

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: **October 26, 2017**..... **Agenda Item #5****

Company: United Natural Gas, LLC

Docket No. **G-6960/M-16-214**

In the Matter of a Petition by United Natural Gas LLC (UNG) for approval of its Request for a Small Gas Utility Franchise Exemption

Issues: Does the Lower Sioux’s status as a sovereign nation mean that UNG’s provision of natural gas service to the Lower Sioux is not subject to Commission jurisdiction and regulation?

Should the Commission approve UNG’s request to extend its current Lafayette/Courtland, MN small gas utility franchise exemption from Commission regulation, to include incidental service along the GMT intrastate pipeline route approved in Docket No. 16-1026?

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Relevant Documents

Commission – Order Granting Exemption Request Approval May 24, 2016
UNG – Request to Expand Exemption Request to Lower Sioux February 7, 2017
Department of Commerce (Department) – Request for Comment Period April 7, 2017
UNG – Response to the Department’s Request for Comment Period April 17, 2017
Commission – Order Directing Staff to Open Comment Period May 23, 2017
Commission – Notice of Comment Period June 21, 2017
UNG – Reply Comments July 21, 2017
Lower Sioux - Comments August 21, 2017
Department – Reply Comments-Response Comments August 22, 2017

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October 19, 2017

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Statement of the Issues

Does the Lower Sioux's status as a sovereign nation mean that UNG's provision of natural gas service to the Lower Sioux is not subject to Commission jurisdiction and regulation?

Should the Commission approve UNG's request to extend its current Lafayette/Courtland, MN small gas utility franchise exemption from Commission regulation, to include incidental service along the GMT intrastate pipeline route approved in Docket No. 16-1026?

Introduction¹

On May 24, 2016, the Commission (or PUC) issued its informal Order granting UNG's² request for a small gas utility franchise exemption from certain Commission regulatory requirements for its natural gas distribution company.³ Under Minn. Stat. § 216B.16, subd. 12, UNG is exempt from Commission rate regulation for service provided in municipalities that have granted a non-exclusive franchise license to operate in its borders - Lafayette and Courtland (the Municipalities) - and for incidental service provided outside the municipal borders.⁴

UNG procures its natural gas supply from a Northern Border Pipeline (NBPL) supply point, i.e. the Hutchinson Pipeline (Hutchinson) interconnection with NBPL. UNG has contracted for transportation capacity on both the Hutchinson and Greater Minnesota Transmission (GMT) "intrastate" pipelines to transport its natural gas supply from the NBPL supply point to its natural gas distribution system.⁵

¹ For previous history on Docket No. 16-214 please see staff's April 11, 2016 briefing papers.

² UNG is a wholly owned business subsidiary of United Farmers Cooperative (UFC) and is managed and operated by UFC's energy department. UFC supplies refined petroleum and L.P. Gas, agronomy products and services, manufactures animal nutrition feed products, markets grain, owns and operates convenience stores in a half dozen Minnesota communities. In addition, it owns and operates an ACE affiliated hardware store, Artic Cat power sports division, and an Exmark lawn mower dealership. UFC's businesses serve approximately 10,000 patrons or customers with 2,500 voting members across 11 Minnesota counties. UNG's natural gas customers will be entitled to receive patronage refunds on the same basis as all other patrons. UFC is governed by agricultural producers who do at least \$5,000 of business with UFC each year. Although governance rights are closely held by agricultural producers, all customers of retail products and services have the same financial rights regardless whether they are agricultural producers or consumers, and regardless whether they do business with UFC or UNG. UFC's earnings are distributed to patrons in proportion to the business they do with UFC and UNG. Approximately 50% is paid in cash each year and the other half consisting of retained equity is now redeemed when each patron reaches age 69. UFC's patronage distributions to natural gas customers will be calculated from the earnings that UFC generates from natural gas each year.

³ But, certain requirements still apply, such as the Commission's Cold Weather Rule.

⁴ See the Cities of Lafayette and Courtland Comments filed on April 5, 2016 in Docket No. 16-214.

⁵ In Docket No. 15-1041, the Commission approved an intrastate pipeline contract between Greater Minnesota Transmission (GMT) and UNG. UNG constructed facilities to provide retail distribution service to the Municipalities, and further to incidental customers who have requested service.

Rates Approved by the Municipalities⁶

UNG's initial petition proposed single-system rate structure for the Municipalities and surrounding area customers; the rate board approved the rate structure for customers inside and outside the Municipalities' borders.⁷ Table 1 reflects the customer charge, the distribution rate, and cost of gas by customer class. In addition, UNG filed its Rates/Service & Regulations Book (Rate Book), which includes the below rates, and terms and conditions for service.⁸

Table 1: Summary of Current Customer Classes and Associated Rates⁹

Rate Class	Customer Charge	Distribution Rate	Base Cost of Gas	Total per Therm
	(1)	(2)	(3)	(4)
	Per month	Per therm	Per Therm	Per Therm
<u>Firm</u>				(2) + (3)
Residential	\$8.50	\$0.65	\$0.38	\$1.03
Sm. Commercial	\$10.00	\$0.60	\$0.38	\$0.98
Lg. Commercial	\$40.00	\$0.45	\$0.38	\$0.83
Interruptible	\$50.00	\$0.30	\$0.30	\$0.60

Background

On January 11, 2017, UNG and the Lower Sioux entered into a Minimum Use Agreement – where UNG would provide natural gas service to several tribal buildings/enterprises including the Jackpot Junction Casino, government center, medical clinic, recreation center, and maintenance building. The Lower Sioux Community Council (its governing body) formally approved the agreement in Resolution No. 17-08 on January 11, 2017.¹⁰

On February 7, 2017, UNG filed its petition notifying the Commission of its intent to provide service to the Lower Sioux through the GMT “intrastate pipeline” approved in Docket No.

⁶ UNG and the Municipalities have agreed to a rate structure.

⁷ The distribution rate would apply to all natural gas service provided within a specific customer class. For example, the rate for residential sales service will be the same in each Municipality and the surrounding areas.

⁸ See UNG's initial petition, Attachment C; As directed by the Commission's May 24, 2016 Order, UNG's Rate Book (tariff) includes the Commission's policies and procedures governing disconnection during cold weather as required by Minn. Stat. § 216B.16, Subd. 12 (c) and understands that if the exemption is granted they will be required to follow the Commission's Cold Weather Rule.

