


Staff Briefing Papers

Meeting Date	December 8, 2022	Agenda Item 1**
Company	CenterPoint Energy Resources Corp., d/b/a/ CenterPoint Energy Minnesota Gas	
Docket No.	G-008/M-21-138	
Issues	<p>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.</p> <p>Should the Commission reconsider its October 19, 2022 Order Disallowing Recovery of Certain Natural Gas Costs and Requiring Further Action?</p> <p>If so, which disallowances should be changed and by how much?</p>	
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 Relevant Documents	Date
Minnesota Public Utilities Commission – Order Disallowing Recovery of Certain Natural Gas Costs and Requiring Further Action	October 19, 2022
CenterPoint Energy – Petition for Reconsideration	November 8, 2022
Department of Commerce – Answer to Reconsideration	November 18, 2022
Office of the Attorney General – Answer to Reconsideration	November 18, 2022
Citizens Utility Board of Minnesota – Answer to Reconsideration	November 18, 2022
City of Minneapolis – Letter	November 18, 2022

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

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I. Statement of the Issues

Should the Commission reconsider its October 19, 2022 Order Disallowing Recovery of Certain Natural Gas Costs and Requiring Further Action?

If so, which disallowances should be changed and by how much?

II. Background

In its October 19, 2022 Order (Order), the Minnesota Public Utilities Commission (Commission) disallowed recovery of approximately \$35.7 million of CenterPoint Energy Resources Corp., d/b/a/ CenterPoint Energy Minnesota Gas' (CenterPoint, CPE, or the Company) February 2021 cold weather costs (February Event).

On November 8, 2022, CenterPoint filed its petition for reconsideration (Petition) requesting that the Company be allowed to recover the disallowed costs.

On November 18, 2022, the Minnesota Department of Commerce, Division of Energy Resources (Department), the Office of the Attorney General (OAG), the Citizens Utility Board of Minnesota (CUB) and the City of Minneapolis (Minneapolis) made filings recommending that the Petition be denied.

III. Parties' Comments

A. CenterPoint Energy – Petition

CenterPoint stated that it has a duty to provide safe, adequate, efficient, and reasonable gas service to its customers. In doing so, the Company must act prudently in incurring costs that will ultimately be charged to customers. CenterPoint argued that the extensive record developed in this case demonstrates that CPE took prudent actions during the February Event. Those actions were taken at a time of significant uncertainty regarding future weather conditions, system conditions, and gas prices. However, with the benefit of hindsight, actions the Company could have taken can be identified.

Based on a review of the record and after overseeing a three-day evidentiary hearing, the two Administrative Law Judges (ALJs) assigned to this case found that the Company met its obligation to act reasonably and prudently to protect customers from unreasonable risks, and should not be denied recovery of the costs necessary to maintain service during the February Event. The impact of the Commission's Order, which rejects many of the findings of the ALJs, increases the possibility that utilities shy away from making prudent purchases of gas for riskier alternatives during a future market event.

CenterPoint stated that the conclusions reached in the Commission's Order that disallowed recovery of costs with respect to the Company's use of storage, peak shaving resources, and curtailment of interruptible customers are not supported by substantial evidence, are inconsistent with the facts and the law, and are contrary to the public interest. Therefore, the

Company requested that the Order be reconsidered so that CPE can recover all disallowed costs.

1. Standard for Reconsideration

Petitions for reconsideration are governed by Minn. Stat. § 216B.27 and Minn. R. 7829.3000. Pursuant to Minn. Stat. § 216B.27, subd. 3, the Commission may reverse, change, modify, or suspend its original decision if, after rehearing, it finds its decision unlawful or unreasonable. The Commission has granted reconsideration when a motion for reconsideration: (1) raises new issues; (2) points to new and relevant evidence; (3) exposes errors or ambiguities in the prior decision; (4) persuades the Commission to reconsider; or (5) where the prior decision was inconsistent with the facts, the law, or the public interest.

