Before the Public Service Commission
Of the State of Montana

# DOCKET NOS. D2015.3.32 and N2014.11.92

# HAVRE PIPELINE COMPANY
# SERVICE QUALITY

# REBUTTAL
# TESTIMONY AND EXHIBITS

# SEPTEMBER 4, 2015

**Department of Public Service Regulation**
**Montana Public Service Commission**
**Consolidated Docket Nos. D2015.3.32 and N2014.11.92**
**Havre Pipeline Company Service Quality**
**Havre Pipeline Company**

# PREFILED REBUTTAL TESTIMONY

# OF JOHN L. ALKE

# ON BEHALF OF HAVRE PIPELINE COMPANY

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## Witness Information

**Q. Please provide your name and business address.**

**A.** My name is John L. Alke. My business address is 208 N. Montana Ave, Suite 210, Helena, Montana, 59601.

**Q. By whom, and in what capacity, are you employed?**

**A.** I am an employee of NorthWestern Corporation, d/b/a NorthWestern Energy ("NorthWestern"). NorthWestern has been the managing partner of Havre Pipeline Company, LLC ("HPC") since December of 2013. Although my job title at NorthWestern is Corporate Counsel, I am no longer acting as an attorney for HPC in this proceeding. Because of the nature and character of the prefiled testimony of Montana Consumer Counsel ("MCC") witness Mr. George Donkin, I have been assigned by NorthWestern the responsibility to appear for HPC in this proceeding to address the structural flaws in the MCC advocacy.

**Q. Please provide your educational and professional qualifications, and work experience, which qualify you to testify as a witness in this proceeding.**

**A.** I received a Bachelor of Arts degree in Economics in 1973 and a Juris Doctorate in 1976, both from the University of Montana. I entered the private practice of law in 1976 and am admitted to the bar in both state and federal court in Montana, the 9th Circuit Court of Appeals, and the

United States Supreme Court. Since 1980, I have specialized in the practice of public utility law, primarily before the Montana Public Service Commission ("Commission" or "PSC"), but also before the Federal Energy Regulatory Commission ("FERC"), the Arizona Corporation Commission, the South Dakota Public Utilities Commission, the Idaho Public Utilities Commission, and the New Mexico Public Regulation Commission.

With my background in economics and law, I have successfully presented, advocated, and litigated a wide range of utility issues for electric, gas, water, and telecommunications utilities. When I was in private practice with the law firm of Hughes, Kellner, Sullivan and Alke, I was listed in Best Lawyers of America under the category Energy Law for my work with regulated utilities and was one of two lawyers listed under the category Utility Law in the 2014 edition of Super Lawyers of the Mountain States. Because of the quality of my work, I was rated AV Preeminent in Martindale-Hubbell.

**Q. Have you previously testified as an expert on public utility regulation?**

**A.** Yes. I have testified twice before in contested proceedings as an expert on public utility regulation. The first time was on behalf of U.S WEST in PSC Docket No. D2000.2.21. The second time was on behalf of PPL Montana in an arbitration proceeding involving the transfer price of the

Kerr Dam to the Confederated Salish and Kootenai Tribes. I have also testified many times before the Montana Legislature on various aspects of public utility regulation.

## Testimony

**Q. What is the purpose of your testimony?**

**A.** The purpose of my testimony is to rebut the advocacy of MCC witness Mr. George Donkin in this proceeding. Specifically, I will address his views of Commission jurisdiction and power over the matters which are before the Commission in this docket. I also address certain barriers that prohibit the Commission action he proposes in his testimony. Throughout my testimony, I address the regulatory and policy issues attendant to his proposal.

**Q. Mr. Alke, why does the advocacy of Mr. Donkin in this case raise issues of Commission jurisdiction and power?**

**A.** The overall tenor of Mr. Donkin's advocacy in this proceeding not only ignores the underlying facts, but the limited nature of the Commission's regulatory powers as applied to those facts. Those errors lead him to a recommendation that has neither a legal basis nor a sound foundation in economics or regulatory principles.

**Q. What is the basis for your assertion that Mr. Donkin is ignoring the underlying facts?**

**A.** Mr. Donkin's position in this case essentially ignores that the HPC has never held itself out to the public as a natural gas distribution utility, has no service area in Montana in which it offers gas distribution service, and has never professed to offer gas utility distribution service to anyone in Montana, let alone the public.

The Havre Pipeline was once part of Northern Natural Gas Company ("Northern Natural"), an interstate natural gas pipeline company subject to the jurisdiction of the FERC. Northern Natural's presence in Montana was never intended as a profession of public utility service to the residents of this state. What is at issue in this case are what are called "farm tap" customers, a fact Mr. Donkin frankly acknowledges in his testimony. Farm tap customers are landowners, or assignees of landowners, who bargained for and received the transferable right to "tap" a Northern Natural gas transmission line, or gas gathering line, as partial compensation for a pipeline or gathering line right-of-way easement. The farm tap customers did not obtain the natural gas they use under a profession of public utility service by a gas distribution utility – they obtained it as a negotiated and transferable right exchanged for allowing the construction of an interstate natural gas transmission pipeline, including its gas gathering lines, across their property.

The farm taps specifically at issue in this case are connected to natural gas gathering lines constructed by Northern Natural many years ago. Northern Natural was, and still is, an interstate gas transmission pipeline company, and in that era, interstate gas transmission pipelines acquired gas in the field and transported it to downstream delivery points where it was sold at wholesale to gas distribution utilities. Northern Natural secured a significant supply of low-cost natural gas in the Tiger Ridge and Bullhook fields, which it needed to transport north into Canada for delivery by Canadian pipeline to an interconnection with Northern Natural in Minnesota. What is now the Havre Pipeline was constructed by Northern Natural to get its natural gas from the gas fields to the Canadian border for ultimate resale in the Midwest.

FERC Order 636 transformed the interstate gas pipeline industry. Interstate pipelines like Northern Natural were effectively limited to being common carrier pipelines and prohibited from directly participating in the gas supply function. Since what is now the Havre Pipeline was built to provide gas supply to Northern Natural, it was put on the market as part of an exit strategy. HPC was created as a vehicle through which Northern Natural could sell its facilities in Montana to the natural gas producers which needed it to get their gas to market. HPC was not created to function as a natural gas distribution utility and has never functioned as one.

**Q. Mr. Alke, what is the basis for your assertion that the farm tap customers did not obtain the natural gas they use under a profession of public utility service by a gas distribution utility but rather they obtained it as a negotiated and transferable right exchanged for allowing the construction of an interstate natural gas transmission pipeline, or its gas gathering lines, across their properties?**

**A.** I am relying upon the inventory of farm tap customers, and summary of the written instruments under which they received their farm tap rights, prepared by Marc Mullowney, another NorthWestern employee. Mr. Mullowney is a witness in this proceeding, and his inventory is an exhibit to his prefiled testimony in this docket. It should be noted that since the pipeline and gathering line right-of-way easements were grants of interest in real property, they were usually filed with the clerk and recorder of the relevant counties and are matters of official public record. My Exhibit__(JLA-1) is a true and correct copy of one of the right-of-way agreements, and associated application for farm tap service, which is at issue in this docket.

**Q. What significance, if any, attaches to the fact that the farm taps specifically at issue in this docket are on gas gathering lines as opposed to gas transmission lines?**

**A.** Natural gas transmission lines, whether interstate or intrastate, have generally been understood to be public utilities, as they are a rough

equivalent of a common carrier. The primary question is who can regulate them. If it is an interstate gas transmission pipeline, it is subject to regulation by the FERC. If it is an intrastate gas transmission line, it may be subject to regulation as a utility by the state in which it is located, depending upon the scope of the state commission's regulatory authority.

Natural gas gathering lines are not the equivalent of a common carrier, or a public utility, as their function is to take gas from individual wells to a central collection point for treatment and subsequent transport by a public utility's natural gas transmission line. They have a limited life – the life of the well or wells from which they are gathering. It is well understood that natural gas reservoirs deplete over time, and that the wells in the reservoir will eventually be capped and abandoned. Similarly, it is well understood that the gathering lines which collect the gas from the wells and take it to a central collection point will cease to be functional when the wells are abandoned, or when well-head and gathering line pressures become too low to be functional. The right-of-way easement agreements under which the granting landowners obtained their farm tap rights recognized that the rights existed only as long as there was sufficient natural gas being gathered through the gathering lines.

When the gathering lines were owned by Northern Natural, they were FERC jurisdictional facilities. Because Northern Natural's Montana

facilities were FERC jurisdictional, it had to obtain the approval of FERC to abandon interstate pipeline service in Montana in order to sell them to HPC. In that proceeding, a declaration was also sought that the facilities upstream of the three main compressors were gathering lines, a determination which would place them outside the scope of public utility regulation. FERC granted the requested abandonment and declaration on June 6, 1995. Its decision is my Exhibit__(JLA-2). The Commission similarly ruled in a declaratory ruling issued on August 15, 1995, in PSC Docket No. 95.2.5, that the gathering facilities of HPC were unregulated facilities. The Commission's decision is my Exhibit__(JLA-3). The Commission's decision that it had no jurisdiction over the HPC gas gathering lines was bitterly opposed by royalty owners, including the State of Montana, who wanted the charges for gathering service regulated by the Commission.

Montana law expressly declares that a gas well is not a public utility. § 82-11-102, MCA. The abandonment of a gas well, and its associated gathering line, is a decision which belongs to the owners of the well and the gathering line, subject to the regulation of the Montana Board of Oil and Gas Conservation. (The Board defines a gas gathering line as a flow line.) This Commission has explicitly recognized that it does not have regulatory jurisdiction over the gas gathering lines owned by HPC.

**Q. What jurisdiction does the Commission have over the natural gas being provided through the farm taps on the gathering lines?**

**A.** The Commission has asserted jurisdiction over the rates being charged for the gas as a state jurisdictional sale of natural gas to an end-use customer in the State of Montana. Jurisdiction was asserted by the Commission in PSC Docket No. 83.9.65, as indicated by Mr. Donkin in his testimony. It was affirmed by the Commission in the 1995 Declaratory Ruling I referenced earlier. (Mr. Donkin also references the 1995 declaratory ruling in his testimony.)

**Q. What jurisdiction does the Commission have over the facilities used to transport the natural gas to the farm taps on the gathering lines?**

**A.** As I just explained, the Commission does not have regulatory jurisdiction over gas wells and gas gathering lines, a fact recognized by the Commission itself in its declaratory ruling. It should be clearly understood that the Commission jurisdictional facilities associated with farm tap service from a gas gathering line are minimal. Mr. Mullowney provides a detailed description of them in his testimony.

**Q. Are the farm tap customers connected to natural gas distribution mains?**

**A.** No. They are connected either to a natural gas transmission pipeline, or to a gas gathering line, a fact recognized by Mr. Donkin in his testimony.

**Q. Does HPC own any natural gas distribution mains?**

**A.** It does not. It has never professed to serve as a natural gas distribution utility in Montana, or acted as a gas distribution utility in Montana, and didn't need gas distribution mains.

**Q. What public utility service has HPC professed to provide in the State of Montana?**

**A.** It has professed to provide intrastate gas pipeline transmission service to the producers in the gas fields served by its gas gathering systems.

**Q. What natural gas distribution utility service has HPC professed to provide in Montana?**

**A.** HPC has not professed to provide gas distribution utility service in Montana. Neither the public generally, nor any segment of the public, has the right to obtain natural gas from HPC for end-use consumption. The only people receiving gas from HPC's transmission line, or its gathering lines, for end-use consumption are the landowners, or their assignees, who received a farm tap right as partial compensation for granting a right-of-way easement for a gas transmission pipeline or gas gathering line.

**Q. Assume that the farm tap right-of-way agreements are treated as the HPC's profession of public service to the farm tap customers. Under**

**that assumption, what service has HPC professed to provide to farm tap customers on gas gathering lines?**

**A.** Under the assumption that the farm tap right-of-way agreements are the HPC's profession of service to the farm tap customer, the service it has professed to provide is a retail sale through a farm tap as long as there is sufficient pressure in the gas gathering line to provide it. In effect, it is a temporary natural gas supply service as long as there is sufficient gas upstream of the farm tap. The temporary nature of the service was clearly delineated when the farm taps were agreed to and provided.

**Q. What effect, if any, did the Commission's 1984 assertion of rate-making authority over the price of natural gas being provided through the farm taps have on its jurisdiction over the facilities used to provide farm tap service?**

**A.** None. In 1984, what is now the Havre Pipeline was FERC jurisdictional. The Commission's assertion of jurisdiction was necessarily limited to determining the appropriate rate for the retail sales which were occurring through Northern Natural's gas transmission pipeline and its gas gathering lines. With respect to the gas gathering lines, that situation still exists today. The Commission regulates the rate at which the retail sales through the farm taps occur, but it does not regulate the gathering lines from which the gas is being taken.

**Q. Why is the correct factual background necessary for understanding what you have described as the structural flaws in the MCC advocacy in this case?**

**A.** Mr. Donkin's penultimate claim in this docket is that the Commission can require HPC to construct a natural gas utility distribution system that will provide traditional gas utility distribution service to the farm tap customers to replace the farm tap service they are receiving from HPC's gas gathering lines. Donkin at pp. 13-14. Neither the HPC, nor its predecessors in interest, ever professed to provide natural gas utility distribution service in the State of Montana. The right-of-way easement agreements which gave the farm tap customers access to a gas supply through the farm taps only provide that access under the express understanding that it will be supplied as long as there is sufficient gas being produced in the field and gathered through the gathering lines. There are no gas distribution mains serving the farm tap customers, as HPC has no gas distribution mains. Once the gas reserves behind a gas gathering line are depleted, the gas gathering line is no longer functional. There are no natural gas distribution mains available to replace farm tap service to the farm tap customers. The Havre Pipeline, including the gathering lines, was not constructed to be a natural gas distribution utility. It was constructed to take gas from the field and transport it to distant markets for wholesale sales to gas distribution utilities.

The only “gas distribution” facilities owned by HPC are the meters, pressure relief valves, odorizers, and desiccant pots connected to the farm tap customers’ service lines. Even the service lines are not owned by HPC; they are owned by the farm tap customers. If the “gas distribution” facilities were depicted on a map, they would be depicted by 94 tiny dots scattered across many square miles of ground. Common sense indicates the cost of building gas distribution mains to provide those tiny dots with natural gas distribution utility service would be enormous.