⁹ UNG stated that the proposed initial rates will be reevaluated after gaining operating experience. It should be noted that UNG did not include an analysis (i.e. class cost of service study) of the methodology it used to develop the rates, but the Municipalities have approved the rates.

¹⁰ See UNG's April 17, 2017 Response to Reply Comments, Resolution No. 17-08.

1026.¹¹ UNG filed its amended Section 2 of its final Rates/Services & Regulations Book, along with a map reflecting the Lower Sioux customers and necessary facilities to provide service.¹²

On April 7, 2017, the Department filed Comments stating its concerns with UNG's February 7th letter not providing all the necessary legal, financial or operational information. The Department recommended that the Commission issue a Notice of Comment Period allowing all interested parties to respond. Further, it noted that the Lower Sioux do not qualify as a municipality within the parameters of Minn. Stat. § 216B.16, subd. 12 (PUC staff agrees with the Department assessment).

On April 17, 2017, UNG filed its response. UNG clarified it was requesting to use its existing small gas utility exemption to provide incidental service along the GMT intrastate pipeline corridor, but UNG's request did not include the Lower Sioux.¹³ The incidental customers along the GMT corridor would receive similar treatment to other UNG incidental customers.

UNG requested that the Commission decline the Department's April 7th recommendation to open an additional comment period, determine that it does not have jurisdiction over the UNG/Lower Sioux agreement, and permit UNG to serve other incidental customers. UNG believed it followed the Commission's rules and practices established in other dockets granting a small gas utility franchise exemption.

On May 23, 2017, the Commission issued its Order (May 23rd Order) adopting the Department's recommendations regarding UNG's exemption request and the opportunities that the new GMT pipeline may afford by extending natural gas service to the Lower Sioux.¹⁴ The May 23rd Order directed its staff to issue a Notice soliciting comments on UNG's service request.

On June 21, 2017, the Commission issued its Notice soliciting comments.

On July 21, 2017, UNG submitted its response.

On August 21, 2017, the Lower Sioux filed its Comments requesting that the Commission approve UNG's exemption request from Commission regulation for incidental service outside the Municipalities borders. The Lower Sioux indicated that it had several discussions with UNG that included the process establishing rates, the rate fairness to the Lower Sioux and other system customers.

¹¹ On December 7, 2016, GMT filed an "intrastate pipeline" petition, Docket No. 16-1026 petitioning for Commission approval to provide UNG additional "intrastate pipeline" services. GMT will transport natural gas through a new 35-mile intrastate pipeline to the Lower Sioux. See the Commission's May 26, 2017 Order in Docket No. 16-1026.

¹² See UNG's February 7th Letter – titled Amended Section 2 Part 2; See UNG's February 7th Letter, Attachment B – system map.

¹³ UNG wishes to use its existing small gas utility franchise exemption received on May 24, 2016 for the Municipalities.

¹⁴ The Commission believed the UNG's February 7th Letter came to the Commission too late in its process to allow adequate record development, concerns included the municipalities along the pipeline's 35-mile route, and incidentally beyond the Municipalities' boundaries.

In Docket No. 16-1026, the Lower Sioux filed its letter describing the importance of having natural gas service available in its Community, benefits include attracting business opportunities to the Community that may not exist without natural gas.¹⁵ The Lower Sioux noted that its process identified that new businesses opportunities would require alternative fuel choices (natural gas) instead of propane.¹⁶

On August 22, 2017, the Department submitted its Reply to the July 21st UNG response, see the below discussion.

PUC staff notes that the Commission did not receive any public comments in this docket or in Docket No. 16-1026.¹⁷

Minnesota Statutes

Minn. Stat. § 216B.02, subd. 4 - Public utility. [defined]

"Public utility" means persons, corporations, or other legal entities, their lessees, trustees, and receivers, now or hereafter operating, maintaining, or controlling in this state equipment or facilities for furnishing at retail natural, manufactured, or mixed gas or electric service to or for the public or engaged in the production and retail sale thereof but does not include (1) a municipality or a cooperative electric association, organized under the provisions of chapter 308A, producing or furnishing natural, manufactured, or mixed gas or electric service; (2) a retail seller of compressed natural gas used as a vehicular fuel which purchases the gas from a public utility; or (3) a retail seller of electricity used to recharge a battery that powers an electric vehicle, as defined in section 169.011, subdivision 26a, and that is not otherwise a public utility under this chapter. Except as otherwise provided, the provisions of this chapter shall not be applicable to any sale of natural, manufactured, or mixed gas or electricity by a public utility to another public utility for resale. *In addition, the provisions of this chapter shall not apply to a public utility whose total natural gas business consists of supplying natural, manufactured, or mixed gas to not more than 650 customers within a city pursuant to a franchise granted by the city, provided a resolution of the city council requesting exemption from regulation is filed with the commission. The city council may rescind the resolution requesting exemption at any time, and, upon the filing of the rescinding resolution with the commission, the provisions of this chapter shall apply to the public utility.* No person shall be deemed to be a public utility if it furnishes its services only to tenants or cooperative or condominium owners in buildings owned, leased, or operated by such person. No person shall be deemed to be a public utility if it furnishes service to occupants of a manufactured home or trailer park owned, leased, or operated by such person. No person shall be deemed to be a public utility if it produces or furnishes service to less than 25 persons. [Emphasis Added]

¹⁵ UNG stated that it has developed a strategic plan and is in the process of developing an economic development strategic plan.

¹⁶ See Exhibit A of the Lower Sioux Letter filed August 21, 2017.

¹⁷ See the Commission Public Comment document filed on September 14, 2017.

Minn. Stat. § 216B.16, subd. 12 – Exemption for small gas utility franchise.

- (a) *A municipality may file with the commission a resolution of its governing body requesting exemption from the provisions of this section for a public utility that is under a franchise with the municipality to supply natural, manufactured, or mixed gas and that serves 650 or fewer customers in the municipality as long as the public utility serves no more than a total of 2,000 customers.* [Emphasis added]
- (b) The commission shall grant an exemption from this section for that portion of a public utility's business that is requested by each municipality it serves. *Furthermore, the commission shall also grant the public utility an exemption from this section for any service provided outside of a municipality's border that is considered by the commission to be incidental.* The public utility shall file with the commission and the department all initial and subsequent changes in rates, tariffs, and contracts for service outside the municipality at least 30 days in advance of implementation. [Emphasis added]
- (c) However, the commission shall require the utility to adopt the commission's policies and procedures governing disconnection during cold weather. The utility shall annually submit a copy of its municipally approved rates to the commission.
- (d) In all cases covered by this subdivision in which an exemption for service outside of a municipality is granted, *the commission may initiate an investigation under section 216B.17, on its own motion or upon complaint from a customer.* [Emphasis added]
- (e) If a municipality files with the commission a resolution of its governing body rescinding the request for exemption, the commission shall regulate the public utility's business in that municipality under this section.

