

From: william curry [REDACTED]
Sent: Wednesday, December 21, 2016 10:40 AM
To: Nelson, Chris
Subject: Fw: More Information on Farm taps

I've attached a court document from Montana Public Service Commission and a news article concerning Havre Pipeline. I just wanted to keep you in the loop.

William J. Curry

By Alex Ross

NorthWestern loses Havre Pipeline case

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March 21, 2016

Havre Pipeline Co., largely owned by NorthWestern Energy, must continue to supply its rural customers with natural gas.

That's the ruling of the Montana Public Service Commission.

At stake was the question of whether the access to natural gas NorthWestern Energy provides to about 90 farm tap customers in remote parts of Blaine, Chouteau and Hill counties are services considered those of a public utility.

Farm tap customers tap into natural gas lines to heat their homes and businesses for a set rate.

"The Commission finds that Havre Pipeline is required by law to provide reasonably adequate services to its farm tap customers," according to the text of the PSC's final order.

When the pipeline was being constructed in the 1970s and 1980s, many of these customers signed contracts granting Havre Pipeline right of way easement in exchange for access to natural gas services to heat their homes and businesses.

But the text of the commission's final order showed that since 2013, when NorthWestern Energy purchased the 82 percent share of Havre Pipeline, the quality of service has diminished.

Eric Sell, PSC spokesperson, said that pressure in the lines has been so degraded that many farm tap customers are having trouble properly heating their homes.

Some tap customer became so dissatisfied that they discontinued their services and converted to an alternate source of energy at their own expense, Sell said.

At a public hearing the commission held in October in Hensler Auditorium at Montana State University-Northern, Richard Alke, corporate counsel for NorthWestern Energy, argued the services provided to tap customers are not those of a public utility. Therefore, they were not subject to regulations of a public utility. And thus, he said, NorthWestern can abandon service to farm tap customers.

NorthWestern Energy argues that the wells in the Bear Paw Basin that supply the gas have been depleted.

Alke said that in order to provide the services of a public utility, the gas has to go through a distribution process through which the gas is properly refined.

"The facilities talked about here, have never provided that function," Alke said at the hearing.

The commission, in its order, disagreed citing a 1995 declaratory ruling issued by the commission in response to a petition from Havre Pipeline.

The ruling said that while the commission “would not regulate gathering portions of the pipeline system” it had jurisdiction over the farm tap service by way of tariffs filed with the commission, which outline the obligations and terms companies enter into with customers.

“The Commission finds that whether the farm tap pulls from the gathering system or transmission lines, it is regulated by the commission as a public utility,” the text of the order stated.

Furthermore, they get “express approval” from the commission, so farm tap services must continue to be provided, it also said.

If NorthWestern can no longer provide such services, Sell said, the company must come before the commission to get its approval.

The commission said in its order that Havre Pipeline must update its tariff, which states the terms of service a company has with its customers “within 30 days to expressly set forth any limitations or unique aspects of the farm tap service, other than conditions precedent to abandonment, which will be handled only in a discreet document.”

Representatives for NorthWestern Energy were not available for comment by printing deadline this morning.

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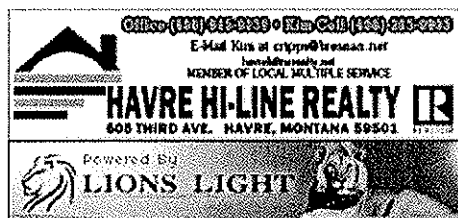


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Service Date: March 15, 2016

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF Havre Pipeline	)	REGULATORY DIVISION
Company's Service Quality and Its Response	)	
to Notice of Commission Action in	)	DOCKET NO. D2015.3.32
N2014.11.92	)	ORDER NO. 7413b
	)	
IN THE MATTER OF the Request of the	)	DOCKET NO. N2014.11.92
Montana Public Service Commission for	)	
Havre Pipeline Company Service Quality	)	
Information	)	

FINAL ORDER

PROCEDURAL HISTORY

1. NorthWestern Energy ("NorthWestern") became the majority owner of Havre Pipeline Company ("Havre Pipeline") in December of 2013. On November 14, 2014, the Montana Public Service Commission ("Commission"), via a *Notice of Commission Action*, initiated an investigatory docket based upon the receipt of service quality complaints about Havre Pipeline's natural gas service in northern Montana. The Commission directed Havre Pipeline to file a plan within 20 days of the issuance of the November 14, 2014 *Notice of Commission Action* to explain what it would do to meet its obligations as a public utility to provide reliable natural-gas service.

