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THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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

=====

Transcript of Proceedings  
March 14, 2017

=====

BEFORE THE PUBLIC UTILITIES COMMISSION,  
KRISTIE FIEGEN, CHAIRMAN  
GARY HANSON, VICE CHAIRMAN  
CHRIS NELSON, COMMISSIONER

COMMISSION STAFF  
Adam de Hueck, Commission Attorney  
Karen Cremer, Commission Attorney  
Greg Rislov, Staff Advisor  
Brittany Mehlhaff, Staff Analyst  
Patrick Steffensen, Staff Analyst  
Mary Zanter (by telephone)  
Katlyn Gustafson

APPEARANCES

Kristen Edwards, appearing on behalf of Commission Staff  
Tom Welk, Gregory Porter, and Jim Talcott appearing on behalf  
of Northern Natural Gas  
Timothy P. Olson, appearing on behalf of NorthWestern  
Brett Koenecke, appearing on behalf of Montana-Dakota  
Utilities

Reported By Cheri McComsey Wittler, RPR, CRR  
Precision Reporting, Onida, South Dakota

1                   TRANSCRIPT OF PROCEEDINGS, held in the  
2 above-entitled matter, at the South Dakota State Capitol  
3 Building, 500 East Capitol Avenue, Pierre, South Dakota,  
4 on the 14th day of March, 2017, commencing at 1:30 p.m.

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1           CHAIRMAN FIEGEN: Good afternoon. We are here  
2 because of Docket NG16-014, In the Matter of the  
3 Commission Staff's Petition For Declaratory Ruling  
4 Regarding Farm Tap Customers.

5           The time is approximately 1:30. It is March 14,  
6 2017, and we are in Room 413 of the State Capitol in  
7 Pierre, South Dakota.

8           I am Kristie Fiegen. With me today is  
9 Commissioner Gary Hanson and Commissioner Chris Nelson.

10           This matter actually was noticed pursuant to the  
11 Commission's Orders for the Notice of Petition for  
12 Rehearing and the Motion for Judicial Notice and Petition  
13 for Reconsideration issued on February 28, 2017.

14           There are three issues in front of us today.  
15 The first one, whether the Commission shall grant  
16 Northern's Petition for Rehearing. Number two, whether  
17 the Commission shall grant Northern's Motion for Judicial  
18 Notice. And, number three, whether the Commission shall  
19 grant NorthWestern's Petition for Reconsideration of the  
20 Declaratory Ruling.

21           With that, we will begin with introductions of  
22 appearances of the parties. And because the Commission  
23 Staff actually was the original Petitioner, we will begin  
24 with the Public Utilities Commission Staff.

25           Please introduce yourself.

1 MS. EDWARDS: Thank you. This is Kristen  
2 Edwards representing the Commission Staff.

3 CHAIRMAN FIEGEN: Are there any others that will  
4 be appearing on behalf of the Commission Staff?

5 MS. EDWARDS: Present with me today are analysts  
6 Brittany Mehlhaff and Patrick Steffensen, and on the  
7 telephone is Mary Zanter.

8 CHAIRMAN FIEGEN: Thank you.

9 We will then go to Northern Natural Gas Company.

10 MR. WELK: Thank you, Chairperson. My name is  
11 Tom Welk from Sioux Falls. I'm representing Northern  
12 Natural Gas. And along with me today, General Counsel  
13 Greg Porter and Associate General Counsel Jim Talcott.

14 CHAIRMAN FIEGEN: Thank you.

15 And then NorthWestern.

16 MR. OLSON: Thank you, Chair Fiegen. Tim Olson,  
17 Senior Corporate Counsel and Corporate Secretary for  
18 NorthWestern.

19 CHAIRMAN FIEGEN: And will you have anybody else  
20 appearing before the Commission today in the hearing  
21 room?

22 MR. OLSON: We do not anticipate anyone else  
23 appearing today.

24 CHAIRMAN FIEGEN: So the first item of business  
25 is -- I'm sorry. MDU.

1 MR. KOENECKE: Brett Koenecke appearing for  
2 Montana-Dakota.

3 CHAIRMAN FIEGEN: I do have you written in red  
4 so that means like priority or something.

5 With that, we will hear from the parties  
6 pertaining to the first issue. The first issue is  
7 whether the Commission shall grant Northern Natural Gas  
8 Company's Petition for Rehearing. And we will start with  
9 Northern.

10 MR. WELK: Thank you, Chairperson Fiegen and  
11 Commissioners, Staff, NorthWestern.

12 As the Chairperson indicated, there are three  
13 issues to be decided. Do you want me to confine my  
14 remarks at this time just to the Petition for Rehearing,  
15 or do you want me to include the Motion for Judicial  
16 Notice as well?

17 CHAIRMAN FIEGEN: Fellow Commissioners, do you  
18 have a preference?

19 COMMISSIONER HANSON: No. Whatever is most  
20 comfortable.

21 CHAIRMAN FIEGEN: Mr. Welk, we will allow you to  
22 do either.

23 MR. WELK: Thank you. I'll try to get all of  
24 them at one time.

25 The Staff has not responded to Northern's

1     Petition for Rehearing but has done so regarding  
2     NorthWestern's filing. NorthWestern opposes Northern's  
3     Petition for Rehearing and Northern has filed a reply to  
4     NorthWestern's response -- to its Petition for Rehearing.

5             The judicial notice that's at issue today  
6     involves a request by the Commission to take notice of  
7     certain proceedings before the Minnesota and Iowa Public  
8     Utility Commissions. NorthWestern has responded and  
9     opposed. The Staff has not responded.

10            Northern has also filed an objection to  
11     NorthWestern's Petition for Reconsideration. Staff has  
12     opposed in part NorthWestern's petition.

13            Northern today will rely in its entirety on its  
14     written filings and all the substantive law arguments of  
15     its filings and NorthWestern's Petition for  
16     Reconsideration but wants to use this opportunity to  
17     highlight why this matter needs to be reheard and a new  
18     hearing based upon the current procedural posture of the  
19     docket.

20            This Commission is unique among the agencies in  
21     South Dakota because you are one of the few agencies that  
22     has provided for in your rules the ability to come back  
23     before you to seek a Petition for Rehearing or  
24     Reconsideration. Most agencies in South Dakota do not  
25     have that according to their rules.

1           The Commission rules allow a party to seek  
2 reconsideration or rehearing if the Commission determines  
3 there is "sufficient reason to do so." The rules are  
4 very specific on what the parties must allege in seeking  
5 reconsideration or rehearing.

6           There must be a showing that there was an error  
7 and to specify all Findings of Fact and Conclusions of  
8 Law claimed to be erroneous and the specific grounds  
9 relating there. Another ground for rehearing or  
10 reconsideration is newly discovered evidence, which no  
11 party has alleged. And also another ground is for the  
12 Commission to reconsider or rehear because of certain  
13 consequences that might arise from your order or your  
14 decision.

