

**STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION**

Katie Sieben	Chair
Joseph K. Sullivan	Vice Chair
Hwikwon Ham	Commissioner
Valerie Means	Commissioner
John Tuma	Commissioner

In the Matter of CenterPoint Energy’s Natural
Gas Innovation Plan

DOCKET NO. G-008/M-23-215

REQUEST FOR RECONSIDERATION

INTRODUCTION

The Office of the Attorney General—Residential Utilities Division (OAG) respectfully requests the Public Utilities Commission reconsider a limited portion of its decision regarding CenterPoint’s Natural Gas Innovation Act (NGIA) plan. As part of its approval of a seventeen-pilot plan, the Commission’s order contains a material legal error in authorizing CenterPoint to conduct a pilot that is not “related to the development or provision of innovative resources.”¹ That pilot is Pilot G, CenterPoint’s proposal to purchase carbon offsets for trees planted by the Minneapolis Parks Board, Hennepin County, and the City of St. Paul. While CenterPoint frames this pilot as a carbon-capture resource, planting trees that pull carbon from the atmosphere does not meet the Act’s definition of “carbon capture,” which “means the capture of greenhouse gas emissions that would otherwise be released into the atmosphere.”²

As the first plan approved under the NGIA, CenterPoint’s plan will set precedent for other utilities. The OAG requests that the Commission carefully reexamine the plain language of the Act and its definitions of “innovative resources” and “carbon capture.” In doing so, the

¹ Minn. Stat. § 216B.2427, subd. 2(a)(5).

² Minn. Stat. § 216B.2426, subd. 1(c).

Commission should reconsider its order and modify it to comport with Minnesota Law by removing Pilot G from CenterPoint’s NGIA plan. Removing Pilot G will not significantly impact the learnings or function of CenterPoint’s overall plan. As an alternative to Pilot G, however, the Commission could require CenterPoint to propose a new pilot program that includes a carbon capture resource that captures greenhouse gas emissions that “would otherwise be released into the atmosphere,” or that benefits populations that are most impacted by the negative effects of climate change.

BACKGROUND

In 2021, the Minnesota Legislature passed the NGIA during a special session.³ Although the Legislature sought to achieve broad economic and environmental opportunities,⁴ it was specific about the resources that qualified for inclusion in an NGIA plan. It notably did not give the Commission a blank slate to determine what types of resources are “innovative.” Instead, the Act enumerates and defines specific resources that are “innovative.”⁵

An innovative resource must be one of eight types: “biogas, renewable natural gas, power-to-hydrogen, power-to-ammonia, carbon capture, strategic electrification, district energy, and energy efficiency.”⁶ Each of these eight innovative-resource types are further defined in the Act.

³ 2021 1st Spec. Sess. Minn. Laws ch. 3, § 20.

⁴ Statements of Bill Sponsor Senator Weber, Hearing of the Committee on Energy and Utilities Finance and Policy on S.F. 421 at 1:03:00 to 01:05:00, (Feb. 11, 2021), https://mnsenate.granicus.com/player/clip/6140?view_id=5&redirect=true. Although the Act was passed through an omnibus bill during the special session, during the regular session significantly similar NGIA bills were introduced, including S.F. 421.

⁵ *See, e.g.*, Minn. Stat. § 216B.2427, subd. 2(a)(1), (5) (requiring utilities to identify “the innovative resource or resources the utility plans to implement” and describe “each pilot program included in the plan that is related to the development or provision of innovative resources.”).

⁶ *Id.*, subd. 1(h).

