

**BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**

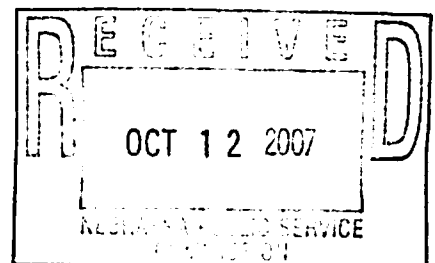
In the Matter of the Commission, on its own )  
motion, to investigate jurisdictional issues )  
pertaining to construction and operation of a )  
natural gas pipeline within the state of )  
Nebraska by Nebraska Resources Company, )  
LLC, or any other entity. )

Application No. NG-0051

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**POST-HEARING BRIEF OF  
NORTHWESTERN CORPORATION  
D/B/A NORTHWESTERN ENERGY**

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## **I. INTRODUCTION**

NorthWestern Corporation d/b/a NorthWestern Energy (“NorthWestern”) respectfully submits this Post-Hearing Brief in connection with the Nebraska Public Service Commission’s (the “Commission”) July 24, 2007, Order Opening Investigation and Notice of Hearing (the “Order”) and subsequent hearing held at the Commission on September 25, 2007 (the “Hearing”) in the above-captioned proceeding.

## **II. PROCEDURAL HISTORY**

On July 16, 2007, Nebraska Resources Company, LLC (“NRC”) filed a letter with the Commission, requesting the Commission open an investigation into a number of jurisdictional questions related to the construction and operation of a new natural gas pipeline in Nebraska by NRC. On July 24, 2007, the Commission opened the above-caption docket for the purpose of seeking comments from interested parties regarding four specific issues related to NRC’s proposed construction and operation of a natural gas pipeline within the state of Nebraska. The specific issues presented by the Commission included the following:

1. Does the definition of “high-volume ratepayer” in Neb.Rev.Stat. § 66-1802(7) include LDCs with volumetric demand in excess of 500 therms per day?
2. Does Nebraska’s double-piping prohibition under NEB.REV.STAT. § 66-1852 apply to a pipeline providing a new interconnection to an LDC?
3. Does the Commission have jurisdiction over an Application under NEB.REV.STAT. § 66-1853(1) for a Certificate of Public Convenience to operate a “jurisdictional utility” a pipeline located wholly within the state of Nebraska to deliver natural gas to LDCs and other customers?
4. What other regulatory authorities, including state, federal and local governing bodies of any kind, would have jurisdiction over the proposed NRC Pipeline, and what is the scope of their review?

Several parties filed Petitions for Formal Intervention which were granted by the Commission, and several interested parties filed Comments on or before September 7, 2007.

On September 25, 2007, the Commission held a legislative formatted hearing in the Commission hearing room. At the Hearing several interested parties, including formal intervenors and members of the public came forward to provide testimony concerning various issues raised in this proceeding. NorthWestern appreciates the opportunity to participate in this proceeding and hereby submits this Post-Hearing Brief for Commission consideration.

### **III. NORTHWESTERN'S POSITIONS ON THE ISSUES**

#### **A. NRC's Proposed Hybrid Theory of Regulation in which Both this Commission and the FERC have Jurisdiction over Portions of NRC's Proposed Pipeline is Unnecessary and Legally Untenable.**

NRC has formulated a novel and rather confusing approach to the jurisdictional questions in this docket by proposing that its pipeline can be both a Hinshaw pipeline for services to LDCs and a FERC-regulated pipeline for services to high-volume ratepayers. This "hybrid" approach proposed by NRC is unnecessary because the Commission possesses both the legal authority and significant public policy rationale to regulate NRC's entire proposed pipeline, including those portions of the pipeline serving high-volume ratepayers. Moreover, NRC's hybrid theory of regulation is legally untenable under federal law.

