

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben	Chair
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
Joseph K. Sullivan	Commissioner
John A. Tuma	Commissioner

In the Matter of an Inquiry into Exemptions for Small Gas Utility Franchises Under Minn. Stat. § 216B.16, Subd. 12, for Gorham’s, Inc., Northwest Natural Gas, LLC, Northwest Natural Gas of Murray County, Inc., and Northwest Natural Gas of Cass County

ISSUE DATE: June 22, 2021

DOCKET NO. G-6278, G-6279, G-6280/CI-18-770

ORDER ACCEPTING FILING AND ESTABLISHING ADDITIONAL REQUIREMENTS

PROCEDURAL HISTORY

On March 14, 2019, the Commission issued an order in Docket No. PL-6580/M-18-465 initiating an investigation into the regulatory status of Gorham’s, Inc.; Northwest Natural Gas, LLC; Northwest Natural Gas of Murray County, LLC (collectively, Northwest),¹ and Northwest Natural Gas of Cass County, Inc.²

On March 29, 2019, the Commission issued a notice of comment period in this docket relating to Northwest’s eligibility for a small gas utility exemption from Commission rate regulation under Minn. Stat. § 216B.16, subd. 12.

On May 15, 2019, Northwest filed comments contending that the three Northwest entities are separate utilities, each eligible for exemption under Minn. Stat. § 216B.16, subd. 12.

On May 31, 2019, the Department of Commerce, Division of Energy Resources (the Department) filed comments recommending that the Commission find Northwest in violation of Minn. Stat. § 216B.16, subd. 12, and require Northwest to either request a small gas utility exemption or initiate a general rate case proceeding.

¹ *In the Matter of the Petition of Greater Minnesota Transmission, LLC (GMT) for Approval of a Firm Gas Transportation Agreement with Northwest Natural Gas of Cass County, LLC, Inc.*, Docket No. PL-6580/M-18-465, Order Approving Petition and Initiating Investigation (March 14, 2019).

² Northwest Natural Gas of Cass County, Inc., has dissolved and does not serve any customers.

On November 20, 2019, the Commission issued an order requiring Northwest to file all municipal resolutions requesting exemption, legal analysis regarding whether it is one utility or multiple utilities, updated and additional information on customer counts, and other information.³

On February 18, 2020, Gorham's, Northwest Natural Gas, and Northwest Natural Gas of Murray County jointly submitted a compliance filing pursuant to the November 20, 2019 order.

In March and April of 2020, the Commission received public comments from the cities of Vernon, Grand Rapids, Ogilvie, and Currie recommending that the Commission confirm the companies' small gas utility exemptions.

On October 2, 2020, the Department filed comments recommending that the Commission treat Gorham's, Northwest Natural Gas, and Northwest Natural Gas of Murray County as a single public utility for purposes of Minn. Stat. § 216B and find the utility ineligible for exemption from state rate regulation because it exceeds the statutory customer-count threshold.

On December 15, 2020, Northwest filed reply comments.

On March 11, 2021, the Department filed supplemental comments reiterating its prior recommendation but also offering an alternative proposal for collaborative regulation between the municipalities and the Commission.

On April 2, 2021, Northwest filed reply comments.

On May 6, 2021, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Completeness of the February 18, 2020 Filing

A. Required Filings

The Commission's November 20, 2019 order required Northwest, within 90 days, to file all municipal resolutions requesting exemptions along with the following:

- a. Additional information and legal analysis, with the guidance of the Department, on the question of whether the Commission should consider Northwest to be one company or three separate companies in the analysis of whether the exemption requirements are satisfied.
- b. Additional information and legal analysis, with the guidance of the Department, regarding the number of customers being served inside and outside the municipalities.
- c. Updated customer counts, plus a statement that the utility does not discriminate between customers located within and outside of municipalities, and if it does, why.

³ Order Requiring Additional Filings, Ordering Paras. 1–2 (November 20, 2019).

- d. Any municipality-approved rate changes that occurred in the prior year and when these changes went into effect.
- e. All changes to its tariff book in redlined and final revised tariff form.
- f. A copy of its cold weather disconnection notice sent to the customers, including how the notice was communicated and date communicated, as required by Minn. Stat. § 216B.096 (Cold Weather Rule).
- g. A copy of any utility disconnection reports served to any of the municipalities, as required by Minn. Stat. § 216B.0976 (Notice to Cities of Utility Disconnection).
- h. Pursuant to Minn. Stat. § 216B.098 (Residential Customer Protections), a copy of its notice form sent to customers who are in arrears, along with any policy not clearly identified in the tariffs regarding budget billing plans, payment arrangements, and under-charge repayment.

