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In the Matter of the Commission
Investigation into the Impact of Severe
Weather in February 2021 on Impacted
Minnesota Natural Gas Utilities and
Customers

Docket No. G-999/CI-21-135

In the Matter of the Petition of CenterPoint
Energy for Approval of a Recovery Process
for Cost Impacts Due to February Extreme
Gas Market Conditions

Docket No. G-008/M-21-138

**DEPARTMENT OF COMMERCE’S ANSWER TO CENTERPOINT
ENERGY’S PETITION FOR RECONSIDERATION**

The Minnesota Public Utilities Commission should deny CenterPoint Energy’s petition for reconsideration.¹ The Commission reconsiders its decisions only when petitions raise new issues, point to new and relevant evidence, expose errors or ambiguities in the underlying order, or otherwise persuade the Commission that it should rethink its decision.² CenterPoint cannot prevail on appeal either. The Commission’s order is supported substantial evidence in view of the entire record. The Commission should decline to take up CenterPoint’s petition.

¹ Minn. R. 7829.3000, subp. 4 (2021) (“Other parties to the proceeding shall file answers to a petition for . . . reconsideration . . . within ten days of service of the petition.”).

² See, e.g., *In re Inquiry into Exemptions for Small Gas Util. Franchises Under Minn. Stat. § 216B.16, Subd. 12, for Gorham’s, Inc., Nw. Nat. Gas, LLC, Nw. Nat. Gas of Murray Cty., Inc., & Nw. Nat. of Cass Cty.*, Docket Nos. G-6278, G-6279, G-6280/CI-18-770, ORDER DENYING RECONSIDERATION at 1 (Aug. 27, 2021).

ARGUMENT

I. CENTERPOINT’S PETITION FAILS TO MEET THE COMMISSION’S STANDARDS.

CenterPoint fails to raise new issues, new and relevant evidence, or identify errors as required by the Commission’s reconsideration standard. Instead of raising new evidence or issues, CenterPoint asks the Commission to reweigh evidence and arguments relating to the Waterville/Medford storage, Ventura swing supply, and peaking plant issues in the company’s favor. CenterPoint also vaguely asserts that reconsideration is warranted to correct “certain errors” in the Commission’s order.³ Yet, CenterPoint neither raises new evidence and arguments nor identifies actual errors. CenterPoint relies on the same arguments that it used during the OAH proceeding. The Commission, however, is not obligated to simply accept CenterPoint’s claims as the Administrative Law Judges did previously.

Instead, as the final decisionmaker in this matter, the Commission was obligated to employ its expertise to render an independent decision.⁴ Only the Commission has the “experience, technical competence, and specialized knowledge” necessary to evaluate “the evidence in the hearing record.”⁵ Unlike ALJs who are well-rounded generalists, commissioners are appointed with consideration of past experience “in the profession of engineering, public accounting, property and utility valuation, finance, physical or natural sciences, production agriculture, or natural resources.”⁶ This special expertise means that commissioners are in the best position to assess what constitutes prudent utility practice under specific conditions. ALJ recommendations,

³ CenterPoint Reconsideration Petition at 4.

⁴ *City of Moorhead v. Minn. Pub. Utilities Comm’n*, 343 N.W.2d 843, 846 (Minn. 1984).

⁵ Minn. Stat. § 14.60, subd. 4 (2020).

⁶ Minn. Stat. § 216A.03, subd. 1 (2020).

by contrast, are “merely one part of [the] record.”⁷ In this instance, the Commission explained in detail the evidence that warranted departure from the ALJ recommendations.

Absent compelling new arguments or new facts, there is no reason for the Commission to disturb its well-reasoned and supported decision. The Commission should not allow CenterPoint to avoid the responsibility to prudently operate its distribution utility by falling back on its business-as-usual practices. The circumstances surrounding the February Event were clearly anything but business-as-usual. As such, the Commission correctly concluded that prudence required CenterPoint to depart from its normal practices to protect its customers from economic harm. The Commission should decline to take up CenterPoint’s petition.