2. On November 20, 2014, NorthWestern, on behalf of Havre Pipeline, requested an extension to file a response to the Commission's *Notice of Commission Action* on or before January 5, 2015. On November 26, 2014, the Commission issued a second *Notice of Commission Action* granting Havre Pipeline an extension. On January 5, 2015, NorthWestern, on behalf of Havre Pipeline, filed a *Response to the Montana Public Service Commission's Notice of Commission Action issued on November 14, 2014*.

3. On April 1, 2015, the Commission issued a *Notice of Commission Action and Notice of Filing and Intervention Deadline*, initiating a contested case proceeding and

consolidating Dockets N2014.11.92 and D2015.3.32. On April 27, 2015, the Montana Consumer Counsel ("MCC") was granted intervention. On June 23, 2015, the Commission issued *Procedural Order 7413a*. On September 3, 2015, the Commission issued a *Notice of Public Hearing*, and a hearing was held in Havre, Montana on October 26, 2015.

FINDINGS OF FACT

Jurisdiction

4. The Commission continues to find that it has jurisdiction over Havre Pipeline. A public utility includes an entity that owns, operates, or controls plant or equipment for the production, delivery, or furnishing of heat. Mont. Code Ann. § 69-3-101(1)(a) (2015). The Commission is "invested with full power of supervision, regulation, and control" of public utilities. *Id.* § 69-3-102. The Commission may "do all things necessary and convenient" in the exercise of its powers. *Id.* § 69-3-103(1). Based on statute, the Commission finds that Havre Pipeline's farm tap service qualifies as a public utility, and is subject to the Commission's authority. *See infra* ¶¶ 21-23.

5. The Commission finds that it previously articulated its position regarding Havre Pipeline's status as a public utility. In 1995, the Commission issued a *Declaratory Ruling* in response to a petition from Havre Pipeline. The Commission found that while the Commission "would not regulate the gathering portions of the pipeline system," it "would continue to exercise jurisdiction over the farm tap service pursuant to the tariffs filed at the PSC... regardless of the form of acquisition of this portion of the system." *In Re Havre Pipeline Company*, Dkt. No. 95.2.5, Declaratory Ruling 8 (Mont. Pub. Serv. Commn. Aug. 15, 1995). Declaratory orders are binding between the agency and the party that requested such an order. Mont. Admin. R. 1.3.229 (2016); *see infra* ¶ 24. The Commission's Declaratory Ruling went unchallenged. *See Data Response ("DR") PSC-025* (Sept. 25, 2015).

6. The Commission finds the testimony of George Donkin, a MCC witness, persuasive. He testified that the language in the declaratory ruling indicates that the Commission recognized that while there are different portions of the system, the farm tap service is regulated by the Commission. Hr'g Tr. 35:4-12. The Commission determines that this interpretation is correct. The Commission finds that whether the farm tap pulls from the gathering system or transmission lines, it is regulated by the Commission as a public utility. The Commission finds that any other conclusion is illogical, as it would allow a public utility with a gas gathering

system to escape regulation.

7. The Commission reiterates its finding that “the farm tap service is indeed a public utility service. Components of full service are present, albeit off a gathering system and limited to the few short feet of service line per each farm tap connection.” Dkt. No. 95.2.5, Declaratory Ruling 8. The Commission already considered the unique aspects of Havre Pipeline’s service, and found that nonetheless, the farm tap service is in fact public utility service, subject to the regulatory jurisdiction of the Commission.

8. Havre Pipeline argues that it has not “professed to provide natural gas distribution service.” Havre Pipeline Opening Post Hr’g Br. 7 (Dec. 9, 2015). The Commission does not find this argument persuasive. The fact remains that there are residential customers receiving gas that is being distributed through the interconnected system. *See* DR MCC-005 (July 13, 2015). Havre Pipeline owns and operates the equipment and facilities that is uses to furnish natural gas to others. *See infra* ¶ 21. The Montana Supreme Court has held that when there is evidence of public utility status, an entity “should be classed as a public utility regardless of its protestations or professions to the contrary.” *Gallatin Nat. Gas Co. v. Pub. Serv. Comm’n*, 79 Mont. 269, 275, 256 P. 373, 374 (1927); *see infra* ¶ 25.