Most relevant here, “carbon capture” is defined as “the capture of greenhouse gas emissions that would otherwise be released into the atmosphere.”⁷

In June 2023, CenterPoint filed a petition requesting that the Commission approve eighteen pilots that CenterPoint claimed “would result in deployment of at least six, and potentially seven, of the eight innovative resources identified in the NGIA.”⁸ One of these pilots, Pilot G, involves purchasing \$295,780 in carbon offsets from “[l]ocal non-profit Green Minneapolis, which is working in partnership with local tree planting partners across the 7-county Twin Cities Metro area.”⁹ Green Minneapolis, now known as Green Cities Accord,¹⁰ has three partners for its Carbon Offset Program: the Minneapolis Parks and Recreation Board, Hennepin County, and City of St. Paul.¹¹ Currently available carbon offsets are tied to tree-planting projects conducted by the cities and county between 2021 and 2023.¹²

While the City of Minneapolis supported Pilot G, several other commenters opposed it, including the Department of Commerce, the Clean Energy Organizations (CEOs), the Citizens Utility Board (CUB), and the OAG.¹³ The OAG, CEOs, and CUB argued that the pilot did not qualify for inclusion in the NGIA because it did not meet the statutory definition of “carbon

⁷ *Id.* subd. 1(c).

⁸ CenterPoint Petition at 5. CenterPoint later dropped a pilot, leaving seventeen pilots that the Commission ultimately approved. *See* CenterPoint Letter on Pilot A (Jan. 3, 2024).

⁹ CenterPoint Petition, Ex. D at 20. CenterPoint estimates that it will spend \$295,780 in carbon offsets (project delivery) and \$33,522 in Allocation of General Portfolio Costs for a total pilot cost of \$329,302.

¹⁰ *Our Story*, Green Cities Accord, <https://greencitiesaccord.org/about/>

¹¹ *Carbon Offsets Program*, Green Cities Accord, <https://greencitiesaccord.org/work/carbon-offset-program/>

¹² *See id.* From *Carbon Offsets Program* page, three links are provided for “Carbon Offset Partnerships.” <https://greencitiesaccord.org/work/partnerships/minneapolis-park-recreation-board/>; <https://greencitiesaccord.org/work/partnerships/hennepin-county-carbon-offset-partnership/>; <https://greencitiesaccord.org/work/partnerships/city-of-st-paul/>.

¹³ CenterPoint NGIA Order at 12.

capture.”¹⁴ CEOs also argued that it did not meet goal of the NGIA to “reduce the overall amount of natural gas produced from conventional geologic sources delivered to customers.”¹⁵ The Department opposed inclusion of the pilot, unless modified to require planting new trees rather than reimbursing the cities for trees that would have been planted regardless of the carbon credit transaction CenterPoint proposed.¹⁶

The Commission authorized Pilot G. Its order recognizes that trees capture carbon dioxide “from the air.”¹⁷ It also finds that “planting trees could reduce natural gas throughput, a goal of the NGIA” because “[i]n winter, trees can shelter homes from wind that causes heat loss, thereby reducing the need to operate gas-fired furnaces as often. In that way, planting trees could reduce natural gas throughput, a goal of the NGIA.”¹⁸ Regarding the statutory definition of “carbon capture,” the order states, “while there are reasonable and differing interpretations of the NGIA’s approach to carbon capture, the Commission is unpersuaded that this first application of the statute calls for its narrowest reading.”¹⁹ The order also emphasizes that “[o]ther approaches to carbon capture may be more reasonable in future iterations of innovation plans” and that “the level of spending/budget allocation related to this pilot is reasonably minimal.”²⁰

LEGAL STANDARD

The Commission may grant a petition for reconsideration if it “appear[s] that the original decision . . . is in any respect unlawful or unreasonable.”²¹ The Commission denies petitions for

¹⁴ CEOs Initial Comments at 32–33 (Jan. 16, 2024); CEOs Reply Comments at 4–5 (Mar. 15, 2024); CEO Supp. Comments at 4–5 (May 15, 2024); CUB Supp. Comments at 24–25 (May 15, 2024); OAG Supp. Comments at 15–17 (May 15, 2024).

¹⁵ CEOs Initial Comments at 32.

¹⁶ DOC Initial Comments at 46 (Jan. 16, 2024); DOC Supp. Comments at 35–36 (May 15, 2024).