II. CENTERPOINT’S ARGUMENTS WOULD NOT WARRANT REVERSAL ON APPEAL.

Framing in terms of the appellate standard of review, CenterPoint argues that the Commission’s decision is affected by legal errors and lacks substantial evidence.⁸ The Commission’s decisions are entitled to significant deference on appeal, and the Commission is presumed to have the expertise necessary to decide technical matters within its authority.⁹ A Commission decision may only be reversed, remanded, or modified if it runs afoul of one of six statutory standards.¹⁰ The scope of review on appeal is limited to the issues raised by a party in its reconsideration petition.¹¹ CenterPoint raises no arguments that would warrant reversal on appeal. Instead, the Commission’s well-reasoned decision was made in accordance with law and is supported by substantial evidence when looking to the entire record.

⁷ *City of Moorhead*, 343 N.W.2d at 847.

⁸ CenterPoint Reconsideration Petition at 3-4.

⁹ *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001).

¹⁰ Minn. Stat. § 14.69 (2020).

¹¹ *See* Minn. Stat. § 216B.27, subd. 2 (2020); *In re Enbridge Energy, Ltd. P’ship*, 964 N.W.2d 173, 188 n.18 (Minn. Ct. App. 2021).

A. The Commission’s Application of the Prudence Standard Is Entitled to Deference.

CenterPoint argues that the Commission misapplied the prudence standard and used impermissible hindsight to reach its determination. To be clear, CenterPoint does not argue against the Commission’s adoption of the undisputed prudence standard.¹² Rather CenterPoint argues that the Commission misapplied the standard to the facts. CenterPoint’s main objection appears to be that the Commission relied on prudent alternative actions to calculate disallowances and therefore applied hindsight.¹³

While legal questions are reviewed de novo on appeal, the Commission’s quasi-judicial application of law to fact is reviewed under the substantial-evidence standard.¹⁴ The Commission took great care to apply the prudence standard to the specific facts and determined disallowances at the margin of prudence based on what CenterPoint knew or should have known at the time of making gas purchasing decisions. The Commission’s disallowances were largely based on the testimony of the Department’s witness Mr. King. Rather than simply pick a random disallowance amount, Mr. King accounted for the utilities’ specific systems and attempted to unwind the utilities’ imprudent actions to recreate the bare minimum a utility would have done to establish prudence. In so doing, Mr. King was not applying hindsight. Instead, he was ensuring that the recommended disallowances were remedial rather than arbitrary or punitive.

¹² CenterPoint faults the Commission for not explicitly including an aspect of the prudence standard—that there is a range of reasonable actions—in the legal standards section of the order. But the Commission clearly recognized a range of reasonable actions throughout its order. *See* Docket Nos. G-008/M-21-138; G-999/CI-21-135, ORDER DISALLOWING RECOVERY OF CERTAIN NATURAL GAS COSTS AND REQUIRING FURTHER ACTION at 14, 19, 25, 28 (Oct. 19, 2022) (“CenterPoint Order”). CenterPoint provides no support for legal error occurring by the Commission not adopting this aspect of the prudence standard verbatim in a specific section of the order.

¹³ CenterPoint Petition for Reconsideration at 4.

¹⁴ *In re Enbridge Energy, Ltd. P’ship*, 964 N.W.2d at 189.

Notably, CenterPoint provided no alternative methodology to calculate disallowances for imprudently incurred gas costs. And CenterPoint’s objection to the Commission’s disallowance calculation is puzzling given the alternatives: that utilities charge ratepayers for gas costs no matter how imprudently incurred or that a disallowance be an all or nothing calculation, with the slightest misstep leading to a disallowance of all costs. The Commission’s disallowance recommendations are far fairer and more reasonable, supported by substantial evidence, and result in just and reasonable rates.

B. The Commission’s Determination that CenterPoint Acted Imprudently Is Supported By Substantial Evidence in View of the Entire Record.

