

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: **June 19, 2015** Agenda Item #__8*

Company: Propane Storage Developers

Docket No. E,G999/CI-14-423

**In the Matter of the Commission Investigation Regarding the
Appropriate Regulatory Response to Propane Storage Projects**

Issue(s): Should the Commission extend the time for propane-storage developers to request a variance to Minnesota Rules, part 7853.0010, subp. 23 which excludes propane from the definition of synthetic gas? Should the Commission take some other action?

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Background Documents

Minn. Statutes § 216B.243, Subd. 3 and Minn. Stat. § 216B.2421, Subd.2
Minn. Rule Part 7853.0010, Subd. 23 - Definition of Synthetic Gas

Commission Order – Establishing Variance Procedures June 19, 2014
CHS Inc. - Comments June 2, 2015
DOC DER – Comments June 2, 2015
Cooperative Network – Comments: Response to Propane Storage Projects June 2, 2015
PUC – Public Comment (Minnesota Propane Association *Filed on June 9*) June 10, 2015

The attached materials are work papers of the Commission staff. They are intended for use by the Minnesota Public Utilities Commission (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 extend the time for propane-storage developers to request a variance to Minnesota Rules, part 7853.0010, subp. 23 which excludes propane from the definition of synthetic gas? Should the Commission take some other action?

II. Project Overview and History

On May 21, 2014, the Minnesota Department of Commerce (the Department) filed a letter stating that new propane-storage facilities were being proposed to address an anticipated propane shortage during the upcoming harvest and heating seasons. To help ensure that these projects could be constructed expeditiously, the Department recommended that the Commission temporarily vary Minnesota Rules chapter 7853 to exempt the proposed facilities from the requirement to obtain a certificate of need.

Between June 2 and 10, 2014, several industry stakeholders filed comments supporting the Department's request.

On June 19, 2014, the Commission issued its Order Establishing Variance Procedures (Order) which allowed new propane storage developers a period of one year to request a project-specific variance to Minn. Rule chapter 7853. The Commission required the developers to submit a specific list of information in their variance request.

In that Order the Commission found that urgent action was appropriate to address the need for near term, additional propane supplies. As described in Governor Dayton's executive order 14-02 and elsewhere in the record, several factors contributed to the need for immediate action.¹ Those factors included:

- seasonal spikes in propane demand,
- the potential for extreme cold weather like experienced in the winter of 2013–2014,
- the repurposing of the Cochin Pipeline (which previously provided Minnesota with roughly 40% of its propane supplies), and,
- decreased supply due to transportation constraints.

The Commission considered other possibilities (other than a variance) for expediting the approval of propane projects including: informal or expedited Commission proceedings under 7829.1200, expedited rulemaking under Minn. Stat. §§ 14.385–.389; and rulemaking generally, however, none of these options would allow propane distributors to have increased storage capacity available for distribution when it is needed or to prevent a propane shortage in time for the harvest season and winter heating months.

Shortly after the Commission's Order was issued, the Commission approved four certificate of need variances for proposed propane storage developments – See Table 1, below.² Since July

¹ See Executive Order No. 14-02.

² See Commission Dockets CN-14-505 (Pirkl Gas), CN-14-506 (CHS), CN-14-527 (Border States), and CN-14-528 (New Horizon Coop).

2014, staff has received phone calls, generally, about the variance process and potential new developments – but no additional request for variances have been submitted.

Table 1. Commission Approved Variances Since June 19, 2014

Docket	Developer	City	Approval Date	New Installation (gallons)	Total Onsite (gallons)
14-528	New Horizons Coop	Norcross	7/7/14	30,000	116,000
14-527	Border States Coop	Beardsley	7/25/14	120,000	150,000
14-506	CHS, Inc.	Glenwood	7/25/14	1,080,000	1,350,000
14-505	Pirkl Gas, Inc.	Owatonna	6/27/14	180,000	180,000
Total New Capacity (Subject to CN Requirements)				1,410,000	

Last, during the 2015-2016 legislative session, several bills were proposed to amend the definition of a Large Energy Facility under Minn. Stat. § 216B.2421 to remove propane storage as a regulated activity. The (existing) controlling law and proposed 2015 legislative amendments are described further below under III. Regulatory Authority. As of the release of these briefing papers, a special session has not yet been called by the Governor. As such, no changes to these provisions have been enacted at this time.

