

# ARTHUR L. RUSCH

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December 23, 2016

South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501  
**Sent by e-mail**

## **COMMENTS IN RE: DOCKET #NG 16-01 4, PETITION FOR A DECLARATORY RULING REGARDING FARM TAP CUSTOMERS**

Dear Commissioners:

These comments are submitted on behalf of a number of my constituents in South Dakota Senate District 17 (Clay and Turner Counties). These residents are farm tap customers who will be significantly impacted by the Commission's decision regarding farm taps.

It appears that the PUC staff may believe that NorthWestern Energy may have already been given permission to shut off these farm taps as a result of the PUC decision in Docket NG11-001. I hope that is not true because none of these farm tap customers were a party to those proceedings; none of them were given notice of those proceedings and none of them were given an opportunity to appear and defend their interests at that time. I would also point out that these farm tap customers were not given notice of these proceedings until after the time for intervention was past.

I don't think that there is any question but that these farm customers have an absolute legal right to continue to receive natural gas through their farm taps. These farm tap customers (or their predecessors in title) granted easements to Northern Natural Gas Company (Northern) in consideration of the promised gas service by Northern. Apparently Northern was unable or unwilling to purchase these South Dakota property owners' easement rights outright so instead of paying for the easements, Northern offered a farm tap and perpetual service as consideration to the landowners to provide a perpetual easement. As I understand it, the landowners were responsible for paying for the initial connection and any repairs, while Northern was responsible for the meter. The easements which I have examined contain the following language:

000610

That grantee, upon written application by the grantor, will make, or cause to be made, a tap in any gas pipe line constructed by grantee upon the above described premises for the purpose of supplying gas to grantor, for domestic purposes only and not for re-sale, and for use upon the above described premises only. All connections required, shall be furnished and paid for by Grantor with the exception of the meter, which is to be furnished and owned by the Grantee. Said tap will be provided by grantee from a convenient point on its main line or some lateral as the grantee may determine, and gas to be taken under this provision shall be measured and furnished to the grantor at the rates and upon the terms as may be established by grantee, or by any vendee of grantee, from time to time.


Northern obtained a significant benefit from these transactions because they were able to finance the acquisition of approximately 200 easements across valuable farmland using the promise of future services, rather than present capital. Northern occupies these easements every single day and benefits from them. Certainly if Northern reneges on its agreements to furnish natural gas by means of these farm taps, which agreements were the consideration for the easements, that places in question the validity of the easements. In fact, Northern admits in their initial brief that they have an obligation to provide taps under the easements.

Northern Natural Gas has the right to engage whatever service provider they deem appropriate if they cannot or do not wish to service these accounts directly. However, Northern has the ultimate obligation to keep this farm tap service active as required by the easements. Whether they contract with Peoples, UtiliCorp, Aquila Inc. , MERC, or NorthWestern Energy it was still Northern's obligation. None of the farm tap customers were party to those assignments or transfers, none of them consented to the agreements and most of them were probably unaware of the agreements. This appears to be a fight between Northern and NorthWestern Energy. It is so unfair to place these 200 farm tap customers, who are mostly small farmers, in the middle of what appears to be a disagreement between two large corporations. Northern, and NorthWestern Energy, both have large incomes, large amounts of assets, and large legal departments while these farm tap customers have none of those. The farm tap customers should not have to face the possibility of losing their utility service due to this dispute between two large corporations.

It is fundamentally unfair to require these farm tap customers to bear the expense of retrofitting existing systems to run on alternate fuels. In addition, a number of these farm tap customers have made significant expenditures in reliance upon the guarantees which they received when they granted the easements and their belief that they would continue to receive natural gas. This includes new equipment, new gas lines, new furnaces, appliances etc. In some of these cases the farm tap customers were urged by NorthWestern to upgrade their lines and equipment. It is fundamentally unfair for the servicer to urge farm tap customers to pay to upgrade their lines and equipment, and then ask the PUC to allow them to disconnect those customers

We are requesting that the PUC protect the rights of these farm tap customers and deny any effort to disconnect their natural gas service.

Sincerely,

A handwritten signature in black ink, appearing to read "Arthur L. Rusch". The signature is fluid and cursive, with a large initial "A".

Senator Arthur L. Rusch  
South Dakota State Senate  
District 17

Cc: Senator Ernie Otten  
Representative David Anderson

**From:** PUC  
**Sent:** Friday, December 23, 2016 12:10 PM  
**To:** 'Arthur Rusch'  
**Cc:** Anderson, David; Otten, Ernie  
**Subject:** NG16-014

Sen. Rusch:

Thank you for your letter relaying concerns from your constituents regarding the farm taps matter, docket NG16-014. I understand the concern of possibly losing the farm taps and natural gas supply. I encourage all affected by this to monitor the PUC's docket as it is reviewed and information continues to be gathered and added by the commission.

The commission held a hearing last week with testimony provided by Northern Natural Gas and NorthWestern Energy officials as well as PUC staff members. The recording of the Dec. 14 four-hour hearing is available on the PUC's website. Click on the Recording link under the Hearing subhead in the docket:  
<http://www.puc.sd.gov/Dockets/NaturalGas/2016/ng16-014.aspx>.

This Informational Guide was designed to assist farm tap customers in understanding the filing of this docket and the PUC's process: <http://www.puc.sd.gov/commission/dockets/naturalgas/2016/ng16-014/informationguide.pdf>.

PUC staff filed an update on progress in resolving this matter this week:

<http://puc.sd.gov/commission/dockets/naturalgas/2016/ng16-014/ltr122016b.pdf>. Here is an excerpt:  
*Staff hereby informs the Commission and interested persons that Staff, Northern Natural Gas, and NorthWestern Energy have agreed to enter into discussions to negotiate for the benefit of the farm tap customers. In order to allow adequate time to have these discussions, we request that the Commission delay its decision until the regularly scheduled Commission meeting on January 17, 2017, rather than January 3, as previously intended. Staff, as the petitioner in this matter, hereby waives the 60-day requirement pursuant to ARSD 20:10:01:35.*

Since this is an open docket on which I will be voting, your message and my response are posted under Comments and Responses for all to read.

If you or any of your constituents wish to communicate with a PUC staff member working on this docket, please contact the commission with this request by calling 1-800-332-1782 or 605-773-3201 or emailing [PUC@state.sd.us](mailto:PUC@state.sd.us).

Chris Nelson, Chairman  
South Dakota Public Utilities Commission  
[www.puc.sd.gov](http://www.puc.sd.gov)