¹⁷ CenterPoint NGIA Order at 12.

¹⁸ *Id.*

¹⁹ *Id.* at 13.

²⁰ *Id.*

²¹ Minn. Stat. § 216B.27, subd. 3 (2022).

reconsideration if they “do not raise new issues, do not point to new and relevant evidence, do not expose material errors or ambiguities in the . . . order, and do not otherwise persuade the Commission that it should rethink the decisions set forth in its order.”²²

REQUEST FOR RECONSIDERATION

The OAG requests reconsideration of the Commission’s determination that CenterPoint’s Pilot G – Urban Tree Carbon Offsets qualifies as an “innovative resource” under the NGIA. The OAG does not dispute that trees are important in combating climate change or that mature trees may provide benefits to urban populations that are often most negatively impacted by climate change. But to be included in an NGIA plan, and to recover costs from ratepayers to fund NGIA pilots, pilot programs must be related to developing or providing one of eight, specifically defined, “innovative resources.”

Because the carbon offsets purchased through Pilot G would not be derived from “the capture of greenhouse gas emissions that would otherwise be released into the atmosphere,” including the costs of these offsets in an NGIA plan is a material legal error. The Commission’s order fails to provide an alternative statutory interpretation and concedes that trees capture carbon from the air, rather than before the carbon “would otherwise be released” into the atmosphere. The Commission should reconsider its decision and correct this material legal error.

I. PILOT G DOES NOT QUALIFY AS AN “INNOVATIVE RESOURCE” UNDER THE NGIA’S PLAIN LANGUAGE.

In Pilot G, CenterPoint proposed to invest ratepayer dollars in a pilot that is not related to the “development or provision of innovative resources” because the resource that ratepayer money would fund does not qualify as “innovative” under the Act’s definitions. Accepting CenterPoint’s

²² *In re Application of Minn. Power for Authority to Increase Rates for Elec. Serv. in Minn.*, Docket No. E-015/GR-16-664, Order Granting Reconsideration in Part, Revising March 12, 2018 Order, and Otherwise Denying Reconsideration Petitions (May 29, 2018).

proposal requires an unreasonable interpretation of the statute. The Commission should reconsider its approval of Pilot G.

The object of statutory interpretation is to effectuate the Legislature’s intent.²³ Where the Legislature’s intent is clearly discernable from plain and unambiguous language, the statute’s plain meaning must be applied.²⁴ The plain meaning of a law may not be abandoned in pursuit of the law’s spirit.²⁵ Further, every law must be construed to give effect to all of its provisions.²⁶ And words may not be added to a statute “that [the Legislature] intentionally or inadvertently left out.”²⁷ A definition provided in statute overrides any dictionary definitions.²⁸ A “statutory definition cannot be enlarged by usage or custom.”²⁹

Investments that remove carbon from the atmosphere, rather than capturing carbon that would otherwise be released into the atmosphere, do not qualify as “innovative resources.”³⁰ The NGIA, like other technical statutes, defines terms used within the Act. Relevant to Pilot G, the statute defines “innovative resource” as “biogas, renewable natural gas, power-to-hydrogen, power-to-ammonia, carbon capture, strategic electrification, district energy, and energy efficiency.”³¹ And it defines “carbon capture” as “the capture of greenhouse gas emissions that would otherwise be released into the atmosphere.”³² That is, the NGIA unambiguously states that

²³ Minn. Stat. § 645.16 (2022).

²⁴ *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 539 (Minn. 2007).

²⁵ *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016) (“When the language of a statute is clear, we apply the plain language of the statute and decline to explore its spirit or purpose.”).

²⁶ Minn. Stat. § 645.16.

²⁷ *Great River Energy v. Swedzinski*, 860 N.W.2d 362, 364 (Minn. 2015).