Northwest timely submitted a joint compliance filing pursuant to the November 20, 2019 order.

B. Comments

1. The Department

The Department reviewed Northwest's February 18, 2020 filing and concluded that it complied with the November 20, 2019 order's directives to provide municipal resolutions, legal analysis on certain issues, and cold-weather-rule and customer-disconnection notices.

The Department noted that, rather than the requested tariff books, Northwest provided rate schedules for each municipality served and stated that it does not maintain tariff books. The Department concluded that Northwest's submission satisfied the order requirement, but it was concerned that Northwest lacked more specific tariff language outlining service to ratepayers.

Additionally, the Department noted that Northwest stated that it had never provided or been asked to provide disconnection reports to municipalities as required by Minn. Stat. §216B.0976. The Department concluded that Northwest's response satisfied the order requirement but requested clarification as to whether Northwest is in compliance with the statute.

The Department concluded that the compliance filing satisfies the requirements of the November 20, 2019 order. However, the Department contended that the information Northwest provided was lacking compared to other companies' small gas utility exemption filings, particularly with respect to the franchise agreements and tariff language. Therefore, the Department recommended that the Commission require Northwest to file formal exemption requests in separate dockets for each entity deemed potentially eligible for exemption.

2. Northwest's Reply

In reply comments, Northwest agreed to implement certain practices recommended by the Department going forward, including filing any changes in rates, tariffs, and contracts for service outside the municipality with the Commission and the Department 30 days in advance; ensuring

compliance with Minn. Stat. § 216B.0976 by providing disconnection reports to regulating municipalities; annually submitting municipally-approved rates to the Commission; and adhering to Commission policies and procedures governing disconnections during cold weather.

C. Commission Action

The Commission agrees with the Department’s analysis that Northwest’s February 18, 2020 filing satisfies the requirements of the November 20, 2019 order, and will therefore approve the submission as substantially complete, with the following exception.

The rate information Northwest provided did not include tariff pages outlining the rights and responsibilities of customers. The Commission will require Northwest to file tariff pages or rate sheets detailing the rights and responsibilities of customers within 90 days.

II. Eligibility for Small Gas Utility Exemptions

A. Legal Standard

Under Minn. Stat. § 216B.16, subd. 12(a), a municipality may request that a public utility under franchise with the municipality be exempt from the Commission’s rate regulation if the utility serves no more than 650 customers within the municipality and no more than 5,000 customers in total. If statutory requirements are met, the Commission must grant the requested exemption with respect to the utility’s natural gas service within the municipality and nearby incidental loads.⁴

B. Number of Utilities

Because eligibility for exemption depends on customer counts, a threshold question is whether Gorham’s, Northwest Natural Gas, and Northwest Natural Gas of Murray County are three separate public utilities with three separate customer counts, or a single public utility with an aggregate customer count, for purposes of Minn. Stat. ch. 216B. Minn. Stat. § 216B.02, subd. 4, defines “public utility,” in relevant part, as follows:

“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

1. Positions of the Parties

a. Northwest

Northwest argued that the corporate form defines the public utility, such that a public utility necessarily consists of a single legal entity and cannot encompass multiple affiliated legal entities. Based on this premise, Northwest argued that this docket involves three distinct public utilities: (1) Gorham’s, Inc., which serves Cass Lake, Grand Rapids, and certain surrounding

⁴ Minn. Stat. § 216B.16, subd. 12(b).

townships and unincorporated areas; (2) Northwest Natural Gas, LLC, which serves Ogilvie, Henderson, Mapleton, Good Thunder, Minnesota Lake, and Vernon Center, and certain nearby townships; and (3) Northwest Natural Gas of Murray County, LLC, which serves Avoca, Currie, Dovray, Fulda, Slayton, and Bingham Lake, and certain surrounding townships.

Northwest stated that the companies all operate under the “Northwest Gas” brand in interactions with customers because they share a common history, but it argued that the corporate structure, not the branding to customers, determines each company’s regulatory status as a utility.