1. **The Rates, Services, and Facilities of a Jurisdictional Utility Providing Natural Gas to a High-Volume Ratepayer in Nebraska are Subject to the Nebraska Public Service Commission's Jurisdiction, and therefore, there Exists No Need for FERC Regulation over any Portion of NRC's Proposed Pipeline.**

NRC posits a novel "hybrid" theory of regulation, in which a portion of its proposed integrated, intrastate pipeline system would be subject to the jurisdiction of this Commission, while another portion of the same system would be subject to the jurisdiction of the Federal Energy Regulation Commission ("FERC").<sup>1</sup> NRC's hybrid approach to regulation is unnecessary for the reason that the Commission possesses both the legal authority and significant public policy rationale to regulate NRC's entire proposed pipeline, including those portions serving high-volume ratepayers.

- a. **Legal Authority**

As a general rule, section 1(b) of the Natural Gas Act ("NGA"), 15 U.S.C. § 717(b), applies to the transportation of natural gas in interstate commerce, the sale of natural gas in interstate commerce for resale, and to the natural gas companies engaged in such transportation or resale. Since the pipeline proposed by NRC would transport natural gas that has moved in interstate commerce,<sup>2</sup> the FERC's NGA jurisdiction would apply unless the pipeline qualifies as a Hinshaw pipeline.

NGA section 1(c), often called the "Hinshaw Amendment" was enacted to avoid duplicative regulation by FERC of intrastate lines already subject to state regulation. The Hinshaw Amendment exempts from NGA regulation pipelines that satisfy two tests: "First, all of the gas received by the pipeline within or at the boundary of a state must be

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<sup>1</sup>See, e.g., NRC's Comments, Docket No NG-0051/PI-130 at 22 (Sept. 7, 2007); Transcript, Exhibit 3; Transcript 18:15 – 26:3

<sup>2</sup> NRC admits that its pipeline would transport natural gas that has moved in interstate commerce. See NRC's July 16, 2007, letter to the Commission, page 2.

consumed within the state. Second, the pipeline's rates, services and facilities must be subject to regulation by a state commission."<sup>3</sup> Accordingly, since it would transport natural gas that has moved in interstate commerce, the NRC's proposed pipeline would be subject to FERC's NGA jurisdiction *unless* both prongs of the Hinshaw test are satisfied.

NorthWestern understands that NRC's proposed pipeline system would receive natural gas at or within the borders of the State of Nebraska and would be consumed within Nebraska. Under these circumstances, the first prong of the Hinshaw test would be satisfied because once the natural gas leaves the interstate line and enters NRC's pipeline system, it would remain in the state of Nebraska until it was ultimately consumed.

With regard to the second prong of the two-part Hinshaw test, under the SNGRA a jurisdictional utility and its rates, services and facilities are already subject to the jurisdiction of the Commission.<sup>4</sup> Furthermore, *if* NRC obtains a Certificate of Public Convenience as a Jurisdictional Utility in Nebraska, NRC's proposed pipeline that would extend to LDCs, along with the rates and services to such LDCs would also be subject to the jurisdiction of the Commission.

NRC's hybrid jurisdiction approach to its proposed pipeline project is based upon an assumption that the rates, services, and facilities of a jurisdictional utility providing natural gas to a high-volume ratepayer are not *subject to* the Commission's jurisdiction under NEB.REV.STAT. § 66-1810, and therefore the Hinshaw exemption does not apply. The hybrid jurisdiction approach is simply unnecessary if the Commission determines

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<sup>3</sup> *Natural Gas Pipeline Company of America, et al.*, Docket No. CP80-520-000, *et al.*, 18 FERC ¶ 61,235, p. 61,472 (1982) (emphasis added)

<sup>4</sup> See NEB.REV.STAT. §§ 66-1802(10) 66-1806, 66-1808, 66-1825, 66-1838, 66-1853(3), 66-1854.

and declares that pursuant to NEB.REV.STAT. § 66-1810, the rates, services and facilities of a jurisdictional utility providing natural gas to a high-volume ratepayer are *subject to* the Commission's jurisdiction. Then, *if* NRC is granted a certificate of public convenience to become a jurisdictional utility in Nebraska, all of NRC's proposed pipeline will be a Hinshaw pipeline, and thus all of NRC's pipeline will fall within the jurisdiction of the Commission.