CenterPoint’s substantial evidence arguments reach their conclusion by picking and choosing portions of the record and generally rely on the testimony of its own witnesses. This is not how substantial evidence works. Courts may reverse or modify an administrative decision only if it is “unsupported by substantial evidence *in view of the entire record as submitted.*”¹⁵ The question is whether there is “relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and more than a ‘scintilla,’ ‘some’ or ‘any’ evidence.”¹⁶ The Commission need only adequately explain “how it derived its conclusion and whether that conclusion is reasonable on the basis of the record.”¹⁷ The substantial-evidence standard is “rooted in the deference [courts] show to matters that are properly within the agency’s particular expertise.”¹⁸

Here, the Commission provided thorough explanations of its conclusions and reasoning for why it decided between competing expert determinations in disallowing gas costs for CenterPoint’s failure to maximize storage from its Waterville/Medford facility, failure to prudently

¹⁵ Minn. Stat. § 14.69 (emphasis added).

¹⁶ *In re NorthMet Project Permit to Mine Application Dated Dec. 2017*, 959 N.W.2d 731, 749 (Minn. 2021) (cleaned up).

¹⁷ *Id.*

¹⁸ *Id.*

utilized the Ventura swing component of its BP Canada storage contract, failure to deploy its peaking plants, and failure to curtail interruptible customers.

1. The Commission’s Determination that CenterPoint’s Planned Withdrawals from Its Waterville/Medford Storage Facility Were Imprudent Appropriately Weighed the Evidence in the Record.

CenterPoint claims that the Commission relied on facts that were “simply not knowable” to find that CenterPoint acted imprudently. This assertion disregards the Commission’s careful review of the record and application of the legal standard. While CenterPoint argued it could not know that it could withdraw 55,000 Dth from Waterville/Medford on a given day, the Commission was not obligated to agree, particularly in light of expert testimony and other record evidence to the contrary. The Commission has wide discretion to determine the credibility of both lay witnesses and experts.¹⁹ The Commission considered the “entire record, including the testimony of [experts] Heer, Reed, and King and the records of CenterPoint’s storage withdrawal history.”²⁰ After doing so, the Commission appropriately found “the Department’s evidence and arguments more persuasive than CenterPoint’s on this issue.”²¹ As the Commission recognized, CenterPoint had a history of frequently withdrawing more than 50,000 Dth over the past several years.²² During the weekend immediately preceding the four-day period (February 13-16), CenterPoint withdrew over 55,000 Dth on three consecutive days: 56,638 Dth on February 6; 56,848 Dth on February 7, and 55,260 Dth on February 8.²³

¹⁹ See *Schultz v. U.S. Bedding Co.*, 297 N.W. 351, 352 (Minn. 1941) (“[W]e do not try the facts nor determine the credibility of the testimony of witnesses, be they laymen or [] experts.”).

²⁰ CenterPoint Order at 10.

²¹ *Id.*

²² CPE Ex. 118 at 61, Table 7 (Grizzle Direct); See DOC Ex. 507 at 8, MJK-S-1 (King Surrebuttal) (CPE Response to DOC IR No. 74).

²³ DOC Ex. 507, MJK-S-1 at 1–2 (King Surrebuttal) (CPE Response to DOC IR No. 74).

CenterPoint also argues that planning for an additional 5,000 Dth of gas from Waterville/Medford would have jeopardized reliability.²⁴ But the Commission again disagreed and explained why: “CenterPoint could have safely addressed the shortfall using peak-shaving plants or interruptible load while leaving ample resources available to address any issues that may have arisen during the four-day period, on February 17, or later in the season.”²⁵ More specifically, during the four-day period CenterPoint had approximately 80,000 Dth of interruptible load to call on, 149,000 Dth of its propane peaking plant capacity to dispatch, and 72,000 Dth of its LNG peaking plant capacity to dispatch should reliability become a concern.²⁶ On the coldest day of the February Event, February 14, CenterPoint used less than 5% (7,001 Dth) of its propane peaking plant capacity and less than 60% (41,611 Dth) of its LNG peaking plant capacity.²⁷ The Commission’s determination that CenterPoint could have safely addressed a 5,000 Dth shortfall from Waterville/Medford has substantial record support.