Northwest argued that the Commission must recognize the three corporations as separate utilities because nothing in the statute expressly allows treating multiple affiliated corporations as a single utility and because the companies have separate ownership structures, charge different rates, are regulated by different municipal regulators, file and present separate taxes, and serve distinct geographic areas and customers.

Northwest also argued that the companies must be treated as distinct utilities because the factors Minnesota courts apply to determine whether to pierce the corporate veil to hold an owner liable for corporate debts, as set forth in *Victoria Elevator Co. v. Meriden Grain Co.*, 283 N.W.2d 509, 512 (Minn. 1979), have not been demonstrated in this case. Addressing the *Victoria Elevator* factors, Northwest argued that the companies are independently capitalized, observe corporate formalities, distribute funds to their multiple owners, keep corporate records, and are sufficiently distinct from their individual owners.

Additionally, Northwest argued that treating the companies as a single utility would not prevent injustice or serve a public purpose, noting that municipalities have regulated the companies for decades without any municipal regulator or customer requesting state regulation. Northwest contended that state regulation would upset community expectations, hinder rural economic development, increase costs, and impose a regulatory burden without corresponding benefits.

b. The Department

The Department argued that the *Victoria Elevator* factors apply only where a creditor seeks to recover corporate debts from a corporation’s owner and, thus, do not control this analysis. Instead, the Department urged the Commission to consider factors the court used to determine whether a subsidiary was organized as an alter ego of its parent company for purposes of the personal-jurisdiction analysis in *JL Schwieters Construction, Inc. v. Goldridge Const., Inc.*, 788 N.W.2d 529 (Minn. App. 2010). The Department analyzed the following factors identified by the court, clarifying that not all eight must be present to support an alter-ego finding:

1. whether an entity conducted business through a closely interrelated entity;
2. whether the entities maintain offices in the same location;
3. whether the entities share the same owners;
4. whether the entities share the same management;
5. whether the entities issue consolidated financial statements and tax returns;
6. whether an entity guaranteed the credit of the other entity;
7. whether an entity held itself out as having substantial control of the other entity and did in fact have substantial control; and
8. whether the relationship is a convenient way for one of the entities to organize its own business.

The crux of the Department's argument was that Northwest failed to adhere to the corporate formalities it relied on to support its position that the three companies are separate utilities.

The Department argued that the companies' shared resources and functions suggest that they operate as one utility and are too dependent on one another to function separately. The Department stated that Gorham's employees provide management and administrative services for all three entities, Northwest Natural Gas provides accounting and customer service for all three entities, and Northwest Natural Gas of Murray County has no employees and appears to contract with the other companies for all functions. Rather than awarding contracts for these services through a competitive bidding process, the companies selected one another for these service agreements based solely on their existing relationships. The Department argued that this arrangement suggests a division of labor within one utility rather than three distinct utilities.

The Department argued that Northwest's contracts suggest a lack of independence between the companies in gas purchasing. Moreover, all but one of Northwest's franchise agreements with municipalities name Gorham's as the franchisee, but if the entities are distinct, the municipalities served by Northwest Natural Gas and Northwest Natural Gas of Murray County should have franchise agreements with those respective entities, not with Gorham's.

Although Gorham's maintains its office in Grand Rapids and the other companies share an office in Mapleton, the Department noted that Northwest's cold-weather-rule and service-disconnection notices to customers refer to Northwest as a singular entity and provide contact information for a single office location. Further, all three companies' customers can make payments and inquiries at any Northwest location, and all three companies' customer service communications are directed through the Mapleton office. Thus, the Department argued, Northwest operates as a single utility from a customer perspective.

The Department also argued that shared ownership and a lack of strong corporate governance practices suggest overlapping control or influence between the companies. Northwest Natural Gas and Northwest Natural Gas of Murray County have identical owners, and Michael Gorham, the sole shareholder of Gorham's, is a minority owner and the registered agent or manager for both other companies. Gorham's has not had a directors' meeting since at least 2015, the other two companies jointly held a shareholder meeting in 2016 which had no formal agenda or minutes, and the ownership and leadership of the companies have remained relatively static. Additionally, the Department cited an industry-publication interview in which Mr. Gorham implied that Northwest is a single organization over which he has control.

The Department questioned the companies' financial independence from one another, noting that the companies are openly related, share a billing system and a customer remit address, have outstanding accounts payable and receivable balances with one another, and provide services for one another without competitive bidding or formal written agreements. Additionally, the Department noted that the companies have credit arrangements that would be highly unusual for truly independent companies. For example, Northwest Natural Gas of Murray County provided an unsecured loan to Gorham's without a formal loan agreement.

