

## Staff Briefing Papers

Meeting Date February 25, 2021 Agenda Item 5\*\*

Company Greater Minnesota Gas, Inc.  
CenterPoint Energy Resources Corp.

Docket No. G-022, G-008/C-20-795

**In the Matter of A Formal Complaint and Petition for Relief by Greater Minnesota Gas, Inc. Against CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Minnesota Gas.**

Issues (1) Does the Commission have jurisdiction over Greater Minnesota Gas' complaint against CenterPoint Energy?

a) If yes, would a Commission investigation into Greater Minnesota Gas' allegations against CenterPoint Energy be in the public interest?

b) If no, should the Commission dismiss and close the complaint?

(2) If the Commission chooses to investigate the complaint, how should the Commission proceed? Should the Commission send this complaint to the Office of Administrative Hearings as a contested case? Alternately, should the Commission make its decision based on available information at this Agenda Meeting?

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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**

	<b>Date</b>
Greater Minnesota Gas, Inc. - Complaint	October 19, 2020
CenterPoint Energy Resources Corp. – Letter Response	October 21, 2020
Minnesota Department of Commerce, Division of Energy Resources - Comments	November 5, 2020
Greater Minnesota Gas, Inc. - Comments	November 6, 2020
CenterPoint Energy Resources Corp. – Comments (Non-Public)	November 6, 2020
Minnesota Department of Commerce, Division of Energy Resources – Reply Comments (Non-Public)	November 13, 2020
Greater Minnesota Gas, Inc. – Reply Comments	November 16, 2020
CenterPoint Energy Resources Corp. – Reply Comments	November 16, 2020
Minnesota Department of Commerce, Division of Energy Resources – Supplemental Comments (Non-Public)	January 20, 2021
CenterPoint Energy Resources Corp. – Response to Department Supplemental Comments	February 1, 2021
Greater Minnesota Gas, Inc. – Reply to Department Supplemental Comments	February 1, 2021

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## I. Statement of the Issues

1. Does the Commission have jurisdiction over Greater Minnesota Gas' complaint against CenterPoint Energy?
  - a) If yes, would a Commission investigation into Greater Minnesota Gas' allegations against CenterPoint Energy be in the public interest?
  - b) If no, should the Commission dismiss and close the complaint?
2. If the Commission chooses to investigate the complaint, how should the Commission proceed? Should the Commission send this complaint to the Office of Administrative Hearings as a contested case? Alternately, should the Commission make its decision based on available information at this Agenda Meeting?

## II. Introduction

On October 19, 2020, Greater Minnesota Gas, Inc. (GMG) filed a formal complaint (Complaint) with the Minnesota Public Utilities Commission (Commission) against CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Minnesota Gas (CenterPoint Energy). The Complaint alleges that CenterPoint Energy plans to extend natural gas service to several premises that are currently receiving natural gas service from GMG and one new commercial premise (TriFecta Truck Stop). GMG alleges that CenterPoint's actions are inconsistent with the provisions of Minn. Stat. § 216B.01 and the Commission Order in Docket No G-999/CI-17- 499 (17-499 Order) regarding unnecessary duplication of facilities to serve another utility's existing customers.<sup>1</sup>

On October 20, 2020 CenterPoint Energy filed a letter responding to GMG's Complaint. CenterPoint Energy concluded that current Minnesota Statutes and the Commission's 17-499 Order allows CenterPoint to serve the new commercial premise (TriFecta Truck Stop). CenterPoint Energy indicated that a decision on which utility should serve 3625 Hoffman Road is not yet ripe, since neither utility has received an application for service and no facilities to serve the customer have been constructed. Finally, CenterPoint Energy indicated that it has ceased construction associated with extending service to existing buildings along 192nd Lane that are currently being served by GMG (buildings owned by Web Construction and a residence). In light of its response letter, CenterPoint Energy asked that GMG withdraw its Complaint.

On November 5, 2020, the Department filed comments recommending that the Commission investigate the Complaint and be guided by the framework provided by the Commission's 17-499 Order.

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<sup>1</sup> *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*, Docket No. G-999/CI-17-499, ORDER ADOPTING STANDARDS GOVERNING COMPETITION AMONG NATURAL GAS UTILITIES (September 19, 2018).

As of their most recent filings in this docket, the Department, on January 20, 2021, recommended that, as a result of additional analysis and review, the Commission dismiss the complaint.

On February 1, 2021, CenterPoint Energy indicated its support for the Department's revised recommendation to dismiss the complaint.

Also, on February 1, 2021, GMG filed its reply to the Department's supplemental comments arguing that it is in the public interest for the Commission to investigate the complaint. In addition, GMG put forth a settlement offer where if CenterPoint Energy accepts the terms of the settlement GMG would withdraw its complaint.

Staff does not believe there is any dispute over the Commission's jurisdiction to investigate this matter, however, there is disagreement over whether to dismiss the complaint or proceed with an investigation. If the Commission proceeds with further investigation, the Commission has opportunity at this meeting to provide direction for the investigation and guidance on the framework for evaluating the complaint, for example, pursuant to its general authority under Minn. Stat. 216B.17 or its 17-499 Order.

### III. Background

#### A. Previous Commission Natural Gas Service Area and Competition Dockets

Because gas utilities do not have exclusive assigned service territories, disputes occasionally arise when two utilities seek to serve the same customer or area. The Commission's approach in these situations has generally been to evaluate each dispute on its merits and in light of the statutory admonition that utilities should be regulated "in order to . . . avoid unnecessary duplication of facilities which increase the cost of service to the consumer."<sup>2</sup>

The Commission first examined gas utility competition on an industry-wide basis in the early 1990s. Western Gas Utilities had agreed to construct a pipeline to serve a preexisting customer of Minnegasco, and the Department recommended that the Commission seek input from interested parties regarding the legal and policy issues raised by the proposed pipeline.<sup>3</sup>

After taking comments and convening a study group of interested stakeholders, the Commission concluded that no categorical judgment on gas-utility competition was required.<sup>4</sup> While acknowledging the potential for wasteful duplication of facilities and higher per-

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<sup>2</sup> Minn. Stat. § 216B.01.

<sup>3</sup> See generally *In the Matter of the Joint Venture Between Rahr Malting and Western Gas Utilities to Construct a Seven-Mile Gas Pipeline in Scott County, Minnesota*, Docket No. G-012/DI-90-227. Western Gas Utilities' system is now owned by Xcel, and Minnegasco was CenterPoint's predecessor.

<sup>4</sup> *In the Matter of an Inquiry into Competition Between Natural Gas Utilities in Minnesota*, Docket No. G-999/CI-90-563, Order Terminating Investigation and Closing Docket, at 5 (March 31, 1995).

customer costs, the Commission reasoned that some level of competition would help promote wider access to natural gas and reduce customers' heating costs.

The Commission concluded that it was capable of balancing the interests of utilities, competed-for customers, and current customers on a case-by-case basis. The Commission continued using this approach in the years that followed as gas utilities brought forward complaints about other utilities' proposed service extensions. For example, please see the record for the two matters involving complaints by Minnesota Energy Resources against Xcel Energy.<sup>5</sup>

In 2017, the Commission initiated an industry-wide investigation in Docket No. G-999/CI-17-499 (the Gas Competition Investigation) to explore competition between gas utilities that may involve the duplication of existing facilities, and utilities' use of incentives and other non-tariffed payments to attract or retain customers.

In an Order dated September 18, 2019, the Commission: (1) adopted criteria for evaluating proposed gas service extensions, and specifically whether an extension would unnecessarily duplicate another utility's existing facilities, and (2) prohibited gas utilities from offering promotional incentives.

The current docket is the first complaint to be addressed under the Commission's new policy.