CenterPoint stated that reconsideration should be granted as the Order's findings and conclusions are inconsistent with the legal standard for prudence, the record evidence, and the public interest in ensuring safe and reliable natural gas service in Minnesota. Reconsideration is also warranted to correct certain errors in the Commission's Order.

2. The Order is Inconsistent with the Prudence Standard

Prudence is not determined by looking backward and considering an end result that was not known at the time a decision was made. The fact that, in hindsight, a better outcome could have been reached is not relevant or permissible evidence in a prudence review.

While the Order acknowledges that hindsight cannot be applied in a prudence analysis, it nevertheless relies on hindsight when evaluating CenterPoint's actions before and during the February Event. For example, the Commission's disallowances rely on potential alternative prudent actions that the Company could have taken, as offered by the intervenors, regarding its use of storage, peak shaving resources, and curtailment of interruptible customers. However, these alternative actions require that the Company had perfect foresight to predict how all of the factors required to maintain adequate gas supplies to meet its customers' needs would play out during the February Event.

The second element of the prudence standard is that there is a range of actions that are reasonable and prudent, not one singular prudent action or decision. In reciting the standard for prudence, the Order ignores this element in applying the prudence standard to CenterPoint's actions. While the intervenors offered alternative actions that CPE could have taken, this does not mean that the actions taken by the Company were imprudent. Rather, the prudence standard recognizes that there are a range of acceptable actions and both the course of action taken by the Company and the course of action proposed by the intervenors can be within the range of prudent actions.

3. Waterville Disallowance

CenterPoint stated that the Order provides two justifications for the \$3.8 million disallowance: (1) CenterPoint Energy should have known on February 12 that it could exceed Waterville's daily withdrawal limit because the Company had done so in the past; and (2) planning in advance to exceed Waterville's daily withdrawal limit would not have risked system reliability

because the Company could have addressed any gas supply shortfalls through peak-shaving or by interrupting customer loads. CenterPoint said that both of these justifications are inconsistent with the prudence standard as they rely on hindsight and fail to acknowledge that some things were simply not knowable, by the Company or anyone else, on the morning of February 12. The Order ignores the record evidence that CenterPoint has never planned its gas supply purchases around exceeding Waterville's maximum 50,000 Dth daily withdrawal limit. CPE's ability to exceed Waterville's maximum daily withdrawal quantity depends on several real-time and constantly changing factors that cannot be known in advance. If the Company were to plan to exceed the maximum daily withdrawal and conditions were not favorable, then the Company places the reliability of the system at risk.

Given what the Company knew and could not know on February 12, CPE argued that the Commission should reconsider its decision and find that it was within the range of acceptable and prudent actions for the Company to plan for the daily maximum withdrawal limit of 50,000 Dth for Waterville.

4. BP Canada Disallowance

CenterPoint noted that its BP Canada virtual storage contract consists of three components: (1) a Ventura baseload component, (2) a Carlton swing component, and (3) a Ventura swing component. As of February 12, CenterPoint had multiple weeks remaining in the Carlton swing portion of the BP Canada contract, but only had 232,000 Dth remaining in the Ventura swing portion of this contract so the Company decided to maximize its remaining Ventura swing supplies over the four-day holiday weekend by splitting the remaining 232,000 Dth equally, i.e., 58,000 Dth/day for the Ventura swing portion and 108,000 Dth/day total under the BP Canada contract, after maximizing the baseload and Carlton swing components of the contract.

