

BEFORE THE PUBLIC SERVICE NEBRASKA COMMISSION

In the Matter of the Application of)	Application No. P-0004
Peoples Natural Gas, Omaha,)	
Nebraska, seeking resolution of)	ORDER
a dispute under <u>Nebraska Revised</u>)	
<u>Statute</u> Section 57-1306.)	Entered: May 14, 2002

BY THE COMMISSION:

On December 21, 2001, Peoples Natural Gas, a division of UtiliCorp United Inc., now known as Aquila, Inc. (Aquila), filed an application with the Nebraska Public Service Commission (Commission), pursuant to Neb. Rev. Stat. Section 57-1306, seeking resolution of a dispute with Metropolitan Utilities District of Omaha (M.U.D.). In its application, Aquila requests that the Commission determine that M.U.D. extensions in two separate locations are in violation of Neb. Rev. Stat. Sections 57-1301 et seq., and that M.U.D. must cease and desist extension of the mains. Notice of this application was sent to M.U.D. by first-class mail on December 27, 2001.

M.U.D. filed an answer to this application on January 11, 2002. A pre-hearing conference was held on March 4, 2002, and on March 5, 2002, the Commission issued a pre-hearing conference order.

On April 12, 2002, a hearing on this application was held in the Sarpy County Board of Commissioners Hearing Room, Sarpy County Courthouse, 1210 Golden Gate Drive, Papillion, Nebraska. The formal rules of evidence were not invoked. Attorneys, Trent Bausch and Megan Wright, appeared on behalf of Aquila. Attorneys, Susan Prazan and Dan Crouchley, appeared on behalf of M.U.D. Each party presented their respective arguments on the issues, and the matter was submitted for decision by the Commission at the conclusion of the April 12, 2002, hearing.

F A C T U A L B A C K G R O U N D

General

The provisions of the Nebraska statutes generally referred to as LB 78 went into effect August 28, 1999 (Stipulation).

The Metropolitan Utilities District of Omaha operates as a natural gas and water utility in the City of Omaha, Nebraska, and its environs, including Sarpy County (Stipulation).

Aquila, Inc. operates in the eastern one-third of Nebraska, including Sarpy County (Stipulation).

M.U.D. is subject to Nebraska open meeting laws found in Neb. Rev. Stat. Sections 84-1408; et seq. (Stipulation). M.U.D.'s Board of Directors approves all natural gas main extensions prior to their installation (Tr. 112:3-7). A Capital Expenditure Authorization form (C&A) was prepared and circulated for internal M.U.D. management review and approval for each main extension at issue in this proceeding (Stipulation). Contained in each C&A is a Necessity and Benefits section in which the estimated costs and benefits of the expenditures are explained (Tr. 102:12-25, 103:10-13). The Assistant General Manager - Operations summarized in memorandums, the main extensions to be reviewed that month by an M.U.D. Board Committee and by the M.U.D. Board (Stipulation).

M.U.D. has no written master plan (Stipulation). Each year, the M.U.D. Board approves a written budget (Stipulation).

M.U.D. uses the following terms to classify certain gas mains:

GC - Construction is necessary for improvement and betterment of the system and may or may not make service available to an unserved area. All costs are borne by District.

GCP - A pioneer approach main is a main connected to the existing distribution system where adequate capacity is available to meet the requirements of the applicant and adjacent areas. It extends to the in-tract facilities of the new development. The developer contributes to costs of these mains.

GRM - Gas revenue main (gas only, no water equivalent). A main installed under a contract where an allowance for contribution-in-aid of construction is based on incremental net income. (Stipulation)

Under M.U.D.'s main extension policy and its annual review, certain costs resulting from system-wide improvements are reviewed for economic feasibility on an annual basis. (Stipulation).

