to NWE's position and supporting Exhibits. On July 13, 2012, the Commission's Staff (Staff) filed Commission Staff's Response and Recommendation on Northwestern Energy's Petition for Declaratory Ruling and supporting Exhibits. On August 3, 2012, Watertown filed a map of the Titan Addition Land Location and explanatory letter. On August 10, 2012, NWE filed NorthWestern Energy's Reply Comments and Second Affidavit of Ron Gogolin.

On May 25, 2012, NWE served the Petition by U.S. mail on Codington and Watertown, and on May 31, 2012, the Commission electronically transmitted notice of the Petition and the intervention deadline of June 15, 2012, to interested individuals and entities. Codington and Watertown appeared and filed responsive pleadings or comments and supporting exhibits. The Commission has jurisdiction over this matter pursuant to SDCL 1-26-15, Chapter 49-34A, specifically, 49-34A-42 through 44 and 49-34A-49 through 55, and ARSD 20:10:01:34 and 20:10:01:35.

At its regular meeting on August 14, 2012, the Commission considered this matter. NWE, Codington, Watertown, and Staff appeared and presented additional comments and argument. Based on its measurements of the official Codington County territory map on file with the Commission, the maps appended to the agreements between NWE and Codington that were approved by the Commission in 1976 pursuant to SDCL 49-34A-43 as defining the territorial boundary between the two parties, and the other maps filed in this docket, Staff concluded that the boundary lies on the half quarter section line forming the north boundary of the south half section of the northeast quarter section of Section 3, which is also the southern boundary of Government Lots 1 and 2. Staff accordingly recommended finding in favor of NWE's position.

Codington and Watertown presented comments and documentation that, since 1977, Codington has been serving a rural home site that lies at least partially north of the northern border of the SE¼ of the NE¼ section and therefore at least partially within the territory that NWE and Staff assert is the assigned service territory of NWE. Staff's Exhibit E depicts the home site in question. Codington and Watertown argue that NWE's failure to claim service rights over this customer until now is persuasive evidence that the territorial boundary is located north of the half quarter section line which is also the southern boundary line of Government Lots 1 and 2. Staff commented that its territory mapping project has shown it is not uncommon for service to customers outside the territorial boundary of a utility to be provided by the

non-assigned utility when the customer location falls near the boundary line and that it has encountered numerous undocumented service exceptions in the boundary studies completed to date. Staff stated that this has been shown to be due simply to history and a lack of vigorous discipline by utilities in the past in determining precise boundary locations relative to isolated service locations and in urban development areas. Staff recommended that the existence of an isolated service exception should not be relied upon to define a boundary that is different from what the official territory maps and agreements demonstrate it to be and also recommended that Codington should be granted a service rights exception for the location it is currently serving as the Commission has done in virtually all of the territory determinations to date in the territory mapping project.

Finding (i) that measurements performed by both Staff and Commissioners and Advisors themselves of the official territory map in the Commission's records covering Section 3, and of the maps appended to the NWE/Codington territory agreements on file, indicate that the boundary line lies on the half quarter section line and southern boundary of Government Lots 1 and 2 of the NE $\frac{1}{4}$ of Section 3, (ii) that there is no legal description in either the NWE/Codington territory agreements or on the official territory map for the area that would specify a contrary location, (iii) that in the absence of a contrary legal description or obvious physical feature that would appear to coincide with the location of the boundary as shown by measurements of the official territory map or territory agreement maps, boundary lines have generally been found to lie on the legal land line most coincident with the boundary line as shown on the official territory maps, and (iv) that Codington has been serving a farm home site since the late 1970s that lies at least partially north of the half quarter section land line, the Commission voted unanimously to find and declare that the boundary between NWE and Codington in Section 3 is located on the half quarter section line of the NE $\frac{1}{4}$ and southern boundary line of Government Lots 1 and 2 and that Codington should be granted a service rights exception for the customer it is currently serving to the extent that such service lies with the territory of NWE. It is therefore

ORDERED, that the boundary line between NorthWestern Energy and Codington-Clark Electric Cooperative in Section 3, T116N, R52W, Codington County is located on the southern boundary of Government Lot 1 and Government Lot 2 of such section and that NorthWestern Energy's territory in such section consists of Government Lot 1 and Government Lot 2 of Section 3, Township 116 North, Range 52 West of the 5th Principal Meridian, Codington County, South Dakota. It is further

ORDERED, that Codington is granted a service rights exception to continue service to the customer it is currently serving to the extent that such service lies with the above described territory assigned to NWE.

