

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of the Petition of CenterPoint Energy for Approval of a Recovery Process for Cost Impacts Due to February Extreme Gas Market Conditions

ISSUE DATE: October 19, 2022

DOCKET NO. G-008/M-21-138

In the Matter of a Commission Investigation into the Impact of Severe Weather in February 2021 on Impacted Minnesota Natural Gas Utilities and Customers

DOCKET NO. G-999/CI-21-135

ORDER DISALLOWING RECOVERY OF CERTAIN NATURAL GAS COSTS AND REQUIRING FURTHER ACTION

## PROCEDURAL HISTORY

### I. Introduction

In February 2021, cold weather across much of the United States led to increased demand for natural gas and, in some areas, supply disruptions. An extreme rise in natural gas prices ensued. Minnesota's regulated gas utilities maintained continuous service to customers throughout this period, but some incurred unprecedented costs purchasing gas on the spot market. Under Commission rules, such costs ordinarily are billed to ratepayers through an automatic purchased-gas adjustment to customer rates over the next 12-month period beginning on September 1 each year. However, the extreme circumstances in this case prompted the Commission to initiate an investigation.

On March 2, 2021, the Commission opened an investigation into the impacts of the event and directed the affected gas utilities subject to its ratemaking authority<sup>1</sup> to file information about the reasons for and details of the price spike, their responses to the spike, and customer impacts, as well as the utilities' gas supply planning and purchasing strategies and how utilities could or should alter those strategies in anticipation of increasingly frequent extreme weather events.<sup>2</sup>

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<sup>1</sup> The affected natural gas utilities are CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Minnesota Gas (CenterPoint); Northern States Power Company d/b/a Xcel Energy (Xcel); Minnesota Energy Resources Corporation (MERC); Great Plains Natural Gas Co. (Great Plains).

<sup>2</sup> *In the Matter of a Commission Investigation into the Impact of Severe Weather in February 2021 on Impacted Minnesota Natural Gas Utilities and Customers*, Docket No. G-999/CI-21-135, Order Opening Investigation (March 2, 2021).

## II. Purchased-Gas Adjustment

Total annual gas costs are reviewed when utilities file their annual automatic adjustment (AAA) reports by September 1 each year. AAA reports include detailed information about all automatic adjustments made in the 12-month period from July 1 of the previous year to June 30 of the reporting year.<sup>3</sup> The reports show, by customer class, the difference between gas costs actually incurred and those collected from ratepayers, and include a proposed plan to reconcile (true-up) this difference through a bill surcharge or refund over the next 12-month billing cycle.<sup>4</sup>

Given the magnitude of costs incurred during February 13–17, 2021 (the February Event), the likelihood of rate shock, and the need to mitigate customer impacts, the affected utilities proposed variances to the Commission’s automatic-adjustment rules to authorize them to separately track their extraordinary gas costs from the February Event and recover those costs over an extended period using a surcharge separate from the AAA true-up mechanism.

## III. Variance Requests and August 30, 2021 Order

On March 16, 2021, in Docket No. G-008/M-21-138, CenterPoint filed its petition for a variance to the Commission’s automatic-adjustment rules to modify recovery of an estimated \$500 million in gas costs incurred from February 12–22, 2021.

On August 30, 2021, the Commission issued an order granting a rule variance and approving a special surcharge to recover the extraordinary gas costs over an extended period using a seasonally adjusted schedule. This action was designed to mitigate ratepayer impacts by reducing the size of each monthly surcharge and by reducing the surcharge rate in the winter, when many customers incur higher gas bills.<sup>5</sup>

For purposes of the variance and the special recovery mechanism, the Commission defined “extraordinary gas costs” or “extraordinary costs” as the margin between \$20.00 per Dekatherm (Dth) and the actual average price paid by the utilities during the February Event.<sup>6</sup>

Applying the Commission’s definitions, CenterPoint requested to recover through the February-Event surcharge a total of \$408,755,953 in extraordinary gas costs.

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<sup>3</sup> Minn. R. 7825.2810; Minn. R. 7825.2910, subp. 4.

<sup>4</sup> Minn. R. 7825.2700, subp. 7; Minn. R. 7825.2810; Minn. R. 7825.2910, subp. 4.

<sup>5</sup> Order Granting Variances and Authorizing Modified Cost Recovery Subject to Prudence Review, and Notice of and Order for Hearing, at 20–21, Ordering Paras. 6–11 (August 30, 2021). The Commission originally ordered recovery over 27 months, but it extended CenterPoint’s recovery period to 63 months in a subsequent order. *In the Matter of the Petition by CenterPoint Energy for Approval of a Rate Stabilization Plan*, Docket No. G-008/M-21-755, Order Denying Rate Stabilization Plan but Extending Amortization Period, at 5, Ordering Para. 2 (December 30, 2021).

<sup>6</sup> Order Granting Variances and Authorizing Modified Cost Recovery Subject to Prudence Review, and Notice of and Order for Hearing at 20, Ordering Para. 3 (August 30, 2021). The total claimed extraordinary gas costs are: \$408,755,953 for CenterPoint; \$178,978,695 for Xcel; \$64,975,882 for MERC; and \$8,827,249 for Great Plains.

The Commission's August 2021 decision precluded the utilities from charging ratepayers interest or financing costs related to the extraordinary gas costs,<sup>7</sup> and it exempted certain low-income customers from the surcharge.<sup>8</sup> With these limitations, the Commission authorized utilities to begin recovering extraordinary costs from customers through the approved surcharge mechanism pending a review of whether the costs were incurred prudently. The order emphasized that each utility bears the burden to prove the prudence and reasonableness of its costs and that any costs not proven to be prudent and reasonable would be disallowed or refunded to customers.

#### **IV. Proceedings Before the Administrative Law Judges**

As part of its decision granting the rule variances described above, the Commission also referred the matters to the Office of Administrative Hearings for contested-case proceedings to develop the record on whether each utility acted prudently in relation to the February Event and whether it is just and reasonable for each utility to recover all extraordinary costs from ratepayers.<sup>9</sup> The investigations proceeded jointly in four utility-specific Commission dockets: G-008/M-21-138 (CenterPoint), G-004/M-21-235 (Great Plains), G-002/CI-21-610 (Xcel), and G-011/CI-21-611 (MERC).<sup>10</sup>

The Office of Administrative Hearings assigned Administrative Law Judges Jessica A. Palmer-Denig and Barbara J. Case to hear these matters.

From October 2021 through February 2022, the following parties filed written direct, rebuttal, and surrebuttal testimony:

- The affected gas utilities, jointly and individually;
- The Citizens Utility Board of Minnesota (CUB);
- The Department of Commerce, Division of Energy Resources (the Department); and
- The Office of the Attorney General—Residential Utilities Division (the OAG).

On February 17–18 and 22, 2022, the Administrative Law Judges (ALJs) held evidentiary hearings.

A public comment period was open from February 7 through March 4, 2022, and two remote-access public hearings were held on March 3. After the comment period closed, members of the public continued to submit written comments into August.

On March 15, 2022, CenterPoint, Great Plains, Xcel, MERC, CUB, the Department, and the OAG filed initial post-hearing briefs and proposed findings of fact.

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<sup>7</sup> Order Granting Variances and Authorizing Modified Cost Recovery Subject to Prudence Review, and Notice of and Order for Hearing, at 21, Ordering Para. 16.

<sup>8</sup> *Id.*, Ordering Para. 12.

<sup>9</sup> *Id.*

<sup>10</sup> The Commission will address the results of each investigation in a separate, utility-specific order in each utility's respective docket.

On March 25, 2022, Xcel, CenterPoint, Great Plains, MERC, CUB, the Department, and the OAG filed reply briefs.

## **V. Proceedings Before the Commission**

On May 24, 2022, the ALJs issued four sets of Findings of Fact, Conclusions of Law, and Recommendations (ALJ Reports), each specific to one utility. The ALJ Reports concluded that each of the affected utilities acted prudently and should fully recover its extraordinary costs.

On June 3, 2022, the Department, the OAG, CUB, and the City of Minneapolis filed exceptions disagreeing with the ALJ Reports. CenterPoint; Great Plains; Xcel; MERC; and the Laborers' International Union of North America, Minnesota and North Dakota filed letters recommending that the Commission adopt the ALJs' findings, conclusions, and recommendations.

On August 4 and 11, 2022, the Commission heard oral argument from and asked questions of the parties. On August 11, the record closed under Minn. Stat. § 14.61, subd. 2.

## **FINDINGS AND CONCLUSIONS**

### **I. Introduction**

#### **A. Legal Standard**

Under Minn. Stat. § 216B.03,

Every rate made, demanded, or received by any public utility . . . shall be just and reasonable. Rates shall not be unreasonably preferential, unreasonably prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to a class of consumers . . . . Any doubt as to reasonableness should be resolved in favor of the consumer.

When a utility proposes annual purchased-gas-cost adjustments to recover or refund amounts for gas purchases made in the 12-month period between July 1 and June 30 of the preceding year, the proposal is governed by the Commission's rules set forth in chapter 7825 of the Minnesota Rules. Minn. R. 7825.2390 explains the purpose of the relevant rule parts:

The purpose of parts 7825.2390 to 7825.2920 is to enable regulated gas and electric utilities to adjust rates to reflect changes in the cost of energy delivered to customers from those costs authorized by the commission in the utility's most recent general rate case. Energy costs included in rate schedules are subject to evidentiary hearings in general rate cases filed by the utility. Proposed energy cost adjustments must be submitted to the Department of Commerce. Annual evaluations of energy cost adjustments are made by the Department of Commerce and others as provided for in parts 7825.2390 to 7825.2920.

When a utility proposes new or revised electric energy or purchased gas adjustment provisions, the proposal is considered a change in rates and must be reviewed according to commission rules and practices relating to utility rate changes.<sup>11</sup>

## **B. Burden of Proof**

The burden is on the utility to prove its costs were incurred prudently and will result in just and reasonable rates.<sup>12</sup> Any doubt as to reasonableness is to be resolved in favor of the consumer.<sup>13</sup> There is no burden on agencies or other intervenors to precisely identify which imprudent actions caused which costs in order to justify a disallowance.<sup>14</sup> Merely showing that the utility incurred expenses does not meet the utility's burden of demonstrating that it is just and reasonable for ratepayers to bear those expenses.<sup>15</sup>

## **C. Prudence Standard**

When evaluating whether costs are just and reasonable, the Commission determines whether a utility acted prudently in incurring the costs. In this proceeding, the prudence standard is not in dispute among the parties.

Generally, prudence is reasonable action taken in good faith based on knowledge available at the time of the action or decision. Actions taken in good faith are those taken without malicious intent, exercising the care that a reasonable person would exercise under the same circumstances at the time the decision was made. Prudence is not evaluated using the benefit of hindsight.

Under this standard, gas utilities' actions and decisions are evaluated based on whether each action and decision was reasonable at the time, under all the circumstances, and based on the information that was or should have been known.