132nd Street and Cornhusker Road Main

On September 25, 2001, M.U.D. completed the installation of a six-inch 60-pound pressure natural gas main in 132nd Street from approximately 1,100 feet south of Giles Road to Cornhusker Road (GC 11452) and a six-inch 60-pound pressure natural gas main in Cornhusker Road from 132nd Street to approximately 1,160 feet west of 132nd Street (GCP 11365-2) (Stipulation). The main connected two "dead-end" sections of M.U.D.'s gas distribution system, i.e., the section in 132nd Street approximately 1,100 feet south of Giles Road required initially to serve the Caterpillar Plant and that section in Cornhusker Road west of 132nd Street required for gas service to the Hilltop Industrial Park (Ex. D, Tr. 134:17-25, 135:1-15). M.U.D. serves areas to the north, west and east of the Main (Ex. 42, Tr. 86:11-25, 87:1-16). M.U.D. does not currently serve any customers directly off the main. Both 132nd Street and Cornhusker Road are major section-line roads. The actual cost to install the main was \$80,750 (Stipulation).

The portion of the main along Cornhusker Road was approved by the M.U.D. Board on September 3, 1997. Installation of this portion of the main did not occur until 2001 because of grading considerations associated with the improvement of 132nd Street. This portion of the main was classified internally by M.U.D. as GCP 11365. The Necessity and Benefits section of the August 22, 1997, C&A form covering GCP 11365 states: "These mains are being installed to provide gas service to 14 industrial lots in Hilltop Industrial Park. The six-inch main is being oversized for future growth east of State Highway 50. Hilltop Industrial Park only requires a four-inch main to serve them." The Economic Feasibility Gas Main Extensions (GRM) form attached to this C&A lists an equivalent main cost of \$99,188 and allowable revenue credits of \$160,200 (Stipulation).

Sanitary and Improvement District #189 of Sarpy County, the developer of the Hilltop Industrial Development, located southwest of the intersection of 132nd Street and Cornhusker Road, executed a Gas Main Extension Agreement dated November 12, 1997, under which M.U.D. is required to install this portion of the main and to provide natural gas service to the Hilltop Industrial Park development (Ex. 41, Ex. L).

A C&A form dated January 26, 2001, covering the portion of the main along 132nd Street (GC 11452) contains a Necessity and

Benefits section which provides: "This main is needed as part of the gridding for the 60-pound system between 144th and 108th Street and between Harrison and Cornhusker. This main would tie a six-inch dead end main in Cornhusker to a six-inch main in 132nd Street, increasing reliability of the system and improving the District's ability to maintain service to current industrial customers in the area. This main should be installed in conjunction with the 132nd Street improvements, to avoid conflicts with other utilities competing for space in the limited underground utility corridors. The District's master plan calls for this main to ultimately be reinforced by a 125-pound main in 108th Street from Harrison to Giles and in Giles from 108th to 114th Street and a new regulator station at 114th Street." The portion of the main extension along 132nd Street was approved by the M.U.D. Board on July 3, 2001 (Stipulation). The actual cost to install this portion of the main was \$55,000 (Tr. 89:17-21).

The gas in Aquila's main along 132nd Street flows at 100 lbs. of pressure (Stipulation). Aquila does not have a main along Cornhusker Road to the west of 132nd Street (Ex. 42, Tr. 89:9-12).

Highway 50 Main Extension

M.U.D. is installing an eight-inch steel gas main in Highway 50 from Prairie Corners to just south of Highway 370. In addition, M.U.D. is installing a regulator station south of Highway 370 at the entrance to the Highway Crossing development, an industrial development located southwest of the intersection of Highway 370 and Highway 50. M.U.D. is also installing interior gas main within the Highway Crossing development (Stipulation). M.U.D. serves customers to the north, west, and east of these facilities plus the city of Springfield to the south (Ex. 43, Tr. 94:11-23). The northern portion of this main is located within M.U.D.'s statutory boundaries (Ex. 45, Tr. 183:3-8). The remaining portion of the main is not located within any city limits or within any city's extraterritorial zoning jurisdiction (Tr. 82:9-14, 183: 9-13). Highway 50 is a section-line road (Tr. 183:14-15).