Based upon careful consideration of Nebraska's high-volume ratepayer statute, NEB.REV.STAT. § 66-1810(1), and what such statute does and does *not* provide, the Commission must conclude that in addition to service provided to LDCs, the proposed rates, services and facilities of a jurisdictional utility providing natural gas *to a high-volume ratepayer* are *also* subject to the Commission's jurisdiction. Admittedly, the State Natural Gas Regulation Act ("SNGRA"), NEB.REV.STAT. § 66-1801, et seq., imposes a slightly different regulatory scheme regarding a jurisdictional utility's service to "high-volume ratepayers."<sup>5</sup> However, "the [SNGRA] and all grants of power, authority, and jurisdiction in the act made to the commission shall be liberally construed."<sup>6</sup> Moreover, even under a strict reading of Section 66-1810(1) (and certainly under a liberal construction of 66-1810(1)) the high-volume ratepayer statute of the SNGRA does nothing to remove the Commission's jurisdiction over a jurisdictional utility's rates, services and facilities to a high-volume ratepayer. More specifically, Section 66-1810(1) of the Nebraska Revised Statutes, in pertinent part, provides:

A jurisdictional utility may provide service at negotiated rates, contracts, and terms and conditions of service under contract to high-volume ratepayers. Service under the contracts shall be provided on such terms and conditions and for such rates or charges as the jurisdictional utility and

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<sup>5</sup> See NEB.REV.STAT. § 1802(7) (defining high-volume ratepayer).

<sup>6</sup> NEB.REV.STAT. § 1804(2).

the high-volume ratepayer agree, without regard to any rates, tolls, tariffs, or charges the jurisdictional utility may have filed with the commission. Upon the request of the commission, the jurisdictional utility shall file such contracts with the commission. The contracts . . . may be used by the commission in any investigation or proceeding. *Except as provided in this subsection, high-volume ratepayers shall not be subject to the jurisdiction of the commission.*

The sentence that NRC relies upon for its conclusion that the Hinshaw exemption does not apply appears to be the last sentence in subsection (1) above, which states: “Except as provided in this subsection, high-volume ratepayers shall not be subject to the jurisdiction of the commission.” (Emphasis added.) However, it is extremely important for the Commission to realize that the Hinshaw exemption does not hinge upon a particular ratepayer (here, a high-volume ratepayer) being subject to the state commission’s jurisdiction. Rather, the exemption hinges upon whether the pipeline’s (here, a jurisdictional utility) rates, services and facilities are subject to state commission jurisdiction. To highlight this point further by way of example, the Commission should note that traditional residential or commercial end-user customers of jurisdictional utilities are not subject to the Commission’s jurisdiction, and this has no impact upon the Commission’s ability to regulate jurisdictional utilities’ rates, services, and facilities to such end-user customers.

As noted, the only jurisdictional limitation provided in § 66-1810(1) relates to a high-volume ratepayer itself and *not* a jurisdictional utility or the rates, services, and facilities provided by a jurisdictional utility. Nowhere in § 66-1810(1) did the Legislature remove or even limit the Commission’s jurisdiction over a jurisdictional utility or the rates, services, and facilities of a jurisdictional utility. Furthermore, in addition to the Commission maintaining full jurisdiction over jurisdictional utilities, the

statutory language of 66-1810(1) -- “[e]xcept as provided in this subsection, high-volume ratepayers shall not be subject to the jurisdiction of the commission” -- indicates that the rest of subsection (1) was in fact intended by the Legislature to provide some level of jurisdiction even over the high-volume ratepayer.

Furthermore, although § 66-1810(1) provides that a jurisdictional utility *may* provide service to a high-volume ratepayer at negotiated rates, contracts, and terms and conditions of service, this statutory *option* does not dismiss or remove the Commission’s jurisdiction over such negotiated rates, contracts and terms and conditions of service. To the contrary, the option to negotiate the rate and service terms was intended to be a light-handed exercise of jurisdiction by the Commission under circumstances in which two entities with seemingly equal bargaining power could reach an agreement on terms. In addition, the United States Court of Appeals for the Tenth Circuit held, and subsequent FERC cases recognized, that the “subject to regulation by a state commission” element of the Hinshaw Amendment includes “potentiality,” that is, the Hinshaw test can be met if there is potential for state regulation.<sup>7</sup> Accordingly, the rates, facilities, and service of a jurisdictional utility providing natural gas to a high-volume ratepayer are still subject to the Commission’s jurisdiction, even though the parties have an option to negotiate.