15           It's significant for the Commission to realize  
16 the difference between a rehearing and a reconsideration.  
17 A rehearing would have you go over and have a new  
18 hearing, either on all or any issues. A reconsideration  
19 may not necessarily require you to have a hearing but  
20 would have you look at what you've done and perhaps issue  
21 a new order.

22           We are asking for a rehearing. And the reason  
23 we are asking for that is because of the -- what has  
24 happened in the procedure regarding this matter.

25           The first question we have raised in our papers

1 is whether the Petition For Declaratory Ruling filed by  
2 Staff is a contested case hearing under the  
3 Administrative Procedures Act. We have put in our papers  
4 the reasons for saying that, and I have seen no argument  
5 that anyone disputes that the Staff's Petition triggered  
6 the APA in South Dakota.

7 And that's very significant. Because the APA  
8 requires certain things to be done, and if they are not  
9 done appropriately, the Circuit Court may have to  
10 reverse, depending on what the nature of the error may  
11 be. And what we're asking today for a rehearing is that  
12 we believe that there are material defects in the  
13 procedure that need to be addressed, and the Commission  
14 has the time to do so now.

15 What were the errors that have been done so far  
16 that would not comply -- the Commission's decision would  
17 not comply with the APA? First of all, the Commission's  
18 decision did not include Findings of Fact and Conclusions  
19 of Law that are required by 1-26-25. The parties were  
20 not given a proper notice of a contested case hearing as  
21 required by 1-26-17. The parties were not given an  
22 opportunity to conduct discovery, cross-examine  
23 witnesses, present evidence. All such rights are  
24 required by the APA and the Commission rules,  
25 specifically SDCL 1-26 at 18.



1           The contents of the current record before the  
2 Commission does not satisfy the APA. It does not show  
3 what evidence has been received or rejected, and the  
4 parties were not provided an opportunity to present  
5 Proposed Findings and Conclusions of Law for the  
6 Commission to consider.

7           The Commission's decision and record do not  
8 allow a Circuit Court to know what was the basis for your  
9 decision. A Circuit Court when looking at your decision  
10 needs to have Findings and Conclusions to know on what  
11 you base your decision, what facts and how -- what facts  
12 result in what Conclusions of Law.

13           The Circuit Court, if it does not see Findings  
14 of Fact and Conclusions of Law separately stated, has no  
15 alternative under our judicial precedence since 1978 to  
16 reverse and remand. And what that means is if the  
17 court -- if it's a Department of Public Safety case, that  
18 there were no Findings and Conclusions and the Supreme  
19 Court said in 1978 without Findings and Conclusions we  
20 don't know what the agency did, and we must remand and  
21 reverse. And, unfortunately, the Commission's decision  
22 does not include that.

23           And the remedy to these procedural errors cannot  
24 be fixed by a new order. You must, I believe, and  
25 respectfully submit you need to renote the hearing,

1 have a proper contested case hearing, reflect what  
2 evidence is received, what's rejected, and because there  
3 is no record as it currently situates -- is situated as  
4 to what evidence you considered and what you rejected.

5 From what I can tell in reading the transcript  
6 and the papers, the evidence regarding this matter was  
7 submitted as attachments to briefs. There was no ruling  
8 on whether the evidence was accepted or rejected. The  
9 parties are unfairly prejudiced in their positions by not  
10 being able to present evidence and cross-examine  
11 witnesses.

12 Northern, for example, has an issue relating to  
13 the opportunity to present the obligations regarding the  
14 farm tap easements that were -- that arose from the  
15 corporate merger and sales that occurred, and you did not  
16 see the opportunity -- have to see those documents to  
17 hear what were the obligations in those, and that's a  
18 very important fact issue.

19 So we believe that these reconsideration -- or  
20 these rehearing issues have to be addressed in a new  
21 hearing. And the deficiencies cannot -- that even  
22 NorthWestern -- and I'm not going to get into the merits  
23 of it, but NorthWestern's reconsideration, their  
24 deficiencies cannot be addressed by merely issuing an  
25 order.

1           If you read -- and I'm not trying to take a  
2 position at this point. I'm talking about procedure.  
3 But there's a lot of alleged facts that people are  
4 arguing. They're arguing from briefs. They're arguing  
5 from what counsel says, but it's not evidence. And so  
6 there needs to be a record to support it, and a  
7 reconsideration will not be sufficient to do so.

8           Northern stands ready and willing to cooperate  
9 with the Commission and the parties to schedule and  
10 conduct an evidentiary hearing that will comply, that  
11 will show what your decision is in this case. So from a  
12 procedural standpoint, unfortunately, Commissioners, I  
13 don't believe that you have a choice.

14           I believe that if the decision stands as it is  
15 now and a party appeals, that a Circuit Court will have  
16 no alternative but to reverse and remand, and we will be  
17 back here six months from now.

18           The second motion I have is a Motion to Take  
19 Judicial Notice regarding these dockets in Minnesota and  
20 Iowa. As the Commission knows, these dockets are not  
21 binding on the Commission. The Commission customarily  
22 looks at dockets from other cases and other  
23 jurisdictions. The Commission is able to discern whether  
24 the regulatory framework in those jurisdictions is  
25 similar to South Dakota, and the Commission is going to

1 be able to reject, accept, as is done in many of your  
2 dockets, what other jurisdictions do.

3 NorthWestern opposes the Motion by saying the  
4 decisions do not have a foundation and that Northern has  
5 misinterpreted what some of those filings -- you don't  
6 have foundation issues regarding judicial notice. You  
7 need to attach it. That is the purpose of judicial  
8 notice.

9 NorthWestern may argue that we are not  
10 interpreting certain things right, and that's their right  
11 to do so. But what we're saying is they ought to be  
12 admitted and the parties would feel free to argue to the  
13 Commission whatever they believe those dockets show and  
14 the Commission will be free to look at the weight of  
15 those decisions and give them whatever they want.

16 So we would ask that you allow the dockets from  
17 the other states because they do address situations in  
18 which jurisdictions have dealt with farm tap issues, farm  
19 tap customer issues, and those are all the reasons that I  
20 would ask you to grant the rehearing and to grant the  
21 Motion for Judicial Notice.

22 CHAIRMAN FIEGEN: Thank you.

23 With that, I am holding questions, unless a  
24 Commissioner has a question they want to ask right now.  
25 Otherwise, NorthWestern.

1 MR. OLSON: Thank you, Chair Fiegen,  
2 Commissioner Hanson and Nelson.

3 I have yet to hear Northern indicate that they  
4 disagree with two of the Commission's determinations.  
5 They are asking the Commission to authorize the  
6 expenditure of valuable resources, Commission resources,  
7 parties' resources to engage in a rehearing process and  
8 reach the same conclusion.

