COMMERCE DEPARTMENT

December 11, 2017

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 280
St. Paul, Minnesota 55101-2147

RE: **Reply Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. G011,002/C-17-802

Dear Mr. Wolf:

Attached are the Reply Comments of the Minnesota Department of Commerce, Division of Energy Resources (Department or DOC), in the following matter:

> Formal Complaint and Petition for Relief by Minnesota Energy Resources Corporation against Northern States Power Company d/b/a Xcel Energy.

The Petition was filed on November 9, 2017 by:

> Amber Lee
> Regulatory and Legislative Affairs Manager
> Minnesota Energy Resources Corporation
> 2605 145th Street West,
> Rosemount, Minnesota 55068

As discussed in the attached Reply Comments, the Department provides its responses to the November 15, 2017 Notice of Comments of the Minnesota Public Utilities Commission (Commission). The Department concludes that:

- The Commission has jurisdiction and that Xcel's Natural Gas Competitive Agreement is not unlawful;
- The Commission could determine there are reasonable grounds to initiate an investigation if it wants to include a complaint-specific cost/benefit analysis as part of its review; and
- A contested case proceeding is unnecessary.

The Department is available to answer any questions that the Commission may have.

Sincerely,

/s/ JOHN KUNDERT
Financial Analyst

JK/lt
Attachment

COMMERCE DEPARTMENT

Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce
Division of Energy Resources

Docket No. G011,002/C-17-802

I. PROCEDURAL HISTORY

On November 9, 2017, Minnesota Energy Resources Corporation (MERC or the Company) filed with the Minnesota Public Utilities Commission (Commission) a formal complaint (Complaint) against Xcel Energy (Xcel). MERC requests that the Commission (1) immediately suspend what they conclude is Xcel's unlawful Natural Gas Competitive Agreement pending completion of the investigation in Docket No. G-99/CI-17-499; and (2) refer this Complaint to the Office of Administrative Hearings (OAH) for a contested case hearing to address disputed issues of fact and fully develop the record. The Complaint alleges that Xcel's use of its Natural Gas Competitive Agreement" (Competitive Agreement) "constitutes an impermissible discriminatory preference to new customers at the expense of existing customers in violation of Minnesota law, which prohibits natural gas public utilities from discounting their tariffed rates in competition with other natural gas public utilities".[1] MERC also posits in the Complaint that such discounts undermine competition between regulated gas utilities and leads to the duplication of facilities.

MERC's most recent complaint[2] involves these facts:

- Xcel has entered into a Competitive Agreement with United Properties (United) to serve United's "Boulder Lakes: development in Eagan.
- Under that Competitive Agreement, Xcel agreed to pay United a $25,000 promotional allowance.
- The facilities Xcel proposes to install to serve United will duplicate MERC's existing natural gas distribution facilities in the area.
- The City of Eagan denied Xcel's request for a permit to install a second distribution main in the same right-of-way as MERC's existing natural gas distribution main on September 22, 2017.
- United and MERC executed a Distribution Facilities Installation Agreement on

[1] Complaint at page 1.

[2] MERC recently filed a similar complaint in Docket No. G011, 002/C-15-305 regarding Xcel's providing service to a facility that the Vikings are building in Eagan. On July 12, 2017, the Commission issued its Order dismissing the complaint and opened a generic docket to review the parameters of inter-gas-utility competitions and the use of promotional incentives.

October 18, 2017.
- MERC began providing service to United on October 25, 2017.
- MERC spent approximately $40,000 to extend service to United.
- MERC estimates that it will receive over $30,000 in revenue annually from service to United.

Procedurally, MERC expressed concern that the Commission's ongoing investigation in Docket No. G-999/17-499 will not be completed in an adequate time-frame to prevent financial harm to MERC's customers. As a result, MERC requested that the Commission immediately suspend Xcel's used of promotional incentives. MERC also requested the Commission initiate a contested case proceeding to address issues of fact.

On November 15, 2017, the Commission issued a Notice of Comment Period. The Notice provided for an initial comment period that closed on November 29, 2017 as well as a Reply Comment period that closed December 11, 2017. The Commission's Notice asked the following questions:

- Does the Commission have jurisdiction over the subject matter of this complaint?
- Is it in the public interest for the Commission to investigate these allegations? and
- If the Commission chooses to investigate the complaint, what procedures should be used to do so?
- Are there other issues or concerns related to this matter?

On November 29, 2017, Xcel filed its Response to MERC's Formal Complaint. Xcel's response concluded that MERC's complaint was without merit and requested that the Commission dismiss the Complaint without further investigation.

II. SUMMARY OF MERC'S COMPLAINT

The Complaint stated that Xcel's proposal to provide natural gas service to United Properties' "Boulder Lakes" development in Eagan, Minnesota is inconsistent with Minnesota Law. Specifically:

> The Competitive Agreement provides Xcel with an unlawful mechanism to effectively discount its tariffed rates in competition with other natural gas utilities without any limitation. This practice

> circumvents Minnesota law and creates an unlevel playing field between regulated utilities.[3]

According to MERC, the Legislature has clearly prescribed the circumstances in which a regulated gas utility may flex or discount its tariffed rates and Minn. Stat. § 216B.163. Critically, regulated gas utilities can tach such action only in the fact of "effective competition" from an unregulated supplier. By creating this exception, the Legislature proscribed all other exceptions, including Xcel's discounting rates to take customers away from a regulated supplier.

MERC:

- Contends that Minnesota law prohibits one natural gas utility from discounting its tariffed rates to compete with another natural gas utility and is the applicable legal standard in this instance,
- Requests that the Commission resolve the Complaint as to which natural gas utility should be allowed to serve United, and
- Asks that the Commission refer this Complaint to the OAH for a contested case hearing to address disputed issues of fact and to develop the record on the important issues set forth herein.[4]

In the "Factual Allegations" section of the Complaint MERC also noted:

- the City of Eagan's public safety concern regarding the construction of two gas mains within one right-of-way;
- the City of Eagan's initial decision to deny Xcel's request for a Right-of-Way Permit to serve United's property;
- the $40,000 in cost MERC incurred to extend service to the United Development which it is currently serving; and
- an estimate that MERC would receive over $30,000 in revenue annually from service to the United Development excluding potential growth associated with the property.

In the "Complaint" section of the Complaint MERC made several recommendations and identified the following topics:

- The Commission should suspend what MERC considers to be Xcel's unlawful use of promotional incentives pending completion of the Commission's Investigation.

[3] Complaint at page 4.
[4] Complaint at page 4.

  - A natural gas utility may not discount rates in competition with another natural gas public utility.
  - A natural gas utility may not discriminate among similarly situated customers.
  - What MERC claims are Xcel's discounted rates under its Competitive Agreement are arbitrary and contrary to Minnesota law.
  - The use of discounted rates is contrary to the Commission-approved Customer Extension Models.
- The Commission must intervene to prevent unnecessary duplication of facilities, which MERC claims will increase MERC's cost of service to its customers.
  - Xcel's service to United will result in an unnecessary duplication of facilities.
  - Because MERC already extended service to United, MERC has incurred approximately $40,000 in costs which will be stranded if Xcel is allowed to serve the United Development.
  - Xcel's efforts have disrupted the City of Eagan's permitting process.
- A contested case is warranted due to what MERC considers to be the severity of these allegations.

MERC also included an affidavit by Ms. Amber Lee supporting MERC's position.

III. XCEL'S RESPONSE

Xcel's response noted that the Commission reviews formal complaints using a two-step process. The first step of the process involves two questions:

- Does the Commission have jurisdiction over the complaint?
- Are there reasonable grounds to open an investigation?

Xcel concluded that the Commission does have jurisdiction and that the Complaint should be "summarily dismissed".[5] In support of its position Xcel noted:

- United Properties chose Xcel as the natural gas service provider

[5] Xcel November 29, 2017 Response at page 3.

for Boulder Lakes development and Prime Therapeutics after a competitive bidding process;

- United will not receive a discount to Xcel's tariffed natural gas rates; rather Xcel will pay United a promotional incentive in the amount of $25,000, under the Large Demand Billed Service Tariff (Rate Code 103) approved by the Commission in Xcel Gas's most recent rate case.[6] Xcel will not seek to recover any portion of that promotional incentive in rates.
- On November 13, 2017, the City of Eagan issued a new right-of-way permit for the construction of the proposed Xcel gas main that will serve the customer. Xcel initiated construction on November 20, 2017 and anticipates that the work will be completed by December 22, 2017.
- The promotional incentive that Xcel is providing to United was fully litigated and resolved in Docket No. G011, 002/C-17-305.
- MERC didn't develop any new arguments that support a different determination in this proceeding than in the prior complaint filed by MERC.
- Information provided by CenterPoint Energy (Centerpoint), Greater Minnesota Gas, (GMG), Great Plains Natural Gas (GPNG), and MERC in Docket No. G-999/CI-17-499, In the Matter of a Commission Investigation into Parameters for Competition among Natural Gas Utilities Involving Duplication of Facilities and Use of Promotional Incentives and Other Payments suggest that both Centerpoint and GMC use incentives, while GPNG and MERC do not.
- MERC should not be allowed to bypass the Commission's process for determining any changes to the appropriate parameters for competition among natural gas utilities in Docket 17-499 by filing this Complaint.
- Commission decisions in Docket Nos. G004,011/C-91-731, G011,002/C-96-1062 and G001, 002/C-17-305 support Xcel's position and also address MERC's concern regarding the potential for stranded costs, and
- MERC's concerns regarding the integrity of the City of Eagan's permitting process have been addressed.

[6] Docket No. G002/GR-09-1153

Xcel concluded by requesting that the Commission dismiss MERC's request for a contested case.

