

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)
)
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 BRIEF
OF THE MONTANA CONSUMER COUNSEL**

Montana Consumer Counsel (“MCC”) submits its post hearing brief in accordance with the briefing schedule implemented at the hearing on October 26, 2015.

I. Background.

NorthWestern Energy (“NWE”) purchased Havre Pipeline (“Havre”) in December of 2013. Both NWE and Havre are sometimes referred to herein as “the Company.”¹

In January of 2014 several informal complaints were filed with the Commission, which led to the opening of this docket. The Commission issued a Notice of Commission Action (“NCA”) in which it stated it “has exercised its jurisdiction over this natural-gas service since 1984.” NCA issued November 14, 2014. The Commission required Havre

¹ In doing so NWE became the largest interest owner and the managing partner of the system. See Havre Pipeline’s Response to the Commission’s NOI, p. 5.

Pipeline to “file a plan within 20 days” of the NCA “to explain what it will do to meet its obligations as a public utility to provide reliable natural gas service.” NCA, *id.*

The Company’s response acknowledged the farm tap service it provides is a public utility service and further acknowledged it is required to provide reasonably adequate service as required by § 69-3-201, MCA. Response pp. 10-11. The Company stated that it is contemplating abandoning one segment of a line, but that it will seek appropriate regulatory authorizations if it does so. Response p. 13.

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.²

² See NWE Response to MCC Data Request 005.

The Company acknowledges that it can continue providing service to the customers being served from the low pressure lines. MCC witness George Donkin testified at hearing that while there may be some service reliability or service cost issues associated with continuing that service, the Company can and in fact is continuing to provide service with gas from other sources on its system.

The genesis of the service at issue here began in the 1970s and 1980s when rural farms in the Havre area submitted Applications to what was then Northern Natural Gas Company to receive direct natural gas domestic farmstead service.³ In conjunction with the Applications, the Company executed Pipeline Easements with these farm customers.⁴ Each of the Applications contains a paragraph with language as follows:

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 services and conditions of service expressed herein are subject to change.⁵

In 1995 Northern sold its facilities to Havre Pipeline Company.⁶ The Montana Commission issued a Declaratory Ruling addressing the public utility status Havre would have upon its purchase of Northern's facilities.⁷ The Commission found that Havre Pipeline's "farm tap service is indeed a public utility service."⁸ The Commission went on to rule in relevant part:

³ Samples of these Applications are provided as exhibits to the initial filing in this Docket. See Attachments 1- 4.

⁴ See Easements included with Applications at Attachments 1 – 4.

⁵ See Attachment 1 p. 1-2, para. 2; Attachment 2 p. 1 – 2, para 2; Attachment 3 p. 1 – 2, para. 2; Attachment 4 p. 1-2, para. 2.

⁶ See Exhibit JLA-2, FERC Order issued June 6, 1995).

⁷ 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.

⁸ *Id.*, p. 8 para. 28.

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.”⁹

MCC witness George Donkin testified at hearing that this language “says to me that the Commission was recognizing that there are different portions of the system gathering lines, the transmission lines, the high pressure transmission line, and the farm tap service, and that whether or not the service is being provided from the gathering system or from the transportation system the Commission has jurisdiction over the service.”¹⁰

This docket did not raise the question of the Commission’s jurisdiction over Havre’s farm tap customers. The Notices of Commission Action initiating the N docket (N2014.11.92) and the D docket (D2015.3.32) stated that “the Commission has exercised jurisdiction over this natural-gas service since 1984” and “the Commission directed HPC to file a plan [...] to explain what it would do to meet its obligations as a public utility to provide reliable natural-gas service.” The Commission did not identify additional issues in this docket.

II. Argument

This Commission has already determined that Havre Pipeline is a public utility, and that the farm tap service it provides to customers is a regulated service. As a public utility, Havre Pipeline is obligated to provide reasonably adequate service. Mont. Code Ann. § 69-3-201.

In this case, some customers have complained that they are receiving inadequate service. The Company has set out steps it could take to remediate the problems. In its

⁹ *Id.*, p. 8, para. (3).

¹⁰ See Transcript of Hearing (“Tr.”), p. 35:4-12.

Response to the Commission's initial NCA the Company identified the customers filing complaints, and outlined options available for ameliorating the complaints and problems.

