

RECEIVED

By Deena Ackerman at 4:53 pm, May 03, 2021

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN THE MATTER OF BLACK HILLS)
NEBRASKA GAS, LLC d/b/a BLACK)
HILLS ENERGY RAPID CITY, SOUTH)
DAKOTA, SEEKING TO EXTEND ITS)
SERVICE AREA FOR PURPOSES OF)
SERVING AN OMAHA PUBLIC POWER)
DISTRICT SITE IN SARPY COUNTY)
)

APPLICATION NO. P-12.32

DIRECT TESTIMONY

Pursuant to the *Order Setting Procedural Schedule and Notice of Hearing* entered by the Public Service Commission on March 24, 2021, in the above proceeding, the Metropolitan Utilities District submits the following Direct Testimony, which will be verified under oath at the hearing of this matter:

Direct Testimony of Jim Knight

My name is Jim Knight, and I am the Vice President, Gas Operations for the Metropolitan Utilities District (“M.U.D.”) and have served in that position since October 2005. My responsibilities include analysis, discussions, and decisions relative to extensions of natural gas pipelines within our service territory.

I have been involved in discussions relating to a M.U.D. natural gas pipeline extension to an electricity generation plant the Omaha Public Power District (“OPPD”) has proposed to build in the area of 168th Street and Fairview Road in Sarpy County to generate electricity using natural gas. The OPPD plant lies within M.U.D.’s service territory pursuant to a 2010 agreement with Black Hills Energy (“Black Hills”). M.U.D. and Black Hills jointly submitted maps to the Public Service Commission in a proceeding docketed P-0014. In the parties’ Notice to the Commission initiating that proceeding, the parties said they “stipulate and agree” that extensions consistent with the agreement “satisfy and exceed the requirements” of the State Natural Gas Regulation Act. On May 12, 2010, the Commission determined that future extensions by each respective party consistent with the service areas shown on the P-0014 maps were presumed to be in the public interest.

Prior to 2010, there had been several disputes between the parties as to which utility should be allowed to build extensions to serve new customers in the rapidly growing county. In order to avoid disputes, which had consumed significant time on the part of the utilities and the Commission, M.U.D. and Black Hills agreed to territories in which each utility would have the right and obligation to serve.

Since 2010, those P-0014 service area maps have guided decisions and actions by M.U.D. and Black Hills as to which utility will serve customers in Sarpy County. With rare exceptions, M.U.D. has constructed extensions in its service territory, and Black Hills has

constructed extensions in its service territory. The agreement of 2010 has accomplished the mutual objective of avoiding service territory disputes. Until Black Hills filed the application in February 2021, which initiated this proceeding, both parties have abided by the P-0014 service territories. Until the February 2021 application by Black Hills, neither party filed an extension proposal with the Commission. Neither party needed to. So long as the extension was within the party's service territory as shown on the P-0014 maps, no further action before the Commission was needed. All extensions that were consistent with the service area maps were conclusively presumed to be in the public interest. As the Commission said in its May 12, 2010, Order, any extension consistent with the maps could proceed "without further Commission action."

Since 2010, M.U.D. and, I believe, Black Hills have made numerous pipeline extensions or enlargements within Sarpy County. I estimate that M.U.D. itself has made 51 extensions or enlargements during that period. Neither party has filed proposals or notices with the Commission for any of these extensions. To the best of my knowledge, neither party has even had communications with the Commission about extensions between May 12, 2010, until the issue of serving the OPPD plant arose late in 2020. This ten-year pattern of activity clearly demonstrates the parties' appreciation of the binding nature of the P-0014 service territory decision by the Commission. We have relied on the P-0014 service area maps in the eleven years that have passed since entry of the order.

This does not mean the parties have not mutually agreed to adjustments to the P-0014 service areas. The parties agreed in 2010 that adjustments might be needed. The P-0014 Notice filed by the parties acknowledged that the parties could modify the service areas if they "determine by agreement that it is more practical and efficient for one party to provide gas service to a customer or customers within the other party's area of service."

The parties, for example, negotiated a change to the service areas in 2017 for purposes of serving the River Oaks subdivision located near S. 180th Street and Giles Road. Neither party, until now, has unilaterally attempted to adjust the P-0014 service areas.