9. Furthermore, the original instrument which initiated the farm tap service alerted interested parties that the Commission may one day assert jurisdiction. The Commission therefore determines that all affected parties were on notice that the Commission may declare jurisdiction over the farm tap service. Each Application that was originally submitted to begin the subject farm tap service stated that all parties recognize “that the service may in the future become subject to the exercised jurisdiction of the Montana Public Service Commission... In such case, the rates for services and conditions of service expressed herein are subject to change.” Ex. JLA-1 p. 1-2, para. 2. The Commission did, in 1995, exercise jurisdiction.

10. In its *Response to the Montana Public Service Commission’s Notice of Commission Action issued on November 4, 2014*, Havre Pipeline acknowledges that though it is not “a typical utility,” it is in fact a public utility. Dkt. No. N2014.11.92, Havre Pipeline Resp. 10-11 (Jan. 5, 2015). The Commission finds that, consistent with its 1995 decision, the Commission has jurisdiction of the public utility portion of Havre Pipeline’s operations, specifically, the farm tap service.

Reasonably Adequate Service

11. The Commission finds that Havre Pipeline is required by law to provide reasonably adequate service to its farm tap customers. “Every public utility is required to furnish reasonably adequate service and facilities.” Mont. Code Ann. § 69-3-201; *see Montana Power Co. v. Public Serv. Comm’n*, 214 Mont. 82, 89, 692 P.2d 432 (1984); *see infra* ¶ 26.

12. Havre Pipeline states that farm taps “are being fed from gas being produced in other areas of the gathering system.” DR MCC-005. This is being done because there are no longer any producing wells in the segment of the gathering line to which the farm tap customers are connected. *Id.* The MCC recognizes that “while there may be some service reliability or service cost issues associated with continuing [farm tap] service, [Havre Pipeline] can and in fact is continuing to provide service with gas from other sources on its system.” MCC Post Hr’g Br. 3 (Dec. 9, 2015). The Commission agrees that Havre Pipeline is continuing to serve existing farm tap customers, using its gathering system as a distribution system.

13. The Commission agrees with the MCC that Havre Pipeline’s “argument here that the contractual provisions trump public utility statutes must be rejected.” MCC Post Hr’g Resp. Br. 6 (Dec. 16, 2015). This position is also supported by the law. The Montana Supreme Court has noted that “[p]rior to the date upon which the [Commission’s Enabling] Act was passed, every rate to a consumer of a product of a public utility in Montana rested on private contract between the consumer and the utility.” *Billings v. Public Serv. Comm’n*, 67 Mont. 29, 36, 214 P. 608 (1923). The enabling act effectively ended this form of contractual regulation. *See infra* ¶ 28. The Commission finds that public utility obligations cannot be avoided through private contracts, and this finding is supported by Montana law.

14. Public utilities are subject to certain standards, such as the requirement to provide “reasonably adequate service and facilities” at rates that are “reasonable and just.” Mont. Code Ann. § 69-3-201; *see infra* ¶¶ 26, 27. The Commission finds that these obligations are essential to the legal classification of a service as a utility, and they cannot be contracted away. The Commission finds that any limitations or unique aspects of service must be identified as special terms and conditions in the tariff. Havre Pipeline has consistently failed to request that the Commission approve any special terms and conditions in its tariff.

15. The section providing for “special terms and conditions” in the tariff reads, in its

entirety, “none.” *See* DR PSC-002 (July 13, 2015). The tariff is the controlling instrument of a public utility service. Absent any special terms and conditions identified in the tariff, there are no limitations to service. However, in this unique circumstance the Commission may consider the original Application in determining what constitutes “reasonably adequate service.”

16. Although the Commission finds that the tariff controls the service today, the original Application states that the “availability of service... and the volumes and pressure of the natural gas... are subject to the limitations with respect to gas supply...” Ex. JLA-1, p. 3, para. 4. Since 2006, Havre Pipeline has been sending letters to its farm tap customers, reminding them of the service limitations articulated in the original Applications. DR PSC-004. These letters did not cite to the conditions of the tariff, and there is no evidence that the company has made customers aware of the utility’s legal obligations. The Commission will consider Havre Pipeline’s unique status if and when the utility files either for special terms and conditions in its tariff, or for the abandonment of parts or all of its system.