Dated at Pierre, South Dakota, this 17th day of August, 2012.

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, electronically.

By: Jay Hanson

Date: August 17, 2012

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Chris Nelson

CHRIS NELSON, Chairman

Kristie Fiegen

KRISTIE FIEGEN, Commissioner

Jay Hanson

GARY HANSON, Commissioner

IN THE MATTER OF THE REQUEST FOR A)	DECLARATORY RULING
DECLARATORY RULING BY NORTHWESTERN)	REGARDING RECOVERY OF
CORPORATION DBA NORTHWESTERN ENERGY)	CURTAILED ENERGY
REGARDING THE RECOVERY OF CURTAILED)	COSTS
ENERGY COSTS THROUGH THE FUEL)	
ADJUSTMENT CLAUSE)	EL12-057

Dated at Pierre, South Dakota, this 27th day of December, 2012.

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, electronically.

By:

Date: _____

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

CHRIS NELSON, Chairman, dissenting

KRISTIE FIEGEN, Commissioner

GARY HANSON, Commissioner

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

**IN THE MATTER OF THE REQUEST FOR A)
DECLARATORY RULING REGARDING THE)
ELECTRIC SERVICE TERRITORY)
BOUNDARY BETWEEN CHARLES MIX)
ELECTRIC ASSOCIATION, INC. AND)
NORTHWESTERN CORPORATION DBA)
NORTHWESTERN ENERGY**

**DECLARATORY RULING
REGARDING TERRITORY
BOUNDARY**

EL13-004

On February 14, 2013, the South Dakota Public Utilities Commission (Commission) received a Petition for Declaratory Ruling (Petition) from Charles Mix Electric Association, Inc. (CME) requesting a declaratory ruling regarding the electric service territory boundary between CME and NorthWestern Corporation d/b/a NorthWestern Energy (NWE) in a newly annexed area in Platte, South Dakota.

On February 21, 2013, the Commission electronically transmitted notice of the filing and the intervention deadline of March 8, 2013, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. No petitions to intervene or comments were filed. On March 7, 2013, NWE filed its Response to Petition for Declaratory Ruling. On March 29, 2013, CME filed an Affidavit of Brett Kennedy. On April 4, 2013, CME filed a Motion and Application for Evidential Hearing. On April 15, 2013, CME filed Petitioner's Withdrawal of Motion and Application for Evidential Hearing. On April 19, the Commission's Staff (Staff) filed a letter containing Staff's recommendations in the matter. The Commission finds that it has jurisdiction over the matter pursuant to SDCL 49-34A, specifically, 49-34A-42 through 49-34A-44 and 49-34A-59, SDCL 1-26-15, and ARSD 20:10:01:34 and 20:10:01:35.

At its regularly scheduled meeting on April 23, 2013, the Commission considered this matter. CME asserted that the north-south boundary between CME and NWE in the Southwest Quarter of the Northeast Quarter of Section 23 of T99N, R68W, Charles Mix County, lies at the 1/16th north-south line, while NWE argued it lies at the 1/64th line. The parties stipulated to the admission of all exhibits as evidence in the docket. Staff recommended that the boundary be determined to be at the 1/64th line, but commented that a number of factors were not considered in formulating its recommendation that the Commission may want to consider. In response to a question from Commissioner Nelson, CME stated that, should the Commission rule in favor of CME, CME would compensate NWE for its facilities currently constructed in the disputed territory.