VI. DEPARTMENT ANALYSIS

The Department's provides its analysis and responses to the questions in the Commission's Notice.

A. DOES THE COMMISSION HAVE JURISDICTION OVER THE SUBJECT MATTER OF THIS COMPLAINT?

In its response to this question, both Xcel and MERC agree that the Commission has jurisdiction.

The Department agrees that the Commission has the jurisdiction to address the complaint as the Commission deems necessary, particularly since the Commission addressed situations in which two natural gas utilities competed to serve the same future load in four separate proceedings. These include Docket Nos. G004, 001/C-91-731, G011/C-96-1062, G999/CI-90-563 and most recently in Docket No. G011, 002/C-17-305. The Department provides the following information about these dockets for ease of reference and as helpful information in the Commission's determinations in this proceeding.

1. Docket No. G004, 001/C-91-731 – Great Plains Energy Complaint against Peoples Natural Gas (91-731 Docket)

In the 91-731 Docket, the Commission dismissed Great Plains Energy's (Great Plains) complaint that Peoples Natural Gas (Peoples), MERC's predecessor, violated several provisions of Minnesota law, and Peoples' own tariff, when Peoples agreed to provide natural gas service to Minnesota Corn Processors (MCP). At the time of the agreement, MCP was an ethanol facility that Great Plains was serving; however, MCP proposed to convert its manufacturing facilities from using coal to natural gas. While this docket did not specifically address the issue of duplication of facilities, it did address a situation in which two utilities wanted to provide service to a facility that does not yet exist. The Commission noted in its Order dismissing Great Plains' complaint that Peoples' agreement would serve new, not existing, load:[7]

> [T]his is not a case in which one utility is using flexible rates to take away the load of another utility. The new load that Peoples wants to serve does not yet exist. It will exist only if MCP follows through

[7] *In the Matter of the Complaint of Great Plains Natural Gas Company Against Peoples Natural Gas Company and UtiliCorp United, Inc.,* ORDER DISMISSING COMPLAINT at 4 (December 20, 1991).

> with its plans to convert its manufacturing operations from coal to natural gas. Great Plains will continue to serve MCP's existing load (office heating) whether or not the conversion occurs. Great Plains is not losing an existing load to another utility.

Further, the Commission addressed the non-exclusive nature of service territories for natural gas local distribution facilities:[8]

> Presumably, there would be no issue at all, since gas utilities do not have exclusive service territories and generally can serve any new load their distribution facilities can reach. . . . Finally, once it has been determined that Peoples' contract with MCP does not violate the flexible rates statute, the complaint rests entirely on the contention that Great Plains has an exclusive right to serve this load. This contention has no basis in law or policy. Minnesota does not have assigned service areas for gas utilities. It does have assigned service areas for electric utilities, which suggests that the Legislature intentionally treated these two types of utilities differently. Peoples, then, is free to serve this new load, in the absence of special circumstances, such as unnecessary duplication of facilities or harm to existing ratepayers, requiring Commission intervention.

The Commission's findings in the Great Plains v. Peoples docket developed reasonable guidelines for evaluating complaints of this nature. For example, the Commission's decision suggests that Minnesota natural gas utilities may compete on equal footing for new load if the results of that competition would not result in unnecessary duplication of facilities or undue harm to existing ratepayers.

Attachment A contains a copy of this ORDER.

2. Docket No. G011/C-96-1062 – Peoples Natural Gas Complaint against Northern States Power Company (96-1062 Docket)

In the 96-1062 Docket, the Commission dismissed Peoples' complaint against Northern States Power Co. (NSP), which alleged that NSP's construction to serve new load violated the letter, spirit and intent of Minn. Stat. § 216.01.

[8] *Id.*

This docket involved MERC's and Xcel's predecessor companies (Peoples and NSP, respectively) in a service area dispute that incorporated a development in Eagan (Eagandale Center) as well as a development in North Branch (Casselberry Ponds).

In its Order dismissing the complaint, the Commission summarized Peoples' argument.[9]

> Peoples argued that NSP unnecessarily duplicated facilities in the two subject areas, because Peoples had stood ready and willing to serve before NSP built to serve (in the case of Casselberry) or sought authority to build (in the case of Eagandale Center). According to Peoples, the potential of both economic and physical harm flowed from NSP's actions.
>
> Peoples argued that retail users would pay higher rates than necessary due to NSP's duplicative service facilities. NSP's actions would deny consumers gas service at the best and least cost. The harm was especially unjust because the choice of providers was being made by the developers, not by the retail users.
>
> Peoples also argued that NSP's actions would create the potential for safety hazards, since gas main might be laid in proximity to existing pipe.
>
> Peoples further objected to NSP's actions because they would tend to escalate disputes between public utilities, contrary to the intent of Minn. Stat. § 216B.01.

The Commission explained its dismissal of Peoples' complaint, as follows:[10]

> All parties agree that Minnesota statues do not establish exclusive service territories for gas utilities. Peoples therefore bases its complaint on Minn. Stat. § 216B.01, which establishes as one goal of utility regulation the avoidance of unnecessary duplication of facilities. Peoples charges that NSP's decision to serve the two subject areas, which are currently contiguous to Peoples' existing

[9] *In the Matter of a Complaint of Peoples Natural Gas against Northern States Power Company regarding its Construction of Distribution Facilities,* Docket No. G011/C-96-1062, ORDER DISMISSING COMPLAINT at 3 (Oct. 21, 1996).
[10] *Id.* at 4.

> facilities, has resulted in the unnecessary duplication of facilities. Peoples urges the Commission to find that this service duplication necessitates the investigation of serious issues of safety and economics.
>
> The Commission disagrees. After carefully considering the parties' written and oral comments, the Commission finds that Peoples has raised no issue that warrants further investigation. The Commission will analyze Peoples' charges regarding safety and economics in turn.

Regarding purported safety concerns, the Commission was unpersuaded by Peoples' arguments:[11]

> The Minnesota Office of Pipeline Safety (OPS) sets standards for construction of gas pipelines in Minnesota. The OPS has overseen the development and implementation of NSP's pipeline construction procedures. . . . In addition, city and county engineers analyze applications to construct pipeline in city and county rights-of-way. . . . Any safety issues relevant to gas service to the Casselberry addition and the Eagandale Center have been addressed by the appropriate bodies. The Commission finds that Peoples has not raised any issue of safety which warrants further investigation in this proceeding.

The Commission stated that it "finds that Peoples has not raised any economic issue which warrants further investigation at this time."[12]

Attachment B contains a copy of this ORDER.

3. Docket No. G999/CI-90-563 – Investigation into Competition between Gas Utilities in Minnesota (90-563 Docket)

In the 90-563 Docket, the Commission reviewed issues concerning the provision of natural gas service in an area by more than one provider. The Commission concluded that competition between gas providers is allowed by statute in the same territory, and that the Commission has the capacity to assess complaints on a case-by-case basis, as follows:[13]

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[11] *Id.* at 4-5.
[12] *Id.* at 5.
[13] *Generic Inquiry,* Docket No. G999/CI-90-563, ORDER TERMINATING INVESTIGATION AND CLOSING DOCKET at 5

> No ultimate judgment on this subject is required. First, while recognizing the negative potential cited above, the fact remains that there is no statutory prohibition against competition between two or more gas providers in the same territory. Moreover, it appears that the Commission has the capacity to balance the interests of utilities, competed-for customers, and current customers on a case by case basis.

A copy of this ORDER is included as Attachment C.

4. *Docket No. G011, 002/C-17-305 (17-305 Docket) – MERC's Complaint Against Northern States Power Company*

The Commission dismissed MERC's complaint in this proceeding. In its Order dated July 12, 2017 the Commission noted:

> In this case, MERC claims that Xcel's plans to serve the Vikings' development will result in unnecessary duplication of MERC's facilities that will harm MERC's customers and raise safety concerns. However the Commission concludes that the circumstances do not require Commission intervention.

The Commission also required Xcel and MERC to file any competitive agreement in Docket No. G999/CI-17-499. The basis for this requirement was the Commission's position that a template in a utility's tariff didn't meet the requirements of Minn. Stat. § 216B.05.

A copy of this ORDER is included as Attachment D.

In summary, the Commission reviewed past complaints in light of Minnesota law and policies, and

- reserved the right to review complaints on a case-by-case basis;
- didn't find unnecessary duplication of facilities or safety issues to be threshold decision criterion for pursuing or denying a specific complaint;
- didn't find Xcel's Competitive Agreement to be unlawful or prohibit Xcel from using it for negotiating with would-be customers.

(March 31, 1995).

Thus, the Department concludes that the Commission clearly has jurisdiction to address the Complaint as the Commission deems necessary.

B. IS IT IN THE PUBLIC INTEREST FOR THE COMMISSION TO INVESTIGATE THESE ALLEGATIONS?

The Department concludes that the facts identified in this proceeding are similar to the facts the Commission faced in previous dockets of this nature. Since the Commission reserved the right to investigate these kinds of complaints on a case-by-case basis, the Department responds to MERC's arguments in this proceeding.

In this proceeding, MERC posits that "a natural gas public utility may use a promotional incentive like Xcel's Competitive Agreement only in the face of "effective competition" from an unregulated provider.[14] MERC's discussion appears to rest on the concept that Xcel's provision of a financial incentive to a customer effectively lowers that customer's "tariffed rates."

Even though Xcel has an approved Competitive Agreement allowing Xcel to provide limited shareholder funds to new customers, who must meet all requirements of Xcel's tariffs, MERC continues to object to Xcel's use of its approved Competitive Agreement. In effect, MERC argues that the Commission's approval of Xcel's Competitive Agreement was inconsistent with Minnesota law.

