
**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 North Robert Street
St. Paul, Minnesota 55101**

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 7th Place East
Suite 350
St. Paul, Minnesota 55101-2147**

**MPUC Docket No. G-004/GR-19-511
OAH Docket No. 65-2500-36528**

*In the Matter of a Petition by Great Plains Natural Gas Co.,
a Division of Montana-Dakota Utilities Co.,
for Authority to Increase Natural Gas Rates in Minnesota*

**INITIAL BRIEF
OF THE OFFICE OF THE ATTORNEY GENERAL—
RESIDENTIAL UTILITIES DIVISION**

April 10, 2020

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BRIEF OF THE OFFICE OF THE ATTORNEY GENERAL

INTRODUCTION

The Office of the Attorney General—Residential Utilities Division (“OAG”) respectfully submits its Initial Brief contesting Great Plains Natural Gas Company’s (“Great Plains” or “the Company”) request to increase rates for natural gas service. Great Plains’ request is excessive and would not result in rates that are just and reasonable.

To protect the interests of Great Plains’ residential and small-business ratepayers, the Administrative Law Judge (“ALJ”) and the Minnesota Public Utilities Commission (“Commission”) should:

1. Reduce Great Plains’ test-year expenses by \$11,964 to disallow recovery of membership dues for the Edison Electric Institute and the Minnesota Utility Investors, Inc. because Great Plains has not proven that membership in these organizations is reasonable and necessary for the provision of utility service; and
2. Maintain the customer charges at their current levels for the residential and small-business classes to encourage energy conservation and maximize customers’ control over their bills.

I. PROCEDURAL HISTORY

On September 27, 2019, Great Plains filed this request to increase rates for natural gas service in Minnesota by \$3.64 million.¹ In a series of orders issued on November 22, 2019, the Commission accepted Great Plains' request as substantially complete, suspended the rate increase pending the Commission's investigation into the merits of the request, and established interim rates. The Commission also referred the matter to the Office of Administrative Hearings for a contested-case proceeding. Administrative Law Judge Ann C. O'Reilly held public hearings in Marshall and Fergus Falls on February 24, 2020, and conducted an evidentiary hearing on March 10, 2020.

II. RATE CASE OVERVIEW

Great Plains is an operating division of Montana-Dakota Utilities Co., a subsidiary of publicly traded parent company MDU Resources Group, Inc. ("MDU").² In its proposed rate increase, the Company seeks to recover \$1.97 million, or approximately 54.3 percent, of the total increase of \$3.64 million from the residential class.³ Great Plains proposes to raise the residential customer charge from \$7.50 per month to approximately \$9 per month,⁴ and the small-business customer charge from \$23 per month to approximately \$27.50 per month.⁵ The Company chose a 2020 test year, based on "actual financial information for the calendar year 2018 adjusted for known and measurable changes through year end 2019 and projected 2020."⁶

¹ Ex. GP-10 at 4–5 (Kivisto Direct).

² See Press Release, MDU Resources Group, Inc., MDU Resources Completes Holding Company Reorganization (Jan. 2, 2019), <https://www.mdu.com/file/Index?KeyFile=396246705>.

³ Ex. GP-2, Statement E, sched. E-1 at 2.

⁴ Ex. GP-25 at 18 (Hatzenbuhler Direct).

⁵ *Id.*

⁶ Ex. GP-10 at 2 (Kivisto Direct).

III. LEGAL STANDARD

Great Plains has the burden to prove that its request to increase rates is just and reasonable.⁷ To satisfy this standard, Great Plains must show that the evidence in this case justifies its request “when considered together with the Commission’s statutory responsibility to enforce the state’s public policy that retail consumers of utility services shall be furnished such services at reasonable rates.”⁸ If the Commission agrees with the OAG or the Department that portions of Great Plains’ request are unreasonable, then the Commission should deny those portions of Great Plains’ request.

Additionally, even if the Commission finds the OAG’s or Department’s arguments unpersuasive on an issue, Great Plains must still produce evidence that its request is just and reasonable.⁹ Discussing the utility’s burden of proof, the Minnesota Supreme Court held that

[B]y merely showing that it has incurred, or may hypothetically incur, expenses, the utility does not necessarily meet its burden of demonstrating that it is just and reasonable that the ratepayers bear the costs of those expenses.¹⁰

In addition to showing that it will incur costs, Great Plains must prove that it is reasonable and necessary for ratepayers to pay for them.¹¹ Further, if the Commission has doubts about the reasonableness of the rate increase after reviewing all of the evidence presented, Minnesota law requires that those doubts must be resolved in the favor of consumers. Great Plains has the burden of producing evidence that each portion of its request is reasonable, and Minnesota law requires that the Company’s request be denied in every instance that it fails to do so.¹²

⁷ See Minn. Stat. § 216B.16, subd. 4; *see also* Minn. Stat. § 216B.03.