In 2014, the total volume of gas provided through all the farm taps on the HPC system was a mere 22,504 Mcf. The total fixed cost recovery from all farm tap customers on the system that year was $4,156. Attached as my Exhibit_(JLA-4) is the calculation of fixed cost recovery prepared, at my request, by Patrick DiFronzo, another NorthWestern employee. Building gas distribution mains for the farm tap customers would be grossly uneconomic. The Commission recognized long ago that the construction of uneconomic distribution facilities by its regulated natural gas distribution utilities should not be allowed, unless the customer to receive the gas service was willing to pay for the cost of constructing the required facilities. Its regulatory policy is reflected in the line extension policies that have been imposed upon natural gas distribution utilities like NorthWestern or Montana-Dakota Utilities Co. Attached as my Exhibit__(JLA-5) is NorthWestern’s line extension tariff for its Montana

operations, Natural Gas Tariff, Rule 6. Using NorthWestern's tariff as an example, a residential gas customer is allowed $900 as a "free allowance" for service extension purposes. If it costs more than $900 to provide natural gas distribution service to the residential customer, the additional cost must be paid by the customer receiving the service. The Commission's administrative rules indicate that the principles behind line extension policies apply to both new and replacement facilities. ARM 38.5.2902.

Mr. Donkin's penultimate claim, that the Commission can and should require HPC to construct a natural gas utility distribution system that will provide traditional gas utility distribution service to the farm tap customers to replace the farm tap service they are receiving from Havre Pipeline's gas gathering lines, is not credible. It ignores that the HPC has not professed to provide natural gas utility distribution service in Montana, and that the Commission does not want Montana's gas distribution utilities building uneconomic distribution facilities.

**Q. How does Mr. Donkin's penultimate claim fit in with the rest of his advocacy on behalf of the MCC?**

**A.** In a nutshell, it is the third piece of a three-part proposal designed to make HPC pay significant sums of money to its remaining farm tap customers to quiet what appears to be informal complaints from five of the 94 farm tap

customers remaining on the Havre Pipeline system. There were once more than 140 farm tap customers on the Havre Pipeline's system. In other words, more than 40 of those customers have already migrated to another fuel source, at their own expense, recognizing that their farm tap rights were limited by the availability of gas in the gas gathering lines crossing their property.

**Q. Why did you characterize the five complaints as informal?**

**A.** I don't believe that any employee of NorthWestern has actually received a written complaint from an HPC customer regarding farm tap service, other than as part of an email string from the Commission. This docket was not instituted by written complaint filed by a HPC customer and noticed to NorthWestern for answer. It was instituted by the Commission as an investigation.

**Q. Are you aware of the substance of the informal customer complaints?**

**A.** Yes. I have email strings between the Commission Staff and Dale Mahugh, a NorthWestern employee. The report filed by NorthWestern in this docket, in response to the Commission's November 14, 2014, Notice of Commission Action, also summarizes its understanding of the informal complaints.

**Q. Please explain your assertion that Mr. Donkin's penultimate claim is the third piece of a three-part proposal designed to make HPC pay significant sums of money to its remaining farm tap customers to quiet what appears to be five informal complaints.**

**A.** In its simplest form, Mr. Donkin's proposal is as follows:

(1) HPC must negotiate a financial package with the farm tap customers for the right to stop providing gas through the farm taps on the gathering lines. Donkin at pp. 12-13.

(2) If HPC and the farm tap customers settle upon a financial package, the HPC can apply to the Commission for approval of the settlement and authority to abandon the gas gathering lines. Donkin at p. 12.

(3) If HPC fails to meet the financial demands of the farm tap customers, or the Commission refuses to approve an agreed-upon financial settlement, the HPC must build gas distribution mains to serve them. Donkin at 13-14.

According to Mr. Donkin, the Commission's adoption of his plan will result in HPC buying out the remaining farm tap customers at their cost of converting to another fuel source and converting their appliances to that fuel source. Donkin at 12-13.

**Q. Are there additional structural flaws in Mr. Donkin's advocacy to the Commission and, if so, would you please identify and explain them?**

**A.** There are a number of additional structural flaws in Mr. Donkin's advocacy, which I identify and explain below.

(1) HPC does not need to negotiate with the farm tap owners for the right to abandon use of the gathering lines. It already has that right under the right-of-way agreements. Even if is assumed, arguendo, that the Commission has jurisdiction over the gas gathering lines, the farm tap customers' consent would not be required for abandonment of their use. Under that assumption, the terms of any abandonment would be vested in the soundly exercised discretion of the Commission, not the desires of the farm tap customers.

(2) The Commission does not have regulatory jurisdiction over the gas gathering lines. A gas producer does not need authority from the Montana PSC to stop using a gas gathering line. Neither the Commission nor the HPC can force a gas producer to fill a gathering line with gas.

(3) Mr. Donkin's three-part proposal will not result in a financial arrangement for the farm tap customers at the estimated cost of converting them to an alternate fuel source and converting their appliances to that fuel source, as he contends. His plan would drive the cost of any financial settlement between the farm tap customers and HPC to a much higher cost. Under Mr. Donkin's

plan, the farm tap customers would know that their refusal to settle with HPC would expose it to potentially millions of dollars in construction costs. They would use that leverage to capture, in settlement negotiations, a significant portion of what they estimated would be HPC's cost to build gas distribution mains to them.

(4) The first two parts of Mr. Donkin's three-part plan are intended to mimic a class action settlement in a district court action. The "parties," in this case the farm tap customers and HPC, would reach a "settlement" and propose it to the "court," in this case the Commission. The Commission would then decide whether it is in the public interest and either approve or disapprove it. The two steps are intended to position the Commission to demand that HPC sweeten the pot as a condition of approval, the same power a district court judge has in a class action suit. The five informal complaints from farm tap customers are not the equivalent of a class action lawsuit in district court and the Commission has no authority to act like a court. The Commission is statutorily prohibited from trying to exercise judicial powers. § 69-3-103(1), MCA.

(5) Mr. Donkin's three-part plan has another feature which is seriously flawed. He contends the cost of the "settlement" between the farm tap customers and HPC must be borne by HPC and cannot be included in its cost of service. Donkin at 13. This Commission does not have the power to impose costs upon HPC and declare

them unrecoverable in its cost of service. The suggestion that it does have such a power does violence to the fundamental regulatory principle that any Commission decision must be reasonable and balanced. Even if the Commission was disposed to undertake the punitive action proposed by Mr. Donkin (something I consider highly unlikely), it would be prohibited from doing so by the applicable due process provisions in both the federal and Montana constitutions.

## Recommendations

**Q. Mr. Alke, given your analysis of Mr. Donkin's proposal in this docket, what, if any, recommendations do you have for the Commission?**

**A.** I believe it is critical for the Commission to give a clear and unambiguous signal to the remaining farm tap customers on the Havre Pipeline system of the economic choice ahead of them. It would be a grave disservice to lead them to believe that natural gas utility distribution service will be extended to them without cost and without regard to economic reality. Accordingly, I recommend that the Commission clearly indicate in its final order in this docket that:

(1) It does not have regulatory jurisdiction over gas gathering lines;

(2) Its jurisdiction over retail sales through a farm tap on an HPC-owned gas gathering line is limited to determining a reasonable rate to be paid for the gas;

(3) HPC has not professed to provide natural gas distribution service and has no gas distribution mains;

(4) It would not be economical to construct natural gas distribution mains to serve 94 farm tap customers spread across a wide geographic area;

(5) When there is insufficient gas being gathered through a gathering line to safely provide farm tap service, HPC is entitled to abandon its use of the gathering line, and the farm tap customer will have to choose and make arrangements for another fuel source;

(6) HPC is obligated to reasonably maintain the meter and regulator, pressure relief valve, odorizer, and, if applicable, desiccant pot used to provide farm tap service on a gathering line until the use of the gathering line is abandoned; and

(7) HPC will give affected farm tap customers at least twelve months' notice of an intent to abandon use of a gas gathering line in order to provide the farm tap customer adequate time to choose and make arrangements for another fuel source.

**Q. Does this conclude your prefiled rebuttal testimony?**

**A.** Yes.

990058

APPLICATION FOR DIRECT RURAL NATURAL GAS
DOMESTIC FARMSTEAD SERVICE
FROM NORTHERN NATURAL GAS COMPANY PIPELINES
IN THE TIGER RIDGE AND SHERARD AREAS

The undersigned Applicant, being the owner of certain real estate described below, herewith applies to Northern Natural Gas Company for direct gas service for domestic use, subject to the following terms, conditions and limitations, acknowledged by the Applicant:

Description of Applicant's Property

SECTION 20 - T34N - R13E HILL Co. MONTANA

Terms, Conditions and Limitations Applicable to the Service

1. Source of Natural Gas - The supply source for the service is a point on the pipeline of Northern Natural Gas Company (hereinafter called "Company").

2. Delivery Point for the Service - The natural gas to be provided to Applicant hereunder will be delivered at a tap point on Company's pipeline as it runs across customer's premises at a specific location satisfactory to Company. The service is provided hereunder on a direct sale, contract basis by Company in fulfillment of its obligation under the terms of an easement for pipeline granted across the above-described property. It is recognized by the parties that the service may in the future become subject to the exercised jurisdiction of the Montana Public Service Commission and accordingly may be transferred to and rendered by a Montana

public utility company presently rendering similar service to natural gas consumers in the State of Montana. In such case, the rates for service and conditions of service expressed herein are subject to change.

3. Ownership of Facilities, Company and Applicant's Respective Installation Cost Responsibilities - Company shall install, own and maintain, at Company's cost, the necessary high-pressure tap, regulator, meter and odorizer at the tap point on its pipeline. Company or Applicant (at Applicant's option) will also install the service line from the pipeline tap to the utilization point (or service entrance) on the Applicant's premises in strict accordance with Company's specifications. Applicant shall reimburse Company for the actual material and labor cost of such initial service line installation if made by Company. If the service line is installed by Applicant's contractor, Applicant shall provide to Company copies of paid bills for such installation expense prior to Company's turn on of gas service at the tap. If the service line is not installed in accordance with Company's specifications, Company shall have the right to lock off, or deny or discontinue service at the tap until such installation is brought up to specifications by Applicant. Applicant shall own and maintain the service line; however, Applicant may call on Company to repair the service line at such times as Owner wishes Company to perform such repair service and agrees to pay Company for the costs of any such repair.

4. Gas Source Limitations - The availability of service through the new pipeline tap point herein provided for and the volumes and pressure of the natural gas to be delivered hereunder are subject to the limitations with respect to gas supply and end use contained in Company's tariff on file with the Federal Power Commission, and the rules, regulations and orders of said regulatory authority. Such volumes and pressure will be limited by the meter which will be a 5b metric meter or Rockwell 175 meter or equivalent, designed for domestic or comparable takes of gas. Excessive takes for heavy duty engines, burners or dryers, etc. which damage the meter will be grounds for immediate discontinuance of service.

5. Changes in Rate - The rate at which gas is delivered and sold by Company to Applicant is subject to change after notice, from time to time, to reflect changes (including increases) in Company's pipeline rates and tariff as approved by the Federal Power Commission.

6. Initial Rate - All volumes at .05195 cents per cubic foot.

7. Conditions of Service -

(a) The service is rendered pursuant to a "direct sale tap" clause in an easement and will be confined to one tap point on the pipeline within the premises of the easement grantor, limited as to volume and use as specified hereinabove.

(b) Applicant shall be exclusively responsible for the installation and maintenance of all piping and appliances downstream of the utilization point (or service entrance) on his premises and shall hold Company harmless from claims or losses arising out of leaks or other failure or malfunctions of such piping and appliances.

(c) Company does not guarantee nor undertake to furnish continuous service and Applicant acknowledges that he understands that service may be interrupted by circumstances and conditions beyond the reasonable or practical control of Company, including, without limitation, by freeze-offs in his service line or the tap point, by necessary repair or maintenance of the pipeline or wells attached to it.

(d) Applicant agrees to mark reading of meters on cards provided by Company and mail them by the 26th day of each month. On failure to receive marked cards for two successive months, Company may send a meter reader to read meters and Applicant agrees to pay Company its cost of making such trip.

(e) Company shall submit a statement to Applicant by the 10th day of each month for natural gas delivered during the preceding billing month, and payment shall be made by Applicant to Company within fifteen (15) days from date of billing.

Applicant agrees to pay bills promptly as rendered. If Applicant fails to pay any such bill or bills within fifteen (15) days of billing, Company may disconnect or discontinue his service after fifteen (15) days' notice mailed to Applicant's billing address. Resumption of service shall only be made after Applicant pays all past-due bills for service and makes a deposit in the amount of two months average bill.

Applicant will be responsible and pay for all gas delivered through the meter until Company is notified in writing upon thirty (30) days' prior notice to discontinue service.

(f) Notices to Company under this agreement shall be addressed to it at P.O. Box 1151, Havre, Montana 59501, and notices to Applicant shall be addressed to him at the address shown below. Either party may change its address under this paragraph at any time upon written notice.

(g) Applicant recognizes that pipeline customers are widely scattered and so located that such service difficulties as may arise in the delivery of gas hereunder cannot always be given prompt attention by Company; and Applicant agrees that no liability of Company shall arise because of service difficulties or interruptions occasioned by operating conditions in Company's facilities or because of Company's inability to give immediate attention to such service difficulties as may arise in connection with the gas service furnished under this contract.

Applicant recognizes that the gas service contemplated is incident only to an easement granted to Northern Natural Gas Company in the lands occupied by Applicant or other persons and that such rights include and reserve the privilege to Company to abandon such operations or to remove, replace or relocate such pipelines at any time and Applicant agrees that no liability of Company shall arise because of any such abandonment, or off premises removal, replacement or relocation of its pipelines or other facilities.

Applicant agrees to save and hold Company harmless from any and all claims for damages or detriments to persons or property (including crop damage) which may arise out of the construction, installation or operation of the facilities necessary for the performance of this gas sales agreement by either of the parties

hereto.

