

**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
John Tuma	Commissioner
Betsy Wergin	Commissioner

In the Matter of a Commission Investigation    )  
Regarding the Appropriate Regulatory         )         Docket No. E,G999/CI-14-423  
Response to Propane Storage Projects         )

**COMMENTS OF CHS INC. IN SUPPORT OF  
EXTENDING THE COMMISSION'S VARIANCE PROCEDURES**

CHS Inc. ("CHS") submits the following comments in support of extending the procedures, adopted by the Commission on June 19, 2014, that permit a propane storage developer to request a variance from the requirement to obtain a certificate of need ("CON") to construct a propane storage facility capable of storing in excess of 100,000 gallons of liquid gas.<sup>1</sup> Extending the variance procedures for at least an additional twelve months (*i.e.*, to June 19, 2016) will serve two important purposes. First, it will allow time for Minnesota's propane industry to continue investing in infrastructure so that Minnesota citizens are adequately protected from a crisis like the one that occurred in the winter of 2013-14. And, second, it will ensure there is time for the Minnesota Legislature to act on draft legislation advanced this year seeking to clarify the definitions and requirements in Minn. Stat. Chpt. 216B for purposes of excluding propane from the definition of "synthetic gas" and exempting propane storage facilities from the requirement to obtain a CON. *See* H.F. 843, Fourth Engrossment, Art. 7.<sup>2</sup>

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<sup>1</sup> *In the Matter of a Commission Investigation Regarding the Appropriate Regulatory Response to Propane-Storage Projects*, Docket E,G-999/CI-14-423, *Order Establishing Variance Procedures* (June 19, 2014) ("*Variance Order*").

<sup>2</sup> <https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF0843&ssn=0&y=2015>.

## **I. BACKGROUND**

### **A. CHS**

CHS is a Minnesota-based, farmer-owned agricultural cooperative. CHS' business in Minnesota includes supplying propane to local cooperatives, independent retailers and wholesalers for resale to end users for use on farms, in businesses and in homes. CHS also has a retail division that sells propane directly to end users in Minnesota.

### **B. The Commission's Variance Order**

As described in detail in CHS' previous comments in this docket, dated June 6, 2014, Minnesota consumers who rely on propane faced a crisis in the winter of 2013-14. One key factor in the crisis was the reversal of the Cochin Pipeline. For years the pipeline transported propane from Canada to the United States, but it was shut down for several weeks in the fall of 2013, and eventually converted to another use so that it no longer supplies propane to Minnesota. Another factor was the availability of other transportation. Competition for rail transport space was fierce and trucking resources were also strained. A third factor was weather and usage. The winter of 2013-14 was unusually cold, and the large and late corn harvest required more propane to be used for crop drying than usual. The propane industry had historically used a just-in-time delivery practice, but the 2013-14 crisis illustrated that such an approach is no longer viable and that additional bulk and distributed storage capacity is essential to meeting peak demand. The limited availability and high price of propane during the 2013-14 crisis threatened the welfare of Minnesota consumers who rely on propane for residential heating and agricultural uses.

In response to the crisis, CHS and other participants in Minnesota's propane industry have been working to expand propane storage capacity. In 2014, CHS ordered and its customers purchased 130 (one hundred and thirty) 30,000-plus gallon storage tanks (in excess of four million gallons of storage capacity) for installation during 2014. This distributed storage – *i.e.*,

ensuring that numerous propane customers have the individual capacity to store significant amounts of propane for their needs – is an important part of preventing the recurrence of situations like the 2013-14 crisis. Bulk storage is also an important part. In 2014, CHS was in the process of expanding one of its rail-supplied propane storage facilities in Glenwood, Minnesota (the "Glenwood Facility") in order to right-size the storage capacity to match anticipated rail deliveries during peak demand. Other Minnesota companies in the propane industry are also engaged in developing expansions to large-scale storage facilities.

In early 2014, Commission Staff advised CHS that the construction of large propane storage facilities like the Glenwood Facility is governed by the CON rules.<sup>3</sup> Specifically, Commission Staff advised that Minn. R. 7853.0010, subp. 23 defines "synthetic gas" to include propane, and thus requires the developer of a propane-storage project with a capacity of more than 100,000 gallons to apply for and receive a CON from the Commission before constructing the facility. The CON process can take up to twelve months.<sup>4</sup>

On May 21, 2014, the Department of Commerce ("DOC") recommended that in light of the 2013-14 crisis, and in order to help increase the reliability of propane supplies in Minnesota, the Commission should temporarily vary its rules by excluding "propane" from the definition of "synthetic gas" in Minn. R. 7853.0010, subp. 23. CHS and other commenters supported this request, explaining that the CON requirement would significantly impair the construction of propane storage facilities and thus significantly impair the industry's ability to meet current and anticipated harvest season demand. CHS and other commenters also urged the Commission to

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<sup>3</sup> See Minn. Stat. §§ 216B.243, subd. 2 ("[n]o large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need."); 216B.2421, subd. 2(6) (large energy facilities include any facility designed for or capable of storing on a single site more than 100,000 gallons of liquefied natural gas or synthetic gas.").