## **II. The Administrative Law Judges' Report**

The ALJs presided over three days of evidentiary hearings and two public hearings. They reviewed the testimony of expert witnesses and examined exhibits. In the ALJ Report on CenterPoint's February Event costs, the ALJs made more than 400 findings of fact, conclusions, and recommendations on the stipulated and contested issues.

Having itself examined the record and having considered the ALJ Report, the Commission concurs in many of the ALJs' findings and conclusions. However, the Commission reaches different conclusions on some issues—including questions of whether certain extraordinary costs

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<sup>11</sup> Minn. R. 7825.2390.

<sup>12</sup> Minn. Stat. § 216B.16, subd. 4.

<sup>13</sup> Minn. Stat. § 216B.03.

<sup>14</sup> *In the Matter of a Commission Investigation into Xcel Energy's Monticello Life-Cycle Management/Extended Power Uprate Project and Request for Recovery of Cost Overruns*, Docket No. E-002/CI-13-754, Order Finding Imprudence, Denying Return on Cost Overruns, and Establishing LCM/EPU Allocation for Ratemaking Purposes, at 13 (May 8, 2015).

<sup>15</sup> *In re N. States Power Co.*, 416 N.W.2d 719, 723 (Minn. 1987).

were incurred prudently—as set forth below. On all other issues, the Commission accepts, adopts, and incorporates the ALJs’ findings, conclusions, and recommendations.

### **III. Public Comments**

Many members of the public submitted comments throughout these proceedings. Virtually all of these commenters supported disallowing recovery of some or all of the extraordinary gas costs incurred by one or more of the affected gas utilities during the February Event.

Generally, these commenters contended that the utilities did not act prudently to protect customers from extraordinary gas costs and that it would be unjust and unreasonable to pass these costs on to customers, who were in no position to avoid or mitigate the costs. Many commenters expressed that it would be difficult or impossible for them to pay these additional costs and that the utilities were in a better position to absorb the financial impact. Some commenters also criticized the gas utilities’ failure to communicate with customers before or during the February Event to encourage conservation measures that could have mitigated costs by reducing the total load the utilities needed to serve during the high-price period and relieved some of the demand-related pressure on market prices.

### **IV. The Department of Commerce**

The Department plays a pivotal role in the evaluation of utilities’ AAA reports by receiving and closely evaluating the filings and making recommendations to the Commission.<sup>16</sup> The Department’s application of its expertise in analyzing the filings facilitates a careful, comprehensive, and thorough examination that informs the Commission’s weighing of evidence, as well as the balancing of the interests of the utility and its customers. The Commission appreciates the extensive analysis undertaken by the Department to fulfill its role in developing the record in this case.

### **V. Background on Gas Purchasing During the February Event**

The extraordinary costs at issue before the Commission arose from gas purchases CenterPoint made on the daily spot market to serve Minnesota customers during the February Event.

Minnesota gas utilities purchase natural gas from various gas-producing regions and transport it via pipeline to serve customers in Minnesota. Gas purchases can be made for baseload (on a monthly or seasonal basis) or on the daily spot market. The primary trading hubs for the affected Minnesota gas utilities are Ventura (located in Iowa), Demarc (located in Kansas), and Emerson (located at the U.S.-Canada border near North Dakota).

The natural gas daily spot market typically operates in a day-ahead fashion, meaning trades occur on the business day before delivery. The market does not formally operate on weekends or holidays, so trades preceding weekends or holidays usually cover the period through the next business day. Purchases covering weekends and holidays also must be “ratable,” which means the buyer must purchase the same volume of gas for each day of that period.

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<sup>16</sup> Minn. R. 7829.2390.

The extraordinary gas costs at issue in this order, totaling \$408,755,953, came from transactions made on two occasions.

First, on the morning of Friday, February 12, 2021, CenterPoint purchased gas on the daily spot market for the four-day period of February 13–16. This four-day period included a weekend, the Presidents’ Day holiday on Monday, and the next business day, which was Tuesday. CenterPoint was required to purchase the same volume of gas for each of these four days. Accordingly, CenterPoint determined the volume of spot-market gas to purchase for the February 13–16 period based on its projected needs to serve the coldest day of that period, February 14.

Second, on the morning of Tuesday, February 16, CenterPoint purchased gas on the daily spot market for February 17 only. These transactions covered only one day and were not required to match the volumes purchased for any other day.

Gas may be purchased on the daily spot market at a “firm” price agreed upon between a buyer and a seller, or at the “index” price, which is an average of the firm transactions for that purchasing period at each hub. During the February Event, CenterPoint purchased spot-market gas at the index price. During the February 13–16 period, index prices reached \$154.9/Dth at Ventura and \$231.7/Dth at Demarc, and \$6.2/Dth at Emerson.<sup>17</sup> For February 17, index prices landed at \$188.3/Dth at Ventura, \$133.6/Dth at Demarc, and \$10.1/Dth at Emerson.

In addition to baseload supply and daily spot-market purchases, gas utilities have various tools they can use to provide price stability and ensure reliability. These tools include interruptible service agreements, gas storage, peak-shaving facilities, and financial hedging.

Interruptible service agreements allow a utility to call on customers to temporarily curtail their gas usage. Customers may choose to accept such terms in exchange for lower rates.

Storage entails maintaining a reserve of gas purchased at lower rates outside the heating season to be drawn on when commodity prices are higher.

Peak-shaving plants help a utility to maintain reliable service to firm customers (i.e., non-interruptible customers) on relatively rare occasions—for example, when capacity needs exceed contracted pipeline capacity or when fluctuations in load or supply require additional gas—by supplementing the utility’s supply with propane or liquid natural gas.

Financial hedging is an action taken to reduce the risk of financial loss, often by using a financial derivative such as an option or futures contract to offset the risk of price movement in a related physical transaction.

Parties recommending disallowances in this case contended that CenterPoint imprudently purchased excessive volumes of gas on the spot market at extremely high prices during the

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<sup>17</sup> For comparison, the index price at Demarc was as low as \$2.5/Dth at the beginning of February 2021. Prior to the February Event, the Ventura hub had only ever priced gas above \$10/Dth in the winters of 2013–14, 2014–15, and 2017–18. The previous record-high index price at Ventura was approximately \$65/Dth for the three-day delivery period of December 29–31, 2017, during a short-term price spike related to extreme cold weather that occurred over a holiday weekend.

February Event as a result of the utility's failure to make prudent use of storage, peak-shaving plants, curtailment, and financial hedging.

## **VI. Waterville/Medford Storage Facility**

### **A. Introduction**

One resource CenterPoint relies on to meet customer needs is an underground aquifer gas storage facility located south of Minneapolis known as the Waterville/Medford facility. This facility is owned and operated by CenterPoint. CenterPoint purchases storage gas volumes in the summer, when gas prices are lower, and stores them at the facility for withdrawal during the winter, when prices are higher.

On February 14, 2021, CenterPoint withdrew 55,000 Dth of gas from the Waterville/Medford storage facility. However, two days earlier, when deciding how much gas to purchase on the spot market for the four-day period including February 14, CenterPoint only accounted for a 50,000 Dth withdrawal from Waterville/Medford. As a result, CenterPoint purchased 5,000 Dth on the spot market at a cost of \$3,810,503 and included this amount in its request for cost recovery.

### **B. Positions of the Parties**

#### **1. The Department**

The Department recommended that the Commission disallow recovery of \$3,810,503 in gas costs that CenterPoint would have avoided if its supply planning for February 13–16 had prudently accounted for the utility's full withdrawal of stored gas from the Waterville/Medford storage facility on February 14.

The Department argued that this discrepancy (1) caused CenterPoint to purchase 5,000 Dth of spot-market gas it did not need for February 14; and (2) caused the utility to purchase additional excess spot gas for February 13, 15, and 16 (due to the market's requirement that weekend and holiday purchases be uniform in volume for each day), at an average index price of \$190.53/Dth over the four-day period. February 14 was projected to be the coldest and highest-load day of that period, so the amount of spot gas CenterPoint determined it needed for the 14th also determined how much it would purchase for the 13th, 15th, and 16th. Thus, the Department argued, purchasing an unreasonably high volume of spot gas for February 14 due to the undercounting of storage withdrawals resulted in imprudent spot-market purchases throughout the four-day period.

The Department's expert witness, Matthew King, testified that CenterPoint's failure to reduce its spot-market gas purchases throughout the February 13–16 period to account for the additional 5,000 Dth withdrawal from Waterville/Medford storage on February 14 caused CenterPoint to imprudently incur an additional \$3,810,503 in gas costs over the four-day period. The Department recommended disallowing the recovery of that amount from customers.

The OAG supported the Department's disallowance recommendation.



## **2. CenterPoint**

CenterPoint argued that it was prudent to plan for a February 14 withdrawal of only 50,000 Dth from Waterville/Medford when purchasing spot-market gas two days in advance because that is the maximum volume it can reliably plan to withdraw from that facility on any given day.

CenterPoint's expert witnesses, John Heer and John Reed, testified that CenterPoint can withdraw from Waterville/Medford storage more than 50,000 Dth in a day only if certain conditions are present, and the utility cannot reliably predict the existence of those conditions before the day of withdrawal. Relevant conditions include system pressures at the storage facility, pressures on the Northern Natural Gas (NNG) pipeline from the nominations of shippers, and storage inventory.

Further, CenterPoint argued, if it had purchased less spot gas based on a plan to exceed the daily limit at Waterville/Medford and then the facility failed to sustain the additional volume, CenterPoint could have faced system reliability issues or pipeline imbalance penalties.

CenterPoint therefore argued that it prudently considered the limits of its Waterville/Medford facility when purchasing spot gas for February 13–16 and no disallowance was warranted.

## **3. The Department's Reply**

Based on CenterPoint's responses to information requests, King testified that CenterPoint had a history of frequently exceeding its stated daily withdrawal limit at the Waterville/Medford facility over the past several years. For example, just one week before the February Event, CenterPoint withdrew more than 56,000 Dth on February 6 and 7 and more than 55,000 Dth on February 8. Given the history of frequent withdrawals exceeding the stated limit, the Department questioned the credibility and reasonableness of CenterPoint's assertion that it was prudent to treat 50,000 Dth as the firm limit in light of the elevated spot-market prices expected over the February 13–16 period.

The Department disputed CenterPoint's argument that planning to withdraw 55,000 Dth from Waterville/Medford on February 14 would have risked system reliability. King testified in surrebuttal that, if the storage facility could not provide the additional 5,000 Dth, CenterPoint could have effectively made up the difference using a small portion of its peak-shaving resources or interruptible load. CenterPoint had access to 149,000 Dth per day in its propane air peaking plants and 72,000 Dth per day in its liquid natural gas plant, enough to address not only a Waterville/Medford shortfall but also any other reliability issues that may have arisen in the February 13–16 period or thereafter.

The Department contended that its recommendations for this and other resources called for the use of different tools on different days to preserve a conservative buffer that could be used to address unexpected issues on any day of the February Event.