The Commission solicited comments on whether the variance should be extended. Comments in support of the variance were submitted by the Department of Commerce (Department), CHS, Inc., and the Cooperative Network. Responsive comments were filed by the Minnesota Propane Association.

III. Regulatory Authority

Minnesota Statutes section 216B.243 provides that “[n]o large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need.”³ Section 216B.2421 lists several types of large energy facilities, including “any facility designed for or capable of storing on a single site more than 100,000 gallons of liquefied natural gas or synthetic gas.”⁴

These statutes do not define the term “synthetic gas.” However, the Commission has defined “synthetic gas” to include propane. Minnesota Rules part 7853.0010 states:

“Synthetic gas” means flammable gas created from gaseous liquid, or solid hydrocarbons, or other organic or inorganic matter. Synthetic gas shall include ethane, **propane**, butane, or their mixtures, whether extracted from gas streams lifted from oil and gas wells or produced at refineries or fuel conversion plants. It

³ Minn. Stat. § 216B.243, subd. 2.

⁴ Minn. Stat. § 216B.2421, subd. 2(6).

shall also include hydrogen or methane produced at conversion plants.⁵ [emphasis added]

Thus, the Commission's rules require that the developer of a propane-storage project with a capacity of more than 100,000 gallons apply for and receive a certificate of need before constructing the facility.

An example of the proposed legislation that attempted to remove propane storage facilities, HF 550 proposed:

- 2.28 **Subd. 2. Large energy facility.** "Large energy facility" means:
- 2.29 (1) any electric power generating plant or combination of plants at a single site with
- 2.30 a combined capacity of 50,000 kilowatts or more and transmission lines directly associated
- 2.31 with the plant that are necessary to interconnect the plant to the transmission system;
- 2.32 (2) any high-voltage transmission line with a capacity of 200 kilovolts or more and
- 2.33 greater than 1,500 feet in length;
- 3.1 (3) any high-voltage transmission line with a capacity of 100 kilovolts or more with
- 3.2 more than ten miles of its length in Minnesota or that crosses a state line;
- 3.3 (4) any pipeline greater than six inches in diameter and having more than 50 miles of
- 3.4 its length in Minnesota used for the transportation of coal, crude petroleum or petroleum
- 3.5 fuels or oil, or their derivatives;
- 3.6 (5) any pipeline for transporting natural or synthetic gas at pressures in excess of
- 3.7 200 pounds per square inch with more than 50 miles of its length in Minnesota;
- 3.8 (6) any facility designed for or capable of storing on a single site more than 100,000
- 3.9 gallons of liquefied natural gas or synthetic gas, excluding propane storage facilities;
- 3.10 (7) any underground gas storage facility requiring a permit pursuant to section
- 3.11 103I.681;
- 3.12 (8) any nuclear fuel processing or nuclear waste storage or disposal facility; and
- 3.13 (9) any facility intended to convert any material into any other combustible fuel and
- 3.14 having the capacity to process in excess of 75 tons of the material per hour.

IV. Initial Comments

A. Department of Commerce

The Department of Commerce recommended the Commission extend the time for variance requests for an additional year. The Department stated it remains unclear as to whether the increased storage capability is sufficient to ensure adequate supply during an extreme heating season such as the one experienced in 2013-2014 and therefore an extension is supported by the Department.

B. CHS Inc.

CHS Inc. (CHS), an agricultural cooperative, which sells propane to other cooperatives, retailers, wholesalers - and in its retail division, directly to end users - filed comments in support of an

⁵ Minn. R. 7853.0010, subp. 23.

extension of the variance. CHS's comments provided a detailed overview of the history and factors leading up the Commission's authorization of a variance and an overview of the changes in the Minnesota propane industry and Minnesota storage capacity since the Commission's June 2014 Order.

CHS indicated that the propane industry has worked to expand propane storage in Minnesota. In 2014, CHS sold 130 – 30,000 gallon storage tanks (four million gallons of storage) to facilitate increased distributed propane storage.⁶

CHS argued that it is still too early to determine whether the storage and supply limitations faced during the 2013-2014 winter have been fully rectified. CHS provided that many of the conditions that contributed to the crisis still exist, conditions which included limited bulk and distributed storage and the ongoing conversion to rail and truck transport [in lieu of pipeline transport].