In addition, if there is a dispute between the parties regarding service, rates, terms and conditions, or facilities, the Commission would be the appropriate decision-maker for resolving such dispute. In fact, § 68-1810(1), in pertinent part, provides: “Upon the request of the commission, the jurisdictional utility shall file such [high-volume ratepayer] contracts with the commission.” As a result, the contracts could be filed with

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<sup>7</sup>See *City of Fort Morgan v. FERC*, 181 F.3d 1155, 1162, n. 10 (10th Cir. 1999); see also *KN Watenberg Transmission Limited Liability Company*, Docket No. CP97-256-005, *et al.*, 90 FERC ¶ 61,321, p. 62,074 (2000).

the Commission and subsequent action taken. In this regard it should again be noted that both federal courts and FERC have recognized that the Hinshaw test can be met if there is simply the potential for state regulation.<sup>8</sup>

Thus, although the Commission's jurisdiction over a high-volume ratepayer may be limited to some degree, the rates, facilities, and services provided by a jurisdictional utility to a high-volume ratepayer are very much subject to the Commission's jurisdiction. As a result, the Hinshaw test would be satisfied, and there would not be a need to fill a gap with a FERC-issued limited jurisdiction blanket transportation certificate. Therefore, NRC's hybrid approach to regulation is unnecessary pursuant to applicable law because the Commission possesses regulatory authority over NRC's entire proposed pipeline system, including that portion serving high-volume ratepayers.

**b. Public Policy Rationale**

In addition to the sound legal support for a conclusion that the Commission has jurisdiction over NRC's entire proposed pipeline system, including that portion used to serve high-volume ratepayers, there is strong policy support for such conclusion as well. It is in the best interest of the citizens of Nebraska that NRC's pipeline system be regulated by the state Commission.

NRC's entire proposed pipeline system will be located in Nebraska. All of the natural gas that enters NRC's pipeline system will be consumed in Nebraska, and all of the ratepayers served by NRC's pipeline, including high-volume ratepayers, will be Nebraska entities. Thus, it makes little sense that NRC's pipeline, or any portion thereof, would be regulated by the FERC, and in fact, this is the very reason that the Hinshaw

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<sup>8</sup> See *id.*

Amendment came into law. No valid regulatory purpose would be served by exporting to Washington D.C. jurisdiction over what are essentially Nebraska intrastate pipelines.

Furthermore, by splitting regulation over NRC's pipeline between the Commission and the FERC, there exists the potential for much confusion and regulatory uncertainty for the Commission in determining the extent of jurisdiction, particularly as it relates to rates. Finally, it is clear that Nebraska Public Service Commission is in the best position to know and protect the interests of its citizens and the entities that do business in this state, including the growing number of high-volume ratepayers in this state. For all of these reasons, if NRC is approved as a jurisdictional utility, the Commission should declare jurisdiction over NRC's entire proposed pipeline and not just a portion of it.

- 2. If this Commission Determines that it Does Not have Jurisdiction over Rates, Services and Facilities of a Jurisdictional Utility Serving a High-Volume Ratepayer, then NONE of the Gas Transported by NRC's Proposed Pipeline would be Subject to this Commission's Jurisdiction.**

As more fully described hereinabove, in both its comments and at the Hearing NRC posited a novel "hybrid" theory of regulation, one in which a portion of its proposed integrated, intrastate pipeline system would be subject to the jurisdiction of the Nebraska PSC, while another portion of the same system would be subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC).<sup>9</sup> At first blush, NRC's hybrid theory appears to be a clever solution to a jurisdictional problem. However, upon closer examination and in addition to the lack of necessity of this approach under NEB.REV.STAT. § 66-1810 as described above, NRC's hybrid theory is legally untenable under federal law.

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<sup>9</sup>See, e.g., NRC's Comments, Docket No NG-0051/PI-130 at 22 (Sept. 7, 2007); Transcript, Exhibit 3.