### **C. Recommendation of the Administrative Law Judges**

The ALJs recommended no disallowance, finding that CenterPoint acted prudently in its gas supply planning related to the Waterville/Medford storage facility. The ALJs accepted CenterPoint's argument that it was unable to predict conditions of the storage facility and the pipeline in advance and, therefore, CenterPoint acted prudently when it decided on February 12

to plan for the contingency that it would not be able to withdraw more than 50,000 Dth from Waterville/Medford on February 14.

The ALJs agreed with CenterPoint that following the plan suggested by the Department would have posed a reliability risk. The ALJs rejected the Department's argument that CenterPoint would have been able to make up a 5,000 Dth shortfall by dispatching a peak-shaving plant or curtailing service to interruptible customers. The ALJs stated that the Department's suggested backup plan would entail using storage, curtailment, and peak-shaving plants in unprecedented ways, which the ALJs asserted would be unreasonable during the winter storm conditions.

#### **D. Commission Action**

Considering the entire record, including the testimony of Heer, Reed, and King and the records of CenterPoint's storage-withdrawal history, the Commission respectfully disagrees with the ALJs' finding that CenterPoint met its burden to prove it prudently accounted for Waterville/Medford storage in its spot-market purchasing for February 13–16, 2021.

Natural gas storage is an important tool that utilities routinely use during cold weather to protect customers from high or volatile gas prices. The Department made persuasive arguments that a prudent utility in CenterPoint's position on the morning of February 12 would have made stronger efforts to plan to maximize its use of stored gas to reduce the need to purchase spot-market gas at prices that were expected to be elevated throughout the holiday weekend.

Given that CenterPoint owned the Waterville/Medford storage facility and had a history of exceeding its stated daily withdrawal limit, CenterPoint has not satisfactorily demonstrated the reasonableness of its decision not to account for a full 55,000-Dth storage withdrawal when purchasing spot gas for February 14, based on the circumstances known leading into the four-day period. The Commission finds the Department's evidence and arguments more persuasive than CenterPoint's on this issue.

Further, the Commission finds insufficient evidence for CenterPoint's position that reducing spot gas purchases based on a plan to withdraw 55,000 Dth from Waterville/Medford on February 14 would have posed a significant risk to system reliability. The record establishes that, if Waterville/Medford had been unable to accommodate an additional 5,000 Dth withdrawal, CenterPoint could have safely addressed the shortfall using peak-shaving plants or interruptible load while leaving ample resources available to address any issues that may have arisen during the four-day period, on February 17, or later in the season.

Based on the Department's persuasive analysis and evidence, the Commission will disallow recovery of \$3,810,503 of the extraordinary costs CenterPoint requested, representing the incremental gas costs CenterPoint should have avoided through prudent planning relating to its Waterville/Medford storage facility for February 13–16, 2021.

### **VII. BP Canada Virtual Storage Contract**

#### **A. Introduction**

Another resource that the Department and the OAG argued CenterPoint should have used differently during the February Event was its virtual storage contract with BP Canada. The contract included (1) a baseload component that provided a fixed volume of gas each day and

(2) Carlton and Ventura swing components, which allowed CenterPoint to nominate additional daily withdrawals up to a daily maximum until a total seasonal limit was exhausted. In February, the contract allowed CenterPoint to withdraw up to 70,000 Dth per day from the Ventura swing supply until the utility reached its seasonal limit of 3.7 billion cubic feet.

The contract required CenterPoint to notify BP Canada of the volume of gas it intended to nominate by 8:00 a.m. on the business day before the gas flow. Thus, due to the weekend and holiday, CenterPoint had to nominate swing volumes on the morning of Friday, February 12, for the four-day period from February 13–16. CenterPoint could have nominated different volumes for each day in that period, but it had to make those decisions by 8:00 a.m. on February 12 and could not adjust nominated volumes after that time.

When it was making nominations for February 13–16, CenterPoint had access to a total of 232,000 Dth of Ventura swing gas for the rest of the winter season. CenterPoint decided to divide that remaining volume evenly over the February 13–16 period, nominating 58,000 Dth for each day and leaving no remaining Ventura swing storage for use after February 16.

## **B. Positions of the Parties**

### **1. The Department**

The Department recommended disallowing recovery of \$21,317,175 in extraordinary costs for two allegedly imprudent decisions relating to CenterPoint's utilization of the Ventura swing portion of its BP Canada virtual storage contract: (1) failure to nominate the daily maximum volume of Ventura swing gas for February 14, and (2) failure to preserve any Ventura swing supply for use after February 16 for the rest of the season.

#### **a. Nomination of Ventura Swing Gas for February 14**

First, the Department contended that CenterPoint's decision not to nominate the daily maximum of 70,000 Dth for February 14, the coldest day of the February Event, was imprudent and caused CenterPoint to spend an extra \$9.12 million on unneeded spot-market gas for February 13–16.

Based on CenterPoint's responses to information requests, contemporaneous meeting minutes, and witness testimony, the Department showed that by the morning of February 12, CenterPoint anticipated that the weather would be significantly colder, and load would be significantly higher, on February 14 than on other days in the four-day period.

With this knowledge, the Department argued, it was imprudent to allocate all remaining Ventura swing gas evenly over the four days instead of actively managing the resource to better align with the significant variations in forecasted weather, load, and supply. The Department argued that a prudent utility with the information CenterPoint had that morning would have nominated the daily maximum volume on February 14 and reduced its nominations on the lower-load days in a way that would accommodate the February 14 increase in load while reducing total exposure to the volatile daily spot market.

Maximizing Ventura swing gas on February 14 would have allowed CenterPoint to purchase a lower volume of expensive spot gas on February 14, the projected highest-load day of the period. In turn, because of the spot market's ratable requirement, reducing spot-market purchases for February 14 would have also reduced purchases for February 13, 15, and 16. King testified that

maximizing Ventura swing withdrawals on February 14 and reducing February 13–16 spot-market purchases accordingly would have avoided \$9.1 million in gas costs.

**b. Unavailability of Ventura Swing Gas After February 16**

Second, the Department contended that CenterPoint’s decision on February 12 to fully nominate its remaining Ventura swing supply over the four-day period, rendering that resource unavailable for the rest of the season, was imprudent in light of the circumstances known at the time.

Early on February 12, CenterPoint knew the market was experiencing an unusual event with prices escalating to uncertain levels and with no known end date, and it knew its Ventura swing supply was limited. King testified that a prudent utility would have withdrawn less Ventura swing gas on February 13, 15, and 16, which were forecasted to have lower load requirements, so it could preserve at least 70,000 Dth—equal to one day’s maximum withdrawal—of that dwindling resource for future price protection. Because each storage resource comes with different features and limitations, the Department contended that the utility should have avoided depleting any unique resource at the expense of maintaining its diverse array of options at this point in the season and in the face of extreme weather and market conditions.

Instead of actively managing the available tools to avoid depleting a unique storage resource for the rest of the season, on February 12, CenterPoint decided to nominate Ventura swing gas at uniform daily volumes that would fully exhaust the resource by the end of the four-day period, leaving none of that resource available beginning on February 17 for the rest of the season. The Department argued that this decision was imprudent and proposed alternative storage-management decisions CenterPoint could have made to avoid depleting Ventura swing supply.

For example, CenterPoint’s forecasted load requirement for February 16 was 160,000 Dth lower than for February 14. Rather than using that lower-load day as an opportunity to preserve some Ventura swing gas, CenterPoint fully depleted the resource that day and planned to balance the lower load requirement (in light of fixed baseload and ratable spot supply over the four-day period) by withdrawing 62,690 Dth and 29,100 Dth less than its daily maximum withdrawal quantities from Natural Gas Pipeline Company of America, LLC (NGPL) and NNG, respectively (in addition to not withdrawing any gas from Waterville/Medford storage). But CenterPoint’s NNG and NGPL storage resources were more flexible than its BP Canada contract and were not on the verge of being exhausted for the season. Therefore, the Department argued that a prudent utility would have used more of its ample available NNG and NGPL storage so it could avoid fully exhausting its Ventura swing gas at this point in the season amid the extreme conditions.

The Department recommended disallowing \$12,195,499 for the failure to preserve any Ventura swing gas for use after February 16. King calculated this disallowance amount as the difference between the cost of purchasing 70,000 Dth of gas on the daily spot market at the average index price CenterPoint paid on February 17 and the cost CenterPoint would have paid to withdraw that same quantity from Ventura swing storage instead. The Department contended that this disallowance represents the extraordinary gas costs CenterPoint unreasonably incurred through its imprudent decision to fully exhaust its seasonal Ventura swing supply before February 17.

The OAG agreed with the Department’s recommendations related to BP Canada storage.

## **2. CenterPoint**

### **a. Nomination of Ventura Swing Gas for February 14**

CenterPoint contended that its decision to nominate the remaining Ventura swing supply evenly across the four-day period was reasonable based on the limited information and the uncertainty the utility faced on the morning of February 12. CenterPoint argued that even with its forecasts, it could not be certain about which day would turn out to be the coldest or how much warmer the other days would be. If it had adjusted the four days' nominations to match daily forecasts as of February 12, there would have been a risk that customer loads would be higher than forecasted on any given day. Rather than attempt to predict precise weather and load variations over the next four days, CenterPoint determined it was safer to nominate the same volume from Ventura swing each day, anticipating that it could use other, more flexible resources to adjust to actual load as more certain information became available during the four-day period.

Also, as of February 12, the NNG pipeline had issued a system overrun limitation, meaning that the pipeline would allow no tolerance for utilities to be short on balancing supply deliveries against actual daily demand and utilities faced increased financial penalties if they took more or less gas than scheduled on a given day. CenterPoint was also aware of some supply production issues, although it did not know the extent or whether its contracted supplies would be affected.

Based on this understanding of the uncertain circumstances as of February 12, CenterPoint contended that it was reasonable to fully nominate the remainder of its Ventura swing supply evenly over the February 13–16 period, allowing it to reserve that amount of its more flexible storage resources (NNG, NGPL, and Waterville/Medford) to address any unexpected load changes or supply issues in the coming days. CenterPoint contended that it was reasonable to prioritize reserving its more flexible storage resources for later because, unlike the Ventura swing supply, it could adjust its withdrawals from NNG, NGPL, and Waterville/Medford over the weekend and holiday. If changes in supply or demand were to occur over the four-day period, CenterPoint would be in a better position to correct for such issues if more of its flexible resources were available; it would have been less helpful to have a greater reserve of Ventura swing gas because that contract did not allow withdrawal adjustments over the holiday weekend.

### **b. Unavailability of Ventura Swing Gas After February 16**

CenterPoint also argued that it was reasonable not to reserve any Ventura swing gas for after February 16 because, early on February 12, it did not know the degree to which spot-market prices would rise over the four-day period and it did not know that high prices would persist on February 17. The utility asserted that, as of February 12, both its Minnesota service area and production areas in Texas were expected to be warmer on February 17. And again, it argued that its decision to fully nominate its remaining Ventura swing supply over the four-day period prudently freed up more flexible storage resources to respond to changing conditions.