The Department concluded that Northwest operates as one utility but created the three entities over time to remain below the statutory threshold for exemption from state rate regulation. Therefore, the Department recommended that the Commission treat Northwest as one utility for

purposes of Minn. Stat. ch. 216B or, alternatively, require the companies to improve their observance of corporate formalities and separate operations to avoid such treatment.

c. Northwest's Reply

Northwest reiterated its position that the three business entities are separate utilities for regulatory purposes. It disputed the Department's characterizations of the relations between the companies, arguing that the companies engage in arm's-length business transactions and observe corporate formalities as distinct, independent utilities. Northwest also argued that the companies are distinct utilities because their ownership is not identical and they serve separate geographic areas, maintain different rates, and are separately regulated by the municipalities they serve.

Northwest argued that the legislative purpose of the limits placed on small gas utility exemptions is to restrict the scope of a municipality's regulatory authority. Therefore, Northwest argued, the analysis should focus on whether a particular municipality seeks to regulate a utility larger than the statute allows, rather than framing the issue as whether a group of companies regulated by multiple municipalities may be too large to avoid state regulation. Because each municipality seeks to regulate only one Northwest entity, Northwest argued, the customer-count analysis for each municipality should not encompass other entities regulated by other municipalities.

However, to address concerns raised by the Department and improve its adherence to corporate formalities, Northwest stated that it would correct its franchise agreements to clarify the name of the business entity serving each municipality. Additionally, Northwest Natural Gas of Murray County agreed to formalize its credit-guarantee arrangement with Northwest Natural Gas and its loan arrangement with Gorham's.

2. Commission Action

The statute does not define "public utility" as a single entity necessarily determined by its formal legal or corporate structure. Nor have the parties identified case law that directly addresses the question presented. However, based on the evidence in the record, the arguments of the parties, and the persuasive effect of cases cited, the Commission agrees with the Department's analysis that Gorham's, Northwest Natural Gas, and Northwest Natural Gas of Murray County are a single public utility for purposes of Minn. Stat. ch. 216B.

The record demonstrates that Northwest has at times held itself out to customers, municipalities, suppliers, and industry publications as a single organization for certain purposes. The companies' identities have been ambiguous in franchise agreements, gas purchasing contracts, and customer notices. The companies' operations, customer service, and billing practices have been substantially interrelated, and the distinctions between the companies have been inconsistent or, at least, unclear. Moreover, the evidence of informal, unwritten credit arrangements and the intercompany sharing of functions without competitive bidding or formal contracts conflicts with Northwest's claim of three distinct, independent companies engaging in arm's-length business transactions. Additionally, although the companies do not share identical ownership and governance, the overlap in this case is enough to raise questions about unified control or influence between the three companies under the totality of the circumstances.

For these reasons, the Commission finds that Gorham's, Northwest Natural Gas, and Northwest Natural Gas of Murray County are a single public utility for purposes of Minn. Stat. ch. 216B.

C. Number of Customers

A gas utility may be eligible for the exemption if it serves no more than 650 customers in the municipality requesting exemption and no more than 5,000 customers in total.⁵ The statute does not define “customer” for purposes of calculating these amounts.

1. Positions of the Parties

a. Northwest

Northwest argued that a “customer” is a person or business that contracts for gas service and that a person or business counts as only one customer even if it has multiple meters or premises. Northwest argued that this interpretation follows the plain, ordinary dictionary definition and common business usage of “customer” as “one that purchases a commodity or service.”

Northwest cited Minn. R. 7820.0700, subp. 1, which defines “customer” as used in the Commission’s utility customer service rules as “any person, firm, association or corporation, or any agency of the federal, state, or local government, being supplied with service by a utility, subject to the jurisdiction of this commission.” As further support for its argument that “customer” throughout chapter 216B refers to the person or business contracting for service rather than that person’s meter or premises, Northwest cited references to a “customer’s meter” in Minn. Stat. § 216B.075; the fact that Minn. Stat. § 216B.164, subd. 2a(f) defines customer as “the person who is named on the utility electric bill for the premises” for purposes of the cogeneration and small power production statute; and chapter 216B’s general focus on customer protections. Northwest argued that interpreting “customer” as “meter” or “premises” in this case would conflict with the meaning of “customer” in the rest of chapter 216B.