The MCC provided several recommendations to address the service quality issues raised by consumers that initiated the Commission's investigation in this docket. Those recommendations include:

- Havre Pipeline should take the necessary steps to continue providing adequate service to its customers, at its own expense.
- In the event that the cost of providing adequate service is excessive, Havre should negotiate buy-out arrangements with its customers and request Commission approval for abandonment of applicable service.
- If the Company and the customer cannot agree on a buy-out arrangement, then the Company should take the necessary steps and incur the applicable costs to restore and continue providing service.

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, assert jurisdiction over the farm tap service. The

customers' prior recognition of the Company's reservation of the option to abandon service in the Application does not control the Commission's obligation to ensure that customers receive reasonably adequate service as required by Mont. Code Ann. § 69-3-201 once the Commission asserted jurisdiction over the service. A regulated public utility may not contract individually with its customers to defeat its public utility obligations.

The Company's attempt to elevate contractual provisions above its public utility status should be rejected. In *Williamson v. Mont. PSC*, 2012 MT 32, P39-P40 (Mont. 2012) the Montana Supreme Court addressed the question of whether the Commission had correctly denied standing to certain litigants on the argument that they were not parties to the operative contract. While not directly on point, the analysis is helpful to the extent that it finds that contract law does not trump public utility regulation statutes. The Court found that absent specific language in the public utility statutes authorizing the plaintiffs to bring a breach of contract action before the Commission, no such action existed without some other independent legal basis. See *id.*, ¶40.

An isolated clause of the contract between the Company and its customers does not supersede the Commission's later exercise of jurisdiction over the service, which both parties to the contract recognized could happen and acceded to when it did. 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 current circumstances. Rather, the

sole question before the Commission is the Company's obligation to continue providing reasonably adequate service as a regulated public utility. In this context it would be inappropriate for the Commission to find that one clause of a contract trumps public utility regulation and that the Company may simply abandon its service.

The Consumer Counsel recommended one option for resolution of the customer complaints as buy out arrangements if appropriate. In *Application for Approval of Abandonment of Service by Columbia Gas of Pennsylvania, Inc.*, Docket No. A-2011-225 Columbia Gas of Pennsylvania, Inc. ("Columbia" or "the Company") sought permission to abandon eight customers who were receiving farm tap service. Extension of distribution service to these customers was not considered to be cost effective. Some of the affected customers protested the Company's proposed conversion to propane. The Company eventually reached settlement agreements with all of the affected customers to pay for the cost to convert to an alternative fuel source. The Commission found the settlement agreements to be reasonable and approved the request to abandon facilities. The Commission cautioned Columbia that any settlement agreement was and would be subject to the Commission's approval and all of its customers should have been so advised. *Id.*, Order adopted July 19, 2012, p. 8.

Similarly, in Resolution G-2941, *Southern California Gas Company's Request for Authorization to Abandon A Pipeline and Service to Two Residential Customers*, PUC of the State of California (1991), the California Commission granted a request to abandon service to two rural customers for maintenance problems in the gas line, contingent upon

agreements for conversion to propane service at no cost to the customers. Regarding terms of settlement where customers are being abandoned, the Commission noted:

The tenor of all the decisions on this subject is that customers have or are provided with an alternative so that they are no worse off after the abandonment than they were before.

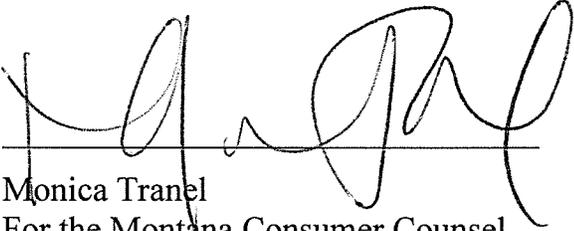
In this case, the Commission should review and approve any appropriate buy-out arrangements before service to any of Havre Pipeline’s customers may be abandoned.

The Commission has the jurisdiction and the authority to do so.

III. Conclusion

If HPC 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 9th day of December, 2015.



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Post Hearing Brief of the Montana Consumer Counsel has been served upon the following persons by first class mail this 9th day of December, 2015:

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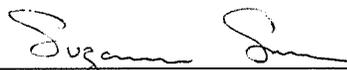
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