## **C. Recommendation of the Administrative Law Judges**

The ALJs agreed with CenterPoint's arguments, found that the utility's decisions regarding the BP Canada storage contract were prudent, and recommended no disallowance.

The ALJs found that CenterPoint's decision not to withdraw the daily maximum on February 14 was reasonable based on the information available to CenterPoint at the time of its decision to

evenly split its storage nominations across the weekend. According to the ALJs, the utility's ability to accurately predict the weather and the necessary level of supply was limited as of February 12 and its efforts to even out the reliability and ratepayer risks were reasonable.

The ALJs also found that CenterPoint was prudent in deciding to evenly split its BP Canada storage nominations across the weekend and preserve its more flexible storage options in case they were needed to respond to load changes or supply disruptions.

#### **D. Commission Action**

##### **1. Nomination of Ventura Swing Gas for February 14**

The Commission concurs with the ALJs that CenterPoint's decision not to withdraw the daily maximum volume from Ventura swing on February 14 was reasonable. Although the Department presented credible evidence that CenterPoint could have prudently avoided \$9.1 million in gas costs from February 13–17 had it managed its storage resources differently to maximize Ventura swing gas on February 14, the Commission is not persuaded that CenterPoint's failure to withdraw 70,000 Dth from the Ventura swing supply on February 14 specifically fell short of the applicable standard of prudent conduct under the circumstances.

CenterPoint's witnesses offered reasonable explanations for why the utility allocated Ventura swing volumes uniformly over the four-day period rather than tailoring daily nominations more closely to uncertain forecasts made days in advance. Forecasts revealed an unambiguous need for additional gas over the four-day period. However, because longer-term forecasts lack the precision of shorter-term forecasts, CenterPoint had cause to question whether the greatest demand would occur on February 14 as expected, and it had cause to protect against the possibility that a moderate difference between forecasted and actual temperatures on any of the four days could result in a consequential miscalculation of demand, risking pipeline penalties or insufficient supply if forecasts were wrong.

Therefore, the Commission finds that CenterPoint's decision not to maximize Ventura swing volumes for February 14 fell within the range of acceptable conduct under the circumstances and does not warrant a disallowance.

##### **2. Unavailability of Ventura Swing Gas After February 16**

The Commission respectfully disagrees with the ALJs' findings that CenterPoint met its burden to prove the prudence of its decisions leading to the unavailability of Ventura swing gas as of February 17 and the reasonableness of the gas costs arising out of those decisions. Although the decision to exhaust the remaining Ventura swing supply was made before CenterPoint could have known the degree to which spot prices would rise or exactly what load and prices would look like by February 17, the prudent storage-management strategy described by the Department did not require special foreknowledge of an unprecedented market event.

The record establishes that utilities routinely use storage resources in the ordinary course of operation to help achieve cost stability amid fluctuating commodity markets. With the information available before 8:00 a.m. on February 12, CenterPoint was obligated to make prudent storage-management decisions to ensure the gas costs it intended to pass on to customers would be just and reasonable.

Contrary to the ALJs' findings, the Department persuasively demonstrated that, under the circumstances, prudence required CenterPoint to actively manage its storage resources to avoid prematurely exhausting any discrete resource so it could maintain its variety of storage options for the rest of the season, thereby maintaining the broadest range of resource options for managing future risks.

As a result of CenterPoint's decision to deplete its Ventura natural gas supply over the February 13–16 period, that resource was unavailable on February 17. Had CenterPoint reserved as little as one day's maximum withdrawal—70,000 Dth of the total 232,000 Dth that remained available leading into the February Event—CenterPoint could have prudently avoided approximately \$12.2 million in gas costs.

CenterPoint's withdrawal of the remaining balance of Ventura swing supply appears to have been driven solely by system reliability concerns with no meaningful attempt to simultaneously mitigate customer costs. However, CenterPoint has not demonstrated that, based on its four-day forecasted load (4,458,396 Dth) and available supply (4,418,844 Dth), reserving a portion of the Ventura swing supply for use on February 17 would have created a reliability risk for the February 13–16. On these facts, and in light of the extraordinary surge in spot-market prices as of February 12, the Commission is not persuaded that it was reasonable for CenterPoint to entirely depart from the practice of utilizing storage in a manner that would have preserved a portion of this resource and thereby ameliorated some measure of cost impacts to customers. For these reasons, the Commission agrees with the Department that CenterPoint's decision to fully exhaust the balance of its Ventura swing supply before February 17 was imprudent.

The Commission will therefore disallow \$12,195,499 in extraordinary gas costs that CenterPoint should have avoided on February 17 through prudent utilization of its storage options that were not close to depletion leading into the February Event.

## **VIII. Peak-Shaving Facilities**

### **A. Introduction**

CUB, the Department, and the OAG contended that it was imprudent for CenterPoint not to use any of its peak-shaving facilities to mitigate extraordinary gas prices during the February Event.

CenterPoint owns and operates the following peak-shaving facilities (or peaking plants): (1) one liquid natural gas (LNG) plant with a storage capacity of 1,000,000 Dth that can dispatch 72,000 Dth per day, and (2) eight propane air plants that collectively hold 980,000 Dth and can dispatch 149,000 Dth per day. According to CenterPoint, the volume of LNG dispatched in one full day of operating the LNG plant can be replaced in about two weeks, while it usually is not feasible to refill its depleted propane facilities until after the heating season has ended.

CenterPoint historically has used its peak-shaving facilities to help maintain reliable service to firm customers by meeting any capacity needs that exceed contracted pipeline capacity and by addressing intraday fluctuations in load or supply. Peak-shaving resources can enable a utility to avoid procuring incremental pipeline capacity and paying associated demand charges year-round when that capacity may only be needed for a few high-load hours per year.

During the February Event, CenterPoint dispatched a total of 48,979 Dth of LNG and 8,478 Dth of propane from its peaking plants to provide supplemental pressure support on specific areas of

the system, to respond to intraday load variations, and to prepare for potential gas supply cuts. But CenterPoint did not use any of its peak-shaving resources to reduce the volume of gas purchased on the daily spot market at extraordinary prices during the February Event.

## **B. Positions of the Parties**

### **1. CUB**

CUB contended that CenterPoint's failure to make use of its peak-shaving resources caused the utility to imprudently incur between \$12.4 million and \$96.9 million in additional gas costs.

Although the utility on the morning of February 12 could not have predicted precisely how high gas prices would reach, CUB argued that the information available then was enough to prompt a similarly situated, prudent utility to plan to utilize its peak-shaving plants to protect customers from the risk of elevated and volatile spot-market prices throughout the holiday weekend.

By the end of February 11, CenterPoint knew that spot prices had more than doubled from the previous day at both Demarc and Ventura, representing 472% and 514% increases over the five-year average annual prices at those hubs. CUB cited written communications between utility gas purchasers and third-party gas marketers as evidence that CenterPoint was aware of rising gas prices and market volatility leading into the event. CUB argued that this knowledge was enough to require CenterPoint to make use of its reasonably available tools, including some LNG and propane, to reduce its reliance on expensive spot gas from February 13–16.

Furthermore, by the time supply decisions were being made for February 17, CenterPoint had even more reason to use peak-shaving resources to mitigate costs, having seen spot-market prices soar to \$154.9/Dth at Ventura and \$231.7/Dth at Demarc and having already incurred \$400 million in gas costs over the previous four days, with no indication that prices would return to normal levels on February 17.

CUB's expert witness, Bradley Cebulko, proposed a range of strategies CenterPoint could have pursued to use its peaking plants to offset spot-market prices and then calculated the costs each of these strategies would have avoided. At the high end, Cebulko testified that it would have been prudent for CenterPoint to plan to dispatch 100% of its daily LNG capacity and 50% of its daily propane capacity for all five days of the February Event and to reduce its spot gas purchases accordingly. Cebulko testified that this would have avoided \$96,922,489 in gas costs from February 13–17.

Alternatively, Cebulko testified that dispatching just half that volume—50% of LNG and 25% of propane—throughout the February Event would have avoided \$34,452,670 in gas costs.

Cebulko also offered disallowance calculations for February 17 only, which CUB recommended the Commission consider if it finds CenterPoint's decision not to use peaking plants for cost mitigation was reasonable on February 12 but not on February 16 when the utility had a clearer understanding of the price spike's severity. For February 17 only, CUB proposed disallowing either (1) \$24,923,313, representing the savings CenterPoint could have achieved by dispatching 100% of its LNG and 50% of its propane capacity that day, or (2) \$12,424,737, which CenterPoint could have saved had it dispatched 50% of its LNG and 25% of its propane capacity for the day.



Citing evidence that CenterPoint rarely uses its peaking plants after mid-February, CUB argued that dispatching LNG and propane at any of the levels discussed above from February 13–17 would have left the utility with more than enough LNG and propane to address potential supply issues for the rest of the season without risking reliability.

The OAG agreed that CUB’s recommendations were reasonable and supported in the record.

## **2. The Department**

The Department contended that it was imprudent for CenterPoint to fail to plan to use peaking plants as a cost mitigation tool when it was making gas purchasing decisions for February 17. The Department argued that the unprecedented spot-market prices experienced over the four-day period would have prompted a reasonable utility to reassess its plan of action on February 16 and focus on opportunities to mitigate severe financial impacts to customers. Although CenterPoint has not traditionally used its peaking plants to mitigate the costs of spot-market price spikes, the Department argued that these unprecedented circumstances, and the severe magnitude of financial consequences at stake for customers, required a different approach and rendered CenterPoint’s adherence to its ordinary practices imprudent when planning for February 17.

Based on the analysis of its expert, the Department contended that a prudent, conservative approach would have been for CenterPoint to dispatch one day’s full capacity (72,000 Dth) from its LNG facility on February 17 while holding its propane plants in reserve to address any unanticipated changes in load, supply, or system conditions.

The Department argued that this approach would not have threatened reliability, as it would have left CenterPoint all of its propane plants (which can dispatch up to 149,000 Dth per day) and enough stored LNG to run the LNG plant at full capacity for 13 more days that season—far more than it reasonably needed to preserve for after the February Event based on weather forecasts and the utility’s history of only rarely using its peak-shaving facilities after mid-February.

Based on King’s testimony, the Department recommended disallowing recovery of \$12,685,132, representing costs CenterPoint should have avoided by reducing its spot-market purchases based on a plan to fully dispatch its LNG peak-shaving facility on February 17.

The OAG and CUB agreed that the Department’s recommendation is reasonable and supported by the record, but CUB maintained primary support for its recommendations discussed above.

## **3. CenterPoint**

CenterPoint contended that its decision not to consider peak-shaving plants as a tool to mitigate spot-market prices was prudent and consistent with its gas procurement plan, which calls for peak shaving only on days when forecasted load exceeds contracted pipeline capacity. Forecasted load requirements were not projected to exceed available pipeline capacity during the February Event, so CenterPoint did not plan to use its peaking plants. Instead, it held these facilities in reserve so they would be available if needed to respond to unanticipated system conditions such as pressure issues, intraday variations in load, or gas supply cuts.