The Department doesn't agree with MERC. It is clear that Minnesota does not have assigned service territories for natural gas utilities. It is also clear that each new customer or expanded customer of any utility, including Xcel Gas, must meet the requirements in the utility's approved tariffs for being added to the utility's system and must pay the rates authorized by the Commission. The fact that Xcel decided to provide United Properties with a financial incentive that was provided with shareholder funds and will not be recovered via Xcel's rates doesn't affect the tariffed rates that United Properties will pay to Xcel in the future.

On page 15 of the Complaint MERC states that "a public utility may not discount rates in competition with another natural gas public utility." The Department agrees with this statement but in this case, United Properties is not taking service under a flexible rate; they will pay the same tariffed customer charge, energy charge and any other tariffed rate as any other customer taking service under Xcel's Large Demand Billed Service tariff, which is not a flexible-rate tariff.

Also on pages 15 and 16, MERC provides a lengthy legal discussion that concludes with the statement: "Each of these statutes prohibits Xcel's discounted rates in its Competitive

[14] Complaint at p. 14.

Agreements, which have neither been reviewed by the Commission nor which are available to other customers." As noted previously, the Department does not believe that Xcel's use of promotional incentives results in discounted rates, since United Properties is paying the same tariffed rates as any other customers taking service under the Large Demand Billed Service tariff; moreover, the Competitive Agreement approved by the Commission authorizes Xcel Gas to provide shareholder funds to customers like United Properties. The use of an incentive may lead to a lower cost for natural gas service from Xcel for the customer, but it does not result in change in Xcel's tariffed rates.

On pages 16 and 17 of the Complaint, MERC states: "A natural gas public utility may not discriminate among similarly situated customers." MERC cites four different Minnesota statutes to support its assertion that: "Through the Competitive Agreement, Xcel discounts its tariff rates for a new customer . . .. The discount is not available to other customers." The Department addresses each of the four statutes MERC cited.

Minn. Stat. § 216B.03 states:

> Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable. Rates shall not be unreasonably preferential, unreasonably prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to a class of consumers. . . .

As noted previously, Xcel's use a promotional incentive does not affect the rates it charges to its customers under the tariffed rates. Moreover, the incentive funded by shareholders is also under an authorized agreement. Thus, this statutory reference is not applicable in this instance.

Minn. Stat. § 216B.05, subd. 1 states:

> Every public utility shall file with the commission schedules showing all rates, tolls, tariffs, and charges which it has established and which are in force at the time for any service performed by it within the state, or for any service in connection therewith or performed by any public utility controlled or operated by it.

Similar to the previous citation, the Department notes that Xcel's use of a promotional incentive does not affect the tariffed rates it charges to customers who receive an incentive under the authorized Competitive Agreement on file with the Commission. Further, Xcel is

required to file as public documents competitive service agreements upon execution so this information is public.[15]

Thus, this statutory reference is not applicable in this instance.

Minn. Stat. § 216B.06 states:

> No public utility shall directly or indirectly, by any device whatsoever, or in any manner, charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered by the utility than that prescribed in the schedules of rates of the public utility applicable thereto when filed in the manner provided in Laws 1974, chapter 429, nor shall any person knowingly receive or accept any service from a public utility for a compensation greater or less than that prescribed in the schedules, provided that all rates being charged and collected by a public utility upon January 1, 1975, may be continued until schedules are filed.

As noted above, the use of a promotional incentive does not affect the rates a customer receiving the incentive pays for service rendered by the utility. Thus, this statutory reference is not applicable in this instance.

Minn. Stat. § 216B.07 states:

> No public utility shall, as to rates or service, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage.

As discussed above, United Properties will not pay a preferential rate or rates. United Properties will pay Xcel's tariffed rates for Large Demand Billed Service and receive service consistent with those rates. Moreover, the Competitive Agreement Xcel executed with United Properties that allows for the payment of promotional incentives by Xcel from shareholder funds was approved by the Commission.

On pages 17 and 18 of the Complaint, MERC asserts that "Xcel's discounted rates under its Competitive Agreement are arbitrary and contrary to Minnesota law."

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[15] *Complaint against Northern States Power Company,* Docket No. G011, 002/C-17-305, ORDER DISMISSING COMPLAINT AND OPENING at 8 (July 12, 2017).

MERC then references Minn. Stat. § 216B.163 which is commonly referred to as the "flexible rate tariff". MERC notes that this type of tariff requires Commission prior approval within a range of fees determined by the Commission to be just and reasonable. MERC then states that since Xcel's Competitive Agreement doesn't require Commission prior approval of the amount of the promotional incentive, the process associated with the Competitive Agreement is arbitrary and discriminatory.

The Department notes that the flexible rate tariff MERC references essentially provides a range of potential flexible rates within a natural gas distribution utility's tariff to allow it to compete with unregulated providers. Given that the Commission must approve every rate included in a company's tariff, this approach provides a natural gas utility with some flexibility when it is confronted by an unregulated provider (*e.g.*, an interstate pipeline.) Xcel's Large Firm Transportation Service tariff allows Xcel an option within that tariff with similar flexibility, but the Commission requires Xcel to file the competitive service agreements on execution. Unlike flexible rates, the promotional incentive Xcel provides in the Competitive Agreement is not recovered from other ratepayers. It consists solely of shareholder funds. As a result, MERC's discussion is incorrect in that Xcel's use of the Competitive Agreement doesn't allow Xcel to discount its rates and the funds used to provide the promotional incentives identified in the Competitive Agreement are not recovered from ratepayers.

On page 19, MERC broaches the topic of how "the use of discounted rates is contrary to the Commission-approved Customer Extension Models." The issue related to Xcel discounting its rates has been addressed repeatedly in this document. There is no need to revisit that question.

The effect of the promotional incentive on the calculation of the Contribution in Aid to Construction (CIAC) that a customer might be required to pay is similar to that for tariffed rates, but not identical. Xcel calculates a CIAC for a customer receiving a promotional incentive consistent with its customer extension model. The incentive can be used to offset some or all of the CIAC if one is required. The Department doesn't view this approach as problematic. From a ratepayer perspective, the customer receiving the incentive is not requiring other customers to pay for the appropriately calculated CIAC. Whether the customer or Xcel's shareholders are responsible for any funds needed to pay the CIAC is not a concern. The key point is that the calculation is made correctly and that the remaining ratepayers are not responsible for subsidizing the cost of adding the customer that receives the incentive.

Moreover, MERC apparently objects to the fact that Minnesota does not have assigned service territories and hence utilities do not have a predetermined right to serve customers. On page 17 of its Complaint MERC stated: "Xcel's offering of a discount to United in order to take

United away from MERC constitutes an unlawful preference under Minnesota law." (Emphasis added). Also on page 17, MERC stated: "Xcel's Competitive Agreement is unlawful precisely because it allows Xcel to provide any discount it chooses, regardless of the impact to competition or competitors (and their customers)" (Emphasis added). On page 18, MERC stated, "Xcel can do whatever it wants to take a customer away from another natural gas public utility". (Emphasis added).

MERC's statements appear to reflect objections with the provisions in Minnesota statutes. In fact, a new customer is *not* the property of the incumbent natural gas utility that has historically served the area. Instead, natural gas utilities compete for new customers by understanding the needs of the new customer and offering the best terms within their tariffs; generally, the new customer is allowed to choose which natural gas utility would serve them.

C. IF THE COMMISSION CHOOSES TO INVESTIGATE THE COMPLAINT, WHAT PROCEDURES SHOULD BE USED TO DO SO?

In its Comments in Docket No. G999/CI-17-499 filed on November 30, 2017 the Department proposed a construct for a cost benefit analysis that could be used in Complaints of this nature. The Department proposed that cost/benefit analysis should analyze the financial effects of the proposal from five different perspectives:

- The new customer/load that will be served;
- The preferred utility's shareholders;
- The non-preferred utility's shareholders;
- The preferred utility's ratepayers, and
- The non-preferred utility's ratepayers.

If the Commission decides to pursue this issue further, the Department would complete a similar analysis in this proceeding as quickly as is feasible and file it with the Commission in a subsequent set of comments.

D. ARE THERE OTHER ISSUES OR CONCERNS RELATED TO THIS MATTER?

The Department is not aware of other issues that would need to be decided at this time, but would expect to respond to any policy issues addressed in this Complaint in subsequent comments as needed.

V. DEPARTMENT RECOMMENDATIONS

The Department's analysis concludes that Xcel's Competitive Agreement is not unlawful. Specifically,

- United Properties would pay the same tariffed rates as any other customer receiving service under the Large Demand Billed tariff;
- Xcel's Natural Gas Competitive Agreement was approved by the Commission; and,
- Xcel filed as public information the Competitive Agreement with United Properties consistent with the Commission's requirements in its Order in Docket No. G011, G002/C-17-305.

The Department also concludes that:

- the Competitive Agreement does not provide Xcel with an unlawful mechanism to discount its tariffed rates in competition with other natural gas utilities;
- The Commission could determine there are reasonable grounds to initiate an investigation if it wants to include a complaint-specific cost/benefit analysis as part of review; and
- A contested case hearing is unnecessary.

/lt

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson	Chair
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner
Don Storm	Commissioner

In the Matter of the Complaint of Great Plains Natural Gas Company Against Peoples Natural Gas Company and UtiliCorp United, Inc.	ISSUE DATE: December 20, 1991 DOCKET NO. G-004, 011/C-91-731 ORDER DISMISSING COMPLAINT

PROCEDURAL HISTORY

I. Proceedings to Date

On October 1, 1991 Great Plains Natural Gas Company (Great Plains) filed a complaint against Peoples Natural Gas Company (Peoples) and its parent company, UtiliCorp United, Inc. The Complaint alleged that Peoples had entered into a contract with a Great Plains customer, Minnesota Corn Processors, to build a natural gas pipeline to provide the customer with sales and transportation service.