To begin and as noted above, a pipeline must satisfy two tests to be eligible under NGA section 1(c) for an exemption from the FERC's jurisdiction: "First, all of the gas received by the pipeline with or at the boundary of a state must be consumed within the state. Second, the pipeline's rates, services and facilities must be subject to regulation by a state commission."<sup>10</sup>

NRC claims that it can satisfy the first prong of the test, but not the second because "NRC's service to high-volume ratepayers will be exempt from Commission regulation, SNGRA § § 6 and 10, Neb. Rev. Stat. § § 66-1806 and 66-1810 (2006). To remedy this problem, NRC proposes that "service [to high-volume rate payers] will be performed under a Limited Jurisdiction Certificate of Public Convenience and Necessity issued by the FERC."<sup>11</sup> There are several problems with this solution under federal law.

If NRC is correct that the Nebraska PSC does not have jurisdiction over the transportation to high-volume ratepayers, then the second of the Hinshaw test cannot be satisfied for any portion of NRC's proposed pipeline system. NRC suggests that it could overcome this problem by obtaining an Order No. 63 blanket transportation certificate, under which it would transport the gas to high-volume ratepayers. The proposed certificate is simply not available under these circumstances.

In Order No. 63, the FERC created, pursuant to NGA section 7, a limited jurisdiction blanket transportation certificate that authorizes Hinshaw pipelines to perform transportation services transactions just like intrastate pipelines do under NGPA

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<sup>10</sup>*Natural Gas Pipeline Company of America, et al.*, Docket No. CP80-520-000, *et al.*, 18 FERC ¶ 61,235, p. 61,472 (1982).

<sup>11</sup>NRC's Comments, Docket No NG-0051/PI-130 at 22 (Sept. 7, 2007); Transcript, Exhibit 3.

sections 311 and 312.<sup>12</sup> However, in order to be eligible for the blanket certificate, one must be a Hinshaw pipeline. Thus, assuming *arguendo* that this Commission does not have jurisdiction over the transportation service to the high-volume rate payers, then *none* of the gas transported by NRC's proposed pipeline would be subject to this Commission's jurisdiction. In that case, NRC would not satisfy the second element of the Hinshaw test – it would not be a Hinshaw pipeline and could not receive an Order No. 63 limited jurisdiction blanket certificate. Put another way, NRC cannot use an Order No. 63 blanket certificate (which is issued to Hinshaw pipelines) to overcome an inability to satisfy the requirements to be a Hinshaw pipeline.

In an attempt to support its theory, NRC's counsel testified before the Commission on September 25, 2007, that he informally advised a member of the FERC's staff of NRC's plans, and that the staff member expressed no concerns.<sup>13</sup> That hardly constitutes a valid and binding regulatory pronouncement. "The [FERC] speaks

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<sup>12</sup>*Certain Transportation Sales and Assignments by Pipeline Companies not Subject to Commission Jurisdiction Under Section 1(c) of the Natural Gas Act*, Order No. 63, Docket No. RM79- 24, 45 *Fed. Reg.* 1,872, FERC Stats. and Regs. [Reg. Preambles] ¶ 30,118 (Jan. 9, 1980). The Commission described Order No. 63 blanket certificate as follows:

Sections 311 and 312 of the NGPA permit the Commission to authorize intrastate pipelines to transport, sell, or assign natural gas to the interstate market. In Order No. 63 the Commission promulgated § 284.222 to establish a blanket certificate program under § 7(c) of the Natural Gas Act for Hinshaw Pipelines. This program permits Hinshaw Pipelines to perform the same kind of transactions intrastate pipelines are permitted to perform under §§ 311 and 312 of the NGPA without jeopardizing the Hinshaw Pipeline's exempt status under § 1(c) of the Natural Gas Act. These blanket certificates permit a Hinshaw Pipeline to make its excess supplies available to the interstate market and to use its transportation facilities to transport gas, thereby eliminating the need for interstate pipelines to build duplicate facilities or use less direct transportation routes.

*Sales and Transportation by Interstate Pipelines and Distributors; Expansion of Categories of Activities Authorized Under Blanket Certificate*, Order No. 319, Docket No. RM81-29, 48 *Fed. Reg.* 34875 (Aug. 1, 1983), FERC Stat. and Regs. [Reg. Preambles] ¶ 30,477, p. 30,621 (1983).

