

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

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

**POST-HEARING RESPONSE BRIEF OF THE
MONTANA CONSUMER COUNSEL**

Montana Consumer Counsel (“MCC”) submits its post hearing response brief in accordance with the briefing schedule implemented at the hearing on October 26, 2015 as modified by agreement of the parties.

Argument in Response.

In a classic straw man argument, NorthWestern Energy (“NWE”) (which, since having purchased Havre Pipeline (“Havre”) in December of 2013, is referred to herein as the Company) frames the issue as whether the Commission has the authority to modify the terms of the Application the customers of Havre Pipeline initially entered into. The Commission should reject this formulation of the issue. The fact is the Commission has asserted jurisdiction over the farm tap service that is in question here. The Company never protested that assertion of jurisdiction. Accordingly, the Commission’s authority at

this juncture is not a modification of the Agreement, but rather an appropriate continued oversight of a fully regulated company to ensure adequate service to certain customers.

The Company's Opening Post-Hearing Brief argues at length that the Commission has no jurisdiction over the gas gathering lines owned by Havre. The basis for the Company's claim is the assertion that natural gas gathering is not a public utility function. The essence of the Company's argument is that because its *gathering* lines are unregulated, as a result, no other part of the service can fall within the Commission's authority and the customers complaining of inadequate service in this case are without remedy from the Commission. This is not the case.

The Company is simply wrong in asserting that this Commission has no jurisdiction over natural gas gathering. Not only does the Commission have jurisdiction over natural gas gathering, it has exercised jurisdiction over other natural gas gathering facilities owned and operated by NWE. See Docket No. D2015.7.53, NWE's October 15, 2015, November 1, 2015 Monthly Natural Gas Cost Rate Adjustment filing, at Appendix E and Appendix F, where NWE presents "Revenue Requirement – Regulated" calculations for interim rates for its regulated NFR and Devon natural gas production at Company-owned natural gas fields in Montana. At line 22 of Appendix E (NFR) and at line 22 of Appendix F (Devon), NWE includes significant gas gathering costs in the total costs of service that are used to support the "Revenue Requirement – Regulated" for each of these two gas producing properties.

The Commission’s decision in its Declaratory Ruling¹ was that Havre’s “farm tap service is indeed a public utility service.” The Commission found in relevant part:

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.”

The Company has acknowledged throughout this proceeding that the farm tap service is a regulated service.

The Company argues that it has never held itself out as providing a distribution service. The evidence in this docket contradicts that assertion. The Company distributes gas throughout its system to serve these customers. In response to data requests, the Company clarified that the service reliability problems centered on a 14 mile segment of gathering line that previously had been used to receive gas from producing wells that are no longer producing. The Company noted that it distributes gas throughout its system to provide service to farms on the low pressure lines. The Company stated:

The entire gathering system is interconnected, so these farm taps are fed from gas being produced in other areas of the gathering system. Although there are no producing wells in the 14-mile segment gathering line described, gas is produced downstream and it back feeds into the segment to provide service to the farm tap customers mentioned. At times water accumulates in low spots, (see paragraph 1, Page 8 of HPC's response to the MPSC's NCA on water vapor). This will not allow the gas to equalize freely throughout the gathering system and causes lower pressure on the non-producing side of the pipeline. [Emphasis added.]

It is hard to explain this answer as anything other than distributing gas to the customers Havre serves. The Company mischaracterizes the recommendation and testimony of MCC witness, George Donkin. Mr. Donkin and is not proposing that

¹ See In The Matter of the Petition of Havre Pipeline Company, LLC, for a Declaratory Ruling on Public Utility Status, D95.2.5, Declaratory Ruling issued August 15, 1995, Exhibit JLA – 3.

NorthWestern has to build natural gas distribution mains so as to continue serving farm tap customers. Mr. Donkin's specific recommendation on this subject appears in his Pre-Filed Direct Testimony, at Page 11, Lines 4 – 13, where he states:

HPC would know the approximate level of cost necessary to enable it to provide adequate service to the customer. If the service is to be terminated, the customer would need to incur the costs to convert from farm tap natural gas service to an alternative heating source, such as propane, electricity, wood, or possibly a pipeline extension to a NWE or HPC gas transmission pipeline. Therefore, any agreed upon conversion cost buy-out payment by HPC that is below the estimated cost necessary to enable HPC to provide adequate farm tap service would represent a cost saving for the Company, and at the same time it would compensate the departing farm tap customer for incurring the cost to convert to an alternative heating source.