2. The Commission’s Determination that CenterPoint Acted Imprudently by Not Preserving a Portion of Its Ventura Swing Supply for Later in the Winter Is Supported by Substantial Record Evidence.

CenterPoint argues that the Commission unreasonably determined that CenterPoint acted imprudently by not preserving 70,000 Dth of gas from the Ventura swing component of its BP Canada virtual storage contract for use on February 17.²⁸ To support its argument, CenterPoint incorrectly describes the Commission’s decision, disregards record evidence and expert testimony, and falls back on a reliability argument that fails to account for the specific circumstances of different storage assets.

²⁴ CenterPoint Reconsideration Petition at 10-11.

²⁵ See CenterPoint Order at 10.

²⁶ See CPE Ex. 129, JTT-D-4 at 1 (Toys Direct).

²⁷ *Id.*

²⁸ CenterPoint Reconsideration Petition at 12-17.

First, to support its argument, CenterPoint reframes the Commission’s decision, claiming the Commission determined that CenterPoint should have withheld a portion of its Ventura swing supply for use *on February 17*.²⁹ That was not the Commission’s finding. Rather, the Commission found that under the facts and circumstances on February 12, “prudence required CenterPoint to actively manage its storage resources to avoid prematurely exhausting any discrete resource so it could maintain a variety of storage options for the *rest of the season*.”³⁰ By prematurely exhausting the Ventura swing supply, CenterPoint failed to maintain “the broadest range of resource options to manage future risks,” including not having a full day (70,000 Dth) of the contract to deploy on February 17 or any later date.³¹ By February 17, however, prudence required exercising all available options to reduce the economic harm to ratepayers, by curtailing interruptible customers, dispatching peak shaving facilities, and using the full daily capacity (70,000 Dth) of Ventura swing supply.

Second, CenterPoint simply ignores the record evidence that contravenes its position. For example, CenterPoint argues against the Commission’s determination that preserving an amount of storage gas for use later in the winter was prudent regardless of “special foreknowledge of an unprecedented market event”³² The Department’s expert, Mr. King, testified in regard to this specific issue that CenterPoint “needs to manage the utilization of its storage assets, including consideration of inventory, on an ongoing basis.”³³ Even CenterPoint’s witness testified that “the

²⁹ *See, e.g.*, CenterPoint Reconsideration Petition at 12 (“[T]he Commission found the decision to use the remaining Ventura swing supply over the four-day holiday weekend was imprudent because the Company should have instead preserved 70,000 Dth of Ventura swing volumes for use on Wednesday, February 17.”).

³⁰ CenterPoint Order at 15 (emphasis added).

³¹ *Id.*

³² CenterPoint Reconsideration Petition at 14.

³³ DOC Ex. 507 at 12 (King Surrebuttal).

Company must manage its BP storage withdrawals to ensure sufficient supply to get through the coldest part of the winter season. . . .”³⁴ The Commission appropriately evaluated the entire record, not just CenterPoint’s cherry-picked testimony, coming to its conclusion that “prudent storage management strategy” required preserving at least a day of Ventura swing gas.³⁵

Lastly, CenterPoint’s argues that the Commission’s determination that CenterPoint should have withheld some portion of the Ventura swing supply for use later in winter is inconsistent with the Commission’s Waterville/Medford decision.³⁶ But CenterPoint ignores the different circumstances and status of the two storage resources at the time CenterPoint made its gas planning decisions. Unlike the Ventura swing supply, which was almost depleted by February 12 when CenterPoint exhausted it, Waterville/Medford had ample resources, 682,132 Dth on February 12.³⁷ There is no inconsistency. The Commission’s decision has substantial record support, and it should not reconsider.

3. The Commission’s Disallowances for CenterPoint’s Failure to Prudently Deploy Its Peak Shaving Assets and Curtail Interruptible Customers Are Reasonable and Supported by Substantial Evidence.

The Commission properly determined that prudence required dispatching its LNG peaking plant and curtailing 50% of its interruptible customer load. CenterPoint simply seeks to relitigate the case. CenterPoint asserts that the Commission discounted reliability concerns in its peaking-plant and interruptible-customer determinations and that the Commission’s peaking-plant disallowance unfairly differentiated between utilities.³⁸ The Commission appropriately accounted for reliability and wisely accounted for differences in the gas utilities’ situations and resources.