17. Havre Pipeline responds to all customer service request in the order they are received, which means the company responds the same day or the next working day. DR PSC-003. Havre Pipeline has taken steps to address service complaints, including rebuilding all gas gathering farm tap settings, which reduces freezing points, installing solar-powered methanol injection pumps to replace old pumps that no longer function and to address freezing issues, and covering exposed piping with insulated blankets. DR PSC-009. Since NorthWestern became the majority owner of Havre Pipeline, a significant decline in service has not occurred. *See* DRs PSC-021, 022.

18. The Commission agrees with both parties that it is not reasonable at this time for Havre Pipeline to construct natural gas distribution mains to serve the farm tap customers, all of whom are scattered across a geographically large and rural area. The Commission finds that constructing distribution mains would permanently resolve the issues the farm tap customers face, but that this option is not currently economically viable. The MCC proposes other options for resolving customer complaints, such as providing the statutory utility service of “heat” by negotiating with customers for the installation of propane service. The Commission finds that any remedy like this should be reserved to a docket where Havre Pipeline requests to abandon its farm tap services. The Commission therefore finds that Havre Pipeline should continue to provide farm tap service to current farm tap customers, and should continue to respond to

customer inquiries promptly.

Abandonment

19. The Commission finds that Havre Pipeline's assertion that it has the right to abandon farm tap service without Commission oversight is not persuasive. The Montana Supreme Court has found that a utility may not abandon service without the Commission's consent. *Great N. Ry. v. Board of R.R. Comm'rs*, 130 Mont. 250, 252, 298 P.2d 1093 (1956); *see infra* ¶ 29. The MCC argues that the Application clearly acknowledges the Commission's right to assert jurisdiction over the service, the Commission did in fact assert such jurisdiction, and finally that the "customers' prior recognition of the Company's reservation of the option to abandon service... does not control the Commission's obligation to ensure that customers receive reasonably adequate service..." MCC Post Hr'g Br. 5-6. The MCC is correct in its assertions. It is nonsensical that public utilities can contract away their obligations, and it is not consistent with the law.

20. The Commission finds that Havre Pipeline is a self-professed public utility subject to the requirement of reasonably adequate service, and therefore, it cannot abandon service absent Commission consent. *See* Dkt. No. N2014.11.92, Havre Pipeline Resp. 10-11 (Jan. 5, 2015); *see also In Re Five Valleys Gas Co.*, Dkt. No. D2015.3.31, Order No. 7414a (Aug. 26, 2015). The Commission finds that Havre Pipeline is considering abandonment of service to certain customers, and that other customers are threatened with abandonment through a decline in gas pressures. Ex. MCC-1, p. 8. It is Havre Pipeline's obligation to propose abandonment of its service with sufficient notice and with reasonable conditions, so that the Commission may consider that application.

CONCLUSIONS OF LAW

21. Pursuant to Mont. Code Ann. § 69-3-101(1)(a):

The term public utility... includes every corporation, both public and private, company, individual, association of individuals, and their lessees, trustees, or receivers appointed by any court that own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal... heat.

22. The Commission is "invested with full power of supervision, regulation, and control" of public utilities. Mont. Code Ann. § 69-3-102.

23. The Commission may “do all things necessary and convenient” in the exercise of its powers. *Id.* § 69-3-103(1).

24. “A declaratory ruling is binding between the agency and the petitioner concerning the set of facts presented in the petition.” Mont. Admin. R. 1.3.229(1).

25. In *Gallatin Natural Gas Co. v. Public Serv. Comm'n* the Montana Supreme Court articulated the following:

The cases cited by appellant lay down the general principle that there must be “profession of public service,” and that the mere furnishing of light or heat to one or two or a limited number of consumers without “profession of public service” does not constitute one a public utility. This is doubtless true, but we repeat, that where, as in this case, the evidence shows that one company through an alter ego distributes gas in the form of heat, light and power to hundreds of consumers at Billings and elsewhere, such company is in fact rendering such service to “other persons...” and should be classed as a public utility regardless of its protestations or professions to the contrary.