CHS does not believe it will be clear whether the situation is remedied for at least another 12-months, and therefore, it requests an additional 12-month variance to the certificate of need rules. CHS believes that it will take at least that long to assess the current state of the propane storage and supply situation, since:

- 1) the tanks purchased for distributed storage are facing a six-month wait to be installed due to the demand for skilled workforce necessary for installation;
- 2) only one (relatively mild) winter has passed since the crisis; and
- 3) only one (less intensive) crop drying season has passed since the crisis.

These factors contribute to CHS's recommendation that the Commission keep the variance in place for another 12-months to allow the propane industry to better evaluate the situation and to allow for CHS, and the industry, to react and rectify any additional storage shortages in early 2016.

Last, CHS argued that the Commission should extend the variance process for at least 12-months while the Legislature, in special session or the next legislative session, is still actively considering the policy change to exclude propane from the definition of synthetic gas.

Regarding the Commission's criteria it must consider when varying a rule (outlined in Minn. Rule 7829.3200) - CHS argued that:

- 1) Enforcement of the rule would impose an unnecessary burden on CHS, its customers and their end users, and an unnecessary risk on Minnesota residential and agricultural customers who rely on propane.
- 2) Maintaining the variance would not adversely affect the public interest and instead it would allow the propane industry sufficient time to determine whether there is a need for additional storage and time to construct that storage if necessary.
- 3) The variance does not conflict with standards imposed by law.

⁶ These storage tank installations, at different locations, do not trigger the certificate of need criteria until they surpass 100,000 gallons of storage at a single site.

C. Cooperative Network

Cooperative Network, an association comprised of multiple types of member-owned cooperatives – including fuel cooperatives supplying propane fuel to rural homes and businesses – provided comment in support of a one year extension to the certificate of need variance. Cooperative Network argued that due to the Cochin Pipeline reversal in 2014, the need for additional propane storage is ongoing. Therefore large propane storage projects under consideration now might not be in operation to meet the demand of the upcoming crop drying season and home heating season if the variance is not extended. Cooperative Network also argued that a one year extension would allow the Minnesota legislature time to consider clarification of the applicable statutes.

V. Reply Comments

A. Minnesota Propane Association

The Minnesota Propane Association filed comment and recommended the Commission extend the variance for another year to allow correction of the definition of synthetic gas and noted it does not believe the variance would not pose any risk to the general public.

VI. Staff Discussion

Previous and New Propane Storage Constraints

While the last crop-drying and heating season (2014-2015) did not rise to the crisis level of 2013-2014, staff agrees with the Department and industry commenters that an extension of the variance for a period of one year may be warranted.

First, the loss of the Cochin pipeline, a significant source of the state's propane supply, is likely to have effects that cannot be fully realized within the first year of its reversal. Second, a variance would provide sufficient time to allow propane storage and supply in Minnesota to either stabilize, or expose a need for additional storage in the event of high demand for grain drying or high demand for residential heating.

The variance would provide the necessary flexibility to install additional storage capacity in the short term (until June 2016) and would not result in excess capacity since the variance will expire or be reevaluated by the Commission in 2016.

Last, as provided by CHS, due to the increased storage tank installation demand, a six month back log exists – which may continue to constrain supply in the short term.

Variance Criteria

Under Minnesota Rules part 7829.3200, the Commission may vary any of its rules upon making the following findings:

1. Enforcing the rule would impose an excessive burden upon the applicant or others affected by the rule;
2. Granting the variance would not adversely affect the public interest; and
3. Granting the variance would not conflict with any standards imposed by law.

Staff believes that enforcing Minn. R. 7853.0010, subp. 23, would impose an excessive burden on propane dealers, by jeopardizing their ability to secure adequate supplies under certain conditions, and on propane users, by potentially jeopardizing their crop-drying operations and their ability to heat their homes, businesses, schools, and other facilities during the coming fall and winter if another extreme weather (cold or wet) situation arises.

Staff believes that granting a variance would not adversely affect the public interest but rather would serve the public interest by ensuring that adequate propane supplies can be available when needed in the short term. And, finally, the Commission has found previously that granting the variance would not conflict with standards imposed by law.

VII. Commission Decision Alternatives

Propane Variance Extension

1. Authorize the extension of the variance process outlined in the Commission's June 19, 2014 Order to be extended for a period of one year, set to automatically expire on June 20, 2016.
2. Take no action (and allow the variance process to expire on June 19, 2015).

Staff Recommendation: 1