⁸ *In re Minn. Power & Light Co.*, 435 N.W.2d 550, 554 (Minn. Ct. App. 1989).

⁹ Minn. Stat. § 216B.16, subd. 4; *see also* Minn. Stat. § 216B.03.

¹⁰ *In re N. States Power Co.*, 416 N.W.2d 719, 722–23 (Minn. 1987).

¹¹ See Minn. Stat. § 216B.16, subd. 4; *see also* Minn. Stat. § 216B.03.

¹² See Minn. Stat. § 216B.16, subd. 4; *see also* Minn. Stat. § 216B.03.

ANALYSIS

Although Great Plains’ operating footprint in Minnesota is relatively small, the potential rate impact on individual residential ratepayers from this case is significant. For example, the Company’s proposal would increase residential rates by nearly 19.5 percent, a greater percentage increase than proposed for any other customer class.¹³ Given this impact on residential ratepayers, it is important to remember that the size of the utility has no bearing on the evidence it must show to prove its case. Regardless of the utility’s size, or the size of the requested rate increase, the utility proposing the increase has the burden of proof to show that such a request is just and reasonable.¹⁴

In this case, Great Plains has not met its burden in at least two areas. First, the Company has not demonstrated that its revenue requirement is reasonable because it includes membership dues that are neither reasonable nor necessary for the provision of electric utility service. Second, Great Plains’ proposal to increase residential and small-business customer charges is unreasonable because it gives insufficient weight to encouraging energy conservation and preserving customers’ ability to pay.

I. REVENUE REQUIREMENT

The ALJ and the Commission must first determine whether Great Plains’ claimed need for additional revenue—its test-year revenue requirement—is reasonable. The OAG has identified two components of the proposed revenue requirement that the Company has not established should be recovered from its ratepayers. Specifically, Great Plains proposes to recover from ratepayers membership dues paid to the Edison Electric Institute (“EEI”) and the Minnesota Utilities Investors, Inc. (“MUI”). For the reasons discussed below, the ALJ and

¹³ Ex. GP-2, Statement E, sched. E-1 at 2.

¹⁴ See Minn. Stat. § 216B.16, subd. 4; *see also* Minn. Stat. § 216B.03.

Commission should deny the Company's request to recover membership dues for these organizations.

A. GREAT PLAINS' GAS CUSTOMERS SHOULD NOT PAY MEMBERSHIP DUES FOR AN ELECTRIC ORGANIZATION.

It is a central tenet of utility law that ratepayers only pay for those expenses that are reasonable and necessary for the provision of utility service.¹⁵ Conversely, the Commission must disallow recovery of expenses, such as membership dues or lobbying expenses, if it determines those expenses to be “unreasonable or unnecessary for the provision of utility service.”¹⁶ Thus, it should be uncontroversial to state that Great Plains' natural gas customers should not pay for electric organization dues. Yet that is exactly what Great Plains asks them to do. After touting the positives of EEI in terms of the benefits the organization provides to *electric* utilities and describing the EEI as “the association that represents all U.S. investor-owned *electric* companies,”¹⁷ Great Plains' witness Mr. Travis Jacobson still declared in direct testimony that “membership dues for organizations not directly related to Minnesota gas operations have been eliminated.”¹⁸

Even assuming that the membership dues paid by the Company relate to EEI's affiliate, the Utility Solid Waste Activities Group (“USWAG”),¹⁹ as Great Plains claims in its rebuttal testimony, this does nothing to bolster the Company's recovery claim. Great Plains' late disclosure of this information limited the OAG's opportunity to conduct due diligence and test the veracity of Great Plains' assertions.²⁰ For example, the OAG was unable to determine whether there were lobbying expenses included in Great Plains' USWAG payment given the

¹⁵ Minn. Stat. § 216B.16, subd. 17(a).

¹⁶ *Id.*

¹⁷ Ex. GP-21 sched. TRJ-1 at 2 (Jacobson Direct) (emphasis added).

¹⁸ Ex. GP-21 at 22 (Jacobson Direct).

¹⁹ Ex. GP-23 at 3 (Jacobson Rebuttal).