The portion of the gas main between Prairie Corners and Highway 370 was approved by the M.U.D. Board on January 8, 1997, in order to provide gas service to a proposed commercial/residential development to be called Wood Hollow and to reinforce M.U.D.'s gas distribution system. This main was initially classified as GCP 11267 and was estimated to cost

\$92,400. The Necessity and Benefits section of the C&A form for GCP 11267 reads: "These mains are to be installed to provide a gas supply to a proposed commercial/residential development in the area southeast of 144th St. (Highway 50) and Highway 370. These mains have been oversized to comply [with] the Gas System Master Plan to provide future gas along 370 to reinforce the 125# system." (Stipulation).

On April 12, 2000, Jerry Gohr, Assistant General Manager - Operations, issued a revised C&A form changing the classification of this main from GCP 11267 to GC 11267 because the commercial/residential development referenced in the original C&A did not occur. Mr. Gohr wrote the following note on the revised C&A: "This main was previously approved by the Board as GCP 11267. No developer contribution was to be made. Change job number to GC 11267." The Necessity and Benefits section of the revised C&A reads: "This main was originally approved as GCP 11267 on January 8, 1997, to provide gas service to a proposed commercial/residential development in the area southeast of 144th (Highway 50) and Highway 370. The main was being oversized to reinforce the 125-pound system in the area per the Gas System Master Plan. This job is being revised, as the proposed development has not occurred and the main is needed for the system improvement to the area. The revision is to change the job number from a GCP developer driven main to a GC system improvement type main" (Stipulation). The revised C&A was not resubmitted to the M.U.D. Board for approval because the Board had already authorized the expenditure of funds out of district funds (Tr. 49:13-19) and because one of the purposes for the main in both the original C&A and the revised C&A was system improvement (Tr. 49:13-25, 50:1-2, 50:8-25, 51:1-14). This gas main extension was released for installation on January 9, 1997, and again on May 30, 2000, but installation was postponed until just recently in order to accommodate major road construction projects in the area (Stipulation, Tr. 99:25, 100:1-13).

Aquila has a gas main along Highway 370 which main is located on the north side of the Highway Crossing development. Both M.U.D. and the developer of Highway Crossing were aware of the location of this Aquila main during 2001 when the developer was deciding whether to receive gas service from Aquila or M.U.D. (Stipulation, Tr. 26:7-10). Before Gerald Torczon, the developer's representative, applied to M.U.D. for gas service, John Nemecek of M.U.D. asked him whether Highway Crossing had contracted with Aquila for gas service (Stipulation, Tr. 26:11-16). Mr. Torczon initially told Mr. Nemecek that he wasn't sure

and would need to check his files. Mr. Nemecek informed Mr. Torczon that a main to be installed along Highway 50, south of Prairie Corners to Highway 370 had already been approved by the M.U.D. Board but that installation had been delayed due to road construction at the intersection of Highway 50 and Highway 370. The intersection of Prairie Corners and Highway 50 is located about two-thirds of a mile north of the intersection of Highway 370 and Highway 50 (Stipulation).

On November 6, 2001, Donald O. Heine, with Hill-Farrell Associates, the engineering consulting firm for the developer of Highway Crossing, faxed a written application to M.U.D. for natural gas service for Highway Crossing (Stipulation, Ex. N). Upon receiving this application, Mr. Nemecek called Mr. Torczon to verify that the Highway Crossing development had not signed a gas service agreement with Aquila. Mr. Torczon told him that it had not. On December 21, 2001, Mr. Torczon, in his capacity as Chairman of Sanitary and Improvement District #199 of Sarpy County, executed a Gas Main Extension Agreement with M.U.D. for gas service to the Highway Crossing development (Ex. 14, Tr. 24:23-25, 25:1-23). M.U.D. executed this Gas Main Extension Agreement on January 14, 2002 (Stipulation).

Mr. Torczon contacted both Peoples and M.U.D. to discuss provision of gas service for Highway Crossing (Tr. (31:15-21), and he selected M.U.D. (Tr. 26:19-25, 27:1-25, 28:1-22). Mr. Torczon also looks at rates when choosing a utility company (Tr. 32:11-14).