(h) The sale of gas by Company to the Applicant is subject to all valid legislation with respect to the subject matter hereof, and to all valid present and future orders, rules and regulations of duly constituted authorities having jurisdiction.

Signed this 10 day of April, 1980.

Applicant's Mailing Address

Kremlin, Mt.
Box 55

APPLICANT

Keith J. Donovan

Accepted

NORTHERN NATURAL GAS COMPANY

By_____

Date_____

DUPLICATE

PIPELINE EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That John L. Donoven and Keith Donoven of Havre, Montana and Kremlin, Montana, hereinafter referred to in the singular as "Grantor", for and in consideration of the sum of Two Dollars ($ 2.00 ) per lineal rod, and other valuable considerations, the receipt of Fifty Dollars ($ 50.00 ) of which is hereby acknowledged, does hereby grant and convey unto Northern Natural Gas Company hereinafter referred to in the singular as the "Grantee", and to its successors and assigns, the right, privilege and easement to survey, construct, maintain and operate a natural gas pipeline upon, across and under a tract of land situated in the County of Hill, State of Montana, being 25 feet on each side of the centerline of a strip of land as shown on Exhibit "A", attached hereto and made a part hereof, said tract and/or strip being described as follows:

All Those Lands Described in Exhibit "A" hereto attached.

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, togethe with the right of ingress to and egress from said land, for the purpose of constructin operating, inspecting, repairing, maintaining, and replacing, re-sizing, or removin the property of the Grantee located thereon, in whole or in part, at the will of the Grantee; it being the intention of the parties hereto that the Grantor may continue to use the surface of the easement strip conveyed hereby for all agricultural purposes; it being the further intention of the parties hereto that the Grantor shall have the rig to construct water, utility or other lines upon and under the easement strip herein granted, provided, however, that Grantor shall not construct or permit to be constructed anything upon the easement strip which would interfere with the Grantee's exercise of the rights hereby created.

IT IS FURTHER AGREED, as follow:

1. That the Grantee will bury all line pipe to a sufficient depth so as not to interfere with the ordinary use and cultivation of the soil by the Grantor.

2. That the Grantee will pay for any damages to Grantor's growing crops, grasses, trees, shrubbery, fences, buildings, flowing waters, springs, reservoirs, or livestock, caused directly or indirectly by the construction, maintenance, operation or removal of Grantee's facilities, said damages to growing crops and grasses to be determined by the mutual agreement of the Grantor and the Grantee. Provided, however, that the Grantee shall have the right from time to time to cut or clear trees brush and other obstructions on said right-of-way that might interfere with the operation or maintenance of Grantee's facilities.

3. That Grantee will restore the surface to its original contour as nearly as practical, including the moving or burying of all newly exposed rocks, all to the reasonable satisfaction of the Grantor, and will replace or rebuild to the reasonable satisfaction of the Grantor, or of its representative, any and all damaged fences and parts of all drainage or irrigation systems; the damage to which shall be occasioned by the construction, maintenance, operations or removal of said pipeline under and through the above-described land.

RBJ JD

4. That in the event Grantor suffers a crop deficiency within ~~2~~ 4 years after completion of construction of said pipeline, its operation, maintenance or removal upon the easement herein granted, as compared to crops adjacent to or in close proximity with said easement, Grantee agrees to pay for any such crop deficiency occasioned by Grantee's construction, operation, maintenance or removal activities as determined by evidence provided by Grantor; provided that Grantor notified Grantee in writing, at least thrity (30) days prior to harvest, in order that the Grantee may view and verify the condition of the growing crops.

5. That the balance of the consideration due from Grantee to Grantor, if any, as provided for in Paragraph 2 above, shall be paid when the Grantee's pipeline is constructed, and upon demand by the Grantor.

6. That in the event Grantee ceases to use all or any part of the easement for the purposes herein granted for a period of 1 years, all rights to all of that part not used for a period of 1 years, shall revert to the Grantor; provided Grantee shall have a reasonable time after said 1 years to remove Grantee's facilities and restore the surface.

7. As part of the initial consideration to be paid or made available to Grantor for the right-of-way granted hereunder, Grantee shall, following Grantor's written request for and subsequent execution of Grantee's form of application for service for farm tap customers, install or cause to be installed (but subject to prior receipt of required authority from regulatory agencies with jurisdiction) one (1) tap on any gas line constructed hereunder, for the purpose of supplying gas to Grantor for personal domestic and agricultural irrigation uses only and not for resale by Grantor and for use on the above-described premises only. Such tap, comprising the initial pipeline pressure regulator and the meter and associated equipment at the tap point, will be the responsibility of Grantee and installed and maintained at Grantee's cost. All other equipment downstream of the meter, including Grantor's fuel line and applicance pressure regulating devices, will be the responsibility of Grantor, and installed and maintained at Grantor's cost. Said tap will be provided by Grantee fror a convenient point on its pipeline as Grantee may determine, and gas taken under thi: provision shall be measured and furnished to Grantor at the rate and upon such term:

as may be established by Grantee (or its vendee or assignee) from time to time. Grantee shall not be obligated to make such tap or sales directly to Grantor in any state in which Grantee is not doing business as a gas distribution utility; however, in any such state, Grantee will make such tap and sale to a willing gas distribution utility as a sale for resale. All of the foregoing is subject, however, to Grantee's right, without further obligation, to abandon or interrupt its use of any such line, or to transport through the same, substances which are not suitable for use by Grantor; and is further subject to the present and future orders, rules and regulations of regulatory agencies with jurisdiction and to Grantee's tariff filed pursuant thereto.

8. That the right of ingress and egress granted herein is limited to the above described easement and does not include the right of ingress and egress to any part of Grantor's other lands. Upon commencing construction, repair, maintenance or removal of said pipeline, Grantor shall be given reasonable notice, either oral or written, when the initial entry shall be made.

9. That this instrument may be executed in counterparts, and that Grantor shall receive payment hereunder in such proportion as its respective interest bear to the fee simple title.

10. That the rights of the Grantee may be assigned in whole or in part.

11. That this instrument, and the covenants and agreements herein contained shall inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors and assigns of the parties hereto.

DATED this 8 day of AUGUST, 1978.

| GRANTOR: | GRANTEE: |
|---|---|
| Keith Donovan | NORTHERN NATURAL GAS CO |
| J. L. Donovan | by Robert B Joyce |

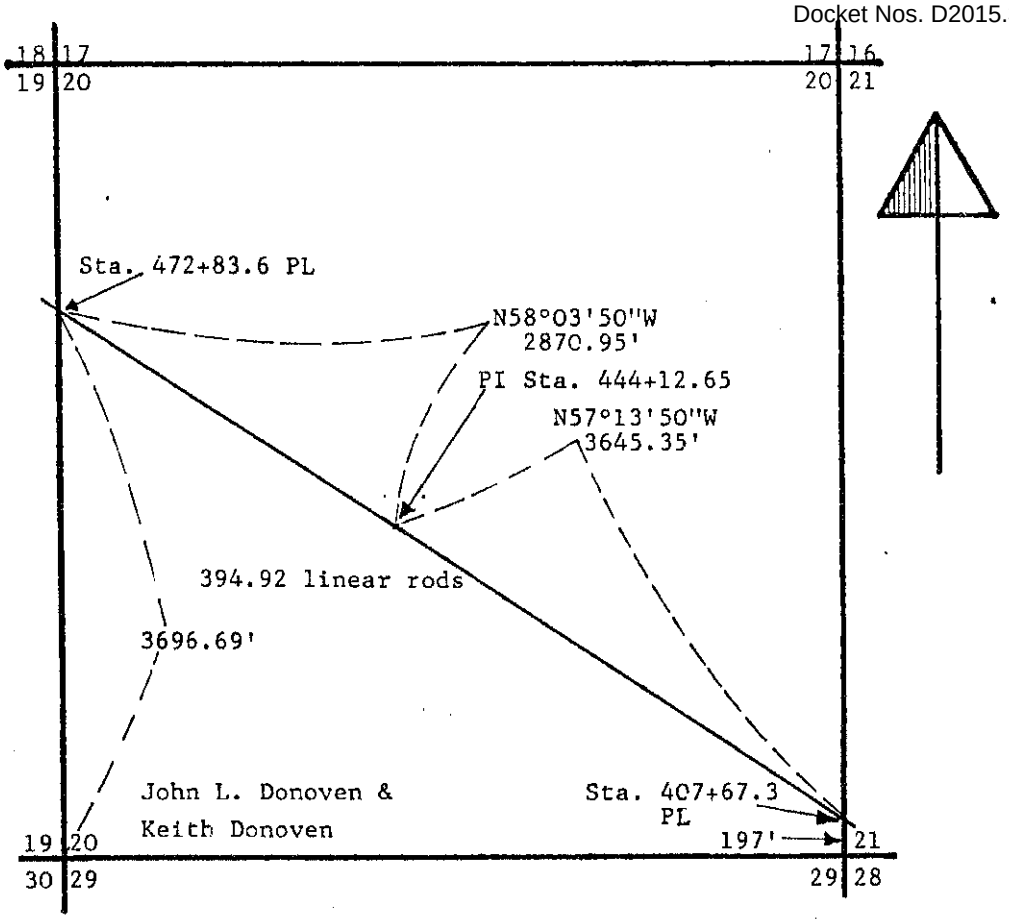
STATE OF MONTANA )
) ss.
County of )

On this 8 day of AUGUST, A.D., 1978, before me, the undersigned, a Notary Public for the State of Montana, personally appeared John L. Donovan Keith Donovan, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year first above written.

(NOTARIAL SEAL)

Robert B Joyce
Notary Public, State of Montana
Residing at: Chinook Mont.
My Commission Expires: 7-24-81




WIDTH-OF-RIGHT-OF-WAY 50 feet
25 feet each side of centerline described

CENTERLINE DESCRIPTION

Beginning at Engineer's Station 407+67.3, said station being on the East line and a distance of 197 feet North of the South-East corner of Sec. 20, T34N, R13E, PMM, Hill County, Montana; thence N57°13'50"W a distance of 3645.35 feet to Engineer's Station 444+12.65, thence N58°30'50"W a distance of 2870.95 feet, to Engineer's Station 472+83.6, said station being on the West line and a distance of 3696.69 feet North of the South-West corner of said Sec. 20, said survey containing 394.92 linear rods.

Exhibit "A"

Sec. 20, T34N, R13E
Hill County, Montana

| | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Scale 1"=1000' | | Dr. by J.H. | | Date 7/28/78 | | | | Operating Division Minneapolis Area | | | |
| | | | Drawing Status | Checked | | Approved | | | | | Centerline description & Easement Plat on Donoven 41-1791 for property of John L. Donoven & Keith Donoven | | | Northern Natural Gas Company |
| | | | | By | Date | By | Date | By | Date | By | Date | | | |
| | | | Prel'y | | | | | | | | | | | |
| | | | Bid | | | | | | | | | | | |
| Revised | By | Apd. | Constr. | | | | | | | | | P.O. | W.O. | 19 Construction | Drawing No. |
| Microfilm File Number | | | | Design File Number | | | | | | | | P.L. or Sta Number | | | |

UNITED STATES OF AMERICA71 FERC ¶61,292
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Elizabeth Anne Moler, Chair;
Vicky A. Bailey, James J. Hoecker,
William L. Massey, and DonalF. Santa, Jr.

| | | |
|---|---|---|
| Northern Natural Gas Company | ) | Docket Nos. CP94-130-000 and CP94-130-001 |
| | ) | |
| Havre Pipeline Company | ) | Docket Nos. CP95-162-000 and CP95-179-000 |

(Not consolidated)

ORDER AUTHORIZING ABANDONMENT,
DETERMINING JURISDICTIONAL STATUS OF FACILITIES,
ISSUING PRESIDENTIAL PERMIT AND AUTHORIZING OPERATION
OF FACILITIES AT THE INTERNATIONAL BOUNDARY

(Issued June 6, 1995)

On December 13, 1993, Northern Natural Gas Company (Northern) filed an application in Docket No. CP94-130-000, as amended on January 18, 1995 in Docket No. CP94-130-001, requesting authorization, pursuant to section 7(b) of the Natural Gas Act (NGA), to abandon certain certificated facilities in Montana and its services utilizing the facilities. Northern proposes to sell the facilities to Havre Pipeline Company (Havre). 1/

On January 25, 1995, Havre Pipeline Company filed a petition in Docket No. CP95-162-000 for a declaratory order that the facilities will be non-jurisdictional gathering facilities under section 1(b) of the NGA following the sale, or alternatively, a combination of gathering facilities and intrastate pipeline facilities under section 2(16) of the Natural Gas Policy Act (NGPA).

The certificated facilities to be abandoned by Northern are interconnected with gas export facilities also owned by Northern.

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1/Northern's original filing requested permission to abandon its Montana facilities by sale to NGC Energy Resources, Limited Partnership (NGC Energy). Northern's purchase agreement with NGC Energy has now been terminated, and Northern has executed an agreement for the purchase of the facilities by UMC Petroleum Corporation (UMC Petroleum). In accordance with the agreement, UMC Petroleum has designated Havre as the party that will acquire the facilities. Northern has therefore amended its application to reflect its current proposal to abandon the Montana facilities by sale to Havre.

On January 27, 1995, Havre also filed an application in Docket No. CP95-179-000 pursuant to section 3 of the NGA, Part 153 of the Commission's regulations, Executive Order Nos. 10485 and 12038, and the Secretary of Energy's Delegation Order No. 0204-112, for authority to own, operate and maintain these existing natural gas transmission facilities at the United States/Canada border.

For the reasons set forth below, we will grant the requests for abandonment authorization, declaratory order, and NGA section 3 authorization, and issue a Presidential Permit.

## I. BACKGROUND AND PROPOSALS

Northern's Montana facilities consist of approximately 500 miles of pipeline, three compressor stations, and other appurtenant facilities located in Blaine, Choteau, and Hill Counties, Montana. Historically, gas has been gathered on the Montana facilities from the Bullhook, Tiger Ridge, and Sherard production areas for transportation through Canada to an interconnection with Northern's mainline system at Carlton, Minnesota for ultimate consumption in Northern's market area.