²⁸ *See State v. Morgan*, 953 N.W.2d 729, 733 (Minn. Ct. App. 2020), *aff’d* 968 N.W.2d 25 (Minn. 2021) (“Where appropriate, we may look to dictionary definitions to determine the plain meanings of words, but we will rely on statutory definitions of terms where relevant.”).

²⁹ *State for Use of Altorfer Bros. Co. v. Dalrymple*, 35 N.W.2d 714, 717 (Minn. 1949).

³⁰ *See* Minn. Stat. § 216B.2427, subd. 1(h).

³¹ *Id.*, subd. 1(h) (emphasis added).

³² *Id.*, subd. 1(c) (emphasis added).

to be a carbon-capture innovative resource, greenhouse gas emissions must be prevented (i.e., captured) prior to atmospheric release. The Act does not contemplate pulling carbon *from the atmosphere* and sequestering it through tree-planting programs or otherwise. Instead, the statute's plain language shows that the Legislature intended that utilities invest in new technologies that capture greenhouse gases *before* their release into the air. An example of such a carbon-capture program is CenterPoint's Pilot H, which provides rebates to commercial customers that install a carbon-capture system connected to a heating system.³³

CenterPoint claimed that Pilot G meets the definition of "carbon capture" because "trees will capture carbon that would otherwise remain released in the atmosphere."³⁴ CenterPoint's interpretation defies principles of statutory construction. It requires inserting a word into the statute, deleting another word, and changing a third word, rewriting the definition as "the capture of greenhouse gas emissions that would otherwise ~~be~~ remain released ~~into~~ the atmosphere." This is impermissible: words cannot be added into a statute that the Legislature either "intentionally or inadvertently left out,"³⁵ nor is reading words out of a statute appropriate.³⁶

If the Legislature had meant to include in the NGIA programs that pulled greenhouse gas emissions *out of* the atmosphere—those that would "otherwise remain released" in the atmosphere—it would have used that language. Instead, the Legislature meant what it said. And paying an organization to plant trees to remove carbon that is already in the atmosphere does not capture greenhouse-gas emissions "that would otherwise be released into the atmosphere."

³³ CenterPoint NGIA Petition at 22. The OAG does not dispute that the purchase of carbon offsets may qualify in some instances, but the offsets must be related to capturing greenhouse gas emissions that would otherwise be released into the atmosphere.

³⁴ CenterPoint Reply Comments at 64.

³⁵ *Great River Energy*, 860 N.W.2d at 364.

³⁶ Minn. Stat. § 645.16 ("Every law shall be construed, if possible, to give effect to all its provisions.").

Not only does Pilot G not involve “carbon capture” as defined by the NGIA, but the pilot also does not qualify as any other type of “innovative resource.” At the hearing, CenterPoint argued that Pilot G could be considered an “energy efficiency” innovative resource because trees reduce wind in the winter and therefore reduce natural gas usage.³⁷ But this argument ignores the definition of “energy efficiency.” The Act defines “energy efficiency” by reference to a provision of section 216B.241 that has since been repealed and moved, “subdivision 1, paragraph (f).” Prior to repeal, this definition stated: “‘Energy efficiency’ means measures or programs, including energy conservation measures or programs, that target consumer behavior, equipment, processes, or devices designed to produce either an absolute decrease in consumption of electric energy or natural gas or a decrease in consumption of electric energy or natural gas on a per unit of production basis without a reduction in the quality or level of service provided to the energy consumer.”³⁸ Similarly, the definition of energy efficiency in section 216B.241 that has been moved to section 216B.2402, states in subdivision 7, “‘Energy efficiency’ means measures or programs, including energy conservation measures or programs, that: (1) target consumer behavior, equipment, processes, or devices; (2) are designed to reduce the consumption of electricity or natural gas on either an absolute or per unit of production basis; and (3) do not reduce the quality or level of service provided to an energy consumer.”³⁹ Under either the repealed cross-referenced subdivision, or the new definition of “energy efficiency” as applied to section