The Order found that CenterPoint's decision to allocate Ventura swing volumes uniformly over the four-day weekend was reasonable; however, the Order found the decision to use the remaining 70,000 Dth Ventura swing supply over the four-day holiday weekend was imprudent. CPE should have preserved it for use on Wednesday, February 17 which could have avoided \$12.2 million in spot market gas purchases. The disallowance overlooks relevant information that was known at the time the Company had to make decisions with respect to BP Canada storage on the morning of February 12, including the fact that the coldest weather was forecasted for the four-day weekend, with significantly warmer temperatures forecasted for February 17. The Order also incorrectly relied on the fact that CenterPoint's use of its Ventura swing supply "entirely depart[ed]" from how such storage would normally be used. CPE argued that its storage dispatch and use of the BP Canada virtual storage leading up to and through the February Event was consistent with its Gas Procurement Plan, past practices, and the contractual limitations relevant to the BP Canada virtual storage contract. Further, the Commission's conclusion is rooted in hindsight facts CenterPoint did not know and could not have known.

Finally, the Commission's disallowance regarding the Ventura swing supply also bears reconsideration because it is inconsistent with the Commission's disallowance related to Waterville. With regard to Waterville, the Commission found the Company was imprudent for failing to plan on February 12 to withdraw more than daily maximum limit of this storage asset

over the holiday weekend. At the same time, the Commission found that the Company was imprudent for planning on February 12 to maximize its Ventura swing supply over the holiday weekend. The Commission's Order does not explain why prudence required the Company to take opposite actions on February 12 with regard to these two storage assets – i.e., maximize one and preserve the other – over the same time period.

5. Peak Shaving Disallowance

CenterPoint stated that, on February 16, it completed its daily gas purchases for February 17 with an extremely narrow supply margin of 0.8%. This margin was so narrow that a temperature drop of only one half of one degree from forecast would have exhausted the entire margin. CenterPoint planned in such a conservative way intentionally and strategically, to mitigate the impacts of the ongoing price spike to the greatest extent possible, while also ensuring the preservation of reliable service; therefore, the Order's characterization that CPE failed to reevaluate the suitability of its strategies to meet the extraordinary circumstances disregards the Company's planning and actions when purchasing gas for February 17.

CenterPoint was only able to purchase the reduced volumes of gas supply because it planned to have the LNG plant available to dispatch in response to colder than forecasted weather or supply cuts. As such, the record demonstrates the Company did "actively manage the various, substantial tools at its disposal to keep the costs of service just and reasonable under the circumstances."¹ The Order also dismisses reliability considerations that supported the Company's actions with respect to peak, stating only that the Company's obligation to provide safe and reliable service "does not obviate the requirement that all rates charged to customers, including purchased-gas adjustments, must be just and reasonable."² These conclusions run contrary to the Commission's recognition that the prudence standard requires "exercising the care that a reasonable person would exercise under the same circumstances at the time the decision was made."³ As reflected in the record, but not addressed by the Order, estimated customer load for February 17 ended up being approximately 20,000 Dth higher than forecasted. CenterPoint also had its gas supply deliveries cut as a result of continued production and supply constraints. As such, CPE stated that the Commission inappropriately relied on hindsight to support its peak shaving disallowance.

Additionally, the Order is inconsistent with the Commission's Order with respect to Northern States Power Company d/b/a Xcel Energy's (Xcel) use of its peak shaving resources.⁴ The Commission disallowed CenterPoint's cost recovery based on the conclusion CPE should have dispatched 100% of its daily LNG capability on February 17; however, Xcel's disallowance was based on the conclusion Xcel should have dispatched 50% of its daily LNG capability on the same day. There is no justification in the Commission's Orders, nor evidence presented in the record, to justify that CenterPoint should have dispatched 100% and Xcel should have only

¹ Order at 19.

² *Id.*

³ *Id.* at 5.

⁴ Commission October 19, 2022 Order Disallowing Recovery of Certain Natural Gas Costs and Requiring Further Action, Docket No. G-002/CI-21-610.

dispatched 50%. Xcel's LNG plant has a higher daily dispatch capability and Xcel serves fewer Minnesota customers (and as a result, less load); therefore, the conclusion that Xcel would have been prudent to preserve a greater amount of LNG capacity to meet a smaller customer load reflects the arbitrariness of the Department's recommendations that were adopted by the Commission.