## **B. This Complaint Docket**

On October 19, 2020, Greater Minnesota Gas, Inc. (GMG) filed a formal complaint (Complaint) with the Minnesota Public Utilities Commission (Commission) against CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Minnesota Gas (CenterPoint Energy or CenterPoint). The Complaint alleges that CenterPoint Energy plans to extend natural gas service to several premises that are currently receiving natural gas service from GMG and one new commercial premise (TriFecta Truck Stop). GMG alleges that CenterPoint's actions are inconsistent with the provisions of Minn. Stat. § 216B.01 and the Commission Order in Docket No G-999/CI-17- 499 (17-499 Order) regarding unnecessary duplication of facilities to serve another utility's existing customers.<sup>6</sup>

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<sup>5</sup> See, e.g., *In the Matter of a Complaint of Peoples Natural Gas Against Northern States Power Company Regarding the Construction of Distribution Facilities*, Docket No. G-011/C-96-1062, Order Dismissing Complaint (October 21, 1996) (dismissing complaint of one utility against another for agreeing to serve planned developments adjacent to complaining utility's existing infrastructure); *In the Matter of the Complaint of Great Plains Natural Gas Company Against Peoples Natural Gas Company and UtiliCorp United, Inc.*, Docket No. G-004, 011/C-91-731, Order Dismissing Complaint (December 20, 1991) (dismissing complaint of one utility against another for agreeing to serve expanded load of complaining utility's existing customer).

<sup>6</sup> *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*, Docket No. G-999/CI-17-499, ORDER ADOPTING STANDARDS GOVERNING COMPETITION AMONG NATURAL GAS UTILITIES (September 19, 2018).

On October 20, 2020 CenterPoint Energy filed a letter responding to GMG's Complaint. CenterPoint Energy concluded that current Minnesota Statutes and the Commission's 17-499 Order allows CenterPoint to serve the new commercial premise (TriFecta Truck Stop). CenterPoint Energy indicated that a decision on which utility should serve 3625 Hoffman Road is not yet ripe, since neither utility has received an application for service and no facilities to serve the customer have been constructed. Finally, CenterPoint Energy indicated that it has ceased construction associated with extending service to existing buildings along 192nd Lane that are currently being served by GMG (buildings owned by Web Construction and a residence). In light of its response letter, CenterPoint Energy asked that GMG withdraw its Complaint.

On October 23, 2020, the Commission issued a Notice of Comment Period. The Notice provided for an initial comment period that closed on November 6, 2020 as well as a Reply Comment period that closed November 16, 2020.

On November 5, 2020, the Department filed comments recommending that the Commission investigate the Complaint and be guided by the framework provided by the Commission's 17-499 Order. The Department was particularly interested in the location of CenterPoint's existing facilities in the disputed area and the potential for the duplication of facilities that might result from either utility serving the customers in question.

On November 6, 2020, CenterPoint Energy filed its comments and recommended that the Commission dismiss the Complaint. CenterPoint Energy noted that it has a substantial presence in the Mankato area and serves over 12,000 customers in the City of Mankato alone and has nearly 300 miles of main within Mankato, Mankato Township, and North Mankato. CenterPoint Energy also noted that it has had facilities in place along 192nd Lane serving customers since 1974. Each company has well-developed infrastructure in that area, developed over time and preexisting any of the facts set forth in the Complaint. Given this history, each company has the infrastructure in place to serve both existing and new customers.

Also, on November 6th, GMG filed its comments and recommended that the Commission investigate and use the framework identified in the Commission's 17-499 Order.

On November 13, 2020, the Department filed its reply comments recommending that the Commission continue to investigate the Complaint but to narrow its focus to the three customers or potential customers – 1) Web Construction's new warehouse; 2) the potential memory care facility at 3625 Hoffman Road, and 3) the new TriFecta Truck Stop.

On November 16, 2020, CenterPoint Energy filed its reply comments continuing its recommendation that the Commission dismiss the complaint.

Also, on November 16<sup>th</sup>, GMG filed its reply comments and recommended that the Commission continue an investigation into this matter using an informal process to fully develop the record. GMG believes that such an investigation will result in a determination that CenterPoint has engaged in conduct that violates the competitive practice requirements set forth for regulated natural gas utilities.



On January 20, 2021, the Department filed supplemental comments recommending that, as a result of additional analysis and review, the Commission dismiss the complaint.

On February 1, 2021, CenterPoint Energy filed its response to the Department's supplemental comments in support of the Department's revised recommendation to dismiss the complaint.

Also, on February 1, 2021, GMG filed its reply to the Department's supplemental comments arguing that it is in the public interest for the Commission to investigate the complaint. In addition, GMG put forth a settlement offer where if CenterPoint Energy accepts the terms of the settlement GMG would withdraw its complaint.

## IV. Relevant Minnesota Statutes and Commission Orders

### A. Minn. Stat. § 216B.01 Legislative Findings.

It is hereby declared to be in the public interest that public utilities be regulated as hereinafter provided in order to provide the retail consumers of natural gas and electric service in this state with adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of public utilities and their need to construct facilities to provide such services or to otherwise obtain energy supplies, 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. [Emphasis Added]

### B. Minn. Stat. § 216B.17 Complaint Investigation and Hearing.

**Subdivision 1.** Investigation. On its own motion or upon a complaint made against any public utility, by the governing body of any political subdivision, by another public utility, by the department, or by any 50 consumers of the particular utility that any of the rates, tolls, tariffs, charges, or schedules or any joint rate or any regulation, measurement, practice, act, or omission affecting or relating to the production, transmission, delivery, or furnishing of natural gas or electricity or any service in connection therewith is in any respect unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed, with notice, to make such investigation as it may deem necessary. The commission may dismiss any complaint without a hearing if in its opinion a hearing is not in the public interest.

### C. Commission Order in Docket No. G-999/CI-17-499

On September 19, 2018, the Commission issued its Order Adopting Standards Governing Competition Among Natural Gas Utilities.<sup>7</sup> In its Order the Commission (1) adopted criteria for

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<sup>7</sup> *In the Matter of a Commission Investigation into Parameters for Competition Among Natural Gas*

evaluating proposed gas service extensions, and specifically whether an extension would unnecessarily duplicate another utility's existing facilities, and (2) prohibited gas utilities from offering promotional incentives. The second topic is not germane to the instant proceeding and will not be discussed further. As for the evaluation criteria, the Commission determined:

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.

A complete copy of Minn. Stat. § 216B.17 and the procedural rules (Minn. Rules 7829.1700 through 7829.1900) covering formal complaints are attached, please see Attachment A.

## **V. Parties' Comments**

### **A. GMG Complaint**

On October 19, 2020, GMG filed its Verified Complaint and Request for Expedited Action (Complaint) against CenterPoint Energy. The Complaint alleges that CenterPoint Energy plans to extend natural gas service to several premises that are currently receiving natural gas service from GMG and one new commercial premise (TriFecta Truck Stop). GMG alleges that CenterPoint Energy's actions are inconsistent with the provisions of Minn. Stat. § 216B.01 and the 17-499 Order regarding unnecessary duplication of facilities to serve another utility's existing customers. GMG also argued that it has the exclusive right to provide natural gas service to all the premises that it is currently serving.

GMG requested that the Commission:

- 1) hold a hearing as required under Minn. Stat. § 216B.17;
- 2) issue an order declaring that CenterPoint is in violation of Minn. Stat. § 216B.01 and the Commission's Order regarding unnecessary duplication of facilities to serve another utility's existing customers;
- 3) issue an order declaring that, under the circumstances, GMG has the exclusive right to provide natural gas service to the customers on 192nd Lane, Mankato and on the property located at 3625 Hoffman Road, Mankato; and
- 4) provide any additional relief that the Commission deems just and equitable.

### **B. CenterPoint Energy Response Letter**

On October 21, 2020 CenterPoint Energy submitted its response letter to GMG's Complaint. CenterPoint Energy argued that current Minnesota Statutes and the Commission's 17-499 Order does not prohibit CenterPoint Energy from serving the new commercial premise (TriFecta Truck Stop). In addition, CenterPoint Energy indicated that a decision on which utility should serve 3625 Hoffman Road is not yet ripe, since neither utility has received an application for service and no facilities to serve the customer have been constructed. Finally, CenterPoint Energy indicated that it ceased construction associated with extending service to existing buildings along 192nd Lane that are currently being served by GMG (buildings owned by Web Construction and a residence). CenterPoint Energy asked that GMG withdraw its Complaint.

### **C. Department's Initial Comments**

In response to the Commission's *Notice of Comment Period* the Minnesota Department of Commerce, Division of Energy Resources (Department) concluded that the Commission has jurisdiction over the complaint and recommended that the Commission open an investigation. The Department noted that the Commission has addressed situations in which natural gas utilities competed to serve certain customers in several past proceedings. In addition, both GMG and CenterPoint Energy agree that the Commission has jurisdiction.