The Complaint claimed the contract violated Minnesota law as follows: 1. it violated the flexible rates statute, Minn. Stat. § 216B.163 (1990), by using flexible rates to compete against another regulated utility; 2. it violated Peoples' own tariffs by failing to require a contribution in aid of construction; 3. it granted the customer an unreasonable rate preference or advantage in violation of Minn. Stat. §§ 216B.03 and .07 (1990); 4. it violated the flexible rates statute, Minn. Stat. § 216B.163 (1990), by offering flexible rates which do not cover the incremental costs of providing the service; 5. it violated the statutory requirement that utilities file plans for "major utility facilities" in advance of construction, Minn. Stat. § 216B.24 (1990).

On October 4, 1991 the Commission issued a notice soliciting comments on the Complaint. On October 18, 1991 Peoples filed an answer and memorandum. Peoples admitted entering into the contract and denied the contract violated any applicable law. Peoples asked the Commission to dismiss the Complaint without further proceedings.

On October 31, 1991 Great Plains filed reply comments. On the same date, the Department of Public Service (the Department) filed its report and recommendation. The Department recommended prohibiting Peoples from performing under the contract because the contract did not ensure recovery of the incremental costs of providing service and because it was not clear that contract rates were set to compete with the price of unregulated, as opposed to regulated, fuels.

To meet the Department's concerns, the parties amended the contract to provide that Peoples would not serve the Company's existing load. Also, Peoples warranted that it would remove the pipeline from rate base if it were abandoned before its costs had been recovered. The Department then recommended allowing performance by Peoples and dismissing the Complaint.

The matter came before the Commission on November 7, 1991.

FINDINGS AND CONCLUSIONS

II. Factual Background

Minnesota Corn Processors (MCP) in Marshall, Minnesota is a long time customer of Great Plains. It uses natural gas for heating only; its manufacturing operations are powered by coal. In late 1989 MCP initiated discussions with Great Plains about converting its manufacturing operations to natural gas and contracting for the provision of transportation service through a pipeline to be constructed and operated by Great Plains.

After extensive negotiations, Great Plains offered to build the pipeline and provide service under its interruptible flexible transportation tariff. Under the terms of the contract MCP would be required to maintain its alternate fuel capacity, would promise to take at least 3 million Mcf over the course of the next four years, would pay $0.17 per Mcf delivered during the first year, could negotiate a different rate under the flexible tariff in subsequent years, and would not be required to contribute to the cost of constructing the pipeline.

MCP entered into similar negotiations with Peoples. As a result of those negotiations, MCP and Peoples signed a contract under which Peoples agreed to serve the Company under its interruptible flexible transportation tariff. Under the terms of that contract MCP promised to take at least 5 million Mcf over the course of the next five years and was required to use natural gas for manufacturing for the next six years unless the cost of using coal fell below 85% of the cost of using gas. The contract price was Peoples' standard interruptible transportation rate of

$0.0829 per Mcf (plus monthly customer and transport charges), until such time as MCP qualified for lower rates under Peoples' flexible tariff. The contract did not require the company to contribute to the cost of constructing the pipeline.

After reviewing the Department's comments, Peoples and MCP amended the contract to exclude the heating load currently served by Great Plains. Peoples also assumed the risk of default by MCP by agreeing to remove the pipeline from rate base if it should be abandoned before construction costs had been recovered.

III. Commission Action

The parties state there are no disputed issues of material fact in this case and contested case proceedings are not required. The Commission agrees.[1] The issues before the Commission are whether Peoples has violated the flexible rates statute by using flexible rates to compete with another regulated utility and whether Peoples has violated Minn. Stat. § 216B.24 (1990) by failing to file its plans to build the pipeline at an earlier date. These issues will be considered in turn.

A. The Contract Does Not Violate the Flexible Rates Statute

Great Plains emphasizes that the flexible rates statute, Minn. Stat. § 216B.163 (1990), was intended to allow gas utilities to retain large customers who might otherwise convert to cheaper unregulated fuels. The statute allows the utility to offer competitive rates to these customers, as long as the rates offered cover the incremental costs of providing service. The rationale is that keeping these customers on the system, making some contribution to its fixed costs, is better for captive customers than losing their contribution entirely. The Commission agrees with Great Plains that this is the basic purpose of the statute.

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[1] The parties believe Peoples' agreement to remove the pipeline from rate base if it is abandoned before its costs are recovered ends the need to examine the three claims of the Complaint resting on the allegation that contract rates do not ensure recovery of incremental costs, since that allegation rested solely on projections of the costs of constructing the pipeline. The Commission notes that a utility's willingness to make up the difference between incremental costs and flexible rates does not legitimize rates below incremental costs. In this case, however, the likelihood that rates would fail to cover incremental costs was so low and depended on contingencies so unlikely that it is reasonable to accept Peoples' guarantee in lieu of further development of the incremental cost issue.

Great Plains then argues that allowing Peoples to serve Minnesota Corn Processors at flexible rates would violate the purpose of the statute by allowing one regulated utility to use flexible rates to compete for the customer of another. The Commission disagrees.

First, this is not a case in which one utility is using flexible rates to take away the load of another utility. The new load Peoples wants to serve does not yet exist. It will exist only if MCP follows through with its plans to convert its manufacturing operations from coal to natural gas. Great Plains will continue to serve MCP's existing load (office heating) whether or not the conversion occurs. Great Plains is not losing an existing load to another utility. That would raise more serious statutory issues, since the purpose of the flexible rates statute is to prevent the loss of large loads already on the system and the threat those losses pose to the rates of captive customers.

Second, it is not clear that flexible rates were the decisive factor in MCP's decision to contract with Peoples. Peoples' standard rate is lower than Great Plains' flexed rate offer ($.0829 as opposed to $.14 per Mcf). It would be cheaper for MCP to take service from Peoples at the standard rate than from Great Plains at the flexible rate. MCP has agreed to take service at the standard rate initially and whenever it does not qualify for the flexible rate. Conceivably, MCP could take service at the standard rate for the entire length of the contract. In that case, there would be no issue under the flexible rates statute. Presumably, there would be no issue at all, since gas utilities do not have exclusive service territories and generally can serve any new load their distribution facilities can reach. Furthermore, once Peoples begins serving MCP at the standard rate, MCP is properly a customer of Peoples, eligible for service at flexible rates if it demonstrates its eligibility under the statute and the Commission-approved flexible rate tariff.

Finally, once it has been determined that Peoples' contract with MCP does not violate the flexible rates statute, the complaint rests entirely on the contention that Great Plains has an exclusive right to serve this load. This contention has no basis in law or policy. Minnesota does not have assigned service areas for gas utilities. It does have assigned service areas for electric utilities, which suggests that the Legislature intentionally treated the two types of utilities differently. Peoples, then, is free to serve this new load, in the absence of special circumstances, such as unnecessary duplication of facilities or harm to existing ratepayers, requiring Commission intervention. The Commission sees no special circumstances here and will not interfere with Peoples' decision to serve.

B. Peoples' Failure to Make an Earlier Filing under Minn. Stat. § 216B.24 (1990) Does Not Prohibit Performance Under the Contract

Great Plains also alleged that Peoples should have filed its plans to build the pipeline to MCP under Minn. Stat. § 216B.24 (1990) as soon as it committed to build it, instead of waiting until Great Plains raised the issue in its Complaint. The statute does not set a deadline for making the filings it requires.

The Commission agrees with the Department that it is unclear that the pipeline is a "major utility facility" within the meaning of the statute. It is not necessary to resolve that issue today, however, since the filings in this case give the Commission adequate notice of Peoples' intention to build the pipeline. The Commission sees no need for more detailed inquiry into Peoples' construction plans and no need to take action on the timing of Peoples' filing.

IV. Conclusion

The Commission concludes that the contract between Peoples and Minnesota Corn Processors does not violate the flexible rates statute or any other statutory provision. The Commission finds that Peoples' filings in this case satisfy any requirement under Minn. Stat. § 216B.24 (1990) that it file notice of its intention to build the pipeline. The Commission will dismiss Great Plains' Complaint against Peoples.

ORDER

1. The Complaint filed on October 1, 1991 by Great Plains Natural Gas Company against Peoples Natural Gas Company is dismissed.

2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)

STATE OF MINNESOTA)
)SS
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

I M. Margaret Diedrich, being first duly sworn, deposes and says:

That on the 20th, day of December, 1991 (s)he served the attached

Order Dismissing Complaint, Docket No. G-004, 011/C-91-731

XX By depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid

XX By personal service

XX By inter-office mail

to all persons at the addresses indicated below or on the attached list:

Commissioners
Margie Hendriksen
Carol Casebolt
Peter Brown
Ginny Zeller
Dan Lipshultz
Karen Sletten
Janet Gonzalez
Jean Dawson
Reference Library
Stuart Mitchell
Bob Harding

M Margaret Diedrich

Subscribed and sworn to before me,

a notary public, this 23rd day of

December, 1991.

Sharon L. Juen
Notary Public

SHARON L. JUEN
NOTARY PUBLIC—MINNESOTA
WASHINGTON COUNTY
My Comm. Expires May 21, 1997

IN THE MATTER OF THE COMPLAINT OF
GREAT PLAINS NATURAL GAS COMPANY
AGAINST PEOPLES NATURAL GAS AND
UTILICORP UNITED, INC.
DOCKET NO. G-004,011/C-91-731
12-11-91 KK

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EXECUTIVE SECRETARY (14)
MN PUBLIC UTILITIES COMMISSION
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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs	Chair
Marshall Johnson	Commissioner
Dee Knaak	Commissioner
Mac McCollar	Commissioner
Don Storm	Commissioner

In the Matter of a Complaint of Peoples Natural Gas against Northern States Power Company regarding the Construction of Distribution Facilities

ISSUE DATE: October 21, 1996

DOCKET NO. G-011/C-96-1062

ORDER DISMISSING COMPLAINT

PROCEDURAL HISTORY

On September 11, 1996, Peoples Natural Gas Company (Peoples) filed a complaint against Northern States Power Company Gas Utility (NSP). Peoples alleged that NSP had violated the letter, spirit, and intent of Minn. Stat. § 216B.01, the basic statute establishing regulation of gas and electric utility service in Minnesota. Peoples objected to NSP's constructing facilities to serve customers in two areas which Peoples stands willing and able to serve. Peoples asked the Commission to open an investigation of the service dispute.