6. Curtailment Disallowance

CenterPoint stated that the ALJs found that CPE's decision not to curtail for economic reasons was consistent with the Company's Gas Procurement Plan, tariffs, past practice, and the typical practice of other gas utilities. Contrary to the ALJs' findings, the Order found that, since CenterPoint's interruptible tariffs allow it to curtail "for other appropriate reasons," the Company's decision not to do so on February 17 was imprudent. Therefore, based on 50% curtailment, a \$7,279,592 disallowance was made. CenterPoint argued that curtailing 50% would have allowed the Company to avoid extraordinary costs while also preserving some curtailable load in case it became necessary to address unanticipated reliability issues relies on information that could only be known with the benefit of hindsight. To realize these cost savings would have required the Company to accurately predict the volumes that would be curtailed and reduce its daily purchases by that amount and such precision was not possible on February 16 when the Company had to complete its gas purchasing decisions.

B. Department of Commerce – Answer to Reconsideration

The Department stated that the Order is supported by substantial evidence; therefore, the Commission should decline to take up the Petition.

1. The Petition Fails to Meet the Commission's Standards

The Department argued that, as required by the reconsideration standard, CenterPoint failed to raise new issues, new and relevant evidence, or identify errors. Instead, CenterPoint asked the Commission to reweigh evidence and arguments relating to the Waterville/Medford storage, Ventura swing supply, and peaking plant issues in the company's favor. CenterPoint also vaguely asserted that reconsideration is warranted to correct "certain errors" in the Commission's order. Yet, CenterPoint neither raises new evidence and arguments nor identifies actual errors. CenterPoint relied on the same arguments that it used during the OAH proceeding; however, the Commission is not obligated to accept CenterPoint's claims as the ALJs did.

As final decisionmaker, the Commission is obligated to employ its expertise to render an independent decision. Only the Commission has the "experience, technical competence, and specialized knowledge" necessary to evaluate "the evidence in the hearing record."⁵ Unlike ALJs who are well-rounded generalists, Commissioners are appointed with consideration of past experience "in the profession of engineering, public accounting, property and utility valuation, finance, physical or natural sciences, production agriculture, or natural resources."⁶ This special

⁵ Minn. Stat. § 14.60, subd. 4 (2020).

⁶ Minn. Stat. § 216A.03, subd. 1 (2020).

expertise means that Commissioners are in the best position to assess what constitutes prudent utility practice under specific conditions. ALJ recommendations, by contrast, are “merely one part of [the] record.”⁷ In this instance, the Commission explained in detail the evidence that warranted departure from the ALJ recommendations.

2. CenterPoint’s Arguments Would Not Warrant Reversal on Appeal

The Department stated that the Commission’s decision may only be reversed, remanded, or modified if it runs afoul of one of six statutory standards.⁸ CenterPoint raised no arguments that would warrant reversal on appeal. Instead, the Commission’s well-reasoned decision was made in accordance with law and is supported by substantial evidence when looking to the entire record.

3. The Commission’s Application of the Prudence Standard Is Entitled to Deference

The Department stated that CenterPoint’s main objection appears to be that the Commission relied on prudent alternative actions to calculate disallowances and therefore applied hindsight. The Commission’s quasi-judicial application of law to fact is reviewed under the substantial-evidence standard. The Commission took great care to apply the prudence standard to the specific facts and determined disallowances based on what CenterPoint knew or should have known at the time of making gas purchasing decisions. The Commission’s disallowances were largely based on the testimony of the Department’s witness Mr. King. Rather than simply pick a random disallowance amount, Mr. King accounted for the utilities’ specific systems and attempted to unwind the utilities’ imprudent actions to recreate the bare minimum a utility would have done to establish prudence. In so doing, Mr. King was not applying hindsight. Instead, he was ensuring that the recommended disallowances were remedial rather than arbitrary or punitive. Thus, the Commission’s disallowances are fair, reasonable, supported by substantial evidence, and result in just and reasonable rates.