³⁷ July 23, 2024 Hearing Video at 4:24:30 – 4:25:30
https://minnesotapuc.granicus.com/player/clip/2400?view_id=2&redirect=true

³⁸ Minn. Stat. § 216B.241, subd. 1(f) (2020), *available at*
<https://www.revisor.mn.gov/statutes/2020/cite/216B.241>

³⁹ *See* 2021 Minn. Laws ch. 29, secs. 3, 19, *available at*
<https://www.revisor.mn.gov/laws/2021/0/29/#laws.0.19.0>

216B.241, tree-planting programs do not “target consumer behavior, equipment, processes, or devices” to decrease electricity or natural gas consumption.

The OAG understands that carbon sequestration and urban reforestation have a role to play in mitigating the worst impacts of climate change. And the OAG appreciates the work that Green Cities Accord and its tree-planting partners do throughout the Twin Cities. But the Legislature was clear as to the meaning of the “innovative resources” it wanted the NGIA to incentivize. The Legislature limited these resources to eight specifically defined items in the Act. Pilot G does not meet any of these definitions. The Legislature did not include resources that pull carbon from the atmosphere, instead choosing to focus on point-source carbon-capture technologies such as those included in CenterPoint’s Pilot H.⁴⁰

II. THE COMMISSION’S ORDER FAILS TO ENGAGE WITH THE STATUTE’S LANGUAGE AND THE ANALYSIS IT DOES PROVIDE IS MISPLACED.

In light of the foregoing analysis, the Commission’s order contains material errors and omissions that should be corrected. First, the order fails to directly address the definition of “carbon capture,” while at the same time tacitly acknowledging that tree-planting does not meet this definition. Second, the order incorrectly suggests that the relatively small cost of Pilot G and the potential to revisit the interpretation of carbon capture in future cases relieve CenterPoint of its obligation to follow the law in this case. Last, the order’s finding that Pilot G will further the goals of the NGIA by reducing gas throughput ignores that trees must grow for 25 years before they are large enough to shelter homes and reduce winter heat loss. And even if Pilot G reduced gas throughput in the foreseeable future, this would not bring it within the NGIA’s definition of

⁴⁰ See CenterPoint Initial Filing, Ex. B at 3 (describing CarbinX carbon capture systems as connecting to existing natural gas heating systems to capture CO₂).

“carbon capture” or “innovative resource.” The letter of the law cannot be ignored in pursuit of the law’s spirit.⁴¹

Faced with a dispute over whether tree planting meets the NGIA’s definition of “carbon capture,” the Commission concludes that it “is unpersuaded that this first application of the statute calls for its narrowest reading.”⁴² This analysis, however, fails to explain how the Commission resolved the dispute or what less “narrow” reading of the statute it actually adopted. This omission is problematic since there is no reasonable reading of the statute under which “carbon capture” includes tree planting. Indeed, the Commission essentially concedes that tree planting does not meet the carbon-capture definition where it describes how trees combat climate change: “by absorbing—or capturing—carbon dioxide *from the air* and releasing oxygen.”⁴³ In other words, trees do not “capture carbon that would otherwise be released into the atmosphere”; they capture carbon that is already in the air. Thus, by the Commission’s own admission, Pilot G does not involve carbon capture as defined by the NGIA, and Commission does not point to an alternative provision under which tree planting can be considered an “innovative resource.”

The Commission’s other justifications for approving Pilot G similarly fail to address the underlying problem—the lack of authority to approve a project that does not meet the NGIA’s definition of an “innovative resource.” The order states, “Other approaches to carbon capture may be more reasonable in future iterations of innovation plans, but those will be explored upon reflection of the pilot’s effectiveness and continuing examination of the issues, which will facilitate careful consideration of possible program refinements or changes.”⁴⁴ The fact that the

⁴¹ See *Cocchiarella*, 884 N.W.2d at 624.

⁴² CenterPoint NGIA Order at 13.

⁴³ *Id.* at 12 (emphasis added).