At its January 2, 2002, Board meeting, the M.U.D. Board approved the installation of 1500 feet of twelve-inch 125-pound steel gas main in Highway 50, south of Highway 370 to the entrance of the Highway Crossing development (GC 12163-1) at an estimated cost of \$135,000, a regulator station near the entrance of the Highway Crossing development (GC 12209-1,2 and 3) at an estimated cost of \$28,080 and the installation of 60-pound four-inch, three-inch, two-inch and one and one-quarter inch plastic interior gas mains to serve the Highway Crossing development (GRM 12233) at an estimated cost of \$54,384. The Necessity and Benefits section of the C&A form covering the main from Highway 370 to the entrance of Highway Crossing and the regulator station states: "This Regulator Station and gas main are being installed to supply 60-pound gas to the area along State Highway 50 south of State Highway 370. This gas main is part of the District's plan for providing reliability and system improvement to the area." The Economic Feasibility Gas Main

Extensions (GRM) form which covers the GRM 12233 interior mains serving Highway Crossing shows customer revenue credits of \$142,022 and an estimated interior main extension expense of \$54,384 (Stipulation).

Neither Aquila nor M.U.D. offered marketing assistance payments to the Highway Crossing developer (Stipulation).

Construction of this main commenced March 25, 2002. This main will not be located within the city limits of any city nor within the extraterritorial zoning jurisdiction of any city (Stipulation). A portion of the main is located within M.U.D.'s statutory boundaries (Ex. 45, Tr. 183:3-8). Highway 50 is a section-line road (Tr. 183:14-15).

M.U.D. provides natural gas service to the City of Springfield, Nebraska, pursuant to a franchise agreement with that city that expires in January 2015 (Stipulation).

Northern Natural Gas (Northern) is M.U.D.'s interstate pipeline supplier (Tr. 60:13-14). In 1996, Northern and M.U.D. executed an amendment to a 1991 agreement between the parties (Ex. 19, Tr. 60:13-18). Under this amendment, Northern will contribute funds to M.U.D. (Northern contribution) to be used to replace the lost capacity that will occur on M.U.D.'s system when the town border station (TBS) located at 84th and Center Street in Omaha is relocated and for pipeline construction associated with such relocation (Ex. 19, Tr. 63:1-18, 72:15-22, 75:1-7). TBS's are traditionally located at the border of a town so that the interstate pipeline can deliver high-pressure gas to a border of a town, and then the distribution company can take it from that point and distribute it within the town (Tr. 75:19-25, 76:1-25, 77:1-2). Except for the TBS at 84th and Center, M.U.D.'s TBS's are located near the edge of the metropolitan area (Ex. 45, Tr. 77:2-15). Both M.U.D. and Northern are concerned about the safety of keeping a TBS at 84th and Center Street since that location is in the middle of Omaha (Tr. 61:1-8). Also of concern to Northern is the 400-pound high pressure Northern pipeline that currently connects to this TBS (Tr. 61:5-8, 71:16-25). Moving the 84th and Center TBS will allow M.U.D. to have the city encircled with TBS's (Tr. 77:16-24).

M.U.D. and Northern, subject to the provisions of the 1996 amendment, have agreed to relocate the 84th and Center Street TBS. M.U.D. and Northern have entered into discussions to con-

struct a new TBS near 174th and Fairview Road, which is on the edge of the southwestern part of the Omaha metropolitan area (Ex. 44, Tr. 62:21-25, 63:1, 77:16-24). M.U.D. supports this location because it is adjacent to Northern's interstate pipeline (Tr. 82:16-25, 83:1-16), is on the east side of the interstate, is along a major section-line road, is not near the Aquila service territory, is near the City of Springfield, and is near a Sarpy County landfill which should eliminate the need to relocate the TBS in the future (Ex. 44, Ex. 45, Tr. 81:5-21). This location is not within the city limits or zoning jurisdiction of any city (Tr. 82:9-14). M.U.D. had previously discussed with Aquila other locations for this TBS, e.g., Highway 370 and 174th Street and 93rd and Cornhusker Road, but Aquila had opposed such locations (Tr. 62:9-20, 68:13-25, 69:1-15, 70:1, 79:1-7, 80:21-25, 81:1-4, 98:18-25, 99:1-9, 155:6-22). M.U.D. intends to use the Northern contribution to pay for the main extensions from Prairie Corners south along Highway 50 to Fairview Road and then west along Fairview Road to 174th Street (Ex. 19, Ex. 44, Tr. 63:14-23). M.U.D. has agreed that, once the 84th and Center Street TBS is relocated, it will continue the backup service to Aquila's Ralston service that is currently being provided by Northern (Tr. 65:21-25, 66:1-13).