9 A theoretical possibility of an appeal is much  
10 different than an actual possibility. I think it is  
11 highly unlikely that Northern is going to appeal from a  
12 decision it agrees with. What does that appeal even look  
13 like? No, no, no, Circuit Court Judge, we agree with the  
14 decision. We just think you reached it the wrong way.  
15 We'd like to do it our way? I find that highly unlikely.

16 What we want to know and what we believe the  
17 Commission is entitled to know is why is Northern asking  
18 for a rehearing when it agrees with your decisions?

19 We believe the most likely possibility for this  
20 request is that they agree that the Commission has  
21 jurisdiction over the farm tap services, that Northern  
22 agrees that NorthWestern is the public utility with  
23 respect to those farm tap services, but that Northern  
24 wants to ask this Commission to rehear the 2011 docket  
25 concerning the Milbank Pipeline acquisition.

1           If that is Northern's intent, the time for  
2 questioning, rehearing, or appealing that determination  
3 expired long ago, and the Commission should deny the  
4 request to hear the 2011 docket as untimely.

5           Moreover, despite Northern's wishes, the  
6 Commission cannot retroactively change the terms of that  
7 2011 transaction. We don't believe the Commission can  
8 change its 2011 decision that NorthWestern could  
9 discontinue farm tap services on December 31, 2017. But  
10 even assuming that the Commission could change that  
11 decision, the Commission has no jurisdiction to change  
12 NorthWestern's contractual rights under the 2011  
13 acquisition.

14           Providing farm tap service through the end of  
15 2017 was part of the overall consideration for that  
16 transaction. There was cash consideration. There was  
17 agreeing to provide that service through the end of 2017,  
18 and there was other consideration.

19           NorthWestern consummated that transaction and  
20 reliance on the Commission's decision in 2011, that the  
21 farm tap services could be discontinued in 2017. We did  
22 not agree to perpetual service. We would not have agreed  
23 to perpetual service. And we would not have consummated  
24 that transaction, which was conditioned upon this  
25 Commission's approval, without that term being a part of

1 the deal.

2 NorthWestern has contract rights in that  
3 transaction that cannot be interfered with today, and  
4 these are contract rights over which the Commission does  
5 not have jurisdiction.

6 Now maybe there's a second possibility for what  
7 Northern wants with this rehearing request, and that is  
8 similarly to rehear the pipeline safety jurisdiction  
9 determination. If that's what Northern means, although  
10 we believe the Commission decided correctly, if the  
11 Commission concludes a rehearing on that limited issue is  
12 appropriate, we will not object. But that rehearing  
13 needs to be limited to testimony and evidence relevant to  
14 the pipeline safety jurisdiction issue.

15 In summary, unless Northern disagrees with the  
16 rulings the Commission has reached in this declaratory  
17 ruling docket, the Commission should deny the request for  
18 rehearing as wasteful and lacking sufficient reason for  
19 rehearing.

20 If I may, I'd like to take the opportunity to  
21 address the -- Northern's Motion for Judicial Notice.

22 CHAIRMAN FIEGEN: Sure. Go ahead.

23 MR. OLSON: The Commission should strike  
24 Northern's Reply Brief in support of its Motion for  
25 Judicial Notice. That Reply Brief was filed yesterday.

1           The South Dakota Rules of Civil Procedure  
2 require that reply briefs be filed two days before the  
3 hearing. The motion is also defective. On its face the  
4 motion provides no statutory basis for seeking such  
5 relief.

6           In addition, absent that late filed Reply Brief,  
7 the motion provides no justification for the relief  
8 requested, even assuming that Northern had moved under  
9 the appropriate statutory sections for judicial notice.  
10 A simple request for judicial notice without any  
11 justification does not meet the standards.

12           And I want to clarify, and I'll quote from the  
13 motion, Northern asks for documents, judicial notice of  
14 documents, not judicial notice of dockets. I quote  
15 "moves that the Public Utilities Commission of the State  
16 of South Dakota take judicial notice of the documents  
17 attached to this motion as Exhibits C, D, and E."

18           When the Commission takes judicial notice of a  
19 record or a matter the parties are entitled pursuant to  
20 SDCL 1-26-19 to "a reasonable opportunity to refute the  
21 officially noticed matters by evidence or by written or  
22 oral presentation of authority."

23           Thus, whether or not the Commission takes  
24 judicial notice of these documents from the proceedings,  
25 our objection has provided various reasons for their lack



1 of any probative value in this proceeding.

2 For instance, in reputation of the document from  
3 the Iowa Commission that Northern has asked this  
4 Commission to take judicial notice of, our objection to  
5 the motion points out the misleading characterization  
6 Northern has ascribed to the initial request filed by  
7 Black Hills Energy. Northern wants this Commission to  
8 take judicial notice of this initial request as the Iowa  
9 Utilities Board's agreement that Black Hills Energy may  
10 conduct a leak survey analysis concerning the Iowa farm  
11 tap's customers. The Iowa Utility Board's agreement.

12 That characterization is misleading. As this  
13 Commission knows, a initial request filed by a utility  
14 cannot possibility be construed as an agreement by the  
15 regulatory body. It was the initial request of Black  
16 Hills Energy, and the Iowa Utilities Board was not part  
17 of it.

18 If Northern wants to show the agreement of the  
19 Iowa Utilities Board, Northern should provide the Order  
20 from the Iowa Utilities Board, but Northern can't do that  
21 because no such order exists. As our objection to the  
22 order details, there are many open questions in the Iowa  
23 farm tap docket.

24 Now certainly the Commission can take judicial  
25 notice of these documents, but if you do so, you should

1 also be aware of the open questions and misleading  
2 representations that have been made because of those  
3 documents. We believe the Commission should deny the  
4 Motion to take Judicial Notice.

5 Thank you.

6 CHAIRMAN FIEGEN: Public Utilities Commission  
7 Staff.

8 MS. EDWARDS: Thank you. This is Kristen  
9 Edwards for Staff.

10 Staff does not take a position on the Petition  
11 for Rehearing or Reconsideration. As far as the Motion  
12 for Judicial Notice, I would agree that it is within the  
13 Commission's discretion to do so, but it does not present  
14 an entire picture of what's going on in the other state.

15 Thank you.

16 CHAIRMAN FIEGEN: Commission questions. Oh, I'm  
17 sorry. Just wait one minute.

18 MR. KOENECKE: I'll pass.

19 CHAIRMAN FIEGEN: In red, MDU.

20 MDU passes.

21 Questions of the Commission.

22 Commissioner Nelson.

23 COMMISSIONER NELSON: For Mr. Welk.

24 From what I understand, in your mind there is a  
25 clear distinction between rehearing and reconsideration;

1 correct?