On September 19, 1996, Peoples filed a Motion to Expedite Consideration of the Complaint and Request for an Interim Cease and Desist Order. Peoples asked the Commission to issue a cease and desist order to preclude NSP from further construction in the subject areas until an investigation is completed and the complaint is resolved.

On October 2, 1996, NSP filed an answer.

On October 3, 1996, the matter came before the Commission for consideration.

FINDINGS AND CONCLUSIONS

I. FACTUAL BACKGROUND

Peoples raised issues regarding service to two areas currently being developed, the Eagandale Corporate Center and the Casselberry Ponds residential subdivision.

A. The Eagandale Corporate Center

The City of Eagan, Dakota County, Minnesota has issued natural gas service franchises to both Peoples and NSP.

The developers of the new Eagandale Corporate Center, now under construction in the City of Eagan, have asked NSP to serve the Center. The Eagandale Center is contiguous to an area currently served by Peoples; it is not contiguous to any area currently served by NSP. NSP has applied to Dakota County for a permit to install a gas main to serve the Center. If the application is granted, NSP will locate the gas main within the County right-of-way.

B. Casselberry Ponds

The City of North Branch, Minnesota has issued franchises to provide natural gas service to both Peoples and NSP.

In May, 1996, the developer of Casselberry Ponds, a subdivision of approximately 150 homes located in North Branch, asked NSP to serve the new development. Casselberry Ponds is contiguous to gas facilities already installed by Peoples; the development is not contiguous to any area served by NSP.

In August, 1996, the City of North Branch granted NSP a construction permit to build the necessary gas main to serve Casselberry Ponds. Since that time, NSP has completed construction of the new facilities with the exception of individual service lines to houses which are still under construction.

II. POSITIONS OF THE PARTIES

A. Peoples

Peoples charged that NSP's actions violated the spirit and intent of Minn. Stat. § 216B.01, which provides in part:

> It is hereby declared to be in the public interest that public utilities be regulated as hereinafter provided in order to provide the retail consumers of natural gas and electric service in this state with adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of public utilities and their need to construct facilities to provide such services or to otherwise obtain energy supplies, to avoid unnecessary duplication of facilities which increase the cost of service to the consumer and to minimize disputes between public utilities which may result in inconvenience or diminished efficiency in service to the consumers...

Peoples argued that NSP unnecessarily duplicated facilities in the two subject areas, because Peoples had stood ready and willing to serve before NSP built to serve (in the case of Casselberry) or sought authority to build (in the case of the Eagandale Center). According to Peoples, the potential of both economic and physical harm flowed from NSP's actions.

Peoples argued that retail users would pay higher rates than necessary due to NSP's duplicative facilities. NSP's actions would deny consumers gas service at the best and least cost. The harm was especially unjust because the choice of providers was being made by the developers, not by the retail users.

Peoples also argued that NSP's actions would create the potential for safety hazards, since gas main might be laid in proximity to existing pipe.

Peoples further objected to NSP's actions because they would tend to escalate disputes between public utilities, contrary to the intent of Minn. Stat. § 216B.01.

Peoples argued that immediate and irreparable harm would ensue if NSP continued constructing facilities to serve Casselberry Ponds and the Eagandale Corporate Center. For this reason, the Commission should order NSP to cease and desist construction and service to the new areas until an investigation is completed and Peoples' complaint is resolved.

B. NSP

NSP countered that the statutes governing the provision of gas service in Minnesota do not create the concept of gas utility service areas. Because gas utilities do not hold exclusive territorial rights, NSP has the right under law to build to serve the two areas.

NSP argued that the Commission need not address safety issues raised by Peoples. The state Office of Pipeline Safety oversees standards for gas pipeline construction and maintenance. The cities and counties in which the facilities will be located will decide if they should grant licenses for NSP to build the gas facilities.

According to NSP, it is also unnecessary for the Commission to reach the economic issues raised by Peoples. NSP has been asked to serve in the new areas and will charge its customers the standard tariffed rates for gas service. NSP assumes the risk of nonrecovery in rates if the Commission decides in a future rate proceeding that the decision to build was imprudent.

For these reasons, NSP argued, no irreparable harm will result from building the facilities, and a cease and desist order is not warranted. NSP has already built into the Casselberry Ponds development; more harm would actually result from requiring NSP to tear up existing facilities than from allowing NSP to serve. Because NSP has not yet received a construction permit to build facilities to the Eagandale Center, the Commission need not preclude the utility from providing service there.

C. The Department of Public Service (the Department)

Although the Department agreed with NSP that there is no legal impediment to NSP's piping to serve the two areas, the Department supported Peoples' request for an investigation. The Department believed that Peoples had raised questions regarding safety which should be explored. The Department also wished to investigate the economics of NSP's decision to pipe the two new areas at this time. Although the prudence of pipeline construction is usually the subject of rate case investigation, the Department noted that issues can be overlooked or underinvestigated in the press of a rate case proceeding.

III. COMMISSION ACTION

A. Introduction

Peoples has brought a complaint proceeding, the merits of which must be addressed before the Commission turns to Peoples' motion for a cease and desist Order. The Commission will therefore analyze the allegations of the complaint.

All parties agree that Minnesota statues do not establish exclusive service territories for gas utilities. Peoples therefore bases its complaint on Minn. Stat. § 216B.01, which establishes as one goal of utility regulation the avoidance of unnecessary duplication of facilities. Peoples charges that NSP's decision to build to serve the two subject areas, which are currently contiguous to Peoples' existing facilities, has resulted in the unnecessary duplication of facilities. Peoples urges the Commission to find that this service duplication necessitates investigation of serious issues of safety and economics.

The Commission disagrees. After carefully considering the parties' written and oral comments, the Commission finds that Peoples has raised no issue which warrants further investigation. The Commission will analyze Peoples' charges regarding safety and economics in turn.

B. Safety Issues

The Minnesota Office of Pipeline Safety (OPS) sets standards for construction of gas pipelines in Minnesota. The OPS has overseen the development and implementation of NSP's pipeline construction procedures. The OPS has inspected and approved NSP's construction of gas main into the Casselberry Addition.[1]

In addition, city and county engineers analyze applications to construct pipeline in city and county rights-of-way. The Casselberry construction has already received engineering approval

[1] Construction of main into the Eagandale Corporate Center has not begun.

and a construction permit. The Eagandale Center application is currently being analyzed by county engineers before a recommendation is made to the Dakota County Board.

Any safety issues relevant to gas service to the Casselberry addition and the Eagandale Center have been addressed by the appropriate bodies. The Commission finds that Peoples has not raised any issue of safety which warrants further investigation in these proceedings.

C. Economic Issues

The Commission has previously addressed economic questions implicit in duplicative gas service. In 1991, the Commission initiated a study group to examine these issues.

On March 31, 1995, the Commission issued an Order[2] summarizing the conclusions of the study group and terminating the investigation. The Order stated that there were both economic advantages and drawbacks to the provision of gas service by multiple providers. The Commission noted that Minnesota statutes do not establish exclusive gas service areas or require that gas utilities get certificates of authority before piping into a new area, even one already served by another utility. The Commission concluded that any situation regarding multiple gas utility providers could be analyzed in rate case proceedings, on a case by case basis.

> No ultimate judgment on this subject is required. First, while recognizing the negative potential cited above, the fact remains that there is no statutory prohibition against competition by two or more gas providers in the same territory. Moreover, it appears that the Commission has the capacity to balance the interests of the utilities, competed-for customers, and current customers on a case by case basis.
>
> Order at p. 5.

The Commission sees no reason to change its policy developed in the generic investigation--the proper place to analyze the economic consequences of redundant piping is in a rate case proceeding. In a rate case proceeding, the Commission can examine the prudence of utility construction to determine if costs may be placed into rate base. The Commission can also determine if rates resulting from the service addition are just and reasonable. While the Commission sympathizes with the Department's desire to limit the extent of a rate case investigation, in this case there is no substitute for the full context of a rase case proceeding.

The Commission therefore finds that Peoples has not raised any economic issue which warrants further investigation at this time.

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[2] In the Matter of an Inquiry into Competition between Gas Utilities in Minnesota, Docket No. G-999/CI-90-563, ORDER TERMINATING INVESTIGATION AND CLOSING DOCKET.

D. Conclusion

Minnesota statutes do not block NSP from providing service to the Casselberry addition or Eagandale Center. Peoples' has failed in its attempt to invoke Minn. Stat. § 216B.01 to preclude NSP from constructing facilities. Peoples has not raised an issue which sustains its complaint or warrants Commission investigation or resolution at this time.

The Commission will therefore dismiss Peoples' complaint. Since the Commission has made no finding of imminent or irreparable harm, the Commission will not issue a cease and desist Order. Peoples' motion to expedite proceedings and request an interim cease and desist Order is denied.

ORDER

1. The Commission dismisses Peoples' complaint.

2. The Commission denies Peoples' Motion to Expedite Consideration of the Complaint and Request for an Interim Cease and Desist Order.

3. Docket No. G-011/C-96-1062 is closed.

4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (612) 297-4596 (voice), (612) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).