The Department recommended that the Commission's investigation should proceed using the informal review process, unless contested material facts arise. The investigation should follow the framework set forth in the Commission's 17-499 Order. The Department expects that record development would include a comparison of the costs and benefits of serving the identified customers by each of the competing utilities. These cost-benefit analyses should consider the effects of either scenario on the following stakeholders:

- The competed-for customer,
- The shareholders of the customer's preferred utility,
- The shareholders of the non-preferred utility,
- The ratepayers of the preferred utility, and
- The ratepayers of the non-preferred utility.

The Department concluded that the Commission's principles set forth in the 17-499 Order apply to this case. However, the Department does not appear to believe that the criteria or standard has been clearly established for evaluating and determining if there is a duplication of natural gas facilities.

The Department stated that GMG is seeking to serve any and all existing and new customers in the area. The Department notes that there appear to be questions regarding the location of CenterPoint Energy's existing facilities in the area as well as the extent of the duplication of facilities that would result if one or the other utility were to serve the identified new and existing customers. In addition, there are remaining questions about the cost and benefits related to extending the necessary facilities to the customers themselves and the resulting cost impact on the respective utility's ratepayers.

#### **D. GMG Comments**

In its November 6, 2020, comments GMG agreed that the Commission has jurisdiction over the Complaint pursuant to Minn. Stat. § 216B.01 which specifically addresses regulation of public utilities for multiple reasons including avoiding unnecessary duplication of facilities.

In addition, GMG concurred with the Department that an informal review process is appropriate as, at this time, GMG does not anticipate that contested material facts will be identified. GMG argued that the record could be developed utilizing the framework that the Commission set forth in the 17-499 Order based on submissions and arguments of the parties; and, that such informal proceedings will provide a sufficient basis upon which the Commission can make a determination.

## E. CenterPoint Energy Comments

In its comments, CenterPoint Energy noted that it has a substantial presence in the Mankato area and serves over 12,000 customers in the City of Mankato alone and has nearly 300 miles of main within Mankato, Mankato Township, and North Mankato. CenterPoint Energy also noted that it has facilities in Mankato dating back to at least 1900.

CenterPoint Energy also noted that it has had facilities in place along 192nd Lane serving customers since 1974. Each company has well-developed infrastructure in that area, developed over time and preexisting any of the facts set forth in the Complaint. Given this history, each company has the infrastructure in place to serve both existing and new customers.

CenterPoint Energy argued that the public interest would not be served by investigation of GMG's complaint. CenterPoint Energy agreed that complaints by one regulated utility against another regulated utility are serious and often warrant Commission investigation. However, under these facts, CenterPoint Energy argued that further investigation would not warrant the strain on limited Commission and Department of Commerce resources, nor would it justify the time and expense burden to the utilities involved.

CenterPoint Energy reiterated its argument from its October 21, 2020 letter that for the Trifecta Tuck Stop, the facts as alleged in GMG's Complaint establish that the customer is not an "existing customer" of GMG. This customer, therefore, is outside the parameters of the Commission's Order, which applies and interprets Minn. Stat. § 216B.01.

In the case of the 3625 Hoffman Road customer, CenterPoint Energy argues that it is uncertain whether the site would qualify as an existing GMG customer after the existing home on the site is demolished, but regardless, no construction of facilities to serve the customer has occurred. Indeed, to CenterPoint Energy's knowledge, the customer has yet to request gas service from either utility. CenterPoint Energy argues that given that there is no factual dispute in these two instances, and that the facts as alleged in the Complaint itself do not show a violation of Minn. Stat. § 216B.01 and the Commission's Order in the competition docket, further investigation of these two instances would serve no public purpose.

Similarly, regarding the customer sites on 192nd Lane, CenterPoint Energy has already offered to stop its extension of service to the existing GMG accounts on 192nd Lane. Given that CenterPoint Energy is not seeking to serve any customer currently served by GMG, there is no further public purpose to be served by a Commission investigation.

In the event that the Commission should decide that additional investigation is warranted, CenterPoint Energy provided the location of its existing facilities around the three areas identified in the GMG complaint. CenterPoint Energy provided aerial views of the project areas with CenterPoint Energy facilities marked. For Exhibits A, C, and E, CenterPoint Energy added its facilities to images included in GMG's complaint so that the Commission can see both GMG and CenterPoint Energy's facilities together. Exhibits B and D zoom out from what was shown in GMG's complaint to show CenterPoint Energy facilities in neighboring areas. CenterPoint Energy designated the Exhibits as Trade Secret.

## F. Department Reply Comments

The Department recommended that the Commission continue to investigate the Complaint but to narrow its focus to the three customers or potential customers – 1) Web Construction’s new warehouse; 2) the potential memory care facility at 3625 Hoffman Road, and 3) the new TriFecta Truck Stop.

The Department noted that CenterPoint stated in its response letter that it “will cease the installation of facilities to the existing buildings located along 192nd Lane that are currently being served by GMG.” Hence, it appears that the conflicts regarding these existing customer sites have been resolved.

The Department stated that such resolution does not extend to new customer facilities and noted there appeared to be three new facilities that the Commission should investigate.

### 1. Web Construction’s new warehouse

The Department pointed out that CenterPoint noted in its letter dated October 20, 2020 that it had entered into an agreement with Web Construction to provide natural gas service to a third building being constructed and owned by that entity.<sup>8</sup> In its Comments dated November 6, 2020 CenterPoint stated its intent to serve Web Construction’s new facility.<sup>9</sup>

### 2. 3625 Hoffman Road, Mankato

The Department noted GMG identified, in its complaint, another existing customer site where it believed that CenterPoint could be in violation of the Commission’s 17-499 Order and Minnesota statute regarding the duplication of facilities. GMG stated that it provided service to a residence at this address until early in 2020 at which point the property was sold. GMG also stated that the new owner had notified GMG that it was planning to replace the existing home with a memory care facility. GMG confirmed that it could serve the new facility and would work with the contractor to complete this task. On October 2, 2020 the new owner advised GMG that it wanted the existing gas line cut and capped because it would be receiving service from CenterPoint Energy. GMG maintained that it has the right to continue to serve this customer and supported this position by noting that CenterPoint would need to provide new facilities to the customer site which could lead to an unnecessary duplication of facilities.

### 3. TriFecta Truck Stop

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<sup>8</sup> CenterPoint Energy’s *Response Letter* at 3.

<sup>9</sup> As discussed in the CenterPoint’s Letter, both companies have well-developed gas infrastructure in the area to serve new and existing customers, and construction of new facilities would be required of either utility in order to serve the new warehouse building on 192nd Lane.

GMG stated that it had facilities installed in 2018 that are ready to serve the potential customer. The Department noted that GMG also stated that it had been contacted by the construction firm responsible for building the facility regarding natural gas service in July 2020. In mid-September the construction firm notified GMG that CenterPoint was awarded the opportunity to serve the truck stop. GMG claimed that CenterPoint will have to construct parallel facilities, and potentially duplicate facilities to GMG's in order to serve the TriFecta Truck Stop. CenterPoint Energy provided the location of its facilities in Exhibits A and B of its comments. CenterPoint Energy designated the information as Trade Secret.

The Department noted in its reply comments that it had "issued discovery regarding the information in Trade Secret Attachments A through D and will provide our review of CenterPoint's responses to that discovery in subsequent comments."<sup>10</sup>

## **G. GMG Reply Comments**

GMG argued that the Commission should continue to investigate this matter using an informal process to fully develop the record. GMG believes that such an investigation will result in a determination that CenterPoint has engaged in conduct that violates competitive practice requirements set forth for regulated natural gas utilities. GMG believes that an informal investigation will provide sufficient information for the Commission to render a decision herein. GMG concurred with the Department that the Commission can apply the framework provided in the 17-499 Order to make its decision.

Specifically, GMG stated "the facts identify a pattern of practice by CenterPoint that involves dual-maining to poach GMG's existing customers and customers that are already on GMG's existing main line. In particular, the specific customer targets at issue in this Complaint exist in situations where GMG had existing main prior to CenterPoint either constructing main or planning to extend main that parallels GMG's main. That creates customer confusion, heightens safety concerns, and is a wasteful duplication of resources."<sup>11</sup>

GMG's Complaint identified several sites where GMG claimed CenterPoint was in violation of the Commission's 17-499 Order.