2 MR. WELK: Yes, sir.

3 COMMISSIONER NELSON: In the opening paragraph  
4 of your Petition for Rehearing you continue to ask for  
5 reconsideration. Help me out.

6 MR. WELK: Well, it is a rehearing. If you read  
7 the entire brief, Commissioner, the process is defective.  
8 It has to be redone.

9 COMMISSIONER NELSON: Well, I understand that.  
10 I'm looking at the language, though, in the first  
11 paragraph and trying to reconcile if there's a  
12 distinction between those two, what are you asking for?

13 MR. WELK: The distinction is to say -- let me  
14 get to that.

15 It does say reconsider. If you read the entire  
16 brief, it should be rehearing. All right. If that is an  
17 error, that should be rehearing. Because if you read the  
18 entire brief, it deals with that.

19 So that is an error, a mistake in that pleading.  
20 It should be rehearing. I was trying to juxtapose that  
21 versus NorthWestern saying we don't have to have another  
22 hearing. We are asking clearly, Commissioner, for a  
23 rehearing to reset it consistent with the APA.

24 COMMISSIONER NELSON: Thank you.

25 CHAIRMAN FIEGEN: Mr. Welk, I don't know if you

1 had any last comments on your petitions before the PUC  
2 Commission continues to ask you questions.

3 MR. WELK: In response to Mr. Olson, yes.

4 Again, I have not heard one comment about all  
5 the alleged procedural deficiencies that I have pointed  
6 out. All I heard were arguments about the motives of  
7 Northern and what we would have obtained in the docket.

8 I can assure you, Commissioners, we will appeal  
9 this docket if it does this -- goes forward. You cannot  
10 have a decision that doesn't comply with the APA. And  
11 we're not talking substantively. We may agree with some  
12 of your rulings. But the way that the decision is  
13 postured now, it is not consistent with the  
14 Administrative Procedures Act, but it can be fixed. And  
15 that's what we're suggesting that we do.

16 And let me just also raise this point. We know  
17 there's a concern to serve these customers. We know  
18 that's a concern. But it doesn't help them if we end up  
19 having to spend another six months on a procedural issue  
20 to get to the merits of serving these people and who  
21 should serve them and the obligations arising from that.

22 So if we're really focused on trying to help  
23 these people, we ought to fix this now, and we should not  
24 go to Circuit Court and waste the time and money that it  
25 would take to do an appeal. I disagree strenuously with

1 the motives that have been aspired by NorthWestern to  
2 Northern. This is an issue that needs to be addressed to  
3 fix the Commission's decision. And even though we might  
4 agree substantively, that's not my point.

5 You have a decision that's not consistent with  
6 the APA, and you need to fix it now. And we have the  
7 opportunity to do that, and it's better that we fix it  
8 now than six months from now. We all know there's a  
9 looming deadline, and we should just fix it. And you can  
10 do this, and you can get a full and better record for  
11 your decision, whatever it may be.

12 As to judicial notice, I believe Mr. Olson is  
13 correct that documents were attached, but we have no  
14 problem with amending to say dockets and to let those  
15 dockets, whatever they may evolve into these other  
16 jurisdictions, that the parties can feel free to give the  
17 Commission what they interpret those to be and the  
18 Commission can take those for what they're worth.

19 It's not intended to be a point in time but  
20 under the Motions for Judicial Notice you need to tell  
21 them what you're going to take notice of. And if we  
22 wanted to say, okay, why don't we just take notice of the  
23 dockets and then we'll monitor those and the Staff can  
24 monitor those, if there's something that might be  
25 relevant to you, at least you've allowed the dockets to

1 be entered and the parties can feel free to argue those  
2 to you and if you feel they're not relevant, you can  
3 disregard them as you often do. You will make your own  
4 decision as to what you're going to do.

5 We would ask that you make the judicial notice.  
6 If you want to say as to those dockets and the parties  
7 can feel free to put those in and argue, I would be happy  
8 to amend the motion to allow that so the parties can  
9 argue whatever they want so they can argue we  
10 misinterpreted. We can argue.

11 But that's not the point. The point is to have  
12 the information for the Commissioners. So for those  
13 points -- that's all I have to say, and thank you for  
14 listening.

15 CHAIRMAN FIEGEN: Commissioner Hanson.

16 COMMISSIONER HANSON: Thank you, Madam Chair.

17 Mr. Welk, in NorthWestern's Answer to your  
18 Petition they stated that Northern elected not to engage  
19 in discovery or provide evidence.

20 How do you respond to that?

21 MR. WELK: Your Commission's order provided only  
22 oral argument to the parties. If the notice would have  
23 been provided under 1-26 as required, those would have  
24 been there. But your order, Commissioner Hanson, only  
25 provided that the oral argument would be given.

1           You did not provide the opportunity to present  
2 any evidence. And as I read the transcript, it was  
3 lawyers arguing on papers and attachments to you and you  
4 asking questions. There is no evidence. And there  
5 wasn't any opportunity to do that.

6           And you also -- and so there wasn't any  
7 opportunity to do so because it wasn't authorized by the  
8 order.

9           COMMISSIONER HANSON: Should that not have been  
10 brought up during the discussion that we had at that  
11 time, the hearing?

12          MR. WELK: Well, you could have brought that up,  
13 and then you would have been faced with an ineffective  
14 notice provision at that point in time. And whether you  
15 would have granted is all speculative.

16          But the real problem, Commissioner, is your  
17 decision itself. What can't be fixed or can't be argued  
18 against is the decision doesn't contain separate Findings  
19 of Fact, Conclusions of Law, and your record doesn't show  
20 what evidence you received regarding your decision. That  
21 can't be fixed by any party. It has to be fixed by the  
22 Commission.

23          The court needs to know what you thought was  
24 important, and 1-26 requires you to state separately  
25 Findings and Conclusions were not there. That --

1 discovery would have had nothing to do with that. And  
2 you've got a problem there. Even if you think you can  
3 get around it, the contents of the record doesn't show  
4 what you received. You can't fix it without starting  
5 over.

6 COMMISSIONER HANSON: I appreciate your  
7 reiteration of your position. Thank you.

8 I have a question of our counsel, how counsel  
9 would respond to that, as to whether or not we have to  
10 have a hearing because --

11 CHAIRMAN FIEGEN: They may want you to restate  
12 the question, but we will just be at ease for a second.

13 COMMISSIONER HANSON: Or if this is something  
14 that is in the jurisdiction of the Commission now, just  
15 say so. But if you --

16 MR. DE HUECK: Say that last part again.

17 COMMISSIONER HANSON: It appeared when you were  
18 chatting that I may have asked a question that you cannot  
19 answer outside the --

20 MS. CREMER: We're good.

21 COMMISSIONER HANSON: Okay. You're good. Thank  
22 you.

23 MR. DE HUECK: Yes. Commissioner Hanson. I  
24 disagree with Mr. Welk.

25 We are here for a declaratory ruling. This is



1 not a contested case, and that's all I'll -- I'll leave  
2 it at that.