Party Responses to Commission Notice for Comments

- 1. Have the municipalities of Lafayette and Courtland been contacted about UNG's proposed expansion of its service area to include the Lower Sioux Indian Community (Lower Sioux)? If so, provide all communications between UNG, Lafayette, Courtland and the Lower Sioux.¹⁸**

UNG

UNG stated that both the Cities of Lafayette and Courtland have been notified of the proposed incidental service to customers along the GMT intrastate pipeline.¹⁹ UNG noted that it is not requesting that the existing Municipalities' small gas utility franchise exemption include the Lower Sioux. All communication between the parties have been verbal. UNG noted that neither of the Municipalities expressed concerns over the proposed construction.

¹⁸ See UNG's July 21, 2017 Reply Comments, pp. 1-2.

¹⁹ GMT's intrastate pipeline approved in Docket No. 16-1026.

Department

The Department did not address this concern.

PUC staff

PUC staff accepts UNG's response regarding verbal communication, but suggests the Commission may want to require UNG's independent rate board to meet and discuss this issue, to keep minutes of its meetings, and to provide the Commission with copies of the minutes from these meetings in a compliance filing. If the Commission believes the rate board oversight is not sufficient then it may want to require the Cities of Lafayette and Courtland to file statement in this docket stating their position on regulating these additional incidental customers.

- 2. Has UNG communicated to the municipalities of Lafayette and Courtland, and the Lower Sioux that the Commission has authority under Minn. Stat. § 216B.16, subd. 12 to ensure customers who receive incidental service outside the municipal boundaries of Lafayette and Courtland are being treated fairly? And that the Commission may investigate such service on its own motion or upon complaint, pursuant to Minn. Stat. § 216B.17? If so, provide an explanation of how this was communicated. If not, provide an explanation detailing why this has not been communicated to these customers.²⁰**

UNG

According to UNG, all customers, whether inside or outside the Municipalities, were informed of the Commission's authority (Minn. Stat. Ch. 216B) through multiple informal meetings.²¹

Further, all customers are charged the same rate structure depending on customer class, see Table 1.

Department

The Department did not address this concern.

PUC staff

PUC staff appreciates UNG's response of informally communicating to customers that the Commission can open an investigation on its own accord or in response to a customer complaint. Staff has concerns because the customer may not have attended one of UNG's informal meetings before taking service, that customers have not receive formal written notice that the Commission retains the right to open an investigation on its own accord or upon receiving a customer complaint, pursuant to Minn. Stat. § 216B.17. The Commission may wish to require UNG to formally notice its current customers and new customers of the Commission authority.

Alternatively, the Commission may want to ask UNG whether this information is included in the written materials provided to prospective and all new customers in the new information packet customarily provided to new customers. Commission-regulated utilities are required to provide

²⁰ See UNG's July 21, 2017 Reply Comments, p. 2.

²¹ That Commission could act on its own motion or because of a customer complaint.

information similar to this pursuant to the utility customer service rules, pursuant to Minn. Rules, part 7820.0200. In addition, the Commission may want to find out whether UNG already provides an annual customer service notice to its customers.

3. Provide UNG's explanation for considering the proposed Lower Sioux load as "incidental" to its existing small gas utility exemption.²²

UNG

According to UNG, Lower Sioux is a sovereign nation, and therefore it has the regulatory authority to determine who provides it natural gas service and at what rates, not the Commission.²³ As a result, obtaining a small gas utility franchise exemption from Minn. Stat. Ch. 216B requirements for UNG's natural gas service to the Lower Sioux is unnecessary. UNG is not proposing that the Lower Sioux service is "incidental" exempt from Commission regulation under the Municipalities' small gas utility franchise exemption.

UNG's petition requested the Commission to expand the Municipalities (Lafayette and Courtland) small gas utility franchise exemption to include customers along the GMT route approved in Docket No. 16-1026. These customers would be treated as other system incidental customers where UNG provides natural gas service. The incidental customers would be exempt from certain Commission regulation in accordance with Minn. Stat. § 216B.16, subd. 12, small gas utility franchise exemption.

Department

The Department believed that UNG's July 21st response was unclear regarding its proposed incidental service exemption along the GMT pipeline route approved in Docket No. 16-1026. The Department could not determine whether UNG is proposing the use of its existing Municipalities' small gas utility franchise exemption or some other exemption.

PUC staff

Staff's understanding of UNG's petition is that UNG is proposing to expand its Municipalities' (Lafayette and Cortland) small gas utility franchise exemption to include the potential customers along the GMT pipeline approved in the 16-1026 docket. Further, that UNG is not proposing to be exempted from Minn. Stat. § 216B.16, subd. 12 requirements because the Lower Sioux is an "incidental customer." UNG is stating that its provision of natural gas service to the Lower Sioux is not subject to Commission regulation because of the Lower Sioux's sovereign status as a federally recognized Indian tribe. Staff addresses the UNG/Lower Sioux exemption statements in Response #4.

²² See UNG's July 21, 2017 Reply Comments, pp. 2-3.

²³ The Commission does not have the authority to regulate UNG's natural gas service to the Lower Sioux.