IN THE MATTER OF PEOPLES NATURAL GAS COMPANY COMPLAINT AGAINST NORTHERN STATES POWER COMPANY

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STATE OF MINNESOTA)
)SS
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

I, Mary Swoboda, being first duly sworn, deposes and says:

That on the 21st day of October, 1996 she served the attached

ORDER DISMISSING COMPLAINT.

MNPUC Docket Number: G-011/C-96-1062

XX By depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid

XX By personal service

XX By inter-office mail

to all persons at the addresses indicated below or on the attached list:

Commissioners
Carol Casebolt
Peter Brown
Ginny Zeller
Dan Lipschultz
Margie Hendriksen
Janet Gonzalez
Jerry Dasinger
Bob Harding
Al Bierbaum
Karen Sletten
Jean Dawson
Legislative Reference Library
Kathy Brengman - DPS
Dennis Ahlers - OAG

Mary Swoboda

Subscribed and sworn to before me,

a notary public, this 22nd day of

October, 1996.

Janet E. Hoffman

Notary Public

JANET E. HOFFMAN
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Jan. 31, 2000

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Joel Jacobs	Commissioner
Marshall Johnson	Commissioner
Dee Knaak	Commissioner

In the Matter of an Inquiry into Competition Between Gas Utilities in Minnesota

ISSUE DATE: March 31, 1995

DOCKET NO. G-999/CI-90-563

ORDER TERMINATING INVESTIGATION AND CLOSING DOCKET

PROCEDURAL HISTORY

On June 28, 1990, the Commission issued its ORDER ASSERTING JURISDICTION AND ESTABLISHING COMMENT PERIOD In the Matter of the Joint Venture between Rahr Malting and Western Gas Utilities to Construct a Seven-Mile Gas Pipeline in Scott County, Minnesota, Docket No. G-012/DI-90-227 (the Rahr Malting docket). That docket concerned, among other things, competition between Minnegasco and Western Gas Utilities, Inc. (Western) for the same customers in Scott County, Minnesota. In its June 28 Order, the Commission sought input regarding the issue of two gas utilities competing for customers in the same area. All regulated gas utilities in Minnesota were asked to submit comments on the following two questions:

1. Will the "race" between Minnegasco and Western to capture new customers lead to a wasteful duplication of facilities? If so, does the Commission have the authority to prevent it?

2. Are the inducements currently offered by Minnegasco and Western to potential customers prohibited by their extension policies as approved by the Commission? If not, should the Commission attempt to impose stricter, more consistent policies on all regulated gas utilities?

All regulated gas utilities were also required under the June 28 Order to submit their current service extension tariffs and a description of their current service extension policies.

The eight rate regulated gas utilities in Minnesota[1] submitted tariffs in response to the Commission's Order. All the utilities except Great Plains and Interstate submitted responsive comments.

On August 6, 1990, the Commission issued its ORDER APPROVING OWNERSHIP AND CAPACITY LEASE AGREEMENTS AND REQUIRING FILINGS in the Rahr Malting docket. In that Order, the Commission established the docket herein to address the general subject of competition among gas utilities.

On April 1, 1991, the Commission issued its ORDER CONCLUDING INVESTIGATION In the Matter of Midwest Gas Service Extension Complaints, Docket No. G-010/CI-90-148. In that Order the Commission deferred consideration of issues related to gas service extension to the current docket, G-999/CI-90-563. Complainants had raised concerns regarding the "levelization" of gas hookup charges between residential customers with small lots and those with large lots. The Commission felt that concerns regarding possible subsidization of large lot homeowners by small lot homeowners would be best addressed in the present generic investigation of competition among gas utilities.

On June 4, 1991, the Commission issued its ORDER INITIATING STUDY GROUP in this docket. The Commission found that a number of important policy issues had been raised in this matter and created a study group to look at those issues. Those issues were:

1. Is "levelization" or equal sharing of the costs of gas service extension for all new customers, whether with large lots or small, unfair to customers with smaller lots?

2. Is open competition between local distribution companies of benefit or a detriment to consumers?

3. Should the Commission encourage the use of natural gas fuel by facilitating the piping of more towns and allowing the companies to use incentives for new customers?

4. Does duplication of facilities by competing gas utilities result in economic waste or safety hazards?

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[1] At the time, there were eight: Minnegasco, Western, Great Plains Natural Gas Company (Great Plains), Interstate Power Company (Interstate), Midwest Gas Company (Midwest), Northern Minnesota Utilities (NMU), Northern States Power Company (NSP), and Peoples Natural Gas Company (Peoples). With the purchase and absorption of Midwest by Minnegasco, there are now seven.

5. Should there be a uniform service extension tariff and policy?

The study group met several times in 1991. All Minnesota local distribution companies (LDCs) and relevant state agencies were invited to attend these meetings. Various other interested parties were involved in the study group as either participants or invited speakers. In addition, all of the LDCs responded to a survey that asked about the areas in which they provide service and that are served by at least one other utility.

On February 24, 1995, Commission Staff served its Report on the Inquiry into Competition Between Gas Utilities on all parties to this proceeding, recommending that the docket be closed.

On March 23, 1995, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

The question before the Commission at this time is whether this docket should be continued or closed. The Commission finds that this investigation should be terminated and the docket closed. The analysis supporting this conclusion examines the issues raised in the docket under three categories:

1) service to areas not currently served,

2) Commission response to multiple service providers in an area, and

3) review of LDC service extension contracts.

A. SERVICE TO AREAS NOT CURRENTLY SERVED

A brief summary of the developments in this area subsequent to formation of the work group is in order:

The study group explored how to extend gas service to communities that request gas service but cannot be served economically at tariffed rates. In response to this question, three LDCs in 1991 proposed a surcharge mechanism to cover the cost of extending service to new communities.

The Commission was encouraged by these attempts to respond to this problem but found it necessary to reject the three filings.[2] Instead, the Commission directed the Department and Commission Staff to conduct a study and file a report identifying the policy issues involved in establishing an appropriate regulatory framework for the provision of natural gas service in areas where service is not currently provided because it is not economically justified under currently tariffed rates.

On March 12, 1992, the Department and Commission Staff submitted their Report on Issues for New-area Rates. The report covered financial issues, rate design and various compliance and reporting issues concerning these new rates.

Subsequently, the Commission has received, reviewed and approved new area rates proposals from Northern Minnesota Utilities (NMU), Northern States Power, and Midwest Gas (now Minnegasco).[3] An additional new area rates proposal by Minnegasco is pending: Docket No. G-008/M-94-1075.

In view of these developments, the Commission finds that the question of how to encourage natural gas service to new areas has been adequately addressed.

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[2] See the Commission's March 10, 1991 ORDER REJECTING PROPOSED TARIFFS AND REQUIRING REPORTS in three joined matters:
In the Matter of a Request by Peoples Natural Gas for Approval of a New Town Least Cost Energy Rate, Docket No. G-011/M-91-296; In the Matter of a Request by Northern Minnesota Utilities for Approval of a New Town Rate, Docket No. G-007/M-91-460; and In the Matter of a Request by Minnegasco for Approval of a New Area Surcharge, Docket No. G-008/M-91-575.

[3] In the Matter of a Request by Northern Minnesota Utilities for Approval of a New Town Rate, Docket No. G-007/M-92-212, ORDER APPROVING TARIFF WITH MODIFICATIONS AND REQUIRING FURTHER FILING (May 6, 1992); In the Matter of a Request by Midwest Gas Company for Approval of a New Town Rate Surcharge and a Request for Variance, Docket No. G-010/M-92-785, ORDER APPROVING TARIFF WITH MODIFICATIONS AND REQUIRING FURTHER FILINGS (November 10, 1992); and In the Matter of a Request from
Northern States Power Gas Utility for a
Miscellaneous Rate Change to Establish a New Area Surcharge, Docket No. G-002/M-94-156, ORDER APPROVING AND MODIFYING NEW AREA SURCHARGE TARIFF (May 13, 1994).

B. SERVICE IN AN AREA BY MORE THAN ONE PROVIDER

Minnesota statutes have not established exclusive gas service areas nor required that gas utilities get certificates of authority from the Commission before extending service to any new area, whether that area is already served by another gas utility or not. Service to an area by more than one provider has occurred in approximately a dozen different places in Minnesota.

Sometimes, in a race to hook up new customers, LDCs drop the excess footage charges or offer to convert a customer's furnace and appliances to natural gas free of charge. On the surface it would appear that there might be wasteful duplication of service and higher per customer costs since there is duplication of large lateral mains running to the area and of regular mains when more than one utility is on the same street.

In addition, competitive situations can tempt utilities to "waive" certain tariffed charges for new customers to the detriment of their current customers. If an LDC, in a race to capture market share and expand its business, neglects to charge for service extensions that the tariffs indicate the LDC should be charging for, then the LDC's other customers wind up paying for the LDC's gain in market share because the excess facilities get put into rate base.[4]

On the other hand, it appears that allowing this level of competition may help promote wider access to natural gas, which is a substantially less expensive fuel than other fuel options such as propane and heating oil. In this light, providing access to natural gas for a greater number of people and, hence, reducing these customers' heating costs may, on balance, outweigh the concern that the competition may result in provision of service somewhat above the lowest possible cost.

No ultimate judgment on this subject is required. First, while recognizing the negative potential cited above, the fact remains that there is no statutory prohibition against competition by two or more gas providers in the same territory. Moreover, it appears that the Commission has the capacity to balance the interests of the utilities, competed-for customers, and current customers on a case by case basis.

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[4] See In the Matter of the Petition of Midwest Gas to Change its Rates for Service Installations and Residential Gas Main Extensions, Docket No. G-010/M-89-374, ORDER APPROVING TARIFF CHANGES AS MODIFIED (August 30, 1989).