CenterPoint argued that its peak-shaving facilities are designed and located on the distribution system specifically to address reliability issues and to respond to changes in hourly and daily load requirements; they are not designed for mitigating the financial impacts of market events.

Further, CenterPoint contended that using its peaking plants for price mitigation could have posed safety and reliability risks. If it had reduced its spot-market gas purchases based on a plan to dispatch peak-shaving resources, but then system conditions changed and supply became unavailable, its peaking plants may not have been capable of delivering LNG and propane at sufficient volumes or rates to maintain continuous service to customers. And given the extreme cold temperatures, a disruption in gas service could have had dire consequences for customers.

Finally, CenterPoint challenged the Department's disallowance calculation, asserting that it did not offset the avoided replacement variable costs associated with running the LNG plant.<sup>18</sup>

### **C. Recommendation of the Administrative Law Judges**

The ALJs recommended no disallowance, finding that CenterPoint's decision not to plan to use its peak-shaving facilities for economic reasons was appropriate under the circumstances.

The ALJs agreed with CenterPoint that, when purchasing gas on February 12 and 16, it was prudent to hold all peak-shaving resources in reserve so they would be available to address any potential reliability issues, as the utility could not know in advance whether actual weather conditions and load would vary from forecasts on a daily or intraday basis and could not know whether, and to what extent, the production declines and supply disruptions reported in some areas of the country might affect CenterPoint's supply deliveries.

The ALJs rejected the Department's and CUB's arguments that their proposed strategies would preserve sufficient peak-shaving capacity for use after the February Event, noting that the dispatch rates of the peaking plants limit the volumes they can dispatch in one day. Thus, any planned dispatch of LNG or propane during the February Event would have reduced the utility's ability to respond to unanticipated supply issues that may arise on that same day, regardless of how much LNG or propane would be available on future days.

The ALJs stated that if weather conditions had been more extreme, if load had been higher, if additional distribution pressure issues occurred, or if supply disruptions had been more significant, CenterPoint could have needed to call on additional peak-shaving dispatch to meet customer load requirements; but in such a case, if CenterPoint had already planned to dispatch its peaking plants for economic reasons and had purchased less spot gas based on that plan, then CenterPoint may not have been able to deliver continuous service to meet customers' needs.

Under the circumstances, the ALJs found that it was prudent for the utility to not plan for any economic dispatch of peak-shaving facilities and to instead lock in as much spot gas supply as it believed it would need as of February 12 and 16 so that its peaking plants would be available to maintain continuous, reliable service in case of potential supply issues.

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<sup>18</sup> In surrebuttal, King testified that he did not offset replacement costs in his disallowance calculation because CenterPoint's own avoided-cost calculation related to its peaking-plant dispatches considered only avoided spot-market-price exposure, without such an offset. King also stated that a replacement-cost offset would only reduce the disallowance amount by 1% to 2%.

#### **D. Commission Action**

The Commission respectfully disagrees with the ALJs' finding that CenterPoint met its burden to prove the prudence of its decision not to use any of its peak-shaving facilities to mitigate gas costs on February 17, 2021, under the extraordinary circumstances demonstrated in the record.

Both CUB and the Department presented compelling analyses demonstrating that CenterPoint could have achieved a range of savings using various levels of peak-shaving dispatch. The Commission finds the Department's analysis is the most strongly supported in the record.

Although CUB plausibly argued that, by February 12, the utility could have reasonably anticipated enough of a price spike to warrant further cost-mitigation measures throughout the February Event, the Commission is not persuaded that CenterPoint's decision to reserve its peaking plants to address potential reliability issues on February 13–16 fell outside of the wide range of reasonable conduct based on the information and uncertainty that existed when decisions for the four-day period were being made on February 12.

By the morning of February 16, however, circumstances demanding extraordinary action were known and unequivocal. At that time, CenterPoint's failure to reevaluate the suitability of its strategies to meet the extraordinary circumstances fell short of the threshold of prudent conduct.

The Department and CUB offered substantial persuasive testimony establishing that a prudent utility under the circumstances, with access to the same information and resources, would have planned to dispatch some peak-shaving resources on February 17 to reduce the volume of spot gas purchased at extremely elevated market prices. By the morning of February 16, CenterPoint had observed unprecedented prices in the spot market, and it had already spent hundreds of millions of dollars to purchase gas for only four days. Moreover, there was substantial reason to expect prices would remain exceptionally high on February 17. Some areas had seen supply restrictions over the long weekend due to gas production failures and controlled power outages that affected wellhead operations, processing facilities, and gas pipelines. Temperatures were forecasted to remain unusually cold in the south-central United States on February 17, adding demand pressure to the prices amid supply constraints. The ongoing market volatility further increased the risk that spot-market prices would remain extremely high on February 17.

Under the extraordinary circumstances, it was imprudent for CenterPoint to adhere to its ordinary practice of holding 100% of its peak-shaving facilities in reserve to address unanticipated reliability issues while using none of these resources to help maintain just and reasonable rates. The record demonstrates that fully dispatching the LNG plant on February 17 would have achieved meaningful cost savings for customers while preserving a reasonable level of capacity and flexibility to resolve potential reliability issues that could have arisen during the February Event, with ample resources remaining for the rest of the season.

The Commission recognizes the gravity of the utility's obligation to provide safe and reliable service, and it commends CenterPoint for achieving that objective for Minnesota customers throughout the February Event. But this obligation does not obviate the requirement that all rates charged to customers, including purchased-gas adjustments, must be just and reasonable. The standard of prudence required CenterPoint to actively manage the various, substantial tools at its disposal to keep the costs of service just and reasonable under the circumstances. CenterPoint has not met its burden to prove it paid due consideration to whether the decisions it made before and during the February Event would impose unjust, unreasonable costs on customers.

Having found that CenterPoint acted imprudently with respect to its peak-shaving facilities in its gas supply planning for February 17, 2021, the Commission will disallow recovery of \$12,431,492. This disallowance amount is based on the Department's calculation of the cost of gas purchases that CenterPoint would have avoided if it had planned to fully dispatch its LNG peak-shaving plant on February 17, but with a 2% offset to reflect the avoided replacement variable costs associated with running the LNG plant, as identified by CenterPoint.

## **IX. Curtailment**

### **A. Introduction**

The Department, CUB, and the OAG also argued that prudence required CenterPoint to curtail service to interruptible customers to mitigate extraordinary gas costs during the February Event.

Interruptible service allows the utility to call for curtailment, i.e., temporarily order the customer to refrain from using gas service, under the terms of the applicable tariff.

CenterPoint's interruptible service tariffs define the utility's right to curtail service as follows:

CenterPoint Energy can interrupt End User if capacity constraints require or for other appropriate reasons.<sup>19</sup>

From February 14–16, CenterPoint called on curtailed 31 customers to curtail their usage to address delivery constraints that were expected to affect specific sections of the utility's distribution system. The utility did not use curtailment to reduce the volumes of gas purchased on the spot market at extraordinary prices during the February Event.

### **B. Positions of the Parties**

#### **1. The Department**

The Department contended that, by February 16, when the magnitude of the price spike was known and there was reason to expect prices would remain high through February 17, prudence required CenterPoint to look beyond its typical practices and to exercise its right to curtail service to interruptible customers to reduce the volumes of expensive gas it needed to purchase on the spot market, in order to mitigate the price spike's financial impact on customers.

Based on testimony from its expert, the Department argued that prudence required curtailing at least 50% of interruptible load to reduce expensive spot-market gas purchases. The remaining 50% of interruptible load, could reasonably be reserved in case it was needed to address any unanticipated issues that may arise after day-ahead supply decisions were made.

To determine a reasonable disallowance amount reflecting the minimally prudent curtailment level, King calculated the cost of spot-market purchases that CenterPoint would have avoided, at the average daily price CenterPoint paid that day, had it planned for curtailment volumes equal to 50% of the usage of interruptible customers on February 17. King testified that prudently

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<sup>19</sup> See, e.g., Firm/Interruptible Gas Transportation Service Agreement, Section VII at 10.b, Dual Fuel Gas Sales Service Agreement, Section VII at 1.a, *available at* <https://www.centerpointenergy.com/en-us/Documents/RatesandTariffs/Minnesota/CPE-MN-Tariff-Book.pdf>

planning to curtail half of interruptible load on February 17 would have avoided \$7,279,592 in gas costs. Based on King’s analysis, the Department recommended that the Commission disallow recovery of that amount of CenterPoint’s extraordinary gas costs.

The OAG agreed that the Department’s recommendation was reasonable and had record support.

## **2. CUB**

CUB took the argument further, contending that prudence required CenterPoint to plan to fully curtail its interruptible customers over the entire five-day period and reduce its spot-market purchases accordingly. CUB cited evidence that, on the morning of February 12, CenterPoint should have known that spot-market prices were higher than normal and had enough information to anticipate a catastrophic winter-weather event that would span much of North America and cause extreme supply uncertainty over the holiday weekend. Pipelines had issued system overrun limitations and critical day designations, signaling capacity constraints. Prices were already significantly higher than typical, and the worst of the storm was predicted to occur over the weekend. High customer demand paired with capacity constraints could be expected to lead to high market prices. CUB argued these facts were strong indicators that both spot-market prices and available gas supply would be volatile heading into the four-day period, and that this information should have been enough to prompt a prudent utility to avail itself of all of its tools—including curtailment—to reduce the amount of spot gas it needed to purchase.

CUB’s expert witness testified that if CenterPoint had planned to call on all of its interruptible customers to curtail usage from February 13–17, and 90% of them complied, CenterPoint could have avoided \$48,020,615 in gas costs during the February Event. Alternatively, if 90% of customers curtailed only on February 17, CenterPoint could have avoided \$16,508,066.

Based on Cebulko’s analysis, CUB recommended that the Commission disallow CenterPoint recovering \$48,020,615 in extraordinary costs, premised on the position that prudence required the utility to successfully curtail at least 90% of its customers throughout the February Event.

The OAG agreed that CUB’s recommendations were reasonable and supported in the record.

## **3. CenterPoint**

CenterPoint contended that curtailing interruptible customers for economic reasons would be inconsistent with its past practice, its approved gas procurement plan, and industry standards. It asserted that curtailment is intended to provide system relief during peak conditions so the utility can maintain continuous, reliable service to firm customers. For example, the utility might call for curtailment in the event of operational issues with the distribution system or if insufficient pipeline capacity limits the delivery of gas to CenterPoint’s system. Under such conditions, CenterPoint may curtail customers until enough load has been removed to maintain sufficient system pressure on the distribution pipeline.

CenterPoint argued that curtailing customers to mitigate extraordinary gas costs would be incompatible with its obligation to provide safe, adequate, efficient, and reasonable service to all customers under Minn. Stat. § 216B.04 and its obligation to curtail service only in accordance with the terms and conditions set forth in its approved tariffs and service agreements.