4. What State, Federal or Tribal Law is UNG relying on to conclude that service from UNG to the Lower Sioux would be exempt from Commission regulation? How does UNG's proposal meet the relevant legal requirements of Minn. Stat. § 216B.16, subd. 12?²⁴

UNG

According to UNG, the Lower Sioux Community is a federally recognized Indian tribe exempt from Commission regulation, specifically Minn. Stat. § 216B.16, subd. 12. According to the Lower Sioux, Native American tribes are unique aggregations, possessing attributes of sovereignty over both their members and their territory.²⁵ Native American tribes are "a separate people" possessing "the power of regulating their internal and social relations."²⁶ As a general rule, Native American tribes are free from state law within their territory, absent Congressional consent.²⁷

Because UNG is seeking to provide natural gas service to the Lower Sioux, it argues that the service is subject to regulation by the tribe, not by the Commission. In support of UNG's position, the petition reviews the following case law:

- The United States Supreme Court addressed whether a state has authority over a non-tribal member on tribal property that "absent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them."²⁸ Since UNG is providing natural gas services to the Lower Sioux, the natural gas services provided are exempt from Commission regulation. Further, the Court stated that "absent a treaty or federal statute conferring it, a state's jurisdiction does not extend over the individual members of an Indian tribe maintaining their tribal relations and organization upon a reservation within the geographical limits of the state."²⁹
- A recent North Dakota Supreme Court decision affirmed a North Dakota Public Service Commission decision that it did not have authority over electric service provided by Other Tail Power Company to the Turtle Mountain Band of Chippewa Indians within the Band's tribal territory. In that case, the North Dakota Public Service Commission initially made a decision that it did not have authority over the Tribe, but their decision was challenged by another utility company. The Court affirmed that the tribe's regulatory discretion with respect to who will provide it electrical service is a power of the tribe's "inherent tribal sovereignty."³⁰

²⁴ See UNG's July 21, 2017 Reply Comments, pp. 3-4.

²⁵ *Worcester v. Georgia*, 31 U. S. 557 (1832).

²⁶ *United States v. Kagama*, 118 U.S. 375, 382 (1886).

²⁷ "The policy of leaving Indians free from state jurisdiction and control is deeply rooted in the Nation's history." *Rice v. Olson*, 324 U.S. 786, 789 (1945).

²⁸ *Williams v. Lee*, 358 U.S. 217, 220 (1959).

²⁹ "Such tribes are domestic, dependent communities under the guardianship, protection, and exclusive jurisdiction of the federal government, with the power of regulating their own internal and social relations, except as otherwise directed by congress." *State v. Jackson*, 16 N.W.2d 752 (1944).

³⁰ *North Central Electric Cooperative v. North Dakota Pub. Serv. Comm'n*, 837 N.W.2d 138 (2013).

- The Federal District Court for the District of North Dakota addressed a similar issue in *Devils Lake Sioux Indian Tribe v. North Dakota Public Service Commission*. That case addressed whether the North Dakota Public Service Commission could regulate which electrical service supplier a tribe used. The court reasoned that "the Tribe has the inherent sovereignty to contract with whomever it will for the provision of service to its lands and businesses, [which] takes precedence over the actions of the [state]." The court ruled that "the Tribe may by resolution or contract determine who is to supply electrical service to Tribal owned businesses located upon Indian owned or trust lands, without regard to the rate structure or other regulations of the North Dakota Public Service Commission."³¹

Department

The Department disagreed with UNG's assertion that the Commission seeks to regulate the Lower Sioux and that the Commission must articulate the extent of Commission authority over UNG. At the same time, the Department did not challenge the legitimacy of UNG/Lower Sioux request, that the Lower Sioux regulate UNG's provision of service to the tribe via contract. Rather, the Department sought to ensure that UNG is not relieved of its obligation to provide retail customers with certain Commission-required safeguards (see Response #5), absent an express statement of the Lower Sioux to the contrary.

The Department recognized that the Lower Sioux may be in agreement with UNG's natural gas service requirements, but the Lower Sioux has not filed a statement affirming its agreement. The Lower Sioux should file a statement regarding whether it wishes to ensure that UNG provides the same protections provided to municipalities who have received a small gas utility franchise exemption from certain regulatory requirements. The Department recommended that the Commission defer addressing UNG's broader request for exemption until the Commission receives the Lower Sioux's communication in this regard. In the alternative, that the Commission could proceed by granting UNG's request for exemption on a limited basis while awaiting the Lower Sioux's communication addressing the Department's concerns.

PUC staff

Staff's understanding of the two cases the Lower Sioux cites in support of its claim that only the tribe can regulate the natural gas service UNG provides depends on certain facts. Those facts are whether the tribe is asserting regulatory authority over a nonmember providing utility service to a tribal-owned business on tribal-owned or tribal trust land within the reservation.

The North Dakota Supreme Court's found in the *North Central* case that:

The Tribe's decision authorizing Otter Tail to provide electric service to the tribal-owned facility on tribal trust land within the reservation represents the Tribe's control of its internal relations in the context of making its own laws and being ruled by those laws.³²

³¹ *Devils Lake Sioux Indian Tribe v. North Dakota Pub. Serv. Comm'n*, 896 F. Supp. 955, 957, 961 (D.N.D. 1995)

³² *North Central*, 837 N.W.2d at 146.

The court also specifically limited its ruling to apply to the utility service being provided to “tribal—owned business on tribal trust or Indian owned land.”³³

The North Dakota US District Court reached a similar conclusion in *Devil’s Lake*, finding that:

[T]he Tribe may by resolution or contract determine who is to supply electrical service to Tribal owned businesses located upon Indian owned or trust lands, without regard to the rate structure of other regulations of the North Dakota Public Service Commission.³⁴

The federal court also limited its order to the facts before it, stating “[n]othing shall limit the power or authority of the North Dakota Public Service Commission except as to such service (i.e., service to tribal owned businesses on tribal owned or trust lands), present or future. . . . The promulgation and enforcement of a reservation wide utility regulation scheme without regard to land ownership, occupancy or use is beyond the sovereign authority of the tribe—under the fact specific situation here.”³⁵

In this case, UNG is proposing to provide service to the Lower Sioux casino, government center, medical clinic, warehouse, and recreation center, which staff assumes are owned by the tribe and located on tribal-owned or tribal-trust land. During an October 18, 2017 informal phone conversation with UNG, staff verified that the UNG service provided to the Lower Sioux consists of all tribal owned facilities that are located on tribal land.³⁶ As a result, there is apparently good case law supporting the Lower Sioux’s contention that they should be allowed to exercise their regulatory authority to determine the rates and other terms of the natural gas service provided by UNG through a negotiated contract with UNG rather than through tariffed rates reviewed and approved by the Commission.

If the Commission is inclined to recognize the Lower Sioux’s regulatory authority over UNG’s provision of service to the various tribal-owned entities on tribal land, staff notes that the Commission may want to confirm with the tribe that it is aware of the various customer protections that UNG provides to its non-tribal owned customers under the Commission’s regulatory authority so that the tribe can negotiate for those protections if it so chooses.