<sup>13</sup>See, e.g., Hearing Testimony of Mr. William F. Demarest, Docket No. NG-0051/PI-130, Transcript at 20 (Sept. 25, 2007)

through its orders.”<sup>14</sup> The underlying rationale for not relying on informal discussions with FERC staff is sound: “To depart from this traditional rule would remove any assurance as to the significance to be attached to the written opinions, and would make the meaning of our decisions depend on subjective impressions and the vagaries of memory.”<sup>15</sup> In short, the legal problems with NRC’s hybrid solution cannot be overcome through informal discussions with FERC’s staff.

Again, as more fully described above, there is no need for NRC’s hybrid solution. As described by NorthWestern in its initial Comments filed on September 7, 2007,<sup>16</sup> and again above, if NRC is granted status as a jurisdictional utility in Nebraska, then the rates, services and facilities of NRC providing natural gas to a high-volume ratepayer are subject to the Commission’s jurisdiction, and therefore the Hinshaw exemption applies. In fact, there is no need for a formal order asserting jurisdiction; a letter from the Commission’s counsel would likely suffice.

If NorthWestern’s position on these issues is not adopted, the alternative would be that the pipelines proposed by NRC would be interstate pipelines regulated by the FERC under the NGA. In that case, the Commission would not be able to regulate any aspect of the transportation service or transportation rates charged to the LDCs. Again, no valid regulatory purpose would be served by exporting to FERC jurisdiction over what are essentially Nebraska intrastate pipelines.

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<sup>14</sup>See, *Indianapolis Power & Light Company*, Opinion No. 328, Docket No. FA86-51-001, 48 FERC ¶ 61,040, p. 61,203 (1989) (footnote omitted).

<sup>15</sup>*Florida Gas Transmission Co.*, Opinion No. 431-B, 32 F.P.C. 908, 909-10 (1964) (subsequent history omitted).

<sup>16</sup>See, e.g., NorthWestern’s Comments, Docket No NG-0051/PI-130 (Sept. 7, 2007); Transcript, Exhibit 3.

**B. NorthWestern Renews Its Positions Set Forth in Its Initial Comments Regarding the Specific Issues Raised in the Commission's July 24, 2007, Order.**

**1. Does the definition of "high-volume ratepayer" in NEB.REV.STAT. § 66-1802(7) include LDCs with volumetric demand in excess of 500 therms per day?**

As more fully described in its Comments filed on September 7, 2007,<sup>17</sup> NorthWestern concludes that the term "high-volume ratepayers" should not include local distribution companies ("LDCs"). A reasonable reading of NEB.REV.STAT. § 66-1802(7) in the context of the entire SNGRA, excludes jurisdictional utilities<sup>18</sup> from being considered high-volume ratepayers in light of both the overall purpose of the SNGRA and the irreconcilable conflict that would result in the application of multiple sections of the SNGRA.

**2. Does Nebraska's double-piping prohibition under NEB.REV.STAT. § 66-1852 apply to a pipeline providing a new interconnection to an LDC?**

As more fully described in its Comments filed on September 7, 2007,<sup>19</sup> NorthWestern concludes that based upon a plain reading of NEB.REV.STAT. § 66-1852 and significant public policy considerations, the double-piping prohibition does not prohibit an intrastate or interstate high-pressure pipeline from establishing a new interconnection to a LDC but does prohibit duplication of LDC infrastructure or services. In addition NorthWestern reiterates its position as set forth in its initial Comments that even in the event that the Commission finds that § 66-1852 applies to a pipeline

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<sup>17</sup> See NorthWestern's Comments, Docket No NG-0051/PI-130 at 1-2 (Sept. 7, 2007); Transcript, Exhibit 3.

<sup>18</sup> A jurisdictional utility under the SNGRA is defined in NEB.REV.STAT. § 66-1802(10).

<sup>19</sup> See NorthWestern's Comments, Docket No NG-0051/PI-130 at 2-4 (Sept. 7, 2007); Transcript, Exhibit 3.

providing a new interconnection to a LDC, there are multiple circumstances under which such pipeline or services to a LDC may not be “redundant” or “duplicative.”