CenterPoint also argued that curtailing for economic reasons would be inconsistent with customers' expectations of the nature of the service and would increase the frequency of curtailments, which could prompt interruptible customers to convert to firm service, thereby undermining the value of interruptible service for addressing system reliability issues.

Noting that its tariffs do not specify conditions under which economic curtailment may occur, CenterPoint argued that it would have been unreasonable to undertake this type of curtailment for the first time in the midst of a far-reaching extreme weather and market event.

Disputing CUB's argument that the utility should have curtailed customers throughout the entire five-day event, CenterPoint argued that it had no reason to plan to do so when it had to make decisions about spot-market purchasing early on February 12. CenterPoint argued that, at that time, the unprecedented magnitude of the price spike could not reasonably have been anticipated.

CenterPoint also defended its decision not to curtail customers on February 17 by arguing that the average temperature for that day was forecasted to be substantially warmer (6.8°F) than the preceding four-day period (-13.0 to -0.6°F), and load was forecasted to be 21.5% lower than the peak over the four-day period. Based on these forecasts, CenterPoint determined it was not at risk of system loads exceeding available pipeline entitlements, meaning that curtailment was not warranted according to the utility's standard operating procedures.

#### **4. Replies**

The Department and CUB disagreed with CenterPoint's argument that a tariff intending to allow economic curtailment would have to include explicit parameters specifying when cost-related curtailment might be appropriate, noting that the tariffs do not contain that level of detail regarding curtailment for other reasons such as capacity constraints. The Department argued that requiring this level of detail in tariffs would improperly place the onus on the Commission to micromanage utilities' day-to-day operations and rewrite tariffs to ensure that they spell out specific, comprehensive instructions for every decision-making scenario the utility may face.

CUB disputed CenterPoint's suggestion that economic curtailment would increase the frequency of curtailments and deter customers from interruptible service, asserting that prices high enough to warrant curtailment do not occur so frequently that they would alter customers' decisions between interruptible and firm service. CUB also contended that this argument relies on unsupported speculation about future customer behavior, which is not relevant to this inquiry into whether a utility's past actions met the applicable standard of prudent conduct.

The City of Minneapolis (the City) also supported a disallowance related to curtailment. The City stated that it has 16 customer accounts with CenterPoint for interruptible gas service, but that CenterPoint did not curtail any of them during the February Event. The City argued that CenterPoint's decision not to curtail interruptible customers to mitigate extraordinarily high gas costs was imprudent and unjustly denied customers the opportunity to reduce costs, which in turn led to even further upward pressure on market pricing. The City argued that CenterPoint was in a unique position to monitor weather and pricing trends and understand the potential consequences for customers, so CenterPoint should bear the costs of its own handling of the event.

### **C. Recommendation of the Administrative Law Judges**

The ALJs found CenterPoint’s curtailment decisions prudent and recommended no disallowance. Noting the absence of tariff language affirmatively mentioning economic curtailment and the lack of established criteria such as a threshold gas price that would trigger such curtailments, the ALJs found that CenterPoint’s interruptible tariffs do not provide for price-based curtailment. Further, because the tariffs do not identify parameters showing when the utility may curtail on economic grounds and CenterPoint had no historical practice of doing so, the ALJs concluded that customers could not have reasonably expected service to be curtailed on those grounds. For the same reasons, the ALJs concluded that CenterPoint’s current interruptible rate structure must not reflect the possibility of economic curtailment.

The ALJs also found that the decision not to curtail for economic reasons during the February Event was consistent with CenterPoint’s gas procurement plan, past practice, and the typical practice of other gas utilities.

Additionally, the ALJs echoed CenterPoint’s general policy argument that curtailing for price-related reasons could increase the frequency of curtailments, which could encourage customers to switch from interruptible to firm service, which in turn could result in increased costs and impede the utility’s ability to respond to operational issues using curtailment.

### **D. Commission Action**

The Commission respectfully disagrees with the ALJs’ finding that CenterPoint met its burden to prove it acted prudently with respect to curtailment. CenterPoint’s interruptible tariffs allowed the utility to curtail for economic reasons and, under the extraordinary circumstances, the decision not to do so on February 17 was imprudent and caused the utility to incur unreasonable gas costs which are not recoverable from ratepayers.

#### **1. Interpretation of the Interruptible Tariffs**

The Commission disagrees with the ALJs’ conclusion that CenterPoint’s interruptible tariffs did not allow curtailment for economic purposes.

When the Commission interprets obligations under a tariff, it looks first to the specific tariff language. Generally, tariffs are interpreted like any other contract.<sup>20</sup> Words are given their plain and ordinary meaning and viewed in accordance with the tariff as a whole.<sup>21</sup> Any finding of ambiguity must be reasonable and not the result of straining the tariff language.<sup>22</sup>

CenterPoint’s interruptible tariffs give the utility broad authority to curtail “if capacity restraints require or for other appropriate reasons.”<sup>23</sup> Nothing in the tariff language suggests any particular

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<sup>20</sup> *Info Tel Commc’ns, LLC v. Minnesota Pub. Utils. Comm’n*, 592 N.W.2d 880, 884 (Minn. App. 1999).

<sup>21</sup> *See Motorsports Racing Plus, Inc. v. Arctic Cat Sales, Inc.*, 666 N.W.2d 320, 323–24 (Minn. 2003).

<sup>22</sup> *Info Tel Commc’ns, LLC*, 592 N.W.2d at 884.

<sup>23</sup> In contrast, Reed’s testimony cites examples of other utilities’ tariffs that expressly limit curtailment to specific situations, such as when supply is insufficient to meet expected demand. Reed Direct Testimony at 38–40 (October 22, 2021). One example expressly states that economic considerations will not be the basis for curtailment. *Id.* A utility seeking to restrict the scope of its curtailment rights is free to propose

limitations on what may constitute “other appropriate reasons.” This broad language allows the utility to interrupt customers for economic reasons if appropriate under the circumstances.

The finding that customers could not reasonably have expected curtailment for economic reasons is not supported by any testimony from such customers in the record and, in any event, is contradicted by the tariff language that defines the scope of CenterPoint’s curtailment right.

The policy argument disfavoring any interpretation that could increase curtailment frequency is not sufficiently supported in the record<sup>24</sup> and is not a persuasive reason to reject the plain meaning of the tariff’s text.

Nor is the Commission persuaded by the argument that a tariff allowing curtailment for economic reasons must contain specific parameters such as price triggers. CenterPoint’s tariffs do not contain analogous details signaling when to expect curtailment for capacity or other reasons, and no party has identified any legal authority requiring more specific language in a tariff provision allowing cost-based curtailment than what is required in a tariff provision allowing curtailment motivated by any other circumstance or objective.

The Commission concludes that it would have been permissible for CenterPoint to curtail customers under its interruptible tariffs as a cost-mitigation tool during the February Event.

## **2. Application of the Standard of Prudent Conduct**

The Commission appreciates CUB’s analysis showing how CenterPoint could have avoided up to \$48 million in gas costs if it had exercised its option to call on interruptible customers to curtail their usage for the entire February Event, and if 90% of interruptible customers had complied. Based on the limited information and uncertainty that existed early on February 12, however, the Commission is not persuaded that the utility’s decision not to use curtailment to reduce spot-market purchases for February 13–16 fell below the threshold of prudence.

However, both CUB and the Department persuasively showed that, by the time CenterPoint was purchasing spot gas for February 17, there was overwhelming evidence of extraordinary circumstances that would have prompted a prudent utility in CenterPoint’s position to reevaluate whether its business-as-usual approach to curtailment was appropriate to respond to the extraordinary circumstances. As discussed above, by February 16, CenterPoint had observed extraordinarily high prices in the spot gas market over the holiday weekend and had substantial reason to expect prices would remain extremely high on February 17 given supply issues, unusually cold weather in the south-central United States, and ongoing market volatility. Based on the record, the Commission agrees with the Department and CUB that the applicable standard of prudent conduct required CenterPoint to plan to use curtailment to protect customers from unnecessary, unreasonable gas costs on February 17.

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tariff language that expresses such restrictions; it should not assume such restrictions will be inferred where the tariff is silent.

<sup>24</sup> To support this assertion, Xcel offered only the general, speculative testimony of the utility’s consultant. To the contrary, the City of Minneapolis, which has 16 interruptible gas service accounts with CenterPoint, stated that it would have preferred to have its service curtailed in this case.



Despite the knowledge that it had already spent extraordinary amounts of its customers' money on historically costly spot gas over the holiday weekend, CenterPoint did not make *any* use of its expansive curtailment rights to mitigate further financial consequences for customers. Rather, the utility adhered to its ordinary practices, purchased high-priced spot gas for customers that had agreed to interruptible service, and even released from curtailment the small number of customers it had interrupted during February 13–16 to address localized distribution issues. The Commission finds that CenterPoint's actions related to curtailment on February 17, 2021, were imprudent under the circumstances.

Of the various curtailment levels analyzed in these proceedings, the Commission finds the most support for the Department's position that 50% of interruptible load is the minimally prudent amount CenterPoint should have curtailed on February 17. This level of curtailment would have reasonably balanced the dual interests of managing extraordinary costs and preserving some curtailable load in case it became necessary to address unanticipated reliability issues.

Although CUB offered credible testimony that planning for 90% curtailment could have avoided millions in additional gas costs, the Commission is not persuaded that the utility's decision not to plan for curtailment at that level was outside the range of prudent conduct.

Based on the above analysis, the Commission finds reasonable and will adopt the Department's recommended disallowance of \$7,279,592, equal to the gas costs CenterPoint would have avoided had it prudently planned to curtail 50% of its interruptible load on February 17 and reduced its spot-gas purchases accordingly.

## **X. Financial Hedging**

### **A. Positions of the Parties**

#### **1. The OAG**

The OAG contended that CenterPoint failed to use prudent financial hedging strategies to protect customers against extreme spikes in spot-market gas prices and, therefore, recommended that the Commission disallow recovery of at least \$44.1 million in extraordinary gas costs.

The OAG defined hedging as taking a tactical action with the intent of reducing the risk of losing money. The OAG's expert, Brian Lebens, testified that CenterPoint could have mitigated much of the financial impact of the price spike by using exchange-traded hedges, customizable over-the-counter products, or hedged swing contracts. Lebens provided examples of hedges—including monthly call options and daily swing futures—and analyzed their observed performance in financial markets during the February Event.

Lebens estimated that, if CenterPoint had put similar hedges in place prior to the February Event and those hedges had performed even half or two-thirds as well as the actual examples he reviewed, CenterPoint could have offset \$44.1 to \$57.2 million of its extraordinary costs.

While the OAG recognized that utilities had limited options to financially hedge once the market became aware of extreme prices, the OAG maintained that the gas utilities should have secured hedging opportunities well in advance of the February Event so that they would have had the tools in place to adequately mitigate impacts of the extreme prices.

