

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. P-0004
of Peoples Natural Gas, Omaha,)
Nebraska, seeking resolution of) ORDER ON MOTION FOR
a dispute under Nebraska Revised) REHEARING
Statutes Section 57-1306.)
) Entered: July 16, 2002

BY THE COMMISSION:

By motion filed May 24, 2002, Aquila, Inc., formerly known as Peoples Natural Gas (Aquila) sought rehearing in the above-captioned matter based upon alleged omission or misinterpretation of material matters of law and fact. Oral argument was requested and was heard June 20, 2002, in the Commission Hearing Room, 300 The Atrium, Lincoln, Nebraska.

On the motion for rehearing, Aquila argued as follows: The Commission erred in finding that the Highway 50 main extension, as described in the Commission's Order of May 14, 2002, in this matter, is in the public interest. Metropolitan Utilities District's (M.U.D.) justification for extension of gas main south on Highway 50 is to reach a proposed town border station (TBS) on 174th and Fairview. The Commission erroneously relied upon a contribution of funds by Northern Natural Gas (Northern) in evaluating the economic feasibility of the gas main on Highway 50. The Commission found that M.U.D. presented no evidence that it had reached an agreement with Northern as to the location of the new TBS; that M.U.D. had not yet obtained approval for moving the TBS from the necessary regulatory bodies; and that M.U.D. had not yet obtained approval for moving the TBS from the M.U.D. Board of Directors. Because the future location of the TBS was uncertain, the Commission should not rely upon the Northern contribution in evaluating the economic feasibility of the Highway 50 main.

M.U.D. argued as follows: The Commission's order should stand. The relevant statutes do not require the Commission to use any particular methodology to determine whether the economic feasibility standard has been met. The Highway 50 mains meet the economic feasibility standard with or without the Northern contribution. The Highway 50 facilities will be used and useful whether the TBS is at 174th and Fairview Road or somewhere in that vicinity.

O P I N I O N A N D F I N D I N G S

Neb. Rev. Stat. § 75-137 provides in part:

The procedure to obtain reversal, modification, or vacation of an order entered by the commission shall be...by filing a motion for rehearing within ten days after the date of the mailing of a copy of the order by the commission to the party appealing.

Aquila's motion for rehearing was timely filed, and the Commission finds merit in Aquila's arguments with regard to the Highway 50 mains. Accordingly, we reconsider and modify our order with respect to the Highway 50 mains.

The Commission was premature in determining that M.U.D.'s Highway 50 mains are in the public interest. The evidence on which the Commission based its conclusion was speculative with regard to the placement of the proposed TBS, and therefore insufficient.

M.U.D. asserted system integrity as its justification for the Highway 50 main construction. Specifically, M.U.D. asserted that a TBS would be relocated to 174th and Fairview Road. However, at the time of the hearing, M.U.D. had no agreement with Northern for relocation to that specific site, and had not obtained approval from the Federal Energy Regulatory Commission or from the M.U.D. Board of Directors. It is uncertain whether the TBS will ultimately be located at 174th and Fairview Road. Therefore, the Northern contribution for relocation of the TBS should not be considered in evaluating the economic feasibility of the Highway 50 mains.

Without the Northern contribution, the Highway 50 mains are not economically feasible. M.U.D. has no power or authority under the law to extend or enlarge its service area, gas mains, or service pipes unless it is economically feasible and in the public interest to do so. See Neb. Rev. Stat. § 57-1303. Thus, the Commission's finding that M.U.D.'s Highway 50 mains are in the public interest should be reversed.

Perhaps at some future time, the new location of the TBS will be certain and will require gas main construction to 174th and Fairview Road. The Commission finds that M.U.D. should cease and desist construction of the gas main until it has made a final determination within the parameters of Neb. Rev. Stat. § 57-1301 et seq. and received necessary approval for moving the TBS.

O R D E R

IT IS THEREFORE ORDERED that Aquila's Motion for Rehearing is granted.

IT IS FURTHER ORDERED by the Nebraska Public Service Commission that its order entered in the above-captioned docket on May 14, 2002, is hereby modified as set forth above.

IT IS FURTHER ORDERED that M.U.D.'s main extensions in Highway 50 south of Prairie Corners are not in the public interest.

IT IS FURTHER ORDERED that M.U.D. must cease and desist from additional construction in Highway 50 south of Prairie Corners.

IT IS FURTHER ORDERED that M.U.D. and Aquila make arrangements to transfer service of the Highway Crossing development to Aquila.

MADE AND ENTERED at Lincoln, Nebraska, this 16th day of July, 2002.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

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NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

//s//Anne C. Boyle
//s//Frank E. Landis


Chair

ATTEST:


Executive Director