All of the M.U.D. mains and facilities that will be installed to reach the new TBS (including those under dispute in this proceeding) have been included in M.U.D.'s budget (Tr. 192:3-7). The Northern contribution will benefit M.U.D. ratepayers because those dollars that were budgeted to come out of M.U.D. funds to pay for these facilities will now come out of the funds to be provided to M.U.D. by Northern (Tr. 75: 1-18).

D I S C U S S I O N

This case requires the interpretation and application of Neb. Rev. Stat. Section 57-1303, which states:

No investor-owned natural gas utility or metropolitan utilities district may extend or enlarge its natural gas service area or extend or enlarge its natural gas mains or natural gas services unless it is in the public interest to do so. In determining whether or not an extension or enlargement is in the public interest, the district or the utility shall consider the following:

- (1) The economic feasibility of the extension or enlargement;

- (2) The impact the enlargement will have on the existing and future natural gas ratepayers of the metropolitan utilities district or the investor-owned natural gas utility;
- (3) Whether the extension or enlargement contributes to the orderly development of natural gas utility infrastructure;
- (4) Whether the extension or enlargement will result in duplicative or redundant natural gas utility infrastructure; and
- (5) Whether the extension or enlargement is applied in a nondiscriminatory manner.

"Public Interest" Criteria

The aforementioned statute provides specific criteria that must be considered in determining whether a main extension is in the public interest and prohibits the extension of gas mains if the extensions are not in the public interest.

1) The economic feasibility of the extension or enlargement;

It appears that the benefits of the main along 132nd Street and Cornhusker Road outweigh its costs.

The portion of the main along Cornhusker Road was installed under the terms of a contract with the developer (Ex. 41). The economic feasibility calculation prepared in 1997 lists revenue credits of \$121,111 and an estimated cost of \$99,200 to install the main in Cornhusker Road from 132nd Street to 144th Street (Ex. 3). The disputed main along Cornhusker Road was part of this larger main installation project.

The actual cost to install the portion of the main along 132nd Street was \$55,000 (Tr. 89:17-21). The benefits gained by the increased reliability of gas service to the Caterpillar plant and to M.U.D.'s other industrial, commercial, and residential customers resulting from this main outweigh the expense to install the main. Without such a tie-in, a line hit could result in lost natural gas service to residential neighborhoods, and to an entire industrial park, causing lost wages, lost production, and the expense to relight customer pilot lights (Tr. 88:4-25, 136:7-25).

Sharing Aquila's capacity along 132nd Street would not be cost-effective or beneficial from an operational point of view (Tr. 90:5-25, 91:1-25, 92:1-5). For example, because the Aquila system operates at 100 lbs. and the M.U.D. system operates at 60 lbs., two pressure-regulating facilities would be required at a cost of about \$25,000 to \$30,000 each (Tr. 91:2-14). Additional metering facilities would also be needed (Tr. 90:23-25, 91:1-3).

It appears that the benefits of the main and associated facilities along Highway 50 and within the Highway Crossing development outweigh the costs of the facilities.

M.U.D.'s Economic Feasibility Gas Main Extensions form for the interior mains to serve Highway Crossing indicate that the revenue credits of \$142,022 exceed the estimated main extension cost of \$54,384 (Ex. O). The exterior mains and the regulator station along Highway 50 are being installed for system reliability purposes, not to serve specific customers. Under M.U.D.'s main extension policy and the annual review of such policy, costs resulting from such system-wide improvements are reviewed annually for economic feasibility. The Gas Main Extension Policy works as intended to provide natural gas service to a growing community for the benefit of all customers. All but one of the mains under dispute have been included in the annual review of this gas main extension policy (Ex. 21, Ex. 35, Ex. 36, Ex. 37, Tr. 171:5-25, 172:1-24, 176:18-25, 177:1-7). The main and facilities south of Highway 370 which were approved by the M.U.D. Board in 2002 will be included in the 2003 gas main extension and service policy review (Tr. 172:11-18, 173:18-25, 174:1-3).