Gas enters compressor stations at a central point in each of the production areas. Gas from the Hill County No. 1 compressor station in the Bullhook Unit area and the Blaine County No. 3 compressor station in the Sherard area converges at the Blaine County No. 1 compressor station in the Tiger Ridge Unit area via two 12-inch diameter pipelines totalling approximately 41 miles in length. Gas is then delivered to the Canadian border through a 16-inch diameter, 46-mile pipeline extending from the Blaine County No. 1 compressor station to the U.S./Canadian border or, to a lesser extent, an interconnection with Montana Power Company consisting of 1.5 miles of 12-inch pipeline downstream of the Blaine County No. 3 compressor station. The three 12-inch diameter pipelines, the 16-inch diameter pipeline, and the three compressor stations were certificated as jurisdictional transmission facilities pursuant to section 7(c) of the NGA.

The Montana facilities, which are non-contiguous to Northern's traditional system, served the purpose of meeting firm sales requirements in Northern's market area. Northern states that, as a result of the decline in its sales obligations since restructuring under Order No. 636, the gas production connected to its Montana facilities is no longer required. Northern has therefore agreed to sell its Montana facilities to Havre. 2/

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2/Havre is composed of Montana gas producers who own or control approximately 95 percent of the gas reserves served by Northern's Montana facilities. Havre is not affiliated with a natural gas company subject to the Commission's jurisdiction under the NGA.

Northern plans to transfer its Montana facilities to Havre at a sum higher than book value. Northern states that its customers will benefit from the resulting reduction in Northern's rate base and operating and maintenance costs. Northern requests, in Docket No. CP94-130-000, as amended in Docket No. CP94-130-001, abandonment authorization pursuant to section 7(b) of the NGA by July 31, 1995 in order to allow for a timely close of the asset transfer on September 30, 1995. Northern also requests that its Presidential Permit to operate facilities at the U.S./Canada border be terminated.

Northern also uses its Montana facilities for gathering services that are not provided under Commission rate schedules. Northern does not believe these services are subject to section 7(b) abandonment authority. If the Commission disagrees, however, Northern requests section 7(b) approval to abandon these gathering services as of the effective date of the sale of the Montana facilities.

Havre has also agreed to assume Northern's farm tap obligations, as well as other obligations and liabilities associated with the Northern facilities.

Northern states that it provides transportation service on some of its Montana facilities pursuant to rate schedules in its FERC Gas Tariff, Fifth Revised Volume No. 1 and maintains a "Point Catalog" that identifies all receipt and delivery points for transportation service agreements. Northern states that, upon abandonment of the Montana facilities, the "Point Catalog" will be revised to reflect the elimination of all points on the Montana facilities. Northern adds that if it is necessary to enter into gathering and transportation agreements with third parties, it will enter into agreements with a term that is reasonably expected to end on or within thirty days after the closing date of the sale of the Montana facilities.

Northern states that, based on the decline in its merchant function, it has been reducing its Montana gas supply contracts through the exercise of termination rights or negotiating the reduction of obligations. Currently, Northern's purchase obligations are approximately 35,000 Mcf per day. Of this amount, 28,000 Mcf per day is covered under a contract with UMC Petroleum which will terminate on September 30, 1995, the date that Northern proposes to transfer ownership of its facilities to Havre. Northern states that it will continue to negotiate the termination of the remaining gas purchase obligations. If Northern is unsuccessful in terminating these contracts, it will attempt to assign them to willing buyers via its electronic bulletin board. Northern will retain downstream capacity in order to transport the gas associated with the Montana gas supply contracts. Northern will export and import these volumes under blanket authorization granted by the Department of Energy, Office of Fossil Energy in Order No. 1013, issued December 15, 1994.

Havre requests, in Docket No. CP95-162-000, that the Commission issue an order declaring that the facilities to be acquired from Northern qualify as gathering facilities exempt from the Commission's jurisdiction under section 1(b) of the NGA. Havre states that, at a minimum, the portions of the Montana facilities upstream of the three compressor stations are gathering in nature. To the extent that the Commission may find that portions of the facilities are not gathering, Havre alternatively requests a declaration that such facilities will constitute non-jurisdictional transportation facilities owned and operated by an intrastate pipeline as defined in section 2(16) of the NGPA.

Havre requests, in Docket No. CP95-179-000, authority for the operation and maintenance of border facilities at the United States-Canada boundary near Willow Creek, Saskatchewan pursuant to section 3 of the NGA, Part 153 of the Commission's regulations, Executive order Nos. 19085 and 12038, and the Secretary of Energy's Delegation Order No. 0204-112. The border facilities consist of that portion of the 16-inch diameter, 46-mile pipeline (extending from Blaine County Compressor No. 1 in Blaine County Montana to the Canadian border) which is located at the international boundary between the United States and Canada near Willow Creek, Saskatchewan, where it connects with Many Lakes Pipe Lines Limited's 161 miles of 16-inch diameter pipeline extending northeastward to connect with pipeline facilities of TransCanada PipeLines Limited. Havre does not intend to either purchase or resell, or import or export, natural gas for its own account, but proposes only to provide transportation service through the border facilities. It states that shippers will be solely responsible for obtaining any necessary authorization to import or export natural gas over the facilities.

## II. NOTICE, INTERVENTIONS, PROTESTS AND COMMENTS

Notice of Northern's original filing in Docket No. CP94-130-000 was published in the Federal Register on December 27, 1993 (58 Fed. Reg. 68,407 (1993)); the due date for comments, protests, or motions to intervene was extended from January 6, 1993 to January 27, 1994. Thirty-one timely, unopposed interventions were filed by the parties reflected in Appendix A to this order. 3/ IES Utilities Inc. (IES) filed a motion to intervene out-of-time, which we address below.

Northern States Power Company and Midwest Gas do not oppose the application, but they question whether Northern should be allowed to retain gains on sales of valuable assets while receiving stranded cost treatment for losses on sales of other assets. Mabelle C. Avila, et al., Alfred L. Finch, and Mr. and Mrs. William J. Finch filed

3/Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.214).

pleadings styled as protests but do not request party status. They raise concerns about potential increases in gathering and transportation rates and the possible impact on certain royalty owners due to the sale of the facilities to NGC Energy. 4/ The Board of Chouteau County Commissioners also is concerned about the potential impact on rates and its tax base due to the sale of the facilities to NGC Energy. 5/

Notice of Northern's amended application in Docket No. CP94-130-001 was published in the Federal Register on February 1, 1995, 6/ with protests or motions to intervene due on or before February 16, 1995. Timely, unopposed motions to intervene were filed by Klabzuba Oil and Gas jointly with John O. Brown, et al., UMC Petroleum Corporation (UMC), the Northern Distributor Group (Distributor Group), and Northern Municipal Distributors Group jointly with Midwest Region Gas Task Force Association (jointly Municipal Customer Groups). On February 22, 1995, the Independent Petroleum Association of America (IPAA) filed a late motion to intervene, which we address below.

The Municipal Customer Groups' filing includes a protest and request for technical conference. The Municipal Customer Groups raised concerns about whether costs associated with retained gas supply and downstream transportation contracts can be recovered from Northern's customers. However, the Municipal

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4/A person may file a protest to an application without also seeking to intervene in the proceeding. See Rule 385.211(a)(2).

5/The Board of Chouteau County Commissioners does not request party status and does not style its filing as a protest.

6/60 Fed. Reg. 6,079 (1995).

Customer Groups filed on May 30, 1995, to withdraw their protest and request for a technical conference. 7/

The Distributor Group does not protest the application, but it also is concerned about the potential impact on the level of stranded investment and retained gas supply costs. 8/

Notice of Havre's petition for a declaratory order in Docket No. CP95-162-000 was published in the Federal Register on February 1, 1995, 9/ with protests or motions to intervene due on or before February 16, 1995. Northern, UMC Klabzuba, Enron Capital & Trade Resources Corp. (Enron), the Northern Distributor Group, and Williston Basin Interstate Pipeline Company filed timely motions to intervene. Interenergy Corporation (Interenergy), the Montana Power Company (Montana Power), and the IPAA filed untimely motions to intervene, which we address below.

Notice of Havre's application for authorization to operate border facilities and for a presidential permit in Docket No. CP95-179-000 was published in the Federal Register on January 31, 1995, 10/ with protests or motions to intervene due on or before February 21, 1995. UMC Petroleum, Klabzuba, Enron, and Interenergy filed timely motions to intervene. The IPAA filed an untimely motion to intervene.

We find that IES, Interenergy, Montana Power, and the IPAA have shown interests in these proceedings, and that their participation will not delay the proceedings or prejudice the rights of any other party. Accordingly, for good cause shown, we will grant the late motions to intervene.

## III. DISCUSSION

7/Pursuant to Rule 216(b) of the Commission's Rules of Practice and Procedure (18 CFR § 385.216(b)), withdrawal of a pleading is effective 15 days after the filing date of the notice of withdrawal, if no motion opposing the withdrawal is filed.

8/The Distributor Group's notice to intervene also expressed concern about the method of allocating gain between the gathering and transmission facilities to be transferred. However, on May 25, 1995, the Distributor Group filed to withdrawal its comments relating to that particular concern. As discussed above, an unopposed withdrawal of a pleading becomes effective after 15 days.

9/60 Fed. Reg. 6,081 (1995).

10/60 Fed. Reg. 7,049 (1995).

A. Abandonment Authorization

As stated, certain of Northern's Montana facilities were authorized by the Commission by a certificate of public convenience and necessity. Therefore, abandonment authority is required for Northern to transfer its interest to Havre.

As the result of restructuring under Order No. 636, Northern's merchant service function has been reduced to a level no longer requiring the gas production connected to its Montana facilities. Further, Northern and Havre have made suitable arrangements to ensure that the transfer will not disrupt services currently provided by the facilities. Moreover, we are determining in Docket No. CP95-162-000 that certain portions of the Montana facilities function as gathering facilities exempt from the Commission's jurisdiction. We also find that other portions of the Montana facilities will function, after being transferred to Havre, as an intrastate pipeline as defined in section 2(16) of the NGPA, and are therefore exempt from the Commission's NGA jurisdiction. In view of these findings and the following discussion and conditions, we find that Northern's proposal to abandon its Montana facilities and services is permitted by the public convenience and necessity.

As we explained in Arkla Gathering Services Co. 11/ and Mid Louisiana Gas Co., 12/ where gathering service has been provided by an interstate pipeline under the jurisdiction of the Commission, the pipeline's historical obligation to its customers and the Commission's requirement for open-access transportation created an expectation that the relationship between the pipeline and producers connected to its gathering systems would continue to be governed by regulation, not private contract. We were concerned that existing pipeline gathering customers in such cases not be subject to arbitrary termination of their service upon the transfer to a non-pipeline gatherer.

Therefore, as a precondition to a final determination that abandonment of gathering facilities is permitted by the public convenience and necessity, we held that the pipeline must demonstrate that the existing customers have been offered by the pipeline's successor in interest the opportunity to continue service under mutually agreeable terms, conditions and rates. If unable to reach agreement with gathering customers by the date of the transfer, the abandoning pipeline must submit a "default contract" which the non-jurisdictional purchaser has offered to the pipeline's existing customers.

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11/67 FERC ¶ 61,257 (1994).

12/67 FERC ¶ 61,255 (1994).

However, the Commission has also stated that the absence of protests by shippers currently using the gathering facilities will be construed as evidence that existing customers are satisfied with their ability to receive desired levels of service on terms mutually agreeable to all parties. 13/ In this case, there are no protests from the shippers currently using the gathering facilities. The partners in Havre own or control 95 percent of the gas reserves served by the facilities.

As discussed, three non-intervening protesters raised concerns regarding the possible impact on royalties (Mabelle C. Avila, et al., Alfred L. Finch, Mr. and Mrs. William J. Finch). In addition, the Board of Chouteau County Commissioners) raised concerns regarding the potential impact on its tax base. These persons have no direct, contractual relationship with Northern. As the Commission has explained, a pipeline's obligations to "existing customers" are limited to those persons that have executed service contracts with the pipeline. 14/

In view of the above considerations, we find that Northern's proposal to abandon the Montana facilities does not necessitate the submission of a default contract.

The Commission has found that section 4 of the NGA requires an interstate pipeline to make a tariff filing to obtain approval for a change of services prior to a transfer of gathering facilities to another party regardless of whether its gathering facilities are certificated. 15/ Accordingly, Northern must make a filing notifying the Commission of the proposed termination at least 30 days prior to the proposed effective date of such termination. Northern's filing shall include the following information: (1) a statement showing the reasons for the termination; (2) a list of the contracts to be terminated, identifying the contract by number and showing the proposed termination date and affected shippers to whom the notice has been mailed; and (3) a list of shippers, if any, that have entered into contracts with Northern's successor.

The Distributor Group's concerns raised regarding recovery of stranded investment and other costs are addressed adequately by our policy enunciated in Mid Louisiana Gas Co., et al.:

> [A] pipeline might seek to spin off facilities that have a market value higher than their book value, while retaining and seeking to recover stranded investment costs for gathering facilities

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13/See Northern Natural Gas Company, 69 FERC ¶ 61,264 (1994).

14/See Panhandle Eastern Pipeline Company & Panhandle Service Company, 71 FERC ¶ 61,201 (1995).

15/Arkla Gathering Services Company, 69 FERC ¶ 61,280 (1994).

with a market value lower than their book value. Pipelines should be aware that if they seek to recover stranded investment costs for gathering facilities, the Commission will consider all the pipeline's gathering transactions, including the transfer of assets to an affiliate, when assessing the recoverability of such stranded costs. 16/

Northern proposes to sell the Montana facilities for $15,700,000. The net depreciated book value of the facilities is $14,098,320. We will permit Northern to record the gain of $1,601,680 in Account 421.1, Gain in Disposition of Property, as proposed. However, to the extent that Northern recognizes gains on sales of stranded facilities and takes such gains to income currently and later has losses on sales of facilities that it seeks to recover as stranded costs, Northern must, if it files for recovery of stranded costs, detail the prior gains and reduce the proposed stranded cost recovery amount by the amount of those gains. This will insure that gains on sales of stranded facilities are taken into consideration if Northern seeks to recover any stranded investment costs in a subsequent section 4 rate proceeding.