### **1. Web Constructions new warehouse**

GMG stated that it had no knowledge of the facility prior to CenterPoint's filings, GMG believes that the building may be constructed on a parcel that it already serves for Web Construction and/or Jerry Williams. If true, GMG argued that it should also be included in the Commission's investigation because it would be on parcel for a customer currently served by GMG.

### **2. 3625 Hoffman Road, Mankato**

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<sup>10</sup> Department Reply Comments at 4.

<sup>11</sup> GMG *Reply Comments* at 2.

GMG stated it has served that site for a number of years. Specifically, GMG stated:

Earlier this year, the land was sold to a new owner and the natural gas account for that meter was transferred to that owner. That owner has been billed for and has been paying the requisite monthly facility fee for GMG's natural gas service. Since the house on the parcel is not occupied, there has not been significant gas use since transfer of the account. The current owners advised GMG that the house will be torn down and a memory care facility will be built on the site. GMG began working with the existing property owners regarding providing service to the new building. Since GMG already provides service to the property and the existing house, GMG will easily be able to serve the memory care facility that is being built by the current owner on the same site as a replacement for the existing structure. No main extension or change to GMG's main is necessary to serve the facility. While the service line and meter set and location may need to be changed, that does not obviate the fact that GMG already has service installed to the current parcel and that the current owner is GMG's existing customer. Hence, CenterPoint's actions with regard to targeting GMG's existing customer should be investigated by the Commission.<sup>12</sup>

In addition, GMG argued that even though CenterPoint Energy asserted that consideration of this location "is not ripe for investigation" CenterPoint Energy has, in fact, made the issue ripe by virtue of its own actions. Specifically, GMG argued:

The existing customer knows that GMG is its natural gas provider and already engaged in discussion with GMG regarding service to the memory care facility that will be built. Thereafter, CenterPoint discussed providing service to that customer despite the fact that the customer is currently served by GMG. CenterPoint does not have main at the location and will need to extend main to serve GMG's existing customer. The fact that CenterPoint has offered to provide service to the customer has made the issue ripe for the Commission's consideration. CenterPoint's direct violation of the Commission's September 19, 2018 Order has created confusion, as GMG's existing customer now believes that it can be served by both CenterPoint and GMG. In fact, after discussions with GMG about serving the facility, the customer contacted GMG in mid-October and requested a cut and cap of the line indicating that it was going to be served by CenterPoint. Clearly, CenterPoint's own actions to take an existing customer from GMG have made the issue ripe for consideration.

Moreover, if, for the sake of argument, one adopts CenterPoint's argument that a change in buildings on the site of an existing customer jeopardizes its status as an existing customer, then the Commission should take the opportunity to clarify that. If a customer remodels and/or makes changes to its facilities on a site and that act leads to it no longer being considered an existing customer thus permitting parallel main installation, utilities should be aware of that. GMG has

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<sup>12</sup> *Id.*



been approached by multiple industrial customers that are currently served by CenterPoint who have asked for GMG to provide service subsequent to planned facilities changes and GMG has declined, believing that doing so violated the Commission's Order. To the extent that CenterPoint's position with regard to the Hoffman Road customer is adopted by the Commission, then that opens the door to permitting companies to install parallel main to serve existing customers of another utility whenever those customers make facilities changes and request service from another provider. The regulated utilities and the public should know the Commission's policy with clarity so that consistent practices are applied uniformly.

### 3. Trifecta Truck Stop

GMG noted that it has main across the street and serving the truck stop would essentially require only building a "long-side service line." Specifically, GMG argued:

the presence of those facilities was precisely the reason that Jerry Williams of Web Construction told GMG that it was being selected to provide natural gas service. That was followed up with load information being provided to GMG and by service design work being initiated. It was only later – after Jerry Williams advised GMG that CenterPoint was giving "a really good deal" – that GMG was advised that the TriFecta Truck Stop business was being awarded to CenterPoint. Based on CenterPoint's existing facilities and required main extension to reach the truck stop, it seems improbable that the extension was economic for CenterPoint. GMG, which has lower overhead cost and higher rates and thus reaches economic viability more easily, would not have been able to run the same amount of main to the truck stop that CenterPoint needed to and still have it meet economic requirements. However, since GMG already has main facilities at the location, no main extension would have been required. Moreover, the timing of the sudden change, the service to the Web/Williams facilities, and "the really good deal" certainly raises the question of the legitimacy of the main extensions. Hence, further Commission investigation is warranted.<sup>13</sup>

### 4. 192nd Lane, Mankato

GMG also identified certain properties on 192nd Lane, Mankato that it currently serves and for which CenterPoint began installing parallel main to serve. GMG noted the properties are owned by Web Construction or by Jerry Williams, the owner of Web Construction. GMG currently serves two shops and Mr. Williams's home on 192nd Lane. GMG noted that Web Construction is also the contractor for the TriFecta Truck Stop, which was discussed in GMG's Complaint.

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<sup>13</sup> *Id.* at 3-4.

GMG agreed that CenterPoint Energy's decision to cease installation to these locations removed them from any Commission investigation and it does demonstrate that CenterPoint Energy's pattern is part of a bigger picture. Specifically, GMG argued:

While CenterPoint does have some main on 192nd Lane, it did not have such main installed at the time that GMG's main was installed there. Rather, several years ago, CenterPoint ran some parallel main to serve a single customer, bypassing several others. Nonetheless, GMG's main in the area existed prior to the installation of CenterPoint's and it is clear from the construction activity immediately preceding GMG's Complaint that CenterPoint would have had to extend its main to serve the 192nd Lane customers in question. Notably, CenterPoint was apparently only planning to serve the Web/Williams locations which suggests selectivity on the part of CenterPoint.<sup>14</sup>

## H. CenterPoint Energy Reply Comments

CenterPoint Energy argued that further investigation in this matter is unnecessary under the framework of the Commission's 17-499 Order and would not serve the public interest.

CenterPoint Energy disagreed with GMG's statement that "the customers at issue herein are already being served by GMG." CenterPoint Energy stated that GMG has never served the TriFecta Truck Stop and while GMG did provide service to a prior residence at 3625 Hoffman Road, this residence will be torn down and replaced with a commercial structure. CenterPoint Energy restated, as noted in its Comments, that it has made no effort to construct facilities to extend service to the 3625 Hoffman Road address.

CenterPoint Energy agreed that the principles set forth in the Commission's 17-499 Order provide guidance in situations such as the current matter. However, CenterPoint Energy noted the 17-499 Order specifically applies when a utility seeks to serve customers "already being served by another Commission-regulated utility through its existing facilities." As discussed in more detail in CenterPoint Energy's response letter, CenterPoint Energy argued "there can be no dispute that the TriFecta Truck Stop was a new construction project not already being served by GMG and no further analysis or investigation is warranted." In addition, CenterPoint Energy argued that a similar analysis can be applied to the proposed memory care facility at 3625 Hoffman Road. While GMG has existing facilities at this premise to serve a residential customer, in order to make way for the memory care project the existing residence will be demolished, and the existing gas facilities abandoned or removed. Finally, as the CenterPoint Energy has noted, this new customer has yet to request gas service from CenterPoint Energy. Therefore, CenterPoint Energy argued that no further investigation is necessary.

In the case of the accounts on 192nd Lane, CenterPoint Energy stated it extended nearby facilities serving an existing CenterPoint Energy customer along 192nd Lane in response to the request of Web Construction and Jerry Williams, the company's owner. CenterPoint Energy noted the request was for a new commercial building not yet served by either utility, plus two

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<sup>14</sup> *Id.* at 3.

existing commercial buildings and Mr. Williams's residence, currently served by GMG. At the time of the Complaint, CenterPoint Energy would have been able to serve either just the new commercial facility or all of the accounts without a contribution in aid of construction from the customer, rendering it a cost-effective extension of the Company's facilities.

CenterPoint Energy argued customer choice was a proper basis for extending service to the 192nd Lane accounts, it ceased its extension of service upon the filing of the Complaint and has indicated it will not pursue extending service to any of the accounts served by GMG. Since CenterPoint Energy is no longer seeking to serve these customers, CenterPoint Energy argued there is no need to evaluate whether such an extension would have been in the public interest. According to the framework of the Commission's 17-499 Order, since the new commercial building is not a customer "already being served by another Commission-regulated utility through its existing facilities" the principles cited by the Department and the prohibitions of Minn. Stat. § 216B.01 do not apply.