4. Waterville/Medford Disallowance

The Department argued that CenterPoint’s claim that the Commission relied on facts that were “simply not knowable” disregards the Commission’s careful review of the record and application of the legal standard. While CenterPoint argued it could not know that it could withdraw 55,000 Dth from Waterville/Medford on a given day, the Commission was not obligated to agree, particularly in light of expert testimony and other record evidence to the contrary. The Commission considered the “entire record, including the testimony of [experts] Heer, Reed, and King and the records of CenterPoint’s storage withdrawal history”⁹ and, after doing so, it appropriately found “the Department’s evidence and arguments more persuasive than CenterPoint’s on this issue.”¹⁰

⁷ City of Moorhead v. Minn. Pub. Utilities Comm’n, 343 N.W.2d at 847 (Minn. 1984).

⁸ Minn. Stat. § 14.69 (2020).

⁹ Order at 10.

¹⁰ *Id.*

5. BP Canada Disallowance

The Department stated that CenterPoint's argument regarding the Ventura swing component of the BP Canada virtual storage contract disregarded record evidence and expert testimony and falls back on a reliability argument that fails to account for the specific circumstances of different storage assets. CenterPoint's claim that the Commission determined that CenterPoint should have withheld a portion of its Ventura swing supply for use on February 17 was not the Commission's finding. Rather, the Commission found that, under the facts and circumstances on February 12, "prudence required CenterPoint to actively manage its storage resources to avoid prematurely exhausting any discrete resource so it could maintain a variety of storage options for the rest of the season."¹¹ By February 17, prudence required exercising all available options to reduce the economic harm to ratepayers, by curtailing interruptible customers, dispatching peak shaving facilities, and using the full daily capacity (70,000 Dth) of Ventura swing supply. The Commission appropriately evaluated the entire record when it concluded that "prudent storage management strategy" required preserving at least a day of Ventura swing gas.

The Department also disagreed with CenterPoint's assertion that the Commission's determination regarding the Ventura swing supply is inconsistent with the Waterville/Medford decision. The Department stated that CenterPoint's position ignored the different circumstances and status of the two storage resources at the time CenterPoint made its gas planning decisions. Unlike the Ventura swing supply, which was almost depleted by February 12, Waterville/Medford had ample resources, 682,132 Dth on February 12. There is no inconsistency.

6. Peak Shaving Disallowance

The Department stated that the Commission properly determined that prudence required dispatching its LNG peaking plant and curtailing 50% of its interruptible customer load and disagreed with CenterPoint's assertion that the Commission discounted reliability concerns in its peaking-plant and interruptible-customer determinations and that the Commission's peaking-plant disallowance unfairly differentiated between utilities. The Commission carefully considered reliability for peaking plants, curtailment, and other issues, and the Commission's disallowances prioritized reliability. CenterPoint's propane peaking plants and remaining interruptible-customer load greatly exceeded the 56,000 Dth in cumulative supply failures that CenterPoint experienced over the entire February Event. CenterPoint had the resources to both ensure reliability and mitigate economic harm to its customers. It failed to do the latter.

Also, CenterPoint's claim that the Commission's peaking plant disallowance unfairly treated the utilities differently ignores the differences between the various utilities systems and resources, which the Commission addressed. The Commission appropriately determined that prudence required CenterPoint to dispatch peak shaving gas equivalent to its LNG plant's maximum daily capacity, while prudence required Xcel to dispatch only 50% of its LNG plant. The Commission determined that both utilities should hold back their propane peaking plants for reliability. In its determination, the Commission appropriately balanced the need to protect consumers from

¹¹ Order at 15.

economic harm while ensuring reliable and safe service based on the two utilities' specific resources. While Xcel may have less load than CenterPoint, CenterPoint has significantly more propane peak shaving facilities than Xcel—eight versus two. CenterPoint's propane peaking plants can dispatch 149,000 Dth per day, whereas Xcel's propane peaking plants can dispatch only 90,000 Dth. Additionally, at the time of making gas purchases for February 17, Xcel had curtailed its interruptible customers for the full day, which removed its ability to curtail interruptible customers for reliability.