⁴⁴ *Id.* at 13.

Commission’s interpretation here may be revisited in a future case, however, does not change the fact that it is erroneous. The order also recognizes “the importance of minimizing ratepayer impacts” and finds that “the level of spending/budget allocation related to this pilot is reasonably minimal, while furthering important public policy goals.”⁴⁵ While the OAG appreciates the Commission’s attention to minimizing ratepayer impacts, no amount of ratepayer impact is acceptable for a pilot that does not meet the requirements of the statute.

Last, the Commission’s finding that Pilot G furthers the NGIA’s goal of reducing gas throughput lacks a factual basis. The order states: “In winter, trees can shelter homes from wind that causes heat loss, thereby reducing the need to operate gas-fired furnaces as often. In that way, planting trees could reduce natural gas throughput, a goal of the NGIA.”⁴⁶ The finding that Pilot G will further the goals of the NGIA by reducing gas throughput ignores that this benefit will not materialize until the trees have grown for 25 years. The carbon offsets CenterPoint seeks to purchase are tied to tree planting projects conducted by Minneapolis Parks and Recreation Board, Hennepin County, and the City of St. Paul between 2021 and 2023.⁴⁷ While the cities and counties point to carbon offsets for the trees and various “co-benefits,” such as air quality and energy use for heating and natural gas,⁴⁸ they acknowledge that “co-benefits” are not provided until the trees

⁴⁵ CenterPoint NGIA Order at 13.

⁴⁶ *Id.* at 12.

⁴⁷ See <https://greencitiesaccord.org/work/partnerships/minneapolis-park-recreation-board/>; <https://greencitiesaccord.org/work/partnerships/hennepin-county-carbon-offset-partnership/>; <https://greencitiesaccord.org/work/partnerships/city-of-st-paul/>

⁴⁸ See, e.g., <https://www.cityforestcredits.org/carbon-credits/carbon-registry/minneapolis-forest-carbon-offsets-3-forest-carbon-offsets/> (“Trees planted as part of this project will provide ecosystem services, also known as co-benefits, when they reach 25 years old.”). This webpage can be navigated from <https://greencitiesaccord.org/work/partnerships/minneapolis-park-recreation-board/> by clicking on the “Project 2023” hyperlink under “Project documents.”

reach 25-years old.⁴⁹ It is not clear what Minnesota’s residential and commercial heating systems will look like in 2046, 2047, and 2048 (25 years after the plantings). By that time, the level of geologic gas in CenterPoint’s distribution system may be insignificant; if so, reducing throughput at that point would no longer contribute meaningfully to the NGIA’s goal of “reduc[ing] the overall amount of natural gas produced from conventional geologic sources delivered to customers.”⁵⁰ Indeed, such a future is the ultimate goal of the NGIA. Approving Pilot G based on a benefit that will not materialize if the NGIA is successful in meeting its stated goal appears unreasonable.

CONCLUSION

The OAG respectfully requests that the Commission reconsider its decision and correct the material legal error of authorizing a pilot that is not related to the development or provision of an innovative resource. The Act’s definition of “carbon capture” requires that these innovative resources capture carbon emissions that “would otherwise be released into the atmosphere” and does not apply to resources that only pull carbon that already exists in the atmosphere. The Commission should therefore remove Pilot G from CenterPoint’s NGIA. The pilot’s removal will not significantly impact the learnings or function of CenterPoint’s overall plan. As an alternative to Pilot G, however, the Commission could require CenterPoint to propose a new pilot program that captures greenhouse gas emissions that “would otherwise be released into the atmosphere,” or provides an innovative resource that benefits populations that are most impacted by the negative effects of climate change.

⁴⁹ *See id.* (“Trees planted as part of this project will provide ecosystem services, also known as co-benefits, when they reach 25 years old.”).

⁵⁰ Minn. Stat. § 216B.2427, subd. 10.

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Respectfully submitted,

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