<sup>4</sup> See Minn. Stat. § 216B.243, subd. 5.

recognize that propane is not "synthetic gas" and thus should not be subject to the CON requirement at all.

In its *Variance Order*, the Commission agreed with the DOC's recommendation and authorized propane-storage developers, for a period of one year, to request a variance of Minn. R. 7853.0010, subp.23 such that the CON requirement would not apply to the facility specified in the variance request. Under the process adopted by the Commission, a developer seeking a variance from Minn. R. 7853.0010, subp. 23 can submit a request to the Commission, which may be granted by the Executive Secretary if the request includes specified information about the facility, a list of other governmental approvals, and a summary of how the project satisfies the requirements of Minn. R. 7829.3200.<sup>5</sup>

The *Variance Order* has been effective in accelerating construction of propane-storage facilities. Several companies sought, and were granted, variances pursuant to the *Variance Order*.<sup>6</sup>

The *Variance Order* was limited in duration: it automatically expires after one year.<sup>7</sup> In anticipation of this impending deadline, the Commission issued a Notice of Comment Period asking whether the Commission "should extend the time for propane-storage developers to request a variance to Minn. R. 7853.0010, subp. 23, which excludes propane from the definition of synthetic gas?"

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<sup>5</sup> *Variance Order* at 7-8.

<sup>6</sup> *E.g.*, CHS requested a variance to add 1,350,000 gallons of storage at Glenwood (*see* Docket CN-14-506); Pirkel Gas requested a variance to add 180,000 gallons of storage to its facility in Owatonna, Minnesota (*see* Docket CN-14-505); New Horizons Coop requested a variance to add 30,000 gallons of storage to its facility in Norcross, Minnesota (*see* Docket CN-14-528); and Border States Coop requested a variance to add 120,000 gallons of storage at its facility in Beardsley, Minnesota (*see* Docket CN-14-527).

<sup>7</sup> *Variance Order* at 7.

**II. THE VARIANCE PROCESS SHOULD BE EXTENDED FOR A MINIMUM OF TWELVE MONTHS BECAUSE IT IS TOO SOON TO TELL WHETHER THE CONDITIONS THAT LED TO THE 2013-14 CRISIS HAVE BEEN MITIGATED**

As described above, the 2013-14 crisis was the result of several factors that combined to create an acutely difficult situation in the Minnesota propane market. The winter of 2014-15 did not present the same combination of factors, and there were no significant difficulties with propane supply during this past winter season. But, that does not mean that there is no longer a need for the variance process. To the contrary, many of the conditions that contributed to the crisis still exist, including limited bulk and distributed storage and an ongoing conversion to rail and truck transport. The variance should stay in place until CHS, other industry participants, and the Commission can ascertain whether the storage and supply limitations that contributed to the 2013-14 crisis have been remedied. That will not be known for at least another twelve months.

One reason it will take at least a year to determine whether the storage and supply limitations have been remedied is that distributed storage – the addition of numerous small and medium propane tanks at farms, residences, and businesses – is ongoing and will continue for months. Many agricultural end users need time to budget for these capital investments. Most importantly, production of storage tanks for distributed storage currently has a long lead time. In addition, the demand for additional propane storage is straining the labor market for skilled installers. Based on its experience as a market participant, CHS believes that on average, across the State, installers are about six months behind on installation projects.

In addition, only one winter has passed since the 2013-14 crisis. In the winter of 2014-15, the weather was milder, and the crop-drying demand was lower, than in 2013-14. The Commission should let at least one more winter pass with the variance process in place so that if we have another cold winter with increased demand, propane industry participants can rapidly

increase storage. This will ensure that Minnesota consumers will not be adversely affected if we have another winter like 2013-14.

CHS itself is in a period of assessing bulk storage needs. It will not be in position to determine whether additional bulk storage is required until a second harvest and winter heating season has passed. By the time the additional data is available, CHS will then have to make very quick decisions early next Spring to meet the 2016 construction season. There will thus be no time to undertake the lengthy year-long CON application process to meet Winter 2016-17 demand. The Commission should therefore keep the variance process in place until at least June 19, 2016, so that the Minnesota propane industry can determine whether there is a need for additional bulk propane storage and react quickly next Spring to seek any required variances.