²⁰ Ex. OAG-2 at 7–8 (Lebens Surrebuttal).

selective timing of Great Plains' disclosure.²¹ Furthermore, without identifying even a single concrete benefit to ratepayers, Great Plains asserts in rebuttal testimony that EEI dues should be allowed because the Company uses USWAG "in a number of ways" for its natural gas operations.²² Again, Great Plains' late introduction of the USWAG information impeded the OAG's ability to explore the legitimacy of the Company's statements, or question how Great Plains actually utilizes USWAG or whether that use actually benefits ratepayers.²³

The Minnesota employee-expense statute unequivocally places the burden of proof on Great Plains to demonstrate that any expenses it seeks to recover from ratepayers are reasonable and necessary for the provision of natural gas utility service.²⁴ This burden is particularly important when the Company times disclosure of its information in a manner that compromises the OAG's role as a ratepayer advocate. As admitted by Great Plains' witness Mr. Jacobson, his direct testimony was incomplete and should have provided more information about USWAG.²⁵ The provision of this information in rebuttal testimony amounts to too little too late and does nothing to assuage the OAG's concerns about the unsuitability of recovering EEI dues from ratepayers. Therefore, based on the current record, and as maintained by OAG witness Mr. Brian Lebens, it is not reasonable to ask Great Plains' *gas* ratepayers to pay costs associated with an *electric* industry association, no matter how minimal these costs may seem.²⁶

B. GREAT PLAINS' RATEPAYERS SHOULD NOT PAY MEMBERSHIP DUES FOR AN ASSOCIATION WHOSE SOLE PURPOSE IS TO FURTHER THE INTERESTS OF UTILITY INVESTORS.

MUI suffers from the same ratepayer disconnect as EEI. Except this time it is not the type of utility service that's at issue, it's the group of individuals for whom the organization

²¹ *Id.* at 8.

²² Ex. GP-23 at 3 (Jacobson Rebuttal).

²³ Ex. OAG-2 at 7-8 (Lebens Surrebuttal).

²⁴ Minn. Stat. § 216B.16, subd. 17(a).

²⁵ Ex. GP-24 at 3 (Jacobson Summary).

²⁶ Ex. OAG-1 at 8 (Lebens Direct).

advocates. In particular, MUI is a grassroots association established to pursue the interests of utility *investors*, not utility *customers*.²⁷ As described by Great Plains witness Mr. Jacobson in direct testimony, MUI is an organization that exists to

represent the interests of individuals and business investors owning shares in utility companies operating in Minnesota. MUI's principal objective is to enhance the voice and impact of utility shareholders in the development of federal, regional and state legislative and regulatory policy.²⁸

Great Plains acknowledges that MUI's name implies a singular focus,²⁹ but asserts that asking its ratepayers to pay MUI dues is justified because the organization focuses on legislation and regulatory policy that impacts utilities and their customers.³⁰ Great Plains further argues that reducing MUI dues beyond the 35 percent that the organization has identified as lobbying fees would “unfairly harm the Company.”³¹ Yet, Great Plains fails to produce a single shred of evidence to support its claims. Department witness Ms. Angela Byrne said as much in her surrebuttal testimony, stating that Mr. Jacobson “provided no documentation to substantiate his statements”³²—not an invoice, not a calculation, nothing.³³

The OAG and the Department agree that there is good reason to disallow MUI membership dues. The OAG believes the old adage that a picture is worth a thousand words. As emblazoned on its banner, MUI's mission is unambiguously clear—“Minnesota Utility

²⁷ *Id.* In fact, MUI itself has emphasized the divide, requesting at a 1993 hearing that “shareholders’ interests be considered along with ratepayers’ interests when rates are being set,” and asserting that the Commission “was not giving enough weight to shareholders’ interests.” See *In the Matter of the Petition of Northern States Power Company (NSP) for Authority to Increase Its Rates for Electric Service in Minnesota*, Docket No. E-002/GR-92-1185, Findings of Fact, Conclusions and Recommendation – Part I (Revenue Requirements) at 5 (July 16, 1993).

²⁸ Ex. GP-21 sched. TRJ-1 at 3 (Jacobson Direct).

²⁹ Ex. GP-23 at 2 (Jacobson Rebuttal).

³⁰ *Id.* at 2–3.

³¹ *Id.* at 3.

³² Ex. DER-14 at 7 (Byrne Surrebuttal).

³³ *Id.*

Investors: Representing the Interests of Utility Shareholders.”³⁴ As succinctly stated in Mr. Lebens’ surrebuttal testimony, the only impact MUI has on utility customers is higher prices,³⁵ which come by way of increased rate-case expense requests as they have here. According to the Department, MUI’s primary focus is to empower utility shareholders in the regulatory policymaking process.³⁶ As aptly noted by the Department, “[s]hareholders have no duty to ratepayers, fiduciary or otherwise, and therefore would not be required to use the information and/or support provided by MUI in the best interest of ratepayers.”³⁷

Once more, Great Plains has failed to meet its burden of proof.³⁸ If the statute were not sufficiently clear regarding Great Plains’ obligation to meet its burden, the Commission’s Statement of Policy on Organization Dues certainly is, stating in pertinent part,

The Commission does not feel it can impose on customers the expense of dues when it *has not been shown that customers receive any benefit from the organizations receiving the dues*, as may be the case when the organizations are lobbying or social in purpose, or where there is no connection between the expense and reasonable and reliable utility service.³⁹

Great Plains should not be allowed to recover 50 percent, or any other percentage, of its MUI dues. Contrary to Great Plains’ assertions, MUI provides benefits only to *utilities*, not to their *customers*. To the extent the ALJ or the Commission may entertain doubts about whose interests these organizations prioritize, or whether there are, in fact, discernable customer benefits, the OAG respectfully reminds the ALJ and the Commission that any doubt as to

³⁴ Ex. OAG-2 at 9 (Lebens Surrebuttal).