³³ *Id.*

³⁴ *Devil’s Lake*, 896 F.Supp. at 961.

³⁵ *Id.* at 961-62.

³⁶ The informal discussion was with UNG representative, Doug Lund.

5. Provide a full explanation of UNG's service proposal to the Lower Sioux, including the initial number of customers and, if known, the total number of potential customers within the Lower Sioux. Provide the projected volumes by customer that UNG is assuming in its financial studies.³⁷

UNG

UNG proposes to provide natural gas service to the Lower Sioux, which includes the Jackpot Junction Casino and four other customers.³⁸ UNG estimates that these customers will annually use 61,975 Dth. UNG/Lower Sioux indicated that there is an interest in providing service residential and small commercial customers located within the Lower Sioux Community. For these customers, UNG estimated annual usage at 15,000 Dth, and a customer count between 150 to 180 additional customers.

Further, UNG plans to extend natural gas service to certain residential and small commercial customers located along GMT pipeline approved in Docket No. 16-1026 (for customer counts and usage, see Response #8, Table 2).

Department

The Department believes that under the current agreement, UNG will be the natural gas provider and the Lower Sioux appears to be a natural gas distribution customer. UNG/Lower Sioux do not appear to be exercising broader regulatory functions associated with a franchise-type agreement for natural gas local distribution service, similar to the small gas utility franchise exemption UNG negotiated with the Municipalities.

At this time, UNG proposes to provide service to the Lower Sioux at certain locations; the Jackpot Junction Casino, Government Center, Medical Clinic, Warehouse, and Recreation Center. This petition does not include any proposed service to residential and/or small commercial customers.

The Department expects the Commission to have concerns if UNG begins to serve residential customers in the future. In its May 24, 2016 Order, the Commission clarified that UNG remains subject to certain regulatory provisions under Commission jurisdiction even though it received a small gas utility franchise exemption. The regulatory provisions include:

- Annual Cold Weather Rule, Minn. Stat § 216B.096 subd. 11 and Minn. Stat. § 216B.16, subd. 12(c);
- Notice to cities of utility disconnection, in Minn. Stat § 216B.0976;
- Residential customer protections, in Minn. Stat § 216B.098;
- Annual tariff updates with municipally-approved rates, in Minn. Stat. § 216B.16, subd. 12(c);
- Any subsequent changes in rates, tariffs, and contracts for service outside the municipalities at least 30 days in advance of implementation; and
- Notification to the Commission should its customer base expand beyond the 5,000 customer threshold.

³⁷ See UNG's July 21, 2017 Reply Comments, pp. 4-5.

³⁸ Also, includes the Government Center, Medical Clinic, Warehouse, and Recreation Center.

To address this situation, the Department recommended that the Commission require UNG to seek further exemption from Commission regulation, if it intends to serve Lower Sioux reservation residential customers at some future date. The Commission also may wish to require that when UNG files its request, that the Lower Sioux file an affirmative statement on its demarcation of oversight responsibilities for UNG's provision of natural gas service to residential customers located within the Lower Sioux Community.

The Department concluded that it is appropriate to allow UNG to serve the large commercial and government facilities listed in Resolution 17-08.

PUC staff

Staff believes that two types of residential customers exist; the residential customers along the GMT pipeline approved in Docket No. 16-1026 and those potential residential located within the Lower Sioux boundaries.

- For the residential located on the GMT pipeline approved in the 16-1026 docket, staff believes that UNG's petition is unclear when it intends to provide service. At the October 26, 2017 Agenda meeting, the Commission may wish to inquire from UNG when it plans to provide the proposed service to these residential customers.

If UNG intends to provide immediate residential services, the Commission could address certain staff concerns at the October 26 meeting. If the Commission chooses to address regulation of these customers, it may wish to determine if these customers qualify as "incidental" load pursuant to Minn. Stat. § 216B.16, subd. 12 requirements regarding - exemption from certain Commission regulation. Staff believes that these customers would be still subject to the Commission regulation stated by the Department in the above discussion.

If UNG does not intend to provide immediate service, the Commission could require UNG to file another petition before providing natural gas service to these residential customers along the GMT pipeline approved in the 16-1026 docket.

- For the residential customers located within the Lower Sioux boundaries, staff believes that these customers would be subject to Commission regulation and not subject to the Lower Sioux regulation. Staff believes that the case law provided by UNG supports this conclusion (see staff discussion under Response #4, for further explanation).

6. Provide an explanation, including the underlying rate calculations and underlying cost assumptions, for the proposed rate structure that UNG proposes to charge the Lower Sioux and how these rates compare to the rates charged to the municipalities of Lafayette and Courtland, and the related “incidental” customers on that portion of its natural gas system.³⁹

UNG

Table 1 (above) reflects the monthly customer charge, distribution rate, and the cost of gas rates for each customer class, pursuant to UNG’s Rate Book. UNG notes that it and the Lower Sioux negotiated a separate monthly service charge and distribution rate for Jackpot Junction Casino.⁴⁰ Jackpot Junction Casino’s charges are not subject to change during the term of the agreement.

Department

The Department did not address this concern.

PUC staff

Staff notes that UNG proposes to charge all customers the same rate structure, customer class dependent, with the exception of the Lower Sioux’s casino. UNG did not provide the requested rate calculations or any related cost assumptions, including the Lower Sioux’s negotiated rate. UNG’s justifies the Lower Sioux’s negotiated rate by stating that the Lower Sioux has sovereign status, and possesses the authority to negotiate with utilities, selecting their service providers and self-regulating the rates they pay for service (certain limitations exist, see Response #4, staff discussion). The provided Resolution 17-08 approving the UNG/Lower Sioux agreement does not state the Lower Sioux negotiated rate. However, in UNG’s petition it is unclear to staff if the negotiated Lower Sioux is applicable to only the casino or if the rate applies to all proposed Lower Sioux customers.⁴¹ The Commission may want to inquire from UNG or the Lower Sioux which facilities will receive the negotiated rate and what rates the other facilities will pay if not receiving the negotiated rate.

UNG believes that because of the Lower Sioux sovereign status, the tribe is exempt from Commission regulation and by providing natural gas distribution service to the Lower Sioux UNG is exempt from Commission regulation. Based on the case law provided by UNG, it seems that the natural service provided to the Lower Sioux would be exempt from Commission regulation. This assumes that each business is tribal-owned and is located on tribal owned land or tribal trust land within the reservation (see staff discussion on Response #4).