Defining customer as a person or business, Northwest asserted that Gorham’s serves 1,748 customers, Northwest Natural Gas serves 1,762 customers, and Northwest Natural Gas of Murray County serves 1,295 customers, for a combined total of 4,805 Northwest customers. This calculation would place Northwest below the statutory exemption limit of 5,000 customers.

b. The Department

The Department argued that the term “customer” has a special meaning based on meters or premises served because gas utilities plan their distribution systems in terms of meters and service-line locations, irrespective of the number of people who might use gas at a given location. The Department cited responses to a discovery request in Docket No. G-999/AA-19-401, in which regulated gas utilities stated that they define “customer” on an active-meter basis. Additionally, the Department argued that Northwest’s practice of billing for service on a meter-by-meter basis rather than providing a combined bill for people and businesses having multiple meters supports basing customer count on the number of meters.

The Department argued that basing exemption eligibility on meter counts would provide a more accurate picture of the size of a utility’s gas distribution system, thus promoting the statutory

⁵ Minn. Stat. § 216B.16, subd. 12(a).

purpose of ensuring state oversight of large systems while allowing exemptions for smaller systems.

Accordingly, the Department calculated Northwest's customer count based on the number of meters. The Department also submitted "high" and "low" estimates to reflect a possible range of customer-premises counts, noting that Northwest did not provide definitive data to ensure the precision of those estimates. Northwest's total number of meters (5,760), the Department's high premises estimate (5,523), and the Department's low premises estimate (5,388) all exceeded the 5,000-customer threshold. The Department therefore concluded that Northwest is ineligible for a small gas utility exemption.

2. Commission Action

Absent a technical definition or special meaning, words in a statute are construed "according to rules of grammar and according to their common and approved usage." Minn. Stat. § 645.08. When a statute's meaning is plain from its language as applied to a particular case, the plain meaning applies. *ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005).

For purposes of determining whether Northwest exceeds the customer-count thresholds for small gas utility exemption eligibility, the Commission will consider the number of persons or businesses served, as recommended by Northwest. A plain reading of the statute as applied to this case supports this ordinary meaning of the statutory language. This interpretation is also consistent with other provisions of Minn. Stat. ch. 216B that imply a distinction between "customer" and "meter." Further, although the rule does not control in this context, it is reasonable to read the statutory term in a manner consistent with the definition of "customer" set forth in Minn. R. 7820.0700, subp. 1, for purposes of utility customer service rules.

With this method of counting customers, the record does not support a finding that Northwest has exceeded the statutory exemption threshold of 5,000 total customers. Further, based on the data in the record, Northwest's customer count for each individual regulating municipality is below the per-municipality threshold of 650 customers. Accordingly, the information currently in the record indicates that Northwest may be eligible for small gas utility exemptions for its franchise service in Cass Lake, Grand Rapids, Ogilvie, Henderson, Mapleton, Good Thunder, Minnesota Lake, Vernon Center, Avoca, Currie, Dovray, Fulda, Slayton, and Bingham Lake.

D. Exemption-Request Requirements

In accordance with the findings in this order concerning Northwest's status as a single public utility, Northwest shall file a new request for a small gas utility exemption in a separate docket within 90 days, or by another date agreed upon with the Commission's Executive Secretary.

Additionally, as agreed by Northwest, the Commission will require each municipality requesting a small gas utility exemption for Northwest to execute a franchise agreement with the correct legal entity that is currently serving the municipality with natural gas service. Each franchise agreement shall reflect the proper legal name of the entity serving the municipality. Northwest shall file these new franchise agreements with the Commission within 90 days.

Going forward, for each small gas utility exemption, Northwest shall make an annual compliance filing that meets the uniform requirements set forth in the Commission’s November 9, 2018 Order Determining Compliance with Commission Orders and Establishing Filing Requirements.⁶

E. Transition Plan

Although the record does not demonstrate customer counts currently above the statutory exemption thresholds, the customer counts submitted are close enough to the thresholds that the Commission finds it reasonable to begin formulating a plan for transitioning Northwest to state regulation if and when the threshold may be reached in the future. The Commission will convene a workgroup with the parties to discuss the appropriate transition process. At the Commission meeting, all parties agreed to participate in this workgroup and discuss a potential transition plan, acknowledging that it remains to be determined whether state regulation will become appropriate for Northwest’s franchise service in the above-referenced municipalities at any point.