This recommendation clearly does not contemplate or even suggest that NWE has to build natural gas distribution mains as a means to continue providing adequate service to existing farm tap customers; rather, it recognizes that a conversion by the customer to an alternative fuel source, such as propane, may be less costly than the cost NWE would need to incur to continue the service, in which case NWE would pay for the cost to convert to propane, or, if less costly than converting to propane, *the customer, not NWE*, may choose to incur the cost of a pipeline extension to NWE or Havre, in which case NWE would compensate the farm tap customer for the cost of the new gas pipeline connection. In any of these arrangements the negotiated agreement between the customer and the Company would have to be approved by the Commission. If the customer and the Company are unable to agree on an appropriate resolution, then the Commission would have the authority to decide the just and reasonable outcome.

The Commission regulates the farm service that is at issue here, and no other conclusion can be drawn without reversing and overturning the Commission's prior decision exercising jurisdiction over this service.

The remainder of the Company's argument distills to a claim that the Commission does not have jurisdiction over the Company and that the Commission should disavow jurisdiction and find the farm tap Applications controlling. A simple answer to this argument is that the Commission would not need to disavow authority that it does not have; so clearly, in the Company's own view, the Commission has jurisdiction over the service here.

Vantage point and legal status being two separate things the fact of the matter is that the Commission has entered a Declaratory Ruling asserting jurisdiction over the farm tap service that remains binding on the Company. The only question then is what remedy is appropriate here.

The Company's argument regarding any particular clause of the contract controlling over any other is unavailing. The Commission exercised jurisdiction and has authority over the conditions of service here. As a public utility Havre is obligated to provide reasonably adequate service. Mont. Code Ann. § 69-3-201.

The Company argues that the paragraph contained in the Applications for farm tap service under "Conditions of Service" reserving the Company's right to abandon the service trumps the Commission's finding of jurisdiction over the service. The Company's argument fails for two reasons.

First, the Application clearly acknowledges the Commission's right to assert jurisdiction over the service. The Commission did in fact claim such jurisdiction, which has never been challenged by the Company.

Second, the customer's acknowledgement in an Application for farm tap service does not bind the Commission. The Commission could, and did without protest or challenge from the Company, find jurisdiction over the farm tap service. The customers' prior recognition of the Company's reservation of the option to abandon service does not control the Commission's obligation to ensure that customers receive reasonably adequate service as required by Mont. Code Ann. § 69-3-201. A regulated public utility may not contract individually with its customers to defeat its public utility obligations.

The Company's argument here that the contractual provisions trump public utility statutes must be rejected. The Company provides no legal authority to support this claim. It is axiomatic that one cannot contract away legal obligations. The logical conclusion of this argument would allow any individual or company to contract away legal obligations. If that were so, there would be no meaning to a minimum wage because companies could simply "contract" with their employees to pay less than the legal minimum wage; or hospitals could "contract" with their staff to forego critical safety procedures, notwithstanding legal obligations to the contrary.

With regard to the Company's recommendation, there is no evidentiary basis for the Commission to reach a conclusion about what is or is not economical in this case. If the Company desires to abandon a regulated public utility service, it should request appropriate authorization. The Company has not requested Commission approval to

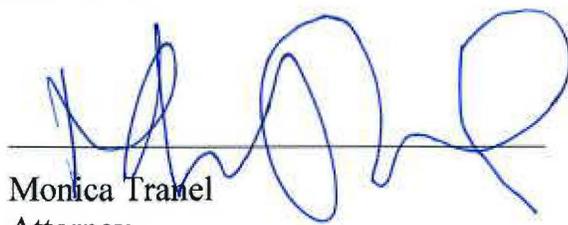
abandon service. Therefore the Commission cannot reach the question of whether abandonment is authorized or appropriate under the circumstances and evidence presented here.

The sole question before the Commission is the Company's obligation to continue providing reasonably adequate service as a regulated public utility. In the event that the Company explores buy-out Agreements as a means to abandon service, then the Commission should review and approve any appropriate buy-out arrangements before service to any of Havre's customers may be abandoned. The Commission has the jurisdiction and the authority to do so.

Conclusion.

If Havre desires to discontinue serving some or all of its customers it should (1) negotiate buy-out payments to be made by the Company to departing farm tap customers, which payments should be totally absorbed by the Company, and (2) obtain Commission approval prior to abandoning service to any farm tap customer.

Respectfully submitted this 10th day of December, 2015.



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