Without reviewing UNG’s negotiated rate calculation, staff cannot determine whether the rate is fairly assessing the Lower Sioux for cost of providing service to the tribe. Staff understands that the Lower Sioux has the right to negotiate with UNG to determine the charge for its service, but staff believes the Commission has the right to regulate UNG to determine if other UNG customers are unfairly subsidizing the Lower Sioux service. From this docket’s record, staff cannot make a recommendation on the fairness of the rate. The Commission may want to

³⁹ See UNG’s July 21, 2017 Reply Comments, p. 5.

⁴⁰ Jackpot Junction Casino will pay a different monthly customer charge, and distribution charge than other customers will pay. The cost of gas factor is the same for all customers.

⁴¹ The Government Center, Medical Clinic, Warehouse, and Recreation Center.

consider the fairness of the UNG/Lower Sioux negotiated rate to assure that UNG's other customers are not unduly subsidizing the Lower Sioux. The Commission may wish to require UNG to file sufficient information to support its negotiated Lower Sioux rate before making its final decision.

- 7. Does the proposed Lower Sioux expansion provide positive benefits to UNG with respect to its overall financial stability, and relative to service UNG provides to the municipalities of Lafayette and Courtland? If so, provide an explanation of benefits to these customers.⁴²**

UNG

UNG expects the Lower Sioux expansion will provide benefits to all customers. UNG believes the expansion will allow it to better utilize the Town Border Station capacity, its Hutchinson pipeline transportation capacity, and allow UNG to obtain its natural gas supply at a better price, given the extra volume required. In addition, UNG believes that by adding additional customer load to the pre-existing load will ultimately lower its fixed cost charges, by spreading out the cost over larger customer count, thus possibly resulting in lower rates.

Department

The Department did not address this concern.

PUC staff

PUC staff believes that if the Commission approves UNG's request and UNG provides natural gas service to the Lower Sioux and incidental customer load along the GMT pipeline approved in Docket No. 16-1026, all of UNG's customers could benefit through allowing better utilization of UNG's assets. Without conducting the cost study suggested in Response #6, staff cannot comment on the fairness of the rates charged to its customers.

- 8. Does UNG plan to provide natural gas service to other "incidental" load customers outside the Lower Sioux? If so, provide the customer count by customer class with associated volumes for each customer. Provide all communications with possible "incidental" customers, where UNG is soliciting their business, along with an explanation of UNG's outreach program to these customers.⁴³**

UNG

UNG provided estimates of customer class additions that it considers "incidental" service - located outside the Lower Sioux Community, along the GMT intrastate pipeline. See Table 2:

⁴² See UNG's July 21, 2017 Reply Comments, pp. 5-6.

⁴³ See UNG's July 21, 2017 Reply Comments, p. 6.

Table 2: UNG's Estimated "Incidental" Customer Information located outside the Lower Sioux

	Number of Customers	Annual Usage-Dth
Residential	9	720
Large Commercial	4	5,700
Interruptible	2	1,800
Total	15	8,220

According to UNG, it verbally notified potential new customers about its expansion plans to provide natural gas service to the Lower Sioux and customers outside the Lower Sioux Community. UNG provided these customers the benefits and costs of natural gas service. Further, UNG indicated that several individuals have independently contacted UNG and inquired about receiving natural gas service.⁴⁴ UNG notes that the provided information is limited since it does not know whether "incidental" service will be available to these customers.

Department

The Department summarized the annual usage data provided by UNG to determine if Lower Sioux is the primary driver behind UNG's proposed expansion. See Table 3:

Table 3: Estimated Annual Usage Compared to Total System Usage

Description-usage	Annual Usage (Dth/yr.)	Percentage to Total (%)
Residential	720	1.03%
Large Commercial	5,700	8.12%
Interruptible	1,800	2.56%
Lower Sioux	61,975	88.29%
Total	70,195	100.00%

In addition, the Department performed its customer load test by comparing the forecasted load inside the Municipalities' borders added to the Lower Sioux Community forecasted load to the forecasted load located outside the Municipalities borders and forecasted load along the GMT intrastate pipeline. The Department's results are reflected in Table 4:

⁴⁴ UNG noted that the provided information is limited since it does not know whether exempt "incidental" service from Commission regulation will be available to serve these customers.

Table 4: Department Customer Comparison Test to Determine Incidental Load⁴⁵

Description	Percent of Customers	Peak Day Demand	Annual Throughput
Within Municipal Borders and the Lower Sioux Community	92.6%	55.7%	40.7%
Outside the Municipal borders and along the route to the Lower Sioux	7.4%	44.3%	59.3%
Total	100.0%	100.0%	100.0%

The Department has supported the use of the number of customers as the determining factor as to whether to approve a utility's request for exemption from Commission regulation. From the information in Table 4, the Department was not concerned, as long as UNG is required to provide the same consumer protections (see Response #5) that the Commission required in its exemption approvals for previous UNG service to Municipalities.

PUC staff

From the April 17th Comments, staff believes that it is apparent that UNG intends to provide service to customers outside the Lower Sioux Community (see Table 2). UNG has proposed to expand its existing Municipalities' small gas utility franchise exemption to include the incidental customer along the GMT pipeline approved in Docket No. 16-1026 exempting these customers from Commission jurisdiction and regulation. Staff points out that these customers are not physically close to the Municipalities; that GMT proposed in Docket No. 16-1026 to construct a lateral some 35-miles long in the opposite direction from the Municipalities.

UNG has not provided any cost studies that illustrates the addition of these new incidental customers along the GMT pipeline approved in Docket No. 16-1026 will provide any benefits to the existing Municipalities' customers (both inside and outside the Municipalities borders). If existing customers receive benefits from expanding the Municipalities' exemption, staff would be supportive of UNG's proposal, but no evidence was provided.

The incidental service issue has been addressed in previous dockets⁴⁶, with the Commission allowing the utility to extend service to incidental customers located outside the municipalities' borders under their small gas utility franchise exemption.

The Commission will need to decide whether the circumstances in UNG's petition meet the small gas utility franchise exemption requirements pursuant to Minn. Stat. § 216B.16, subd. 12.

⁴⁵ The Department concluded from its analysis that the Lower Sioux is primary driver behind GMT's intrastate pipeline and UNG's proposed facilities expansion (Table 3). Further, that the forecasted load associated with UNG's service to the Lower Sioux Community Council's facilities and the associated incidental load for service to customers along the route to but not located within the Lower Sioux Community is appropriate (Table 4).