Finally, CenterPoint Energy disagreed with the Department's recommendation regarding the need for an investigation, the procedures to be followed in any such investigation and whether the Commission's principles regarding "unnecessary duplication of facilities" have been met in this instance. However, if the Commission does decide that an investigation is warranted CenterPoint Energy stated that the informal process laid out in the Commission's 17-499 Order would be appropriate. CenterPoint Energy specifically noted Ordering Paragraph (OP) 2 of the 17-499 Order. (Please see page 6 of these briefing papers for a copy of OP2.)

## **I. Department Supplemental Comments**

After further investigation, the Department changed its recommendation. The Department now recommends that the Commission dismiss the Complaint. The Department's review determined that either GMG or CenterPoint could serve the two customers cost effectively. Thus, no potential for duplication of facilities existed. Web Construction and the Trifecta Truck Stop exercised their respective right to choose which natural gas local distribution company should serve them consistent with Commission policy and the requirements included in the 17-499 Order.

The Department also concluded that the third customer identified in the Complaint at 3625 Hoffman Road, Mankato faces a similar situation and should be allowed to choose its natural gas service provider if construction at that site commences.

The Department utilized a bill comparison analysis to make its determination. Specifically, the Department compared the annual cost of gas service from July 2019 through June 2020 and used an identical level of usage and compared the hypothetical bill for CenterPoint Energy and GMG.

## **J. GMG Reply to Department Supplemental Comments**

GMG stated that it recognizes the importance of competition in the natural gas industry and noted that the best interests of all rate payers, however, are only served when competition is

fairly engaged in. GMG argued that “the scope of the complaint examination essentially contemplates two fundamental issues: first, whether competition is fair when one utility deviates from its tariffed main extension requirements in competitive areas and passes the ultimate cost of those main extensions to all of its ratepayers; and, second, whether substantial construction changes and/or major remodels and additions to existing customer buildings constitute a basis for a competitive utility to take away that customer, thus essentially forcing at least partial economic obsolescence of the originally serving utility’s facilities.”<sup>15</sup> GMG argued that CenterPoint Energy’s actions run afoul of the principles of fair competition in both respects.

In its reply, GMG noted that a great deal of the Department’s Supplemental Comments are predicated on trade secret information and since GMG is not entitled to review that trade secret information, GMG’s ability to respond directly to the Department’s analysis is hampered. GMG stated it has done its best to respond based on publicly available information and information that customers provided to GMG. However, without seeing the trade secret information referenced in both CenterPoint Energy’s assorted responses and, in particular, upon which the Department relied, GMG cannot accurately analyze whether CenterPoint Energy deviated from its tariffed main extension requirements in any of these cases where competition exists.

In an effort to bring this process to a conclusion GMG offered a settlement. Specifically, GMG offered the following:

GMG is willing to dismiss its Complaint if a corporate officer of CenterPoint signs and submits a sworn affidavit confirming, with respect to each project,

- that a CIAC was calculated and submitted to the respective customers in accordance with CenterPoint’s main extension requirements prior to the time that GMG filed its Complaint;
- that all costs of construction including allocation of corporate overhead, special construction costs, boring, and other costs were incorporated into the project cost upon which the CIAC was predicated to determine whether main extension requirements were met;
- that no other marketing commitments of any kind or form were made, offered, or formed part of the basis for CenterPoint’s construction analysis for each project; and,
- that each project met CenterPoint’s tariffed main extension requirements standing alone based on its construction costs, required

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<sup>15</sup> GMG Reply to Department Supplemental Comments at 1-2.



CIAC, and anticipated revenue without being incorporated into the general rate base for later recovery via ratepayer subsidization.<sup>16</sup>

Staff is unaware of any discussion regarding the proposed settlement between GMG and CenterPoint Energy therefore, the Commission may wish to inquire as to the status of GMG's settlement proposal at its February 25<sup>th</sup> agenda meeting.

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<sup>16</sup> GMG Reply to Department Supplemental Comments at 5.

## VI. Staff Discussion

### A. 192nd Lane, Mankato

In its Complaint, GMG requested that the Commission find that CenterPoint Energy was in violation of the 17-499 Order in its attempt to serve three of five existing GMG customers located on 192<sup>nd</sup> lane in Mankato, MN. In response, CenterPoint Energy agreed to cease its construction activities associated with extending service to existing buildings along 192nd Lane that are currently being served by GMG (i.e. buildings owned by Web Construction and a residence).

### B. Web Construction's new warehouse

#### 1. Introduction

GMG did not contest the provision of natural gas service to the new structure specifically in its Complaint. CenterPoint Energy noted in its letter dated October 20, 2020 that it had entered into an agreement with Web Construction to provide natural gas service to a third building being constructed and owned by that entity.<sup>17</sup> In its Comments dated November 6, 2020 CenterPoint Energy stated its intent to serve Web Construction's new facility.<sup>18</sup>

In reply comments, GMG stated that it had no knowledge of the facility prior to CenterPoint's filings, GMG believes that the building may be being constructed on a parcel that it already serves for Web Construction and/or Jerry Williams. If true, GMG argued that it should also be included in the Commission's investigation because it would be on parcel for a customer currently served by GMG.

#### 2. Analysis

##### a. GMG

GMG argued that the facts identify a pattern of practice by CenterPoint Energy that involves "dual-maining" to poach GMG's existing customers that are already being served on GMG's main line.<sup>19</sup> GMG noted that "While CenterPoint does have some main on 192nd Lane, it did not have such main installed at the time that GMG's main was installed there. Rather, several years ago, CenterPoint ran some parallel main to serve a single customer, bypassing several others. Nonetheless, GMG's main in the area existed prior to the installation of CenterPoint's and it is clear from the construction activity immediately preceding GMG's Complaint that

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<sup>17</sup> CenterPoint Energy's Response Letter at 3.

<sup>18</sup> As discussed in the CenterPoint's Letter, both companies have well-developed gas infrastructure in the area to serve new and existing customers, and construction of new facilities would be required of either utility in order to serve the new warehouse building on 192nd Lane.

<sup>19</sup> GMG Reply Comments at 2.



CenterPoint would have had to extend its main to serve the 192nd Lane customers in question.”<sup>20</sup>

GMG states that the new warehouse is on a parcel that it already serves for Web Construction and/or Mr. Williams and therefore should be considered an existing GMG customer.

#### **b. CenterPoint Energy**

CenterPoint Energy stated that both companies have well-developed gas infrastructure in the area to serve new and existing customers and construction of new facilities would be required of either utility in order to serve the new warehouse building on 192nd Lane. CenterPoint Energy argued that under the principle of customer choice it is justified to provide service to what CenterPoint Energy considers a new building or premise, situated on a parcel that is not currently served by any utility.<sup>21</sup>

#### **c. Department**

In Supplemental Comments the Department concluded that both CenterPoint Energy and GMG “could serve the customer cost-effectively and the customer exercised his/her ability to choose the natural gas service provider that could provide service most economically from the customer’s perspective.”<sup>22</sup> The Department developed a bill comparison that compared the annual cost of gas service for the new facility for the historical time period from July 2019 through June 2020. Although the actual calculations are trade secret,<sup>23</sup> the Department’s comments imply that service under CenterPoint Energy would be cheaper for the customer in question and therefore it is appropriate for the customer to choose service by CenterPoint Energy.

#### **d. Staff Analysis**

As discussed above, the Commission’s 17-499 Order set forth an approach for determining whether a utility is duplicating another utility’s facilities. Specifically, OP 2 of the 17-499 Order states:

The Commission adopts the following principles with respect to the duplication of natural gas facilities:

A Commission-regulated utility is prohibited from extending natural gas service to any customer who is already being served by another Commission-regulated

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<sup>20</sup> *Id.* at 3.

<sup>21</sup> CenterPoint Energy Comments at 3.

<sup>22</sup> Department Supplemental Comments at 5.

<sup>23</sup> The bill comparison can be found at TRADE SECRET Attachment 6 of the Department’s Supplemental Comments.



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 (a) customers cannot obtain the natural gas service they need from the utility with the existing facilities; or (b) such duplication furthers the public interest based on (i) the needs of the customers who would be served by the utility extending service; (ii) 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; (iii) any safety concerns associated with constructing and operating the duplicative facilities; and (iv) 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 17-499 Order sets forth a multi-step process in determine whether a proposal to serve a customer is in violation of the order. The various steps set forth in the 17-499 Order are addressed below.