A majority of the Commission found that their own measurements indicated that the line on the official territory map lay at the midpoint between the 1/16th line and the 1/64th line, and both CME and NWE indicated a ruling placing the boundary at that midpoint would not be satisfactory because it would split the subdivision currently under development in two. The Commission majority then determined the boundary to be at the 1/16th line, acknowledging the fact that at no other location in Charles Mix County did the boundary between the two companies deviate from either the section lines, ¼ lines, or 1/16th lines, except in the case of following a municipal boundary. The Commission directed the parties to discuss compensation for facilities, which would be addressed by the Commission at a later date if necessary.

It is therefore

ORDERED, that the north-south boundary line between Charles Mix Electric Association, Inc. and NorthWestern Energy in the Southwest Quarter of the Northeast Quarter of Section 23 of T99N, R68W, Charles Mix County is located at the 1/16th line.

Dated at Pierre, South Dakota, this 25th day of April, 2013.

<p align="center">CERTIFICATE OF SERVICE</p> <p>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, electronically.</p> <p>By: <u>Tina Douglas</u></p> <p>Date: <u>4-25-13</u></p> <p align="center">(OFFICIAL SEAL)</p>
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BY ORDER OF THE COMMISSION:

Gary Hanson

GARY HANSON, Chairman

Chris Nelson

CHRIS NELSON, Commissioner

KRISTIE FIEGEN, Commissioner,
dissenting

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

IN THE MATTER OF THE REQUEST FOR A)	DECLARATORY RULING
DECLARATORY RULING BY)	REGARDING QUALIFYING
NORTHWESTERN CORPORATION DBA)	FACILITY POWER PURCHASE
NORTHWESTERN ENERGY REGARDING)	AND SALE AGREEMENT
APPROVING A QUALIFYING FACILITY)	
POWER PURCHASE AND SALE AGREEMENT)	EL13-025

On July 15, 2013, NorthWestern Corporation d/b/a NorthWestern Energy (NorthWestern) filed a Petition for Declaratory Ruling (Petition) pursuant to ARSD 20:10:01:34 with the South Dakota Public Utilities Commission (Commission) requesting the Commission to issue a declaratory ruling that the price, terms, and conditions of the Power Purchase and Sale Agreement (PPA) between NorthWestern and B & H Wind, LLC (B & H Wind) comply with the Public Utility Regulatory Policies Act of 1978, as amended (PURPA) and that costs NorthWestern will incur pursuant to the PPA are prudent, efficient, and economical and are reasonable and necessary. NorthWestern requested that a ruling be issued as soon as possible so B & H Wind will be able to commence construction in a timely manner.

On July 18, 2013, the Commission electronically transmitted notice of the Petition and the intervention deadline of August 2, 2013, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. No petitions to intervene or comments were filed. On July 24, 2013, counsel for B & H Wind filed a Notice of Appearance. On August 8, 2013, the Commission's staff (Staff) filed a Staff Memorandum setting forth Staff's analysis and recommendations.

At its regular meeting on August 13, 2013, the Commission considered this matter. After considering the Petition, including the Exhibits thereto, Staff's Memorandum, oral argument and comments from NorthWestern, B & H Wind, and Staff, and the parties' answers and discussion in response to extensive questioning, the Commission voted unanimously to rule that the PPA does comply with PURPA because it was negotiated between the parties based on their good faith determination of avoided cost, but to decline to rule on the issue of whether the rates in the PPA meet the prudence and just and reasonable standards for retail rate purposes as set forth in SDCL 49-34A-8 and 49-34A-8.4 because, as the Commission held in Docket EL11-007, the Legislature has only given the Commission jurisdiction to determine these matters in a retail rate proceeding, including a proceeding under SDCL 49-34A-25.

In making this decision, the Commission concluded that pursuant to SDCL Chapter 49-34A, particularly 49-34A-93, SDCL 1-26-15, ARSD 20:10:01:34, 16 U.S.C. Chapter 12, § 824a-3, and 18 C.F.R. Part 292, affords the Commission with jurisdiction to determine that a PPA was entered into based on a thorough analysis and modeling of avoided cost data with the intent to comply with PURPA and that such analysis appears, based on the documents filed, to reach a reasonable approximation of avoided cost, which is all that is possible. However, the statutory scheme enacted by the Legislature, in particular SDCL 49-34A-8 and 49-34A-8.4 and the other ratemaking statutes and rules, does not provide the Commission with the authority to issue a declaratory ruling on reasonableness, prudence, and cost-effectiveness, which under the statutes are made in connection with a rate filing.