⁴⁶ Docket Nos. 13-672 (Dooley's), 15-856 (Community Coops), 16-214 (UNG), and 17-186 (Lake Region).

- 9. With respect to the proposed construction route for the pipeline from UNG to the Lower Sioux, has UNG contacted unserved municipalities located near the proposed route soliciting their business? If so, provide all correspondence between the parties. If not, provide an explanation as to why these municipalities have not been contracted. If the customers have indicated they would like service, but were denied service by UNG, provide an explanation for the denial.⁴⁷**

UNG

UNG stated that its business practice is not to approach municipalities about natural gas service, but instead, the municipality contacts UNG expressing their interest in receiving service. UNG stated that all municipalities currently served have independently contacted UNG about natural gas service. UNG claims that no municipalities along the GMT pipeline route have contacted UNG about natural gas service. Further, UNG believes terrain constraints may limit natural gas service availability to certain municipalities.⁴⁸

Department

The Department did not address this concern.

PUC staff

PUC staff appreciates UNG's policy of responding to municipalities that request natural gas service. However, UNG did not explain the basis used to develop its municipality service connection policy. Staff realizes that certain constraints (such as terrain) may prohibit certain expansion opportunities because construction costs exceed the benefits of adding a particular municipality. Further, certain municipalities along the GMT pipeline route already have natural gas from a different provider. However, staff reasons that UNG may be missing business opportunities to expand its operations by not contacting these municipalities. The possibility exist that the unserved municipalities may be unaware UNG is providing natural gas services in close proximity. At the October 26, 2017 Commission meeting, the Commission may want to ask UNG its reason for not directly contacting unserved municipalities along the GMT intrastate pipeline.

⁴⁷ See UNG's July 21, 2017 Reply Comments, pp. 6-7.

⁴⁸ For example, UNG believes that terrain constraints would prohibit service to City of Morton, the service would be uneconomical and would cause other customers rates to increase.

10. Has UNG received any complaints about its service from its customers or the municipalities of Lafayette or Courtland? If so, provide those complaints and an explanation of how the complaints were resolved.⁴⁹

UNG

According to UNG, it has received one complaint since its natural gas service began, a small commercial customer.⁵⁰ The customer was concerned because its natural gas consumption was greater than its prior propane usage.⁵¹ UNG investigated the customer's claim by performing a service line leak test and further tested the customer's meter measurement function – with no issues discovered. The customer later contacted the third party contractor who constructed the service line and discovered property issues caused the increased gas usage. This customer did not contact the Commission about its concerns.

Department

The Department did not address this concern.

PUC staff

PUC staff is of the opinion that UNG acted according to its tariff and performed the necessary tests to confirm that the additional customer use was not the fault of UNG. Staff questions whether the customer was aware of the Commission's complaint process. This concern would be alleviated if the Commission requires UNG to issue a customer notice describing the Commission's authority and process. (Please see discussion under question #2 about whether UNG already provides this notice to its customers.)

11. Has UNG communicated with its “incidental” service customers regarding their service rights? If so, provide all communication with those customers. How often does UNG plan to communicate with or notify these “incidental” customers regarding their service rights?⁵²

UNG

UNG states that it regularly uses brochures and information packets to communicate with “incidental” service customers.⁵³ The information communicated includes safety, required notices, and cold weather rule.

Department

The Department did not address this concern.

PUC staff

PUC staff believes that UNG properly communicated with its incidental customers.

(Please see discussion under questions #2 and #10 about whether UNG provides notice to its customers about their right to submit complaints to the Commission.)

⁴⁹ See UNG's July 21, 2017 Reply Comments, p. 7.

⁵⁰ Located in the City of Lafayette.

⁵¹ The customer believed that either the service line was leaking or the meter was measuring incorrectly.

⁵² See UNG's July 21, 2017 Reply Comments, p. 7.

⁵³ Included in customer bills.

12. Provide UNG's rate committee minutes for every meeting that has been held and an explanation of any rate changes that have been discussed or that were the result of these meetings.⁵⁴

UNG

In 2016, UNG created its "Rate Board," this board governs the rates charged by UNG on its system. In 2016, the board consisted five members that included a representative from each of the Municipalities, the Township of Lafayette, and two members of UFC management. In this petition, UNG proposes to increase this board to six member, to include a Lower Sioux representative. UNG stated that the Rate Board has not met and that no rate changes have been discussed or implemented. UNG also noted that its 2016 Rate Book approved by the Commission is still in effect.

Department

The Department did not address this concern.

PUC Staff

The Rate Board was established to oversee UNG's operations, and to set and control UNG's rate structure that impacts all customers. Staff finds it interesting that UNG negotiated a separate Jackpot Junction rate and the Rate Board has not met to discuss the rate. The "Rate Board" may not have jurisdiction over the Lower Sioux, but on the other hand, the Lower Sioux has been invited to join the Rate Board, the Rate Board expanded from five members to six to include the Lower Sioux. At the October 26, 2017 Agenda meeting, the Commission may wish to ask UNG how the Jackpot Junction rate was approved without having a Rate Board meeting to discuss the rate and the impact on the other customers. (Please also see discussion under question #1 about the role of the independent rate board.)

13. Any other issues relevant to the Commission's review of UNG's request to expand its service to include the Lower Sioux Indian Community.

UNG

UNG believes that all relevant issues were in UNG's Reply Comments.

Department

The Department did not address this concern.

PUC Staff

PUC staff is unaware of any other concerns.

⁵⁴ See UNG's July 21, 2017 Reply Comments, p. 7.

Rate Book Changes

UNG

UNG's February 7th filing included certain proposed tariff changes to its Rate Book, Section 2, such as:

- An addition of a member of the Lower Sioux as a board member on the Local Utilities Rate Board, total board members increased from five to six members.
- The inclusion of the Lower Sioux Indian Community on the list of "Cities or Communities Involved" as defined in the Rate Book.

Department

The Department recommended that the proposed tariff changes were reasonable.

PUC staff

PUC staff agrees with the Department's recommendation.