III. Incidental Service

Where a small gas utility is granted an exemption for franchise service within a municipality, its service outside the municipality’s border is also eligible for exemption if the Commission considers such service “incidental.”⁷ The statute does not define the term “incidental.”

A. Positions of the Parties

1. Northwest

Northwest contended that its exemptions from state rate regulation should extend to all of its out-of-municipality service in areas surrounding Cass Lake, Grand Rapids, Ogilvie, Henderson, the Maple River system, and the Murray County system. Citing the dictionary definition of “incidental” as “being likely to ensue as a chance or minor consequence,” Northwest argued that its service outside of the regulating municipalities is incidental because it arose as a consequence of having built distribution systems to serve the municipalities—i.e., those areas would not be served but for Northwest’s franchise service in the neighboring municipalities.

2. The Department

The Department recommended that the Commission interpret “incidental” as meaning “of a minor, casual, or subordinate nature,” focusing on the relative number of customers served within and outside of the municipal boundaries.

Applying this interpretation, the Department agreed with Northwest that the out-of-municipality service surrounding Ogilvie, Henderson, the Maple River system, and the Murray County system are incidental for purposes of the exemption.

⁶ *In the Matter of Community Coops of Lake Park’s Petition for Exemption for a Small Gas Utility Franchise*, Docket No. G-6956/M-15-856, et al., Order Determining Compliance with Commission Orders and Establishing Filing Requirements, Ordering Para. 3 (November 9, 2018).

⁷ Minn. Stat. § 216B.16, subd. 12(b).

However, the Department disagreed with Northwest's position that the service of townships and unincorporated areas outside of Cass Lake and Grand Rapids qualifies as incidental service. The Department argued that Northwest's service of approximately 1,175 customers outside of Grand Rapids could not be incidental to its service of only approximately 350 customers within Grand Rapids.⁸ The Department contended that it would be unreasonable to deem 70% of a company's service to be merely incidental to the other 30%. Moreover, the Department argued, extending the requested exemption to Northwest's out-of-municipality customers would unreasonably leave a large percentage of Northwest's customers without regulatory recourse, being outside the governing municipalities' jurisdiction and unable to obtain regulatory recourse from the state.

The Department also argued that Northwest's out-of-municipality service surrounding Cass Lake is not incidental to its service within Cass Lake, based on the Department's estimation that nearly 40% of Northwest's Cass Lake area customers are outside the municipality.

3. Northwest's Reply

Although its service outside of Grand Rapids includes a relatively large number of customers in the Harris Township and other townships and unincorporated areas, Northwest argued that such service is incidental because it arose as a consequence of its Grand Rapids franchise service. Further, Northwest argued that its customers in the Harris Township are adequately protected because Harris Township representatives participate with the City of Grand Rapids on a Joint Powers Board that regulates rates, terms, and conditions for gas service in the area.

B. Commission Action

The Commission agrees with the parties that Northwest's out-of-municipality service in the areas surrounding Ogilvie, Henderson, the Maple River system, and the Murray County system is incidental for purposes of Minn. Stat. § 216B.16, subd. 12(b). Therefore, to the extent Northwest's franchise service in those municipalities is eligible for the small gas utility exemption, the exemption eligibility extends to Northwest's service in those surrounding areas.

The Commission disagrees with the Department's analysis regarding incidental service near Cass Lake. All of Northwest's service in that area falls within the Leech Lake Band of Ojibwe's tribal reservation and trust lands. Its out-of-municipality customers include a high school and a tribal college which are part of a cohesive Cass Lake community despite falling outside city limits. Based on the record, the Commission finds that Northwest's out-of-municipality service in the area surrounding Cass Lake is incidental to its franchise service within the city.

However, the Commission is not persuaded that Northwest's service in townships and unincorporated areas in the vicinity of Grand Rapids is incidental to Northwest's Grand Rapids franchise service under either party's proffered definition of the word "incidental." The evidence in the record—including the service-area map and information provided by Northwest and the customer counts submitted by both parties—is insufficient to support a finding that the all of the service purported to be incidental to Northwest's Grand Rapids service either is "of a minor,

⁸ For the incidental-service analysis, the Department used approximate averages between Northwest's recommended method of counting persons or businesses as customers and the Department's recommended method of counting meters as customers.

casual, or subordinate nature” or was “likely to ensue as a chance or minor consequence” of Northwest’s Grand Rapids service.

