

**Before the Public Utilities Commission
of the State of South Dakota**

**In the Matter of
Commission Staff's Petition
for Declaratory Ruling
Regarding Farm Tap Customers**

Docket No. NG16-014

**NorthWestern Energy's Objection to
Northern Natural Gas Company's
Motion for Judicial Notice**

NorthWestern Corporation d/b/a NorthWestern Energy (*NorthWestern Energy*) objects to the motion of Northern Natural Gas Company (*NNG*) asking the South Dakota Public Utilities Commission (the *Commission*) to take judicial notice of certain documents from dockets considered by utility commissions in Iowa and Minnesota. Proper foundation does not exist for the context of the documents NNG is seeking to introduce, NNG has made misleading statements concerning at least one of the three documents, and NNG has provided no basis for taking judicial notice of these documents.

Objection to Motion for Judicial Notice

From the very first words of the motion, NNG seeks relief pursuant to statutory sections that do not exist. NNG filed the motion "Pursuant [sic] SDCL 1-29-19 and 19-19-203." Chapter 1-29 deals with the emergency location of state government and contains only three sections. Section 1-29-19 does not exist within that chapter. Similarly, Chapter 19-19, which codifies the South Dakota Rules of Evidence, does not contain a section 203. Absent any statutory basis for relief, the Commission should deny the motion.

Assuming NNG meant to move pursuant to SDCL § 1-26-19 and SDCL § 19-19-201, the Commission should deny the motion because taking judicial notice of the responsibility other utility commissions may or may not have taken to ensure the safety of farm tap customers in

other states is not relevant to whether *this Commission* has jurisdiction pursuant to the *laws of this State* to regulate the safety of *South Dakota farm tap facilities*. Without proper foundation and analysis concerning the laws of those other states, the regulations of those commissions, and how farm tap customers in those other states previously had been dealt with in relation to other utility customers in those states (among other inquiries), there is no basis for this Commission to conclude whether the orders from the Minnesota commission or the initial request filed by Black Hills Energy in front of the Iowa Utilities Board have any similarity or relevance to the issues *this Commission* is facing in *this docket* under the laws of *this State*.

Moreover, NNG continues to make misleading statements about the proceedings in other states. In its Petition for Rehearing in this docket, NNG stated that the Iowa Utilities Board “*agreed* that Black Hills will perform partial leak surveys on certain facilities owned by the farm tap customers in Iowa.”¹ In support of that statement, NNG seeks to have this Commission take judicial notice of the *initial request* filed by Black Hills Energy to *initiate* that Iowa docket. A request made by a utility to its regulator is not an agreement by the regulator.

The docket that Black Hills Energy initiated with its initial request is still pending before the Iowa Utilities Board, with many unresolved issues regarding continued service to the Iowa farm tap customers, including whether Black Hills Energy is willing to continue serving the Iowa farm tap customers and under what terms it is willing to provide that service:

- *Black Hills Energy* has testified that NNG will need to find another provider or eliminate the farm taps if Black Hills Energy does not receive the relief requested from the Iowa Utilities Board and decides to not renew its service contract with NNG. Black Hills Energy provided similar testimony in the farm tap docket pending before the Nebraska Public Service Commission.
- The *Iowa Utilities Board* has questioned Black Hills Energy about (i) the contractor status of Black Hills Energy, (ii) NNG’s obligations created by the easements between NNG and the Iowa farm tap customers, and (iii) the requirement that NNG would have to arrange an alternative service provider for

¹ Petition for Rehearing, p. 14 (emphasis added), filed by NNG on February 17, 2017, in this docket.

the Iowa farm tap customers if Black Hills Energy does not continue to provide service. NNG chose not to participate in the hearing before the Iowa Utilities Board.

- The *Iowa Office of Consumer Advocate* has stated, in opposition to the relief requested by Black Hills Energy, that (i) the obligation to provide farm tap service arises from the easements between NNG and the Iowa farm tap customers, (ii) it is unfair for general service customers to pay for costs created by an agreement between NNG and the farm tap customers, and (iii) several options are available to NNG to fix this problem NNG created.

NNG is misleading this Commission by stating that the Iowa Utilities Board has “agreed” to a leak survey analysis for the Iowa farm tap customers. The Iowa Utilities Board has entered no order approving or authorizing Black Hills Energy to conduct a leak survey analysis. The request by Black Hills Energy remains pending and unresolved.²

The Commission should deny the motion for judicial notice.

For the reasons stated in this objection, the Commission should deny NNG’s motion for judicial notice. Proper foundation does not exist for the context of the documents NNG is seeking to introduce, and NNG has made misleading statements concerning at least one of the three documents. Moreover, NNG has provided no basis for taking judicial notice of these documents. Accordingly, NorthWestern Energy requests that the Commission deny the motion for judicial notice.

² Should the Commission desire to take judicial notice of any portion of the Iowa and Nebraska farm tap proceedings, it may do so on its own. SDCL §19-19-201(c). The proceedings are publicly available at the websites of the Iowa Utilities Board (<https://efs.iowa.gov/efs/ShowDocketSummary.do?docketNumber=SPU-2015-0039>) and the Nebraska Public Service Commission (http://www.psc.nebraska.gov/natgas/natgas_ng-0090.html). From the ***Iowa proceeding***, NorthWestern Energy references in this Objection: (1) the Rebuttal Testimony of Robert J. Amdor, filed by Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy on December 29, 2016, (2) the Transcript of the February 2, 2017, Hearing before the Iowa Utilities Board, filed on February 8, 2017, and (3) the Post-Hearing Brief of the Office of Consumer Advocate, filed by the Iowa Office of Consumer Advocate on February 22, 2017. From the ***Nebraska proceeding***, NorthWestern Energy references in this Objection the Direct Testimony of Robert J. Amdor, filed by Black Hills/Nebraska Gas Utility Company, LLC d/b/a Black Hills Energy on December 5, 2016.

Dated at Sioux Falls, South Dakota, March 9, 2017.

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Certificate of Service

I the undersigned hereby certify that on March 9, 2017, a true and correct copy of *NorthWestern Energy's Objection to Northern Natural Gas Company's Motion for Judicial Notice*, was served upon the service list on the following page.

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