7. Curtailment Disallowance

The Department disagreed with CenterPoint's argument that, because its tariffs do not provide specific criteria to trigger curtailment for extreme gas prices, it precluded any authority to curtail interruptible customers during a historic price spike event is incorrect. Tariffs are interpreted like other contracts, with words being given their ordinary meaning read in light of the tariff as a whole. The Commission thoroughly reviewed the tariffs' language, employed the proper interpretation principles, and came to the correct conclusion that CenterPoint had broad authority to curtail. Furthermore, the Commission properly recognized that CenterPoint's tariffs require no parameters, structure, or benchmarks for curtailments.

C. Office of the Attorney General (OAG) – Answer to Reconsideration

The OAG stated that the Order applied the correct legal standards. Arguments that the Commission impermissibly relied on hindsight and did not consider the possibility of a range of reasonable conduct are contradicted by the Order. Thus, the Commission should not credit these arguments and instead it should deny the Petition.

For example, the Commission explicitly based its disallowance for CenterPoint's failure to preserve Ventura swing supply after February 16, 2021, on information available to the utility before 8:00 a.m. on February 12, 2021.¹²

CenterPoint's argument that the Commission failed to consider that a range of possible conduct could be found to be reasonable is unfounded. The Commission's analysis clearly evaluated whether CenterPoint's actions fell within a range of reasonable conduct. This is true both for issues where the Commission concluded that CenterPoint acted reasonably, and for issues where the Commission concluded that CenterPoint acted unreasonably. For example, the Commission found that "CenterPoint's decision not to maximize Ventura swing volumes for February 14 fell within the range of acceptable conduct"¹³ and that CenterPoint's "financial hedging strategy leading up to the event was within the range of prudent conduct."¹⁴ Conversely, where the Commission found that CenterPoint acted unreasonably, it concluded that CenterPoint's "decision not to plan for curtailment at that level was outside the range of prudent conduct"¹⁵ and "that CenterPoint's decision to reserve its peaking plants to address

¹² *Id.* at 14.

¹³ *Id.*

¹⁴ *Id.* at 28.

¹⁵ *Id.* at 21.

potential reliability issues on February 13–16 fell outside of the wide range of reasonable conduct.”¹⁶

The OAG added that CenterPoint’s argument that its tariff lacks any criteria that would trigger price-based curtailment ignores the fact that its tariff also does not provide this type of specific criteria for reliability curtailments. Indeed, the tariff does not even define reliability. Far from narrowly restricting CenterPoint’s discretion to economically curtail, the tariff broadly authorizes CenterPoint to curtail for “other appropriate reasons.” Protecting customers from the economic consequences of a historic price spike would be an appropriate reason.

The OAG concluded that the Order applied the correct legal standards, are supported by substantial record evidence, and accurately interpret interruptible tariffs; therefore, the Commission should affirm its decisions and deny the Petition.

D. Citizens Utility Board of Minnesota (CUB) – Answer to Reconsideration

CUB noted that the Petition did not raise any new issues, uncover errors or ambiguities in the Order, or present any new relevant evidence that could, or should, lead the Commission to rethink its prior decision. CenterPoint’s Petition reiterated, in summary form, the arguments that it has previously offered via written comments, expert witness testimony, legal briefs, and oral arguments that were all part of the substantial record reviewed by the Commission prior to issuing its Order. Consequently, the Commission should remain unpersuaded by the Petition and uphold its original Order.