## 2. CenterPoint

CenterPoint argued that its hedging activities were prudent and consistent with its Commission-approved annual gas procurement plan and a 2020 order in which the Commission granted rule variances to allow CenterPoint to recover certain financial hedging costs through its purchased-gas-adjustment rider.<sup>25</sup> CenterPoint stated that it uses a combination of physical hedge products such as costless collars, call options with a ceiling price, and fixed price hedges, in addition to using storage as a natural price hedge with the goal of achieving price stability.

CenterPoint contended that the exchange-traded hedge examples the OAG discussed are irrelevant because they were for futures options contracts executed in February 2021 for settlement and delivery in March 2021, after the February Event. Further, CenterPoint argued that those hedges would not have benefitted Minnesota utilities because they were priced at Henry Hub in Louisiana, not the Minnesota market hubs of Ventura, Demarc, or Emerson.

CenterPoint further argued that it would have had to execute the suggested hedging contracts before the end of January, when it could not have predicted a price spike of this magnitude so it had no reason to believe such hedging would be necessary.

CenterPoint contended that even if it could have negotiated the type of over-the-counter hedges described by the OAG, they would have been unreasonably expensive. And it argued that the suggested hedged swing contracts either are nonexistent or lack sufficient liquidity to be a feasible option to mitigate price risk and, if available, would not be offered at a reasonable price.

Finally, CenterPoint argued that even if the financial hedging products recommended by the OAG had been available and could have mitigated the February price spike, CenterPoint would have had to accurately anticipate the precise timing of the unprecedented market event to time the execution of the transactions perfectly to avoid extraordinary costs. CenterPoint therefore argued that the OAG's recommended hedging disallowance relies on hindsight, which is incompatible with the applicable standard of whether the utility acted prudently based on the information it knew or reasonably should have known when the decision was made.

## 3. The OAG's Reply

In response to suggestions that the OAG's suggested approach would have required the utility to establish hedges before it could have anticipated the timing or magnitude of the price spike, the OAG emphasized that the inherent nature of hedging is that it is done to protect against potential risks before their precise nature and timing can be known. Thus, the prudence of a particular hedging strategy should not be dismissed merely because the utility would have needed to take the action to hedge against a risk before the risk came to fruition.

The OAG disputed CenterPoint's characterization of its financial hedging plan as having been approved by the Commission and its suggestion that CenterPoint could not have undertaken any financial hedging activities that were different from or beyond those contemplated in past filings. Although utilities have sought variances from the purchased-gas-adjustment rules so they can

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<sup>25</sup> *In the Matter of the Petition of CenterPoint Energy for Approval of an Extension of Rule Variances to Minn. Rules to Recover the Costs of Certain Nat. Gas Fin. Instruments Through the Purchased Gas Adjustment*, Docket. No. G-008/M-19-699, Order (Jan. 13, 2020).

recover some costs of financial hedging instruments through their purchased-gas-adjustment riders (which otherwise are only used for gas costs), utilities are under no obligation to obtain pre-approval of financial hedging activities. If the Commission denied a utility's request to recover financial hedging costs through the purchased-gas-adjustment rider, the utility could still seek to recover those costs through other mechanisms, such as base rates.

The OAG asserted that the Commission's approvals in the orders cited by CenterPoint relate to the specific mechanism of cost recovery; they neither determine the prudence of the specific hedging activities nor limit the utility's authority to engage in financial hedging.<sup>26</sup> The utility maintains the obligation to develop a purchasing strategy, including hedging, that is prudent and reasonable; it is not the Commission's role to direct the utility's hedging decisions.

In response to CenterPoint's contention that some of the products the OAG described have not been proven to exist, the OAG asserted that utilities are free to negotiate directly with other parties to design over-the-counter hedging contracts suitable to their needs. It further argued that such products usually are not available for public viewing, so utilities are uniquely positioned to identify them, and it is the utility's burden to prove they could not have negotiated such products.

## **B. Recommendation of the Administrative Law Judges**

The ALJs found that CenterPoint acted prudently in maintaining its hedges and adhering to its gas supply plans, and it recommended no disallowance for the utility's actions related to hedging. They found that the OAG's hedging proposals would not have been feasible or reasonable strategies for CenterPoint because they are based on instruments that do not exist, would not have addressed the risk in Minnesota during the February Event, or would have been too expensive to be an appropriate hedging tool.

The ALJs agreed with CenterPoint that the OAG's hedging arguments relied on hindsight. Based on the information CenterPoint could have known when developing its gas procurement plan in the summer of 2020 and throughout the 2020–2021 winter season leading to the February Event, the ALJs concluded that CenterPoint acted prudently in maintaining its financial hedges.

## **C. Commission Action**

The Commission agrees with the OAG that the fact that financial hedging decisions had to be made long before the February Event is not a reason to categorically reject any potential disallowance based on hedging. An action or inaction at any time could support a disallowance if it was imprudent and caused the utility to incur unreasonable costs. When considering a disallowance, there is no theoretical limit on how much time may pass between a relevant imprudent action and the unreasonable cost it causes; rather, the particular facts presented determine whether a sufficient causal relationship exists to support a disallowance.

The Commission also agrees with the OAG that utilities do not need prior Commission approval to engage in financial hedging and the Commission does not pre-determine the prudence of hedging strategies when it determines what type of hedging costs can be recovered through a

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<sup>26</sup> See, e.g., *Id.* at Attached Department Comments, p. 5 (noting that “nothing in [CenterPoint’s] proposal would preclude the Commission from exercising its authority in the future to disallow imprudent or unreasonable [hedging] transactions”).

utility's purchased-gas-adjustment rider or when it approves a gas procurement plan. The fact that the Commission has approved a filing that contemplates certain hedging activities or has not specifically required a utility to take a different approach is not a sufficient reason to find all costs resulting from the utility's strategy prudent, nor does it imply that further or different hedging activities would be impermissible.

However, on this record, the Commission is not persuaded that CenterPoint's financial hedging decisions were imprudent or caused the utility to incur unreasonable gas costs during the February Event. The Commission finds that CenterPoint's financial hedging strategy leading up to the event was within the range of prudent conduct for a similarly situated utility under the circumstances.

The Commission therefore will not order any disallowance related to financial hedging. The Commission anticipates that the exploration of more advanced hedging techniques in the future will continue in proceedings established by this order.

## **XI. Low-Income Exemption**

### **A. Background**

In ordering paragraph 12 of the August 2021 order in these dockets, the Commission granted limited exemptions from the extraordinary-cost surcharge in order to mitigate the impact of the February Event on the most vulnerable customers. Among others, the exemption applied to residential customers who receive or previously received assistance through the Low-Income Home Energy Assistance Program (LIHEAP) in the program years of 2019–2020, 2020–2021, 2021–2022, or 2022–2023. Utilities were directed to update their lists of exempt customers every six months to include any customers who newly receive LIHEAP assistance during the 27-month recovery period authorized in that order.

Subsequently, in connection with a rate case filed in a separate docket, the Commission extended the recovery period for CenterPoint's extraordinary gas costs from 27 months to 63 months.<sup>27</sup>

### **B. Comments**

In light of the extension of the recovery period for CenterPoint's extraordinary costs, the City of Minneapolis recommended extending the surcharge exemption to customers who become eligible for LIHEAP assistance at any point during the extended 63-month period, through the 2026–2027 LIHEAP year.

Additionally, the City recommended expanding the exemption to include all customers who apply for and are found to be eligible for LIHEAP assistance during the identified years, not only those who actually receive LIHEAP assistance as the Commission previously required. The City asserted that some low-income customers are eligible but do not receive LIHEAP assistance because the program has run out of funds for a particular year. The City argued that these customers are just as vulnerable to high utility bills as those who actually receive LIHEAP

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<sup>27</sup> *In the Matter of the Petition by CenterPoint Energy for Approval of a Rate Stabilization Plan*, Docket No. G-008/M-21-755, Order Denying Rate Stabilization Plan but Extending Amortization Period, at 5, Ordering Para. 2 (December 30, 2021).

assistance and it would be inequitable to deny them the protection of this exemption merely because LIHEAP funds were insufficient to help all eligible customers.

Further, the City proposed to extend the exemption to CenterPoint's residential customers who applied for protection under the cold weather rule, Minn. Stat. § 216B.096, and met the income-eligibility criteria for that protection in the previous cold-weather-rule season. The City recommended that the utility update this list of exempt customers each year on September 1 from 2022 through 2026.

CenterPoint supported the City's proposed exemption modifications and stated that it has the ability to implement them.

The Department, CUB, and the OAG also supported the City's recommendations.

### **C. Commission Action**

The Commission finds the City's recommendations reasonable and will adopt them as set forth in the ordering paragraphs below. The Commission continues to find that it is reasonable and in the public interest to exempt low-income customers from the extraordinary-cost surcharges arising out of the February Event. In light of the fact that CenterPoint's surcharge period is now 63 months, it is reasonable to grant the exemption to customers who newly become eligible for LIHEAP assistance at any time during the 63-month recovery period.

The Commission also finds reasonable and will adopt the City's unopposed recommendations to expand the exemption to CenterPoint's customers who applied for and were found eligible for LIHEAP and to its residential customers who applied for and were found eligible for protection under the cold weather rule in the identified years.

## **XII. Compliance Filings and Final True-Up**

The Commission will require CenterPoint to recalculate its remaining balance of recoverable extraordinary costs to account for the disallowances ordered herein and, accordingly, update the extraordinary-cost recovery factors for its surcharge for the remainder of the 63-month recovery period. Within 60 days, CenterPoint shall provide this updated information in a compliance filing for approval by the Executive Secretary.

Additionally, because the extraordinary-cost surcharges are volumetric and are calculated based on sales forecasts from which actual sales may vary, there may be an outstanding balance of under- or over-recovered costs at the end of the recovery period. To align the amount of recovery with the total amount of recoverable extraordinary gas costs, the Commission will require CenterPoint to incorporate any remaining true-up in the first annual automatic adjustment report following the end of the 63-month recovery period.

## **XIII. Prospective Investigation**

In addition to precluding utilities from charging ratepayers for past imprudent costs, the Commission will require the affected gas utilities to take action to prevent or reduce impacts of future extreme weather and market events on Minnesota's ratepayers and utilities. As extreme weather events become more frequent due to climate change, it is vital that utilities act to protect ratepayers from reoccurrences similar to the February Event.

To that end, the Commission will require CenterPoint to review its practices relating to gas contracting, purchasing, hedging, storage, peak shaving, curtailment, customer communications, and other relevant practices and file a plan explaining how it will improve or modify its practices to protect ratepayers from extraordinary natural gas price spikes in the future.

As a part of its plan, the utility shall identify the general timeframe in which it will implement the modifications. If plan implementation would require modification of tariff language, the utility shall provide proposed tariff language with its plan. Additionally, the utility should include in its filing a discussion of how integrated resource planning could facilitate ratepayer protection from price spikes, and it should identify any statutory or rule changes that could be implemented to protect ratepayers from future price spikes.