³⁵ *Id.* at 8.

³⁶ Ex. DER-6 at 9 (Byrne Direct).

³⁷ *Id.*

³⁸ See Minn. Stat. § 216B.16, subd. 17(a).

³⁹ Ex. DER-14 sched. ACB-S-1 at 2 (Byrne Surrebuttal) (emphasis added). Notably, both Otter Tail Power and CenterPoint Energy have previously agreed to remove MUI costs from their rate cases, and CenterPoint Energy has elected not to include MUI dues in its current rate case. Ex. OAG-1 at 8 (Lebens Direct); see also *In the Matter of the Application of CenterPoint Energy Resources Corp. for Authority to Increase Rates for Natural Gas Utility Service in Minnesota*, Docket No. G-008/GR-19-524, Direct Testimony of Mary Kirk at 21 (Oct. 28, 2019).

reasonableness is to be resolved in favor of the ratepayer.⁴⁰ It is undeniably inappropriate to ask ratepayers to foot the bill for an organization like MUI, whose purpose is to pursue interests that run directly counter to the ratepayers' own.⁴¹

II. RATE DESIGN

After determining the appropriate revenue requirement for Great Plains, the ALJ and Commission will need to decide how the Company may collect that revenue from customers, in two steps. The first step is to apportion responsibility for a share of the revenue requirement to each of Great Plains' customer classes. The second step is to establish specific rates for each class through the quasi-legislative process of rate design.

The OAG takes no position on revenue apportionment in this case but instead focuses its recommendation on rate design, and in particular, on the design of residential and small-business⁴² rates. Both rates have three main components:⁴³

1. A "basic service charge," expressed in dollars per month, which is the minimum amount a customer will be billed in a single month even if the customer consumes no gas;⁴⁴
2. A "distribution charge," expressed in dollars per dekatherm of gas consumed;⁴⁵ and
3. The cost of gas, expressed in dollars per dekatherm and adjusted each month to reflect Great Plains' actual costs to procure a supply of natural gas for its customers.

⁴⁰ See Minn. Stat. § 216B.03.

⁴¹ See, e.g., Ex. DER-14 at 9 (Byrne Surrebuttal) ("Great Plains' identification of customer benefits was limited to a statement that the MUI dues support efforts that have an impact on legislation and regulatory policy; however, it is likely that such efforts are focused on shareholder, and not necessarily ratepayer, interests. Just because an elective activity has impact on regulatory policy does not mean that it is reasonable for the utility to recover the expense from ratepayers.").

⁴² This brief uses the descriptor "small business" to refer to the same class that Great Plains calls the "small firm general service" class.

⁴³ See Ex. GP-1 app. A at 5-40, -42, -70, -72 (Great Plains' current residential and small-business tariffs).

⁴⁴ This charge is more commonly referred to as the "customer charge" or "fixed charge."

⁴⁵ Parties also referred to this charge as the "volumetric charge."

Since the cost-of-gas component simply passes on to the customer the actual cost of procuring natural gas, the main rate-design decision for the residential and small-business classes is how to allocate the non-gas-related rate increase between the basic-service/customer charge and the distribution/volumetric charge.

In this case, Great Plains seeks to increase the residential customer charge from \$7.50 per month to \$9 per month and the small-business customer charge from \$23 per month to \$27.50 per month, and to convert both charges to a daily rate.⁴⁶ The Department agrees with the proposed increases, but not with the conversion to a daily rate.⁴⁷ The OAG concurs with the Department that customer charges should not be computed on a daily basis.⁴⁸ However, neither Great Plains nor the Department has shown that increasing the residential or small-business customer charge would result in a charge that is more just and reasonable than the current one. The Commission should therefore retain the existing charges.

A. THE COMMISSION’S TASK IN RATE DESIGN IS TO BALANCE COMPETING POLICY CONSIDERATIONS TO ACHIEVE A RATE STRUCTURE THAT IS JUST AND REASONABLE.