1. The Commission does not misapply the prudence standard

CUB stated the Order included numerous, clear examples of the Commission applying the prudence standard to consider a range of actions that are reasonable and prudent rather than one singular prudent action or decision. In several instances, this application of the prudence standard worked in favor of the Company. For example, when assessing the Company’s decision not to maximize Ventura swing volumes for February 14, the Commission determined the Company acted “within the range of acceptable conduct under the circumstances.”¹⁷ When assessing the Company’s decision to reserve its peaking plants, the Commission noted it “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.”¹⁸ When assessing the Company’s financial hedging strategies, the Commission noted 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.”¹⁹ Based on this, CUB saw no reason to think the Order misunderstood or misapplied the prudence standard.

¹⁶ *Id.* at 19.

¹⁷ *Id.* at 14.

¹⁸ *Id.* at 19.

¹⁹ *Id.* at 28.

CUB noted that the Commission's weighing of these diverse factors is a process that the Company should have undertaken in the first instance to satisfy its statutory obligation to provide safe, adequate, efficient, and reasonable service at just and reasonable rates. Considering the substantial impact that costs would have on customers is an essential part of utility service.

CUB also disagreed with the assertion that the disallowances rely on potential alternative prudent actions that the Company could have taken and that such alternatives require perfect foresight. As stated on the record, prudence reviews are inherently backward-looking – they cannot be done in real time.

2. CenterPoint has not proven its plan to deploy its peak-shaving facilities to address system reliability was prudent

CUB stated that CenterPoint mischaracterized the Order by simultaneously oversimplifying and overstating the Commission's conclusions. The Order contains clear examples of the Commission evaluating the Company's decision-making based on what the Company knew or should have known prior to and during the February Event. The Commission evaluated the entirety of the record when determining the Company failed to meet its burden with respect to utilizing peak-shaving resources. The Order entails the sort of weighing of the information that CPE should have undertaken in the first instance. When potential cost impacts were included in its analysis, the Commission determined that a "prudent utility . . . 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."²⁰ Thus, the Order shows that the Commission did consider whether a reasonable utility would have acted in the same way as the Company.

3. CenterPoint has not met its burden to prove it acted prudently with respect to curtailment

CUB stated that customers taking service under CenterPoint's interruptible tariffs pay a discounted rate in return for accepting that, with one hour's notice, they are required to curtail their gas use and CenterPoint can interrupt the end user if capacity constraints require or for other appropriate reasons. The Company has not pointed to any criteria establishing objective thresholds that must be reached before CenterPoint can call for curtailments, or how any tariff language limits the broad discretion afforded to the Company.

Moreover, the Company has not cited any evidence in support of its speculation that its interruptible customers would have been surprised to be curtailed during the February Event. However, there is evidence in the record of interruptible customers expressing frustration over not being called to curtail, given what CenterPoint knew going into and during the February Event.²¹ Just because a utility had not previously taken an action does not inherently suggest the utility is incapable of that action, or that a Company acted prudently by maintaining the status quo amidst highly unusual circumstances that demanded proactive action.

²⁰ *Id.* at 19.

²¹ City of Minneapolis, Exceptions to the ALJ Report, Docket No. G-008/M-21-138, at 1.

4. The Petition does not point to new and relevant evidence.

CUB stated that the Petition cites several exhibits, the ALJ Report, transcripts from the Evidentiary Hearing, and prior Commission orders filed in this docket. However, all of this evidence was part of the substantial record considered by the Commission prior to issuing its Order. The Company has not introduced any new or relevant evidence not previously part of the record considered by the Commission.

5. The Petition does not expose errors or ambiguities in the underlying order

CUB stated that the Company's argument that the Commission's inconsistent conclusions regarding Xcel and CenterPoint are arbitrary and not supported by the record obscures CenterPoint's burden to prove it acted prudently when utilizing its peak shaving resources during the February Event. Any lack of specific language comparing the prudence of CPE's use of peaking resources to Xcel's use of their resources does not inherently suggest the Commission acted arbitrarily, that the Order was erroneous or ambiguous, or that CenterPoint had met its burden to prove.