Furthermore, Northern states that it has agreed with the Northern Distributor Group, Northern Illinois Gas Company, and the Municipal Customer Groups to the following conditions limiting its right to seek the recovery of stranded costs:

1. Northern will never seek to recover in any proceeding before the Commission or in any other forum any stranded investment in the Hobbs, 17/ Crockett County, 18/ or Montana gathering facilities or in any other gathering facilities as currently classified as of, and including any gathering facilities which have been sold or assigned prior to, August 17, 1994, or any other gathering facilities acquired after August 17, 1994 by Northern. However, in the event Northern is required by the Commission or its successor to refunctionalize any of its facilities for which Northern has not applied to or sought from the Commission such refunctionalization, the parties agree that Northern may seek to recover the investment in any such facilities which may be stranded.

2. In the event that Northern seeks to recover stranded investment in any refunctionalized facilities, the Customers retain the right to contest any recovery applied for by Northern, including, but not limited to, the right to argue for the offset

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16/65 FERC ¶ 61,166 at 61,843 (1993). See also Arkla Gathering Services Co., 67 FERC ¶ 61,257 (1994).

17/See Northern Natural Gas Company, 69 FERC ¶ 61,264 (1994).

18/See Northern Natural Gas Company, 69 FERC ¶ 61,354 (1994).

of any such costs of stranded investment with gains and losses from the sale of any other gathering facilities, or transmission or other facilities over which the Commission has disclaimed jurisdiction as gathering facilities, except that the Customers may not argue that Northern has waived or otherwise foregone the right to seek the recovery of such costs by virtue of this agreement.

3. Upon Commission approval of the abandonment, and the subsequent transfer of the facilities, Northern will no longer incur costs related to such facilities. Northern will not reflect any costs or revenues associated with these facilities in its general rate case to be filed in 1995, provided that an order is issued in this docket granting Northern the relief requested by October 31, 1994. Because any such order will be issued after November 1, 1994, Northern agrees to file to adjust its cost of service and rates in its 1995 general rate case for the removal of costs and revenues associated with the facilities effective upon the later of the first day of the month after the date the facilities are transferred to the purchaser, or the effective date of rates in the 1995 general rate case.

4. Northern agrees not to file for or request refunctionalization of any facilities in the 1995 general rate case, except for facilities which are non-contiguous to Northern's pipeline system or which are located in the Gulf Coast area. However, in the event Northern files to refunctionalize Gulf Coast and non-contiguous facilities, Northern agrees it will never seek to recover the investment costs of those facilities as stranded and shall be precluded from doing so. Any party shall be free to raise any and all issues without limitation in the event that Northern files for or requests refunctionalization of any facilities after the 1995 general rate case.

The Commission is not bound by this agreement, and our authorizations are not contingent on it; nonetheless, we find no reason to disturb these terms of the parties' agreement.

B. Declaratory Order

1. Summary

As discussed below, we find (1) that the Montana facilities upstream of the compressor stations perform a gathering function and will therefore be exempt from the Commission's jurisdiction under section 1(b) of the NGA, and (2) that the remainder of the Montana facilities constitute an intrastate pipeline within the meaning of section 2(16) of the NGPA.

2. The Primary Function Test

Under section 1(b) of the NGA, the Commission's jurisdiction does not extend to facilities used for "the production or gathering of natural gas." 19/ The Commission has, over the years, developed a number of legal tests to determine which facilities are non-jurisdictional gathering facilities and which facilities are jurisdictional transmission facilities. The Commission has now come to rely on the modified "primary function test," which includes consideration of the following factors: (1) the extension of the facility beyond the central point in the field, (2) the location of compressors and processing plants, (3) the length and diameter of the line, (4) the location of wells along all or part of the facility, (5) the facility's geographic configuration, and (6) the operating pressure of the line. 20/ The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations. 21/ In addition to the factors enumerated above, the Commission also weighs any and all other relevant facts and circumstances of a particular case, including non-physical criteria. 22/

Applying the criteria of the modified primary function test, as discussed below, we find that the primary function of the facilities upstream of the compressor stations will be used for

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19/The courts have narrowly construed the NGA section 1(b) exemption to apply to "the physical act of drawing gas from the earth and preparing it for the first stages of distribution." See, e.g., Transcontinental Gas Pipe Line Corporation v. State Oil & Gas Board, 474 U.S. 409, 418 (1986) (quoting Northern Natural Gas Company v. State Corporation Commission of Kansas, 372 U.S. 84 (1963)).

20/See Amerada Hess Corporation, 52 FERC ¶ 61,268 (1990) and Farmland Industries, Inc., 23 FERC ¶ 61,063 (1983).

21/See, e.g., TOMCAT, 59 FERC ¶ 61,340 at 62,239 (1992).

22/See, e.g., id. and Amerada Hess Corporation, 52 FERC ¶ 61,268 (1990).

gathering natural gas and, accordingly, will be exempt from the Commission's jurisdiction under section 1(b) of the NGA.

a. "Central Point in the Field"

The "central point in the field" test considers the location of the facilities in relation to the point where gas is delivered into a single pipeline for transportation. Facilities located upstream of this point are generally considered to be non-jurisdictional gathering facilities, while those facilities located downstream are generally considered to be jurisdictional transmission facilities. 23/ The majority of the facilities here are located upstream of compressor stations, which serve as central points in the field. We therefore find these facilities to be performing a gathering function.

However, the facilities located downstream of the inlet of the compressor stations are beyond the central points in the field and are currently classified as transmission. Havre acknowledges that "the three compressors and the related pipelines transporting gas away from each of those facilities suggest the conclusion that this portion . . . . performs a transportation, rather than a gathering function." Application of the central point in the field test supports a finding that these facilities perform a transmission function.

b. Location of Compressors

In addition to gathering lines, the Montana facilities include three compressor stations. Since the compressor stations and the facilities downstream of those stations are beyond the central point in the field and serve a transmission function, there is no field compression to consider. Therefore, this criterion is irrelevant.

c. Length and Diameter of the Facilities

The facilities upstream of the compressor stations consist of approximately 400 miles of pipe that vary in diameter from 3-20 inches. We have found lines of this and greater length and diameter to be gathering. 24/ Thus, the length and diameter of these facilities are consistent with a gathering function.

d. Location of Wells, Geographic Configuration

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23/Peach Ridge Pipeline, Inc., 69 FERC ¶ 61,354 at 62,321 (1994).

24/See, e.g., Northwest Pipeline Corporation and Williams Gas Processing Corporation, 59 FERC ¶ 61,115 (1992) (approved gathering system consisting of 3,420 miles); El Paso Natural Gas Company, 57 FERC ¶ 61,186 (1991) (systems consisting of up to 24-inch diameter pipe were found to be gathering).

and Operating Pressures

The facilities upstream of the compressor stations serve numerous wells that are located in a number of different production areas and connected to receipt points throughout the system. These systems are comprised of numerous short, small-diameter lines arranged in spider-web configurations typical of most gathering systems and operate at relatively low pressures (between 60 and 75 psig) consistent with a gathering function. 25/

The facilities downstream of the compressor stations consist of three single, large-diameter pipelines many miles in length that are not connected to any wells. These factors are more indicative of a transmission function.

3. Intrastate Facilities

Section 2(16) of the NGPA defines an "intrastate pipeline" as:

> any person engaged in natural gas transportation (not including gathering) which is not subject to the jurisdiction of the Commission under the Natural Gas Act (other than any such pipeline which is not subject to the jurisdiction of the Commission solely by reason of section 1(c) of the Natural Gas Act.

In order for those transmission portions of the Montana facilities to qualify as intrastate pipeline facilities, Havre must be: (1) engaged in transportation rather than gathering; (2) engaged in transportation that is not subject to NGA jurisdiction; and (3) not exempt from NGA jurisdiction solely by reason of section 1(c) of the NGA. 26/ We find that the Montana facilities downstream of the compressor stations qualify as an intrastate pipeline.

a. Transportation vs. Gathering

The facilities downstream of the inlet of the compressor stations are used to bring gas to mainline transmission pressures. Gas delivered from the compressor stations is delivered into a single, large-diameter pipeline many miles in length. Moreover, there are no well connections along the length of these facilities. As discussed above, we find these facilities to be transportation in nature.

b. Lack of NGA Jurisdiction

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25/See K N Gas Gathering Inc., et al., 69 FERC ¶ 61,378 (1994).

26/See Texas Sea Rim Pipeline, 6 FERC ¶ 61,151 (1979). The third criterion is not an issue in this case.

Havre states that it intends to use the Montana facilities to provide intrastate gathering and transportation services for gas produced in the state of Montana and delivered in Montana or into Canada. Havre also states, however, that it may provide NGPA section 311(a)(2) transportation services for domestic markets outside the state of Montana. Based on these assertions, we find that Havre will not be subject to the Commission's NGA jurisdiction.

C. Presidential Permit

On March 15, 1995, the Commission submitted a draft Presidential Permit for operation of international border facilities to the Secretaries of Defense and State, informing each of Havre's application, providing copies of a draft permit, and soliciting their views. Replies on behalf of the Secretaries of Defense and State were received on April 11, 1995 and May 8, 1995, respectively. 27/ The designee of the Secretary of Defense and the designee of the Secretary of State responded and concurred with the issuance of the permit.

Havre's proposal to own and operate facilities at the international border between the United States and Canada is subject to the jurisdiction of the Commission under section 3 of the NGA to the extent that they will be used for transportation in foreign commerce. Section 3 states that border crossing facilities may be approved unless there is a finding that they will not be consistent with the public interest.

As stated above, in response to the Commission's letters, the Secretaries of Defense and State indicated their approval of the issuance of a Presidential Permit. Accordingly, we find that this proposal is not inconsistent with the public interest. Havre will be granted authorization under section 3 of the NGA and be issued a Presidential Permit to own, operate and maintain facilities at the U.S./Canada border at a capacity of up to 150,000 Mcf per day. If Havre desires to change the capacity, it will have to file an amendment to its section 3 authorization.

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27/Executive Order 10485 requires that the Commission obtain the favorable recommendations of the Secretaries of Defense and State prior to issuing a Presidential Permit.

The Commission orders:

(A) Northern's application in Docket Nos. CP94-130-000 and CP94-130-001 for authority to abandon its Montana facilities by sale to Havre and to abandon the services provided by those facilities is hereby granted, subject to the conditions discussed in the body of this order.

(B) Northern's Presidential Permit and section 3 authorization to own, operate, and maintain border facilities is hereby terminated.

(C) Northern is hereby required to make a filing pursuant to section 4 of the NGA notifying the Commission of the proposed termination of service at least 30 days prior to the proposed effective date of such termination. Northern's filing shall include the following information: (1) a statement showing the reasons for the termination; (2) a list of the contracts to be terminated identifying the contract by number and showing the proposed termination date and affected shippers to whom the notice has been mailed; and (3) a list of shippers, if any, that have entered into contracts with Northern's successor.

(D) Havre's petition in Docket No. CP95-162-000 for a declaration that the Montana facilities upstream of the inlet of the compressor stations will be gathering facilities exempt from the Commission's jurisdiction under section 1(b) of the NGA, and that the remainder of the Montana facilities will constitute intrastate pipeline facilities within the meaning of section 2(16) of the NGPA, is hereby granted.

(E) Pursuant to its authority under section 3 of the Natural Gas Act, as delegated by the Secretary of Energy, the Commission approves Havre's operation and maintenance of facilities at the United States/Canadian border as requested in Docket No. CP95-179-000 at a capacity of up to 150,000 Mcf per day, and issues a Presidential Permit authorizing Havre to own, operate and maintain the Montana facilities at the United States/Canadian border as requested.

(F) Northern shall notify the Commission of the effective date of the abandonment within 10 days thereof.

(G) The untimely motions to intervene in Docket Nos. CP94-130-000, CP95-162-000 and CP95-179-000 are hereby granted.

(H) The motions to withdraw protests or comments in Docket Nos. CP94-130-000 and CP94-130-001 are hereby granted.

By the Commission.

( S E A L )

Lois D. Cashell,
Secretary.

# APPENDIX A

## INTERVENTIONS

### Docket No. CP94-130-000

Agricultural Committee of the Havre Area Chamber of Commerce #
Anadarko Petroleum Corporation
ANR Pipeline Company
Harrington and Bibler, Inc.
IES Utilities Inc.
Interenergy Corporation
Interstate Power Company
Iowa-Illinois Gas and Electric Company
K N Energy, Inc.
K N Interstate Gas Transmission Co.
Kilroy Company of Texas, Inc.
Klabzuba Oil and Gas and John O. Brown, et al.
Meridian Oil Inc.
Metropolitan Utilities District of Omaha
Midwest Gas
Minnegasco, a Division of Arkla, Inc.
Mobil Natural Gas Inc.
Montana Power Company
NGC Energy Resources
Northern Distributor Group
Northern Illinois Gas Company
Northern Municipal Distributors Group and Midwest Region Gas
Task Force Association
Northern States Power Company (Minnesota and Wisconsin)
OXY USA Inc.
Panhandle Eastern Pipe Line Company
Phillips Petroleum Company
Solomon Exploration Inc.
Tennessee Gas Pipeline Company
Texaco Inc. and Texaco Gas Marketing Inc.
UMC Petroleum Corporation
Utilicorp United Inc.
Western Gas Marketing Limited
Williston Basin Interstate Pipeline Company

### Docket No. CP94-130-001

Havre Pipeline Company, LLC
Independent Petroleum Association of America
Northern Distributor Group
Northern Municipal Distributors Group and Midwest Region Gas
Task Force Association

**Docket No. CP95-162-000**

Enron Capital & Trade Resources Corporation
Independent Petroleum Association of America
Interenergy Corporation
Klabzuba Oil and Gas and John O. Brown, et al.
Montana Power Company
Northern Distributor Group
Northern Natural Gas Company
UMC Petroleum Corporation
Williston Basin Interstate Pipeline Company

**Docket No. CP95-179-000**

Enron Capital & Trade Resources Corporation
Independent Petroleum Association of America
Interenergy Corporation
Klabzuba Oil and Gas and John O. Brown, et al.
UMC Petroleum Corporation

# APPENDIX B

## PERMIT AUTHORIZING HAVRE PIPELINE COMPANY, LLC TO OWN, OPERATE, AND MAINTAIN, NATURAL GAS FACILITIES AT THE INTERNATIONAL BOUNDARY BETWEEN THE UNITED STATES AND CANADA

FEDERAL ENERGY REGULATORY COMMISSION
DOCKET NO. CP95-179-000

(Issued June 6, 1995)

Havre Pipeline Company, LLC, (Permittee), a limited liability company organized under the laws of the State of Texas and qualified to do business in the State of Montana, filed in Docket No. CP95-179-000 on January 27, 1995, an application pursuant to Executive Order Nos. 10485 and 12038 and the Secretary of Energy's Delegation Order No. 0204-112, for a Permit authorizing Permittee to own, operate, and maintain the natural gas transmission facilities described in Article 2 below at the international boundary between the United States and Canada.

