

IN THE MATTER OF THE APPLICATION)	STAFF’S REPLY TO SDIP’S
OF SOUTH DAKOTA INTERSTATE)	REQUEST FOR HEARING TO
PIPELINE COMPANY FOR AUTHORITY)	COMPEL SETTLEMENT
TO INCREASE ITS NATURAL GAS)	AGREEMENT AND RESPONSE
RATES)	TO STAFF’S MOTION FOR
)	SECOND PROCEDURAL
)	SCHEDULE
)	
)	
)	NG17-009

In Reply to SDIP's Response

Staff agrees that Staff, SDIP, Montana-Dakota Utilities Co. (“MDU”) and Ring-Neck Energy & Feed, LLC (“Ring-Neck”), together “the Parties” engaged in settlement discussions and, as indicated in Staff’s March 27, 2018 Letter Regarding Procedural Schedule (“Letter”), the parties were able to reach an “agreement on revenue requirement in principle.” Based on this

agreement in principle, the Parties agreed that the Procedural schedule should be suspended. Staff agreed that the schedule should be suspended to promote efficiency and attempt to keep the remaining rate case expenses as low as possible. Specifically, the suspension avoided the parties submitting Pre-Filed Testimony and Rebuttal Testimony in the docket, as well as preventing additional discovery. However, as Staff's Letter made clear, "the rate design treatment of potential new customers" was still being considered.

Despite Staff's Letter and despite Staff's desire to finalize the agreement in principle, two specific issues arose, leading Staff to file its Motion. First, between March 27, 2018 and May 29, 2018, the Parties did not appear to make any significant progress on resolving the issue of the rate design treatment of potential new customers. From Staff's perspective, this is a key item Staff wants resolved in this docket, as Staff explained in its February 21, 2018 Response to Ring-Neck's Petition to intervene. The resolution of this issue is a key factor in the agreement in principle that was reached by the Parties, at least on the part of Staff, and Staff would likely not have agreed to the other items without this key element. Between the filing of Staff's Letter and Motion, it was Staff's understanding that SDIP, MDU and Ring-Neck planned to engage in discussions and appeared confident that an agreement could be reached. Staff requested updates from the parties, but on May 24, 2018, it became apparent that there was not yet an agreement.

This rate proceeding has been a great exercise in patience. As is demonstrated by the number of data requests and timeliness of the responses, obtaining the necessary information was a tedious process. Thus, it was not surprising to Staff that as the Parties finally neared the finish line, significant and new information came to light, which would have a shocking and material impact to the ratepayer(s). On May 24, 2018, SDIP finally provided Staff with its updated rate case expenses. This update came after numerous requests by Staff for SDIP to provide updated

expenses for Staff to review and include in a draft settlement stipulation. Staff sent emails to SDIP and its counsel requesting rate case expense updates on March 27, April 24, and May 2. No update was provided in response to any of the email requests. The update of rate case expense ultimately filed at the end of May is significantly higher than the previous estimate given to Staff in a settlement counter offer from SDIP in early March, and included an element related to interest that Staff believes was not discussed and was not agreed upon at the time of the settlement in principle in early March.

As Staff considered these issues and the options for addressing these issues, it became apparent that if these issues could not be resolved without an evidentiary hearing, a new procedural schedule would need to be adopted as soon as possible. Staff identified potential hearing dates and filed a schedule based on those dates. Although Staff does generally attempt to work with the Parties to agree to a schedule in advance of filing a motion with the Commission, there was not time to do so in this case, nor is there a legal requirement to provide advance notice of a motion to the parties in an administrative proceeding. On May 29, 2018, Staff filed its Motion, and served the Parties a copy of the Motion, providing a full 10-day notice of the Motion before the next regularly scheduled Commission Meeting.

As Staff made clear to SDIP the afternoon the Motion was filed, it is Staff's intent to attempt to resolve these issues among the Parties without an evidentiary hearing. However, it is also imperative that Staff retain its right to bring this matter to hearing to ensure that any rate set is just and reasonable. Since this Motion was filed, the Parties have engaged in numerous conversations in an attempt to address these remaining issues. Although Staff would like to remain optimistic that these items will be fully resolved without a hearing, Staff believes it is necessary to keep the option available to the Parties. If the option for an evidentiary hearing in

the docket is taken away, the Parties will lose the ability to litigate issues before the Commission, essentially requiring the Parties to come to an agreement.

