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THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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

NG16-014

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Transcript of Proceedings  
December 14, 2016

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

COMMISSION STAFF  
Adam de Hueck, Commission Attorney  
Karen Cremer, Commission Attorney  
Greg Rislov, Staff Advisor  
Patrick Steffensen, Staff Analyst  
Brittany Mehlhaff, Staff Analyst

APPEARANCES

Kristen Edwards, appearing on behalf of Commission Staff  
  
Gregory Porter and James 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 Matthews Training Center,  
3   Foss Building, 523 East Capitol Avenue, Pierre,  
4   South Dakota, on the 14th day of December, 2016,  
5   commencing at 10 o'clock a.m.

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1           CHAIRMAN NELSON: Good morning. Welcome,  
2 everybody. We will begin the hearing in Docket NG16-014,  
3 In the Matter of Commission Staff's Petition for  
4 Declaratory Ruling Regarding Farm Tap Customers.

5           The time is 10:00 a.m. The date is December 14,  
6 2016. The location of the hearing is the Matthews  
7 Training Center in the Foss Building, Pierre,  
8 South Dakota.

9           My name is Chris Nelson. I am Commission  
10 Chairman. With me are Commissioners Fiegen and Hanson.

11          I am presiding over this hearing. The hearing  
12 was noticed pursuant to Commission's Order for and Notice  
13 of Hearing issued on November 30, 2016.

14          The issues at the hearing are, number one,  
15 whether the Commission has jurisdiction over any utility  
16 providing natural gas to farm tap customers taking  
17 natural gas from the transmission line owned and operated  
18 by Northern Natural Gas Company.

19          Number two, if the Commission has jurisdiction,  
20 which company, NorthWestern Corporation, doing business  
21 as Northwestern Energy, or Northern Natural Gas Company  
22 is a public utility as defined by SDCL Chapter 49 with  
23 respect to these farm tap customers.

24          And, number three, are the farm taps in whole or  
25 in part subject to state jurisdiction for the purpose of

1 pipeline safety pursuant to SDCL 49-34B.

2 All parties have the right to be present and to  
3 be represented by an attorney. These rights and other  
4 due process rights may be forfeited if not exercised at  
5 this hearing.

6 After the hearing the Commission will consider  
7 the matter. The Commission will then issue a declaratory  
8 ruling. As a result of this hearing the Commission will  
9 make decisions on the issues set forth above. The  
10 Commission's declaratory ruling may be appealed by the  
11 parties to the Circuit Court and the Supreme Court as  
12 provided by law.

13 And at this point I'd like to deviate and do  
14 just a couple of housekeeping type announcements. For  
15 those -- we really don't have much of an audience today.  
16 But the Rushmore Network is the public WiFi network. And  
17 so if you're searching for a network, that's the one you  
18 want to be on.

19 We are live webcasting. Now we are not in our  
20 normal environment up on fourth floor of the Capitol and  
21 so we did a little bit of experimenting over whether we  
22 ought to try to set up our own sound system in here and  
23 have that feed into the webcast system. That didn't work  
24 out so well.

25 And so what we are relying on are these

1 microphones in the ceiling that are picking up the  
2 webcast. What they are not doing is obviously amplifying  
3 what we are saying. And so we want to make sure we are,  
4 on our own, speaking loud enough that everybody in the  
5 room can hear what we are saying. But suffice it to say,  
6 I've been told these microphones are very accurate and  
7 will pick up the smallest of sounds so if you have side  
8 bar conversations, make sure it's truly a side bar  
9 conversation, lest it may be webcast for the world to  
10 hear. And they are live all the time. So just beware of  
11 that. We will shut them off during breaks.

12 Cheri Wittler from Precision Reporting will be  
13 transcribing the hearing. Anyone who wishes a transcript  
14 of the hearing should contact Cheri directly at some  
15 point today and make appropriate arrangements.

16 We've got a number of our Staff back here.  
17 Katlyn and Tina will be staffing today, and so if you've  
18 got any needs, let the two in the back know and they will  
19 do everything they can to take care of that.

20 With that, I will now be turning the proceedings  
21 over to Mr. Adam de Hueck, our Commission attorney, who  
22 will act as Hearing Examiner and will conduct the hearing  
23 subject to the Commission's oversight.

24 Mr. de Hueck, the floor is yours.

25 MR. DE HUECK: Thank you, Mr. Chairman.

1           Good morning, everyone. With that, we'll begin  
2 with appearance of the parties. And we'll begin with  
3 Staff as the Petitioner.

4           MS. EDWARDS: Kristen Edwards, Counsel for  
5 Staff. With me is Patrick Steffensen, staff analyst, and  
6 Brittany Mehlhaff, staff analyst.

7           MR. DE HUECK: And Northern.

8           MR. PORTER: Greg Porter, Vice President and  
9 General Counsel of Northern Natural Gas, and with me is  
10 Jim Talcott, who is Assistant General Counsel, and  
11 Laura Demman, who is our Vice President of Regulatory  
12 Government Affairs.

13          MR. DE HUECK: NorthWestern.

14          MR. OLSON: Good morning. Tim Olson on behalf  
15 of NorthWestern. With me today is Melissa Baruth from  
16 our DOT Department and Reed McKee, Strategic Development  
17 and Business Development.

18          MR. DE HUECK: Very good.

19          MDU.

20          MR. KOENECKE: Brett Koenecke, the lawyer from  
21 Pierre flying solo for MDU today.

22          MR. DE HUECK: Thank you. At this point we'll  
23 turn to the matter at hand today, and we'll take oral  
24 argument beginning with Commission Staff.

25                   (Discussion off the record)

1 MS. EDWARDS: Thank you, Mr. de Hueck, all  
2 parties. I am Kristen Edwards for Staff. With me are  
3 Staff Analysts as well as our Pipeline Safety personnel  
4 Boice Hillmer.

5 Over the past several months Staff has been  
6 struggling with the issue of what to do to protect the  
7 nearly 200 farm tap customers receiving natural gas  
8 service pursuant to a contract between NorthWestern and  
9 Northern Natural which is set to expire at the end of  
10 2017.

11 It presents a difficult balancing act in trying  
12 to protect customers' access to the gas service they rely  
13 on while also ensuring the safety of natural gas users in  
14 South Dakota.

15 The facts and history behind the farm taps are  
16 detailed in the Memorandum attached to our Petition and  
17 in our Reply Brief.

18 In summary, Northern Natural operates natural  
19 gas transmission service lines in this state. Along  
20 those lines are farm taps which provide natural gas  
21 service for domestic use to end users at retail.

22 I would like to clarify at this point that Staff  
23 is not asking the Commission to do -- to evaluate  
24 discontinuing regulation. What we are asking in part is  
25 whether the Commission ever had jurisdiction to begin

1 with. Additionally, we are not asking the Commission in  
2 this Docket to consider whether to allow a regulated  
3 utility service to discontinue service to farm tap users,  
4 as some customers may have been led to believe.

5 Discontinuing service is not at issue in this  
6 Docket. Essentially, all this Docket would do is to  
7 determine if the Commission ever had jurisdiction to  
8 begin with over the company providing service.

9 If the answer is yes, it would be the  
10 responsibility of that company to seek Commission  
11 approval to discontinue service, and that would come in a  
12 different docket, not by a Staff request.

13 The first question is whether the Commission has  
14 jurisdiction over the utility providing natural gas to  
15 farm tap users. In this sense jurisdiction refers to the  
16 Commission's authority to regulate aspects such as rates  
17 and reliability under SDCL 49-34A and, perhaps more  
18 importantly, to require the utility to continue to  
19 provide service unless a request has been made and  
20 granted to discontinue such service.

21 If the answer is no, we need not look any  
22 further into what company is a public utility. It is  
23 imperative, however, to determine what, if any, company  
24 is a utility if the answer is yes so that that company  
25 can determine what steps it would like to take going

1 forward.

2 We endeavored to tackle this confusing and  
3 convoluted issue in our Memorandum and in our Reply  
4 Brief. The conclusion we came to was that the Agreement  
5 signed in 1985 effectively transferred all obligations  
6 from Northern to Peoples, which was purchased by  
7 UtiliCorp, later known as Aquila. From there we are not  
8 entirely certain what happened to this 1985 contract, but  
9 we do have reason to believe it passed on to MERC when  
10 MERC purchased the assets of Aquila.

11 In what Staff determined to be a parallel but  
12 completely separate string of events, a 30-year contract  
13 for utility services was made in 1987 between Northern  
14 and Peoples. That 30-year contract was assigned as  
15 detailed in our Brief and ultimately assigned to  
16 NorthWestern in 2011 and was in a tariff docket that was  
17 approved by the Commission in NG11-001.

18 It was always understood to have an end date of  
19 December 31, 2017, after that Docket was brought to the  
20 Commission.

21 Because NorthWestern has all of the obligations  
22 and responsibilities of a public utility through 2017,  
23 NorthWestern is a public utility until the end of 2017.  
24 Because of federal law and because they effectively  
25 transferred their responsibilities, Northern is not a

1 public utility.

2 And that federal law I am referring to is FERC  
3 Order 636, which was appealed to the DC Circuit Court in  
4 1996, and that decision is available online, for more  
5 clarification. But it is our understanding through that  
6 Order and subsequent Court Decisions that Northern is  
7 prohibited from providing gas service as a local  
8 distribution company to an end user at a retail.

9 Thus, this is, unfortunately, unclear at this  
10 point if any entity will be serving the 197 customers as  
11 a public utility after the end of this year.

12 We do recognize that our position with respect  
13 to NorthWestern has changed slightly between the initial  
14 filing and our Reply Brief. The positions we took in the  
15 Reply Brief were largely based off of information that we  
16 received through the Briefs of the other parties. After  
17 carefully reviewing this information in the three days or  
18 so we had to do so, it appears that NorthWestern did  
19 contract to control facilities in this state through 2017  
20 and is, therefore, a public utility until the end of  
21 2017.

22 I would note that when we submitted our Reply  
23 Brief we were also working off of the assumption based  
24 upon the depictions submitted by Northern attached to  
25 their Brief that NorthWestern owned the odorizer and the

1 local distribution company three-way valve which would  
2 allow them to shut off natural gas service.

3           However, since we submitted that Reply Brief I'm  
4 no longer quite sure that that's the case, and I think  
5 there's disagreement between the two parties as to  
6 whether or not NorthWestern actually has any ownership of  
7 any of these facilities attached to the farm tap, which  
8 is an important question because as our statute defines  
9 public utility, owning and controlling facilities is a  
10 pivotal element in the determination. So that might be a  
11 question for those companies, and clarification is  
12 something we would greatly appreciate.

13           Regarding the issue of pipeline safety  
14 jurisdiction, as the Commission is aware, its  
15 jurisdiction and responsibility to conduct pipeline  
16 safety inspections differs greatly from its regulatory  
17 authority under 34A, the rate setting authority, as  
18 Boice could attest to we inspect plenty of pipelines that  
19 we don't have rate regulatory jurisdiction over.

20           Pursuant to Chapter 49-34B, the Commission has  
21 safety jurisdiction over intrastate transportation of gas  
22 and gas pipeline facilities. Thus, answering the  
23 question of jurisdiction posed in the first question does  
24 not necessarily answer the jurisdictional question for  
25 the purposes of pipeline safety.

1           When we discuss this issue we are not talking  
2 about the line from the meter to the customer's home.  
3 That is understood to be customer owned and not  
4 jurisdictional, unfortunately, to either the Federal  
5 Government, to PHMSA, or to pipeline safety. Those  
6 lines, it is understood, are not inspected.

7           Our main concern, however, is that someone is  
8 inspecting these farm taps, and it is our impression that  
9 that is not the case and neither PHMSA nor the  
10 South Dakota Public utilities Commission at this point  
11 are inspecting those farm taps.

12           I will just briefly mention the intervenor,  
13 Montana-Dakota Utilities, just to say that we have no  
14 information on the record as to the location, inspection  
15 history, and ownership arrangement and, therefore, none  
16 of our positions taken in this docket should be assumed  
17 to automatically apply to MDU.

18           I would just commend them for taking the  
19 initiative to come forward and be here today and for  
20 always allowing our pipeline safety staff to inspect  
21 their farm taps and make sure they are safe for MDU's  
22 customers.

23           Regrettably, at this point we have likely left  
24 the Commission with more questions than answers, and I  
25 and my fellow Staff members will be available to

1 hopefully answer any questions you might have.

2 Thank you.

3 MR. DE HUECK: Thank you, Ms. Edwards.

4 At this time we're going to go to Commission  
5 questions and advisor questions.

6 CHAIRMAN NELSON: And I do have questions.

7 Ms. Edwards, I've got questions for you. And I  
8 see Mr. Hillmer is here. Is he also available to answer  
9 questions?

10 MS. EDWARDS: Yes, he is.

11 CHAIRMAN NELSON: Now let me start with a  
12 question for you. In your explanation today you talked  
13 about the fact that the Commission may not have  
14 jurisdiction in this area. And I ask this question maybe  
15 more for the listening public than anything, but  
16 frequently the PUC gets questions about, well, do you  
17 regulate water service in the state? People think of  
18 that as a utility type service. And the law doesn't give  
19 us the authority to regulate or oversee water service.

20 And so what I'm hearing you saying is there may  
21 be a question under the law whether or not we have  
22 authority in this area also. Is that accurate?

23 MS. EDWARDS: That's accurate. These farm taps  
24 were put into place before we had our regulatory  
25 jurisdiction, which came about in roughly 1975, 1976, and

1 this isn't something the legislature may have  
2 contemplated us having jurisdiction over.

3 CHAIRMAN NELSON: Thank you. And at this point,  
4 Mr. Hillmer, if I could ask you some questions.

5 In Staff's Brief there was discussion about the  
6 fact that these farm taps were inspected in 2014. And I  
7 want to thank Northern for the pictures that you  
8 submitted as an attachment. Very, very helpful.

9 And so, Mr. Hillmer, I want to refer to these  
10 pictures. In particular this one, the comprehensive  
11 one.

12 Actually let's go to this one. Let's go to the  
13 wider view.

14 MR. HILLMER: Okay.

15 CHAIRMAN NELSON: In 2014 how much of the  
16 facility did you inspect? Was it the blue, the red, the  
17 yellow, or all of the above?

18 MR. KOENECKE: Which exhibit is that,  
19 Commissioner?

20 CHAIRMAN NELSON: Hang on a second. I've got a  
21 question here as to which exhibit number. I'm going to  
22 have to look that up.

23 MR. RISLOV: Attachment B.

24 CHAIRMAN NELSON: Thanks for helping me out.  
25 I'm sorry, Mr. Hillmer. Go ahead.

1           MR. HILLMER: Actually when we were there we  
2 would look at everything. It doesn't mean that we have  
3 jurisdiction over everything. Obviously, we do not have  
4 jurisdiction over the inlet on the farm tap.

5           We probably would ask the operator to make sure  
6 that their outlet valve or their three-way valve, as  
7 they're calling it, is operational. So, I mean, we would  
8 inspect that. To be honest with you, on these it's more  
9 of a visual inspection to make sure that coatings and  
10 everything are good.

11           And in 2014 Mary was the one that inspected  
12 them. I don't know if she asked them to check relief  
13 settings and stuff like that. I highly doubt it. It was  
14 probably more of a visual inspection as far as that goes.

15           CHAIRMAN NELSON: Did she inspect all 195 of  
16 these?

17           MR. HILLMER: No.

18           CHAIRMAN NELSON: Can you tell me how many were  
19 inspected?

20           MR. HILLMER: I do not know, Commissioner  
21 Nelson, at this time.

22           CHAIRMAN NELSON: So then there was some  
23 discussion about the fact that a request was made to do  
24 an inspection in 2016. Northern resisted that, as I  
25 understand, and you all can correct me if I'm wrong

1 later.

2 But would it have been true that you would have  
3 been able to inspect the red portion of this since  
4 Northern is telling us that they don't control the red  
5 portion?

6 MR. HILLMER: That is true.

7 CHAIRMAN NELSON: But you didn't do that; is  
8 that correct?

9 MR. HILLMER: No, we did not.

10 If what Northern is saying is true, that is  
11 correct.

12 CHAIRMAN NELSON: Understand. Understand. That  
13 may be all the questions I have for you. But just hang  
14 tight.

15 And so, Ms. Edwards, there's been some  
16 discussion in your Briefs about the position the  
17 Commission took in NG11-001. And there was a hearing on  
18 March 8, 2011, that from which an Order came out.

19 In response to Commission questions at that  
20 hearing, PUC Staff clearly stated that it would be  
21 Northern's responsibility to continue to provide gas  
22 following 2017 to the farm tap customers.

23 Is that still Staff's position?

24 MS. EDWARDS: I wasn't here in 2011. I'm sorry.  
25 Thank you, Commissioner. I wasn't here in 2011 so I

1 don't know exactly what went on as far as data requests  
2 behind the scene. But by responsibility they might have  
3 interpreted it as responsibility to find a subsidiary or  
4 another company who could legally not in contradiction to  
5 FERC Order 636 provide service. Maybe a subsidiary as  
6 Peoples did originally, but not being here in 2011, I  
7 can't be sure.

8 I think what Staff was working under the  
9 assumption was that there would always be a utility  
10 willing to come forward and do this and that the parties  
11 had made sure that was the case.

12 CHAIRMAN NELSON: Did you listen to the  
13 recording of that hearing? Have you listened to that?

14 MS. EDWARDS: I did. It's been a while, but I  
15 did listen to it.

16 CHAIRMAN NELSON: I just listened to it within  
17 the last couple of days, and it seemed to me that  
18 Commission's questions to Staff at that point were pretty  
19 pointed in that we wanted to be assured of who would  
20 continue providing this service after 2017, and the clear  
21 response was from Staff at that point was that it would  
22 be Northern's responsibility.

23 But I appreciate your clarification at this  
24 point.

25 If we could go to Staff's Brief, page 6 -- and I

1 should say Staff's Reply Brief. I apologize. Page 6,  
2 Section B, Paragraph 1. You've made the statement, and  
3 you reiterated it this morning, that Northwestern Energy  
4 is a public utility as it relates to the farm taps today.

5 That is your position; correct?

6 MS. EDWARDS: It is. If they have the ability  
7 to shut off gas service, then by our definition of  
8 controlling service, if you can shut it off, if you can  
9 close the valve and shut off gas service, I think it  
10 would be difficult to argue that you didn't have control  
11 over gas service to an end user.

12 Also when I looked at the contracts submitted by  
13 the parties I believe there was a statement in the  
14 agreement that said Peoples would serve as a public  
15 utility, and that was assigned to NorthWestern.