By letter dated May 2, 1995, the Secretary of State, and by letter dated April 7, 1995, the Secretary of Defense favorably recommended that the Permit be granted. The Federal Energy Regulatory Commission finds that the issuance of a Permit is appropriate and consistent with the public interest.

Pursuant to the provisions of Executive Order Nos. 10485 and 12038, dated September 3, 1953, and February 3, 1978, respectively, the Secretary of Energy's Delegation Order No. 0204-112, effective February 22, 1984, and the Commission's regulations, permission is granted to Permittee to own, operate, maintain, and connect the natural gas transmission facilities described in Article 2 below, upon the terms and conditions of the Permit.

Article 1. It is expressly agreed by the Permittee that the facilities herein described shall be subject to all provisions and requirements of this Permit. This Permit may be modified or revoked by the President of the United States or the Federal Energy Regulatory Commission, and may be amended by the Federal Energy Regulatory Commission, upon proper application therefor.

Article 2. The following facilities are subject to this Permit:

That portion of a 16-inch diameter natural gas transmission pipeline approximately 46 miles long extending from Blaine County Compressor No. 1 in Blaine County, Montana, to the Canadian border, which portion is located at the international boundary between the United States and Canada, near Willow Creek, Saskatchewan, where said pipeline connects with Many Lakes Pipeline Company's pipeline in the Province of Saskatchewan, Canada. The facilities were authorized in Northern Natural Gas Co., 47 FPC 1202 (1972), as amended by Northern Natural Gas Co., 38 FERC ¶ 61,186 (1987).

Article 3. The natural gas facilities authorized herein, or which may subsequently be included herein by modification or amendment, may be utilized for the transportation of natural gas from the United States to Canada only in the amount, at the rate, and in the manner authorized under Section 3 of the Natural Gas Act.

Article 4. The operation and maintenance of the aforesaid facilities shall be subject to the inspection and approval of representatives of the United States. The Permittee shall allow officers and employees of the United States, showing proper credentials, free and unrestricted access to the land occupied by the facilities in the performance of their official duties.

Article 5. If in the future it should appear to the Secretary of the Army that any facilities or operations permitted hereunder cause unreasonable obstruction to the free navigation of any of the navigable waters of the United States, the Permittee may be required, upon notice from the Secretary of the Army, to remove or alter the same so as to render navigation through such waters free and unobstructed.

Article 6. The Permittee shall be liable for all damages occasioned to the property of others by the operation or maintenance of the facilities, and in no event shall the United States be liable therefor. The Permittee shall do everything reasonable within its power to prevent or suppress fires on or near land occupied under this Permit.

Article 7. The Permittee agrees to file with the Commission, under oath and in such detail as the Commission may require, such statements or reports with respect to the natural gas exported or the facilities described herein, as the Commission may, from time to time, request. Such information may be made available to any federal, state, or local agency requesting such information.

Article 8. Neither this Permit nor the facilities, nor any part thereof, covered by this Permit shall be voluntarily transferred in any manner, but the Permit shall continue in effect temporarily for a reasonable time in the event of the involuntary transfer of the facilities by operation of law (including transfer to receivers, trustees, or purchasers under foreclosure or judicial sale) pending the making of an application for a permanent Permit and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the facilities authorized by this Permit remain substantially the same as before the involuntary transfer. The Permittee shall maintain the facilities in a condition of repair for the efficient transportation of natural gas and shall make all necessary renewals and replacement.

Article 9. Upon the termination, revocation, or surrender of this Permit, the transportation facilities herein authorized shall

be removed within such time as the Commission may specify, and at the expense of the Permittee. Upon failure of the Permittee to remove such transportation facilities or any portion thereof, the Commission may direct that possession of the same be taken and the facilities be removed, at the expense of the Permittee, and the Permittee shall have no claim for damages by reason of such possession or removal.

Article 10. The Permittee agrees that when, in the opinion of the President of the United States, evidenced by a written order addressed to it as holder of this Permit, the safety of the United States demands it, the United States shall have the right to enter upon and take possession of any of the facilities, or parts thereof, maintained or operated under this Permit, and all contracts covering the transportation or sale of natural gas by means of said facilities, to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes, and then to restore possession and control to the Permittee; and in the event that the United States shall exercise such right it shall pay the Permittee just and fair compensation for the use of said facilities upon the basis of a reasonable profit in time of peace, and the cost of restoring said facilities to as good condition as existed a the time of taking over thereof, less the reasonable value of any improvements that may be made thereto by the United States and which are valuable and serviceable to the Permittee.

Article 11. This Permit is subject to any action which the Government of the United States may in the future deem expedient or necessary to take in case any part of the aforesaid facilities comes into the control of any foreign government.

Article 12. The Government of the United States shall be entitled to the same or similar privileges as may by law, regulation, agreement, or otherwise, be granted by the Permittee to any foreign government.

By direction of the Commission.

( S E A L )

Lois D. Cashell,
Secretary.

IN TESTIMONY OF ACCEPTANCE of all the provisions, conditions, and requirements of this Permit, the Permittee this day of _____, 1995 has caused its name to be signed by _____, pursuant to a resolution of its Board of Directors duly adopted on the _____ day of _____, 1995, a certified copy of the record of which is attached hereto.

Havre Pipeline Company, LLC

By _____

(Attest)

_____

Executed in triplicate

MASTER Computer Index

Service Date: August 15, 1995

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

* * * * * *

| | | |
|---|---|---|
| IN THE MATTER OF the Petition of HAVRE PIPELINE COMPANY, LLC for a Declaratory Ruling on Public Utility Status. | ) ) ) | UTILITY DIVISION<br><br>DOCKET NO. 95.2.5 |

## DECLARATORY RULING

### Introduction

1. On February 15, 1995 the Montana Public Service Commission (PSC) received a Petition for Declaratory Ruling on Public Utility Status from Havre Pipeline Company, LLC (Havre or Petitioner). Havre requested that the PSC determine what Havre's public utility status would be if it purchased natural gas gathering and transmission pipeline facilities from Northern Natural Gas Company (Northern). With this purchase, Havre would also acquire "farm tap" customers within the system.

2. On February 28, 1995 the PSC issued notice of the petition and opportunity to comment to the following parties: Montana Consumer Counsel, Montana Power Company, Montana-Dakota Utilities Company, Montana Land and Mineral Owners Association, Great Falls Gas Company, and Williston Basin Interstate Pipeline Company. Only Petitioner filed comments.

3. On July 11, 1995 Havre submitted its Supplemental Filing in Support of Petition for Declaratory Ruling. Havre informed the PSC that the Federal Energy Regulatory Commission (FERC) granted Havre's Petition for a Declaratory Order Disclaiming Natural Gas Act Jurisdiction, issued June 6, 1995. FERC determined that the pipeline facilities upstream of the inlet of the compressor stations will be exempt gathering facilities under section (1)(b) of the Natural Gas Act (NGA), and the remaining Montana facilities will constitute intrastate pipeline facilities as defined in section 2(16) of the Natural Gas Policy Act (NGPA). Havre also submitted additional factual data in support of its petition to the PSC, in particular documenting ownership status and clarifying limited liability corporate status of Havre.

4. Pursuant to § 2-4-501, MCA, and the procedures in ARM 38.2.101 and Model Rules ARM 1.3.226 through 1.3.229, the PSC exercises jurisdiction to make declaratory rulings binding on requesting parties as to the facts presented.

Facts Presented

5. UMC Petroleum Corporation (UMC), Havre's manager and owner of substantial working interests in the Montana properties served by Northern's System, executed an Asset Purchase Agreement with Northern dated December 16, 1994, and transferred the right to purchase Northern's System to Havre, as a recently organized limited liability company. Until the FERC's Order granting Northern authority to abandon its Montana facilities by sale to Havre, Northern had operated the System as an interstate pipeline subject to FERC's jurisdiction and provided "farm tap" service to farms subject to PSC jurisdiction.

6. Pursuant to its option to purchase, Havre intends to acquire, own and operate natural gas gathering and transmission facilities from Northern. Havre's members are Montana gas producers currently attached to the system, producing about 95 percent of the gas carried to market by the pipeline facilities. Havre intends to engage in intrastate gathering and transportation, along with interstate transportation authorized by section 311(a)(2) of the NGPA. Upon FERC's Order, Havre seeks a ruling from the PSC that portions deemed transmission facilities would be a "public utility," subject to the PSC's jurisdiction, but that its gathering portion would not be a public utility.

7. The System consists of 500 miles of pipelines located in Blaine, Chouteau and Hill Counties, Montana, and related facilities, including three compressor stations and more than 350 natural gas metering stations. Low pressure gathering lines of 3-inch to 20-inch pipelines (more than 400 miles) serve the three gathering systems in the Bullhook Tiger Ridge and Sherard production areas. Each gathering system collects gas at the wellhead and gathers it to a central point in the field. There the gas enters compression facilities which converge at the Blaine County No. 1 compressor station via 12-inch higher-pressure lateral pipelines. Gas is then delivered to connecting pipelines through either (a) a 46-mile, 16-inch high-pressure pipeline extending from the Blaine County No. 1 compressor to the U.S./Canadian border, or (b) interconnections with the pipeline system of Montana Power Company (MPC), an intrastate pipeline company serving Montana's gas customers. FERC has certified the two 12-inch pipelines, the 16-inch pipeline and the following three compressor stations, as transmission facilities: (1) the Blaine County No. 1 station -- two 5,500 horsepower reciprocating compressor units; (2) the Hill County No. 1 station -- one 1,460 horsepower compressor unit; and (3) the Blaine County No. 3 station -- one 750 horsepower compressor unit.

8. Havre proposes to engage in intrastate transportation, subject to transportation tariffs, for the portion of the System deemed to be transmission facilities by FERC, together with transportation

authorized by Section 311(a)(2) of the NGPA. Havre intends to operate solely as a gatherer and transporter of gas, and not as a purchaser and reseller of natural gas.

9. On both the gathering and transmission facilities Northern has a number of "farm tap customers," landowners receiving service as a result of easements and contractual agreements granting Northern the right to construct, operate and maintain pipelines across the customers' properties. Service is provided off a short connection, and the landowners are responsible for the pipeline to their premises. For the 12 months ending May 31, 1994, Northern's farm tap sales totalled 29,737 Mcf under rates approved by the PSC. Havre would assume the obligation to continue service under the farm tap tariffs, upon transfer of the facilities, and may arrange for acquisition of gas by purchase or through third-party contractors for sale to the landowners. Havre concedes the PSC's pipeline safety jurisdiction over intrastate pipelines as provided in 49 CFR Subchapter D, §§191, 192 and 199 (Pipeline Safety).

## The Questions Presented

10. The petition presents the following questions of law for the PSC's determination:

> Would the PSC have regulatory authority pursuant to § 69-3-102, MCA, over Havre Pipeline Company, LLC, as a public utility under the definition of § 69-3-101, MCA, if Havre acquired and engaged in intrastate operation of (1) those parts of the Montana Pipeline System deemed by FERC to be "transportation" and (2) those parts deemed to be lower pressure "gathering" systems? Would delivering natural gas to "farm tap" customers pursuant to easement agreements and in accordance with previous "farm tap" tariffs constitute Havre's pipeline system a public utility?

## Applicable Law

11. Section 69-3-101(1), MCA, provides that the term "public utility":

> [S]hall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court, whatsoever, that now or hereafter may 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:
>
> (a) heat;
>
> ....
>
> (d) power in any form or by any agency;

Pursuant to § 69-3-102, MCA, the PSC is "invested with full power of supervision, regulation, and control of such public utilities, subject to the provisions of [Title 69] ...."

Analysis

12. Havre inquires whether the PSC would have jurisdiction over Havre for the intrastate natural gas activities of gathering, transmission and "farm tap" service. Havre maintains that the gathering function of the System on the low pressure lines would not submit Havre to regulatory oversight so long as Havre is not a reseller of the natural gas. Havre is willing to accept regulatory jurisdiction over intrastate transportation of natural gas for others and to submit tariffs for PSC approval. Havre is equivocal on regulation of "farm tap" service.

13. To support its position on the distinction between the gathering and transmission portions of its proposed natural gas pipeline system, Havre cites definitions from case law.

> The term "gathering" refers to the process of collecting gas at the point of production (the wellhead) and moving it to a collection point for further movement through a pipeline's principal transmission system.
>
> "Transportation" involves the movement of gas through a pipeline's principal transmission system. Transportation facilities which receive natural gas after gathering may conduct transportation in interstate commerce, which is subject to [FERC's] jurisdiction under § 1(b), or transportation in intrastate commerce, which is excluded from [FERC] regulation under the NGA.

Northern Natural Gas Company, Div. of Enron vs. F.E.R.C., 929 F.2d 1261 (8th Cir. 1991).

**Gathering**

14. In gathering, the producers do not sell their gas to Havre; there is no change in ownership. Havre would provide private gathering service to the compressors for its members. At that point, the movement would become "transportation" like that provided by MPC pursuant to tariffs, and Havre would charge tariffed transportation rates, if the declaratory relief is granted.

15. Montana Power Company (MPC) first applied to the PSC to establish new transportation rates in Docket No. 90.1.1. After a rate hearing and settlement negotiations, the PSC granted MPC's request to implement transportation rates. (Order No. 5474c, October 3, 1991.) In Order No. 5474c (¶¶ 5-6), the PSC discussed a "fully-bundled service (MPC's traditional and present service)" in which "the total of procurement, production, processing, storage, supply, transmission, delivery, and all other related aspects of natural gas service are a package to the customer -- MPC provides natural gas as a product and service to the customer's burner tip." The PSC contrasted this full service with an unbundled service in which the components become separable and customers can choose one or more services.