³⁴ CPE Ex. 121 at 39 (Grizzle Rebuttal).

³⁵ CenterPoint Order at 14.

³⁶ CenterPoint Reconsideration Petition at 17.

³⁷ See Ex. CPE-129, JTT-4 (Toys Direct).

³⁸ CenterPoint Reconsideration Petition at 19-23. Oddly, CenterPoint claims that “[i]t is undisputed that . . . for February 17, CenterPoint Energy arranged as little daily gas supply as

First, CenterPoint’s accusation that the Commission unreasonably dismissed reliability considerations is simply inaccurate. As it has done throughout the case, CenterPoint points to load uncertainty and the potential of supply cuts to justify not deploying any of its peaking plants or curtailing any interruptible customers to offset expensive spot gas purchases.³⁹ The Commission carefully considered reliability for peaking plants, curtailment, and other issues, and the Commission’s disallowances prioritized reliability. The record shows that CenterPoint retained adequate tools to provide reliable service *and* protect its customers from excessive gas costs on February 17. CenterPoint retained its eight propane facilities (149,000 Dth per day⁴⁰) and half its interruptible customer load (approximately 80,000 Dth) to address up to 229,000 Dth in hypothetical shortfalls due to weather changes or supply disruptions. That is, the weather on February 17 would have had to be approximately 15 degrees colder than forecasted to create a reliability concern that would cause CenterPoint to call on its firm customers to conserve energy.⁴¹ CenterPoint’s propane peaking plants and remaining interruptible-customer load also greatly exceeds the 56,000 Dth in cumulative supply failures that CenterPoint experienced over the entire

reasonably possible.” *Id.* at 19. The dispute about the reasonableness of CenterPoint’s February 17 daily gas purchases has been the subject of intensive litigation for over a year. The Department introduced substantial evidence that CenterPoint did not “arrange as little daily gas supply as reasonably possible,” for February 17, and the Commission agreed based on the weight of the record evidence. While the Department did not specifically dispute CenterPoint’s load forecasting, prudent load forecasting does not relieve CenterPoint of its obligation to make prudent gas supply decisions considering other factors.

³⁹ CenterPoint Reconsideration Petition at 19-21.

⁴⁰ DOC Ex. 507 at 16 (King Surrebuttal); CNP Ex. 129, JTT-D-4 at 1 (Toys Direct) (showing 149,000 Dth in peaking capacity).

⁴¹ CenterPoint states that for every degree the average daily temperature drops below 65 degrees, CenterPoint must plan for approximately 15,000 Dth of additional gas supply. CPE Ex. 121 at 26 (Grizzle Rebuttal); $(229,000/15,000 = 15.26)$.

February Event.⁴² CenterPoint had the resources to both ensure reliability and mitigate economic harm to its customers. It failed to do the latter.

Second, CenterPoint claims that the Commission's peaking plant disallowance unfairly treated the utilities' differently.⁴³ This argument ignores the differences between the various utilities systems and resources, which the Commission addressed. The Commission appropriately determined that prudence required CenterPoint to dispatch peak shaving gas equivalent to its LNG plant's maximum daily capacity, while prudence required Xcel to dispatch only 50% of its LNG plant. The Commission determined that both utilities should hold back their propane peaking plants for reliability.⁴⁴ In its determination, the Commission appropriately balanced the need to protect consumers from economic harm while ensuring reliable and safe service based on the two utilities' specific resources. While Xcel may have less load than CenterPoint, CenterPoint has significantly more propane peak shaving facilities than Xcel—eight versus two.⁴⁵ CenterPoint's propane peaking plants can dispatch 149,000 Dth per day,⁴⁶ whereas Xcel's propane peaking plants can dispatch only 90,000 Dth.⁴⁷ In addition, at the time of making gas purchases for February 17, Xcel had curtailed its interruptible customers for the full day, which removed its ability to curtail interruptible customers for reliability.⁴⁸ Under the Commission's prudence determination, CenterPoint retained the ability to curtail half of its interruptible load to address

⁴² DOC Ex. 507 at 16 (King Surrebuttal).