In Reply to SDIP's Request for Hearing to Compel Settlement Agreement

Staff respectfully requests the commission deny the motion to compel settlement agreement, as it was filed without citing any authority upon which it could be granted. In addition, because SDIP placed Staff in a position of having to defend itself for the state of the settlement agreement, Staff is compelled to provide the discussion below.

SDIP states in its Response that it “believes the only question remaining in this docket is whether or not this docket must resolve potential new customers of SDIP.” The Commission’s Order granting intervention to Ring-Neck does not limit the scope of Ring-Neck’s intervention. As Staff has made abundantly clear throughout this process, as shown in its February 21, 2018 Response to Ring-Neck’s Petition to Intervene, the addition of such a large customer on SDIP’s system will require an evaluation of SDIP’s rates and, in particular, the class cost of service. Therefore, it is imperative this issue be decided in this rate case. Staff must ensure that with the addition of a second customer, SDIP’s rates remain just and reasonable.

Ring-Neck plans to be operational in November 2018. There is not enough time to process another rate case, nor does it make sense to, from both time efficiency and cost efficiency perspectives. As SDIP pointed out in its Response, and discussed above, Staff has an issue with recovery of rate case expenses. The amount of costs that would be incurred as a result of a new separate proceeding to address this issue is unreasonable when we have the available information to address the issue now.

The determination of the allocation of costs between MDU and Ring-Neck (or any other potential customer) and resulting rate design may have a material impact on other items of the settlement in principle. Without yet agreeing on the appropriate class allocation and rate design treatment, Staff cannot waive its right to a hearing involving other issues in the case. Staff's understanding of the settlement in principle is it will address the addition of a new customer and the appropriate rate design treatment. Without this important issue being satisfactorily addressed within the settlement, Staff cannot support all remaining issues addressed in the settlement in principle.

Additionally, although the Parties were able to reach a verbal agreement in principle regarding the revenue requirement, there has not yet been a signed written agreement. Moreover, it has become obvious to Staff through communications with the Parties that the Parties may have had different opinions on what that verbal agreement entailed. These differing opinions make it evident that the terms of any potential settlement agreement be explicitly agreed to and outlined in a written document. SDIP has provided no legal authority or precedent for the Commission to compel the Parties to enter into a settlement agreement, and Staff is unaware of any such authority. Conversely, an order by the Commission compelling the Parties to enter into a settlement agreement would prejudice the Parties and take away their rights to a hearing if so desired.

As a final note, Staff respectfully requests the Commission deny SDIP's request that the Commission set a date to address whether language regarding potential new customers must be included in any order in this docket and allow for additional briefing from the parties on this subject. At this point, Staff believes this matter must be included in any final settlement agreement Staff would enter. Staff made this perspective clear to SDIP and negotiated the terms

of the agreement as such. If SDIP refuses to include this issue in an agreement, then Staff does not believe a settlement agreement is possible and an evidentiary hearing on all aspects of this docket is needed. Staff believes an evidentiary hearing is the proper forum for this matter to be litigated and a Post hearing brief the proper mechanism to permit additional discussion of the issue. Staff's proposed procedural schedule will allow the Parties further discovery and provide hearing dates to present evidence of the issues to the Commission. Denying Staff's motion for a procedural schedule and granting SDIP's request for a different hearing is counterintuitive and appears to be a simple delay tactic by SDIP to waste time and interfere with Staff's right to proceed to hearing in this docket. Moreover, failing to address the treatment of a new customer within this proceeding will likely cause delays and inhibit Ring-Neck's ability to obtain natural gas service when the facility becomes operational. This is especially concerning given that the issue could be resolved in the current docket.

Staff respectfully requests the Commission grant Staff's Motion for Second Procedural Schedule. Additionally, Staff respectfully requests the Commission deny SDIP's Request for Hearing to Compel Settlement Agreement, deny SDIP's request that the Commission note that the impending settlement stipulation need not include language regarding a hypothetical new customer and the issue need not be addressed in this proceeding, and deny SDIP's request that the Commission set a date to address whether or not language regarding potential new customers must be included in any order in this docket and allow additional briefing from the Parties on this subject.

Dated this 11th day of June 2018.

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