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July 20, 2021

VIA EDOCKETS

Mr. Will Seuffert  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
St. Paul, MN 55101

**Re: *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 Cnty., Inc., & Nw. Nat. Gas of Cass Cnty.***  
**Docket No. G-6278, G-6279, G-6280/CI-18-770**

Dear Mr. Seuffert:

The Department of Commerce recommends that the Commission deny Northwest’s petition for reconsideration in the above-referenced docket.<sup>1</sup> The Commission only considers reconsideration petitions in limited situations. Typically, the Commission only takes up petitions when they (1) raise new issues, (2) point to new and relevant evidence, (3) expose errors or ambiguities in the underlying order, or (4) otherwise persuade the Commission that it should rethink its decision.<sup>2</sup> Northwest’s petition fails to meet any of these standards.

Specifically, Northwest asks that the Commission reconsider its finding that Gorham’s in combination with Northwest Natural Gas and Northwest Natural Gas of Murray County are a single public utility for purposes of Minn. Stat. ch. 216B.<sup>3</sup> Northwest attempts to support this request by arguing that the Commission created a new “influence” doctrine.<sup>4</sup> This argument mischaracterizes the Commission’s Order.<sup>5</sup> It also lacks record support.

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<sup>1</sup> Minn. R. 7829.3000, subp. 4 (2019) (“Other parties to the proceeding shall file answers to a petition for . . . reconsideration . . . within ten days of service of the petition.”).

<sup>2</sup> See, e.g., *In re Minn. Power’s Revised Pet. for a Competitive Rate for EITE Customers & an EITE Cost Recovery Rider*, Docket No. E-015/M-16-564, ORDER DENYING RECONSIDERATION at 1 (Feb. 7, 2018).

<sup>3</sup> Northwest Reconsideration Petition at 2 (July 17, 2021) (eDocket No. 20217-176039-01) (“Petition”).

<sup>4</sup> *Id.* at 3.

<sup>5</sup> ORDER ACCEPTING FILING & ESTABLISHING ADDITIONAL REQUIREMENTS (June 22, 2021) (eDocket No. 20216-175280-01) (“Order”).

First, the Commission considered extensive evidence and arguments by the parties.<sup>6</sup> Yet, Northwest wrongly claims that the Order relies on a finding that Mr. Gorham, as a member with a minority interest, exercises influence over Northwest Natural Gas and Northwest Natural Gas of Murray County.<sup>7</sup> This claim glosses over the Order's express language that clearly states the Commission made the finding "based on the evidence in the record, the arguments of the parties, and the persuasive effect of cases cited."<sup>8</sup> A fact that Northwest appears to have tacitly acknowledged by quoting the Order's finding that 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.*"<sup>9</sup>

The Order also summarizes the evidence in the record. It details the discrepancies between the purported independence of the Northwest entities and their actual operations:

- Gorham's provides management and administrative services for all three Northwest entities.
- Northwest Natural Gas provides accounting and customer service for all three Northwest entities.
- Northwest Natural Gas of Murray County has no employees and appears to contract with the other Northwest entities for all functions.
- Rather than awarding contracts for these services through a competitive bidding process, the Northwest entities selected one another for service agreements based solely on their existing relationships.
- All but one of Northwest's municipal franchise agreements with municipalities name Gorham's as the franchisee.
- The Northwest entities 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.
- The Northwest entities have credit arrangements that would be highly unusual for truly independent companies, for example, by providing an unsecured loan without a formal loan agreement.<sup>10</sup>

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<sup>6</sup> *Id.* at 6–7.

<sup>7</sup> Petition at 4.

<sup>8</sup> Order at 7.

<sup>9</sup> Petition at 2 (quoting Order at 7) (emphasis added).

<sup>10</sup> Order at 6.

Accordingly, Northwest's claim that the Order relied on an "influence" determination for its finding that Gorham's in combination with Northwest Natural Gas and Northwest Natural Gas of Murray County are a single public utility for purposes of Minn. Stat. ch. 216B misstates the record. Moreover, this extensive evidence undercuts Northwest's "parade of horrors" claim that a mere minority stake in another utility entity will preclude that entity from extending service to new customers.<sup>11</sup> The Order's well-reasoned analysis makes clear that an ownership interest is not outcome determinative.<sup>12</sup> It is merely one factor.

Second, Northwest's suggestion that the Order creates a "influence doctrine" that will be "difficult to adjudicate" is wrong.<sup>13</sup> Nothing in the Order purports to create a "doctrine." In fact, the reverse is true: the Commission speaks through its written orders, and its orders are generally limited to the specifics of that proceeding.<sup>14</sup> The Commission prefers "to rule on the specific facts and circumstances presented in a fully developed record."<sup>15</sup> The Commission does so "to ensure the integrity and rigor of its decision making processes, to exercise its quasi-judicial powers with the restraint those powers demand."<sup>16</sup> As a result, Northwest's concerns about a doctrine that will lead to unwanted results is baseless. If another Minn. Stat. § 216B.16, subd. 12, exemption matter arises in the future, the Commission can issue an order that is based on the "specific facts and circumstances" unique to that proceeding.

For these reasons, the Department concludes that Northwest has 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. Thus, the Department recommends that the Commission deny Northwest's petition. To the extent Northwest needs assistance to "better understand what future Commission regulation might mean for its existing customers and the communities,"<sup>17</sup> these discussions are more appropriate for the "alternative regulatory collaboration" process requested by the Commission.<sup>18</sup>

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<sup>11</sup> Petition at 5.

<sup>12</sup> Northwest analogizes to Vanguard's ownership of Xcel Energy and CenterPoint Energy shares in its attempt to cast doubt on the Commission's finding. *Id.* at 4. Yet, a hypothetical "contract or arrangement" between Vanguard and the utilities likely would be subject to Commission review. Minn. Stat. § 216B.48, subd. 1(1) (2020).

<sup>13</sup> Petition at 3–4.

<sup>14</sup> Minn. Stat. § 216B.33 (2020); *In re Excelsior Energy, Inc.*, 782 N.W.2d 282, 296 (Minn. Ct. App. 2010).

<sup>15</sup> *In re Pet. of the Minn. Dep't of Com. for a Decl. Ruling Regarding Qwest Corp.'s Compliance with Disconnection Statutes*, Docket No. P-421/M-07-35, ORDER DECLINING DECLARATORY RULING at 3 (Aug. 10, 2007).

<sup>16</sup> *In re Pet. of Inland Steel Mining Co. & N. Elec. Coop. Ass'n for Approval of the Purchase & Sale of Elec. at Retail*, Docket No. E-130/SA-95-1262, ORDER DENYING RECONSIDERATION at 5 (Oct. 25, 1996).

<sup>17</sup> Petition at 5.

<sup>18</sup> Order at 14 (order points 7(b), 9).

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The Department thanks the Commission for its consideration.

Sincerely,

/s/Richard Dornfeld

RICHARD DORNFELD

Assistant Attorney General

(651) 757-1327 (Voice)

(651) 297-1235 (Fax)

richard.dornfeld@ag.state.mn.us

*Attorney for Minnesota Department of Commerce*