16 CHAIRMAN NELSON: So is it your opinion that  
17 SDCL 49-34A-2.1 applies to Northwestern Energy today?

18 MS. EDWARDS: Yes, it is.

19 CHAIRMAN NELSON: And why would that not apply  
20 then in 2018 to Northwestern Energy?

21 MS. EDWARDS: There's an argument to be made,  
22 and it would be the burden of NorthWestern to advance  
23 that argument that when the Commission approved a tariff  
24 with an end date that that was understood to be allowing  
25 them to discontinue service. But that would be

1 NorthWestern's burden.

2 CHAIRMAN NELSON: In Staff's initial Brief there  
3 was considerable amount of talk about the yellow portion  
4 of the line, the line going from the odorizer to the farm  
5 itself.

6 And forgive me if I'm interpreting this wrong,  
7 but I got the impression that Staff's position in that  
8 initial Brief really denigrated the ability of the  
9 farmer, the customer, to maintain their own line. There  
10 was considerable question, I think, about whether those  
11 customers could take care of their own line.

12 And we've heard, since that, significant public  
13 comment from those customers talking about the thousands  
14 of dollars that they have invested in upgrading their  
15 lines, taking care of their lines, doing that type of  
16 thing.

17 Does any of that public comment that we have  
18 received since your initial Brief, does any of that  
19 change your opinion as to the ability of these farmers to  
20 take care of their own lines?

21 MS. EDWARDS: I'm certain that some of them are  
22 maintaining excellent facilities. Some of their  
23 facilities may be even better than some of our operator's  
24 facilities. And I'm sure some of them are doing an  
25 excellent job.

1           But I know in other jurisdictions there have  
2       been instances where lives have been lost because maybe  
3       somebody who didn't know where that line was, hit that  
4       line while they were tilling or putting in tile.

5           And I know we've had consumer issues in the past  
6       where somebody had a leak for a year and didn't know it  
7       because they simply don't have the technology at their  
8       disposal to determine whether or not they're losing gas  
9       between their tap and where they're receiving it.

10          So if there's one tap out there that's not being  
11       monitored and not being watched and there's an explosion,  
12       that's too many. I'm very, very grateful that so many  
13       consumers are taking such great care of their lines.

14          CHAIRMAN NELSON: So today in your presentation  
15       you used the word "unfortunately" as it relates to  
16       whether or not you may have the ability to inspect that  
17       line. You said unfortunately you don't have the ability  
18       to inspect that line for safety.

19          So I take it to mean that Staff's position is  
20       that you wish you did have the ability to inspect that  
21       line. Is that accurate?

22          MS. EDWARDS: From a resources standpoint it  
23       would be very difficult to inspect all of those lines,  
24       but from a safety standpoint and from a taking that  
25       burden off the customer to know that they don't have a

1 leak or to have some assurance that they don't have a  
2 leak and to help make sure their line is locatable when  
3 they're farming every spring, we would love to be able to  
4 help them out, and to some extent that's regrettable.

5 CHAIRMAN NELSON: Okay. So help me understand  
6 how that differs from the tens of thousands of private  
7 propane lines that are scattered across this state that  
8 are not inspected that customers themselves take  
9 responsibility for.

10 What's the difference? Is there one?

11 MS. EDWARDS: We don't have any jurisdictional  
12 propane in the state so I'd have to ask Boice for sure.

13 CHAIRMAN NELSON: I'm talking about the safety  
14 aspect of it. I mean, you're talking about that we  
15 wished we had the ability to inspect these farmer-owned  
16 lines to maintain and make sure that they are safe.

17 So does that also then carry over to the private  
18 propane lines? I'm just trying to figure out where the  
19 line is here so far as what your position is with regard  
20 to safety.

21 MR. HILLMER: Can I help her answer that  
22 question?

23 CHAIRMAN NELSON: Absolutely.

24 MR. HILLMER: I think the difference here is  
25 that in a propane typically the propane tank's within 50,

1 100 foot of the house. So you're talking about a 50 foot  
2 of downstream line. Where in this circumstance these  
3 farm taps can be a quarter mile, half a mile out in the  
4 middle of a farm field serving this residence.

5 So there's a lot more footage of pipe there that  
6 is not being inspected and a lot more places for things  
7 to go wrong, I guess.

8 CHAIRMAN NELSON: Thank you.

9 Are these meters -- they're self-read monthly or  
10 more often or less often?

11 MS. EDWARDS: My understanding -- and  
12 NorthWestern would probably be the better one to answer  
13 this, but just dealing with consumer issues in the past  
14 is that NorthWestern's going out there once a year and  
15 doing something of a true-up and hoping that the customer  
16 is reading it more accurately and has not always been the  
17 case. But NorthWestern has been going out and trueing it  
18 up once a year.

19 CHAIRMAN NELSON: But it would be the  
20 expectation that the customer's reading it monthly and  
21 self-reporting monthly?

22 MS. EDWARDS: Yes.

23 CHAIRMAN NELSON: So if there is a leak and the  
24 customer is doing as they're supposed to, they should be  
25 able to detect that within 30 days or less? Is that

1 accurate?

2 MS. EDWARDS: If there was a large enough leak,  
3 yes, they should. They would notice a substantial  
4 increase in their gas bill. If it was a small leak,  
5 maybe, maybe not.

6 CHAIRMAN NELSON: Okay. I think that's all the  
7 questions I have for Staff at this point.

8 COMMISSIONER FIEGEN: Yes. I do have a question  
9 of Pipeline Safety Staff.

10 In 2014 it appears that you inspected the farm  
11 taps, which that area now is being considered interstate  
12 according to Northern?

13 MR. HILLMER: I believe that is correct.  
14 They're saying it's nonjurisdictional.

15 COMMISSIONER FIEGEN: So that would be  
16 interstate?

17 MR. HILLMER: Yes.

18 COMMISSIONER FIEGEN: Help me understand as a  
19 Commissioner why that is interstate? Because it's not,  
20 you know, going from state to state. It's coming to a  
21 farm tap.

22 MR. HILLMER: It's kind of -- maybe that's a  
23 question better answered by Northern, but it's coming off  
24 of their interstate line. And to the point of the  
25 valves, I know we inspect other utilities, and some of

1 the other utilities they've basically taken it over to  
2 the valves off of the interstate line so that they own  
3 everything after that. But that's obviously not the  
4 circumstances here.

5 So I don't know how -- you know, I don't know  
6 where -- I think there's a point there where we're trying  
7 to figure out where their jurisdiction, Northern Natural,  
8 ends and where NorthWestern ends, and that's the real  
9 question here.

10 COMMISSIONER FIEGEN: Do you figure that with  
11 PHMSA? I mean, are you working with PHMSA on that?

12 MR. HILLMER: Mary has been in contact with them  
13 quite a bit. She's been in contact with PHMSA and FERC,  
14 and she has not gotten a straight answer one way or the  
15 other.

16 Like the question she posed was if these farm  
17 taps are all jurisdictional, why isn't PHMSA coming out  
18 with a ruling that all farm taps are jurisdictional.  
19 Which they're not at this time.

20 COMMISSIONER FIEGEN: Thank you.

21 COMMISSIONER HANSON: I have one for you as  
22 well, Mr. Hillmer. Thank you.

23 MR. HILLMER: Yes, sir.

24 COMMISSIONER HANSON: I'm assuming you're  
25 concerned about the safety issue with farm taps.

1 MR. HILLMER: That is correct.

2 COMMISSIONER HANSON: How many farm taps, if  
3 any, does the PUC, do you, inspect at the present time?

4 MR. HILLMER: I would say there's probably about  
5 100 of them.

6 COMMISSIONER HANSON: And are there challenges  
7 with those farm taps? Are there safety issues with those  
8 farm taps that we have run into?

9 MR. HILLMER: You've got the same safety issues  
10 as you would with a border station. You want to make  
11 sure that their reliefs are set correctly, their regs are  
12 working properly.

13 I mean, it's some of the same exact concerns  
14 that you would have with a border station in a town. I  
15 mean, you're checking the same thing.

16 COMMISSIONER HANSON: Excuse me. Go ahead.

17 MR. HILLMER: And it might be a higher level  
18 risk because you're coming off of a transmission line  
19 that's serving, I don't know, 6, 800 pounds, whatever it  
20 is, and they're cutting it down to 10 pounds. So if that  
21 reg station isn't working, you're blowing 800 pounds up  
22 against a residential customer's service, possibly.

23 COMMISSIONER HANSON: Have there been some  
24 challenges that you're aware of in South Dakota with the  
25 farm taps? Is there a history of challenges?

1           MR. HILLMER: Last year when I was doing an  
2 audit, I mean, I did find some that were not set  
3 properly, not where they said they were set. They've got  
4 to keep a book where each one of them's set. Not  
5 everyone's set the same.

6           So yeah. There are challenges. Or maybe the  
7 relief isn't popping off where it's supposed to. Yes,  
8 there are challenges there.

9           COMMISSIONER HANSON: Perhaps you've answered  
10 this in the question with Commissioner Fiegen, but I am  
11 curious on the farm taps. Is there a requirement from  
12 PHMSA that you are aware of that farm taps must be  
13 inspected?

14          MR. HILLMER: There's kind of a muddy water  
15 there.

16          PHMSA says yes, we should be inspecting farm  
17 taps. But then operators are saying that FERC has  
18 jurisdiction over them; therefore, they're not  
19 inspectable by PHMSA or us.

20          COMMISSIONER HANSON: Who do we take our orders  
21 from?

22          MR. HILLMER: Me as a gas pipeline safety? All  
23 of you. But PHMSA is my driver, I guess, in the safety  
24 end of it. That's where I take my orders from.

25          COMMISSIONER HANSON: I'm being inclusive when I

1 say "we."

2 MS. EDWARDS: Mr. Commissioner, could I add on  
3 to that?

4 COMMISSIONER HANSON: Certainly.

5 MS. EDWARDS: Just to clarify, when he said they  
6 inspect 100 farm taps, many of those are off of  
7 intrastate transmission lines such as SDIP. So the  
8 intrastate and interstate jurisdictional issue is not  
9 present, and it's a lot more clear for Pipeline Safety  
10 staff.

11 COMMISSIONER HANSON: Thank you. I was making  
12 that assumption, but I appreciate you taking me away from  
13 the assumption.

14 Thank you. Appreciate it.

15 I do have questions of Ms. Edwards.

16 First of all, and correct me if my premises are  
17 inaccurate, but from the information that we have here  
18 and what you've stated today, it's your belief that  
19 NorthWestern is the utility and it's also your belief  
20 that that comes under South Dakota Codified Law and it  
21 must receive PUC permission to withdraw.

22 And as I understand from your filings, you  
23 believe that the Public Utilities Commission has already  
24 given that permission under NG11-001. Is that a correct  
25 premise so far?

1 MS. EDWARDS: I certainly believe that there's  
2 an argument to be made that they did, but it's not a  
3 clear argument. No.

4 COMMISSIONER HANSON: Okay. My question is,  
5 similar to the Legislature, cannot the PUC subsequent to  
6 one action make a change in an action that it took, a  
7 previous action that it took?

8 In other words, can we not in a present or  
9 future docket rule that in NG11-001 that they no longer  
10 have that permission?

11 MS. EDWARDS: Absolutely. The Commission is  
12 never bound by precedent of past decisions. And I would  
13 certainly encourage NorthWestern not to rely on an  
14 assumption that the Commission already made that  
15 decision. If they feel that's the case, they should  
16 bring a declaratory ruling to ensure that's the case, and  
17 that is what the Commission believes.

18 COMMISSIONER HANSON: Thank you. And  
19 argumentative question here.

20 The Commission, recognizing that Northwestern  
21 Energy is a utility at the present time, can we not rule  
22 that they are prohibited from shutting off the customers,  
23 and by that ruling they would continue to be -- because  
24 excuse me.

25 If their position as a public utility ends when

1     they shut off the consumer, if we prohibit them from  
2     shutting off the consumer, do they not continue to be a  
3     public utility?

4             MS. EDWARDS: I guess I don't want to be  
5     argumentative, but that question assumes they have the  
6     ability to turn the valve and shut off and that that's  
7     their obligation. Right now I'm not sure that's the  
8     case.

9             But without that -- barring that assumption, I  
10    would agree with your statement that you have the ability  
11    to force them to continue doing that.

12            COMMISSIONER HANSON: Thank you.

13            Thank you, Mr. Chairman.

14            MR. DE HUECK: Advisors, are there any  
15    questions?

16            MR. RISLOV: No.

17            MR. DE HUECK: If you don't mind, I had a  
18    question I'd like to ask Ms. Edwards.

19            What type of service do these farm taps fall  
20    into? Is this the retail sale of gas? Is it the  
21    wholesale sale of gas, or is this some other category of  
22    the sale of gas?

23            How do you characterize this sale of gas?

24            MS. EDWARDS: This is the retail sale of gas,  
25    and it's covered by their tariff. I believe Section 1.8?

1           1.1 of NorthWestern's tariff, which establishes  
2 the general rate.

3           MR. DE HUECK: Could you elaborate on why it's  
4 the retail sale? What makes it retail?

5           MS. EDWARDS: Because it's sale of gas to an end  
6 user, would be my position.

7           MR. DE HUECK: With that, we'll turn it over to  
8 Northern and let you make your oral argument.

9           MR. PORTER: Thank you.

10           Good morning. As I said earlier, my name is  
11 Rick Porter. With me is Jim Talcott and Laura Demman.  
12 Appreciate the opportunity.

13           First of all, I notice Ms. Edwards stood. Do  
14 you have a preference whether we stand or sit?

15           Okay. I didn't want to be disrespectful. If  
16 it's okay, I'll sit.

17           Thanks for allowing us the opportunity to  
18 address these issues this morning. Our goal has been and  
19 continues to be to ensure that a common understanding of  
20 what will happen if no one provides utility service to  
21 the 195 or nearly 200 farm tap customers that received  
22 notice their utility service will end as of December 31,  
23 2017.

24           Northern was up here and talked to the  
25 Commissioners and Staff in 2015 and again in 2016. We've

1     also provided quite a bit of information, two Briefs in  
2     this proceeding. We've tried to be as helpful as we can  
3     be in understanding the complexities of the issues. Many  
4     of the issues already discussed here today as far as the  
5     difference between retail and wholesale, first sale of  
6     gas, those are issues that aren't dealt with every day  
7     and are important to fully understand the jurisdictional  
8     lines that are drawn here.

9             We realized early on as we started to deal with  
10    this in South Dakota that there was no common view in  
11    South Dakota regarding the responsibility of service to  
12    farm tap customers, responsibility of utility service to  
13    customers.

14            We believe the historical facts are very  
15    important, and that's what we've tried to bring to the  
16    Commission is the understanding of the history and the  
17    corporate structure that has been in place. We've  
18    repeatedly -- Northern's repeatedly made clear that if  
19    the current utility, NorthWestern, terminates service  
20    effective December 31, 2017, the obligation to provide  
21    utility service does not default to Northern.

22            That is not a point that we're trying to say not  
23    us. We're trying to make sure that everybody understands  
24    the jurisdiction, understands that -- the two agreements  
25    that I'll talk about later, but the two agreements and

1 the importance of those agreements that are part of the  
2 history of farm taps in South Dakota.

3 Our persistence has been driven by our concern  
4 that if awareness is not brought to these issues, farm  
5 tap customers will be without utility service. These are  
6 farm tap customers that have enjoyed the convenience of  
7 natural gas for 50 to 60 years.

8 To allow farm tap service to be discontinued --  
9 and I take Counsel's point that this isn't necessarily  
10 about discontinuation, but we can see what the end path  
11 is. To allow the farm tap service to be discontinued  
12 when there's an existing regulated utility  
13 infrastructure, as we're finding out and we should have  
14 expected, is difficult for farm tap customers to  
15 understand.

16 As a -- this might be a little unconventional,  
17 but what I'm going to do with the time that I have this  
18 morning, I'm going to start with what we recommend and  
19 we, Northern Natural Gas, and then I'll get into the  
20 arguments or the questions that have been raised by  
21 Commission Staff.

22 I tried to as preparing for these comments think  
23 about the complexities of the issues and what would be  
24 most beneficial to the Commission, knowing that a fairly  
25 sizable amount of information has been received, detailed

1 information, in a very short period of time, the Briefs,  
2 and knowing that a decision on the declaratory ruling  
3 statute needs to be made quickly. So hopefully starting  
4 with the recommendation will be helpful.

5 Starting with Northern believes that  
6 NorthWestern is a public utility now and will remain one  
7 post-December 31, 2017. NorthWestern should have  
8 continuing service obligations. And we believe that in  
9 Docket No. NG11-001 the Commission asked the question to  
10 Staff, as we've already discussed this morning, about  
11 what happens after December 31, 2017?

12 I think Chairman mentioned that the reference  
13 was made that that would be Northern's. We tried to make  
14 clear we fundamentally disagree with that. We don't  
15 think the law or the facts support that. I think Staff  
16 is right to begin to come around on that issue.

17 We do not see anywhere in that Order that it  
18 says that Northwestern Energy's public utility obligation  
19 ends. So need to distinguish -- and we'll talk further  
20 about that, but the distinction between what a public  
21 utilities obligation is and what an agreement to provide  
22 service -- as the 1987 Agreement, what that Agreement  
23 means different than the Northwestern Energy's statutory  
24 obligations.

25 Okay. So what we recommend is the Commission --

1     since there's a lot of hair on this issue, we recommend  
2     that the Commission sits down with NorthWestern and works  
3     out an arrangement that is satisfactory to the  
4     Commission, satisfactory to NorthWestern, and that allows  
5     service to continue. The bottom line is we think service  
6     ought to continue to folks that have had service for 50  
7     to 60 years.

8             Assuming -- so what would that deal look like?  
9     It may be -- you may be sitting there -- it may be  
10    presumptuous, first of all, for me to suggest that the  
11    Commission and NorthWestern ought to work out a deal.  
12    And I apologize. I don't mean it that way. But I just  
13    think that given what I'm going to describe and what we  
14    see, that's the most practical and probably the best path  
15    forward.

16            An arrangement would -- of that nature would  
17    include NorthWestern providing the utility service to the  
18    farm tap customers. It would also allow NorthWestern to  
19    recover the costs and earn a fair regulated return for  
20    doing so. In the same manner that other utilities have  
21    their operating costs and to the extent they own the  
22    plant, they have that in their rates as well.