It is therefore

ORDERED, that the PPA between NorthWestern and B & H Wind complies with PURPA because it was negotiated between the parties based on their thorough and good faith analysis and determination of avoided cost and negotiation of other necessary and proper terms and conditions. It is further

ORDERED, that under the current statutory scheme, the Commission is not able to render a declaratory ruling on whether costs incurred by a utility are prudently incurred and just and reasonable except in a retail rate proceeding.

Dated at Pierre, South Dakota, this 15th day of August, 2013.

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, electronically.

By: Loy Lashley

Date: 8.16.13

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Chairman

Chris Nelson
CHRIS NELSON, Commissioner

Kristie Fiegen
KRISTIE FIEGEN, Commissioner

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

IN THE MATTER OF THE REQUEST FOR A )	)	DECLARATORY RULING
DECLARATORY RULING BY SNET AMERICA, )	)	REGARDING DE MINIMUS
INC. REGARDING SPECIFYING WHAT THE )	)	PROVISION OF INTRASTATE
COMPANY MUST DO TO ADDRESS THE DE )	)	LONG DISTANCE SERVICE
MINIMUS PROVISION OF INTRASTATE LONG )	)	WITHOUT A CERTIFICATE OF
DISTANCE SERVICE WITHOUT A )	)	AUTHORITY
CERTIFICATE OF AUTHORITY))	

TC14-008

On March 27, 2014, the Public Utilities Commission (Commission) received a request from SNET America, Inc. (SNET) for a declaratory ruling. SNET offers interexchange services to both residential and business customers through post-paid calling cards and intends to discontinue the calling card service in May of 2014. In its request, SNET states it has never obtained a Certificate of Authority from the Commission but received a small amount of revenue, totaling less than \$10.00, as a result of interexchange services it provided its customers in South Dakota in 2007, 2008, and 2010. SNET requests a declaratory ruling, "specifying what the company must do to address the de minimus provision of intrastate long distance service without a certificate of authority." SNET stated that "[p]ermitting customers to make intrastate calling card calls while in South Dakota was the result of internal administrative oversights."

On April 3, 2014, the Commission electronically transmitted notice of the filing and the intervention deadline of April 18, 2014, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. No petitions to intervene or comments were filed.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 49-1, 49-1A, and 49-31.

At its regular meeting on April 30, 2014, the Commission considered this matter. The Commission voted unanimously to require SNET to pay \$250.00 to the Gross Receipts Fund. In making this decision, the Commission noted that this decision does not establish precedent for the manner with which similar dockets will be treated in the future. In this docket, several factors, including the facts that the calls relate back to 2007 and the inadvertent nature of the calls being made, make this situation unique.

It is therefore

ORDERED, that SNET shall pay \$250.00 to the Gross Receipts Fund.

Dated at Pierre, South Dakota, this 2nd day of May, 2014.

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, electronically.

By: Joy Lashley

Date: 05.02.14

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Chairman

Chris Nelson
CHRIS NELSON, Commissioner

Kristie Fiegen
KRISTIE FIEGEN, Commissioner

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

IN THE MATTER OF THE PETITION FOR A)	DECLARATORY RULING
DECLARATORY RULING BY QWEST)	REGARDING DIRECTORY
CORPORATION DBA CENTURYLINK QC AND)	ACCESS
DEX MEDIA, INC. REGARDING DIRECTORY)	
PUBLICATION)	TC15-069

On November 13, 2015, the Public Utilities Commission (Commission) received a petition from Qwest Corporation dba CenturyLink QC (CenturyLink) and Dex Media, Inc. (Dex Media) requesting a Declaratory Ruling to clarify whether South Dakota statutes and regulations, specifically SDCL § 49-31-107, ARSD § 20:10:06:03, and ARSD § 20:10:32:10, relating to telephone directories and directory listings, require a paper printed format. On December 10, 2015, and January 14, 2016, CenturyLink and Dex Media responded to staff's data requests.

