

Staff Briefing Papers

Meeting Date February 15, 2019 Agenda Item *1


Company All Commission Rate-Regulated Natural Gas Utilities

Docket No. **G-999/CI-17-499**

In the Matter of a Commission Investigation into Parameters for Competition Among Natural Gas Utilities Involving Duplication of Facilities and Use of Promotional Incentives and Other Payments

Issues Should the Commission, in response to a request by Greater Minnesota Gas, Inc., clarify its September 19, 2019, *Order Adopting Standards Governing Competition among Natural Gas Utilities (Standards Order)*?

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 Relevant Documents	Date
<i>Order Adopting Standards Governing Competition among Natural Gas Utilities (Standards Order)</i>	September 19, 2018
Letter Seeking Clarification: Greater Minnesota Gas (GMG)	November 28, 2018
Notice of Comment Period (PUC)	December 4, 2018
Comments: Greater Minnesota Gas (GMG)	December 20, 2018
Comments: Minnesota Department of Commerce (Department)	December 26, 2018

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

 **Relevant Documents**

Date

Comments: CenterPoint Energy (CPE)

December 31, 2018

Comments: Xcel Energy

December 31, 2018

Comments: Minnesota Office of the Attorney General (OAG)

December 31, 2018

Reply Comments: Minnesota Department of Commerce
(Department)

January 15, 2019

I. Statement of the Issue

Should the Commission clarify its September 19, 2019, *Order Adopting Standards Governing Competition among Natural Gas Utilities (Standards Order)*?

II. Background

On July 12, 2017, the Commission issued an order addressing a complaint filed by Minnesota Energy Resources Corporation (MERC) against Xcel Energy (Xcel).¹ In that order the Commission dismissed the complaint and initiated an industry-wide investigation in this docket, No. 17-499[BB1]. The Commission sought to review and investigate (1) the parameters of inter-gas-utility competition that involves the duplication of existing facilities and (2) the use of promotional incentives and other non-tariffed payments provided by utilities to their existing customers and potential future customers.

On September 26, 2017, the Commission issued a notice to all natural gas utilities seeking comments regarding how “unnecessary duplication of facilities” should be defined and evaluated.

On September 19, 2018, the Commission issued its *Order Adopting Standards Governing Competition among Natural Gas Utilities (Standards Order)*. That order established that the Commission would continue to review gas-service disputes on a case-by-case basis and it adopted principles addressing “the duplication of natural gas facilities where utilities are competing for an established customer.”²

On November 28, 2018, Greater Minnesota Gas (GMG), having become aware of a plan by CenterPoint Energy (CPE) to construct a gas main in the Eagle Lake area, filed a letter stating that it “respectfully invites the Commission to clarify its Order”³ Subsequently, GMG clarified that it did not intend its request to be interpreted as a complaint, either formal or informal.⁴

¹ *Order Dismissing Complaint, Requiring Filings, and Opening Investigation*, Docket 17-305, July 12, 2017. The Commission denied MERC’s petition for reconsideration on September 25, 2017. MERC filed a second complaint against Xcel on November 17, 2017, in Docket 17-802. That complaint was dismissed on April 10, 2018, the Commission referring the broad policy issues to the current docket.

² *Standards Order*, p. 7. Note that this order also addressed the use of promotional incentives, an issue for which no party has sought reconsideration or clarification.

³ GMG Request, p. 2.

⁴ GMG Comments, p. 1.

Between December 20, 2019, and January 19, 2019, the Commission received comments from GMG, Xcel, CenterPoint Energy (CPE), the Minnesota Office of the Attorney General (OAG), and the Minnesota Department of Commerce (Department). The Department and CPE believe that clarification of the *Standards Order* is not warranted and/or necessary. GMG and OAG urge clarification. Xcel offers no comments but notes that it would participate in any continued discussion of gas-service policies.

III. The *Standards Order*

In the *Standards Order*, the Commission addressed the facilities-duplication issue as follows:

The Commission appreciates the parties' recommendations regarding the Commission's process for resolving gas-service disputes. The Commission agrees that there is room for improvement, yet it is not persuaded that the circumstances warrant overhauling the current, case-by-case process. But to improve the process, the Commission will clarify the criteria on which it relies in determining whether duplication of natural gas facilities is "necessary," as detailed below.

The Commission's criteria are in essence a framework for applying Minn. Stat. § 216B.01. The statute requires this agency to regulate utilities "to provide the retail consumers of natural gas . . . with adequate and reliable services at reasonable rates . . . to avoid unnecessary duplication of facilities which increase the cost of service to the consumer[,] and to minimize disputes between public utilities which may result in inconvenience or diminish efficiency in service to the consumers."

By using the qualifier "unnecessary" before the word "duplication," the statute contemplates that **some duplication of facilities may be necessary to provide adequate and reliable service at reasonable rates**. Moreover, the absence of legislative action to assign exclusive gas-utility service territories allows a certain amount of competition among them, and likely some duplication of infrastructure. The Commission's primary task is to define as clearly as possible what constitutes "necessary" duplication.