Having concluded that the definitions recommended by both parties yield the same result, the Commission need not and does not adopt a specific definition of “incidental” at this time. However, the potential regulatory gap for customers in townships and unincorporated areas around Grand Rapids is particularly concerning in light of the large number of customers falling in that category. By the utility’s count, Northwest serves 328 customers within Grand Rapids and 1,149 customers in areas surrounding Grand Rapids, meaning nearly 78% of Northwest’s Grand Rapids area customers fall outside the municipality’s jurisdiction. Although Northwest contends that Harris Township’s participation in the Joint Powers Board protects the 770 Harris Township customers Northwest would deem incidental to its Grand Rapids service, the degree of protections and regulatory recourse available to those customers, or to the 379 customers in other townships and unincorporated areas outside of Grand Rapids, is unclear.

On this record, the Commission does not conclude that Northwest’s service in the townships and unincorporated areas outside of Grand Rapids is incidental to Northwest’s franchise service within Grand Rapids. Therefore, Northwest’s service in those areas is not eligible for incidental exemption from state regulation derived from its franchise service in Grand Rapids.

However, the Commission appreciates the concerns raised by Northwest and Grand Rapids regarding the possible costs and burdens of state rate regulation and potential changes to the working relationship between the city and the utility. The Commission also acknowledges that Northwest and its operations are small relative to other Minnesota-regulated gas utilities and, therefore, the scale and complexity typical of a larger utility’s general rate case may not necessarily be appropriate for Northwest’s non-exempt operations.

Considering the circumstances, it is reasonable to explore an alternative approach to incorporate both state and local regulatory collaboration appropriate for this particular case. To that end, within the workgroup referenced above in Part II.E, the Commission will direct the parties to also discuss the appropriate process for transitioning Northwest to state regulation for the areas around Grand Rapids. As a part of this discussion, the Commission will ask the Department to verify whether there are any significant customer complaints regarding Northwest’s service quality. If there are not, the Commission will request that the Department develop a proposed alternative regulatory framework for Northwest’s service around Grand Rapids and file the proposal within 180 days. The proposed framework should conform to the Commission’s regulatory obligations of Minn. Stat. ch. 216B, but should also allow collaboration between the Commission, Grand Rapids, and the townships served in the vicinity of Grand Rapids, and may take into account Northwest’s and the municipalities’ concerns about cost and efficiency.

At the Commission meeting, both parties agreed to participate in this transition-plan discussion, and the Department agreed to develop a proposed regulatory framework.

IV. Paul Bunyan Natural Gas

In response to a Department information request, Northwest provided an exemption resolution approved by the City of Walker relating to Paul Bunyan Natural Gas, LLC. Northwest stated that Paul Bunyan Natural Gas is a 50/50 partnership between Northwest Natural Gas and Northern

Star Cooperative Services, Inc., formed to build and operate a new system to serve prospective customers pursuant to the franchise agreement with Walker.

The Department recommended that Paul Bunyan Natural Gas file a small gas utility exemption request in a separate docket. Northwest stated that Paul Bunyan Natural Gas intends to do so.

In light of the record and the issues discussed herein, the Commission finds it reasonable to request further information regarding Paul Bunyan Natural Gas's relationship to Northwest and whether its operations may affect the exemption issues investigated in this docket. Specifically, if Paul Bunyan Natural Gas is part of the Northwest public utility for purposes of Minn. Stat. ch. 216B, then its customer counts will be relevant to the issue of whether Northwest exceeds the total customer-count threshold for exemption eligibility.

The Commission therefore will require Paul Bunyan Natural Gas, within 90 days, to file its present and anticipated 2022 customer counts, a thorough description of its corporate and operational relationship to Northwest, and, if applicable, a small gas utility exemption request.

