

**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

NG16-014

**NORTHERN NATURAL GAS
COMPANY'S REPLY BRIEF IN
SUPPORT OF MOTION FOR JUDICIAL
NOTICE**

Pursuant to SDCL 1-26-19 and 19-19-201, Northern Natural Gas Company ("Northern") moves for the Public Utilities Commission of the State of South Dakota ("PUC") to take judicial notice of three dockets in other states related to farm tap services, including three specific documents attached to the motion for judicial notice. NorthWestern Energy Corporation d/b/a NorthWestern Energy ("NorthWestern") opposes the motion for judicial notice and argues there is no foundation for the documents. (NorthWestern Energy's Objection to Northern Natural Gas Company's Motion for Judicial Notice ("Northern's Objection"). NorthWestern's objection fails because no additional foundation is required for admission.

SDCL 1-26-19 generally provides that South Dakota's rules of evidence apply to contested case proceedings. South Dakota's rules of evidence permit judicial notice of "a fact that is not subject to reasonable dispute because it: (1) Is generally known within the trial court's territorial jurisdiction; or (2) Can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." SDCL 19-19-201.

Here, Northern requests that the PUC take judicial notice of the documents filed in the official record of other, administrative agencies. These filings are akin to a court record or court file, which is the proper subject of judicial notice, because these materials "are not subject to

reasonable dispute and their accuracy cannot be questioned.” *Jenner v. Dooley*, 1999 SD 20. ¶ 15, 590 N.W.2d 463, 470. Like the court files in *Jenner*, the PUC here should take judicial notice of the filings from the other state’s dockets.


Moreover, even if the filings from the other dockets were not subject to judicial notice under SDCL 19-19-201, the PUC should still grant the motion for judicial notice because filings from other dockets are the type of information typically relied upon in PUC proceedings. Under the rules of evidence governing contested case proceedings, the agency can admit evidence otherwise inadmissible under the rules of evidence:

When necessary to ascertain facts not reasonably susceptible of proof under [the Rules of Evidence], evidence not otherwise admissible thereunder may be admitted except where precluded by statute if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

SDCL 1-26-16 (emphasis added). Documents filed in other administrative agency dockets are just this type of information, and there is no need for further foundation before admitting filings from those dockets.

In actuality, rather than an argument about the admissibility of the proffered documents, NorthWestern’s opposition to the motion for judicial notice is better understood as an argument about the interpretation of those documents. (Northern’s Objection at pp.1-2). NorthWestern does not present any evidence that these documents were not part of the official docket in each of those proceedings. Disputing Northern’s interpretation of the documents does not provide grounds for excluding the proffered evidence. Instead, after admitting the evidence, the PUC may consider and determine the impact of these documents. As a result, Northern’s motion for judicial notice thus should be granted.

Dated: March 13, 2017.



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