CenterPoint should also provide an analysis of whether it considered filing a performance-based gas purchasing plan pursuant to Minn. Stat. § 216B.167. If it has chosen not to proceed with a performance-based gas purchasing plan under that section, it should provide an analysis explaining that decision.

Further, the utility should explain how any proposed tariff, rule, or statutory changes are consistent with the Natural Gas Innovation Act, Minn. Stat. §§ 216B.2427 and 216B.2428.

The Commission will require CenterPoint to file its plan in Dockets No. G-008/M-21-138 and G-999/CI-21-135 by September 15, 2022. Reply comments will be due by October 14, 2022. The Commission will hold hearings on the plans on or before December 9, 2022.

The Commission previously contemplated convening a stakeholder group to examine prospective changes in natural gas supply planning. However, based on further discussions and information developed through these proceedings, the Commission has determined that the plan-submission process described above is a more efficient and effective way to pursue the same goals. Accordingly, the Commission will rescind ordering paragraph 26 of the August 30, 2021 order.

## **ORDER**

1. The Commission adopts the Administrative Law Judges' Findings of Fact, Conclusions of Law, and Recommendation to the extent that they are consistent with the Commission's decision as set forth herein.
2. The Commission finds that CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Minnesota Gas did not meet its burden to prove it acted prudently with respect to its Waterville/Medford storage facility and, therefore, disallows recovery of \$3,810,503.
3. For February 17, 2021, the Commission finds that CenterPoint did not meet its burden to prove it acted prudently with respect to the BP Canada storage facility and, therefore, disallows recovery of \$12,195,499.
4. The Commission finds that CenterPoint did not meet its burden to prove it acted prudently with respect to its peaking facilities and, therefore, disallows recovery of \$12,431,429.

5. For February 17 only, the Commission finds that CenterPoint did not meet its burden to prove it acted prudently with respect to curtailment and, therefore, disallows recovery of \$7,279,592.
6. Within 60 days, CenterPoint shall make a compliance filing that updates the remaining recovery amount and also updates the recovery factors for the remainder of the 63-month recovery period. The Commission delegates approval of this filing to its Executive Secretary.
7. CenterPoint shall incorporate any remaining true-up into its next annual automatic adjustment report following the end of the 63-month recovery period.
8. With respect to CenterPoint, the Commission modifies ordering paragraph 12 of its August 30, 2021 order in Docket No. G-999/CI-21-135, and its December 30, 2021 order in Docket No. G-008/M-21-755, as follows:

~~The Gas Utilities CenterPoint~~ must exempt low-income residential customers who ~~receive or previously received~~ applied and were eligible for Low Income Home Energy Assistance Program (LIHEAP) assistance during 2019–2020, 2020–2021, 2021–2022, or 2022–2023, 2023–2024, 2024–2025, 2025–2026, or 2026–2027 as well as those residential customers who are 60 to 120 days in arrears on their natural gas bills, from the extraordinary cost surcharge established in this order. ~~The Gas Utilities CenterPoint~~ shall ~~be authorized to~~ recalibrate the customers covered by this exemption once every six months—exempting any customers who newly applied and were eligible for LIHEAP or who fall within the category of being greater than 60 days and less than 120 days in arrears on a going-forward basis and removing customers who are no longer greater than 60 days and less than 120 days in arrears. ~~The Gas Utilities CenterPoint~~ will set exempted customers based on arrears and current or previous LIHEAP status as of June 30, 2021. These exemptions will be adjusted effective:

March 1, 2022, based on arrears and new LIHEAP enrollments as of January 31, 2022;

September 1, 2022, based on arrears and customers who applied and were determined eligible for LIHEAP ~~enrollments~~ as of July 31, 2022; ~~and~~

March 1, 2023, based on arrears and customers who applied and were determined eligible for LIHEAP ~~enrollments~~ as of January 31, 2023;

September 1, 2023, based on arrears and customers who applied and were determined eligible for LIHEAP as of July 31, 2023;

March 1, 2024, based on arrears and customers who applied and were determined eligible for LIHEAP as of January 31, 2024;

September 1, 2024, based on arrears and customers who applied and were determined eligible for LIHEAP as of July 31, 2024;

March 1, 2025, based on arrears and customers who applied and were determined eligible for LIHEAP as of January 31, 2025;

September 1, 2025, based on arrears and customers who applied and were determined eligible for LIHEAP as of July 31, 2025;

March 1, 2026, based on arrears and customers who applied and were determined eligible for LIHEAP as of January 31, 2026; and

September 1, 2026, based on arrears and customers who applied and were determined eligible for LIHEAP as of July 31, 2026.

9. CenterPoint shall exempt residential customers who applied for Cold Weather Rule (CWR) protection and met income eligibility criteria from the extraordinary cost surcharge as follows:
  - September 1, 2022, for low-income CWR customers from the previous CWR season (October 1, 2021–April 30, 2022)
  - September 1, 2023, for low-income CWR customers from the previous CWR season (October 1, 2022–April 30, 2023);
  - September 1, 2024, for low-income CWR customers from the previous CWR season (October 1, 2023–April 30, 2024);
  - September 1, 2025, for low-income CWR customers from the previous CWR season (October 1, 2024–April 30, 2025); and
  - September 1, 2026, for low-income CWR customers from the previous CWR season (October 1, 2025–April 30, 2026).
  
10. CenterPoint must review its gas contracting, purchasing, hedging, storage, peak-shaving, interruptible, customer communications, and other relevant practices and, by September 15, 2022, file a plan in Docket Nos. and G-008/M-21-138 and G-999/CI-21-135 on how it will improve or modify its practices to protect ratepayers from extraordinary natural gas price spikes in the future. As part of its plan, the utility shall identify the general timeframe it will implement the modifications, and, if the proposed change requires modification of tariff, proposed tariff language. The utility should also identify, in its filings: a) how integrated resource planning could facilitate ratepayer protection from price spikes; and b) any statutory or rule changes that could be implemented to protect ratepayers from future price spikes. The utility should also provide an analysis of whether it considered filing a plan pursuant to Minn. Stat. § 216B.167 (Performance-Based Gas Purchasing Plan) and its analysis of why it is not using the statute if it has chosen not to proceed with such a plan. The utility should also explain how any proposed tariff, rule, or statutory changes are consistent with the Natural Gas Innovation Act (Minn. Stat. §§ 216B.2427 and 216B.2428). Reply comments to the utility plans will be due by October 14, 2022. The Commission will hold hearings on these plans on or before December 9, 2022.



11. The Commission rescinds ordering paragraph 26 of the Commission's August 30, 2021 order in Docket Nos. G-999/CI-21-135, G-008/M-21-138, G-004/M-21-235, G-002/CI-21-610 and G-011/CI-21-611, regarding a stakeholder group.
12. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Will Seuffert  
Executive Secretary



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## **CERTIFICATE OF SERVICE**

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

**Minnesota Public Utilities Commission**  
**ORDER DISALLOWING RECOVERY OF CERTAIN NATURAL GAS COSTS**  
**AND REQUIRING FURTHER ACTION**

Docket Number **G-008/M-21-138, G-999/CI-21-135**

Dated this 19th day of October, 2022

/s/ Chrishna Beard

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Kristin	Stastny	kstastny@taftlaw.com	Taft Stettinius & Hollister LLP	2200 IDS Center 80 South 8th St Minneapolis, MN 55402	Electronic Service	No	OFF_SL_21-138_Official Service List
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James	Worlobah	james.worlobah@state.mn. us	Public Utilities Commission	121 7th Place E, Suite 350  St. Paul, MN 55101	Electronic Service	No	OFF_SL_21-138_Official Service List
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Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_21-135_Official Service List
Riley	Conlin	riley.conlin@stoel.com	Stoel Rives LLP	33 S. 6th Street Suite 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_21-135_Official Service List
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Catherine	Fair	catherine@energycents.org	Energy CENTS Coalition	823 E 7th St St Paul, MN 55106	Electronic Service	No	OFF_SL_21-135_Official Service List
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_21-135_Official Service List
Edward	Garvey	garveyed@aol.com	Residence	32 Lawton St Saint Paul, MN 55102	Electronic Service	No	OFF_SL_21-135_Official Service List
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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Kim	Havey	kim.havey@minneapolismn.gov	City of Minneapolis	350 South 5th Street, Suite 315M Minneapolis, MN 55415	Electronic Service	No	OFF_SL_21-135_Official Service List
Travis	Jacobson	travis.jacobson@mdu.com	Great Plains Natural Gas Company	400 N 4th St  Bismarck, ND 58501	Electronic Service	No	OFF_SL_21-135_Official Service List
Kyle R.	Kroll	kkroll@winthrop.com	Winthrop & Weinstine, P.A.	225 South Sixth Street Suite 3500 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_21-135_Official Service List
Annie	Levenson Falk	annief@cupminnesota.org	Citizens Utility Board of Minnesota	332 Minnesota Street, Suite W1360  St. Paul, MN 55101	Electronic Service	No	OFF_SL_21-135_Official Service List
Brian	Meloy	brian.meloy@stinson.com	STINSON LLP	50 S 6th St Ste 2600  Minneapolis, MN 55402	Electronic Service	Yes	OFF_SL_21-135_Official Service List
Joseph	Meyer	joseph.meyer@ag.state.mn.us	Office of the Attorney General-RUD	Bremer Tower, Suite 1400 445 Minnesota Street St Paul, MN 55101-2131	Electronic Service	No	OFF_SL_21-135_Official Service List
David	Moeller	dmoeller@allete.com	Minnesota Power	30 W Superior St  Duluth, MN 558022093	Electronic Service	No	OFF_SL_21-135_Official Service List
Andrew	Moratzka	andrew.moratzka@stoel.com	Stoel Rives LLP	33 South Sixth St Ste 4200  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_21-135_Official Service List
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Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_21-135_Official Service List
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Peter	Scholtz	peter.scholtz@ag.state.mn.us	Office of the Attorney General-RUD	Suite 1400 445 Minnesota Street St. Paul, MN 55101-2131	Electronic Service	No	OFF_SL_21-135_Official Service List
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Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	7400 Lyndale Ave S Ste 190  Richfield, MN 55423	Electronic Service	Yes	OFF_SL_21-135_Official Service List
Peggy	Sorum	peggy.sorum@centerpointenergy.com	CenterPoint Energy	505 Nicollet Mall  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_21-135_Official Service List
Richard	Stasik	richard.stasik@wecenergygroup.com	Minnesota Energy Resources Corporation (HOLDING)	231 West Michigan St - P321  Milwaukee, WI 53203	Electronic Service	No	OFF_SL_21-135_Official Service List

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James M	Strommen	jstrommen@kennedy- graven.com	Kennedy & Graven, Chartered	150 S 5th St Ste 700  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_21-135_Official Service List
Eric	Swanson	eswanson@winthrop.com	Winthrop & Weinstine	225 S 6th St Ste 3500 Capella Tower Minneapolis, MN 554024629	Electronic Service	No	OFF_SL_21-135_Official Service List