3 COMMISSIONER HANSON: Thank you.

4 CHAIRMAN FIEGEN: That was actually my next  
5 question, Mr. de Hueck.

6 But, first of all, my question actually is for  
7 Tom Welk. In the November 9, 2016, filing of the  
8 Petition from the Public Utilities Commission their  
9 Petition was for declaratory ruling.

10 Could you tell me the difference between a  
11 declaratory ruling and a contested case?

12 MR. WELK: All right. Stay with me. First of  
13 all --

14 CHAIRMAN FIEGEN: Is this going to be a long  
15 one? That's okay. Go ahead.

16 MR. WELK: No, it's not.

17 I'm going to cite you a statute, 1-26-15, and  
18 it's entitled Declaratory Rulings By Agencies. And I'll  
19 read it slowly. "Each agency shall provide by rule for  
20 the filing and prompt disposition a petition for  
21 declaratory rulings as to the applicability of any  
22 statutory provision or of any rule or order of the  
23 agency." I'll delete the sentence about the inmate.

24 "Rulings disposing of petitions have the same  
25 status as agency decisions or orders in contested cases."

1 I'll read it again. "Rulings disposing of petitions have  
2 the same status as agency decisions or orders in  
3 contested cases."

4 Then you go to the definition of a contested  
5 case. That's found in 1-26-1(2)(2). "Contested Case. A  
6 proceeding including rate making and licensing in which  
7 the legal rights, duties, or privileges of a party are  
8 required by law to be determined by an agency after an  
9 opportunity for hearing but the term does not include  
10 proceedings relating to rule making, other than rate  
11 making proceedings relating to inmate or student academic  
12 or complaints."

13 And then in the definition of rule, which is  
14 parenthetical 8, it says that rule means "Each agency's  
15 statement of general applicability that implements,  
16 interprets, or prescribes law, policy, procedure,  
17 practice, requirements of an agency. The term includes  
18 the amendment or appeal of a prior rule but does not  
19 include, B, declaratory rules issued pursuant to  
20 1-26-15."

21 I think it's clear, absolutely clear, that  
22 you've got a contested case proceeding, and no other  
23 lawyer other than what I heard today has disputed that  
24 ruling. I think the statutes are clear. And,  
25 unfortunately, I think you have to fix them. That's the

1 law.

2 CHAIRMAN FIEGEN: The other parties to the  
3 docket, NorthWestern, do you have any comments on the  
4 declaratory ruling?

5 MR. OLSON: The definition that Mr. Welk read to  
6 us stated that the declaratory ruling has the same status  
7 as agency decisions disposing of contested cases. It  
8 does not state that the declaratory ruling proceeding is  
9 a contested case. It says that the ruling has the same  
10 status. So that is -- that is the distinction that  
11 NorthWestern would make.

12 CHAIRMAN FIEGEN: Thank you.

13 And, Staff, do you have any comments on the  
14 declaratory ruling?

15 MS. EDWARDS: Thank you.

16 Kristen Edwards for Staff. I would tend to  
17 agree with Mr. Welk that this morphed into something of a  
18 contested hearing. When I look at the definition of a  
19 contested case under the Administrative Procedures Act it  
20 speaks to affecting legal rights, duties, and privileges.  
21 And when I initially filed the Motion or Petition For  
22 Declaratory Ruling I don't know if I could have foreseen  
23 it morphing into such a contested matter, but I would  
24 agree with Mr. Welk at this time.

25 CHAIRMAN FIEGEN: Other questions of the

1 Commission.

2 Commissioner Nelson.

3 COMMISSIONER NELSON: I want to ask Ms. Edwards,  
4 I don't disagree with you in regard to the fact that  
5 maybe this has gone farther than what you or I  
6 anticipated when this all began, but I don't think that  
7 negates the fact that what you asked for was a  
8 declaratory ruling, period.

9 Now the fact that it may have implications  
10 beyond what you imagined, you know, I don't know if we  
11 can take that into account. The fact was that you asked  
12 for a declaratory ruling.

13 How would you respond to that?

14 MS. EDWARDS: Thank you, Commissioner. My  
15 response --

16 COMMISSIONER NELSON: And let me -- you asked  
17 for a declaratory ruling, and that's how we answered.

18 MS. EDWARDS: Correct. Right.

19 A declaratory ruling, typically you are just  
20 interpreting the laws. Here the interpretation wasn't as  
21 clear as I had predicted because it's hard to apply the  
22 laws to the facts when we can't say whether or not does  
23 NorthWestern own and maintain facilities.

24 Apparently it wasn't as clear as I predicted it  
25 would be whether or not they own and maintain facilities.

1 And it's impossible to answer that question without  
2 getting to the facts. What are those facilities, and who  
3 owns them?

4 COMMISSIONER NELSON: Mr. Welk, 1-26-15 has been  
5 in place for 50 years. There has got to be some court  
6 precedent that has answered this question.

7 MR. WELK: We couldn't find anything because  
8 it's clear -- it's clear, I think, on the statutes.

9 But here is what happens, I think. And you  
10 don't see these very often, but I see them in other  
11 agencies. And what has happened here is oftentimes when  
12 you go to a declaratory ruling -- think about a tax case.  
13 I mean, the facts aren't disputed. You bought X. You  
14 were taxed there.

15 And a lot of declaratory rulings that percolate  
16 up to the court system the facts really aren't, you know,  
17 contested. And when I've done revenue cases we often  
18 times do a stipulation of facts. So a lot of these  
19 procedural issues you see now morphing don't happen in  
20 the garden variety declaratory ruling because you go to  
21 the agency and say assume these facts, X, Y, and Z. What  
22 is the interpretation of the regulation and statute.

23 What happened here, as people got in and it  
24 became, as Ms. Edwards said, more complicated and facts  
25 became convoluted -- there was no stipulation of facts.

1 And they affect rights and privileges of people and of  
2 companies. And what happened is it might have started  
3 out as being this sort of esoteric, I'll call it, the  
4 typical tax declaratory ruling, but it wasn't. It was  
5 more complicated.

6 And once that is recognized that, look, no one  
7 has stipulated to the facts, then what it takes -- and  
8 this does happen, but you've got to step back and say  
9 wait. What happened? We have no stipulation here? We  
10 need to have a full blown hearing, which you do all the  
11 time.

12 And that's what I see from the outside happened  
13 is as she thought it was this typical tax case, I assume  
14 this, I assume that, and it wasn't that way. So that's  
15 what happened to this case and why it has to go back and  
16 get fixed.