23            I understand that there's the existing rates and  
24    whether it's rolled in rates or whether, until their next  
25    rate case, there's regulatory asset and liability,

1 accounting, all of those things would need to be worked  
2 out. Again, I'm not suggesting that it's an easy,  
3 straightforward process.

4 The point is a fairer arrangement would make it  
5 economically worthwhile for NorthWestern. Farm tap  
6 customers would continue to get gas utility service. The  
7 public and the Commission could be assured utility  
8 service is being safely provided by a sophisticated  
9 utility. And from a customer service perspective there  
10 would be continuity of service from the existing  
11 provider.

12 You might ask, along the presumptuous path, who  
13 are you to come in here and make this recommendation?  
14 Fair question. Fair question.

15 However, the bottom line is the Commission and  
16 NorthWestern cannot -- or to the extent they cannot  
17 reach an agreement, it is likely that service as of  
18 December 31, 2017, will be terminated. Because the other  
19 options available to the Commission will be more  
20 expensive and time-consuming.

21 For instance, as demonstrated in this  
22 proceeding, in 1985 InterNorth transferred the assets and  
23 liabilities of Peoples Natural Gas to UtiliCorp. So as  
24 of 1985 UtiliCorp owned Peoples and owned the obligation  
25 and the responsibility to provide farm tap service in the

1 State of South Dakota. That's all covered in our Brief.  
2 There's a diagram in the Brief. I'd refer you to that.

3 So there have been transfers. UtiliCorp  
4 transferred those assets to different companies after  
5 1985. They've transferred the Minnesota and South Dakota  
6 assets, originally transferred that to MERC. They've  
7 transferred some of the other assets to other utilities.  
8 So as of 1985 it was all -- Peoples was owned by  
9 UtiliCorp.

10 If, as Staff suggested at least in its initial  
11 Brief, Northwestern Energy has no obligation to serve  
12 after termination, that would mean there are two  
13 successors that the Commission could look to, and that  
14 would be Aquila and MERC. So UtiliCorp became Aquila  
15 through a change in name. Aquila then sold the assets  
16 and liabilities to MERC. And then MERC and NorthWestern  
17 entered into the arrangement over the Milbank sale.

18 The point being if a deal is not worked out and  
19 if the Commission would decide that Northwestern Energy  
20 doesn't have a utility obligation -- again, we think that  
21 would not be the right decision, but if that was the  
22 Commission's decision, the Commission would have a choice  
23 of pursuing Aquila or MERC or allowing service to be  
24 discontinued.

25 These aren't great options. Discontinuing

1 service would deprive service to customers currently  
2 receiving utility service. And, as I have mentioned,  
3 they've been receiving service for 50 or 60 years. This  
4 would do, in our view, a disservice to the public  
5 interest, the very interest the Commission is obligated  
6 to uphold.

7           If the Commission decides farm tap customers  
8 should continue to receive utility service, the only  
9 option under that circumstance would be to pursue MERC  
10 and Aquila. That would be a difficult process, I  
11 believe. MERC and Aquila, to my knowledge, neither of  
12 which are subject to the Commission's jurisdiction. I  
13 think that would be an expensive and time-consuming  
14 effort, the certainty of which would certainly be in  
15 doubt.

16           So, in summary, Northern would respectfully  
17 submit that the choices would be, one, find that  
18 Northwestern Energy is the utility now, which I believe  
19 there's agreement in the briefing on that, and after  
20 December 31, 2017, that they continue to be and they have  
21 the obligation to provide farm it happen service --  
22 utility farm tap service.

23           If that's not the choice the Commission makes,  
24 then I think the decision -- the best option would be to  
25 work out an arrangement with Northwestern Energy to

1 provide that service.

2           There are two important issues, takeaway issues,  
3 that we hit in our Brief that I would just like to  
4 summarize. Because they are two -- there are two  
5 agreements that are important here. One is the 1985  
6 Agreement that I mentioned between InterNorth and  
7 UtiliCorp that transferred all the assets and liabilities  
8 and obligations of Peoples to UtiliCorp.

9           The sale from InterNorth to UtiliCorp expressly  
10 required UtiliCorp to assume the obligations with regard  
11 to the farm taps in South Dakota.

12           The second agreement is referred to as the 1987  
13 Agreement. And that was an agreement between Northern  
14 and Peoples Natural Gas. It was entered into in 1987 so  
15 almost two years after the assets and liabilities had  
16 already transferred.

17           The 1987 Agreement was merely to write down on  
18 paper what had been a well settled practice between two  
19 affiliates that were commonly owned for a long time.  
20 Since 1930. So the guys in the field knew how things  
21 operated. They knew who provided utility service. And  
22 they knew who provided the interstate service.

23           After the sale in 1985 it was thought best to  
24 identify those obligations and to put them down on paper.  
25 That's the import of the 1987 Agreement.

1           Staff in its Reply Brief agreed that the first  
2 agreement I mentioned, the 1985 Agreement, transferred  
3 all the assets to Peoples Natural Gas. So there was some  
4 disagreement. It just from a legal and factual  
5 perspective, once that liability was transferred to  
6 UtiliCorp, there's not a legal or any reasonable factual  
7 point where that reverts to Northern somehow. And that's  
8 the point that we've been trying to make. I think we've  
9 made it now and had the opportunity in briefing to do so  
10 and appreciate that opportunity to do that.

11           The last thing I want to do is just reference --  
12 or not reference but address, excuse me, the questions  
13 that have been posed in this proceeding. And those  
14 questions are does the Commission have jurisdiction over  
15 the utility providing the farm tap service? Which  
16 entity, NorthWestern or Northern, is a public utility  
17 with regard to the farm tap service? And are the farm  
18 taps subject to state jurisdiction for pipeline safety?

19           The first question is does the Commission have  
20 jurisdiction over the utility providing the farm tap  
21 service. As outlined in our briefing, the answer is  
22 clearly yes. Both NNG, Northern, and Staff agree that  
23 NorthWestern is a gas utility subject to the Commission's  
24 exclusive jurisdiction under Section 49-34A.

25           Northwestern Energy operates, maintains, and

1 controls equipment for the purpose of providing gas  
2 service to the public in South Dakota. NorthWestern  
3 squarely fits this definition of public utility.

4 Chapter 34A-4 of the South Dakota Statutes  
5 require the Commission -- require the Commission to  
6 regulate every public utility.

7 The second question is which entity,  
8 NorthWestern Energy or Northern, is a public utility with  
9 regard to farm tap customers. The answer is NorthWestern  
10 Energy is a public utility, as we have discussed.  
11 Northern is not.

12 There is agreement between Staff, Northern, and  
13 NorthWestern that Northern is not a public utility.  
14 NorthWestern Energy is a public utility today, and, as I  
15 mentioned earlier, we believe will be after December 31,  
16 2017. However, that's a question that has come up in  
17 this proceeding.

18 I would ask how can such a large gas and  
19 electric utility say it's not a gas utility for the  
20 purpose of serving 195 farm tap customers but it is a  
21 public utility for the purposes of serving other farm tap  
22 customers that it had served prior to the MERC contract  
23 and for the purpose of serving 60 communities and 86,000  
24 customers in the State of South Dakota?

25 Based on the statutory definition of public

1 utility referenced earlier, as well as the size and  
2 extent of Northwestern Energy's South Dakota service  
3 territory, it would be reasonable for this Commission, in  
4 Northern's view, to conclude NorthWestern is a public  
5 utility even after December 31, 2017.

6 As an aside, it is interesting to note the same  
7 1987 Agreement Northwestern Energy is citing to say the  
8 obligation terminates has been partially assigned to MERC  
9 in Minnesota and Black Hills in Iowa. NorthWestern is  
10 the only utility proposing to terminate utility service  
11 to farm tap services -- or to farm taps.

12 All others, including MidAmerican, serve farm  
13 tap customers and will continue to serve farm tap  
14 customers.

15 NorthWestern argues that it only agreed with  
16 MERC to take assignment of farm taps until December 31,  
17 2017. The Commission should not view NorthWestern's  
18 commitment so narrowly. It's important to keep in mind  
19 that NorthWestern was in the process of buying the  
20 Milbank Pipeline from Northern in 2011, but in order to  
21 do so it had to deal with MERC because MERC had service  
22 off of that Milbank line.

23 To take care of MERC and purchase the Milbank  
24 Pipeline from Northern, a deal had to be reached, and it  
25 was. The deal was that MERC would agree to take service

1 from Northwestern Energy, and Northwestern Energy had to  
2 take assignment of the farm tap.

3 Part of the value proposition for NorthWestern  
4 was taking assignment of the farm tap service obligation.  
5 It's not clear in the record where the communications  
6 broke down in the Milbank approval process between MERC  
7 and NorthWestern.

8 I think the Commission asked the right question,  
9 and clearly the wrong answer was provided. But given  
10 this miscommunication, I would submit to you that the  
11 farm tap customers should not lose service because of it.  
12 Farm tap utility service shouldn't be abandoned because  
13 of a misunderstanding.

14 The third question was are the farm taps subject  
15 to state jurisdiction for pipeline safety? Unequivocally  
16 in regard to Northern facilities -- and we've made  
17 reference to the exhibit that we had attached to our  
18 Brief, and that's the purpose that that was provided --  
19 the answer is no. Northern facilities are subject to  
20 state pipeline -- or no Northern facilities subject to  
21 state pipeline safety inspection.

22 Because the Northern facilities are used to  
23 transport natural gas in interstate commerce, does not  
24 involve retail, but in interstate commerce, and the  
25 Northern facilities are regulated by FERC, they are

1 subject to the exclusive safety jurisdiction of PHMSA.

2 Any attempt by the South Dakota Public Utilities  
3 Commission to regulate the Northern facilities -- so  
4 Northern facilities being upstream of what was referred  
5 to as the three-way valve, would be barred by the  
6 United States Constitution and the express provisions of  
7 the Pipeline Safety Act at 49 U.S.C. Section 60104.

8 In summary, the Commission has jurisdiction over  
9 farm tap utility service as well as the utility providing  
10 it. Today that utility is Northwestern Energy.  
11 Northwestern Energy is a public utility. Northern is  
12 not. Northern is subject to the exclusive jurisdiction  
13 of FERC and for pipeline safety for PHMSA. And  
14 Northern's facilities, as I said, are not subject to  
15 state pipeline safety inspection.

16 Let me end by, first of all, again thanking you  
17 for the time and your attention but the time to address  
18 these questions. I appreciate the proceeding being  
19 initiated to allow parties to provide information that at  
20 the end of the day hopefully is helpful in the  
21 Commission's deliberative process.

22 I would like to conclude with what I believe is  
23 a real life question but one which I pose today  
24 rhetorically for your consideration as you deliberate.  
25 Is the public interest being served if on December 31,

1 2017, 195 rural customers that have received gas utility  
2 service on a continuous basis for 50 to 60 years abruptly  
3 lose service, not because of anything they did but  
4 because no South Dakota utility had the obligation to  
5 serve?

6 And, with that, I'd be happy to answer  
7 questions.

8 CHAIRMAN NELSON: And I do have questions.

9 First of all, I want to thank you for the  
10 considerable amount of time that you spent in your Brief  
11 talking about the history. I think that's key to all of  
12 this.

13 But it also struck me that, for the most part,  
14 in your Briefs history to you all starts in 1985. And I  
15 think the history of this goes back much sooner than  
16 that. So I want to try to fill in some gaps in that  
17 history between really the initiation of building a  
18 pipeline in 1985 and try to fill in some gaps.

19 And so my initial questions are going to revolve  
20 around the easement between Northern and a number of the  
21 landowners. And I'm going to use the one that Staff put  
22 on as an attachment that you all used as an attachment in  
23 your last Brief to us because I think that's  
24 representative.

25 In the first paragraph the easement seeks to

1 find what is being done here, and it talks about a right,  
2 privilege, an easement to construct, maintain, and  
3 operate pipelines and impertinences thereto over and  
4 through the following the described lands.

5 And so you would agree, would you, that that's  
6 what Northern was seeking from the landowners? Is that  
7 correct?

8 MR. PORTER: That is correct.

9 CHAIRMAN NELSON: The second thing that I think  
10 is important in the easement for the history of this is  
11 how long was Northern seeking this right? And in the  
12 second paragraph it spells that out.

13 It says To have and to hold -- that almost  
14 sounds permanent -- so long as such pipelines and  
15 impertinences thereto shall be maintained -- okay.  
16 That's a little bit less than forever -- together with  
17 the right of ingress to and egress from said premise for  
18 the purposes of constructing, inspecting, repairing,  
19 maintaining, and replacing the property of the grantee  
20 located thereon or the removal thereof in whole or in  
21 part.

22 And so would it be accurate that the expectation  
23 is that this easement would last as long as Northern  
24 maintains and operates the pipeline? Is that correct?

25 MR. PORTER: That's correct.

1           CHAIRMAN NELSON: And so then we get to the  
2 third portion of what -- in exchange for this, what could  
3 be a forever commitment on the part of the landowner,  
4 what does the landowner get in return for that?

5           And, obviously, in the first paragraph it talks  
6 about some monetary compensation, and if you're crossing  
7 a quarter section, the landowner got 160 bucks for a  
8 forever commitment.

9           Would you agree?

10          MR. PORTER: Yes.

11          CHAIRMAN NELSON: In the last set of paragraphs  
12 there are some additional compensation or agreements, if  
13 you will, that state As further consideration for this  
14 grant, the grantee herein agrees as follows. Number one,  
15 that it will bury all pipelines laid upon said land to a  
16 sufficient depth so as to not interfere with the  
17 cultivation of soil. Beneficial to both parties,  
18 obviously.

19          Second, that the grantor -- that it will pay to  
20 grantor any damages that may arise to growing crops,  
21 trees, shrubbery, fences, or buildings from the  
22 construction, maintenance, or operation of said  
23 pipelines. Okay. That makes sense. If you damage  
24 something, you're going to compensate for it.

25          Number three, that grantee will make or cause to

1 be made a tap at any gas pipeline constructed by grantee  
2 upon the above-described premises for the purpose of  
3 supplying gas to grantor. And I think we all have an  
4 understanding that the tap you're talking about there,  
5 you're going to make a hole in the pipe and provide  
6 the -- essentially in your picture, the blue portion.

7 Is that accurate?

8 MR. PORTER: Correct.

9 CHAIRMAN NELSON: And then that paragraph ends  
10 with the phrase "and gas to be taken under this provision  
11 shall be measured and furnished to the grantor at the  
12 rates and upon the terms as may be established by grantee  
13 or by any vendee of the grantee from time to time."

14 And so my question coming out of that last  
15 phrase is would you agree that per that language either  
16 Northern or Northern's vendee has a responsibility to  
17 provide gas to the grantor as long as the pipeline is  
18 operational? One of those two parties?

19 Is that correct?

20 MR. PORTER: Yes. Subject to knowing what  
21 furnish gas means.

22 CHAIRMAN NELSON: So let me ask you, what do  
23 you think that means to the farmer that granted the  
24 easement?

25 MR. PORTER: It means they're going to get gas.

1 That's exactly right.

2 That does not mean that Northern is selling the  
3 gas to them. And that's the distinction that I think is  
4 important. We have never sold the gas to the end user in  
5 the State of South Dakota.

6 CHAIRMAN NELSON: Understand. But in this  
7 phrase, this phrase leaves open the possibility of that  
8 or that if Northern chooses not to, that you will have  
9 the responsibility of finding a vendee to do that.

10 Is that accurate?

11 MR. PORTER: I agree with that.

12 CHAIRMAN NELSON: And so the landowner that  
13 signed these easements in the 1950s, would you agree that  
14 it was their expectation that for as long as that  
15 pipeline is operational they will have gas available to  
16 them?

17 MR. PORTER: Commissioner, I don't mean to hedge  
18 that, but I think -- I don't know what was in the  
19 person's mind signing this easement. We've got a lot of  
20 easements. Northern has a lot of easements with what we  
21 refer to as a farm tap provision in it that are not  
22 receiving gas. They've just never asked for it. They've  
23 never asked for a tap.

24 So I don't know what was in a particular  
25 landowner's mind at that time. I would think if they

1     were planning on asking for service, they were looking  
2     for access to the pipeline, and then arrangements would  
3     have to be made for the gas.

4             CHAIRMAN NELSON:   And that's fair.   I would  
5     agree with that.   You can't know what was in each  
6     person's mind 60 years ago.

7             So maybe the last question I've got from the  
8     actual easement is this:   Is it correct that it would  
9     violate the easement provisions if neither Northern nor  
10    Northern's vendee continued to provide gas?

11            MR. PORTER:   I would say no.   I don't think it  
12    does.

13            CHAIRMAN NELSON:   And please explain that.

14            MR. PORTER:   I will.   Thank you.

15            Northern's obligation -- as the law has changed  
16    over time, Northern's obligation is as a interstate  
17    pipeline.   We get gas to our farm tap facilities.   Farm  
18    tap facilities owned by us.   It is somebody else's  
19    responsibility, today Northwestern Energy's, to purchase  
20    the gas, nominate it on our pipeline for receipt, and  
21    then delivery at the delivery point.

22            It's not Northern's responsibility -- should, in  
23    this case, the utility refuse to do that job, it's not  
24    Northern's responsibility under this easement to do  
25    anything other than what it agreed to do, and that is to

1 make a tap available and furnish gas under the  
2 circumstances involved. And that would be somebody's got  
3 to nominate it. Somebody's got to buy it.

4 CHAIRMAN NELSON: Okay. So I understand your  
5 position and what you just said as it relates to Northern  
6 and particularly as it goes back to the FERC Order that  
7 Staff mentioned.

8 But the easement language has an "or" in it. It  
9 says Northern or a vendee of Northern. One or the other.  
10 And you've made the case, I think adequately so, that  
11 it's not Northern. It can't be.

12 But that to me leaves the only other option, and  
13 that is that Northern must have a vendee to provide gas  
14 to the landowner. Is that not correct?

15 MR. PORTER: The language that you're referring  
16 to, if I'm reading it correctly, says at the rates and  
17 upon the terms as may be established by grantee or any  
18 vendee of grantee from time to time.

19 I believe the way I read that provision may be a  
20 little bit different.

21 CHAIRMAN NELSON: Feel free.

22 MR. PORTER: To me what that is saying, it's  
23 referring to the rates and upon the terms that may be  
24 established by the vendee pursuant to somebody earlier  
25 referred to NorthWestern's Tariff, Section 1.1. The

1 terms of what that -- and the price of what that's being  
2 provided for is established by vendee.

3 I think the language earlier is what addresses  
4 Northern's obligation to make available.

5 CHAIRMAN NELSON: So is NorthWestern today your  
6 vendee?

7 MR. PORTER: We don't refer to them as a vendee  
8 in normal conversation, but under the language of this  
9 easement, I would say yes.