16. Producers acting like producers, gathering and collecting their gas for market, are not performing a public utility function. If, however, the producers provide what looks like a product with service, the PSC would examine the matter to determine public utility status. Havre would own the facilities, which is the first prong of public utility status. Havre would not use the gathering facilities to provide utility service to others, the second prong. The gathering would be a private collection service for private producers to a privately owned central compression point. There would be no end-user, and therefore no public utility status to the point of the compressors. Producing and gathering would not be regulated as a public utility service, as discussed in the MOGA declaratory ruling. The PSC determines that the gathering function of Havre's system would not be regulated.

**Transportation**

17. "Transportation" of gas for purposes of pipeline safety and intrastate gas transportation as a public utility function have different meanings. Title 49 CFR § 192.3 (pipeline safety) provides encompassing definitions, including all aspects of the movement of gas by pipeline. The PSC has pipeline safety enforcement jurisdiction over intrastate pipelines, with penalty provisions under § 69-3-207, MCA. This jurisdiction extends to the full gamut of intrastate transportation as defined under the pipeline safety provisions, including high-pressure gathering, transmission, distribution of gas by pipeline and limited jurisdiction over the storage of gas.

18. "Transportation" of gas in conjunction with tariffs has a more limited meaning, referring to the transportation service unbundled from an integrated utility service. Havre requests authority to provide transportation service similar to that which MPC provides according to tariffs. When MPC applied for approval of transportation rates in 1990, the PSC considered the request as a matter of first impression. (Docket No. 90.1.1, Order No. 5474c.) MPC's concern was that large customers capable of finding alternatives to traditional service would bypass the system. MPC maintained that bypass would harm remaining customers, while unbundling service into separate services, such as transportation, would benefit MPC and its remaining customers by sharing some system costs. (Order No. 5474c, ¶ 5.)

19. In addition to the issue of bypass, the PSC considered the federal trend toward unbundling of transportation and sales. In 1978 Congress enacted the Natural Gas Policy Act (NGPA) removing FERC's jurisdiction of prices at the wellhead and authorizing FERC to allow interstate and intrastate pipelines to transport gas in interstate commerce without certificate and abandonment requirements. FERC implemented procedures to promote open access transportation by interstate pipelines in 1985 in Order No. 436. The interstate natural gas industry was changing to an unbundled transportation and sales business with companies transporting gas for shippers for a fee. (Order No. 5474c, ¶¶ 13-17.)

20. The PSC found that the natural gas industry was evolving from a fully-bundled, regulated business to an unregulated supply business, with an unbundled, but regulated, transportation business. The PSC also found that gas transportation would allow the marketplace to determine the price of natural gas in Montana, provide more supply options, and allow fuller use of MPC's pipeline system, increasing revenues to contribute to offset fixed transmission costs for all customers. (Order No. 5474c, ¶¶ 58 and 62.) Transportation customers "would be responsible for procuring their own gas supplies and contracting with MPC for transportation of their gas supplies to their delivery points on MPC's system. Customers could select from the menu of unbundled transportation features (including transmission and storage functions) which they deemed necessary to properly transport and shape their gas supplies for their requirements." (Order No. 5474c, ¶ 79.)

21. Montana Oil and Gas Association (MOGA), independent gas producers opposed to gas transportation, requested a declaratory ruling in anticipation of Order No. 5474c. MOGA asked whether §§ 69-3-101 and 69-3-102, MCA, would apply to independent producers selling gas to selected industrial end-users transporting on MPC's facilities, if the PSC approved MPC's transportation proposal. The PSC never regulated gas producers for producing and selling gas in the field. The producers did not want to turn the act of selling gas at the wellhead into a public utility function by using MPC's transportation facilities. The PSC ruled that public utility status under § 69-3-101, MCA, requires the ownership, operation or control of the facilities and provision of service on these facilities to someone other than the gas producers. Producers, acting like producers, would remain unregulated. A producer could be subject to regulation as a public utility for a contractual agreement to sell to another, if the producer owned, operated or controlled the facilities and engaged in delivery of the gas to the end-user/purchaser.

22. As the only intervening party not to approve the settlement in Docket No. 90.1.1, MOGA maintained that MPC was a distribution system only and not a transmission system. MOGA expressed concern that its producers would have to go through two or three systems, paying multiple transportation charges. (Order No. 5474c, ¶¶ 37-45.) MPC maintained that the producers in a competitive environment would have more opportunities to reach markets for gas supplies. (Order No. 5474c, ¶¶ 46-47.) The PSC concluded that Montana producers would have more opportunities to sell to others under gas transportation and open access. (Order No. 5474c, ¶¶ 66-70.)

23. Pursuant to its authority under § 69-3-102, MCA, the PSC will have jurisdiction over Havre's transportation rates upon Havre's acquiring the Northern pipeline system. As defined in § 69-3-101, MCA, Havre would own plant and equipment for transportation of the natural gas to others. Havre would submit transportation tariffs similar to those of MPC and provide transportation service

accordingly. Havre states that it will not purchase or resell the gas, thereby providing only the transportation component and not a full utility service.

Farm Taps

24. Havre requests the same level of regulatory oversight as exists over Northern's farm tap tariffs. While it "acquiesces" to continued "light-handed" oversight, Havre maintains that deliveries to farm tap customers after Northern's sale to Havre would have a different character and would no longer have any public utility status. According to Havre, Northern has delivered its own gas to the farm tap customers, but Havre would own no gas. Havre would either have to purchase gas for farm tap delivery or arrange for the transfer of the farm tap gas delivery obligation to a third party.

25. If Havre purchased gas for farm tap deliveries, Havre contends that it could "avoid public utility status" if the PSC ruled either (1) that there were no actual deliveries to the public, or (2) that Havre would not be providing service to the burner tip but rather a license to tap into its pipelines to remove gas.

26. To avoid public utility status, Havre cites Re Lake-Hubbard Natural Gas Service, PSC Docket No. 995, P.U.R. 1928C 358 to support its contention that "farm tap deliveries are not sales to the public." The 1928 PSC held that the principal issue was whether the property was dedicated to a public use, which would bring the owner of the pipeline facility under the jurisdiction of the PSC. Distributing gas to users for compensation would not subject the owner of the facilities to regulation, without a profession of public service and the willingness to serve at least a limited portion of the public, said the 1928 PSC. The PSC further stated that willingness to serve only particular individuals, either as an accommodation or for other unique reasons, would not subject the owners of the facility to public utility regulation.

27. The PSC rejects Havre's reasoning that it would not be professing public service, but merely serving particular individuals for reasons of accommodation or otherwise. The reliance on a 1928 case is misplaced. The pipeline owners and developers (Lake and Hubbard) would be regulated today for the 1928 service to the end-user for which they received compensation. The PSC has since construed "public utility" § 69-3-101, MCA, in numerous decisions and orders to mean an entity providing service to an end-user (furnishing or delivering heat, light or power, including natural gas) on facilities it owns, operates or controls.

28. The farm tap service constitutes just such a utility service under the definition, i.e., delivery of natural gas on facilities owned by Havre to the end-user farmers. MPC also provides this service at set tariffs, similarly in exchange for pipeline easements. All the components of service are

present. The farm tap customers on the gathering and transmission lines receive service on distribution lines to the service lines up to the customer meters. A customer meter measures the transfer of gas from an operator to a consumer. The service lines providing farm tap service are generally very short, just a few feet to place the meter and appurtenant equipment. The operator provides service to this meter or to the customer's piping, whichever is farther downstream. If there is no meter, the service line extends to the customer's piping. Under the farm tap tariffs, the customer's piping is right at the meter where the gas is transferred. The customer then pipes the gas, sometimes across hill and dale, to the premises.

29. The PSC finds that the farm tap service is indeed a public utility service. Components of full service are present, albeit it off a gathering system and limited to the few short feet of service line per each farm tap connection. Upon Havre's acquiring the system, the PSC would continue to regulate the farm tap service pursuant to the tariffs. The PSC furthers finds that pipeline safety enforcement would apply to the system, consistent with pipeline safety requirements.

## DECLARATORY RULING

On the petition of Havre Pipeline Company, LLC, for a declaratory ruling assuming that Havre exercises its option to acquire the pipeline facilities of Northern Natural Gas Company, the PSC rules as follows:

(1) Gathering system. The PSC would not regulate the gathering portions of the pipeline system, so long as the producers are acting like producers, collecting the gas at the well-head and gathering it to the collection points, i.e., the compression facilities. Havre has stated that this service is private carriage, because the ownership of the gas has not changed. This decision on the gathering system is based on the fact that gathering itself has never been regulated as a public utility function.

(2) Transportation system. Havre has agreed that the PSC would exercise jurisdiction over the transportation component of its pipeline system. Havre must file transportation tariffs upon acquiring the system.

(3) Farm tap service. The PSC would continue to exercise jurisdiction over the farm tap service pursuant to the tariffs filed at the PSC by Northern, regardless of the form of acquisition of this portion of the system.

Done and Dated this 8th day of August, 1995 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

NANCY MCCAFFREE, Chair

DAVE FISHER, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

# Havre Pipeline 2014 Farm Tap Fixed Cost Revenues

| | Total Revenues | Dkt's | Total Price | Non-Gas Component | Gas Component | Total Revenues |
|---|---|---|---|---|---|---|
| Residential | $ 41,654 | 18,567 | $ 2.24 | $ 0.19 | $ 2.05 | |
| Residential Free Gas | $ - | 732 | | | | |
| Commercial | $ 7,191 | 3,205 | $ 2.24 | $ 0.19 | $ 2.05 | |
| Total | $ 48,845 | 22,504 | | | | |
| Total Revenue Non-Gas Component | | | | $ 4,156 | $ 44,689 | $ 48,845 |

NorthWestern Energy NATURAL GAS TARIFF

| | | | | |
|---|---|---|---|---|
| | 3rd | Revised | Sheet No. | R-6.1 |
| Canceling | 2nd | Revised | Sheet No. | R-6.1 |

Rule No. 6

LINE EXTENSIONS

6-1 Free Main Line Extension Allowance – Upon application for natural gas Core service, the Utility shall make an extension of the distribution main pipeline free of charge to the Applicant for Service up to the level of cost shown below, but no greater than the entire actual cost of such line extension:

| | | |
|---|---|---|
| Residential Service Customer | $ 900.00 | |
| All other Core Customers ($/Therm) | $0.355 | times the Utility's estimate of the annual Therm consumption of the Customer. |

Non-Core Transportation Customers: Determined on an individual basis.

A. Applicant requesting installation of a gas service will receive a meter and regulator free of charge, but will be responsible for the cost of the service pipeline connecting the meter to the distribution main. Customer contributions toward the cost of the gas service are non-refundable.

B. The Applicant for service shall furnish all necessary rights-of-way.

6-2 Extension Beyond Free Limit (See Rule No. 6-11)

A. Where a main extension cost exceeds the free limit specified above in Rule No. 6-1, the Utility will require the Applicant for Service to pay the difference between the cost of the project and the main extension allowance. Whenever this customer cost is collected as an advance, if additional requests for service (new line taps) from this protected extension are received within 60 months from the date the extension is completed, the Utility will:

1. Collect from the new line tap an advance or contribution representing an amount equal to the average advance for all line taps on the main line extension, in addition to the new line tap.

2. Refund to previously connected line taps of the existing line, their successors or assignees, or the current owner(s) of the property such an amount as is required to reduce the average cost of the line tap to the average advance with all connected line taps sharing equally in the cost of the original protected line.

   The Customer(s) of each line tap, as a group, will share any required advance for their line tap extension, equitably, in addition to the cost of their individual line extension. Additional advances and refunds associated with such line taps will be treated as specified in Rule No. 6-2 A above.

(continued)

Rule No. 6

LINE EXTENSIONS

B. No refunds will be made or credits allowed until the additional Applicant for Service has become an active gas Customer of the Utility.

C. At the end of the 60-month period referred to above, no further refunds shall be made.

6-3 Applicability - This Rule applies to all prospective permanent Customers, except service for resale, provided the proposed line extension can be built from an adequate, existing line across rights-of-way, which shall be supplied and cleared by the Customer. Extensions, which are not capable of further revenue development, or to loads of uncertain duration, or extensions for temporary service or which would involve any unusual conditions, are governed by the provisions of Rule No. 5.

6-4 Construction Standards - The engineering, design, materials and method of constructing the line extension shall be determined by the Utility in accordance with its construction standards. The location and route of the line extension, from an existing, adequate line, shall be established by the Utility. The line extension and all related facilities shall, at all times, be owned, maintained, and operated by the Utility.

6-5 Line Extension Cost

A. The cost of an extension, as used herein, shall include the total construction expense associated with the extension including overhead charges, based on the minimum sized facilities needed to effectively serve the extension. The cost shall also include the cost of any addition to, or moving of, existing facilities necessary to serve the extension. The cost of an extension shall not include meters or regulators. The free extension cost allowance shall be in accordance with Rule No. 6-1.

In unusual circumstances where facilities could be extended from multiple existing locations, or where multiple routes could be taken from one location, the cost of an extension shall be based on the shortest technically feasible route where there is an available right-of-way and/or Utility easements and access to facilities.

B. The Utility will perform one line extension engineering cost estimate per Applicant for Service, per year at the same location free of charge. The Applicant for Service will be assessed a charge at the rate of $61.00 per hour for additional line extension cost estimates. Minimum charge is $61.00. Any line extension engineering costs collected which result in establishment of service, shall be credited to Customer's line extension responsibility.

6-6 Extensions to Subdivisions or Housing Projects - Where a line extension is requested for a subdivision or housing project, the Utility may require the principal thereof to advance the entire

(continued)

Rule No. 6

LINE EXTENSIONS

cost of construction, and will subsequently refund this amount as specified in Rule No. 6-1, less the additional costs required to serve each Customer at this location, within 60 months from the date the basic extension is completed as described in Rule No. 6-2.

6-7 Field and Transmission Line Tap Extensions - When line extensions, either within or beyond the free extension limits, are made from gathering or transmission lines or as direct taps to wells in producing fields, the Utility makes no guarantee of service continuity where operating problems require the temporary shutting off or abandonment of facilities.