17 COMMISSIONER NELSON: But even in an esoteric  
18 tax case the ultimate answer still affects rights and  
19 privileges of people.

20 MR. WELK: Right. And what happens in those  
21 cases, Commissioner, is there's a stipulation of facts or  
22 no one objects, and then the agency renders a decision  
23 and sets forth Findings of Fact and Conclusions of Law  
24 based upon the stipulation as to the interpretation of  
25 that statute array. That's what typically happens.

1           Here when people got into this and saw that  
2 people had different positions as to these facts and  
3 responsibilities and -- jurisdictional facts to your  
4 jurisdiction became contested. You've certainly got the  
5 right to determine those, but they became contested. And  
6 that's what happened here.

7           And so I've been involved in those where there's  
8 basically a petition and that but nobody disputed the  
9 facts. That's not what happened here. And that's why it  
10 is a contested case. It's treated as a contested case,  
11 but nobody has these issues when the facts are  
12 undisputed. That's why this has happened.

13           And one thing I want to point out to Mr. Olson's  
14 position where he's now parsed this under 1-26-15 that  
15 it's a status, even if that was true, 1-26-25, which is  
16 the decision, says you need to have separately stated  
17 findings and conclusions. That's 1-26-25. Even if you  
18 accept his, you still don't have a decision, and you  
19 don't have a record to base it on. That's the problem.

20           And it's nobody's fault. It just morphed into  
21 this. And we've all been involved in things that didn't  
22 go the way we thought, and the question is do you fix it  
23 or do you let it go on? And to me what the sensible  
24 thing is, you fix it, and you render the decision you  
25 want consistent with all the processes and procedures you

1 normally do.

2           You tried to do something simple. It became  
3 more convoluted than be anybody thought. But that's  
4 nobody's fault, but let's fix it.

5           CHAIRMAN FIEGEN: Thank you. I certainly -- I  
6 have some follow-up questions, Commissioner Nelson, if I  
7 could continue.

8           You know, the three Commissioners read the  
9 November 19 Petition. It was a declaratory ruling that  
10 we were asked to rule on. You were able to come in front  
11 of us and ask for a contested case because as a  
12 Commission we had 60 days to actually rule on this so we  
13 have to go by the law and look at the law and adhere to  
14 what we have to do.

15           So help me understand why Northern did not come  
16 in front of us and ask for a contested case so then you  
17 could have got a procedural schedule? Because we only  
18 had 60 days.

19           MR. WELK: The answer is it was always a  
20 contested case. Northern doesn't have to tell you what  
21 the law is, Commissioner. It's always a contested case  
22 if you meet the definition of a contested case under the  
23 Administrative Procedures Act.

24           And as I explained to Commissioner Nelson,  
25 oftentimes in a declaratory ruling there aren't any facts



1 in dispute. So it's pretty simple. That's why you get  
2 these 60 days. And that's why you typically see them in  
3 the tax cases, Commissioners, can we do this? And that's  
4 what happens.

5 These declaratory rulings, they happen in court  
6 too where you end up having full depositions and trials  
7 about it. It just -- it ended up being more difficult  
8 than people thought it was going to be. But it always  
9 was a contested case, as a matter of law.

10 CHAIRMAN FIEGEN: NorthWestern, I will certainly  
11 allow you or Staff, if any of you want to respond on my  
12 question about the Petition being declaratory ruling and  
13 never having -- no parties brought us a motion to make it  
14 a contested case. You don't have to respond, but I would  
15 allow you. Of course, Mr. Brett Koenecke can respond  
16 too.

17 Other questions from the Commission. Or do you  
18 have a response?

19 Yes. NorthWestern.

20 MR. OLSON: Thank you, Chair Fiegen.

21 In our Answer to the Petition for Rehearing we  
22 talked about this pattern that Northern has. Sitting on  
23 its hands in multiple proceedings and then coming in at  
24 the last minute asking for a rehearing, asking to reopen  
25 the record in this proceeding after the hearing.

1           It had the opportunity here. It had the  
2 opportunity in other hearings. Those requests in other  
3 proceedings are pending. I just -- I just don't  
4 understand that way of operating. So we think the  
5 Petition for Rehearing should be denied.

6           CHAIRMAN FIEGEN: Thank you.

7           Other questions.

8           And, Mr. Welk, your mic. is on. But other  
9 questions of the Commission and/or action.

10          COMMISSIONER NELSON: Could I request a  
11 five-minute recess to consult with counsel?

12          CHAIRMAN FIEGEN: Yes. We will be in recess and  
13 at ease for five minutes.

14                           (A short recess is taken)

15          CHAIRMAN FIEGEN: The Public Utilities  
16 Commission is coming back to order.

17           Are there any additional questions from  
18 Commissioners before I ask for a motion?

19           I see none.

20           There are two motions that we have talked about.  
21 You can make one motion and then the other, or you can  
22 combine the motions, whatever you choose to do. What is  
23 the wish of the Commission?

24           Is there a Motion?

25          COMMISSIONER NELSON: Madam Chair, in NG16-014 I

1 move that we deny the Petition for Rehearing and deny the  
2 Motion for Judicial Notice.

3 CHAIRMAN FIEGEN: Discussion on the Motion.

4 COMMISSIONER NELSON: Petition for Rehearing. I  
5 appreciated the discussion, but I am convinced that the  
6 reading of the statute, 1-26-15, differentiates between a  
7 declaratory ruling and a contested case.

8 And I believe that we were asked -- we were  
9 asked for a declaratory ruling. And that's how we  
10 handled this, and that's how we responded to this. At no  
11 time during that process were we asked to do otherwise.  
12 And I don't believe it's appropriate at this point to ask  
13 us to do otherwise either. And, hence, my Motion to  
14 deny.

15 The only caveat that I would make, on the third  
16 question that was asked regarding state jurisdiction as  
17 it relates to the farm tap facilities, I had some  
18 inclination to grant that portion of it because I made  
19 some statements that were incorrect. And I determined  
20 they were incorrect after and as we were drafting the  
21 Order.

22 I would have loved the opportunity to correct  
23 those on the record. But as we went back and forth and  
24 talked about rehearing versus reconsideration, I may have  
25 been willing to go as far as reconsideration. I'm not

1 willing to go as far as a rehearing. And so, hence, I'm  
2 not going to differentiate that.

3 So far as the Motion for Judicial Notice, I  
4 simply fail to see the relevance in these cases as it  
5 relates to the specific declaratory ruling questions that  
6 we were asked. And, hence, my Motion.