Under the contract between Northern and M.U.D., Northern has agreed to contribute funds to M.U.D. to be used to replace the capacity to be lost when the 84th and Center Street TBS is abandoned (Ex. 19). M.U.D. intends to use such funds to construct the gas mains needed to reach the new TBS at 174th and Fairview Road (Tr. 63:14-23). The Northern contribution bolsters the economic feasibility of the Highway 50 gas main.

Mr. Gohr testified that Northern agrees with M.U.D. that the 84th and Center TBS should be moved to 174th and Fairview Road (Tr. at 77:16-24). M.U.D. presented no evidence from representatives of Northern, however, that such agreement has been reached. Furthermore, M.U.D. has not yet obtained approval for moving the TBS from the necessary regulatory bodies, nor from the M.U.D. Board. Mr. Gohr's testimony regarding the

agreement with Northern is not conclusive. The rationale to permit M.U.D. to extend main to Fairview Road and 174th Street is to reach the proposed TBS. Therefore, while we do not prohibit construction of this line, if the TBS is not relocated to 174th and Fairview, M.U.D. should not use the existence of such line to justify future expansion in this area.

(2) The impact the enlargement will have on the existing and future natural gas ratepayers of the metropolitan utilities district or the investor-owned natural gas utility;

M.U.D.'s internal procedures consider the effect proposed main expenditures will have on existing and future ratepayers. For example, when C&As are forwarded to M.U.D.'s accounting department, if such department determines the funds are available without any kind of undue burden on M.U.D. ratepayers, the C&A is then forwarded to the Assistant General Manager - Operations for review (Tr. 101:8-17). In addition, all of the gas mains at issue in this proceeding have been included in M.U.D.'s budget (Tr. 103:15-25, 104:1-9). The budget review committee reviews the expenditures being proposed and makes the necessary adjustments to those expenditures in order to meet M.U.D. cash flows and to meet the needs of the M.U.D. system. Once the budget is formalized by management, it is presented to the M.U.D. Board for review, adjustments, and approval. In approving the annual budget, the M.U.D. Board considers the impact the budget will have on existing and future M.U.D. ratepayers (Tr. 106:2-18, 114:1-4, 117:1-4). The cost of the mains and facilities being disputed in this proceeding (i.e., both the 132nd Street project and the Highway 50 project) did not cause M.U.D.'s rates to increase (Tr. 106:19-22).

M.U.D.'s main along 132nd Street and Cornhusker Road will benefit existing and future M.U.D. ratepayers because of the added reliability attributable to the main. "Dead-end" or single feed portions of a gas distribution system lend themselves to a lower reliability of service than gas distribution systems that are grid systems and have gas feeds from more than one direction. This main will provide added reliability not only to the Caterpillar Plant and the Hilltop Industrial Park, but to other sections of M.U.D.'s system (Ex. D, 135:18-25, 136:1-6, 137:4-12). The record indicates that M.U.D. created two small dead-ends extending under the street when it tied the initial dead-ends together (Ex. 7). However, the new dead-ends appear to have been put in place for operational reasons and for

possible future extensions off the existing main (Tr. 39:3-24, 132:18-25, 133:1-5).

M.U.D.'s main extensions along Highway 50 will benefit both existing and future ratepayers because once the new customers in the Highway Crossing development pay off the interior main, such customers will start contributing to the fixed costs of M.U.D.'s entire system. Establishing a new TBS and associated mains will allow Northern to abandon a TBS in a populated area thus eliminating an unsafe condition. Finally, having a new TBS in the southwest metropolitan area will benefit all M.U.D. customers by replacing capacity lost at the 84th and Center TBS location and by providing a new gas source to M.U.D.'s distribution system.

(3) Whether the extension or enlargement contributes to the orderly development of natural gas utility infrastructure;

The main extension along 132nd Street and Cornhusker Road contributes to the orderly development of natural gas utility infrastructure because it ties two sections of M.U.D.'s existing distribution system together. Increasing the reliability and efficiency of M.U.D.'s existing gas distribution system contributes to the orderly development of gas utility infrastructure. However, the existence of two new dead-ends should not be the sole justification for future extensions.