10 I would say I've never referred to them as a  
11 vendee.

12 CHAIRMAN NELSON: Understand. There's obviously  
13 language in here that we don't use so much anymore. But  
14 going back -- again, going back to the beginning of  
15 history, you would consider them to be your vendee today.

16 And so then I guess maybe the ultimate question  
17 is if they cease to be your vendee, do you have a  
18 responsibility for a replacement vendee under the  
19 language of the easement?

20 MR. PORTER: I do not think Northern Natural has  
21 an obligation to go out and get somebody under the terms  
22 of this easement.

23 CHAIRMAN NELSON: Let's go to your Brief,  
24 your initial Brief, page 5. And the last sentence on  
25 page 5 -- are you with me?

1 MR. PORTER: Not yet, sir.

2 Okay. I'm with you.

3 CHAIRMAN NELSON: Last sentence on page 5,  
4 Although the pipeline easement permitting the pipeline to  
5 be built across the landowner's property was granted to  
6 Northern, Peoples as a separate affiliate of Northern  
7 provided natural gas utility service to farm tap  
8 customers.

9 So my question is was Peoples your vendee per  
10 the language of the easement?

11 MR. PORTER: Yes. Again, I've never thought of  
12 them, but under the language -- the wording in the  
13 easement I would say that they're the vendee.

14 CHAIRMAN NELSON: Okay. So the document that is  
15 missing in all of this proceeding is where is the  
16 document that shows the rights, responsibilities,  
17 obligations, liabilities of Peoples at that point?

18 I mean, obviously Peoples and Northern were  
19 affiliate companies, but there had to be some document  
20 where Northern designated Peoples as the vendee per the  
21 language of the easement and what the rights,  
22 responsibilities, obligations, assets were at that time.  
23 Where is that?

24 MR. PORTER: I am not aware of a document as you  
25 described. What happened over time from the time that

1 Peoples was incorporated in 1930 was two affiliates  
2 worked together. Northern provided interstate  
3 transmission, the interstate service. Peoples provided  
4 the local retail service in Iowa, South Dakota,  
5 Minnesota, Kansas, all the states that Peoples was in.

6 They worked side by side at the town border  
7 stations or at facilities all over our system. They had  
8 a common ultimate owner.

9 I'm not aware of any document that lays out that  
10 a person for Peoples is going to do this and a person for  
11 Northern, the interstate transmission company's, going to  
12 do that. I was not aware of one. The only one I'm aware  
13 of is in 1987 where they went to the effort of laying  
14 that out.

15 We tried to supplement this board with a long  
16 time employee that was manager of the operations at that  
17 time, Keith Peterson. We included his Affidavit to  
18 support the historical practices. But I wish I had a  
19 document I could give you. There just isn't one.

20 CHAIRMAN NELSON: And you didn't bring  
21 Mr. Peterson with you today.

22 MR. PORTER: Did not.

23 CHAIRMAN NELSON: And I appreciate his attempt.  
24 His statements, obviously, were pretty vague that, yeah,  
25 I know, but beyond that they really weren't helpful in

1     answering the question that I want answered.

2             And ultimately we've talked a lot about what the  
3     1985 Agreement, what it transferred, but what I don't  
4     know is what did Peoples actually have to transfer?  
5     Okay. Because we don't know what Northern provided to  
6     Peoples. We don't know what that relationship was back  
7     in the 1950s. Okay.

8             MR. PORTER: Just let me try this.

9             CHAIRMAN NELSON: Certainly.

10            MR. PORTER: There are three three- to four-inch  
11     binders that I've come across during this process that  
12     document the InterNorth sale to UtiliCorp. So I didn't  
13     mean to suggest that there weren't any documents. And  
14     they identify assets. They identify easements. They  
15     identify the things that you would expect to see in an  
16     asset purchase agreement.

17            There's normal language of all of Peoples  
18     Natural Gas's assets and liabilities are being purchased.  
19     I just want to make sure -- I didn't mean to mislead you  
20     because there is that kind of documentation, but there is  
21     no document that says Joe that works for Peoples or Mary  
22     that works for Northern is going -- carries out these  
23     functions.

24            CHAIRMAN NELSON: Well, and I appreciate that.  
25     So let me ask a concrete question that may help you

1 understand where I'm trying to fill in. And I'm going to  
2 go back to the very helpful picture.

3 So I understand the blue. And I want to focus  
4 on the red. We've got the three-way valve, and we've got  
5 the odorizing can. Who paid for it initially, and who  
6 installed it?

7 MR. PORTER: Very good question. You asked that  
8 earlier, and it wasn't my time so I appreciate you asking  
9 it again. Not Northern.

10 So, again, I'm not trying to be evasive. We  
11 only know -- Northern only knows up to the end of the  
12 blue. We have all of those facilities on our -- on our  
13 books and records. We've received FERC certification to  
14 construct under our blanket certificate. When we have to  
15 remove a facility we get approval, and we specifically  
16 identify those facilities up to not including the  
17 three-way valve.

18 So the three-way valve which goes down into the  
19 mercaptan tank and then into the service line, we did  
20 identify these pictures the way we did, and it does say  
21 LDC. I believe, frankly, in my review you will see a  
22 mixture. So I'm not trying, again, to -- I'm just trying  
23 to be forthright.

24 Downstream of our facilities, I'm not sure. I  
25 would not -- I'm not qualified to say one way or the

1 other. I know I've seen it both ways.

2 CHAIRMAN NELSON: So just so I'm clear, you  
3 don't know who installed or who paid for the three-way  
4 valve or the odorizer can; is that correct?

5 MR. PORTER: Yeah.

6 CHAIRMAN NELSON: So Northern designated Peoples  
7 as your vendee, but you don't know as your vendee what  
8 they paid for or what they installed; is that correct?

9 MR. PORTER: As I sit here today for Northern  
10 Natural Gas, all those -- let's assume that Peoples did  
11 pay for that. I don't have any records that would  
12 indicate that.

13 CHAIRMAN NELSON: Okay.

14 MR. PORTER: So I don't have any way to verify.  
15 I can verify what Northern's paid for.

16 CHAIRMAN NELSON: Okay. So who owns those two  
17 pieces today?

18 MR. PORTER: I'm sorry. The --

19 CHAIRMAN NELSON: The three-way valve and the  
20 odorizer can.

21 MR. PORTER: That's what I was intending to  
22 address. Not sure. We thought it was as laid out in the  
23 pictures. Somebody could disagree with that and I  
24 wouldn't be able to verify that one way or the other. I  
25 know it is not Northern Natural Gas. So it is either the

1 end user, the farm tap owner, or the regulated utility.

2 CHAIRMAN NELSON: So we have -- we have a no  
3 man's land. Nobody wants to claim ownership of that. Is  
4 that accurate?

5 MR. PORTER: I believe that's accurate. Again,  
6 I know it's not Northern, but I don't know what the  
7 arrangement was between the utility and the farm tap  
8 owner.

9 CHAIRMAN NELSON: I appreciate your patience  
10 with me answering those questions to get us through  
11 pre-'85. So let's look at the 1985 Agreement.

12 In the first whereas clause, Part B, it says as  
13 part of the sale UtiliCorp is assuming all of Peoples'  
14 rights, duty, liabilities, and obligations in regard to  
15 farm taps along Northern's pipeline system.

16 So is there a document that defines what those  
17 are?

18 I mean, I find it amazing we've got a two-page  
19 agreement to sell an entire company? There's got to be  
20 more.

21 MR. PORTER: Excuse me. No. There are three  
22 volumes of documents.

23 CHAIRMAN NELSON: Those are the three you were  
24 referring to?

25 MR. PORTER: Those are the three volumes.

1           CHAIRMAN NELSON: I'm going to regret asking the  
2 question, but go ahead.

3           MR. PORTER: InterNorth, Inc. selling the assets  
4 and liabilities of Peoples Natural Gas. So selling  
5 Peoples' assets and liabilities to UtiliCorp, Inc.

6           That was a large transaction with assets in six,  
7 seven, eight states from Kansas to Michigan, Minnesota,  
8 South Dakota, Nebraska, Iowa, Missouri.

9           CHAIRMAN NELSON: And in Section A it talks  
10 about the purchasing of the assets of Peoples. So was  
11 the three-way valve and the odorizer part of Peoples'  
12 assets to actually sell?

13          MR. PORTER: Again, sir, I don't -- I don't  
14 know. We don't have the -- I will say this, Chairman:  
15 Looking through those three volumes of documents that  
16 transferred the assets and liabilities, they don't get  
17 down into that level of detail. They don't get down into  
18 three-way valves or mercaptan tanks.

19          CHAIRMAN NELSON: And I can appreciate that.  
20 Obviously, what I'm struggling with is -- and you've said  
21 that Northern didn't install or pay for those.

22          MR. PORTER: Correct.

23          CHAIRMAN NELSON: But I don't have  
24 documentation -- I have your word. I don't have  
25 documentation of that. And so I'm trying to figure out

1 who actually owns those two pieces. And I'm trying to  
2 see the paper trail of from when they were installed to  
3 today and obviously that's -- I'm not going to find that.

4 MR. PORTER: I appreciate what you're asking.  
5 Northern's records -- I want to be clear. We do have  
6 records on what Northern owns and operates, what we have  
7 authority to construct and what we've over time  
8 abandoned. We have a -- we have documentation for that.

9 CHAIRMAN NELSON: Right.

10 MR. PORTER: I can't speak to Peoples or the  
11 utilities after that. I wish I could because I get your  
12 question, and I understand it.

13 CHAIRMAN NELSON: So let's go to 1987 Agreement.  
14 Section 5. "This agreement shall continue from its  
15 effective date first written above to and including  
16 May 31, 2017. Peoples may terminate this agreement  
17 effective any time after May 31, 2017, by providing six  
18 months' prior written notice to Northern."

19 And so it was everybody's understanding who  
20 signed off on this, including Northern, that Peoples  
21 could terminate the farm tap service in 2017; correct?

22 MR. PORTER: As far as I know, sir, everybody's  
23 understanding regarding this agreement as written in  
24 regards to the termination provision.

25 CHAIRMAN NELSON: And so with Northern

1 understanding that in 1987, Northern would have also  
2 understood that if Peoples exercised their option to  
3 cancel in 2017, that that would have left Northern  
4 without a vendee. Is that correct?

5 MR. PORTER: We believe it would have done two  
6 things in regards to the services that are identified  
7 under this 1987 Agreement.

8 There's meter reading. The vendee just from  
9 historical practices and what was transferred to  
10 UtiliCorp, did not have any obligation to read the meter  
11 and give that information to us on a monthly basis.

12 That is -- it makes sense for them to do that  
13 because they need that information anyway, but that would  
14 not be covered, nor would the obligation which is covered  
15 in the '87 Agreement, what do the parties do when a  
16 landowner that has a farm tap provision in their easement  
17 says I want service now and they give us written notice  
18 that they want service. That also needed to be addressed  
19 and is addressed in the '87 Agreement.

20 So those two provisions, if the '87 Agreement  
21 was terminated, those two would be unresolved, would need  
22 to be addressed.

23 CHAIRMAN NELSON: But you would also lose a  
24 vendee that actually provides the gas to the customer;  
25 correct?

1           MR. PORTER: I don't -- no, sir. I think that  
2 they have -- we would lose the vendee under this  
3 contract, but it's their obligation to do those things  
4 under the 1985 Agreement.

5           So I think they're still -- they may be able to  
6 terminate the '87 Agreement, but they can't terminate the  
7 obligation that they took as a result of the corporate  
8 purchase.

9           CHAIRMAN NELSON: In the same agreement, the  
10 '87 Agreement, under Section 1, Performance of Services,  
11 "Northern acknowledges that Peoples shall operate as a  
12 public utility."

13           But when we compare that to the Section 5  
14 termination clause, it appears that Northern acknowledged  
15 that a public utility could terminate service. Is that  
16 accurate?

17           MR. PORTER: No, sir. I don't think it is.

18           CHAIRMAN NELSON: Okay. Yeah.

19           MR. PORTER: I think it's more descriptive in  
20 paragraph 1, saying they're going to operate as a public  
21 utility. The only -- statute, law, is going to define  
22 whether somebody is, in fact, a public utility or not.

23           This agreement nor the -- nor would it change  
24 the status of Northwestern Energy in the transaction with  
25 MERC. It's got to be by statute.

1           CHAIRMAN NELSON: I think that's all the  
2 questions I've got at this point.

3           Thank you.

4           COMMISSIONER FIEGEN: Thank you, Adam.

5           First of all, certainly thank you for coming  
6 here, and thank you for meeting with us, et cetera,  
7 because public interest of farm taps is certainly  
8 important to the Commission and that we continue the  
9 service. Also getting accurate information and not  
10 pointing fingers and et cetera.

11           We just need to figure out this. And if the  
12 Commission can. This might, unfortunately, be a Circuit  
13 Court situation instead of a Commission situation.

14           When I read everything, and as you know there's  
15 lots of information here, I'm amazed that Northern signed  
16 a couple of agreements with distribution companies that  
17 they could actually terminate their service in 2017.  
18 Help me understand why Northern signed those agreements  
19 and then are here today and are baffled that a  
20 distribution company wants to exercise their agreement  
21 that it looks like Northern signed, to me, that they can  
22 terminate the service.

23           MR. PORTER: The words of the 1987 Agreement are  
24 what they are. And they can terminate that. We don't  
25 dispute that one bit.

1           We do -- we also believe that because the 1985  
2 transfer of the obligation to provide service, utility  
3 service, to farm tap customers, that even if they should  
4 under the terms of the '87 Agreement terminate it, that  
5 doesn't take away their obligation to serve.

6           COMMISSIONER FIEGEN: And that's your opinion,  
7 of course. Not maybe everybody's opinion but certainly  
8 yours.

9           MR. PORTER: If I may, I mean, it's also the  
10 effect of the corporate -- the 1985, the legal effect of  
11 the transfer of obligations and liabilities to UtiliCorp.

12          COMMISSIONER FIEGEN: In the 1985 -- if I  
13 remember right, in the 1985 Agreement that you signed,  
14 though, couldn't you at any time -- there was a certain  
15 date that you could actually pull away that vendorship  
16 distribution to those customers? You could terminate the  
17 agreement?

18          MR. PORTER: The 1987 Agreement allows Northern  
19 to --

20          COMMISSIONER FIEGEN: Terminate until '88 it  
21 was. Like July something of '88.

22          MR. PORTER: I think that's -- I can give you  
23 that answer.

24          COMMISSIONER FIEGEN: Something like that.

25          MR. PORTER: It says Northern may terminate this

1 agreement effective any time after July 20, 1988.

2 COMMISSIONER FIEGEN: Well, my husband's  
3 birthday. Good job.

4 MR. PORTER: Well, happy birthday to your  
5 husband.

6 COMMISSIONER FIEGEN: There has certainly been  
7 lots of discussion with the farm tap customers from  
8 NorthWestern and from Northern Natural Gas. It appears  
9 that when I look at -- when we met you, you had a -- you  
10 had a farm tap line, and it looks like so many of your  
11 customers are in MidAmerican's territory.

12 Do you know out of those 195 customers that  
13 you're talking about now -- and it looked like it was  
14 206 when I met you maybe, but it must have went down to  
15 195. How many of those are MidAmerican territory?

16 MR. PORTER: I'm not sure of where -- are you  
17 talking from an electric perspective? I didn't  
18 understand -- I'm a little confused by the terminology  
19 because I didn't think gas distribution companies had  
20 service territories.

21 COMMISSIONER FIEGEN: Well, okay. You're right.  
22 They don't have service territories. But their trucks  
23 might be closer than other trucks because that  
24 distribution company may actually be serving that  
25 community.

1           MR. PORTER: Uh-huh. I understand what you're  
2 saying.

3           I don't know. I would guess down in the  
4 southeast corner I believe that's a MidAmerican area --

5           COMMISSIONER FIEGEN: Have you talked to  
6 MidAmerican? I mean, that is actually -- you guys have  
7 at least a little bloodline relationship.

8           MR. PORTER: With MidAmerican?

9           COMMISSIONER FIEGEN: Yes.

10          MR. PORTER: No, I have not.

11          COMMISSIONER FIEGEN: Actually your parent  
12 company has.

13          MR. PORTER: That's right.

14          COMMISSIONER FIEGEN: And you guys have not  
15 talked to MidAmerican about providing farm tap service to  
16 South Dakota customers, although they're a distribution  
17 company and they might serve areas that are relatively to  
18 these farm taps?

19                 And I understand there's no service territory,  
20 but they're relatively close. You guys have not talked  
21 to MidAmerican?

22          MR. PORTER: I have not. I don't know if  
23 there's been -- certainly our owner knows that this issue  
24 is going on. I'm not aware of discussions. It is not  
25 something that they've probably given a lot of thought to

1 since it's not an issue. It's not their issue. And  
2 they're plenty happy dealing with their own issues let  
3 alone Northern's. And we don't see it as our obligation.

4 It's a good question. It might be worth  
5 talking about. But as far as I'm aware, nothing.

6 COMMISSIONER FIEGEN: Have you had the  
7 opportunity to talk to MERC?

8 MR PORTER: We have talked -- certainly we have  
9 talked to MERC in regards to farm taps in Minnesota. And  
10 those discussions are ongoing. They have the same issues  
11 that NorthWestern -- same agreement, 1987 Agreement, that  
12 they're looking at and the same 1985 Agreement.

13 We have sent them the Briefs in this proceeding  
14 so they would have them and so that they would know our  
15 arguments and what we believe is going on. So, yes, we  
16 have had discussions in that regard.

17 COMMISSIONER FIEGEN: You talked about -- in  
18 your oral argument you talked about other farm taps that  
19 you deal with in other states like Iowa, et cetera.  
20 Several, several states. And you pretty much have said  
21 that this is new that a distribution company would  
22 terminate -- is that what you said? Something like that,  
23 Greg?

24 MR. PORTER: Not remembering exactly what you're  
25 referring to, but I would say that we have never had this

1 issue with a LDC, a local distribution company, saying  
2 they're no longer -- you know, maybe the homeowner moves  
3 and they don't need the tap with abandoned farm taps  
4 that -- FERC jurisdictional facilities would abandon  
5 that.

6 So I just want to be clear. We've done that,  
7 but we've never had an issue where a regulating utility  
8 has just walked away and told us that they're not going  
9 to provide service.

