

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF)	DECLARATORY RULING
COMMISSION PIPELINE SAFETY PROGRAM)	REGARDING JURISDICTION
MANAGER FOR A DECLARATORY RULING)	
ON JURISDICTION OF LOW INCOME)	PS08-004
HOUSING PROPANE SYSTEM)	

On October 28, 2008, the Public Utilities Commission (Commission) received a Petition for Declaratory Ruling (Petition) from Commission Staff (Staff) regarding jurisdiction over the Burke Housing Authority low income housing propane system. In its Petition, Staff stated the following:

The Burke Housing Authority herein (the "facility") is a non-profit elderly and low income housing unit in Burke, South Dakota. Residents must undergo an application process prior to acceptance as a resident at the facility. After acceptance, the applicant is provided a housing unit. The housing units are set up in sets of four individual units under one roof. There are 23 individual residential units as well as one community room. Heat for the units is provided by propane heaters that each serve two units. Units do not have individual heating units.

The resident pays a set fee for his or her rent. The rent paid by the resident includes all utilities, upkeep and maintenance used at the facility. The rent paid by the resident is either 30% of his or her income or a set rate. The "percentage of income rent" is set by US Housing and Urban Development. If a resident is above a particular income rate he or she must pay the flat rate, also set by US Housing and Urban Development.

The facility makes an annual application to US Housing and Urban Development to recoup its utility expenses through a subsidy. The application is based on a three year average consumption and the estimated rate of the utility (inclusive of water, sewer, gas and electricity). At the end of the year US Housing and Urban Development calculates actual consumption and actual cost. After expiration of the three year estimate period, the cumulative calculations are evaluated. The facility keeps 75% of unused money if it over estimated its costs or usage and thus collected more government subsidy than necessary. If, however, the facility exceeds its estimate, US Housing and Urban Development pays only 25% of the overage and the facility covers the remaining overage. At no time, however, may the facility increase its rent. The facility may only collect the rent set by US Housing and Urban Development.

The facility has paid the program fees set in SDCL 49-34B and been considered part of the South Dakota pipeline safety program since at least 1997. While inspecting the facility this year, however, one of the pipeline safety program inspectors questioned whether the facility falls within the pipeline safety program's jurisdiction and now looks to the Commission for assistance.

In its Petition, Staff requested that the Commission issue a decision regarding the following issue:

Is a propane gas delivery system, where heat is provided to two units from each furnace, units do not have individual furnaces and the costs thereof are paid through a government subsidy, and where user rents cannot be modified based on actual cost, a master meter system according to SDCL 49-34B-1(10) and thus within the jurisdiction of this Commission?

On October 30, 2008, the Commission electronically transmitted notice of the filing and the intervention deadline of November 28, 2008, to interested individuals and entities. No parties filed to intervene.

At its regularly scheduled meeting of December 9, 2008, the Commission considered this matter. After listening to comments presented by Staff, the Commission voted unanimously to find that it does not have jurisdiction over the Burke Housing Authority low income housing propane system. It is therefore

ORDERED, that the Commission finds that it does not have jurisdiction over the Burke Housing Authority low income housing propane system.

Dated at Pierre, South Dakota, this 16th day of December, 2008.

<p align="center">CERTIFICATE OF SERVICE</p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.</p> <p>By: <u>Dulaine Kolbo</u></p> <p>Date: <u>12/17/08</u></p> <p align="center">(OFFICIAL SEAL)</p>
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BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Chairman

Steve Kolbeck
STEVE KOLBECK, Commissioner

Dustin M. Johnson
DUSTIN M. JOHNSON, Commissioner