### **III. THE VARIANCE PROCESS SHOULD BE EXTENDED TO ALLOW TIME FOR THE LEGISLATURE TO CLARIFY THE APPLICABLE STATUTES**

In an effort to increase Minnesota's propane storage capacity, Legislative sponsors sought, during the just-ended regular session, to amend Minnesota law to clarify that propane is not "synthetic gas" and thus should not be subject to the Commission's CON requirement. Several bills were introduced that included a statutory amendment to this effect.<sup>8</sup> Unfortunately, the session was complex and somewhat contentious, and as the session wound to a close, this language was not included in the Omnibus Jobs and Agriculture bills that emerged from the Conference Committee toward the end of the session.<sup>9</sup> Then, on May 23, 2015, these omnibus

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<sup>8</sup> See H.F. 550, First Engrossment (amending Minn. Stat. § 216B.02 to make clear that propane is not within the definition of "synthetic gas"), <https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF0550&ssn=0&y=2015>; S.F. 1063 (same) <https://www.revisor.mn.gov/bills/bill.php?b=Senate&f=SF1063&ssn=0&y=2015>; H.F. 843, Fourth Engrossment, Art. 7 (same), <https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF0843&ssn=0&y=2015>.

<sup>9</sup> H.F. 1437, <https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF1437&ssn=0&y=2015>; S.F. 1764 <https://www.revisor.mn.gov/bills/bill.php?b=Senate&f=SF1764&ssn=0&y=2015>.

bills were vetoed by Governor Dayton.<sup>10</sup> At this point, it appears that there will be a special session to address the vetoed bills, but the timing and process for the special session are not yet known. The Legislature may act during the anticipated special session to clarify that propane is not "synthetic gas," or it may not be able to effectuate that statutory revision until the next legislative session.

The fact that the Legislature considered, but was unable to fully implement, a statutory amendment to expressly exclude propane from the definition of "synthetic gas" is good reason to extend the variance process. If the Legislature changes the law, the CON requirement will no longer apply. Although CHS cannot predict what, if any, action the Legislature will ultimately take, the Commission should extend the variance process for at least an additional twelve months while this issue is actively being considered by the Legislature.

#### **IV. ALL APPLICABLE REQUIREMENTS TO EXTEND THE VARIANCE PROCESS HAVE BEEN SATISFIED**

Minnesota Rules, part 7829.3200 provides that:

The commission *shall* grant a variance to its rules when it determines that the following requirements are met:

- A. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- B. granting the variance would not adversely affect the public interest; and
- C. granting the variance would not conflict with standards imposed by law.

Minn. R. 7829.3200, subp. 1 (emphasis added).

The Commission found, in the *Variance Order*, that these three requirements were satisfied.<sup>11</sup> These three requirements remain equally satisfied now. First, returning to enforcement of the rule that propane is within the definition of synthetic gas would impose an

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<sup>10</sup> See <http://www.leg.state.mn.us/lrl/vetoes/vetodetails.aspx>.

<sup>11</sup> *Variance Order* at 5-6.

unnecessary burden on CHS, its customers, and their end users, and would impose an unnecessary risk on Minnesota residential and agricultural consumers who rely on propane. It is too soon to tell whether the recent propane storage capacity projects have been enough to ensure that the crisis of 2013-14 will not be repeated. Second, maintaining the variance process would not adversely affect the public interest. To the contrary, maintaining the variance process is in the public's best interest because it will allow the propane industry sufficient time to determine whether additional storage is needed. Third, the Commission already determined that the variance process does not conflict with standards imposed by law. That has not changed. Indeed, if the Legislature acts during the special session or the next regular session, it may turn out that the Commission's rule including propane in the definition of synthetic gas conflicts with Minnesota law. Because all three requirements are met here, the Commission should extend the variance process.

### **CONCLUSION**

For the foregoing reasons, CHS respectfully requests that the Commission should extend the variance process set forth in the *Variance Order* until at least June 2016.

Dated: June 2, 2015

**BRIGGS AND MORGAN, P.A.**

By: /s/ *Lisa M. Agrimonti*

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Regarding the Appropriate Regulatory  
Response to Propane Storage Projects**

**CERTIFICATE OF SERVICE  
MPUC Docket No. E,G999/CI-14-423**

Sandra J. Cambronne certifies that on the 2<sup>nd</sup> day of June, 2015, she e-filed a true and correct copy of the attached Comments of CHS Inc. in Support of Extending the Commission's Variance Procedures by posting it on [www.edockets.state.mn.us](http://www.edockets.state.mn.us). Said document was also served via U.S. Mail and e-mail as designated on the Official Service List on file with the Minnesota Public Utilities Commission.

*s/ Sandra J. Cambronne*

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