3. **Does the Commission have jurisdiction over an Application under NEB.REV.STAT. § 66-1853(1) for a Certificate of Public Convenience to operate a “jurisdictional utility” a pipeline located wholly within the state of Nebraska to deliver natural gas to LDCs and other customers?**

As noted in NorthWestern’s initial Comments,<sup>20</sup> although the Commission has jurisdiction to rule on an Application under NEB.REV.STAT. § 66-1853(1), NorthWestern believes that the instant investigation is not the appropriate procedural vehicle in which to make a preliminary ruling on NRC’s future application under § 66-1853(1) for a certificate of public convenience as a jurisdictional utility.

NorthWestern would also like to further note that if NRC is granted such certificate, then pursuant to NEB.REV.STAT. § 66-1856, as a jurisdictional utility, NRC does not need Commission approval to begin the construction of any new plant, equipment, property or facility that NRC determines to be necessary to provide adequate and reliable service to ratepayers. Rather, NRC would be subject to state and federal law regarding such construction as has been followed by jurisdictional utilities constructing new facilities for many years.

4. **What other regulatory authorities, including state, federal and local governing bodies of any kind, would have jurisdiction over the proposed NRC Pipeline, and what is the scope of their review?**

As described in its initial Comments,<sup>21</sup> NorthWestern concludes that unless (1) all of the gas received by the pipeline within or at the boundary of a state is consumed within

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<sup>20</sup> See NorthWestern’s Comments, Docket No NG-0051/PI-130 at 4 (Sept. 7, 2007); Transcript, Exhibit 3.

<sup>21</sup> See NorthWestern’s Comments, Docket No NG-0051/PI-130 at 4-5 (Sept. 7, 2007); Transcript, Exhibit 3.

the state of Nebraska and (2) the pipeline's rates, services and facilities are subject to regulation by this Commission, NRC's proposed pipeline is subject to FERC jurisdiction pursuant to section 1(b) of the Natural Gas Act ("NGA"), 15 U.S.C. § 717(b).

**4(a)/4(b). Additional Issues Raised by NorthWestern in Its Initial Comments.**

In its initial Comments,<sup>22</sup> NorthWestern raised two additional jurisdictional issues for Commission consideration that were closely related to the issues initially raised by the Commission. NorthWestern hereby renews its request that the Commission consider these issues and conclude the following for the reasons set forth in NorthWestern's initial comments:

(a) If a jurisdictional utility, as defined under the SNGRA, constructs a pipeline that extends from an interconnection with an existing interstate natural gas pipeline within the State of Nebraska to a Nebraska municipality that is currently being served by the same jurisdictional utility, such pipeline and the service and rates associated therewith are subject to the jurisdiction of the Nebraska Public Service Commission.

(b) If a jurisdictional utility, as defined under the SNGRA, constructs a pipeline extending from an interconnection with an interstate natural gas pipeline within the State of Nebraska to a municipality in Nebraska already served by the same jurisdictional utility and also extends such pipeline beyond the municipality to serve a high-volume ratepayer, such pipeline and the service and rates associated therewith are subject to the jurisdiction of the Nebraska Public Service Commission.

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<sup>22</sup> See NorthWestern's Comments, Docket No NG-0051/PI-130 at 6-10 (Sept. 7, 2007); Transcript, Exhibit 3.

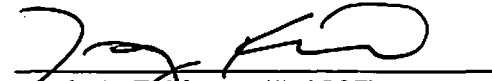
#### IV. CONCLUSION

NorthWestern respectfully submits this Post-Hearing Brief for Commission consideration and requests that the Commission give careful attention to the issues presented herein. Northwestern appreciates this opportunity to participate in this docket and looks forward to working with the Commission as it pursues these issues further.

Dated: October 12, 2007.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Post-Hearing Brief of NorthWestern Corporation was sent on this 12th day of October, 2007, via hand-delivery or U.S. mail, postage prepaid, to the following:

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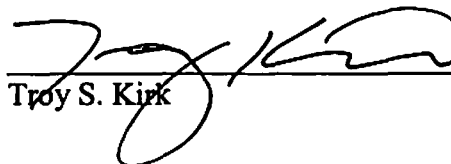
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