On November 19, 2016, the Commission electronically transmitted notice of the filing and the intervention deadline of December 4, 2016, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. No petitions to intervene or comments were filed.

The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-31, and ARSD 20:10:01:35 and 20:10:32:10.

At its regular meetings on January 5, 2016 and January 19, 2016, the Commission considered this matter. At the January 5, 2016, meeting, Commissioner Nelson made a motion that allows a company to fulfill its legal obligations requiring access to a local directory by providing an online directory as long as customers can also request a free printed copy of a local directory from the company. The Commission deferred the docket to January 19, 2016, and left the motion on the table. At the January 19, 2016, meeting, Commissioner Fiegen proposed an amendment to the motion from the January 5, 2015, meeting to include a standing order for customers who request a printed copy of the directory. The Commission voted 2-1 to include the amendment requiring a standing order for upon request customers. The Commission then voted unanimously to approve the motion as amended.

Pursuant to ARSD 20:10:32:10(3), a telecommunications company providing local exchange service is required to provide access to a local directory to each customer. As explained in its petition for a declaratory ruling (Petition), Dex Media publishes the directories for CenturyLink. Petition at 3. Currently, Dex Media delivers paper directories to all customers of CenturyLink in what is referred to as saturation delivery. Data Response 1-10. Dex Media also publishes replicas of its traditional print directories online at no charge to users and offers digital platforms for name and business searches. Petition at 5, 9. CenturyLink and Dex Media further noted that consumers have many options and alternatives to traditional printed telephone directories. Petition at 5-8. Dex Media states that it plans to gradually transition away from saturation delivery and will provide paper directories upon request. Data Response 1-10. Dex Media stated that it plans to provide paper directories upon request for an indeterminate number of years "until the number of requests are too few to sustain the costs to produce print directories." Data Response 1-10. Dex Media stated that the request rate for a printed directory in areas where saturation delivery of residential white pages has been discontinued "is substantially less than one percent in nearly all of Dex Media's markets and no more than two percent in any state." Petition at 9.

ARSD 20:10:32:10(3) requires a local exchange telecommunications company to provide access to a local directory but does not specify how access is to be provided. The Commission finds that access to a directory is not limited to only printed directories. A telecommunications company can also provide access through an online directory, as long as a customer is able to receive a printed directory upon request. The Commission finds that a telecommunications company must provide a customer with a printed directory upon request because not every customer has access to the internet. Providing a printed directory upon request will ensure that customers have access to a local directory as required by the rule. In addition, the Commission finds that when a customer requests a printed directory, the telecommunications company shall continue to deliver the directory as a standing order, instead of requiring a customer to call each year to request a directory.

It is therefore

ORDERED, that access to a local directory may include an online directory but must include free, upon request delivery of a printed directory to a customer. It is further

ORDERED, that when a customer requests delivery of a printed directory, the telecommunications company shall continue to deliver the directory as a standing order.

Dated at Pierre, South Dakota, this 27th day of January, 2016.

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, electronically or by mail.

By: Rolayne West

Date: 1-27-16

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Chris Nelson
CHRIS NELSON, Chairman

Kristie Fiegen
KRISTIE FIEGEN, Commissioner

Gary Hanson
GARY HANSON, Commissioner

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

IN THE MATTER OF COMMISSION	)	DECLARATORY RULING
STAFF'S PETITION FOR DECLARATORY	)	REGARDING FARM TAPS
RULING REGARDING FARM TAP)	
CUSTOMERS	)	NG16-014

On November 9, 2016, the South Dakota Public Utilities Commission Staff filed a petition with the South Dakota Public Utilities Commission (Commission) for a declaratory ruling to resolve the following issues: 1) Does the Commission have jurisdiction over any 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) 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?

