

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. P-0008
of Aquila, Inc., Omaha,)
Nebraska, seeking resolution of)
a dispute under Nebraska Revised) ORDER
Statute Section 57-1306.)
)
) Entered: February 23, 2005

BY THE COMMISSION:

On August 10, 2004, Aquila, Inc. (Aquila) filed an application with the Nebraska Public Service Commission (the Commission). In its application, Aquila requests that the Commission enter an order, pursuant to Neb. Rev. Stat. §§ 57-1301 to 57-1307 (2000 Supp.) and Title 291, Chapter 9 of the Nebraska Public Service Commission Pipeline Common Carriers Rules and Regulations, declaring that the Metropolitan Utilities District's (M.U.D.) proposed natural gas main extensions to serve the planned Stonecrest/Meridian Park subdivision (Stonecrest), are in violation of Neb. Rev. Stat. §§ 57-1301 et seq., and that M.U.D. must cease and desist extension of the proposed natural gas mains. Notice of the application was sent to M.U.D. via certified mail on August 13, 2004.

On August 30, 2004, M.U.D. filed its Answer to Aquila's Complaint and Affirmative Defenses. In its Answer, M.U.D. asserted that its proposed main extensions to serve Stonecrest are in the public interest pursuant to Neb. Rev. Stat. §§ 57-1301 et seq. At the request of the parties, hearing on this matter was held jointly with the hearing in Application No. P-0009. The hearing took place in Sarpy County on December 20, 2005.

E V I D E N C E

The parties stipulated to several facts related to this matter. Additionally, Kevin Jarosz, operations manager, testified on behalf of Aquila. The following individuals testified on behalf of M.U.D., Tim Young, developer for the Stonecrest subdivision; Scott Keep, senior vice president for operations; and Denise Dolezal, senior gas design engineer.

M.U.D. is a municipal corporation and a political subdivision of Nebraska and operates as a natural gas and water utility in eastern Nebraska. Aquila operates as a natural gas utility in the eastern one-third of Nebraska. Both Aquila and M.U.D. serve parts of Sarpy County. Aquila has a franchise agreement to provide natural gas service within the city limits

of the City of La Vista and the City of Gretna. M.U.D.'s statutory boundary extends into Sarpy County and currently includes portions of Giles Road including that between 164th Street and 168th Street.

Stonecrest is located between 156th and 168th Streets just south of Giles Road in Sarpy County. Stonecrest, in its entirety, is located outside the city limits and extrajurisdictional zoning jurisdiction of the City of La Vista.

On June 29, 2004, Boyer-Young, the developer of Stonecrest contacted M.U.D. and requested that M.U.D. provide natural gas service to the development. M.U.D. has applications from the developer for M.U.D. to provide natural gas service to Stonecrest. On October 18, 2004, Sanitary & Improvement District #257 of Sarpy County and M.U.D. signed a Gas Main Extension Agreement for M.U.D. to provide natural gas service to the initial phase of the Stonecrest.

Aquila has existing natural gas infrastructure on the east, south, and west sides of the Stonecrest. Aquila has natural gas main along 156th Street abutting a portion of the east side of the subdivision, along 168th Street abutting the west side of the subdivision, and has natural gas main in and provides service to the development immediately to the south of the subdivision.

M.U.D. has existing natural gas infrastructure serving the Millard Park South subdivision in the northeast corner of Giles Road and 168th Street. M.U.D. has existing natural gas infrastructure presently serving the initial phases of the Spring Hill subdivision in the northwest corner of Giles Road and 156th Street and has a contract to serve the remaining phases of the Spring Hill subdivision. M.U.D. plans to install two segments of natural gas main in Giles Road along the south edge of the Millard Park South and Spring Hill subdivisions to serve those subdivisions and to serve future growth of these subdivisions and others. M.U.D. also plans to install a two-block long natural gas main in Giles Road between the two previously planned segments to connect the two segments, to serve the next phase of Millard Park South, to provide system reliability, to serve future growth to the north and west, and to serve the Stonecrest.

The M.U.D. Board had previously approved natural gas main extensions to serve the Spring Hill subdivision at the northwest corner of 156th Street and Giles Road. These main extensions were released for construction prior to March 2004, but

installation of the main along Giles Road was delayed due to road construction.

The M.U.D. Board also approved natural gas main extensions to serve the Millard Park South subdivision at the northeast corner of 168th Street and Giles Road.¹ The main extension along Giles Road was released for construction in October 2002, but installation of this main was also delayed due to road construction. On November 24, 2004, the developer of Millard Park South filed an application with M.U.D. for natural gas service to Millard Park South, Phase 3. M.U.D. intends to provide natural gas service to Millard Park South, Phase 3. On August 4, 2004, the M.U.D. Board approved natural gas main extensions to serve Stonecrest.