The main extension along Highway 50 to Highway Crossing contributes to the orderly development of M.U.D.'s natural gas utility infrastructure because it is an incremental addition to M.U.D.'s current gas distribution system which lies just to the north of the Highway Crossing area. Such main is necessary in order to reach M.U.D.'s planned town border station at 174th and Fairview Road. This new TBS will provide capacity to replace that currently being provided by the TBS located at 84th and Center Street. In addition, the new TBS and associated main will increase the reliability of the gas service M.U.D. provides to the City of Springfield and to the Southwest metropolitan area.

(4) Whether the extension or enlargement will result in duplicative or redundant natural gas utility infrastructure; and

M.U.D.'s main extension along 132nd Street, but not along Cornhusker Road, will duplicate Aquila's main. However, such duplication is acceptable because 132nd Street is a major

section-line road, such duplication occurs only for a relatively short distance, and M.U.D.'s main is needed in order to provide increased reliability to large industrial customers being served by M.U.D. and to other sections of M.U.D.'s gas distribution system (Ex.42).

M.U.D.'s main extension along Highway 50 to serve the Highway Crossing development and to reach a new TBS at 174th Street and Fairview Road will not duplicate Aquila's main except for a small portion just south of Prairie Corners (Ex. 43). Such duplication is in a major section-line road and is acceptable under the facts of this case.

The safety of duplicate gas mains in major section-line roads can be addressed by the one-call system that must be used by excavators and utilities (Tr. 93:12-21). As we stated in the order in Application No. P-0002, "Under the one-call system provided by state law, anyone excavating in a particular area is required to call the one-call number. Whoever owns the utility facility is then required to locate that facility for the excavator" (p. 11).

Neb. Rev. Stat. Section 57-1305 states:

A metropolitan utilities district or investor-owned natural gas utility shall not extend duplicative or redundant *interior* natural gas mains or natural gas services *into a subdivision*, whether residential, commercial, or Industrial, which has existing natural gas utility infrastructure or which has contracted for natural gas utility infrastructure with another utility. (Emphasis added.)

This statute prohibits certain duplicate or redundant interior natural gas mains or services extended into a subdivision. In the Floor Debate on LB 78, Senator Bruning stated "interior natural gas mains or natural gas services ... refers to gas utility infrastructure placed within that subdivision for the purpose of serving natural gas at retail within that subdivision." See *Transcript of Floor Debate*, LB 78 at 3459 (1999). This statute does not prohibit duplicate mains along major exterior section-line roads such as 132nd Street and Highway 50.

(5) Whether the extension or enlargement is applied in a nondiscriminatory manner.

In explaining the meaning of "nondiscriminatory manner," Senator Bruning, in the Floor Debate on LB 78, stated that this "is intended so that the provider serves such customer similarly to the way they served the last customers or their current customers." See *Transcript of Floor Debate*, LB 78 at 3523 (1999). M.U.D.'s gas main extension policy appears to have been applied in a nondiscriminatory manner. In regard to the Highway Crossing development and the main along Cornhusker Road, M.U.D. reviewed the revenue to be generated by the customers, looked at the associated costs, and determined whether the project would be economically feasible for M.U.D. customers (Ex. 13, Ex. 31). As for the mains and facilities being installed along Highway 50 and along 132nd Street for general system improvement rather than to serve specific customers, M.U.D. applied its gas main extension policy to evaluate such mains on an annual basis to ensure that such mains and facilities were economically feasible (Ex. 21, Ex. 35, Ex. 36, Ex. 37). Furthermore, M.U.D. followed its existing procedures in that all of the mains were described in Capital Expenditure Authorization forms, summarized in memorandums prepared by the Assistant General Manager - Operations, reviewed at M.U.D. Board Committee meetings, and then approved by the M.U.D. Board.

