

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the matter of Black Hills) Application No. P-12.32
Nebraska Gas, LLC d/b/a Black)
Hills Energy, Rapid City,)
South Dakota, seeking to) ORDER DENYING MOTION TO
extend its service area for) DISMISS
purposes of serving an Omaha)
Public Power District site in)
Sarpy County.) Entered: March 31, 2021

BY THE HEARING OFFICER:

On February 23, 2021, Black Hills Nebraska Gas, LLC, d/b/a Black Hills Energy ("Black Hills" or "Applicant") filed an application seeking to extend its service area for purposes of serving an Omaha Public Power District site in Sarpy County, pursuant to Neb. Rev. Stat. § 66-1829. On March 3, 2021, the Metropolitan Utilities District ("MUD") filed a Protest and Motion to Dismiss, and thereby became a party to this proceeding under 291 Neb. Admin. Code § 9-003.02. On March 18, 2021, the Omaha Public Power District ("OPPD") filed a petition for formal intervention pursuant to 291 Neb. Admin. Code § 1-002.12, which was granted by order of the Hearing Officer on March 19, 2021.

The Motion references Commission Docket No. P-14, which was jointly filed by Black Hills and MUD in April of 2010. The application in Docket No. P-14 included a service area map setting forth an agreement between the parties as to their service territory. No protestants or interventions were filed, and the application was approved in May 2010 by the Commission without hearing pursuant to Neb. Rev. Stat. § 66-1863(3) and accompanying regulation 291 Neb. Admin. Code § 9-003.02. Under that statute and regulation, an application for a pipeline extension or enlargement of territory which is not protested is automatically approved without further review by the Commission.

On March 9, 2021, Black Hills filed a Reply and Opposition to MUD's Motion ("Opposition"). In its Opposition, Black Hills states that "as circumstances changed, the utility that served an area depicted on the map may need to change, and Black Hills Energy and M.U.D. have made adjustments as needed." Black Hills further argues that the Commission's determination of what is in the public interest should be evaluated based upon the statutory factors as they currently exist.

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MUD argues in its Motion that the service area maps submitted in Docket No. P-14 were "conclusively presumed" to be in the public interest pursuant to Neb. Rev. Stat. § 66-1863(3) and 291 Neb. Admin. Code § 9-003.02. MUD states that such a presumption "cannot be overcome by additional evidence or argument." MUD further states that the extension proposed by Black Hills in this docket to the proposed OPPD site would be within MUD's service territory, as shown in the maps filed in Docket No. P-14.

I find that this motion must be overruled. In dockets regarding pipeline extensions and enlargements of service territory, the Commission is tasked with reviewing several criteria to determine what is in the public interest.¹ These criteria were not considered by the Commission in Docket No. P-14 and have not yet been reviewed by the Commission with regard to the extension proposed in this proceeding. Moreover, it is unclear to what extent Black Hills and MUD have relied upon the service area maps submitted in Docket No. P-14 in the eleven years which have passed since the entry of the order in that matter, as neither Black Hills nor MUD made any further filings or communication to the Commission regarding Docket No. P-14 after the entry of the May 2010 order in that matter. Therefore, issues of fact and law remain in this docket. As such, the Motion to Dismiss is overruled.

O R D E R

IT IS THEREFORE ORDERED that the Motion to Dismiss this matter filed by the Metropolitan Utilities District is hereby overruled.

IT IS FURTHER ORDERED that this matter shall proceed as previously scheduled.

ENTERED and MADE EFFECTIVE at Lincoln, Nebraska, this 31st day of March, 2021.

BY:



Dan Watermeier
Hearing Officer

¹ See Neb. Rev. Stat. § 66-1860.