**i. Should the Web Construction warehouse be considered an existing customer?**

A customer is defined as “an individual or business that purchases another company's goods or services.” The record shows that GMG currently serves three meters in the Web Construction “complex” located on 192<sup>nd</sup> Lane in Mankato.

- A construction “shop” at 56644 192<sup>nd</sup> Lane:
- A second construction shop at 56644 192<sup>nd</sup> Lane, and
- A residence at 56698 192<sup>nd</sup> Lane, Mankato.

In Exhibit A to the Complaint GMG also included a locate request for natural gas service that would be provided to a new structure, another “shop,” at 56698 192<sup>nd</sup> Lane.<sup>24</sup>

The record shows that the new facility will be located at the same address as a residence where GMG currently provides service. GMG argued that the new warehouse is on a parcel that it already serves for Web Construction and/or Mr. Williams and therefore should be considered an existing GMG customer. Staff is inclined to agree with GMG’s interpretation.

The operative term is customer. The 17-499 Order does not discuss new or existing meters but rather limits the discussion to customers which staff views as intentional and therefore considers that the Commission purposely intended the information to be based on whether the customer was new or existing and not whether the meter being served was new. An existing customer can have many meters at the same location and just because a new meter is added does not make it a new customer. A meter is not a customer.

Thus, since the warehouse has been established to be an existing customer for GMG under the 17-499 Order, CenterPoint Energy can only serve them if (1) GMG does not wish to serve the customer; or, (2) CenterPoint Energy 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.

**ii. Does GMG wish to continue to serve the customer?**

Yes, the record is clear that GMG wishes to continue to serve the customer.

CenterPoint Energy must demonstrate that it would not be duplicating GMG’s existing facilities or that the duplication of existing facilities is necessary to serve the customer or further the public interest.

**iii. Is CenterPoint Energy duplicating GMG’s existing facilities?**

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<sup>24</sup> See TRADE SECRET Attachment 2 of the Department’s Supplemental Comments for a map.

The record indicates that both GMG and CenterPoint Energy have facilities in the general area with CenterPoint Energy having facilities on 192<sup>nd</sup> lane since 1974 and GMG since 2003.<sup>25</sup> According to the record, CenterPoint Energy would have to construct facilities to serve GMG's customer whereas since GMG is already serving the parcel and therefore, would only have to construct a standard service line to connect the warehouse. Additionally, according to the map located in TRADE SECRET Attachment 2 of the Department's Supplemental Comments CenterPoint would need to cross GMG's existing facilities in order to serve the customer.

**iv. 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.**

The 17-499 Order does not define a minimum or maximum distance threshold to meet the duplication of existing facilities standard. In such a case the Commission must use its judgment to determine whether duplication of existing facilities occurs and whether the duplication furthers the public interest.

The current set of facts indicate that GMG has facilities in place to serve the warehouse and CenterPoint Energy would need to construct additional facilities in addition to what it currently has in the area to provide service to the warehouse. The actual amount of facilities CenterPoint Energy needs to construct to serve this customer is considered trade secret but is contained in the Department's Supplemental Comments on page 4. In addition, according to the map located in TRADE SECRET Attachment 2 of the Department's Supplemental Comments CenterPoint Energy's facilities would need to cross over GMG's existing facilities in order to serve the customer.

It is clear from the record that GMG has facilities located on the customer's premises that currently serve the customer and that CenterPoint Energy would need to create its own facilities to serve the customer. Staff concludes that CenterPoint Energy would be duplicating GMG's facilities to serve the customer.

**v. Is the duplication of the existing facilities necessary to further the public interest?**

The 17-499 Order provides little guidance on how public interest is to be determined. The Department utilized a cost-benefit analysis in its Supplemental Comments to arrive at its recommendation. According to the 17-499 Order such service is based on (i) the needs of the customers who would be served by the utility extending service; (ii) 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; (iii) any safety concerns associated with constructing and operating the duplicative facilities; and (iv) any other factors showing that the duplication would advance the public's interest in adequate, reliable and economical access to natural gas service.

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<sup>25</sup> See TRADE SECRET Attachment 2 of the Department's Supplemental Comments.



- **Needs of the customer**

Both CenterPoint Energy and GMG can provide natural gas service to the customer.

- **Incremental capital expenditures associated with duplicating the existing facilities compared to any incremental capital expenditures needed to expand the existing facilities.**

Staff considers the question to be a comparison of costs between the competing natural gas utilities to provide service to the customers. The incremental capital costs are considered trade secret and are discussed in the Departments Supplemental Comments on page 4.

- **Safety concerns associated with constructing and operating the duplicative facilities**

GMG did cite a safety concern relative to CenterPoint serving the 4 properties identified on 192nd Lane in its Complaint at page 7 noting that “if there is a gas leak in the area, it will be difficult to determine whether that leak is coming from a pipeline owned by GMG or CenterPoint”. The Department did not pursue this concern given that CenterPoint and GMG both serve customers on 192nd Lane. Hence, that risk is not incremental, rather it is pre-existing. If the Commission decides to pursue that question, it may want to ask GMG to provide additional information on this issue.

- **Any other factors showing that the duplication would advance the public’s interest in adequate, reliable and economical access to natural gas service.**

The Department developed a bill comparison that compared the annual cost of gas service for the new Web Construction facility for the historical timeframe from July 2019 through June 2020 and compared the customer’s theoretical annual bill using an identical level of usage. Although the Department’s results are listed as trade secret the Department does state “That represents a strong incentive for a customer to take service from CenterPoint if the two utilities are competing for the same small commercial customers. That was the situation here as well.”<sup>26</sup>

Staff is not convinced that a cost/benefit analysis is an appropriate way to determine the public interest. CenterPoint Energy is the largest Commission rate-regulated natural gas utility in Minnesota whereas GMG is the smallest. The difference in size between the two utilities does not lend itself to a fair comparison. The Commission may wish to discuss this topic further at its February 25<sup>th</sup> agenda meeting.

## **C. 3625 Hoffman Road, Mankato**

### **1. Introduction**

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<sup>26</sup> Department Supplemental Comments at 5.



GMG has served the customer since 2001. Early in 2020, the land was sold to a new owner and the natural gas account for that meter was transferred to that owner. The new owner was billed for and has been paying the requisite monthly facility fee for GMG's natural gas service. Since the house on the parcel is not occupied, there has not been significant gas use since transfer of the account. The current owner advised GMG that the house will be torn down and a memory care facility will be built on the site. GMG began working with the existing property owner regarding providing service to the new building. GMG noted that since it already provided service to the property and the existing house, GMG will easily be able to serve the memory care facility that is being built by the current owner on the same site as a replacement for the existing structure.

## **2. Analysis**

### **a. GMG**

GMG stated that no main extension or change to GMG's main is necessary to serve the facility. While the service line and meter set and location may need to be changed, that does not change the fact that GMG already has service installed to the current parcel and that the current owner is GMG's existing customer. Hence, CenterPoint's actions with regard to targeting GMG's existing customer should be investigated by the Commission.

### **b. CenterPoint Energy**

CenterPoint Energy argued that it is uncertain whether the site would qualify as an existing GMG customer after the existing home on the site is demolished, but regardless, no construction of facilities to serve the customer has occurred. Indeed, to CenterPoint Energy's knowledge, the customer has yet to request gas service from either utility. CenterPoint Energy argued that given that there is no factual dispute in these two instances, and that the facts as alleged in the Complaint itself do not show a violation of Minn. Stat. § 216B.01 and the Commission's Order in the competition docket, further investigation would serve no public purpose.<sup>27</sup>

### **c. Department**

In Supplemental Comments, the Department concluded that both utilities could serve the potential customer cost-effectively and the potential customer should have the ability to choose the natural gas service provider that can provide service the most attractive bundle of services from the customer's perspective. To that end, the Department recommended that the Commission dismiss this component of GMG's Complaint.

### **d. Staff Analysis**

Staff's concerns discussed above in section VI. B, are also present here and staff will not repeat its argument. Upon review of Department's Trade Secret Attachment 8, staff notes that both

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<sup>27</sup> CenterPoint Energy Comments at 2.