C. NEW CUSTOMERS' RIGHTS TO FAIR SERVICE EXTENSION POLICIES AND TARIFFS

Minnesota LDCs provide service to new customers under individual company service extension tariffs. The purpose of a tariffed service extension policy is to ensure that all new customers receive the same treatment. These tariffs specify what length and size of main and service line extension each new customer is entitled to receive without charge and how much they will have to pay for extensions that exceed the free footage allowance.

On the basis of its work in this docket, the Commission finds that its approach to designing LDC service extension rates and policies is reasonable. The Commission's method provides a balance between the two main approaches to service extension rate design.[5]

At the same time, the Commission clarifies that this docket has not reviewed each LDC's service extension policies and tariffs for consistency in terms of service, the fairness of refund provisions, and the inclusion of a customer financing option. The Commission believes that such reviews would be beneficial and will require them in future rate cases. In addition to such reviews, the Commission's Consumer Affairs Office will continue to handle any individual consumer complaints as appropriate.

With respect to the reviews to be conducted in future rate cases, the Commission would like the Department and the parties to address the following kinds of questions:

- Should the "free" footage or service extension allowance include the majority of all new extensions with only the extremely long extensions requiring a customer contribution-in-aid-of-construction (CIAC)?

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[5] The two main theoretical approaches are 1) the rolled-in-rates approach which allows LDCs to extend service to new customers without charge and 2) the incremental-rates approach which requires all new customers to pay their own way, i.e. the full cost of their service extensions, at the time they connect to the LDC's system. The method used by Minnesota LDCs is a compromise between these two opposing approaches.

The Minnesota approach recognizes that residents benefit from having access to natural gas service and Minnesota LDCs benefit from being able to provide that service. In addition, the LDC's policies try to balance the interests of existing customers with new customers so that both groups are able to receive reasonably priced service. Consideration is also usually given to making service extension polices as simple as possible for customers to understand and for utilities to administer.

- How should the LDC determine the economic feasibility of service extension projects and whether the excess footage charges are collected?

- Should the LDC's service extension policy be tariffed in number of feet without consideration to varying construction costs amongst projects or should the allowance be tariffed as a total dollar amounts per customer?

- Is the LDC's extension charge refund policy appropriate?

- Should customers be allowed to run their own service line from the street to the house (or use an independent contractor) if it would be less expensive than having the utility construct the line?

- Should the LDC be required to offer its customers financing for service extension charges? This could be offered as an alternative to paying extension charges in advance of construction.

Finally, the Commission has concern about the impact of service extension-related additions (projects involving multiple customers) on the company's rate base. In future rate cases, the Commission will request the Department to investigate the company's service extension-related additions to rate base to make sure

1. that LDCs are applying their tariffs correctly and consistently,

2. that they are appropriately cost and load justified, and

3. that wasteful additions to plant and facilities are not allowed into rate base.

D. COMMISSION ACTION

On the basis of the foregoing review, the Commission finds that the issues raised in the course of this investigation either have been adequately addressed or are suitably pursued in other proceedings, as indicated in the text of this Order. Accordingly, the Commission will terminate its investigation and close this docket.

In future rate cases initiated by Minnesota regulated gas utilities, the Department and other parties to such proceedings will be invited to develop the record with respect to the issues raised in this Order. As is customary in such proceedings, the Commission's NOTICE AND ORDER FOR HEARING (referral to the Office of Administrative Hearings for contested case proceedings) will contain specific directives regarding issues to be addressed by the parties.

ORDER

1. The Commission's investigation into competition between gas utilities is hereby terminated and the docket created for it (G-999/CI-90-563) is closed.

2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

In the Matter of an Inquiry Into Competition Between Gas Utilities in Minnesota

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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange	Chair
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
Katie J. Sieben	Commissioner
John A. Tuma	Commissioner

In the Matter of Minnesota Energy Resources Corporation's Complaint Against Northern States Power Company	ISSUE DATE: July 12, 2017 DOCKET NO. G-011,002/C-17-305
In the Matter of a Commission Investigation into Parameters for Competition Among Natural Gas Utilities Involving Duplication of Facilities and Use of Promotional Incentives and Payments	DOCKET NO. G-999/CI-17-499 ORDER DISMISSING COMPLAINT, REQUIRING FILINGS, AND OPENING INVESTIGATION

PROCEDURAL HISTORY

On April 19, 2017, Minnesota Energy Resources Corporation (MERC) filed a complaint against Northern States Power Company, dba Xcel Energy (Xcel) under Minn. Stat. § 216B.17. MERC alleged that Xcel's plans to extend natural gas service to a new Minnesota Vikings complex in Eagan—which MERC claimed was within its "natural (although not exclusive) service territory"—were inconsistent with state policy disfavoring the unnecessary duplication of facilities.

MERC requested that the Commission declare that Xcel's actions were inconsistent with statute and Commission policy, and that MERC has the exclusive right to provide natural gas service to the Vikings' proposed development.

On April 28, Xcel filed a response to MERC's complaint. Xcel noted that Minnesota does not have assigned service areas for gas utilities and argued that the circumstances of this case do not call for Commission intervention. It asked the Commission to dismiss MERC's complaint.

By May 16, the Commission had received reply comments from the following parties:

- Xcel
- MV Eagan Ventures, LLC (the Vikings)
- MERC
- The Office of the Attorney General – Residential Utilities and Antitrust Division (OAG)
- The Minnesota Department of Commerce (Department)

On June 8, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Factual Background

The material facts of this case are undisputed.

MERC and its predecessor, Peoples Natural Gas Company, have provided gas service to the property in question, a 200-acre parcel in northeast Eagan, since 1985. The property was used by Northwest Airlines as its corporate headquarters until 2008, when Northwest merged with Delta Airlines and moved its operations to Atlanta, Georgia. Since that time, the property has sat largely vacant.

In early 2016, the Vikings bought the property for use as a new team headquarters and practice facility. That June, Eagan approved the Vikings' redevelopment plans for the site, which include office, retail, residential, hotel, and conference space, with the Vikings headquarters and practice facility as the anchor tenant. The redevelopment will occur in phases over the next 10 to 15 years.

Construction of the development began in August 2016. MERC provided gas service to the Vikings' general contractor to meet construction-related demand. It also abandoned 2,900 feet of gas pipeline at the Vikings' request to accommodate construction.

In September, the Vikings invited Xcel to a meeting to quote a price for providing natural gas service to the development. MERC had several discussions with the Vikings about providing permanent service under its standard rate offerings, but apparently was unaware that another utility was competing to provide natural gas service to the site.

The Vikings ultimately selected Xcel as their natural gas provider. In March 2017, the two parties executed a Natural Gas Competitive Agreement (Competitive Agreement) memorializing the terms of their agreement.

The Competitive Agreement, together with the attached "Natural Gas Marketing Proposal," contemplates that Xcel will provide the Vikings with $75,000 in promotional incentives—$50,000 initially and $25,000 after consumption of 250,000 therms of natural gas.[1] These incentives will not be recovered from ratepayers but will be paid for by Xcel's shareholders.

In April, the Vikings informed MERC that they had selected Xcel as the exclusive natural gas provider for the development, prompting MERC to initiate this complaint proceeding.

[1] Xcel initially treated the payment amounts as trade secret, but it disclosed them at the hearing before the Commission.

II. Positions of the Parties

A. MERC

MERC argued that Xcel's plans to serve the Vikings' development were inconsistent with Minn. Stat. § 216B.01, which provides that public utilities are to be regulated to avoid "unnecessary duplication of facilities which increase the cost of service to the consumer."

MERC asserted that its existing infrastructure has sufficient capacity to meet the development's anticipated demand and that, if Xcel is allowed to serve the development, MERC's pipeline and associated facilities located in the surrounding area will not be fully utilized. MERC argued that the burden of paying for this underutilized infrastructure would fall on its ratepayers.

MERC also argued that Xcel's plans to serve the development raise safety concerns because Xcel's pipeline would have to cross over or under MERC's existing pipeline, which encircles the development site. In particular, MERC argued that having two sets of pipeline in the same area will make it harder to determine the source of potential leaks.

MERC acknowledged that natural gas utilities in Minnesota do not have exclusive service territories, but it argued that the circumstances in this case warranted a Commission finding that MERC is entitled to serve the planned development. And it argued that the Commission should set clear parameters for gas-utility competition, since MERC expects the issues raised in this dispute to arise again as development expands in suburban and exurban areas.

Finally, MERC contended that the promotional incentive included in Xcel and the Vikings' Natural Gas Competitive Agreement may violate certain statutory provisions governing utility rates. Specifically, MERC pointed to the following statutes:

- **Minn. Stat. § 216B.03**, which requires that rates not be "unreasonably preferential, unreasonably prejudicial, or discriminatory";
- **Minn. Stat. § 216B.05, subd. 1**, which requires public utilities to file with the Commission "schedules showing all rates, tolls, tariffs, and charges which it has established and which are in force at the time for any service performed by it within the state"; and
- **Minn. Stat. § 216B.06**, which prohibits a public utility from charging a rate greater or less than what is set forth in the utility's filed tariffs.

B. Xcel

Xcel argued that, given that gas utilities have no assigned service areas, the Commission should decline to interfere with the Vikings' choice of service providers. Xcel claimed that the Commission had dismissed complaints similar to MERC's in the past, and that the current circumstances were materially indistinguishable from those prior cases.

Xcel cited two cases, both involving MERC's predecessor, Peoples Natural Gas Company. In the first case, Great Plains Natural Gas Company filed a complaint against Peoples after Peoples agreed to build a pipeline to serve an existing customer of Great Plains who was planning to

convert its manufacturing operations to natural gas.[2] In the second case, Peoples filed a complaint against Xcel after Xcel agreed to serve two planned developments adjacent to areas served by Peoples. [3]

Xcel noted that in both cases, the Commission dismissed the complaint, finding no justification for interfering with utility competition despite there being some duplication of facilities. Xcel argued that the facts of this case are substantially similar to the two prior cases and should lead the Commission to the same conclusion.