The pole star of utility ratemaking in Minnesota is the statutory requirement that every rate made must be “just and reasonable.”⁴⁹ Within this broad mandate, the Commission has wide latitude to balance a variety of competing policy goals.⁵⁰

The public-utility statute itself identifies several key rate-design considerations. A just and reasonable rate is “not . . . unreasonably preferential, unreasonably prejudicial, or

⁴⁶ Ex. GP-25 at 18 (Hatzenbuhler Direct).

⁴⁷ Ex. DER-4 at 50–51 (Zajicek Direct).

⁴⁸ The OAG opposed daily customer charges in Great Plains’ last rate case, when the Company requested and then abandoned the same conversion it seeks here. *See* Docket No. G-004/GR-15-879, OAG Initial Brief at 29 (May 6, 2016) (advocating that daily customer charges be rejected because they are confusing and counter to how other utilities bill their customers); Findings of Fact, Conclusions, and Order at 36 n.34 (Sept. 6, 2016) (noting that Great Plains withdrew its request for daily customer charges at the Commission hearing).

⁴⁹ Minn. Stat. § 216B.03.

⁵⁰ *See In re Inter-City Gas Corp.*, 389 N.W.2d 897, 901 (Minn. 1986) (stating that “the selection of an appropriate rate design is a quasi-legislative or policy determination”).

discriminatory, but . . . sufficient, equitable, and consistent in application to a class of consumers.”⁵¹ Similarly, no rate can provide an unreasonable preference or advantage to any person, nor can any rate unreasonably prejudice or disadvantage any person.⁵² Moreover, the Commission must set rates that encourage energy conservation “[t]o the maximum reasonable extent”⁵³ and must also consider ability to pay as a factor in setting rates.⁵⁴

The cost of providing service is an important consideration in rate design. However, as the National Association of Regulatory Utility Commissioners (“NARUC”) states in its *Gas Distribution Rate Design Manual*, “Utility rate design is more art than science. Even within a seemingly objective standard, such as cost of service based rates, there remains considerable latitude for judgment and personal value systems to affect the final result.”⁵⁵ The *NARUC Manual* goes on to discuss a number of noncost factors and policy goals that may influence the design of rates:

- Meeting the basic energy needs of certain residential customers at a subsidized rate;⁵⁶
- Controlling load;⁵⁷
- Addressing fuel-supplier competition;⁵⁸
- Making gradual changes to the utility’s existing rate structure;⁵⁹
- Responding to the political and economic climate;⁶⁰ and
- Addressing societal needs.⁶¹

⁵¹ Minn. Stat. § 216B.03.

⁵² Minn. Stat. § 216B.07.

⁵³ Minn. Stat. § 216B.03.

⁵⁴ Minn. Stat. § 216B.16, subd. 15.

⁵⁵ Ex. OAG-4 at 17 (hereinafter “NARUC Manual”).

⁵⁶ See NARUC Manual at 50–51 (discussing inverted-block and lifeline rates).

⁵⁷ See *id.* at 51–52 (discussing interruptible rates).

⁵⁸ See *id.* at 53–56 (discussing flexible rates and incentive rates).

⁵⁹ *Id.* at 56.

⁶⁰ See *id.* at 57 (noting that “the ratemaking process is subject to considerable public and political scrutiny” and that “[b]road governmental policy goals, such as business climate development” can have a significant impact on rates).

⁶¹ *Id.*

This discussion is not meant to suggest that all these factors apply to this case, but simply to illustrate that gas rate design is “not an abstract application of economic principles.”⁶² Given the many competing goals of rate design, there may be multiple potential rate structures that would be just and reasonable in a given case.⁶³ In such a situation, the Commission should select the rate design most favorable to the consumer.⁶⁴

B. THE COMMISSION HAS FOUND GREAT PLAINS’ CURRENT RESIDENTIAL AND SMALL-BUSINESS CUSTOMER CHARGES JUST AND REASONABLE, AND THE COMPANY’S DECISION TO FILE A RATE CASE DOES NOT ALTER THEIR REASONABLENESS.

In Great Plains’ last rate case, the Company sought to increase its residential customer charge from \$6.50 to \$9 and its small-business customer charge from \$20 to \$25.⁶⁵ The Commission, however, only allowed the Company to increase the charges in proportion to the increase in its overall revenue requirement.⁶⁶ This amounted to a \$1 increase, to \$7.50, for the residential class and a \$3 increase, to \$23, for the small-business class.⁶⁷ Implicit in this decision was a finding that these customer charges were just and reasonable.⁶⁸ Notably, the Commission found these charges just and reasonable even though Great Plains estimated its customer-related costs to be much higher.⁶⁹

In this case, Great Plains is again seeking a \$9 customer charge for the residential class and is requesting an even larger amount than last time, \$27.50, for the small-business class. But the Company has not identified any changed circumstances that would render the existing

⁶² *Id.*

⁶³ *See* Ex. DER-4 at 25 (Zajicek Direct).