10 COMMISSIONER FIEGEN: And when you talk about  
11 that, it appears that that was part of that Milbank  
12 exchange when they bought the Milbank Pipeline. This was  
13 part of the deal. Somebody used the word "deal" today.

14 MR. PORTER: I did.

15 COMMISSIONER FIEGEN: That they would provide  
16 service from whatever, 2011 to 2017. Which is not  
17 longstanding. I mean, that's very brief when you look at  
18 your history of service to farm taps in South Dakota.

19 But when you talk about other states are you  
20 talking about apples to apples when you're talking about  
21 companies that have bought pipeline and then you gave  
22 them like a -- or somebody gave them a five-year -- not  
23 you, but MERC gave them a five-year deal to provide  
24 service. Is that the same thing or --

25 MR. PORTER: In the State of South Dakota,

1 Minnesota, Iowa. I'm not sure about Michigan. But at  
2 least those states that I mentioned were all states  
3 served by Peoples Natural Gas, that Peoples Natural Gas  
4 had service responsibilities to.

5 And they're also states that Northern's  
6 interstate pipeline goes through. So certainly as  
7 UtiliCorp that acquired all the assets and liabilities in  
8 all the states, they've sold them off to maybe three  
9 different companies now.

10 So Black Hills owns the Iowa facilities. MERC  
11 owns the Minnesota facilities. They did own -- or have  
12 obligations to the South Dakota farm tap customers until  
13 the transfer to NorthWestern. I think I mentioned Iowa  
14 was Black Hills.

15 Does that answer your question?

16 COMMISSIONER FIEGEN: So then like Black Hills,  
17 when they bought some of the Iowa lines --

18 MR. PORTER: Uh-huh.

19 COMMISSIONER FIEGEN: -- they also have the  
20 opportunity to terminate service in 2017?

21 MR. PORTER: They do. And they have a  
22 proceeding that is ongoing right now in front of the  
23 Iowa Utilities Board that where Black Hills has  
24 proposed -- not perfectly familiar with it, but has  
25 proposed an inspection program where they would inspect

1 the farm tap from Northern's jurisdictional facilities to  
2 the farm tap owner's facilities.

3 They would look at that line. They would  
4 inspect it. If it was not in -- if it didn't meet  
5 standards, it would replace it. And this filing before  
6 the utilities board then addresses, obviously, the cost  
7 recovery of doing so.

8 So that is an ongoing proceeding right now in  
9 front of the Iowa Utilities Board. Over time there's  
10 been, and I cite in our Brief, one instance where  
11 Black Hills has been before the Iowa Utilities Board.  
12 The Iowa Utilities Board has exercised jurisdiction over  
13 farm tap services.

14 We've had that discussion. They know that the  
15 obligation is within their public utility jurisdiction to  
16 regulate. So they have stepped up to that, and now  
17 they're in the process of establishing what a Black Hills  
18 program, if you will, will look like to be able to  
19 handle -- post-December 31, 2017, will be able to  
20 transition long term.

21 COMMISSIONER FIEGEN: Thank you. That was  
22 helpful.

23 Also you saw the filing of our pipeline safety  
24 manager on safety. Safety is always a concern.

25 It appears that your company filed -- I don't

1 know if it was with PHMSA or FERC. I think it was with  
2 PHMSA -- a distribution report. Can you help me  
3 understand that?

4 MR. PORTER: The report or why --

5 COMMISSIONER FIEGEN: Why was it a distribution  
6 report? Why was it a distribution report?

7 MR. PORTER: Good question. And we do not look  
8 at facilities downstream of ours. So the three-way valve  
9 downstream, those are not our facilities.

10 PHMSA -- we called up PHMSA and said, hey. How  
11 do you want us to handle it? It's not our facilities.  
12 They said file a distribution form. So that's what we've  
13 been doing.

14 COMMISSIONER FIEGEN: Huh. That makes us all  
15 very confused, you know.

16 MR. PORTER: Why is that?

17 COMMISSIONER FIEGEN: Because -- yeah.  
18 Interstate, intrastate, distribution transmission, all of  
19 that. So that gets to be kind of confusing when PHMSA  
20 looks like -- I don't know if they changed their mind on  
21 some things or --

22 MR. PORTER: Yeah. I can't tell you,  
23 Commissioner, what's in PHMSA's mind as far as why they  
24 wanted us to use that particular forum. But I do know  
25 what the Pipeline Safety Act from a legal perspective --

1 FERC jurisdictional facilities subject to PHMSA, I know  
2 what facilities those are, and that's everything, if you  
3 will, upstream of the three-way valve.

4 So how PHMSA -- and trying to work with them on  
5 a day-to-day basis, how they want us to -- we just  
6 oblige.

7 COMMISSIONER FIEGEN: All right. And I think  
8 we're all working with all of that.

9 Mr. de Hueck, those are my questions for now.

10 (Discussion off the record)

11 MR. DE HUECK: Commissioner Hanson.

12 COMMISSIONER HANSON: Thank you. Good  
13 afternoon -- good morning still, I guess.

14 MR. PORTER: It is for a few more minutes. Good  
15 morning.

16 COMMISSIONER HANSON: I'm going to be asking  
17 questions on three documents that you filed with us.  
18 Those three are a May 6 letter that's shown as Exhibit A  
19 that was sent to Mary Zanter from Mr. Talcott. The  
20 second is a letter that was sent November 23. And that  
21 was created -- I'm not sure who created it, but it was  
22 sent by -- how do you pronounce your last name?

23 MR. TALCOTT: Talcott.

24 MS. DEMMAN: Demman.

25 COMMISSIONER HANSON: Thank you. Was sent by

1 Ms. Demman. Rickie Mork.

2 (Discussion off the record)

3 COMMISSIONER HANSON: I believe the portion I  
4 ended with that you probably missed was the letter was  
5 prepared to be sent to a Rickie Mork.

6 The third instrument is a November 3 -- dated  
7 November 3, and it was sent to Chairman Nelson from  
8 Ms. Demman as well.

9 First of all, on the May 6 letter, the letter  
10 was in response to and refers to an e-mail from  
11 Mary Zanter. And that e-mail -- do we have a copy of  
12 that e-mail?

13 MR. TALCOTT: I can't remember whether we made  
14 it part of the record or not.

15 COMMISSIONER HANSON: I don't believe I've read  
16 that e-mail, but I was just curious.

17 MR. TALCOTT: We did provide a couple of e-mail  
18 strings, and I don't know how far back they went.

19 COMMISSIONER HANSON: Thank you.

20 Mr. Talcott, I read somewhere years ago where at  
21 least a third of all -- if not 40 percent of all e-mails  
22 are misinterpreted by the fact that we're reading  
23 something that someone's writing quickly, and sometimes  
24 we misinterpret their attitude.

25 From your response, though, it appears that

1     you've found the e-mail to be too aggressive? Is that --

2             MR. TALCOTT: I wouldn't say too aggressive.

3     The discord that goes back between -- discourse that goes  
4     back between Northern and SD PUC Safety Staff goes all  
5     the way back to 2012. And we've had a number of e-mails  
6     and correspondence over this issue number three today,  
7     and that is what jurisdiction does the Commission Safety  
8     Staff have over the Northern assets.

9             And I don't have the April 26 e-mail in front of  
10    me. I don't know if I brought it with me. But, as I  
11    recall, the tenor of the e-mail was that someone in the  
12    SD PUC Safety department was threatening enforcement  
13    action against Northern. And the whole purpose for this  
14    discourse was to lay out our position that the Commission  
15    does not have safety jurisdiction over Northern's assets  
16    and so could not issue an enforcement letter.

17            COMMISSIONER HANSON: Thank you.

18            In your response you stated in the first  
19    sentence -- and I won't read the entire sentence. You  
20    referred to the letter. You state that Mary Zanter  
21    requested from Northern a copy from Northern to its  
22    customers in South Dakota regarding, and then you cite.

23            However, it does not appear that you provided  
24    that letter. You basically argue in your response not to  
25    provide that letter. Is that accurate?

1           MR. TALCOTT: I think that's accurate. In the  
2 background, as I recall it, I don't remember the back and  
3 forth regarding 49 CFR 192.16. I didn't prepare for that  
4 today. I was more prepared to talk about interstate  
5 facilities and that.

6           The letter, as I understand it, my recollection  
7 of 49 CFR 192.16 is a letter that that regulation  
8 requires go out to end users. And I think that --  
9 subject to check, I think the purpose of the regulation  
10 is to let customers know downstream of certain assets  
11 that do transport gas and are inspected and maintained  
12 versus assets that transport gas downstream that may not  
13 necessarily be inspected and maintained by whoever is  
14 sending the letter -- whoever is required to send the  
15 letter on this regulation.

16           It's to notify the customers downstream that --  
17 and in this context here that we're talking about, it  
18 would be the service line. It would be the facilities  
19 from the three-way valve to the house. My recollection  
20 is the purpose of this 49 CFR 192.16 is to let people  
21 know downstream that that service line is not being  
22 inspected by whoever sends the letter.

23           That's my understanding of the regulation. And  
24 the back and forth between myself and Safety Staff was,  
25 first, that, with all due respect, the safety Staff of

1 the Commission does not have jurisdiction to require  
2 Northern to send that letter.

3 The bottom line is I think with respect to --  
4 and I don't know if this is universal across all states  
5 and across all farm taps, but my best understanding is  
6 it's not Northern that sends out that letter with respect  
7 to farm taps.

8 My understanding is that -- I don't know if it's  
9 universal, but my understanding is the letter that's  
10 required by this regulation is actually sent by the  
11 person providing service to those people, which would be  
12 MERC, Peoples Natural Gas, Northwest Public Service.  
13 That's a big explanation.

14 COMMISSIONER HANSON: Yes. I was looking for a  
15 yes or no, but I appreciate it. Thank you.

16 So, yes or no, was there a letter sent? You've  
17 placed the foundation, an explanation of why a letter may  
18 not have been sent. However, was a letter sent?

19 MR. TALCOTT: To the best of my knowledge, in  
20 the State of South Dakota a letter was not sent by  
21 Northern to farm tap end users as a result of this  
22 regulation.

23 COMMISSIONER HANSON: Ms. Demman, is that your  
24 understanding as well?

25 MS. DEMMAN: I have no different knowledge than

1 Mr. Talcott on that issue. Yes, it's my understanding.

2 COMMISSIONER HANSON: The November 23 letter --  
3 or at least the letter that was sent to us on November 23  
4 and addressed to Rick Mork, as it was filed with some  
5 other information before us at that time, Ms. Demman, is  
6 that a copy of that letter?

7 MS. DEMMAN: Yes. That's a -- one of the  
8 letters that was sent to customers. It was a mail merge,  
9 and so we gave you one as an example of one letter.

10 COMMISSIONER HANSON: Might have to speak just a  
11 smidge louder.

12 MS. DEMMAN: Yes. That was one of the letters  
13 that was sent. It was a copy of the same letter that  
14 went to 195 customers, and it was a mail merge so we gave  
15 you one to -- addressed to Mr. Mork.

16 COMMISSIONER HANSON: So this is dated  
17 November 23 because you sent it to us on November 23; is  
18 that correct?

19 MS. DEMMAN: Because we sent it on -- to the  
20 customers and to you.

21 COMMISSIONER HANSON: You also sent it to the  
22 customers on November 23?

23 MS. DEMMAN: We did.

24 COMMISSIONER HANSON: To your knowledge, was  
25 there any letter prior to this one sent to customers?

1 MS. DEMMAN: Not by Northern Natural Gas.

2 COMMISSIONER HANSON: Okay. Curiosity,  
3 Mr. Talcott. In the first sentence again on the May 6  
4 letter you stated that Ms. Zanter had requested a letter.  
5 That letter you referred to sent from Northern to its  
6 customers in South Dakota.

7 So do you regard those 100 plus to be your  
8 customers?

9 MR. TALCOTT: No, sir.

10 COMMISSIONER HANSON: Because you state from  
11 Northern to its customers in South Dakota.

12 MR. TALCOTT: I didn't put quotes on it, but I  
13 believe to the best of my knowledge I was paraphrasing  
14 the inquiry that came from Mary. Our customers are the  
15 shippers that have a contract with us under our FERC  
16 tariff to transport gas to the custody transfer point at  
17 a farm tap, which is immediately before the three-way  
18 valve.

19 COMMISSIONER HANSON: Thank you.

20 There's been a significant amount of discussion  
21 and writing pertaining to who's on first here. And in  
22 regards to whether FERC or PHMSA's regulating who where.

23 In my experiences, oftentimes I find that there  
24 are more than one Fed department that feels that they're  
25 in charge. Is that possibly the case here, where FERC

1 and PHMSA both have regulation responsibilities?

2 MR. TALCOTT: Absolutely. There's no -- in our  
3 opinion there's no doubt about that.

4 COMMISSIONER HANSON: And is not the PUC  
5 required to engage in those activities that are required  
6 of us by PHMSA in regard to regulation and interaction in  
7 this case with Northern?

8 MR. TALCOTT: If I understand your question  
9 carefully, I don't agree. The Federal Energy Regulatory  
10 Commission has exclusive jurisdiction over Northern with  
11 regard to matters that are dealt with in the Natural Gas  
12 Act. By federal statute, by the same token, PHMSA has  
13 exclusive jurisdiction over the safety operation of  
14 Northern's assets.

15 And as we've outlined in our Briefs and then I  
16 think in the subsequent letter that we filed yesterday,  
17 by virtue of the Pipeline Safety Act, it expressly says  
18 that states may not -- may not regulate the safety  
19 aspects of interstate pipelines.

20 And we've demonstrated that we are an interstate  
21 pipeline by virtue of the fact that we transport gas in  
22 interstate commerce, and the facilities for which the gas  
23 is transported to Northwest at these farm taps, those  
24 facilities are regulated by FERC. It's a two-prong  
25 question in the Pipeline Safety Act statute, very clearly

1 answered that, yes, we are an interstate pipeline  
2 regulated by PHMSA.

3 COMMISSIONER HANSON: So if you are an  
4 interstate pipeline regulated by PHMSA and the farm taps  
5 are under FERC -- is that what you're saying?

6 MR. TALCOTT: The rate regulation is FERC, and  
7 the safety regulation of the Northern facilities as we  
8 characterize them and describe them is under the safety  
9 jurisdiction of PHMSA.

10 COMMISSIONER HANSON: So is PHMSA examining  
11 those farm taps?

12 MR. TALCOTT: They have the exclusive  
13 jurisdiction to. My understanding of their attention or  
14 inspection of farm tap facilities is inconsistent across  
15 Northern's pipeline system.

16 There are different areas of PHMSA. There's a  
17 regional office in Kansas City. There's a regional  
18 office in Texas. I don't know where the Northern region  
19 is off the top of my head. Different PHMSA inspectors go  
20 out for different parts of the Northern system, and  
21 they're not necessarily consistent.

22 I know that in talking with Northern's Pipeline  
23 Safety personnel in preparation for this meeting, I know  
24 for a fact that on some of the audits the farm tap  
25 facilities are, in fact, inspected by PHMSA inspectors.

1 I can't say that it's consistent across the system.

2 But the fact -- if it is a fact that PHMSA  
3 inspectors do not go out and during a routine inspection  
4 don't go out and inspect each of the farm taps, that does  
5 not defer them to state jurisdiction.

6 COMMISSIONER HANSON: I understand that. It's a  
7 curiosity with me. Because PHMSA, my familiarity with  
8 PHMSA is that they are extremely anal and that they are  
9 first on the scene to condemn if a state has not dotted  
10 every I and done everything perfectly. So it would  
11 surprise me if they are not examining the farm taps.

12 And are you aware of how often, the frequency,  
13 in South Dakota?

14 MR. TALCOTT: I am not, sir.

15 COMMISSIONER HANSON: The November 3 letter,  
16 Ms. Demman, you state in the second paragraph at the end  
17 of the paragraph that "The impediment to continue the  
18 farm tap service is that no utility has stepped in to  
19 provide the retail distribution service NorthWestern  
20 plans to abandon."

21 I understand, however, during the discussion  
22 here that Northern has not made an effort to find another  
23 operator. Is that correct?

24 MS. DEMMAN: That's correct.

25 COMMISSIONER HANSON: Well, if that is the

1       impediment, I have to ask why not.

2               MS. DEMMAN:   Well, as Mr. Porter said, you know,  
3       our view is that NorthWestern is currently the public  
4       utility providing service.   And it seems that it makes  
5       the most sense for them to continue providing service to  
6       the customers who they're currently billing and providing  
7       services to.

8               And so we have not considered that some other --  
9       that it's our obligation to provide some other utility to  
10      do that.

11              COMMISSIONER HANSON:   Well, if you don't feel  
12      it's your obligation legally, morally don't you have an  
13      obligation?

14              MS. DEMMAN:   We feel we had a moral obligation  
15      to raise this to the Commission and to bring it to your  
16      attention because we're concerned about continuity of  
17      service to the farm tap customers.   And we believe  
18      NorthWestern is in the best position to continue to do  
19      that.

20              COMMISSIONER HANSON:   So you have a distributor  
21      of your product who's notified you that they're not going  
22      to distribute your product anymore, but as a company you  
23      feel that you'll just not serve those customers anymore?

24              MR. PORTER:   Let me, Commissioner, address that  
25      if I may.   When you say your product, first off, the

1 natural gas is not Northern's. We are the highway that  
2 transports.

3 COMMISSIONER HANSON: I understand that.

4 MR. PORTER: Okay. So when the gas is  
5 purchased, we will transport it. We will provide the  
6 service that we're set up to and that we do provide and  
7 provide reliably.

8 So if somebody nominates it, goes out, finds the  
9 gas, and nominates on our system, we'll provide that  
10 service.

11 COMMISSIONER HANSON: I understand that. And  
12 you stated that Northern does not have an obligation to  
13 pursue a vendor. And you are obviously speaking from a  
14 legal aspect.

15 But I'll ask you the same question. Don't you  
16 believe that you have a moral responsibility?

17 MR. PORTER: No, sir.

18 COMMISSIONER HANSON: None whatsoever?

19 MR. PORTER: Our obligation is to raise it to  
20 this Commission. Moral obligation, if that's what we're  
21 talking about, is to raise it to this Commission so that  
22 they can make a determination, since it's in our belief  
23 under this Commission's jurisdiction under South Dakota  
24 Law that the Commission can make appropriate decisions  
25 regarding the continuation or discontinuation of that

1 service.

2 COMMISSIONER HANSON: Both of your statements  
3 are interesting from the standpoint of the letter that  
4 was sent November 23. You say you have an obligation to  
5 raise it and to have this forum apparently, and yet the  
6 letter that was sent on November 23 is then inflammatory  
7 and misleading because you state in the letter on page 2  
8 "Why would the South Dakota Public Utilities Commission  
9 allow discontinuance of my utility service?"