⁴³ CenterPoint Reconsideration Petition at 22-23.

⁴⁴ CenterPoint Order at 19; Xcel Order at 38.

⁴⁵ CNP Ex. 115 at 22 (Heer Direct); Xcel Ex. 223 at 3 (Yehle Direct).

⁴⁶ DOC Ex. 507 at 17 (King Surrebuttal).

⁴⁷ Xcel Ex. 223 at 7 (Yehle Direct).

⁴⁸ DOC Ex. 506 at 97 (King Direct).

reliability on February 17.⁴⁹ The Commission appropriately looked at the circumstances of each utility in its disallowance determination. It should not reconsider.

III. THE COMMISSION’S CONCLUSION THAT CENTERPOINT’S INTERRUPTIBLE SERVICE TARIFFS ALLOWED ECONOMIC CURTAILMENT IS LEGALLY SOUND.

CenterPoint argues that the Commission incorrectly interpreted its interruptible service tariff to allow for economic curtailment.⁵⁰ CenterPoint claims that because its tariffs do not provide specific criteria to trigger curtailment for extreme gas prices, it precludes any authority to curtail interruptible customers during a historic price spike event.⁵¹

Tariffs are interpreted like other contracts, with words being given their ordinary meaning read in light of the tariff as a whole.⁵² The Commission thoroughly reviewed the tariffs’ language, employed the proper interpretation principles, and came to the correct conclusion that CenterPoint had broad authority to curtail.⁵³

CenterPoint’s tariffs provide it broad authority to determine when to curtail interruptible customers. For example, CenterPoint’s dual fuel gas sales service agreement provides that “CenterPoint Energy can interrupt Customer if capacity constraints require, *or for other appropriate reasons.*”⁵⁴ The Commission correctly found that the plain language of CenterPoint’s tariffs provides it wide discretion to determine when to curtail.

⁴⁹ CenterPoint Order at 25.

⁵⁰ CenterPoint Reconsideration Petition at 23.

⁵¹ *Id.*

⁵² *Info Tel Commc’ns, LLC v. Minn. Pub. Utils. Comm’n*, 592 N.W.2d 880, 884 (Minn. Ct. App. 1999).

⁵³ Commission Order at 23.

⁵⁴ *See, e.g.*, Firm/Interruptible Gas Transportation Service Agreement, Section VII at 10.b, Dual Fuel Gas Sales Service Agreement, Section VII at 1.a, *available at* <https://www.centerpointenergy.com/en-us/Documents/RatesandTariffs/Minnesota/CPE-MN-Tariff-Book.pdf> (emphasis added). Although CenterPoint has several different interruptible tariff offerings, they all share common terms and conditions. *See* CUB Ex. 801 at 63 (Cebulko Direct).

CenterPoint also argues that the tariffs' lack of parameters for economic curtailment would make undertaking a one-time economic curtailment on February 17 unreasonable or possibly illegal. The Commission properly recognized that CenterPoint's argument ignores the fact that CenterPoint's tariffs require no such parameters, structure, or benchmarks for curtailments that CenterPoint believes are reasonable, such as for capacity constraints.⁵⁵ For example, the service agreements include no parameters for how close to capacity CenterPoint's load must be before calling curtailment or other reliability benchmarks that must be passed before curtailment. Reliability is not even defined in CenterPoint's tariffs.⁵⁶ Instead, the tariff provides CenterPoint the authority to make that call.

The Commission has already assessed CenterPoint's arguments and rejected them. It should not reconsider.

CONCLUSION

CenterPoint failed to raise new issues, point to new and relevant evidence, expose errors or ambiguities in the underlying order, or present evidence that otherwise warrants reconsideration. The Commission's order is well-reasoned, consistent with law, and supported by substantial evidence. The Commission should deny the company's petition.

⁵⁵ CenterPoint Order at 23.

⁵⁶ CUB Ex. 819 at 37 (Nelson Surrebuttal).

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