⁶⁴ *See* Minn. Stat. § 216B.03 (providing that “[a]ny doubt as to reasonableness should be resolved in favor of the consumer”).

⁶⁵ *See* Docket No. G-004/GR-15-879, Findings of Fact, Conclusions and Order at 36 (Sept. 6, 2016) (listing proposed customer charges by class).

⁶⁶ *Id.* at 38.

⁶⁷ *See* Docket No. G-004/GR-15-879, Order Approving Final Revenue Apportionment and Rate Design, Updated Base Cost of Gas, and Interim-Rate Refund Petition at 5 (Dec. 22, 2016) (listing new customer charges).

⁶⁸ *See* Minn. Stat. § 216B.03.

⁶⁹ In the last case, Great Plains estimated the residential customer cost to be \$23 and the small-business customer cost to be \$27.42. *See* Docket No. G-004/GR-15-879, Direct Testimony of Adam Heinen at 46 (Feb. 23, 2016).

charges unreasonable. A customer-charge increase might make sense if Great Plains' need for more revenue were driven by an increase in the cost of connecting customers to its system. But Great Plains' claimed customer costs for the residential and small-business classes have not changed significantly since its last rate case.⁷⁰ Instead, the primary driver for the case was increased system-wide pipeline-integrity investments.⁷¹

Despite there being no significant increase in customer-related costs, Great Plains proposes to raise both the residential customer charge and the small-business customer charge by roughly 20 percent. The Company's justification is limited to a single paragraph:

The basis for the increased amounts to be collected through the Basic Service Charge component is the customer component identified in the class cost of service study. As demonstrated, the Company is proposing to mitigate the impact and rate shock of implementing a fully compensatory fixed charge rate at this time. Moving toward fully compensatory Basic Service Charges is consistent with the rate structure objectives noted above.⁷²

It is unclear what rate structure objectives Great Plains is referring to. But it appears that the Company's primary rate-design objective was "moving toward fully compensatory" customer charges, with a perfunctory nod to "rate shock." Great Plains overlooks several factors that override the need to move customer charges closer to "cost" in this case. Instead, as the following discussion demonstrates, maintaining the charges at their current levels is the most pro-consumer rate-design option before the Commission.

1. Maintaining the Existing Customer Charges Would Preserve a Strong Incentive to Conserve Energy.

With regard to section 216B.03's directive to encourage energy conservation, the Commission has stated,

⁷⁰ Compare *id.* with Ex. DER-4 at 49 tbl.6 (Zajicek Direct) (showing \$24.39 residential customer cost and \$27.62 small firm-general-service customer cost).

⁷¹ Ex. GP-10 at 6–10 (Kivisto Direct).

⁷² Ex. GP-25 at 20 (Hatzenbuhler Direct).

[C]ustomer charges do not vary with usage, and therefore no amount of conservation can reduce these costs. A significant increase in the customer charge can act as a disincentive to conservation, working at cross-purposes with the statutory directive that “[t]o the maximum reasonable extent, the commission shall set rates to encourage energy conservation.”⁷³

The use of the term “maximum reasonable extent” by the legislature means that it is not enough for the Commission to simply consider conservation in rate design; it must do so to the maximum reasonable extent.

No party to this case disputes that maintaining the existing customer charges would give customers a greater incentive to conserve energy than the Company’s proposal. As the OAG’s witness Mr. Lebens testified, “the algebra is clear—any increase to the fixed charge prevents costs from being allocated to the volumetric charge. Increases to fixed charges thus reduce the financial incentive for energy conservation.”⁷⁴ The Commission should find that this factor weighs in favor of maintaining the existing charges because any increase to the fixed customer charge would reduce the cost per therm, sending a weaker price signal to conserve energy.

Department witness Mr. Michael Zajicek agrees that leaving the residential charge at \$7.50 would encourage energy conservation, calculating that maintaining the charge would result in a 0.67 percent decrease in residential energy usage, all else being equal.⁷⁵ But he also speculates,

[I]t is likely that at least some customers will react to the total increase in their bill without investigating whether the increase was caused by a change in the volumetric charge or a change in the customer charge. For those customers, any bill increase may lead

⁷³ *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E-002/GR-12-961, Findings of Fact, Conclusions, and Order at 33 (Sept. 3, 2013).

⁷⁴ Ex. OAG-2 at 3 (Lebens Surrebuttal).