CUB concluded that, ultimately, the Commission appropriately balanced the Company's obligations to provide safe, reliable, and affordable service when determining that the Company failed to prove it acted prudently when not taking certain actions that could have reasonably mitigated financial harm to customers. Therefore, CUB recommended that the Petition be denied.

E. City of Minneapolis – Letter

Minneapolis disagreed with CenterPoint's argument that the Order ought to be reconsidered because it is inconsistent with the prudence standard and relied on hindsight.

Regarding CenterPoint's claim that its planned withdrawal amount was prudent based on its knowledge at the time, the record reflects that CPE knew, or had reason to know, that daily spot gas would be significantly more expensive than their storage assets.

Minneapolis has sixteen CenterPoint accounts with interruptible gas service and CenterPoint failed to request or invite Minneapolis to curtail at any of these locations. Minneapolis and other interruptible commercial customers were unfairly denied the opportunity to curtail and reduce costs based on pricing information for which CenterPoint's analysts had access but customers did not. Further, CenterPoint's decision not to call on interruptible customers to curtail led to even more unnecessary upward pressure on market pricing. Thus, by failing to call on customers to curtail or conserve, it was reasonable for the Commission to conclude that CenterPoint mismanaged the pricing event and contributed to higher wholesale prices.

Regarding the Company's argument that the interruptible tariff lacks any price-based criteria and that customers could not have reasonably expected to be called upon to curtail, Minneapolis stated that the whole point of customers choosing dual-fuel or interruptible service is the customer's willingness to have a backup system in exchange for the opportunity to save money and manage rates. Therefore, to avoid taking on excessive natural gas prices, it

is reasonable to believe that curtailment rate customers, like Minneapolis, would have been happy to curtail if called upon.

For the reasons, Minneapolis recommended the Petition be denied.

IV. Staff Analysis

Staff finds CenterPoint's statement that the Commission's Order "increases the possibility that utilities shy away from making prudent purchases of gas for riskier alternatives during a future market event"²² to be troubling. If the utilities were to indeed "shy away from making prudent purchases" they would be exposed to having those imprudent purchases disallowed.

Staff agrees with the Department, the OAG, CUB and the City of Minneapolis that CenterPoint's Petition does not include any other new arguments or evidence.

V. Decision Alternatives

1. Grant CenterPoint's request for reconsideration and modify the October 19, 2022 Order as follows:
 - a) Find that CenterPoint met its burden to prove it acted prudently with respect to its Waterville/Medford storage facility and, therefore, rescind ordering paragraph 2.
 - b) Find that CenterPoint met its burden to prove it acted prudently with respect to the BP Canada storage facility and, therefore, rescind ordering paragraph 3.
 - c) Find that CenterPoint met its burden to prove it acted prudently with respect to its peaking facilities and, therefore, rescind ordering paragraph 4.
 - d) Find that CenterPoint met its burden to prove it acted prudently with respect to curtailment and, therefore, rescind ordering paragraph 5.
2. Deny CenterPoint's request for reconsideration. (DOC, OAG, CUB, Minneapolis)
3. Partially grant CenterPoint's request for reconsideration and modify the October 19, 2022 Order as follows [Commissioners may select one or more of 3. A-D]:
 - a) Find that CenterPoint met its burden to prove it acted prudently with respect to its Waterville/Medford storage facility and, therefore, rescind ordering paragraph 2.
 - b) Find that CenterPoint met its burden to prove it acted prudently with respect to the BP Canada storage facility and, therefore, rescind ordering paragraph 3.
 - c) Find that CenterPoint met its burden to prove it acted prudently with respect to its peaking facilities and, therefore, rescind ordering paragraph 4
 - d) Find that CenterPoint met its burden to prove it acted prudently with respect to curtailment and, therefore, rescind ordering paragraph 5.
4. Take no action.

²² Petition, at 3.