10 You're placing this in front of those consumers  
11 as if why in the world would the Public Utilities  
12 Commission be doing this? And yet now you're sitting  
13 here saying that that is something that you wanted to see  
14 done.

15 You state "Does the South Dakota Public  
16 Utilities Commission believe the longstanding service to  
17 farm tap customers is outdated or somehow inappropriate?"  
18 You have five different statements that you could have  
19 answered for those folks and explained to them of why  
20 we're having this, instead of alarming them.

21 For instance, the fourth statement, "If  
22 Northwestern Energy no longer serves my farm tap, who  
23 should I call to investigate possible leaks or respond to  
24 emergencies?" Well, there wouldn't be any leaks. There  
25 wouldn't be any emergencies if no one was serving them.

1 So you're alarming them to all of these issues, but now  
2 you're sitting here saying you have no moral obligation  
3 whatsoever and you have no legal obligation but yet  
4 you're inciting these consumers. And you're misleading  
5 them as to the purpose of this meeting.

6 I'll let you respond in a second.

7 If you look at the first page, the second  
8 paragraph, "The Commission is evaluating whether it  
9 should discontinue regulation of farm tap service after  
10 doing so for decades." And I probably should read that  
11 entire paragraph prior to that because it all builds on  
12 a -- on footings and on the foundation of trying to  
13 incite those consumers. And I found it offensive.

14 If you'd like to respond, you may.

15 MR. PORTER: Yes, I would, and Laura may as  
16 well.

17 First of all, in regards to you finding it  
18 offensive, I apologize on behalf of the company. That is  
19 not the purpose or the intent of the communication. The  
20 purpose and intent of the communication, we had for  
21 months and actually over a year been reaching out to this  
22 Commission and to Staff trying to talk through issues.

23 Northwestern Energy sent a letter out to its  
24 customers that we thought was very unbalanced and very  
25 one sided. So we thought it was appropriate to send the

1        easement holders a letter regarding what we see as the  
2        status, if you will, or the nature of ongoing service.

3                And we tried to pose some questions that we  
4        think are fair questions. And the intention was not to  
5        incite anything. It was to make sure they were aware of  
6        both sides. And we tried to point those issues out to  
7        them. Not trying to incite anything or offend anybody,  
8        but we did believe that a direct communication was  
9        appropriate.

10               And given the feedback that we're receiving and  
11        the calls that we received, we think it hit that mark.

12               COMMISSIONER HANSON: Hit what mark?

13               MR. PORTER: Hit the goal of encouraging the  
14        customers to know what's going on and if they're  
15        interested or if they're concerned, to get involved.

16               COMMISSIONER HANSON: The mark of informing them  
17        of what was taking place could have been done by, for  
18        instance, the three issues that were brought up at the  
19        beginning of this meeting for the purposes of this  
20        meeting regarding who has jurisdiction.

21               There are certain things in this letter that one  
22        could construe could have been written far better. And  
23        as you read this letter, I'm sure you would agree with  
24        me. And there are items in this letter that should have  
25        been left out.

1           MR. PORTER: I haven't looked at the -- I'll  
2 directly respond, and then, Laura, please do.

3           I haven't looked at the letter to see what we  
4 could have done better or anything. But if I read it,  
5 I'm -- I can't read a document but think I could do  
6 better than what I did the previous time. So I would  
7 agree with your statement to the extent that do we think  
8 we could do better knowing what we know now? Yeah. I  
9 think we probably could.

10          COMMISSIONER HANSON: Well, if your intent as  
11 you stated was to -- I'll use the word "arouse" instead  
12 of incite, but I believe it incited people. If that was  
13 your intent, to get action from them, then certainly this  
14 type of a letter with misleading statements and  
15 inflammatory statements certainly would accomplish that.

16          However, if your first goal, as you said, was to  
17 inform the people, it was very lacking in that respect.

18          Thank you, Mr. de Hueck.

19          CHAIRMAN NELSON: I have a follow up. One  
20 follow up.

21          In response to one of Commissioner Fiegen's  
22 questions, Mr. Porter, you talked about the 1985  
23 Agreement where Peoples transfer "the obligation to  
24 serve."

25          Where I'm still struggling is -- and correct me

1 if I'm wrong, but we don't have anywhere in the record of  
2 this proceeding that Peoples actually had that obligation  
3 in order to transfer. Is that correct?

4 MR. PORTER: No. I think there is evidence.  
5 And I think the evidence is in the Affidavit, the sworn  
6 Affidavit that we provided to point out what those --  
7 what the services were being provided prior to the sale  
8 in 1985 and that those very same services were being  
9 provided after 1985.

10 CHAIRMAN NELSON: Thank you.

11 MR. DE HUECK: Mr. Rislov, do you have any  
12 questions?

13 MR. RISLOV: I may have one or two.

14 Mr. Porter, do you have something that describes  
15 what your definition of termination of service means,  
16 something more expansive than what's in that agreement?

17 MR. PORTER: What agreement are you referring  
18 to, sir?

19 MR. RISLOV: Well, the '87 Agreement, the  
20 agreement that appeared when NorthWestern took over for  
21 MERC where you talk about termination of service at a  
22 certain date.

23 I know we're getting into -- deep in the  
24 legalities, but, as I read it, a layperson, it seems to  
25 me termination of service means termination of service.

1 And I think your explanation to the Commissioners is  
2 something -- you have it saying something different than  
3 that. You have it conditional termination, yet they  
4 still have to provide all the services, and I find that  
5 confusing.

6 Do you have something that would explain that,  
7 and was that presented to NorthWestern at that time you  
8 signed that agreement or you approved them taking over  
9 service?

10 MR. PORTER: A couple of issues there, if I may.

11 First of all, the 1987 Agreement has termination  
12 in there. That can terminate. It doesn't impact the  
13 obligations to serve that were transferred two years  
14 prior in 1985.

15 So I encourage everyone to look at those two  
16 things differently. They overlap, but termination of the  
17 '87 Agreement does not dilute, minimize, or eliminate the  
18 obligation that was transferred in 1985.

19 MR. RISLOV: So if I can put this in ordinary  
20 language terms, not attorney terms, was NorthWestern  
21 aware of what you thought termination of service meant?  
22 Were they in agreement with that? Do you have any idea?  
23 Because it appears today they don't agree.

24 MR. PORTER: I do not have any idea, and I do  
25 agree with you that it doesn't -- I mean, today it seems

1     like there was not agreement. That was a transaction  
2     between MERC and NorthWestern. We were not involved with  
3     that transaction, other than consent to the assignment of  
4     that agreement.

5             MR. RISLOV: But you were involved with  
6     UtiliCorp, and the same language was in the UtiliCorp  
7     agreement in 1987. Was UtiliCorp aware of that?

8             MR. PORTER: I'm not sure I understand your  
9     question.

10            MR. RISLOV: The same language UtiliCorp --  
11     that they could terminate service. And I think it said  
12     May 31, 2017.

13            Were they aware of your interpretation.

14            MR. PORTER: Oh, I'm sure they were, yes. I  
15     mean, yeah. The '87 Agreement was entered into between  
16     Northern and UtiliCorp. UtiliCorp, pursuant to the 1985  
17     Agreement and all the states, the tariffs that they had  
18     on file with the states that regulated them, they knew  
19     what their obligations were. Entered into the 1987  
20     Agreement to memorialize those obligations.

21            As that agreement terminates it does not change  
22     the obligation that --

23            MR. RISLOV: I understand that's what you think.  
24     I'm wondering what UtiliCorp thought.

25            MR. PORTER: I can't answer what UtiliCorp

1 thought other than what I just said.

2 MR. RISLOV: I think that's all I have.

3 MR. DE HUECK: I have one quick question.

4 MR. PORTER: Yes, sir.

5 MR. DE HUECK: Mr. Porter, I found your  
6 discussion with Chairman Nelson about the express terms  
7 of the easement very interesting. And whether or not  
8 Northern has an obligation to provide a vendee under the  
9 terms of the easement.

10 My question is to you has that issue ever been  
11 litigated?

12 MR. PORTER: Not with Northern Natural or any  
13 proceeding that I'm aware of.

14 Whether the term "vendee" has been litigated in  
15 any jurisdiction, I'm not sure. But not regarding  
16 Northern.

17 MR. DE HUECK: And then just very quickly, I  
18 want to make sure I'm following you here.

19 Termination of the '87 does not dilute the '85  
20 Agreement; correct?

21 MR. PORTER: Yes, sir.

22 MR. DE HUECK: But the '85 Agreement can dilute  
23 the express language of the easement, no problem.

24 MR. PORTER: I'm not sure I understand your -- I  
25 think there's a point there, but I wouldn't say that it

1 dilutes the language of the easement.

2 MR. DE HUECK: Okay. Thank you.

3 With that, we'll recess? We'll reconvene at  
4 1:30.

5 (A lunch break is taken)

6 MR. DE HUECK: Good afternoon, everyone. I will  
7 call the hearing back to order in NG16-014. Again, my  
8 name is Adam de Hueck, and I'm the Hearing Examiner  
9 today.

10 But before we proceed any farther with oral  
11 argument, we do have a matter of housekeeping to take  
12 care of.

13 Northern had made a Motion to Accept a  
14 Supplemental Brief, and now I'll turn it over to Chris.

15 CHAIRMAN NELSON: I would move to grant  
16 Northern's Motion for Leave to File Supplemental Brief  
17 and Supplemental Brief of Northern Natural Gas Company.

18 Discussion on the Motion?

19 COMMISSIONER HANSON: Second.

20 CHAIRMAN NELSON: Discussion on the Motion.

21 Hearing none, all those in favor will vote aye.  
22 Those opposed, nay.

23 Commissioner Hanson.

24 COMMISSIONER HANSON: Aye.

25 CHAIRMAN NELSON: Commissioner Fiegen.

1 COMMISSIONER FIEGEN: Fiegen votes aye.

2 CHAIRMAN NELSON: Nelson votes aye. The Motion  
3 carries. The Motion is granted.

4 With that, I'll turn it back to Mr. de Hueck.

5 MR. DE HUECK: Before moving on with  
6 NorthWestern's oral argument, I'd like to ask the  
7 Commissioners if they have any further questions for  
8 Northern.

9 COMMISSIONER FIEGEN: I just have a clarifying  
10 question, Mr. de Hueck, for Northern if I may ask.

11 You talked a lot about obligation of service.  
12 And we asked you about the -- the termination of service.  
13 So we talked about termination of service, and what I  
14 thought I heard you said is, yes, they can terminate  
15 their service according to those agreements that were  
16 signed. But the obligation of service is still there.

17 And I heard different places where the  
18 obligation of service. So could you clarify to me who  
19 the obligation of service is to or who has the obligation  
20 of service? Although they can terminate an agreement,  
21 who has the obligation of service?

22 MR. PORTER: Yeah. That's a good question.  
23 Thank you.

24 COMMISSIONER FIEGEN: And I know you've answered  
25 it. I just need it clarified again.

1           MR. PORTER: That's fair. The 1987 Agreement --  
2 let me say it this way. The 1987 Agreement does not  
3 affect the obligation and liabilities that were assumed  
4 by UtiliCorp.

5           So to the extent you find that the obligation to  
6 provide utility service to farm tap customers was  
7 transferred from InterNorth to UtiliCorp, that obligation  
8 is with UtiliCorp and its successors, regardless of the  
9 '87 Agreement or any other agreement. Unless it was  
10 further transferred.

11          COMMISSIONER FIEGEN: So successors as?

12          MR. PORTER: Successors would be from UtiliCorp,  
13 Peoples, so the same company, went to change the name to  
14 Aquila. So same entity yet. Then to MERC. Some of it  
15 went to other utilities that aren't in your jurisdiction.

16          But relevant to this proceeding, would have been  
17 to MERC because MERC took Minnesota and the South Dakota  
18 properties.

19          And then the question is NorthWestern. What did  
20 they -- what did they assume in regards to the '87  
21 Agreement.

22          Somebody in their briefing asked of those  
23 original obligations, that obligation to serve utility --  
24 utility service to farm taps, was that transferred to  
25 NorthWestern?

1           I don't know. We don't have any of those  
2 documents. We don't see those documents. That is  
3 between the successors of I guess at that point Aquila.  
4 So we don't know what the transaction between Aquila and  
5 MERC or between MERC and NorthWestern.

6           COMMISSIONER FIEGEN: So you're telling me the  
7 obligation of service, you have really no idea where that  
8 lies?

9           MR. PORTER: I've got an idea, but I don't  
10 have --

11          COMMISSIONER FIEGEN: A legal.

12          MR. PORTER: Yes. I know it's not Northern. I  
13 know InterNorth transferred that to UtiliCorp. After  
14 UtiliCorp I think it was Staff that said in their Reply  
15 Brief it is not -- we don't have those documents.

16          So UtiliCorp, Aquila to MERC, those aren't in  
17 the record. And the MERC, as far as I know, the MERC to  
18 NorthWestern, to the extent that obligation was  
19 transferred, is not in the record.

20          COMMISSIONER FIEGEN: Okay. And so then the  
21 obligation of service doesn't appear that legally we  
22 actually know for sure. According to your testimony  
23 today, we don't really know for sure where that is at.

24          And Northern, of course, isn't obligated to be a  
25 distribution company, but some may differ on your

1 obligation to find a vendor.

2 MR. PORTER: Somebody may have a view on that.  
3 I don't know what that argument would be so it's hard to  
4 address. I don't think their -- personally I don't see  
5 that, but I don't know what that argument would be.

6 In regards to the obligation, we know that it  
7 went from -- it was at Aquila and went to MERC. To what  
8 extent it went to MERC, we don't know. We know they  
9 filed tariffs with the Commission to provide that service  
10 to the farm tap customers. They were acting as if they  
11 had the obligation. But, again, I don't know what the  
12 documents said.

13 COMMISSIONER FIEGEN: But remind me, Mr. Porter,  
14 in your agreements didn't you have to approve all those  
15 agreements?

16 MR. PORTER: No.

17 COMMISSIONER FIEGEN: Okay.

18 MR. PORTER: Excuse me. For assignment of the  
19 1987 Agreement Northern, had to approve that assignment.  
20 But I'm not talking about the '87 Agreement. I'm talking  
21 about the responsibility that was transferred in 1985.  
22 That was transferred through an acquisition of the assets  
23 and liabilities.

24 There's not another obligation to further  
25 transfer that, UtiliCorp to further transfer that, unless

1 they sign the agreement. But they can sell those assets  
2 and sell those liabilities, and that's what happened  
3 here. So there's no obligation for UtiliCorp or Aquila  
4 to come to Northern -- it wouldn't have been Northern.  
5 It would have been InterNorth, to get approved.

6 COMMISSIONER FIEGEN: Okay. Thank you.

7 COMMISSIONER HANSON: I have one. Excuse me.  
8 Forgive me if this has already been asked and answered.

9 If NorthWestern wanted to serve additional  
10 customers along the line, do you know what Northern's  
11 position would be from a standpoint of allowing them to  
12 serve additional customers? Would you provide the same  
13 services that you are presently to NorthWestern so they  
14 could provide those services?

15 MR. PORTER: I think I'm with you on the  
16 question. Along our line? So if a new --

17 COMMISSIONER HANSON: Well, presently you're  
18 serving up to that point that we discussed and clarified  
19 to a number of customers, and NorthWestern is providing  
20 services to those customers presently.

21 If additional farmers, ranchers, or communities  
22 were interested in having that same service provided by  
23 you, by another provider, would you be willing -- or do  
24 you know whether or not you'd be willing to provide  
25 those? I suspect you would from your history, but I'm

1 just curious.

2 MR. PORTER: Good question.

3 To the extent a easement grantor has a farm tap  
4 provision in their easement and they ask for a tap, we  
5 will provide that tap. We've got an obligation to  
6 furnish the tap. We will do that, as long as there is a  
7 utility to provide -- or somebody to provide the utility  
8 service.

9 Northern would not do that, but Northern would  
10 get the gas to the -- through its facilities, Northern  
11 facilities.

12 COMMISSIONER HANSON: So you're saying in a  
13 situation where there's an existing easement and existing  
14 line as opposed to building additional transmission  
15 systems.

16 MR. PORTER: Yes. Northern generally is not  
17 agreeing -- and I can't say it categorically, but we no  
18 longer include farm tap provisions as a general rule in  
19 our easements.

20 COMMISSIONER HANSON: Okay. I just wanted that  
21 clarified. Thank you.

22 Thank you.

23 MR. DE HUECK: With that, NorthWestern, you may  
24 proceed.

25 MR. OLSON: Thank you. Tim Olson on behalf of

1 NorthWestern. Thank you, Commissioners, for this  
2 opportunity.

3 When this landed on my desk I first asked the  
4 question why is there a service to these customers? And  
5 that points all the way back to the 1950s and those  
6 easements.

7 Northern obtained those easements in exchange  
8 for their agreements. And this was discussed earlier so  
9 I don't need to go into depth on this, but those  
10 agreements involved providing access via a farm tap and  
11 furnishing gas, either by directly grantee, Northern, or  
12 indirectly by grantee. And it is in those shoes that --  
13 those vendee of grantee shoes that NorthWestern sits  
14 today.

15 If we would not have acquired that Milbank  
16 Pipeline, we would not be in front of the Commission  
17 today. We would not have an obligation to publicly serve  
18 these customers. We have a contractual obligation to  
19 serve those customers through the end of 2017.

20 But our role began in 2001 -- 2011, excuse me,  
21 when we acquired the unrelated Milbank Pipeline. A  
22 condition of that transaction was that we provide  
23 assistance to Northern for a limited duration with  
24 Northern's farm tap customers. Our agreement is with  
25 Northern. Our agreement is not with the farm tap

1 customers.

2 When we negotiated that acquisition of the  
3 Milbank Pipeline we were very explicit that we were  
4 willing to undertake those service obligations through  
5 the end of 2017. That limitation was documented as part  
6 of that transaction. It was reviewed and adopted as part  
7 of this Commission's Docket in NG11-001.

8 I also want to point out that in that  
9 acquisition of those Milbank Pipeline assets NorthWestern  
10 did not acquire any of the assets of the farm tap  
11 customers that are a part of this docket. We don't  
12 operate any of those equipment or facilities. For the  
13 most part we don't even know where the bulk of those  
14 facilities are.

15 We know where the farm tap is, and we know where  
16 it enters the ground. But after those facilities enter  
17 the ground, we do not know where the bulk of them are.