⁷⁵ Ex. DER-8 at 3 (Zajicek Rebuttal).

to reduced natural gas usage, regardless of what billing component contains the increase.⁷⁶

Most customers likely do care more about the total amount of money they pay for utility service than the amounts of the individual charges, but this is beside the point. Lower customer charges mean higher volumetric charges, and higher volumetric charges send a stronger price signal to conserve energy.⁷⁷

Finally, Great Plains appears to argue that because it is proposing to increase the customer charge and the distribution charge, the customer-charge increase does “absolutely nothing” to discourage conservation.⁷⁸ But section 216B.03 does not say that the Commission should “do absolutely nothing to discourage conservation.” It requires that, “[t]o the maximum reasonable extent, the commission shall set rates to encourage energy conservation.” It is eminently reasonable to maintain the existing residential and small-business customer charges in an effort to encourage conservation, especially given that customer costs have remained stable since Great Plains’ last rate case.

2. Maintaining the Existing Customer Charges Would Strengthen Customers’ Ability to Pay.

Section 216B.16, subdivision 15, requires the Commission to consider ability to pay in setting rates. Maintaining lower customer charges would strengthen customers’ ability to pay by maximizing their control over the amount of their bills. Conversely, increasing the customer charges would give customers less control over their bills and would disproportionately impact low-usage customers,⁷⁹ who may have made significant efforts to reduce their usage.

⁷⁶ *Id.* at 3–4.

⁷⁷ *See* Ex. OAG-2 at 3 (Lebens Surrebuttal).

⁷⁸ Ex. GP-26 at 5–6 (Hatzenbuhler Rebuttal).

⁷⁹ *See* Ex. OAG-1 at 7 (Lebens Direct) (explaining that a higher monthly fixed charge would disadvantage customers who use less energy because the fixed charge would be a higher percentage of their overall bill).

The record contains evidence of “dramatic market condition changes that occurred in late February and early March 2020, including a significant decrease in the overall level of stock prices and a significant increase in price volatility” as a result of economic concerns over the COVID-19 pandemic.⁸⁰ The pandemic and the ongoing economic crisis that it has spawned are relevant to consumers and small businesses’ ability to pay for essential services. These conditions heighten the importance of giving these customers maximum control over their utility bills, and the simplest way to do that is not to raise their fixed monthly customer charges.

Department witness Mr. Zajicek asserts that any increased per-therm cost could negatively impact low-income customers because they are higher-than-average users of gas.⁸¹ This assertion is perplexing given Mr. Zajicek’s earlier conclusion that, in fact, low-income customers use an amount of gas comparable to other customers.⁸² In any event, a more appropriate avenue to address impacts to high-usage, low-income customers is through low-income assistance programs, which provide a beneficial, targeted subsidy to assist low-income customers with paying their energy bills.⁸³

Mr. Zajicek also points to seasonal bill variability as a reason to increase the customer charge.⁸⁴ Customers in Minnesota’s northern climate generally see their highest gas bills in the winter, and it is a mathematical fact that lower customer charges and higher volumetric charges

⁸⁰ Ex. DER-23 at 1 (Addonizio Response to Bulkley Summary); *see also* Ex GP-17 at 3–4 (Bulkley Summary) (citing the “very significant volatility in both the prices of utility stocks and the yields on Treasury bonds” resulting from the pandemic).

⁸¹ Ex. DER-8 at 9 (Zajicek Rebuttal).

⁸² *See id.* at 4 (stating that “customers enrolled in the Low Income Home Energy Assistance Program (LIHEAP), a reasonable proxy for low income customers, use comparable natural gas amounts relative to non-LIHEAP customers”); Ex. DER-4 at 53–54 (Zajicek Direct) (stating that it is “unclear” whether low-income customers have a different usage pattern than other customers, but that LIHEAP customers use “a very similar amount of energy” to other customers, and “may” use slightly more).

⁸³ Ex. OAG-2 at 3–4 (Lebens Surrebuttal).

⁸⁴ Ex. DER-8 at 4–5, 9 (Zajicek Rebuttal).

tend to increase the seasonal difference in bill amounts.⁸⁵ However, like many other utilities, Great Plains already has a mechanism in place to address seasonal bill variability—its Balanced Billing Program.⁸⁶ The Company’s tariff describes the program as follows:

All residential and commercial customers receiving natural gas under the Residential or Firm Gas Service rate schedules are eligible to enter into a Balanced Billing Plan. This option allows customers to be billed monthly based on a twelve-month rolling average of gas consumed multiplied by the currently effective rate for the month. Monthly bills will change minimally as fluctuations in consumption levels and natural gas prices occur throughout the year.⁸⁷

Based on this description, signing customers up for balanced billing would seem a far more effective strategy for reducing seasonal bill variability than raising the customer charge.

In summary, rate design is not an abstract economic exercise in moving customer charges “closer to cost.” It is a quasi-legislative determination that requires consideration of cost along with statutory, social, political, and other factors. In this case, encouraging energy conservation and preserving customers’ ability to pay outweigh any need move the charges closer to cost. The existing residential and small-business customer charges have been found to be just and reasonable, and they remain so despite Great Plains’ claimed need for more revenue.