Department Procedural Issues

Department

The Department recommended that the Commission's Order include language that requires UNG to notify the Commission when:

- UNG or a related entity intends to begin to provide natural gas service to customers or facilities other than those listed in Resolution 17-08;
- UNG or a related entity executes a franchise agreement, or similar legal agreement, with the Lower Sioux Community Council or with a similar entity representing the Lower Sioux Indian Community or Council; or
- The Council notifies UNG that it intends to terminate its firm service agreement with UNG.

PUC staff

PUC staff agrees with the Department's procedural recommendations.

Concluding Comments

If the Commission believes it needs additional information for making its decisions, staff included Attachment A that reflects additional questions the Commission may want to ask during the October 26, 2017 Meeting to clarify this docket's record. These questions are included in staff's discussion, but have not summarized for Commission convenience.

Decision Alternatives

If the Commission chooses to address regulation of Lower Sioux customers and customers along the GMT pipeline route approved in the 16-1026 docket

A. Lower Sioux Indian Community Natural Gas Service⁵⁵

1. Decide that the Lower Sioux may regulate UNG's provision of natural gas service to tribal-owned entities located on tribal-owned or tribal-trust land; or
2. Decide that the Lower Sioux may not regulate UNG's provision of natural gas service because it is subject to Commission jurisdiction and regulation; or
3. Take no action.

B. Residential Customers Natural Gas Service within the Lower Sioux tribal boundaries.

4. Require UNG to file a petition seeking Commission exemption if residential and small commercial customers located on the Lower Sioux reservation wish to take natural gas service from UNG at some future date.

C. Residential Customers Natural Gas Service along the GMT pipeline route established in the 16-1026 docket

5. Grant UNG authority to expand the existing Municipalities' small gas utility franchise exemption pursuant to Minn. Stat. § 216B.16, subd. 12, granted in the Commission's May 24, 2016 Order to include the customers requesting service along the GMT pipeline route approved in the 16-1026 docket.
6. Grant UNG's exemption request on a limited basis while awaiting the Lower Sioux's communication addressing the Department concerns. (Department)
7. Do not allow the existing Municipalities' small gas utility franchise exemption to be expanded.
8. Take no action.

Other Decision Alternatives

9. Require the Cities of Lafayette and Courtland to file statement reflecting their position on regulating the proposed additional incidental customers along the GMT pipeline approved in the 16-1026 docket. or

⁵⁵ Jackpot Junction Casino, the Government Center, Medical Clinic, Warehouse,

10. Require UNG's independent rate board to meet and discuss the issue of regulating additional incidental customers along the GMT pipeline, to keep minutes of its rate board meetings, and to provide the Commission with copies of the minutes from these meetings in a compliance filing.
11. Require UNG to issue a customer notice describing the Commission's regulatory authority pursuant to Minn. Stat. § 216B.17 to all current customers and to new/future customers. or
12. Require UNG to provide an explanation of the information included in written materials provided to prospective and new customers and whether it is consistent with the information Commission-regulated utilities are required to provide their customers under the Commission's utility customer service rules, pursuant to Minn. Rules, part 7820.0200. And, if so, whether this information is provided only to new customers or annually.
13. Require UNG to submit sufficient information to support its negotiated Lower Sioux rate before making the final decision or in a compliance filing within 10 days of the Commission issuing its Order. or
14. Do not require UNG to submit sufficient information to support its negotiated Lower Sioux rate before making the final decision or in a compliance filing within 10 days of the Commission issuing its Order

If the Commission approves UNG's proposal to expand the Municipalities small gas utility franchise exemption to include the customers along the GMT pipeline approved in the 16-1026 docket.

15. Require UNG to be subject to following regulatory provisions:
 - Annual Cold Weather Rule, Minn. Stat § 216B.096 subd. 11 and Minn. Stat. § 216B.16, subd. 12(c);
 - Notice to cities of utility disconnection, in Minn. Stat § 216B.0976;
 - Residential customer protections, in Minn. Stat § 216B.098;
 - Annual tariff updates with municipally-approved rates, in Minn. Stat. § 216B.16, subd. 12(c);
 - Any subsequent changes in rates, tariffs, and contracts for service outside the municipalities at least 30 days in advance of implementation; and
 - Notification to the Commission should its customer base expand beyond the 5,000 customer threshold.

Rate Book Changes

16. Approve UNG's proposals to increase the number of members of the Local Utilities Rate Board included in Section 2 of its tariff from 5 to 6 and to include the "Lower Sioux Indian Community" on the list of Cities or Communities in Section 2 of its Rate Book.
17. Do not approve UNG's proposals to increase the number of members of the Local Utilities Rate Board included in Section 2 of its tariff from 5 to 6 and to include the "Lower Sioux Indian Community" on the list of Cities or Communities in Section 2 of its Rate Book.

Procedural Issues Requirements

18. Require UNG to notify the Commission if UNG or a related entity begins to provide natural gas service to customers or facilities other than those listed in the Lower Sioux Community Council's Resolution 17-08 as part of its efforts to provide natural gas service to the Lower Sioux Indian Community.
19. Require UNG to notify the Commission if UNG or a related entity executes a franchise-type agreement or other legal agreement similar in function with the Lower Sioux Community Council or a similar entity representing the Lower Sioux Indian Community.
20. Require UNG to notify the Commission if the Lower Sioux Community Council initiates action to terminate its firm service agreement with UNG.
21. Do not approve the procedural issue requirements.

Attachment A
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Questions the Commission may wish to ask at the October 26, 2017 Meeting

Ask UNG whether this customer complaint information is included in the written materials provided to prospective and all new customers in the new information packet customarily provided to new customers. (Reference Response to Questions #2, pp. 6-7)

Confirm with the tribe that it is aware of the various customer protections that UNG provides its other customers under the Commission's regulatory authority so that the tribe can negotiate for those protections if it so chooses. (Reference Response to Question #4, p. 10)

Ask UNG if it plans to provide service to these residential customers. (Reference Response to Question #5, p. 12)

Inquire from UNG or the Lower Sioux which facilities will receive the negotiated rate and what rates the other facilities will pay if they are not receiving the Lower Sioux negotiated rate. (Reference Response to Question #6, pp. 13-14)

Ask UNG its reason for not directly contacting unserved municipalities along the GMT intrastate pipeline approved in the 16-1026 docket. (Reference Response to Question #8, p. 16)

Ask UNG how the Jackpot Junction negotiated rate was offered and then approved without having a Rate Board meeting to discuss the rate and the impact on the other customers. (Reference Response to Question #12, p. 19)