18 We do provide a number of services pursuant to  
19 the 1987 Agreement that's been discussed, and the  
20 assignment of a portion of those services to us. We fill  
21 the odorant receptacle every year. We bill Northern's  
22 farm tap customers on a monthly basis. We read the meter  
23 once a year, and, as has been discussed earlier, the farm  
24 tap customer is required to read it on a monthly basis.  
25 When that doesn't happen we estimate usage based on prior

1 usage.

2 We also are a first call responder for the farm  
3 tap customers. If they believe there is a problem with  
4 their service, we are called to determine what that  
5 problem is. But if we discover the problem, a leak or  
6 something else, we cannot fix it. We cannot address it.  
7 It's either the customer's responsibility, the farm tap  
8 customer's responsibility if it's on their line, or it's  
9 Northern's responsibility if it's part of the farm tap.

10 There are -- there's a distinction that I think  
11 has been weaving its way through the discussion today,  
12 and that is the direct responsibility to serve and the  
13 indirect responsibility to serve. And when we look at  
14 that 1985 Agreement and the responsibilities that Peoples  
15 sold as part of that -- or that Northern sold, those  
16 are -- those are the vendee responsibilities that left.

17 And what we haven't talked about on the 1985  
18 Agreement are what Northern retained. And in the second  
19 Paragraph, B, of that agreement it said the  
20 responsibilities that "prior to closing were Northern's  
21 responsibility shall be Northern's responsibility after  
22 closing."

23 The 1985 Agreement did not change the 1950s  
24 easements. In fact, the 1985 Agreement specifically  
25 maintained those responsibilities.

1           One of the customers filed comments in these  
2           proceedings. David and Deanna Brouwer. They own land  
3           subject to the easement. And I believe their comments  
4           amply summarized the roles that Northern and NorthWestern  
5           are filling in this -- with this service.

6           And I quote "No matter how you define the  
7           entities in this case, what has occurred here is a  
8           contract in which Northern in exchange for land easements  
9           has agreed to provide natural gas via a farm tap." The  
10          Browers continued, "I would consider NorthWestern's part  
11          in this situation as that of a subcontractor of Northern.  
12          Ultimately it is Northern's responsibility to provide  
13          service to the current farm tap customers. That can  
14          continue to be done with renegotiation of NorthWestern's  
15          contract or by finding another subcontractor to provide  
16          this service. In the past Northern has formed its own  
17          subcontractor to provide this service, and that certainly  
18          could be an option once again at this time. I would say  
19          that the current contract that NorthWestern has with  
20          Northern is just that, a contract that was made in 1987  
21          that is due to be renegotiated at this time."

22          We have reached out to Northern in an attempt to  
23          renegotiate the terms of this agreement which expire at  
24          the end of next year. To this point we have not been  
25          able to get Northern to come to the negotiation table.

1 They have refused. I don't understand that, given their  
2 obligations in the easements to continue to provide a  
3 vendee for this gas, but that is what's happened here.

4 To suggest, as they did earlier, that  
5 NorthWestern is just abandoning this service and walking  
6 away without doing anything is not accurate.

7 I understand and can appreciate that the way  
8 Northern is organized today, they cannot directly provide  
9 the gas to the customers. But that doesn't change the  
10 promises they made in the easements. They can still find  
11 a vendee, a subcontractor, another party to provide that  
12 service.

13 With that, I'll be happy to answer questions  
14 from the Commission.

15 CHAIRMAN NELSON: And I do have some questions.  
16 Thank you.

17 And I think you answered this question at the  
18 outset, but I'm going to ask it again just to be clear.  
19 Does Northwestern Energy consider itself to be Northern's  
20 vendee per the easement language?

21 MR. OLSON: Yes. We do. The reason I say that  
22 is we entered into this service arrangement pursuant to a  
23 contract. That contract -- we were assigned  
24 responsibilities under a contract. That contract is with  
25 Northern.

1           CHAIRMAN NELSON: Earlier with Staff I made  
2 reference to the March 8, 2011, hearing in which we  
3 approved an Order in NG11-001. And in that hearing  
4 NorthWestern upon Commissioner questioning clearly stated  
5 that it believed it was Northern's responsibility to  
6 continue to serve customers with gas after 2017.

7           And so my question is was it your -- was it  
8 NorthWestern's clear understanding back in 2011 that come  
9 2017 that was going to -- responsibility was going to  
10 shift back to Northern? Is that correct?

11          MR. OLSON: That is correct. We made that, our  
12 belief there, very explicit as part of the negotiations  
13 for that transaction.

14          CHAIRMAN NELSON: And, in fact, that's what you  
15 clearly conveyed to the Commission; correct?

16          MR. OLSON: That is correct.

17          CHAIRMAN NELSON: Is it still NorthWestern's  
18 position that Northern has that obligation after 2017?

19          MR. OLSON: Yes.

20          CHAIRMAN NELSON: If you would pull out Staff's  
21 Reply Brief, I want to ask just a few questions from  
22 that. And if we go to page 6, Staff Reply Brief page 6,  
23 Section B, first paragraph. Staff makes a statement that  
24 "NorthWestern is a public utility only through 2017," as  
25 it relates to these farm taps.

1           Do you agree with that statement?

2           MR. OLSON: I don't agree with that statement.  
3 I personally find it a very difficult question to answer.  
4 We have some hallmarks of a public utility, and we have  
5 some hallmarks of not being a public utility with respect  
6 to these farm tap customers.

7           We don't own any of these assets. We don't know  
8 where the assets are. We cannot fix issues with respect  
9 to these assets. But, on the other hand, the Order  
10 approved a rate for these, although it was simply  
11 adopting the rate that MERC used with respect to these  
12 customers.

13           So I don't agree with Staff's position, but I  
14 also don't disagree with it so I'm being very unhelpful  
15 to the Commission.

16           CHAIRMAN NELSON: Well, that's helpful. But  
17 thank you for your candor. I appreciate that.

18           Moving to page 5 of that same Brief, the first  
19 paragraph, Staff does a nice job of laying out what in  
20 their mind is a quandary. And I'm wondering if you would  
21 be willing to, you know, provide your insight.  
22 Apparently in the '87 Agreement Peoples was able to close  
23 Northern's inlet valve for nonpayment of bills.  
24 Presumably that obligation would have followed all the  
25 way down the line to you folks.

1           But it's Staff's understanding that you don't  
2 believe that's the case. So enlighten us on that,  
3 please.

4           MR. OLSON: Well, let's -- if I may direct the  
5 Commission and the other participants here to the picture  
6 of the farm tap. And I can attempt to walk us through  
7 that.

8           I would state today that the farm tap inlet  
9 valve on the blue side of the diagram in the lower  
10 left-hand corner is something that NorthWestern does not  
11 touch.

12           On the other side of the diagram, the three-way  
13 valve which the customer owns, if there were to be a  
14 failure to pay, that is the valve that we would turn.

15           Now many of the farm tap services are not as  
16 pretty as this one. They've been out in the fields for  
17 years. And so sometimes in situations we've come across  
18 those valves that -- customer-owned valves that we don't  
19 care to touch because of what might happen. In those  
20 situations we have to contact Northern to deal with the  
21 other valve.

22           CHAIRMAN NELSON: So fair to say that you've had  
23 to shut some of these off; is that correct?

24           MR. OLSON: Yes.

25           CHAIRMAN NELSON: And when you say that they're

1 not all as pretty as this, obviously this one has been  
2 very recently painted and does look very, very nice. But  
3 I can imagine that prior to it didn't look nearly as nice  
4 as this does.

5 We're going to have just a little bit of  
6 interruption, but we'll keep going.

7 So you made the statement that you believe the  
8 three-way valve belongs to the customer?

9 MR. OLSON: Yes.

10 CHAIRMAN NELSON: So how did the ownership of  
11 that -- does the customer also own the can?

12 MR. OLSON: Yes.

13 CHAIRMAN NELSON: So how did the ownership of  
14 that valve and can transfer from Peoples to the customer?

15 MR. OLSON: I have a document here that is not  
16 part of the record. And I recognize that. But it is the  
17 Peoples Natural Gas Construction Manual. And this is  
18 something that we have handed out to some of the farm tap  
19 customers.

20 MS. BARUTH: I just had it as record from MERC.  
21 It was given to me by MERC as record.

22 MR. OLSON: Thank you.

23 It defines the customer fuel line as the piping  
24 system from the meter outlet to the outermost wall of the  
25 customer's building structure. And the meter outlet, I

1 don't know if it's on the second picture or not. It's  
2 right at the meter there.

3 CHAIRMAN NELSON: Right. And so that's from a  
4 Peoples document; correct?

5 MR. OLSON: That is from a Peoples document.

6 MS. BARUTH: When I was given this document by  
7 MERC I was told this is a document they use to tell  
8 customers how to comply with building a service. And so  
9 this is a document that Peoples, we believe -- we don't  
10 know that for a fact. We believe Peoples gave to  
11 customers to tell them what they needed to put into the  
12 ground for specifications.

13 MR. OLSON: If I may continue with that,  
14 included in those specifications are a series of  
15 components, including the three-way valve, the farm tap  
16 wick odorizer, et cetera.

17 And I would also remind the Commission that when  
18 we entered the picture here we did not acquire any of  
19 these assets. Our only relation here is pursuant to that  
20 1987 Agreement, a portion of which was assigned to us.  
21 We don't have any of these assets on our books. We are  
22 not depreciating any of these assets. We can't. We  
23 don't own them.

24 CHAIRMAN NELSON: Well, and I think this begins  
25 to maybe clear up what had been muddled in my mind

1 because we've had earlier discussion about we don't know  
2 who ultimately or initially paid for that three-way valve  
3 or can. But what -- apparently Peoples in this document  
4 is claiming that the customers did. And then that's also  
5 your understanding.

6 MR. OLSON: That is our understanding, yes.

7 CHAIRMAN NELSON: And so on this picture instead  
8 of three colors, there should only be two colors. The  
9 red should be yellow; correct?

10 MR. OLSON: We believe that is inaccurate as  
11 depicted.

12 CHAIRMAN NELSON: Northern referred to a letter  
13 that apparently they believe NorthWestern sent to all of  
14 these farm tap customers. Is that in the record?

15 MR. OLSON: Yes, it is.

16 CHAIRMAN NELSON: Can you refer me to --

17 MR. OLSON: It is very near the top of the  
18 docket. November 14, 2016, Northwestern Energy Sample  
19 Letter.

20 CHAIRMAN NELSON: Perfect. That's all the  
21 questions I've got at the moment.

22 Thank you.

23 MR. DE HUECK: Commissioner Fiegen.

24 COMMISSIONER FIEGEN: I do not have any  
25 questions at this point.

1 MR. DE HUECK: Commissioner Hanson.

2 COMMISSIONER HANSON: Neither do I. Thank you.

3 MR. DE HUECK: That means we've concluded our  
4 first round of oral argument.

5 I'm sorry, Brett. I forgot about you over  
6 there. You're so quiet.

7 MR. KOENECKE: Quite okay, Adam.

8 Originally this docket started out looking like  
9 a general broad question of what were the rights and  
10 responsibilities of people providing farm tap service.  
11 MDU resources has an interest and provides farm taps  
12 through Williston Basin and also through its regulated  
13 utility, and so it felt like something MDU should show up  
14 and be a part of. So I'm glad I'm here. It was a  
15 broader question.

16 It seems after this question like it's a much  
17 more narrow dispute than it was originally held out to  
18 be. So I might or might not file a brief. But since  
19 I've got the microphone for a couple of minutes, I would  
20 say, you know, it doesn't feel to me like farm taps meet  
21 the definition of a public utility, of gas utility, if  
22 you look at the statutes.

23 The service isn't held out to the general  
24 public. It's held out to only those people who have an  
25 ability to have a farm tap in the first place. Somebody

1 who's got a pipe through the ground.

2 And so it looks to me like the obligation to  
3 serve comes from the easement document. That's where the  
4 obligation is found in that paragraph 3 as I'm reading  
5 that. And it doesn't feel to me like the Commission has  
6 authority to regulate those documents. That's a Circuit  
7 Court matter. That's a real estate transaction.

8 So be that as it may, it seems like a -- it  
9 seems like it's ripe for an action in Circuit Court and  
10 maybe a breach of contract and sort it out there. Is the  
11 contract breached without the provision of that service  
12 found in No. 3? And, if so, is specific performance a  
13 remedy? Can the court order one of the parties to follow  
14 through on its agreement?

15 So that's my two cents worth on that. Like I  
16 said, I might or might not file a brief depending on  
17 where this goes. This really feels like a very specific  
18 incident going on and not a broader question like it was  
19 framed up to start. So we'll see where it goes, but I  
20 sat here long enough to think I could at least offer that  
21 much up.

22 MR. DE HUECK: Are there any questions for  
23 Mr. Koenecke?

24 CHAIRMAN NELSON: For the only time in my life,  
25 no.

1 MR. DE HUECK: Any other Commissioners?

2 So, with that, we've now finished our first  
3 round of oral argument. And what I think we're going to  
4 do is start back from the beginning starting with Staff.

5 I wanted to call it a chance for a rebuttal, but  
6 it seems like we're more at concluding remarks too. So  
7 interpret that how you want to, and you may begin.

8 MS. EDWARDS: Thank you, Mr. de Hueck,  
9 Commissioners. One thing that I would note is that if  
10 the 1987 Agreement was merely to clarify the 1985  
11 Agreement as it's been portrayed, it seems odd to me that  
12 a large sum of money, even by today's standards, would  
13 have changed hands in a clarification transaction.

14 It's also concerning to Staff that while all  
15 parties seem to agree that there is a moral obligation to  
16 the customers, no company stepped forward to warn the  
17 customers until Staff filed their hand by forcing the --  
18 or by filing the Docket.

19 I'm not entirely certain of what all  
20 communications have transpired, but if other letters have  
21 been sent out by either party prior to the filing of this  
22 docket or subsequent to the filing of this docket, it  
23 would be interesting to have those filed in the record to  
24 see what else customers have been told.

25 The Commission also asked of Northern how many

1 of the 197 customers are in MidAmerican's service area.  
2 I would point out that while MidAmerican's service area,  
3 unlike an electric territory, is not a territory, it is  
4 detailed in their tariff -- in Section 2 of the tariff we  
5 do discuss what communities they serve.

6 I don't know where all the 197 farm taps are,  
7 but I do know of the contacts that we've gotten that are  
8 filed in the docket from consumers. They appear to be --  
9 those consumers do appear to be down there in that  
10 Yankton Gayville area, which is specified in  
11 MidAmerican's tariff. Unlike --

12 Northern says they haven't reached out to  
13 MidAmerican. Staff did, did make that attempt. It  
14 wasn't a successful attempt.

15 We've also reached out to several other  
16 companies and other jurisdictions. Northern stated  
17 that -- or suggested that it might be a good idea for  
18 Staff to work with NorthWestern to come to a workable  
19 solution like they have in other states. And we have  
20 explored that. We have worked exhaustively to do that.

21 And we have reached out to the Kansas  
22 Commission. We've reached out to Alliant Energy,  
23 Black Hills. We've had extensive discussions with  
24 Black Hills. How are they making this work in their  
25 areas? What ideas could we take and implement here?

1           And, unfortunately, with our rate structures  
2 here and the way we have to look out for NorthWestern's  
3 other ratepayers to make sure that they're not  
4 subsidizing anything, we don't have that same opportunity  
5 that the Iowa Utilities Board has been presented with  
6 where Black Hills Energy was -- or the other customers  
7 were somehow structured to where it wouldn't be  
8 inherently unfair for those, in their case, 1,500  
9 customers to spread the cost of buying the system.

10           And when they say that the Iowa Utilities Board  
11 has exercised jurisdiction, it's my understanding that  
12 Black Hills Energy is actually buying that line and is  
13 going to control that customer line. And, I mean, other  
14 analysts, Ms. Mehlhaff and Mr. Thurber, have had these  
15 discussions with Black Hills and might know a lot more  
16 about that, but the jurisdictional question there is very  
17 clear because Black Hills Energy in Iowa and potentially  
18 Nebraska and Kansas, depending on how things play out, is  
19 going to own everything that is in red or yellow in those  
20 states.

21           Beyond that, I don't think I have anything else  
22 to add, other than that I don't know if she's on the  
23 phone now, but our Pipeline Safety Manager, Mary Zanter,  
24 was going to make herself available for any questions  
25 since she was the one that did the 2014 inspection and

1 had those discussions with Northern.

2 Thank you.

3 MR. DE HUECK: Commission questions.

4 CHAIRMAN NELSON: Just a couple. First a  
5 statement and then a question.

6 I appreciate what you have just said now, kind  
7 of illuminating for all of us the efforts that Staff has  
8 gone through to try to resolve this, short of having to  
9 go through this proceeding and whatever may emanate from  
10 that. So I appreciate that.

11 The sole question I've got, Ms. Edwards, I spent  
12 a great deal of time earlier going through the Easement  
13 Agreement between landowners and Northern. I did that  
14 because I wanted to understand clearly the history of  
15 that.

16 But is it correct and your understanding that  
17 this Commission does not have the authority under state  
18 law to adjudicate issues revolving around easements and  
19 easement rights?

20 MS. EDWARDS: It absolutely is. And that's  
21 something that we are very forthright with landowners  
22 about in our siting dockets that we have. That's an  
23 accurate statement. Yes.

24 CHAIRMAN NELSON: Thank you.

25 MR. DE HUECK: Any other questions?

1 COMMISSIONER FIEGEN: I do not.

2 COMMISSIONER HANSON: No.

3 MR. DE HUECK: With that, the floor is  
4 Northern's.

5 MR. PORTER: Thank you. Just a few comments.

6 One in regards to Northwestern Energy's on the  
7 facilities. As far as the three-way valve and the  
8 odorant tank, I believe the record will be -- is clear,  
9 but I just want to clarify.

10 What Mr. Olson said is not inconsistent with  
11 what our view is either. We know what we own. We don't  
12 know who owns down. I think there's a combination.  
13 Mr. Olson says pursuant to a document that I've never  
14 looked at, the Peoples construction documents -- that  
15 might be the farm tap owners. Grant you that. Don't  
16 know. So I just wanted to clarify that.

17 What is interesting is we're talking about  
18 jurisdictional issues, and it's come up a few times.  
19 Both NorthWestern and before NorthWestern MERC had  
20 tariffs on file with the Commission to provide service to  
21 these farm tap customers.

22 It seems odd for a nonjurisdictional service to  
23 be subject to tariffs that are on file with the  
24 Commission. It seems that the Commission has exercised  
25 jurisdiction over the area, required tariffs to be placed

1 on file, and the regulated entities have complied with  
2 that.