CONCLUSION

The OAG’s concerns center on residential and small-business ratepayer impacts that are unreasonable and unnecessary, and for which Great Plains has failed to meet its burden of proof.

⁸⁵ Ex. OAG-2 at 6 (Lebens Surrebuttal).

⁸⁶ See Ex. GP-1 app. A at 6-30 (current tariff).

⁸⁷ *Id.*

In order to protect the interests of Great Plains' residential and small-business ratepayers, the ALJ and the Commission should:

1. Reduce Great Plains' test-year expenses by \$11,964 to disallow recovery of membership dues for EEI and MUI because Great Plains has not proven that membership in these organizations is reasonable and necessary for the provision of utility service; and
2. Maintain the current residential and small-business customer charges to encourage energy conservation and maximize customers' control over their bills.

Dated: April 10, 2020

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

/s/ **Kristin Berkland**

KRISTIN BERKLAND
Assistant Attorney General
Atty. Reg. No. 0394804

/s/ **Peter G. Scholtz**

PETER G. SCHOLTZ
Assistant Attorney General
Atty. Reg. No. 0389936

445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2131
(651) 757-1473 (Voice)
(651) 296-9663 (Fax)
kristin.berkland@ag.state.mn.us
peter.scholtz@ag.state.mn.us

ATTORNEYS FOR OFFICE OF
THE ATTORNEY GENERAL—
RESIDENTIAL UTILITIES DIVISION



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April 10, 2020

The Honorable Ann C. O'Reilly
Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
St. Paul, MN 55101

Re: *In the Matter of a Petition by Great Plains Natural Gas Co., a Division of Montana-Dakota Utilities Co., for Authority to Increase Natural Gas Rates in Minnesota*
MPUC Docket No. G-004/GR-19-511, OAH Docket No. 65-2500-36528

Dear Judge O'Reilly:

Enclosed and e-filed in the above-referenced matter please find an Initial Brief of the Office of the Attorney General—Residential Utilities Division.

By copy of this letter all parties have been served. An Affidavit of Service is also enclosed.

Sincerely,

/s/ Kristin Berkland

KRISTIN BERKLAND

Assistant Attorney General

(651) 757-1236 (Voice)

(651) 296-9663 (Fax)

kristin.berkland@ag.state.mn.us

Enclosure

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Tamie A.	Aberle	tamie.aberle@mdu.com	Great Plains Natural Gas Co.	400 North Fourth Street Bismarck, ND 585014092	Electronic Service	No	OFF_SL_19-511_Official CC Service List
Jorge	Alonso	jorge.alonso@state.mn.us	Public Utilities Commission	1217 h Place East Suite 350 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_19-511_Official CC Service List
Peter	Beithon	pbeithon@otpc.com	Otter Tail Power Company	P.O. Box 496 215 South Cascade Street Fergus Falls, MN 565380496	Electronic Service	No	OFF_SL_19-511_Official CC Service List
Kristin	Berkland	kristin.berkland@ag.state.mn.us	Office of the Attorney General-RUD	445 Minnesota Street Bremer Tower, Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_19-511_Official CC Service List
James J.	Bertrand	james.bertrand@stinson.com	STINSON LLP	50 S 6th St Ste 2600 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_19-511_Official CC Service List
Ray	Choquette	rchoquette@agp.com	Ag Processing Inc.	12700 West Dodge Road PO Box 2047 Omaha, NE 68103-2047	Electronic Service	No	OFF_SL_19-511_Official CC Service List
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_19-511_Official CC Service List
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	857th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	Yes	OFF_SL_19-511_Official CC Service List
Linda	Jensen	linda.s.jensen@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota Street St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_19-511_Official CC Service List
Brian	Meloy	brian.meloy@stinson.com	STINSON LLP	50 S 6th St Ste 2600 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_19-511_Official CC Service List

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Ann	O'Reilly	ann.oreilly@state.mn.us	Office of Administrative Hearings	PO Box 64620 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_19-511__Official CC Service List
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_19-511__Official CC Service List
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	Yes	OFF_SL_19-511__Official CC Service List
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	1217 h PI E Ste 350 Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_19-511__Official CC Service List
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	7400 Lyndale Ave S Ste 190 Richfield, MN 55423	Electronic Service	Yes	OFF_SL_19-511__Official CC Service List
Byron E.	Stams	byron.stams@stinson.com	STINSON LLP	50 S 6th St Ste 2600 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_19-511__Official CC Service List
Lynnette	Sweet	Regulatory.records@xcelenergy.com	Xcel Energy	414 Nicollet Mall FL 7 Minneapolis, MN 554011893	Electronic Service	No	OFF_SL_19-511__Official CC Service List