Finally, Xcel argued that its promotional incentive does not violate the requirement that all utility rates be filed. It pointed to Section 7 of its tariff, sheets 36–37, which set forth a template Natural Gas Competitive Agreement that includes a "Natural Gas Promotion Allowance."[4] The template agreement does not specify an amount for the allowance. But Xcel argued that as long as an agreement with specific price terms conforms to the template agreement, it need not be separately filed.

C. Department

The Department recommended that the Commission dismiss MERC's complaint, reasoning that the Competitive Agreement would result in cost savings for the Vikings and Xcel's ratepayers generally without causing undue harm to MERC's ratepayers.

The Department analyzed the consequences for MERC and its ratepayers if Xcel is allowed to serve the new development. One consequence would be that some of MERC's infrastructure investments may need to be abandoned. The Department found that $8,119 in Net Plant In Service would be considered abandoned if MERC does not serve the development. It identified another $39,089 in infrastructure costs that MERC incurred to provide construction-related service to the Vikings' contractor. But it also found that MERC would avoid making additional capital investments by not serving the development.

The Department concluded that MERC's ratepayers may see a higher revenue deficiency in MERC's next rate case if Xcel serves the Vikings' development. But it also found that MERC's ratepayers would benefit, regardless of which utility serves the development, if MERC sees increased revenues as a result of serving other development expected to occur in the surrounding area.

The Department noted that the Commission has allowed for some duplication of facilities in previous dockets and could not identify a compelling reason in this proceeding to recommend a different determination. It argued that safety issues were best addressed by the Minnesota Office of Pipeline Safety and local permitting authorities.

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[2] *In the Matter of the Complaint of Great Plains Natural Gas Company Against Peoples Natural Gas Company and UtiliCorp United, Inc.*, Docket No. G-004, 011/C-91-731.

[3] *In the Matter of a Complaint of Peoples Natural Gas Against Northern States Power Company Regarding the Construction of Distribution Facilities*, Docket No. G-011/C-96-1062.

[4] The Commission approved Xcel's Natural Gas Competitive Agreement tariff in the utility's 2009 rate case, Docket No. G-002/GR-09-1153.

D. OAG

The OAG requested that, if the Commission dismisses MERC's complaint, it specifically state that it is not making a determination regarding the prudence of Xcel's new facilities or whether they can be added to rate base. It recommended that the Commission make the same statement regarding any allegedly abandoned facilities owned by MERC. The OAG maintained that the prudence of the investments and whether the costs are recoverable should be determined in the utilities' future rate cases.

III. Commission Action

Upon receiving a complaint that a public utility's rates, practices, or actions relating to the furnishing of natural gas are in any respect unreasonable, insufficient, or unjustly discriminatory, the Commission must make such investigation as it may deem necessary.[5]

The Commission initially reviews formal complaints to determine whether the Commission has jurisdiction over the matter and whether there are reasonable grounds to investigate the allegations.[6] The Commission may deal with a complaint through a contested-case proceeding, informal proceeding, or expedited proceeding.[7]

Both MERC and Xcel recommended that the Commission resolve MERC's complaint on an expedited schedule. The Department, similarly, recommended that the Commission render a decision based on the current record, without further factual investigation. It recommended that, if the Commission wishes to further review gas-utility competition rules, it open a generic docket to investigate those issues.

The Commission concurs with the parties that no further investigation is necessary and will dismiss MERC's complaint for the reasons, and under the conditions, discussed below. In addition, the Commission will open a generic docket to review and investigate (1) the parameters of inter-gas-utility competition involving the duplication of existing facilities, and (2) the use of promotional incentives and other non-tariffed payments provided by utilities to their existing customers and potential future customers.

A. Duplication of Facilities

Unlike electric utilities, Minnesota natural gas utilities do not have exclusive service territories.[8] Given the lack of assigned natural gas service areas, the Commission has generally declined to disturb gas customers' choice of service provider. The Commission evaluates disputes between competing natural gas utilities on a case-by-case basis, balancing the interests of the utilities, competed-for customers, and current customers.

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[5] Minn. Stat. § 216B.17, subd. 1.

[6] Minn. R. 7829.1800.

[7] Minn. R. 7829.1900, subp. 1.

[8] *See* Minn. Stat. §§ 216B.37–.43 (establishing rules governing assigned electric service areas).

In this case, MERC claims that Xcel's plans to serve the Vikings' development will result in unnecessary duplication of MERC's facilities that will harm MERC's customers and raise safety concerns. However, the Commission concludes that the circumstances of this case do not require Commission intervention.

The Department itemized and quantified the economic benefits and burdens flowing to the Vikings, the utilities, and the ratepayers of each utility under scenarios where MERC serves the development or Xcel serves the development. Some of this information—in particular, the economic benefits each utility expects to realize from serving the development—is trade secret. Based on its review of the data, including the trade secret information, the Department concluded that the balance of equities did not support displacing Xcel as the Vikings' service provider.

The Commission concurs. While MERC has incurred certain costs which it anticipated being able to offset through revenues from the development, the Commission cannot say, on this record, that this expectation outweighs the harm to the Vikings, Xcel, and Xcel's ratepayers if Xcel is forced to rescind its Competitive Agreement with the Vikings and allow MERC to serve the development.

Nor does the Commission find MERC's arguments about the safety of having two sets of pipeline in the same area to be compelling in this case. The Commission agrees with the Department and Xcel that, as a general matter, and certainly in this case, pipeline-safety issues are best left to the Minnesota Office of Pipeline Safety and local permitting authorities. In short, the Commission does not find any circumstance here that would justify interfering with utility competition.

The Commission clarifies that its conclusion that Xcel should be allowed to serve the Vikings' development does not rest on, or imply, any finding of prudence. The Commission makes no determination in this case as to prudency or whether or not Xcel's new facilities can be added to rate base. These issues will be resolved in a future rate case. Similarly, the Commission makes no determination regarding allegedly abandoned facilities owned by MERC or any decision regarding the prudency of those investments or the recovery of the associated costs.

Finally, MERC argued that allowing Xcel to serve the Vikings' development would send a signal that any gas utility can simply extend service to a large customer of another utility regardless of whether that premises is currently served by the utility or whether the utility already has infrastructure in place to serve the customer. MERC stated that it may need to evaluate whether to engage in similar practices to remain competitive.

The Commission appreciates MERC's perspective and concludes that a more thorough review of the allowable parameters of gas-utility competition could provide useful guidance if and when similar disputes arise in the future. The Commission agrees with the Department that the most appropriate forum in which to undertake this review is a new docket involving all regulated gas utilities. The Commission will therefore open a generic docket to review and investigate the parameters of inter-gas-utility competition involving the duplication of existing facilities.

B. Competitive Agreements

Under Minnesota law, every public utility must file schedules showing "all rates, tolls, tariffs, and charges which it has established and which are in force at the time" as well as "any contracts, agreements, or arrangements relating to the service or product or the rates to be charged for any service or product to which the schedule is applicable."[9] One important reason for this filing requirement is that it prevents utilities from discriminating among similarly situated customers by offering "secret" rates.

Xcel argued that its Competitive Agreement with the Vikings does not need to be filed because it conforms to the template Natural Gas Competitive Agreement in Section 7 of Xcel's tariff, which is on file with the Commission. The Commission disagrees. The template agreement does not set forth all material terms and conditions of service. Most significantly, it does not specify the amount of the "Natural Gas Promotion Allowance" to be paid to the customer (which the Vikings' Competitive Agreement refers to as a "promotional incentive").

The Commission concludes that a template competitive agreement like the one in Xcel's tariff does not meet the requirements of Minn. Stat. § 216B.05. Without a price term for the promotional allowance, the template does not allow the Commission and other parties to determine whether Xcel is discriminating in the rates it offers to similarly situated customers.

Accordingly, the Commission will require Xcel to file the Vikings' Competitive Agreement in its entirety as a public document.[10] Moreover, within 30 days of the date of this order, Xcel will be required to file as public documents all other existing competitive service agreements, and to do so for future agreements upon execution.

The rationale for filing competitive agreements applies with equal force to other public utilities. Since MERC is a party to this case, the Commission will impose on MERC the same filing requirements for existing and future competitive agreements that it has imposed on Xcel. Moreover, to gain a better understanding of the nature and extent of other gas utilities' use of promotional incentives and other non-tariffed payments, the Commission will include in the scope of its inquiry into gas-utility competition an investigation into these incentives and payments.

ORDER

1. MERC's complaint is hereby dismissed without further investigation.

2. Within 30 days of the hearing in this matter, Xcel shall file the Vikings' Competitive Agreement in its entirety as a public document; the agreement shall be effective upon filing.

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[9] Minn. Stat. § 216B.05, subds. 1, 2.

[10] Xcel filed the Competitive Agreement on June 9, 2017.

3. Xcel and MERC shall file as public documents all existing competitive service agreements within 30 days of the date of this order and all future such agreements upon execution.

4. The Commission hereby opens a generic docket, G-999/CI-17-499, to review and investigate (1) the parameters of inter-gas-utility competition that involves the duplication of existing facilities and (2) the use of promotional incentives and other non-tariffed payments provided by utilities to their existing customers and potential future customers.

5. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Janet Gonzalez for

Daniel P. Wolf
Executive Secretary

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CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

Minnesota Department of Commerce
Reply Comments

Docket No. G011, G002/C-17-802

Dated this 11th day of December 2017

/s/Sharon Ferguson

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