6-8 Customer Agreement - The Utility will require the Applicant for Service requesting a line extension to enter into a Customer Agreement to connect to the Utility's natural gas system.

6-9 Utility Installation Option - The maximum free line extension cost allowance to which a Customer is entitled, without cost, shall be in accordance with Rule No. 6-1. The cost of an extension, as used herein, shall be determined in accordance with Rule No. 6-5. However, nothing contained herein shall prohibit the Utility from installing additional facilities in excess of those used to calculate the cost of an extension, in accordance with Rule No. 6-5, if, in the opinion of the Utility, such facilities are reasonably justified by anticipated additional future load to be served, or where such additional facilities will be used for general system improvement or reasonable orderly development.

6-10 Extensions to New Service Areas - The Utility will install natural gas distribution lines in a new service area when it is technically feasible. Free line extensions will be determined on a project specific basis.

A. As used in this Rule, "technically feasible" means that the trench through which the underground lines would run could be excavated by a conventional backhoe, trencher, or cable plow with no blasting and minimal use of jackhammers or like equipment required, and does not involve highway, railroad or river crossings.

B. As used in the preceding subsections, "unit" means a residential or general service structure in a new service area, and "distribution lines" mean all natural gas lines in new service areas.

6-11 Surcharge on Advances or Contributions - Whenever, under the provisions of this Rule, an advance or contribution is required, the current surcharge as required by Utility operations shall be applied to such advance or contribution. This is to offset the effect caused by the Utility's delayed tax depreciation reimbursement of the current year tax on this advance or contribution. This surcharge is not applicable where such contributions or advances are the result of highway relocations or any government directed relocations that benefit the public and the government is not receiving utility service.

**Department of Public Service Regulation**
**Montana Public Service Commission**
**Consolidated Docket Nos. D2015.3.32 and N2014.11.92**
**Havre Pipeline Company Service Quality**
**Havre Pipeline Company**

# PREFILED REBUTTAL TESTIMONY

# OF MARC T. MULLOWNEY

# ON BEHALF OF HAVRE PIPELINE COMPANY

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**Exhibits**

| | |
|---|---|
| HPC Farm Tap Customers | Exhibit__(MTM-1) |

## Witness Information

**Q. Please provide your name and business address.**

**A.** My name is Marc T. Mullowney and my business address is 40 East Broadway Street, Butte, Montana 59701.

**Q. By whom are you employed and in what capacity?**

**A.** I am the Director of Gas Transmission and Storage for NorthWestern Energy ("NorthWestern").

**Q. On whose behalf are you testifying for in this proceeding?**

**A.** I am testifying on behalf of Havre Pipeline Company ("HPC").

**Q. Please summarize your educational and employment experiences.**

**A.** I received a Bachelor of Science degree in Mechanical Engineering in 1981 from Montana State University. Upon graduation, I began employment with the Montana Power Company in the Gas Transmission Department as a staff engineer. I have 34 years of experience working in this department in various capacities. I have served as Manager of Engineering, Manager of Construction and Maintenance and am presently the Director of Gas Transmission and Storage and Vice President of HPC.

## Purpose of Testimony

**Q. What is the purpose of your testimony in this consolidated docket?**

**A.** My testimony provides a complete inventory of all current HPC farm tap customers and ties the customers either directly or indirectly to a right-of-way agreement given by the customer, or their predecessor in interest, to HPC's predecessor in interest, Northern Natural Gas Company ("Northern Natural"). I also testify regarding the facilities that are owned by HPC.

**Q. Have you ever testified before the Montana Public Service Commission?**

**A.** Yes. I previously testified in Docket No. D2012.9.94.

## HPC Facilities and Operations

**Q. Are you familiar with the facilities and operations of HPC?**

**A.** Yes. Given my position at NorthWestern, I supervise and oversee NorthWestern's Montana natural gas transmission and storage operations, which includes its management of HPC. I am familiar with the facilities and operations of HPC.

**Q. Please describe the HPC facilities.**

**A.** HPC has two components: (1) transmission pipelines, and (2) gas gathering lines, which take natural gas from individual wells in the field and bring it to the transmission pipeline for transport to either the Many

Islands Pipeline in Canada, or the NorthWestern transmission pipelines at the Box Elder Storage Field or south of Big Sandy. There are three large natural gas producing areas in the region: Tiger Ridge, Bullhook, and Sherard. They are spread across three Montana counties: Choteau, Hill, and Blaine counties. HPC's gathering line systems collect the gas in those fields and move it to central collection points where it can be treated to pipeline quality and injected into HPC's high pressure natural gas transmission pipeline.

**Q. Does HPC have any natural gas distribution facilities, such as city gate stations, service lines, or distribution mains?**

**A.** No it does not. HPC was not designed or built as a natural gas distribution system. It was designed and built to provide natural gas supply to Northern Natural, an interstate gas transmission pipeline company. It has no city gate stations, distribution mains, or service lines.

## Farm Tap Customers

**Q. What is a farm tap customer?**

**A.** A farm tap customer, at least on the Havre pipeline, is a customer who bargained for and received the right to tap the HPC natural gas transmission line, or its gathering lines, in exchange for granting necessary right-of-ways for the transmission or gathering lines.

**Q. Please describe how a farm tap functions.**

**A.** A farm tap is a connection which allows natural gas to be diverted from its normal stream in a natural gas transmission line, or gas gathering line, for use by a rural end user. Farm taps are most typically found on transmission pipelines although they can be found on gathering or storage pipelines as well. A farm tap consists of a tap on the pipeline, an upstream shutoff valve, a pressure regulator, a pressure relief valve, and a downstream shutoff valve. The custody transfer point for HPC customers is at the farm tap, so a gas meter and odorant pot are also part of an HPC farm tap assembly. A desiccant pot may, or may not, be part of the farm tap assembly depending upon the water content of the natural gas. The wet gas stream comes into contact with the desiccant (a substance that absorbs water vapor) inside the pot to help reduce the water content of the natural gas being provided to the customer. The desiccant eventually dissolves into a solution and must be replenished.

**Q. Mr. Mullowney, were any natural gas distribution mains constructed between the HPC gas transmission pipeline or its gas gathering lines and the farm tap customer's gas service line, to facilitate gas distribution service to them?**

**A.** No. The custody transfer point between customers and HPC is at the farm tap. The service line from the tap to the house, the regulator, and the relief valve at the house all belong to the customer.

**Q. How many current farm tap customers does HPC have?**

**A.** Currently, HPC has 94 farm tap customers. My Exhibit__(MTM-1) provides a list of all current HPC farm tap customers.

**Q. Mr. Mullowney, what is the relationship between the customers listed in Exhibit__(MTM-1) and Northern Natural?**

**A.** With one exception, each of the customers listed in Exhibit__(MTM-1) is either a landowner who granted a right-of-way easement to Northern Natural for construction of the HPC natural gas transmission and gathering lines, or the assignee of such a landowner. The farm tap right in the right-of-way agreements is a transferable interest.

**Q. Please explain the exception.**

**A.** HPC has recently determined that one farm tap is not associated with a right-of-way agreement. It belongs to a former long-time employee of HPC who we now believe received it as an employment benefit.

**Q. Please explain how you made that determination.**

**A.** While searching for and collating the underlying right-of-way agreements for the farm tap customers, we determined there was no gathering or transmission pipeline associated with that particular parcel of ground. We do have documentation that establishes the farm tap originated in 1996, when the landowner was an employee of HPC.

**Q. Does this conclude your rebuttal testimony?**

**A.** Yes, it does.

| **Farm Tap Number** | Original Customer | Current Customer |
|---|---|---|
| 990001 | Standiford, Leland -J&J Hauer | Standiford, Leland - J&J Hauer |
| 990002 | Haugen, Harold | Henderson, Mitch |
| 990004 | Dion, Pete | Dion, Pete |
| 990005 | Pyette, William | Pyette, Willie |
| 990006 | Nemetz, James | Nemetz, James |
| 990007 | Ramberg, Ray | Nissen, Patty |
| 990011 | Shuland farm tap | Terry, Roger |
| 990012 | Ramberg, Lena and Harry | Vasseur, Lois |
| 990013 | Moore, John | Sand Creek Ranch |
| 990015 | Finch, Alfred | Finch, Alfred |
| 990017 | Fritz, Robert | Carter, Walter |
| 990018 | Waid Ranch, Inc. | Waid Ranch, Inc. |
| 990019 | Morse, Bruce | Morse, Bruce |
| 990020 | Morse, Dan | Lee Morse, Inc. |
| 990021 | Vosen, Bill | Vosen, William |
| 990023 | Lux, John | Lux, John |
| 990024 | Reynolds, Stuart | Reynolds, Dr. S.A. |
| 990025 | Carlson, Marlyn | Carlson, Marlyn |
| 990026 | Sweeney, Donald | Swinney, Rex |
| 990027 | Olson, Ed | Olson Sr., E.F. |
| 990030 | Davidson, Joe | Casolaro, Edward D. |
| 990031 | Richardson, Dr. Bruce | Richardson, Dr. Bruce |
| 990032 | Swank, Terry | Swank, Terry |
| 990033 | Gallager, John | Gallager, John |
| 990035 | Erskin, Ed | Erskine Farms |
| 990036 | Patrick, Ray | Patrick, Ray |
| 990038 | Young, John | Young, John |
| 990039 | Hinebauch Grain INC. | Hinebaugh Grain, Inc. |
| 990040 | Davies, Mark | Davies Ranch |
| 990041 | Paulsen, Walter | McMaster, Dave |
| 990042 | Red Rock Land Corp. / Leslie Pleninger | Olson, Harry |
| 990043 | Vogel, Ray | Vogel, Raymond O. |
| 990044 | Miller, Max | Bar Z-T Ranch |
| 990045 | Thorstad Ranch, Inc. | Thorstad Ranch, Inc. |
| 990046 | Munson, Robert | Munson, Robert G. |
| 990047 | Young, Scott | Young, Scott |
| 990049 | Childs, Patty | Wood, Carol |
| 990050 | See, George | See, Charles J & Bonnie J (George) |
| 990053 | Beck, Lillian | Beck, Neil |
| 990054 | Williams, Leon R. | Williams, Leon R. |
| 990055 | Rambo Grain and Cattle | Rambo Grain & Cattle |
| 990056 | Haugen, Gorden | Haugen, Gordon |
| 990057 | Williamson, Herb, M. | Sand Creek Ranch |
| 990058 | Donoven, Keith | Donoven, Keith J. |
| 990059 | Dumas, Hugh | Anderson, Bob & Kathy |
| 990061 | Hanson, Robert / Victor Hanson | Hanson, Robert |
| 990064 | Williams, Lyle | Williams, Lyle |

| | | |
|---|---|---|
| 990065 | S-B Ranch | S-B Ranch |
| 990069 | Boyum, Kermit | Boyum, Kermit |
| 990070 | Staples, Roy/ Larry | Young, Dennis |
| 990072 | Sivertsen, Leonard | Siversten, Howard |
| 990076 | Wigmore, L.C. | Kuhr, Pete |
| 990078 | Fort Assinaboin | No. Ag. Experiment |
| 990083 | Kafka, Lada | Kafka Farms |
| 990084 | Davey, Robert | Davey, Robert A. |
| 990085 | S--B Ranch | S-B Ranch |
| 990086 | Stallcup, Jack | Stallcup, Jack |
| 990088 | Pollington, Gary | Pollington, Gary |
| 990089 | Fisher, Doug | Fisher, Doug |
| 990091 | Genger, Charles | Leahy, James |
| 990092 | Hellebust, Conn | Hellebust, Conn |
| 990094 | Martin, Donna | Maroney, Tim |
| 990095 | Montgomery, John | Montgomery, John |
| 990096 | Myers, Rob | Myers, Rob |
| 990097 | Hockett, Jeff | Hockett, Jeff |
| 990099 | Jess, Larry | Jess, Larry |
| 990100 | Chivilicek, Steve | Chivlicek, Steve |
| 990101 | Anderson, John | Hanson, Vic |
| 990102 | Skoyen, John | Skoyen, John |
| 990103 | Moyer, Russ | Moyer, Russ |
| 990108 | Gregoire, Gary | Gregoire Farms, Inc. |
| 990109 | Marra, Joe | Solomon, Edmond |
| 990111 | Beardsley, Dr. | Beardsley,  Dr. Allen |
| 990112 | Herron, Tim | Herron, Tim |
| 990114 | Dahlin #1 farm tap | Bar Triangle J Ranch |
| 990122 | Nystrom, Ed | Nystrom, Ed |
| 990123 | Solomon, Jeff | Solomon, Clint |
| 990124 | Gregoire, Giles #2 | Gregoire, Giles |
| 990125 | Paulson Land Corp. | Paulsen, Ernest |
| 990126 | Reighard Farm Tap | Reighard, Donald |
| 990127 | Jess Farm Tap | Jess, Frances |
| 990132 | Manual, Charles farm tap #2 | Manuel, Charles |
| 990137 | Williams, Dale | Williams, Dale |
| 990138 | Inman, Charles | Inman, Charles |
| 990139 | Vosen, Robert | Vosen, Robert |
| 990140 | Williams, Robert | Williams, Robert |
| 990142 | Anderson, Lee | Anderson, Lee |
| 990143 | Ratliff, Dale | Ratliff, Dale |
| 990144 | Mord, Mike | Mord, Mike |
| 990145 | Reum Ranch Limited Partnership | Reum, Tony |
| 990146 | Nold, Wayne | Seiwing, Roger |
| 990148 | Riley, Ryan | Riley, Ryan |
| 990149 | Johnson, Joe | Johnson, Joe |
| 990150 | Tucker, Thomas | Tucker, Thomas T. |

CERTIFICATE OF SERVICE

I hereby certify that a copy of Havre Pipeline Company's Rebuttal Testimony and Exhibits in Docket Nos. D2015.3.32/N2014.11.92 has been hand delivered to the Montana Public Service Commission and Montana Consumer Counsel, e-filed with the Montana Public Service Commission, and emailed to counsel of record this date. It has also been served upon the remainder of the service list by postage prepaid via first class mail as follows:

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DATED this 4th day of September 2015.

Connie Moran

Connie Moran
Administrative Assistant
Regulatory Affairs