7 CHAIRMAN FIEGEN: Other discussion on the  
8 Motion.

9 Commissioner Hanson.

10 COMMISSIONER HANSON: Madam Chair, thank you.

11 I thought the discussion we had this afternoon  
12 and the presentations were really interesting.  
13 Mr. Welk's articulation of positions were compelling in  
14 many respects. I keep wrestling with the -- in my mind  
15 the evidentiary hearing versus the request for  
16 declaratory ruling. They're different animals in my mind  
17 so when we're going through a process for a declaratory  
18 ruling, I don't feel I can be nuanced into a evidentiary  
19 hearing.

20 At the same time, I was on the short end of the  
21 vote when we -- it was a two-to-one vote. And I've  
22 wrestled with that since that time. And in regards to  
23 one of the -- when I was actually with the -- all three  
24 of us voted on one of the issues. I won't say which one  
25 of the other three issues there were that we joined in.

1 I reflected on that, and I couldn't see how if we were in  
2 one position, that, in fact, we should have voted the way  
3 we did on the other. And I would have liked to have  
4 argued that further at the time.

5 And so there are two issues that I find myself  
6 not in the majority here so it's -- I shouldn't allow  
7 that to move me into saying that I want to have a  
8 rehearing because it would afford me that opportunity to  
9 do so.

10 So I look at this from other aspects as well.  
11 I'm wondering, the whole process of this, why we're going  
12 through this to the extent that it seems to me that you  
13 have the opportunity -- since it was the Staff that asked  
14 us to decide for guidance purposes three different issues  
15 why an evidentiary hearing cannot be -- why you can't  
16 make a motion for that and go through that process.

17 I need further examination on that as to whether  
18 or not -- since we've already made decisions on these  
19 issues, whether you can or cannot do that since one is a  
20 declaratory and one is an evidentiary hearing. So to me  
21 I'm not fully grasping whether or not you have that right  
22 and that opportunity.

23 I do feel that the farm taps should be  
24 regulated, and they should be subject to state  
25 jurisdiction so I -- I wrestle with this, but ultimately

1 I feel as compelling as your arguments are, that I have  
2 to abide by the -- my feeling that the -- there's two  
3 different animals here, and I can't quite cross that  
4 bridge to marrying them.

5 So I'll support the motion, as much as I would  
6 like to have an evidentiary hearing on two of the issues.

7 CHAIRMAN FIEGEN: Any other discussion on the  
8 motion?

9 Hearing none, all in favor say aye. Opposed,  
10 nay.

11 Commissioner Nelson.

12 COMMISSIONER NELSON: Aye.

13 CHAIRMAN FIEGEN: Commissioner Hanson.

14 COMMISSIONER HANSON: Aye.

15 CHAIRMAN FIEGEN: Commissioner Fiegen votes aye.  
16 Motion carries.

17 COMMISSIONER HANSON: Anything further?

18 CHAIRMAN FIEGEN: Yes. We still have one more.

19 Commissioner Hanson, do you need a break?

20 The third issue before us is our final issue,  
21 which is whether the Commission should grant  
22 NorthWestern's Petition for Reconsideration of the  
23 Declaratory Ruling.

24 We will go with NorthWestern first, Northern,  
25 Montana-Dakota Utilities, and then Staff.

1 MR. OLSON: Thank you, Chair Fiegen,  
2 Commissioner Hanson, and Commissioner Nelson.

3 NorthWestern believes that two of the  
4 Commission's determinations from the declaratory ruling  
5 were erroneous. As outlined in our Petition for  
6 Reconsideration, we believe the Commission does not have  
7 jurisdiction over private contractual arrangements, and  
8 we believe that NorthWestern is not a public utility with  
9 respect to the services it provides on behalf of Northern  
10 to the farm tap customers.

11 Primarily, these two determinations are  
12 erroneous because there is no public utility obligation  
13 here. The right to farm tap services arises pursuant to  
14 the easements. NorthWestern has not held itself out to  
15 the general public as a provider of farm tap services.

16 Even if it wanted to, NorthWestern could not  
17 hold itself out to the general public because there are  
18 two requirements for farm tap service. Land must be  
19 subject to a Northern easement, and you must have a farm  
20 tap. If someone in the general public wants farm tap  
21 service but cannot meet those two requirements, they are  
22 not entitled to the service.

23 And with respect to that potential customer who  
24 doesn't meet the requirements, NorthWestern can  
25 discriminate. In fact, not only can we discriminate with

1 respect to that nonqualifying customer, we cannot provide  
2 service to that customer.

3 Moreover, even if a customer meets those two  
4 requirements, NorthWestern still must get approval from  
5 Northern to initiate that service. That does not sound  
6 anything like public utility service to NorthWestern.

7 If you think back to our December 14 hearing,  
8 December 14, 2016, Northern told this Commission that  
9 NorthWestern is Northern's vendee pursuant to the  
10 easement. In our words, NorthWestern is the service  
11 provider to Northern.

12 The situation is highly similar to other  
13 situations in this state that the Commission is aware of;  
14 the services we, NorthWestern, previously provided to the  
15 cities of Humboldt, Crooks, and Garretson. It's also  
16 similar to the billing and meter reading services we,  
17 NorthWestern, provide the City of Chamberlain with  
18 respect to Chamberlain's municipal water system. Those  
19 services don't make us a water utility. We are simply  
20 providing a service to that city.

21 Northern understands very well that a public  
22 utility can provide public utility services in one  
23 respect while providing utility-like services that are  
24 not public utility services in another respect.

25 In our Petition we cited the Northern Natural



1 Gas Company versus Roth Packing Company case. In that  
2 case the Appellate Court concluded that although Northern  
3 was a public utility in a nearby city, it was not a  
4 public utility with respect to a plant, the Roth Packing  
5 Company plant, located just outside the city limits that  
6 was served pursuant to a private contract with Northern.

7 NorthWestern clearly is a public utility in  
8 South Dakota, but we are not a public utility with  
9 respect to the farm tap services that we provide to  
10 Northern pursuant to a contract with Northern.

11 We do not have a public duty to serve the farm  
12 tap customers. In 2011 when we were negotiating the  
13 acquisition of the unrelated Milbank Pipeline we could  
14 have refused to render service to the unrelated farm tap  
15 customers; however, we agreed to do so as part of the  
16 overall consideration for that acquisition, the terms of  
17 which the Commission approved in 2011.

18 As I stated earlier in this hearing today, it  
19 was not perpetual service. We did not agree to perpetual  
20 service. That was not a part of the bargain that we  
21 struck in 2011. We closed on that acquisition in relying  
22 upon the full package of the terms, the full  
23 consideration, including specifically providing services  
24 to the farm tap customers only through 2017. We would  
25 not have closed that acquisition under different terms.