On November 10, 2016, the Commission electronically transmitted notice of the filing and the intervention deadline of November 21, 2016, to interested individuals and entities on the Commission's PUC Weekly Filings listserv. On November 23, 2016, the Commission issued an Order Granting Intervention, granting intervention to Northern, NorthWestern, and Montana-Dakota Utilities Co. The Commission issued an Order for and Notice of Hearing on November 30, 2016. The hearing was held as scheduled on December 14, 2016, at which time the Commission heard the oral arguments of the parties.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-1-11(5), 49-34A, and 49-34B, and ARSD 20:10:01:34 and 20:10:01:35. The Commission may rely upon any or all of these or other laws of this state in making its determination.

At its regularly scheduled meeting on January 17, 2017, the Commission considered this matter. Having reviewed the filed documents, the transcript of the hearing, and the arguments of the parties; as to whether the Commission has jurisdiction over any utility providing natural gas to farm tap customers taking natural gas from the transmission line owned and operated by Northern, Commissioner Hanson moved to declare that the Commission does have jurisdiction over a utility providing natural gas to farm tap customers taking natural gas from the transmission line owned and operated by Northern. The motion carried 3-0.

As to which entity, NorthWestern or Northern, if either, is a public utility as defined by SDCL Chapter 49 with respect to these farm tap customers, Commissioner Hanson moved to declare that both Northern and NorthWestern are public utilities as defined by SDCL Chapter 49 with respect to these farm tap customers. Commissioner Nelson moved a substitute motion to

declare that NorthWestern is a public utility as defined by SDCL Chapter 49. The motion carried 3-0. Commissioner Hanson moved to declare that Northern has made itself a public utility in the State of South Dakota for the providing of natural gas to the farm tap customers. The motion failed 2-1.

As to whether farm taps in whole or in part are subject to state jurisdiction for the purpose of pipeline safety pursuant to SDCL Chapter 49-34B, Commissioner Nelson moved to declare farm taps in whole or in part, are not subject to state jurisdiction for the purposes of pipeline safety pursuant to SDCL Chapter 49-34B. Motion carried 3-0.

Pursuant to SDCL 49-34A-1(12), a public utility is an entity 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. As explained throughout the proceedings, the Commission finds that NorthWestern operates equipment and facilities for the purpose of providing gas service to or for the public including providing emergency response, filling the odorizers annually, billing monthly, reading the meters annually, locking the taps if needed, and nominating gas for the farm tap customers.

Pursuant to SDCL 49-34B-4, the Commission may establish safety standards for the intrastate transportation of gas and gas pipeline facilities. As presented throughout the proceedings, the Commission finds that Northern is a federally regulated interstate pipeline and is not subject to state jurisdiction for the purpose of pipeline safety.

It is therefore

ORDERED, that the Commission has jurisdiction over utilities providing natural gas to farm tap customers taking natural gas from the transmission line owned and operated by Northern. It is further

ORDERED, that NorthWestern is a public utility as defined by SDCL Chapter 49 with respect to these farm tap customers. It is further

ORDERED, that farm taps in whole or in part are not subject to state jurisdiction for the purpose of pipeline safety pursuant to SDCL Chapter 49-34B.

NOTICE OF ENTRY AND OF RIGHT TO APPEAL

24th PLEASE TAKE NOTICE that this Declaratory Ruling was duly issued and entered on the day of January, 2017. Pursuant to SDCL 1-26-32, this Declaratory Ruling will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties. Pursuant to ARSD 20:10:01:30.01, an application for a rehearing or reconsideration may be made by filing a written petition with the Commission within 30 days from the date of issuance of this Declaratory Ruling; Notice of Entry. Pursuant to SDCL 1-26-31, the parties have the right to appeal this Declaratory Ruling to the appropriate Circuit Court by serving notice of

appeal of this decision to the circuit court within thirty (30) days after the date of service of this Notice of Decision.

Dated at Pierre, South Dakota, this 24th day of January, 2017.

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, electronically or by mail.

By: Adam Detrick

Date: 1/24/17

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Kristie Fiegen

KRISTIE FIEGEN, Chairperson

Gary Hanson

GARY HANSON, Commissioner

Chris Nelson

CHRIS NELSON, Commissioner