Other arrangements and communications between the parties that have occurred in the ten years since the P-0014 service territory decision by the Commission illustrate the parties' appreciation of the binding nature of the P-0014 service area maps. In 2015, Black Hills reached out to M.U.D. regarding a proposed main extension to bring landfill gas from the Sarpy County Landfill located between South 168th Street and South 156th Street on Fairview Road to Black Hills' existing natural gas distribution system located at South 156th Street and Schram Road. Recognizing that a portion of the main running from the Sarpy County Landfill west along Fairview Road then north along South 168th Street would be within M.U.D.'s service territory, Black Hills reached out to M.U.D. M.U.D. did not object to the proposed extension under the condition that Black Hills would not offer any direct customer services off of the pipeline within M.U.D.'s service territory.

Similarly in 2019, M.U.D. reached out to Black Hills regarding a proposed main extension that would run from the Town Border Station located at South 174th Street and Fairview Road to the east along Fairview Road and then to the south along Highway 50 towards Springfield. Recognizing that a section of the proposed main extension running along Fairview Road from the Town Border Station at South 174th Street to the west side of South 168th Street would be within Black Hills' service territory, M.U.D. sent a letter to Black Hills to inform them of the planned main extension with the condition that M.U.D. would not offer any direct customer services off of the pipeline within Black Hills' service territory. Attached to the letter was a map derived from M.U.D.'s Geographic Information System (GIS) that reflected the P-0014 service area maps. The map attached to the letter showed the area west of South 168th Street as part of Black Hills' service territory and the area east of South

168th Street as part of M.U.D.'s service territory. In the letter, M.U.D. states, "the anticipated gas main would extend through the territory of Black Hills ('Black Hills') for approximately one half of a mile." M.U.D. goes on to state, "The section of gas main installed from 174th Street to 168th Street would not be tapped as it would be located in Black Hills' service territory." Not only did Black Hills not object to the planned main extension, the assertions in the letter regarding the service territory boundaries, or the boundaries reflected on the map that was attached to the letter, they stated via e-mail from Kevin Jarosz on December 10, 2019, "This will work and is acceptable."

There is no agreement that the P-0014 service area maps should be adjusted so that Black Hills can construct an extension to the proposed OPPD plant in M.U.D.'s area of service. Should the Commission approve Black Hills proposal to serve a customer within M.U.D.'s service territory, it would effectively be allowing Black Hills to abrogate an agreement approved by the Commission in 2010. The unfortunate result would be the undoing of an agreement that ended years of disputes and led to years of cooperation between the parties. The intention of the P-0014 action was to avoid disputes like Black Hills is now creating.

Because Black Hills' proposal is inconsistent with maps conclusively presumed to be in the public interest in P-0014, we respectfully request that the Commission deny Application P-12.32. By doing so, the Commission will cause the parties to cooperate and reach agreement before changing their service territories.

This concludes my testimony.

DATED: May 3, 2021

METROPOLITAN UTILITIES DISTRICT,
Protestant

By: REMBOLT LUDTKE LLP
3 Landmark Centre
1128 Lincoln Mall, Suite 300
Lincoln NE 68508
(402) 475-5100
apollock@remboltlawfirm.com
jralph@remboltlawfirm.com

By: /s/ Andrew S. Pollock
Andrew S. Pollock (#19872)
Jennifer L. Ralph (#26998)

And Mark Mendenhall
Marc Willis
Metropolitan Utilities District
7350 World Communications Drive
Omaha NE 68122-4041
(402) 504-7129
mark_mendenhall@mudnebr.com
marc_willis@mudnebr.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that I caused a true and correct copy of the foregoing *Direct Testimony* to be sent by electronic mail, on May 3, 2021, addressed to:

Nichole Mulcahy
Sallie Dietrich
Deena Ackerman
Nebraska Public Service Commission
1200 N Street, Ste. 300
Lincoln, NE 68508
psc.naturalgas@nebraska.gov
nichole.mulcahy@nebraska.gov
sallie.dietrich@nebraska.gov
deena.ackerman@nebraska.gov

Douglas J. Law, #19436
Associate General Counsel
Black Hills Energy
1731 Windhoek Ave.
Lincoln NE 68501
douglas.law@blackhillscorp.com

Trenton P. Bausch
Megan S. Wright
Cline Williams Wright Johnson
& Oldfather, LLP
Sterling Ridge
12910 Pierce Street, Ste. 200
Omaha, NE 68114
tbausch@clinewilliams.com
mwright@clinewilliams.com

Stephen M. Bruckner
Katherine A. McNamara
Fraser Stryker, PC, LLO
500 Energy Plaza
409 South 17th Street
Omaha, NE 68102-2663
sbruckner@fraserstryker.com
kmcnamara@fraserstryker.com

/s/ Andrew S. Pollock
Andrew S. Pollock