1           We are serving Northern. Prior to entering into  
2 our agreement with Northern we had no public utility  
3 obligation to serve the customers. We were not involved  
4 with those farm tap customers before 2011. Not involved.  
5 And remember the terms of the contract we have with  
6 Northern: "To perform certain services for Northern in  
7 connection with the natural gas sales to said existing  
8 and future customers and to provide the services on  
9 behalf of Northern."

10           That contract in the easements could not be  
11 clearer that these are Northern's obligations.  
12 NorthWestern is serving as Northern's vendee under the  
13 easements.

14           Northern answered our Petition for  
15 Reconsideration and complained that we were raising the  
16 same losing arguments we raised previously before this  
17 Commission. And to an extent that is the definition of a  
18 request for reconsideration, asking the Commission to  
19 reconsider rulings that we believe are erroneous. Most  
20 parties do not ask the Commission to reconsider rulings  
21 that they agree with.

22           So for the reasons set forth in our Petition for  
23 Reconsideration, we respectfully request the Commission  
24 to reconsider its rulings, that it has jurisdiction over  
25 the farm tap services, and that NorthWestern is a public

1 utility with respect to the farm tap services.

2 Thank you.

3 CHAIRMAN FIEGEN: Northern.

4 MR. WELK: Thank you, Chairperson Fiegen.

5 Northern requests the Commission to deny  
6 NorthWestern's Request for Reconsideration. As we have  
7 stated in our papers, the rule for reconsideration or  
8 rehearing that the Commission has, which it is bound by,  
9 needs to have one of the three things that I talked about  
10 earlier in its application: An error regarding Findings  
11 of Fact, Conclusions of Law claimed to be erroneous,  
12 newly discovered evidence or, consequences resulting from  
13 the compliance of the order.

14 None of those -- although the regulation was  
15 cited, none of the grounds of which NorthWestern is  
16 urging are satisfied by their filing under the rule.

17 Moreover, all I heard today was again additional  
18 counsel statements that allege to be facts. The problem  
19 you have is you do not have a record establishing any  
20 facts. What you have are arguments of counsel. So even  
21 if you wanted to, you don't have a record that could  
22 substantiate any facts on which to base the  
23 reconsideration.

24 And, as counsel said, this we believe is a  
25 rehash of arguments previously made. That is not the

1 grounds for reconsideration, as your rules provide. So  
2 NorthWestern has not satisfied the Commission's rules and  
3 that there are no facts that would justify -- in the  
4 record that have been introduced because there is no  
5 record that would substantiate the relief that they  
6 request.

7 That's all I have, Chairperson.

8 CHAIRMAN FIEGEN: Thank you.

9 Montana-Dakota Utilities?

10 Staff.

11 MS. EDWARDS: Thank you.

12 Staff takes no position on the request. Just as  
13 in our brief, we caution against any interpretation as  
14 broad, as the Commission has no jurisdiction over any  
15 service arising from contracts. We have a lot of ethanol  
16 plants in the state that would suddenly be outside of the  
17 Commission's jurisdiction.

18 Thank you.

19 CHAIRMAN FIEGEN: NorthWestern, do you want to  
20 have any final words before the Commission is allowed to  
21 ask you questions?

22 MR. OLSON: No. I don't have a need for a  
23 response.

24 Thank you.

25 CHAIRMAN FIEGEN: Thank you. Questions of the

1 Commission and/or action.

2 COMMISSIONER NELSON: Move to deny.

3 CHAIRMAN FIEGEN: It's been moved to deny  
4 NorthWestern's Petition for Reconsideration of the  
5 declaratory ruling in NG16-014.

6 Do you have comments on the motion?

7 COMMISSIONER NELSON: I guess the only comment,  
8 I never would criticize a party for asking for  
9 reconsideration to give us another opportunity to take a  
10 look, see if we made a mistake, and give us an  
11 opportunity to do it again. We have done that, and I  
12 don't find that we've made an error in this regard. And  
13 so, hence, my motion.

14 CHAIRMAN FIEGEN: Other discussion on the  
15 Motion.

16 Commissioner Hanson.

17 COMMISSIONER HANSON: I'm still struggling with  
18 being on the short end of the stick when we first did  
19 this. Just look at it from the standpoint --

20 CHAIRMAN FIEGEN: You know I want to make a  
21 comment; right? But I won't.

22 COMMISSIONER HANSON: I'd like to see a hearing  
23 on --

24 Farm taps are not regulated, then NorthWestern  
25 doesn't seem to be a utility, in my mind. So that's what

1 I struggle with is the decision that we made earlier.

2 And at the same time if it's possible for folks  
3 to file to have a evidentiary hearing, then I'm all for  
4 it. I'd like to see that. I struggle on -- well, I'll  
5 just let the chips fall where they are.

6 CHAIRMAN FIEGEN: Oh, Commissioner Hanson, you  
7 bring us great joy.

8 COMMISSIONER HANSON: I'm going to vote against  
9 this one just so I can be consistent.

10 CHAIRMAN FIEGEN: I'm not for sure if that's  
11 consistent or not. Actually you wanted both of them to  
12 be a utility.

13 COMMISSIONER HANSON: Yes.

14 CHAIRMAN FIEGEN: Okay. So any other discussion  
15 on the motion?

16 Seeing none, all in favor of denying  
17 NorthWestern's Petition for Reconsideration of the  
18 Declaratory Ruling, say aye.

19 Commissioner Hanson.

20 COMMISSIONER HANSON: No.

21 CHAIRMAN FIEGEN: Commissioner Nelson.

22 COMMISSIONER NELSON: Aye.

23 CHAIRMAN FIEGEN: Commissioner Fiegen votes aye.  
24 It is denied.

25 Is there anything else in front of the

1 Commission?

2           Seeing none, motion to adjourn?

3           COMMISSIONER NELSON: Move to adjourn.

4           CHAIRMAN FIEGEN: All in favor say aye.

5 Opposed, nay.

6           Commissioner Nelson.

7           COMMISSIONER NELSON: Aye.

8           CHAIRMAN FIEGEN: Commissioner Hanson.

9           COMMISSIONER HANSON: Aye.

10          CHAIRMAN FIEGEN: Commissioner Fiegen votes aye.

11 We are adjourned.

12           (The proceeding is concluded at 2:50 p.m.)

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1 STATE OF SOUTH DAKOTA)

2 :SS

CERTIFICATE

3 COUNTY OF SULLY )

4

5 I, CHERI MCCOMSEY WITTLER, a Registered  
6 Professional Reporter, Certified Realtime Reporter and  
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed  
9 shorthand reporter, I took in shorthand the proceedings  
10 had in the above-entitled matter on the 14th day of  
11 March, 2017, and that the attached is a true and correct  
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 28th day of  
14 March, 2017.

15

16

17

18

Cheri McComsey Wittler,  
Notary Public and  
Registered Professional Reporter  
Certified Realtime Reporter

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