Kevin Jarosz testified that M.U.D. service to Stonecrest would result in duplicative piping at 156th and Giles Road and along 168th south of Giles Road.² Mr. Jarosz testified, relying on a letter from Rod Buethe from Gretna Volunteer Fire and Rescue³, that redundancy in systems in close proximity to one another can cause confusion and delays in emergency response to gas leaks.

Scott Keep testified that some level of duplication is necessary within M.U.D.'s system in order to provide reliability of service. Mr. Keep further testified that either M.U.D. service or Aquila service to Stonecrest represented orderly development as it is simply incremental growth of their system. He further testified that M.U.D. ratepayers would benefit if M.U.D. serves Stonecrest as M.U.D. would be able to spread its fixed costs over more ratepayers.

The parties have further stipulated that service by either Aquila or M.U.D. to Stonecrest would be economically feasible and nondiscriminatory.

¹ Service to the Millard Park South subdivision was the subject of Application No. P-0002 before the Commission.

² Mr. Jarosz indicated the areas of duplicative piping on Exhibit 70 in yellow.

³ The letter from Mr. Buethe was admitted into evidence as Exhibit 63.

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

"It is the starting point for most challenges regarding whether a proposed or existing main extension meets the public interest criteria."⁴

In determining whether or not an extension or enlargement is in the public interest, the Commission considers the following criteria:

- 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.

Neb. Rev. Stat. § 57-1303 and § 57-1305.

Because the parties have stipulated that service by either would be economically feasible and nondiscriminatory, these factors are not at issue.

Furthermore, because Stonecrest is not within the city limits or extraterritorial zoning jurisdiction of the city of La Vista, none of the rebuttable presumptions regarding the public interest outlined in Neb. Rev. Stat. § 57-1304 are present.

Impact on Ratepayers

Neither party submitted substantial evidence regarding the impact of service on ratepayers. M.U.D. argued that allowing it to serve Stonecrest would allow M.U.D. to spread its fixed cost over more ratepayers thereby reducing costs. The same is true for Aquila ratepayers should Aquila be permitted to serve Stonecrest. Aquila relied heavily on the potential confusion and delay in emergency response to gas main leaks in circum-

⁴ Application P-0005 Order at 6.

stances in which parallel main exist. Although this public safety issue is of concern, given the proximity of existing and pending mains along Giles Road, the addition of M.U.D. service to Stonecrest would not appear to exacerbate this problem.

Based upon the limited evidence provided, the Commission finds that the impact of service by Aquila or M.U.D. on ratepayers is neutral.

Orderly Development of Natural Gas Infrastructure

"[T]he orderly development requirement is not limited to scrutiny of whether a particular extension would be part of orderly growth of a particular natural gas utility; rather, the legislature requires consideration of orderly development of natural gas utility infrastructure as a whole."⁵ Both Aquila and M.U.D. have significant infrastructure in place in close proximity to the subdivision. The Commission finds that either Aquila or M.U.D.'s service to Stonecrest will contribute to the orderly development of the Natural Gas Infrastructure.

Duplicative or Redundant Natural Gas Infrastructure

In prior orders, the Commission has explained that "redundant" means "exceeding what is necessary or normal: superfluous."⁶ As previously stated, Aquila and M.U.D. each have significant infrastructure in place capable of serving Stonecrest. The Commission finds that neither Aquila's or M.U.D.'s service will result in significant duplicative or redundant natural gas utility infrastructure.

Conclusion

M.U.D. has relied heavily on the fact that the developer wants M.U.D. to provide the natural gas service to the subdivision. As the Commission has previously determined in P-0005, developer choice, although taken into consideration, is not determinative. However, in the present case, when the factors support service by either provider, developer choice will necessarily play a more significant role.

The Commission finds that in light of the evidence presented, M.U.D. has presented sufficient evidence to show that its service to Stonecrest will serve the public interest.

⁵ Application No. P-0005 Order at 9.

⁶ Application No. P-0003 Order at 9; Application No. P-0006 Order at 20.

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O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that M.U.D.'s proposed gas main extensions to serve the planned Stonecrest/Meridian Park subdivision are in the public interest.

MADE AND ENTERED at Lincoln, Nebraska, this 23rd day of February, 2005.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Lowell Johnson
Anne C. Boyle
Frank E. Dandis

Chairman

Gerald L. Vap

ATTEST:

John Burwainis

Deputy Director

//s// Frank E. Dandis
//s// Gerald L. Vap