CenterPoint Energy and GMG have facilities in the general area but only GMG has facilities at the customer's premises. The Commission needs to determine whether the removal of the residence in place of a new structure means the parcel is no longer an existing customer of GMG under the guidelines put forth by the 17-499 Order. In addition, staff notes that although customer choice should be a consideration in the Commission's deliberation process the fact that CenterPoint Energy is so much larger than GMG and has the ability to pass costs onto a much larger customer base will likely mean that it will always be able to provide cheaper service than GMG but that does not mean the Commission should allow CenterPoint Energy to extend facilities unfettered. Costs to the individual customer should not be the only consideration in determining if the proposed expansion meets the threshold established in the 17-499 docket.

## **D. Trifecta Truck Stop**

### **1. Introduction**

GMG stated that it had facilities installed in 2018 that are ready to serve the potential customer. The Department noted that GMG also stated that it had been contacted by the construction firm responsible for building the facility regarding natural gas service in July 2020. In mid-September the construction firm responsible for building the facility notified GMG that CenterPoint was awarded the opportunity to serve the truck stop. GMG claimed that CenterPoint will have to construct parallel facilities, and potentially duplicate facilities to GMG's in order to serve the TriFecta Truck Stop. CenterPoint Energy provided the location of its facilities in Exhibits A and B of its comments. CenterPoint Energy designated the information as Trade Secret.

### **2. Analysis**

#### **a. GMG**

GMG stated that it had facilities installed in 2018 that are ready to serve the potential customer. The Department noted that GMG also stated that it had been contacted by the construction firm responsible for building the facility regarding natural gas service in July 2020. In mid-September the construction firm responsible for building the facility notified GMG that CenterPoint was awarded the opportunity to serve the truck stop. GMG claimed that CenterPoint will have to construct parallel facilities, and potentially duplicate facilities to GMG's in order to serve the TriFecta Truck Stop.

In Reply Comments, GMG noted that it has main across the street and serving the truck stop would essentially require only building a "long-side service line." Specifically, GMG argued:

the presence of those facilities was precisely the reason that Jerry Williams of Web Construction told GMG that it was being selected to provide natural gas service. That was followed up with load information being provided to GMG and by service design work being initiated. It was only later – after Jerry Williams advised GMG that CenterPoint was giving "a really good deal" – that GMG was advised that the



TriFecta Truck Stop business was being awarded to CenterPoint. Based on CenterPoint's existing facilities and required main extension to reach the truck stop, it seems improbable that the extension was economic for CenterPoint. GMG, which has lower overhead cost and higher rates and thus reaches economic viability more easily, would not have been able to run the same amount of main to the truck stop that CenterPoint needed to and still have it meet economic requirements. However, since GMG already has main facilities at the location, no main extension would have been required. Moreover, the timing of the sudden change, the service to the Web/Williams facilities, and "the really good deal" certainly raises the question of the legitimacy of the main extensions. Hence, further Commission investigation is warranted.<sup>28</sup>

It is unclear to staff if the "really good deal" referenced in GMG's statement above was a comment about a promotional incentive that would be in violation of the Commission's 17-499 Order or a general statement regarding the service CenterPoint Energy would provide. The Commission may wish to inquire of the parties regarding this reference to a promotional incentive at the February 25<sup>th</sup> agenda meeting.

#### **b. CenterPoint Energy**

On October 21, 2020 CenterPoint Energy submitted its response letter to GMG's Complaint. CenterPoint Energy argued that current Minnesota Statutes and the Commission's 17-499 Order does not prohibit CenterPoint Energy from serving the new commercial premise (TriFecta Truck Stop) since neither utility has received an application for service and no facilities to serve the customer have been constructed. In its Comments, CenterPoint Energy reiterated its argument from its October 21, 2020 letter that for the TriFecta Tuck Stop, the facts as alleged in GMG's Complaint establish that the customer is not an "existing customer" of GMG. This customer, therefore, is outside the parameters of the Commission's Order, which applies and interprets Minn. Stat. § 216B.01.

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<sup>28</sup>GMG Reply Comments at 3-4.

### c. Department

In Supplemental Comments, the Department concluded that both CenterPoint Energy and GMG “could serve the customer cost-effectively from the utility’s perspective.”<sup>29</sup> As previously discussed, the Department developed a bill comparison that compared the annual cost of gas service for the new facility for the historical time period from July 2019 through June 2020. Although the actual calculations are trade secret,<sup>30</sup> the Department did allude to the fact that service under CenterPoint Energy would be cheaper for the customer in question and therefore it is appropriate for the customer to choose service by CenterPoint Energy.

### d. Staff Analysis

Currently, neither CenterPoint Energy nor GMG provide service to the Trifecta Truck stop. The Commission’s 17-499 Order suggests the following two factors could be considered in determining whether there is a duplication of facilities and, if so, whether that was necessary.

- 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 (a) customers cannot obtain the natural gas service they need from the utility with the existing facilities; or (b) such duplication furthers the public interest based on (i) the needs of the customers who would be served by the utility extending service; (ii) 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; (iii) any safety concerns associated with constructing and operating the duplicative facilities; and (iv) any other factors showing that the duplication would advance the public’s interest in adequate, reliable and economical access to natural gas service.

#### i. Is CenterPoint Energy duplicating GMG’s existing facilities?

According to the map located at TRADE SECRET Attachment 12 of the Department’s Supplemental Comments both GMG and CenterPoint Energy have facilities in the general area.

- ii. **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.**

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<sup>29</sup> Department Supplemental Comments at 9.

<sup>30</sup> TRADE SECRET Attachment 15 of the Department’s Supplemental Comments contains the bill comparison.



As noted above, the 17-499 Order does not define a minimum or maximum distance threshold to meet the duplication of existing facilities standard. In such a case the Commission must use its judgment to determine whether duplication of existing facilities occurs and whether the duplication furthers the public interest.

The current set of facts indicates that GMG has facilities located across the street from the customer. CenterPoint Energy would need to construct additional facilities in addition to what it currently has in the area to provide service to the Truckstop. The actual amount of facilities CenterPoint Energy needs to construct to serve this customer is considered trade secret but is contained in the Department's Supplemental Comments on page 8. In addition, the Department included a map showing the location of the various facilities in TRADE SECRET Attachment 12 of the Department's Supplemental Comments.

Clearly GMG has the facilities closest to the new customer and would require substantially less construction to serve the customer.

### **iii. Is the duplication of the existing facilities necessary to further the public interest?**

The 17-499 Order provides little guidance on how public interest is to be determined. The Department utilized a cost-benefit analysis in its Supplemental Comments to arrive at its recommendation. According to the 17-499 Order such service is based on (i) the needs of the customers who would be served by the utility extending service; (ii) 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; (iii) any safety concerns associated with constructing and operating the duplicative facilities; and (iv) any other factors showing that the duplication would advance the public's interest in adequate, reliable and economical access to natural gas service.

- **Needs of the customer**

Both CenterPoint Energy and GMG can provide natural gas service to the customer.

- **Incremental capital expenditures associated with duplicating the existing facilities compared to any incremental capital expenditures needed to expand the existing facilities.**

Staff considers the question to be a comparison of costs between the competing natural gas utilities to provide service to the customers. The incremental capital costs are considered trade secret and are discussed in the Departments Supplemental Comments on page 8.

- **Safety concerns associated with constructing and operating the duplicative facilities**

No specific safety issue was cited





- **Any other factors showing that the duplication would advance the public's interest in adequate, reliable and economical access to natural gas service.**

The Department put forth trade secret annual bill comparison using assumed sales service for the historical time period July 2019 through June 2020.

## VII. Decision Alternatives

### Does the Commission have jurisdiction?

1. Find that the Commission has jurisdiction (GMG, CenterPoint Energy, Department), or
2. Find that the Commission does not have jurisdiction.

### Should the Commission investigate all of GMG's complaint?

3. Open an investigation (for example, to investigate whether CenterPoint Energy offered the Trifecta Truck Stop a promotion or some other specific aspect of this complaint). (GMG), or
4. Do not open an investigation and dismiss GMG's complaint without further investigation. (CenterPoint Energy, Department)

### Does the Commission have sufficient information to make a decision?

5. Yes (GMG, CenterPoint Energy, Department), or
6. No

### GMG's Offer of Settlement

7. Request CenterPoint Energy to provide a response to GMG within 10 days, or
8. Take no action

### If the Commission decides it has sufficient information, then:

#### 192<sup>nd</sup> Lane Mankato

9. Because CenterPoint Energy has withdrawn its offer of service to the customers located on 192<sup>nd</sup> Lane Mankato, there is no duplication of service and this issue is resolved.