With these considerations in mind, the Commission will adopt the following principles with respect to the duplication of natural gas facilities **where utilities are competing for an established customer**.

A Commission-regulated utility is prohibited from extending natural gas service to **any customer who is already being served** by another Commission-regulated utility through its existing facilities unless (1) the utility with the existing infrastructure does not seek to serve the customer, or (2) the utility seeking to extend service can demonstrate that it would not be duplicating the existing facilities of the other utility or that its duplication of the existing facilities is necessary to serve the customer or further the public interest.

Determining whether a utility is duplicating the facilities of another will be based on the nature, size and physical proximity of the new facilities relative to the other utility's existing infrastructure, as well as the extent to which the existing facilities need to be expanded to serve the customer.

To establish that its duplication of existing facilities is necessary, a utility must show that (1) customers cannot obtain the natural gas service they need from the utility with the existing facilities; or (2) such duplication furthers the public interest based on:

- the needs of the customers who would be served by the utility extending service;
- the incremental capital expenditures associated with duplicating the existing facilities compared to any incremental capital expenditures needed to expand the existing facilities to serve the customers in question;
- any safety concerns associated with constructing and operating the duplicative facilities; and
- any other factors showing that the duplication would advance the public's interest in adequate, reliable and economical access to natural gas service.

The Commission will continue to decide gas-service disputes on a case-by-case basis. However, the Commission will institute an additional protection to help prevent unnecessary duplication of facilities: Upon the filing of a complaint, the respondent utility will not be allowed to engage in any construction activity related to the allegedly duplicative facilities while the complaint is pending unless the Commission otherwise issues an order specifically allowing construction to proceed.

The Commission appreciates MERC's effort to develop a "first-in-the-field rule" to minimize disputes among utilities. The Commission also appreciates the OAG's thoughtful proposal for minimizing system-wide infrastructure costs. However, the Commission is not persuaded that either proposal is consistent with the statutory scheme. Moreover, in light of the infrequency of these disputes, the Commission agrees with CenterPoint and GMG that the administrative burdens of the OAG's proposal are likely to outweigh any benefit gained.

The Commission is satisfied that the criteria outlined above will allow it to protect ratepayers without unnecessarily stifling competition. And while no criteria or standard, however clear, can entirely foreclose the possibility of future disputes, the Commission is confident that these criteria will provide gas utilities with a clear legal framework when evaluating whether to file a complaint before the Commission.⁵

⁵ *Standards Order*, pp. 6-8, emphasis added.

IV. GMG Request

A. GMG Request

GMG asks the Commission to clarify whether the *Standards Order* can be understood to apply **only** in the instance where one Commission-regulated gas utility seeks to serve a customer **currently receiving service** from another Commission-regulated gas utility, **or** it can be understood to apply where one such utility seeks to extend service to a **potential customer** of the other utility. GMG's stated impetus for its request for clarification emerges from its observation that CPE plans to construct a gas main that will parallel GMG's main line for approximately 1 mile in the Eagle Lake area. GMG states:

[T]he order only expressly prohibits a regulated utility from extending natural gas service to a customer that is already being served by another regulated utility. However, the spirit of the Order and some language in the Order suggest that the Commission intended that its Order would prohibit extension of natural gas service to a potential customer that could be served by another utility's existing facilities unless the existing utility does not seek to serve the new customer or duplication of facilities would be otherwise necessary.

GMG's interpretation of the Order is that [it] applies in such a way that it prohibits duplication of facilities to serve new customers that could be served by another utility's existing facilities; ergo, it prohibits constructing parallel mains. Apparently, CenterPoint interprets the Order to mean that it can duplicate facilities and run parallel mains so long as it does not poach an existing GMG customer. ...⁶

GMG further states:

GMG takes this opportunity to respectfully request that CenterPoint re-examine its construction plans in light of the Order to carefully consider whether paralleling GMG's main constitutes unnecessary duplication of facilities; and, GMG respectfully invites the Commission to provide clarification regarding the application of its Order in circumstances such as these.⁷

In its Comments GMG clarified its request stating:

GMG did not intend that its letter would constitute a complaint against CenterPoint, either formal or otherwise GMG is not seeking dispute resolution by the Commission, nor was GMG suggesting that CenterPoint should be forced to halt its construction activities until the Commission issues an order. GMG believes that the situation illustrated that there can be confusion in how the Order is interpreted and

⁶ GMG Request, p. 1.

