

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

In the Matter of the Complaint of )  
MONTANA-DAKOTA UTILITIES CO., a )  
Division of MDU Resources Group Inc., )  
Regarding South Dakota Intrastate Pipeline )  
Company's Rates for Pipeline )  
Transportation Service )

Docket No. NG16-006

MOTION TO DISMISS COMPLAINT

COMES NOW, The South Dakota Intrastate Pipeline Company ("Intrastate Pipeline") in the above entitled matter, by and through its attorney, Paul E. Bachand, and hereby submits this Motion to Dismiss the Complaint made by MDU Resources Group, Inc. ("MDU").

**1. Motion to Dismiss Counterclaims**

The undersigned, on behalf of Intrastate Pipeline moves to dismiss MDU's Complaint pursuant to SDCL 15-6-12(b)(5) as MDU's Complaint fails to state a claim upon which relief can be granted.

**2. Procedural History and Background**

MDU filed its Complaint with the South Dakota Public Utilities Commission on or about June 10, 2016. Intrastate Pipeline signed an admission of service regarding the Complaint on June 28, 2016. The Complaint was submitted in accordance with the provisions of SDCL 49-34A-26. (Complaint at Paragraph X).

Intrastate Pipeline is entitled to dismissal of the Complaint since SDCL 49-34A-26 is inapplicable to the facts as alleged by MDU and the appropriate method in which to proceed in establishing a rate is under SDCL 49-34A-13.

#### 4. Legal Argument

##### A. SDCL 15-6-12(b)(5): Failure to State a Claim

SDCL 15-6-12(b) provides that certain defenses may at the option of the pleader be made by motion. One such defense is “Failure to state a claim upon which relief can be granted.” SDCL 15-6-12(b)(5). A motion to dismiss for failure to state a claim under SDCL 15-6-12(b)(5) tests the legal sufficiency of the pleading. *Sisney v. Best Inc.*, 2008 S.D. 70, ¶ 8, 754 N.W.2d 804, 809. The pleading’s material allegations are accepted as true for purposes of a motion to dismiss under SDCL 15-6-12(b)(5) and they are construed in a light most favorable to the pleader to determine whether the allegations allow relief. *Id.*<sup>1</sup> The Complaint filed by MDU doesn’t comport with the requirements of SDCL 49-34A-26.

##### B. SDCL 49-34A-26

SDCL 49-34A-26, provides as follows:

On its own motion or upon a complaint made against any public utility, by the governing body of any political subdivision, by another public utility, or by any twenty-five consumers of the particular utility that any of the rates, tolls, tariffs, charges, or schedules or any joint rate or any regulation, measurement, practice, act or omission affecting or relating to the transmission, delivery or furnishing of natural gas or electricity or any service in connection therewith is in any respect unreasonable, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the Public Utilities Commission shall proceed, with notice, to make such investigation as it may deem necessary and take such action as deemed necessary and appropriate.

In order to proceed under 49-34A-26, the Complaint must establish that the rate currently in effect is unreasonable, insufficient or unjustly discriminatory. MDU, however, doesn’t take issue with the rate currently in effect, it simply “seeks to start the process now so that rates are in

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<sup>1</sup> Intrastate Pipeline previously communicated to MDU a schedule in which Intrastate Pipeline would provide documents to MDU and when it would file a rate case. Intrastate Pipeline indicated its willingness to meet in person with MDU. MDU, however, threatened to file a complaint if MDU’s arbitrary dates in which Intrastate Pipeline was to turn over documents to MDU was not complied with. Instead of communicating further with Intrastate Pipeline in order to resolve a scheduling dispute, MDU filed this Complaint. The end date for the current Transportation Agreement isn’t until September 1, 2018.

place in a timely manner.” (Complaint at Paragraph IX). Certainly MDU isn’t seeking to breach the Transportation Agreement attached as Exhibit A to the Complaint. MDU even acknowledges that the Transportation Agreement is currently in full force and effect. (Complaint at Paragraph III). Knowing now that MDU will not exercise its option to extend the Transportation Agreement further, a rate will need to be approved by the Commission. SDCL 49-34A-26 is inapplicable to the allegations made by MDU. The Commission should not encourage filings of this nature simply because one party does not succumb to arbitrary deadlines approximately 27 months prior to the end of an agreed-upon and Commission-approved Transportation Agreement.

**C. Appropriate Method to Proceed is under SDCL 49-34A-13**

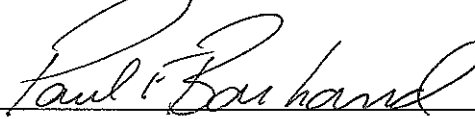
A complaint under SDCL 49-34A-26 is not applicable to an unknown future rate. The appropriate method in which to proceed is under SDCL 49-34A-13 and 13.1. The Commission is well aware of the requirements under SDCL 49-34A-13 and the process in which to establish reasonable rates for public utilities and they will not be repeated here. It is worth noting, however, that even if a rate is not finally established by the Commission prior to the end date in the Transportation Agreement, statutory authority exists to address refunds should the Commission determine that the rate charged is excessive (SDCL 49-34A-22).

**CONCLUSION**

Intrastate Pipeline will work with Commission staff with the goal of establishing an appropriate rate filing. MDU may wish to intervene in any subsequent rate filing, but its process here by filing a Complaint under SDCL 49-34A-26, seeks to wreak havoc with the statutorily prescribed method of establishing a rate under SDCL 49-34A-13. Based on the foregoing legal authorities and argument, Intrastate Pipeline requests that the Commission grant its Motion to Dismiss with prejudice.

Dated this 14<sup>th</sup> day of July, 2016.

RESPECTFULLY SUBMITTED:



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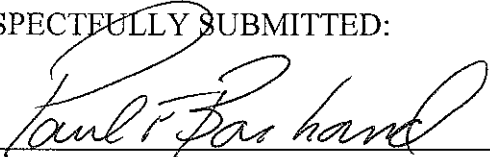
### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of its Motion to Dismiss Complaint in the above-referenced case was served upon the following person by electronic case filing at the addresses listed below:

Brett Koenecke  
May, Adam, Gerdes & Thompson  
Email: [koenecke@magt.com](mailto:koenecke@magt.com)  
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Dates this 14<sup>th</sup> day of July, 2016.

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