**Web Construction's new warehouse:**

10. The Commission evaluates the complaint under the framework established in Docket 17-499 and finds:
  - a. because the Web warehouse is not served by existing facilities, there is no duplication of service and the complaint is dismissed (CenterPoint Energy), or
  - b. there would be duplication of service but duplication is necessary and in the public interest; the customer may be allowed to choose the service provider (Department), or
  - c. there would be duplication of service but duplication is not necessary or in the public interest so the existing natural gas provider should continue to serve the customer. (GMG)

**3625 Hoffman Road, Mankato**

11. The Commission evaluates the complaint under the framework established in Docket 17-499 and finds:
  - a. because there is no pending request for service there is no duplication of service established and the complaint is dismissed (CPE), or
  - b. because 3625 Hoffman Road is not served by existing facilities, there is no duplication of service and the complaint is dismissed (Department), or
  - c. there would be duplication of service but duplication is not necessary or in the public interest so the existing natural gas provider should continue to serve the customer. (GMG)



### **Trifecta Truck Stop**

12. The Commission evaluates the complaint under the framework established in Docket 17-499 and finds:
  - a. because the facility has not yet been constructed there is no duplication of service and the complaint is dismissed (CenterPoint Energy), or
  - b. there would be duplication of service but duplication is necessary and in the public interest; the customer may be allowed to choose the service provider (Department), or
  - c. there would be duplication of service but duplication is not necessary or in the public interest. (GMG)

### **If the Commission decides it needs additional information, then:**

13. Refer this matter to the Office of Administrative Hearings (OAH) for additional investigation and a contested case proceeding. Ask the OAH to render its Report by a specific date and finding of fact if there has been any duplication of service under the Commission's 17-499 Order; or
14. Direct Commission staff to issue a Notice to solicit comments from interested parties, and
  - a. Direct Commission staff to develop a list of questions for further investigation, and
  - b. Delegate authority to the Commission's Executive Secretary to issue notices and vary time periods for the duration of the investigation, or
15. Develop some other methodology to determine who should provide natural gas service to the contested properties.

**Minn. Stat. § 216B.17 COMPLAINT INVESTIGATION AND HEARING.**

**Subdivision 1. Investigation.** On its own motion or upon a complaint made against any public utility, by the governing body of any political subdivision, by another public utility, by the department, or by any 50 consumers of the particular utility that any of the rates, tolls, tariffs, charges, or schedules or any joint rate or any regulation, measurement, practice, act, or omission affecting or relating to the production, transmission, delivery, or furnishing of natural gas or electricity or any service in connection therewith is in any respect unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed, with notice, to make such investigation as it may deem necessary. The commission may dismiss any complaint without a hearing if in its opinion a hearing is not in the public interest.

**Subd. 2. Notice of complaint.** The commission shall, prior to any formal hearing, notify the public utility complained of that a complaint has been made, and ten days after the notice has been given the commission may proceed to set a time and place for a hearing and an investigation as provided in this section.

**Subd. 3. Notice of hearing.** The commission shall give the public utility and the complainant ten days' notice of the time and place when and where the hearing will be held and the matters to be considered and determined. Both the public utility and complainant are entitled to be heard and to be represented by counsel. A hearing under this section is not a contested case under chapter 14.

**Subd. 4. Notice to local governments and interested persons.** Notice shall also be given to the governing bodies of affected municipalities and counties, and to any other persons the commission shall deem necessary.

**Subd. 5. Combined notice.** The notice provided for in subdivisions 2 and 3 may be combined but if combined the notice shall not be less than ten days.

**Subd. 6. Complaint petition.** The commission shall have the power to hear, determine, and adjust complaints made against any municipally owned gas or electric utility with respect to rates and services upon petition of ten percent of the nonresident consumers of the municipally owned utility or 25 such nonresident consumers whichever is less. The hearing of the complaints shall be governed by this section.

**Subd. 6a. Cooperative electric associations.** For the purposes of this section, public utility shall include cooperative electric associations with respect to service standards and practices only.

**Subd. 7. Evidence.** Section 14.60 shall be applicable to all contested cases before the commission.

**Subd. 8. Further action by commission.** If after making an investigation under subdivision 1 and holding a hearing under this section, the commission finds that all significant factual issues raised have not been resolved to its satisfaction:

(1) for investigations concerning the reasonableness of rates of a public utility, if the commission is unable to resolve the complaint with the utility, the commission may order the utility to initiate a rate proceeding under section 216B.16, provided, however, that the

(2) utility must be allowed at least 120 days after the date of the commission's order to initiate the proceeding; and

(3) for investigations of other matters, the commission shall order that a contested case proceeding be conducted under chapter 14.

### **Minn. R. 7829.1700 FORMAL COMPLAINT.**

**Subpart 1. Content.** A formal complaint must include the following information: the name and address of the complainant; the name and address of complainant's counsel, if any; the name and address of respondent; the name and address of respondent's counsel, if known; the statute, rule, tariff, or commission order alleged to have been violated; the facts constituting the alleged violation; and the relief sought by complainant.

**Subp. 2. Mailing and filing.** A formal complaint must be mailed to the respondent, the department, and the Office of the Attorney General, as well as filed with the commission. Formal complaints may also be filed in a manner consistent with the electronic filing requirements of Minnesota Statutes, section 216.17, subdivision 3. If filed electronically, a formal complaint does not need to be mailed to the state agencies.

### **Minn. R. 7829.1800 INITIAL CONSIDERATION OF FORMAL COMPLAINT.**

**Subpart 1. Initial commission review.** The commission shall review a formal complaint as soon as practicable to determine whether the commission has jurisdiction over the matter and to determine whether there are reasonable grounds to investigate the allegation. On concluding that it lacks jurisdiction or that there is no reasonable basis to investigate the matter, the commission shall dismiss the complaint.

**Subp. 2. Answer.** On concluding that it has jurisdiction over the matter and that investigation is warranted, the commission shall serve the complaint on the respondent, together with an order requiring the respondent to file an answer either stating that it has granted the relief the complainant requests, or responding to the allegations of the complaint. The answer must be filed with the commission and served on the complainant, department, and Office of the Attorney General within 20 days of service of the complaint and order.

**Subp. 3. Reply.** Replies are not required unless the answer alleges that respondent has granted the relief sought by complainant. In that case, the complainant shall file a reply within 20 days admitting or denying that relief has been granted. If the complainant fails to file the reply, the commission shall dismiss the complaint. Copies of the reply must be served on the respondents, department, and Office of the Attorney General.

**Subp. 4. Failure to answer.** If the respondent fails to answer a complaint served by the commission under subpart 2, the commission shall consider the allegations of the complaint denied.

**Minn. R. 7829.1900 COMMISSION ACTION ON FORMAL COMPLAINT;  
COMMENTS.**

**Subpart 1. Nature of proceedings.** The commission shall deal with a formal complaint through a contested case proceeding, informal proceeding, or expedited proceeding.

**Subp. 2. Initial comments.** A person wishing to comment on a formal complaint shall do so within 30 days of the date of a commission order requiring an answer to the complaint. Comments must be served on the complainant, respondent, department, Office of the Attorney General, and any other known parties.

**Subp. 3. Reply comments.** A commenting party has ten days from the expiration of the original comment period to file reply comments. Reply comments must be limited in scope to the issues raised in the initial comments and must be served on the complainant, respondent, department, Office of the Attorney General, and any other known parties.

**Subp. 4. Petition to intervene.** If a person who files initial or reply comments is not entitled to intervene in commission proceedings as of right and desires full party status, the person shall file a petition to intervene before the initial or reply comment period expires. The intervention petition may be combined with the comments on the complaint.

**Subp. 5. Comments to include procedural recommendation.** A person commenting on a complaint shall specify whether the person believes the matter requires a contested case proceeding, informal proceeding, expedited proceeding, or some other procedural treatment, together with the reasons for recommending a particular procedural treatment.

**Subp. 6.** [Repealed, 40 SR 1329]

**Subp. 7.** [Repealed, 40 SR 1329]

**Subp. 8.** [Repealed, 40 SR 1329]

**Subp. 9. Comment periods extended at department's request.** At the request of the department, the commission shall extend the comment periods established in this part up to an additional 30 days, except for comment periods set by statute.