⁷ GMG Request, p. 1.

simply asked for clarification about the precise meaning of the Order so that all utilities interpret it uniformly to preclude future disputes.⁸

B. OAG Response

OAG argues that the Commission should clarify its order to cover situations involving **both** existing customers **and** potential customers. OAG argued:

[W]hen natural gas utilities duplicate infrastructure, the result is “Minnesota ratepayers collectively paying more than necessary” to serve the customers. This economic reality holds true regardless of whether the customer in question is an existing customer already being served by a natural gas utility, or a potential customer capable of being served by a natural gas utility’s existing infrastructure. When Minnesota ratepayers are paying for superfluous infrastructure, their collective rates are higher than they should be. Accordingly, including potential customers that are capable of being served by other regulated natural gas companies in its prohibition would be consistent with the Commission’s statutory edict and would be more likely to lead to just and reasonable rates for Minnesota ratepayers.⁹

However, OAG further stated:

[E]ven if the Commission chooses to exclude potential customers from its categorical prohibition, it should continue to consider the increased costs to current customers when deciding whether to allow a utility to drive up system-wide costs through the building of duplicative infrastructure. It is likely that consideration of these costs will often lead to the same conclusion in a case-by-case balancing of the equities as would be achieved by including potential customers in the Commission’s prohibition.¹⁰

C. CPE Response

CPE argues that GMG’s request should be rejected because (1) it is untimely, as it was filed outside of its 20-day window of opportunity to seek reconsideration of the *Standards Order*, and (2) it lacks information as to the specific grounds for the request and makes no claim of error,¹¹ (3) the requested standard is unattainable, and (4) the Commission explicitly rejected such a policy in its *Standards Order*.

⁸ GMG Comments, p. 1.

⁹ OAG Comments, p. 2, footnote omitted.

¹⁰ OAG Comments, p. 1.

¹¹ CPE makes reference to Minnesota Rules, parts 7829.1800 (Complaints) and 7829.3000 (Reconsideration).

With respect to facilities duplication, CPE addresses its Eagle Lake activity:

CenterPoint has existing facilities within the Eagle Lake, Minnesota area and is currently in the process of designing and constructing at least two system integrity projects in and around that area. These types of system reinforcement projects are necessary for the Company, and all natural gas utilities, to continue to reliably serve customers. To the extent these reinforcement projects parallel other system facilities, the duplication is “necessary” and the Commission should not prohibit these integrity projects merely because they are proximate to other system facilities.¹²

D. Department Response

The Department recommends that the Commission dismiss GMG’s request for further clarification because the language in the Commission’s *Standards Order* is sufficient to address GMG’s requested clarification. The Department states:

While the Department can appreciate GMG’s desire to have the Commission explicitly resolve this particular question, the Department is not convinced that it is the Commission’s responsibility to provide absolute clarity on all issues contained in its Orders, particularly given the Minnesota statutes do not assign service territories for natural gas utilities. Regulatory risk is an aspect of doing business as a regulated public utility. Unless the risk is financially material, a company may reasonable be expected to bear that risk given the opportunity regulation provides for garnering a return on invested capital.¹³

DOC stated that the *Standards Order* does not prohibit the duplication of facilities to serve new customers.

E. Xcel Response

Xcel took no position regarding GMG’s request. It noted that it would welcome an opportunity to participate in any process that revisits this issue.

¹² CPE Comments, pp. 1-2.

¹³ Department Reply Comments, p. 3.

V. Staff Comment

GMG has not expressly filed a complaint against CPE, nor has GMG sought formal reconsideration of the *Standards Order*, both actions being governed by processes set forth in Minnesota Statutes¹⁴ and Commission rules.¹⁵ Rather, GMG “simply wants to understand the precise meaning of the Order so that it is clear for future planning purposes,”¹⁶ and it “invites the Commission to provide clarification regarding the application of its Order”¹⁷ If the Commission wishes to accept GMG’s invitation it may do so by reopening its *Standards Order* on its own motion.¹⁸

GMG’s request, in a single sentence, describes CPE’s planned construction activities. CPE describes its activities in three sentences. The fact record is thin. However, GMG does not directly seek to affect CPE’s activities at Eagle Lake. Rather, it seeks a broad interpretation of the *Standards Order*, one that could affect all gas utilities.

Identifying a current gas customer is straightforward. In contrast, identifying a potential gas customer is often much less straightforward. In the absence of geographically defined service areas, and without a specific fact record, it is difficult to determine whether the construction of facilities by one utility to serve a potential customer constitutes unnecessary duplication of the facilities of another utility. That question begs an understanding of physical and economic factors as well as a judgement as to what “potential” means. The *Standards Order* does not prevent GMG, or any other regulated gas utility, from filing a complaint at any time, and the Commission has stated that it will address disputes on a case-by-case basis.

¹⁴ See Minnesota Statutes § 216B.17 (Complaint Investigation and Hearing) and § 216B.27 (Rehearing, Condition Precedent to Judicial Review).

¹⁵ See Minnesota Rules, parts 7829.1800 (Complaints) and 7829.3000 (Reconsideration). Part 7829.3000 allows 20 days for the filing of a petition for “rehearing, amendment, vacation, reconsideration, or reargument.”

¹⁶ GMG Comments, p. 2.

¹⁷ GMG Request, p. 1.

¹⁸ See Minnesota Statute § 216B.25 (Further Action on Previous Order).

VI. Commission Options

- 1) Take no action (the minutes of the meeting, filed in eDockets, will reflect that the Commission met and took no action).
- 2) Deny GMG's request to clarify the *Standards Order*.
- 3) Clarify the *Standards Order* as recommended by GMG.
- 4) Take other action.