The Developer Contract

The Highway Crossing development had the option of receiving gas service from M.U.D. or Aquila. As we stated in the order in Application No. P-0002, "Competition between M.U.D. and Peoples [now known as Aquila] operates as an incentive for both companies to keep service quality high and gas rates low. The developers should be allowed to choose their gas service provider where it is in the public interest to do so. The Commission encourages this competition to continue". (p. 12). Mr. Torczon, the Highway Crossing developer, testified that he selected M.U.D. after reviewing the prices and service of both M.U.D. and Aquila.

Neb. Rev. Stat. Section 57-1305 provides that once a gas utility has contracted with a developer for utility service but has not yet laid its pipe throughout the subdivision, as in the case of the Highway Crossing development, the other utility is prohibited from entering into that subdivision. As we noted in the order in Application No. P-0003, this is true even if the

extension of natural gas services by the other utility is in the public interest under the criteria set forth in Section 57-1303 (p. 7). Allowing Aquila to install mains to serve Highway Crossing would violate this statute.

Regarding the contract between M.U.D. and the developer, the order in Application No. P-0003 states that, "When faced with similar issues, the courts have stated that unless interference is necessary to protect the public interest, public service commissions must refrain from interfering with private contracts between utilities and the developers." (p. 11-12) See Arkansas Natural Gas Co. v. Arkansas Railroad Commission, 261 U.S. 370 (1923); United Telephone Co. of Florida v. Public Service Commission, 496 So. 2d 116, 119 (Fla. 1986). Because any mains installed by Aquila to serve Highway Crossing would be duplicative and prohibited by Neb. Rev. Stat. Section 57-1305, interfering with M.U.D.'s contract with the developer by allowing Aquila to serve Highway Crossing does not protect the public interest.

Rebuttable Presumption

This case also requires the interpretation and application of Neb. Rev. Stat. Section 57-1304, which states:

In determining whether an enlargement or extension of a natural gas service area, natural gas mains, or natural gas services is in the public interest pursuant to Section 57-1303, the following shall constitute rebuttable presumptions:

- (1) Any enlargement or extension by a metropolitan utilities district within a city of the metropolitan class or its extraterritorial zoning jurisdiction is in the public interest;
- (2) Any enlargement or extension by an investor-owned natural gas utility within gas on a franchise a city of the primary, first, or second class or village in which it serves natural basis or its extraterritorial zoning jurisdiction is in the public interest; and
- (3) Any enlargement or extension by a metropolitan utilities district within its statutory boundary or within a city of the first or second class or village in which it

serves natural gas on a franchise basis or its extraterritorial zoning jurisdiction is in the public interest.

The rebuttable presumption contained in Neb. Rev. Stat. Section 57-1304(3) applies to a portion of M.U.D.'s main along Highway 50. This presumption has not been rebutted.

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

The Commission is of the opinion and finds that M.U.D.'s mains are in the public interest.

In consideration of the above, the Commission finds that:

(1) The Nebraska Public Service Commission has jurisdiction over the parties and the subject matter of the Application.

(2) One of the rebuttable presumptions contained in Neb. Rev. Stat. Section 57-1305 applies to a portion of the M.U.D. gas main.

(3) M.U.D.'s gas main along 132nd Street and along Cornhusker Road is in the public interest.

(4) M.U.D.'s gas main along Highway 50 is in the public interest.

(5) Since M.U.D. successfully contracted with the Highway Crossing development, it shall be entitled to construct the necessary facilities to serve said development.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that M.U.D.'s gas main along 132nd Street and along Cornhusker Road as described herein is in the public interest.

IT IS FURTHER ORDERED that M.U.D.'s gas main along Highway 50 and within the Highway Crossing development as described herein is in the public interest.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

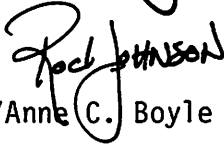

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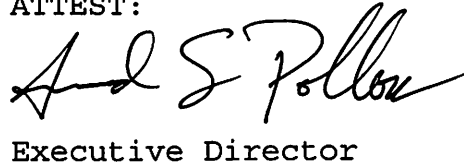
MADE AND ENTERED at Lincoln, Nebraska this 14th day of May,
2002.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:


//s//Anne C. Boyle
Chair

ATTEST:


Executive Director