Gallatin Natural Gas Co. v. Public Serv. Comm'n, 79 Mont. 269, 275, 256 P. 373, 374 (1927).

26. “Every public utility is required to furnish reasonably adequate service and facilities.” Mont. Code Ann. § 69-3-201.

27. Mont. Code Ann. § 69-3-201 additionally states:

The charge made by any public utility for any heat, light, power, water, or regulated telecommunications service produced, transmitted, delivered, or furnished or for any service to be rendered as or in connection with any public utility shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful.

28. In *Billings v. Public Serv. Comm'n* the Montana Supreme Court found:

When the legislature created the Public Service Commission as an administrative arm of the sovereignty, giving to the agency thus created ample authority to exercise through the police power of the state a supervisory control over all public utilities, the sovereign prerogative was asserted. In creating the commission the intention of the legislature was “to provide a comprehensive and uniform system of regulation and control of public utilities.”

Billings v. Public Serv. Comm'n, 67 Mont. 29, 36, 214 P. 608 (1923) (quoting *State ex re. Billings v. Billing Gas Co.*, 55 Mont. 102, 112, 173 P. 799 (1918)).

The Montana Supreme Court further found that:

Prior to the date upon which the Act was passed, every rate to a consumer of a product of a public utility in Montana rested on private contract between the consumer and the utility. Some of these rates were unjust, unreasonable, discriminatory, unduly

preferential. To put a stop to practices of that character, to improve the service rendered by public utilities, to cause to be fixed just, reasonable and equitable rates for the service rendered, and to equalize the burden between consumers, manifestly were objects within the legislative intention.

Billings v. Public Serv. Comm'n, 67 Mont. at 36.

29. The Montana Supreme Court has ruled that a public utility may not abandon service without Commission approval. Specifically, “[t]his order of the board is in line with the authorities throughout the country to the effect that a public utility may not discontinue its service without approval of the public service commission. This has been held in a great many states under statutes no broader than ours.” *Great N. Ry. v. Board of R.R. Comm'rs*, 130 Mont. 250, 252, 298 P.2d 1093 (1956).

30. The Commission may at any time “upon its own motion, investigate any of the rates, tolls, charges, rules, practices, and services” of a utility. Mont. Code Ann. § 69-3-324.

31. The Commission “after a full hearing... make by order such changes as may be just and reasonable.” *Id.* § 69-3-324.

ORDER

Based on the foregoing, IT IS HEREBY ORDERED THAT:

32. Havre Pipeline must continue to furnish reasonably adequate service and facilities to current farm tap customers,

33. Havre Pipeline may not discontinue any farm tap service absent express approval from this Commission; and

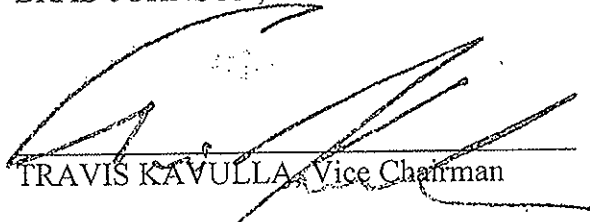
34. Havre Pipeline is required to update its tariff within thirty (30) days to expressly set forth any limitations or unique aspects of the farm tap service, other than conditions precedent to abandonment, which will be handled only in a discreet docket.

DONE AND DATED this 23rd day of February 2016 by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION



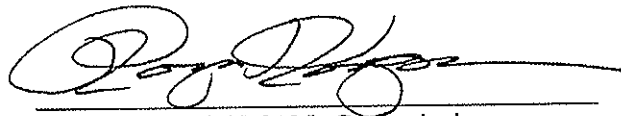
BRAD JOHNSON, Chairman



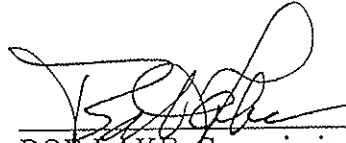
TRAVIS KAVULLA, Vice Chairman



KIRK BUSHMAN, Commissioner



ROGER KOOPMAN, Commissioner



BOB LAKE, Commissioner

ATTEST:



Aleisha Solem
Commission Secretary

(SEAL)