ORDER

1. The Commission accepts the February 18, 2020 filing of Gorham's, Inc., Northwest Natural Gas, LLC, and Northwest Natural Gas of Murray County, LLC, as in substantial compliance with the Commission's November 20, 2019 order in this docket, with the exception of filing tariff pages or rate sheets with the rights and responsibilities of the customer. Northwest shall file these tariff pages or rate sheets within 90 days.
2. The Commission finds that Gorham's, Inc., Northwest Natural Gas, LLC, and Northwest Natural Gas of Murray County, LLC, are the same public utility for purposes of Minnesota Statutes chapter 216B, but that the evidence on the record at this time has not demonstrated that the utility has more than 5,000 customers.
3. The Commission finds that Northwest's service outside of all of the municipalities Northwest serves at this time is incidental, except for the service provided to the townships and unincorporated areas around Grand Rapids.
4. For each Northwest franchise agreement between a municipality and an entity that is not currently serving that municipality with natural gas service, the municipality shall execute a new franchise agreement with the entity serving the municipality, and Northwest shall file the franchise agreement with the Commission, within 90 days.
5. Northwest shall file a new request for a small gas utility exemption in a separate docket within 90 days, or by another date agreed upon with the Executive Secretary.
6. For each small gas utility exemption, Northwest shall file an annual uniform compliance filing per the Commission's November 9, 2018 Order Determining Compliance with Commission Orders and Establishing Filing Requirements.

7. The Commission requests that the Department of Commerce:
 - a. Verify that there are no significant customer complaints regarding Northwest's service quality, and if there are not,
 - b. Within 180 days, file a proposed alternative regulatory collaboration between the Commission, Grand Rapids, and the areas served around Grand Rapids.
8. Paul Bunyan Natural Gas, LLC, shall file its present and anticipated 2022 customer counts, a thorough description of its corporate and operational relationship to Northwest, and, if applicable, a small gas utility exemption request, within 90 days.
9. The Commission delegates to the Executive Secretary authority to vary all time periods and procedures related to this matter for the duration of this proceeding.
10. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Will Seuffert
Executive Secretary



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CERTIFICATE OF SERVICE

I, Chrishna Beard, hereby certify that I have this day, served a true and correct copy of the following document to all persons at the addresses indicated below or on the attached list by electronic filing, electronic mail, courier, interoffice mail or by depositing the same enveloped with postage paid in the United States mail at St. Paul, Minnesota.

**Minnesota Public Utilities Commission
ORDER ACCEPTING FILING AND ESTABLISHING ADDITIONAL
REQUIREMENTS**

Docket Number **G-6278, 6-6279, G-6280/CI-18-770**

Dated this 22nd day of June, 2021

/s/ Chrishna Beard

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Kristine	Anderson	kanderson@greatermngas.com	Greater Minnesota Gas, Inc. & Greater MN Transmission, LLC	1900 Cardinal Lane PO Box 798 Faribault, MN 55021	Electronic Service	No	OFF_SL_18-770_Official
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_18-770_Official
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_18-770_Official
Brian	Gardow	bgardow@greatermngas.com	Greater Minnesota Gas, Inc. & Greater MN Transmission, LLC	1900 Cardinal Ln PO Box 798 Faribault, MN 55021	Electronic Service	No	OFF_SL_18-770_Official
Mike	Gorham	mike@nwgas.com	Northwest Gas of Cass County L.L.C.	1608 NW 4th St Grand Rapids, MN 55744	Electronic Service	No	OFF_SL_18-770_Official
Nicolle	Kupser	nkupser@greatermngas.com	Greater Minnesota Gas, Inc. & Greater MN Transmission, LLC	1900 Cardinal Ln PO Box 798 Faribault, MN 55021	Electronic Service	No	OFF_SL_18-770_Official
Cheri	Landsteiner	cheri@nwgas.com	Northwest Gas	314 Main St NE PO Box 721 Mapleton, MN 56065	Electronic Service	No	OFF_SL_18-770_Official
Pam	Marshall	pam@energycents.org	Energy CENTS Coalition	823 7th St E St. Paul, MN 55106	Electronic Service	No	OFF_SL_18-770_Official
Brian	Meloy	brian.meloy@stinson.com	STINSON LLP	50 S 6th St Ste 2600 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_18-770_Official
Greg	Palmer	gpalmer@greatermngas.com	Greater Minnesota Gas, Inc. & Greater MN Transmission, LLC	1900 Cardinal Ln PO Box 798 Faribault, MN 55021	Electronic Service	No	OFF_SL_18-770_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_18-770_Official
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th Pl E Ste 350 Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_18-770_Official
Rachel	Sorrentino	rachel@nwgas.com	Northwest Gas	1608 NW 4th St Grand Rapids, MN 55744	Electronic Service	No	OFF_SL_18-770_Official