3 So based on the history of activity, it is -- it  
4 seems clear to Northern that it's a jurisdictional  
5 activity and one in which the Commission has exercised  
6 authority over.

7 There's been quite a bit of discussion on the  
8 '85 and the '87 Agreements. And I think that's  
9 appropriate. I think that's where focus ought to be. An  
10 opinion was offered on what the easements -- what the  
11 obligation is under the easement. And the easement says  
12 what it does.

13 However, to say that that is controlling,  
14 eliminates -- poof -- the '85 Agreement where the  
15 obligations to provide specific services that we provided  
16 evidence on that indicate what was provided before the  
17 '85 Agreement and what was provided after the '85  
18 Agreement just is making null and void that '85 Agreement  
19 to say that those obligations did not transfer.

20 And I think that from a transactional  
21 perspective those obligations did transfer. They  
22 transferred to UtiliCorp. They are with UtiliCorp or one  
23 of UtiliCorp's successors.

24 Just check my notes here.

25 There was a comment made regarding the 1985

1 Agreement not changing the easement. And I wanted to  
2 affirm that. The '85 Agreement transferred the  
3 obligations and how those obligations were being  
4 handled -- transferred those to UtiliCorp. The language  
5 in the easement is the same, but it has to be read in the  
6 context of who was providing those -- who was fulfilling  
7 those obligations and who acquired them. It doesn't  
8 change the language of the easement.

9 And I think that's all I have. I appreciate  
10 your time.

11 MR. DE HUECK: Any further questions for  
12 Northern Natural Gas?

13 Commissioner Fiegen.

14 COMMISSIONER FIEGEN: NorthWestern talked a  
15 little bit about asking Northern to come to the table to  
16 negotiate. Were you part of those discussions or --

17 MR. PORTER: I was not.

18 COMMISSIONER FIEGEN: Those requests.

19 MR. PORTER: I'm not sure there have been those  
20 discussions.

21 COMMISSIONER FIEGEN: The requests to come to  
22 the table?

23 MR. PORTER: I'm not sure what that means.  
24 We've had conversations. Our commercial groups have had  
25 discussions regarding this docket about what's going to

1 happen on December 31, 2017. It's your obligation. No,  
2 it's your obligation. We've had those discussions.

3 COMMISSIONER FIEGEN: But no negotiations type  
4 of discussion?

5 MR. PORTER: There's nothing that I would call  
6 negotiations, no.

7 COMMISSIONER FIEGEN: Okay. Also we talk a lot  
8 about the Commission's Order and the discussion at a  
9 hearing in 2011, the Natural Gas 11-001.

10 MR. PORTER: Uh-huh.

11 COMMISSIONER FIEGEN: Did you intervene in that  
12 docket?

13 MR. PORTER: Not that I'm aware of.

14 COMMISSIONER FIEGEN: And why was that?

15 MR. PORTER: I can't speak specifically. I  
16 don't know. But we very rarely intervene. And this is  
17 the first one I remember in a long, long time that we've  
18 intervened in.

19 COMMISSIONER FIEGEN: And you have a Government  
20 Affairs Department; correct?

21 MR. PORTER: We certainly do.

22 COMMISSIONER FIEGEN: That certainly could have  
23 intervened in the 2011 docket?

24 MR. PORTER: We could have, but I don't know  
25 what the reason would have been. We had an agreement.

1 I'm not sure -- I mean, Northwestern Energy is a customer  
2 of ours. We don't, as a practice, intervene in our  
3 utility's matters -- or customers' matters unless they  
4 invite us to.

5 Because once we intervene, we're subject to  
6 discovery and subject to questions, and we would much  
7 rather have -- just from a customer relations perspective  
8 we'd rather -- utilities need to manage that.

9 COMMISSIONER FIEGEN: Did you listen to the  
10 hearing at all or read the Order?

11 MR. PORTER: No, ma'am.

12 COMMISSIONER FIEGEN: Were you aware that the  
13 Public Utilities Commission Staff -- and I certainly  
14 appreciate Ms. Edwards explaining to the Commission today  
15 how the Commission Staff has tried to work with different  
16 entities to address this issue.

17 Have you been aware of those discussions, or did  
18 you know the Staff was working on those?

19 MR. PORTER: I do not know the extent. I knew  
20 Ms. Edwards and I have had a couple discussions, two,  
21 three discussions. We've brought up to the Commission  
22 and to the Commission Staff the fact that the ongoing --  
23 the proceedings ongoing in Iowa. So yes. I knew that  
24 they had had that conversation.

25 I had also talked to the General Counsel of the

1 Iowa Utilities Board, and I knew that they had been  
2 called. So I knew at a very high level that there had  
3 been some interaction. I have no information regarding  
4 the substance of those discussions.

5 COMMISSIONER FIEGEN: Were you aware that they  
6 have visited with MidAmerican?

7 MR. PORTER: I was not aware of that.

8 Let me say, if Ms. Edwards told me that, I don't  
9 remember. So no. As I sit here, I was not aware of  
10 that.

11 COMMISSIONER FIEGEN: So we did get a copy in  
12 the docket, the letter that you sent to the customers  
13 that Commissioner Hanson has certainly asked you a lot of  
14 questions about. It certainly surprised me when I got  
15 that letter in my Inbox also.

16 Have you sent other letters to customers, or is  
17 this it, the only letter you have sent?

18 MR. PORTER: First of all, they're easement  
19 holders. They're not -- we would not consider those  
20 customers.

21 COMMISSIONER FIEGEN: Tomato tomahto.

22 MR. PORTER: It's important in a sense that we  
23 communicate with our customers all the time.

24 COMMISSIONER FIEGEN: Correct.

25 MR. PORTER: Laura.

1 MS. DEMMAN: We sent a letter recently, which is  
2 dated December 9, where we invited customers to meetings  
3 that we have scheduled in Madison and Beresford to answer  
4 any questions that they may have for Northern.

5 COMMISSIONER FIEGEN: Madison and Beresford?

6 MS. DEMMAN: Yes.

7 COMMISSIONER FIEGEN: So have you asked other  
8 people to participate so the communication is balanced?

9 MS. DEMMAN: We have encouraged customers to  
10 participate so that their views can be known.

11 COMMISSIONER FIEGEN: How about other like Staff  
12 or NorthWestern or -- have you invited them to  
13 participate?

14 MS. DEMMAN: They are participating.

15 COMMISSIONER FIEGEN: Okay. So they're going to  
16 participate at the Madison and Beresford?

17 MS. DEMMAN: I'm sorry. At that meeting. No.  
18 We sent an invitation to the customers, to the farm tap  
19 landowners, to answer any questions that they may have.

20 COMMISSIONER FIEGEN: And so the Staff has not  
21 been invited?

22 MS. DEMMAN: I didn't copy the Staff on that.

23 MR. PORTER: I don't believe they have.

24 COMMISSIONER FIEGEN: Okay. So -- okay.

25 So my last question on jurisdiction. And it

1 sounds like Mr. Porter certainly believes the Public  
2 Utilities Commission has jurisdiction. I don't know if  
3 that's true or not, but I do -- this is what I feel, just  
4 as one Commissioner, that our farm tap customers in  
5 South Dakota will have to spend their financial resources  
6 possibly to litigate this in Circuit Court because I  
7 believe we don't have jurisdiction possibly over all the  
8 issues that our farm tap customers will have concerns  
9 about.

10 So they will have to use their financial  
11 resources possibly to deal with an easement contract and  
12 to ask possibly Northern to live up to their easement  
13 contract. So that will be in Circuit Court and the  
14 financial resources of the farm tap customers.

15 That's it.

16 MR. DE HUECK: Mr. Rislov.

17 MR. RISLOV: Mr. Porter, you brought it up this  
18 morning, and now Ms. Edwards brought it up today.

19 But in comparison of what could happen in  
20 South Dakota with Iowa and other states, do you realize  
21 that the regulatory circumstances among all these states  
22 may be entirely different and may impact customers in  
23 entirely different ways with regard to cost versus  
24 benefit?

25 MR. PORTER: Absolutely realize that --

1           MR. RISLOV: So they're maybe not an apples to  
2 apples comparison to compare South Dakota to Iowa?

3           MR. PORTER: Sir, I didn't mean to say because  
4 Iowa was doing something, South Dakota had to or vice  
5 versa.

6           What I was saying is that there are potential  
7 solutions out there that ought to be looked at and  
8 pursued. Whether South Dakota or Iowa is pursuing one, I  
9 100 percent agree with you, that may not fit for  
10 South Dakota, if that's the question.

11          MR. RISLOV: And we've gone a little bit into  
12 the tariff, and you mentioned the tariffing and whether  
13 or not that indicated jurisdiction.

14          Do you know if this Commission ever approved  
15 MERC's tariff?

16          MR. PORTER: In regards to farm taps?

17          MR. RISLOV: Yes.

18          MR. PORTER: It was on file. Yes.

19          MR. RISLOV: Did the Commission approve it?

20          MR. PORTER: I'm not sure. It was on file and  
21 was replaced by -- you're making a distinction that I'm  
22 not aware of.

23          MR. RISLOV: Honestly, I'm not either. It was  
24 handled by another employee, but it may have well been  
25 they were filed simply for informational purposes.

1           Would you be surprised that there was discussion  
2 during the 1980s and confusion over exactly what  
3 jurisdiction we did have with regard to those farm tap  
4 customers? Would that surprise you?

5           MR. PORTER: I would not be surprised about  
6 that.

7           MR. RISLOV: That's all I have. Thank you.

8           CHAIRMAN NELSON: Just one follow up.

9           You made mention of meetings that you're going  
10 to be conducting in I think you said Beresford and  
11 Madison for the easement grantors.

12           Would South Dakota PUC Staff be welcome to  
13 attend those meetings?

14           MS. DEMMAN: Yes. Yes, they would.

15           CHAIRMAN NELSON: Thank you.

16           MR. DE HUECK: I had a quick follow up to this  
17 question probably belongs in Circuit Court, as  
18 Mr. Koenecke explained. And it goes back to whether  
19 Northern Natural Gas has an obligation to secure a vendee  
20 for these farm tap customers.

21           And I understand there was a corporate  
22 transaction in 1985 where Northern Natural Gas relieved  
23 that burden that they were carrying by doing a corporate  
24 transaction and selling that obligation to another  
25 company to continue the service.

1           My question is were the easement holders at this  
2 corporate transaction when you sold the duty to have  
3 service provided?

4           Where were the easement holders? Don't they  
5 have a stake in ensuring their easement isn't altered in  
6 a significant way?

7           MR. PORTER: Easement holders would have, I  
8 believe, an interest if their easement was altered or  
9 amended, one. Two, I don't think they were. They were  
10 transferred from -- excuse me. They weren't even -- the  
11 easements weren't transferred.

12           The same entity that owned -- that had entered  
13 into the easements as we have discussed prior to 1985,  
14 the easements that were entered into by Northern Natural  
15 are held today by Northern Natural.

16           What was transferred was the utility service  
17 that through historical practices had developed and  
18 Peoples Natural Gas had provided -- from the beginning  
19 had provided that utility service. Northern Natural  
20 never did. Peoples provided that service.

21           That was transferred. It does not impact a word  
22 of the easement. So I think the easement is unaffected.

23           MR. DE HUECK: Thank you.

24           Anything else?

25           With that, we'll move to NorthWestern.

1 MR. OLSON: Thank you, Mr. de Hueck.

2 So if the easement is not affected by that  
3 transfer, then evidently there still is an obligation by  
4 Northern to provide a vendee of grantee in this  
5 situation.

6 And what has perplexed me throughout this  
7 process is if, as Northern alleges, they gave up all of  
8 those obligations in 1985 in that corporate transaction,  
9 why are they here today?

10 Why are they entering an agreement in 1987 to  
11 have others provide those services on their behalf? Why  
12 are they consenting to the assignment in 2011 to have  
13 others provide those services on their behalf?

14 I think the answer -- the answer to me is clear.  
15 They understand their obligations under those easements,  
16 and they're trying to make other people perform those  
17 obligations on their behalf.

18 We took a fair amount of flack based on their  
19 November 23 letter. Northwestern Energy and its  
20 predecessors have provided utility service to your farm  
21 tap since Northern Natural Gas first constructed the tap.  
22 That is so inaccurate. NorthWestern did not enter this  
23 picture until 2011.

24 The carefully crafted words "and its  
25 predecessors" suggest a link between NorthWestern and the

1     servicers prior to that. It's ironic that the servicers  
2     prior to that were Northern's at the very beginning. But  
3     that was obscured in this letter.

4             And if Northern was willing to provide a copy of  
5     this letter to us, I can only imagine what the December 9  
6     letter might say since they haven't been willing to  
7     provide that copy.

8             Thank you.

9             MR. DE HUECK: And, Mr. Koenecke -- or are there  
10    any questions for NorthWestern? I'm sorry.

11            Mr. Koenecke.

12            MR. KOENECKE: Thanks, Mr. de Hueck. I  
13    appreciate that. I'll try to be brief.

14            I wasn't trying to intimate that Northern would  
15    be able to somehow simply escape liability for their  
16    agreements under the easement in Circuit Court by saying  
17    that somebody else now has the responsibility.

18            I guess I want to make clear that it seems to me  
19    like it would be their obligation to third party in  
20    somebody who they think now has that.

21            And so thinking about that caused me to look at  
22    the '85 and the '87 Agreements, and I found it curious.  
23    The reliance on the '85 Agreement seems to be somewhat  
24    complete, that all of this was transferred in '85.

25            Well, if it was all transferred in '85, why is

1     there an '87 Agreement? Why did you come back two years  
2     later and do another agreement transferring these  
3     responsibilities? It seems like there must have been  
4     something reserved in '85 and then transferred in '87.

5             And if the argument is that all of these rights  
6     and responsibilities are transferred to somebody else,  
7     why is there an end date in the '87 Agreement?

8             Those are questions that I think a Circuit Court  
9     is teed up to resolve. It would be helpful for anybody  
10    in your situation to have taken testimony. I think that  
11    would have probably helped here today, taken testimony  
12    from witnesses and have documents admitted.

13            You know, hindsight's 20/20. But there are  
14    certainly questions here to be resolved, and I wouldn't  
15    want anybody to think they can't be resolved.

16            I will follow up by saying I don't think the  
17    Commission has jurisdiction over farm taps. I do not  
18    think that is a public utility or a gas utility under the  
19    definitions in the code. But no one should think that  
20    the customers have no remedy because I think they  
21    certainly have a good argument to put forth.

22            Thank you.

23            MR. DE HUECK: Well, at this point I'd like to  
24    invite any individuals who might be listening on the  
25    phone or attending the webcast to continue submitting

1 written comments into the record.

2 And I'll ask the Commissioners if there's  
3 anything else we need to cover with respect to this  
4 hearing.

5 CHAIRMAN NELSON: Well, I guess I do want to  
6 make a final statement. But before I do that, I'm  
7 looking at fellow Commissioners.

8 Do we want to request any final briefs? Or are  
9 we good with what's on the record thus far?

10 COMMISSIONER HANSON: I'm comfortable.

11 COMMISSIONER FIEGEN: I'm opposite of him.  
12 Surprise, surprise.

13 CHAIRMAN NELSON: And I'm really uncomfortable  
14 right now.

15 No. Actually I'm comfortable also, but I will  
16 defer. If one Commissioner would like to have those, I  
17 think timing is the issue. My presumption is that we  
18 would make a decision probably at our January 3 meeting.

19 And I'm looking at Ms. Edwards. Is our timing  
20 okay if we make a decision at our January 3 meeting?

21 MS. EDWARDS: Well, under the Administrative  
22 Rule, if the Commission asks for more information, I  
23 think that 60 days is somewhat told. So --

24 CHAIRMAN NELSON: Well, I personally don't want  
25 to push it past that because we are not going to be the

1 final arbiter of this, and so I want to give as much time  
2 as possible for folks to move down the line if needed.

3 MS. EDWARDS: I have no objection to preparing a  
4 brief by -- or prior to January 3 to give you guys time  
5 to read and will comply with that order if you wish.

6 COMMISSIONER FIEGEN: Mr. Chairman, I recant. I  
7 will not need a brief.

8 CHAIRMAN NELSON: Are you sure?

9 COMMISSIONER FIEGEN: Yes.

10 CHAIRMAN NELSON: Okay. Then that resolves that  
11 question.

12 I guess the only statement that I would make --  
13 first of all, I appreciate all four of the parties coming  
14 here and enduring our questions and putting your  
15 positions out in front of us.

16 We have all, over the last three or four weeks,  
17 had the opportunity to read the comments of the people  
18 that really matter here.

19 I know you all have business interests and  
20 shareholders you have to respond to to make prudent  
21 business decisions. But there are 195 South Dakotans  
22 that for 60 years have relied upon this service. It's  
23 part of their business. It's part of their home. It's  
24 how they stay warm. And we've heard from those people.

25 And I dearly wish that we had the authority

1 today to wave the magic wand and solve this problem for  
2 those folks today. But I think we probably don't. At  
3 least not today.

4 And so if I could leave one thought with all of  
5 you is go home and wrestle with this. Is it right for  
6 either of your companies to walk away from this? Or is  
7 the right thing to do to come together and find an  
8 agreement that works for everybody and keeps 195  
9 South Dakotans in the position that they've enjoyed for  
10 60 years and through no fault of their own find  
11 themselves having to deal with this issue today.

12 That's all.

13 MR. DE HUECK: Anything else?

14 COMMISSIONER FIEGEN: I'm just thankful that  
15 everybody came. I'm certainly thankful for all the  
16 comments that the farm tap participants have sent to us.  
17 It certainly enlightens us.

18 As a Commission, we all look at the public  
19 interest, and just like Commissioner Nelson has said, we  
20 want to ensure those people continue to get service in  
21 the future.

22 We don't know where that will be, and that may  
23 be a decision in the Circuit Court. We do not know that  
24 today. And we'll make a decision soon.

25 MR. DE HUECK: Commissioner Hanson.

1 COMMISSIONER HANSON: Nothing. Thank you.

2 MR. DE HUECK: With that, the hearing in

3 NG16-014 is adjourned. Thank you.

4 (The hearing is concluded)

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1 STATE OF SOUTH DAKOTA)

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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 December, 2016, and that the attached is a true and  
12 correct transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 2nd day of  
14 January, 2017.

15

16

17

18 Cheri McComsey Wittler,  
19 Notary Public and  
20 Registered Professional Reporter  
21 Certified Realtime Reporter

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